



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

ESTIMATES

(Supplementary Budget Estimates)

MONDAY, 30 OCTOBER 2006

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SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Monday, 30 October 2006

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

Senators in attendance: Senators Bartlett, Brandis, Carr, Crossin, Chris Evans, Hurley, Ludwig, Lundy, Nettle, Payne, Scullion and Trood

Committee met at 9.06 am

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

In Attendance

Senator Amanda Vanstone, Minister for Immigration and Multicultural Affairs

Department of Immigration and Multicultural Affairs

Executive

Mr Andrew Metcalfe, Secretary
Mr Bob Correll PSM, Deputy Secretary
Mr Abul Rizvi PSM, Deputy Secretary
Ms Carmel McGregor, Deputy Secretary
Mr Peter Hughes PSM, Acting 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
Ms Alison Larkins, First Assistant Secretary, People Services, Values and Training Division

Parliamentary and legal services

Mr John Eyers, Acting Chief Lawyer, Legal Division
Mr Chris Hodges, Assistant Secretary, Legal Coordination and Procurement Branch
Mr Jim Williams, Acting First Assistant Secretary, Strategic Policy Group
Mr Des Storer, Principal Adviser to the Secretary
Mr Nhan Vo-Van, Assistant Secretary, Ministerial and Parliamentary Services 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: Migration and temporary entry

Mr Jamie Fox, First Assistant Secretary, Migration and Temporary Entry Division
Mr Paul Farrell, Assistant Secretary, Temporary Entry Branch

Output 1.2: Refugee and humanitarian entry and stay

Ms Arja Keski-Nummi, Acting First Assistant Secretary, Refugee, Humanitarian and International Division

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Ms Judith O'Neill, Acting 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 and Offshore Services Division

Mr Dermot Casey, Assistant Secretary, Detention Health Branch

Mr Steve Dreezer, Assistant Secretary, Detention Operations and Client Services Branch

Mr Vincent McMahon, First Assistant Secretary, Border Security Division

Mr Stephen Allen, Assistant Secretary, Border Security Systems Branch

Mr John Rees, Acting Assistant Secretary, Entry Policy and Procedures Branch

Dr Wendy Southern PSM, Acting First Assistant Secretary, Compliance Policy and Case Coordination Division

Mr Peter White, Assistant Secretary, Character, Assessment and War Crimes Screening Branch

Mr Ross Greenwood, Assistant Secretary, Case Coordination Branch

Mr John Eyers, Acting Chief Lawyer, Legal Division

Ms Deborah Jacka, Assistant Secretary, Review Coordination Branch

Output 1.4: Safe haven

Ms Arja Keski Nummi, Acting First Assistant Secretary, Refugee, Humanitarian and International Division

Ms Judith O'Neill, Acting Assistant Secretary, Humanitarian Branch

Output 1.5: Offshore asylum seeker management

Ms Lyn O'Connell, First Assistant Secretary, Detention and Offshore Services Division

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

Ms Renelle Forster, Assistant Secretary, Citizenship Taskforce

Output 2.4: Promoting the benefits 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

Department of Immigration and Multicultural Affairs

CHAIR (Senator Payne)—I declare open this public meeting of the Senate Legal and Constitutional Affairs 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 with 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 Wednesday, 13 December 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 am advised that there remains one outstanding response to questions remaining from the budget estimates round in May 2006. I thank the department for their assistance in providing those answers in the period since then. Minister, do you or Mr Metcalfe wish to make an opening statement?

Senator Vanstone—I would like to make a very brief statement. DIMA, as you would understand, is the fourth biggest employer of public servants in the Commonwealth. If you put all the variations of Defence into one and then Tax and then Centrelink, I think Immigration comes next. That is an indication of the degree to which it is a service delivery department. Over the last 18 months to two years the focus has very much been on the compliance and detention aspects of the department. That certainly does not take up 6,000 people.

A large part of the department's work is assisting Australians in the normal conduct of their daily lives. For employers, that means assisting them to get in the people they need to allow their companies to expand, grow and protect Australian jobs. For normal citizens, it is more likely to be whether a family member can get a visa to come to Australia and whether people who are coming to visit can get tourist visas. Management of incoming visas to Australia allows us to make a very substantial contribution to important industries. For example, education, one of Australia's biggest export industries, just cannot survive without the immigration department properly conducting its business and going about it in an orderly and efficient manner. In fact, that efficiency is a part of our competitiveness not only for education visas but for skilled migrants. If it takes six months to get a visa application considered for one country, and for another country you can get it done in four, it is a fair bet that, if you have got a degree of enthusiasm to move, the country that is more efficient in its administration is going to have a competitive advantage.

I am very pleased that the migration program has received such international endorsement for being second to none. I am equally pleased to note that sometime in the preceding 12 months we shifted to being the second largest taker of people in need of resettlement in the world. We are regularly in the top three—never first. The United States comes there, then there is us and then Canada or Canada and then us. At the moment it is us and then Canada. This is something that all Australians can be proud of. Last year some 14,000 people came in under that program—on top of about 143,000 who came in under the remaining aspects of the program. So it is a very, very busy department.

I want to say briefly that senators will know—and they have got their questions on a range of matters—that because of a number of high-profile cases and the government's decision to therefore have all cases that could possibly come into that category be reviewed by the Ombudsman, the department has, over and above that normal workload, been very busy in the last two years or so. It is undergoing a tremendous reform program and it is well under way. We made the announcements—that is easy, to put out the press release and commit the money—and we are now in the process of not just spending the money but achieving the outcomes.

As one example of how long it can take, we have been criticised for our record keeping. We have gone about addressing that by way of getting a report from the Australian Archives on how we should do it. I cannot think of better people to get a report from. But in almost all of the fields where we are seeking to improve, there is a delay mechanism in terms of getting good advice and then considering the proper implementation of that advice. If government simply said to the immigration department, 'Here you are, here's a lot of money, go and spend it,' and we did not seek outside advice, I think people would be entitled to say: 'What did you give it to them for? If they were not at their peak performance prior to getting the money, what makes you think they will be afterwards?' We needed to get a broad range of outside advice. There are some tremendous changes that have been taking place in the detention area, especially in relation to health. We have been pushing a COAG agenda for reform, looking at 457 visas.

I simply wanted to put those remarks on record so that the committee could be reminded—although the committee does not need reminding; most of the people here have a longstanding

interest in this committee—of the wide range of work done by this department, particularly the large additional agenda that the department are now undertaking because, as we like to say, ‘People are our business, and we are on the move to improve.’

Mr Metcalfe—At the last estimates hearing in May this year I provided a document to the committee setting out our progress and implementing a comprehensive program of reform in the department. With your agreement, I would like to provide an update of that document to you and bring you up to date on those issues. I would also like to draw to your attention the achievements, initiatives and issues summarised in the department’s annual report for 2005-06, in particular the feature article on the change program that occurred in the department over the reporting year. This time, for the first time, we produced a CD-ROM version of the annual report, and we are surveying key recipients to see if they would prefer that version in future in an effort to reduce the use of paper.

Since the last estimates hearing the department has achieved some key milestones in the reform and improvement program mentioned by the minister, including implementation of the client service improvement program and the client service charter, the DIMA plan for 2006-07, our national quality assurance framework and our leadership tool on values, ethics and decision making known as IDEAL, which stands for immigration dilemmas, ethics, APS values and leadership. That is a very important part of our cultural reform program within the organisation.

I brought along today copies of those documents and some other documents produced recently by the department. I would not seek to table them but copies are available here if senators would be interested in seeing how we are going about trying to embody those key strategic themes we have identified of being an open and accountable organisation which has fair and reasonable dealings with its clients and which has well-trained and well-supported staff. All of those documents are being used by departmental officers here and overseas to guide their planning and performance reporting, and all of that is summed up, as the minister says, in our motto, which we take very seriously: ‘People are our business.’ Our client service improvements are essential to building the trust of our clients and stakeholders. We are an organisation that is aiming for nothing less than service excellence. I would particularly like to thank Deputy Secretary Carmel McGregor for her initiative and leadership in this area.

Our plan for 2006-07 strongly contributes to our building an ongoing positive departmental culture. It defines the purpose of the department as ‘enriching Australia through the well-managed entry and settlement of people’. The plan forms the basis for a cascading set of business plans that guide our work right down to the individual work-group level. They are not plans to sit on the shelf; they are plans that are to be used in running this organisation as well as we possibly can. Business planning, risk management and reporting performance against the plans are a fundamental part of our improved accountability arrangements. The plan articulates our key values as an organisation: teamwork, service excellence, respect, openness and a commitment to delivering government policy in a fair and reasonable way. Those values develop and are consistently informed by the broader Australian Public Service values.

They are seen in thousands of examples of the department’s work. One example I would like to single out are the services that we provided, together with other departments, in

helping Australians evacuate Lebanon recently. Some of our staff involved in that issue went well above and beyond the call of duty in the work they did. We have taken great pride in their work and they deserve great praise for what they did.

Our IDEAL package, which I just mentioned, was developed with the support of the Australian Public Service Commission as the basis of putting the APS and DIMA values in practice and implementing a culture of ethical decision making. I have copies here today of some further documents produced by the department in recent times which represent the breadth of our activity: the 12-month Palmer update, *On the move to improve*; a document about better management of records in the department; the settlement outcomes discussion paper; the *New beginnings* settlement publication; and the citizenship test discussion paper.

The establishment of the College of Immigration in July was a significant achievement in addressing the learning and development needs of our compliance, border security and detention staff. We are delighted to have a very strong advisory board in place with Mick Palmer as the chair, representation by all of the deputy secretaries in the department and other leading public sector experts such as retired departmental secretary Tony Blunn, Professor Mary O'Kane, Deputy Ombudsman Dr Vivienne Thom and Ms Sue Tongue from the Australian National University. Sue is a former principal member of the Migration Review Tribunal. We are working to develop a fresh stakeholder and community engagement framework to ensure that our service delivery is outwardly focused and that we are an open and accountable organisation fully plugged into the Australian community.

Work involved in the skilled temporary entry visa, subclass 457 visa, has been a key priority in recent times. A strong policy agenda is being advanced, particularly through the Council of Australian Governments process. Deputy Secretary Abul Rizvi is heading a task force on these issues and, as a result, Peter Hughes is currently acting as the deputy secretary for the group of divisions involved with migration, refugees, citizenship, settlement and multicultural affairs.

Considerable progress has been made with the Systems for People project, the information management program, the business transformation program that will vastly improve our ability to serve clients in a timely, efficient and fair manner. Deputy Secretary Bob Correll is providing very strong leadership on this major initiative. We have recently let some significant contracts under Systems for People and have already rolled out our new client service facility to all staff. This facility gives staff a single view of the department's holdings on a particular client and will greatly improve our ability to make accurate decisions more quickly.

Over the next six months we will retender for the detention services contract and the detention health services contract as separate processes. The national case management framework is now finalised to provide a new and more holistic approach to managing clients with complex circumstances or who are particularly vulnerable.

With supports such as this in place or near completion, our approach, as the minister indicates, is very much focused on implementation and the future. But much more remains to be done. No-one should underestimate the scale of activity required for our work, the comprehensive nature of our change and improvement program and our commitment to doing

the very best we can. The workload for staff is often substantial and I want to put on the record my appreciation for the efforts of my deputy secretaries and indeed all departmental staff in meeting the many demands and challenges we face and embracing the opportunities we have. Thank you.

CHAIR—Thank you. As I indicated in my opening statement, we will start with general questions to members of the departmental executive.

Senator LUDWIG—I have a general question to the minister. I was curious as to the break-up of responsibilities between you and Mr Robb. I am unsure of Mr Robb's responsibilities under citizenship and multicultural affairs vis-a-vis your department, that is, Immigration. Is the break-up of responsibilities reflected in the administrative orders or is there an arrangement between you and Mr Robb as to what legislation you will look after and what legislation Mr Robb will look after?

Mr Metcalfe—I can answer the specific point in relation to the administrative arrangements orders. It is my understanding that the orders are simply presented at portfolio level, so within the Immigration and Multicultural Affairs Portfolio there is an indication of the range of responsibilities and legislation administered. The break-up of responsibilities between a portfolio minister and junior ministers or parliamentary secretaries is an issue essentially settled by the minister with the Prime Minister, and I am sure the minister is happy to elaborate on the activities that Mr Robb is responsible for.

Senator LUDWIG—I could not find it in the administrative orders.

Mr Metcalfe—That is correct.

Senator Vanstone—What the secretary says is correct in that the arrangements for junior ministers or parliamentary secretaries are settled between the portfolio minister and the Prime Minister. The Prime Minister has made it clear since 1996 that he expects junior ministers and parliamentary secretaries to have proper jobs—not to be just extra capacity to sign letters or something. On the occasions that I have been the senior minister I have dutifully undertaken that task—to make sure that people have proper responsibilities. In Mr Robb's case, I have simply said that he should do pretty much the equivalent of what previous junior ministers did. There are some minor variations. In relation to interventions, for example, he does 351 interventions and I do 417s. Within the portfolio there are areas of responsibility that are in fact his.

Senator LUDWIG—I am still not clear, though. Does he do citizenship and multicultural affairs?

Senator Vanstone—Yes.

Senator LUDWIG—You have indicated that you retain 417 and he has discretion under 351. There are other discretions that are exercised.

Senator Vanstone—He does family migration as well.

Senator LUDWIG—What does family migration encompass—all the visas that are associated with that?

Senator Vanstone—Yes.

Senator LUDWIG—I am sure the department can provide—

Senator Vanstone—I think we will get you a list; that might be easier.

Senator LUDWIG—That was what I was going to allude to—

Senator Vanstone—Yes, I will get you a list.

Senator LUDWIG—effectively a list of the work distribution between you and him, because there are a number of discretions other than 417 and 351 that I was interested to know—

Senator Vanstone—I do the 501 cancellations.

Senator LUDWIG—I am sure the list will help provide that anyway. The other question on the back of that was the number of staff that you have in your ministerial office.

Senator Vanstone—We will happily give you a list. I think they are publicly available.

Senator LUDWIG—The same for Mr Robb as well. That would be helpful.

Senator Vanstone—Sure.

Senator LUDWIG—Who has responsibility for the detention centres?

Senator Vanstone—I have responsibility for the policy within the detention centres. Mr Robb is oversighting the forward planning, which I think we covered at the last estimates, if not the one before. We made some remarks that in the past what we have done is decided we needed a new centre so it has been built and that what we ought to do is have a long-term plan about what we should engage in. We have moved towards that. We have made the announcements about, for example, the immigration transit centres that we will have in a couple of states where we do not have a detention facility in the capital city but we need the capacity to be able to detain people for short periods of time, either while they are being turned around, to be put back on a plane and go, or are being relocated to one of the detention facilities. Mr Robb as the oversight of the implementation of that plan.

Senator LUDWIG—My recollection was that outcome 2 was more likely to be that which the junior minister had dealt with in the past.

Senator Vanstone—Pretty much.

Senator LUDWIG—So there has been a significant movement from there. Can you provide the date of that movement or change? It seems that there is now significant growth in Mr Robb's area to the detriment of your area.

Senator Vanstone—I do not see it that way. Mr Robb came to the portfolio with significant experience in IT, so there is another area that I thought it was appropriate that he have oversight of, and that is the implementation of Systems for People. That is the background that he came from; it is very sensible to give him oversight responsibilities there.

Senator LUDWIG—So, Minister, what do you finally look after then?

Senator Vanstone—All the rest. I am happy to give you a list. If you are looking to make a story that Mr Robb is somehow wanting to take my job, good luck go to you—keep at it!

Senator LUDWIG—I am not looking to make any story. It just seems to me that you have given away most of your portfolio area.

Senator Vanstone—Not at all. I am afraid that simply means you do not have an understanding of how much is in the portfolio. He does the multicultural affairs and citizenship, which is a very important part of the portfolio but perhaps has not needed as much time as Mr Robb can apply. It is just very sensible to use his skills. So an oversight of Systems for People seemed appropriate and, given his interest in contractual arrangements, I thought the implementation of the strategy I had instigated that we set up for forward planning, which I am very happy with, was a sensible thing to do.

Senator LUDWIG—Can you provide by lunchtime that list which splits the distribution of work?

Senator Vanstone—I think we probably can, yes.

CHAIR—Are there further general questions?

Senator CROSSIN—I have some general questions. I want to ask some questions about costs paid out for litigation. I am wondering if you can tell us what amount you have paid out for litigation costs against the department in the last financial year.

Mr Eyers—If I can just clarify the question, Senator: that was not costs that we are paying for our own legal representation but costs in matters where costs have been awarded the department?

Senator CROSSIN—Actually I would like both. I chose costs against you first, but I actually want both.

Mr Eyers—I do not have a figure at hand for the amount that we have paid by way of applicants' costs during the 2005-06 financial year, but I will be able get that figure and provide it later in the day. For the payment on litigation for the 2005-06 year I need to add three figures together—

Mr Metcalfe—Senator, we can probably provide you with some more detailed material. My attention has been drawn to page 336 of the annual report. There is a table there which I must say defies my glasses, so I need to look at it very closely. There is reporting against output 1.3.6, which is this area of activity—

Senator CROSSIN—Yes, sorry, Mr Metcalfe. I am actually after figures for the last financial year, from June to July.

Mr Metcalfe—This is reported for both 2005 and 2006.

Senator CROSSIN—To 30 July this year?

Mr Eyers—The figure in appendix 13 of the annual report is for the financial year ending 30 June 2006. There are three figures there, which are the ones I was just starting to add. They add up to about \$29.8 million.

Senator CROSSIN—This is costs incurred by the department for your own representation?

Mr Eyers—Yes.

Senator CROSSIN—The costs that you have incurred that have been brought against the department and that you have paid, you will get to me?

Mr Eyers—During the course of the day, yes.

Senator CROSSIN—Do you have figures for both costs from 1 July until now?

Mr Eyers—I do not have an exact figure for the cost of litigation for the year to date. Our external spend per month on litigation is about \$2½ million, running this financial year. So a very rough calculation would be—

Senator CROSSIN—Sorry to interrupt you. Just to clarify in my mind: the \$2½ million is your costs to represent the department yourself, as opposed to costs against others. Is that correct?

Mr Eyers—Yes.

Mr Metcalfe—Sorry to interrupt, Senator. It may assist you to know that in the annual report, at page 18, in my overview I have mentioned that there has been a substantial reduction in active cases before the courts in the AAT over the financial year from 3,615 cases to 2,518 cases. I think the number of active cases now is lower again, around 2,200. I think that indicates decreasing numbers of protection visas in past years and the clearance of backlogs in the tribunals. I know that the amount of litigation in this area has been of great concern to the parliament, and it is pleasing to see that that number is now steadily being reduced.

Senator CROSSIN—Mr Eyers, in terms of the litigation brought against the department, are you able to give me a list of the individual payments or at least the issue to which a payment against the department was made?

Mr Eyers—There would be many hundreds of cases; I do not think that would be quite possible.

Senator CROSSIN—Where the claim has been against the department and you have paid?

Mr Eyers—Yes.

Senator CROSSIN—Can you give me an idea of what sorts of hundreds of cases you are talking about?

Mr Eyers—We would be talking in the order of, I think, millions of dollars during the financial year in payment of applicants' costs, but I will obtain for you the figure and the number of matters in which we have paid. That might give you a better idea as to the extent.

Senator CROSSIN—There must be a database somewhere from which you then get your figure for your annual report.

Mr Eyers—Yes. The issue is the volume of matters. I am trying to put by issue the matters where we either have been unsuccessful in the court or have withdrawn from the court proceeding and had an order for costs made against the department.

Mr Metcalfe—It is fair to say, Senator, that, overwhelmingly, matters which proceed to litigation are resolved in the minister's favour. I think the figure is over 90 per cent.

Mr Eyers—That is correct.

Senator LUDWIG—Can you split up the litigation figures depending on whether it is the RRT, the MRT, HREOC, the Federal Court or the High Court? As you can appreciate, litigation is different, depending on the court that you might be in. If it is before the Human Rights and Equal Opportunity Commission, are you usually represented?

Mr Eyers—There are no orders for costs in matters before the—

Senator LUDWIG—There are orders for compensation, though.

Mr Eyers—Yes.

Senator LUDWIG—That is what I was going to come to shortly. There will also be costs for the litigation if you are represented.

Mr Metcalfe—Mr Eyers may correct me, but I am not aware that we are actually involved in litigation concerning HREOC. We certainly are involved in complaints that are made to HREOC. The resolution of those complaints, in a very small number of cases, may lead to the commission recommending some form of compensation payment. I would not characterise that as litigation per se.

Senator LUDWIG—No, and that is why, in characterising the general phrase ‘litigation’, I was seeking to break it down a little further to those where you are represented in complaints.

Mr Metcalfe—Normally we would not be represented in a formal sense before a hearing or an investigation by HREOC or indeed the Ombudsman. Rather, we provide information and respond to inquiries. There are not hearings, ordinarily, in a court like way. Our costs of representation, in the sense of using solicitors and barristers, would be minimal or nonexistent, but there are costs associated with responding to requests for information from HREOC. Similarly, it is rare indeed for us to be represented at the MRT, but of course there may be litigation that ultimately arises from the tribunal’s decisions. It is the same with the RRT. I am not trying to be unhelpful; I am just concerned that if we are providing information to you we provide accurate information as to the costs of litigation. I think some of what you are going to is more about complaints mechanisms or alternative dispute resolutions.

Senator LUDWIG—I am trying to find out whether you can specify which court the litigation work relates to—be it the Federal Court, the High Court or wherever else you might appear in a court. If there is work within the tribunals—the MRT and the RRT—if that information is available it would be helpful for us to understand the amount of representation by legal or paralegal professionals or by workload. That goes on the back of the question about costs that might be awarded against you. It also relates to compensation orders that might be made against you. Could you provide that detail as well.

Mr Metcalfe—Yes.

Senator LUDWIG—A recent one that comes to mind is CD, which was a \$15,000 award in the Human Rights and Equal Opportunity Commission.

Mr Metcalfe—That is right. Again, that is the sort of case I have in mind. I doubt if we would have been represented in any formal hearing or had legal counsel representing us. Rather, we would have provided information to the human rights commission. Ultimately, their conclusion of the circumstances was that compensation should be made payable, and that compensation has now been paid.

Senator LUDWIG—CD has now been paid?

Mr Metcalfe—That is correct.

Senator LUDWIG—When was that paid?

Mr Metcalfe—Last week, I think.

Mr Eyers—Last Wednesday. Just to clarify one matter: the department is not represented in any shape or form and does not appear before either the RRT or the MRT, so there would be no costs relating to them.

Senator LUDWIG—I understand that. You will provide information to them, though, if requested.

Mr Eyers—No.

Mr Metcalfe—Normally we simply provide them the file, so it is fairly low cost—‘Here’s the file.’ With the Ombudsman or with HREOC, quite often we receive requests for information and there is a substantial cost in terms of providing responses to quite detailed questions that are asked by those bodies. But that is counted separately from a litigation cost for contested matters before a tribunal court such as the AAT—where there is a right of appearance—or the Magistrates Court or the other federal courts.

Senator LUDWIG—Are there currently any outstanding HREOC compensation orders that you have not finalised?

Mr Metcalfe—Could I check on that, and we will endeavour to answer that quickly.

Senator LUDWIG—All right. And in relation to other compensation orders that have been made, are there any others still outstanding in either the Federal Court or the High Court where a private arbitration has been completed and the compensation has not been paid? I will come back to that in the relevant output, but I thought I would give you notice of that.

Mr Metcalfe—Thank you. We will try to have that information available then.

Senator CROSSIN—Following on from Senator Ludwig’s questions, I also want to get from you—take it on notice if you need to—the total amount paid to claimants without court action or in settlement in the last financial year.

Mr Metcalfe—That probably goes very close to what Senator Ludwig just asked. We will endeavour to have that answer when we come to that output. If it is not readily available, we will take it on notice.

Senator CROSSIN—What is the amount set aside in the forward budget for compensation payments?

Mr Metcalfe—I will ask Ms Gray, our chief financial officer, to respond to that question.

Ms Gray—Depending on the sort of payment it is—whether it is a claim for defective administration, act of grace or litigation—it is covered either in the departmental appropriation or as part of Comcover.

Senator CROSSIN—I am not looking for the Comcover; I am looking at the other area that you specified.

Ms Gray—I would have to check that. We can check that this morning.

Senator CROSSIN—Also, how much per year remains ongoing?

Ms Gray—We will get that.

Senator CROSSIN—Thank you.

CHAIR—Are there any further general questions?

Senator NETTLE—While we are in the compensation area, I might ask for an update on the compensation cases of Vivian Solon and Cornelia Rau.

Mr Eyers—In the Solon matter, the private arbitration before Sir Anthony Mason concluded on 23 June, and we are still awaiting the decision.

Senator NETTLE—Do you have a time frame for when that decision might be?

Mr Eyers—We expect it very shortly.

Senator NETTLE—There is no figure associated with that yet?

Mr Eyers—No, Senator.

Senator NETTLE—Could I ask about Rau.

Mr Eyers—We are still awaiting a formal request from Ms Rau's solicitors, which we have not received. The progress that has been made is that an FOI request has been made on behalf of Ms Rau, and that is currently being processed.

Senator NETTLE—When was that FOI request made?

Mr Eyers—On 26 September.

Senator NETTLE—And that was an FOI request for what documents?

Mr Eyers—I think it was a fairly general FOI request in respect of all documents relating to Ms Rau. It was addressed not only to us but to a number of other government departments as well.

Senator NETTLE—Do you have department figures for the legal bills associated with the Solon and Rau cases to date?

Mr Eyers—No, not at hand.

Senator NETTLE—Would we be able to get those?

Mr Eyers—We can certainly attempt to get those during the course of the day.

Senator NETTLE—Is there a similar compensation case in relation to the Niyonsaba case?

Mr Eyers—With Niyonsaba, it is currently before the court and that matter is ongoing. A statement of claim has been filed on behalf of the Niyonsaba family. There is preliminary discovery under way, and the matter next comes before the court on 21 November. The department is to comply with the preliminary discovery by 3 November, which is this Friday.

Senator NETTLE—Again, do you know the legal costs so far? And I have another general question: in relation to new boat arrivals, I understand there was a boat that recently arrived at Ashmore Reef, and I am wondering if we could get some information on that one.

Mr Correll—There was a boat arrival at Ashmore Reef, as I recall, with three people on board—two Vietnamese and one Indonesian. My colleague will give you an update on the latest position.

Mr McMahon—Two Vietnamese and an Indonesian, who was presumably the skipper of the boat, arrived at Ashmore Reef on 2 October 2006. Because they arrived on Ashmore they are offshore entry persons and are not eligible to make applications under the Migration Act. The group were transferred to Christmas Island, and no decision about where they are going to be taken has been made.

Senator NETTLE—Is that the latest boat arrival that has occurred?

Mr McMahon—Yes, that is the latest one.

CHAIR—Is there any reason why these questions cannot be done in the relevant outcome? As I am listening to you, they are not particularly general questions. I am not sure why we are doing them now.

Senator NETTLE—What outcome would you like me to do them in?

CHAIR—With everyone else, under 1.3.

Senator NETTLE—Okay, I am happy to continue them then.

CHAIR—Okay. So are there any general questions?

Senator NETTLE—Yes, I will ask some general questions in the area of climate change refugees.

Senator LUDWIG—Mr Metcalfe—there was a formal request from the solicitors. What was the nature of the request that you were waiting for?

Mr Metcalfe—Sorry, Senator, we did not hear the first part of your question. This is in relation to Ms Rau, is it?

Senator LUDWIG—Yes. You indicated in an answer to Senator Nettle that you were waiting for a formal request. I assume, although it was not stated, that that was for a request for compensation.

Mr Metcalfe—That is correct. Mr Evers can provide you with a little bit more detail.

Senator LUDWIG—What I was seeking in response to that was: has there been a request for private arbitration? Where is it at? We can deal with it later in that particular outcome if you want.

Mr Metcalfe—No, we can answer that now if you wish.

Mr Evers—We have asked for a statement setting out the claims on behalf of Ms Rau. That has not been forthcoming.

Senator LUDWIG—When did you ask for that?

Mr Evers—I think it was first asked for in April this year.

Mr Metcalfe—We asked for it on a number of occasions.

Senator LUDWIG—And it is in the process of preparation? I take it you have contacted the solicitors.

Mr Metcalfe—I think it is fair to say that the ball is in their court. The latest we have seen from them is the FOI request. But we are ready, willing and able to respond to a statement of claim as soon as we receive it.

Senator LUDWIG—So there has been no request for an arbitration? It is awaiting a request for a statement of claim?

Mr Eyers—We are waiting for a reply to the request for a statement of claim.

Senator NETTLE—I have a question in relation to climate refugees and whether the department has done any planning about the potential impact of climate change in producing climate refugees?

Mr Hughes—I will start with the word ‘refugees’. Of course, the refugees convention does not particularly deal with people who might need to leave their homeland because of some environmental disaster at some time. Therefore, if Australia were to consider admitting people who had to leave their country because of environmental disaster or if there were an international move for a group of countries to allow people to move from their home country because of environmental disaster, that would be a matter of a policy adopted at the time in response to particular circumstances. They would not normally be treated as refugees under the refugees convention.

Senator NETTLE—Are you saying that the government does not believe that there are climate refugees?

Mr Metcalfe—I think Mr Hughes is giving a proper, legally supported answer. The refugees convention refers to persons who are outside their country of residence for reasons of persecution, particular reasons which go to ethnicity, race, religion or whatever. I am sure you are very familiar with that. So the word ‘climate refugees’ in the sense of the refugees convention is simply not appropriate. The question of whether people may be displaced by climate change and thus be looking for safety somewhere else is an issue. As to whether you choose to use the term ‘refugees’ or not, when we use the term we are using it in its legally correct form. On the straight issue of whether or not Australia may at some time in the future seek to provide safe haven for people affected by climate change, the answer is: that is a policy issue and that is an issue, I suspect, for the future.

Senator NETTLE—Has the department done any planning in relation to that issue?

Mr Metcalfe—No.

Senator NETTLE—Is the department aware of any other government department that is doing planning on this issue which this department may also have been involved with?

Mr Metcalfe—Not that I am aware of. I am aware that there is a very substantial government issue on the interest and the response to the issue of global warming and climate change. But to the extent that an ultimate response might be to provide residence in Australia to people, that is not something that is currently under consideration.

Senator NETTLE—Minister, are you aware of any planning that is going on in relation to this issue?

Senator Vanstone—No, not in the context that you raise it.

Senator NETTLE—Has the government received any request from Pacific island countries for Australia to look at this issue of taking people whose homes are disappearing?

Senator Vanstone—Not that I am aware of. Any such request would presumably be put through the foreign affairs minister.

Senator NETTLE—Are you saying that, if such a request had been made, they would not come to the department of immigration?

Senator Vanstone—No, I simply said that, if any request had been made, that sort of thing would usually be made from one country to another through the Department of Foreign Affairs and Trade.

Senator NETTLE—Are you aware of the comments of the President of Kiribati last week in relation to this issue? I understand it was raised at the Pacific Islands Forum. Has the department been involved in any responses to that request?

Senator Vanstone—To the best of my knowledge, no and no.

Senator NETTLE—So you are not aware of any request from Kiribati—

Senator Vanstone—I do not know how to expand on the word ‘no’.

Senator NETTLE—In 2001 I understand there was a request to the department of immigration on this issue from the government of Tuvalu. Is anyone in the department or the government—

Senator Vanstone—You say ‘on this issue’. I have had meetings with people from Vanuatu, for example, in relation to migration to Australia but not, as you loosely refer to it, ‘on this matter’ and so generously referring to people as economic or climate change refugees. I have to say I concur with Mr Hughes—well, actually, I would go a bit stronger than him in my response: you clearly do understand what a refugee is and you do understand that there is no such thing as a ‘climate’ refugee. There may be circumstances where, because of some sort of disaster, there is a humanitarian need to relocate people. But in my view it diminishes the importance that the international community should put on refugees to call everyone else who might need to be relocated for humanitarian reasons a refugee.

Senator NETTLE—My question was about whether the department has received any formal requests. I have seen media reporting of two formal requests to the government of Australia in relation to the need for general population movement to Australia because of rising sea-level change—one from Kiribati and one from Tuvalu—so I was just asking if the government had received those formal requests and if the department had been involved in responding to them.

Senator Vanstone—I have given you my answer: to the best of my knowledge, no.

Senator NETTLE—To check again in relation to any planning that may be being done—

Senator Vanstone—Perhaps I could just help you, Senator. If you want to know something, if you go direct to it we will give you a direct answer. But you want to shillyshally around with ‘Are you aware of something?’ indirectly and ‘Have you got a request?’ and then you wait to get a no and then you say, ‘Oh, well, I’ve heard of this request.’ Why don’t you,

for heaven's sake, save the taxpayer a bit of time and money and go straight to the question you want to ask?

Senator NETTLE—Minister, I am aware of two reports of countries—

Senator Vanstone—Now you say!

Senator NETTLE—As I said in my previous question, I am aware of two reports. There may be more that I am not aware of—

Senator Vanstone—I understand that.

Senator NETTLE—so that is why I asked the question: has the department received any request from Pacific island nations to take people because those countries are going under water as a result of climate change?

Mr Metcalfe—I am not aware, if any request was made in the last week, as you indicated, of this department having received notice of that. We can check on that point, but I am not aware of that. You mentioned 2001: I do not have any recollection; we can check as to whether something was raised in 2001. The issue of whether or not, at some indeterminate time in the future, change in climate patterns or sea levels may indicate some sort of humanitarian response from countries is one that goes very much to policy, and it is not something that we normally canvass in this committee. I can simply say that it is not something we are actively engaged on in terms of work at the moment.

Senator NETTLE—Okay, thanks. I will leave my questions there.

CHAIR—Before we move on to the outcomes, are there any more general questions that cannot be asked in the outcomes?

Senator BARTLETT—I have a general question.

CHAIR—That is a promise, is it?

Senator BARTLETT—Well, everything could be answered in an outcome, but I think it is more appropriate for this part.

CHAIR—Okay.

Senator Vanstone—Everyone else has had a go, so I don't see why Senator Bartlett should be deprived of this opportunity.

CHAIR—Indeed, Minister, and I am extending the generosity of the committee to Senator Bartlett.

Senator BARTLETT—I just want to ask about staffing levels. I know the numbers have gone up fairly significantly in the last financial year, I presume as a response to the Palmer report and the like. I just want to ask about the figure you have at 30 June 2006 of 6,345, which includes 550 or so of non-ongoing. Is that going to be stable at about that level or is it going to increase more, or is that a temporary peak that will dip down again?

Mr Metcalfe—I would just note that there are a couple of different reportings in the report of staffing numbers. We have given a snapshot of the department's activities at page 25 of the annual report. You will see there the staffing numbers are reported at around 7,100. That quite deliberately includes locally engaged employees who work on visa matters overseas. Even

though I think formally they are employed by the department of foreign affairs, they are actually working on visa issues, so that is a more accurate representation.

It is fair to say that our staffing numbers have grown by around 10 per cent in the last year. That has been largely, but not solely, attributed to the very significant program of work associated with the Palmer-plus package. My expectation is that the numbers will probably be stable for the time being. I would not expect, all things considered, any significant growth unless there are particular government initiatives such as the one the minister announced over the weekend.

Indeed, it is my expectation, all things being equal, that we will see a reduction in numbers in a couple of years time because many of the projects that are currently under way, such as the Systems for People project, establishing the DIMA college and those sorts of things, are requiring a very substantial investment in activity now. Once those projects are complete and those systems are in place or those training packages are developed, it is my expectation we will be able to bring the numbers down somewhat. But I would not want to speculate as to the extent that that might occur. So they are reasonably stable but with an expectation, all other activity levels being equal, that things may come down. I do note, though, that in some of our areas of work there is an increasing level of activity. In some key visa categories and in citizenship, for example, there have been significant increases in activity, and that naturally needs to translate to adjustments to staff.

Senator BARTLETT—You mentioned a few specific visa categories where there have been dramatic increases as well as citizenship. Is there some sort of rough formula to ensure, if you are anticipating a hike in intake under a particular area, that you will have the built-in staff numbers to—

Mr Metcalfe—Yes. The majority of our resourcing does go directly to employee costs. The department is funded in part depending upon activity levels. Money that flows through the budget and is agreed with the department of finance will vary depending upon activity levels. If you are interested in a briefing on that formula we could be here for some hours, because it is a highly complex thing invented by some very capable accountants. But essentially it means that activity levels across visa categories are looked at and, depending upon the overall level of activity, there may be adjustments upwards or downwards. There is a component in much of our activity of a base or core funding and then a marginal adjustment depending upon activity levels. We have seen a significant increase in the size of the migration program and the refugee program. Overseas student numbers and temporary skilled worker numbers are up. Tourist visas or ETAs are down slightly. All of those things are examined in the way that the funding is provided to us.

Senator BARTLETT—I have a question to save time later and figure out which outputs it fits into. There were announcements or reports a couple of weeks ago of comments by the minister about proposed changes to ministerial discretion and humanitarian sponsorship. What is the status of those? Are they decisions that have been made that are coming down the line or are they proposals for consultation?

Senator Vanstone—In relation to the humanitarian settlement issue, and in particular whether we need to make sure that people who sponsor are capable of being a sponsor, of

being an anchor for the person they sponsor and of providing all that they are meant to, the government is determined to make sure that happens. But the shape of how that will happen is very much a matter for consultation.

In relation to the second matter, I have had the opportunity post-Palmer to focus on other areas within the department that can be improved, and it is clear to me that the intervention process needs some improvement. I understand that when the Migration Act was made in effect a lot of the rules that were not otherwise in legislation were put in legislation. I understand there was a view that the then minister did not think ministerial discretion was required, and there was a bit of a bunfight about that. It was settled that it would be available, and I support it being available.

In a sense, I think both parties were right. Senator Ray, if that was his view, was correct in saying, 'What is the point of codifying something and then saying: but please feel free to come back to have another opinion any time you like and as many times as you like?' He thought that was stupid. If that was his view, in my view that is quite correct. Equally, I think those who thought codification alone would not do were correct as well because there are cases that inevitably, whenever you draw lines, fall between them.

Unfortunately, the unique and exceptional cases often take longer to get a yes than they should because they are in amongst a lot of non-unique and non-exceptional cases of people who are simply trying it on for the second, third or fourth time. One has to query the advice they are getting and the fee they pay, perhaps to a migration agent, for assistance to lodge that subsequent intervention or whether it is in fact a predetermined process of theirs to simply stay in Australia long enough to have so many children that become Australian citizens that it becomes impossible to remove them.

I do not think any of that is in anybody's interests and I would like to see some reform that brings the decision-making process for the unique and exceptional forward, and where they deserve a yes they get it much more quickly. If there is some point of law that we want to litigate then find another case that is not unique and exceptional that we can do that litigation through to ascertain where the courts are going to go on a particular point. That would of course mean saying no earlier on. Having an early consideration of the matter and an early answer will discourage people from putting three or four in, and I think that will be better for everyone. But it is not resolved as to how we will do that. While I am determined to see that improvement, the manner in which that happens is open to consultation.

Senator BARTLETT—Is there any time frame on that or any detail about when the consultation will unfold?

Senator Vanstone—I would like to see it as soon as possible. I do the interventions where people are applying for sometimes a third and fourth time. It is frustrating for me to realise how many public service hours have been wasted. It is frustrating for me to realise that the person thinks that this is just an endless process—a mouse wheel that can keep going. We have devised this process over time in the parliament and I think it is time we had another look at it and found a way to cull out the non-unique and non-exceptional quickly and that will mean giving the unique and exceptional an answer quickly. And they deserve that; that is what the whole process was meant to be for. But it will mean accepting that a no is a no, and

if you want to stay after that and try your arm at the legal process because you may have a valid legal issue that you want to litigate, well and good, but it will not change the outcome of the intervention because the matters that make you unique and exceptional have already been considered and all you will be doing then is finding out whether at law there was some sort of error.

Senator BARTLETT—Thank you.

Senator NETTLE—Has the government considered the model of complementary protection that has been put forward by this committee in its inquiry into the Migration Act and by the UN as a way of dealing with these ministerial interventions?

Senator Vanstone—I am happy for Mr Hughes to make some remarks about complementary protection. But as a way of handling these issues generally, if you mean people who would like to stay in Australia who have no legal entitlement to do so, no.

Senator NETTLE—Perhaps you missed the end of my sentence, Minister, which was these issues around ministerial interventions.

Senator Vanstone—Ministerial interventions do not relate only to 417s; there are 351s as well. People have had their refugee determination in the first instance and they have had their RRT hearing; I think at that point it is possible for us to make an assessment of whether their case is unique and exceptional or whether the only thing remaining to be considered is some legal issue that needs to be canvassed. Mr Hughes might have some more to add.

Mr Hughes—All I would add to that is that we are well aware of proposals to give effect to the idea of complementary protection through a new visa category with appeal to the RRT and to the Federal Court. There has been a paper circulating, originated by NGOs in Australia, for some time. There have also been recommendations from at least one Senate committee to that effect. The current and previous governments have nevertheless, as a matter of policy, preferred to implement the kinds of things that might be given through a complementary protection visa class through ministerial intervention. The way that is done is really a matter of government policy.

Senator NETTLE—Correct me if I am wrong, but the way that currently operates is that somebody needs to go through the process of the RRT and the MRT, get rejected and then they can make an application for ministerial intervention if the kind of protection that they require is covered by international conventions but not covered by our laws.

Mr Hughes—What you are saying is correct. The reason for that is that with those other international obligations—for example, those that arise from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the International Covenant on Civil and Political Rights—for anyone who requires protection under the convention against torture, for example, 99 per cent of those cases are probably also going to qualify as being refugees under the Convention relating to the Status of Refugees. So by the process of requiring people to first apply for refugee status and then, if refused, to go to the RRT, that should take care of virtually all of those cases that Australia might have protection obligations to under the convention against torture and the ICCPR.

Senator NETTLE—If the minister were to look for a way to speed up that process, and to not require people to go through one process before they could apply for another, that would certainly cut down the number of processes that people have to go through. That is a suggestion. Minister, more generally, when will there be a government response to this committee's inquiry into the Migration Act?

Senator Vanstone—It is under consideration. I think we have a formal response to a question on notice about that. I will get someone to have a look for you.

Senator NETTLE—Do you know the time frame given in which to respond to that?

Senator Vanstone—There is no specific time frame.

Senator NETTLE—But there is a response coming?

Senator Vanstone—Yes. It may not be by way of a formal report but, anyway, I will get you the answer.

CHAIR—I am hoping that we are close to the end of general questions.

Senator LUDWIG—Could I check, Chair, whether those include questions about information technology, office services and those things which are before outcome 1?

CHAIR—If you want to ask some, Senator, yes.

Senator LUDWIG—I have a couple of general questions. Mr Metcalfe, in the provision of advice that you gave this morning there was one answer that was on information technology. In that answer you mentioned the words on page 7 of your advice under the heading 'Systems for People'. You announced in June a consortium led by IBM to help implement the Systems for People program. You then also mentioned the:

... initial release of a person centric search facility, which will improve staff's client searching capabilities by enabling simultaneous search across a number of departmental systems.

What does that mean?

Mr Metcalfe—Mr Correll might be able to provide the detail, because he is leading this very important project, but to date IT applications in the portfolio have been developed largely around a particular transaction, such as an application for a particular visa, a particular movement record, a particular email or whatever. Vivian Alvarez's circumstances tragically showed how disconnects can occur between information holdings and the fact that the way that information was collected meant that some people may have had multiple entries and, indeed, multiple identities within departmental records. The Ombudsman's report and Mr Comrie's report show how Vivian was known in about 20 different permutations of her name: Vivian Alvarez, Vivian Alvarez Solon, Vivian Solon, Vivian Young—the list goes on. One of the issues that was identified as having gone wrong with her case was not joining the dots and understanding who this person was and what her status was.

The simple response to that is to try to ensure that, in checking to see whether we have any knowledge of a particular person or if we have had a transaction with them, an officer is able to access all our information holdings and to check to see whether or not that person or someone with a similar name or a similar date of birth is known to us. That is something that has now been introduced in a release to our systems on 1 October. It covers many of our

systems but it will be complete later through the Systems for People project. The issue of identity and understanding whether this person is the same as that person, and thus having a proper understanding of their status, is a very significant improvement and I am delighted that Systems for People will give us that.

Senator Vanstone—I might raise a similar example of where Systems for People will help. That is the case of a woman who was not served well because of poor record keeping by the immigration department both under the previous government and under this government. She came here from the Philippines. There was a point at which fraud in relation to her entry was discovered. She was about to face court proceedings and decided to relinquish her citizenship. This is all under the previous government. She went to an office and presumably signed a form. But the form did not end up in the place it should have. She then left Australia—thinking that it was best thing to do rather than facing court proceedings. But the giving up of her citizenship was never registered, because the papers just did not go into the right file. It is a terrible mistake to happen, but you can easily see how someone picks up a file and off it goes.

As a consequence, later when she sought to come into Australia she was refused entry on a number of occasions. Some of the details of her matters, because of this name issue, were recorded on her husband's file and not on hers. She was on occasions refused entry, despite the fact that she was a citizen. That shows the consequences of poor record keeping. One small mistake, much further down the line or, for that matter, the next day—if information cannot be accessed by someone in the right bucket when they go to look at it—means that someone makes a decision based on the information that they have at hand, but it is not the right information. It is not that they are poorly trained, lazy or indifferent to the outcome. It is just that the information accessible to them is not the right information. It is a vitally important issue.

Senator LUDWIG—No-one is disputing that, I suspect. What I was more interested in was: in terms of the simultaneous search across a number of departmental systems, is that your own internal systems or external checks as well?

Mr Correll—Our own internal systems. Four of our main internal systems are checked against.

Senator LUDWIG—Will you be able to search not only on name? What fields will you be able to search on? Are there any other identifiers?

Mr Correll—There is an organisational search component within this client search facility as well. I emphasise that this is a very important step forward but it is not the ultimate destination we want to get to with the client search facility. That will come into play next year, with the introduction of the portals from April 2007. This represents a very important step forward in giving very fast and easy access to staff to information about a client from four key different systems in the department.

Senator LUDWIG—Perhaps you can take this on notice. What I am more interested in is an overview of the current project: what fields you can search in and when it will be fully operational or implemented.

Mr Metcalfe—You are talking about fields such as name and date of birth.

Senator LUDWIG—That is right. You can also take other data from a person who is in an immigration detention facility. Can you tell me whether or not you can search on that as well.

Mr Metcalfe—There are several fields that can be searched. We can give you that detail.

Senator LUDWIG—Is this overall \$495 million part of your bringing together the 11 computer systems that you currently have, your legacy systems, into one?

Mr Correll—Correct. It is about providing that. More than that, it is also supporting a wide range of redesign or redevelopment of business processes across the department in a range of the output areas. It will enable that business process redesign, as well as giving our staff a single view of a client and all the information that we know about that client.

Senator LUDWIG—I do not want to take up too much time on this issue. I would like a mud map of what the legacy systems are, where they are being migrated to, the platform, which new systems will then be added to that, the current cost, the projected budget and the outcomes that will be associated with that. I am sure you have a request for tender document or something which you can draw that material from. I would also like to know the time line—how long the project will take to be fully implemented—and who the contractors are. I know IBM is the main partner in that. In addition to that, could you indicate whether or not, in terms of the ICT—that is, the program—whether you have gone to the AGIMO website and had a look at the source IT model contracts. Can you indicate whether you are using those, whether you have departed from those in any significant way or whether you have not used them. That would also be helpful to understand. They also produce a guide to ICT sourcing for the Australian government. Could you tell us whether or not you are following that as well. Thank you.

Mr Correll—All that information is readily available. AGIMO is represented on our overall governance committee for the program.

Mr Metcalfe—In my opening statement I mentioned the level of activity in the department. The minister made the point also that not only are we dealing with those millions of clients that we have each year—and that is a significant effort—but we are also going through this major improvement program to try to provide better client services and better governance and accountability in the organisation. Systems for People is an extraordinary opportunity for the organisation but it is also providing very significant impacts in terms of the amount of work being required. We are not just buying a whole bunch of new computers. As you would understand, there is a business transformation opportunity here to look at how we deliver services, how we process applications, and to ensure that that is being done in the most efficient and effective way. That is the real opportunity that we are seizing. It is adding to a very significant level of activity within the department. It is a very exciting time but there is a lot of work required.

Senator LUDWIG—Can you also tell us whether or not you have looked at the Booz Allen Hamilton report into the Customs IT debacle, to assist you in your overall program. In addition to that, can you tell us whether or not you have a coordinator or someone who is in the hot seat, so to speak, to drive this program.

Mr Metcalfe—We have a program director. In our response on notice we will provide a comprehensive briefing on those issues. Mr Correll is essentially leading the project, but he

has other responsibilities as well. We are very mindful that such a large IT project does carry risk. We are very mindful of seeking in every way we can to minimise that risk and produce a good outcome.

Mr Correll—The Systems for People program is also one of the first government programs that is subject to the Gateway Review Process and is going through the Gateway Review Process.

Senator LUDWIG—Thank you.

Senator NETTLE—I received a letter from you, Minister, about an asylum seeker in Villawood I had asked about. It came back to me several months after he had been released, and it indicated to me that there had been a review of ministerial correspondence and you had found that my letter was one of the letters that had not been responded to. So I wanted to just ask you about the review of ministerial correspondence that was referred to in that letter and find out some information about how that had gone. My letter had not been responded to and I wondered how many others there were not as well.

Senator Vanstone—I do not recall the individual letter, but it does intermittently happen that the correspondence unit has a review to try and make sure that the records they keep as to what has come in match up with what has gone out. That would be an intermittent and reasonably regular practice. It is not a one-off, out of the blue arrangement.

Senator NETTLE—I was not assuming it was. I just wanted to hear about where that review was up to and how substantial that issue was.

Senator Vanstone—My guess is that it would have referred to a simple review in the terms of a reconciliation.

Mr Metcalfe—We will see if we can provide some more information.

Senator Vanstone—It was not a major project.

Mr Metcalfe—I note that Senator Vanstone is probably one of the most popular people in Australia in terms of receiving letters. Last year, Minister, you will be pleased to know, you received about 41,000 letters—and, the previous year, even more. The amount of correspondence—that is not emails; that is just letters—is very substantial. It is an area where we are taking seriously our responsibilities to ensure the minister is well supported and able to reply to those letters or have responses made to them. But it is a very high-volume activity.

Senator CROSSIN—We were wondering how that compared to Father Christmas.

Senator Vanstone—I will be doing a lot of interventions between now and Christmas. I can assure you that, within that, there will be some Father Christmas—or Mother Christmas—messages. There will also be some Scrooge ones.

Senator NETTLE—Is the person who came up to the table able to provide us with any more information about the ministerial review? Perhaps you were coming to the table for another reason.

Ms McGregor—As the minister indicated, whatever was said in the letter may have been as perfunctory as a review of something within the letter that was sent. We are not aware,

necessarily, what it is referring to, but I can assure you that there is no full-scale review of arrangements, which perhaps may have been intimated in the letter.

[10.28 am]

CHAIR—Am I being ambitious in entertaining the vague hope that that is the end of general questions? Good. Then we will move on to outcome 1 and start with output 1.1.

Senator CROSSIN—I will start with the trade skills training visa. I want to ascertain the numbers in the cost here. How many visas have been issued under the scheme and how many were actually budgeted for?

Mr Farrell—There have been no visas granted to date.

Senator CROSSIN—Are there any projections?

Mr Farrell—In terms of projections, we do not have absolute numbers, no.

Senator CROSSIN—What do you mean by that? Are there any anticipated numbers?

Mr Farrell—The anticipated numbers are expected to be low, but we have not put any exact figure on it, no.

Senator CROSSIN—How many employers have been given approval to apply for the visa?

Mr Farrell—There are 29 sponsorship applications at the moment.

Senator CROSSIN—Do you have a breakdown of those by state and territory?

Mr Farrell—Yes. There are seven in Queensland, eight in Victoria, six in Western Australia, six in New South Wales, one in the Northern Territory and one in South Australia.

Senator CROSSIN—Is it possible for us to have a list of those employers and the number each employer has asked for?

Mr Farrell—Yes. I can get that list to you.

Senator Vanstone—Has that—the officer might be able to help—changed from the last estimates, when I think the same question was asked and the information was provided?

Mr Farrell—There were 19 at the last Senate estimates.

Senator Vanstone—How many are there now?

Mr Farrell—29.

Senator CROSSIN—We are after the list of employers by state and territory and the number of applications per employer.

Mr Farrell—Yes. I can get that to you.

Senator CROSSIN—Thank you. So no visas have been cancelled?

Mr Farrell—None have been granted, so by implication none have been cancelled.

Senator CROSSIN—How many apprentices are likely to be in Australia by the end of 2007?

Mr Farrell—That depends on the progress of the sponsorship applications. So it is difficult to tell, but things are progressing. From the applicants we have 15 applications. As I say, none have been approved, but our Brisbane office that handles the applications is processing those applications.

Senator CROSSIN—What industries are those applications in?

Mr Farrell—Various industries. Again, I could give you a list rather than—

Senator CROSSIN—A breakdown?

Mr Farrell—Yes.

Senator CROSSIN—That would be fine. What fees are associated with the visa for both the applicant and the sponsor?

Mr Farrell—It is a two-stage fee for the applicant. It is \$420 at the first stage and then \$3,300 at the second instalment, which is paid just before the grant of the visa. For the sponsor it is \$1,050 for the sponsorship fee.

Senator CROSSIN—When is that paid?

Mr Farrell—That is paid at the time of application.

Senator CROSSIN—Finally on this, I am wondering if you could provide for me information on any revenue received in 2005-06 under the trade skills training visa arrangement for regional Australia. I think in Budget Paper No. 2 it was on page 233.

Mr Farrell—I would need to follow up on that. I will get that information to you.

Senator CROSSIN—Will you take on notice the revenue received in 2005-06 and also the latest revenue estimates for 2006-07, 2007-08 and 2008-09?

Mr Farrell—Yes.

Senator CARR—Minister, I have in front of me a copy of your press release from this morning, Monday 30 October, 248.06. It is entitled 'Package to enhance integrity of temporary skilled migration'. It refers to an announcement that you have made about what you say is improved management of the temporary skilled migration 457 visa. In particular it says there is a \$23.5 million package for the establishment and training of investigation or mobile strike teams. I also notice there are a number of press reports on the same matter in today's press. I am wondering if you could outline what the proposal is.

Mr Fox—If you like, I can answer some of the detail in that question. The funding that the minister announced today was, I guess, a follow-up from the advice that the minister gave in our last estimates—that we were looking to enhance our capacity to conduct investigations into the allegations that have been made around the 457 visa regime. The large majority of that funding is designed to give us some more resourcing, particularly around our state and territory office network, to improve our capacity to go out and monitor and investigate allegations that are made. We will also be enhancing the resourcing in our national office around what we call the business integrity section, which is designed to deal with all the monitoring of and allegations about this visa subclass. There is also some funding that is allocated to the Department of Employment and Workplace Relations as part of the package.

In particular, we are adding some more resourcing in our national office staff to negotiate, monitor and implement labour agreements.

Senator CARR—I wonder if I could take those issues; there are three parts to them. One goes to the question of allegations made—I just want to make sure I have understood this correctly—

Mr Fox—Yes, that is right.

Senator CARR—which is the investigation of matters and complaints with you. Then there is business integrity, so I will assume that you will be doing your own audits through this?

Mr Fox—Yes. That business integrity section is one of our national office sections, which will oversee the policy and monitor how we are going with our monitoring and allegations.

Senator CARR—And they will do the audits, will they?

Mr Fox—No, they will not do the audits. They will be based in Canberra. The fieldwork, if you like, will be done by our state and territory office network.

Senator CARR—So how will this announcement augment the normal audit program that is undertaken by the department with regard to the operations of 457 visas?

Mr Rizvi—The work that we do in this area has perhaps three components. The first is a monitoring and site visit component which is undertaken on an ongoing basis. Secondly, there is a component associated with investigating allegations. Where those allegations relate in particular to matters relating to the Migration Act, that is where a substantial portion of the particular resources announced by the minister this morning would go. The third component in the work that we do in this area is to work with a range of relevant agencies, both at the Commonwealth and at the state level. We do that because a fundamental requirement of the subclass 457 visa is that the employers abide by all relevant Australian laws. Clearly, the department of immigration is not in a position to ensure compliance with all relevant Australian laws. That can only happen through the relevant agencies, and the key is to work with those agencies to ensure they are aware of their responsibilities so that there can be appropriate information exchange and referral of cases for those agencies to undertake investigations.

Senator CARR—How many site visits did you have in the last year?

Mr Rizvi—In 2005-06 there were 1,790 site visits of 457 employers.

Senator CARR—And how many in the previous year?

Mr Rizvi—There were 1,845.

Senator CARR—So it is a decline in the number of site visits. Have I understood that correctly? There were actually fewer site visits undertaken in the last year than in the previous year?

Senator Vanstone—I think that is pretty obvious. There are two numbers and one is smaller than the other. I mean, we could do a PhD on it if you like.

Senator CARR—And how many sites are there, currently, where people are working on 457 visas?

Mr Rizvi—The number of sites would be approximately equivalent to the number of active 457 sponsors there are. In 2005-06 there were approximately 10,000 active sponsors.

Senator CARR—So it is fair to say that in your judgement there are 10,000 sites or thereabouts?

Mr Rizvi—There is a mixture there. Some of those employers will of course be bringing in people for a very short term, so undertaking a site visit in respect of someone who is in here for a very short term is going to be difficult. Other employers will have people at a number of sites. For example, if you had a department of health in a particular state they will have 457 employees in a wide range of health centres and hospitals around that particular state. So I do not think the figure of 10,000 necessarily aligns with individual sites.

Senator CARR—It is just that I thought that was what you were saying before. I asked the question: how many sites were there? I thought you were telling me that that roughly equates to the number of sponsors.

Senator Vanstone—That is what he told you.

Mr Rizvi—Yes, I am saying it roughly equates to that, but it does not exactly relate to that.

Senator CARR—All right. What I am trying to get to is that, in terms of site visits, it would be fair to say that you have visited something like 17 per cent of sites.

Mr Rizvi—That is correct.

Senator CARR—In the previous year you visited 18 per cent of sites.

Mr Rizvi—No, because—

Senator CARR—Was the number of sponsors more or less?

Mr Rizvi—The number of sponsors the year before was less.

Senator CARR—So what was the number of sponsors in the year before?

Mr Rizvi—I do not have here the exact numbers of active sponsors in 2004-05 but it would have been less than 8,000.

Senator CARR—So, in percentage terms, there is quite a substantial drop in the number of site visits.

Mr Rizvi—That is correct.

Senator CARR—Can I just be clear: what do you think was the percentage for site visits in the period of two years ago?

Mr Rizvi—Two years ago it would have been closer to 25 per cent.

Senator CARR—And it is now down to 17.

Mr Rizvi—Around 18.

Senator CARR—The figures I am reading that have been canvassed widely show the number of audits undertaken was 62.5 per cent, down from 96 per cent. So 62.5 per cent of employers were audited in the last financial year—is that correct?

Mr Rizvi—The number of employers monitored in 2005-06 was 6,471.

Senator CARR—How many last year?

Mr Rizvi—The year before it was 7,963.

Senator Vanstone—Senator, these figures that you are asking to have repeated to you are in the annual report.

Senator CARR—I appreciate that. I want to be clear in my own mind what the difference is between an audit, a monitor and a site visit. Can you explain to me how you would characterise each of those three activities by the department?

Mr Rizvi—If I might use the terminology: employers monitored, employers site visited and employers investigated.

Senator CARR—Can we get those sets of figures?

Mr Rizvi—They are the figures we have just been talking about.

Senator Vanstone—The terminology I think you wanted explained, Senator.

Mr Rizvi—I just wanted to clear up the terminology. The figures are the figures I have just given you.

Senator CARR—Yes. There are the numbers investigated.

Mr Rizvi—The numbers investigated would have increased in 2005-06. The current number of employers being investigated is approximately 190.

Senator CARR—What was it in the previous year?

Mr Rizvi—That is a point in time figure; it fluctuates. I do not have a stock figure. I only have a point in time figure for investigations.

Senator CARR—So you are currently investigating 190.

Mr Rizvi—That is correct.

Senator CARR—And you cannot tell me what numbers were investigated in the previous financial year.

Mr Rizvi—I have not got that with me, but the numbers would have been smaller.

Senator CARR—Do you know by how much?

Mr Rizvi—Significantly smaller.

Senator CARR—What do you regard as significant?

Mr Rizvi—My recollection is that the numbers we were investigating at the time we last met at this committee were between 30 and 40.

Senator CARR—I come back to the announcement today. What level of activity do you expect to see as a result of this additional expenditure of \$17.6 million on the investigative mobile strike teams?

Mr Rizvi—I go back to the approach we are taking in this area. Firstly, we will be investing a significant proportion of these resources, and have been in recent months, in developing state by state working arrangements with a range of Commonwealth and state agencies. As you would appreciate, the bulk of the allegations that are made in respect of this visa relate to the legislation of other agencies; they do not predominantly relate to breaches of the Migration Act. So the key for us is to leverage the agencies that have direct responsibility for the legislation that might have been breached. A significant proportion of these resources will go into developing those relationships and referring and coordinating cases where the actual investigations will be undertaken by another agency.

Secondly, we will be investing resources in the actual investigations, which, as we have noted, have gone up significantly. In order to be able to move more quickly with those investigations, resources will go into that. Finally, we will be targeting our monitoring and site visits to at-risk industries and at-risk occupations a lot more than we have been in the past.

Senator CARR—I would like to go through that again. When you audit a company, is that when you investigate? Is that the process?

Mr Metcalfe—Senator, you earlier asked us to define what we mean by those terms. I think it would be very useful if Mr Rizvi precisely defined monitoring, investigating et cetera so that we are all talking about the same thing. I can just see a little disconnect occurring that is probably not a good idea.

Senator CARR—I am happy for that to happen. I would like to know what the methodology is. That is where I am going. I would like to know on how many occasions you will actually look at the company's books, for instance. What is your level of investigation and what is your level of monitoring? I would like to know how you come to these things.

CHAIR—Let us let Mr Rizvi define the terms and then we will try to work consistently with the definitions.

Mr Rizvi—The first layer is the monitoring layer, which is essentially a request to the company to answer a series of questions. The series of questions is listed in a monitoring questionnaire form, which we can provide to the committee. It relates to form No. 1,110 and it lists the questions that the employer is required to respond to. We then analyse the responses we receive in respect of each of those particular monitoring forms, which are returned to us by the employer.

We will then compare the responses we have received with the original application and with any other information we have regarding that company. That will then determine for us whether we need to take the matter to the next step. The next step is to undertake a site visit. As I mentioned earlier, the site visits will be targeted to those companies or employers where we have some specific concerns either because of what is in the monitoring form or because it is previously known as an industry or occupation where problems have arisen. There are certain industries and occupations that we will clearly target for site visits. When we undertake a site visit there will be standard questions that we will ask. In addition, there will be a range of other questions we might ask, depending on the nature of the industry and depending on what came out of the monitoring questionnaire.

Senator CARR—I come back to the question I asked before: at what point do you actually examine the company's books?

Mr Rizvi—We would not go into the details of examining the company's books unless we have some specific concerns arising out of the monitoring form responses that we have received.

Senator CARR—Do you have the power to examine the company's books?

Mr Rizvi—We can ask for certain information; we cannot demand. We do not have the same powers as, for example, the Office of Workplace Services has in that regard.

Senator CARR—So these investigation units have the power to ask questions of the sponsor?

Mr Rizvi—Correct.

Senator CARR—They have the power to ask the sponsor to fill in a questionnaire but they have no powers to actually go behind that questionnaire?

Mr Rizvi—We can continue to ask questions regarding that. If issues arise that suggest there has been a breach of legislation, and usually it will be the breach of another agency's legislation, that may lead us to a point where we have sufficient information to refer that matter to the relevant agency. For example, if from the answers we have received there is a concern that there is underpayment, that the workers are being required to work excessive hours, that there is an occupational health and safety issue, or that there is an issue of deductions being inappropriately made and they do not meet the requirements of the relevant fair trading agency, we would refer that matter to those agencies to then investigate.

Senator CARR—So these mobile strike teams are in fact referral agencies?

Mr Rizvi—They will be gathering information and investigating to the point that they can. At some point they will have enough information so that a referral can be made to the relevant agency that is responsible for the potential breach to investigate.

Senator CARR—You mentioned that you thought there were certain industries at risk. Would you be able to provide us with a list of those industries?

Mr Rizvi—Yes, we can provide that.

Senator CARR—Do you have it with you now? Are you able to table it for the committee?

Mr Rizvi—Yes. We have a more detailed list, which we will provide, but here is a broad summary of it.

Senator CARR—Are you happy to table the more detailed document?

Mr Rizvi—Yes.

Senator CARR—Thank you.

Mr Rizvi—Probably the highest risk industry is accommodation, cafes and restaurants. The second would relate to cases involving labour hire firms. Thirdly, there is manufacturing; fourth, agriculture, forestry and fishing; fifth, retail trade; and finally, construction.

Senator CARR—Where does the meat industry fit within that categorisation?

Mr Rizvi—The meat industry would fit within agriculture, forestry and fishing.

Senator CARR—Agriculture? Manufactured meats?

Senator Vanstone—Meat is not produced in a factory, Senator. It is a—

Senator CARR—Of course, but you see it is a manufacturing industry: the processing of meat.

Senator Vanstone—It is a value-add to agriculture.

Senator CARR—That is not quite right.

Mr Rizvi—I would need to check the ASCO dictionary as to precisely where it fits, but I would imagine that is where it fits.

Senator CARR—In with the fishing?

Mr Rizvi—Well, certainly with agriculture. I will check the ASCO dictionary. It will be one of those. It may be manufacturing, but I have not got a copy of the dictionary with me.

Senator LUDWIG—That aside, the questions relate to when you decide to send a letter for a site monitoring questionnaire. For the third time I am going to ask this question. You send out a letter; do you determine how, why and to which area you will send out that letter? How is that information decided, or do you send out a general monitoring questionnaire to all employers?

Mr Rizvi—It is a standard questionnaire.

Senator LUDWIG—Is it sent out to every 457—

Mr Rizvi—We would send it out to every active sponsor. An active sponsor is usually someone who has probably been approved as a sponsor six to nine months before and who has had someone visit.

Senator LUDWIG—Can you provide the numbers of how many you send out and how many return the questionnaire?

Mr Rizvi—Yes, Senator, I can provide some of that data. Of course, because this is financial year data, there will be some questionnaires that will be outstanding at the point of crossing over from one financial year to another. The number of questionnaires that were sent out in 2005-06 is 7,917. The number that were finalised is 6,471.

Senator LUDWIG—Is there a proportion of those which are what you would call ‘non-response’—where there has not been a response?

Mr Rizvi—Yes, we do have a proportion where we get a non-response or we get an incomplete response. We would follow up a non-response with further questions, asking the sponsor when they will be responding. When we get an incomplete response, they are likely to be a target for a site visit.

Senator LUDWIG—What happens if you fail to get a response? Is there a percentage that you do not get a response from at all?

Mr Rizvi—I do not have the percentage of non-responses with me.

Senator LUDWIG—You can take that on notice as well.

Mr Rizvi—If we could. They would certainly become a target for a site visit.

Senator LUDWIG—You went to answer a question from Senator Carr about your ability to request information from the employer. Can you request employee wages data to determine whether they are being paid according to the regulations?

Mr Rizvi—Yes, we can request data such as pay slips and that type of material. We will look at those as a basis for determining whether there is an issue and whether it therefore needs to be referred to the relevant workplace relations agency.

Senator LUDWIG—But you have no right to demand it?

Mr Rizvi—We do not have the right to demand it, no. But, of course, if an employer fails to provide, that provides a pretty good basis for us to refer.

Senator LUDWIG—How many cases have been referred?

Mr Rizvi—Referred to another agency?

Senator LUDWIG—Yes, specifically about wages. I guess it is to the Department of Employment and Workplace Relations.

Mr Rizvi—I would have to take that on notice, in terms of specific referrals.

Senator Vanstone—The Canberra waiters are a good example.

Mr Rizvi—Certainly, in the Canberra restaurant incidents that the minister is raising, the issues were raised with us and we then referred them to the agency that was more expert in investigating those matters.

Senator LUDWIG—I understand that, but what I am after is how many you referred. Of those that you referred, have you then sought a response from the referral agency? How long has it taken for the referral agency to follow up the investigation and are there currently any outstanding? Do you then follow that up for further information from the referral agency?

Mr Rizvi—The situation varies from agency to agency. I think it would be fair to say that the cooperation we get from the Office of Workplace Services is excellent. They are very responsive to the referrals that we make and are very quick in keeping us up to date with how they are progressing. With other agencies it varies from case to case. In a number of instances the agencies have indicated to us: ‘Thank you for the referral. We will investigate,’ and they will decide whether they will actually let us know the outcome of their investigation or not.

Senator LUDWIG—I am happy for you to take it on notice. I am after the number referred, the agencies that you have referred to, the responses that you have received from them and where there is a non-response or a letter indicating that they will follow it up but not provide you with any detail—those cases as well.

Mr Rizvi—At the moment, of the 190 cases that we are currently investigating, around 45 per cent have already been referred to at least one or more agencies and others will be referred to other agencies as we gather further information which perhaps indicates an issue. If no issue arises then we will not refer. So these would be the investigations that we are currently undertaking.

Senator LUDWIG—I will try to make it plainer. I was curious to know whether, if you refer something, it simply falls off the edge of the table as far as you are concerned. Clearly, you cannot answer for the other department—

Mr Rizvi—No.

Senator LUDWIG—but we want to find out whether there was an issue and, if so, what they are doing about it—for example, whether there was any sanction imposed because of the information that you had referred—and what other actions that department took. Take the Office of Workplace Services as an example. If there was an underpayment, we want to find out whether they pursued it, prosecuted it, sorted out the wages and advised you that that had been dealt with to your satisfaction and therefore the wages were then being paid correctly for those people who were on 457 visas. Do you have a monitoring program in place to ensure that that does happen and it is to your satisfaction? Ultimately, they are your responsibility, are they not?

Mr Rizvi—I would not necessarily agree with that.

Senator LUDWIG—You are the issuing agency for 457 visas.

Mr Rizvi—We were the agency that issued the visa; however, if there has been a breach of the legislation of a particular agency, that agency is as responsible as us.

Senator LUDWIG—Don't you care if they are underpaid?

Mr Rizvi—We certainly do care. I did not say that we did not care.

Senator LUDWIG—So it is just not your responsibility then?

Mr Rizvi—No. I am saying that, where there has been a breach of another agency's legislation, the primary responsibility rests with that particular agency. In respect of the Office of Workplace Services, we get responses from them very quickly. They keep us up to date on a regular basis. With other agencies, the response is not as quick. In the case of some agencies, we have been advised that they are not in a position to provide us with the outcome of their investigations because of limitations within their own legislation.

Senator LUDWIG—Perhaps you could outline those circumstances?

Mr Rizvi—For example, a number of state agencies have indicated to us that they are not able to give us the details of the outcome of their investigations. In respect of the Australian Taxation Office, we have been advised that the secrecy provisions of the Tax Act limit the ability of the Australian Taxation Office to tell us the outcome of their investigations.

Senator Vanstone—Although you can see, Senator, that even a not very astute businessman could conclude that, if he were not cooperative and matters were not resolved, those matters would therefore be referred to the tax office. Someone who was not going to cooperate would want to be confident that they were comfortable with the tax office having an investigation into their area. You do not have to be too bright to figure that out.

Senator LUDWIG—I appreciate that. I was also interested in cases where there has been an underpayment and where, for example, the employer has not resolved it, the Office of Workplace Services has not been able to assist or the person has said, 'I don't really want you to persist with the complaint,' and then Workplace Services decide not to follow it up—that is

an example and not an accusation. If they notify you that they are not going to proceed any further, what do you do?

Mr Rizvi—If an agency comes to the conclusion that, within the framework of their legislation, there is not a basis for them to investigate further, I think we have to accept the expertise and advice of that particular agency. For example, there have been instances where we have referred allegations to the relevant state police departments and they have come back to us and advised that there was not a sufficient basis to continue a police investigation. It is not possible for the Department of Immigration and Multicultural Affairs to then go back and say, ‘Can’t you look at it again?’

Senator Vanstone—Or to step into the shoes of the state police.

Senator LUDWIG—I did not mention the state police; I was talking about Workplace Services. I was talking about a situation where there has been an underpayment, according to the regulations that you promulgate, and Workplace Services have either settled one matter but not all the matters or the person has withdrawn the complaint and they have decided not to pursue it but there is still an ongoing underpayment.

Mr Rizvi—Certainly our experience with the Office of Workplace Services is that they have been very responsive and very cooperative.

Senator CARR—Just following up on that, how many times have you referred matters to the state police?

Mr Rizvi—Could I take that on notice, Senator? I have a very long list here and I am not sure that I can readily find the detail.

Senator CARR—A long list of referrals to state police?

Mr Rizvi—No, it is a long list of issues arising—

Mr Metcalfe—It is a comprehensive list of briefing material, and we are just finding the right little bit.

Senator CARR—I appreciate that. Mr Rizvi has always been very thorough in his responses to the committee.

Mr Rizvi—Thank you, Senator. I can remember at least two, but I might take that on notice.

Senator CARR—Perhaps we can come back to that later in the day.

Senator CROSSIN—I want to follow up on some of the answers you provided to Senator Ludwig, but I would like to go into a bit more detail. You said that you have the capacity to look at the pay slips of 457 holders. Do you have the capacity to look at the employer’s time and wages records?

Mr Rizvi—Certainly, when we do our site visits, the employers have been quite prepared to show us their time and wage records. Indeed, in the site visits we have conducted, that has not been an issue.

Mr Fox—Perhaps I could add a little to that answer. We referred earlier to the sorts of undertakings that employers make when they are approved as sponsors. A part of those

undertakings is that they provide information to us when requested. If they do not provide the information that we seek—for example, the time and wage records—then that is prima facie a breach of their undertaking and we could move to the sanction regime under our legislation. Obviously we would seek to engage with them further but, as Mr Rizvi said, our experience to date has been that employers have been prepared to show us those documents.

Senator CROSSIN—Have there been any instances where the time and wages records have not corresponded with the pay slips?

Mr Rizvi—I am not aware of a specific instance where that has occurred. However, if it did occur then that would certainly be a trigger for us to refer the matter to the relevant workplace relations agency. I think it is important to remember that the department of immigration officers are not experts in workplace relations legislation. The moment that it reaches a point where there is enough information to make a referral, that is what we would do—to have experts investigate rather than have our officers investigate.

Senator CROSSIN—Do you have the capacity to monitor whether the market rates that have been set are being paid?

Senator Vanstone—What do you mean by the market rates that have been set? There is not a set rate that you can go and look up for a market rate, is there?

Senator CROSSIN—Under your scheme you have the minimum salary level that is set by the regional bodies.

Senator Vanstone—Yes.

Senator CROSSIN—Would you then know what the minimum salary is in an industry, say, for a chef? Would you know what the minimum salary level is for that?

Senator Vanstone—That is not a market rate. There is a minimum salary level for all 457s and there is a slightly less minimum salary level for regional areas. The regional certifying bodies cannot go below that level; they can simply recommend something in between that minimum and the minimum for the capital cities. But it is always the MSL or the award, whichever is the higher.

Senator CROSSIN—So when you are looking, then, at a time and wages record in relation to a complaint, you would be making sure that person is paid either the MSL or the award rate, whichever is the higher. Is that correct?

Mr Rizvi—The industrial instrument or the MSL, yes. In that context, we would not look at market rates.

Senator CROSSIN—But you would certainly be looking to see if, at least, either the award rate or the MSL was being paid to that person?

Mr Rizvi—Yes.

Senator Vanstone—Either, whichever was the higher.

Senator CROSSIN—Do you have a capacity to look at any other employment arrangements? For example, even though you might see a wages slip that says net pay is \$450 per week, do you have the capacity to see whether there is any payment provided to the employer for rent, food or transport or any other payment in kind back from the employee?

Mr Rizvi—We will look at those factors. There are two key issues here. Firstly, the employee must be paid, as the minister has pointed out, the minimum salary level or the industrial instrument, whichever is the higher. They must receive that salary. If, after that, the employer and the employee freely enter into a fair and reasonable arrangement to have certain payments deducted from that salary by the employer, then that is permissible. As I said, however, they must be freely entered into in writing and they must be fair and reasonable.

Senator CROSSIN—Would you expect to see any such arrangements specified on a wages slip—for example, the payment of rent, the payment of lunch each day or the payment of transport? What evidence would you want to see of that? Would it be on a pay slip or in a signed contract?

Mr Rizvi—That would depend on the individual employer and the circumstances in which that occurred. As I said, the key issues are: was it freely entered into and was it fair and reasonable? If there is an indication that either of those two elements were not met, we would then refer that to the relevant fair trading agency to investigate, as we have in a number of instances where the matters have been raised both in the media and from within our own monitoring.

Senator CROSSIN—Mr Rizvi, I want to concentrate on two areas there. Let us set aside the idea of ‘freely’. First of all, I want to ask you whether the department looks for any evidence in writing that those arrangements are occurring. Do you look for a deduction of rent in a wages slip? Do you look for evidence in writing of that agreement?

Mr Rizvi—We would ask questions in relation to that during the site visit.

Senator CROSSIN—So, again, I am asking you: do you look for evidence of that in writing in some form or another? Suppose the employer simply says to you: ‘I have an arrangement with my two people; they give me \$100 a week for rent.’ Given that those people may not speak English and may be quite frightened that if they speak up they will be deported or mistreated, how do you ascertain whether that is true or not?

Mr Rizvi—If there are issues arising, we will also separately interview the employees to ask them about their circumstances and whether they have any concerns to raise with us.

Senator CROSSIN—Is that how you determine whether any such arrangements have been entered into freely?

Mr Rizvi—As I said, that particular test lies in state legislation. If we get an indication that there is a problem there, we will refer it to the relevant state authorities to investigate.

Senator Vanstone—If I may interpose, I do not disagree with anything Mr Rizvi has said, but I agree with the concern about simply asking the employer what the arrangements are. But if you get to the point where you are not prepared to take what the employer says and you are not prepared to take what the employee says, I wonder whose advice you will take.

Senator CARR—Do you talk to the union?

Senator CROSSIN—That is not the issue that I am getting at. What I am trying to ascertain is: how do you come to the conclusion that an agreement has been entered into freely? Do you interview the employee away from the employer? Do you do it with an interpreter?

Mr Rizvi—We can do it separately from the employer. Where an interpreter is needed we will use our own interpreter for that purpose.

Senator CROSSIN—When you say you can do it, do you always do it away from the employer? Is there a guarantee that you always do that?

Mr Rizvi—No, there is not a guarantee. We will make an assessment of whether that is necessary or not.

Senator CROSSIN—On what basis is that assessment made?

Mr Rizvi—That is a judgement based on what we have detected from the site visit and from what has been provided to us in the monitoring form.

Senator CROSSIN—In order to protect the 457 holder, though, why would you not in every case interview that person away from the employer?

Mr Rizvi—Because it is a question of how best to use your resources. We could interview every single employee away from their employer. Last year there were some 40,000 employees. I am not sure there would be much value in separately interviewing every one of those people. You have to do it on a targeted basis in order to use your resources efficiently.

Senator Vanstone—All law enforcement, Senator, with respect, does require an element of judgement on behalf of the person asking the question as to whether these are circumstances where further questioning is warranted and whether these are circumstances where it is important to question people in isolation from other people. That will be assessed on a case-by-case basis and it will always be a question of judgement.

Senator CROSSIN—So it is or can be done from time to time?

Mr Rizvi—It will be done where we have reason to do it.

Senator CROSSIN—You said a moment ago that where you believe there are problems, say, with a deduction from salary in relation to rent or in relation to payment of lunch or transport allowances, you would refer that to the relevant state authority. What state authority would have the capacity to investigate whether there is such an arrangement for payment of lunch or transport allowances?

Mr Rizvi—There are laws in place in each state, usually administered by the relevant state department of fair trading, that go to issues of whether such deductions have been made properly or not. Those agencies have the relevant legislative capacity and the expertise to test those matters. I am certainly not going to pretend that our officers have that expertise.

Senator CROSSIN—What is the legislation in relation to the territories?

Mr Rizvi—I would have to get the details of that.

Senator CROSSIN—Can you take on notice which legislation would apply in respect of the ACT or the Northern Territory?

Mr Rizvi—I will try to find that out.

Mr Metcalfe—I mentioned in my opening statement this morning that there was a significant policy review and strengthening under way through the Council of Australian Governments process. That very much envisages that issues relating to this particular visa

category are in some respects a partnership between the Commonwealth, state and territory governments in that, as Mr Rizvi has been indicating, much of the responsibility for enforcement of proper arrangements in the workplace is at the state level. Many of the regional certifying bodies are state government bodies or are envisaged by them.

Senator Vanstone—Premiers' offices or departments.

Mr Metcalfe—So this is very much a cooperative area designed to bring about the appropriate use of skilled labour from overseas where it is demonstrated, through the market, through minimum salary levels and whatever, that it is required. We have now seen that the average level of salary paid in this visa category is approaching \$70,000, so it is largely a skilled area. But in those areas where there are concerns we are absolutely committed to working with our partners to ensure that people are not being exploited.

Senator CROSSIN—Do you currently have an MOU with DEWR in relation to this matter?

Mr Rizvi—We have over the last four or five months had meetings on a state by state level with a range of agencies in order to establish with them cooperative working relationships. We are hopeful that, at the end of that, the development of an MOU, if that is necessary, will proceed. At this stage we do not have an MOU of that sort with the Department of Employment and Workplace Relations or the OWS. As I have said, however, our working arrangements with those two agencies are excellent and highly cooperative.

Senator CROSSIN—In the press release today you talk about measures to improve negotiation and management. What sorts of measures are you talking about?

Mr Rizvi—Essentially, working arrangements so that we have an understanding of their concerns and they have an understanding of ours and that, where allegations arise, we have working arrangements in place—that is, we know who to contact, where to contact—to make referrals and to make inquiries about how to progress those matters in a manner that takes advantage of the relative strengths of each agency.

Senator CROSSIN—You currently don't have that in place?

Mr Rizvi—We have those things in place, but they can always be strengthened.

Senator CROSSIN—Where will the strike teams be located around the country? In the major capital cities?

Mr Rizvi—They will be in each of our state offices.

Senator CARR—You have allocated \$17.6 million for these strike teams. Can you tell me how you expect that money will be spent?

Mr Fox—Our plan at the moment is to allocate the resources across our state network, as we were just advising Senator Crossin. I have with me the numbers of staff that we are anticipating, rather than the specific dollars, if that will help you at the moment.

Senator CARR—Do you have that in a table format—a format that could be tabled?

Mr Fox—It is in handwritten table format in my notebook—and you won't be able to read that! But we can provide that for you, if that would be preferable.

Senator CARR—Yes, if you could today, if that is possible.

Mr Fox—We should be able to do that, yes.

Senator CARR—What is the essence of it?

Mr Fox—What it amounts to is that for the balance of this financial year we are looking at about 11 staff working across our business centres in the state and territory offices and about three staff on the monitoring side. In 2007-08, 2008-09, 2009-10 and 2010-11 there will be around 13 staff in our national office and 27 staff across the state and territory office network who will be working on that.

Senator CARR—That is to monitor the 40,000 visas?

Mr Fox—That is to add to our existing resources.

Senator CARR—Have you any expectation of the growth that is likely to occur in this visa category? Is that part of your calculations for those additional staff?

Mr Fox—It is not a direct factor. We have some forecasts in our annual report for growth. We have already seen continuing growth this financial year. We have not factored that in in the calculation of the resources.

Senator CARR—What are your forecasts?

Mr Rizvi—We will have to take the forecasts for the growth of 457 on notice, but certainly in the rate of growth in the first quarter of 2006-07 compared to the rate of growth in 2005-06 we have seen quite a slowdown.

Mr Fox—It has been about 16 per cent in the first quarter of this year.

Senator CARR—So do you have that growth forecast with you now? Is that what you have been handed.

Mr Fox—No, sorry, that is not the out-year forecast. We will have to get that for you.

Senator CARR—All right. So that was staffing allocation. What else do you expect the \$17.6 million to be spent on?

Mr Fox—In addition we will be looking to improve our capacity to exchange information with other agencies, so there may be some systems resources that will be in there. There will be some training required.

Senator CARR—So that is computers. How much of the money will go on staffing?

Mr Fox—The majority. I mentioned I do not have the dollar breakdown with me, but I can get that for you today.

Senator CARR—So there are computers and training, and what else?

Mr Fox—That is the majority of the resourcing.

Senator CARR—Thank you.

Mr Rizvi—Some of those resources will also go into the negotiation of labour agreements.

Senator CARR—But that is a different category here, of \$5.9 million. Is that right?

Mr Rizvi—No, the \$5.9 million is for DIMA and DEWR, for the negotiation of labour agreements.

Senator CARR—I see. So how much of the money will go to DIMA and how much will go to DEWR? I take it there is a total of \$5.9 million.

Mr Rizvi—Yes. We will take that on notice and get a breakdown for you today.

Senator CARR—Thank you. I just return to the questions on site visits. Can you explain to me: is the sponsor or the employer provided with notice of a site visit?

Mr Rizvi—Yes, they are provided with notice of a site visit.

Senator CARR—How much notice?

Mr Rizvi—That will depend on the circumstances, but usually we will contact the employer and arrange for a mutually convenient time when we would undertake the site visit.

Senator CARR—And is the visa holder also provided notice that you are going to come?

Mr Rizvi—If we are going to interview the visa holder then we will make those arrangements as well.

Senator CARR—And are these new arrangements that you are talking about today post 1 July this year?

Mr Rizvi—We have started to implement many of them already—that is correct, Senator.

Senator CARR—From 1 July?

Mr Rizvi—During this financial year, yes.

Senator CARR—Do they apply to the visa holders who had approval prior to 1 July, or do they apply to all people currently in Australia under this visa?

Mr Rizvi—The new money would be used in respect of both groups.

Senator CARR—So there is no discrimination or no difference in the approach that you are taking between those that are approved at a certain point and those that were not?

Senator Vanstone—That was the question you asked, and the answer has been given, yes.

Mr Rizvi—There is no discrimination.

Senator CARR—No discrimination; thank you. Can I ask you about the COAG working party, Mr Rizvi. I understand that you are the chair of that, are you not?

Mr Rizvi—Yes.

Senator CARR—Is it true that all matters connected with the program go through the working party or at least through your office?

Mr Rizvi—I am not quite sure what you mean—

Senator CARR—I am just wondering what the remits of your responsibilities are with regard to the COAG processes and the DIMA working party.

Mr Rizvi—Certainly we agree on the processes to be used in the way we will work at the working party itself. Each individual jurisdiction then goes away and does its own work in

respect of who it will consult with within its own jurisdiction and comes back with reports or responses to draft papers and then develops recommendations.

Senator CARR—Mr Rizvi, in terms of the Commonwealth's work, is it true that all matters relating to this visa go through your office?

Mr Rizvi—Not in relation to the whole visa; I would not say that would be correct. There would be matters that are being dealt with in respect of these visa holders that may well not come to me or to my attention.

Senator CARR—But you would see the bulk of them?

Mr Rizvi—The bulk of the work in respect of the development of policy proposals for the COAG working party would be coming to me.

Senator CARR—So do media inquiries to the minister's office with regard to this visa class go through you?

Mr Rizvi—The media inquiries would go to the minister's office or through our national communications area.

Senator CARR—Yes, but they come back through to you?

Mr Rizvi—Yes, mostly they would come back to me.

Senator Vanstone—That is the normal practice. I just want to clarify that so people understand. People might tune in and assume, by virtue of the fact that you are asking a question, that you are asking about something new and different and therefore tune their ears to something new and different. So it is important to say that you have asked about the normal practice, and that is, if a media inquiry that goes to the minister's office deals with any detailed information that the department might have, or for a variety of other reasons, it might be referred down to the national communications area then down to the line area to try to make sure that I, if I am going to give you some information, give you the correct information—just in case it is something that has suddenly come up in the department that I am not familiar with.

There might be other media inquiries where the media go straight to the department, and we encourage them to do that. In which case, they would go to the national communications area and they would, again, check with the line area—or should; I can think of one instance recently, not on 547s but on another issue, where they did not—before they resolve what is the appropriate response. It is nothing new.

Senator CARR—Do you handle all inquiries from, for instance, members of parliament, Mr Rizvi?

Mr Metcalfe—Senator, when you are talking about 'you', it is important to note that Mr Rizvi is a very capable officer but unless he was Superman he could not personally handle all these issues. He is the leader of the task force, as I explained in my opening statement. The reason I created that task force within the Migration and Temporary Entry Division was because of the significant public interest in these issues and the fact that there is an ambitious COAG process associated with that. He is a very experienced officer leading a team. Generally, when you are talking about 'you', media inquiries, policy issues and other areas are

coordinated through the task force, which Mr Rizvi leads. He may or may not have personal knowledge of everything that goes on.

Senator Vanstone—You asked about members of parliament; I certainly hope members of parliament are following the appropriate protocol and going to the minister's office first.

Senator CARR—Yes. Do inquiries from the Parliamentary Library from members of parliament go through your office as well, Mr Rizvi?

Senator Vanstone—I had never known the Parliamentary Library to contact me. I think the Parliamentary Library is a different kettle of fish.

Mr Metcalfe—We encourage the Parliamentary Library to ordinarily channel their requests into our ministerial and parliamentary coordination branch, which is responsible for a range of issues—correspondence and other things. I am aware, though, that on not every occasion has that approach been made, and there may have been approaches directly to parts of the department to provide information directly. It is something where good practice would be that there is a single point of contact on these issues.

Senator CARR—Is a new practice being established, Mr Metcalfe, under which you are encouraging the Parliamentary Library to go through the task force on 457 visas?

Mr Metcalfe—No, in fact, I am doing the opposite.

Senator Vanstone—He did not say that.

Senator CARR—I asked the question.

Mr Metcalfe—I am doing the opposite.

Senator Vanstone—With respect, Madam Chair, I just make the point that that is not what Mr Metcalfe said. He was asked a question; he gave an answer. Then it was put back to him, 'So you are encouraging all of these things to go to Mr Rizvi?' which is in fact in direct contrast to what Mr Metcalfe had just said. I understand, Madam Chair, that we are going to be here until 11 o'clock tonight and it is entirely in the committee's hands how it conducts these things, so we can go on asking the same question in different ways or verballing witnesses or we can just get on and ask different questions up until 11 o'clock tonight so that a bigger range of information is made available to the parliament.

CHAIR—You are right, Minister, it is a matter for the committee and I cannot tell individual senators what to ask specifically in their questions. I think repetition is unhelpful and misstating the officer's answers is also unhelpful. But it is a matter for Senator Carr.

Senator CARR—Thank you for your advice.

CHAIR—I am sure you are very grateful, Senator.

Senator CARR—How many requests have you had from the Parliamentary Library from the members of parliament that the task force has dealt with?

Mr Metcalfe—I will have to check. We could probably get back to you during the course of the hearings. The point I was making earlier was that I think it is useful for there to be a single point of contact between the library and the department. Indeed, that is not unique to the library; it is the same with many external organisations. I am seeking for that not to be

with the task force, because the library quite often asks questions in relation to quite different issues. That should go through our ministerial coordination branch. If it was an issue that was pertinent to the work of the task force, then that would be referred on to the relevant people in the task force to provide a response as they were able to.

Senator CARR—Mr Rizvi, can you provide us with the report on the progress of the COAG process of the review? Do you have a copy of that report?

Mr Metcalfe—I think that we would want to take that on notice. That is an issue that is currently the subject of policy development. There is no report; there are draft papers that are being prepared which as yet have no formal status within either the Commonwealth or the states and territories. To provide you with a progress report, we can do that orally. The papers are being prepared and are subject to consideration. They will be submitted first for ministers to consider in due course. At that stage, they may or may not wish to make those papers public.

Senator CARR—Is it true that the working party has circulated a draft set of proposals?

Mr Rizvi—If I could go back to the process, I will just describe the process that has taken place to date. On 14 July COAG met and issued a communique requesting the Ministerial Council on Immigration and Multicultural Affairs prepare a report in respect of 457s. COAG issued a communique which outlined essentially the terms of reference by which we would be working. On the same day the ministerial council met and also issued a set of terms of reference for the Commonwealth-State Working Party on Skilled Migration to undertake that review. In other words, the Commonwealth-state working party now has two sets of terms of reference—one from COAG and one from the ministerial council—to which we are working. I think the ministerial council has had three meetings so far—

Mr Metcalfe—It is not the ministerial council.

Mr Rizvi—I am sorry, the Commonwealth-state working party has had three meetings so far. At the first meeting, we discussed the broad areas to be covered, the papers to be prepared and the processes for consultation to take place. At the second meeting, we developed a set of possible recommendations for ministers to consider. Each jurisdiction then went away and consulted internally further in respect of those recommendations. Prior to the second meeting, we also requested submissions from a range of industry bodies and from the ACTU. In the development of the recommendations, the working party had access to all of those submissions, both from the ACTU and a range of industry bodies.

We developed the draft recommendations. The draft recommendations were further consulted on by each jurisdiction. The Commonwealth consulted with the relevant agencies within the Commonwealth on those draft recommendations. We had a further meeting last week at which the draft recommendations were further refined. Now each jurisdiction is going back and consulting with their respective ministers again on the appropriateness of those recommendations to gauge the degree to which ministers would agree with those directions. Once we reach a point where there is a reasonable level of consensus on those recommendations, we will provide a report to Senator Vanstone as the chair of the ministerial council. If she is comfortable with that particular report, she may refer the progress report on to COAG.

Senator CARR—You mentioned the submissions. How many submissions have you received?

Mr Rizvi—It would be in the nature of a dozen or so, I think.

Senator CARR—Can you tell where they are from?

Mr Rizvi—They are from a range of bodies, including, for example, the Recruitment and Consulting Services Association. We have one from the ACTU, one from the Australian Chamber of Commerce and Industry, one from the Migration Institute of Australia and from a range of smaller industry bodies.

Senator CARR—Can we have copies of those submissions?

Mr Metcalfe—We will take that on notice and see if there are any issues that go to confidentiality. Ordinarily our predisposition, though, is to assist the committee.

Senator CARR—Could I get a full list of the 12 that have provided submissions?

Mr Rizvi—I said that there were a dozen or so.

Senator CARR—Whatever the number is. I am not holding you to the precise number.

Mr Metcalfe—We will take that on notice.

Senator CARR—Have you received any submissions from state governments?

Mr Rizvi—State governments are, of course, party to the working party.

Senator CARR—I understand that.

Mr Metcalfe—There would not be much point in them making a submission to themselves.

Senator CARR—But are there any submissions from state departments or state agencies amongst those dozen or so?

Mr Rizvi—I am sure the state agencies would have made submissions to their respective premiers departments or their lead agencies in respect of this. That is the way that we work in the Commonwealth. I assume the states work in a similar way.

Senator CARR—So there are none from independent agencies that might be regarded as state authorities?

Mr Rizvi—We have received formal responses from each state in respect of the first draft recommendations. We have received formal responses from only three states and we received informal responses from others.

Mr Metcalfe—This is very much a whole-of-government process—whole-of-government times nine, I suppose—in that we as the Commonwealth are engaging as a single entity and, within that, we are working closely with the department of employment and other relevant departments. Our expectation is that the states and territories do the same and we then come together as nine governments and discuss these issues.

Senator CARR—I would like to take you through some issues. Are you able to advise the committee on what proposals the working party will be putting forward with regard to labour market testing?

Mr Metcalfe—Madam Chair, I would appreciate some direction. This is very much a policy issue that is currently under consideration at an officials level. While we will, of course, assist the committee in whatever way we can, at the moment these proposals have no status in terms of ministerial status. They are not decided government policy. We are very much in a policy formulation process, and I am just not sure whether these are questions that we can properly answer in this committee.

CHAIR—If you cannot answer them, Mr Metcalfe, it is appropriate to advise the committee that you are not in a position to do that. The minister may have a perspective on that as well. The committee can only ask the questions to which it seeks an answer, and if you and your officers are not in a position to answer them it is appropriate to respond that way.

Mr Metcalfe—If Senator Carr does wish to ask questions in relation to matters which are subject to current policy considerations, as a minimum I think it would be proper for us to take those questions on notice and to form a proper view.

Senator CARR—I am interested to know what the current practice is with regard to labour market testing.

Senator Vanstone—Mr Rivzi might like to take you through the development since Senator Bolkus was smart enough to realise that labour market testing generally was not effective and to make changes towards key activities—and to point out how even that had its limitations. As you and I both know, Senator, if you are running, say, a meatworks in a more remote regional town and you place an advertisement for meatworkers in the *Financial Review*, you might not get any. It is an area fraught with administrative difficulty. A far better system is, of course, one that sets minimum salary levels and minimum skill levels so that there is no incentive for people to bring in workers other than those they can readily get onshore. Mr Rivzi might have more to say on that. It is not very often that I compliment Senator Bolkus, but I thought it was probably appropriate to put that on the record, since he was a trailblazer in this area.

Senator CARR—So what is the current practice with regard to labour market testing, Mr Rizvi?

Mr Rizvi—With respect to highly skilled occupations, the system essentially relies on price signals as the means of ensuring that Australian employers consider hiring and training Australians first. With respect to the lesser skilled occupations—essentially occupations covered by the regional concessions or through a labour agreement—we undertake the labour market testing approach. With the regional concessions, the labour market testing is via the regional certifying bodies—who, using their local knowledge and local expertise, are able to advise on the ability to fill those positions locally. In respect of labour agreements, we look at various sources of data, including efforts made by the employer to recruit locally, before we come to a judgement as to whether there is a sufficient shortage to justify the entry of people at what might be regarded as medium-level skills.

Senator CARR—In what particular circumstances do you apply a market rate for remuneration—the price signal that you referred to?

Mr Rizvi—The market rate is applied by the market.

Senator CARR—No, in terms of your market testing, in what circumstances does a market rate of pay apply?

Mr Rizvi—We will look at—in respect of, for example, a labour agreement, where recruitment of someone of a medium-level skill is being considered—efforts made by the employer to recruit locally. In that context, we might look at the salaries at which they were advertising. But as a general rule, in respect of higher skilled occupations, we do not look at market rates because we allow the market to determine the market rate. I think it has got to be noted that where an employer is going to bring in someone of a highly skilled nature to Australia, if they insist on paying them at a level that might be below the market rate for the region, for the occupation or for the level of experience of that individual, it is highly likely that they will not be able to retain those people for very long.

Senator CARR—No, but if they are on a 457 visa—that is, they are being imported at a much lower rate than the market rate—a different set of circumstances applies, doesn't it?

Mr Rizvi—No, Senator. They are as free as you and I to move from one employer to another employer, as long as the employer to whom they are moving is also able to meet the requirements to become a sponsor under subclass 457. Indeed, we know from our own data that approximately 10 per cent of 457 visa holders who obtained 457s in 2005-06 were, in fact, previously holders of a 457 visa with another employer. We know that a further 20 per cent of them obtained permanent residence. From the research conducted by Professor McDonald, we also know that a significant proportion of them, during the two surveys that he conducted, obtained promotions within their own companies and obtained higher levels of pay within their own companies. This is a highly mobile group. They have the capacity to negotiate better pay and salary for their own skills, but it will sometimes take a little bit of time for them to be able to demonstrate, after arrival in Australia, that they have those skills.

Senator CARR—Under the new proposals, what market testing will be required?

Mr Rizvi—As I said, Senator, I cannot talk about what the Commonwealth-state working party may or may not recommend to COAG, and I cannot talk about what COAG may or may not agree to.

CHAIR—Thank you, Mr Rizvi. That was made clear by Mr Metcalfe.

Senator CARR—The draft proposals do contain provisions for market testing, do they not?

CHAIR—Senator Carr, I think it has been made quite clear by Mr Metcalfe and the minister that, in relation to those matters, the officers are unable to respond to you. They could perhaps take those questions on notice as appropriate, but they will not be able to give you responses here and now in relation to the draft proposals.

Senator CARR—You will take that on notice?

Mr Metcalfe—We will take it on notice, but on the proviso that I think this is an issue that does go to policy. In exploring whether or not we would be able to make that material available to the committee, we would need to check with the parties to that activity, which are the six states, two territories and the Commonwealth at ministerial level.

Senator CARR—What is the form of market testing that is being considered? Is it newspaper advertisements?

Senator Vanstone—Madam Chair, with respect, we are just going through the same exercise again. The senator is pressing the patience here. He has been told on numerous occasions—and he well understands from his long term in opposition, and if I have my way I will make sure it is longer—by the officers, time and time again, that they cannot go into the COAG arrangements. It is partly policy development and partly a matter for the Prime Minister and the premiers. I do not think either the Prime Minister or the premiers would welcome individual officers at the federal level discussing what may or may not have been put forward with a view to coming to some agreement about changes that may need to be made. The officers have politely made that point on numerous occasions. I am wondering how many more times they are going to have make it.

Senator BRANDIS—Madam Chair, I am also wondering, following from what the minister has just said, whether or not the line of questioning is in breach of the standing order which prohibits tedious repetition?

CHAIR—If we applied that, Senator Brandis, it is entirely possible that we could have finished at 9.15 am. Senator Carr, the minister and the secretary have made the situation—

Senator LUDWIG—Is that a reflection on a senator?

Senator Vanstone—I do not think that anyone on that end of the table is in any position to get antsy, Senator.

Senator LUDWIG—I can get as antsy as I want to. I think if we just ask the questions and if officers cannot respond then they say so without any interference by you, Minister, that is the easiest way and we will be able to progress—

CHAIR—Actually, Senator Ludwig, I am in the chair and I will be dealing with how questions are responded to or not, as the case may be. What the secretary and the minister have made quite clear is that there is a section of these questions to which they are unable to respond at the moment, given the nature of the process. I would seek your assistance, Senator Carr, in observing that issue and, if you have questions that you wish to place on notice in relation to that, which we discussed also, that would be helpful.

Senator CARR—Thank you. Mr Rizvi, how do you currently ensure that employers are not making local workers redundant in order to bring in 457 visa holders?

Mr Rizvi—Any employer who seeks to make workers in Australia redundant in order to replace them with any other workers is, I understand, in breach of the Workplace Relations Act. If they had made such breaches, we would know about them from the Office of Workplace Services or the relevant state industrial relations agencies if they have similar provisions within their state laws.

Senator CARR—So you have had no complaints on that matter?

Mr Rizvi—We have had no referrals from either OWS or state industrial relations agencies as to a breach in regard to that. I am aware of that issue being raised in the media, and I am aware of some unions raising that matter. However, as it is a breach of legislation, we would

be guided by the relevant agencies which administer that legislation as to whether there has been an actual breach or not.

Senator CARR—But you have not had any direct complaint about that matter?

Mr Rizvi—We have had it raised through the media and in some meetings we have had with unions. We have also received some material from one state alleging that has occurred. We have gone back to that state government and asked: ‘Can you provide us with details of this?’ and they have been unable to provide anything at this stage.

Senator CARR—Which state was that?

Senator Vanstone—I think it is appropriate to check with the state whether they are happy for us to reveal the nature of matters that they have given to us.

Senator CARR—It is a complaint. I cannot see what possible problem there could be.

Senator Vanstone—It is a matter of courtesy, Senator. We will check with the relevant state. You might think, it being a Labor state, that we would be happy to take the political opportunity, but I think it is appropriate to check with them.

Senator CARR—I do not know how many other types of states there are.

Senator Vanstone—That is what I mean. I do not know which state it is myself. But, given it is a Labor state, you would think we would happy to do them in—

Senator LUDWIG—It can only be a Labor state.

Senator Vanstone—But we are trying to work cooperatively here and I think it is relevant and fair to go back to them.

Senator CARR—I see. Mr Rizvi, are you able to enlighten the committee with regard to the proposed information campaign that you are about to undertake?

Mr Rizvi—I am sorry, which information campaign do you mean?

Senator CARR—The proposed information campaign.

Mr Rizvi—I not sure—

Senator CARR—Are you proposing an information campaign to educate employers on their obligations under these matters?

Mr Rizvi—That is something we do on an ongoing basis.

Senator CARR—I see. What is the nature of that information campaign? For instance, what is the nature of the information that is provided on the basis of a minimum salary level?

Mr Rizvi—Firstly, on the minimum salary level, there is information provided through all of our forms and information leaflets in respect of subclass 457 visas. Secondly, when an employer is using our electronic lodgement arrangements for subclass 457, they are required to answer an explicit question regarding salary levels and whether those salary levels are above the MSL. Thirdly, we undertake, through our industry outreach officers, information campaigns with employers alerting them to the minimum salary level and the requirement to pay at least that or the industrial instrument, whichever is the higher.

Senator CARR—Have there been any examples where employers have not followed that advice and have made unauthorised or unlawful deductions from wages?

Mr Rizvi—There are two separate things here. One is underpayment against the MSL and the other is deductions. Yes, there have been allegations in respect of both. We have investigated those allegations and many of the investigations are ongoing. In some instances when we have had concerns in respect of those allegations and there is sufficient evidence for referral, we have referred the matter to the relevant industrial relations agencies or the relevant fair trading agencies who have undertaken those investigations. In a number of instances those industrial relations agencies have advised us that they have found evidence of underpayment and they have taken action within their legislation to ensure that the employers make good against those underpayments.

Senator CARR—Can you give me a breakdown of the number of occasions that has occurred?

Mr Rizvi—I would have to take that on notice, Senator, because that figure is constantly changing. I would have to break it down, I suppose, between the number of times it has been alleged and the number of times it has been proven.

Senator CARR—Yes, proven cases and the amounts of money involved.

Mr Rizvi—Yes, we will take that on notice and provide that information. As I have said, that information would be from the relevant industrial relations agencies.

Senator CARR—What is the current penalty for such breaches?

Mr Rizvi—There are two sets of penalties, Senator. The first sets of penalties rest within the relevant workplace relations legislation, whether state or Commonwealth. There is a second set of penalties that can be applied through the Migration Act. The application of penalties through the Migration Act is dependent to some degree on—and we take a lead from—what the relevant state or Commonwealth industrial relations agency penalties apply. For example, if a state agency applied no penalty within its legislation and it had a range of penalties available, we would need to be guided by that before we took action to apply penalties when they decided not to apply penalties.

Senator CARR—On how many occasions have you applied penalties?

Mr Rizvi—In respect of sanctions such as those, they would be broken down between sanctions against an employer to bar that employer from hiring further workers. That might be a temporary suspension; it may be a longer term suspension. Secondly, we can warn the employer where the breach may have been lesser and in particular where the relevant agency that owned the legislation that was breached did not take particular action.

Senator CARR—How many occasions have you applied those sanctions?

Mr Rizvi—There would be a mixture of barrings and warnings. The number of instances in which people were barred in 2005-06 was three. The number of instances they were warned was greater than that.

Senator CARR—Can we have a list of the companies that were barred?

Mr Rizvi—Yes, we can provide that, Senator.

Senator CARR—Since it is three, you can probably provide it now, can't you?

Mr Rizvi—If you give us a bit of time we will probably be able to find that later today.

Senator CARR—Thank you very much.

Senator LUDWIG—Just on that issue, for the mobile strike teams their only sanction is effectively to then bar the use of a 457 visa?

Mr Rizvi—No, Senator. As I said, there are two sets of sanctions—

Senator LUDWIG—But in terms other than the Migration Act—perhaps I should qualify that.

Mr Rizvi—Within the Migration Act, yes, at the moment a warning or a bar. Previously I think that the minister has made announcements that we should be examining the question of whether a fines regime is also applicable in this area, and we are taking advice from the Attorney-General's Department in that regard.

Senator LUDWIG—All right. But to date you can only bar and you have only done three. What date do they relate to? Are they post 1 July or previous to 1 July?

Mr Rizvi—No, that was in 2005-06. There would be other barrings that would have taken place post 1 July 2006. The minister reminded me that of course where we have a concern with a particular employer and the allegation has not yet been proven—for example, when we cannot be satisfied that the employer is meeting its good standing provisions—in those circumstances we could not finalise any visas for that particular employer. That is also a substantial penalty and it is not within the barring figures that I have mentioned.

Senator LUDWIG—Perhaps you could provide information on those as well where you have chosen not to renew their ability to apply for a 457 visa.

Mr Rizvi—That would be a temporary suspension whilst the allegation is being investigated. At the moment there are 190 employers being investigated in that way.

Senator LUDWIG—So there are none that you have permanently taken a negative view against?

Mr Rizvi—They would be the three that I mentioned in 2005-06, and further barrings would have occurred in 2006-07 to date.

Senator LUDWIG—In terms of where you take a sanction against an employer such as a labour hire group supplying a particular market, there is nothing preventing a second labour hire organisation taking on or doing the same thing and supplying to the same market or to the same employer, is there?

Mr Rizvi—As long as the labour hire firm is operating, and indeed that applies to any employer. For example, if one employer is not meeting its obligations the workers for that employer can move to a different 457 sponsor. That is always open to the 457 visa holder.

Senator LUDWIG—Even at the same workplace? If you are a labour hire organisation supplying labour to a work site—

Mr Rizvi—It would depend on the nature of the breach and what breach took place. If the breach was entirely in respect of the labour hire firm and the employer had done nothing wrong, then penalising the employer would not make much sense.

Senator LUDWIG—Yes, that was what I was trying to ascertain. I was trying to ascertain what investigation you did—whether you looked at those issues or not.

Mr Rizvi—We would certainly look at the employers using the labour in those circumstances to see if there was anything untoward in respect of the actions of the employers.

Senator CARR—With regard to the payment of wages, is it currently mandatory for 457 visa holders to have their moneys paid into Australian bank accounts and in Australian dollars?

Mr Rizvi—Currently it is not mandatory.

Senator CARR—So how many inquiries have you had on that matter?

Mr Rizvi—There have been some instances where the issues have been raised with us. I cannot remember the specific number of inquiries in respect of that.

Senator CARR—How many complaints have you had? How many investigations have you been required to undertake?

Mr Rizvi—We have not had a complaint from the employees themselves in respect of how the salaries were paid. Where an employee, for example, is coming to Australia for a very short period, sometimes it may well suit them to have their salaries paid in their home bank accounts.

Senator CARR—You are not proposing to change that and make it mandatory for 457 visa holders to have their moneys paid in Australian bank accounts?

Mr Rizvi—As I said, that is a matter of policy and it is being considered—

Senator Vanstone—We are back on the same issue, Madam Chairman—another question being asked about what is being considered in terms of policy development—

CHAIR—Mr Rizvi said he was unable to answer it.

Senator Vanstone—That is true, but we do get to a point where we wonder how many times the same type of question under another guise—

CHAIR—I think the answer to that is actually countless times, unfortunately.

Senator Vanstone—I am not sure I am happy with that.

Senator CARR—I am entitled to ask what the government is considering to do about a matter which I find quite extraordinary. It is extraordinary that people do not have to be paid in this country.

CHAIR—There is absolutely no need for that sort of behaviour, Senator Carr, not in this committee. Take it elsewhere if you wish to behave like that. Mr Metcalfe and the minister have indicated their position on this matter. If you wish to keep asking questions on this matter they will keep putting that position and we will make no progress. That is a matter for you and your colleagues.

Senator CARR—With regard to visa holders that claim to hold certain skill levels, what is the current arrangement in your capacity to ascertain whether or not those skill levels are actually held by the visa holder?

Mr Rizvi—There are a number of things that we will look at as to whether the applicant has the skills relevant for the position that they will be filling. Firstly, we will have information with regard to the position itself that has been provided by the employer and the skills required to fill that position. We will have compared that to the skills as outlined in the ASCO dictionary to make sure that the two sets correspond. When the visa application is made we will look at the information provided by the visa applicant to test whether the skills of the applicant match the skills of the position and the skills described in ASCO.

There are a number of ways you can do that. Firstly, you might look at the qualifications that the people hold. Secondly, you might look at an assessment that has been done in respect of the applicant by an appropriately registered organisation as to whether they hold those skills. A third thing that can be looked at is whether an appropriate skills assessing body has made a determination in respect of the applicant and whether the applicant holds such a determination. Finally, and in particular where the employee asserts that they have various levels of skilled work experience, the matter can be referred to one of our overseas posts that will undertake an investigation. That might be an investigation simply by ringing the relevant employer to check those things or they may actually do a site visit of the employer to check whether the person indeed has the skilled work experience that they say they have.

Senator CARR—What happens if you have discovered that the skill levels claimed are different from the skill levels actually acquired? Have you had examples of that?

Mr Rizvi—We have had examples where a person has alleged that they had various skill levels and subsequent to arrival there were allegations made that they did not possess the skills that we were told that they had.

Senator CARR—Is there a penalty involved in that situation?

Mr Rizvi—It is a question of the way in which that problem arose. For example, if the applicant at no point did anything wrong in terms of the skills they thought they had—the problem related to a registered training organisation that said, ‘I believe X person has this skill,’—and then we subsequently find out that the person does not, penalising the person who said they had the skills would seem quite inappropriate. The problem lies really with the registered training organisation that may have done the skills assessment.

Senator CARR—What is the penalty for the registered training organisation that has undertaken an assessment that you have found to be faulty?

Mr Rizvi—That is something that we pursue with the employers and with the relevant state government that may have registered that registered training authority.

Senator CARR—There are cases that I have raised with you. Have you had further inquiries on those—

Mr Rizvi—We have been making inquiries in respect of those.

Senator CARR—But you do not have any results yet?

Mr Rizvi—No, we have not received any response to those.

Senator CARR—With regard to the skills testing for the 457 program, how does it compare to the skills testing for permanent skilled migration programs?

Mr Rizvi—There are two types of permanent skilled migration programs. There are the points tested categories, where an employer is not directly involved, and there are employer sponsored visas. The distinction is more in terms of employer sponsored visas in the points tested category rather than between temporary and permanent. In respect of the points tested categories, we take an approach whereby we rely much more extensively on skills assessing bodies. That is because we do not have the benefit in those circumstances of the judgement of a sponsoring employer. Where we have the benefit of the judgement of a sponsoring employer we tend to take a different process. We look at the qualifications put forward. We look at the experience put forward and we make an assessment ourselves, and we take a risk management approach as to whether we will require further testing. With the points tested categories it is mandatory that the relevant skills assessing body make the skills assessment.

Senator CARR—Would it be fair to say that the skills testing arrangement for 457 visa holders is of a lower standard than the skills testing for permanent skilled migration visa holders?

Mr Rizvi—I would not necessarily agree with that characterisation. I think that I would agree that it is different, but I think it is a question of what weight you place on the judgement of the employer.

Senator CARR—Exactly. In the circumstances where you have already advised us that there is a significant proportion of 457 visa holders who gain permanent residency, is that not a significant issue for the department?

Mr Rizvi—I do not believe so. It is a matter of looking at the evidence. The evidence ultimately lies in the employment success of the individuals being given visas. If you look at the employment success of points tested migrants, their success has been steadily increasing over the last 20 years. Points tested migrants are doing better today than they have ever done in the past. However, their performance still ranks well below that of employer sponsored migrants. In other words, if an employer selects the migrants and goes about looking at their skills, the evidence shows that those employees will have a higher employment rate, a lower unemployment rate and higher income levels than persons selected through the points tested categories.

Senator CARR—I will just give you an example. I have referred to the meat industry already. What are your calculations in terms of salary? You have told me before. I think you said that the minimum salary requirement for persons to fit into this category is \$42,000.

Mr Rizvi—It is just under \$42,000 if you are in non-regional Australia.

Senator CARR—So that is the city, do you mean?

Mr Rizvi—Yes.

Senator CARR—So what is it in the regions?

Mr Rizvi—It is 90 per cent of that.

Senator CARR—Is that income level calculated on the basis of base payment or is it calculated on the basis of work performed over and above the base requirement?

Mr Rizvi—That is only base salary. All other payments and non-salary benefits are over and above the base salary.

Senator CARR—With regard to the minimum annual salary level, the *Gazette* tells us that schedule A of that specifically excludes incentive bonus commission payments. Is that the case?

Mr Rizvi—That is correct. Those matters are over and above MSL.

Senator CARR—So where will the at risk section—which are the incentive payments in the meat industry because of the tally system—be included in the calculations?

Mr Rizvi—It is not part of the MSL.

Senator CARR—At all? There is no—

Mr Rizvi—They can certainly be paid according to those other systems, over and above the MSL, but they must be paid the minimum salary level irrespective of any tally arrangements.

Senator CARR—If they are only paid a tally system, though—is that the case?

Mr Rizvi—I am not sure what—

Senator CARR—I am just wondering how you reach the minimum standard if there is a tally system operating.

Mr Rizvi—I am not sure whether a tally system still operates or not in the meat industry. What I can say is that the legislation requires that they must be paid the MSL. The minimum salary level is guaranteed for the period the person is in Australia—that or whatever the industrial instrument provides. If the industrial instrument provides, for example, for a tally system and the tally system results in a wage higher than the MSL, then that is fine.

Senator CARR—Okay. So you can confirm for me now that in the meat industry the \$42,000 figure for a city worker is calculated independent of any tally system—it is a base rate system.

Mr Rizvi—It is a base salary that must be paid to the visa holder. That is correct. They can calculate it in different ways, but if the tally system leads to a figure much higher than what the MSL provides, then that is what they would be paid.

Senator CARR—That is the point I am trying to get to—the method of calculation. If you are saying that the incentive based payments are to be excluded, how do you get to the figure of \$38,000 in the country areas and \$42,000 in the city areas?

Mr Rizvi—How do we arrive at the figure or—

Senator CARR—Yes.

Mr Rizvi—The figure is arrived at based on advice from the Department of Employment and Workplace Relations using appropriate indexes from the Australian Bureau of Statistics.

Senator CARR—I see. And you are saying to this committee that those indices exclude incentive payments.

Mr Rizvi—They exclude performance bonuses and those sorts of things. Let us look at two scenarios. Let us look at a scenario where a person has to work for a certain period of time during each week, and because of the way the salaries are calculated you come to a figure less than the MSL. That would be unacceptable, because they must be paid the MSL. If, on that basis, they come to a figure above the MSL, then that is fine.

Senator CARR—With regard to the labour agreements—and I notice this is the figure of \$5.9 million referred to in the minister's statement today—how many labour agreements do you currently have?

Mr Rizvi—I might take that on notice, but it is approximately 70.

Senator CARR—In what industries are they?

Mr Fox—The labour agreements are in a variety of industries, including tourism and hospitality; nurses and health workers; there are some defence related ones; ambulance officers; health and radiographers; doctors and health workers; finance and management, with some large accounting companies; manufacturing; metal fabricators and welders; track riders; aviation. There are a variety of industries.

Senator CARR—What progress is being made on the meat industry labour agreement?

Mr Rizvi—We have been progressing that document. Firstly, I will distinguish that there are two separate labour agreements we are negotiating at the moment. One is an emergency agreement with the Western Australian government in respect of the circumstances in Western Australia, and we have a separate, generic meat labour agreement that we are negotiating with the industry as a whole. It would be fair to say that the progress with the Western Australian one has been pretty good, and I think the minister could speak further on where that is up to in terms of finalisation. In respect of the generic meat labour agreement, it would be fair to say that we are still at points of difference with the meat industry in respect of perhaps three or four critical aspects. We have also been consulting with a number of state governments on that labour agreement. There are still questions of whether or not those particular states wish to become parties to those labour agreements.

Senator CARR—I have a number of contemporary press reports here which go to what is contained in these agreements. Can you confirm that there are proposals to commit to the training of Australian workers?

Mr Rizvi—Yes, as there are in subclass 457s generally.

Senator CARR—What are the particular details with regard to this meat industry labour agreement?

Mr Rizvi—The key issue is going to be what particular benchmarks might be used that would be tailored to the specific circumstances of the meat industry. We have been discussing with them and with the Department of Employment and Workplace Relations what the appropriate benchmarks would be.

Senator CARR—Is that one of the issues that remain outstanding?

Mr Rizvi—In respect of the meat labour agreement?

Senator CARR—Yes.

Mr Rizvi—Yes, it is.

Senator CARR—Who is objecting?

Mr Rizvi—There are two parties and we are still a little way apart.

Senator CARR—Is it proposed that there be specific improvements in English language training in the meat industry?

Mr Rizvi—There are specific requirements proposed in respect of English language training in the labour agreement. As you probably recall, the minister announced some time back the intention to consult with industry more generally on the introduction of an English language requirement in respect of subclass 457.

Senator CARR—Is there a requirement for jobs to be advertised by the Job Network for 28 days before sponsoring of a migrant worker?

Mr Rizvi—That is correct, and that would essentially be in place of the current regional certifying body role that is played in that regard.

Senator CARR—Is there a requirement that Indigenous workers and refugees be sought for jobs prior to the importing of overseas workers?

Mr Rizvi—There is a requirement for active participation in relevant labour market programs relating to Indigenous Australians and humanitarian entrants; that is correct.

Senator CARR—Is there a provision for the hiring of long-term unemployed?

Mr Rizvi—They are included in the labour market programs, in which there must be active participation, yes.

Senator CARR—Who will be the parties to these agreements?

Mr Rizvi—At present it is proposed that the parties to the agreement be the Commonwealth—that would be the minister for immigration and the minister for employment—the relevant state government, the Australian Meat Industry Council and the participating meat companies.

Senator CARR—So there is no union involvement at all?

Mr Rizvi—We have had consultations with the unions in respect of the labour agreement and, in respect of the submissions that we have received from them, which we have found very helpful, we have tried to take on board as much of that as we could.

Senator CARR—But they will not be parties to the agreement?

Mr Rizvi—At this stage they are not parties to the agreement.

Senator CARR—At what stage will they be parties to the agreement?

Mr Rizvi—I cannot say.

Senator CARR—Was it intended that they be parties to the agreement?

Mr Rizvi—No, but we have consulted with them and will continue to take into account the submission that we have received from them.

Senator CARR—So their involvement is to the point of providing submissions. They are not actually part of the negotiations.

Senator Vanstone—Those questions have been asked and answered.

Senator CARR—I am asking the question directly: have they been party to the negotiations?

Senator Vanstone—You are re-asking the questions. They have been asked and they have been answered.

Senator CARR—How many meetings have there been with the meat industry union?

Mr Rizvi—At a state level we have had meetings with officials. There has been one major meeting which took most of the morning with the meat industry. In addition, we have their very detailed submission.

Senator CARR—Were they given a copy of the draft agreement? Was their advice sought on the copy of the draft agreement or just aspects of it?

Mr Rizvi—Not at this stage. We have not provided them with a copy of the agreement. We felt that it was more appropriate for us to complete negotiations with industry and with the states before we moved to showing the unions a copy of the agreement. Of course, that would also be dependent on the views of the relevant state governments.

Senator CARR—So when you say ‘industry’ you do not think the union is part of the industry. Is that the proposition?

Mr Rizvi—The industry bodies, the meat companies, we have been consulting with.

Senator CARR—The employers.

Mr Rizvi—Yes.

Senator CARR—So you conclude the agreement with the employers and then ask the union.

Mr Rizvi—Where you have an agreement where the two parties are still some way apart, introducing a third party or indeed a fourth party at that stage will only complicate progress.

Senator CARR—We are differing on what role they play in the industry. Are they a third party or are they a party to the industry? Are they a legitimate functioning part of the industry?

Senator Vanstone—Senator, you have asked what role they have played. You have been told that they have been consulted. You have been told that it is not envisaged that they be a party to any of these agreements. Obviously they have a role to play; otherwise they would not have been consulted.

Senator CARR—They are part of an at-risk industry. The meat industry is one of those at-risk industries that you have put on the list before. Is that right?

Mr Rizvi—It is one of the high-risk industries, yes.

Senator CARR—How many complaints have you had with regard to the 457 visa specifically relating to the meat industry?

Mr Rizvi—The number of companies in the meat industry that—

Senator CARR—No, I said complaints.

Mr Rizvi—It is hard to tally up complaints. What we can do is identify the number of companies against whom allegations have been made.

Senator CARR—How many are they?

Mr Rizvi—I would have to take that on notice.

Senator CARR—Can you give me a list of the companies?

Mr Rizvi—Against whom allegations have been made?

Senator Vanstone—I am not sure that is appropriate.

Senator CARR—Why isn't it?

CHAIR—They would be matters under investigation, I would have thought.

Senator Vanstone—We will give consideration to it. It will at some point be appropriate to reveal that, but during the course of an investigation it may not be. It is not always convenient for people to know they are being investigated. We might find when we have a look at it that they already know. We will take that on notice.

Senator CARR—Presumably, you advise the companies that an allegation has been made against them.

Mr Rizvi—That is part of the investigative process.

Senator CARR—The point I am going to is that you are saying that this is a significantly at-risk industry but the union is not part of the agreement. I just cannot follow the logic of this.

Senator Vanstone—The logic is not a matter for Mr Rizvi or anyone else to discuss. You simply asked some factual questions; you are being given some factual answers.

CHAIR—The minister said they will take that last question on notice, Senator Carr.

Mr Rizvi—I might mention that labour agreements have been around since 1985. They were first introduced as a means of managing the entry of overseas workers. Initially, unions were parties to the agreements. They used to be called tripartite labour agreements. In the late 1980s, however, the Commonwealth decided that the process of negotiation of these labour agreements was taking much too long. As a result, difficulties were being experienced by many of the employers who were seeking to bring in workers. In the late eighties or early nineties, as I recall, the government decided that the agreements would still be tripartite but they would involve the equivalent of the department of employment, us and the relevant industry body or employer.

Senator CARR—The difference is that since 1996 we have had this particular class of visa with a different program and a different set of circumstances.

Mr Rizvi—The equivalent of the 457 visa existed prior to 1996.

Senator CARR—But not in the meat industry for this sort of work, for the short-term guest worker program.

Mr Rizvi—I would disagree with the characterisation of it as a short-term guest worker program.

Senator Vanstone—It seems that about 20 per cent of the people move on to permanent migration, which, as we know, is not available to guest workers in other countries.

Senator CARR—How many staff would you have monitoring these meat employers' practices and meat industry workplaces?

Mr Rizvi—They will be staffed from within the business centres and the compliance areas in our state offices. Also, there will be a key role for monitoring from central office as well as from the Department of Employment and Workplace Relations. There are detailed reporting and monitoring arrangements outlined in the draft labour agreement and, subject to the finalisation of those terms, we will then determine what level of staffing will need to be applied to the monitoring of that agreement.

Senator CARR—How many people do you currently have dedicated to the meat industry?

Mr Rizvi—I would have to take that on notice. I am not sure whether we have a breakdown by industry in that way.

Mr Fox—From memory, none of our staff are solely dedicated to working with the meat industry.

Senator CARR—How many would have expertise in dealing with the meat industry?

Mr Rizvi—A number of the business centres in our state offices would have developed, I think, an expertise in the meat industry. Indeed I, amongst others in my area, have developed some knowledge of the meat industry in the last six months.

Senator CARR—I have no doubt that you will have, as you have in the past when matters like this have arisen. What are the penalties proposed under this agreement? Are the penalties for breaches?

Mr Rizvi—The penalties for breaches at this stage are what is available within, firstly, the migration legislation and in the legislation of the relevant agencies that might be involved.

Senator CARR—So, it is slap on the wrist stuff.

Senator Vanstone—With respect, Madam Chair, if a question is asked, the verballing of officers by recharacterising their answers—in this case, 'Oh, a slap on the wrist'—just wastes the committee's time, because I am obliged now to point out that what Mr Rizvi answered was that the penalties available are those under the Migration Act and those under the various agencies. He has made it clear on a number of occasions this morning that the various agencies have their appropriate penalties, as you would expect, and it is a very serious penalty under the Migration Act to have significant delay on further 457 visas being granted. They are very important visas. They allow a business to bring people in and take commercial opportunities and therefore become a stronger business or, for that matter, cancel the entitlement altogether. Mr Rizvi has also indicated that we are looking at the question of whether fines are appropriate, and that issue has been dealt with. At no time has Mr Rizvi

chosen to say, 'We give them a slap on the wrist.' We can go through this if we like, verballing people, but it will just take up time because either the officer or I will have to stop and make sure the committee understands that the verballing is not accepted.

Senator CARR—Mr Rizvi, have you managed to find those three firms that have had their visas stopped?

Mr Rizvi—I think we have given that to you.

Senator CARR—Has that been handed up?

CHAIR—Not that I am aware of. I do not think you have tabled that, Mr Rizvi.

Mr Rizvi—No, I do not think we have tabled that. I think we were planning on looking at that during the lunchbreak.

Senator CARR—How many of the three firms that have lost their right to import guest workers are in the meat industry?

Mr Rizvi—As I mentioned earlier, there are two sets of penalties that can be applied. The first is a penalty which bars the person once an investigation has been completed and a breach has been proved. The second set relates to instances where an allegation is being investigated. During the period in which an allegation is being investigated, the relevant companies would not be able to bring in any further subclass 457 visa holders until those investigations were complete. The meat companies would tend to fall in the latter category rather than the former.

Senator CARR—Have you had submissions from ACCI to alter the regional certifying bodies?

Mr Rizvi—We have had requests from the Australian Chamber of Commerce and Industry regarding regional certifying bodies, yes.

Senator CARR—Are you able to provide us with a copy of that?

Mr Metcalfe—I think we took on notice earlier whether we would be able to provide copies of submissions. That would be contained within that response.

Senator CARR—Can you confirm that ACCI is of the view that, under the current arrangements, employer interests are currently under-represented on the regional certifying bodies?

Senator Vanstone—We will have a look at the submission. The secretary has just indicated how we will handle that.

Senator CARR—Is it their view that unions should be removed from certifying bodies where they exist at all?

Mr Metcalfe—We will take that on notice.

Senator CARR—Have any other employer groups sought greater representation on the regional certifying bodies?

Mr Metcalfe—We will take that on notice.

Senator Vanstone—It is worth making the point, Senator, since you mentioned unions again, that unions really are not a part of the visa process. The labour agreements are about

establishing an agreement whereby the visa will be used to bring people in. They are not a part of that process.

Senator LUDWIG—Minister, are you sure about that? A lot of the times when people bring workers on 457 visas in, the immigration department or other departments consult with various bodies, including unions, about whether there are people available currently to fill those roles and that sort of thing. It is the same sort of role that the regional certifying authority seems to play.

Senator Vanstone—They are not a part of the visa process, Senator. They might be consulted but they are not a part of the process. The visa is issued by the government—let us put the agreement aside for the moment—to an employer or whomsoever the government makes an agreement with, as, if you like, the sponsor of the workers coming in. And that has not been the union.

Senator LUDWIG—No. But in making that determination you take in a range of interests which include the unions.

Senator Vanstone—That is what Mr Rizvi said: the unions were consulted.

Senator LUDWIG—Do the regional certifying bodies have union representation on them?

Senator Vanstone—Some would, some would not, some may—I do not know. Most would not, would they?

Mr Rizvi—I am not sure. If you look at the areas of Australia that are covered, the vast majority of certifying bodies are covered by state government agencies. If they choose to take advice from unions in that process, that is a choice they can make.

Senator LUDWIG—No, I mean represented on the body.

Mr Rizvi—For example, in Western Australia, all the regional certifying bodies are an arm of the Western Australian government. They are an agency of the Western Australian government. If they chose to consult with unions as part of the process of certification, that is certainly something that is open to them.

Senator LUDWIG—What happens in Queensland, for example? You said that in Western Australia they are an arm of the government. I take it they are not an arm of the government in other states or territories.

Mr Rizvi—No. In South Australia, only the state government does certification. In Tasmania, the ACT and the Northern Territory, only the state government does certification. I understand that in Victoria the regional certifying bodies are largely state government bodies, other than two—one of which is a local council and one is a conglomerate of four councils. In Queensland, there is more of a mixture. There is the state government and there is a range of regional development bodies which have a mixture of representatives. In New South Wales there is the Mid North Coast Regional Development Board, which contains union representatives, TAFE representatives, council representatives and business owners. In Queensland, some of them are government bodies, some of them are local councils, some of them are chambers of commerce and some of them are an amalgam of such bodies.

Senator LUDWIG—Who makes the decision as to whether or not it would be, as in the Western Australian model, an arm of government or a mixture?

Mr Rizvi—That was a decision made by the Western Australian government. In addition to what they have done recently, the Western Australian government have changed the way their regional certifying body arrangements operate. They have decided to significantly centralise the process such that where, for example, an employer in outback Western Australia approaches the regional certifying body to seek certification and the regional certifying body is of the view that there is a case to be considered, they are now required to refer to Perth before a decision can be made. Western Australia have centralised the process very significantly.

Senator LUDWIG—So there is no requirement by DIMA to have one or other of the models? States or territories could decide to adopt a WA model or—

Mr Rizvi—We take the advice of the states as to how to go about these matters.

Mr Metcalfe—To summarise what Mr Rizvi said in his quick trip around the country, the composition of the regional certifying bodies is a matter for the relevant state or territory government and therefore who is included is essentially a matter for those governments.

Senator CARR—How often are the regional certifying bodies consulted before visas are issued?

Mr Rizvi—The regional certifying body is required to be consulted before the visa application is made.

Senator CARR—Each and every one?

Mr Rizvi—No, only where the regional concessions are to be applied.

Senator CARR—It has been put to me recently that in some states in the Commonwealth the number of occasions on which regional certifying bodies are consulted where regional concessions are required is very few. Is that true?

Mr Rizvi—In order to utilise the regional concession—

Senator CARR—They must be consulted.

Senator Vanstone—They have to sign off on it being appropriate.

Senator CARR—So they cannot bypass the regional certifying body?

Mr Rizvi—Unless there is a labour agreement involved.

Senator CARR—I see. How many circumstances are there where labour agreements would allow the bypassing of the regional certifying bodies?

Mr Rizvi—The labour agreement process does not legally require the regional certifying body to be involved.

Senator CARR—And there are seven labour agreements in place?

Mr Rizvi—Seventy.

Senator CARR—It has been put to me that, for instance, in the state of Victoria some 2,000 visas were granted in the last year or so and only a very few of them went through

regional certifying bodies as a result of those 70 agreements. Does that sound right to you, Mr Rizvi?

Mr Fox—There are two concepts there. It is true that a smaller number of visas would require the certification of the regional certifying body. That is because only a small number sought the regional concessions. We have provided previously, in an answer to a question on notice, the numbers of visas that have been granted below the minimum salary level or the skill level, which are, by implication, those that would have been certified by the regional certifying body. The 70 labour agreements are a separate process. I hope I did not misunderstand your question.

Senator CARR—But the effect is that they can bypass the regional certifying bodies by way of these agreements.

Mr Rizvi—The agreement will generally not involve a regional certifying body.

Senator CARR—Is it possible that there are very few applications or lower rates in rural areas—and we are talking regional or rural areas, although some, I understand, also apply to the city?

Mr Fox—Yes. Those labour agreements are not exclusively regional.

Mr Rizvi—In fact, the bulk of the labour agreements are in metropolitan Australia.

Senator CARR—So is it possible that in the state of Victoria very few applications would go through a regional certifying body?

Mr Rizvi—Because the bulk of the visas issued under subclass 457 meet the normal metropolitan skill and salary requirement, yes, that would be correct.

Senator CARR—So what are the figures from Victoria? In the last year, how many applications for exemptions to the minimum went through regional certifying bodies?

Mr Rizvi—I would have to take that on notice.

Senator CARR—How many were actually granted? I want to know the figure. It has been put to me that there were over 2,000 but only a very few went through the regional certifying bodies.

Mr Rizvi—Of the 2,000 visas granted in 2005-06 to employers operating in Victoria, I would expect that a small percentage would have required the regional concessions—that is, either the skill or salary concessions.

Senator LUDWIG—Perhaps I can deal with it in another way. Of the 70 where there is a labour agreement in place, can you provide the number of visas by state and territory that are granted through that process? That way we can make a comparison between those which are dealt with through the regional certifying authority, because you have already provided those figures—but you can update them if you want to; in fact, you should—and those which are in that industry. Do they choose to use the labour agreement, or can they choose not to use it?

Mr Rizvi—A labour agreement is usually negotiated when an industry body, an employer or a state government comes forward and seeks a labour agreement with us, and we then negotiate that agreement with them. The agreement, if it is reached, will specify the maximum number of visas allowed within that labour agreement.

Senator LUDWIG—But if the employer chooses not to use the labour agreement in that particular industry then the visa applicant can choose not to use it and then apply for a visa in that skill.

Mr Rizvi—They could apply for a standard subclass 457, but then they would need to meet all of the requirements of subclass 457.

Senator LUDWIG—I accept that.

Mr Rizvi—That is correct. Most of the labour agreements seek to make one or more variations to the standard product, and that is why most people enter into a labour agreement.

Senator CARR—I will bring you back to a specific case. Fu Zhihong is a printing worker from China who entered into a contract with a company known as the Shanghai Overseas Employment Service Ltd. The contract was signed by Mr Fu on 7 November 2005. Is the department aware of this contract?

Mr Rizvi—We are aware that Mr Fu entered into an arrangement with a recruitment company in China.

Senator CARR—Do you have a copy of the contract?

Mr Rizvi—A copy of the contract that Mr Fu entered into?

Senator CARR—Yes.

Mr Rizvi—We may have it. I cannot be sure. I will have to take on notice whether or not we have a copy of the contract.

Senator CARR—My reading of it suggests—

Mr Rizvi—Actually, he has provided a copy of the contract, and we are currently translating it into English.

Senator CARR—The translation that I have says that he has to pay a fee of \$22,000 to the recruitment agency, that he has to guarantee his return to China on completion of the contract, that he has to undertake not to change employers under any circumstances and that he has to pay for travel costs to and from Australia. The contract includes a list of actions and circumstances which would make Mr Fu in breach of the contract. They include fighting; drunkenness and trouble making; behaving badly; participating in strikes, union activity, demonstrations and political activity; not obeying the management; failing to perform and finish tasks assigned by the employer; becoming pregnant or impregnating others; and inflicting physical or mental harm on others. If Mr Fu did not meet any of the criteria, he could be sent back to China. Would you agree that those clauses are contained in the contract?

CHAIR—I think Mr Rizvi said the contract was in the process of being translated.

Mr Rizvi—We are having it translated at the moment.

CHAIR—So you do not have it with you?

Mr Rizvi—I do not have a copy of the contract with me.

CHAIR—That puts Mr Rizvi at a disadvantage, Senator Carr.

Senator CARR—You were not provided with an English translation of it as well?

Mr Rizvi—What I have here is that he has provided us with a copy of his contract and that we are currently translating it. That was the advice I received on 16 October. Whether or not we have a translation through at this stage I cannot say.

Senator CARR—Have you had any other contracts brought to your attention where it is alleged that persons are required to meet conditions such as not impregnating others?

Mr Rizvi—It has to be clear that this is a contract between Mr Fu and the recruiting agent in China. This is not a contract between Mr Fu and the employer in Australia. As part of the visa process we do ask for and look at the terms of employment of the individual. If the individual overseas has entered into a contract with another individual overseas, and neither of them is the employer, we will not necessarily know about that contract.

Senator CARR—So if it can be demonstrated that a contract requires Mr Fu not to change employers under any circumstances—which is what has been put to me as the terms of that contract—would that be illegal?

Mr Rizvi—That contract would be contrary to the migration regulations.

Senator CARR—What would happen under those circumstances?

Mr Rizvi—Mr Fu would be allowed to transfer employers, if that is what he wished, if he could find another sponsor who was eligible to sponsor him. I think we need to be very careful when we use the term ‘agent’, because there has been a lot of confusion in the media about the use of the term ‘agent’. Broadly speaking, there are three types of agents that we are talking about. There are registered migration agents, who are governed by the Migration Agents Registration Authority; there are employment or recruitment agents operating in Australia who are generally governed by the relevant state legislation regarding such agents; and there are agents who operate overseas within the framework of legislation that might exist within that country—three different sets of circumstances and ruled by three different sets of legislation.

Senator CARR—Is Mr Fu’s case currently a matter under investigation?

Mr Rizvi—It has been referred to the relevant Victorian government agency for investigation.

Senator CARR—The Victorian government?

Mr Rizvi—Yes.

Senator CARR—Are you sure it is not a breach of Commonwealth legislation?

Mr Rizvi—If Mr Fu’s agent is a migration agent, we could look at him in that context. If Mr Fu’s agent is an onshore employment agent, he would be governed, first and foremost, by the relevant state government legislation. If Mr Fu’s agent is entirely an offshore overseas agent operating in China—and China alone—that is a separate matter again.

Senator CARR—If there is a breach of the 457 visa insofar as I understand you have told this committee that it is not legal to require people to stay with one employer, surely that is a matter for you to investigate.

Mr Rizvi—It is a matter for us to investigate in the sense that we can advise Mr Fu that that is not a restriction that applies to him. Whether the person he entered into that contract

with is someone within the ambit of the Migration Act is another matter—remembering that what I was referring to was the relationship between Mr Fu and his employer. This is not a relationship between Mr Fu and his employer. You are referring to a relationship between Mr Fu and another agent—who is not a migration agent but who may be an onshore employment agent or an offshore recruitment agent.

Senator CARR—So what is Mr Fu's current status?

Mr Rizvi—The latest advice I received, which was on 16 October, was that Mr Fu had been advised by us that he has time to find another sponsor.

Senator CARR—How much time?

Mr Rizvi—Initially we would provide him with 28 days.

Senator CARR—And the clock is ticking on that initial 28 days, is it?

Mr Rizvi—I am not sure when the clock started ticking on that, but that would be correct. He would be provided with 28 days.

Senator CARR—And that is the same 28 days that applies to anybody under this visa program?

Mr Rizvi—Yes. We initially provide them with 28 days. If they need more time than that and they can demonstrate to us that they are making efforts to find another employer, we can look at that flexibly and provide them with further time.

Senator CARR—Is that an opportunity open in this particular case?

Mr Rizvi—That is open to Mr Fu.

Senator CARR—Is it the case that a person may be deported or asked to leave after the 28 days even if they had separated from their employer as a result of occupational health or safety or an unfair dismissal claim?

Mr Rizvi—That person would be able to come to us and discuss the circumstances of their case. If there was a need for them to remain in Australia in order to deal with those matters, we would look to see what visa arrangements we could make to allow that person to remain.

Senator CARR—And that would be on a case-by-case basis?

Mr Rizvi—That would be case by case.

Senator LUDWIG—Just a follow-up question on that: it is really the offshore labour hire group that is the issue. Do you refer them if there has been an underpayment of wages and the employer is offshore? What do you do in that respect? Do you refer them to the overseas industrial relations people? The employer is offshore, so would the OWS—

Mr Rizvi—You are saying that the employer is an overseas employer?

Senator LUDWIG—Can it happen that the labour hire group is the employer and they are offshore?

Mr Rizvi—The minister reminded me of the example of the overseas company that was installing the paint plant in South Australia.

Senator LUDWIG—I am not using any example; I am merely asking the question. It would seem to me logical that you could have an overseas labour hire group or employer. Given that you already accede to payment in both foreign bank accounts and foreign currency, it would seem logical that you could also have a foreign employer as the sponsor of a 457 visa to work in Australia.

Mr Rizvi—That is correct.

Senator LUDWIG—That can happen quite easily if the foreign company has a plant or work requirement in Australia and requires technical or expert advice and sends a person here under a 457 visa. The employer or the labour hire group, though, is overseas.

Mr Rizvi—Yes, that could happen.

Senator LUDWIG—In that respect, where an underpayment of wages has been detected by your mobile strike team or existing group, who do you refer that to?

Mr Rizvi—If it is an underpayment issue, in the first instance we would refer it to the relevant industrial relations agency. It would be question of whether their legislation was adequately able to address the circumstance of an overseas employer. We have found that, with globalisation, the phenomenon of overseas employers is increasing, but there is a range of both Commonwealth and state legislation that at this stage does not adequately deal with those particular circumstances.

Senator LUDWIG—Have you consulted with the OWS about foreign employers who may underpay, and what follow-up action they can take or what ability they have to recover wages on behalf of the employee?

Mr Rizvi—We have discussed that with OWS. In the specific instances where that has arisen, OWS have been able to deal with the matter. Whether in all instances all relevant Australian legislation—both Commonwealth and state—adequately covers those circumstances is another matter.

Senator LUDWIG—When you say ‘adequately covers’—

Mr Rizvi—In the particular instances they were able to address the underpayment issue.

Senator LUDWIG—That would have been by agreement. They would have had difficulty in prosecuting the employer for underpayment.

Mr Rizvi—We are not experts in their particular legislation. I would be reluctant to make any comments on that.

Senator LUDWIG—What holes have they identified to you in these discussions?

Mr Rizvi—OWS have not identified any holes to us so far. The holes that have been identified have been identified by a particular state government.

Senator LUDWIG—What are they?

Mr Rizvi—That was in relation to workers compensation and, I think, occupational health and safety.

Senator LUDWIG—You might have to elaborate.

Mr Rizvi—It was the case of the ABC factory in Sydney. The New South Wales government advised us that their legislation may not have adequate coverage of overseas employers.

Senator LUDWIG—What are you now doing about that, where you clearly see that there is the potential for the staff of an overseas employer to be granted 457 visas? You have provided 457 visas in those instances, I suspect.

Mr Rizvi—We have, as do overseas countries provide for Australians working overseas in similar circumstances. Increasingly, Australian companies are winning international contracts and they are required to send their workers to those countries in order to fulfil those contracts. It is a two-way flow. You are right; this is an area where extraterritoriality makes the issue complex. I am reluctant to go too much further on this because this is, once again, stepping into a different area.

Mr Metcalfe—You will be pleased to know it is to do with policy development.

Senator CARR—It is a COAG matter, isn't it?

Mr Metcalfe—That is correct.

Senator CROSSIN—In respect of the gentleman who is on contract with a labour firm from China, has the department been able to ascertain whether or not that labour firm is a subsidiary of the Chinese government?

Mr Fox—Do you mean the Mr Fu case that Senator Carr was discussing?

Senator CROSSIN—Yes.

Mr Fox—I was going to make the observation that that is a slightly different scenario. His employer is actually Lakeside Packaging. The Office of Workplace Services was able to investigate and my understanding is that some alleged underpayments were made good by Lakeside Packaging.

Senator CROSSIN—That is not the question that I am asking. Perhaps we are not talking about the same person here.

Mr Fox—That is why I asked the question.

Senator CROSSIN—I am asking about the gentleman on the contract that you were talking about, Mr Rizvi, that is currently being translated into English. Is he in fact on contract to a labour hire firm in China? Have you been able to ascertain whether that firm is a subsidiary of the Chinese government?

Mr Rizvi—I might clarify this. Mr Fu was in an employment contract with an Australian employer—the Australian employer that Mr Fox just mentioned. In addition and separate to the visa process, Mr Fu, back in China, entered into an arrangement with a recruitment agent in China.

Senator CROSSIN—I am assuming that the employer here in Australia got Mr Fu through that recruitment agency. Is that correct?

Mr Rizvi—That is most likely to be the case.

Senator CROSSIN—Has your department been able to ascertain whether or not that recruitment agency is a subsidiary of the Chinese government?

Mr Rizvi—We have not been able to establish whether it is a subsidiary of the Chinese government, a provincial government or not. What we have been able to establish is that it is a registered recruitment agency in China.

Senator CROSSIN—I see. How many 457 visas have been issued to foreign employers?

Mr Rizvi—To overseas business sponsors?

Senator CROSSIN—Yes.

Mr Rizvi—I would have to take that on notice. The number of overseas business sponsors is a very small fraction of the total 457 visa caseload.

Senator CROSSIN—This may take some time, and I would like you to consider it. Some 15 years ago—and, Minister, you may well remember this because you were in opposition—we had a situation in the Northern Territory in the trade development zone with a Chinese company called Hengyang textiles. Their workers were also on contract with a labour firm in China. The terms of that contract sound very similar to the terms of the contract that Senator Carr read. Is there any way that your department could ascertain if in fact there is any similarity between the contracts that were used then and now?

Mr Metcalfe—We will have to take that on notice. I recall the Hengyang situation. I was in Hong Kong at the time on posting. To the extent that we can retrieve material from that time and compare what we may have seen at that time with this case, we will attempt to do so.

Senator CROSSIN—Just before we go to lunch, on how many occasions has the department sought to penalise an employer under section 11.2 of the Criminal Code Act for a breach of the 457 visa conditions?

Mr Rizvi—Where we become aware of allegations that go to the Crimes Act, we would refer that to the relevant police department and it would be up to them to determine whether prosecution under the Crimes Act was appropriate.

Senator CROSSIN—So where we are talking about an unlawful noncitizen who works illegally, that is not something that you would take up? You would take that up with the Crime Commission, would you?

Mr Metcalfe—Not the Crime Commission. What Mr Rizvi is saying is that we take it to the Federal Police. For my information, what does 11.2 of the Crimes Act say?

Senator CROSSIN—It is a section—

Senator LUDWIG—She has it there.

Senator CARR—She knows about it too.

Senator CROSSIN—Yes, I do. It is a brief that I got back from the Parliamentary Library. There is some very limited scope for employers committing criminal offences arising under the migration legislation. It is possible that an employer may be penalised under section 11.2 of the Criminal Code Act. This section can lead to criminal liability where the employer is found guilty of aiding or abetting the commission of a so-called section 235 offence by

breaching section 235 of the Migration Act. A section 235 offence is committed by an unlawful citizen who works illegally or by a noncitizen who breaches the work conditions. Have you taken action against any employers who have assisted that?

Mr Metcalfe—We will take that on notice, because that takes us into a slightly different area of activity. 457s, by definition, are people who are here with a visa, and what you have referred to are people who might be detected working without a visa. You are probably aware that that has been the subject of a great deal of consideration over time as to what sort of level of sanctions, if any, employers should face for knowingly employing people who are illegally in Australia. We will take that on notice.

Senator CROSSIN—Thanks for that.

Senator LUDWIG—I have a couple of questions.

CHAIR—In fact, I was going to ask Mr Metcalfe, who has indicated to me that he has some responses to Senator Crossin's questions on compensation, to provide the committee with those. When we resume at two o'clock I understand that we will still be discussing section 457 matters. We will start with Senator Lundy then.

Mr Metcalfe—Senator Crossin, you asked me earlier about compensation for detriment caused by defective administration and act of grace payments. I have some information in relation that. I am advised that under section 33 of the Financial Management and Accountability Act 1997 act of grace payments may be paid where the delegate concludes that there has been an unintended or inequitable outcome as a result of the application of Commonwealth legislation and there is a moral obligation on the Commonwealth to make the payment. The act of grace scheme is administered by the Department of Finance and Administration. I am advised that in the last financial year, 2005-06, \$44,133.20 was paid under act of grace payments in relation to this department. For this financial year, 2006-07, to date no act of grace payments have been made.

It is also possible for there to be compensation under the Compensation for Detriment caused by Defective Administration scheme. CDDA is an administrative scheme which provides a means of compensating persons who have been adversely affected by the defective actions or inactions of a Commonwealth agency where that person has no other means of redress. I am advised that in 2005-06 the sum of \$16,885 was paid under CDDA in respect of our department and that in 2006-07 to date \$23,139.34 has been paid. That includes the sum of \$15,000 that was paid as recommended by the Human Rights and Equal Opportunity Commission for Ms CD. I am advised that the budget for CDDA is budgeted for as part of the budget within our Financial Strategy and Reporting Division and that it is adjusted quarterly, depending on expected funding needs.

CHAIR—Thank you. If there are any questions on that, Senator Crossin, we will come back to those in the afternoon session.

Proceedings suspended from 12.58 pm to 2.06 pm

CHAIR—Mr Metcalfe, I understand you have some responses on matters raised in the morning session.

Mr Metcalfe—That is correct. Mr Fox and Mr Rizvi might be able to provide some further information on matters we discussed this morning.

Mr Fox—Senator Carr, you asked me if I could get some more information on the breakdown of the funding for the announcement that the minister made today.

Senator CARR—Thank you.

Mr Fox—You asked particularly about DEWR's costs. The allocation is \$5.9 million over the next four years for DEWR. That is roughly \$1.5 million per year, with \$1.3 million in the remainder of the 2006-07 financial year.

Senator CARR—So no money goes to DIMA.

Mr Fox—No, sorry, there were two components.

Senator CARR—Yes, I understand that. But of the \$5.9 million—

Mr Fox—That is for DEWR.

Senator CARR—That is for the labour market agreements.

Mr Fox—That is for DEWR's part of the labour agreements. We have some funding for Immigration that is also part of the package, but that is incorporated into the \$17.6 million rather than the \$5.9 million. You also asked for the financial year totals and the breakdown that we had on that. I indicated earlier that the total national office staffing was just over 10 for 2006-07 and 13 staff for each of the next three years. That is \$1.315 million for 2006-07, \$1.434 for 2007-08, \$1.452 million for 2008-09 and \$1.469 million for 2009-10. In our state offices, there are 13.5 ASL—average staffing level—positions for this financial year and 27 for each of the next three years. The allocations for that are \$1.604 million for 2006-07, \$2.852 million for 2007-08, \$2.886 million for 2008-09 and \$2.921 million for 2009-10.

You also asked me about the other matters that were incorporated in there, and I mentioned training—which is for the development and delivery of a training module. There were some travel costs incorporated into the bid. We will seek to get some assistance in the form of a consultant to help us with some of the regulatory changes that may arise out of the COAG process, should that be the outcome of that process. We have got a little bit of money for leasing a vehicle to enable the strike teams to go out and do their work.

Senator CARR—One vehicle?

Mr Fox—We have got about \$75,000 across each of the next few years.

Senator CARR—For the whole country?

Mr Fox—That would be to add to our existing source of motor vehicles.

Senator CARR—You said 35 ASL now and then down to 27. Does that mean you would do less monitoring?

Mr Fox—No, I don't think—

Senator CARR—Did you say 35 ASL positions in the offices?

Mr Fox—I said that there are an additional 27 funded out of this funding.

Senator CARR—What is the 35, then?

Mr Fox—It is 13.5. That is for the 2006-07 year.

Senator CARR—So it is actually building?

Mr Fox—Yes. That is the total—

Senator CARR—Thank you.

Mr Rizvi—In respect of sanctions, Senator, we mentioned earlier that there were three companies that had been sanctioned in 2005-06. On checking our records it appears that four companies were sanctioned in 2005-06 and another six companies have been sanctioned—that is, a sanction involving a sponsorship bar rather than just a warning—so far this financial year. The discrepancy arises because one of the Canberra restaurants was sanctioned in May 2005-06 but on our systems was not recorded as having been sanctioned until October.

Senator CARR—Do we have a list of the company names?

Mr Rizvi—There are four companies involved. I was reminded by the secretary that at this stage we do not actually have the permission of the companies that have been sanctioned to name them in public. With your permission, Senator, we would like to contact the companies, alert them to the fact that they will be named and then provide those names to you.

Senator CARR—Thank you. What industries do they work in? What is the predominant industry base?

Mr Rizvi—At least one of them is a restaurant.

Senator CARR—We have established that.

CHAIR—Are there further responses, Mr Metcalfe?

Mr Metcalfe—I think that Mr Fox has completed his. I think the answer is no. It is just this response we are on now.

Mr Rizvi—Two of them are restaurants.

Senator CARR—Two of the six?

Mr Rizvi—Yes. One of them is in the manufacturing area.

Senator CARR—What branch of manufacturing?

Mr Rizvi—I would prefer to take that on notice. I only have the name of the company and I cannot be absolutely sure what branch of manufacturing it is in with only the name.

Senator CARR—How many are in the meat industry?

Mr Rizvi—None of the four is in the meat industry.

Mr Metcalfe—Senator, if there are some particular aspects of details on those six that you are seeking, if you can let us know now we can perhaps, through the course of the afternoon, try to provide that response to you.

Senator CARR—I am putting it in the context of the so-called rigour of the sanctions that are applied. It does not seem to me to fit the criteria that Mr Rizvi was putting—

Mr Metcalfe—Mr Rizvi made the point a couple of times this morning that, in addition to the actual sanctions, which involve a finding that there has been improper activity and

therefore a withdrawing of the eligibility of the company to sponsor people, there is a sort of freeze position as well, in that if there are active allegations which are being investigated then there is a temporary suspension. I think that he made clear that that is essentially the current status in relation to some of those meat companies.

Senator CARR—Of the 190 inquiries at the moment, how many companies have freeze orders imposed on them?

Mr Rizvi—At the moment we are not processing primary applications for any meat processing company until the audits that we have requested of those companies are completed. So, effectively, primary applications of all meat companies cannot be progressed until those audits are completed. I would have to take on notice the precise number of meat companies involved, but it is at least 30. The other thing that I should highlight here, Senator, is that when any one of these companies is warned by us as part of our processes—that is, not a bar but a warning—or if an employer breaches the Workplace Relations Act, those companies are included in what we call our ‘list of companies to watch for’. If any one of those companies seeks to apply to become a sponsor under subclass 457, that of course is examined much more closely in terms of their record. If the company were one that had breached the Workplace Relations Act we would seek further advice from OWS before we could process any one of those cases.

Senator CARR—Is it fair to say that there are 190 different firms that are subject to investigation?

Mr Rizvi—Correct.

Senator CARR—How many of those 190 are subject to freeze orders on their 457 visas?

Mr Rizvi—In terms of the meat companies?

Senator CARR—No; of all the 190.

Mr Rizvi—At the moment, if a company is identified as being subject to an allegation and an investigation, a decision maker cannot be satisfied that that company is a company of good standing and at that point would not be able to finalise any further primary visa applications in respect of that company.

Senator CARR—Of the 190, how many are subject to freeze orders?

Mr Rizvi—All 190.

Senator CARR—All 190?

Senator Vanstone—That is the answer he has given you.

Senator CARR—I am sorry, Minister, that you are being so grumpy today. It is a disappointment to me, but I suppose I have got used to it over the years. If the officer is answering a question, I am entitled to clarify what the meaning of the answer is—since we understand that the officers are more than capable of defending themselves.

Senator Vanstone—My point, Madam Chair, is that the officers are certainly capable, in another environment where it is even-stein, of defending themselves, but they are not in a position at estimates to defend themselves as freely as they otherwise would be able to. The

question was asked, and it has happened again that the answer is repeated back in some other form—and it is just going to continue to happen.

CHAIR—Senator Carr, do you have any further questions?

Senator CARR—With regard to the question that I raised about complaints and the Chinese printer, Mr Fu, is it the case, Minister, that you had this matter raised with the Chinese government?

Senator Vanstone—I intend to raise it by way of correspondence.

Senator CARR—Are there any other matters that you have raised with the Chinese government with regard to complaints that have been referred?

Senator Vanstone—Not that I have raised, but I believe some officer level discussions have happened.

Senator CARR—Can I have an indication of what the nature of those officer level discussions has been.

Mr Rizvi—Our officers in our posts in China have been talking with their counterparts in the Chinese government about recruitment agents and their activities and our concerns regarding the level of charging by some of those agents that is taking place.

Senator CARR—Is that the \$22,000 figure that was mentioned with regard to Mr Fu's case?

Mr Rizvi—That is correct.

Senator CARR—Is that type of figure common when it comes to people who are engaged by these labour hire companies?

Mr Rizvi—The charges that are applied are market driven and they will vary depending on the circumstances of the individual. On the basis of our investigations, a figure of \$20,000 in the meat industry is not unusual.

Senator CARR—At the previous estimates I raised the issue of another company charging those sorts of figures. When you say that it is not unusual, is it in fact common practice for Chinese workers to be charged figures of that dimension?

Mr Rizvi—I think there are two dimensions to that question. The first dimension was your reference to the earlier company.

Senator CARR—Yes.

Mr Rizvi—That earlier company, as I understand it, is a company operating in Australia and, hence, is subject to a different legislative framework from the companies that are operating directly out of China with Chinese agents. With Chinese agents operating out of China in association with the meat industry, I think it is probably reasonable to say that \$20,000 is common practice.

Senator CARR—With regard to the other company that I raised, which operates in Australia and which, according to my information, was undertaking exactly the same practice of asking people to pay money as part of a recruitment fee, have you been able to advance that investigation?

Mr Rizvi—We have referred this matter to, if I recall correctly, at least two different state government agencies who have responsibility for the operation of employment agents and the legislative framework within which they operate. We are seeking advice from them as to whether what these agents have done is in breach of the relevant state legislation. The advice we have is that state legislation on this matter varies quite considerably. Some states have quite strong legislation in this area; in other states the legislation is quite weak.

Senator CARR—That was the case of World Workers where, if I recall correctly from the last estimates round, they provided you with a contract.

Mr Rizvi—That is correct.

Senator CARR—Were you able to verify that that contract was a valid document?

Mr Rizvi—It was a contract. Whether it was a contract that meets Australian law is another matter. That is what we have referred to the relevant state agencies.

Senator CARR—My point to you was that persons were asked to sign those documents, which appear on the surface to be illegal.

Mr Rizvi—That is something we need advice on, Senator. We have referred it to the relevant state government agencies and we are awaiting their response.

Senator LUDWIG—Have you sought legal advice on it? Were you aware that there might be state regulation in the area for the regulation of private employment arrangements and have you considered whether you should seek separate legal advice as to the legality of it under state acts or other instruments?

Mr Rizvi—We have the option of seeking legal advice from our own lawyers, but our lawyers tend to be experts in migration law, not in respect of employment agents. The people who are experts in these matters will be the relevant state agencies, and it is far more efficient to seek their advice, because they have the expertise.

Senator LUDWIG—But how long has this been going on?

Mr Rizvi—We wrote to them some time back.

Senator LUDWIG—How long ago was that?

Mr Rizvi—I would have to take on notice the date we wrote to them.

Senator LUDWIG—A month ago?

Mr Rizvi—It would have been more than that.

Senator CARR—It would be much more than that, because it was the last round of estimates, wasn't it?

Senator LUDWIG—That is right. It would have been before February or May.

Mr Rizvi—We are trying to work closely with state agencies to encourage them to work with us on these sorts of matters.

Senator CARR—I am not particularly fussed about which agency you have written to. I would like to know which government you wrote to about these matters.

Mr Rizvi—We have written to the state government agency in South Australia; we have written to one other state government agency, and possibly two others, about this matter. I would need to take on notice who else we have written to.

Senator CARR—Have you had a reply yet?

Mr Rizvi—No.

CHAIR—Does that deal with the responses officers indicated they wished to provide?

Mr Fox—I have one extra piece of information. I think Senator Carr or Senator Crossin asked us about Mr Fu's current status. His costs are being met by WorkCover in Victoria at the moment. He is undergoing treatment for his injuries, and that continues. Due to the ongoing treatment of his injuries, he has not at this stage looked for a new sponsor. I understand there are some legal proceedings involving unfair dismissal that he is part of as well.

Senator CARR—So he will not be required to meet the 28-day rule?

Mr Fox—No, he will not be removed from the country while those matters are pending, as Mr Rizvi indicated earlier.

Senator CARR—Does it require action by him to have those matters taken up by you? Or do you do that automatically, given the circumstances of his case?

Mr Fox—Our business centre is in contact with Mr Fu and will be making sure that appropriate arrangements are made for his visa status.

Senator CARR—And make sure that his rights are protected in this matter.

Mr Fox—That is right.

Senator LUNDY—I want to begin where Senator Carr ended and ask: what is the fourth business that has been barred from being a sponsoring employer in 2005-06? I think you mentioned three, and maybe I missed the fourth.

Mr Rizvi—There was a fourth, and I have not got the industry grouping in which it is. We promised to contact the relevant companies to ensure that they understood that they would be named, and then we will pass on that information to the committee.

Senator LUNDY—Thank you. I would like to refer to answers to questions on notice provided from the additional estimates hearing on 13 February. I received a table which outlined DIMA action in relation to the visa applicants involved in the six restaurants investigated for breaches of 457 visas. I have a couple of questions about that response that I would like to follow up. The first one relates to the point of privacy. I note your comments to Senator Carr about the naming of companies, but in this response, having previously named the restaurants involved in the investigation, you have gone back to restaurant A, B, C, D and two others. Why did you do that when their names are already in the public domain and it is easy enough, looking at the facts, to work out which restaurant is which?

Mr Rizvi—I think it goes back to the point at which we provided that answer. We were reluctant to name the companies or the restaurants before we had sought legal advice on what it was appropriate to do with regard to the naming of employers using subclass 457. At that time, we had not sought that legal advice and hence we took a cautious approach.

Subsequently, we did obtain legal advice from the Australian Government Solicitor. They advised that we are required to provide information in respect of the names of sponsors using subclass 457 where parliament requests us to do so, unless there are privacy and/or commercial-in-confidence reasons for not doing so.

Senator LUNDY—Do you deem that there is a privacy or commercial-in-confidence justification for not identifying the names of restaurants that have been found to have breached the provisions of the act?

Mr Rizvi—In respect of the names of the restaurants that have been sanctioned, as I mentioned earlier, we propose the approach of alerting the employers to the fact that we are going to provide their names to you and then we would do so.

Senator LUNDY—Sorry, but that did not answer my question. I understand the point, but I want to know how an employer found to be breaching the act can, in the department's opinion, use privacy or commercial-in-confidence reasons.

Mr Rizvi—You are right; it is not—

Senator LUNDY—I put to you that a breach of the act does not qualify for protection of their identity for privacy and commercial-in-confidence reasons, so I ask you for their names.

Mr Metcalfe—My hearing of Mr Rizvi's response was that the Australian Government Solicitor provided that advice.

Senator LUNDY—That is right.

Mr Metcalfe—I suppose that was probably a cautious lawyer simply saying that there always could be grounds of privacy or other issues. I think we have made our intention fairly clear, and that is that we think that it is appropriate to let the employers know that they will be publicly named but then go ahead and do so.

Senator LUNDY—With regard to the restaurants that we are discussing here—particularly the four for whom there were found to be breaches by DIMA—for the purposes of this document, can you clarify which restaurant is which?

Mr Metcalfe—Are you asking whether we can update that document to reflect who is A, B, C and D?

Senator LUNDY—Yes, please. Do you have the document there to reference?

Mr Metcalfe—No, we do not have it.

Mr Rizvi—I have the names of the four restaurants.

Senator LUNDY—I put to you that restaurant A—

Mr Metcalfe—You want to make sure that we say who is A, who is B and—

Senator LUNDY—Exactly. It will not surprise you that I know, but I think it is important for the department to make this clarification for the public record.

Mr Metcalfe—I think we have with us copies of answers to questions on notice from the previous estimates but I do not think we have the earlier ones.

Senator LUNDY—I can give you the reference number.

Mr Metcalfe—If we could possibly get a copy of the reference number, we can locate that and, over the course of the afternoon, I am sure we will be able to do what you have asked.

Senator LUNDY—Thank you. We will come back to it.

CHAIR—Can you tell us the number of the question, Senator Lundy?

Senator LUNDY—It is answers to questions 3 and 115 in output 1.1 from 13 February 2006.

Mr Metcalfe—Thank you, Senator.

CHAIR—Not the budget estimates, Mr Rizvi; the ones—

Mr Metcalfe—They were from the additional estimates from earlier this year.

Senator LUNDY—I do have some specific questions in relation to that, but I have some general questions and I will come back to this when that document is available. Three of the restaurants that are referred to cite that litigation is an issue. I am certainly aware that there are Federal Court decisions pending for both Pangaea and Zeffirelli. Can you tell the committee who the third restaurant is for whom litigation has been undertaken?

Mr Rizvi—As the matter is being litigated, the name of that restaurant would be in the public arena.

Senator LUNDY—It would not be in the public arena?

Mr Rizvi—It would be in the public arena.

Senator LUNDY—That is right.

Mr Rizvi—The latest advice I have is that that particular restaurant rectified the underpayments involved in respect of one of its former employees and that OWS is continuing to investigate breaches involving locally engaged staff—that is, Australian staff—and is likely to initiate litigation action in respect of them shortly. This is my information as at 27 October. The sponsor responded on 21 August and on 6 October to a DIMA natural justice letter, and DIMA imposed sanctions on this restaurant which bar them from sponsoring further overseas workers for a period of three years—that is, until 6 October 2009. It is not clear to me whether litigation in respect of this particular restaurant has started or not.

Senator LUNDY—That is my understanding as well. I think it is important to clarify the issue. In my understanding the restaurant in question is the Holy Grail. I was not aware that litigation in the Federal Court had proceeded so I too will seek clarification of that with the Office of Workplace Services. It has been publicly reported that it may have, hence my questioning of the wording of this document, which implies it carries the same action as with the other two for which there are decisions pending.

Mr Metcalfe—We have not acknowledged which restaurant that may be.

Senator LUNDY—I am making an informed guess in that regard. I am asking the department to clarify specifically which restaurants are which for the purposes of this document.

Mr Metcalfe—Sure. I would seek to apply the same arrangement as we have suggested in relation to the other companies that Senator Carr referred to. If it is clearly in the public

domain then it is relatively straightforward. If it is an area where it may place someone in the public domain who was not previously in the public domain, we believe it would be appropriate to let them know that, in responding to a question from this committee, we were proposing to put their name in the public domain. We will seek to assist you as quickly as we can in relation to that.

Senator LUNDY—DIMA has the capacity to bar restaurants for participating in this, regardless of any Federal Court action undertaken by the Office of Workplace Services, so why is litigation an issue for DIMA with respect to making a determination about whether or not the two restaurants for which there are decisions pending—we know that they are Pangaea and Zeffirelli; it is in the public domain—have been barred?

Mr Rizvi—There are two dimensions to that. The first is that, whilst this particular action by OWS is ongoing, these restaurants would not be able to sponsor any further workers. So during that period they are effectively barred in any case.

Senator LUNDY—So you have made that determination?

Mr Rizvi—That is correct, because at that point a decision maker cannot be satisfied as to the good standing of these restaurants, which is a legal requirement before further visas can be processed. The relevance of the litigation is that the outcome of the litigation would determine or be an input into determining the nature or the length of the sanction that might be applied.

Senator LUNDY—So you will await that decision and that will perhaps inform the more permanent nature of the sanction?

Mr Rizvi—That is correct.

Senator LUNDY—Can you confirm, because this paper does not say it clearly, the current status of Pangaea and Zeffirelli with respect to a sanction under the Migration Act?

Mr Fox—I think we are in the same position. We will happily provide that to the committee but, as a courtesy to the companies, as Mr Metcalfe has indicated, we want to let them know that we are going to do so first.

Senator LUNDY—Why? I put it to you that there is no privacy or commercial-in-confidence issue here. Both restaurants are in the public domain. This is about the breach of specific provisions of the Migration Act, and I do not believe you have grounds to withhold this detail.

Mr Rizvi—Let us go through each of those restaurants. OWS initiated litigation action against Pangaea on 31 March this year. They also sought court orders to rectify underpayment breaches. There were direction hearings on 28 April and 7 June. The matter was heard by the Federal Magistrates Court on 10 and 11 July. OWS are also investigating breaches involving Pangaea's Australian employees. On 6 October this year, we imposed sanctions on Pangaea which bar them from sponsoring any further overseas workers for a period of three years.

Senator LUNDY—Thank you. That is one of the six in 2006-07.

Mr Rizvi—Yes. In respect of Zeffirelli's, which has also been in the public domain, a breach notice was issued by OWS on 21 February for underpayment of two employees. OWS commenced litigation in the Federal Magistrates Court and a directions hearing was held on

12 July. The magistrate has reserved his decisions regarding penalties. Zeffirelli's made admissions regarding the breaches and, on that basis, on 6 October 2006 DIMA imposed sanctions on Zeffirelli's which bar them from sponsoring any further overseas workers for a period of three years.

Senator LUNDY—Thank you. Are there more?

Mr Rizvi—That is two. One of the restaurants was already sanctioned by us in May 2005—last financial year.

Senator LUNDY—Can you name that restaurant, please?

Mr Rizvi—That was Milk and Honey.

Senator LUNDY—And the final restaurant on my paper?

Mr Rizvi—The final one is the one where, according to my latest information, OWS is still considering whether to initiate litigation action.

Senator LUNDY—That is correct. What is the status of DIMA's consideration with respect to that restaurant for the purposes of the sanctions under the Migration Act?

Mr Rizvi—The sponsor responded to our letters on 21 August and on 6 October. On 6 October, we imposed sanctions on that restaurant which also bar them from sponsoring any further workers for a period of three years. That can be reviewed, depending on the outcome of any litigation that may or may not take place.

Senator LUNDY—What is that restaurant's name?

Mr Rizvi—That is the Holy Grail.

Senator LUNDY—That tidies that up. So on 6 October, Pangaea, the Holy Grail and Zeffirelli's were all sanctioned under the Migration Act and barred from being sponsoring employers for the purposes of 457 visas for three years. Is that correct?

Mr Fox—That is correct. I might clarify: we had a typo in our brief here. The Milk and Honey sanctions that were referred to were in fact put in place on 11 May 2006.

Senator LUNDY—That is what—

Mr Fox—That is what we had said. I just wanted to clarify.

Senator LUNDY—So for the purposes of the statistics that you provided Senator Carr with, when you said that six businesses had been sanctioned in the 2006-07 year, three of those would have been Canberra restaurants.

Mr Fox—That is correct.

Senator LUNDY—Of the four in 2005-06, we know that one, Milk and Honey, was a restaurant. But you said earlier that there were two Canberra restaurants sanctioned in 2005-06. Can you give me the name of the other restaurant?

Mr Rizvi—There were two restaurants, not two Canberra restaurants. The other restaurant was not in Canberra.

Senator LUNDY—Thank you for that clarification.

Mr Rizvi—I will also clarify that the sanction on Milk and Honey was for a period of two years not three years.

Senator LUNDY—That is what it says in the document; thank you.

CHAIR—Minister, did you wish to add something?

Senator Vanstone—There is an additional point that is of interest. Companies can cease but the people running them can come back, and we have thought of that.

Senator LUNDY—What are you able to do about that?

Mr Rizvi—We are able to identify the individuals as clients of interest on our system, so if they do seek as directors to become involved in other company that would raise an alert within our system.

Senator LUNDY—Would that alert mean that that new company or that other company would also be barred from being a sponsoring business?

Mr Rizvi—I think you would have to consider that on a case-by-case basis. I do not think you could predetermine that.

Senator LUNDY—What would the process be of considering that, from the department's perspective? How would you measure what was reasonable?

Mr Rizvi—We would look at the previous involvement of the director involved, the nature of that person's involvement, the nature of the company that is seeking to sponsor this time around, how much of their penalty is still outstanding and so on. We would look at those sorts of factors.

Senator Vanstone—For example, you might find someone who is a person of interest in that sense seeking to set up another company where they are the main operator or half the operator of that business. That would be an entirely different situation than if one of those people, perhaps having learnt their lesson, bought into another business that was ongoing and that had an excellent training record, an excellent record using 457s, an excellent IR record, and was just a part of that team and did not have the same degree of control. But you would certainly have to have a look at it.

Senator LUNDY—Has the department prepared any guidelines about how you would make that assessment? How would you prevent it from becoming an arbitrary assessment?

Senator Vanstone—Those sorts of things would be looked at centrally by head office.

Senator LUNDY—Could you take on notice to provide the committee with more information about that process, either if you have it or as it becomes available?

Mr Rizvi—Yes, we can take that on notice.

Senator LUNDY—Have you been able to locate the answers to questions on notice yet?

Mr Rizvi—Yes, we have it in front of us.

Senator LUNDY—Excellent. Can we go through and clarify which restaurants are which?

Mr Rizvi—We might ask one of our colleagues to do that, rather than holding the committee up, and then once we have it we can come back to you.

Senator LUNDY—Okay; let me know. I have a few questions about the information and communications technology industry's use of 457 visas. I have quite a few questions about the various statuses across previous financial years as well. Do you have material available to you now—for example, numbers of 457 visas granted in 2002-03, 2003-04 and 2004-05 and the year to date?

Mr Rizvi—We certainly have data with us on 2004-05 and 2005-06. We also have data with us on the year to date. I do not think we have data with us prior to that.

CHAIR—You could take that on notice.

Senator LUNDY—That would be fine. I will start by asking for the total cumulative number of ICT workers currently in Australia on the temporary skilled 457 class visa.

Mr Rizvi—I can give you how many visas were granted in all of those periods. The numbers currently in Australia fluctuate quite a deal from day to day as these people are highly mobile and are moving in and out of the country all the time. We would really have to take it on notice to give you a stock figure at a point in time, because that figure would be a lot smaller than the total number of visas granted.

Senator LUNDY—If you could take that on notice, I think that it would be an interesting number. Are you able to give the committee an indication of how much smaller it would be than the total cumulative number of visas issued? What proportion would it be?

Mr Rizvi—I would not hazard a guess at that, Senator, because it would fluctuate from day to day quite a deal.

Mr Metcalfe—In providing a response, we will certainly endeavour to do what we can. I think that it could be quite tricky to try to provide a response of exactly or even approximately how many 457 holders are in the country at a point in time. You would virtually, I suspect, have to identify all of the people who held visas and then run a report against the movement databases as to who was actually in the country at that time.

Senator LUNDY—I do not think that is particularly useful. Perhaps just the cumulative figure of those whose visas are still current and have been issued for this industry in Australia.

Mr Metcalfe—To the extent that our systems support that sort of data we will certainly try to provide that.

Senator LUNDY—I would hope so.

Mr Metcalfe—So would I. Our management reporting is one of the areas of considerable upgrades at the moment through our own IT—

Senator LUNDY—You are actually upgrading at the moment?

Mr Metcalfe—We are upgrading. We have got a very significant systems activity under way called Systems for People, which we discussed a little bit this morning. It is funded to the tune of almost \$500 million over the next four years. We are very much seeking to upgrade our systems and one of the components is better reporting capability.

Senator LUNDY—I would think it is pretty much 101 in tracking everyone you had ever issued a visa to.

Mr Metcalfe—I wish that life was that simple. Roughly over 20 million people come and depart Australia every year, and tracking them from that point of view is an extraordinarily large exercise. As for the number of visas issued and how many visas may be valid at any particular time, we should be able to get some reasonable numbers, but I think that they are necessarily going to have to be approximate because no system is going to be perfectly updated at all times.

Senator Vanstone—Senator, on just one of the difficulties: I was a bit surprised when I first came to this portfolio in terms of our capacity to get at who are the rolling group of overstayers. Immigration has said for decades there is a rolling group of about 45,000 people who are overstaying. Some of them are short-term overstayers—tourists who have overstayed the couple of days or a couple of weeks or maybe even a couple of months. Others are people who have gone underground and stayed for a long time. There have been changes over decades in the way data is collected. Mr Rizvi might be a better provider of information, though I am not sure that it is of any interest to you anyway. It is not so much on the visas granted—that is the easy part of it. Whether they have gone is sometimes the not so easy part. People who are dual citizens, for example, can come in on one passport and go out on another. With the volume of numbers and the permutations that can come up it is a very difficult task, and since we do not require tourists—as no-one else does—to put their address every minute that they are here it becomes a very difficult task. We will give you what our systems will allow you to have.

Senator LUNDY—Also express in your response what the qualification is and the weaknesses in the system and what the approximations are, to the extent that you can.

Mr Metcalfe—We will do everything that we reasonably can. I do not want anyone undertaking heroic efforts for weeks and weeks to try to cover it. We will try to give you a good answer with a reasonable amount of resources devoted to providing that answer.

Senator LUNDY—Particularly for the overall number of visas granted in the ICT sector. If you could track that back as far as you can just to give an indication of a longer term trend on those numbers—

Mr Metcalfe—Would five years be sufficient? I am mindful that a great deal of resources go into responding to these questions.

Senator LUNDY—I presume that you can get those figures reasonably readily.

Mr Fox—You might recall that we responded to a question on notice that Senator George Campbell asked at the last estimates and we provided for the last five years a breakdown of a number of classifications. We will try to use that as a basis to aggregate information. One of the shortcomings of the data that we do have is that people almost self-select their type of industry classification. They might choose a different classification from that which we would choose. But we will try to do the best we can to provide that data for you.

Senator LUNDY—Thank you. Five years would be useful—more if you have got it. My next question is: are you able to provide the total number of applications for skilled 457 class visas in the ICT sector for the year to date but also going back over five years?

Mr Metcalfe—Do you mean applications by intending sponsors or visa applications by individuals?

Senator LUNDY—Both.

Mr Metcalfe—I should not have been so helpful!

Senator LUNDY—It is always appreciated.

Mr Rizvi—We will provide the data that you are talking about, but to assist the committee it might be useful to let you know that over the last, say, three years, the volume of 457 visas granted to people working in the broad sector of communications services—and that is broader than just ICT, but it essentially covers ICT—has been relatively stable. We have got a figure here which suggests that the communications services category is reasonably stable, at around 3,260 in 2004-05 and 3,280 in 2005-06. So it is pretty stable across those two years. What we have seen is that average salaries in the ICT area have been growing quite strongly—

Senator LUNDY—Oh, good—I have got some questions on salaries, so do not put that bit of paper away.

Mr Rizvi—Okay. Average salaries in the ICT sector have been quite strong. The average salary in terms of communications services is now well in excess of \$70,000.

Senator LUNDY—Okay. I do have some questions, and I will come to that shortly. How many skilled permanent residence visas have been granted in the last financial year in the ICT industry?

Mr Rizvi—In terms of permanent visas, there would be two groupings of skill stream visa grants that we would be getting. There would be those who come through the points tested categories—that is, without an employer sponsor—and there would be those who are employer sponsored. I would have to take on notice the size of those two groups, and we can get back to you with some data on those two for the ICT sector.

Senator LUNDY—Thank you. Could you also provide details for both the year to date and going back five years, please. Is there a cap on the number of 457 visas that can be granted in the ICT sector in a given financial year?

Mr Rizvi—No.

Senator LUNDY—Has there been any consideration given, Minister, to introducing such a cap? My understanding is that the US have a cap on skilled employee visa programs.

Senator Vanstone—The US have an entirely different system.

Senator LUNDY—I appreciate that. I am just using it to characterise the question.

Senator Vanstone—Since you asked, it is worth mentioning that the World Economic Forum papers recently made available chose to highlight, as one of the reasons for the United States's competitiveness slipping from one to five, as I understand, their not having a well-developed immigration system and, in particular, not having flexibility. That is one of the reasons, incidentally, not the only reason. If you look at the criticisms that are made of their immigration arrangements, you will see that they are an obverse of the arrangements that we

have. We do recognise that immigration allows business to immediately take economic opportunities that present themselves. If they cannot do it quickly, they will not be able to.

Caps, therefore—coming to your point—if set in an arbitrary way, simply mean that everyone else has to wait. You might find a situation where a company has a tremendous opportunity, and if we have set a cap, for no other reason than for guidance in policymaking, that company and the workers therein miss out on taking the opportunity. You have to be careful about that sort of thing.

Senator LUNDY—Are you ruling out a cap?

Senator Vanstone—I am not enamoured with the prospect of caps. In recent times in relation to other industries there has been some looking at whether there should be a percentage cap, for example, within a company. I do not know that that works either, because you might have one company, simply by virtue of its location in Australia, having an easy labour force and not needing more people coming in either permanently or on 457s and another, because of its location, not having that labour source. They might both be close to coal, meat or whatever it is that needs to have something done with it but be in different proximity to a labour market. An arbitrary cap there would make one company less competitive than the other for no other reason than that we wanted to be able to report against a cap. What I and the immigration department are always trying to get, and the government wants, is an immigration system that brings in the skills we need—not more than we need but not less than we need—in response to business need.

Senator LUNDY—I was listening to questions Senator Carr was asking earlier about the requirement for employers seeking to sponsor 457 visa applicants to demonstrate that there are no Australian residents capable of fulfilling the job. The response was that periodically there is an assessment of the nature of the shortage. I was hoping the department could detail, with respect to the ICT industry, its methodology for determining the extent of skills shortages, how often that is investigated and so forth.

Senator Vanstone—I will make a comment while Mr Rizvi is getting his thoughts together on that matter. You might have an example where an executive is very much sought after by a particular company but that executive will not accept the job unless his PA of many years can come in as well. You would be battling to say that over a long period of time there would be no suitable PA in Australia or in a capital city who could take that job. But it would be part of the package to get the primary applicant. I thought you might be interested in that.

Senator LUNDY—Do you think that is reasonable?

Senator Vanstone—Yes, I do think it is reasonable, if a company wants the skill. Companies put together a range of packages and there will be occasions when someone who is much sought after will say, 'I'll only come if I can have my group of staff with me.'

Senator LUNDY—Does the act provide for that or do you have to give those people special permission?

Senator Vanstone—They come as a primary applicant and above the relevant salary levels.

Senator LUNDY—Where does it say they can do that in the act?

Mr Metcalfe—It is not in the act. It would be essentially in the application policy or the regulations. Depending on whether it was permanent or temporary employment, an argument would be advanced by the company concerned that the skills of the individual were not obtainable in Australia, those skills being the ability to work in a highly confidential and trusted position with the extremely sought after person. I think that the eligibility would essentially go to the working relationship that existed between the two people.

Senator LUNDY—So it is a bit of a loophole, really.

Mr Metcalfe—No, it is not a loophole.

Senator Vanstone—It is not a loophole.

Senator LUNDY—Can you tell me how it is not, because from what you described—

CHAIR—The minister was actually just trying to do that.

Senator LUNDY—I know. I just want to clarify my point in asking the question. From what you have described, it sounds like that is not the general instruction or general understanding of how this program operates.

Senator Vanstone—I think it is the general understanding. I have no problem with this. Do you have a problem with it?

Senator LUNDY—I am just asking you to point me to the act, regulations or guidelines where it specifies how this can be done and why it conforms with the provisions of the act?

Mr Metcalfe—The act itself, as you may or may not be aware, provides very broad enabling provisions—for example, the minister may grant visas or whatever.

Senator LUNDY—So is it a ministerial discretion?

Mr Metcalfe—It is in the detail of the application of the particular visa class. Take, for example, a skilled temporary worker. If a chief executive were coming out to run a major Australian company and the minister indicated that they said, 'I'm only coming if this person whom I know and trust and who is absolutely essential to the management of my office can come—and they will be paid above the minimum salary level,' that would be an example of a particular skill. That is a very unusual example, I must say, but it is a particular skill which is in demand and which cannot be easily met from within the Australian workforce. There is absolute provision for that within policy. It is not a loophole, but it would be a very unusual thing to happen. While we have a number of very senior executives here under this scheme, in numerical numbers we are not talking about a large proportion of the overall skilled migrants.

Senator LUNDY—Perhaps you could tell the committee how many people have come in in this way.

Mr Metcalfe—We will certainly take that on notice. Again, it would be difficult to provide a report from a system on that basis because we are presumably talking about either employment nominations or skilled temporary visas. Short of examining the basis of the approval for each one—bearing in mind that there are many thousands of people applying each year—it would, I suspect, be difficult in a reporting sense to home in on this, but if we can we will.

Mr Rizvi—Senator, may I respond to your earlier question as to how we assess the labour market in terms of ICT?

Senator LUNDY—Before you do, I would like to put a question on notice. Could you provide the committee with the reference in the law that permits this mechanism and also the number of people who have come in specifically under that mechanism?

Mr Metcalfe—We will take that on notice.

Senator Vanstone—You do not think of PAs as being unskilled, do you, Senator?

Senator LUNDY—The thought had not crossed my mind.

Senator Vanstone—With some chief executives, it is the PA—or the EA as they are now called—who does the large part of the organising and rearrangements that facilitate the ongoing flow of work.

Senator LUNDY—Thanks, Minister. Is there anything else you would like to add?

CHAIR—That is really for me to offer, Senator Lundy—not for you. Do you have any questions, Senator Lundy?

Senator LUNDY—I do. Mr Rizvi is about to answer them.

Mr Rizvi—In terms of assessing the ICT labour market, there are perhaps two quite distinct approaches that we take. In the points tested category, where there is no direct employer link associated with the visa grant, the process of establishing migration occupations in demand—as they are called—is undertaken by the Department of Employment and Workplace Relations. They do a detailed analysis of job advertisements and demand across the country. It is done at a fairly low level of detail in terms of ICT specialisations. As a result, over the last four or five years there has been quite a deal of fluctuation in the list of occupations on the migration occupations in demand list. Leading up to Y2K, all ICT occupations were identified as being in demand. Soon after the dotcom crash, the Department of Employment and Workplace Relations indicated that no occupations should be on the migration occupations in demand list, and all ICT occupations were removed.

In more recent times, the department of employment has indicated that there is a growing number of critical ICT specialisations which are in demand. On the basis of consultations with the Australian Computer Society, we were able to set in place arrangements that enabled those particular specialisations to be placed on the migration occupations in demand in list and for the Australian Computer Society to assess applicants against those specialisations. That is one approach that we take. The other approach relates to the way that we deal with employer sponsored visas and, in particular, subclass 457. As you are aware from the earlier discussion with Senator Carr, we do not necessarily go through a formal skills assessment process for every application within subclass 457. If we were to do so, it would very significantly lengthen processing times and potentially put Australian employers at a competitive disadvantage. Rather, the approach we take is to require the employer to provide us with evidence that the individual meets the skill requirements. We then assess those to a degree on a risk management basis. Where it is clear cut that the person meets the—

Senator LUNDY—Against the same categories that you had identified under the process with ACS and DEWR?

Mr Rizvi—Against the full range of ICT specialisations, not just the ones that are on the migration occupations in demand list. This is against the full spectrum of ICT occupations. We would assess whether the person meets the skill requirements and only send them for formal skills assessment on a risk management basis. The approach that the government has taken to dealing with concerns that entry level jobs were being taken by people using a subclass 457 visa has been to announce a minimum salary level for subclass 457 visa holders going into ICT occupations which is at a significantly higher level than the minimum salary level for all other occupations. In other words, the government used a price signal approach to rationing demand rather than using the more blunt instrument of a cap.

Senator LUNDY—Okay. What is the minimum salary level for ICT?

Mr Rizvi—It currently stands at around \$57,000 and has been growing quite rapidly. It has been growing at a faster rate than the standard MSL.

Senator LUNDY—How does the formula that you have just described allow that to grow? Do you have to make another determination to increase that, based on your investigations?

Mr Rizvi—It is reviewed regularly—

Senator LUNDY—How regularly?

Mr Rizvi—It is normally done every year. The minimum salary is reviewed every year. The ICT one in particular is reviewed against the background of movements in the ICT sector.

Senator LUNDY—Every year or more often?

Mr Rizvi—Every year.

Senator LUNDY—Still every year?

Mr Rizvi—Every year. It is also done on the basis of consultations with the Australian Computer Society and the AIIA so that we can gauge their advice. Then it is implemented on that basis.

Mr Fox—In 2004-05 the average salary for the communications services category that Mr Rizvi referred to earlier was \$72,400. In 2005-06 it was \$78,000, which is about a 7.72 per cent increase. In the first quarter of this year, that has gone up to \$81,900, which is about another five per cent increase.

Senator LUNDY—Can you tell me the movements of the ICT special minimum salary which correspond with those movements in the average salaries?

Mr Rizvi—The minimum salary for ICT occupations at the moment is \$57,000. What Mr Fox was quoting was the average salary.

Senator LUNDY—I appreciate that. I am just trying to see if that \$57,000 has gone up since it has been put in place.

Mr Rizvi—Yes. We can provide you with that. We might take it on notice, but it has been going up quite rapidly. Indeed, we have had a number of representations—

Senator LUNDY—So each year it has been going up?

Mr Rizvi—Yes.

Senator LUNDY—How does it correspond with your analysis of what the entry level salaries are in ICT?

Mr Rizvi—On the basis of advice we have received, the minimum salary level for ICT of \$57,000 is above the entry level for ICT occupations.

Mr Fox—The advice we have is that the average starting salary for ICT graduates is around \$48,000.

Mr Rizvi—The other point we would make is that if you look at the communications services industry more generally the minimum salary level at around \$57,000 is in fact very close to the average salary right across that industry in Australia. In other words, the minimum salary is well above the entry salary; it is closer to the average salary across that industry, and the average salary for subclass 457 in the ICT industry is itself close to just under \$20,000 above the average.

Senator LUNDY—So up at around \$77,000—

Mr Rizvi—At the moment it is \$81,900 in the first quarter of 2006-07.

Senator LUNDY—Could you take on notice to provide all those figures, broken down where possible on a quarterly basis, and particularly can you tell me how frequently that ICT minimum salary is tested in the way you described against the industry average wages? You just mentioned the figures then: is that tested at the same time that you review it every year and therefore it is only tested once a year?

Mr Rizvi—It is only tested when we review the MSL for updating by the minister, and that is usually done annually. We would not do it more frequently than that. But certainly on the evidence before us there would not appear to be a great need to test it any more often. Clearly, subclass 457 visa holders entering an ICT occupation are paid well above the Australian average.

Senator LUNDY—Does the department consider the impact these rates of pay, particularly the minimum rate of pay that you described, \$57,000, have on the prevailing rates of pay in the industry? You mentioned that many are paid above that rate anyway. Does that put downward pressure on average salaries given that it is set at \$57,000 and, clearly, the average is a lot higher?

Mr Rizvi—The average salary of 457 visa holders is significantly higher. The average salary of Australians working in the communications industry sector is about the same. On that basis there is probably little evidence that is putting downward pressure on salaries in the ICT industry.

Senator LUNDY—Has the department considered the impact the minimum rates of pay have had on university enrolments in ICT courses in Australia?

Mr Rizvi—I would imagine that the minimum salary level in respect of ICT occupations for 457s would have minimal impact on what university graduates are getting.

Senator LUNDY—Have you considered it though? I have seen some figures from the AVCC about the trend in ICT enrolments. The trend is going down, particularly for women. So at the same time that things are looking healthy it appears that the demand for these skilled

workers is coming as a higher proportion from 457 class visas and a lower proportion from graduates, so it is having a disincentive effect—that is my observation—on people undertaking this area, even though the salaries seem to be reasonably healthy. What is DIMA doing about this and how do you liaise with the Department of Education, Science and Training on these issues?

Mr Rizvi—We have met with the IT industry with regard to those allegations, particularly the ones that appeared in *People and Place*—

Senator LUNDY—I have seen the statistics and analysed the statistics. It is not an allegation that there are fewer people now choosing to study ICT in Australian universities; there is a clear decline.

Mr Rizvi—We have discussed that with the IT industry. Their view is that 457s are having no impact in respect of the number of young Aussies studying IT. Their view is that it is more likely to be other factors including, fundamentally, the problem that studying IT at university is a difficult course. It involves a substantial element of maths and there is a general trend towards maths specialisation—

Senator LUNDY—It sounds like you are saying that people do not want to do the hard work. I find that an interesting explanation and I would be very interested if you can provide the committee with information about where the industry has asserted this or, indeed, if that is the opinion of the universities—and they ought to be the ones that know.

Mr Rizvi—It was certainly the opinion provided to us in response to those articles—

Senator LUNDY—By whom?

Mr Rizvi—by the industry itself.

Senator LUNDY—But not by the universities.

Mr Rizvi—No, not by universities.

Senator LUNDY—So the industry would have an interest in arguing for the ongoing use of 457 class visas.

Mr Metcalfe—The industry I think—

Senator LUNDY—They would say that, wouldn't they?

CHAIR—Perhaps Mr Metcalfe could conclude his answer.

Mr Metcalfe—I think the industry, if they are a rational industry, which I assume they are, would be arguing for more workers to be trained in Australia because they seem to cost less. The figures we have seen here this afternoon show that the average salary rate for overseas workers is over \$20,000 higher than for Australian workers. Therefore, you would think it would be in the industry's interest to in fact promote the greatest possible number of graduates coming through Australian courses. That is just my observation based on—

Senator LUNDY—Yes, but I put to you that there are many more complicating factors than that, including the capacity for young Australian ICT graduates to get the experience they need. ICT is notoriously based on staying current and on the ability to find work and maintain

and develop your skills whilst in work, so it is not necessarily as cut and dried as your analysis implies. What percentage of 457 visa class ICT workers are covered by awards?

Mr Rizvi—The MSL in respect of the ICT industry is generally well above any relevant awards, so the question of awards does not necessarily arise. There may be other industrial instruments that are relevant, but they would tend to be developed on a company-by-company basis—certified agreements and that sort of thing.

Senator LUNDY—Can you provide the committee with a reference to any awards that would be relevant in the sector. I certainly appreciate your point that it has long had a tradition to be contract based, but can you provide that?

Mr Rizvi—We will see what we can find in respect of ICT awards.

Mr Metcalfe—We will. Given that it is not our responsibility to determine or manage awards, we will be reliant upon advice from elsewhere, presumably DEWR, so we will ask them to provide that to us and pass it on to you.

Senator LUNDY—Thank you. What monitoring does the department undertake to ensure that 457 visa holders in the ICT sector are paid in accordance with the minimum salaries we have been discussing?

Mr Rizvi—There are two main steps that we take. One is that after approximately six to nine months after the sponsor has been approved we send out a monitoring form—that is form 1110—which asks a series of questions, including in respect of salaries paid, of employers. Based on the responses that we receive we will, on a targeted basis, undertake site visits of the sponsor to look at things like pay slips. We will also, if necessary, interview the employee to check that the minimum salaries are being paid.

Senator LUNDY—You will forgive me for being a tad cynical about that. Are you able to take on notice to provide the committee with details of how many times that has been undertaken with ICT employers and 457 class visa holders?

Mr Rizvi—We can take that on notice. We can divide up the monitoring and site visit statistics into the ICT occupations.

Senator LUNDY—And over the last five years, if you have those numbers as well.

Mr Rizvi—I am not sure whether we can go back that far, but we will do the best we can.

Senator LUNDY—If you cannot, just provide an explanation. I have a couple more points on this issue and then I will be done. Are there any employers who have been sanctioned in the ICT sector or under that communications definition?

Mr Rizvi—We will have to take that on notice. We will see if there are any employers in the last few years who have been sanctioned in the ICT sector.

Senator LUNDY—Are you aware of any problems where employees are forced to pay sums of money to the employer? Again, I reference your earlier exchange with Senator Carr. You stated that there must be a written agreement and that that therefore implies that they were freely entered into. But to what depth do you examine these issues? Anecdotally—I am not making any specific allegations—I hear that large proportions of the salaries are paid to labour hire agencies that arrange the placement et cetera, where the fees are paid back over a

period of time for rental accommodation and other fees associated with the placement? What are you seeing out there? How are you documenting that? What can you provide to the committee?

Mr Rizvi—As you said, there are two dimensions to your question. One is the role of labour hire companies, in particular labour hire companies in the ICT sector, and the extent to which they are seeking fees from the employees as opposed to from the employers. The rules around whether a labour hire company can extract fees from the employees as opposed to the employer vary from state to state. Some states have quite strong rules regarding that. In other states, we are told by the labour hire industry, the rules are not quite so strong. Indeed, in some states it is possible for the labour hire company to charge both the employer and the employee for the service that they are providing. Certainly we seek to monitor that closely and, where there is evidence that a labour hire company is charging an employee in a state where that is contrary to the legislation, we would seek to engage with the relevant agency. Where we are talking about deductions, such as for accommodation—

Senator LUNDY—Before we go on to that, are you able to identify the proportion of 457 class visa holders who do have deductions for the purposes of labour hire fees?

Mr Rizvi—Where they pay the labour hire company?

Mr Fox—We may not have that information.

Senator LUNDY—So in effect, in talking about the average salaries, it could have a distorting effect on what these people actually receive if there are large fees being paid.

Mr Rizvi—If the fee is being taken out of the employee's salary it would have to be after the minimum salary has been paid.

Senator LUNDY—That is correct. It means you would not see it in your statistics.

Mr Rizvi—We may not see it. It would have to be a deduction that was freely entered into and it would have to be fair and reasonable. That brings us to the second point, which relates to deductions. As I said, there are laws within each state regarding how deductions can be managed and how they can be extracted. Where there were deductions being made that appeared inappropriate, we would refer that to the relevant state agency to investigate whether the deductions had been freely entered into and whether the way they were managed was in compliance with the relevant legislation.

Mr Fox—Senator, you might recall that Senator Carr asked us a question that we took on notice at the last hearings which went to the same ground. I am pleased to say that we also said then that we did not have readily available statistics that would enable us to answer that question, unfortunately.

Senator LUNDY—Thank you. It is an area of concern. Can we go back to that document. Can you run through which restaurants are A, B, C and D?

Mr Fox—Restaurant A is Pangaea, restaurant B is Holy Grail, restaurant C is Zeffirelli and restaurant D is Milk and Honey.

Senator LUNDY—Point 3 in DIMA action for restaurant A, Pangaea, says that allegations of abduction are with the AFP. Can you provide the committee with an update of those allegations?

Mr Fox—My recollection from when we discussed this in May is that the AFP advised that at that stage their investigation was ongoing but it was unlikely that they would be able to take any action. This was against the allegation of kidnap of the worker. We can confirm that, but my recollection is that that was the advice from AFP.

Senator LUNDY—I have written to the AFP and have not received a response from them, so you obviously know more than me. Please provide the committee with any information you have regarding that matter. Thank you. Thanks for your patience, colleagues.

CHAIR—Thank you, Senator Lundy. We are still discussing 457 visas.

Senator CROSSIN—I want to go through these questions. You could take them on notice, but I will put them on the transcript for ease. In terms of the total number of 457 visas issued to date, I think Senator Carr went through some of them, the current estimate was 39,500 in the 2005-06 year. That was an increase of 42 per cent from 2004-05, for which I understand the estimate was 28,000. I would like you to provide us with the costs associated with the current administration of the scheme. How much is it costing in terms of compliance processes and costs?

Mr Metcalfe—These are costs within the department?

Senator CROSSIN—That is correct.

Mr Metcalfe—Of administration of the 457 scheme?

Senator CROSSIN—Yes; compliance processes and costs.

CHAIR—Are you happy for these to be taken on notice?

Senator CROSSIN—I will stop after each one in case you need clarification or it is too complicated.

Mr Metcalfe—Thank you. There will be some components to that. You mentioned compliance. There is obviously a sort of policy implementation cost. There is a significant cost of responding to questions on notice. There are obviously offshore visa application considerations as well, so we will attempt to bring that together for you.

Senator CROSSIN—We are also after the costs associated with advertising, either internationally or domestically, the type of advertising and the spend per country.

Mr Metcalfe—We will take that on notice.

Mr Rizvi—Is that advertising in respect of subclass 457?

Senator CROSSIN—Yes, it is.

Mr Metcalfe—We as a department do not advertise. We do have some promotional activities in relation to skilled migration to Australia, but there is no advertising as such.

Senator CROSSIN—Perhaps we might include in that the promotional activities then.

Mr Fox—Those are not unique to 457 visas, though.

Senator CROSSIN—Just generally.

Mr Fox—You have seen reference to the Australia Needs Skills expos that have been run in recent times.

Senator CROSSIN—If I ask for department staffing levels for administration and compliance, do you have a particular section that deals with 457s?

Mr Metcalfe—We have within the national office a couple of sections dealing with 457 issues, and within each of our state and territory offices there are people involved in processing applications and follow-up monitoring. Our overseas posts also have a cost. Earlier we took on notice the issue of costs. A significant amount of the costs will be the costs of employees. In fact they will probably correlate very strongly, but we can take that on notice as well.

Senator CROSSIN—Take that on notice then. Can I have the costs associated with the upgrading of IT to support compliance?

Mr Metcalfe—For the 457 visa?

Senator CROSSIN—Yes, this is in relation to that.

Mr Metcalfe—That will be difficult to disaggregate.

Senator CROSSIN—Is that a generic activity across the department, of which 457s are one?

Mr Metcalfe—Yes. You heard earlier that there is a \$495 million program in relation to IT as well as ongoing maintenance. If we can sensibly provide you with something, we will. If not, we will provide you with an explanation as to why we cannot.

Senator CROSSIN—Are there application fees associated with the visa? Do these vary from country to country?

Mr Rizvi—The application fees are standard for all countries, but there are application fees associated with the visa, yes.

Senator CROSSIN—And that is? Will you take that on notice?

Mr Fox—No, we can give you that. The sponsorship fee is \$270, the nomination fee is \$55 and the visa application fee is \$185.

Senator CROSSIN—And that would be the same no matter what the country of origin?

Mr Fox—That is right.

Senator CROSSIN—I will go to occupations and skill levels. How many 457 visas were approved for occupations which have been on the MODL since 2000?

Mr Rizvi—We would have to take that on notice. That would require a fair amount of detailed examination because MODL over time changes itself, so you would have to match it up with the date in which the MODL was in effect. I think it is important to point out that the MODL is not relevant to decision making under subclass 457. MODL is related to completely different visa classes.

Senator CROSSIN—And 2000 is a fair time ago, isn't it—six years.

Mr Rizvi—And MODL would have changed many times since then.

Mr Metcalfe—I would be concerned as to whether it was an unreasonable diversion of resources to try and respond to that question, but if there is some other way we can help you in that area—

Senator CROSSIN—I think we are looking for a comparison between what occupations are on the MODL and what occupations 457s have generated.

Mr Metcalfe—We would be able to provide a snapshot of MODL, acknowledging that it changes within years.

Senator CROSSIN—Perhaps if we went back two years.

Mr Metcalfe—We could show you what it looked like two years ago; we could show you what it looked like a year ago; we could show you what it looks like now. We could also provide you with—and we probably have on notice already—information as to the major occupations using the 457 visa.

Mr Rizvi—We can do that.

Senator CROSSIN—When you say that it is not used for 457s, is it used mainly for the skilled migration?

Mr Rizvi—It is used for the points tested skilled migration categories, not for employer sponsored migration categories. The MODL is designed to help us in selecting or targeting the categories that are in demand. Of course, fundamentally what that is trying to do is to understand the needs of employers; where you have got a category where the employer is expressing their needs, what better way to get an understanding of their needs?

Senator CROSSIN—So 457s is one basket and MODL is another—is that what you are telling us?

Mr Metcalfe—That is correct.

Senator CROSSIN—One is a skilled points system; one is employer sponsored—correct?

Mr Rizvi—Correct.

Mr Fox—Senator Lundy asked earlier—and I know she has left the room for the moment—about the minimum salary that was in place for the ICT professions in various states. I have gone through some of the salary increases and I can provide that to the committee now. On 11 February 2004 the minimum salary level in ICT workers was \$46,620. That was increased on 2 April 2005 to \$50,775—an 8.9 per cent increase—and on 3 May this year to the figure of \$57,300, and we referred to that earlier—a 12.9 per cent increase. In other words, there has been a steady increase in the minimum salary level, as Mr Rizvi indicated.

Senator CROSSIN—I want to go to a report in the *Sydney Morning Herald* in early September, a report that suggested that truck drivers, factory workers and kitchen hands have been given 457 visas. Is that correct?

CHAIR—Is the fact of the report correct or the contents?

Senator CROSSIN—Factory workers and kitchen hands have been given 457 visas as primary applicants. Are you aware of that article in the *Sydney Morning Herald*?

Mr Rizvi—I cannot remember the specific article.

Mr Metcalfe—There have been many articles in the papers, Senator.

CHAIR—Do you have a copy of the article, Senator?

Senator CROSSIN—Can you tell me whether truck drivers, factory workers or kitchen hands have been given 457s as primary applicants?

CHAIR—To assist the witnesses, Senator, do you have a copy of the article?

Senator CROSSIN—No. You do not need the article now. I am asking you a generic question.

Mr Rizvi—In respect of truck drivers, we have been having discussions with the Australian Trucking Association now for many months in order to get to some understanding of what their needs are and what their problems are and how best we might be able to assist. That has led to lengthy discussions on a possible labour agreement. That labour agreement has not yet been finalised; there are still some outstanding issues in respect of that. Certainly kitchen hands are a low-skill occupation and would not be permissible under subclass 457. I suspect that we are looking at the possibility that on occasions some chefs perhaps have been used to do some work which might be regarded as lower skilled as part of their overall duties. But certainly kitchen hands are a low-skill occupation. They are under ASCO 9 and are therefore not permissible under subclass 457. I guess with factory workers it is a question of what skill level of factory worker we are talking about. There are factory workers with a very high skill level and they are certainly permissible under subclass 457. If it were a factory worker in a labouring job that would not be permissible under subclass 457.

Senator CROSSIN—In relation to the truck drivers, you said you have had discussions with the Australian Trucking Association. Have they sought to sponsor overseas drivers under 457?

Mr Rizvi—If they wish to do so.

Senator CROSSIN—Have any of these been approved?

Mr Rizvi—The labour agreement in respect of truck drivers is still under consideration.

Senator CROSSIN—Who will that agreement be with—between yourselves and the ATA, is it?

Mr Rizvi—It would be between us and the ATA. The Department of Employment and Workplace Relations would be involved and we will closely consult with the relevant state governments.

Senator CROSSIN—Is there any discussion about concessions or exemptions being made in relation to this area?

Mr Rizvi—Some exemptions would be needed because truck drivers are an ASCO 7 occupation, which is a semi-skilled occupation. The advice we have received from the Australian Trucking Association is that they are seeking to source truck drivers associated

with very heavy trucks, very large pieces of machinery not just ordinary trucks, and that the individuals concerned would need extensive experience in driving long-haulage, very large trucks. We are advised by the industry that that is a substantial skill level and that the ASCO assessment of truck drivers in that regard is not correct. We have indicated that we will need some further advice from the relevant registration and licensing authorities about those sorts of matters before we could proceed.

Senator CROSSIN—Is there an exact job title or job description or are you talking about people who would be driving trucks over a certain tonnage?

Mr Rizvi—I think that we are talking about trucks over a certain tonnage. The generic description of truck drivers within ASCO suggests that it is semiskilled. The Australian Trucking Association is suggesting to us that that is not entirely correct.

Senator CROSSIN—Are they suggesting that it is highly skilled?

Mr Rizvi—They are suggesting that driving certain types of trucks is a highly skilled occupation.

Senator CROSSIN—Has there been any discussion about the country of origin or particular companies involved in sponsoring them?

Mr Rizvi—Yes, a range of companies have been involved in the discussions. The ATA represents a range of companies. There are separate other companies that have approached us directly. It would be fair to say that most of the big trucking companies in Australia are involved, indirectly at least, in those discussions. In terms of source countries, they have mentioned some source countries but of course we run a non-discriminatory program as far as subclass 457 is concerned and so the source country would not necessarily be a critical aspect. But a number of Eastern European countries have been mentioned.

Senator CROSSIN—Is it possible at this stage to give us the names of the companies that you are in discussion with either individually or through the ATA?

Mr Rizvi—I would need to seek their permission before I could reveal that.

Senator CROSSIN—When are you likely to have this labour agreement finalised?

Mr Rizvi—I could not put a time on it, Senator. There are some complex issues here and I think they will take some time to resolve.

Senator CROSSIN—Are there any other types of visas or schemes that are in place or would be put in place to allow foreign drivers to be sponsored to work in the Australian trucking industry?

Mr Rizvi—The labour agreement would need to address a range of issues. As we have already discussed, it would address the question of skill levels and appropriate independent advice regarding skill levels and how skills should be assessed. It would need to address issues of salary levels. The salary levels would have to be reflective of the highly skilled nature of the positions that the trucking industry is proposing be filled. It would need to address issues associated with English language skills because English language skills are going to be important if a person is going to be able to drive a truck safely in Australia. There will be licensing and registration issues. There will be issues associated with the training

commitment and the training levels that the trucking industry is committed to and they would need to commit to a higher level of training. All of those issues would need to be addressed, and that is one of the reasons why it is taking some time to resolve all of those.

Senator CROSSIN—Will the labour agreement just go to 457s or will it go to other sorts of visas?

Mr Rizvi—A labour agreement can cover other visa classes as well. It could cover some permanent residence classes as well.

Senator CROSSIN—Is there an intent for this to do that?

Mr Rizvi—There have been some discussions along those lines but nothing particular. It is quite possible that the truck drivers, after having worked in Australia for some time, may wish to migrate permanently.

Senator CROSSIN—Is there a name to this? Is it just called the trucking labour agreement, or the labour agreement between DIMA and ACA?

Mr Rizvi—It is called the labour agreement with the Australian Trucking Association. We have not got a formal title, Senator.

Senator LUDWIG—Is there only the one agreement being negotiated?

Mr Rizvi—At the moment we are in discussions with two groups of people in respect of trucking.

Senator LUDWIG—How do you differentiate between those? Are there two agreements then?

Mr Rizvi—There are essentially two agreements proceeding but they are very similar.

Senator LUDWIG—If I am then going to follow this further and ask questions, is it group A and group B, or is there a regional component or a city component?

Mr Rizvi—It might be best to refer to one as the agreement with the Australian Trucking Association and the other one can just be called the other trucking agreement, I suppose, with an amalgam of other trucking companies.

Senator LUDWIG—What stage is that one up to?

Mr Rizvi—They are at a similar stage.

Senator LUDWIG—So neither have been finalised.

Mr Rizvi—No, neither have been finalised.

CHAIR—I am keen to finish output 1.1.

Senator CROSSIN—It might be a while.

CHAIR—I take that on board. Perhaps I should send home or at least back to the department the officers for outputs 1.2 to 1.5 to do something productive—not that listening to estimates is not a productive exercise for those officers entranced in the back of the main committee room!

Senator CROSSIN—I intend to come to output 1.2 and 1.3 before dinner.

CHAIR—I am afraid those officers are condemned to stay here.

Mr Metcalfe—There was a small sigh of disappointment behind me, I think, but thank you.

CHAIR—It was not audible. It was very restrained.

Senator CROSSIN—I want to ask for some data on salaries. Do you monitor the base salaries paid by employers to 457 visa holders?

Mr Rizvi—We monitor salaries in three ways. Firstly, we monitor the salaries at the time the visas are processed so we know what the base salary is at that point in time and, if there is any salary packaging, we have some understanding of the salary packaging. We then monitor that at the point at which we send out the monitoring forms to the employers requesting information regarding a range of matters, including the salaries being paid. Thirdly, if we do a site visit, we will again investigate that matter a bit further. The data we have in respect of salaries tends to be the data at the visa-processing stage because that is part of the administrative system. The data that is collected at the monitoring stage is not on systems but rather held on the relevant files and hence less easy to access.

Senator CROSSIN—I want to ask you about the figures that are commonly cited by the government in relation to this issue of around a \$60,000 to \$65,000 average 457 salary. Is that taken from the survey that was reported in the study *Temporary skilled migrants in Australia*?

Mr Rizvi—No, that is not from a survey; that is from administrative data.

Senator CROSSIN—How is that arrived at? Is it based on all actual salaries paid to 457 visa holders or on the salaries stated on the application? It is not from the commissioned survey.

Mr Rizvi—It relates to the salaries quoted at the time the visa was processed relating to base salary only.

Senator LUDWIG—Is there a form that provides that?

Mr Rizvi—Yes, when the application form is lodged with us—

Senator LUDWIG—Do you have a copy of the form?

Mr Rizvi—Yes, we have a copy of the application form.

Senator LUDWIG—Can you make that available and indicate on the form where the figure is extracted from?

Mr Rizvi—Yes.

Senator CROSSIN—Thank you for that. Is the \$60,000 to \$65,000 salary an average of those salaries?

Mr Rizvi—\$66,000 was the average salary of all base salaries indicated to be paid at the time the visa was processed in 2005-06.

Senator CROSSIN—So that figure was determined in 2005-06.

Mr Rizvi—That is correct.

Senator CROSSIN—Do we have a rough date for that? Do you do it at the start or the end of the year?

Mr Rizvi—That would have been the average of all visas processed in 2005-06.

Senator CROSSIN—I see. So at the end of the year you come up with that figure?

Mr Rizvi—We add up all of the salaries quoted in each of the primary visas processed and divide by the number of visas.

Senator CROSSIN—And it currently sits at \$66,000.

Mr Rizvi—That is correct.

Senator CROSSIN—So it will be updated again at the end of 2006-07. Is that right?

Mr Rizvi—We can provide you with the salary figure for the visas processed in the first quarter of 2006-07, and that figure is just above \$70,000.

Senator CROSSIN—So it can be updated three-monthly?

Mr Rizvi—Yes.

Senator CROSSIN—Taking the three-monthly figure, how many visa applications are we looking at in that figure?

Mr Rizvi—The total number of primary visas processed and granted in the first three months of 2006-07 was 11,060.

Senator CROSSIN—And for 2005-06?

Mr Rizvi—I do not have a figure comparing quarter by quarter but I can provide you with a figure for the whole of 2005-06. The total number of primary visas granted in 2005-06 under subclass 457 was 39,530.

Senator CROSSIN—There is a gazetted 457 minimum salary level. Is that correct?

Mr Rizvi—That is correct.

Senator CROSSIN—Can you tell me what that is at the moment?

Mr Rizvi—The standard minimum salary level at the moment is \$41,850. That is a standard. The ICT minimum salary level is \$57,300 and the regional concessional salary is 90 per cent of the standard.

Senator CROSSIN—How many 457 visa holders are currently on a salary below the standard level?

Mr Rizvi—I will have to take that on notice. We could provide you with the figures for, say, the first quarter of 2006-07, and identify the numbers who were granted visas below the standard but above the regional minimum.

Mr Fox—Senator Carr has already asked us to take that on notice.

Senator CROSSIN—Would that also include the number of sponsors, and how many sponsors employing below the minimum?

Mr Rizvi—Yes, we can provide that.

Mr Fox—The 90 per cent figure that Mr Rizvi referred to translates into a regional minimum salary level of \$37,665.

Senator CROSSIN—I think we have been through most of the compliance statistics. A lot of questions I have in front of me were asked by Senator Carr this morning in one form or another. I think I will put these on notice.

CHAIR—If they have been asked and answered, the department can indicate that.

Mr Rizvi—Yes, we will cross-reference.

Senator CROSSIN—Yes.

Senator LUDWIG—Do you cross-reference or data match with the ATO any of the figures that you receive—payroll data or payroll tax?

Mr Rizvi—For the purposes of compliance of the subclass 457 visa, the legislation at present does not permit that. We have made a submission to an inquiry being conducted by the Treasury regarding the secrecy provisions of the tax act and if our submission is successful that may be something that we might be able to do in the future. But, at present, the tax office have advised us that whilst they are happy to receive referrals from us regarding matters of concern they are not able to advise us on the outcome of those referrals.

Senator LUDWIG—And when did you put that request in?

Mr Rizvi—We made a submission to the Treasury inquiry into the secrecy provisions of the tax act. That would have been very recently.

Senator LUDWIG—That would allow the ATO to provide payroll data or tax returns so that you could then verify what was paid as a gross salary, what was tax deductible and what was the net salary of the 457 visa holders.

Mr Rizvi—It would make our lives a lot easier if that could happen.

Senator LUDWIG—At the moment you use business monitoring as a way of establishing what the base salary is and then you ask for two payslips or other advice.

Mr Rizvi—That is correct. Currently, it is a very labour intensive process.

Senator LUDWIG—What happens if they do not provide that payroll data to you?

Mr Rizvi—Mr Fox mentioned that earlier. If they fail to cooperate they are risking their ability to continue to use the program.

Senator CROSSIN—I will consult with Senator Ludwig for a moment.

Mr Fox—Madam Chair, if this is a convenient point, I can provide the committee with one more piece of information that we took on notice earlier.

CHAIR—What does it relate to, Mr Fox?

Mr Fox—It was the stock figure of the number of 457 visa holders in Australia right now.

CHAIR—In response to a question from which senator?

Mr Fox—I think it was Senator Lundy. The figure as at midnight last night was 92,459, and that includes primary and dependants.

Senator CROSSIN—I have a question concerning the ABC Tissues construction site and the 50 457 visa holders from China. There were allegations centred on the lack of adequate skills, training and OH&S issues. Did the department issue any penalties to any sponsor following an investigation by either your department or any other department?

Mr Rizvi—I can advise on the actions that we have taken to date. That matter is being investigated by other agencies, both Commonwealth and state. I am not in a position at the moment to advise on what actions they may have taken. In terms of actions that we have taken, we have issued a sanction against Hunan Industrial Equipment Installation, barring that company from making further applications for approval as a sponsor with regard to subclass 457 for a period of two years.

Senator CROSSIN—Is that it?

Mr Rizvi—That is the only sanction that we have issued. As I said, the allegations with respect to that particular case were wide-ranging and there are a number of agencies, both Commonwealth and state, who are investigating those matters from their respective perspectives.

Senator CROSSIN—Is that the only breach notice that was issued?

Mr Rizvi—That was the only breach notice issued by the department of immigration.

Senator CROSSIN—And the sanction was a two-year bar?

Mr Rizvi—Yes.

Senator CROSSIN—In relation to Aprint, the company that sponsored Mr Zhang on a 457 visa, I understand that Mr Zhang paid an agent in China \$10,000 and his employer a further \$10,000 for the position. He was dismissed after the amount was repaid and evicted from the sponsor's premises he was renting. That then became public. What compliance monitoring of Aprint has occurred?

Mr Rizvi—Mr Zhang first approached the department on 22 August 2006. He was interviewed on the same day and the Office of Workplace Services was contacted on 23 August 2006. We interviewed Mr Zhang again on 28 August 2006 with OWS in attendance. OWS conducted a site visit on 6 September 2006. We interviewed the director of Aprint on 7 September 2006. The allegation relating to rental arrangements was then referred to the Victorian Office of Fair Trading. A notice of intention to consider sanctioning Aprint has been sent. Aprint had 28 days to respond, and we are, I understand, currently considering the response received. Mr Zhang has been granted a 457 visa with a different sponsor. The other 457 visa holders continue to be employed by Aprint at this stage.

Senator CROSSIN—What monitoring did you do or conduct prior to approving the company to sponsor the 457 visa?

Mr Rizvi—You are asking what investigations we undertook in respect of Aprint itself and its application to become a sponsor?

Senator CROSSIN—Yes.

Mr Rizvi—We will take that one on notice. That is a level of detail that we do not have here. If we can take that on notice we can provide you with the details of the assessments that we made.

Senator CROSSIN—Can you tell me when the visa was approved?

Mr Rizvi—I do not have the date of the visa approval. I have lots of other details but I do not have details on when that visa was approved. We can take that on notice.

Senator CROSSIN—You are telling me that that visa has not been cancelled? Mr Zhang has simply transferred to another sponsor?

Mr Rizvi—Mr Zhang has another 457 visa with a different 457 sponsor.

Senator CROSSIN—When was the Aprint visa cancelled?

Mr Rizvi—Mr Zhang confirmed he had ceased employment with Aprint on 18 August 2006. He was given until 30 September 2006 to find another employer.

Mr Fox—He was granted a new 457 visa on 22 September 2006.

Mr Rizvi—Once the employer has advised that the Mr Zhang had ceased work with Aprint we would then have proceeded to consider cancellation of the visa. At the point that Mr Zhang was able to find a new sponsor we would have granted a new 457 visa, and therefore we would have had to cancel his previous 457 visa.

Senator CROSSIN—He had until 30 August and a new visa was not granted until 22 September. Is there a problem there?

Mr Rizvi—We provide the employee 28 days to find another sponsor. However, if the employee needs some further time we look at that flexibly.

Mr Fox—In fact Mr Zhang was given until 30 September, which was within the time frame.

Senator CROSSIN—How many cases is the department aware of where the 457 holder was required to pay or incur a debt of more than \$5,000 for the position and hence the visa?

Mr Rizvi—We are aware that out of some countries recruitment agents charge substantial amounts of money. Precisely how many of those would have paid and how much they would have paid is not something that we have comprehensive data on. They are inquiries we make, particularly in the China context, but we do not specifically keep records of that information. Those transactions take place overseas between two overseas parties and are not a specific part of the visa process.

Senator CROSSIN—What sanctions have been issued against Aprint?

Mr Rizvi—As I said, a notice of intention to consider sanctioning Aprint has been sent. Aprint has 28 days to respond. I understand we have now received a response and are considering it. That is the latest advice I have.

Senator LUDWIG—Senator Carr was asking, probably this morning, or it may have been just after midday, about the meat industry and the minimum salary level. Listening to that conversation, even if you were not confused, I was a little, so I am seeking some clarification. Does the way you work out the MSL include or exclude incentive payments?

Mr Rizvi—The way we calculate it is to exclude incentive payments. If the basic way that wages are calculated in a particular industry involves some sort of tally rate or something like that—

Senator LUDWIG—An incentive payment. An industry I am more familiar with is shearing, where you are paid by sheep shorn. It is an incentive—the more sheep you shear the more pay you get. That is a true incentive system.

Mr Rizvi—That is right. We would say up to the MSL none of that is at risk in respect of a subclass 457 visa holder because, irrespective of how many sheep they shear, they have to get the MSL. If they shear more sheep and are entitled to a salary above that because that is how the industrial instrument in respect of that industry operates then they are eligible for any payments above that. But they could never be paid a level below the MSL, irrespective of how many sheep they shear.

Senator LUDWIG—Schedule A says that incentive payments are not included, but in effect you do take them into account to arrive at the MSL.

Mr Rizvi—The key point there is that the MSL cannot include anything which is at risk, and a tally system or whatever would not mean that any of that salary would be at risk. It must be paid, irrespective of the level of work performed.

Senator LUDWIG—In the meat industry, using Senator Carr's example, if a tally system was used, irrespective of what work the person performed in that week, the MSL would be guaranteed.

Mr Rizvi—The MSL would be guaranteed; that is correct.

Senator LUDWIG—But it still could form part of the calculation for the incentive payment.

Mr Rizvi—Above the MSL? Yes, they would be entitled to whatever extra performance and whatever extra salary they were due under the relevant industrial instrument.

Senator LUDWIG—You also mentioned that you referred these matters to the OWS if there was a perception that a person was being underpaid or paid less than the MSL. What happens if there is no award, it is an award-free area, or it is an area where, because of the way the industrial legislation operates, incentive payments cannot be taken into account or the OWS cannot investigate it?

Mr Rizvi—If there is no award then the individual must be paid the MSL or the relevant minimum salary in Australian legislation—whichever is the higher.

Senator LUDWIG—Yes, but you see the problem. If someone was paid under that amount and you referred it to the OWS for investigation, how would the OWS have the authority to investigate a rate that there was not an award for?

Mr Rizvi—At present there is no provision within industrial relations legislation for a sanction against the employer in those circumstances. The only sanction available is in the Migration Act, and that is to bar the company from further sponsoring. We believe at the present that sanction has been sufficient to encourage employers to make correction. However, there is an argument that the legislation should be strengthened in that regard.

Senator LUDWIG—So if a person was paid a rate where the OWS did not have the ability to prosecute or pursue for a breach of an award or an agreement and seek recovery through the various systems that are available under the workplace relations legislation, that underpayment could not be corrected by them, or you, for that matter, other than by encouragement or through a separate sanction under the migration legislation.

Mr Rizvi—Yes, it is through the sanction. What we have found to date is that the threat of the sanction is usually enough to encourage the employer to comply. However, we recognise that that is an area in which things could be strengthened.

Senator LUDWIG—I note that you used the word ‘usually’. Are there circumstances that exist in which breaches of the MSL, namely underpayment, have come to your attention and not been remedied?

Mr Rizvi—We have not encountered an instance in which OWS has advised us that the person is being paid according to the relevant industrial instrument but not being paid the MSL where the employer will not make good.

Senator LUDWIG—What about the circumstance which I have outlined, in which OWS respond that they have no jurisdiction to deal with the underpayment of the MSL?

Mr Rizvi—I cannot recall an instance to date in which OWS has advised us of that. I understand that it could occur, and it is one of the areas of tightening up that we are looking at.

Senator LUDWIG—Could you have a look at your records to see whether or not it has in fact occurred. I know you say you cannot recall it, but if you could—

Mr Rizvi—We will check.

Senator SCULLION—Mr Rizvi, my colleagues have obviously covered a wide area with regard to the 457 visas, and it appears to principally cover the routine monitoring of those arrangements. Some time ago, you prefaced one of your first answers by saying that there are areas within the demographics of organisations and industries that require, through identification, higher levels of compliance than others. We have principally concentrated on those areas. What are the other areas and large organisations that use 457 visas? Can you enlighten me about the other demographics and how they are going?

Mr Rizvi—It is certainly true that the vast bulk of 457 visa users in Australia are highly compliant. They are at the high level of reputable organisations in Australia and would cover, for example, every state government in Australia. Indeed, in 2005-06 around 10 per cent of visas were granted to employers which were state government agencies. That would include almost every state government health department.

Senator SCULLION—What sorts of areas of the health departments would they be using these visas for?

Mr Rizvi—They would be using them for a mixture of medical specialists: doctors, nurses and probably the full spectrum of medical professionals. A very significant portion of the whole of the Tasmanian state’s usage of 457 visas is state government sponsoring of medical professionals. The biggest user of 457 visas in most states tends to be the state health department.

Senator SCULLION—Are you aware of the spatial split between the regional and rural areas within those states and territories and the metropolitan ones? Which of the areas would most use the 457 visas?

Mr Rizvi—Certainly in regional Australia the extent to which health professionals are utilised is quite extensive.

Senator SCULLION—Yes, I know that is the case, certainly in Alice Springs and the rest of the Northern Territory.

Mr Rizvi—It would also be the case in probably the bulk of Queensland and Western Australia and, as I have mentioned, Tasmania. The biggest user of 457 visas is the New South Wales department of health, in terms of both doctors and nurses. They have only recently again gone on a worldwide trip to recruit more nurses from around the world. That is proceeding. In addition, it is probably fair to say that half of the publicly listed companies in Australia would use 457 visas. In 2005-06, 35 universities used subclass 457 visas. In addition, there are an increasing number of other departments in state governments which use 457 visas. For example, RailCorp in New South Wales is a very significant user of subclass 457 visas. Increasingly we are seeing subclass 457 visas used to recruit teachers, particularly due to the shortage of maths and science teachers in Australia.

Senator SCULLION—Excellent. From sitting here this morning, I could perhaps have got the idea that they are not such a good idea but, clearly, from your answers, that is not the case. In terms of the number of complaints, the public obviously have an interest in this matter, and quite rightly. The complaints have been widely spoken about in the media for some days. Could you provide me with the number of complaints that have actually come in as against the number of complaints that have had some compliance action at the end. That might be useful.

Mr Rizvi—In 2005-06 there were just under 10,000 active employers using subclass 457s. We are currently investigating complaints against 190 employers. Those complaints are broadly divided as follows. About a third are complaints that we identified through our own monitoring. About a third of them came about because an employee came forward to us and said: 'I have a problem. I don't think my employer's paying me right,' or, 'I don't think my employer's doing the right thing.' Another third of them came via the unions, the media or other sources. In terms of sanctions applied against those, whilst the number of sanctions—

Senator CROSSIN—Can I ask a question before you go on to sanctions. Are there any complaints from the areas Senator Scullion was suggesting? For example, has there ever been a complaint against New South Wales Health?

Mr Rizvi—I cannot recall a complaint against the New South Wales department of health.

Senator CROSSIN—It would almost be a model sponsor, then.

Senator Vanstone—If you will agree that any private sector company against which there is no complaint should be judged a model sponsor on that basis, I am tempted to say yes, but I have to say I do not assume that at all. That is why we have visits to people about whom we have had no complaints.

Senator CROSSIN—I just wanted to clarify whether there have been any complaints about New South Wales Health—that is all. Obviously there have not been.

Mr Rizvi—Not in respect of New South Wales Health. That is not to say the health sector is without complaint. We have had complaints in the health sector but not against the New South Wales department of health. Of the 190 cases which we are currently investigating, we have found breaches in a relatively small percentage—less than two per cent of allegations. So it would be a small percentage of two per cent.

Senator SCULLION—Thank you. I have a question for Mr Metcalfe. You would be aware that a Sheikh Taj al-Din al-Hilali has been in the media over the last few days. Are you aware of the individual?

Mr Metcalfe—I am certainly aware of Sheikh al-Hilali.

Senator SCULLION—I have read some media reports over the last couple of days, in particular from a previous immigration minister, Mr Chris Hurford, who asserts that in 1986 if he had had his way effectively he would have deported Mr Hilali. I was very interested in the process. He has asserted in the media and on the public record that he was not the one who approved the permanent residency and the subsequent citizenship of Mr Hilali. I wonder if you could tell me who would have provided the permanent residency and the subsequent citizenship of that individual.

Mr Fox—I have not refreshed my memory on the precise dates in relation to Sheikh Hilali. I know that quite a lot of this issue is in the public domain so I will preface my comments cautiously by saying that he is a citizen. I have not checked as to when he was granted citizenship. I am aware from personal knowledge, in that I was actually working in the department in a legal capacity in the mid-eighties, that there was very careful consideration given, including by Minister Hurford, to the issue of Sheikh Hilali's residence application at the time. In fact, I think there was litigation around that issue. From my recollection, it was a subsequent minister who approved that residency. From memory it may have been the minister who immediately followed Mr Hurford, but I have not checked on that point.

Senator SCULLION—Perhaps you can take that part on notice.

Mr Metcalfe—I will take that on notice.

Senator Vanstone—It might be worth mentioning, since Senator Ray is a former minister and has been mentioned, that the media reports indicate—and they seem to have far more information than is available to me—that the proposition was put to Senator Ray, who apparently bluntly refused.

Senator SCULLION—I am very interested in the process and I have, as a part of this committee, been looking very much at the very robust process that we have to go through in this regard. Clearly, if the minister had a very strong view on the matter, I imagine very strong representations would have had to have been made to counter that argument, usually in this process. Are you personally aware or would the department be aware of any representations that may have been made to Mr Hurford or subsequent ministers with regard to that matter?

Mr Metcalfe—I make two points. Firstly, I need to take some advice on the point of the extent to which it is appropriate for me to comment on the actions of a previous government,

so I will be very careful there. I think it is a well-known fact, though, that there was considerable public interest in relation to Sheikh Hilali's residence, and I think that some of the reports in the papers in recent days have indicated that there were a lot of views one way or another in relation to his status in Australia. I could take that on notice but I also want to seek some advice as to the extent to which actions of a previous government should be appropriately responded to through this process. It is not something I am familiar with.

Senator SCULLION—The issues associated with character and security are generally ones that are a fundamental plank that is taken into consideration in these matters. From your own experience, since you were around and you have that great corporate memory of that time, are you aware if those issues were taken into consideration in the initial circumstances?

Mr Metcalfe—Certainly I know that they were issues that Mr Hurford regarded as being particularly serious ones. It is a well-established aspect of Australian immigration law that the so-called character test should apply and that persons coming to Australia or seeking to stay in Australia should be of good character. That is manifested in its most modern form in section 501 of the Migration Act, where there are grounds which exist to refuse the grant of a visa and which indeed for a few years now have existed to cancel a visa—they would not have existed in the mid-eighties—if a person is not only of criminal background but also could cause disruption within the Australian community. It was those sorts of issues which were considered at that time.

Senator SCULLION—With the normal provisions of privacy, I am not sure whether you would be able to provide us with any further information on the specifics with regard to that matter.

Mr Metcalfe—I think that there has been some quite informed comment from previous ministers, including Mr Hurford, around these issues. But it certainly is a provision in Australian law now that if a person vilifies a segment of the Australian community, incites discord in the Australian community or a segment of that community, or represents a danger to the community or to a segment of the community then those are grounds to either refuse a visa or cancel a visa.

Senator SCULLION—With regard to the same issue but on the final decision, I wonder if you could take on notice or advise us now whether or not character and security grounds were taken into consideration as part of that final decision.

Mr Metcalfe—Certainly, any proper application of the Migration Act would require those grounds to be taken account of. Ultimately, it is a discretionary issue as to whether they outweigh any other issues in relation to the matter, so I can be reasonably confident in saying in general—not in the specific—that those issues would have been the subject of consideration. On the specifics relating to this individual and the decision taken in relation to him many years ago now, I need to be mindful of both privacy issues and issues relating to decisions of a previous government. Having very carefully caveated that, I will take that question on notice.

Senator SCULLION—I understand that. If you could get back to me on notice on those matters, I would greatly appreciate it.

Senator Vanstone—I put on record that Mr Hurford was and is regarded as a fine South Australian.

Senator CROSSIN—As is previous minister Senator Ray, I have to say.

Senator Vanstone—Sorry?

Senator CROSSIN—As is previous minister Senator Ray.

CHAIR—He is not South Australian. I think that was what the minister—

Senator CROSSIN—I am not suggesting he is a South Australian, but there were suggestions from Senator Scullion that impugned the integrity of former Minister Ray in a previous government.

Senator Vanstone—No, I do not think that is the case, Senator. That is precisely why I put on record that the news clips made it clear that Senator Ray had apparently refused offers put to him. That was my purpose in putting that on record.

Senator SCULLION—Could I say for the record, Madam Chair, that at no time in my questions have I impugned any individual or any other government at all. I am simply seeking to clarify issues that are on the public record and in the media before us today.

Senator BRANDIS—Mr Metcalfe, I anticipate that you will want to take some of these questions on notice. I am pursuing the very same issue that Senator Scullion just asked questions about, so if this is the appropriate time to do it I will do it now.

Mr Metcalfe—This program does relate to permanent residence issues, and I think that is what the questions I have been asked about relate to.

Senator BRANDIS—Indeed. I want to pursue more specifically the media reports, which I dare say you would have seen, particularly in the *Australian* newspaper this morning, about the circumstances in which the decision was made to grant Sheikh Hilali permanent residency. It is asserted in an article under the by-line of Natalie O'Brien in this morning's *Australian* that a person who is described as a former Australian secret agent wrote reports on Sheikh Hilali for Canberra and was responsible for keeping the government informed. He is reported as saying:

... that information about the Sheik's activities had come via files held on him—

that is, on the sheikh—

by the Egyptian intelligence service.

Have you read that article in this morning's *Australian* newspaper?

Mr Metcalfe—Yes, I have seen that.

Senator BRANDIS—Are you aware that a report on Sheikh Hilali's activities written by an Australian intelligence officer and sourced, at least in part, from Egyptian intelligence was prepared and was in the hands of the department or of the minister at the time the permanent residency application was under consideration?

Mr Metcalfe—Let me answer that very carefully. Based upon my personal experience, I have knowledge as to the answer to that question. For the reasons that I explained just before to Senator Scullion relating to privacy issues relating to the individual and any issues to do

with decisions taken by a previous government, and I will add to that the issue of intelligence matters, it is not appropriate for me to confirm or deny that particular article.

Senator BRANDIS—I appreciate your caution and circumspection. Let me approach this very carefully and make it clear what I am not asking you about. For the moment let me limit myself to this: are you aware that a report in relation to the sheikh was prepared by an Australian intelligence officer at the time the permanent residency application was under consideration in 1984? I am not asking you what it said; I am simply asking you whether you are aware of the fact of the existence of a report of that nature.

Mr Metcalfe—From personal recollection I am aware of the answer to that question, but it would not be proper, I think, without taking advice, for me to respond to that question.

Senator BRANDIS—Are you able to take advice so that you will be in a position to respond by the time we resume after the dinner adjournment?

Mr Metcalfe—I will certainly initiate inquiries with other organisations, including the Department of the Prime Minister and Cabinet, on the issue of issues relating to a previous government. I suspect, to be perfectly honest, that I will not be in a position to respond today.

Senator BRANDIS—Let's see what the advice is.

CHAIR—Senator Brandis, it is the case that, in both this committee's incarnations, in matters concerning the Department of Immigration and Multicultural Affairs, the Attorney-General's Department and the Justice and Customs portfolio, this committee goes to the nth degree to avoid transgressing any proprieties in relation to intelligence matters, and has traditionally done that.

Senator BRANDIS—I understand that, Madam Chair, although I am a new and inexperienced member of this committee.

CHAIR—New, perhaps, Senator.

Senator BRANDIS—I am very careful not to ask about what the report said, and I have not asked about what the report said. I have sought merely to identify the report in the broad.

CHAIR—Minister, did you wish to say something?

Senator Vanstone—Let Senator Brandis finish on his matter and then I will have 30 seconds.

Mr Metcalfe—On that point, the very act of confirming or denying whether there was a report is of itself a significant issue, and that is why I am being so careful.

Senator BRANDIS—I understand that that is why you have said what you have said. I understand perfectly, Mr Metcalfe, why you have taken that position. Let me ask you another question: where reports come to the attention of the department or of the minister, sourced from Australian intelligence services, is there a protocol within the department for the handling of such reports?

Mr Metcalfe—Yes.

Senator BRANDIS—Does that protocol include instructions as to the persons who may have access to the report and limitations defined by security classifications as to who may not see the report?

Mr Metcalfe—Certainly, the standard arrangements would be that only people with a definite need to know in relation to the particular matter would have access to the report, and there would be the need for them to hold appropriate security clearances as well. Departmental officers are routinely cleared to the protected level, the base level of security above unclassified material, because of material that is routinely handled by the department. But in relation to secret, top secret or highly protected material, obviously the handling of that is the subject of special arrangements.

Senator BRANDIS—There may not be a single answer to this but what would be the most usual classification—top secret or protected or some other classification—for reports of the kind we have been describing, without for the moment confirming or denying there was a report.

Mr Metcalfe—Speaking entirely hypothetically—

CHAIR—I am not sure that Mr Metcalfe is in a position to answer that question, Senator Brandis.

Mr Metcalfe—If the question is: were we to receive a report from an intelligence source then my response in the general, not the specific—

Senator BRANDIS—I am only asking in the general.

CHAIR—We really do not deal in hypotheticals, particularly not on intelligence matters.

Senator BRANDIS—I am asking for information as to what the rule is about a category of documents which I have defined as documents sourced from Australian intelligence services which come to the attention of a minister in relation to applications for permanent residency. That is a defined category of document. Mr Metcalfe has already said that there is a protocol for dealing with documents of that class. I am now asking, following on from his answer to that question, whether there is a standard security classification given to documents falling within that class.

Mr Metcalfe—The answer is that there is not a standard security classification. That is an issue largely for the originating agency as to the national security classification they wish to attach to that. It is fair to say that that information would, routinely, be at the higher end of the security levels.

Senator BRANDIS—May we take it that documents within that class would come to the attention of the minister—that is, that there are no circumstances in which the minister would be excluded from access to a report falling within that class.

Mr Metcalfe—I would not agree with that proposition. It would happen on a case-by-case basis. It would depend on the particular arrangements between the minister of the day and the secretary of the department of the day. I do not think the minister will object to me saying that my usual practice is that if something particularly sensitive is received then I would brief her in relation to it, for proper reasons. But we do receive a significant amount of information from the intelligence community on a range of issues and not all of that matter is brought to

the minister's attention. We have to make decisions on each circumstance as to whether the minister has an interest or duty in relation to that material.

Senator BRANDIS—Would it be regarded as unusual or irregular for a document of the kind we are discussing, bearing a security classification at the higher end, to use your expression, to come to the attention of a minister other than the portfolio minister or the Prime Minister?

Mr Metcalfe—I imagine that such a document would quite often come to the attention of the minister whose portfolio agency originated that material, which could be the foreign minister or the Attorney-General.

Senator BRANDIS—Would it be unusual or irregular for a document of the kind we are discussing, carrying a security classification at the higher end, to be shown to the Treasurer?

Mr Metcalfe—Speaking in terms of current practice, it would be unusual.

Senator BRANDIS—Would it be unusual or irregular for a document of the kind we are discussing, bearing a security classification at the higher end, to be shown to a government backbencher?

Mr Metcalfe—That would be quite unusual.

Senator BRANDIS—Would it be irregular?

Mr Metcalfe—I would regard it as irregular but I would not want to provide a definitive answer because one could possibly conceive there may be a circumstance. Normally that would be very unusual.

Senator BRANDIS—One last thing before we finish. You have told us that there are protocols governing documents of the kind we are describing. May we take it that those protocols would include the handling of the document, including the archiving of the document?

Mr Metcalfe—I will check and let you know on notice if the answer is no, but I am sure the answer is almost definitely yes. It really derives from the security checking handbook, which is a common document amongst government agencies.

Senator BRANDIS—So you would expect, subject to reconsidering your answer, that a document of the kind we are discussing would be archived and retained?

Mr Metcalfe—That is my expectation.

Senator BRANDIS—Where would it be archived and retained? In the hands of the department which generated it, in the hands of your department or in both?

Mr Metcalfe—I could not be definitive on that point because I have not researched that point. Highly classified material is held by our department. In terms of old material, I suspect that quite often it is returned to the originating authority with an appropriate notation made on our files that the material has been returned. Certainly, it would require special handling if it was retained by us above and beyond the normal archival of material.

Senator BRANDIS—Would the consideration of that document by your department generate secondary documents, for example, briefs of advice to the minister or minutes which

contained an epitome or summary of the material of the primary intelligence report, or other secondary documents?

Mr Metcalfe—It could, and if it did then those secondary documents would also require similar levels of classification.

Senator BRANDIS—And would those secondary documents also be archived?

Mr Metcalfe—It would be my expectation that they would be archived in an appropriately classified manner.

Senator BRANDIS—So subject to two matters—that is, the rules governing inquiry into the activities of previous governments and the rules governing national security issues—if a document of the kind we have been discussing had been generated about 22 years ago, you would expect that it and any secondary documents which it generated would still be in the hands of the Commonwealth?

Mr Metcalfe—That would be my expectation.

Senator BRANDIS—Thank you.

Senator Vanstone—I will make a brief comment. Since this matter has been raised it might be an opportunity to put on record two things, one perhaps less generous than the other. The less generous one is to combine Barry Jones's statement about the previous government's use of the immigration system for its electoral advantage with the statement from another minister, Mr Hurford, who said the same. The other, in a more generous spirit, is that there have been lots of comments made over the weekend, with some people saying that Sheikh al-Hilali should be deported. That is not possible for Australian citizens, and I do not want to be in an Australia where, if you are a citizen and you are entitled to be a citizen and you say something that someone else does not agree with, however disgusting they think it is, you can be deported. You should have all the approbation that goes with having said something disgusting, as I think Sheikh al-Hilali did say—it fits into that category—but to suggest that there be some fount of all knowledge who will decide who should be deported because they have said something that the rest of us do not like, I find quite horrifying. I want to put on record that some of those remarks have been an exercise of poor judgement.

I also want to put on record my own very strong admiration—I hope shared by lots of Australians—for the Muslim people who spoke out against the remarks of Sheikh al-Hilali in the first instance, and in particular the women. I do not think anyone is of the view that it is a religion where it is easy for women to be in the ascendancy and to be seen as leaders who take a public position. There are a number of women who have done that and they deserve all the support we can possibly muster to give them. I do not think this is an easy time for the Muslim community given there are different views being expressed. So I want to put on record my great admiration for these women, and indeed for all of the men who spoke out, because it is my own view that there is a new generation of Muslims who are sick to death of an older generation with older and outdated views purporting to speak on behalf of all Muslims, when they have very rarely spoken for the large majority of Muslim women and they do not speak for the vast majority of the young generation of Muslims.

CHAIR—I think that concludes questions on that subject. We still have further questions in 1.1 because Senator Nettle has indicated that she has questions. Is there anything else in 1.1?

Senator BRANDIS—I indicate that, subject to what Mr Metcalfe may or may not be able to tell us after dinner in relation to the matters on which he is going to take advice, I expect I will have some more questions which I suggest be suspended, as it were, until Mr Metcalfe can come back to us. I obviously cannot pursue the matter now. I am flagging that I may wish to continue to pursue this area following what Mr Metcalfe has to tell us.

CHAIR—We may have to discuss that matter in a private meeting of the committee because given the time now and the material we will endeavour to cover before 7 pm and the material which is scheduled for covering after 8 pm, which is outcome 2, we may have to come to some arrangements about business for the rest of the afternoon. Are there any further questions on the matter of Sheikh al-Hilali?

Senator CROSSIN—Mr Metcalfe, are you investigating a breach of security or a Commonwealth leak here? Has something been sent to the AFP?

Mr Metcalfe—No. Madam Chair, I am not at all confident that I will have any response to Senator Brandis later today. I am aware that the Department of the Prime Minister and Cabinet, whom I would seek advice from on protocols relating to any papers of matters considered by a previous government, are also in estimates today so their availability may be limited. The other inquiries that I would need to make, which are not straightforward, relate to material that is over 20 years old and would involve at least one other agency. There is also the additional aspect that I would need to receive advice on and that is any appropriate concerns—I flag this to the committee—in relation to the privacy of the individuals concerned. Even though these issues are subject to parliamentary privilege there is that aspect that the committee may wish to consider also. Without at all being unhelpful, I would not want you to hold out false hope that I would be able to complete that in the next couple of hours.

Senator BRANDIS—Mr Metcalfe, I think you have made yourself perfectly well understood, at least to me, that you do not feel in a position to respond otherwise than you have done to my questions at the moment. You are going to take advice and I do not interpret anything you have said as being an assurance that you may be able to change or expand further upon those answers between now and after we come back from dinner. Nevertheless, I am asking you to take whatever steps you feel are open to you in the time available to consider the matter and I will repeat the question at 7 pm. If the answer is the same then the answer is the same.

Mr Metcalfe—Thank you, Senator.

CHAIR—You may, Senator Brandis, depending on the arrangements we come to on the management of the committee's processes for this evening, which we still have to resolve. Are there further questions on output 1.1, other than from Senator Nettle?

Senator LUDWIG—Before we do that, I would like to pursue your response to Senator Crossin's question. I do not have the articles in front of me but there has been a lot said and a lot of information in the public domain about Sheikh al-Hilali. Some of it relates to

documents that have been in the possession of the department of immigration, as it was then, which would seem to have come from your department or were in the possession of your department at some stage. They have now entered the public arena or have at least been referred to in the public arena. Senator Crossin asked whether you were investigating a potential leak.

Mr Metcalfe—My reading of the various material that appeared in the media over the weekend and this morning has not given me any cause to believe that there may have been material that was in the possession of the department which has been inappropriately made public. What we saw over the weekend was a former minister indicating that the decision to grant residency to the sheikh was not made by him. There was some commentary from a journalist of some note that his father, who was one of my predecessors as secretary, had views about this issue, and we saw in this morning's paper some comments attributed to a 'former intelligence officer'. I have refused, very properly, to be drawn in relation to that latter material and neither confirm nor deny that such material exists or existed at the time.

It is self-evident that Sheikh al-Hilali was an applicant for residency, that there were papers held by the department, ultimately a decision was made and subsequently he was granted citizenship. A careful reading of the material put in the public domain by a former minister, by the son of a former secretary and by an unidentified intelligence officer does not lead me to believe there has been any improper disclosure of documents held by this department. I would not see therefore any need to initiate any inquiries.

Senator LUDWIG—Thank you.

Senator NETTLE—I have some questions on permanent residence. A case has been brought to my attention that appears to be very similar to that of Robert Jovicic. It is the case of someone, an Australian permanent resident since the age of three, by the name of Sasha Stevanovic, who was deported to Serbia two years ago, on 24 September, when his residency was cancelled by Minister Ruddock at the time. Similarly to Mr Jovicic, he does not speak Serbian and has been living on the streets of Belgrade. I understand that the Australian embassy contacted him a few weeks ago to tell him that his Australian visa had been wrongly cancelled—I presume that is a Nystrom case decision—and had been restored. However, in his email he also indicates that Senator Vanstone is now taking steps to recancel it. Can I get some information on his case?

Mr Metcalfe—I will ask Mr Correll to respond to this question. Again, this is an individual, so there are privacy issues associated with this matter, but on the basis that this has been reported in the media and you have asked a question, it would be my intention to ask Mr Correll to answer as fully as possible, knowing that we will be putting these issues in the public domain through this process.

Mr Correll—With respect to the background in relation to this case, the individual concerned was removed from Australia to Serbia after his permanent visa was cancelled because of a serious criminal history. The individual made contact with the Australian embassy in Belgrade in June 2006, seeking assistance to return to Australia. When the case was examined, it was determined that, pending the outcome of current litigation before the High Court in relation to the Nystrom case, the previous cancellation did not deal with all the

visas held by him, and that as a result he continues to hold two visas. However, neither of those visas allow him to travel to Australia. They are a transitional visa and an absorbed person visa. The individual has now been advised that, because of the seriousness of his criminal history, consideration will again be given to cancelling the visas not dealt with in the earlier consideration. The individual will have the opportunity to provide the department with reasons why his visas should not be cancelled. That is the current status of the case.

Senator NETTLE—Did you say consideration was being given to cancelling both of his visas? You said he had two current visas; did you say consideration was being given to cancelling both of them?

Mr Correll—Correct.

Senator NETTLE—What support is being provided for him by the embassy in Belgrade?

Dr Southern—Mr Stevanovic has been interviewed a couple of times at the embassy but he has not been provided with any support at the moment by our staff there, beyond advice on the process that is being undergone at the moment.

Senator NETTLE—How is his case different from the one of Robert Jovicic?

Mr Correll—All cases are dealt with on their merits and are all of different character, Senator.

Senator NETTLE—Are they both permanent residents in Australia who were here for a long time, who had a visa cancelled under section 501, who were subject to the Nystrom decision and who have been living homeless on the streets of Belgrade and do not speak Serbian?

Dr Southern—I understand that Mr Stevanovic is not homeless on the streets of Belgrade. He does have accommodation outside the city.

Senator NETTLE—Can I ask about the difference in the level of support provided to Mr Jovicic as compared with that provided to Mr Stevanovic from the Belgrade embassy and the department of immigration?

Dr Southern—Certainly. I think it goes to the point that was just made regarding the fact that Mr Stevanovic is currently able to support himself in the community. Mr Jovicic had come to the embassy's attention as he was camping outside the embassy at the time.

Senator NETTLE—It seems to be a question of where one sleeps as to what level of support or attention one gets.

Dr Southern—And one's ability to support oneself.

Senator NETTLE—Again, looking at how this compares with Mr Stevanovic's case, what is Mr Jovicic's current visa status?

Mr Correll—Mr Jovicic is currently on a special purpose visa which operates until 4 January 2007.

Senator NETTLE—You spoke previously about determinations being made to cancel Mr Stevanovic's visa. Are any similar considerations being made in relation to Mr Jovicic's visa?

Mr Correll—Again, each case is considered relative to the specific circumstances that apply. In relation to Mr Jovicic, the government continues to hold the view that he is not a stateless person. He is eligible to apply for Serbian citizenship but he is yet to do so personally. The government's position has been that, until the issue of his citizenship is resolved, his immigration status cannot be finally resolved in Australia.

Senator NETTLE—If he got Serbian citizenship, would the Australian government cancel his Australian visa?

Mr Correll—I cannot answer that question. He has been requested as a demonstration of good faith to seek Serbian citizenship.

Senator NETTLE—Has the government looked at cancelling his current Australian visa?

Mr Correll—No. He has been provided with special purpose visas. The most recent one of those has been an update of his special purpose visa until 4 January 2007.

Senator NETTLE—I will go to another permanent resident case. I will give you the Ombudsman's report personal identifier, because he is another Mr X. It is personal identifier 06106. I indicated I would be asking questions in relation to this as well. I think in some instances he has also been referred to as Mr SVT. The Ombudsman's report was tabled by the minister in parliament, I understand, on 20 June and it included two recommendations from the Ombudsman, one of which was that the minister make a decision within the 15-day statutory period on the tabling of the report, which would have been 20 September. I ask the minister, firstly, whether any decision has been made in relation to his case.

Senator Vanstone—No, it has not.

Senator NETTLE—Can I ask why that is the case?

Senator Vanstone—The Ombudsman can make his recommendations, but they are recommendations. The Ombudsman has a view, and it is not necessarily a view shared by the minister. There have been plenty of occasions when I have agreed with the Ombudsman and what has been suggested or a version thereof, but it has not happened on this occasion.

Senator NETTLE—Minister, have you responded to the second recommendation, which is about his release from detention? The first recommendation was about resolving his case and the second one was that, if you were not in a position to make that decision, he be released.

Senator Vanstone—No. The person, as I am advised, is still in detention. That may not need to be the case for much longer but it may need to be. I want to go back and have a look at some more detail on it in the first instance. Senator, I would like an ideal world where everyone did what they were meant to do and everyone was a nice person and everyone could be out in the community, doing the right thing and showing up every day. The world would be rosy. Sadly, the world is not that way. At the moment I am charged with making those decisions, and one has not been made in this man's favour at this point.

Senator NETTLE—The process of allowing the Ombudsman's reports to be tabled in parliament means that we are able to see them, we are able to see the recommendations and whether they are not followed.

Senator Vanstone—That's right. That's fine.

Senator NETTLE—That is why I am asking these questions.

Senator Vanstone—That's fair enough.

Senator NETTLE—One hopes to see the Ombudsman's recommendations put in place. In cases such as these, when he has been in detention for five years, when he has a four-year-old son who is living with an over 70-year-old grandmother who, as the Ombudsman says, does not know how long she can continue to look after the son—

Senator Vanstone—Do you know why this man is in detention? Why doesn't he have a visa?

Senator NETTLE—He's a 501.

Senator Vanstone—Oh, heavens! And what does that mean?

Senator NETTLE—That means that somebody has done the time in prison for their crime and subsequently been put back into a prison environment in a detention centre by your government for double jeopardy, for crimes they have already served their time for. He is one of them.

Senator Vanstone—Senator, is it a Greens policy that someone who a minister has judged to be of bad character should be allowed to float around the community?

Senator NETTLE—Minister, I do not support double jeopardy. When people have done their time for their crime I do not think they should be imprisoned again.

Senator Vanstone—It is a simple question, Senator: do you think someone who has been decided to be of bad character and had their visa cancelled should be allowed to float around the community? In some cases, I have to tell you, I would say yes—in some, I would; in some, I would not. Who has the responsibility for making that decision? The minister.

Senator NETTLE—And I will continue to ask you about these cases, Minister. I will move on to another question on this output which is about a series of Chinese writers and artists who are seeking to come to Melbourne for a conference being held by a Chinese dissident group. It has given notification, and the minister has received a letter from Senator Brown about this issue. A group of Chinese dissidents are having a conference in Melbourne. There have been applications for people to come to the conference from a whole range of countries—the US, Canada, Germany, Britain, India and China. All of the people who have applied to come and speak at the conference from China have had their visas refused. There were applications for two different types of visas. They were given advice by the Shanghai embassy about what types of visas they applied for. They are people who have travelled overseas. They are known writers and thinkers. I want to ask for some explanation about what is going on with their cases. I have made people aware that I was going to ask about these specific cases.

Senator Vanstone—Did you let my office know you were going to ask about this?

Senator NETTLE—Through the secretariat we let the department of immigration know that we would be asking about these particular cases.

Senator Vanstone—Apparently we have some information.

Mr Farrell—In the cases that were refused that you referred to, the decisions were made out of various posts in China—out of Beijing, Guangzhou and Shanghai. As you suggest, there were two visa categories that were applied for: the 676, which is a tourist visa, and the 456, which is our short-stay business visa, which is for under three months. In relation to the tourist visas I am advised the decision maker was not satisfied there was a strong enough incentive to return to China or that a genuine visit was intended. In relation to the 456 visa categories there were various reasons why they were refused, including lack of information or inappropriate information provided.

Senator NETTLE—I understand not all of these people have travelled overseas previously in their roles as writers and thinkers and that they all have families in China. What other additional information are people required to provide to show that their case is genuine? They have been to conferences before—this is a conference that is being held—and they have family and property in China that they are returning to.

Mr Farrell—Generally, there is a requirement that they show they have sufficient funds to support their stay in Australia. For all cases, there is a security check before they arrive, to see whether they are of good character or whether they have something we should be concerned about.

Senator NETTLE—I understand that in all of these cases they met all of the health and security requirements and that it was, as you pointed out, the issue of the genuineness. I note that the letters back deal with the fact that they do own property and that they do have families elsewhere, so I am trying to understand what else is needed. All the other Chinese dissidents are able to come to the conference and none of those from China are, because of this process.

Mr Metcalfe—I think we can be very proud of the way we have managed the growth in tourism and short-stay entry to Australia from China in recent years. The numbers of travellers have increased vastly and the overstay rate has not increased; in fact, it has decreased. I think it is a very good example of how the department has sought to well-manage an extraordinary growth in nationals from that country travelling overseas. But, at the end of the day, our officers do have to make decisions in relation to applicants' bona fides, whether or not a genuine visit is intended and whether or not a person will return home. Although it happens every day around the world, these are difficult decisions that officers have to make. We could certainly see if there is any further material. If there is any other information that might be helpful, we are always happy to receive that and to consider fresh applications. But it sounds like this is a decision taken on those criteria, which are well understood and which have been in place for many years.

Senator NETTLE—I would appreciate it if you could look at that matter. The conference has not happened yet. The conference organisers have got the hotels for a short period of time. Some of them have bought their tickets, and if the matter were able to be addressed, that would be appreciated.

Mr Metcalfe—Particularly if there is any further information which might assist us, that is always helpful, Senator.

Mr Fox—One of the people that we think is one of the people you are talking about has reapplied for a new visa and, of course, no decision has been made on that. That only occurred on 26 October.

Senator NETTLE—Thanks.

[5.02 pm]

CHAIR—There being no further questions on 1.1, we will now turn to output 1.2—Refugee and humanitarian entry and stay.

Senator LUDWIG—I have a couple of questions on the number of current TPVs that are here.

Mr Metcalfe—Mr Illingworth will be able to assist. The question is simply about the number of persons holding temporary protection visas currently in Australia?

Senator LUDWIG—Yes.

Mr Illingworth—It is in the order of 600.

Senator LUDWIG—Are there dates on which their temporary protection visas will expire? The policy of the department seems to have changed over the years since I have been asking about TPVs. Is it intended, if there are no additions, that that number will then decline towards 2008?

Mr Illingworth—The number already declined substantially over the last 12 months as we finalised some 4,000 applications. Of the further protection visa applications lodged by temporary protection visa holders, 488 have yet to reach the 30-month point, at which we would normally commence processing. So the vast majority of the relatively small number of temporary protection visas in force at the moment have not been held by people for more than 30 months. Most of them have been held for much less than that. If you will bear with me, I will find the figures for the ones that have reached that point.

Mr Hughes—While Mr Illingworth is looking up the figures for you, I will look at the overall picture. Of the very large group of people who got temporary protection visas in the period 1999 to about 2002, virtually all of the applications for further protection visas have been processed and virtually all of them received permanent protection the second time around. So we are talking about a relatively small number that have not reached the 30-month point on their visas, as well as of course a continuing small number of new temporary protection visas flowing, for example, from unauthorised air arrivals who apply for protection and then receive a temporary protection visa.

Senator LUDWIG—In terms of the bulk, about 400 have not reached the 30-month point. They will at some point—by late 2007 or 2008?

Mr Illingworth—It is a continuum, with the numbers gradually declining. But increasingly we will be seeing people who were granted temporary protection visas following unauthorised air arrivals in 2002, 2003 and 2004 starting to reach the 30-month point. We are very much past the spike of large numbers of applicants for further protection who arrived by boat in the period 1999 to 2001. I have the precise figures for you now. The total caseload of further protection visa applications on hand at 29 September was 616, of which 128 had

reached the point at which we would normally start processing. So the vast majority of the 616 had not reached that point. To give you a feel for the way it tapers off, 93 will fall due within 180 days—that is, they are within 180 days of the 30-month point—125 are within the period of 181 to 365 days away from commencement of processing and 270 have over a year to wait before they reach the 30-month point.

Senator LUDWIG—They are the air arrivals. Do you have separate figures for how many air arrivals were granted a temporary protection visa on an ongoing basis in the last 12 months? Is there a projection underway as well of how many you expect to unfortunately get that way?

Mr Illingworth—We will take that on notice.

Senator LUDWIG—That will then be the pool of existing costs or on-costs that you would expect to meet. There will be the cost of the current program, and obviously those numbers on current statistics are going to decline, at least within a year. Is there a projection of what the existing temporary protection visa will cost on an ongoing basis?

Mr Illingworth—No, we do not keep separate costing projections for the temporary protection visa processing work as distinct from our general protection visa assessment work.

Senator LUDWIG—Which output will I find the general work in?

Mr Illingworth—It is all incorporated into 1.2.2.

Senator LUDWIG—As one output?

Mr Illingworth—Yes.

Senator LUDWIG—How do I get more detail in respect of that output costing for the various functions that are provided in that?

Mr Illingworth—We can give you statistical information on outputs under the outcome, but the expenditure within the department on protection visa processing that relates to an initial protection visa applicant and on protection visa processing that relates to the grant of a temporary protection visa to an unauthorised arrival is not disaggregated.

Senator LUDWIG—All right. If you do not want to disaggregate that, what about the general cost—that will be the whole output then?

Mr Illingworth—Yes.

Senator LUDWIG—I will have a think about that and if I need to I will put it on notice. Thanks.

Senator NETTLE—I would like to follow on in relation to the number of people still on TPVs. Is it correct that many of those will be people from the Nauru caseload?

Mr Illingworth—Some will be from the Nauru caseload—not from the Nauru caseload processed in 2002 but from the reassessment work we undertook as a result of the changes in Afghanistan and the changes in Iraq when we conducted quite large re-evaluation programs, so that meant that some people came in later than others.

Senator NETTLE—I am just trying to understand why they would be a significant part of the caseload, why those cases would be any slower than others, given that they are people

who have already been separated from their families for a long time on Nauru and now this TPV keeps them separated from their families for much longer. I am trying to understand if there is any more explanation for that.

Mr Illingworth—The regulations require that a person who is granted one of the five-year offshore humanitarian visas is not eligible to access a permanent protection visa onshore until they have held their visa for 54 months. The offshore visa has a longer duration than the three-year onshore temporary protection visa and a longer period within which the holder cannot get a permanent protection visa onshore if they were to apply and obtain the visa. The influx of people granted those five-year visas from Nauru has meant that the date at which we would normally start processing those applications is a little bit further out from the date of arrival than it would be for somebody who was granted a temporary protection visa in Australia.

Senator NETTLE—Sounds like double punishment again—first on Nauru, then here on the longer visa. But I will continue on. I want to ask questions about the Burmese asylum seekers on Nauru. I understand there have been offshore visa applications made for them now. Can I get an update on where they are up to.

Mr Hughes—Yes, we have quite recently received some applications under the offshore humanitarian program.

Senator NETTLE—Where are they up to?

Mr Hughes—They are being examined.

Senator NETTLE—Is that concurrent with any other procedure occurring in relation to assessing their claims whilst on Nauru?

Mr Hughes—I might explain more broadly the situation of the Burmese on Nauru. As you are probably aware, they came from Malaysia via Indonesia. They are part of a group of Burmese; there are many Burmese temporarily staying in Indonesia, but they are one part of that group of Burmese that constitutes 11,000 people who are known to the UNHCR. The UNHCR has been working with the Malaysian government to ensure the protection and stay of that group of people in Malaysia.

Senator NETTLE—Are you talking about them as a group of people, like Rohingyas, in terms of their ethnicity?

Mr Hughes—That is right.

Senator NETTLE—I was just checking that that is what you are talking about.

Mr Hughes—That is right; that is the subgroup. There are Burmese of other ethnicities also in Malaysia, as you are aware. So we have been working with the UNHCR to understand more about the background of the people and their situation in Malaysia before they left because they were known to the UNHCR. We will be considering that information in deciding what is the most appropriate solution for them.

Senator NETTLE—What is your time frame for assessing that?

Mr Hughes—I hope that we will come to a view within the next couple of weeks.

Senator NETTLE—What are the options that you are looking at?

Mr Hughes—I would rather not go into any particular options. We are looking at the whole circumstances and, on that basis, the government will decide the most appropriate handling for them. As I said, we are also in touch with UNHCR to obtain their views on the history of that group of people and their views on what is possible. I think it is really a matter for the department to be in touch with the minister and the government about that before any decision is made.

Senator NETTLE—In the past when you have had people on Nauru you have looked at options of a third country, settlement in Australia or settlement elsewhere. Are those all options that are on the table in relation to these cases?

Mr Hughes—For any group of people who arrive, we look at a whole range of options and try and consider what is the most appropriate for that particular group.

Senator NETTLE—With respect to that particular group of Rohingyas, has Australia granted protection visas for Rohingyas in the past?

Mr Hughes—I could not say offhand whether we have granted any protection visas within Australia for Burmese of Rohingya nationality. Mr Illingworth might be able to answer that. I believe we have resettled some from offshore on referral from UNHCR.

Mr Illingworth—We do not keep separate figures for the ethnic subgroupings of Burmese nationals.

Senator NETTLE—In relation to Rohingyas, given that Malaysia is not a signatory to the refugee convention, is there a view about whether the protection of Rohingyas can be done adequately in Malaysia?

Mr Hughes—The UNHCR has been working very actively with the Malaysian government to improve the situation of Rohingyas there. My understanding is that they are permitted to stay if they are of concern to UNHCR, and that UNHCR is working with the Malaysian government to implement a formal registration process which will significantly improve their status. But they and Burmese of other ethnicities, as well as many thousands of people of other nationalities who are of concern to UNHCR, have been allowed to stay in Malaysia for quite considerable periods.

Senator NETTLE—Whilst you are in discussions with UNHCR, is any assessment about whether or not they are refugees going on at the same time as that discussion?

Mr Hughes—Obviously we are taking into account the status that they had with UNHCR in Malaysia as part of that process, but it is not so much that we are conducting a separate assessment of whether they are refugees or not.

Senator NETTLE—What do you mean?

Mr Hughes—We are not conducting a separate assessment of whether they are refugees or not at this stage.

Senator NETTLE—Can you tell me about their access to lawyers and whether or not support is provided for lawyers to visit them in Nauru, as it is for people through the IAAAS?

Mr Hughes—They have already had access to a lawyer who has chosen to represent them. On the question of IAAAS, there has been no decision to assist them at this stage.

Senator NETTLE—Is there an assessment going on about whether or not they should have access to IAAAS support?

Mr Hughes—That depends on the entire decisions about their future.

Senator NETTLE—What does that mean?

Mr Hughes—That means it is just one of a number of considerations that we are looking at for the handling of this group.

Senator NETTLE—Does that mean down the track?

Mr Hughes—Yes.

Senator NETTLE—Did the department pay for the costs of lawyers to visit them on Nauru?

Mr Hughes—No, we did not.

Senator NETTLE—Have you informed their lawyers of the process by which decisions will be made on their applications?

Mr Hughes—We have recently given their lawyer exactly the same answer that I have just given you, Senator—that we are looking at a range of options for handling the future of the group.

Senator NETTLE—How long is it expected that they will stay on Nauru?

Mr Hughes—I don't have a view about how long that will be. We will be coming to a conclusion, I hope, within the next couple of weeks on the future handling of the group.

Senator NETTLE—Is it the department's intention to assess them within 90 days of arrival? Does that apply to them?

Senator Vanstone—We always try and do things as quickly and efficiently as we can, Senator.

Senator NETTLE—But the requirements around 90 days that were put into legislation: my question is whether or not they are covered by the—

Senator Vanstone—There was a bill before parliament to deal with unauthorised boat arrivals that would have provided that vis-a-vis Nauru, but that bill was not proceeded with because it was not going to get support.

Senator NETTLE—It did not have the 90 days in it, did it?

Senator Vanstone—It did, actually.

Senator NETTLE—Was that one of the amendments that came subsequently?

Mr Metcalfe—The current provision about the secretary providing a report if a protection case takes more than 90 days applies to cases of protection visas, which by definition are in Australia. As the minister indicated, the bill that was before parliament and which was not proceeded with to the Senate would have provided for a similar regime in relation to offshore processing, but as the minister indicated that bill was not proceeded with. So there is no statutory reporting requirement in relation to processing time for offshore persons.

Senator NETTLE—These Burmese asylum seekers were moved to Nauru by charter plane; is that correct?

Mr Hughes—That is correct.

Senator NETTLE—Do you know how much the charter plane cost for their removal to Nauru?

Mr Metcalfe—We will just ask the relevant people to come to the table. Chair, that question takes us more into 1.5 rather than 1.2, which is offshore processing.

CHAIR—I am just having that discussion with Senator Nettle.

Senator NETTLE—It is because they have now put in an offshore application. That is why I was doing them in output 1.2.

Mr Correll—The answer to your question is yes, there was a charter flight used for their relocation from Christmas Island to Nauru.

Senator NETTLE—And costs? My second question was about how much that cost.

Mr Correll—\$225,000.

Senator NETTLE—And that is a return trip? That is the cost of the charter flight there and back?

Mr Correll—That is the total cost of the charter. It was a one-way flight.

Senator NETTLE—Well, presumably the plane came back.

Senator Vanstone—It may have gone on to other facilities in other places.

Senator NETTLE—Maybe it did. While we have got Mr Okely at the table I could ask more questions in this area or I can stick to 1.2. What would you like?

Mr Okely—I think it would probably be better to wait until 1.5.

Senator NETTLE—I will just ask another question under 1.2, which relates to a letter I received about Afghan asylum seekers. It talks about DNA testing being offered by the Australian government for refugees seeking family reunion with Afghan families. I think this is one I have informed you about as well. I have certainly written to the minister about it. It talks about DNA testing being done for Afghan asylum seekers through a family reunion process. The letter deals with the issue that the DNA testing is concentrating on the father's DNA, and there are Afghan supporters in Australia—people supporting Afghan asylum seekers—who have made some comments in relation to circumstances where rape has occurred in Afghanistan so parentage is uncertain. Their request is that the DNA testing occur with respect to the mother's DNA for the assessment of the family reunion, rather than just the father's DNA. Everyone is giving me blank looks.

Mr Hughes—DNA testing may be sometimes requested in connection with offshore humanitarian applications. I do not know anything about the case that you are referring to.

Senator NETTLE—It is not a specific case. It is about the circumstances of Afghans here, trying to bring their families from over there. DNA testing has been part of the process for them, and it is a general request. Given their understanding that DNA testing concentrates on the father, can it concentrate on the mother because of the issues around rape of Afghan

women and the way families may be shamed if that is revealed? It is also about whether the DNA testing can show the parentage through the mother rather than the father. It is a general request.

Ms Keski-Nummi—The general policy on DNA testing is that we ask our officers to use it sparingly where there are issues of identity or concern about family relationships. In relation to whether it is better for the father or the mother, I am really not quite sure because I have in the past understood that there are issues around who is the most appropriate person to request that DNA testing, and that gets into medical issues around relationships. I am sorry, I am tying myself in knots here. My understanding is that DNA testing of males is a far more certain outcome in terms of relationships. But if there are issues around rape and things like that, we really need to take that into account before we ask for DNA testing. It has been raised with us in the past and I will certainly look into it to make sure if we have claims around relationships and if rape has been involved as well that we are careful about requesting DNA tests from fathers.

Senator NETTLE—The letter is not so much in relation to ones where people are up-front in saying that rape is involved but where you are dealing with people from countries where women are persecuted, where they can get blamed, for rape. We want to make sure we can avoid that by—

Ms Keski-Nummi—I absolutely understand that, and I will look into it to see what is happening around that, but we do ask our officers to use DNA tests sparingly and only in exceptional circumstances.

Senator NETTLE—Okay. If you could get back to us on that, that would be great.

Ms Keski-Nummi—I will.

Senator NETTLE—That is all I have on 1.2, Chair.

[5.26 pm]

CHAIR—I will ask Senator Crossin and Senator Bartlett to put their questions on 1.2 on notice, and we will now move to output 1.3, Enforcement of immigration law.

Senator NETTLE—I will go back to where I was at the beginning of today when I was asking about the new boat arrival on Ashmore Reef two weeks ago. I want to ask about how they were treated in comparison to the Burmese who arrived on Ashmore Reef a couple of weeks ago. That was on the occasion when we were dealing with the designated unauthorised arrivals piece of legislation in parliament, and I note that the minister did a press conference in relation to the arrival of those particular asylum seekers. I have not heard any press conference in relation to these, and I am wondering where the decision is made about whether the arrival of a boat should be made public or not. Is that a decision made by the department or by the minister?

Mr McMahan—We normally go through a process of managing arrivals through the People Smuggling Task Force and we would normally, as a matter of course, suggest that there be a press release around an arrival. In this case we never actually took a decision not to suggest a press release; we just did not think of suggesting a press release. On this particular

occasion we were managing the issue but we did not get around to putting the proposition that there should be a press release.

Senator NETTLE—Are you describing to me standard protocol that when a boat arrives a press release would be issued?

Mr Metcalfe—I think the best way to describe this is as an iterative process. There will usually be discussions between officials and ministers as to handling of situations and, out of that process of discussion, ministers may decide or not decide to issue a press release.

Senator NETTLE—So the minister makes a decision about whether or not to issue a press release.

Mr Metcalfe—I am saying it is an iterative process, but if there is to be a press release by the minister then of course it is up to the minister, if she wishes, to issue such a press release.

Senator NETTLE—Minister, perhaps I could ask you why there was a press release for the boat arrival on Ashmore Reef that occurred around the time of the debate on the offshore processing bill and why there was not for this one. Could you explain that difference?

Senator Vanstone—There was no particular reason. As I recall, at that time some colleagues would have preferred an announcement about the eight Burmese arrivals to have been made earlier than I made it. I could have made it earlier. I cannot tell you that there was any particular reason for not doing so, either. It is a fact that happened. It is of particular interest because it is new and recent. It is new in the sense that it has been a long time since we have had a load of that number. I do not recall ever in my time a boat of that number and that particular nationality, so it is a quite new and quite different situation. As I recall, I felt at the time that that was therefore something that was of particular interest. But that is not always the case.

Senator NETTLE—I do not remember you mentioning the nationality at the time.

Senator Vanstone—Perhaps I did not. There is nothing here. You just make a decision as to whether it is something that should be done.

Senator NETTLE—It seems interesting to me that, when a boat arrives on Ashmore Reef and legislation is being debated about offshore arrivals, there was a media release. Then, two weeks ago, another boat arrived and there was no media release. That seems to be a difference, to me, and that is the reason I am asking.

Senator Vanstone—It clearly is a difference. I understand why you are asking. I am just telling you that you should not put too much on that.

Mr Metcalfe—I note, Senator, that the most recent arrival involved three people. So, while it was a boat arrival, we are talking about three people, not a dozen or a larger number.

Senator NETTLE—Have they made applications for protection visas?

Mr Metcalfe—They are not able to, by force of law. They arrived at an offshore place and therefore they are precluded by Australian law from applying for a protection visa

Senator NETTLE—Have they made applications for any other type of visa?

Mr Metcalfe—Their circumstances are currently being considered. Mr Hughes might be able to add further information.

Mr Hughes—They are being interviewed, under the offshore refugee status determination process.

Senator NETTLE—Have they been granted access to a lawyer?

Mr Hughes—I do not know if they have sought access to a lawyer. It is not usual for people in the offshore process to be given formal IAAAS assistance.

Senator NETTLE—Have they been offered the opportunity to receive legal advice, whether through IAAAS or any other procedure?

CHAIR—Are we on 1.5 again, Mr Metcalfe?

Mr Hughes—I would have to make some inquiries to check that for you, Senator Nettle. In terms of any refugee status determination process, it is not a normal part of the offshore process for the department to provide legal advice.

Senator NETTLE—What about making them aware that they are able to access legal advice?

Mr Metcalfe—Section 286 of the Migration Act still applies in the circumstance.

Senator NETTLE—I was asking about that process—whether or not they had been offered legal advice.

Mr Metcalfe—If they ask then the department must provide them with reasonable facilities. That is the section which has been the subject of a lot of discussion in this room, I suspect, over many years.

Senator NETTLE—But they do not get told that they can ask.

Mr Metcalfe—No. That section does not require that they can be told that they can ask. If they ask they are given reasonable facilities. If you read the section you will see that it is quite straightforward.

Senator NETTLE—Mr Hughes, I asked about the type of visa and the process they were involved in. Can you describe what that process is?

Mr Hughes—The normal process for people who arrive offshore is for the department, if they are found to have protection issues to be addressed, to undertake a refugee status determination process offshore. That is not an application for a visa, as Mr Metcalfe has explained already.

Senator NETTLE—Where are they in that process?

Mr Hughes—They have been interviewed and the results of that interview are being considered.

Senator NETTLE—Is there any time frame for making a decision?

Mr Hughes—There are some quite complex issues related to their cases, and again we are also in touch with UNHCR about the history so I cannot give you a time frame on that.

Senator NETTLE—But there is no 90-day limit in relation to them?

Mr Hughes—No.

Senator NETTLE—I might go to the unlawful cases that the Ombudsman looked at. Would that be in this output?

Mr Metcalfe—That is correct.

Senator NETTLE—Have there been any more since the last time we asked at estimates?

Mr Metcalfe—Any more what?

Senator NETTLE—I cannot remember what the category at the top of the list is.

Mr Metcalfe—Any more cases identified as being ones which might require referral to the Ombudsman—is that the question?

Senator NETTLE—Yes, we can start there.

Mr Correll—There have been no additional cases referred to the Ombudsman.

Senator NETTLE—Since when? I am checking we have that right from the last estimates.

Mr Correll—We will confirm this, but since the report at the last estimates.

Senator NETTLE—How many residence determinations are currently in place?

Ms O'Connell—I will use stats from 20 October. At 20 October there were 71 people in residence determination arrangements in the community.

Senator NETTLE—How much is being spent on their cases? I do not know how you can give me that figure. Can you give me the figure for how much was spent on residence determinations until then?

Mr Metcalfe—Are you asking for the cost of their care and maintenance, the provision of services to them—

Senator NETTLE—The entire cost around the process of their residence determinations.

Mr Metcalfe—There are probably two broad areas of cost. The first is departmental costs associated with administering the particular cases and the scheme more generally and the second is the costs of the provision of assistance to them—accommodation, daily living needs and that sort of thing.

Ms O'Connell—I cannot give you immediate cost figures, but it will vary. Residence determination includes things like the cost of a house. You may have some family configurations with a large number of people in a house and at other times family configurations with a small number of people in a house. It is not on an individual basis or a per person basis. Perhaps I can take it on notice and give you the costs for residence determination for, say, the last financial year and the year to date and also tell you the total number of people in residence determination.

Senator NETTLE—Okay.

Mr Metcalfe—I note that the service provider routinely used by us to provide for the daily care and accommodation of people is the Australian Red Cross. This is probably a good time to place on the record our appreciation for the excellent work that they do in this area. We

have forged a very good working relationship with the Red Cross and are very grateful for their ability to assist in this area.

Senator NETTLE—I appreciate you taking those questions on notice. In relation to the people who are on residence determinations, are they predominantly made up of family groups, women and children, or single men? What is the mix of that group?

Ms O'Connell—It is predominantly family groups. There are some other individuals who are eligible for residence determination, but it is certainly predominantly for families.

Senator NETTLE—You said there were 71 at the moment. Could you take on notice what proportion of those are family groupings and what proportion of those are single individuals?

Ms O'Connell—I have the breakdown on the basis of the number of adults, male-female, and children, male-female. That gives you an idea, but you do not necessarily have a correlation immediately of male-females with children. On residence determination there are 16 adult males, 17 adult females, 23 male children and 15 female children.

Senator NETTLE—I take it from the secretary's comments that this program of residence determination is considered to be working well and is considered to be a success.

Ms O'Connell—It certainly is. The cooperation we have with our service provider, the Australian Red Cross, is very good.

Senator NETTLE—You talked before about the number of single individuals who are able to access it fitting into certain categories. Could you describe what those current categories are and whether, given the success of the program, there has been any thought given to expanding the number of single individuals who may be able to have access to the program?

Ms O'Connell—Certainly. Currently the program is specifically designed for families, so children and their parent or parents. Also someone who is a survivor of torture or trauma fits within the guidelines and is eligible for residence determination. There is a broader category of people who perhaps have a condition that cannot be cared for in detention centres. I might get my exact wording of that corrected from a colleague if that is not precise. They are some of the criteria around the guidelines for residence determination. But, as it is stated in the legislation, it is a non-compellable decision. It is at ministerial discretion, non-compellable and non-delegable.

Senator NETTLE—Perhaps I should ask my question of the minister, then. Minister, we have just been talking about the successes the department has described around the residence determination, who is able to get access to that and whether, given it is considered to be a success—and I presume that is your view also—there has been any thought given to expanding the people who are able to have access to the residence determination program.

Ms O'Connell—Can I just add that, in terms of total numbers, the number of people in residence determination as a population of all people detained is 10 per cent. When I say all people detained, I am including illegal foreign fishers, who are very short stay. They represent about a third of the detention population, so you have a third for illegal foreign fishers. Ten per cent of all of the people detained are in residence determination, so as a proportion of total detainee numbers it is not insignificant.

Senator NETTLE—That is why I am asking. If people are saying people being in the community whilst their claims are being assessed is working well, is there any consideration being given to expanding on the people who are able to access this program of living in the community whilst their claims for asylum are assessed?

Senator Vanstone—Not at this point. It is not just for claims of asylum; residence determination is available to families. There might be people who have simply overstayed and are challenging a migration request, other than for protection. It is equally available to them. It is across the board; it is not entirely related to asylum seekers at all.

Senator NETTLE—Of the 71 who are currently there, what proportion are seeking asylum?

Ms O'Connell—I would have to get the breakdown for you. But it is not determined on the basis of whether you are or are not seeking asylum. It certainly would not be 100 per cent who are seeking asylum. There are also cases where there has been, say, a first refusal or where they have been to RRT and were refused. Some are where perhaps they are taking the matter to the courts in terms of a review. So there is a range of cases and a range of different stages.

Senator Vanstone—If you want to look at a grouping like that, you would want a breakdown not only of those who are there who are not seeking asylum but also those who are seeking some other migration outcome. In any group, you would also want a breakdown of those who are now seeking asylum, having lost all other migration outcome opportunities and now, years and years later, have decided they need protection, and to distinguish those from those who have, in the first instance, sought asylum.

Senator NETTLE—If the program is working then it is some people who are seeking asylum and others. If the program is a success it can be a success for people no matter what claims are being expressed in the community.

Senator Vanstone—I am not disputing that.

Senator NETTLE—I would be happy to see it expanded and include a number of those categories.

Senator Vanstone—It is a success in some ways. I think there are a variety of ways that you can consider this but, if you are asking whether a successful outcome would be one where everyone who disputed whether they had to leave Australia was allowed to roam around freely at taxpayers' expense while indulging themselves in lengthy litigation to delay their stay, my answer to that would be no.

Senator NETTLE—I was giving the department the opportunity to define 'success'.

Senator Vanstone—That is a matter for government, rather than the department. The department does an excellent job in doing what the government asks it to do—except for a few notable exceptions.

Ms O'Connell—It is worth noting in terms of the number of people detained that a significant proportion of people seeking asylum are not detained. So it is not necessarily a correlation of the two. Out of the total detention population, only 15 per cent of those people

who are detained actually have a protection visa application pending. Significantly, the proportion of those detained is made up of people who are now largely just overstayers.

Mr Metcalfe—I think we have mentioned this but it is worth repeating that the largest single cohort in immigration detention are illegal foreign fishers—people apprehended plundering our fish stocks in Northern Australia, where there is a very active program to respond to that. It is a complex issue but it is something that we are involved in. The second largest cohort are essentially people who have overstayed their visas and have been found to be working illegally. Only those people where there is an assessment that they would be a flight risk are detained. There are also, as Ms O’Connell said, a very small number of persons who are applicants for protection visas. Myths around the place that detention centres are full of asylum seekers are clearly and completely incorrect.

Senator NETTLE—I am pleased to hear you indicating that these people can have their claims, whatever they may be, assessed while living in the community.

Mr Metcalfe—Because of some planning that has been in place for quite a long time, as well as the advent of the residential determination process last year, we now have some options around these issues that we did not have previously—such as residential determination and residential housing, which is a much more benign type of reassurance that the person is not a flight risk.

Senator NETTLE—Don’t get me started on the benign reassurances, as I have a different view to you. So that is probably not a wise idea.

Mr Metcalfe—If you look at the options, it is a very good option. I think this represents a lot of good work.

Senator NETTLE—We will move on to some family groups living in the community. I will start with the circumstances of Virginia and Naomi Leong. Naomi Leong was born in Villawood Detention Centre. I understand that they are still on bridging visa E. I was wondering whether there has been any update on their cases or how long it is intended that they will be on bridging visa E.

Dr Southern—In relation to the Leongs, there is a section 417 submission currently being prepared. That will be before the minister very, very shortly for her to consider.

Senator NETTLE—What does ‘very, very shortly’ mean?

Dr Southern—I would think within the next couple of weeks.

Senator NETTLE—Is that the only outstanding matter in relation to their case?

Dr Southern—I believe so.

Senator NETTLE—Can I ask about another family from Villawood—Sereana. Again, this is one that I have given notification of. Can I ask about her and her children—I can’t remember how many of them I have met—and where their case is up to at the moment.

Dr Southern—Again, this is subject to a 417 intervention request. That submission went before the minister within the last couple of weeks and is for her consideration at the moment.

Senator NETTLE—When was that 417 application made?

Mr Metcalfe—It is not an application, Senator.

Senator NETTLE—When was the—

Mr Metcalfe—It is a request to the minister.

Senator NETTLE—417 request made?

Dr Southern—I do not have that information in front of me. I understood that the 417 request was actually initiated by the department in this case.

Senator NETTLE—Is there an average period of time that a 417 application takes?

Mr Metcalfe—We are back into 1.2, Senator.

Senator Vanstone—But it does provide me with the opportunity of saying—and I don't recall whether Senator Nettle was here earlier when I think Senator Ludwig raised these issues—that I do want the intervention process looked at. I have made some public remarks about that. I think it does take too long and I am sure that part of the reason it takes too long is that the non-unique and the non-exceptional are loaded in. It is all very well to say, 'Well, do the unique and exceptional quickly,' but you have to go through them all to find out which ones are. The system needs to be revamped so that the non-unique and exceptional do not get to avail themselves of that opportunity, preferably at all but, if not, any more than once. While we continue to have people who think that everyone who makes a claim is telling the truth and everyone who puts an intervention in should get a 'yes' we will continue to have more people putting in interventions than are meritorious of receiving a 'yes' and we will continue to have a delay in getting them looked at.

Senator NETTLE—I will ask about bridging visa E now, and in particular the bridging visa E review that is taking place. When is that envisaged to be completed?

Mr Metcalfe—That review is close to completion. It will be a matter for the minister as to how she wishes to proceed with the issue at that stage. So I would not be able to give any timing in relation to the completion of it. It has been a very useful process and there has been some excellent engagement with stakeholders on key issues. Bridging visas are quite ubiquitous in that there are hundreds of thousands of bridging visas issued over time, but the review has been comprehensive and it has been the subject of some good community consultation. It will be a matter for the minister as to whether she wishes to take any action in response to it, how she might go about doing that and the time frame. They would all be issues that she would need to consider.

Senator NETTLE—Did you say the report was with the minister?

Mr Metcalfe—No, I said it is close to finalisation.

Senator NETTLE—Senator Kemp said in the chamber, when we were discussing this issue, that he understood it would be with the minister within this month.

Mr Metcalfe—The month is not over. I will check to see whether a final copy as such has been provided to the minister and I will get back to you during the course of these hearings.

Senator NETTLE—Thank you. You talked about the groups that had been consulted. Could you take on notice which groups have been consulted in the process.

Mr Correll—We will take that on notice, Senator.

Mr Metcalfe—I am advised that the report from the department will be with the minister very soon, in the next few days. So Senator Kemp was absolutely correct in what he said to the Senate the other day.

Senator NETTLE—How many asylum seekers are currently on bridging visa E?

Mr Metcalfe—Again, we have gone back into 1.2, given that as soon as you say ‘asylum seekers’ we are probably back in that area. I will see whether colleagues from that area have that information or whether we will need to take it on notice. They look troubled, so I will take that on notice and see if we can provide advice on that question.

Senator NETTLE—Okay. Could you take it on notice to say how many people are on bridging visa E, how many people are asylum seekers on bridging visa E, and also how many people on bridging visa E have work rights, in each of those two categories?

Mr Metcalfe—I will take that on notice.

Senator SCULLION—Mr Metcalfe, as I came here I was listening to my colleagues’ questions, particularly on the number of people who have been arriving illegally on our shores. I can recall in 2001, when I first got here, that that was pretty much what took the bulk of the questions here, and obviously they were very different circumstances. How many unauthorised arrivals have we had by vessel in Australia since 2001?

Mr McMahan—We have had 153. We had nearly 12,000 in the 2½ years to December 2001. We have had two financial years since then, 2001-02 and 2004-05, when we have not had any. But the total number is 153.

Senator SCULLION—Just to clarify that: it has gone from 12,000—

Mr McMahan—Over 2½ years.

Senator SCULLION—over 2½ years to 153. Can I assume from that that the danger has passed? There are no more people wishing to come to Australia? There is no more people smuggling? It has obviously crashed. What comfort can I take from those amazing statistics?

Mr McMahan—I guess you can take some comfort, and I suppose one of the big, unheralded successes during that period of time was the dismantling of the people-smuggling networks. There are seven people smugglers now in jail, mainly in Australia but one in Egypt as well, serving jail terms of about 50 years. That certainly has hindered the build-up of potential asylum seekers coming by unauthorised boat arrival. But there are a couple of worrying issues for us at the moment. One of them is that there are a couple of people smugglers who have become more active of late. One or two of them actually had longstanding associations with people-smuggling activities. This has been reflected not so much in the boat arrivals but by, I guess, foiled boat attempts in the region. In June, for example, the Thai authorities announced that 150 Sri Lankans had been stopped. But we have also heard reports of boats being stopped in a number of other centres, including Indonesia.

Looking at it more widely, we can observe an increased level of activity. Sri Lanka in particular has really been a bit of a worry for us because their routes to the Northern Hemisphere through the Suez have been hampered, and consequently they have been looking

for other potential places to take asylum seekers. We know that Australia has been a target, though a pretty difficult one. One of the problems with Sri Lanka is that, unlike some other countries in the region, they do have very substantial capacities to deliver people thousands of miles away without stopping, because they have tuna fleets et cetera. So I think Sri Lanka will remain a threat. In some cases we have seen evidence that they have linked up with people smugglers in Indonesia, so they have actually moved them.

Vietnam remains uncertain. We have had reports that a number of boat exits have been stopped from Vietnam, but we do not really have details on that. That is a matter for the Vietnamese government. In Indonesia we estimate there are about 1,000 people in IOM care. Broadly speaking, we think there would be 1,000 people in the region with some interest in being smuggled to Australia, being the closest destination. There are a number of ventures we have heard about where people have paid money to people smugglers and have simply lost their money, but they still have an interest in coming to Australia.

Our experience in the past is that pools of people available for people smuggling build up very rapidly when there are successes. Although the numbers are very low, we have had about five groups of about 60 arrive this year. We are quite conscious of the fact that some of these people smugglers are desperate to have successful arrivals in Australia as a basis for selling for the next group.

Senator CROSSIN—Could you provide me with an update on what I understand is now known as the northern detention facility? Is that right?

Ms O'Connell—It is the Northern Immigration Detention Facility.

Senator CROSSIN—Who has the contract for the security at that facility?

Ms O'Connell—Our current detention service provider provides security and detention services at that centre, the same as for all of our other centres. So that is GSL.

Senator CROSSIN—In a question answered back in February, you informed me that a memorandum of understanding was being developed between Defence and DIMA in relation to the use of that facility and services. Is that memorandum now finalised?

Ms O'Connell—I understand it is. I will take the opportunity of double-checking but, yes, I believe it is. We do have at least operating protocols between us and Defence—certainly understood protocols. I will check to make sure that it has been physically signed as an MOU, but that is my understanding.

Senator CROSSIN—All right. If that is the case, can you provide a copy of that to this committee?

Ms O'Connell—I would need to seek Defence's agreement to do so, but if they agree I will provide it.

Senator CROSSIN—You also informed me that several meetings have been held between DIMA and Defence in relation to the separation of the services and the subdivision of the land. What is an update on that situation?

Ms O'Connell—In terms of the services, things like, for example, the water being separately metered so that we are charged for water consumption. Is that the sort of thing you are after?

Senator CROSSIN—It goes to a whole range of activities. It will also go to the proposal by the Department of Defence to sell off the defence establishment at Berrimah.

Ms O'Connell—I could not comment on their plans to sell off the rest of the facility.

Senator CROSSIN—Can you clarify, then, for me what you put in this answer? You said to me that several meetings have been held between DIMA and Defence in relation to the separation of services and the subdivision of land.

Ms O'Connell—That is things like separate water metering, so that we are billed and are responsible for the water consumption on the part of the land that we occupy and use, and separation of power services. Those are the sorts of things.

Senator CROSSIN—Can you provide me with a complete list of matters that this question may go to and what the subject of those meetings has been in terms of the services or separation of land that you are specifying?

Ms O'Connell—Certainly I will, but it is in relation to those infrastructure services.

Senator CROSSIN—The question also suggests that works on the separation of services would begin post July 2006. Has that occurred?

Ms O'Connell—I will have to get back to you on that. I will take on notice to give you the complete list of all of the separations of services.

Senator CROSSIN—Thank you. Can you also tell me what the situation is with regard to a new entrance to the detention facility?

Ms O'Connell—In terms of the works to improve access to the centre, as part of the building and upgrades to the northern and southern compounds there are proposals to change that entrance, or there is the road entrance issue.

Senator CROSSIN—I understand there is a proposal to actually change the entrance to the facility and make it accessible off Amy Johnson Avenue.

Ms O'Connell—That is correct—instead of using the entrance that Defence uses.

Senator CROSSIN—Correct.

Ms O'Connell—We have plans and we are progressing those with the Department of Defence, but I will get you an update as to exactly where we are up to.

Senator CROSSIN—When is it proposed to have a new entrance to the facility? Is there a time line?

Ms O'Connell—There is not a time line at this stage. We need agreement with all of the parties to do it.

Senator CROSSIN—Your answer here says that Defence has engaged consultants to develop a concept design.

Ms O'Connell—Yes, and all those designs have to be agreed before we can say it will happen by a particular construction date.

Senator CROSSIN—Do you know if Defence has engaged a consultant to do that?

Ms O'Connell—I would have to check. I know we are progressing it, and we are progressing it in cooperation with Defence. We need various different approvals, to connect to the main roads et cetera, as well. We need all of those approvals.

Senator CROSSIN—Can you take all of that on notice for me, please.

Ms O'Connell—Yes.

Senator CROSSIN—The maintenance cost for the centre as at 22 September was \$57,000. Do you have an update on that?

Ms O'Connell—I will have to take that on notice and get back to you. By 'maintenance' do you mean the upkeep and running of the facility? I will make sure it is the same definition I used in that last answer to you.

Senator CROSSIN—Okay. Can you tell me how many security guards are on at any one shift at that centre?

Ms O'Connell—No, I cannot tell you that at this stage.

Senator CROSSIN—Can you take that on notice for me?

Ms O'Connell—I will.

Senator CROSSIN—You would be aware of recent reports about problems inside the centre.

Ms O'Connell—Yes.

Senator CROSSIN—Has DIMA sought to investigate that activity with GSL?

Ms O'Connell—Yes, we have, in terms of looking at all of the incidents that have taken place, why they have, and what needs to be done in terms of management of the centre.

Senator CROSSIN—What is the outcome of those discussions?

Ms O'Connell—The outcome of those discussions has been that we identified, certainly in the very early stages, the need for some additional staffing. That has been provided. In addition to that, with most of those staffing being relatively new and fairly local recruits of GSL, as a result of some incidents in early October it was identified that we needed some more experienced staff to assist those newer recruits. For a period of approximately a month some more senior and experienced staff were assisting those newer recruits in the new centre. Having said that, the manager of the centre was a significantly experienced centre manager but there was just a need to bolster the skills at the centre, and that did take place. I think that has had a significant effect in terms of a reduction in disturbances more recently.

Senator CROSSIN—What training is required by GSL staff before they step onto the grounds as a security officer in a facility such as that?

Ms O'Connell—They have an extensive training program for their staff. I am happy to get some information from them as to what is in that training program and provide that to you.

Senator CROSSIN—Are all of their staff required to undertake that under their contract with you?

Ms O'Connell—Yes, they are. They are required to be fully trained.

Senator CROSSIN—Are there plans to have an isolation unit or a separation unit at this centre?

Ms O'Connell—We do not have an isolation unit or, as far as I understand, a separation unit at this centre.

Senator CROSSIN—What happens with detainees who become particularly violent, then?

Ms O'Connell—If a detainee becomes particularly violent, we would be calling in the police for immediate action if there has been violence. There is the opportunity to separate them within the centre at the moment. We have got two separate compounds and there are separate accommodation blocks within the compounds.

Senator CROSSIN—Are most of the detainees being housed in the northern compound at this stage?

Ms O'Connell—At this stage they are, yes.

Senator CROSSIN—And if someone becomes particularly violent would they go to the southern compound?

Ms O'Connell—There is the possibility of using that. Our preference is to seek police assistance if there is violence. The detention service officers are able to deal with a certain range of issues, but if you are talking about some extreme violence then we would seek police assistance.

Senator CROSSIN—Thanks for that. I will wait till I get your answers to the questions you took on notice.

Senator NETTLE—I just want to ask about Baxter detention centre, and how many people are currently in Baxter detention centre.

Ms O'Connell—They are very low numbers. It is about 40. I will just look it up exactly for you, but it is in the order of 40 to 50 people. It is in fact 40 people.

Senator NETTLE—And what does it cost to run per month? Or any other way in which you have that figure?

Ms O'Connell—I have got the per annum costs for Baxter. It is approximately \$5 million.

Mr Metcalfe—I think that the figure we provide for last financial year will have been significantly inflated, because it was the centre where, until the northern detention facility became available, the majority of the illegal foreign fishermen were held. So last year's figure, I suspect, would not bear any relationship to this year's figure. I will just make that point in providing that information.

Ms O'Connell—I think also, in noting this, that in running a facility there are very significant amounts of fixed cost that do not relate to the number of detainees that you may or may not have in the centre, particularly when the centre is a contingency centre and able to be used by larger numbers at any particular time in response to an event. So the costs are not

immediately proportional to the number of detainees. There are significant fixed costs through having a capacity and having a centre. The figure I have here is for last financial year's costs for running Baxter, which is a much, much higher figure. But again, the numbers in Baxter at that time were significantly larger. We have also seen, this financial year, significant numbers of illegal foreign fishers through Baxter. So again, the numbers at any one time have varied significantly.

Senator NETTLE—What was that figure that you had?

Ms O'Connell—The cost for last financial year for Baxter was \$29,449,000.

Senator NETTLE—Has any consideration been given to closing down the Baxter detention centre?

Ms O'Connell—As part of the budget announcement there is a review of the ongoing use of Baxter to be conducted by the end of calendar year 2007, with a view to it becoming a contingency centre in 2008.

Senator NETTLE—Do you have a projection about what the costs would be of maintaining it as a contingency centre?

Ms O'Connell—That all depends on the review. There are some fixed costs with the contingency centre, yes, and there will be a cost associated with that. But it also depends on whether you want that to be a contingency centre that is capable of quick activation or slower activation. We will need to work through that as part of the review.

Senator NETTLE—Do you have the other figures there about other centres that are currently either mothballed or contingency, and what the ongoing running costs for those are?

Ms O'Connell—I do not have them with me, but relatively they are low numbers for running contingency centres, like for example the Port Hedland facility. But I do not have that figure with me at the moment.

Senator NETTLE—Maybe you could take those on notice. We have asked that question before, about all the centres and the costs.

Ms O'Connell—You have, and I have provided that answer. For Port Hedland it is \$60,000 per month, covering security and maintenance services. So it is \$60,000 times 12.

Senator NETTLE—Thanks. It would be appreciated if you could take the other ones on notice. I want to ask about the enforcement of student visas. There was a case last year in the Federal Court where some criticism was made about the enforcement of student visas. The committee inquiring into the Migration Act also heard criticism on this. Have there been any changes in the way in which student visas were being enforced, to bring in any more discretionary warnings, rather than what was described in the Federal Court last year as heavy-handed tactics?

Mr Correll—There are substantial changes currently being implemented in the delivery of compliance services in the department. That is reflected in a new compliance strategic plan which sets priorities for staff. Also, much emphasis is being placed on a new set of business processes for our compliance staff. They will come into play in full measure from April 2007,

when they are supported with some systems coming into play at that time. In the meantime, action is being taken to implement those measures.

In addition, the introduction of case management services also assists across the board in identifying circumstances—and these could involve students—where the referral of a case to a case manager would enable the circumstances to be resolved in a more effective way than might have otherwise been the case. So a range of changes are occurring in the delivery of compliance services within the department. Another area I should have mentioned is the new training college which provides substantial training of our compliance services staff. The first full program has been completed, and that is now up and running widely for our staff. All those measures are geared to improving the compliance services across the board. They are not restricted to the student area.

Senator NETTLE—If you have any specific to students, I would be happy to hear that on notice. I want to ask about the case of the Chinese officials interviewing detainees at Villawood Detention Centre. I understand HREOC is investigating this case at the moment. I want to find out where that is up to and what DIMA's involvement is with that HREOC investigation. Is there any update on where that process is up to? How is the Department of Immigration and Multicultural Affairs cooperating with this investigation—for example, in relation to the release of documents and the staff involved? I understand that there were some locally engaged staff who were involved in that procedure. I think they were employed by the Chinese diplomatic service.

Mr Correll—We have conducted a full investigation into the matters raised, and we have responded to the complaints that were raised with us by the Ombudsman's office and HREOC. Out of the investigation, we have identified some shortcomings in the way the delegation visit was managed. As a result, changes to practice are being introduced to ensure that the appropriate practice is followed with any future delegation arrangement. So it has been fully investigated and, based on that investigation, we have responded to the Ombudsman and HREOC and there have been changes made to the practices for the management of delegations like that in the future.

Senator NETTLE—What were the shortcomings?

Mr Correll—Really, they were in the nature of supervision of the activities of the delegation and the observation of interviews that took place. Those were identified as weaknesses. It was not so much the notion of undertaking the delegation, because it was well intentioned to assist in the provision of travel documents to facilitate the detainees' return home; it was more the way it was conducted on the ground. There were some weaknesses: in particular, management oversight of the interview processes that occurred on the ground.

Senator NETTLE—Can you explain that in any more simple language? Can you give me an example of what you mean?

Mr Metcalfe—I think it is worth recalling the genesis of this issue, which was essentially dealing with some of our clients who are not particularly cooperative. Unfortunately, some of our clients are not prepared to be forthcoming with information as to who they really are, what their nationality might be or, when those facts have been established and where it is clear that person has no right to be in Australia, they do not cooperate with obtaining the

necessary documentation from their country of nationality to enable a passport to be provided to them. In this particular case, there were a number of people, who were clearly thought to be nationals of the People's Republic of China, who were not prepared to cooperate in obtaining travel documents themselves. The department was faced with the issue of how it would go about verifying the nationality of these people and obtaining travel documents in relation to them.

I think what was clear in hindsight was that, although the intention was correct, this exercise, very well conceived, of inviting a delegation out who might be able to interview some of these people—this happened over a year ago now—had some shortcomings. It goes to those issues of appropriate supervision in the interview circumstance to ensure that the questions people were being asked went purely to their identity and nationality and did not go into other areas. We have cooperated fully with HREOC in relation to that matter and have put measures in place to prevent a repetition of any inappropriate questioning occurring.

Senator NETTLE—Was there any concern about people still employed by the Chinese government being asked to conduct those interviews?

Mr Metcalfe—Effectively the delegation consisted of experts from the relevant Chinese ministry who were not there as representatives of the Chinese government but rather as experts in establishing identity. There was the additional issue that you mentioned, that the locally engaged staff member of the Australian government was in fact—as are many locally engaged employees in China—employed through the diplomatic service bureau, which is the way that embassies recruit staff. In hindsight all of those arrangements should have been strengthened in terms of proper supervision to ensure that in an interview situation the questions that were asked related purely to the person's identity and nationality. That is the issue that was of concern, and that is where—were we to do such a thing again—we would look at stronger arrangements being put in place.

Senator NETTLE—Is there any follow-up happening in relation to those individuals and their cases?

Mr Metcalfe—Yes.

Senator Vanstone—Absolutely.

Senator NETTLE—Can you describe that or is it in the HREOC report? Is it public?

Mr Metcalfe—Essentially, we have examined the circumstances of each of those cases and whether or not Immigration compliance activity should continue in relation to them. That has been the subject of an individual assessment in each case.

Senator NETTLE—What I meant by 'was there any consideration' was: in the shortcomings identified by HREOC, was there any consideration given, in subsequent dealings with these people, to compensating in any way for the shortcomings that were identified by HREOC?

Mr Correll—The transcripts of the interviews were reviewed as part of the investigation. The weakness related to not having more senior management in the room during the interviews, rather than a locally engaged employee participating in the interview process. As a result of the review of the transcripts, where there was any concern those cases have then been

subject to individual reconsideration and review within the department, based on the transcripts.

Mr Metcalfe—I will take on notice whether HREOC has separately reported yet on this matter. My recollection is no, but of course we are cooperating fully with HREOC in its inquiries.

Senator NETTLE—Was there any breach of the refugee convention in relation to using—

Mr Metcalfe—That is precisely what we have checked to ensure that there is no suggestion that anyone would be inappropriately returned.

[6.26 pm]

CHAIR—We will go to output 1.5, Offshore asylum seeker management.

Senator BARTLETT—We have already had some questions about the Burmese who are there, so I shall not go over that again. Could I just get an indication of any changes in staffing that have occurred with extra support staff, particularly in the health area, with the new arrivals on the island?

Mr Okely—There are presently no IOM—International Organisation for Migration—health staff in Nauru. There should be one arriving on Thursday. That person will be a psychiatrist who has been there previously. That person will be doing an assessment of the group that is presently in the centre. The health services provided by the Nauru government are available for the IOM to refer people from the group of Rohingyas who are presently in the centre to, if they require medical treatment. Those services are deemed to be satisfactory at the present time. The IOM will keep that very much under advice and under review and, if they feel it is necessary to get further health services into the centre itself, they will take that step.

Senator BARTLETT—Has the eighth Burmese person, who did not go across with the other seven, gone across yet, or is he still—

Mr Okely—The eighth person from the group arrived last week on Wednesday. So he has not joined them.

Senator BARTLETT—What is the flight situation there at the moment? Have they got their airline running?

Mr Okely—The commercial flight is operating twice a week. It is so far holding together.

Senator BARTLETT—So he went across on the commercial flight?

Mr Okely—He went across on the commercial flight.

Senator BARTLETT—What sorts of rights do the eight Burmese people have at the moment in terms of movement? Are they allowed outside the camp?

Mr Okely—The government of Nauru has advised the IOM that open centre arrangements pertain and they are able to move around the community between the hours of 8 am and 7 pm.

Senator BARTLETT—That is not with an escort or anything?

Mr Okely—No. The IOM bus will be doing its 15-minute run round the island. They can pick it up any time.

Senator BARTLETT—The Nauru government, as I understand, recently either introduced or increased some charges for visas—I think monthly renewals for visas. Have we been paying those?

Mr Okely—In respect of the Burmese, I think the visa fee was \$2,000 for a 90-day visa. Those fees have been paid. In respect of Mr Sagar, who is the remaining Iraqi in Nauru, the visa fee has been levied and that is presently under consideration.

Senator BARTLETT—How much is that one?

Mr Okely—The request is for \$100,000 for one month.

Senator BARTLETT—Inflation must be a problem over there, I guess.

Mr Okely—Yes.

Senator BARTLETT—Is that a decision for DIMA? Does it come out of your budget?

Mr Okely—It is a decision that is presently under consideration by the Department of Foreign Affairs and Trade and, I understand, the minister.

Senator BARTLETT—What is the situation if we do not pay it? Does he become unlawful and go back on the other side of the fence?

Mr Okely—I think we will have to burn that bridge when we come to it. It is one that we have under consideration. It will be a question of managing the relationship with Nauru.

Senator BARTLETT—To clarify again, did you say it is \$2,000 a month per person for the other—

Mr Okely—The \$2,000 is per person.

Ms O'Connell—I think you said it was a 90-day visa.

Mr Okely—It is a 90-day visa.

Senator BARTLETT—Each have 90 days. The other health workers on the island at the moment: they are just using the health workers with the Nauru hospital?

Mr Okely—That is correct. They are using the Nauru GPs, and we do have a visiting psychiatric team. One psychiatrist visits one week a month and would be available for treating the Rohingyas if they were referred to a GP in the hospital and the GP considered that psychiatric intervention was required. There is a psychiatric nurse on the island. He is there permanently under our program and is also available for consultation.

Senator BARTLETT—I am not overly keen on going into forensic detail about individual cases in this sort of forum but I guess the case of the two Iraqis is sufficiently public that it is not that inappropriate. One of them has been in Australia now for about two months or so. He would no longer be part of the offshore situation; he is now probably under the 1.3 output, I suppose. Would he just be an unlawful person in Australia?

Mr Okely—That is correct. He is presently in detention and is presently receiving treatment.

Senator BARTLETT—Is he still in Brisbane?

Mr Okely—He is still in Brisbane.

Senator BARTLETT—He and the other Iraqi that is still on Nauru presumably have not heard any word from ASIO to change the current situation?

Mr Okely—That is a question you will have to put to the Attorney-General's Department.

Senator BARTLETT—I will endeavour to ask them tomorrow. I presume you have not heard anything from them.

Mr Okely—There has been no change in the situation.

Senator BARTLETT—In theory the mechanism that enabled one of them to come here, I appreciate, for medical treatment is available to the other person that is there but he does not want to come here. Is that reasonable shorthand?

Mr Okely—If the gentleman concerned was subject to an assessment then a recommendation would be made to us and then, through that, to the minister. The issue would be, if the minister were to decide that he was to come onshore, that it would have to be a voluntary movement on his part.

Senator BARTLETT—Are we still making efforts to find a third country for him?

Mr Okely—Efforts are still going on with UNHCR and in cooperation with UNHCR to find a resettlement outcome, but that process has not yielded any positive results.

Senator BARTLETT—Is it fair to say that the negative security assessments are a significant impediment to resolution of that situation?

Mr Okely—I might refer to my colleagues from the Refugee, Humanitarian and International Division.

Mr Hughes—There is a significant impediment but it is not an absolute impediment, therefore it is always possible that a country may decide to accept one or both.

Senator LUDWIG—Some of my questions are for an update of what I have asked for before on the total cost of the Nauru facility—from 2005 and 2006 we would probably now have a financial year for a cost—and for projected costs on a ongoing basis. And would you then deal with the out years as well in terms of the projected costs.

Ms O'Connell—Yes, we have that information.

Mr Okely—The total cost of running the Nauru operation in 2005-06 was \$21.4 million; and for Manus, \$2.8 million. For the costs for this financial year, we have a mixture of the centre being run as a contingency facility in Nauru and then it became operational, of course, when the seven Rohingyas arrived. There has been some repair work going on at the centre, so those are one-off costs. But, presently, the cost of operating Nauru is running at around \$1.8 million a month. That covers the cost of maintaining the centre, maintaining security and some repair and refurbishment work.

Senator LUDWIG—Does it also include the IOM aid or other matters that you have to pay the Nauru government for?

Mr Okely—There is a small component in there, probably around \$100,000 a month, that would be related to maintaining and improving some of the infrastructure in Nauru that supports the offshore processing centres, particular in relation to the hospital. It is important

to have a hospital that functions. We have for a couple of years now been supporting the hospital in maintaining that service.

Senator LUDWIG—So out of that \$21-odd million you pay \$100,000 a month to the Nauru government?

Mr Okely—No, not to the Nauru government. These are particular projects that are undertaken under our or IOM's cognisance. They are managed and effectively delivered as whole projects. A couple of note are the high-dependency unit and the accident and emergency area at the hospital which have both been refurbished and re-equipped. There is a project under way at the present time for flood mitigation at the hospital—it floods whenever it rains. It is a sewerage problem and a possible cholera problem. We are undertaking to repair that. That particular project is being undertaken by DIMA and by a qualified project manager. So the input into the infrastructure of Nauru that supports the OPCs is reasonably significant but it is certainly not over the top.

Senator LUDWIG—Is there a separate payment for visa processing to the Nauruan government?

Mr Okely—There are no payments made to the Nauru government.

Ms O'Connell—With the exception of the visa fees we outlined.

Mr Okely—With the exception of the visa fees, but there are no payments made to the Nauru government for support of infrastructure.

Senator LUDWIG—That is what I meant, the visa fees. They are of the order of how much?

Ms O'Connell—Two thousand dollars per person for three months.

Mr Okely—The only visa fees that have been paid are in respect of the, now eight, Rohingyas, at the rate of \$2,000 for a 90-day visa. Those are the only visa fees that have been paid.

Senator LUDWIG—Is that ongoing—every 90 days you pay another \$2,000?

Mr Okely—It may be ongoing. This is something that is the subject of negotiation at the present time.

Senator LUDWIG—Perhaps you could take on notice to provide the figures of what visa payments you have made to date, and in the last financial year and in the one before that.

Mr Okely—There actually have been no payments made directly to the Nauru government.

Senator LUDWIG—Who receives the visa processing?

Mr Okely—As I say, the only visa fees that have been imposed have been those imposed some weeks ago in respect of the eight Rohingyas. Prior to that there were no visa fees paid.

Senator LUDWIG—I see; it was unclear.

Ms O'Connell—You mentioned future costs, and we started to give those for this financial year. It is also worth noting that we are consolidating to a single site on Nauru and costs will

reduce again, it is foreshadowed, as a result of that consolidation. The per month figure will vary again.

Mr Okely—The per month figure is likely to reduce to around \$1.8 million to \$2 million. The small number of people in the centre does not alter the cost structure appreciably. We can look at a future cost structure with a small number in the centre of around \$1.8 million to \$2 million a month.

Senator LUDWIG—You are currently negotiating with the Nauruan government over the visa processing?

Mr Okely—The Department of Foreign Affairs and Trade is, I understand, advising their minister on that particular issue. It might be as well to take it up with them.

Senator CROSSIN—Going to the issue of the mental health of detainees on Nauru, over the last 12 months you have despatched teams of mental health experts to assess the mental health of detainees on Nauru. Is that correct?

Mr Okely—There has been a resident psychiatrist in Nauru, and that particular IOM psychiatrist looked after the mental health of the people who were there.

Senator CROSSIN—How many trips have been made by such teams?

Mr Okely—There have been two particular visits by mental health professionals who advised the minister on the mental health of the remaining residents in Nauru, and another on the two remaining Iraqis.

Ms O'Connell—That is two specific visits outside the routine visits of health professionals.

Senator CROSSIN—Do the routine visits of health professionals include anyone connected with mental health?

Ms O'Connell—I think my colleague earlier outlined that on a regular basis a psychiatrist visits, for example, and that is the normal treating psychiatrist. I just intended to differentiate that there is the regular treating psychiatrist, who was visiting monthly, but these were two specific separate instances of looking at their mental health, which we are happy to talk about.

Senator CROSSIN—When did the psychiatrist's monthly visits stop?

Mr Okely—The reason that particular step was taken is that the two Iraqis who were in Nauru—there is only one now—became DIMA's responsibility rather than IOM's responsibility once processing ceased and once the centre moved into its contingency configuration. The steps that were taken at that point put in place a mental health management program for them. That consisted of a mental health nurse located in Nauru on a permanent basis and a visiting psychiatrist for one week a month each month. That particular step has proved to be very useful. There is also a spin-off for the Nauru community, as well. That service is ongoing and would continue until such time as there were other mental health professionals available in Nauru or we had a situation where we no longer required a team to be going to Nauru—in other words, if the demand was not there any longer.

Senator CROSSIN—I asked when the visiting psychiatrist's monthly visits stopped. What month did that stop?

Mr Okely—They have not stopped. It is ongoing.

Senator CROSSIN—That person is still going monthly?

Mr Okely—Yes.

Senator CROSSIN—When did the two mental health teams go there?

Mr Okely—The first mental health team went in September 2005, when there were 27 residents in the centre. That particular team provided its report to the minister for her consideration.

Senator CROSSIN—So the mental health team has only gone once?

Mr Okely—That particular group was quite different from the one I am speaking about that visits monthly. This was a particular group that went in to assess the mental health of the group that was remaining in Nauru.

Senator CROSSIN—What are the two trips that you referred to earlier?

Mr Okely—That was one of them. The second trip was a visit by two psychiatrists to make an assessment of the mental health facilities available in Nauru and also to speak with the two gentlemen who were in Nauru at the time. My colleague from the mental health area might like to comment on that.

Senator CROSSIN—Have reports been written after both visits?

Mr Okely—That is correct.

Senator CROSSIN—What are the costs associated with those two visits, and what is the cost associated with the psychiatrist going monthly to Nauru?

Mr Okely—I would have to take the monthly cost on notice; I do not have that with me. In respect of the first visit, I would have to take that on notice. That was a commercial flight so it would simply be a question of multiplying the number of air fares by four or five.

Senator CROSSIN—Are you going to provide me with that cost?

Mr Okely—I can provide you with that cost. For the second one it would have been the cost of the charter aircraft that took the team in.

Senator CROSSIN—Can you provide that?

Mr Okely—Yes, I will provide that.

Senator CROSSIN—Of the reports that have been written to the government, have any actually recommended that detention on Nauru would not have a continued negative impact on mental health?

Mr Correll—These were reports that in both cases were commissioned by the minister and went to the minister. It is not for officials to comment on the content of those reports.

Senator CROSSIN—Neither of those reports have been released publicly?

Mr Correll—No.

Senator CROSSIN—What sorts of areas of reporting generally were contained in those reports?

Mr Correll—In each case the reports would have related to aspects going to the individuals concerned and that is one of the key reasons that those reports have not been made public.

Senator CROSSIN—There is no mention in those reports of the impact of Nauru and the isolation on mental health generally?

Mr Correll—Again, that is going to the content of those reports.

Senator CROSSIN—I want to ask about the withdrawal of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. I understand that during the government's negotiations on the bill there was talk about the cost of improvements to the proposed Nauru facility. Are those improvements proceeding?

Mr Correll—No, they were part of the package with the bill.

Senator CROSSIN—When did the government actually consider, then, that the improvements were required on Nauru?

Mr Correll—The measures discussed with the bill were related to a complete package in the bill so it was linked in with the DUA bill.

Senator Vanstone—I do not think it is fair to describe them simply as improvements. What we were trying to do was to say that we would put people who were on Nauru in as similar circumstances as possible to those who were in detention in Australia, and that would mean that women and children would be away from the main facility. Even though that is not a detention facility, it is a migration processing place, it is open at night. It is a pretty open centre anyway. One of the things looked at was a disused village that had been created for some weightlifters some years ago. It was in a disused state and would have needed some upgrading to create a facility where women and children could live separately in a village type environment with some minimum security.

That was along with the 90-day limits and the confirmation of what the Ombudsman already has, which is the capacity to report. There was provision for legal services, which Senator Nettle has been inquiring about. They are now provided to people who arrive on Christmas Island and would have been provided on Nauru. A range of things were committed to and were seen in exchange—if you can see it in terms of an exchange—for saying that future boat arrivals who make it to the mainland would be treated the same way as future unauthorised boat arrivals who simply make it to a nearby island. There was not a preparedness to pass that bill. It was in effect rejected.

Senator LUDWIG—It was withdrawn, wasn't it?

Senator CROSSIN—Yes.

Senator Vanstone—I said that it was in effect rejected. Your party made it abundantly clear that they were not going to vote for it. It was withdrawn because it was in effect rejected.

Senator CROSSIN—If we now had any unauthorised arrivals, would they be sent to Nauru?

Mr Correll—Yes, the arrangements applying before the DUA bill continue to apply: unauthorised arrivals arriving at an offshore excised location would be going to Nauru.

Senator CROSSIN—Given that, there are still no plans to proceed with any improvements, for want of a better word, of facilities on Nauru?

Mr Correll—There has been some refurbishment of the State House facility on Nauru as part of a maintenance refurbishment program for Nauru. There are also plans to close down the Topside facility. The refurbishment action is largely under way.

Ms O'Connell—Yes, it is under way. But those refurbishments are not to the same extent as what was proposed in the earlier bill of housing for families in the community.

Senator CROSSIN—Do we have a cost for that?

Ms O'Connell—For the works under way? Yes.

Mr Okely—As I mentioned earlier, the cost is running at around \$400,000 a month.

Senator CROSSIN—No, I am talking about the cost of the two improvements.

Mr Okely—The improvements presently are projected to be around \$4 million to \$5 million and the rate of expenditure on the repair and refurbishment is around \$400,000 a month. In other words, the expenditure for the six months has been around \$2.4 million.

Senator CROSSIN—We currently have one person on Nauru. Is that correct?

Mr Okely—We have eight Rohingyas in the centre and one Iraqi who lives outside the centre quite independently of the centre.

Senator CROSSIN—So there is actually nobody living in the facility that we are currently spending \$400,000 a month on?

Mr Okely—Yes, there are eight people in there at the present time.

Senator CROSSIN—I thought you said they were working in there.

Mr Okely—No, there are eight people living there. They are the eight Burmese Rohingyas who were taken to Nauru five or six weeks ago.

Senator CROSSIN—What was the amount saved by not proceeding with the upgrade as proposed under the bill? What was the amount set aside for those upgrades if the bill had proceeded?

Mr Okely—There was never a firm costing of a program because the package was one that was under negotiation. When the bill was deferred and withdrawn there was no further costing done.

Senator CROSSIN—You do not have a ballpark figure of what was perhaps being negotiated?

Mr Okely—I do not.

Mr Correll—It was a very different package to the refurbishment, and a much more substantial package of measures. As Mr Okely has indicated, no final costings were done. It would have been in excess of \$100 million in terms of costs for those various plans that were associated with the DUA bill.

CHAIR—Senator Ludwig reminded me, Mr Metcalfe, that earlier in the day you indicated that you would try to get back to us a list of the break-up of responsibilities between the minister and the parliamentary secretary.

Mr Metcalfe—That is still being developed. I hope to have that this evening.

CHAIR—Are there any more questions in 1.5?

Senator NETTLE—Have the mental health reports for the gentlemen on Nauru that we were talking about been made available to the detainees? A team of mental health professionals went and wrote the reports about the situation of mental health in Nauru. You were talking before with Senator Crossin about whether those reports were available. I was wondering whether they had been made available to the detainees.

Mr Correll—In relation to the second visit by the two psychiatrists: as part of their visit they were asked to, as well as provide a report to the minister, provide a written advice to the two individuals of their findings. We do not know as a matter of certainty that that has been done. It was part of the requirement. In relation to the earlier visit, we would need to check on that and take that on notice.

Senator NETTLE—Turning now to Christmas Island, what level of security is being designed for the centre? What is the intention?

Ms O'Connell—The intention is no different from our other detention centres in that there is an appropriate level of security for the facility. Is it being designed, for example, along the lines of some of our new, lower security facilities, like residential housing? No, it is not. It is an immigration detention centre, so in that sense it has equivalent security, if you like, to our other main centres like Villawood, Maribyrnong and centres like that.

Senator NETTLE—I understand that a jetty or wharf is being built or refurbished as part of the Christmas Island detention centre.

Ms O'Connell—Not near the centre, no. There is a wharf for the island but that is in quite a different location from the centre and is not specific in any way to us or the centre. It is a general wharf.

Senator NETTLE—What is the estimated time for completion?

Ms O'Connell—The middle of 2007.

Senator NETTLE—Once it is completed, is there any plan to have detainees from the mainland sent there?

Ms O'Connell—No, not at this time. The purpose of the Christmas Island centre is to process arrivals who hit mainland Australia. That is the purpose.

Senator NETTLE—Does it have a management unit associated with it?

Ms O'Connell—Yes, in the construction it does have a management unit.

Senator NETTLE—How many rooms are in that?

Ms O'Connell—I will have to get back to you on how many rooms. The capacity of the centre is 800. On management units in general, post the Palmer recommendation there is a

significant reduction in use of management units across the board, in line with the new operating procedures that we have brought on board.

CHAIR—Senator Nettle, it is 7 o'clock. Could you put further questions relating to output 1.5 on notice, please? If any other senators have questions unasked in that area can they place them on notice? We will resume at 8 o'clock with outcome 2.

Proceedings suspended from 7.00 pm to 8.00 pm

CHAIR—Mr Metcalfe, I understand there is a matter concerning outcome 2 which you want Mr Vardos to deal with. Before we go to that, I understand that Senator Brandis is seeking some advice on a matter raised before the dinner break.

Senator BRANDIS—Mr Metcalfe, since I asked you those questions concerning Sheikh al-Hilali earlier in the afternoon, have you been able to get some advice concerning what you are able to tell the committee?

Mr Metcalfe—No, I have not been able to receive the advice, so I apologise. I will have to deal with that on notice.

Senator BRANDIS—That is fine. Would you be good enough to take that on notice, and, in the event that you are not able to say anything more, obviously you will tell us that. While you are taking these questions on notice, can I also ask you—I assume you will have to take this on notice as well: we are talking in a generic sense about a category of documents rather than about a report in relation to a named individual. Would there be any regular or lawful way for a minister of the government who was not concerned with the immigration portfolio or a national security portfolio, or a backbencher, to interfere with or seek to influence the exercise of a ministerial discretion concerning an application for permanent residency in a case where the subject of the application was also the subject of a report of the category we have been discussing?

Mr Metcalfe—It is open to any person—whether a minister, a backbencher or, indeed, any individual—to seek to make representations to the minister. That has occurred, continues to occur and, I suspect, will always occur. Ultimately the exercise of a discretion is for the minister or for a delegate, and it is of course important that proper considerations are brought to bear.

With respect to the last comment you made, which sort of implied that there was knowledge of particular material or information, it is difficult to make a general response, but I think it is fair to say that it is a very regular thing for people to seek to bring issues to the attention of the minister in relation to decision making.

Senator BRANDIS—Indeed. Now just to square the circle, you told us earlier in the afternoon that it would be unusual for a national security report within the generic category we have been discussing to be shown to a minister who was not the portfolio minister or a minister concerned with national security and that it would be irregular for it to be shown to a backbencher. May we then take it that if representations were made by a minister who was not the portfolio minister or a minister concerned with national security matters, or a backbencher, in the course of receiving or treating those representations it would be highly

improper for the national security report, or the contents or substance of it, to be disclosed to that other minister or to that backbencher?

Mr Metcalfe—It would be highly unusual. Whether or not it was improper would depend on the particular circumstances. In relation to national security classified material, ordinarily it requires the person accessing that material to hold a security clearance and, in relation to some material, to have been provided with appropriate briefings and undertakings as to the confidentiality of that material. That is not usually required in the case of ministers of the Crown, but usually there would be a briefing. In relation to other persons, I suspect it would be very unusual for that material to be provided.

I stand by the comments I made this afternoon. It would be very unusual for material of a highly classified nature to be provided to a person other than a properly checked officer responsible for the issue who had a need to know or the portfolio minister in immigration or a portfolio minister or Prime Minister responsible for the particular originating agency.

[8.06 pm]

CHAIR—We will go to outcome 2, A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably. Mr Vardos, I understand that there is a matter you wish to raise.

Mr Vardos—Yes, thank you. The department has identified an inadvertent omission in the description of the AMEP results in table 69 on page 232 of the 2005-06 annual report, and we will be tabling an erratum in due course. The words ‘or part thereof’ have been omitted against all of the references to certificates in spoken and written English.

CHAIR—Thank you for that clarification. We will start with questions from Senator Hurley on output 2.1, Settlement services.

Senator HURLEY—I would like to start off by talking about the ‘Highlights’ section on page 198 of the annual report and the Interdepartmental Committee on Humanitarian Settlement. I will skim through it as background:

An Interdepartmental Committee on Humanitarian Settlement was convened on 4 April 2006 ... The committee was chaired by the Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold AM, and comprised the heads of 16 government agencies. The committee agreed that settlement services need to be focused on achieving successful integration—getting a job, learning English, committing to Australian values, and participating in mainstream activities.

Apart from the Department of the Prime Minister and Cabinet, which were the 16 other agencies involved?

Mr Vardos—I will read out the list of agencies that participated: Prime Minister and Cabinet; Finance and Administration; our department; Employment and Workplace Relations; Education, Science and Training; Families, Community Services and Indigenous Affairs; Transport and Regional Services; Communications, Information Technology and the Arts; Health and Ageing; the Treasury; the Australian Bureau of Statistics; the Attorney-General’s Department; Centrelink; the Australian Agency for International Development; the Department of Human Services; and the Australian Federal Police.

Senator HURLEY—Were any ministers or parliamentary secretaries involved in the discussion?

Mr Vardos—This was a committee of agency heads. There was a lower level IDC that supported the group, which consisted of officers of my and Ms Pope's level.

Mr Metcalfe—The answer is therefore no.

Senator HURLEY—Were any specifications or any instructions on what to look for or how to proceed given to that committee?

Mr Metcalfe—No. I represented our department on the committee, and I think it is fair to say that our department was instrumental in seeking to ensure that there was a whole-of-government approach on this particular issue, given the importance of successful settlement for refugees and humanitarian entrants coming to Australia. I recall that I discussed the issue with both the minister and the parliamentary secretary as an idea. They were certainly pleased with the idea of there being a whole-of-government senior review and made it clear that it was an issue that they expected agency heads to consider and to report to government on, which is what occurred.

Senator HURLEY—Was the discussion paper that was released in October 2006, called 'Measures to improve settlement outcomes for humanitarian entrants', the outcome of that IDC?

Mr Metcalfe—Close to it; there was, essentially, reporting by the IDC to government, and following initial consideration by government it was agreed that there should be a community consultation process, which is the document you have in front of you.

Senator HURLEY—When you say 'discussion with government', was that the minister or cabinet?

Mr Metcalfe—It was considered by cabinet.

Senator HURLEY—Was it the IDC that came up with the issue of settlement services being a prime focus for discussion?

Mr Metcalfe—I think it is fair to say that it was an area of activity pursued by DIMA. When I came to this job, almost a year and a half ago now, there were some areas which I was clearly focused on as priorities. It became apparent to me that there were some significant issues in the area of humanitarian entry, largely because we had seen a change in the cohort of people coming to Australia. Their needs were different. I hasten to add that all humanitarian and refugee entrants to Australia bring with them particular needs and issues; by definition we are dealing with some of the most disadvantaged people in the world. It appeared to me that it was timely that there be a review, but particularly a joined-up review, not simply a review progressed by DIMA itself. It was of sufficient importance that a very senior whole-of-government exercise should occur. So we certainly wanted to range quite widely in relation to the sorts of issues that ultimately go to a successful outcome for humanitarian and refugee settlements and a successful outcome for the Australian community in extending the extraordinary generosity of Australia in bringing people to Australia under this program.

Senator HURLEY—During these discussions, were other people or agencies consulted about what issues there were and the directions that they should take?

Ms Pope—Yes. As I think Mr Vardos mentioned, there was a working group set up at AS and FAS level across all the agencies involved. That working group met two or three times to draw together areas where we thought further work could be done that would be of benefit to humanitarian and refugee entrants across all of the agencies involved. We identified about 14 different subject areas where each department had some role to play in coming up with suggestions for how things could be improved. For example, FaCSIA might have taken the lead with us and another agency involved in, for example, income support and how that is working for entrants currently. So in that sense there was consultation across the Australian government at the stages through the working group and the IDC. Then, post government consideration, we have been holding consultations with state and territory governments based on the paper that was released, giving an overview of the recommendations where state and territory involvement might be needed to make it a success. We issued the discussion paper that you have been referring to, and the time for response to that paper closes on 24 November. Some limited consultations have also been held on aspects of that paper by colleagues in the humanitarian branch in the department.

Mr Metcalfe—For the sake of completeness, I would add that we also provided some briefing to senior state colleagues at the Standing Committee on Immigration and Multicultural Affairs—our Commonwealth-state body—which met immediately preceding the ministerial-level body in July this year. We updated state colleagues on our work in this area. They clearly had some views, and we made it clear that, to the extent that we could, we would be providing some consultation in relation to these issues, which is where we are at the moment.

Ms Pope—We also briefed the Refugee Resettlement Advisory Council—mostly community representatives—on the directions that the IDC was taking. I am sure you are familiar with the membership of that council.

Senator HURLEY—Was that the only group that you consulted in the lead-up to the production of the discussion paper? Did you consult with any outside groups—for example, any of the IHSS providers or the migrant resource centres?

Mr Metcalfe—Not formally. It was very much an internal government process that led up to the external consultations that are now occurring. It is fair to say that departmental officers have regular engagements with people. Indeed, very early on in my term of appointment, I met with newly arrived refugees in Brisbane and Adelaide and had the opportunity to talk with some of the folk who do such terrific work about some of these issues. All of that provided input to a process. But, in a formal sense, we are now at that stage of seeking views and input.

Senator HURLEY—One of the proposals in the discussion paper is the development of a complex case support network. Can you elaborate a bit more on why that was thought necessary and how it came about?

Mr Vardos—The case load that we are dealing with has particular challenges that may not manifest themselves in the first six to 12 months during the period when they are going through IHSS. When these issues do arise they require a very labour intensive approach to handle them. This is something that we have been thinking about for some time. It is not

intended as an overlay but as a complementary service to the way we provide assistance to refugee and humanitarian entrants. I am sure you will be familiar with the fact through press reporting that there have been a couple of tragic cases of family breakdown and such things that have occurred well after the arrival and the transition through IHSS. The complex case support network is designed to have dedicated resources for those complex cases and to allow IHSS to get on with delivering the core business that they are tasked to deliver. Ms Pope may have more detail to add.

Ms Pope—I do have a couple of things to add. One of the features of the complex case support network is the proposed appointment of a network of youth coordinators. Given that about 65 per cent of our intake is under 25 and that the early period of settlement for people in that age group is really critical, we are proposing that youth coordinators—we are not sure yet where they will be based, because the delivery mechanisms for this proposal are certainly not finalised at this stage—be appointed to focus on the needs of young people and to help to ensure that those young people remain part of their families, that they continue to go to school and that they have a successful settlement process. In addition, there is a proposed hotline for service providers and people dealing with humanitarian entrants, in whatever walk of life they come across them, so that they are able to make a phone call and get advice on how best to resolve any difficult cases.

Lastly, on the complex case support network itself, as Mr Vardos said, there are some things that happen onshore sometimes which compromise quite seriously the ability of some people to settle and it may be beyond the usual scope of what IHSS focuses on either in the intensity of service provision requirement or in the time frame that it needs to be provided. We would like to have this service available for those sorts of cases, where we might be able to provide more intense and, in some cases, broader assistance.

Senator HURLEY—Is this not exactly what IHSS was set up to do in the first place? We had the whole system turned around so that MRCs no longer deal with those early entrants. It was set up to provide intensive assistance in the first six months to a year; there was Job Network provision, housing assistance, referral to English language services—intensive support. As the minister and the parliamentary secretary have pointed out many times, a lot of money is spent on that program. In my previous questioning, the answer about the so-called tough cohort of refugees coming through was: that was what the IHSS program was set up to deal with.

Mr Hughes—Before Ms Pope answers that in detail, I will make the point that probably what this process reflects is the fact that the international community has made enormous strides in solving the world's refugee problems in the last five or so years. At the moment, there are 8.3 million refugees in the world, which is down from about 25 million 25 years ago. It is the lowest number of refugees. There are also internally displaced persons and other people of concern to UNHCR, but those regarded as refugees are down to 8.4 million. That reflects enormous progress in recent years in solving world refugee problems, largely by encouraging voluntary repatriation and making the conditions suitable to allow that to occur but also by opening up protracted refugee case loads to resettlement. That has meant that, in the last five or so years, people who have been in camps for 10, 15 or 20 years can actually be resettled. In other words, they have got a chance of making another life.

I think what we have seen is a progressive response to that, as we are getting to the heart of some of the longest-standing refugee problems in the world. There was the initial response when more cases became available in 2003, I think it was, with the settlement services review. Currently, and looking to the future, we are seeing, along with other resettlement countries, more opportunities to deal with these very protracted case loads—10 to 15 years, sometimes 20 years, in a refugee camp. The scale of the problems and the issues to be dealt with have just got larger. I think you should see this as part of a continuum of really getting to the heart of solving the longest-standing and toughest refugee situations in the world.

Senator HURLEY—I can see your point, but the tender was only let in October last year. Are you saying to me that the situation has changed that dramatically in 12 months? The minister at the time was saying that the government settlement services are world class, and the minister fairly recently talked about how IHSS is dealing with a difficult case load and going through those very points that you outlined.

Mr Metcalfe—I understand the point you are making. The intention of the IDC process was, as I said, very much whole of government. Certainly there has been a great deal done within our portfolio, particularly the IHSS, in order to provide services for newly arrived refugees. I think it has been estimated that the Commonwealth government spends around \$500 million a year on services to newly arrived refugees and humanitarian entrants. This was very much about ensuring that all of those agencies and portfolios—the 16 that we referred to earlier—were working in a coordinated and integrated way to address the full spectrum of issues that go to settlement. That includes health, family and community services, employment and education—all being focused, in the best possible way. I think we can quite justifiably say that we do have the world's best settlement services, but that does not mean we cannot make them better, and that is what this process is about. I think it would be quite unfair and incorrect to regard this as some failure of the IHSS. This is about improving something that is already good.

Senator HURLEY—Is it not a failure of IHSS? There are several services being provided. There is over \$30 million over five years to provide exactly the services you were talking about: assistance with health, assistance with Job Network and assistance with family and community services. All these things, I was told over and over again, were being provided by IHSS under a world-class system and at great cost to the federal government. There were some failures that were highlighted here and in other places among those service providers. Is this not an attempt to patch over those failures and inadequacies of those service providers by providing another service?

Mr Metcalfe—The clear intention here is to ensure that the services that are being provided across a whole range of government agencies and levels of government—Commonwealth, state and local—and through the non-government and voluntary sectors operate as well as they possibly can. This is about joined-up government—joining the government up with the community to provide the best possible outcomes for a highly vulnerable and disadvantaged group of people.

Senator HURLEY—In October last year, when the IHSS program was set up, this idea of joined-up service was not contemplated?

Mr Metcalfe—It was always contemplated, but it was around that time that I was thinking to myself that this is an area where it would be good to have a senior review to ensure that the results and outcomes are as good as they possibly can be. I think that, rather than being critical, the government should be congratulated for seeking to ensure the best possible services operate amongst a wide range of different agencies who have responsibilities in this area.

Ms Pope—When the tender process was developed the data that we based that process on was from about 2003 because of the lead times involved in going through a tender process and so on, even though the tenders were not finally let until October 2005. So some of the sorts of cases that we are seeing now were not within our experience at the time the IHSS was designed—for example, the size of families, the number of single female heads of households with very large numbers of dependants and so on. We also had not seen at the time the sorts of issues that people were encountering onshore. Reflection on the experience we have had so far through the program and updating the data from 2003 has also informed the proposal.

Senator HURLEY—It seems to me that setting up a network entirely separate from the IHSS is an admission that the system, the program, is not working well—otherwise, why not simply beef up what you already have? Why not simply augment the services there? Why create another network on top of what you have already got?

Mr Metcalfe—I would hasten to add that this is a discussion paper and final decisions have not been taken on these issues, so it does not necessarily follow that an issue canvassed in the paper will be the subject of a final decision. But it is an area we have identified, possibly informed by some of the experiences that we have discussed here with you, in which there may be some particularly vulnerable people who require an additional level of service above and beyond what the current arrangements provide for.

Ms Pope—We have not determined what delivery mechanism we would apply in this case. It could be an adjunct to the IHSS or it could be delivered through another service delivery channel. We are consulting about that issue as well, so we welcome any comments on where it should sit and how it might best be delivered if it goes ahead.

Senator HURLEY—Was there as part of this process any estimate of what the cost might be?

Ms Pope—No, we have not got through that process yet.

Senator HURLEY—So it is just an open-ended cost?

Mr Metcalfe—It is an undecided cost. This is a discussion paper; it is not to be regarded as settled government policy. Any proposals coming out of this process would be the subject of normal government budget considerations, so I am sure there would be a range of views through that as to whether such a service should be funded or how it should be funded, if in fact it should occur.

Senator HURLEY—You have just said that there are problems in the system, and now you are saying you are not sure that you have the budget to—

Mr Metcalfe—I am saying that improvements can be made and that there are always improvements that can be made. This is a classic example of there being a proper review and

an acknowledgement that we do have world-class settlement services but that that should not stop you from trying to make them better.

Senator HURLEY—Let me talk a bit about the IHSS services. Last estimates and for some time I have been raising issues about cases in Sydney generally and particularly in Newcastle where there have been complaints by St Vincent de Paul and other charities about being approached for things like warm clothing, furniture and bedding, which would normally be covered under the IHSS contract. The answer at that time was that one of the caseworkers, a former refugee themselves, had unilaterally made the approach to Lifeline. Lifeline was contacted by ACL, which was the provider in question. ACL apologised for the confusion and said it was not company policy to refer clients to Lifeline for blankets and warm clothing. Another part of the answer was that no-one from the department was aware that anything similar to this was happening elsewhere. Is that still the case? Is that not happening subsequently or elsewhere?

Ms Pope—We have not had any complaints or commentary from charities about a similar issue occurring, no.

Mr Vardos—You may recall that it came to our attention because I received an email direct from Lifeline. That is how we became aware of the issue and then we followed it up. Certainly in the national office we have had no similar communications on matters like that.

Senator HURLEY—I have had discussions with St Vincent de Paul in Brisbane, and they have a list of 72 IHSS clients who have approached them for things such as emergency clothing, bedding, blankets, furniture, ongoing support with rent and school fees, food vouchers, books, baby strollers, children's toys, lawnmowers, carpet and microwave ovens. They have the providers' client referral databases in which they note names and addresses of the people who have approached them, which I will not detail, in the interest of privacy of the individuals involved. If you have not heard of instances like that, is that again a failure of the system where complaints are not getting through?

Ms Pope—I am not aware of that issue, although I met with the heads of all of the migrant refugee committees of St Vincent de Paul across the country about three or four weeks ago and that was not raised with me at that meeting. I am happy to chase that up through our provider in Brisbane, but it is not an issue that has been brought to our attention in the national office.

Senator HURLEY—It is an issue that is raised with me again and again as I travel around to migrant resource centres and so on. People are talking about the IHSS providers not being able to provide the kind of support that the MRCs expect of them—that the IHSS providers seem not to be coping with the provision of those things which they are supposed to be providing under the contract. And you are saying you have had no feedback along those lines.

Ms Pope—No, I have not.

Mr Vardos—You suggested that they are supposed to be providing these things. We are satisfied that what they are expected to provide under the contracts are being delivered. If the clients themselves want more than that, I guess we cannot stop individuals from asking. For example, we do not provide lawnmowers under the IHSS menu of household items.

Mr Metcalfe—Senator, we gave this invitation before but if there are any particular examples that you wish to let us know about, you don't need to wait until estimates to let us know; we will follow up every issue. We are as concerned as anyone—more concerned—to ensure that we get proper value, that the service providers are doing their job and that, if there are issues, they are fixed immediately. I would just like to repeat that general invitation.

Senator HURLEY—Certainly, I have written where people are prepared to have their names and details mentioned. But I raise this specifically because it seems on one hand that through the IDC there is a recognition that the system is failing at least some of the refugees that come to this country, yet on the other hand, in the annual report and elsewhere, I continue to read that there are no complaints and no problems with the current network. They seem to be two very contradictory messages.

Mr Metcalfe—I think that is an unfair characterisation. As I said earlier, the IDC is an acknowledgement that we have a particularly challenged group of people that we are welcoming to Australia, and we need to ensure that the very substantial resources that are provided to them by the Commonwealth are provided in an integrated and effective way so that the folk concerned have every possible opportunity to integrate into Australia, to build new lives for themselves. That is not an admission of failure; that is an admission that we want to do better, because we can always do better. Sadly, it is inevitable, I suspect, that in any area of service provision administered anywhere, there are going to be situations where things don't work in the way they should, and we are absolutely determined, if that is the case, to rectify them as soon as we hear about them. Ms Pope has indicated the particular matters you raised had not been communicated to us. If people do not tell us, it is hard for us to do something about it. But we do have a network of staff out there in the states and territories, we do work closely with communities, and we certainly have our ears well and truly open to any areas of concern.

Senator HURLEY—I suppose that is what worries me a bit, because until the local member of parliament and the volunteers in Newcastle started to complain loudly to the media, DIMA here, the people administering the contract, had no idea, I was told, of the complaints coming through Newcastle and being filtered through to the New South Wales office of DIMA. So it concerns me when I then go to Brisbane and hear similar sorts of stories and again I am being told that there is no problem.

Mr Vardos—Senator, I can only reinforce what Mr Metcalfe said: unless someone actually brings these things to our attention, we cannot pursue them. As Ms Pope said, in the Brisbane case, what you are telling us now is the first time certainly that I have heard of those issues in Brisbane. We can follow it up, even without the names, just to establish the general principle of the sorts of issues that have been raised with you.

Mr Metcalfe—I am quite confident that Mr Vardos and Ms Pope have made it very plain to our colleagues in the state and territory offices that these are serious issues and if they are raised then they are issues which are of national significance. There have been regular meetings with staff to reinforce that point. No-one is pretending that this is a perfect program. It is a good program; it can always be made better. If there are particular examples then we certainly should have arrangements in place to hear those ourselves, but if we do not then we need to hear them through any way we possibly can.

Senator HURLEY—What about the six-monthly reports that are meant to come from the IHSS service providers? Have the service providers received 75 per cent or above client satisfaction from those who have exited the program?

Ms Pope—Yes, Senator. The six-monthly reports covered the first four months of the contract through to February 2006, and at that time very few entrants had actually exited from IHSS. In fact, only four clients had exited at that time. They reported satisfaction with the service delivery.

I can update figures for the end of the first financial year period through to 30 June, if that would be helpful, in line with the completion of the first set of annual reports that we have received from our providers. I can give you the numbers of clients handled by each provider and also the numbers of clients now exited from the program, which I think you also requested. The number of people that have exited to date is 2,751, which represents around 40 per cent of the total number of persons who have been provided services since the contracts began. The total number of individuals provided services up to 30 September—covering the first full year of the program—was 12,108. The figures for the annual report period, which was to the end of June 2006—nine months of the program—show that 1,156 people had exited IHSS at that point.

The providers have all reported that the KPIs on client satisfaction were met to 75 per cent or higher. The reports vary in the degree to which they measure and give precision around how far above 75 per cent. There are 13 separate KPIs related to client satisfaction, so there are quite a number of KPIs that need to be examined. Some providers have given a greater level of detail than others in relation to the methodology they have used to reach that percentage figure of client satisfaction. In the process that we are working through of analysing the annual reports and preparing executive summaries of those reports, where it is not clear to us how the figures were derived by the providers we are going back to them to understand the methodology they have used in order to reach those figures. But all of them report satisfaction of 75 per cent or above in relation to those 13 measures.

Senator HURLEY—Can you describe a couple of examples of the methodology?

Ms Pope—Certainly. They use a range of measures, including exit interviews, which we discussed at the previous estimates, and formal and informal interviews and discussions with clients throughout the period of service provision. Some service providers run client satisfaction surveys. Some do home visits and some use community reference groups as a measure of their success and so on. There is a range of methodologies used.

Senator HURLEY—Some providers use their caseworkers who have been dealing with the person to ask these questions, and others use independent sources?

Ms Pope—They use a combination, I would say, but certainly the exit interviews are conducted by the staff of the provider. If you are meaning that they are not independent in their assessment, that is the case. The staff of the provider would prepare that information. But that is self-reporting, and then the work for us is to quality assure the information that has been provided to us by each of the providers around the country. We are in the process of rolling out a framework of quality assurance around all of the service provision under IHSS that draws together a number of the measures that we are already using but pulls them into a

formal structure to allow us to compare more readily across contract regions and look at best practice and issues of benchmarking and so on for service provision.

Senator HURLEY—The quality assurance that you are talking about takes the form of assessment and perhaps a more uniform approach to the reporting?

Ms Pope—The quality assurance that I am talking about is conducted by departmental officers on service providers. In addition to examining the six-monthly and 12-monthly reports, and assessing the information contained there, they also conduct visits to observe service providers delivering service, such as at airports, or accompany new arrivals to their homes to see the orientation to their household arrangements and so on. These are observed by departmental officers and commented on, giving us the ability to draw that information together across contract regions and have a comprehensive understanding of the level of service delivery across the network and thereby set a benchmark that we will require the providers to meet.

We intend to conduct an initial audit of all service provider programs, something that we might normally consider doing in mid-contract, which would be around April 2008. But we have decided that it is timely to do that review over the next six months through to mid-2007. After that, we will have a cyclical program of audit where it appears required for whatever reason—for example, community feedback or client commentary or the various other sources we have for feedback on the programs. Indeed, estimates provides very useful feedback for us and alerts us to areas where there may be some concern. This will give us the ability to make those audits.

Senator HURLEY—When you were talking about the numbers, you said that you were able to provide the number of refugees that each different service provider—

Ms Pope—Yes. I can give you those figures on the basis of 1 October through to 30 September. In the ACT, Centacare has taken care of 99 humanitarian entrants. That is a contract based in the ACT and Goulburn. There are 58 clients that have been dealt with in the Riverina contract region, which is held by St Vincent de Paul. ACL has served 3,565 clients in the north metro and south metro contract regions and Anglicare has served 71 clients in rural New South Wales. The Northern Territory has covered 180. In Queensland, Centacare in Cairns has had 39 clients. Logan Access has serviced 260 clients. MDA, which has the metro Queensland contract, has served 886 clients. Toowoomba Anglicare has serviced 136 clients and the Townsville Multicultural Support Group has served 23 clients.

In South Australia, where both the north and west contracts are held by the MRC, the number is 1,400. In the north of Tasmania, the MRC has served 125 clients. Centacare, which is based in Hobart, has served 180 clients in southern Tasmania. AMES, which holds the contracts for east, west and rural Victoria, has served 3,455 clients. The north MRC in WA has served 884 and in the south Centacare has served 553. There are also 194 cases which transitioned from the old contracts through to the current service providers. I cannot give you the figures by provider because those cases came across in an almost completed fashion when we migrated the date to our new management system, but there are 194 in total spread broadly across those service providers. That comes to a total of 12,108 clients.

Senator HURLEY—Is the distribution of those clients pretty much roughly what you expected when the tenders were allocated?

Ms Pope—I cannot answer that, because I was not in this position when the tenders were contemplated. But there is nothing that strikes me as unexpected about the distribution. I know that you would be aware that we only influence the settlement location of a small proportion of the case load—about 3,000 to 4,000 of the refugees. The remainder have links, and they go where their links are located. Where they finally settle is a little unpredictable.

Senator HURLEY—Speaking of that, the refugee arrivals that were published a couple of weeks ago showed that Western Australia was receiving an unusually large number, 81 as compared to 32 in New South Wales and 31 in Victoria. Will this place a strain on the service providers there?

Mr Metcalfe—Was that the weekly total?

Senator HURLEY—Yes, I believe that was the weekly total.

Mr Metcalfe—The minister has recently been issuing a fairly regular press release on expected arrivals or recent arrivals. I was trying to establish whether it was—

Senator HURLEY—It was the weekly one.

Ms Pope—That is from that source, I believe. Western Australia has not notified us of any concern about the numbers. We advise of expected arrivals. If an issue had been raised with the Western Australian office, I would have expected to have been advised that the service providers were concerned about the numbers. I have not been advised.

Senator HURLEY—Can you go through again what happens to the contract figures if there are changes in the number of clients that they expect? How does that work in terms of payment?

Ms Pope—I am sorry, I would have to take that question on notice. I am not familiar with the—

Senator HURLEY—I mean just generally. Say that in Perth they would normally get 800 refugee arrivals and they get 1,000: does the payment reflect that? If they get less, does the payment reflect that?

Ms Pope—There is a bottom line below which they do not drop if their numbers fall below a certain number, but there is no premium attached to dealing with a larger number. We would be supportive and cooperative if they had some difficulties if they had an unprecedented load. Our office would work closely with them to assist, if there were issues we could assist with. But we expect them to deal with peaks and troughs because the program is unpredictable and they were advised of that when the contracts commenced.

Senator HURLEY—Has anyone been outside what you would regard as peaks and troughs?

Ms Pope—As far as I am aware, nobody has gone below but there have been months when arrivals to particular areas have been higher than anticipated.

Senator HURLEY—Which areas have they been?

Ms Pope—I would have to take that on notice.

Senator HURLEY—On the services provider and the referral services: part of the IHSS contract, I understand, is that clients are referred to a Job Network provider, and they are generally linked in the contract with the IHSS provider or the provider has nominated a Job Network provider. Can you tell me how many of those Job Network providers are contracted with the IHSS provider in that way?

Ms Pope—The IHSS providers are not linked directly to Job Network contracts at all in a formal sense, except that there are—and I have a list—four providers under the IHSS contracts who also hold Job Network contracts. I can give you that list. Mission Employment, which is an arm of Mission Australia, the ACL consortia partner responsible for volunteer coordination, is also a Job Network provider. Centacare Cairns, which is the principal holder of the IHSS contract in Cairns, is not a Job Network provider themselves but their sister arm, Centacare Employment, is a Job Network provider. Centacare Tasmania is also a Job Network provider, and AMES in Victoria is a Job Network provider. But those contracts are let separately and competed for separately under tender processes.

Senator HURLEY—Do you keep records of how many clients are referred to Job Network providers?

Ms Pope—The way our clients are, in the first instance, referred to Job Network is in fact through Centrelink. Our clients are taken to Centrelink, usually in the first couple of days after arrival, for income and employment assistance assessment by Centrelink. Then Centrelink meets with the entrants on about three occasions over a 13-week period. As you would be aware, newly arrived humanitarian entrants are exempt from the activity test and participation in Job Search for the initial 13 weeks after their date of arrival in Australia. If the individual is of working age and wants to pursue work then the Centrelink staff use the job seeker classification instrument to determine their readiness for work and any factors that may have a bearing on their ability to seek employment. So the process is not one of IHSS providers taking our clients or referring them directly to Job Network in the first instance; it is via Centrelink. Of course, if a client seeks, or a provider thinks it would be useful for them, to be referred separately to Job Network then that also happens, but the initial process is via Centrelink.

Senator HURLEY—So it is not within the IHSS provider's power to make sure that the client is referred to an appropriate Job Network? It is up to Centrelink, is it?

Ms Pope—In the first instance, yes.

Senator HURLEY—Torture and trauma counselling is another area where the IHSS provider is meant to provide referrals if appropriate. What has been the uptake under the IHSS contract of torture and trauma counselling?

Ms Pope—As you would be aware, each consortia in each contract region has an arrangement which either includes torture and trauma service provision within the consortium or uses external providers that are part of the group that tender for the contracts. As I mentioned before, the number of clients that were handled by providers between 1 October and 30 September was 12,108. During that same time frame there were over 7,700 short-term torture and trauma sessions held. Over 1,900 of these were initial sessions attended by over

4,000 people. There have been nearly 6,000 subsequent sessions attended, with about 10,000 attendances. That boils down to about 35 per cent of entrants having so far accessed torture and trauma service provision.

Senator HURLEY—When you say sessions, are they general information sessions or counselling sessions?

Ms Pope—They are counselling sessions. They could be individual or family sessions.

Senator HURLEY—Is that 35 per cent pretty much across the board, or do you find that some providers—

Ms Pope—I would have to take that on notice. I do not have that detail with me.

Senator HURLEY—Getting back to people going into the workforce, Andrew Robb, the parliamentary secretary, announced in October at the AMEP national conference that the government will be looking at using AMEP as a means of accelerating people into the workforce. Has there been any discussion on how that will work?

Ms Pope—AMEP is not within my responsibility.

Senator HURLEY—I have lots of questions on AMEP, so I will leave them to the appropriate stage. I want to discuss the migrant resource centres. Are any of the migrant resource centres having their contracts or their funding reviewed?

Ms Pope—We no longer directly fund migrant resource centres. In the last grants round, which was announced in June this year, the core funding that was previously provided to MRCs was rolled into the project funding. They bid for projects, the same as all the other service providers under the Settlement Grants Program.

Senator HURLEY—So the department is not investigating in any way any MRC in Australia?

Ms Pope—There is one audit process underway, although I do not have the details of it here. It is a Victorian MRC that is under investigation at the moment. I would have to take the details of that on notice.

Senator HURLEY—Can you tell me what that is in relation to?

Ms Pope—Accurately, off the top of my head, no—although I have just been given a document that might help me answer that. There were allegations of corruption and non-performance of the funded agencies of the particular migrant resource centre—the name of which is in the public domain. If you wish me to name it, I will.

Senator HURLEY—Not particularly.

Ms Pope—So there were allegations of corruption and non-performance—that is, non-delivery on its grants.

Senator HURLEY—What you seem to be saying is that, because there is now no core funding, DIMA will not be monitoring the MRCs for anything—

Ms Pope—No, I am sorry; I misunderstood your question at the outset. We do provide funding to them through the grants program but no longer through core funding. This MRC,

up until the end of 2005-06, would have received core funding as well as project funding if it were available.

Senator HURLEY—Now that you are providing project funding rather than core funding, there will be no way of checking whether MRCs are—

Ms Pope—No, Senator. We monitor all the grants, and each one has a grants consultant attached to it in the relevant state office. There are a series of milestones that have to be met throughout the life of the grant, and further money is not disbursed until those milestones are met. There are financial and other reporting requirements that grant recipients have to meet in order to continue to satisfy the terms of their work plan and to continue to receive ongoing funding.

Senator HURLEY—You monitor how the grants are spent—the SGP funding—so it is possible that a migrant resource centre may spend its SGP money properly but still be guilty of corruption in other areas that will no longer be monitored by DIMA. That will have to be the responsibility of the board, committee or whatever that runs it.

Ms Pope—For a long time we have not been the sole providers of funding to migrant resource centres. They can and do apply for grants from local government, state government, and other federal departments to deliver a wide range of programs. We are obviously responsible for monitoring the expenditure that we provide to them and the way that they use that money. I am not aware of the details or issues in relation to Westgate, but we are responsible for our part of the funding.

Senator HURLEY—One case that I have become aware of is that of the Australian Croatian Community Service of Victoria, which I believe has had its funding cut. I understand that they are upset because their clients have now been referred to a Serbian-run organisation. Is this a consideration in giving out these kinds of grants?

Ms Pope—I am aware of the Croatian community's concerns. The circumstances in that case are that there were very few arrivals in the five-year period who were eligible for service under the Settlement Grants Program—such a small number of clients that renewing or reissuing funding for the proposal they put forward was not considered to be proper use of the funding under the Settlement Grants Program. I am afraid I am not aware of their being referred to a Serbian service provider, although I am aware of concerns about the potential conflict in relation to Serb and Croatian entrants. I would have to take on notice details of where the clients were suggested to receive services.

Senator HURLEY—Thank you. I have one last question on referrals, and that is referrals to migrant health services. I have been made aware of some issues where migrant health services—which are state-run bodies, I understand—are feeling that IHSS clients are not being referred directly to them. Is there any kind of guideline for that?

Ms Pope—Some are state provided. Others, such as the refugee health clinic in Newcastle, are staffed on a voluntary basis. The contract does not predicate the service delivery model for health services that the provider needs to follow. It is perfectly acceptable to us that cases are referred to the migrant health services, and we recognise the expertise that they offer in providing medical services to migrants and refugees, but it may be that other arrangements are made, such as linking entrants to GPs. For their long-term care that might be the best

strategy and it might also be their personal preference. In some other cases, the migrant health service might be quite a distance from where the entrant has settled. We do not dictate the means by which a new entrant is linked to the health system, just that they are.

Senator HURLEY—I have not spoken directly to a number of migrant health services but I understand they are a bit concerned that a lot of GPs are probably not aware of the health issues and the issues surrounding torture and trauma that may affect refugees, although they may be closer. Some of the refugees are not being made aware of a migrant health service that, although it might be further away, has better expertise in this area. Hospital outpatient services can be very fragmented; you might never see the same doctor twice. I understand that the migrant health services are getting worried that there is a decrease in the amount of care being provided to some refugees. Is the department concerned about that issue?

Ms Pope—I am a member of a multijurisdictional refugee health working group set up between the federal departments of Immigration and Health and Ageing, which involves representatives of all the health departments of all the states and territories. We have been working on a series of issues to do with delivery of health services to refugees after convening for the first time in December last year. We have in fact developed a set of recommendations that are going to health ministers in the near future. One of those is around ways that GPs can be given access to further information about the sorts of conditions they might come across in terms of refugee health. Quite a lot of focus and effort is being put into that. In that context, yes, there has been commentary that some GPs are not as familiar with those sorts of conditions that refugees may present with and, as I said, efforts are being made to address that.

Senator HURLEY—That group you are associated with has not raised the issue of the lack of referral to migrant health services?

Ms Pope—It has not been raised in that group but I am aware of a couple of instances where some concerns have been expressed by the migrant health services about the numbers that are flowing through to them.

Senator HURLEY—So when the contract, for example, specified that there would be some refugees who had particularly difficult health issues, often accompanying torture and trauma, mental health issues, there was no feeling they might be better directed to a migrant health service? There was no encouragement to the IHSS provider to direct people that way?

Ms Pope—As I said, we do not predicate the way they deliver the services. I agree with you: in some cases the migrant health service or the refugee health service might be the most appropriate place for a refugee to make first contact with medical services in Australia. But there are other models that might work equally as well.

Senator HURLEY—So it is the IHSS caseworker, who has no real medical expertise, as we have discovered, who decides—in consultation, I suppose, with the refugee, who might not necessarily know what services are available—where they would go?

Ms Pope—I would expect that the case coordinators, who are more senior to the caseworkers and who work to develop the case plan for the entrants, would look at a range of factors when working out where the person might best be referred. But I am speaking in generalisations.

Senator HURLEY—I wouldn't think that the case coordinator would have very much medical expertise either—anywhere along the line with the IHSS providers.

Ms Pope—They would not be medically trained necessarily. I did not mean that; I just meant that they might be more aware of the service options that are available than perhaps a caseworker might be. But, again, I am speculating.

Senator HURLEY—We do not know this but, anecdotally, it seems those migrant health services that have built up specialised expertise in this area are often being overlooked by people who do not seem to have the medical expertise to make the assessment about whether that is appropriate or not.

Ms Pope—I cannot really comment in general. If there is a particular issue you would like me to take up, I am happy to do that.

Senator HURLEY—Given that the department does not keep figures and has no control over it, I think it is probably a bit difficult for the department to do anything about it, even if there is a problem.

Ms Pope—As I commented earlier, I am aware of one instance where the migrant health service raised through the state government body concerns about client numbers.

Senator HURLEY—Just one?

Ms Pope—There is only one that comes to mind. I can take that on notice if you would like us to research it further.

Senator HURLEY—Thank you. I would like to move on to AMEP.

Mr Vardos—Will you be coming back to any settlement services issues? If you will be, Ms Pope will stay.

Senator HURLEY—I do not expect to. AMEP has come under the spotlight a bit recently in talking about migrants to the country learning English as a priority. I must acknowledge of course that it is very good that an English language program is provided for migrants, but there has been quite a bit of discussion about the hours and the adequacy of the program that is provided. The standard amount of hours for eligible people I understand is 510 hours. The parliamentary secretary, Mr Robb, has talked a lot about some people being eligible for 610 hours and others up to 910 hours. Can you explain to me what qualifies people to gain access to the extra 100 hours, to the 910 hours and to anything in between?

Ms Ellis—Refugee and humanitarian entrants, who because of their difficult premigration experiences such as torture and trauma are assessed as benefiting from an informal learning environment prior to commencement of their entitlement to the 510 hours, have access to up to 100 hours of tuition under the special preparatory program. Those aged under 25 with low levels of schooling and low levels of literacy have access to up to 400 hours of tuition.

Senator HURLEY—Four hundred extra or just 400?

Ms Ellis—Four hundred in addition to the 510 hours.

Senator HURLEY—What about the 610?

Ms Ellis—That is for the refugee and humanitarian entrants who, because of their difficult premigration experiences, have access to up to 100 hours.

Senator HURLEY—What percentage of people who are eligible for the program have completed the 510, 610 and 910 hours respectively?

Ms Ellis—I would have to take that on notice. That is the percentage—

Senator HURLEY—The percentage of the clients who are eligible for 510 hours, for 610 hours et cetera.

Ms Ellis—I have the figures for eligibility; sorry. For the period 1 July 2003—the commencement of the current contract—to 30 June 2006, 78 per cent of clients were eligible for the 510 hours or up to the 510 hours, subject to their progress within English language tuition because if they acquire functional English prior to the completion of the 510 hours then that is the end of their entitlement in the program. For that same period, 22 per cent of clients were assessed as being eligible for 100 hours under the special preparatory program. The 400 additional hours for those under 25 with low levels of literacy and schooling was introduced in 2004. Since that time, in those two years, 0.8 per cent of clients have been eligible for the additional 400 hours. Those percentages are based on clients who have completed the special preparatory program and gone on to their 510 hours. They do not include those who are still working through their hours in the special preparatory program.

Senator HURLEY—I see. You may well have to take this on notice. Of those percentages, how many have completed their allotted hours or reached a level of functional English?

Ms Ellis—I would need to take that on notice.

Senator HURLEY—Thank you. The performance information table on page 232 of the annual report says that in calendar year 2005 the following results were achieved: 38.3 per cent achieved certificate I, 22.6 per cent achieved certificate II, 19.3 per cent achieved certificate III and 19.8 per cent achieved a record of achievement. I gather certificate III is the functional English level.

Ms Ellis—Yes. Mr Vardos mentioned earlier that there are some words that were inadvertently omitted from that. It should say certificate I ‘or part thereof’, certificate II ‘or part thereof’ and certificate III ‘or part thereof’.

CHAIR—It was the erratum Mr Vardos referred to at the beginning, which is going to be formally circulated, I assume.

Mr Metcalfe—On that point, the normal thing would be that we would publish an erratum in the following year’s annual report. In fact, there was an erratum identified at estimates a year ago which we have published in this year’s annual report. But, because of the time lag, we thought it was essential that this committee be aware of that point.

Senator HURLEY—Exactly what does that mean? Certificates I, II and III are obviously progressions through the course. So are the 19 per cent, say, who have reached part of certificate III stuck halfway between certificates II and III?

Ms Ellis—Each certificate consists of five modules, and the reporting picks up those who have completed at least one module towards completion of the certificate. The reporting does

indicate that those who did not have the certificate on average were two-thirds of the way through to completing the certificate. So they had completed a substantial part of the work on average towards the certificate.

Senator HURLEY—I think the 2005 results were that 11 per cent left with functional English, so that is a fair increase. Is that an exactly equivalent method of reporting or has there been a change in the way of reporting that figure?

Ms Ellis—Was that the 2004-05 annual report you were referring to?

Senator HURLEY—Yes.

Ms Ellis—The 11 per cent was those who had actually completed the certificate.

Senator HURLEY—And that translates to 19.3 per cent in the current—

Ms Ellis—No, because the 19.3 per cent is the certificate or part thereof. My understanding is that there is very little variation between the years. In terms of those who have completed certificate III in 2005, my understanding is that the figure is in the order of 11 per cent, as it was in the previous year.

Senator HURLEY—You may need to take this on notice: is there any difference for those who have got the extra 100 hours? Is that a higher percentage achieving certificate III or is that the same as for the 510-hour people?

Ms Ellis—I would have to take that on notice. The people who would complete, use all of the 100 hours for the special preparatory program, would then generally go on into the 510 hours, which is a more formal learning environment. The special preparatory program is a special program in an informal learning environment to prepare them for that formal learning environment. I do not have with me the numbers, the percentage, that participated in the special preparatory program and then went on to reach certificate level III. I would need to take that on notice.

Senator HURLEY—But people are given 100 hours, so how do you assess whether that is worthwhile, whether that is working?

Ms Ellis—There are a number of factors that impact on people's progress in learning a language. An important factor, we know, is education in first language. There are other factors that impinge on their learning progress, such as what is happening in their personal life and the level of intensity at which they undertake their English language learning. They are all factors that have an impact.

Senator HURLEY—I understand that, but you are providing an extra 100 hours for people that you have assessed as having extra difficulties in learning English. How do you gauge whether that extra 100 hours that is being provided is worthwhile and is a program that is working?

Ms Ellis—It is up to 100 hours, and assessments are generally made by the service provider. While someone may be provided with access to the special preparatory program, if they get to the point where the service provider feels that they are ready to take on the challenge of the formal tuition of the 510 hours then they may well not complete the full 100 hours of the special preparatory program.

Senator HURLEY—So it is purely up to the service provider to assess whether it is useful for people to do that 100 hours.

Ms Ellis—It is up to the service providers and the teachers to make an assessment as to whether people are yet at the point to be able to take advantage of the formal learning environment. That is not something that the department get involved in; we leave that to the teachers to make that assessment. If they are left in the special preparatory program for longer, if someone is assessed as needing the full 100 hours then they would stay there on the basis that they need it, and one would hope that they may be in a position to benefit from it.

Senator HURLEY—Given the fact that the parliamentary secretary has put out a discussion paper proposing that there be an English language test before citizenship is granted, is there any discussion about assessing just how well the total AMEP is working and whether more effort needs to be made to get people learning English more effectively?

Mr Vardos—That sort of assessment is part of the preparation of the tender documents for the next tender. If significant changes are to be made to any program—but in this case we are talking about AMEP—that will reflect a different service-delivery model or a different structure then that has to be built into the tender spec. So that would be the appropriate time to do it, rather than amending the contract in the last year of a five-year contract period.

Senator HURLEY—Well, I wanted to talk about the tender. That is due next year. What is the time line for that?

Mr Vardos—The current contracts expire on 30 June 2008. An officer has been identified to head the AMEP tender team, commencing I think at the end of January or early February next year, to start the process of pulling it all together to deliver contracts by 1 July 2008.

Senator HURLEY—That team that is being put together in January-February next year will just be examining these kinds of things, what kind of tender it will be and how it will work?

Mr Vardos—It is incumbent upon us to make sure that AMEP remains essential to contemporary needs, and issues that have arisen can be reviewed in the context of what the specifications will look like. There will be a review of some description, either internal or other, of AMEP, and whatever emerges from that will feed into the tender specifications.

Senator HURLEY—This team you are getting together for February next year; is it decided who is on that? What will be the composition?

Mr Vardos—The secretary has appointed an SES officer from the department to head that team, and as I said she will be starting in that job in February of next year. One of the first tasks she will have will be to put together the requisite resources, which builds up over time, I have to say. We have been through a number of tender processes. You start with a small nucleus, and as you map out your time line for your tender, working back from 1 July 2008, then there are a number of milestones that have to be met. Specialist expertise is brought on board. As I mentioned, the review will be conducted. That is the main task of the tender team: to put the framework together to complete the tender process and deliver the contracts to start on 1 July 2008.

Senator HURLEY—Has there been any kind of assessment of the effectiveness of the current AMEP, or will that not begin until next year?

Mr Vardos—There is ongoing internal analysis but no formal evaluation, if that is what you are suggesting.

Senator HURLEY—Yes.

Mr Vardos—No.

Senator HURLEY—Is there to be one?

Mr Vardos—It is yet to be decided what form of assessment will be undertaken. You have an array of mechanisms available to you, from an internal review to a full-scale external evaluation. It is yet to be decided.

Senator HURLEY—There will be no attachment to the current form of tender arrangement? Will this be an open process, where you look at all kinds of possible scenarios for the AMEP?

Mr Vardos—Excuse me, Senator. Ms Ellis was just reminding me there is scope for extending existing contracts, but our expectation is that there will be a full-scale tender process, and that will follow the normal patterns of tender processes: specifications, requests for tender, analysis of submission et cetera.

Senator HURLEY—For example, under the current contract, can you tell me what is the cost per student of running the program?

Ms Ellis—It varies because it is a program whereby tuition is given according to demand, apart from the special preparatory program. In 2005-06 the average cost per client—and this is taking the special preparatory program, the home tutor scheme and everything into account—was \$2,907.77.

Senator HURLEY—I have information that, since the system changed from funding education providers in the public sector to include the letting out of private tenders, the cost has increased. Is that right?

Ms Ellis—I would be surprised if costs had not increased since that time. We have been through open tender processes and the cost is what we have arrived at through a competitive tender process. Certainly salaries et cetera would have increased over that time and would have been built in to the responses to the request for tender.

Senator HURLEY—But there are still ways of comparing the cost structure, I would imagine, adjusting for—

Ms Ellis—A couple of the contracts are with private sector companies, but it was an open tender process. The Commonwealth was able to identify value for money and that tenders were compliant with the specifications, and that was the result.

Senator HURLEY—Under the current arrangements, the IHSS provider refers their client to an appropriate English language provider. Is that right?

Ms Ellis—It is my understanding that it is one of the responsibilities of the IHSS service provider to ensure that the clients are registered for their AMEP.

Senator HURLEY—For example, in New South Wales, we have ACL, who are an IHSS provider and an AMEP provider as well. But there is the possibility for them to refer clients to, for example, the AMES services in parts of Sydney.

Ms Ellis—Yes.

Senator HURLEY—Are you aware of what the referral rate from ACL to AMES is, for example?

Ms Ellis—No, I am not. I expect that it would be related to where the clients are located. We have a similar situation in Victoria with AMES Victoria being an AMEP service provider as well as an IHSS provider.

Senator HURLEY—So you do not know whether the fact that the companies are linked means that they are artificially referring clients to their own related company rather than to another company?

Ms Ellis—We would have to take on notice that question and look at what the process is that the IHSS providers use to refer clients to an AMEP service provider.

Senator HURLEY—Thank you. Just on the question of skilled migrants and English language training, they are not eligible for the AMEP. Is that right?

Ms Ellis—As a rule, the primary applicant or the primary visa holder would not be, but their family, their dependants, may well be if they do not have functional English. If they are assessed as not having functional English then they would be required to pay the visa application charge.

Senator HURLEY—Skilled migrants now undertake some English language testing before they come to Australia, as I understand it, but that is at various levels. I have had calls and emails from skilled migrants who have come here and whose English is not really adequate for them to get jobs. They discover once they get here that their English is not adequate to get them a job—at least easily. They are not in a financial position to pay for English language courses. Is there any consideration given to whether or not the AMEP might in certain circumstances be expanded to some skilled migrants?

Ms Ellis—I am not aware of any proposal to change the eligibility requirements.

Senator HURLEY—How is functional English defined and who decides what functional English is?

Ms Ellis—Functional English is regarded as being the equivalent of CSWE, or certificates of spoken and written English, III. The AMEP service providers will assess people when they register for the AMEP. If they are assessed as already being at the CSWE III level then they will not get access to the AMEP.

Senator HURLEY—I am thinking more from a curriculum point of view, if you like. Who defines what functional English is and what level that should be? Does someone decide that functional level means that you are able to read signs or able to read a book? How does that work?

Ms Ellis—CSWE is a curriculum that is used within the AMEP. I can take on notice what the different levels equate to, but there is an equivalent to the ISLPR. I think CSWE III is the equivalent of about ISLPR 2. But it was a decision taken some years ago.

Senator HURLEY—By whom?

Ms Ellis—By government.

Senator HURLEY—By the education department, DIMA?

Mr Metcalfe—We might have to take that on notice.

Senator HURLEY—That is fine.

Mr Vardos—It goes back beyond our collective memory.

Ms Ellis—It goes back to about 1992 or 1993.

Senator HURLEY—That is the second part: has it changed over the years?

Mr Metcalfe—My recollection is that Minister Hand did a lot of work on this issue. I suspect some of these issues date back to then. But we will attempt to give you an answer to that.

Senator HURLEY—I finally got an answer from someone about why it is 510 hours. I was very excited about that.

Mr Metcalfe—It is an interesting figure.

Ms Ellis—The legislation was passed in 1992 and commenced in March 1993. That was for the 510 hours.

Senator HURLEY—Yes. I was more interested in who decides what functional English is and what level it should be at.

Mr Metcalfe—We will take that on notice. It may well have been quite a senior decision as part of an overall submission. We will see if we can locate that information.

Senator HURLEY—Some background might be useful. I ask it because I think it is commonly recognised that the level of English required by employers, for example, has increased over the last few years. There are occupational health and safety requirements et cetera and computing and reporting are at a greater level than they used to be. I was wondering if that is taken into account.

Mr Vardos—Ms Ellis has an extract here from the 1992-93 annual report. Whilst it does not shed a lot more light I will quote from it. It says that the ‘amount of the entitlement was based on data which indicated that AMEP clients who reached functional proficiency did so in an average of 510 tuition hours’. It goes on to say that ‘importantly it represents an increase on the previous average hours for AMEP clients exiting the program of 370 hours’. So there must have been some analysis at the time of how many hours people were using to get to that level and it came out at 510.

Senator HURLEY—I might put the other questions on notice and go on to citizenship.

[9.40 pm]

CHAIR—Senator Hurley is putting her questions on notice, so we will now move to output 2.3, Australian citizenship.

Mr Vardos—If we are going to general questioning on citizenship, the officer is Ms Ellis. If there are questions on the citizenship test, we will need a changing of the guard.

Senator HURLEY—I have questions on both.

CHAIR—We might just increase the guard on that basis, Mr Vardos.

Mr Metcalfe—The guard is standing at attention, Senator!

CHAIR—As always, as I understand it, Mr Metcalfe.

Mr Metcalfe—Just to explain the split in responsibilities: Ms Ellis runs the branch that routinely deals with not only Australian citizenship but also AMEP issues. Ms Forster heads a branch which is specifically focusing on the policy proposals relating to a possible citizenship test.

Senator HURLEY—I want to start off by talking about issues related to the bill that is proposing some changes in the way citizenship works. The bill was originally tabled in parliament in November last year. It proposed increasing the waiting time that permanent residents had to be in Australia from two to three years. That decision was based on security measures agreed at a COAG meeting. That bill has not yet been debated. How many people have successfully gained citizenship since that COAG decision was handed down; that is, while the two-year waiting period still existed? So in that nearly a year, how many—

Ms Ellis—Before I go into the figures, I should advise that it was not a COAG decision; the decision was announced by the Prime Minister in September last year that it would be increased from two to three years.

Senator HURLEY—So it was not even discussed at COAG?

Ms Ellis—I do not know whether it was discussed or mentioned, but it was not a COAG decision or agreement.

Senator HURLEY—I see what you mean.

Ms Ellis—Applications in 2005-06 numbered 117,208. From 1 July 2006 to end of September 2006, the number of applications made was 34,324.

Senator HURLEY—So they were processed entirely under the old system? Were there no additional security checks or anything of that nature carried out?

Ms Ellis—The processing had not changed during that period.

Senator HURLEY—There was a discussion in this committee about the bill. In discussing the element of retrospectivity—which is now gone, for those people who were in Australia at the time the bill was first tabled, because it has been nearly a year since it was tabled—and the fact that people who thought there would be a two-year waiting period would have to wait for three years, I think it was you who stated that, if people have not yet met the two years waiting requirement and have not applied prior to the commencement of the amendment to the legislation, they will be subject to the new provision and will need to wait the additional

period. Since then there has been a proposal announced by Mr Robb, the parliament secretary, that that waiting period might go from three to four years. There were a number of calls about that, and it was stated that the DIMA switchboards were swamped with over 7,000 calls in three days about people having to wait the extra time. Mr Metcalfe said that it seemed that many people did not realise that the change to four years lawful residence would only affect those who became permanent residents after the change came into effect. Essentially, is that a reversal of the earlier position?

Ms Ellis—Consideration has been given to the recommendations of this committee on the citizenship bill, and the parliamentary secretary announced on Citizenship Day the change to the residence requirement and that the new requirement would only affect those people who became permanent residents on or after commencement of the legislation. I understand that the bill is listed on the program for debate tomorrow in the House of Representatives. The change in the residence requirement is a change in the model. It is not four years permanent residence; it is four years lawful residence, of which there must be a minimum 12 months permanent residence. So it is a different model of a residence requirement from that which is currently in the legislation.

Senator HURLEY—How does that equate to the old model?

Ms Ellis—The current legislation requires two years permanent residence. In announcing the change, the parliamentary secretary noted that the new model recognises or acknowledges the changes in the migration program over the years, changes to migration law, and the fact that there are many people who spend considerable periods of time in Australia as temporary residents prior to becoming permanent residents. For example, someone who was here for three years as a temporary resident before becoming a permanent resident, after 12 months of permanent residence, would then be residentially eligible for citizenship.

Senator HURLEY—So, in fact, someone could have to wait for a lesser time for citizenship than they did under the—

Ms Ellis—Less time as a permanent resident, yes.

Senator HURLEY—When you were talking about temporary residents, that would be people like students, skilled migrants?

Ms Ellis—Spouses.

Senator HURLEY—If, say, you came as a refugee, you would have to wait for four years, but if you came as a student or a skilled migrant and were working here for three years, you would only have to wait for 12 months as a permanent resident?

Ms Ellis—Yes, because the focus of the residence requirement is the person having time in Australia to become familiar with the Australian way of life and understand the commitment that they are required to make to become a citizen.

Mr Metcalfe—Senator, you said that if a person came here as a refugee they would have to wait for four years, and if they were here as a skilled worker they would have to wait for three years?

Senator HURLEY—No, I said they might be here as a student or a skilled migrant for three years on lawful entry and one year as a permanent resident.

Mr Metcalfe—It is three years lawful temporary residence and 12 months permanent residence. As Ms Ellis said, it is four years lawful residence, including at least 12 months as a permanent resident, and previous periods as a temporary resident will be counted. Sorry, I did not quite hear what you said.

Senator HURLEY—So it is possible, when the bill goes through, that someone who currently is not eligible to take out citizenship could almost straightaway become eligible to take out citizenship. Someone might have had to wait another year, but then find that they are already eligible.

Ms Ellis—If they had been here for three years as a temporary resident, and following the commencement of the legislation they acquired permanent residence, then 12 months after that time—a further 12 months in Australia—they would be residentially eligible.

Senator HURLEY—So, as I say, it is possible that they could become a citizen sooner under the current arrangements?

Ms Ellis—Yes.

Mr Metcalfe—But in this case they would have been in Australia for a longer period of time than otherwise might be the case with some people now.

Senator Vanstone—While you are checking your notes, Senator Hurley, one of the senators earlier today, and I think it was Senator Ludwig, asked about the division of responsibilities between me and Andrew Robb. I said I would get something. What I have got does not quite cover it, so if I may I will just take a couple of minutes to run through that but then it will be on the record. I would first of all direct any interested party to pages 30 and 31 of the annual report, where we list the portfolio outcomes. You could loosely say that I largely do output 1 and Mr Robb does output 2. However, I have an interested oversight in part of the humanitarian settlement services and Mr Robb does family entry permanent out of output 1, so there is a slight swap in that sense. Of course, what that does not do is go through all the detail, but I think it is pretty clear. For example, for enforcement of immigration law—output 1.3—when you go to the major output components it pretty well outlines what it is and I think the same thing goes for migration and temporary entry. Although, even given the size of our general skilled migration program, it gets that little 1.1.

In the interventions, I do all the 417s and the 351s where there is a detention case. Otherwise Mr Robb would do the 351s. I do the other discretions, which are under section 48B, repeat applications for protection visas. There are a few of those. There are not many of the others. Section 46A is to enable an offshore entry person to make a visa application in Australia. And health waivers, there are not many of those. There are section 501 character cancellations: there is a bit of work involved there. And, of course, there are the residence determinations. I do the correspondence from cabinet minister, premiers, chief ministers, Leader of the Opposition and the opposition spokesperson.

Mr Robb, in terms of his duties, does output 2 and the family migration aspects, including assessment of 351 requests, but that is for non-detention cases. He does the visitor visas, family sponsored visas and migrations agents. He does the other correspondence and is involved in overseeing, as I mentioned earlier today, the major IT system change. That is a sensible thing for him to have because of his prior involvement in IT, in between the Liberal

Party and coming here. And he has the oversight of the development of a long-term strategy for detention facilities.

The major skeleton of that is clear in terms of the major detention centres. There may be some shifting of placement and the introduction of the immigration transit centres, which will accommodate people who are very short term. In Brisbane, for example, where we do not have a detention facility, there might be people who are being turned around and need an overnight stay, or they might be there for less than two weeks, generally, while they are relocated to a proper facility.

I have not counted them, but I am told that I have 16 staff, including two departmental liaison officers and a graduate trainee, who we have just taken on. It is a rolling-through arrangement of, I think, a three-month placement and then another person for three months. It is not a permanent person. Mr Robb has nine staff, including two departmental liaison officers.

Senator HURLEY—Is it true that Mr Robb has a personal staff allocation which exceeds the personal staff allocation of all other parliamentary secretaries?

Senator Vanstone—I would not have any idea what the others have. This portfolio lost a junior minister—admittedly it also lost Aboriginal affairs, but the junior minister did not do that—and has one less member of Executive Council. But with the vast bulk of the work needing to be done, coupled with the government's awareness that the Palmer business is not over just because we have done the report and made an announcement of the money, there is an enormous amount of work happening there. It was seen as appropriate by the Prime Minister to have a parliamentary secretary and, as we indicated before, the Prime Minister with the portfolio minister settles the responsibilities, and I think Mr Robb can and is easily handling the responsibilities that would in other circumstances have gone to a junior minister.

Senator HURLEY—One might ask why it did not go to a junior minister then.

Senator Vanstone—I think one of the more difficult jobs a Prime Minister has is allocating responsibilities and places when there are only so many spots. Mr Robb is a member of Executive Council and the important thing is that he has the staff and support to do the duties that he has, and I think he has that.

Senator HURLEY—Has the number of staff or the classification of his staff changed since 1 May 2006?

Senator Vanstone—No, I would not have any idea.

Senator HURLEY—Can you provide that?

Senator Vanstone—I will find out for you.

Senator HURLEY—What are the permanent work locations of Mr Robb's current staff members? Are any within Parliament House?

Senator Vanstone—I imagine he has some who are Canberra based, but I have not asked him. I do not regard that as my business. I have been told that he has recently taken on someone who is going to be Adelaide based, but as to the remainder of his staff I do not know. We can find out for you.

Senator HURLEY—Adelaide based?

Senator Vanstone—Apparently.

Senator HURLEY—I am very happy about that.

Senator Vanstone—It is recognition of the skills of people from Adelaide, I suppose.

Senator HURLEY—That is surprising, given that Mr Robb is a Victorian.

Senator Vanstone—Some ministers make that choice because of the person that they want and that person's commitments, whatever they might be. I do not know what they are in this circumstance. These days some people use videoconferencing. Not all ministers do, but I use it a lot. I find it saves a lot of departmental travel and a good deal of mine, and I also find it much more effective than normal telephone conferencing—you can actually see the face. It has improved so much over the last three or four years; I think I have been using it for eight. That makes distance not such an issue. I think we are seeing that in all areas of life. In a lot of the large corporations a lot of work can be done away from the head office.

Senator HURLEY—So is it just a matter of this person wanting to stay in Adelaide and not of the extra work that might be required in Adelaide?

Senator Vanstone—I understand that the person is an Adelaide person and that that is where their family is. I do not know that Mr Robb has any special workload in Adelaide, though.

Senator HURLEY—I want to talk about a citizenship issue that was reported in the *Australian* on 21 and 22 August this year. The report was that 110 Chinese nationals had managed to acquire passports illegally over a period of five years. Many also apparently went on to acquire citizenship illegally from, as I understand it, two corrupt DIMA officials. I was wondering if I could get an update on that case and whether it is currently before the courts.

Mr Metcalfe—Ms Ellis can assist. That is obviously not a new matter; it is a matter that has been around for a very long time.

Ms Ellis—Two people have been charged. One is a former department officer who was charged with one count of conspiracy to defraud the Commonwealth, one count of conspiracy of official corruption and another count of official corruption. The second person, who was a migration consultant, has been charged with one count of conspiracy to defraud the Commonwealth, one count of conspiracy to corrupt and bribe a Commonwealth officer, one count of conferring a benefit to or on a Commonwealth officer in order to influence or affect a Commonwealth officer, and 14 counts of making a false statement in an application by another person for an Australian passport. The charges relate to the alleged improper grant of Australian citizenship to 110 people who did not meet the normal residence requirements for grant of Australian citizenship. They were people who were permanent residents of Australia but had not spent sufficient time in Australia to meet the residence requirement.

Mr Metcalfe—There is a provision in the Citizenship Act—if memory serves me correctly, it is section 13(4)(b)(i)—which provides a discretion to waive some or all of the residential qualifying period where there is a very strong, demonstrated public interest for that to occur. Most usually it occurs in relation to compassionate cases, possibly relating to illness or spouses, or it may occur in relation to people who have a particular economic benefit to

Australia but who need to travel as Australians overseas. The case essentially turned on the accused former officer exercising that delegation. The allegation is that that was done improperly and for a benefit.

Senator HURLEY—For payment, in other words—he was paid to do that?

Mr Metcalfe—Yes. It is important to say, and you may have said something about this in the media, that I do not think there has been any suggestion that I am aware of—and Ms Ellis will correct me if I am wrong—that the actual individuals concerned understood that there was something improper. I think the understanding is that they believed this was simply a payment that was required to obtain Australian citizenship, but there is an allegation that there was effectively a conspiracy between the former officer and a migration agent to fast-track the applications in this way. They did relate to people who were permanent residents who did pay a sum of money above and beyond the normal application fee and did receive citizenship. But, as far as I am aware, there is no suggestion that the individuals themselves were actually aware that there was improper behaviour occurring. Given the gravity of what I have just said I will make sure that Ms Ellis confirms that I have accurately portrayed the situation.

Ms Ellis—Certainly the information I have is that the investigation established that none of the 110 cases involved migration related fraud, which is one of the bases for considering deprivation of citizenship, and the investigation was unable to locate sufficient evidence to support prosecutions for citizenship fraud or any other offences. So in terms of the individuals' status as citizens, there is no basis for considering deprivation under the act.

Senator HURLEY—So these 110 were granted permanent visas to Australia, came to Australia and then contacted the migration consultant and were fast-tracked for their citizenship. They entered Australia perfectly legally, with legal visas and legal passports. Is that right?

Ms Ellis—There is nothing to indicate that there was anything inappropriate in terms of their permanent visa applications. The investigation established that none of the cases involved migration related fraud. They acquired permanent visas, they entered Australia and spent some time in Australia but then spent considerable periods of time outside Australia. The provision that Mr Metcalfe referred to says that, where people have not spent time in Australia as permanent residents solely because they have been involved in activities that are beneficial to the interests of Australia, those activities can be taken into account and the time overseas can be treated as if they had spent time in Australia. It is not so much a fast-tracking in that it was not a matter of them having spent only, for example, a month as a permanent resident. It was about an allegedly improper assessment that the time that they spent overseas was involved in activities beneficial to Australia and therefore could be treated as if it was time spent in Australia. That is the nub of the case, if you like.

Senator HURLEY—I understand that they were from China.

Ms Ellis—China and Hong Kong.

Mr Metcalfe—That is now all China.

Senator HURLEY—Yes. Did they come to Australia as migrants initially?

Ms Ellis—Yes. They came on permanent visas.

Senator HURLEY—Then they left Australia to work elsewhere.

Ms Ellis—They left Australia for whatever reason. At the time the applications for citizenship were made, it would have been at least two years after they had first entered Australia as the holder of a permanent visa, but they had not spent the required period of time physically present in Australia. The discretion in the legislation enables a decision maker, taking into account policy guidelines, to treat periods spent outside Australia by the holder of a permanent visa as a period spent in Australia if the individual was involved in activities beneficial to the interests of Australia. In these cases, the Commonwealth is alleging that it was improper to exercise that discretion.

Senator HURLEY—How was it detected?

Ms Ellis—The department became aware of the alleged conspiracy in February 2000 during an internal investigation into concerns raised by the regional director at the Rocks office in Sydney. The findings of the internal investigation were referred to the AFP in July 2000. Within a fortnight or so, a joint AFP-DIMA investigation commenced.

Senator HURLEY—I will leave that section there. I have a question about the amendments to the citizenship bill. Among the new amendments is one that says that any stateless individual who is born in Australia—we are dealing with a very small group of people here, I admit—who has been jailed overseas for a foreign crime is not eligible for Australian citizenship.

I was just wondering if that opens the possibility for someone who was jailed for treason, sedition, or something like that, under an oppressive foreign regime, finding themselves barred from Australian citizenship despite it being a regime that Australia might not recognise—Saddam Hussein, for example.

Ms Ellis—I understand that a briefing has been provided on this and that you were advised that the provisions are consistent with the UN convention on the reduction of statelessness. Theoretically, yes, it is possible, but we know of no case that would fit those particular circumstances. It would be a highly unusual case. It would be about a person who was born in Australia, left Australia and acquired another citizenship, perhaps renounced their Australian citizenship, committed an offence but somehow found themselves back in Australia. It would be highly unusual, and we have struggled to come up with a scenario that would put someone into that category.

Senator HURLEY—I will move on now to the citizenship testing discussion paper. Can you tell me what consultation occurred before the citizenship discussion paper was released?

Ms Forster—The consultation consisted primarily of talking to our colleagues in various countries about the arrangements that they have in place. Those were the external type of consultations we were involved in. The rest were primarily internal consideration of the information that had been provided by those countries and in consultation with them.

Senator HURLEY—So the reason for proposing the test was not put to various interested groups in Australia; it was discussed in the context of foreign countries having tests.

Mr Vardos—It was an internal government policy contemplation, and from that there was the consultation with like countries that had this sort of test in place. The external consultation

is the process that is underway now, testing the various issues that have been outlined in the paper.

Senator HURLEY—Has there been an assessment about the cost in Australia of administering such a test?

Mr Vardos—There are no firm costings on that yet, no. We do not, at this point in time, have a scenario that is able to be costed. That is still a work in progress.

Senator HURLEY—There must have been some consideration of how it might be funded—for example, whether it might result in an increase in the application fee for citizenship.

Mr Metcalfe—Those are all matters that would be considered by government in due course. We are currently in a public consultation phase. I imagine that the parliamentary secretary will then consider that advice and input from the community. It is then an issue for him as to whether he wishes to proceed with formal submissions within government processes. Were there to be a test introduced, there certainly would be costs of administration, and I would certainly be keen to see the Department of Finance and Administration appropriately fund us for whatever costs are involved. Those are all government deliberation and budget process issues that are nowhere near complete at this stage.

Senator HURLEY—I must say I was a bit surprised that it was not one of the topics raised in the discussion paper. I would think it might affect people's view of whether there should or should not be testing if it adds significantly to the cost of applying for citizenship, for example.

Mr Metcalfe—Those are all policy issues for government, ultimately.

Senator HURLEY—So it is not a matter for discussion; it is something that the government will decide.

CHAIR—It is not a matter that Mr Metcalfe can engage in.

Mr Metcalfe—It is a matter for the parliamentary secretary as to how he may wish to discuss that. He is obviously seeking community feedback on some important issues.

Senator HURLEY—How many submissions have been received to date on this?

Mr Vardos—We have received somewhere between 600 and 650 responses. They are not all in the form of submissions. There is a lesser number of what you would classify as submissions in response to the discussion paper. Many are email communications of one line or one paragraph. But, in all, there have been somewhere between 600 and 650 responses of some kind.

Senator HURLEY—What kind of break-up is there between supporting and opposing the changes?

Mr Vardos—I will ask Ms Forster to answer that question. Thus far we have only done what you would describe as a superficial analysis. The detailed analysis will not happen until the closing date, which is 17 November, and we will consolidate that in a report to the parliamentary secretary.

Ms Forster—Of the responses that we have received, around 60 per cent have indicated their very clear support for introducing formal citizenship testing. Around 20 per cent have indicated opposition to the introduction of testing. The remainder have not stated a view but they either have made some suggestions about the implementation of the parameters of testing, should it be introduced, or have simply written, saying, ‘Thank you for the discussion paper,’ and have not stated a view.

Senator HURLEY—Was the discussion paper made available in other languages?

Mr Vardos—No.

Senator HURLEY—Why was that? Was there not enough time or was it not considered necessary?

Mr Vardos—It was not considered to be in the context of the purpose of the exercise.

Senator HURLEY—So what was the purpose of the exercise?

Mr Vardos—To get a broad community response to the issues raised in the paper.

Senator HURLEY—And you do not consider that people who might have difficulty with the English language might be part of the broader community?

Mr Vardos—We wanted to go beyond what you would classify as the CALD—the culturally and linguistically diverse community—and seek views from a sector of the Australian community that does not normally get engaged in issues of this nature.

Mr Metcalfe—Advertisements about the fact that the paper was available were placed in major national and regional newspapers and 39 ethnic newspapers, so I do not think there would be any reasonable suggestion that people who may speak languages other than English would be unaware that there has been a discussion, a debate, in Australia on this issue. We certainly have received no feedback that anyone has had an access problem in relation to the issues concerned.

Mr Vardos—The advertisement appeared in 39 ethnic newspapers in all.

Senator Vanstone—I think there is a further point to make, apart from the advertising, and it is that the advocacy groups for particular communities, even if they see themselves as more pastoral care groups, would be aware, through this advertising and through their normal liaison with the department, of what is happening. That is one aspect. The other aspect is that someone who does not at the moment speak English, because they are a very newly arrived person or because they are one of the, thankfully, small group of people who have never mastered any real degree of fluency, has friends, family and, importantly, children and grandchildren who do speak English. I think you can rely on them to be spokespeople for the situation of their grandmother, for example, who might have come here some time ago and has never mastered English. They might be apprehensive about grandma’s capacity to have done so at a time that it was relevant. I do not think there are many, if any, cases of people who do not speak English and have no friends or family who would recognise that situation and have something to say about it.

Senator HURLEY—I understand that quite a few countries do have some kind of citizenship testing program.

Ms Forster—That is correct.

Senator HURLEY—How many countries did you consult about the citizenship test and/or the English language test?

Ms Forster—At the back of the discussion paper you will notice that we have details about four countries that we were able to consult with directly on the type of testing arrangements they had in place, in terms of both the knowledge component and their language testing area. Those countries were the UK, the USA, Canada and the Netherlands. They are the ones that we were able to obtain detailed information on. The UK and the Netherlands had the most recently introduced testing areas and in both a significant component is about the local language as well as the knowledge of that country. Both of those countries happen to combine their testing into one test, so the knowledge and the language are part of the one process. The Netherlands is a little bit different in terms of their integration test.

Senator HURLEY—Do any of those countries have a separate test for English language?

Ms Forster—The US separately assesses the language component of an applicant's English reading, speaking and writing skills. That is separate from questions that are also asked about the knowledge that a person has about US history and government.

Senator HURLEY—Is that just a sort of interview?

Ms Forster—Yes, as well as reading passages and comprehension. That is quite a separate process, whereas in the UK it is a computer based test that is set at a particular standard of English language and testing the person's knowledge is part and parcel of that test, which is set at a specific English language level.

Senator HURLEY—Part of the current citizenship requirement is passing an interview for English language proficiency.

Ms Forster—For basic English—that is right.

Senator HURLEY—And your assessment was that the USA test was more stringent than that?

Ms Forster—Yes, in the sense that the knowledge component is broader than our current requirements.

Senator HURLEY—I am just talking about the language test.

Ms Forster—That is right. Also the English language component does quite clearly have separate English reading, speaking and writing skills. Information that has been provided by US officials says that the requirement is met if an applicant can read, write and speak simple phrases and words in ordinary use. That is what they are testing.

Senator HURLEY—And that is not similar to our current test?

Ms Forster—No. It goes on further and says that the English reading test consists of reading sample sentences from an immigration officer, the English writing test consists of writing a sentence dictated by an immigration officer and the English speaking test, which is similar to ours, consists of a naturalisation interview. So it is different in nature from our current arrangements.

Mr Metcalfe—It is fair say it is more rigorous than our current arrangements.

Senator HURLEY—Did you consult with any countries that do not have a test?

Ms Forster—We have checked with New Zealand, and they do not currently have a formal type of testing arrangement. We touched base with Germany to see what Germany was doing because we had heard that they may have been entering into formal testing arrangements in the future.

Senator HURLEY—And are they?

Ms Forster—They are still considering that. They have some provision at the local level, it is similar to state based arrangements, and they are looking at what they may be able to do at the federal level as well.

Senator HURLEY—How are they doing their consultation?

Ms Forster—I am not aware of the details. I can provide those later if you wish.

Senator HURLEY—No, that is fine.

Senator Vanstone—The New Zealanders could not have a verbal test because none of us would understand the questions anyway! I was there recently and someone pointed out to me that they were told to go and stand in the chicken line and it was the check-in line.

CHAIR—This is enhancing the estimates discussion!

Senator Vanstone—It is absolutely ridiculous for New Zealand to have that test. They should be setting up a vowel museum so that children can go and see—

CHAIR—Some of my best friends—

Senator Vanstone—something about what vowels—a, e, i, o, u—

CHAIR—and family—

Senator Vanstone—used to mean in the English language.

CHAIR—diplomatic associates and all sorts of people.

Senator Vanstone—Sorry?

CHAIR—Nothing, Minister.

Senator Vanstone—No, I love the New Zealanders but they do speak a different language.

Senator HURLEY—When you were consulting with those foreign countries did you ask about the costings of their tests?

Ms Forster—I can recall that we certainly asked some questions about the fee that people were paying. I believe that is actually in the paper. We asked, if an applicant was applying to do the test or was applying as part of their citizenship application, what fee was imposed at that point.

Senator HURLEY—But you did not ask how much it cost the government to conduct a test?

Ms Forster—I cannot recall in any detail any answers given on that but we certainly did ask about the nature of the development of the testing arrangements and the type of cost recovery that may have been looked at by those governments to introduce testing.

Senator HURLEY—When you say you asked about cost recovery you mean the fee?

Ms Forster—Yes.

Senator HURLEY—You are doing consultation and, presumably, you get some individuals and mostly groups responding. Is there any intention to perhaps survey recent migrants and find out if any of them would be dissuaded from trying for citizenship if this testing were introduced?

Ms Forster—There are no plans at this stage to specifically talk to recently arrived migrants. However, the umbrella organisations and community groups are well being consulted. While we have yet to receive many formal submissions from umbrella organisations, we do expect them to be taking up those types of issues. They will be presenting us with formal submissions some time before 17 November.

Senator HURLEY—It is actually the 24th, isn't it?

Ms Forster—No, 17 November.

Mr Vardos—It is the 17th for the citizenship discussion paper. We have extended the deadline by a week for the humanitarian settlement discussion paper.

Senator HURLEY—Sorry, so it is still the 17th. There has been a great deal of discussion about the English language testing component in particular, including from the government's own backbench. Mr Petro Georgiou indicated that he did not believe it was necessary, and I suppose that is on the basis that many people came to this country and contributed to the country but did not necessarily speak English or speak English very well.

My concern, in particular, is that many of those people who did not speak English very well then—and do not speak it very well to this day—were women who were at home with the children and had limited opportunities to interact very much with other people or to maintain the English language even if they did learn it. That is something that I am worried about. We know that a lot of the new migrant groups have large families. Obviously, if you have four, five or more children, it is very difficult to get the time to learn English, to stick at it and to get out and interact with the community in a way that maintains retention of language. Has there been any consideration given to those particular issues? I know, for example, that there is a proposal that there be an age limit. I am very concerned about those types of women.

Senator Vanstone—I am very concerned about them, too, for a particular reason, and that is that many of us know of people who have been in just that predicament and therefore have not learnt as much English as they otherwise might have wanted to learn—for the very reasons that you outline—and, because of that, they are not now in their later years enjoying the wider range of benefits that they might be able to enjoy had they been able to learn English. That, I think, is one of the key motivators for making English a higher priority than it has been—and for better English.

Of all the migrants who have come here, if you want to pick a group that might have missed out on the full opportunities, it would be women. That is not to do with any particular ethnic group that treat women in one way or another. I think, internationally, women now have greater opportunities than they had in the past. That older group of women who came here, who were at home with the kids and did not get those opportunities, have really been locked out of so much that Australia offers. I would be very keen to see that that never happened again—that we can stop that. The only way we can stop that is with carrots or sticks.

You can put sticks in if you like, but I cannot see that as being very helpful. Whereas if you can say that citizenship requires this, I think it is an incentive for those women and those families to make the extra time and effort so that they do not get locked out. I think that is critical. They are one of the key groups that will miss out if we do not do something like this. The guys who go along and get a job will pick it up in the workplace and the kids will get it at school. I think the group that needs a motivator for more English being taken up and sooner is women—the very group that you describe. I would also add that, if it is too much to use it as an incentive or an expectation for those women, you might like to speak to your leader about whether it is feasible to ask tourists to pass some sort of quiz or test on Australian values before we give them a tourist visa.

Senator HURLEY—Minister, it is all very well to give someone an incentive to learn English, but you also have to provide them with the means. You and I were at an African women's group of over-40s yesterday.

Senator Vanstone—That is right, but it was the day before, actually.

Senator HURLEY—All of those women said that they found, because of their literacy problems and their lack of schooling, the 610 hours inadequate and very few of them could speak good English at that stage. You may profess to care about them but, unless you provide additional services to those women to enable them to learn English, they are never going to do it, they are never going to become citizens and they are going to miss out on even more.

Senator Vanstone—I would make a couple of points in response to that. I will not say that you are not worried about whether they learn English, but you make the point that you would not use citizenship as an incentive for them to be drawn towards that. Yes, there were some women we saw the other day who had some difficulties with English but there were some who had fantastic English—particularly taking into account the period of time that they had been here. I can remember talking to one woman and thinking, 'Heavens, if I went to China, there is no way that I would be at that level of fluency in that period of time.' You never know until you are immersed in a community how you will go in that respect, but I accept that there are people with difficulties and I accept that there was some expression of that.

There was also an expression of difficulty not so much with the hours available but with the rate at which some of the classes are conducted. I understand that. That is another issue. It is a valid issue. I am not saying it is not important; it is important. But it does not go to the point of whether we want people and we want to provide an incentive for people to master sufficient English so that they can unlock all the opportunities that Australia provides.

If the unhappy event was to occur that the next election was lost and Labor won government, they would try to introduce what I think is a stupid policy—namely, that we have some sort of quiz for tourists that come here—which we of course know will not happen because it is ridiculous. We spend more time and effort on that than we are prepared to spend on encouraging future citizens to speak English. It is crazy.

Senator HURLEY—I would think, if you are talking about stupid policies—

Senator Vanstone—It is not your craziness.

Senator HURLEY—that it would not be a stupid policy to put in place the means to learn English before you put in place the disincentive in the form of testing.

Senator Vanstone—I should have added that it is not only the classes. Those women will also learn, as will their partners, from their children. A guy in my office when we were discussing this recently said his grandparents are migrants and that is how his grandparents learnt English—from the kids. So it is not just a function of the hours and it is not just a function of the rate of the classes. They are valid issues to raise; I am not trying to dispute that. I am just saying that that is not the only issue here and the key one is unlocking the opportunities that Australia offers. That will never happen. Too many people have come here, and they are predominantly women, who have missed out on those opportunities. We will look at anything we can do by way of incentives and, if we have to, improving our English classes. Incentives, especially for that group, to master English so that in later life they can have all the opportunities are very important.

Senator HURLEY—I suggest what will happen is that those people will simply not seek citizenship or, if they fail, they will give up. Has there been any evaluation from those foreign countries of the level of take-up of citizenship before and after the introduction of the test?

Ms Forster—I cannot recall any details about that issue specifically, other than that the UK introduced formal citizenship testing in November 2005 and they said to us that they will be looking a year after that date at the implementation of it, how it has all gone and any changes et cetera that have taken place. That is still something that they are looking at doing in the future, according to the people that we were talking to.

Senator HURLEY—So they have not done their evaluation yet. Have the Netherlands or any other countries done an evaluation?

Ms Forster—I do not know the answer to that; I am sorry.

Senator HURLEY—Can you find out for us?

Ms Forster—We can ask the question, yes.

Senator HURLEY—Thank you. So we do not have the data about how it affects the take-up of citizenship. We have currently got a program to encourage people to take out citizenship. It is a very expensive program. I think, according to the annual report, the contract for working up the advertising for the citizenship program is \$1.3 million to Singleton, Ogilvy & Mather.

Ms Ellis—The cost of the development of the ad was \$1.17 million, and it was Singleton, Ogilvy & Mather.

Senator HURLEY—So we are running this expensive program encouraging citizenship and we do not have any assessment of what will happen if we introduce testing. Has there been any thought as to what will happen if it does reduce the number of people taking out citizenship and what implications that will have for us?

Mr Metcalfe—Something it is probably worth my contributing to this line of questions is that from my recollection—and Ms Ellis may correct me—the overwhelming majority of persons eligible to take out Australian citizenship on the basis that they are residents of Australia who have chosen not to do so are UK nationals. Therefore, the issue of any English language test would be, I presume, completely irrelevant. Although I think that some of them have traditionally seen that there are no particular benefits of acquiring citizenship, we believe that there are very strong benefits in order to fully contribute to participation in Australian society, hence the rationale for advertising campaigns. It is not exclusively for those people, but I think there are many hundreds of thousands of those people, and if this campaign can assist some of them to realise the benefits of citizenship then that is a good thing.

Senator HURLEY—It is true that UK citizens are supposedly the slowest to take it out. They would probably have the least trouble with the English language testing and the other citizenship testing. It seems to me that you are now working at the other end to reduce the number of new migrants who do not take up citizenship either.

Senator Vanstone—No, the point that is being made is that the people who do take up citizenship are people who come from not mainly English-speaking countries—that is the point.

Senator HURLEY—Yes, and you are making it more difficult for them.

Senator Vanstone—No, I think what the secretary is saying is that this is the group that has the keenest interest in becoming citizens.

Mr Metcalfe—The point I am making is that there is nothing inconsistent with having a strong and positive campaign to publicise the benefits of Australian citizenship, at the same time seeking to ensure that people becoming citizens are able to fully participate in Australian society through their ability to communicate and also to have some knowledge and understanding of what Australia is about. I do not see any inconsistency. Citizenship promotions and advertising are things that have been around for a long time. I recall that 1988 was the Year of Citizenship. I remember being at the citizenship ceremony when Warren Mitchell—Alf Garnett—became an Australian citizen, for example. So these are not new.

Senator Vanstone—Is that right?

Mr Metcalfe—Yes, that is correct. It was at Sunshine in Victoria. I was there.

Senator Vanstone—Is he still alive?

Mr Metcalfe—I am not sure.

Senator HURLEY—Speaking of citizenship ceremonies—

Senator Vanstone—I know Leo Sayer has become a citizen.

Senator HURLEY—The parliamentary secretary, Mr Robb, when he launched this discussion paper, talked about a walkout of people during a citizenship ceremony he attended.

He said that this was one of the reasons he was putting forward the discussion paper: because people did not value citizenship. They went out, I understand, before the Australian national anthem was played. I think that this is a serious issue and it certainly never happened in any of the many citizenship ceremonies I have attended. Has there been any kind of inquiry about what is happening in Sydney? Is this a widespread problem or a one-off? What is happening?

Ms Ellis—There was a report in one of the Sydney newspapers that at a ceremony that was hosted by a local council—I understand it was quite a large ceremony—a number of people, having made the pledge of commitment, become citizens and received their certificates, had left. The report indicated that that had happened. I am not sure that an inquiry into that would achieve much other than verifying that it did happen. It is certainly not something that we would encourage at citizenship ceremonies. There is an expectation, and certainly at the ceremonies that I have attended over the last three years I have not seen people leave.

Senator Vanstone—No, but it is fair to say that I have been to some ceremonies where the thought has crossed a number of minds because, frankly, some ceremonies are far more efficiently run than others; and some ceremonies, by virtue of where they are and how regularly they are held, are extremely long. I think that if a family had a commitment and they needed to go, if they had made their pledge and had been through all the legal aspects, we could be a little bit understanding about them not hanging around for the national anthem and some scones.

Senator HURLEY—This was the reason Andrew Robb said he wanted to introduce citizenship testing, because he was so appalled by this behaviour.

Senator Vanstone—He has seen the report and I have not. I am just making a general point. There may have been an appalling circumstance to which he refers; but I am sure you will find that is not his only reasoning.

Senator HURLEY—Was this a one-off that Andrew Robb encountered? Has there been any attempt to contact councils in the Sydney area to find out what is happening—if they are not following protocol, or the ceremonies are too large, or what is happening?

Ms Ellis—It was not a ceremony that the parliamentary secretary attended. It was an instance that was reported in the media.

Senator HURLEY—So he was not actually there? He did not see it for himself?

Ms Ellis—No.

Senator HURLEY—He read about it over breakfast and got horrified, did he?

CHAIR—That is an observation you are making, Senator.

Senator HURLEY—Yes, sorry, Chair.

Senator Vanstone—That might be an exaggeration, which adds to a possible exaggeration in the media of what Mr Robb originally said, which might in fact be an exaggeration in the media of what actually happened.

Senator HURLEY—The reason that the previous minister, Mr Cobb, gave for changing the waiting time from two years to three years was that he wanted people to get to know Australia and to go to the pub and have a few beers. That is strange decision making.

Senator SCULLION—That is great stuff if you are in the Territory.

Senator HURLEY—It might work in the Territory, but a lot of people do not drink, Senator Scullion, and are not keen on going into pubs.

CHAIR—You are literal, aren't you, Senator Hurley?

Senator Vanstone—I myself have not been drinking for 12 weeks.

Senator HURLEY—In the absence of other reasons for doing all these things, we have to take ministers and parliamentary secretaries at face value. If they say they want people to drink beer or stay at citizenship ceremonies or else they will introduce draconian measures, we have to take them at face value.

Senator Vanstone—Of course you are right when you say you have to take what someone says at face value, but the mistake is when you take only one sentence and do not look at the full context of what was said. That is taking it out of context, and to pretend that it is treating it at face value is engaging in some sort of mental gymnastics.

CHAIR—You are not suggesting depth of analysis, are you, Minister? That is a radical suggestion!

Senator Vanstone—I just think that to take one remark and treat it as being a minister's thoughts at face value is a mistake.

Senator HURLEY—Let's stay on citizenship ceremonies—

Senator Vanstone—For 11½ minutes more.

Senator HURLEY—I have got more after that, don't worry.

CHAIR—Yes, but unfortunately, Senator Hurley, the committee will adjourn at 11 pm so they will need to be placed on notice.

Senator HURLEY—Yes, that is unfortunate. There was another media report—and it may not be correct—saying that the US Consul-General gave a formal speech at a citizenship ceremony about what it is like to be an Australian citizen.

Senator Vanstone—Who made the speech?

Senator HURLEY—The US Consul-General in Sydney.

Senator Vanstone—Oh yes, you asked me about that.

Senator HURLEY—I just wondered if you had any answers about that—how that happened and whether—

Senator Vanstone—I think I will have some comment for you on that matter.

Ms Ellis—We have been advised that the former mayor at the particular council had invited the US Consul-General after meeting him at a function, as he thought he would be a very interesting speaker and also because of the number of consulates in the area. He apparently spoke for three to five minutes about the countries he had visited, how much he liked Australia, and how lucky the conferees were to be living here. He also spoke about what he thought the benefits were to living in Australia, and the beauty of the local area.

Senator Vanstone—Not all of that in three to five minutes, he didn't.

Ms Ellis—This is what I am told. He also reflected on the democratic rights of Australians and made a small reference to the minister's speech. We have been told this was the shortest speech a guest speaker had ever delivered.

Senator HURLEY—That is probably because he did not give the full minister's blurb.

Senator Vanstone—He probably got a huge round of applause so that everybody could go and have an orange juice or a beer.

Senator HURLEY—And sing the national anthem.

Senator Vanstone—And sing the national anthem.

Ms Ellis—The presiding officer was the mayor. The presiding officer did the usual formalities of reading the preamble, taking the pledges and reading the parliamentary secretary's message.

Senator HURLEY—So the US Consul General was not there representing—why did he read out the minister's speech, then?

Ms Ellis—He did not read out the minister's speech. The advice I have is that the mayor, the presiding officer, read the parliamentary secretary's message.

Senator Vanstone—I think I might have said to you at the time that I was not concerned if someone was a guest speaker but I would be if they purported to engage in the formalities. Apparently, on the advice we have, this person did not do that.

Senator HURLEY—There is an important issue that I want to touch on which deals with promoting the benefits of cultural diversity, and that is multicultural policy. The government's current multicultural policy, the informal document, expires in a little less than two months time. I wonder what consultation the government has undergone to update its current policy or indeed if it is going to update the current multicultural policy.

Mr Vardos—Mr Robb is contemplating the updating of the policy at the moment. It is in his in-tray, on his agenda.

Senator HURLEY—As I said, this policy comes to an end in two months time. I take it that if it is still under consideration there will be insufficient time to put any proposed new policy out for consultation.

Mr Vardos—It is Mr Robb's call. There will be an appropriate forum when he announces the new policy to replace the current policy document, which is *Multicultural Australia: united in diversity*.

Senator HURLEY—Is it not regarded as a priority? When the current policy was considered, I think a year beforehand there was discussion about which direction it would take. Why is it that this has not been regarded as a priority?

Mr Vardos—You may recall that at budget estimates we advised that the government had extended funding for multicultural policy and programs into the out years and had given forward commitment into the next three years. The policy statement draws on the extensive consultations that occurred last year as part of the evaluation of multicultural policy and programs and Mr Robb's own analysis of the issues since he took over the job.

Senator HURLEY—When did Mr Robb take over the job?

Mr Metcalfe—January this year.

Senator HURLEY—And nothing had begun before then? There had been no discussion about what would happen with this policy?

Mr Vardos—As I said, there was extensive consultation in the context of evaluating multicultural policy and programs during last year which we have spoken of at length in this forum. That is a substantial body of work that has informed the government's renewal of multicultural programs in the last budget and Mr Robb's own thinking, plus his own assessment of the issues over the past 10 months.

Senator HURLEY—Given that there is this body of policy work being done, why are we going to be overdue for the policy, or is he going to just write the policy on his own?

Mr Vardos—Clearly we are doing policy development work for him for his consideration. What actually comes out at the end of the process is his call and the government's call. I would not like to speculate beyond that.

Senator HURLEY—Given that for the current policy there was a discussion paper put out well in advance for public consultation, it seems clear to me that there is going to be no public consultation this time; that, if it is going to be on time, it is just going to be a document that people have to accept.

Dr Nguyen-Hoan—We have done the consultation, Senator, during late 2005. That was part of the evaluation that Mr Vardos referred to earlier.

Senator HURLEY—I think evaluating programs and having a general discussion about multicultural policy and providing input is a different thing to actually seeing a document that says in which direction the government is going to head and what it thinks is the definition of multiculturalism in Australia and what it can mean. That is a different process, isn't it? You are not giving people an opportunity to see what the government makes of that consultation—and that is what I am talking about.

Mr Metcalfe—Senator, I really do not think we can assist you much more on this. I think we have said three times now there was an examination last year, Mr Robb has clearly been looking at these issues and ultimately it is a matter for the government as to how it consults and how it goes about doing those issues. I do not think the department can actually answer the question or proposition that you have just put.

Senator HURLEY—Well, I suppose to just finally clarify: there is no consultation paper on the policy about to go out?

Mr Vardos—No, there will be no discussion paper specific to the forthcoming policy statement.

Senator HURLEY—There is no point in starting another topic now so I will put the rest of the questions on notice. Thank you, everyone.

CHAIR—That concludes our consideration of supplementary estimates for the Immigration and Multicultural Affairs portfolio. Mr Metcalfe, I thank you and your officers. You will recall the return date for answers to questions on notice is 13 December. Minister,

thank you for your time today. I declare this meeting of the Senate Legal and Constitutional Affairs Committee closed. The committee will resume at 9 am tomorrow with consideration of the Attorney General's, Justice and Customs portfolio budget estimates.

Senator Vanstone—Thank you, Madam Chair and committee members, for your civility; and Hansard and the secretariat.

Committee adjourned at 10.58 pm