



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Consideration of Additional Estimates

TUESDAY, 20 FEBRUARY 2001

CANBERRA

BY AUTHORITY OF THE SENATE

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Tuesday, 20 February 2001

Members: Senator Payne (*Chair*), Senators Coonan, Cooney, Greig, Mason and McKiernan

Senators in attendance: Senators Cooney, Ferguson, Harradine, Ludwig, McKiernan, Payne and Schacht

Committee met at 9.01 a.m.

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

Consideration resumed from 22 November 2000.

In Attendance

Senator Ellison, Minister for Justice and Customs

Senator Hill, Minister for the Environment and Heritage

Senator Ian Macdonald, Minister for Regional Services, Territories and Local Government

Department of Immigration and Multicultural Affairs

Executive

Mr Bill Farmer, Secretary

Mr Andrew Metcalfe, Deputy Secretary

Refugee Review Tribunal

Dr Peter Nygh, Acting Principal Member

Ms Susan McIllhatton, Senior Member

Ms Jill Toohey, Registrar

Outcome 1 – Lawful and Orderly Entry and Stay of People

Mr Abul Rizvi, First Assistant Secretary, Migration and Temporary Entry Division

Mr Todd Frew, Assistant Secretary, Temporary Entry Branch

Mr Bernie Waters, Assistant Secretary, Business Branch

Mr Chris Smith, Assistant Secretary, Migration Branch

Ms Jenny Bedlington, First Assistant Secretary, Refugee and Humanitarian Division

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Mr Vincent Giuca, Acting Assistant Secretary, Humanitarian Branch

Mr John Okely, Assistant Secretary, International Cooperation Branch

Ms Philippa Godwin, First Assistant Secretary, Detention Task Force

Mr Peter Vardos, Assistant Secretary, Unauthorised Arrivals and Detention Branch

Mr Greg Kelly, Director, Detention Operations Section

Ms Linda Webb, Executive Coordinator, Detention Strategy

Ms Mary-Anne Ellis, Assistant Secretary, Detention Strategy Group

Ms Lesley Daw, Acting Assistant Secretary, Detention Services Contracts Branch

Mr Dario Castello, Acting First Assistant Secretary, Border Control and Compliance Division

Mr John Sargent, Acting Director, Investigations Policy and Coordination Section
Ms Mary-Anne Sakkara, Director Onshore Compliance Section
Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division
Mr John Matthews, Assistant Secretary, Legal Services and Litigation Branch

Outcome 2 – A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably

Mr Peter Hughes, First Assistant Secretary, Multicultural Affairs and Citizenship Division
Mr David Page, PSM, Assistant Secretary, Settlement Branch
Mr David Doherty, Assistant Secretary, Citizenship and Language Services Branch

Internal Products

Mr Vincent McMahon, PSM, First Assistant Secretary, Corporate Governance Division
Mr Steve Davis, Assistant Secretary, Resource Management Branch
Ms Louise Archer, Director, Budget Strategy Section
Mr Douglas Walker, Assistant Secretary, Visa Framework Branch
Mr Hamish Lindsay, Acting Assistant Secretary, Ministerial and Communications Branch
Mr Ed Killesteyn, Executive Coordinator, Business Solutions

Australian Government Solicitor

Mr Bert Mowbray, General Counsel (Immigration)

CHAIR—The committee will consider the portfolio in the order which appears on the circulated agenda, beginning after any general questions with the interstate agencies. At the conclusion of this hearing, a date will be set for receipt of answers to questions taken on notice and additional information. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the Order of the Senate dated 23 August 1990.

I have been requested to remind committee members that the Finance and Public Administration Legislation Committee continues to monitor the format and content of the portfolio budget statements, and if there are any comments that you wish to make about these documents they should be placed on the public record during these estimates hearings or directed at a later date to the committee. I would also remind everyone present that mobile phones must be turned off while in the hearing.

Department of Immigration and Multicultural Affairs

CHAIR—I welcome again Senator the Hon. Chris Ellison, the Minister for Justice and Customs and the Minister representing the Minister for Immigration and Multicultural Affairs, Mr Farmer and the officers of the department and associated agencies. Officers will not be required to answer questions relating to policy or the advice they have given in the formulation of policy. Minister, do you or Mr Farmer wish to make an opening statement?

Senator Ellison—I have no opening statement, Madam Chair, but I believe Mr Farmer does have one.

Mr Farmer—Thank you. We thought it might be helpful, and of interest to the committee, if I were to provide a brief factual summary of some major issues that have occurred in the broad area of unauthorised arrivals since we last appeared before the committee in November.

Senator McKIERNAN—Excuse me, Mr Farmer. I do not want to be frantically taking notes and then have a printed copy of your statement afterwards. Would it be possible to be provided with a printed copy at the conclusion of your remarks?

Mr Farmer—I have a very untidy script, Senator, but I would be very happy to give it to you, if that would help. If you like, I will ask someone to make a clear note for you, but that may take half an hour or so.

Senator McKIERNAN—It would just save time, and prevent me from making mistakes in my notes, which I have done once before.

Senator Ellison—We will have them typed up and we will return to them so Senator McKiernan will have a chance to read them and ask questions on them.

CHAIR—Thank you, Minister.

Senator McKIERNAN—I do have some questions which may be related to the content of the thing. If the answers are there in your speech it will save time.

Mr Farmer—Since November, 1,315 people have arrived in Australia unlawfully by boat. That is a marked reduction compared with the same period last year when the figure was 3,104. There has also been a reduction in unauthorised air arrivals: down from 1,695 in the first seven months of 1999-2000 to 897 in the first seven months of the current financial year. The dangers of illegal travel to Australia have also been highlighted since we met. On 22 December, at least three people, having arrived illegally by boat, are believed to have drowned off the coast of north-west Australia.

We have continued to be involved in a range of international actions to stem the flow of illegal arrivals. This is in fulfilment of a strategy of building a network of arrangements with countries of first asylum and transit, designed to deter people leaving their country of first asylum in the first place or to intercept them on the way. An important element in constructing that network of relationships has been the close involvement of Mr Ruddock, who visited the Middle East, Sweden and Geneva in January to that end. Efforts have gone into building cooperative relationships with the countries of first asylum, such as Iran and Pakistan, and with countries of transit, such as Thailand and Indonesia, and they are beginning to bear fruit. We have established programs of technical assistance to enhance their capacity to fight people-smuggling. We are sharing information and intelligence. We signed an agreement in January with Syria on returns and we have hosted senior official delegations from Iran and Pakistan. Senior officials from DIMA have travelled to a number of countries since November, including Iran, Indonesia, Vietnam, the Philippines, Cambodia, Thailand and East Timor.

With Indonesia—a country of particular interest—we have established a good working relationship in close concert with the International Organisation for Migration and with UNHCR. Indonesia continues to intercept and detain people who are en route to Australia by boat—around 1,000 so far. IOM then interviews those detained and refers to UNHCR those claiming a protection need. Over 90 people not in need of protection have been removed by IOM. Attempts are being made to find a durable solution for those mandated as refugees by the UNHCR—just over 400. There are currently 546 illegal immigrants detained in Indonesia under regional cooperation agreements. With Vietnam, we are making progress in discussions with the Vietnamese authorities regarding criminal deportations. Senior officials met last week to discuss a draft memorandum of understanding to enable the return to Vietnam of criminal deportees. We assess that these negotiations are progressing very positively. We will move them along as quickly as we can.

I would like to say something about our interception efforts overseas involving airline liaison officers and immigration compliance officers. There is a good degree of cooperation between our airport liaison officers, the airlines, the national authorities in the countries in

which they operate and with other countries of destination. These officers have proved very effective in spotting fraudulent documentation and, as a result, are making the activities of people-smugglers more difficult, higher risk and more expensive. The numbers of officers working specifically on illegal people movement overseas has increased from 11 in 1998-99 to 35 in this financial year. The measure of their effectiveness is that the numbers of illegal arrivals at Australian airports have gone down and that the interdictions of Australia-bound inadmissible passengers overseas are decreasing.

I would like to make a comment about things that have happened over the last couple of months which illustrate that Australia is not alone in facing this complex issue of unauthorised arrivals. In Canada, some 1,500 refugee claimants with tuberculosis are reported to be living in the community, with some 500 refusing treatment for the condition. In Britain, we have seen reports that tens of thousands of asylum seekers have simply disappeared into the community and reports that the British Home Secretary, Jack Straw, has pledged a crackdown, saying that because of a lack of detention some were bound to disappear. We understand that the British government has now constructed one detention facility and has three others in the planning stage. We read that last weekend, in France, about 900 Kurdish asylum seekers were rescued from a ship believed to have been deliberately run aground off the Riviera by people-smugglers.

I would like to say a few words now about detention in Australia and processing issues. As at 16 February, there were a total of 2,456 people in detention. The figures were as follows: Woomera, 577; Curtin, 865; Port Hedland, 426; Villawood, 397; Maribyrnong, 87; and Perth, 27. In relation to processing and releases, our procedures for processing unauthorised arrivals in detention are now very much quicker and more streamlined than a year ago, consistent with the requirements of health, security, police and other integrity measures. Since mid-1999 the number of trained staff allocated to processing asylum claims has more than doubled.

While 80 per cent of protection claims made by boat arrivals in late 1999 received a decision within 7½ months, this had reduced to less than 15 weeks for applications made late in 2000. Many cases are now processed in well under 15 weeks. In terms of releases, holders of temporary protection visas were released into the community in 1999-2000 in the following number: 871. In the first seven months of the current financial year, there were 3,087 releases. The majority of TPV holders are released to Melbourne, Brisbane, Adelaide and Perth. Many travel on under their own arrangements to Sydney.

Since the committee last met with us before it, the situation in detention centres has remained volatile, with a less compliant population. Among particular issues and incidents have been the following. There was a death at Maribyrnong involving a visa overstayer who was due to be removed from Australia to Tonga. In an attempt to prevent his removal, the man climbed a basketball pole and subsequently died after jumping. Police took witness statements on the day of the death and the matter is now the subject of a coronial inquest. At Port Hedland, a group of detainees was transferred from Woomera to Port Hedland on 20 January. About 3 hours after their arrival, detainees became involved in damaging property. The next day some detainees identified as being involved in the first disturbance were removed. Other detainees demanded their return and about 100 detainees breached the internal gates, and police were called to assist with restoring order. Also at Port Hedland a detainee was charged with assault on a female ACM officer. Earlier this month ACM suspended an ACM officer after allegations of assault. Charges were subsequently laid by the West Australian police. Another ACM officer is also under investigation following allegations of assault by a detainee.

At Curtin on 27 January a significant number of detainees fought among themselves, resulting in a 40-year-old Iranian detainee being hospitalised with stab wounds and several others receiving minor injuries. The conflict was brought under control by ACM officers. At no time was the disturbance directed at ACM staff or immigration officers. Also at Curtin on Saturday, 3 February a large group of detainees confronted a small group of ACM officers, resulting in six ACM officers sustaining minor injuries. No injuries were reported by detainees. The identification of six cases of typhoid at Curtin and Woomera again reinforced the importance of our health testing on unauthorised arrivals. No detainee with typhoid was released. As a precaution, all 873 detainees in Curtin were re-examined specifically for typhoid, as were 320 detainees in Woomera, with no further cases of the disease being identified. Eighteen former immigration detainees were also being examined by health authorities in Victoria.

My reputation for understatement will be enhanced by my saying that immigration detention facilities are the subject of quite a bit of external scrutiny. I would like to say something about those just by way of a progress report, if I might. The report by Mr Philip Flood into the processes for dealing with and following up allegations of child abuse in detention centres will, we understand, be completed and given to the minister later this month. The finalisation and public release of the Commonwealth Ombudsman's report into the management of immigration detention facilities and immigration detainees held in state correctional facilities is also, we understand, to be released soon.

On 18 December South Australian Family and Youth Services issued a statement which confirmed its earlier finding that there was no evidence to substantiate allegations of abuse against a 12-year-old boy in the Woomera detention facility. As part of the department's policy of facilitating visits by external organisations to detention centres, the following groups have visited the detention facilities in the past few weeks: the Joint Standing Committee on Foreign Affairs, Defence and Trade (Human Rights Subcommittee) and representatives of a number of media organisations. I hope you find these matters helpful in your committee hearings today.

Finally, I hope you will allow me a brief personal comment. When I first appeared before this committee as Secretary to the Department of Immigration and Multicultural Affairs three years ago Senator McKiernan asked me a question about the approach I would adopt to the portfolio and in my reply I essentially said that I came to this position with a very strong regard for the competence and professionalism of DIMA officers. Three years on, I record my appreciation of my colleagues' dedication to the job. Across the range of our operations, including in some difficult and stressful issues, they serve with great fortitude, imagination and capacity. We do not get everything right, and I accept responsibility for those things, but what we do achieve is a tribute to a fine body of public servants.

CHAIR—Thank you very much for those remarks, Mr Farmer. We have on our agenda a proposal to commence with general questions before we move to the Refugee Review Tribunal. I know Senator McKiernan, before your statement, had some general questions to ask. I am sure he will have been encouraged more by that process. So I will Senator McKiernan if he wishes to begin.

Senator McKIERNAN—I think I can deal with all of the general questions under the program headings. It might be more orderly to do that rather than have a duplication of effort now. I am still interested in comparing your notes with my notes, Mr Farmer. I do, however, have some questions regarding IT outsourcing which I would like to place on notice. There

are quite a large number of them. At this stage I will refrain from general questions. I will deal with them in the course of the examinations.

CHAIR—That is very helpful. Thank you, Senator McKiernan. Do any other senators have general questions they wish to ask at this stage?

Senator COONEY—I would like to ask some questions arising out of the statement Mr Farmer made. You say you have full faith in the staff and have been very impressed with it over your three years. Have you got confidence in Australasian Correctional Management, ACM, that runs the centres?

Mr Farmer—We have an elaborate—and deliberately so—system for managing the contract with ACM.

Senator COONEY—I asked you whether you had faith in them. I take it from that answer that you have not.

Mr Farmer—No, I am saying we have a process that enables us to reach conclusions about the way in which ACM handles its contract.

Senator COONEY—Why would you do that if you had full faith in them? I simply asked whether you had confidence in them, and the impression I am getting is that you have not—which concerns me a bit.

Mr Farmer—Perhaps I am not conveying my view clearly.

Senator COONEY—I do not think so.

Mr Farmer—We have in any major contract a variety of mechanisms for monitoring the contract. That is what you would expect. The detention services contract has substantial elements of reporting and monitoring which enable us to reach conclusions about the way in which ACM does its job. So I have more than an impression, we have a quite detailed process for reaching views on how that contract is performed.

Senator COONEY—Do you have faith and trust in ACM?

Mr Farmer—Over the last two years there have been a number of highly challenging issues, many of which ACM has handled very well, in my view. There have also been a number of incidents where we believe things were not handled well, and we have pursued those with ACM.

Senator COONEY—Unfortunately, I am still left with the impression that I am not sure what you think of ACM. It sounds as though you have some considerable doubt about them. If that is so, why do you persist with them?

Mr Farmer—I have not used those words, Senator. I have tried to explain to you the basis on which we deal with ACM, the way in which we try to ensure that they administer our centres in accordance with the contract.

Senator COONEY—I keep asking the same question—I do not know how much clearer I can make it, I am sorry—

Mr Farmer—I think I have the same difficulty, Senator.

Senator COONEY—The question is: do you have full faith and trust in ACM? Every time I ask you that you balk at the answer, you will not answer it. I conclude from that that you have some doubts about them.

Mr Farmer—The contract does not contain any reference to faith or trust. It talks about detention standards which we expect ACM to administer. As I said, we have a quite well developed process to enable us both to do that and to take corrective action if it is not being done.

Senator COONEY—So your answer is that it is irrelevant as to whether you have full faith and trust in ACM?

Mr Farmer—We have a commercial relationship with them, Senator; that is right.

Senator COONEY—So you say that what you think as to whether they are good or bad is quite irrelevant?

Mr Farmer—No, not at all.

Senator COONEY—I am not sure what you are saying.

Senator Ellison—Madam Chair, I think the thing here is that Senator Cooney has asked Mr Farmer about whether he has faith or trust in ACM. Those words are somewhat subjective, and Mr Farmer is saying, ‘We have a contract in place, there is quality assurance and we assess the performance of ACM in relation to that contract.’ I think we are perhaps on two different wavelengths here. If Mr Farmer were asked about how that contract had gone, the evaluation of it, and if they had fulfilled their requirements, that would be a little different to being asked about faith and trust, because that really is a more subjective view. To bring that into a contractual situation is a bit different. If you had asked, ‘Have they lived up to their contract and are they fulfilling their contract?’ that is a different story.

Senator COONEY—Say somebody asked me if I had full faith and trust in you. I would say, ‘Yes, I know Chris Ellison. Yes, as far as I am concerned he is a very good man.’ What is wrong with that? If somebody said to me, ‘What do you think of Chris Ellison?’ and I said, ‘I monitor him in the Senate every day. I have him up on a contract and I look at that,’ I would deduce from that that there are some problems about my attitude to you—which I hope there is not.

Senator Ellison—I think Mr Farmer is talking about a body that the department has a contractual relationship with; and we do not have one, Senator Cooney.

Senator COONEY—No, but can you see what I am saying? If somebody asked me what I thought about you, why shouldn’t I say what I think about you? If I said, ‘He is a minister and I check him in the Senate and at estimates,’ people would say, ‘That is not a very ringing endorsement of the man.’

Senator Ellison—I think, as a public official, Mr Farmer does have to look at the situation in the light of the contract that exists. When we have these committees and we ask officials for evidence to assist the committee in its inquiry, we do not ask them for legal or personal opinions. We try, but they report according to—

CHAIR—Do not mention legal opinions!

Senator Ellison—No. They report by performance indicators—benchmarks and those sorts of things. That is very much the sort of stuff that public administration concerns itself with. I think Mr Farmer is saying, ‘We have this contract and my personal opinion is not relevant. What I am saying here is that I have this contract to manage, and the question is: do they live up to it?’

Senator COONEY—I will explain to you why I am asking the questions. Mr Farmer introduced the issue of the problems that we have had in detention centres. He then says,

‘Arising out of those problems, there are statements by the inmates who say, “We have been treated badly.”’ There are then statements by the department which say, ‘We have looked at this, but it is all right. This has not happened. There has been the odd event but, by and large, it has been very good.’ If Mr Farmer is basing that opinion on the fact that he has great trust in the department—which he says he has—plus great faith in the ACM, then you would want to ask just how good the department and ACM are, because what he is doing is preferring one version to another. That is the difficulty with all this business in the detention centres. In other words, there seems to be a propensity on the department’s part to pick up the evidence of one side, and I think a lot of that comes because of his proper faith in his staff and in ACM.

Mr Farmer—Senator, they are your words. You talked about ‘faith’ and ‘trust’. I have not used those words. I have not said that they are elements in my thinking about ACM.

Senator COONEY—Of course they are my words. That is exactly what I am saying. You seem to cavil, Mr Farmer. You do not seem to want to answer the questions. If you do not want to answer, we draw our own conclusions.

Mr Farmer—I am not cavilling, and I am not not answering, Senator. I am saying that I do not use the words that you attributed to me.

Senator COONEY—I know what you are saying. You are not answering the questions. You are saying that they are unfair questions and that I should ask you about the contract and whether you monitor the contract. I am not asking you that. As Senator Ellison says, perhaps I should not. But you are not answering my questions. You are saying, ‘I am not going to answer them because they are not appropriate.’

Mr Farmer—I have answered your question, but I am not in a position where it is appropriate for me to say, ‘I have faith or trust in a commercial organisation.’

Senator COONEY—Right. That is the answer.

Mr Farmer—Our approach is to use the elements in the contract which are designed to enable us to manage the contract and to arrive at views on whether the contractor is or is not performing the contract to the required standard.

Senator COONEY—You have given me the answer that I want. Perhaps it would have helped at the start if you had simply said, ‘I do not think it is appropriate for me to answer the questions.’ That is all you needed to have said.

CHAIR—Senator Cooney, shall we move on?

Senator COONEY—No. I have just a couple more questions.

CHAIR—No, not move on from you. I meant move on from that point. I was encouraging you to ask further questions.

Senator HARRADINE—May I ask a question. Mr Farmer, what methods are used to measure ACM’s performance against the detention standards?

Mr Farmer—I will ask my colleague Ms Godwin, who is the First Assistant Secretary in charge of the detention task force, to answer that question in detail.

Ms Godwin—We have a process of quarterly formal evaluations. That takes the form of reports received by us from our centre managers—the DIMA business manager in each of the centres—as well as an examination of incident reports and the way in which various incidents have been managed during the period under review. Those items are brought together, as I say, in central office and staff in central office go through them. There is a framework against

which the contractor is assessed, which is included in the contract, and points are assigned—positive or negative—and then, at the end of that process, there is either a net gain—positive points—or net negative points, and they are applied. The way in which the assessment is done looks not just at the incident that occurred, for example, but at the way in which the incident was managed. For example, if an incident occurred but was well managed, that would not necessarily attract a negative response from us. On the other hand, if an incident occurred and we took the view that it had not been well managed then negative points might accrue.

Senator HARRADINE—So it is the amassing of those points, negative or positive, that constitutes the performance review function of DIMA?

Ms Godwin—That is the formal assessment component. As well as that, we have regular meetings with ACM, both at a central office and ACM head office level, and also on the ground where our DIMA staff at centres meet with the ACM manager at the centre. The purpose of those meetings is to discuss contract issues more generally. They may not be things that are formally assessable under the contract but where we would want to discuss with them, for instance, their staff selection processes or the way in which they have responded to the health needs of detainees in that particular centre or something of that nature.

Senator HARRADINE—Or educational needs, specific needs for women and children and so on?

Ms Godwin—We have those discussions regularly. They used to be held quarterly to coincide with the quarterly assessment process. In the last few months, we have upgraded those to monthly discussions. We are also introducing some additional elements to our monitoring arrangements to do with—what I guess you could call—audits from time to time of particular issues in the contract and that process is being implemented now.

Senator HARRADINE—Much has been said about the contract. When was the contract entered into with ACM?

Ms Godwin—The contract was signed in February 1998.

Senator HARRADINE—For how many years?

Ms Godwin—For an initial period of three years but with extension provisions.

Senator HARRADINE—Am I correct in understanding that that has been extended for another 12 months and, if so, why?

Ms Godwin—I might on this point defer to my colleague, Ms Webb.

Ms Webb—The contract was extended for a further 12 months to allow time for the negotiations that the contract requires to be conducted fully and thoroughly. In the preceding period, we had had that surge in boat arrivals and the department had not been in a position to give it the priority that it would otherwise have been given.

Senator HARRADINE—Whether or not you renew a contract would depend on performance standards. Were you not at any given time during that period able to alert the ACM management to problems in their performance standards? Presumably, their performance standards were not considered to be at a sufficiently high level to award them the contract for the further three years?

Mr Farmer—Senator, may I say something on that. In terms of the contract itself, there are a number of steps that have to be taken. The first one is that we have to satisfy ourselves that the service provider is delivering value for money. We also have to satisfy ourselves that, in terms of industry standards and so on, we are getting the sort of service that is the best in

the marketplace and we have to satisfy ourselves about the quality of service. In relation to particular issues and incidents, we have pursued those with ACM. In relation to their overall performance during the contract, that is something that is being looked at in the context of contract renewal or not. We essentially have a choice: to extend the contract or to go to the market—in other words, to tender for services in the market.

CHAIR—Senator Harradine, before you continue, I might just seek the guidance of the committee. We have begun, of course, with general questions, as is indicated on the agenda. We have Dr Nygh and representatives of the Refugee Review Tribunal here. I seek the committee's guidance as to whether it wishes to continue on this particular issue now or come back to it later in the order in which it is set out in the agenda? I am in your hands.

Senator COONEY—I would like to continue now, because they are matters raised by Mr Farmer.

CHAIR—I appreciate that, Senator Cooney.

Senator HARRADINE—I am in the committee's hands. I will try to make them very brief and to the point. Could I do that?

Senator McKIERNAN—I have some questions in this area as well, but I am acutely aware that we had Dr Nygh and his team here last night.

CHAIR—It would be helpful, Senator Cooney, if we could complete the Refugee Review Tribunal and then return to this point.

Senator COONEY—I am happy to return.

Senator Ellison—We will return to the Refugee Review Tribunal on the basis we can return to general questions later.

Senator McKIERNAN—Rather than return to general questions, we can return specifically to this area within the portfolio. I have some questions in that regard and we can clean that up in one hit. I am happy to deal with that first up in the area. I am happy to deal with it now, but I am conscious that Dr Nygh, who is always willing to assist us, is here.

CHAIR—Thank you, Senator Cooney and Senator Harradine, for your assistance with that. We will deal with the Refugee Review Tribunal while tribunal members are here. We will come back to DIMA shortly.

[9.36 a.m.]

Refugee Review Tribunal

Senator McKIERNAN—Thank you. Dr Nygh, my questions are directed at the tribunal's work in processing applications from persons within detention. What information can you give the committee about the number of applications from persons in detention centres around Australia and about the work of the tribunal in processing those applications either by way of personal hearings or hearings via electronic means such as video? I am also particularly interested in the processing times. Can you encapsulate all those into one statement?

Dr Nygh—Certainly, Senator. The information that I have is that this year we have received 525 cases where the applicant is in detention. I listened earlier to the statement made by Mr Farmer, and I say by way of preface that, although there are indications that the number of unauthorised arrivals is receding at the moment, because of the flow-on effect it is peaking with us because of the inevitable delay. Particularly in the early days there was a considerable delay within the department, because they were obviously taken somewhat by surprise. We

are now seeing the crest of the wave. For the entire financial year last year we received 539 cases; so, in other words, for the first half of this year we are already pretty close to what we had for the total of the previous year. In this financial year we have finalised 417 cases, of which 275 are boat cases. Of course, that would include matters that came on stream in the last financial year.

The tribunal has set aside 151 various detention cases, which includes 117 boat cases. The set-aside rate in relation to unauthorised arrivals has been about 40 per cent, which compares with the average for the tribunal as a whole of 11 per cent. We have a policy of dealing with these matters within 70 days of being constituted to a member—that is to say, when the member receives the papers on his or her desk. That has been achieved in 78 per cent of cases. In the boat arrival component of the detention caseload, the average time taken to complete a case is 55 days.

With regard to the methods of dealing with it face to face and by video link, I do not have any figures on that. I cannot give you a breakdown of how many we have dealt with by way of video link and how many we have dealt with face to face, but I have a list here of circuits to the various camps. Generally speaking, I can summarise it without going through the details by saying that since the list was composed, starting in late August, we have virtually had a circuit each week to one of the detention centres. That is certainly likely to continue whilst we are dealing with that ‘crest’ situation—the crest of the wave of boat arrivals.

Because of the increase in boat arrivals and the priority given to boat arrivals, it is also noticeable that there has been some resulting delay in what we might call ‘ordinary cases’—non-detention cases. That is because the resources have been concentrated on dealing with the boat arrival cases and detention cases, which is in accordance with our general policy. Does that answer the question, Senator?

Senator McKIERNAN—It certainly answers a number of them. Thank you very much, Dr Nygh, for that cooperation. The 417 cases that have been finalised were finalised within the first seven months of this current financial year?

Dr Nygh—Yes. That is right.

Senator McKIERNAN—You talked about a 40 per cent set-aside rate in that time, which of course is a 60 per cent rejection rate.

Dr Nygh—That is right, indeed. Again, one can break it down further in relation to countries. With boat arrival applications, if one looks at the countries—and this is a point that I made earlier—one sees that the rate of set-aside varies very highly on a country-by-country basis. For instance, in Afghanistan the set-aside rate is 56 per cent. It is terribly hard—these figures are not from a reliable sample; the sample is too small. Sri Lanka, for instance, has the top figure of 66 per cent, but there were only six cases, so that is hardly a guide. If one looks at a country like Iraq, one sees that it is about 61 per cent. On the other hand, I notice that for Iran it is 17.8 per cent. So there is a variation on a country-by-country basis.

Senator HARRADINE—The PRC?

Dr Nygh—The PRC is not listed among the high boat arrivals. There is about a two per cent set-aside rate overall for the PRC.

Senator McKIERNAN—With regard to the processing times, the aim of the tribunal is a 70-day processing cycle for people in detention, to be completed within 70 days of formal lodgment of the application for review?

Dr Nygh—That is right, yes.

Senator McKIERNAN—You are achieving that in 78 per cent of cases for people in detention?

Dr Nygh—That is right.

Senator McKIERNAN—The average time in which you process boat arrivals in detention is 55 days?

Dr Nygh—That is right. If you move out the boat arrival cases, it is speedier. We spend considerable time on that.

Senator McKIERNAN—Twenty-two per cent of cases are not achieved within the 70-day period. Because of the way the percentiles work, that must mean that the average processing time for that 22 per cent is going to be well over the 70-day target the tribunal sets for itself.

Dr Nygh—There are some situations which can take a long time. There was one case that I personally dealt with, a person in detention where certainly the time period was considerably extended because there were issues of the person having received prior protection in two other countries, and inquiries that were directed to those other countries took some time. Indeed, in one case I had to take some steps to try to short-circuit it because I was told that a proper inquiry from, say, the Home Office in the United Kingdom takes about 12 months to answer. There is considerable room, I think, for international cooperation in this field.

Senator McKIERNAN—They are still receiving communications by sailing ship from the Antipodes, are they?

Dr Nygh—I am not sure. It seems to take a very long time. One can get a very prompt reply from Waterloo Station, I found, but when it comes from wherever the Home Office is situated nowadays, say, Whitehall, it seems to be terribly hard to get an answer. So Mr Straw should do some work on this.

Senator McKIERNAN—I hope you are not building a straw man here! I appreciate how individual cases like that can blow out the statistics on average processing times, but you have given us an individual case. We have got 22 per cent not being achieved within your 70-day target. Can you give more general information as to why the targets are not being achieved within that period of time?

Dr Nygh—The target is usually not achieved for a variety of reasons. One reason I have just mentioned is that further information has to be obtained, which at times takes time to be obtained. Another reason is that advisers seek further time in order to produce further evidence or make further submissions. That is another very common reason why a matter is delayed. I should also say that Mr Godfrey, fortunately for him, is on leave and so, unfortunately for me, is not here. Mr Godfrey is, as it were, the enforcer in the sense that he notes all matters that run over time and issues a please explain notice to the member why the matter is running over time. In most cases there is a good reason. In some cases I have to say the reason is not satisfactory and pressure is put on that member to complete the matter as soon as possible.

Senator McKIERNAN—In how many cases would that happen? I appreciate what you have said about the enforcer not being here. You are protected by privilege, incidentally. For things you say outside these walls you might not have the same protection. On how many occasions would Mr Godfrey have to initiate actions to encourage the member to apply himself or herself more diligently to the case in front of them?

Dr Nygh—I cannot give you the exact answer because Mr Godfrey would have that. It is not something that we note in the records. But, globally, not very often. I am aware that I am protected by privilege, and I do not want to hurt individuals, but, as you know, it is my duty, and it has been my duty, to conduct appraisals of all members. Part of those appraisals, if I see there have been too many black marks, leads to a decision as to whether I should make a recommendation to the minister about reappointment. On some occasions, having spoken to a member where there have been considerable delays, and repeated delays, I have found that it was sufficient to speak to the member to obtain voluntary resignation. I am therefore the ultimate enforcer—subject to the minister, of course, I suppose.

CHAIR—It is always nice to be able to describe oneself as the ultimate enforcer!

Senator McKIERNAN—Sometimes disparaging remarks of a similar type are made about members of the opposition. There is a 60 per cent rejection rate. The tribunal obviously monitors how many of them go on to appeal in the judicial process. Do you have any information to hand on the number of actions?

Dr Nygh—Yes. In detention cases, the appeal rate to the Federal Court is quite high: 49 per cent of detainees who have been unsuccessful in the Refugee Review Tribunal lodge an application for judicial review whereas the general average, taking all cases combined, is 10.7 per cent. So there is a very high rate of judicial review. I have not been able to separate the outcome and it is probably premature to deal with the latest inflow of detention cases, because of course most of these matters are still pending before the Federal Court.

Senator McKIERNAN—You have given us a percentage figure of 49. I having a little difficulty trying to work out the actual numbers that that 49 per cent represents.

Dr Nygh—I will have to do some calculations, and mathematics has never been my strong point, but we finalised 417 cases and we set aside 151 cases. Do you have a calculator there?

Senator McKIERNAN—I make it 266 left.

Dr Nygh—So 266 left, and virtually 49 per cent; so, say, one half of those would have lodged applications for judicial review.

Senator McKIERNAN—However, you did put a caveat on that that, of the 417 that were finalised, 275 were boat people cases.

Dr Nygh—Yes, if we are limited to boat people cases, there were 275 cases, of which 117 were set aside.

Senator McKIERNAN—Okay. So that is 158.

Dr Nygh—Again, we have not separated out non-boat and boat cases on the appeal rate. Whether the 49 per cent applies there or whether there is a somewhat higher percentage, I cannot tell you.

Senator McKIERNAN—I wonder whether you could do that, on notice. I do not want to tax your brain with mathematical equations!

Dr Nygh—It will not be my brain, Senator, I shall be somewhere else.

Senator McKIERNAN—Thank you. I will rest at that point.

CHAIR—Are there any further questions in relation to the Refugee Review Tribunal?

Senator HARRADINE—The CIS had the assessment of the situations in the various countries, which is obviously relevant to your consideration of appeals, et cetera. Where do you get the information?

Dr Nygh—From a variety of sources, which includes the Department of Foreign Affairs and Trade. It also includes the US State Department, country reports, particularly human rights reports, Amnesty International, Human Rights Watch and other non-governmental organisations concerned with human rights issues.

Senator HARRADINE—So you have a CIS base which is separate and different from that held in the department?

Dr Nygh—Yes. We have a general information base. It is not specifically directed to CIS but it covers the CIS countries as well.

Senator HARRADINE—The rejection rate that you mentioned for the PRC was the set-aside rate, was it?

Dr Nygh—Yes.

Senator HARRADINE—A set-aside rate of two per cent. What was the sample size?

Dr Nygh—A total of 322 applications. Of those, 229 did not attend for a hearing. They were invited but did not attend. One striking feature of PRC applications is that a very high percentage—in fact, over one half; I think about 60 per cent—do not attend, although they have been invited to a hearing.

Senator HARRADINE—Do you have any idea why? How does that compare with people from other countries?

Dr Nygh—It is very marked in the countries from East Asia. Indonesia and Malaysia have a similar, very high non-response rate. With countries like Sri Lanka, Somalia and the Middle East, applicants will invariably turn up. I am only speculating, but it may be that we are looking at a cultural difference. I do not want to speculate and say anything about that, but I think there is a tradition perhaps of deference to or distrust of authority in some countries. In other countries, notably Sri Lanka, there is a very healthy regard for one's rights.

Senator HARRADINE—Is the department considering this question and seeing whether it is significant in respect of the implementation of our obligation to genuine refugees—if there is something there which in our system does not somehow link in to their cultures and thus in effect would deny them access to a decision which would prevent them from being returned to a situation of violation of their rights? I find that very interesting.

Dr Nygh—The other feature particularly of the PRC applications is that many of those applications make statements in a very rudimentary fashion. Normally, they are handled by migration agents, usually from the Chinese ethnic community. A marked feature sometimes has been—and we have an officer who collates the applications made—the repetitiveness of some of the applications. In other words, they seem to roll off a standard form on a word processor. Very often, when we see that sort of standard application, these people do not turn up. This leads to another inference, and that is that those people who do not turn up basically do not have real claims that could stand up. They are seeking to remain in this country simply by lodging a claim, any claim—indeed, I dealt with one case not so long ago—even if that claim, in identical terms, has already been made by 10 other people.

Senator COONEY—I would like to ask one question on that. Have you thought of listing those cases—where people are unlikely to turn up—earlier on the list so that you get them disposed of rapidly?

Dr Nygh—Yes, Senator. We try to expedite those cases so that, in other words, there is more room for the harder cases and to discourage people treating an application for a

protection visa merely as an attempt. I think there is some reason to believe—Mr Farmer will probably have more knowledge than I—that in some countries some people see Australia as a country where they could come, earn a lot of money in, say, three or four years and return and build the biggest house in the village. I can sympathise with that. No doubt, if I were in a similar position in a country, I would do it. I notice, for instance, that there is one particular province from which most applicants seem to come. That is a province that has a very strong tradition of migration going right back to the goldmining days. It is also, I understand from my information, one of the wealthier provinces in China. In other words, it is not people fleeing poverty. But there is this ancient tradition of mainly young men going out to the ‘mountain of gold’ and bringing back a bit of that gold to, presumably, prove their virility. That, of course, distorts the claim. I must also say that it is those provinces where, again from my observation, the regime weighs far less heavily than it does on parts closer to the centre where one would expect that serious claims of human rights violations would arise.

Senator COONEY—It gets over the problems, doesn’t it? If you process them quickly—put them high on the list and get them disposed of—we would not have the violence that is sometimes done to the judicial system because, when people do not turn up, bang—that’s it! Away they go.

Dr Nygh—That is correct, Senator, and that certainly is what we have done. In Malaysia, the non-turn-up rate is 92 per cent. Whatever one may think of the current government of Malaysia, I would not regard it—unless one wanted to be Prime Minister—as generally a very repressive regime.

Senator McKIERNAN—I have a couple of questions relating to the circuits that you say you do. When you do a circuit, does a member of the tribunal go to Woomera, then to Perth, then to Port Hedland and then to Curtin or is a circuit deemed to be a member heading directly to Curtin, which would be the furthestmost point?

Dr Nygh—To do it the most effective way and not to have intermediate travelling time, our policy is that a member should go to one centre and do eight cases in a one-week session by listing them back to back, one in the morning and one in the afternoon. So we send one member to Woomera and one member to Curtin. At times, in the one week we have somebody sitting in Curtin and somebody sitting in Woomera, et cetera.

Senator COONEY—Do they actually sit in the centre or are they brought out from the centre to the—

Dr Nygh—They are brought out from the centre. For instance, the hearings at Curtin are held in Derby town. In Port Hedland, we use the excellent new court facilities in South Hedland, which of course are state court facilities. In Woomera, we use a quaint little magistrate’s court which I think was built when Woomera was a flourishing town in the desert and still has the insignia of George VI on its portals—it is a museum piece.

Senator McKIERNAN—I have not seen that.

Dr Nygh—You must go and see it, Senator.

Senator McKIERNAN—I am not so sure I want to—George VI! Concerning comparative statistics between hearings held in videoconference and hearings held face to face, do you compare statistics from each type of hearing? If so, are there any differing trends that arise from the differing hearing types?

Dr Nygh—Not to my knowledge. I do not think that we have ever done that. I would be greatly surprised if there was any appreciable difference because it really depends on the

nature of the claim rather than face to face. Certainly, I have done both video hearings and face-to-face hearings and I do not think I have ever been influenced by the fact that I did not see the person live.

Senator McKIERNAN—They are somewhat different hearings. Without putting the tribunal to an enormous amount of work, it seems to me that we might be at an appropriate moment in history to undertake that comparative research, to see whether there are any different trends arising from the different methods of hearings. With the permission of the applicants, I have had the honour and the privilege of looking in on both sets of hearings and, as an outsider, there are marked differences. Perhaps different trends have emerged by way of the decisions that arise out of those hearings. Even now, despite my enormous media profile, I still find it very difficult to look directly into the camera without getting a little bit nervous.

Dr Nygh—Most certainly, Senator, that can be done. We will take that on notice.

Senator McKIERNAN—Is this the last time we will see you, Dr Nygh?

Dr Nygh—It is absolutely the last time, positively my last appearance.

CHAIR—We do not mean to be personal, Dr Nygh. It is just that we discussed yesterday that we have welcomed and commended you on your assistance with our committee several times. Senator McKiernan was just clarifying that we would like to say again that the committee is very appreciative of your assistance in your capacity with the Refugee Review Tribunal in the time we have been working together.

Dr Nygh—Thank you very much, Senator. I thank members of the committee for their kind words.

[10.09 a.m.]

Department of Immigration and Multicultural Affairs

CHAIR—As I indicated earlier, the committee will now return to the issue that we were discussing principally with Senator Cooney and Senator Harradine. Senator McKiernan also has questions in this area. Mr Farmer, if I am correct, that would be in relation to output 1.3, under enforcement of immigration law?

Mr Farmer—Yes.

CHAIR—Thank you. Senator Harradine was asking questions when we broke to speak with the Refugee Review Tribunal, so we will return to that point.

Senator HARRADINE—Does DIMA have the figures providing an overall cost, a cost per centre and a cost per detainee per year? Do you have that detail?

Mr Vardos—Sorry, I missed the last part of the question whilst coming to the table.

Senator HARRADINE—Do you have figures that provide the overall cost, the cost per centre and the cost per detainee per year?

Mr Vardos—We do have those costings; I am sure they are in my brief.

Senator HARRADINE—I would be grateful if you would take that on notice.

Mr Farmer—We will do that, Senator.

Senator HARRADINE—Thank you. Are you able to provide us with a breakdown of payments made to ACM—for example, by centre per head of detainees per financial year?

Mr Farmer—Some of those matters we have explained to the committee before. There is a particular reason. We are facing litigation in respect of this contract, and we have really

been constrained from giving information that would, in effect, be of use in that litigation. We will give you such information as is possible to do within those constraints.

Senator HARRADINE—Since the commencement of the contract with ACM, has DIMA ever conducted an audit of ACM's accounts?

Mr Vardos—There has not been an audit, in the conventional sense, of their accounts, but there certainly has been a review of their costing regime in the context of the renewal of contract negotiations. Ms Webb may be able to provide more information on that.

Ms Webb—If you would like me to elaborate, we employed a merchant banking firm, N M Rothschild and Sons, to assist us in understanding the costing structure and the way that the charges imposed by ACM had been constructed. That went on for about six months of last year. In a pretty thorough manner, they went right into the details of the books and were able to advise us in a lot of detail about the way the charges were constructed. While that is not a formal audit in the sense of their being an auditing firm and with the intention of their giving us, if you like, a bill of health about their books, it was nonetheless a very thorough analysis of the underlying charges that lead to the prices that we paid.

Senator HARRADINE—Is there any way that one can get a handle on how ACM have done—for example, their profit and loss, their balance sheets and what have you—out of the centres?

Mr Farmer—Presumably, they have a company report. I just do not know the extent to which they report on matters in the report.

Senator HARRADINE—Surely your department would be very interested in how they have gone financially in respect of the services provided at detention centres.

Mr Farmer—Indeed we are, and there are provisions in the contract for us to deal with ACM in relation to profit matters.

Ms Godwin—As far as I am aware—and I would need to check this back to the beginning of the contract—ACM provides us with an audited statement each year. We are entitled under the contract to undertake our own examination of their books if we so determine. That was the point that Ms Webb was mentioning, that we have actually used our ability under the contract to examine their financial arrangements as part of our overall approach to contract renewal.

Senator HARRADINE—Can the committee be provided with this information on how they have gone and whether they have made a profit out of their contract with you?

Mr Farmer—They have certainly made a profit, because that is inherent in the contract.

Senator HARRADINE—It is a cost plus arrangement, is it?

Ms Webb—Yes, that is correct. The contract provides for a margin of profit above costs. In terms of providing the details, can I suggest that we review how much we can give you consistent with not interfering with the other issues that we are facing. Within that constraint, we will give you as much as we can.

Senator HARRADINE—In 3.3 of the general agreement it mentions the sharing of costs between DIMA and ACM. How is this measured and achieved?

Ms Godwin—Each year, under the contract, if ACM has made savings over and above its normal operating arrangements, those savings are shared with the department on an agreed formula. Again, that is something that we are able to audit. It is done on a calendar year basis and we would be able to audit those. At the moment, we are at the point where we would

expect to get their statement under that provision of the contract and then go forward with an audit.

Senator HARRADINE—You have got a system of incentives and fines and, at the end of the year, you have performance linked fees. How does that operate?

Ms Godwin—That goes back to the point that I was making before about the quarterly assessment. It is not done on an annual basis; it is done quarterly. There is a proportion of the fee for each month in the quarter that is retained by us, and then at the point where we do the assessments—as I said before, there is a negative points, positive points sort of approach—if there is a net negative, there is a financial amount attached to that and we would withhold that. If it is positive, we do not pay them, but they would then get the full amount of what is called the ‘retention amount’ that we have so far held back.

Senator HARRADINE—In the event of say, a riot, who pays for the damage? The new perimeter fence cost something like \$1.7 million. Who pays for that?

Ms Webb—In the case of something like a riot there are three ways that the damage bill is distributed. One way is by ACM themselves, if the damage is such that, under the contract, they would have been assessed as being reasonably capable of preventing it had they acted in a different way. Had the damage been such that it was assessed that it was not something that ACM were able to prevent, then we go to the Commonwealth insurer—Comcover—and put in a claim for insurance, which is what we have done with the damage done in the Woomera riot. Comcover is assessing the claim. In that instance, we understand that we will shortly be getting a determination from Comcover and we are led to believe that they will agree to foot the bill.

The cost of the capital works at the various centres is met in different ways, to some extent depending on who owns the centres. Where the Department of Finance and Administration is the landlord, at places such as Maribyrnong or Port Hedland, they actually fund the capital to put up fences or, in the case of Port Hedland, to put in a new kitchen. At Woomera the department has been funding those works either as capital works or as works that can be dismantled and moved to another centre when we need them.

Senator HARRADINE—Mr Farmer, has the department made an overall assessment of the comparison between the cost of detention prior to privatisation and the cost after—that is, the cost to the taxpayer?

Mr Farmer—I am not sure that the microphones are working properly. We cannot hear you.

Senator HARRADINE—I will try again. Has the department made an analysis of the comparison between the cost to the taxpayer of the detention prior to privatisation as against after privatisation?

Mr Farmer—There are a number of things to say to that. One is that in absolute terms the cost to the Commonwealth has risen very substantially because the number of people in detention has risen very substantially in the last two years.

Senator HARRADINE—*Mutatis mutandis*.

Mr Farmer—The trouble is changing the things that need to be changed. We are dealing with different contracts and we are asking different things of the current detention service provider than we asked of the previous detention service provider. Mr Metcalfe elaborated on

this point to Senator McKiernan at an earlier meeting. I might ask him to elaborate on that point.

Senator HARRADINE—I do not want anything to be repeated, if you can point me in the direction of when that was.

Mr Metcalfe—It certainly was at a previous estimates hearing. I think it was in this room, possibly 12 months ago. Just to supplement what the secretary said, when the Australian Protective Service were the service provider, essentially they were providing guarding services and security services, but some other aspects of service delivery, such as medical services and catering and so on, were independently contacted by the department. Part of the concept of the competitive tendering of the contract would be that the service provider provides a complete service: detention services, catering, health and education services, transport services and whatever. As I said to Senator McKiernan some time ago, it is difficult to make a comparison because you are comparing apples and pears. We can find the reference to the earlier exchange and we will provide that to you.

Senator HARRADINE—Obviously we are interested—and no doubt you are, because we are both responsible for the expenditure of public moneys—in seeing how it has gone, principally for the detainees but also for the taxpayer. That seems to be a relevant question. I know you have got apples and pears arguments—

Mr Metcalfe—I completely understand the question and I think it is a very fair proposition that you are pointing to. I will take on notice that particular issue and see if there is any analytical or comparative work that may have been done that may be able to assist the committee in saying whether it was cheaper to do it in a certain way or more expensive to do it in this way.

To a certain extent, I think our response may be seen as not being particularly helpful, but it may reflect reality: the decision was taken by the government in 1996 to competitively tender the service. A number of companies forwarded tenders. The previous service provider did not tender, so what their costs might have been under the current service provision becomes quite speculative. Adding to that is the fact that, as we have discussed at previous hearings, there are different daily rates for detainees depending on the numbers of people in detention. Having made all those points, I will take that question on notice and see if we can provide you with an answer.

Senator HARRADINE—Thank you. On the question of your own immigration detention standards, I notice that the first principle in those standards states: ‘Immigration detention is required by the Migration Act and is administrative detention, not a prison or correctional sentence.’ Considering that, how did DIMA assess that against its decision to appoint a company which really is a prison and correctional services company?

Mr Metcalfe—The answer is that the company can do a variety of things and, in the tender process that took place before the signing of the contract in November 1998, an evaluation was made of the tenders. You are quite right: we are looking for a range of services which is not in all respects the same range of services that you would be looking for in a prison or a correctional environment. We are looking at the capacity of potential service providers to provide what we require.

Senator HARRADINE—ACM’s parent company is Wackenhut Corrections Management, isn’t it?

Mr Metcalfe—There are two owners of Australian Correctional Services: Wackenhut, a US company, and Theiss Constructions, an Australian company.

Senator HARRADINE—What is the relationship between the Australian company and Wackenhut, for example, in its operations in America?

Mr Metcalfe—There is an Australian set of directors and it is an Australian company, but there is an ownership structure back to the American company.

Senator COONEY—Is it ACM or ACS that you are talking about?

Mr Metcalfe—The parent company in Australia is Australasian Correctional Services. They have contracted the service delivery component of the contract to a subsidiary company, Australasian Correctional Management. The names do tend to get interchangeably used, but ACM is actually the people who provide the service.

Senator COONEY—Mr Farmer, when you were asked by Senator Harradine about what experience they have had, you said they have done a variety of things. I take it from that that they have looked after detention centres either here or overseas prior to signing up with the immigration department. Can you tell me what those detention centres either here or overseas that you were referring to were when you said that they do a variety of things?

Mr Metcalfe—It was before my time, Senator, but we will see if someone who was involved in the contract can help you there. Senator, Ms Bedlington was previously the program manager responsible for this issue when the contract was decided and was involved in the tender process.

Ms Bedlington—I know, because we got references from the countries concerned, that Wackenhut or one of its subsidiaries actually operated immigration detention centres in the United Kingdom and in the US.

Senator COONEY—We have been told by the secretary that Wackenhut is not directly involved, that it has an ownership link and that it has nothing to do with the management. I was asking this in terms of management.

Ms Bedlington—They do have a link in terms of management in the sense that where they produce, for example—

Senator COONEY—Just stop there. I want to clear this up first. We were told that it did not have a management link, that it had an ownership link and that it was all done in Australia.

Ms Bedlington—Senator, if I could finish, then the answer to that question will become clear. They do not have a direct responsibility management link, but where they develop products and procedures that might be useful, for example, particular management techniques and so on, there is an informal sharing of best practice across Wackenhut and all its subsidiaries. They are not subject to direction from the parent company.

Senator COONEY—How do you know that?

Ms Bedlington—That was part of the evaluation.

Senator COONEY—Have you got those evaluation documents?

Ms Bedlington—I beg your pardon?

Senator COONEY—Have you got the evaluation documents you have just spoken about?

Ms Bedlington—That was part of the tender evaluation.

Senator COONEY—Where are they now? You have told us something, and I just want to check up on it. Is that possible?

Mr Metcalfe—Those documents will be held by the department. Could I take on notice that question and again run the issue of whether there are any commercial-in-confidence issues that may arise. I know the precise point that you are seeking, and we may be able to extract that particular aspect.

Senator COONEY—Mr Metcalfe, you have been very helpful over the years—and I thank you for that—but when we discuss these issues here, we get statements—bang—and, as a committee, we have absolutely no way of checking the credibility of those sorts of statements.

Mr Metcalfe—I appreciate the point. That is why I said that, certainly to the extent possible, we will follow that issue up. The precise thing that I think you are asking is: what information was before the department when we awarded the contract to ACM?

Senator COONEY—I will put the issue of statements in context. From what I can see and from events described in the papers, a lot of trouble has occurred in these detention centres, which is not normal if you look at jails. Every now and again there is a riot in a jail, but if you look at Fulham or Port Phillip in Victoria or wherever, you do not get the problems that you do in these detention centres. People say, ‘It is really the inmates who are the problem,’ which seems to me to be a cop-out, if I can use that expression, because there are not the same problems in the places that ACS runs where you have convicted criminals. We are told that it is an inmate problem and we have to do nothing there, but you can imagine—and I think you have given evidence that people sent out as guards to Woomera, for example, have about four weeks of training—that people with little training who are working in these detention centres are going to get a bit irritated by what goes on there and that clearly the closest people to take their frustrations out on are those they are supposed to be looking after. That is the picture you get.

You come along here and say, ‘What about the contracts,’ and, ‘This contract is going to do this’ but we never see the contract. That is a bit unfair because you have given me a pro forma and invited me to look at it, which I do not intend to do because this has all got to come out in public. The committee is bound the whole time here by statements from the table. I am not saying for one minute that the department is not full of people with absolute integrity, but I would really like to know whether their interpretation of things is as good as it could be. Ms Webb gets you a bit worried when she says, ‘We went off to a merchant banker to see our way through.’ You have to ask yourself: ‘What capabilities are in this gathering before us?’ I am just trying to get some sort of check on things.

Mr Metcalfe—I know where you are coming from, Senator, and to the extent possible we certainly will assist. You made one comment which, with your indulgence, I might respond to. That was about the fact that there have not been riots in prisons in the way that we have seen riots in detention centres. From our point of view, I certainly do not think it is an issue of blaming the detainees. I think it is more to do with recognising that there is a different set of dynamics at work. I am not an expert on prisons, but from what I can see we are dealing with people who are convicted criminals who have a very high degree of certainty as to how long they will be in the prison. They are purpose-built facilities—certainly, the more modern ones are built very well. The inmates are normally only males, and females are kept separately. People know how long they are going to be there. There is a range of programs that are established that they can work towards.

Administrative detention, as we see it on a number of occasions, presents a different set of dynamics. We are talking about people who quite often have been given expectations by people smugglers about how long they will be in detention that are quite wrong. There is natural disappointment if a person is given notice that we do not regard them as a refugee. We have men, women and children, families, single people, unattached minors all in the centre environment, possibly in different areas but all in the centre environment. That is because we are grappling with that other objective, which is to try to make life as normal as possible—which is a difficult thing to try to do—within the fact that people are being deprived of their liberty. People do not know how long they are going to be in centres. To the extent possible, we try to give them that information about processing times. We are dealing with some people who are hoping for a positive outcome, other people who have been told that the answer is no, other people who are waiting to go home and some people who are doing anything they can to stop going home. So all of those dynamics mean that we have a unique set of challenges to operate in this area.

Senator COONEY—I think that was very lucidly and fairly put, Mr Metcalfe. In that context, I was reading the *Age* yesterday and I saw what I thought was an unfortunate letter from Stewart Foster, Director of the Public Affairs section in the immigration department. He went through and explained the problems with unauthorised entrants around the world. But his last paragraph read:

As for the length of time in detention, many detainees in this country pursue appeals through the court system, often at multiple levels, thereby prolonging their time in detention.

I have a background in this—you have educated me over the years, Mr Metcalfe! In reading the letter, a clear message comes through. Perhaps I should show you the letter?

Mr Metcalfe—I have seen the letter, Senator.

Senator COONEY—If you did not have that background, the clear message you get from the letter is that people have been locked up because they are appealing; they are being punished for going to the legal system. That would be a most unfortunate interpretation.

Mr Metcalfe—Certainly, that is not the interpretation that was intended by that letter. It was making a point that has been made many times: some of the people who are in detention are people who have been determined not to be refugees by the department and by the Refugee Review Tribunal—essentially, on a merits based system, it has been decided that Australia does not have a protection obligation in relation to them. People do have the right to go to the court and, as we heard earlier, many people exercise that right—about half of rejected applicants exercise that right. That is an option for them; it is not mandatory. They could make arrangements to leave Australia; many people, of course, believe that they do not wish to leave Australia, for a variety of reasons. Some of the very long-term detention cases that we have seen over the last decade have been people who have pursued litigation in Australia—sometimes successfully, usually not successfully—and there have been some people who have pursued complaints through other mechanisms, which may be very lengthy mechanisms. That just adds to the challenges of detention.

Senator COONEY—I wonder whether that could be corrected.

Mr Metcalfe—If you have taken that interpretation, Senator, we certainly would not want that to be taken by the average reader. It was not intended, but we will look at the wording of that letter and that type of letter.

Senator COONEY—You go through the letter and you see ‘Australia has a mandatory detention policy for illegal arrivals’. The letter goes through and says why—because of health checks and character checks and what have you. It says that they are thinking about changing things in Britain. Then he sticks this paragraph at the end, and it is not in any way connected. Perhaps what he should have said is that parliament has decreed that while people are here they ought to be locked up. It is not the department’s fault; it is parliament’s fault. But it certainly has not come out that way, and I was a bit concerned to know why he had written it in that way.

Mr Farmer—It may have been responding to a point made in a particular article, Senator.

Senator COONEY—But if he is responding, that makes it worse, does it not? He ought to make it clear rather than just let it hang out there.

Mr Metcalfe—Without wanting to prolong the discussion, we are very conscious of constrictions of space on the letters to the editor page. You have made a point that we will certainly follow up and, if there are any ambiguities in that statement, we will see that they are corrected.

Senator COONEY—As I understand it, Mr Farmer was saying that the way we are checking whether or not we ought to keep on ACM is by measuring them against contractors. It is not a matter of having faith or trust in them; it is a matter of whether they adhere to the contract. They said they are in negotiations and that they are going to be long negotiations. Would I be right in concluding that there would be some problems with ACM management?

Mr Farmer—Were we to decide not to extend the contract, the length of time gives us the option to go into a tender process which would take some time. That is the reason for the period we are talking about.

Senator COONEY—I understood that this was a terms contract for three years, with a right—I take it the right is in ACM—to renew the contract, but for how long?

Mr Metcalfe—I might briefly explain the contractual overview to provide some context to that question. Essentially, the department has a contract in place with ACM, called the general agreement, which has a life of 10 years. Although that sounds like a long period, the actual performance of the contract comes under a services contract which is the three-year contract we have been talking about. That ran from February 1998 until about now and has been extended to allow us to go through this particular process. It is open to the Commonwealth to extend the contract for a further period, but as Mr Farmer indicated earlier when responding to Senator Harradine, there are a number of issues that we are obliged to take into account in deciding whether or not we would extend the contract. The threshold issue is: do we believe that we are getting value for money? Are we able to satisfy ourselves in relation to that? That is exactly what we are going through at the moment and what Ms Webb has described. Depending upon the outcome of that, we also have to look at issues such as whether we believe that they are performing all requirements of the contract to a satisfactory standard and whether they represent best practice in the industry. The value for money consideration is occurring at the moment.

We are being very careful in what we say today because the contract requires an exclusive negotiation period and that is what we are in currently. It is crucial that we maintain an open mind in relation to these matters until the secretary ultimately takes a view one way or the other. Hypothetically, were the decision taken that we did not wish to extend the contract, then we would need to go through a new tender process. ACM, of course, would be open to bid for that process but other companies could then come in and we could examine their costs and

capabilities in the area. Our experience in such commercial areas is that that process would naturally take some time. We would need extensive commercial and legal advice. It is a valuable and crucial contract in terms of public interest, so we want to do the best we possibly can. As we have indicated, when it occurred last time one of the disappointed tenderers commenced litigation in relation to that issue. So we will obviously undertake the task properly and carefully. Realistically, that will take some months. That is why the 12-month extension was provided. If the secretary hypothetically decided to extend the contract, that is something that would occur more quickly.

Senator COONEY—I take it that the right for renewal lies with the department; the ACM has no right of renewal.

Mr Metcalfe—The contract allows ACM to make an offer, which they have done. It requires there to be an exclusive bargaining period, which is what we are in, but at the end of the day it is our decision.

Senator COONEY—In this context but a little differently, say there is a complaint, a difficulty at some detention centre, and someone rings up or writes in to the department that there are some problems there: what happens? I get the impression that you might ring up ACM and say, ‘Is there any trouble?’ and they say, ‘No. Somebody was rioting and that’s all been fixed up now.’ You then hang up the phone and say, ‘That’s the problem. Write a letter to the constituent saying that we have inquired about this and our inquiries show that that has not happened.’ Or else you might ring up somebody from the department who was there but did not see the incident and then sees ACM. One of your problems is a problem with prisons in general and it is a difficult one. It is the quality of an investigation into an incident that is a problem, I think.

Mr Metcalfe—It is more than just a phone call, I can assure you. A lot of resources are devoted to monitoring and performance managing of the contract.

Ms Godwin—In many instances we would already have been made aware that there had been an incident through what is referred to as the incident reporting process. That is something that has been a matter of discussion publicly in the last few months. In any event, if we got such a complaint, you are quite right—we would in the first instance speak to ACM, but it would not just be a phone call, as Mr Metcalfe said. What we would ask for would be a report of the incident, if one had not already been provided. On the basis of that report we would go back and seek further information. A number of other things would follow, or may already be in train.

ACM itself will often, depending on the nature of an incident, appoint an investigator from some other part of the agency—someone who is not in that centre and who is not involved in the management of that centre in any way—to go in and examine the complaint. We would always consult with our DIMA business manager as to their view—whether there were further issues that needed to be explored. Depending on the nature of the incident, we would also check that certain reporting had been done. For example, if it was something that should have been drawn to the attention of the police or some other agency we would check that it had been done appropriately. There have been occasions—and this is something we are progressively doing a bit more of—when we would engage somebody independent to undertake a further examination of ACM’s handling of an issue and, to some extent, whether we, as the DIMA officers responsible, had also attended to the issue appropriately. It would depend a lot on the nature of the complaint and the nature of the incident but there is, in a sense, an escalating process that we would go through.

Senator COONEY—I do not know what the answer is. I suppose it is the same for prisons. The people who are actually investigating are those with an interest. They are deemed as clearly having an interest and we have to make sure that it looks good in the public's eye. You now have a director of public affairs in the immigration department so there is that consciousness. Certainly ACM have an interest. As against this you have got somebody who is going to give a version who probably cannot speak English and is not particularly a figure of sympathy for those who are doing the investigation. It is a classic case. You could let it go but, underneath it all, it is the Commonwealth that is locking the people up, so it has some sort of obligation.

Mr Metcalfe—I might just add that we have internal procedures, as does ACM, to deal with incidents. Of course, there are external accountability mechanisms. Detainees are aware of and do regularly use their access to the ombudsman and to the Human Rights and Equal Opportunity Commission. We deal with a number of complaints or requests for information that come from those bodies and obviously we investigate those, and they independently investigate those by talking directly to the people concerned or whatever.

Senator COONEY—I am absolutely sure you are trying to do your best. You have this Wackenhut, as you mentioned before, and I read the other day that they are taking care of some of the nearly 2 million prisoners in America. They have an interest, I suppose, in having people incarcerated, legitimately, no doubt, but they also have a position to defend because their contract is up.

Mr Metcalfe—I do not think there is any suggestion that Wackenhut is bringing illegal immigrants to Australia.

Senator COONEY—No, but I am saying that it does depend on whether it is management or whether it is simply ownership—and that has to be identified. If it is management, Wackenhut is bringing a culture to their body here which will be, 'Lock people up.'

Mr Metcalfe—Yes. I suppose the point I was making, without wanting to appear glib, is that ACM has no role in the decision as to whether someone is detained under the Migration Act. That is a decision provided for by Australian law and is solely within the domain of this portfolio and this department and that is where we are highly accountable. The issue I think you are driving at is whether there is a performance culture or a management culture or whatever coming through ACM. At the end of the day, when the decision was made 3½ years ago to award the contract to ACM, from what I have seen—and I was not personally involved in the decision—it was a very thorough process which looked at the people who had presented their claims.

It is interesting, and I do not think we should forget that, without in any way impugning the previous service provider, there were incidents previously. It is a difficult area for any service provider. I think we have spoken before about the fact that the former Human Rights Commissioner made some comments in writing saying that he was generally pleased that the service being offered now was better than that previously being offered. There is a very strong performance culture. The department is putting more and more resources into monitoring the contract and expecting it. At the end of the day, I think in this situation, regrettably, there will be incidents because we are dealing with difficult situations. How we respond to it and how the programs are set up are very legitimate questions, and it is an issue about which we have spoken at length to your colleagues on the Human Rights Subcommittee and wherever.

Senator COONEY—I think the time before last it was said that the length of training that ACM puts their people through is four weeks.

Ms Godwin—It is a five-week preservice training course and there are 40 hours of refresher training each year for each officer. We have been collating some quite detailed information on that in the context of discussions that Mr Metcalfe mentioned we have been having with the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. We would certainly be able to provide that same sort of information to you. Overall, the training incorporates a lot of training about being a detention officer and there are also modules that go to responsibilities of DIMA, and the detention officer's responsibility in relation to DIMA issues, communication and cultural awareness, et cetera. In many instances, they draw on external experts from torture and trauma services, the Refugee Council of Australia and people in ethnic communities to assist in the provision of that training. Although it is five weeks, it is an intensive period. The other point to make about the training is that it has been developed in consultation with national accreditation bodies and it is a TAFE certificate accredited course.

Senator COONEY—You can get all sorts of certificates. You will not be able to tell me, because it will be pursuant to contract and commercial in confidence, but how much do people out there earn?

Ms Godwin—I do not know.

Senator COONEY—I am glad you gave an answer because it now allows me to make some suppositions. I suppose that they would not be paid terribly much. What concerns me is that you have these people with limited training—five weeks, with 40 hours upgrade—out there in the middle of the desert in Woomera having to act as prison guards for people in detention. Day after day, you would imagine that your temper might get short at times. It would be a terrible strain. If there is an opportunity to give an outlet to your frustration, the people you are detaining, who are pretty vulnerable, would be the ones that you would let your frustration out on. That is why I am asking about the level of training and so on. You are not going to get people from St Vincent de Paul going out there to be to the guards, I wouldn't have thought.

Ms Godwin—I understand entirely, and that of course is an issue in any institutional setting where people are responsible for the care of others—the relationship between the staff and the people for whom they are responsible. I would add a couple of things. Prior to even being selected, there is a pretty intensive process—which we could also provide you with some details on—which involves interviews, police and other checks, and psychological assessment. There is quite a significant culling process, if I can put it that way, in terms of the number of people who apply for jobs and the number of people who are ultimately selected.

The other point to make is that it is clear that, from time to time, exactly what you are describing can happen: people do feel frustrated and they inappropriately take that frustration out on detainees. The issue at that point, it seems to me, is: are there processes in place for appropriately recognising that and dealing with it? In his opening statement Mr Farmer referred to a very undesirable incident in Port Hedland where a detainee has alleged that he was assaulted by an ACM officer. The action taken was that immediately ACM were aware of the allegation, even prior to the police being called, the ACM officer was suspended. It was then referred to the police for proper investigation and, as a result of those investigations, the officer has been charged. As I say, it is not desirable and we obviously take those sorts of incidents very seriously. But I think it is important that what we have, hopefully, is a process whereby, if those incidents occur, they are immediately and appropriately responded to.

Senator COONEY—Who is negotiating the contract? Has that been negotiated through merchant bankers?

Ms Webb—No, we are doing the negotiations ourselves. We have consultants on board to advise us. If perhaps I can correct you, I may have been not quite clear in my reference to merchant bankers. It was more in reference to a group from that particular firm who probably have one of the best areas of expertise in Australia on those sorts of institutions and organisations and the sort of cost structures one would expect. That is the reason they were chosen—not because they are merchant bankers.

Senator COONEY—What solicitors do you use? Do you use the Australian Government Solicitor?

Ms Webb—We use AGS, yes.

Senator COONEY—And you are in the process of negotiations now?

Ms Webb—That is right. As Mr Metcalfe said, we are in the process of negotiations on value for money.

Senator COONEY—I think it is fair enough not to interfere with negotiations. Thank you.

Senator LUDWIG—I have a follow-up question to Senator Harradine's in relation to the litigation that was referred to. As I understand it, that litigation you have enlarged upon, Mr Metcalfe, concerns a disappointed tenderer who is litigating. Are there any others or is there just the one?

Mr Metcalfe—There is just one. It is one of the short-listed tenderers from the 1997 process who obviously was not awarded the contract, and they have pursued a couple of actions. There is no resolution of that matter at this stage.

Senator LUDWIG—In respect of the ACM, is there any dispute currently afoot or being proposed about the costs of the riots or who pays that you are aware of?

Ms Webb—Not that I am aware of, Senator.

Senator McKIERNAN—I have a series of questions which hopefully will not take long. Firstly, I would like to go to what Ms Godwin just referred to—the incident at Port Hedland. Could you go through with us the date of the incident, the date on which the officer was suspended and the date on which the police laid charges?

Ms Godwin—I can, Senator. If you can bear with me, I will rifle through this extensive folder and find the details. The allegation arose in relation to an incident that occurred at Port Hedland on 20 January—that was a Saturday. The detainee sought to speak to the DIMA business manager on 1 February and, as a result of that conversation, the DIMA business manager was due to speak to the police the following day. In that interview, the detainee raised concerns in relation to the alleged assault. However, prior to that being drawn to the attention of ACM or the police, ACM received a report from a different officer who had been on duty on the night in question. That officer simultaneously made an allegation of assault against the officer who was then suspended—that was on 2 February. On 2 February, the officer was suspended, and the police and DIMA's central office were advised. The police conducted an investigation and charges were laid on 8 February.

Senator McKIERNAN—There is quite a large gap between the incident—that is, the riot at which the alleged assault occurred—and when the incident came to light. Is there any reason for that?

Ms Godwin—There is not a reason that I am currently aware of. The other point I should make is that ACM themselves have instigated an internal investigation into the whole incident. One of the questions they are pursuing in that context is why the report took a number of days to make.

Senator McKIERNAN—That is ACM. The other thing is that the department did not know about it and, after all, it is the department's responsibility to look after the care and welfare of the detainees. You did not know about this alleged—let us face it, it has not been before the courts—incident until nearly two weeks later.

Ms Godwin—At that point, clearly, it was an incident presumably between the detainee and the officer. Obviously, there were other witnesses. It is a question as to why that was not brought to attention. It was not brought to ACM management's or DIMA management's attention until the detainee first raised it and, as I said, almost simultaneously another detention officer made a report. The detainee had not sought to raise it with DIMA until that point.

Senator McKIERNAN—It goes to the question of where the responsibility lies. Is it the detainee's responsibility to bring it to the attention of those who have duty of care or is it up to those who have duty of care to exercise their responsibility and find out about these things rather than waiting until two weeks later?

Ms Godwin—I am certainly not suggesting that it is the detainee's responsibility, although clearly one way that we would get to know about an issue would be by a detainee raising it. Clearly our detention manager cannot be in all parts of the centre at all times of the day and night. He relies, obviously, on his own experience, because he is in the centre, he moves around the centre, and from time to time he will observe things himself. We are also dependent in that context on ACM drawing such issues to our attention. Immediately ACM centre management—their head office management—became aware of it, they did draw it to our attention, but, as I say, the question of why the officers directly involved did not bring it to attention earlier is something that we have asked for an explanation of from ACM.

Senator McKIERNAN—This incident concerns me, particularly the time gap. It concerns me in relation to what we explored at the last estimates committee hearing, with the allegations about Woomera and the length of time that was taken to investigate those allegations and the amount of information that came through after the event. It bothers me that the lessons from the experiences at Woomera have not been put into practice as yet. I appreciate that the Flood inquiry is still going on and the recommendations have not been made. However, in regard to the Port Hedland incident, the police were brought in to put down the incident. Then I think some of the individuals who were involved in that were removed from the centre and others were segregated from other people within the centre.

Ms Godwin—The incident that I am referring to on the night of the 20th was not the incident that involved the Western Australian police. There were two incidents on consecutive evenings. There was an incident on the Saturday night which involved this detainee, and on the Sunday there was another incident. The second incident was prompted, at least in fairly significant part, by a decision to try to move some of the main instigators of the incident on the Saturday away from the main group of detainees into a separate area. It was the move of that group on the Sunday night that prompted the incident that called for the police to come in

on the Sunday night. This was, in a sense, the smaller incident on the Saturday evening and did not involve the police.

Senator McKIERNAN—Was the first incident you describe the time that the female officer was injured.

Ms Godwin—No.

Senator McKIERNAN—Was it another incident?

Ms Godwin—That was an entirely separate incident. There was a female detention officer assaulted by a detainee, and I have the date somewhere and will look that up for you if you wish. I could certainly give you that. That was not an incident that was related to either of these two incidents that we are now discussing. However, in the course of the incident on the Saturday night a detention officer was assaulted as part of the general melee. It was not a largish group at that point, but there was an incident against a detention officer, and subsequently the report of the incident against the detainee.

Senator McKIERNAN—Thank you for the clarification and the correction. I am sorry I got it wrong. Following the Saturday night incident, there was then a review of that incident, and as a result of that a number of individual detainees were removed into a separate part of the centre. Apparently the inquiry into the incident did not reveal that a detainee had been allegedly injured during the course of the incident.

Ms Godwin—Not at that point; that is correct.

Senator McKIERNAN—Do you know if the detainee was actually spoken to—that is, the one who had allegedly been assaulted?

Ms Godwin—I do not know whether he was spoken to earlier than the conversation he had with the DIMA business manager, except to say that he was, as I said, part of that incident on the Saturday evening. He became very agitated, and a decision was made on the Saturday night to move him into the area of the centre where there are observation rooms—near the medical unit. You may recall the layout there?

Senator McKIERNAN—Yes.

Ms Godwin—He was there in consultation with the nurse on duty, and I think the mental health nurse came in and also spoke to him. I am not aware at this point whether, during those conversations, he made any mention of having been assaulted. But certainly that has not been brought to attention at this point.

Senator McKIERNAN—Has the department sought to find out if the detainee did in fact make a complaint at that particular point or, rather than make a complaint, told others—including the nurses—about the alleged assault?

Ms Godwin—As I mentioned before, we have asked ACM for a detailed explanation of just what happened, the time frames, the chronology and those sorts of things, and that report will no doubt include a list of who spoke to the detainee and when. He did ultimately move back into the main compound, of course, and so there would have been a period of time when he could have spoken to other people more generally.

Senator McKIERNAN—I am acutely aware that this matter is before the courts and that that is the proper forum in which to tease out all the matters. I do have concerns, as I had on the last occasion, about the department's duty of care—how you exercise that duty of care and

how, as a department, you investigate allegations but, more importantly, how the department exercises its duty of care so that, if incidents do occur, it is the department that takes action rather than the detainee, who may be the victim, some two or three weeks later. It is not the first incident where allegations have been made and investigated. I am aware that, from time to time, allegations are made that have no substance to them, but it would appear on this occasion that the police have been the ones to lay the charges. Perhaps I am going too far, because the matter is still in front of the court. I will let it remain on the record that I have concerns about the amount of time between the incidents. Without dealing with the individual who has allegedly been assaulted, I do want to deal with the matter of the disturbance at Port Hedland. It has been said that the main persons involved in that disturbance had earlier been removed from the Woomera Detention Centre.

Ms Godwin—The incident on the Saturday afternoon almost entirely, I think, involved people who had been transferred from Woomera. The cause of the incident on the Saturday, I think, was concerns about which rooms they were being allocated in the compound and so forth. On the Sunday, however, it was a larger group of detainees. It certainly included some of the detainees who had been transferred from Woomera, but not entirely. Certainly the numbers were much greater than the number of detainees who had been transferred. I think it is also true that some of the detainees who had been transferred from Woomera, although they had been agitated on the Saturday, were not involved in the incident on the Sunday. So some were involved on the Sunday but not all, and there were other detainees involved on the Sunday who had not been involved in the incident on the Saturday.

Senator McKIERNAN—It has also been alleged publicly that the persons who were transferred from Woomera were also involved in earlier disturbances at that detention centre and that that, in part, was the reason for their removal from Woomera. Is there any substance to that allegation?

Ms Godwin—I would have to check all of the detainee details to be able to confirm that. As you are aware, there had been a number of very significant incidents involving large numbers of people at Woomera. It is possible that some of the people who moved from Woomera to Port Hedland had previously been involved in incidents. In fact, it is quite likely, but that is not the essential reason that they were moved. We were faced, I think early in January, with a situation where numbers arriving were such that we needed to put new arrivals into Woomera again. You are probably aware that phase 2 of Woomera has newer, more purpose designed type accommodation and we have been progressively finalising that.

Our initial intention had been, to the extent possible, to allow numbers at Woomera to reduce until we got to a point where we could use the new phase. But, as I say, the numbers arriving at the end of December and early January were such that we needed to revise that. We needed to move people to Woomera. That meant we needed to move some people out of the main compound at Woomera to make way for new arrivals. The question then became one of where they would be located. Some people remained at Woomera but moved across into the other compound. There was not room in that compound for everybody, nor was it considered to be desirable from an operational point of view because there were some groups in the centre who had previously experienced tensions between them and it did not seem sensible to simply put them all together and perhaps heighten those tensions. A decision was made then to move people to other centres. A small group, I think, went to Perth, a group went to Port Hedland and I think some went to Curtin.

Senator McKIERNAN—Who makes the decision about the movement of people? Is that a DIMA decision or an ACM decision?

Ms Godwin—It is essentially a joint decision. As the service provider and the ones with the day-to-day understanding of the dynamics in the centre, ACM would provide us with their views about what would be a sensible approach to the management of a particular population of detainees, but they could not just move people without consulting us. In this instance there was a general discussion about where their space was, where the appropriate accommodation for the detainees was and so forth. We also took into account, although not absolutely, because I think a couple of people got caught in this, where people were up to in processing. If they were about to be interviewed by the RRT or whatever in Woomera, for example, we did not want to disrupt that process by moving them. We took account of those sorts of issues.

Senator LUDWIG—Does the joint decision making stretch only to location of the detainees? They have the day-to-day management of the centre, so I assume that once you process them there is a handing over, in a sense, to a detention centre, in which case the ACM do it. I understand there is a DIMA officer usually located in the detention centre to act as a liaison officer.

Ms Godwin—There is.

Senator LUDWIG—Does it end at that point? What you have raised is a case where you are talking about a shifting of detainees from one centre to another and you then said there was a joint decision as to how or whether that would occur. But it also raises the question: does ACM have feedback to you—that is, ‘We don’t agree with this course of action’? How do you resolve factors in this instance? Using this as an example, did DIMA say, ‘Yes, it is a good idea’ or, alternatively, did they suggest an alternative arrangement or something different? How is that dispute resolved if your service provider, who is looking after the detainees, is telling DIMA that this is a better course of action? Please correct me if I am wrong. If, for argument’s sake, DIMA then says, ‘No, we disagree and this is a better course of action,’ I guess you win. How does that occur?

Ms Godwin—In my experience—and Mr Vardos, who has been involved longer than I, may want to comment—it has not usually come to a dispute of that sort. Certainly, from time to time ACM would suggest to us that it would be sensible for a detainee to move and we would then usually say, ‘What is that assessment based on? What factors have been taken into account?’ Generally speaking, if that seems sensible we would go ahead with it or we may ask questions such as, ‘Have you considered this? Have you considered that?’ In my experience we generally come to an agreement on what would make operational sense at that particular point.

As to the question of whether these are the only joint decisions, there is a lot of consultation back and forth between us and ACM, particularly about those bigger ticket items, if I can put it that way. Where we have concerns about things ACM are doing on a day-to-day basis, things we would normally regard as being within their ambit, we would still ask them questions about that. For example, they are responsible for the catering and the dining arrangements and so forth, but if we had concerns about that or if detainees or others had raised issues with us—you are probably aware that some of the centres have community consultative committees and they will occasionally raise issues—we would take those issues up with ACM. While we regard them as being responsible, we also regard ourselves as having a proper role to play in asking about and pursuing issues where we think there might be performance questions that need to be explored or resolved.

Senator LUDWIG—More specifically, in relation to the issue we are currently talking about—the shifting of the detainees—did ACM agree with that or did they provide any note of caution in respect of that?

Ms Godwin—I will ask Mr Vardos to comment because he was directly involved in those discussions.

Mr Vardos—Senator, I cannot recall any issue of dispute over the transfer of the detainees. There was general agreement that it was, for a range of operational reasons, in everyone's best interests to go down that path. We obviously sought advice from them on group dynamics and how best to split the detainees that we wanted to move. The sort of thing that was taken into account was, for example, where they would have fellow country folk to relate to upon arriving at the new centre. There was no dispute to resolve and I cannot recall any note of caution on the part of ACM in relation to that matter.

Senator McKIERNAN—Going back briefly to the incident where a complaint has been made by the police, you indicated that the officer has been suspended.

Ms Godwin—Yes.

Senator McKIERNAN—Is he suspended on salary or without salary?

Ms Godwin—I do not know, Senator; I would have to take that on notice. I know only that he has been suspended.

Senator McKIERNAN—He would not have been transferred. Do you know whether he was a locally engaged employee of ACM?

Ms Godwin—I think he was, but I would have to confirm that. I will take that on notice.

Senator McKIERNAN—Is ACM or DIMA paying or contributing in anyway to the officer's legal costs?

Ms Godwin—Certainly DIMA is not. I would have to take on notice the question of whether there is any issue there with ACM.

Senator McKIERNAN—During the last round of estimates—and this relates to my concern—Mr Farmer told a committee that DIMA had engaged an independent consultant to review detainee record keeping and file management practices at Woomera. Is that going to spread to other centres? It seems to me that we may have a problem also at Port Hedland if incidents like this do not come to light for some two weeks after the alleged event.

Mr Farmer—Senator, there are two issues: one is record keeping and the other is reporting of incidents. The matter you are talking about at Port Hedland falls into the latter category. Someone did not make an allegation until some time after the event. The Woomera issue was really a matter of record keeping—how the records were maintained and kept.

Senator McKIERNAN—There may be a fine line of distinction. I am concerned that there is legal action on the way and I do not want to do anything or say anything that may in any way influence that case. Going back then to the overall incident, the minister at the time stated that the persons responsible for the Woomera incidents did not have valid claims for refugee status. If that is the case, why were they relocated to Port Hedland and not simply removed from Australia?

Ms Godwin—I think it goes to the question of where in the process they were. For a complete overview I would need to check each of the individual detainee records, but certainly my understanding is that the bulk of people moved had been found not to be

refugees. Whether they had finalised their RRT process or whether they had then sought review in the courts, there would have been an initial decision that they were not a refugee.

Mr Farmer—There can also be delays for people who have in effect reached the end of the line and are available for removal. In a number of cases we need to go through a variety of processes to effect removal because we have to do that in cooperation with the home country of the person concerned. Sometimes that can be done quickly, but other times it takes longer.

Senator SCHACHT—How much longer on average does it take after they have exhausted all their rights and they have to be removed?

Senator McKIERNAN—Perhaps we might put that to one side at the moment and deal with the incident. I need to follow the track of these incidents, because it is not just Port Hedland; it is also Curtin and Woomera. Going back to the minister's statement, it would be obvious that the minister at the time had possession of that information—that they had exhausted their refugee applications, exhausted all processes—otherwise he would not have made that statement, would he?

Mr Farmer—I remember reading the statement in the press; I do not recall seeing a statement by the minister. I think it is true that the majority of people had in effect exhausted the processes, but whether it was all of them I do not recall the minister saying. So that is not necessarily my understanding.

Senator McKIERNAN—Has anybody been charged over the incidents at Woomera and Port Hedland? We will deal with Curtin as a separate matter, because I do not believe the Curtin incident was related to people being transferred out of Woomera on the basis that they had exhausted their refugee status. Has anybody been charged over the Woomera incidents and, if so, what are the charges?

Ms Godwin—When you talk about the Woomera incidents are you referring to the major incidents over the course of last year?

Senator McKIERNAN—Yes, but there was an incident earlier this year, wasn't there?

Ms Godwin—In Woomera?

Senator McKIERNAN—I thought so.

Mr Farmer—I do not think we have had one in Woomera this year. There was obviously the major escape in June and then the rioting and arson in August. The more recent incidents have been at Curtin and Port Hedland.

Mr Metcalfe—As at the moment, the detainee population in Woomera basically constitutes new arrivals—people who arrived in December and January and are being processed at this moment. Indeed some are reaching the conclusion of that processing. So some of the issues and frustration expressed about people who had been with us for a long time are not currently present at Woomera.

Senator McKIERNAN—Thank you for that clarification. In regard to the earlier incident last year at Woomera, have any charges been laid?

Ms Godwin—Certainly a number of people were charged. What I do not have with me, and I apologise for that, is a list of the number of people charged and the nature of the charges and where they are up to. But certainly I know a number of them have progressively appeared in court and so forth. We could provide you with that information.

Senator McKIERNAN—Could you provide me with that information on notice and, possibly, if you have not got information on that, you would have information on the charges, if any, coming out of the Port Hedland incident and also the incident at Curtin last month as well—if indeed any charges have been laid in relation to each of them. The other information that I am seeking concerns the amount of damage that was done in each of the incidents at Woomera, Port Hedland and Curtin. Do you have any indication of the amount of money that these incidents have cost the taxpayers of Australia?

Ms Godwin—In very general terms. We would have to take on notice the details, although Ms Webb might have some of them at her fingertips. Certainly, the most serious was the major incident at Woomera last August which I think resulted in damage of around \$1 million. But there has been significant damage at Port Hedland over a couple of separate incidents and we could provide you with the details of that.

Ms Webb—If I could just chip in on the Port Hedland figures. We understand that it was of the order of \$30,000 to \$50,000—it was mostly smoke damage.

Senator McKIERNAN—If a person from any of the incidents we have been discussing were to be charged and convicted as a result of their actions whilst in detention, would those convictions have any impact upon the person's application for protection in Australia?

Ms Godwin—I might ask for further comment from Ms Bedlington, who is responsible for the onshore protection program but, as a general comment, it would depend on the nature and length of the conviction.

Ms Bedlington—To answer your question, as you know, within the refugees convention, there is a capacity whereby the country does not owe a protection obligation if the person has committed a serious non-political crime. So—just picking up on what Ms Godwin said—it therefore depends on whether the person has been convicted of a crime that is considered serious enough to obviate Australia's protection obligations.

Senator McKIERNAN—I have to ask this in the hypothetical and I am loath to ask hypothetical questions in estimates but, because court proceedings are afoot, I do not in any way want to intrude or impede on court proceedings. Would a charge and conviction of damage to public property be enough for the minister to consider the deportation of an individual?

Ms Bedlington—Perhaps if I could make something clear before I go into the body of your question. It would not be a consideration by the minister about whether the person should be deported; it would be a consideration that would go to whether Australia had protection obligations, that is, whether the person would be eligible for the grant of a protection visa of one sort or another. If it is such that the decision of the minister's delegate was that Australia did not owe protection obligations to that individual—that they have no right to remain—then the mandatory removal provisions of the act would come into force. It would not be a decision on the part of the minister directly to deport in the criminal deportation sense.

Senator McKIERNAN—I asked the question in the first sense of the minister because, in fact, all decisions are the minister's decisions taken under delegation, but I do understand the point that you are making.

Mr Farmer—Can I add that the minister has under consideration a number of issues in this area—and has made statements to that effect—because of the concern that is felt about these incidents in detention centres.

Senator McKIERNAN—The minister has made some statements, you say, Mr Farmer. Are you then able to give a more precise answer to the hypothetical that Ms Bedlington took from me?

Mr Farmer—No, I am not, because it is a matter that is under policy consideration now.

Senator McKIERNAN—Is it possible to separate the protection visa stream from the criminal deportation stream, and can they be treated separately?

Ms Bedlington—They are treated separately. They are completely different provisions in the act. The exclusion that I was talking about is actually part of the consideration about whether provisions under the refugees convention lead us to a decision that Australia owes protection obligations. It is article 33(2) of the convention. The criminal deportation issue is for somebody who is already a permanent resident who commits a crime and the criminal deportation provisions of the act apply. They are fundamentally different provisions in the act.

Senator McKIERNAN—Indeed. How would the criminal deportation provision impact upon the protection visa stream? If a person who is still in claims for a protection visa and an incident occurred where that individual had broken Australian law whilst in Australia, would that have any impact on the application for protection within Australia?

Mr Metcalfe—I can try to answer that, Senator. As Ms Bedlington just said, we are possibly using terms of art that the committee may not be completely familiar with, but essentially the issue of whether a protection visa should not be granted on the basis of a person's criminality is an issue that Ms Bedlington has just described—article 33(2) of the convention. A term of art within the Migration Act is the criminal deportation provisions, which essentially apply to people who have been granted a permanent visa, who are living in Australia, who have been here for less than 10 years, who are not Australian citizens, and who commit a crime that carries a penalty of 12 months or longer. That essentially is an ability to cancel a visa and to deport that person from Australia. In addition, there are powers to cancel visas and remove people from Australia, but I will not go into that level of detail. I think the point you are driving at is whether a person's criminal record and their possible deportation from Australia is influenced by the fact that they may have been recognised as a refugee.

Senator McKIERNAN—Yes, indeed.

Mr Metcalfe—Essentially, if we had a person who had been granted a visa on the basis that they were a refugee who then committed a criminal act, there is an issue. In considering whether that visa should be cancelled or whether that person should be deported, we would be mindful of the fact that the person was granted refugee status, and there would be a consideration through that process of cancellation or removal as to how that impacted upon that person's refugee status.

Senator McKIERNAN—Thank you for that. We are exploring a number of different streams, and probably, because it is hypothetical and because legal actions are afoot in the courts, I might exercise caution and not proceed any further down that path. But I do want to make one further attempt to explore the matter. What about individuals who have come through the application and review for protection in Australia—and perhaps even gone to the minister under section 417 for an exercise of discretion—who are then involved in unlawful incidents within Australia and who, for other reasons, are not able to be removed from

Australia? Could the criminal deportation provisions contained in the act be brought into effect to encourage either the individual to leave or their country of nationality to accept them?

Mr Metcalfe—The short answer is no, because, as I indicated earlier, criminal deportation applies to people who have a visa. In your hypothetical proposition, the person had not ever got a visa; they had been refused a visa. It then becomes an issue where presumably there has been a determination, for whatever reason, that the person is not a refugee. It comes down to the basis of whether they can be removed from Australia—whether it is practical. The law requires their removal if they do not hold a visa. It comes down to a question, as Mr Farmer indicated earlier—which takes us towards where Senator Schacht was—of whether it is possible to remove someone. It is only possible to remove someone if you can put them on a plane and a country will receive them. That takes us into a different set of issues in this complex area.

Senator COONEY—Criminal deportation is one of the two issues that the AAT can hear on appeal.

Mr Metcalfe—That is correct. There are several areas within our administration where the AAT has a role, and criminal deportation is an area where there is a review right by the AAT.

Senator COONEY—Whereas if it were a matter under the Geneva Convention that would go to the RRT.

Mr Metcalfe—Yes, unless the decision is actually in relation to criminality, where the AAT has a jurisdiction under section 501. I recall that the Joint Standing Committee on Migration looked at the issue of criminal deportation, and I think some of these issues were covered through that inquiry.

Senator MCKIERNAN—As a result of the disturbances at the detention centres, the minister has been on the public record saying that there are going to be new laws brought into place to give better control to the detention centres. How far advanced is the development of those new laws?

Mr Metcalfe—We are in the process of working with the Office of the Parliamentary Counsel to have that legislation drafted. The minister has indicated very strongly that he wishes that legislation to be introduced these sittings and we have conveyed that to the parliamentary counsel. Essentially, those provisions go to the penalties that are applicable to escape or breaches of the peace within a detention centre, as well as issues relating to being able to appropriately search detainees and visitors to detention centres because of our concerns about things being smuggled in, weapons being manufactured and whatever. That is something that the minister has announced, and we are working to develop that legislation at the moment.

Senator MCKIERNAN—Will that new legislation include giving authority to use chemical sedation as a method of control of persons?

Mr Metcalfe—What the minister has talked about there, I think, is clarifying some existing powers. There are powers in the migration regulations that were introduced in about 1992 that go to non-consensual application of medication essentially to resuscitate people who are hunger strikers. I think that Minister Bolkus introduced those regulations, from memory, or possibly Minister Hand, because of a particular—

Senator SCHACHT—Disallowable instruments.

Mr Metcalfe—Yes, but they were not disallowed. I think the minister has been talking about that general area as part of the full and considered response to some of the situations we have been looking at. He has asked the department to further advise him on that issue, and that is something we are in the process of doing.

Senator McKIERNAN—Didn't the minister go even further and foreshadow the extended use of injected sedatives on violent detainees rather than just hunger strikers?

Mr Metcalfe—Certainly my recollection of the issue and what we are doing is working in the areas of clarifying the existing powers and the issues.

Senator McKIERNAN—Will these changes require legislative changes, or will it be sought to be done by regulation?

Mr Metcalfe—We have not concluded our work on that, so I could not give you an answer on that, because it depended on ultimately where that issue went. There is a power under the legislation to generally regulate in relation to detention, and it is off that limb that the current regulation that relates to resuscitation comes. But it depends on the nature of the issue. It may well be not only migration regulations but areas such as air navigation issues, the powers of pilots and aircrew when a person is non-cooperative on an aircraft and those sorts of issues. They are real issues that have to be faced up to, and that is some work we are doing at the moment.

Senator McKIERNAN—On a matter of hunger strikers, I understand that the regulations provide now that a qualified medical practitioner has authority for health reasons—

Mr Metcalfe—It is a decision taken by the secretary on advice by a qualified medical practitioner.

Senator SCHACHT—That is for hunger.

Mr Metcalfe—That is correct.

Senator McKIERNAN—In terms of the control of individuals by using injected sedatives on violent detainees, that would require an additional power, wouldn't it?

Mr Metcalfe—That is something we are working on at the moment. I really think we are straying into the area of policy development and it is difficult for me to really respond.

Senator SCHACHT—The minister can.

Senator Ellison—The advice I have is that the minister is considering this at the moment, and really it is premature to say either way what the minister's decision will be.

Senator SCHACHT—The minister made a public statement. It was about the time that the Human Rights Subcommittee of the Joint Committee on Foreign Affairs, Defence and Trade visited detention centres. I know this because I was asked about the minister's public comments that this was an area that needed to be reviewed, and he left it in his comments very much that this was well under way. At the time I think a lot of us took a step back and said that we would like to see what justification there was for this change, but it certainly seemed to me to be more than a review that was under way. If it was a review, that is not the impression the minister gave. He was moving on the area and this was going to be a positive outcome, if you can call it that.

Mr Metcalfe—The minister made quite a few public comments around that time.

Senator SCHACHT—We know that.

Mr Metcalfe—Certainly what he did foreshadow, I think, is the legislation that I just indicated, which was essentially strengthening powers and increasing penalty provisions and those sorts of issues to make it clear that the Australian public does not regard riotous behaviour or whatever lightly. In relation to some of these other areas—

Senator SCHACHT—I think the Australian public would also not take lightly non-medical people injecting other people with chemical substances to sedate them, to tranquillise them or to knock them out.

Mr Metcalfe—I was going to go on to say that that was the area that the minister has asked us to work on, and that is something that we are currently working on.

Senator SCHACHT—In that review have you received any information on our international obligations about how you use this sort of treatment?

Mr Metcalfe—We are consulting the Attorney-General's Department through this process and so, naturally, all of those issues will be taken into account.

Senator Ellison—I think, for the record, we do not want to overstate what the minister has said before. In fact, you can see that back in November in an interview when he was asked a question in relation to chemical injections, the minister said then that he was proposing 'a framework of law for more abundant precaution to be more fully spelt out than it is now and to ensure that there is a proper and lawful basis that cannot be attacked in relation to the way in which these restraints are used. It is not just chemical restraints, it is physical restraint and it is in a variety of circumstances.' He then went on to stress that he would be looking at the detailed legislation which was being drafted at that time and that he would be looking to ensure that there were proper safeguards in relation to the circumstances in which it could be viewed. That was back in November.

Then on 23 January, an interviewer said, 'What we are talking about here are detainees that will be forcibly held down and injected.' The minister said, 'No. What we are talking about is a framework of law to validate a range of operational measures that might be necessary in relation to the management of detention centres and also the processes under which people are removed from Australia. It is what I would describe as more abundant precaution.'

Senator SCHACHT—What a wonderful phrase—'abundant precaution'.

Senator Ellison—I think what he is indicating there is that he was not at the stage that you might have thought. Perhaps the people that have put his statement to you really have not put the whole context of his statement to you.

Senator SCHACHT—I think that is a pretty fair summation.

Senator Ellison—I think it demonstrates that the minister was not at an advanced level of detailed legislation having been arrived at but that he was at the position where the policy had been formulated and on which it seems the minister was still taking advice and exercising great caution because of the sensitivity and the complexity of the issue.

CHAIR—Thank you for that clarification.

Senator SCHACHT—Madam Chair, I got the impression that the minister was putting this issue up to appeal to that section of the Australian community that is expressing views which are very antagonistic to illegal immigrants, et cetera and that this was a way of indicating where this government, your government, is going to take even more extreme

measures to deal with them, to get a tick from that element of the community which the government, for political reasons, is concerned about.

Senator Ellison—Those comments which I have attributed to the minister speak for themselves—exercising abundant caution. Certainly there is no—

Senator SCHACHT—But under abundant caution we are actually extending the powers.

CHAIR—Would you let the minister finish, Senator Schacht.

Senator Ellison—I am relying on the record of what the minister said, not on an impression of what he said. The words speak for themselves. Certainly in the language employed by the minister there is no extremity, no appealing to anyone who might be of an extreme view. In fact, I would say that his language was very measured. He said that they were looking at the legislation and that he would be looking at the detail of it. That is my understanding of the situation. I think that is really where we are at.

Senator SCHACHT—Can I ask, Minister—

CHAIR—Senator Schacht, I would like to return to questions on the issues that we were pursuing. I am not sure whether Senator McKiernan had completed in that area and I know Senator Cooney has been very patient in waiting to do some follow-up questions as well.

Senator SCHACHT—I will return to it later.

Senator McKIERNAN—I am looking for some reported media comments by the minister at the time. It appears to me that at the time there were some quite direct comments made about the use of medical restraint on people who are involved in services. I understand from what you have said to Mr Metcalfe that this is what has been looked at. I do not want to explore the policy with you—I do not think it is appropriate that we do it with public servants here—but I repeat the question: will it be a legislative change or will it be by regulation, or can we look for some form of parliamentary scrutiny over the process? I think parliament would probably want to get involved and certainly would want to find out what is happening in this area. Without going into the policy, are you able to inform the committee whether or not there will be parliamentary scrutiny?

Mr Farmer—I do not believe that the minister has reached that stage in his consideration of issues, because much of the advice is still being prepared.

Senator McKIERNAN—That media comment which led to headlines such as the one that appeared in the *Sydney Morning Herald* on Tuesday, 23 January 2001—‘Injections, expulsion for rioting refugees’—does not help the process. I am not in charge of the minister’s media releases, but if comments are made and reported on we then have a situation in this committee where we deal with questions asked.

Mr Farmer—You asked a question about legislation and regulation. I am not in a position to say what will be in the minister’s mind at the end of this process.

Senator McKIERNAN—We would like to find out what is in the minister’s mind; hence the questions and the earlier questions about the removal of people from Australia. I repeat a headline from the *Mercury* in Hobart on the same day, 23 January 2001, which said ‘Ruddock threatens to expel rioting detainees’. We have just explored what the minister’s powers are in regard to that action. Again, the comment does not necessarily help for good policy development and does leave one open to the press.

Mr Farmer—That is a headline.

Senator Ellison—The minister does not write the headlines—none of us do, unfortunately.

Senator McKIERNAN—I have just had a quick examination of the minister's media release file on the web and there are no media releases dealing with this matter. Yet there is a lot of media comment by the minister. I recall the minister being on television, but I do not have the words. There has been media comment, the minister has a big army of media people behind him, yet there is no detailed press statement by the minister on these incidents. That is something to be taken note of. I hear what Minister Ellison has to say. Again, Minister, you do have a certain amount—indeed, ministers have a certain amount—of power and control in regard to these matters, do you not?

Senator Ellison—I have never noticed it.

Senator McKIERNAN—I will conclude with this question. Mr Metcalfe, you said that the powers that are being looked at by the minister will include enhanced powers to search persons in detention and also people visiting the detention centres?

Mr Metcalfe—That is correct, Senator.

Senator McKIERNAN—Will that include strip search powers and surprise searches during the night?

Mr Metcalfe—Those issues have yet to be finally developed. The problem that we are seeking to solve is the manufacture of weapons, which have been used in attacks within detention centres between detainees and on staff. We take our obligations, our duty of care, very seriously in that regard, so the powers need to be proportionate according to the issue. Similarly with the issue of searches. At the moment, I think visitors to centres simply walk through a metal detector, and there is not even the opportunity to have a look at what is in a bag, for example. That legislation will emerge from that process, and it will obviously be subject to parliamentary scrutiny at that time.

Senator COONEY—We will be going on to outcome 2, and you will see the relevance of this questioning when I finish. A society which values Australian citizenship appreciates cultural diversity and enables migrants to participate equitably in society. That is a great vision, and if you are going to be associated with that you deserve to be proud. It is typical: we have not finished—Senator Schacht is about to begin—and we have been on detention since about 9 o'clock, including the Refugee Review Tribunal, which is part of this. The next issue I want to address is related to that letter by Stewart Foster, the Director of Public Affairs in the Department of Immigration and Multicultural Affairs. I am wondering whether you have any concern that the public might come to perceive the department as a jailer—the people that arrest the boat people when they come and then throw them into Woomera, Curtin and wherever else. All we ever hear about are the riots and how they are put down and the sorts of matters that are being discussed now—that we are thinking of going to sedatives to quieten people down. The other factor is the image overseas of the sharks and the crocodiles—you know all that. Has the department thought about that and thought, 'How can we get the image that it's a facilitator rather than a regulator?' You are more than simply a series of jailers—or perhaps you really are that! But, as I look down the hall, I do not see the nasty and savage people that we would expect to have as jailers. What about the image of the department?

Mr Farmer—Your concern is one that I share. Of course, the media treatment of detention is a very varied beast. For example, we took a group of media representatives through Woomera on, I believe, 24 January. The reporting as a result of that was much more balanced than anything we had seen for some time.

Senator SCHACHT—You were softening them up for our visit.

Mr Farmer—No, not at all. I think that there is a point in demystifying the detention centres. We make a great deal of effort to look at the detention standards and to make sure that those places are administered properly. Where they are not administered properly, we go to great lengths to catch up. On the detention side of things, we have a role in demystifying the centres and in exposing representatives of the media and other appropriate organisations—particularly the parliament and the Ombudsman, the Human Rights and Equal Opportunity Commission—to the centres.

On the other side of our operations, I could not agree more with you. I think the immigration effort in making the Olympic Games happen last year was an outstanding one. The comments we had from international visitors were overwhelmingly positive. It is certainly the case that we participate very positively in making it possible for the greatly increased volume of students to come to Australia under a well-administered program.

Senator COONEY—Senator Carr is not along there, is he?

Senator SCHACHT—If Kim Carr were here, we would start another three-hour debate.

CHAIR—Please do not invoke that proposition.

Mr Farmer—We service the tourism trade. We have developed cooperative arrangements with China in tourism. We are looking at making our services appropriate to 2005 and 2010 in a variety of ways that will improve our customer service. Yes, I think we do have a role to get those stories out. We have a program to try to do more of that. You and I, I hope, Senator, are having a heated agreement on this.

Senator COONEY—The other thing is that it is a matter of policy and not for you to talk about. I mean, both political parties have gone in for detention, but I wonder whether it is worth the—

Senator SCHACHT—We're not in detention yet.

Senator COONEY—Yes, we are. We went in for detention.

Senator SCHACHT—I am sorry, I thought you meant the whole party was in detention!

Senator COONEY—No.

Senator SCHACHT—I just want to go back to the discussion that the minister started on chemical sedation. Mr Metcalfe, you said that in 1992 there was a regulation to allow chemical sedation for people who went on hunger strike.

Mr Metcalfe—Yes. I said the regulation was established that allows the forcible medical treatment of people. It is essentially a resuscitation power.

Senator SCHACHT—Have you been required to use that?

Mr Metcalfe—Yes, we have.

Senator SCHACHT—On how many occasions?

Mr Metcalfe—I think we would need to take that on notice.

Senator SCHACHT—Is it six times or 600 times?

Mr Metcalfe—It is a handful.

Mr Farmer—I think it is more than a handful. I have been secretary for three years and the regulation imposes the responsibility on the secretary personally. It cannot be delegated.

Senator SCHACHT—So you're down there injecting them yourself! That would be an interesting scene, Secretary. I would get a photograph of that!

Mr Farmer—Perhaps I will tell you what does happen.

Senator SCHACHT—I will be interested, actually.

Mr Farmer—The usual case that has been brought to my attention is the case of someone on hunger strike whose bodily fluids or some other vital elements have fallen to a dangerous level and the medical practitioner certifies that unless that person receives medical treatment, usually some sort of intravenous drip, then there would be extreme or grave danger to that person's life. It is then my responsibility to agree or not to agree to authorise medical treatment. We can get the figures for you, but in the three years I have been doing it my guesstimate would be that this has happened on about 20 occasions. That is my guess.

Senator SCHACHT—You would give medical treatment, but I presume the person has to be physically restrained, even though they are in a weakened state—strapped down, held down, tied down or whatever—so that you can put in the intravenous drip.

Mr Farmer—I believe that varies very much from case to case.

Senator SCHACHT—Is that in the regulation? Do you delegate that power and, if you do, to whom do you delegate that power to provide the physical restraint so the doctor can provide the intravenous drip?

Mr Farmer—The power I am talking about now is only the authorisation to the medical practitioner to administer the—

Senator SCHACHT—But who authorises this? Is it your staff or is it the Federal Police who hold the person down? Who does that job? Someone must have the power to physically handle the body, though it is still alive.

Mr Metcalfe—I am advised that ordinarily, if a person continues to object to receiving medication, they are physically restrained—

Senator SCHACHT—By whom?

Mr Metcalfe—By the relevant detaining authorities—ACM, most commonly—and that flows from the general power within the legislation to restrain.

Senator SCHACHT—And that is delegated to ACM?

Mr Metcalfe—They are the officers for the purpose of the act.

Senator SCHACHT—Have they had training in how to do this?

Mr Metcalfe—Yes.

Senator SCHACHT—Have they had training in this particular method of restraint, of what they should or should not use?

Mr Metcalfe—Essentially, they are holding someone under medical supervision while a doctor places a drip in an arm.

Ms Godwin—It is quite common for people to agree to have that treatment. I certainly would not suggest that there has not been a need to restrain people on occasions, but it is not always necessary.

Senator SCHACHT—You have not taken advice from now Baroness Thatcher about how she treated the IRA prisoners who were on hunger strike in the early eighties?

Mr Farmer—That is right, Senator.

Senator SCHACHT—You have not taken advice from her?

Mr Farmer—No.

Senator SCHACHT—Or from the British government?

Mr Farmer—That is right.

Senator SCHACHT—Have you taken advice from any other government about how to handle forcible treatment?

Mr Farmer—Not that I am aware of.

Senator SCHACHT—Returning to the minister's comments—and you will keep telling me that this is all under review and that it will be a disallowable instrument—if the minister decided upon a change that enabled the use of chemical tranquillisers or chemical sedation for people who were violent, that would require a further amendment to the regulations. Is that correct?

Mr Metcalfe—As a statement of principle, that is correct.

Senator SCHACHT—It is not a statement of principle; that is what will happen. The parliament will have the final say over the method of how this will be imposed if the minister so chooses to change the current method.

Mr Metcalfe—I was going to say that, if it is ultimately decided—and it is far from that—to go down that path, anything that involved something happening without a person's consent which would otherwise constitute an assault upon the person would require legislation.

Senator SCHACHT—Thank you. In your review, the person administering the drug—I presume by injection, or is it by force-feeding pills down their throat?—by whatever method will be a delegated staff of ACM. Is that correct?

Mr Metcalfe—We have not gone anywhere near that level of detail yet. We really are at an area of principle rather than detail.

Senator SCHACHT—Unless you get some of the detail for us, how can you have a principle?

Mr Farmer—We are assembling the detail as part of the advice to the minister.

Senator SCHACHT—I would be interested in seeing in the statement following the completion of the review—and what will be debated in the parliament—just how much power ACM staff will be delegated to do this and under what restrictions it can be used. These are not fully-fledged Commonwealth employees. They do not have to appear before an estimates committee. You take the rap for what they do. Is that correct?

Mr Metcalfe—Certainly safeguards and appropriate training and all of those issues are integral to any consideration in this area. I think that, from what the minister said earlier, Minister Ruddock made it quite clear that appropriate safeguards and issues will be germane to this review.

Senator SCHACHT—Are you able to give any indication of what chemicals are going to be used—what substances will be injected into these people?

Mr Farmer—No.

Senator SCHACHT—It is not something like a couple of aspirins or a Bex, is it?

Mr Farmer—I think I have answered that, Senator.

Senator SCHACHT—I am just surprised that this review has such a paucity of detail when in fact the minister is speculating that this is a good idea and is necessary.

Mr Farmer—Senator, with great respect, there are very different things that my colleagues and I are able to say to you compared with what we are able to say to the minister.

Senator SCHACHT—Of course I understand that, being a former minister, and I fully respect that. That is why I have directed some of my questions to the minister at the table. Have ACM put a submission to you either in writing or in the form of a phone call to say that they need to have this power to effectively run the detention centres of which they have control?

Ms Godwin—I am not aware of any formal submission, although the issue of the powers of ACM officers in general and how they should be used is something that we would discuss reasonably regularly with ACM.

Senator SCHACHT—Has ACM, even by phone or as a chat with some senior officer, suggested they need these powers?

Mr Farmer—Senator, look—

Senator SCHACHT—This is a simple question. Have you had—

CHAIR—Mr Farmer was endeavouring to begin a response.

Senator SCHACHT—He was going to duck the question.

CHAIR—I do not think you can say that.

Senator Ellison—With all due respect, Madam Chair, he has not given him a chance.

CHAIR—I think that is entirely inappropriate; Mr Farmer was just about to begin answering the question.

Senator SCHACHT—I am sorry, Mr Farmer; I apologise for my enthusiastic form of questioning.

Mr Farmer—Thank you for those gracious words, Senator.

Senator SCHACHT—I am a very gracious person.

Mr Farmer—And I never duck questions. I think that on one or two occasions over the last few years—for example, when we have been removing people from Australia on aircraft—there have been instances where the captain of an aircraft has required a person—

Senator SCHACHT—Mr Farmer, I want to get back to the detention centre. I will come to the plane in a moment, but I want to get back to the detention centre where there have been riots, property burnt and people in fear of assault. Have ACM, since they got the contract, in one form or another indicated to the department that they want this power to be able to chemically tranquillise or sedate people who are—in their terms or your terms—uncontrollable?

CHAIR—Senator Schacht—

Senator SCHACHT—Please let him answer the question.

CHAIR—Last time I looked, Senator Schacht, I was in the chair. You can design your question in any way you wish. It is a matter for Mr Farmer to elucidate a response in the manner he regards as appropriate. If he wishes to set out his answer with some information

for you before he comes to the precise point that you are demanding, then he will do that. It is unhelpful of you to continue to interrupt him.

Mr Farmer—In relation to the disturbance, for example, at Woomera last year, I do not recall the exact form in which it took place but I do recall that, in some way, in reflecting on that incident, ACM referred to the desirability of clarifying its powers in relation to detainees. I do not think there was a reference there to any specific form of power—in other words, forced injection or the calling in of the police. There was a general raising of the question regarding the clarification of their powers in relation to detainees who were causing incidents.

Senator SCHACHT—It is a wonderful phrase of Sir Humphrey, Mr Farmer.

Mr Farmer—I am sorry, Senator, I did not hear that.

CHAIR—I understood you were trying to be helpful, Senator Schacht.

Senator SCHACHT—Sir Humphrey is trying to be helpful. He will then tell me I am asking a courageous question and then I will desert the place quickly.

CHAIR—I do not think personal reflections included in your responses are helpful.

Senator SCHACHT—You said ‘reflect’. Did the reflection come by osmosis, smoke signals or was there a phone call? You said that they reflected on what happened at Woomera and on reflection they wanted to raise the issue of further powers. How did the reflection take place?

Mr Metcalfe—We will have to check because no-one at the table recalls. A lot happens and we do not recall whether it was a phone call. I understand that there may have been an incident report from ACM in relation to the incidents at Woomera in which they talked about the adequacy of the infrastructure and they talked about their own powers to deal with people acting in a riotous way and suggested that a clarification and strengthening of those powers may assist. As I said earlier, some of those matters are actively being developed in terms of penalty provisions. These other issues are on the table and are being worked on.

Senator SCHACHT—Ms Godwin, were you on our visit to Woomera?

Ms Godwin—Yes.

Senator SCHACHT—Who else, apart from yourself, Ms Godwin, was there from the department?

Ms Godwin—The DIMA business manager.

Senator SCHACHT—I think you were sitting in the room two chairs from me when I specifically asked the question of ACM. I asked whether they had made any request to have their powers changed. I think that the head bloke who had come from Sydney while the visit was on said no. So how has this reflection come from ACM? He said, in front of the committee, that they had not made any request. Now I am told that there is at least a reflection from them.

Mr Farmer—We are trying to help you. You asked whether there was anything. I am giving you a recollection of mine.

Senator SCHACHT—I had this answer from the head man of ACM during our visit, in a crowded little room, in a briefing for an hour. He said no to the specific question about which you have said, ‘They have given a reflection to us.’ You said there might have been a report, but there was a reflection that led to them requesting further abilities or powers.

Mr Farmer—I was not at Woomera on the day.

Senator SCHACHT—You would have to accept that what you have said here is marginally different at least from what the gentleman said at the briefing he gave the committee in response to my question.

Mr Farmer—I hear you saying that. If it is an issue of interest to you I am very happy to—

Senator SCHACHT—A matter of interest? You are going to have to front the parliament if you want to change this. I am trying to find out who started it. They say it was not them. You say it came as a result of discussions with them in one form or another, which you described as a reflection. I think it is a reasonable question.

Mr Farmer—Senator, I think there are two issues. You are saying, firstly, ‘Did ACM ask something?’ and, secondly, ‘Who started it?’ Those concerns have been concerns held by the department and, I believe, by the minister for some time.

Senator SCHACHT—But they are not concerns held by ACM.

Mr Farmer—I have a recollection that after the Woomera riots, in the context of examining security in detention centres, I saw an interview, a record or something like that, from ACM saying that they would like certain elements of clarification about what the powers are to control people who are involved—

Senator SCHACHT—Clarification of powers. Is that broad enough to say that you will clarify the powers and give them a right to use chemical sedation, chemical treatment?

Mr Farmer—The point I was making—

Senator SCHACHT—Or have you told them they cannot do that under the present powers?

Mr Farmer—The point I was making earlier was that they had not, to my recollection, made a specific reference to use of sedation, but there was a general reference to clarification of their—

Senator SCHACHT—Did the clarification seek to say they should be able to use other means of physical force—bigger batons, bigger shields, more handcuffs or whatever: all those sorts of things that we have seen used elsewhere in the world, sometimes in an unfortunate way, sometimes in a necessary way?

Ms Godwin—It has certainly been something that ACM has mentioned to us in the past—the issue of search powers. That is an issue, as Mr Metcalfe has already mentioned, which we are examining. There are also questions about when it is appropriate to use things that would normally be regarded as crowd control. You are probably aware that most of the centres have what are referred to as CERT teams. They are used only in very limited circumstances. Generally, it is a case by case, on the spot determination. The question of whether or not that needs to be clarified in a more general way is an issue they have raised with us from time to time. There are, in a sense, ongoing discussions that touch on this general question of powers. I do not specifically recall a submission from ACM about sedation. I recall your question at the briefing at Woomera. It was specifically in the context of sedation. When Mr Lewis said no, I think he was answering in response to that specific point, not to the more general question of whether there were issues that they wanted to pursue with us in terms of powers in general.

Senator SCHACHT—I only make the point that Mr Farmer said there was some sort of reflection on these powers. Since they have sent that memo in about the general powers, have

you given them any advice to change what they could do to strengthen their activities—to use more force or different forms of equipment?

Ms Godwin—I do not believe so. We have not provided any such advice to them.

Senator SCHACHT—Did that memo—excluding the chemical issue—saying what their powers were, actually request anywhere increases in material ability to search and detain people and to lock them up and restrain them?

Ms Godwin—Which memo are we talking about?

Senator SCHACHT—I am told there was a report. I am trying to get to the bottom of what was flowing around. It is a bit hazy, I must say—that is always the way with a large organisation—but apparently some report came out of the Woomera incident. That is what Mr Farmer said earlier led to consideration of the chemical issue, for example.

Mr Farmer—I have not made that link.

CHAIR—Senator Schacht, my understanding, and I have been listening very carefully, is that Mr Farmer and Mr Metcalfe have referred to endeavouring to do their best to assist you with your questions to the best of their recollection at this stage in this hearing. Perhaps if you wish to set down the particular detailed information that you want, it may be helpful if the officers take the question on notice, assess the material they have available to them to respond to your question and return to you with that information.

Senator Ellison—In addition to that, there is the detailed conversation that Senator Schacht had with the ACM official at Woomera.

CHAIR—Quite, Minister.

Senator Ellison—We are getting a summary of that conversation and the officials really cannot comment in detail without seeing that.

Senator SCHACHT—I would be delighted to get a summary of it. I didn't realise you were taking it all down.

Senator Ellison—Was it recorded? If it was, it would be useful to have a recording of it.

CHAIR—I understand Senator Schacht to be referring to a visit of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade to the facility. I think there was an aide-memoire, if nothing else, recorded. That would be my suggestion, Senator Schacht, given that we have now spent a considerable period of time discussing an issue on which Mr Farmer and Mr Metcalfe, and now Ms Godwin, have tried to help you.

Senator SCHACHT—That is a very useful way to describe it.

CHAIR—They have tried to respond to your question. I do not know which other way you wish to describe it but let me use whichever I choose.

Senator SCHACHT—Mr Farmer, I ask you to take a question on notice about the report from ACM on the Woomera incident concerning the details of any request of what it meant to change to have their powers reviewed and whether that was a request for any additional material or ability to handle the inmates of the detention centre.

Mr Farmer—We will take that on notice.

Senator SCHACHT—Turning now to the centre itself—as a senator from South Australia, it is in my electorate—I have been visiting Woomera on average about once a year,

or maybe once every two years, since 1969. I find it, in one sense, rather sad that the biggest investment made in Woomera by the Commonwealth government since the close of the space program in the early seventies was actually a detention centre. This question may have been answered earlier, but what is the cost to the government of the detention centre, the new metal spikes, the razor wire, the cabins, the airconditioning and all the other facilities? Do we have a figure yet?

Ms Webb—The final expenditure on phase 1, which was the original compound that went up, was just over \$7 million. On phase 2, expenditure is of the order of \$10 million, plus \$1.7 million for the palisade fencing.

Senator SCHACHT—How much was the fence?

Ms Webb—It was \$1.7 million.

Senator SCHACHT—Was that the biggest individual item of expenditure at the detention centre? I was going to call it the 'spiked fence', but you call it a much more salubrious name, the 'palisade fence'.

Ms Webb—That is the correct term for that form of fencing, I believe.

Senator SCHACHT—With the razor wire and the double fencing.

Ms Webb—The biggest costs in terms of capital works would relate to earthworks and electrical works. The rest of those costs relate primarily to temporary facilities that can be relocated. The demountables, for example, can be removed to other centres should Woomera change in the future.

Senator SCHACHT—It is not a matter for here—the committee will make its own report—but I would like to make a couple of observations as a South Australian senator. Although I have to say that many of the staff were there, many of the detainees made positive comments about the treatment and service they were being provided in difficult circumstances—and that is acknowledged. It was pleasing to hear that. But one thing that families complained about was the effect of the heat on young kids. It is a hot place in summer and, although the demountables are airconditioned, it means that young families basically have to be inside all day in small rooms. Obviously, it can be a bit tense. Are there any efforts for the provision in the grounds for, for example, grass under shade cloth for kids to lie on and be outside. The only green grass I saw in the whole of the centre happened to be outside the administration block, from which the detainees were excluded. I would have thought that could be something, whatever the small cost—I doubt it would run into millions—that would be very useful for kids to enable them to be outside, even on a hot day.

Ms Webb—Yes, we fully agree with that. Shade structures are being erected in each compound at the moment and the India compound and shade structures in phase 2 are expected to be completed by the end of February. There is additional shade going into phase 1 and the whole program is expected to be completed by the end of March. Until all of that is completed, there are temporary shade structures that have gone into two of the compounds. In terms of sports ground and the play development, we have proposals in hand to cover the sports area—which, if you have been there, is mainly the soccer pitch—

Senator SCHACHT—I would not like to play soccer on it. You would not have much skin left on your knees and hands if you fell over!

Ms Webb—to provide a softer surface to play on. We have plans well advanced to put in a children's play area at the southern end of the soccer pitch—it will be fenced off—to allow

for children to play and for equipment to go in. There are already some slides and one of those big plastic slide-and-ladder arrangements and further equipment is to be provided.

Senator SCHACHT—Woomera is connected to the River Murray water system and I would suggest that, for the kids in particular, although it might be expensive, it would not be an unreasonable cost to actually put some turf in and water it. You would not have to put much in, but at least put it in some areas. Thank you for that. What is the life of the palisades and the razor wire before you have to replace it? Is there a plan that this facility is now going to become a permanent feature at Woomera?

Ms Webb—I would not know what the life of that sort of fencing is, but I would expect that it is a very long life. It is galvanised steel, so I would not expect it to have a short shelf life. Our plan is to move it when we no longer need it. It can be taken down and put somewhere else.

Senator SCHACHT—When there are no longer refugees, or people claiming to be, and when there are no longer illegal entrants to Australia! You call it a detention centre, but I have to say that, when I flew into Woomera and looked out of the plane as we flew over it a couple of times and then visited it, it does give you more the impression of being at least a medium level prison rather than a detention centre. That would be a correct description, wouldn't it?

Mr Metcalfe—I was there Friday and, just as an observation, I was quite surprised that the palisade fencing was probably less impressive than I thought it might be.

Senator SCHACHT—What did you expect it to be—electrified or something with spikes going out so that kids could fall on it!

Mr Metcalfe— No, I am making a serious comment, Senator.

CHAIR—That is unnecessary, Senator Schacht.

Mr Metcalfe—Because of the spaces between the pickets, you can see through and in, and there is a balancing of issues associated with that. But you also need to be aware and recall that the palisade fence was not there last June when 400 people forced their way out of that camp and occupied the middle of Woomera and caused enormous disruption to the townsfolk and a lot of difficulty. They delayed their processing, they delayed other people providing services—it was a serious issue which we had to address—and I would think that it is not unreasonable to say that, if people are in immigration detention, we need to provide appropriate perimeter security so that they cannot just walk out. Our earlier assumptions about the level of compliance were, unfortunately, incorrect and people were prepared to break out.

Senator COONEY—Is it the same as Lodden?

Mr Metcalfe—I gather it is the same as Fulham at Sale. I have not been to Lodden. I gather it is basically the standard material used in a medium security type environment.

Senator COONEY—I think Fulham is the main jail but Lodden is a low security one. I just thought you might be talking past each other—that when Senator Schacht said that it looked like a prison it probably is higher security than some prisons. That is why I was asking you whether it was the same as Lodden.

Mr Metcalfe—I think Senator Schacht mentioned medium security.

Senator SCHACHT—Yes, one of my first observations was that it did not look very dissimilar. If you know Grand Junction Road, where the women's prison is in metropolitan Adelaide, the style of the fencing, et cetera is not very different. I am not an expert on these things, but when I drove past the women's prison on Grand Junction Road it struck me that

Woomera does not look dissimilar now. I understand about the 400 and the concern about that. I have no argument with that.

I have nothing critical to say about the ACM staff that I met. They were very frank, very friendly and always answered quite well the questions that I had. I was interested to be told that some 20 local Woomera people had been employed. These people, by definition, would not have had any previous experience in running a detention centre. Does the department overview the training of those staff who are recruited locally who have had no previous detention experience?

Ms Godwin—My understanding is that a number of the people have been employed as administration staff rather than as detention officers and, as such, would not undergo the detention officer training, but anybody who is employed as a detention officer goes through their standard training process.

Senator SCHACHT—I was told that the people they bring in to do that are recruited directly by ACM on one-year contracts. Is that because they do not expect people to work there for more than a year before they think Woomera is too hot—physically, in the sun, not too hot in the job? Another restriction is that Woomera is isolated. Is it that they think that is the maximum time they can get people for or is there some industrial relations issue about why they have them on only one-year contracts?

Ms Godwin—It is really a matter for ACM, but in fact what they have been looking to do is to put people on longer contracts. A number of the staff they have had there have been on relatively shorter contracts than that and, in effect, the move to longer contracts is to build a pool of core staff.

Senator SCHACHT—Have you reviewed or observed the training that ACM gives to their staff who actually handle the detainees?

Ms Godwin—We do have quite a lot of information about the training. Before you came in, Senator, I took on notice a question to provide a fair bit of detail in that area.

Senator SCHACHT—Okay, I can read the *Hansard* later on.

Senator McKIERNAN—Senator Schacht, I wonder if I might intrude at this point.

Senator SCHACHT—Sure.

[12.33 p.m.]

ATTORNEY-GENERAL'S PORTFOLIO

Consideration resumed from 19 February.

Attorney-General's Department

Senator McKIERNAN—It has come to my attention that I have been massively verballed by the minister at the table for comments I made during yesterday's proceedings. In an Australian Associated Press statement of 7.07 p.m. on 19 February, the minister is quoted as saying that I had got my facts wrong in the matter of Mr Skase. The minister is quoted as saying:

There was no hearing on January 25 before the Spanish Constitutional Court as alleged by Senator McKiernan.

He is further quoted as saying:

Senator McKiernan's comments were inaccurate and obviously mistaken.

I have now obtained a copy of the *Hansard* of yesterday morning, when I asked the questions on it. I do not want to delay the hearing, but it is important to put some facts down. I had asked the officers at the table:

Are you aware of any further legal avenues that Mr Skase might have available to him to avoid his deportation from Spain?

The minister responded, and I then asked:

Do you know what stage the process is up to?

The minister asked Mr Carnell to give me details, and Mr Carnell said:

Mr Skase appealed to the Spanish Constitutional Court on 25 January 2001. It is a not dissimilar process to our High Court, where they will make a decision on whether they accept the appeal for hearing or not. There appears to be no fixed period in which they need make that decision. We are awaiting advice on that decision, on whether the Constitutional Court accepts the appeal or not.

I then asked:

Did Australia have an observer at those proceedings—the 25 January proceedings?

Ms Jackson then responded:

The DFAT mission in Madrid has very closely monitored all of the developments in the Skase case. I am not sure whether they were actually in court when judgment was handed down. I can confirm that with Foreign Affairs and get back to you.

The minister came in around 4.38 yesterday afternoon and sought to clarify the situation. Mr Cornall is quoted about that time as saying:

We were taken by surprise by the suggestion that there was a hearing in Spain on 25 January.

I suspect that the secretary will be speaking to his officer in regard to that, because that is where I got my information. Mr Cornall continued:

We have been checking our file and our records since that suggestion was made. It is our understanding that there was no hearing in Spain on 25 January but that on that date Mr Skase lodged his documents which commenced his appeal to the Spanish constitutional tribunal.

The minister then goes on to say:

... I think that when it was put to the official who answered it took her by surprise.

It certainly took me by surprise, and the minister's statements took me by surprise as well. If I did get things wrong yesterday in asking the question, I got them wrong because of the responses I got from the officer at the table. It was the officer at the table who suggested that the hearing date was the 25th. Had we got the different information that we have now, perhaps the questioning that we were engaging in at that time might have continued in a different vein. I hope that my intrusion at the moment sets the record straight in regard to that.

Senator Ellison—Madam Chair, I stand by what was said yesterday by the department and me. Mr Carnell had not mentioned that there was any hearing on the 25th; he had mentioned that there was an appeal, which is made by lodging one's documents. It was in the questioning of Ms Jackson that Senator McKiernan made much of there being a hearing. At the time, the officials took it from Senator McKiernan that he was clearly saying that there was a hearing on that date. They were surprised by that, because they were not aware of any such hearing taking place. They went away and checked the situation and found that there was only a lodging of documents. I have checked the *Hansard* as well, but certainly the department and I are firmly of a view that the first person to raise the idea that there was a hearing on the 25th was Senator McKiernan.

Senator McKIERNAN—On a point of order, I think the minister is now actually accusing me of lying.

Senator Ellison—No, I am not.

Senator McKIERNAN—I think you are. I have read the transcript of yesterday's proceedings to you.

Senator Ellison—Mr Carnell's word was 'appealed', and no question of a hearing was mentioned by him. You say that you took from Mr Carnell the fact that there was a hearing on the 25th, but the record speaks for itself. He did not say that there was a hearing on the 25th. It was Senator McKiernan who raised the question of a hearing. The word 'hearing' was used for the first time by Senator McKiernan. It speaks for itself. I might add that the AAP picked this up and made much of it, which was entirely unfounded. That is what caused my response. The press were entirely misconstruing it all on the basis of what was said in the hearing yesterday. It was a very unfair statement to say that the department had been negligent, because it had not.

Senator McKIERNAN—I think the record now will prove that the department was indeed negligent. I will not repeat the quote from Mr Carnell in response to the request by you, Minister, for Mr Carnell to provide the committee with the information, but I will repeat this one. I asked:

Did Australia have an observer at those proceedings—the 25 January proceedings?

The answer I have already quoted then came back from Ms Jackson. I think for the sake of the record we should seek to incorporate things rather than read parts of yesterday's transcript into today's proceedings.

CHAIR—Thank you. Shall we return to the issue at hand?

[12.40 p.m.]

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

Consideration resumed.

Department of Immigration and Multicultural Affairs

Senator SCHACHT—I just have a couple of quick questions to finish off this section about Woomera. As I say, I am a member of the committee which will make a report to which the department—the government—will respond. I just want to say personally that the cooperation of the department and ACM on my visit to Woomera was quite good. In particular, they accepted the request of the committee that we meet with detainees without the presence of either departmental officials or ACM staff, and all members of the committee appreciated that. I think Mr Metcalfe or Mr Farmer mentioned something about the use of force—putting people in aeroplanes when everything is exhausted: whether they like it or not, they have to leave the country. Obviously, they are upset, for whatever reason, and force is needed. Is that force used by the Federal Police? Is it the Federal Police who are actually the ones or does ACM take them from the camp, even if they have to forcibly put them in a truck, car or bus, and then hand them over at some stage to the Federal Police or someone else who then takes them to the airport, and then someone puts them on the plane and in the control of the staff on the plane—the pilot and the aircrew? Can you just run through that for me very quickly?

Ms Godwin—It really depends a lot on the circumstances of the particular removal. Sometimes ACM are the escorts, but not always.

Senator SCHACHT—The escorts all the way through?

Ms Godwin—Yes, we will sometimes escort people all the way through to their destination. Sometimes, if people are reasonably cooperative, they will not be escorted all the way through. Who the escorts are will depend sometimes, as I say, on who is responsible for the removal. In certain circumstances, if somebody arrived in an unauthorised manner by air, the airline that brought them in is responsible for the removal, and they will make the arrangements for the escorts and so forth. It is quite varied. Generally speaking, though, what would happen is that ACM would take them from the detention centre to the airport, and then transfer them to whoever is responsible for the removal or, if it is ACM who are conducting the escort, remain with the person.

Senator SCHACHT—Could you just provide—you may have to take it on notice for obvious reasons—information on how many times in the last two calendar years some force, by definition, has had to be used to get people in—manhandle them into the truck or car, out of the detention centre, and physically guide them, if I could use that phrase, onto the plane, where the pilot may have taken a decision to handcuff them?

Ms Godwin—We will certainly take that on notice and endeavour to give you as much information as we can. Generally speaking, it would not be uncommon for people to have what are known as flexi-cuffs—sort of plastic restraints. But as to any other elements I will take that on notice.

Senator SCHACHT—And once they are on the plane the captain then chooses. I think they have more serious handcuffs on aeroplanes, for obvious reasons—metal handcuffs, et cetera, which are more effective.

Ms Godwin—Once they are on the plane, a different set of circumstances comes into play, because it goes to questions of air regulations—air navigation, air safety and those sorts of things. If they are escorted, generally you would rely on the escorts.

Senator SCHACHT—Boat people who fail in all their appeals and are sent out of the country cannot go back on the boat; they are going to go back on the plane.

Ms Godwin—Yes.

Senator SCHACHT—Is that the responsibility of the department—to get them onto the plane? It is not the airline's fault. Do we accept the responsibility of getting them on the plane and back to the country that is willing to accept them?

Ms Godwin—Yes. The responsibility for the removal is DIMA's, but we would engage ACM in that sort of situation. It also varies according to numbers, of course. If there is a large number, there may be a charter arranged, as opposed to an individual commercial flight.

Senator SCHACHT—And the cost of the charter is borne by DIMA, even though some of these people might have extensive private accounts somewhere else?

Ms Godwin—Yes.

Senator COONEY—How do you know that they have? This fascinates me. It is just a statement you throw out. This is what I was talking about before with the contracts. Just how do we know?

Mr Farmer—It was a hypothetical. Senator Schacht said even though they may have bank accounts elsewhere, and the answer was yes.

Senator COONEY—Not only am I criticising Ms Godwin, I am criticising Senator Schacht too. He is on the law and order campaign, per usual. I do not know where he got it from.

Senator SCHACHT—During my visit to Woomera a number of the ACM staff said to me informally, with no provocation, that they were aware that some of the people who are detainees do have access to bank accounts, overseas or wherever, either through relatives or directly themselves, that have significant amounts of money. I am not saying they are millionaires or whatever, but they are not absolutely destitute. That is why I raise it.

Senator COONEY—That is a different matter from the one you put. ‘Not absolutely destitute’ is a bit different.

Senator SCHACHT—I understand there was one case—without naming the actual detainee—where it was known that the person had several thousand dollars.

Senator COONEY—Do you accept it?

Senator SCHACHT—It is face value, it is hearsay, but clearly there is some comment around among staff, chatting with people. I accept that it is a cost to the Australian taxpayer that we put them on a charter flight or on an individual flight and fly them out. I know that some redneck people or some other people who have a nasty view about our international obligations would say, ‘Let them row home or something, because we do not want to waste taxpayers’ money.’ I do not agree with that. If we have to pay for the airfare under our international obligations, that is the responsibility we take.

Mr Metcalfe, you mentioned that even the airlines may want a review of the necessity to restrain recalcitrant passengers. Presumably the restraint is nothing to do with passengers who may complain about the quality of their food, the cramped nature of the seats or deep vein thrombosis breaking out. Are you aware, given your relationship with the airlines, of what they are asking for? I am a bit alarmed that if I complain about the food next time going back to Adelaide I might end up being physically done over—much to the joy of many other people, I suspect.

Mr Metcalfe—The point I was making is that the minister has asked the department to provide advice to him on the full range of issues that go to restraint. There are several parts of that continuum. We would want to look at a situation where a Customs officer or a naval officer is initially involved in the detention of someone when they arrive at Ashmore Reef or wherever they happen to arrive, through the continuum of detention ultimately through to the escorting to the airport and the placing on the aircraft. I do not think it needs to be looked at, but it is probably something we need to satisfy ourselves does not need to be looked at, as to whether there are any issues on the aircraft itself, because the Air Navigation Regulations do provide specific powers for pilots and captains in that area.

Senator Ellison—Madam Chair, at this point I am afraid I have to go. Senator Hill will take over after lunch. I do apologise for my absence for 10 minutes prior to lunch.

CHAIR—I understand that. Thank you, Minister.

Senator SCHACHT—I want to ask a couple of questions on the comparison between the treatment of illegal entrants to Australia outright, such as so-called boat people, and the treatment of those who are illegal through overstaying. In estimates last year, you said there were 50,000 overstayers—people who had got into the country on a visa, a tourist visa usually, and for various reasons had overstayed. Out of that 50,000 a year, you pick up about 20,000—

Mr Metcalfe—About 12,000 or 13,000 is the latest figure—about a quarter get picked up.

Senator SCHACHT—When those ones are picked up—we will deal with those first—you tell them, ‘You have to leave immediately.’ What do you say to those people—‘You have broken the law of Australia. You now have to leave. You get 24 or 48 hours to get onto the plane and out of Australia’? Is that basically what you tell them?

Mr Metcalfe—Essentially, a couple of things tend to happen after establishing that they are unlawful. I do not have the figures with me—others may be able to help or we can take it on notice. A significant proportion of people are in fact not detained but are granted what is called a ‘bridging visa’ because our officers are able to satisfy themselves that, having been located, the person will now depart Australia. They give us an undertaking—a bond may be taken from them or they may be put on some sort of reporting arrangement—while they make arrangements to depart. If an assessment is made, however, that the person would not comply—

Senator SCHACHT—And disappear again?

Mr Metcalfe—And disappear again—the person is taken into detention. They may well apply for a bridging visa, which is refused in that circumstance. The Migration Review Tribunal has a merits review jurisdiction in relation to any such refusal decision and, on occasion, may decide to grant the bridging visa—again, in some circumstances. A person may apply for a substantive visa, and that is a term of art—they may apply for refugee status, for example, at that time. Any such application needs to be determined and any appeal rights need to be dealt with before removal occurs. The most simple situation is a person who is detained, lodges no application and is removed from Australia fairly quickly. They may have their own airline ticket to use or there may be something that we have to arrange. There is a variety of circumstances.

Senator SCHACHT—What is the average length of time of a bridging visa—those that are granted to give them a chance to make arrangements to leave the country—a month, 28 days?

Mr Metcalfe—It may well be less than that. I do not know whether anyone here can assist me on that.

Ms Godwin—I think we need to take the specific detail on notice. Generally speaking, I think it relates to the time that the officer thinks is necessary for the person to make arrangements. So, if they have a ticket for Saturday, you do not give them a bridging visa for four weeks.

Senator SCHACHT—It would be very unusual for someone to get a bridging visa for more than a month, by and large?

Mr Metcalfe—We will take it on notice, but I am hearing that it is normally no more than a month. It depends greatly on personal circumstances—how long a person has been here, whether they have property or cars to dispose of, whether there is family and those sorts of issues. It may vary depending on all of that.

Senator SCHACHT—For the quarter that you catch each year who have overstayed, are most of those detections people who did not realise that their visa had a limit? I had a constituent the other day who had one of these where the travel agent told them one thing and they did not bother to check whether they were able to stay for a year or six months. They thought they could stay for a year, but the travel agent told them that in fact it was only for six months. When they were voluntarily going down to the airport to leave—whack!—you quite rightly detected them as overstayers. They left the country, but their problem is that they are now on a warning list somewhere else in the world if they want to come back to see friends. They, quite rightly, have an asterisk next to their name on the computer service. I understand that. Are most of the overstayers that you catch of that nature—that have been here for only a short time after the visa ran out—or are you catching people who have been here for years as an overstayer? I am trying to get a picture of it. Have the three-quarters who are not caught really been here for a long time?

Mr Metcalfe—We will take that on notice, because we have detailed statistical information on that and that will provide the answer to the question. I think we see a combination of people who overstay by a few days and people who we literally see at the airport as they go. Some people overstay for a short period of time. I think it is a fewer number of what I would regard as the very long-term overstayers—the people who have been here for more than six months or a year. It tends to be more difficult to find them because they are very well entrenched in the community. One of the issues that we have been working with is how we can develop strategies to try and deal with those people who may have been here for a long period of time.

Senator SCHACHT—Is it possible, out of your computer system, on notice, to give, of the approximately 50,000 illegal overstays, the time? Is it 10 per cent that have been here illegally for five years and just disappeared into the community? I would like to see that. I have a couple of other questions on this overstaying. Have you ever had to use physical assistance—as you have occasionally had to use with boat people—to get overstayers when you detect them? Do they ever have to be put on a plane with physical assistance, to use that phrase?

Ms Godwin—It would depend very largely on the circumstances of their departure from Australia. If they were detained and were not voluntary departures, it would go to the point that I made before. It would not be uncommon for people to have flexi-cuffs, that sort of thing.

Senator SCHACHT—Could you just take on notice how many are actually—after you detect them as overstayers—defined as being risky: people who, if you gave them a bridging visa, would just disappear back into the community until next time they were unlucky enough, in their view, to be caught again? At any one stage, do we have 50 of these people detained as overstayers who are a risk until we get them out of the country? Is it 500? I just want to get a rough idea of what we are dealing with. You can answer that now or take it on notice.

Mr Metcalfe—We will take it on notice.

Senator SCHACHT—I have seen recently a press report that India has been taken off the list as a country of risk from overstayers, as you might put it. Which country has the highest number—the most illegal overstayers? I am not talking about boat people but about people who have a visa. I am talking about overstayers from one day to infinity.

Mr Metcalfe—What I might do is provide you with a copy of a fact sheet that is publicly available from the department that provides answers to many of these questions, including the break-up of percentages. In terms of overstay rates, according to the latest version of this fact sheet—and we will double-check that this is right up to date; it was revised in May last year—

Senator SCHACHT—What category tops the list?

Mr Metcalfe—In terms of proportion of overstayers or highest overstay rate, according to this fact sheet, in May last year it was Tonga, with 3.5 per cent of Tongans—

Senator SCHACHT—Of the—

Mr Metcalfe—That is the proportion of Tongan nationals who come to Australia and overstay. In terms of the volume—the highest numbers of overstayers—from a particular source country, it is the UK. As at May last year, there were 5,561—

Senator SCHACHT—So the mother country is the biggest supplier of illegal immigrants to Australia?

Mr Metcalfe—They are also a very large supplier of tourists to Australia.

Senator SCHACHT—You might suggest to the minister when he comes back that he might point that out to Pauline Hanson—that the mother country is the biggest provider.

Mr Metcalfe—These figures are freely and publicly available.

Senator SCHACHT—I do not think Pauline Hanson has read them. It would not suit her political views. Of that 5,000, how many are literally the backpacker who stayed an extra month and how many have just disappeared into the system for years.

Mr Metcalfe—That is where the fact sheet does not go into detail. We will need to take that on notice as to whether we can disaggregate the UK overstay rate by length of overstay.

Senator SCHACHT—Please take that on notice. Could you also help me with this. It might come up later on, but I will give it to you now. I presume the biggest number of people with residential status in Australia who have not taken out citizenship are from Great Britain.

Mr Metcalfe—I will ask Peter Hughes, who is the program manager for citizenship, to answer that.

Senator McKIERNAN—I think we are asking questions under the different portfolio headings. I have some questions of Mr Hughes.

CHAIR—We are trying very hard to work on one area, Senator Schacht.

Senator SCHACHT—Okay. Mr Hughes will come back this afternoon, and if I am not here I will take it up with the department.

Mr Metcalfe—The answer to your question is yes, but Mr Hughes, I am sure, can give you further details this afternoon.

Proceedings suspended from 12.59 p.m. to 2.02 p.m.

CHAIR—We will continue with questions to DIMA. Senator McKiernan has some more questions and I think Senator Ferguson may join us relatively soon also with questions relating to enforcement of immigration law. Senator Hill, welcome.

Senator Hill—Thank you.

Senator McKIERNAN—I am going to ask some questions about processing, and I want to take up some of the remarks you made, Mr Farmer, in your opening comments. Your remarks have helped me cut back on some of the questions I was going to ask. In regard to processing, you indicated to the committee that some 80 per cent of protection claims made by boat arrivals in 1999 received the decision within 7½ months. This has been reduced to less than 15 weeks for applications made in late 2000. How many claims would be processed within that 15-week period? Are we still talking about 80 per cent?

Ms Bedlington—Can I just clarify exactly what you are asking? Are you referring to the ones that have been done within the standard, which is 80 per cent within 42 days?

Senator McKIERNAN—Let's go back then to Mr Farmer's opening statement.

Mr Illingworth—Regarding the cohort of people who arrived in the second quarter of 1999-2000, of that cohort who applied for protection visas 80 per cent of them received a decision within just on 7½ months. Looking at the cohort from the first quarter of the year 2000-01, that 80 per cent figure had been reduced to 101 days. It is a reduction from about 7½ months for 80 per cent of the case load to 80 per cent of the case load getting a decision in 101 days—just under 15 weeks.

Senator McKIERNAN—As to the 20 per cent that are not being processed within that 101 days, are there any reasons for the delay—if indeed that is the correct terminology—in those people not being processed within that period?

Ms Bedlington—All of the ones that are over three months as at the end of December are awaiting one or more checks—a security check, a penal check or an effective protection check. They are outside the direct control of DIMA.

Senator McKIERNAN—Is there greater difficulty in doing a security check for persons coming from countries like Iraq and Afghanistan than persons coming from Jordan or another Middle Eastern country? I ask that question in terms of those countries with which Australia has direct diplomatic relations.

Mr Metcalfe—It is possibly a question that is more properly asked of people who do the security checking rather than us.

Ms Bedlington—I could add one thing that does create some difficulties and it is not so much to do with the nationality—it is the fact that the great majority of these people are arriving without any documentation. So there are issues of identity and nationality in the first instance which can also come to bear in relation to security checks and indeed to penal checks.

Senator McKIERNAN—How long does it take to check identity? Do you have a mean figure or a cohort figure on checking of identity?

Ms Bedlington—Not a figure. It depends very much on the individual case. If, for example, we have reason to suspect that somebody is claiming either a different identity or a different nationality and we then have to satisfy ourselves, by embarking on things like a linguistic analysis and so on, that could add considerably to the amount of time. If we have a case where they may have arrived without any documents but they are telling a coherent story and we have no reason to disbelieve the story, it is not really an issue.

Senator McKIERNAN—It is somewhat of an achievement to reduce the processing time from 7 ½ months down to just over three months, or just short of four months. It is almost a halving of the processing time. But it is still a long time to be kept in detention. Some of the detention facilities are not necessarily the most ideal places for any persons to be spending any real amount of time in. What would be the shortest amount of time an unauthorised arrival coming here by boat, entering into the protection stream—a person who has genuine claims—would be processed within?

Mr Illingworth—It could be as little as three to four weeks from date of application. For example, of the people who have arrived so far in the third quarter of the current financial year, almost 60 have already been finalised. The average processing time is just over 22 days.

Senator McKIERNAN—During the course of the inquiry of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, to which Senator Schacht referred earlier in the day, I recall, during visits to detention centres I asked at each facility for details of individuals within the processing stream—the number that had been screened out, the number in primary processing, the number in review, the number of those who had exhausted all processes and the number of those involved in litigation and others who were not involved in litigation. I know that that material has been supplied to the subcommittee, but I am no longer a member. I do not know whether that material has been made public by the subcommittee. I am wondering whether there are any sensitivities about providing that information to this committee.

Ms Godwin—I would not have thought so, but can we take that and look at it? I do not see why we could not supply the same set of tables to this committee. It is just statistical information.

Mr Metcalfe—I do not think we have supplied anything to that subcommittee in confidence or in camera, so I am sure it will be readily available to you.

Senator McKIERNAN—I did not want to be in breach of any confidences. I am no longer a member of the committee and was not at the proceedings that took place here last week.

Mr Metcalfe—We will take that on notice from this committee.

Senator McKIERNAN—If you would, thank you.

CHAIR—As a member of both, I am sure I will come across it somewhere.

Senator McKIERNAN—Thank you very much for that. Regarding people smugglers and the attempts by government to contain the problem of unlawful non-citizens arriving in Australia, the scourge of people smugglers on our community and on the individuals themselves, since the significant increases in the penalties for people-smuggling, how many people have been prosecuted for their involvement in people trafficking activities?

Mr Metcalfe—We do have that material. We will take that on notice as well. Essentially, we are supplied information from the Director of Public Prosecutions as to the number of prosecutions and the duration of the penalties. That material is available and we should be able to get that to the committee.

Senator McKIERNAN—Along with the number of prosecutions, can you provide me with the number of convictions that have been secured, the penalties that go with those convictions and the nationalities of the persons who were convicted of people-smuggling or indeed what countries they have been operating in? If the persons were charged whilst in Australia, can you inform the committee what form of publicly funded legal assistance they

are receiving, if they are receiving any? That may be a little out of the immediate bailiwick of the DIMA office, but I am sure, with the resources of the department, that you know immediately where to go to find out whether there was any publicly funded legal assistance given to those who were so charged.

Mr Metcalfe—We will take all of that on notice, Senator. The point you make is a fair one. To the extent that we can ascertain from others—I suspect it would be DPP—as to their knowledge of the numbers of cases which have been publicly defended through legal aid or whatever, we will provide that information.

Senator McKIERNAN—My question related to overstayers is more properly dealt with in output 1.1 rather than in 1.3. I would not want Senator Schacht to come back in and—

CHAIR—No, but Senator Ferguson does have questions on output 1.3, I think.

Senator FERGUSON—No.

CHAIR—Are there any further questions on output 1.3?

Senator COONEY—I have some questions on the Australian Federal Police and the strike team. Do you have people investigating overseas?

Mr Metcalfe—Yes, we have a network of what we call principal migration officers, compliance who do not investigate, as such, but who liaise with local authorities and deal with visa fraud and associated issues. As I think you are aware, we also have officers placed in a number of airports, usually working with an airline such as Qantas, to more directly advise airlines on whether or not people are entitled to be carried to Australia. The Australian Federal Police also have a number of officers overseas who are tasked in this area, and we work closely with them.

Senator COONEY—I get the picture, though, that, if you have people at airports and seaports, what you are looking for are illegal immigrants rather than people smugglers. I am just wondering what processes you have in place to target people smugglers. As I was saying yesterday, they seem to be the problem in the sense that they exploit people who want to come here as asylum seekers or in any other way; they victimise those people by making use of an opportunity. They seem to me to be the bad guys, if you are going to talk in such terms, and I am just wondering what we are doing about those people.

Mr Metcalfe—There is quite an extensive effort associated with that. Our own information gathering capability has expanded greatly in the last couple of years, and we have much better knowledge about who the criminals actually are. That is obtained through a range of measures. Talking to people when they arrive illegally is one of those measures. Working with local authorities in places like Indonesia and Malaysia and in the Middle East is also part of that. There is a lot of joint work being done with the Australian Federal Police in relation to amassing information and, where possible, laying charges against some of the known principals. Again, we work closely with local law enforcement bodies in relation to those issues.

Senator COONEY—This seems to be becoming a worldwide problem. If you can believe the television and the newspapers, there is people-smuggling into Europe and England and what have you. Do we have any liaison world wide; do we have a sort of Interpol?

Mr Metcalfe—There is not a worldwide immigration agency in the sense of Interpol. The Australian Federal Police, though, who are tasked to work on these issues and who are putting a lot more resources into it, work closely with their international colleagues. We do, but it

tends to be by more bilateral arrangements between ourselves and our colleagues. We have regular high level exchanges with the UK, the US and Canada. Indeed, there is a meeting of chief executives each year on that issue. But something that we have done much more of in the last couple of years, basically by creating two new branches within the department—the border protection branch and the international cooperation branch—is to engage much more effectively and with a lot more of our colleagues in countries of transit like Indonesia, New Guinea, Malaysia and Thailand and in countries in the region such as in the Middle East and in South Asia.

Senator COONEY—It seems to me that you would need a significant amount of resources to do this properly. I do not know how you feel about saying yea or nay to that?

Mr Metcalfe—I think the answer is, yes, and in fact there are a lot more resources now being applied. I think we have talked before with you about the Prime Minister's Coastal Surveillance Task Force of June-July 1999 and budget decisions, in this portfolio and elsewhere, last budget flowing from the secretaries report on unauthorised arrivals. A substantial amount of funding has now come in not only to fund Coastwatch type issues but beyond that, in this portfolio, to fund very significant expansion of those PMOC and ALO positions, the establishment of the strike force, the establishment of the National Surveillance Centre and whatever. So there are a lot of resources, and I think that, in part, they have a fair bit to do with the fact that we have seen a reduced number of arrivals.

Senator COONEY—It sticks in the craw to see people asphyxiated in England or detained here or used in a bad way in Germany and the people actually running the scheme are allowed to go free. I suppose it is the classic drug argument: it is a matter of whether you pick the people up on the street for using drugs or whether you try to get to the source of the problem.

Mr Metcalfe—I think one of the complications you have pointed to is that many of the principals are in fact located outside Australia. There has been some prosecution action and whatever—there is certainly a case before the courts in Perth at the moment involving a person we regard as quite a substantial organiser who came to Australia on a vessel. But many of the people we know about are based in Indonesia and are pretty mobile sorts of people. We work with their authorities and, to the extent that they breach local law or are extraditable, those are issues we are pursuing vigorously.

Senator COONEY—I suppose the crime is committed when they put them on the boat, or when they bring them into Australia.

Mr Metcalfe—The Migration Act does have coverage to include the actions overseas, but it is a question of whether the person is in our jurisdiction to actually deal with them or whether we can bring them into the jurisdiction through extradition. That is a matter that A-G's and the AFP are doing some work on.

Senator COONEY—There was an article in the Melbourne *Herald Sun*—

CHAIR—You are going to ask about the Valentine's Day husband.

Senator COONEY—It was about Melbourne radio station Fox FM, Richard Kosior and Anita Perry from Rosebud on the peninsula. To cut it short, if we are looking at the interpretation people might make of what goes on in the department, they could say, 'Look at people from Iraq or Iran,' and particularly from Iraq, where we give silent assent in any event to the bombing of the people there, so clearly a nasty place to be. 'If you come from Iraq or Iran, you end up detained, whereas, if you have got Fox FM station behind you and there is publicity to be gained, you could get entrance.' This really depends on whether you can get

favourable publicity, as this man must have to start off with, because he comes from a media outlet, and then you get in, but if you get bad publicity, if you are one of the evil people from the Middle East, not quite human, then we will lock you up. I suppose that comes down to asking how he got in. Was it because people saw that this is a man who is going to take part in a media event and therefore should have entrance?

Mr Metcalfe—Can I say first that everyone is a human being and we do not bring any values of the sort that you ascribed. The simple fact is that there is a clear distinction between a person who arrives without a visa and a person who arrives with a visa. People who arrive by small vessel invariably do not have a visa, and the law requires that they must be detained and processes established to determine whether they have any claims to stay here. This gentleman was in possession of a visa when he arrived in Australia; he was coming here for a holiday. Not everything that you read in the newspaper is quite true. I think I am not breaching any privacy issues to say that we have become aware that there do appear to be some issues that go to whether he meets the character requirement, and those issues are matters that we are now looking at. There are procedures laid down to deal with the possible cancellation of a visa. Natural justice is an extremely important part of that. So we have essentially asked him to tell us more about himself and his circumstances, and the decision will then be made.

Senator COONEY—What I was really interested in is how far the media affects decision making in the department. If you get a group of people who you can demonise through the media, you treat them in one way; whereas, if you get somebody else who is going to be attractive in the media's eye, he or she gets another deal.

Mr Metcalfe—I completely reject any suggestion that we are influenced in any particular way. We deal with people as we find them. For people who arrive without a visa, the law requires us to deal with them in a particular way. For people who arrive with a visa but where there may be grounds for possible consideration of that visa, that will be looked at carefully. We treat each case carefully on its merits. This gentleman was involved in a radio station promotion. Clearly we are conscious of the fact there will be publicity associated with our actions but that does not mean we are not going to be careful and proper in the way we go about doing our job.

Senator COONEY—Would the department use the media to demonise people that it wanted to lock up?

Mr Metcalfe—No, absolutely not.

[2.26 p.m.]

CHAIR—Thank you. We will now move to questions on output 1.1, 'Non-humanitarian entry and stay'.

Senator McKIERNAN—At the hearing in November last year I asked a question on notice seeking details of the minister's exercise of non-humanitarian entry and stay—that was question 51. That response has come back to me covering outputs 1.1 and 1.2. Again covering both outputs, could we have similar figures for 1996-97, 1997-98 and 1998-99, with similar breakdowns?

Mr Metcalfe—We will take that on notice.

Senator McKIERNAN—I understand that the minister chooses to exercise his discretion on each individual case. However, it does seem that certain nationalities are among the beneficiaries of the minister's exercise—that some nationalities are better treated than others.

I do not want to impute any untoward behaviour in terms of the exercise of the minister's discretion, because I for one am very pleased that the minister is indeed exercising the discretion as liberally as he is. However, I am wondering how we could check on the exercise of the discretion without going into individual details of the nationalities I am looking at. For example, when the officers talked with Senator Schacht earlier today we found out that one group of people had the highest incidence of overstay rate by one measurement and that another group, by actual numbers, had a higher incidence of overstay. Is a methodology available so that the exercise can be measured to ensure that one group of people is not getting a better deal from the exercise of the discretion than another group? I ask that question in a roundabout way very deliberately, but if we need to go into more detail I would certainly be prepared to do that.

Mr Farmer—One immediate thing to say is that these are not group decisions. The minister takes his decision on each individual case. So looking at things as a group is not duplicating what actually happens during the exercise of the minister's discretion.

Senator McKIERNAN—How can that be measured then in a public way? I am appreciative of the fact—and certainly we addressed that in the recent report of the Senate Legal and Constitutional References Committee on the exercise of the minister's discretion—that this is discretionary and not subject to review by the courts, but how can it be measured? Is there a way that it can be measured to ensure that a particular national group is not receiving a benefit that other national groups are not receiving?

Mr Farmer—I will ask Ms Bedlington to talk about the guidelines, but I will just repeat that the way in which you are putting the question to determine if a particular national group is doing better than another—I think that is not actually duplicating what happens in the minister's mind where he looks case by case at whether the circumstances in a particular case are compelling or not.

Mr Metcalfe—For example, it may well be that people of particular nationalities may for a variety of reasons have situations which more properly attract the discretion than people from other backgrounds. So a straight comparison by nationality, which would need to take into account possibly the number of requests overall before trying to deduce some sort of conclusion that it is easier if you are from this country or that country, is hard to produce. As Mr Farmer said, each decision is taken individually and, indeed, groups or individuals from particular countries may have circumstances which lend themselves to the application of the power. So I think that what you are asking for is a difficult thing to actually produce, but it might be worthwhile if Ms Bedlington talked a little bit about the guidelines and how the system actually works and that may assist you.

Ms Bedlington—The guidelines are put in place by the minister to assist the department in identifying the cases that he would want brought to his attention to see whether in fact he wishes to consider exercising his discretion. Following on from what Mr Metcalfe has just said, I guess you could characterise the guidelines as covering two large families of reasons: one the of those is the refugee, humanitarian, our protection obligations under the Convention Against Torture and ICCPR and so on; and the other one I suppose you could categorise as being about family, or links with the Australian community, or the need for medical treatment, or that sort of thing. If you think about that second group, you could see that perhaps that would be more likely to be applicable to individuals who have, for example, links with a

large, longstanding community in the Australian community. You would expect that those people might come forward more often with reasons of links to the Australian community. Ones that come from countries where there might be difficulties in terms of persecution or other protection issues, you might expect that that side of the guidelines to be brought to the minister's attention. So you cannot really answer the question directly.

The one further comment that I would make is the way in which the minister is accountable in relation to the use of his public interest powers—that is, of course, the obligation under the act for him to make a tabling statement, which is posed before parliament each and every time he uses that discretionary power. That tabling statement sets out the reasons why he considers it to be in the public interest.

Senator McKIERNAN—I heard what you said, Ms Bedlington, and thank you for the information you have given the committee. If one were to hold up the figures that you have provided us with from the question on notice against those figures from the department itself when it does primary decision making for protection visas within Australia, and compare the national groups that are getting the benefit of the ministerial discretion against the groups that are granted refugee status in the first instance by the department or even by the Refugee Review Tribunal, I am wondering if that might be an indicator of measuring whether or not there might be favour being given to any national group over another national group or national groups over other national groups?

Mr Metcalfe—Again, I think there would be some problems in trying to draw conclusions from such a comparison because primary decision making is obviously an application of the refugees convention: does the person have a well-founded fear of persecution? The guidelines and the reasons for intervention could be much wider and, as Ms Bedlington indicated, go into a range of issues that maybe are not strictly refugee but broadly humanitarian or may relate to family or other personal circumstances. Again, it is a comparison of somewhat different things.

Senator McKIERNAN—The figures that have been provided to us give us some information. I am reluctant to go to the next step of asking for the breakdown of those matching the visa class grant against the individual national group because some of the smaller grants can lead to identification. That is my difficulty. I do not want to go down that track. I am more concerned with the larger national groups which have been in receipt of the benefit of the ministerial discretion. I am wary about how I get that type of information and how I can test the veracity of the ministerial decision making. I am not in any way seeking to intrude or impede on the minister's discretion, which is something that I support.

Ms Bedlington—I do not have the information that you said you were not going to pursue in terms of the type of visa granted or the reason by nationality; but, by way of illustration that might go some way to meeting your interest in this matter, the most common visa that was granted as a result of the use of the minister's powers under section 417 and the parallel power under sections 345 and 351 was the spouse visa: 67 under section 417, and 24 under sections 345 and 351. After the protection visa, which you would expect to have been about other international protection obligations, it is by far and away the most common visa. So, irrespective of the nationality, that would lead you down the path that this is based on an objective fact that the person had actually married probably an Australian citizen.

Senator McKIERNAN—I think we are getting close to where I want to come to. Thank you for the information. I am aware, despite what you have just said, of individuals who have Australian spouses and who have had to remove themselves from Australia and then come back in an illegal, unlawful way when the ministerial discretion was not applied in those instances. I am interested in trying to examine why on one hand it is successful and on a different hand it is not successful. That is done on an individual basis. When I look at the overall figures in the national groups, I wonder if there are more—I do not want to use their nationality—of one group than another. I do not want to impugn any ulterior motives to the minister, but I wonder whether or not the spouses of a particular national group are getting the advantage of ministerial discretion whilst the spouses of a different national group are not getting that advantage. I do not know how I can measure that. I am aware of the accountability provisions that the minister has to go through in reporting to the parliament but, regrettably, from that I am unable to do the checking that I want to do on this particular matter. I am wondering how you can help me undertake that checking.

Mr Farmer—Part of the answer, of course, comes back to the original point: the decision whether to extend the facility lies with the minister, and he takes that on an individual basis.

Senator McKIERNAN—How can I get further information without going into further detail? Can I get further information on it?

Mr Farmer—Yes, you can.

Senator McKIERNAN—My difficulty is, if I do go down the track of asking for a breakdown by visa category—of the exercise of a grant in each instance—it would expose those small visa grants for national groups and could lead to an identification of them. That is not what I am about. It may not lead to an identification of them but, when dealing with small numbers of a national group, there is always that risk. That is something that I understand refugee and humanitarian processing have been acutely aware of in the past. I certainly do not want to do that. I do, nonetheless, want to pursue and get some more information about the beneficiaries—including the national group beneficiaries—of the exercise of the ministerial discretion.

Ms Bedlington—Without going into the individual nationalities for the sensitive reasons that you have alluded to, the nationality group where the minister has intervened in the most number of cases has fewer than 20 cases; the next nationality group has only two fewer than that. We are talking about very small numbers and perhaps it would be inappropriate to read too much into the fact that one had 18 or 19 cases and one had 16 or 17 cases. From one time to the next, that could just as easily reverse.

Mr Metcalfe—At the end of the day, each decision is taken in respect of a set of individual circumstances. What those particular circumstances happen to be and how they may vary from case to case are matters that would be looked at by the minister in making that decision. Short of looking at every tabling statement where there is some information, I do not know that there is much more that we can do to assist.

Senator SCHACHT—Ms Bedlington, you said that you are sensitive about the nationalities or about where the minister intervenes. You talked about comparing countries. I can understand some argument about that, but that would be available or recorded somewhere, or someone could go and get it from somewhere in the system.

Mr Farmer—I think we were respecting Senator McKiernan's view about sensitivity.

Senator SCHACHT—Yes, I understand that, but it is still available.

Mr Metcalfe—I think the basis of these questions is some information we provided on notice to the committee last time around in which those nationalities were outlined.

ACTING CHAIR (Senator McKiernan)—I would like to go to the matter that you were addressing earlier today, Senator Schacht—the high risk factor list. Over what period was the information on visitor visa overstayers collected—information that was used in arriving at decisions for the high risk factor list of countries, which was updated in December of last year?

Mr Rizvi—It was based on the performance of all visitor arrivals in the 1999-2000 program year.

ACTING CHAIR—Of the countries that were added to the list, what was the percentage of overstayers recorded during the assessment period?

Mr Rizvi—Of the countries that were added to the list, the non-return rate—once again, I need to make a distinction between a non-return rate and an overstay rate—for Afghanistan was 18.8 per cent; for Armenia, it was 38.5 per cent; for Brazil, it was 9.4 per cent; and for North Korea, it was 13.8 per cent.

Senator SCHACHT—These are business visas?

Mr Rizvi—No, visitor visas.

Senator SCHACHT—Tell me of the North Korean businessman. Does one exist? I nearly fell off my chair when I thought you were doing business visas.

Mr Rizvi—The final one is Mongolia, with a rate of 15.3 per cent.

Senator SCHACHT—The percentages sound big. What are they in raw figures? Is it three from North Korea—or 10 or 15? The percentages sound quite large, but they might be a percentage of a rather small number.

Mr Rizvi—The visitor arrivals in 1999-2000 from Afghanistan were 95. For Armenia, the figure was 54. For Brazil, it was 6,941.

Senator SCHACHT—What was the percentage? Nine per cent?

Mr Rizvi—Brazil was 9.4 per cent.

Senator SCHACHT—So it is about 600—550.

Mr Rizvi—For North Korea—

Senator SCHACHT—I am surprised anybody got out of North Korea.

Mr Rizvi—For North Korea, 521. And for Mongolia, 163.

Senator McKiernan—Of the countries that have been removed from their high risk factor list, can you provide some details as to why the changes in regard to that have occurred.

Mr Rizvi—Let me outline the broad methodology we used for determining which countries go on the list and which countries go off. That might help. Essentially, we use two benchmarks to determine which countries go on the risk factor list. For countries with more than 500 arrivals on a visitor visa in any one year, the benchmark rate we use is that the non-return rate of visitors from that country is three times greater than the global average. The global average in 1999-2000 for visitors was 2.41 per cent, so the benchmark rate for countries with more than 500 visitor arrivals was 7.23 per cent. So any country with more

than 500 visitor arrivals and a non-return rate of greater than 7.23 per cent would be on the risk factor list. For countries with fewer than 500 arrivals on a visitor visa, we again use the global average as the benchmark, but, because of the problems of small numbers, as Senator Schacht has pointed out, we use a different multiplier: we multiply the global average by six times. If the non-return rate is greater than six times the global average for a country with fewer than 500 visitor arrivals, that country is placed on the risk factor list. That is a non-return rate of greater than 14.46 per cent.

Senator SCHACHT—What was Great Britain's percentage? You said before lunch that 5,000 was the raw figure.

Mr Metcalfe—That is the number of overstayers.

Senator SCHACHT—They are illegal?

Mr Metcalfe—Yes. The figures Mr Rizvi is using are non-return, which may imply that the person applies for a further visa or stays in Australia with a visa—or overstays. It is a different concept from that of a person who is straight illegal. Of course, that number of overstayers is against a very large number—hundreds of thousands—of arrivals.

Mr Rizvi—For the United Kingdom we had 533,967 arrivals and a non-return rate of 2.07 per cent, which is less than the global average. To be on the risk factor list, you have to be greater than three times the global average.

Senator SCHACHT—But in raw figures they are the biggest.

Mr Metcalfe—The biggest number of overstayers, and I suspect the biggest number of non-return.

Senator SCHACHT—They do actually go back to Great Britain at some stage, do they?

Mr Rizvi—The bulk of them do.

Senator SCHACHT—In summer—not in winter, I presume—or when we are playing them at cricket in England. Or they go back for the coronation.

Mr Rizvi—There would be a variety of reasons.

Mr Farmer—So long as they go back, Senator, we are not fussy.

Senator SCHACHT—I agree. I just thought you might have some indication that when the Queen is having a birthday they might all go back.

ACTING CHAIR—Obviously the list of high risk factors is published. Is there an accompanying demographic profile of prospective visitors? If so, can we have a copy?

Mr Rizvi—The risk factor list does go into greater detail regarding the profile—that is, the age and sex profile—of persons from individual countries that are on the risk factor list. That is tabled by the minister in a *Gazette* notice. The details of that are included. We can provide you with a copy of the *Gazette* notice with all of the details regarding age and sex, Senator.

ACTING CHAIR—Thank you. With regard to the countries that have been added to the list, have there been any official responses from those countries or the ambassadors from those countries? If so, what was the response?

Mr Rizvi—I have just been advised that we met with the Brazilian ambassador and he was briefed on the rationale for the risk factor list.

Senator SCHACHT—Did he accept it?

Mr Rizvi—He accepted the rationale. I am sure he would not have been happy that Brazil was on the risk factor list.

Senator SCHACHT—Is Brazil out of kilter with other South American countries?

Mr Rizvi—No. There are other South American countries on the risk factor list as well.

Mr Metcalfe—I hasten to add, Senator, that simply because a country is on the risk factor list does not mean that no visas will be granted to people in that country.

Senator SCHACHT—I fully understand.

Mr Metcalfe—It is purely that there is a different standard of processing and decision making involved.

Mr Rizvi—We are continuing to see very rapid growth in visas issued out of Brazil. They have been climbing very rapidly over the last three years.

Senator SCHACHT—Does that reflect the fact that it is easier to get here by aeroplane now—there are more direct flights across the southern Pacific?

Mr Rizvi—That may well be a factor.

Senator SCHACHT—And they are overwhelmingly tourist visas?

Mr Rizvi—Yes, they are visitor visas.

Senator McKIERNAN—Aligned with this practice regime is the new government initiative to introduce a bond for visitors coming to Australia. What is the history of the bond so far—the effectiveness of it?

Mr Frew—As at 31 December 2000 we had received 6,500-odd applications under the sponsored visitor category globally and we had granted about 50 per cent of the applications in the same period. I understand that more recent figures to the end of January show that we are approving about 60 per cent of applications. Sadly, a number of people have absconded while they have been on a bond. I will confirm the number in a moment, but I think it is 53.

Mr Rizvi—It might be useful if I highlight the fact that, under this category, it is possible for people to be visaed with the sponsorship alone or with the sponsorship and a bond. The decision maker has a discretion as to whether to apply a bond and they do not always apply a bond. Of the people who have not returned at the expiry of their visa, a portion of them would not have had a bond applied and a portion of them would have had a bond applied.

Mr Frew—The figure was correct. A total of 53 sponsored visitors did not depart Australia within the validity of their visa during the first six months and 10 bonds, totalling \$67,000, were forfeited. This is to say that the lion's share of those people who absconded had not paid the bond. The downside of their staying on in Australia to them and to their sponsor is that the sponsor now forfeits any right to sponsor for a five-year period.

Senator McKIERNAN—What was the figure that was forfeited?

Mr Frew—\$67,000.

Senator McKIERNAN—What would the bond amounts range from and to within that figure?

Mr Frew—They range between \$5,000 and \$10,000. I do not believe I have information specifically on those 10 bonds.

Senator McKIERNAN—That is fine. I was only looking for a range. Can you tell us which nationalities are, in the main, using both the sponsorship facility and the bond facility?

Mr Frew—I can tell you which are the main posts that have been using them, but I do not believe that I have had it broken down by sponsorship.

Senator McKIERNAN—Okay. That is fine.

Mr Frew—The main posts thus far in the first six months of the program have been Beijing, Beirut, Belgrade, Colombo, Guangzhou, Manila, New Delhi, Shanghai and Suva. Sixty-nine per cent of all applications were lodged in these nine posts.

Senator McKIERNAN—What is the approval rate within those posts? Is there a variation between them?

Mr Frew—Yes, there have been variations within approvals. It might be better if I take that one on notice. I have raw numbers but not the percentages.

Mr Rizvi—Perhaps we could calculate the percentages for you. In Beijing, the approval rating was about 65 per cent; in Beirut, about 63 per cent; Belgrade, about 41 per cent; Colombo, about 66 per cent; Guangzhou, about 42 per cent; Manila, about 79 per cent—

Senator McKIERNAN—Thank you. You have given me an indication. I appreciate that you are dealing with raw figures. What I am after is how the program is working. I know it is in the early stages, but we are getting some indication that there are some successes and some downsides of the program. You mentioned the 53 persons who have absconded and the amount of money that has been forfeited. What are the nationalities of the people who absconded?

Mr Rizvi—I can give you a broad indication. Sri Lanka had 14, Beijing had two, Guangzhou had nine and Shanghai had 14. So the dominant group at the moment is China.

Senator McKIERNAN—Are you collecting statistics—I know you do not have the figures there—on the number of people who are issued visas with sponsorship and the number of people who are issued visas with sponsorship and a bond?

Mr Rizvi—We do have those figures, Senator. Perhaps we could take that on notice.

Senator McKIERNAN—I am not asking for those figures now. I am just asking whether or not you are collecting them. At a future estimates committee, we probably will be asking for such figures.

Mr Rizvi—We monitor this very closely.

Senator McKIERNAN—In turn, we will be monitoring as well.

Mr Frew—In response to your comment about trying to get a feel for how the program is going, it being new, as Mr Rizvi said, we are monitoring it very closely. We have been corresponding with regional directors posted overseas, once to all posts and on a couple of occasions to a number of posts, explaining that we are looking at the outcomes, asking that they test the bounds of the policy. Early on in the process, perhaps the visa was not being granted, in our view, sufficient so as to test the policy. Yes, we are monitoring it carefully and managing it carefully directly.

CHAIR—Do we have any questions to continue in output 1.1, Senator Cooney?

Senator COONEY—India was on a list and it has come off that list. If you can believe what you read, India provides a lot of people for Silicon Valley in the United States. We have been discouraging to Indians over the years. I am a bit concerned as to Australia's capability of attracting people who can in fact develop things like information technology. I am concerned whether or not the attitude and the culture that we have developed in our

immigration scheme—by which I mean the general regulation of entry of people into the country—has created a situation where we do not get the top line people, so networks are developed in America, in Ireland and in all these other places. For example, among the people who come here claiming refugee status, do we look to see whether or not there are some outstanding scientists—not that that would make any difference because we are going to be fair to all?

Senator SCHACHT—On refugee status, yes.

Senator COONEY—The culture seems to be let us keep people out rather than see whether there are any great scientists among them. After the war—you would not remember this, Mr Farmer; you would be too young—a lot of rocket scientists went to the United States. Einstein went there before the war. We got some great people here on the *Dunera*. That ability to attract the top people seems to have failed. I am wondering whether the culture of the immigration system—I am not talking about the department now—is such that we do not get the top people.

Senator SCHACHT—What you are asking is: if Einstein was an Indian, would we let him in?

Senator COONEY—We would not have, up until recently. That is right; that is well put.

Mr Farmer—For a long time, the way in which the Migration Act has been administered bears very little relationship to how you have been painting it. With the emphasis now on skilled migration—on skills, age and English language capacity—there are many graduates in India who have a natural advantage. For example, the United States certainly takes a lot of IT graduates from India. In our case, we do not have a ceiling on the number of IT graduates who come in. There is a ceiling in the case of the United States. In the administration of the migration program, I think we have a positive approach to skilled people from India and indeed from anywhere else. It is a global non-discriminatory program.

Senator COONEY—We seem to be allowing more people to go—I am thinking of a niece and nephew and of friends; they seem to go overseas and that is it—but we do not seem to somehow get the same quality of people back. People are saying, ‘It is an each way bet: what we lose, we gain; people go over there’—you know all the arguments—‘and they get the experience and they come back.’ I do not think that is right. It is getting very serious in Australia as to the development of our industry and the cutting edge that we are supposed to be at. I think that is an issue for this department.

Mr Farmer—One thing I would draw your attention to, because I think it is a very significant change just in the last couple of years, are the changes concerning young overseas students being educated in Australia. We now give them in effect extra points because they have trained in Australia. As a result we are seeing that we now have no difficulty in attracting young English-speaking people with skills useable in Australia. You made the point, and I agreed very much with you, that we are competing in a global market. That change, which occurred only quite recently—one or two years ago—is one that I think has great significance for Australia.

Senator SCHACHT—On the same point as Senator Cooney’s, you said for IT that many people with skills gained in India, who are graduate recognised, go to Silicon Valley and that a number of them have become millionaires many times over. I think something like 3,000 Indians have been directly or indirectly employed out of Silicon Valley over last several years.

Mr Farmer—There would be many more than that.

Senator SCHACHT—That is in information technology. India has a reputation in a number of its universities for having the best theoretical mathematicians in the world in various schools. That is not directly related to information technology, but if you were the professor of theoretical mathematics at Madras University you would probably be recognised as being in the top 10 in the world. You may not want to come to Australia to work for an IT company—for Optus or Telstra or so on—doing software programming. You probably want to come to work in a university—and we need such people. What points would they have to get to get in?

Mr Rizvi—Most people who seek to enter Australia in that sort of capacity tend to come through what is known as the employer nominated scheme, where they are nominated directly by the Australian university and are employed by them in Australia.

Senator SCHACHT—Because they have a job?

Mr Rizvi—Yes, it is either a contract or a tenured job. It could be on a long-term temporary basis or a permanent basis.

Senator SCHACHT—If a professor decides he is going to apply to come to Australia without guaranteed employment at a university but he reckons that once he gets here it will not take him long to be snapped up somewhere—anywhere from DSTO to universities to high-tech companies—what does he have to do? What would his treatment be?

Mr Rizvi—He could apply through the points test arrangement. If he met the English language, age and qualification requirements, he would receive a visa.

Senator SCHACHT—I hope you are recruiting these Indian mathematicians, because we could certainly do with them in Australia.

Mr Rizvi—If I could make a few general points about this issue, you are right, we have a substantial issue in how immigration to Australia is being portrayed in the media and whether it is being portrayed as dominant in the gatekeeper role or the assistance of entry role. I think there is a problem there, and Mr Farmer has pointed that out. It is something we need to deal with. But, if one were to look closely at the statistics, one could very readily see that that perception is in fact quite misplaced. I will elaborate on what we are trying to do to address that perception problem. The first thing is that we have undertaken a fair amount of research. One of the bits of research that we will in fact have reported to a seminar that the minister will be speaking at on 1 March in Parliament House on the economics of immigration will be on the very issue of brain drain. It will look at the movement both into and out of Australia of people with various qualifications. That report will show us that, in net terms, Australia is a very substantial beneficiary in just about every major occupation in demand in terms of the net flows—that is, far more people with, for example, ICT, finance, nursing and other such qualifications are actually coming to Australia than leaving Australia. That is quite the reverse of that actually being portrayed in the media.

Senator COONEY—I can give an example. We have recently lost Dr Peter Singer. Do you know of him?

Mr Rizvi—Yes.

Senator COONEY—He has gone off to Princeton.

Senator SCHACHT—Some of the coalition might have thought he was a good person to lose.

Senator COONEY—That might be so. Can you point to somebody in recent years who would compare to somebody as brilliant and as well qualified as he is?

Mr Rizvi—We have many well qualified—

Senator COONEY—I have named one going out; you name one coming back of equal value.

CHAIR—I did not realise it was a competition.

Senator HARRADINE—Is it of interest to you what the brain drain has meant to the development of developing countries?

Mr Rizvi— I think what we are looking at is the situation for Australia—

Senator HARRADINE—Is the effect of the brain drain from developing countries on their development of interest to the government?

Mr Farmer—Certainly we take into account, for example, the position of AusAID funded students who are coming to Australia. In other words, we are not ready to allow those students to come here, study and then stay on immediately, because the Australian government with one hand is paying for them to gain a qualification, the aim of which—

Senator HARRADINE—I understand that, but I thought I heard it said just a few minutes ago that these were the very types of people who can come back and are welcomed here, after a period of time, presumably. I am talking about that brain drain too.

Mr Farmer—You talk about a whole of government approach, and with AusAID funded people that is where the government is paying to train someone from overseas and the expectation is that they will go home. For someone who comes from anywhere overseas as a private student and is paying their own way, there is no such view taken, because we are, as with every other country, competing in the global market.

Senator HARRADINE—Globalisation, yes.

Senator COONEY—Coming back to what Mr Metcalfe explained this morning, what keeps coming up again and again is the impression, if you like, of the public face of the department and of the government—and when I say the government here I do not just confine it to the present government, because somebody was rude enough to talk this morning about what happened in the early 1990s. It is the signals that go up: the sharks in the water and the alligators and what a terrible country we are, pictures of boat people and all that sort of stuff. The image coming through the whole time is that here is a country that is not going to welcome somebody unless they are from certain parts of Europe or America and places like that.

Mr Farmer—Senator, that is absolutely not what we are about.

Senator COONEY—Can you hold on. What I am saying, Mr Farmer, is that that is the image. The question was carefully framed. I am not accusing you of being like that. I am saying that that is the image that has been created, and I am asking you: what are we going to do about that image? Mr Metcalfe was dealing with this this morning, and it came up in another context. It is no good saying, 'We are not about that,' if in fact that is the perception that is created. You say that the perception is incorrect.

Mr Farmer—There are some people who have perceptions and some people who manufacture perceptions. We are charged with managing a global, non-discriminatory program, and that is exactly what we do. The government is quite unapologetic, and the

department is quite clear in its administration of the approach to unauthorised arrivals: we do not care where they come from, the same approach will be taken.

Senator COONEY—But where is the evidence that we are attracting the top people from around the world—from America, if you like? I take Senator Harradine's point: this is an Australian going to America. How do we get the reverse? We got Paul Davies. There is one I have pointed to. Can somebody point to somebody else?

Senator SCHACHT—He is half gone, though, isn't he? He won \$1 million from some religious fund, proving that God still exists in the universe or something.

Senator COONEY—There is no doubt that there is a God.

Senator SCHACHT—It seemed to me to be a strange award, but nevertheless he got \$1 million and good luck to him.

Mr Farmer—I think the truth of the matter is that Australia, as a whole, is competing in the global market—and it is not only the immigration functions. I think our immigration regime for people of skill and talent is as open as anywhere else in the world. In fact, it is very much more open, because we are one of the few countries with a manifest, declared, positive, front-foot immigration program.

Senator COONEY—I understand all that.

Mr Farmer—But you are asking the question: what happens to the top Indian IT graduate? That person really has a decision to make, because he or she can go to the United States, Canada, Australia, Sweden or Botswana. It is up to each of those countries, not just through immigration programs, as to what sort of commercial environment or what sort of other environment they offer to that person. People with top talent can choose.

Senator COONEY—Can I just go through it again. All morning and most of the afternoon we have been talking about detention, how we have kept people out, whether the British overstayers are the greatest in number and who are in the greatest number in percentages, and you have been saying, 'Here is the percentage. I will give you this. No, Senator, I cannot give it to you now, but I will take that on notice.' All that time and all that information is directed to the issues of who we keep out and how we do it. As soon as we then switch the argument and say, 'Let's not have a look at who we want to keep out but have a look at who we want to bring in; let's have a look at the issue of whether we can get the top brains from America, India or wherever,' you say, 'That is the wrong perception. This is not just a migration issue; this is a whole of government issue.' When we say, 'Who can you point to that we have brought in?' you say, 'It is all very difficult.' So we can get lots of information about how we keep people out, but we can get very little information as to how we can attract the top-line people. You get a frown on your face, but that is true. You are going to get very irritated if I persist with this, aren't you? And that is just an indication of what I am talking about.

Mr Farmer—Part of the answer to your question is that we have a skilled program that we fill each year. Those people are selected because of what they can bring to Australia. We also have a quite sizeable set of programs for bringing people of talent to Australia on short-term or temporary bases to work in business or elsewhere.

Senator COONEY—I understand all that.

Mr Farmer—Those are quite substantial programs.

Senator COONEY—But who are the top-line people you bring in?

Senator LUDWIG—Do you have a super skilled program? How does the world-class physicist fit in?

Mr Metcalfe—The short answer is that we, in the immigration department, do not bring anyone in. The universities bring people in, people bring themselves in and employers bring people in. Our job is to make that happen and to cut the red tape.

Senator SCHACHT—So you are saying that the industry department or the education department need your assistance to make sure that the process is done quickly and efficiently?

Mr Metcalfe—It is all about our being able to have streamlined processes so that, if people do want to come and if they are going to contribute to Australia, they can do that. We, the immigration department, are not scouring the world for people. We work in partnership, we do promotional work with DFAT and that type of thing. I think the point you are driving at is: how is Australia competing in a global market to bring the top people in?

Senator COONEY—You would remember the arguments that we had about visas for visitors and things like that. Do you remember that? We went through the whole business—we are going to have electronic visas and references. This was going to get people in because it was going to help a lot. Of course there was a lot of work in that—Mr Baird was very big in this area. Do you remember that? That became an issue for the department. I think that this is an issue for the department in the same sense. We have to create an image of our immigration system that is welcoming, just as the department of trade created a desire in people to come here as tourists and what have you. The department had its part to play. It is a matter of policy as to whom we keep out—it is not up to just the department. The department gets blamed for it all, but it is the government that makes the policy, and you are to carry it out. It is in that sense that I am asking whether the department has given any thought to creating a climate, insofar as it can, that would attract these sorts of people. It might not be an issue because the department feels that it cannot do anything.

Mr Metcalfe—Others may have more to say—I know where you are coming from, but I want to repeat the point of view. Our job is about trying to ensure that the people who do want to come and who do meet what the government requires do so as simply and as easily as possible. We have been involved in the past in the promotion of particular areas. For example, when I was posted to Hong Kong some years ago, we did a lot of work in relation to business migration issues and whatever. But the top mathematician, the top scientist, is not going to come because the immigration department goes out there and finds him; it will be the University of Sydney or the University of Melbourne that goes out and finds that person.

Senator COONEY—But he or she might decide not to come because of the actions you take.

Mr Metcalfe—I think that is where our job becomes important—that, in accessing the entry process to Australia, we try to make that as simple and as accessible as possible. That is a continuing challenge. We are doing as much work as we can to try to ensure that we maintain the integrity of the program but, at the same time, to cut out the unnecessary red tape.

Senator COONEY—I think Mr Farmer was saying that the minister is going to give a talk about this in a few days time.

Mr Metcalfe—There is a seminar in Parliament House in a few days time.

Senator COONEY—I would have thought that that is an appropriate issue to address. I hope he does not get up and say, ‘Look, attracting people here is really not a matter for the

department.' I hope he does not say that. I hope he says, 'This is a whole of government approach and the department has its part to play.' That is what I hope he will say.

Mr Metcalfe—I think that is what we are all agreeing to, from different perspectives.

Senator COONEY—The question I am asking is: what part do you want to play? Perhaps we can have a talk about it again in June—you can think about it in the meantime. What I am asking is: what is that part and how well are you carrying it out?

CHAIR—As I understand it, we are still on questions for output 1.1 and I am sure that there are many more questions to come in that area. I know that Senator McKiernan has more and that Senator Schacht has some.

Senator McKIERNAN—Perhaps the questions can flow on from what Senator Cooney was just raising. There was some speculation in the media on Saturday, 10 February—in the *Courier-Mail*, the *Adelaide Advertiser* and the *Herald Sun*—about an increase in the migration program for 2001-02 of some 10,000, probably all of them rocket scientists! Are you in a position to confirm this increase in the numbers at this time, or will the minister do so in his seminar next week? Will that be about increasing the numbers?

Mr Farmer—This is a matter that the government will look at in the context of the budget when it decides on the migration program for next year. We are providing advice, and the government will make its decisions, but until then we cannot make any comment.

Senator McKIERNAN—It was worth a try, Mr Farmer. There has already been an increase in the migration program. There was an announcement earlier in the year by the Prime Minister of an extra 2½ thousand places for students or persons who have trained in Australia. That is an effective increase in the migration program for the current financial year. Can you provide the committee with further information on what categories those 2½ thousand new places will fit into? Will there be the employer nomination category or the independent skills category? Can you provide the committee with some further information about that?

Mr Rizvi—The Prime Minister announced that at least an additional 2,500 places of the 5,000 place contingency reserve that was announced as part of the original announcement of the migration program will now be allocated to persons who have qualified in Australia—that is, overseas students who have successfully completed a degree in an ICT occupation and have applied through the independent points test. The 2,500 places will go to those people and their immediate families.

Senator McKIERNAN—The independent and their families?

Mr Rizvi—They are all counted as independent because, in the skills stream, the principal applicant as well as the immediate family are counted as part of the family unit that is visaed.

Senator McKIERNAN—Would they come in under the skills visa or under the skills Australian linked, which used to be the old family visa class?

Mr Rizvi—I think they will be almost entirely in the independent category.

Senator McKIERNAN—Will the applications be from offshore only and processed offshore or will there be an ability for persons who are in Australia to make applications onshore?

Mr Rizvi—In respect of the 2,500, the Migration Act and regulations continue to require that an overseas student who applies for an independent category visa must at the time of visa grant be offshore. In conjunction with that, the Prime Minister also announced that, from 1 July 2001, those persons will be able to apply for that category whilst they are onshore and be granted the visa onshore.

Senator McKIERNAN—Will this unique group be receiving a priority in processing over and above other applicants within the visa class or within the skills class?

Mr Rizvi—That is correct. People with ICT occupations will be given a processing priority over other occupations.

Senator McKIERNAN—Going back to the discussion between Senator Cooney and the officers about attracting individuals into Australia, does the department itself have a proactive role in promoting the established business visa class to persons in overseas countries—that is, potentially overseas investors or people who want to establish businesses in Australia?

Mr Rizvi—Yes, there is an investment linked category as part of the suite of business skills program.

Senator McKIERNAN—But does the department itself promote this visa class in overseas countries, or is that left to other government departments, such as Industry? Even Senator Hill's department might be doing it in some areas.

Senator Hill—What is that?

Mr Rizvi—Trying to attract persons who wish to invest in a business in Australia. It is certainly true that a range of departments are involved in that sort of work, as are a number of state government departments. We work with those people in doing that work. We also invest a substantial amount of money in promoting Australia's business entry arrangements ourselves.

Senator McKIERNAN—Do you target particular countries for that work? I am talking now of DIMA's own promotion. I understand that you work with other government departments and other departments will have agencies within the various embassies which you would have to interlink with. But does DIMA as a department in its own right target particular nationalities in seeking to attract people here?

Mr Rizvi—We do not target any particular nationalities; rather the approach we take is to invite our overseas posts to identify opportunities that may arise in their regions and we fund those posts to undertake those promotional activities. We are aware that some of the states do target particular regions of the world in trying to attract business migrants. We do not tend to target any particular country.

Senator McKIERNAN—I have just a final wrap-up question on this category of the established business visa class. Does the government provide any financial assistance to the states when they go out and promote their programs to attract migrants who would settle in their states, if they so chose to? Are any Commonwealth funds attached to that? What monitoring, if any, does DIMA do of persons who come in under the established business visa class to see if they are fulfilling the obligations of the visa class they have been granted?

Mr Rizvi—We do not actually provide any financial assistance to the states in that regard. What we do provide is assistance in kind. For example, if a state is going to a particular region of the world and is wishing to do some promotional work, we will assist them in organising that and also make people available in an advisory capacity. But we do not provide any financial assistance as such.

In respect of monitoring, I think a distinction needs to be made between the established business in Australia category and the business migration category. The established business in Australia category is really a category which receives people who have entered Australia on what is known as a temporary entry independent executive visa. Those people have a visa usually for up to four years, with the intention of setting up a business in Australia. If, during the four years, they are successful in setting up the business, they then apply for an established business in Australia visa. If they meet the requirements, they will be given an established business in Australia visa.

The monitoring group that I think people tend to more usually talk about is the business skills migrants who come in on a permanent visa and are required to report to DIMA at various stages over the first three years that they are in Australia in order to demonstrate that they have successfully established or made genuine attempts to successfully establish a business in Australia. We monitor those people through the survey returns that they provide. We also monitor them through site visits and those sorts of things. The visa is subject to cancellation if they do not meet those requirements.

Senator McKIERNAN—On notice last time you provided the committee with an update with some figures as to the number of visas issued within the various visa classes for businesses in Australia. If there has been any significant movement in those numbers, we would appreciate being brought up to date with that. If there are only minor variations on what has transpired since we last met or since you provided the information to us, we will be happy with the figures that we have. I do not want to put the department to too much additional work in regard to that matter.

Senator SCHACHT—Senator Cooney was discussing with you a borderline philosophical issue about how to handle the attraction of high quality migrants to Australia. We talked about Silicon Valley, mathematicians, Indians, et cetera. When those people apply, they are put forward by a university and have a job—even as a professor of mathematics—they meet the criteria and there is no limitation once they are approved to bring their immediate family—spouse and children—with them, is there?

Mr Metcalfe—We essentially treat people as a family unit.

Senator SCHACHT—So, irrespective of language—

Mr Metcalfe—That is right. There is the principal applicant, and if that person qualifies then spouse and dependent children follow.

Senator SCHACHT—I just draw your attention to the fact that when I was in Germany last year I became aware that they are going through an agonising reappraisal of citizenship definition. They apparently have a law that has not changed much from Hitler's time that you are a German by definition of your genealogical table that goes back through several generations of Hun blood to find out that you are a genuine German. They realised they were

not attracting anybody from India, for example, to their version of Silicon Valley—whatever that is in Germany—and they decided to establish a green card. They went to India and tried to attract people—people were offered good salaries and conditions—but the restriction was that they could not bring their spouses or families with them. One Indian responded, ‘When I apply to go to America the only issue of colour I am dealing with is the colour of the car I am driving. When I go to Germany there is still the issue of colour.’ As a result, they attracted nobody from India. I think that really sums up the attitude. We do not have that disgraceful position that Germany has got itself in, which I think is very positive. I just wanted to get that clear. There is absolutely no restriction on the spouse or the immediate family if the other person meets the qualification?

Mr Metcalfe—The only thing to make sure there is an absolutely complete picture is that the other family members are subject to health and character checking. So the principal applicant needs to qualify and meet all the eligibility criteria as well as health and character ones and the other family members are automatically included in that.

Senator SCHACHT—If you had an Indian who was a Nobel Prize winner in physics and his wife had a kidney complaint, that would obviously mean she was going to need health treatment in Australia, wherever they lived. Would that mean we probably would not give him a visa?

Mr Metcalfe—No, it is looked at on a case by case basis and there is consideration given as to whether the health requirement is waived or not. Clearly, the potential cost to the Australian taxpayer is looked at.

Senator SCHACHT—Who does the waiving? Is it at a ministerial level or a delegated level?

Mr Rizvi—It is done in gradations. Where the cost to the Australian taxpayer is estimated to be less than \$200,000—

Senator SCHACHT—Over what period?

Mr Rizvi—Over the balance of the lifetime. In terms of health care and associated support costs, if it is less than \$200,000 the delegation rests with the relevant decision maker at the overseas post. Where it is greater than \$200,000 and the intention is to waive, then the matter is referred to the minister for consideration and then the decision is taken.

Senator SCHACHT—How many of those does the minister have to deal with in a year—500, 50?

Mr Rizvi—I would have to take that on notice, but I would say it would be a few hundred per year.

Senator SCHACHT—I had a constituent and I made representations to the minister, who did give a waiver; otherwise it would have meant the splitting of the family. One daughter would have stayed in an abominable situation in India and the other two kids would have come to Australia. He just could not justify that.

Mr Rizvi—They are difficult decisions and that is why I think the minister becomes personally involved.

Senator SCHACHT—Yes, I appreciate he has a stack that high from time to time.

Mr Rizvi—I might add one point to that about the spouse and the German situation. You are right: in the German situation their so-called green card is in fact only a temporary entry

card where the spouse is not allowed to enter. It is different from the American situation where the spouse and child are allowed to enter. Our situation is different again, as Mr Farmer pointed out. In America the spouse does not get work rights.

Senator SCHACHT—That is right.

Mr Rizvi—In Australia the spouse of a temporary entrant automatically gets work rights. Hence we have that added advantage.

Senator SCHACHT—I think the major problem we have is what we are offering to pay these people under the present exchange rate; it is not competitive with what they can get in Silicon Valley, particularly under other tax arrangements. But that is a difficult issue which this government has to take responsibility for. I refer to the collapse of the Australian dollar, Minister.

Senator COONEY—Would you like to check on this, Mr Rizvi: you said that when you go to America your wife cannot get work rights. Are you sure of that?

Mr Rizvi—The spouse of a temporary entrant—

Senator COONEY—Yes, I am talking about that.

Mr Rizvi—to the United States does not get automatic work rights.

Senator SCHACHT—We give automatic ones.

Mr Rizvi—We give automatic ones.

Senator SCHACHT—They have to apply again for some.

Mr Rizvi—In Australia, the work rights are with the visa. In the United States, they must arrive and seek work rights as an individual in their own right.

CHAIR—It might even be the spouse—you never know, Senator Cooney.

Senator SCHACHT—I will ask about this the other way around. If the family comes to Australia, the marriage breaks up and the spouses divorce, do they then have to apply to stay in Australia or do they automatically go back?

Mr Rizvi—Where a person enters Australia on a spouse visa, they enter on what is known as a provisional visa where there is a second stage to the spouse processing. Two years following that initial visa, they are required to demonstrate that the relationship is ongoing. If they cannot demonstrate that it has been ongoing, they are required to depart.

Senator SCHACHT—So after that if the marriage then breaks up?

Mr Rizvi—Then they are permanent residents.

Senator SCHACHT—Is there a perception that if you have the money you can get in, or you can stay? If someone like a very famous American movie actor marries an Australian and the marriage breaks up, do they automatically lose their residential right?

Mr Rizvi—The nature of their skills or their financial background is irrelevant to that decision. It relates only to the genuineness of the relationship. They can, of course, apply in their own right to migrate and they would be considered. That is fine.

Senator McKIERNAN—How many applications have there been in the current financial year under the employer nomination scheme?

Mr Farmer—While we are waiting for the information, may I say that I have an answer for Senator Cooney, courtesy of Kay Hull, the member for Riverina, who sent me a press

release she issued. It might be of interest. It relates to the distinguished talent visa category. She noted in her release a couple of months ago that Dr Thomas Nordblum had been granted a distinguished talent visa to enter Australia. He is a specialist in natural resource management, particularly in the area of minimisation of herbicide use and the evaluation of strategies for dealing with weed control, including the use of biological agents. Dr Nordblum's visa was sponsored by Charles Sturt University and part of his role there will be to carry out research in the area of environmental sustainability of Australia's agricultural and natural resources. I am grateful to Mrs Hull for that.

CHAIR—We all are. Thank you.

Mr Rizvi—Over the first six months of this financial year, application rates in the employer nominated labour agreements and regional sponsored migration scheme categories, which are all interrelated, have been approximately 500 to 550 per month.

Senator McKIERNAN—Can you give me the rate of the applications that have been successful and those visas that have been granted?

Mr Rizvi—The refusal rate in the employer nomination scheme, onshore year to date, is four per cent; offshore year to date is 11 per cent. That is the refusal rate.

Senator McKIERNAN—Thank you. From that, I can work back. Is it also possible to identify the industry or industry groups which take most advantage of those visa classes?

Mr Rizvi—I cannot seem to find it right now but, if my recollection serves me correctly, the four major categories in the ENS have traditionally been—forgive me if I get the order wrong—university lecturers and tutors—

Senator McKIERNAN—Perhaps, rather than sticking your neck out like that, you might take the question on notice and come back to me at a later time. It is not imperative that the information be provided at this moment. I would prefer to get it correct rather than you, my dear friend, having to stick your neck out.

Mr Rizvi—We can do that.

Senator McKIERNAN—In taking it on notice, can you break down the industry groups into occupations that are beneficiaries of the visa grant, staying with the employer nomination category?

Mr Rizvi—We have it here, Senator.

Senator McKIERNAN—If you have the accurate information there, I am more than happy to get it.

Mr Rizvi—The major groups are university lecturers and tutors, ministers of religion, registered nurses and general managers. Those are the 1999-2000 figures. I know that in 2000-01 ICT occupations have climbed up that list. They were about sixth earlier; I think they are closer to fourth now.

Senator McKIERNAN—I asked for industry groups. Into what industry group would you put ministers of religion? It might have been better to take the question on notice.

Mr Rizvi—I do not have any problems with ministers of religion, Senator.

Mr Metcalfe—I think DEWRSB identify what are industry groups.

Senator McKIERNAN—I will go to ICT before I come back to employer nominations. There has been a recent announcement of an increase in short-term visas for highly skilled

ICT workers. This program is said to be aimed at attracting young skilled workers and it is being promoted overseas. How is it being promoted, and by whom?

Mr Rizvi—Are you referring to the announcement by the Prime Minister earlier this year?

Senator McKIERNAN—I am talking about a report which appeared on AAP on 29 January 2001. The heading was 'IT savvy migrants to get priority following innovation plan'. It is in regard to the innovation plan. It is actually quoting Minister Ruddock and Minister Alston.

Mr Rizvi—That is correct. There was a joint press release from Senator Alston and Minister Ruddock regarding the new arrangements for the entry of ICT workers. I have a copy of that press release here.

Senator McKIERNAN—I do not have the press release. Does it talk about attracting those workers from overseas? My question then is: what is Australia doing to attract those workers and where are we doing it?

Mr Rizvi—In the press release I have here there is no reference to actual promotional type work, although we actually do promotional work of that type. The initiatives here tend to go more to streamlining visa processing arrangements to make it easier for ICT employers to get the people they need into Australia quickly.

Senator LUDWIG—Can you tell us what savings have occurred as a consequence of that streamlining?

Mr Rizvi—The announcement was only made on 29 January and it is now being implemented, so it is very difficult to talk about specific savings at this stage. What we can do is refer to the specific initiatives and perhaps at the next estimates committee we would be in a better position to report on what the impact of that has been.

Senator McKIERNAN—When taking it on notice, can you tell us whether there is any direct expenditure by the department in promoting it in whatever shape? You could take it on notice or tell us at the next round of estimates. Going back to the employer nomination scheme, what checks are done on employers, if any, if they are nominating employees to enter the country or, indeed, if a person is already in the country? Are there any checks undertaken by DIMA on whether the employer is a responsible individual or a responsible body corporate?

Mr Rizvi—I guess there is a range of checks that we undertake. We certainly look at the bona fides of the employer. We check, for example, their registration and those sorts of issues. We undertake a check in relation to their training record. That is a major issue in the processing of employer nominated visas where the employer must have a good training record or at least a training plan for the training of Australians. A third key element is the testing of the labour market where the person coming in is coming into a position which involves a skill that is not on the migration occupations in demand list. A further issue that we look at is to make sure that the person will be employed in Australia according to Australian wages and conditions. Finally, there is a health and character check as well.

Senator McKIERNAN—You have answered a number of questions in that response. Thank you for that. Does the department keep a list or a record of those employers who have breached sponsorship obligations? Is a record kept of employers, for example, who have been found not to be paying the award wage or who have been paying workers in cash when they should have made a proper payment—I am talking about their paying cash to avoid the taxation system—or who otherwise have abused workers? Is a record kept of them?

Mr Rizvi—It might be best if we take that one on notice. We work fairly closely in this area with the Department of Employment, Workplace Relations and Small Business and, indeed, we consult with them on quite a number of these cases. If we could take that question on notice, we would be able to provide you with details of what we do jointly with DEWRSB, and that might be a better way to answer the question.

Senator McKIERNAN—Thank you. How does the department monitor or decide whether an employer should or should not be approved to sponsor people from overseas, if there is no record of that employer on a database? Do you check with DEWRSB—an awkward term—if you do not have any records?

Mr Rizvi—If we have no records, we will certainly consult DEWRSB and seek their advice on the matter.

Senator McKIERNAN—Would that be the only investigation or procedure that you would undertake or are there other initiatives that DIMA might undertake in order to check for yourselves—because, after all, DIMA will be issuing the visas—whether those employers may have breached sponsorship obligations in the past, as I mentioned before, by not paying the correct wage, by encouraging people to work in the black economy or by threatening or using coercive actions against workers?

Mr Rizvi—We certainly have information on our databases and files of previous employer nominations that that employer may have been involved in and, as I mentioned earlier, we check with DEWRSB. If we reach a situation where the employer is totally new to us and we do not have any information on our files and neither does the Department of Employment, Workplace Relations and Small Business, an option we can pursue is, for example, a site visit to confirm the nature of the claims the employer may be making. That would be unusual, but it is a step we sometimes take.

Senator McKIERNAN—Could you, on notice, find out for the committee the number of times that site visits were undertaken by the department to follow through on those inquiries? It is not information we would expect you to have readily available. Are you in a position now to inform the committee whether or not any employers have been prosecuted for breach of their statutory or award obligations—that is, in the narrow area of the breach occurring in relation to persons who were on visas through the employer's sponsorship?

Mr Rizvi—We will take both of those questions on notice. With regard to the first one, it may be difficult to collect. I suspect that information would not be on our systems and would require a file search. We will go to our onshore offices to see what data we can obtain.

Senator McKIERNAN—I assume the department has the power to refuse a sponsorship by employers who have been known to have breached sponsorship obligations. Could you inform the committee of any occasions in the last couple of years when you have exercised that power?

Mr Rizvi—We will take that on notice. We do refuse employer sponsorships where they do not meet the legal requirements of such a sponsorship.

Senator McKIERNAN—Thank you for that. Where an employee has been brought into Australia under the sponsorship arrangements, what recourse is available to that employee where their employer has not met the requirements of the sponsorship to pay the correct wages or salary or to provide the proper award conditions?

Mr Rizvi—Where a person has come in on an employee nominated basis, they receive a permanent resident visa, and therefore they are permanent residents and they have available to them the same range of rights of recourse to the employer that are available to any employee.

Senator McKIERNAN—Is it possible for the employer to revoke the sponsorship, therefore putting the employee's residency in Australia in jeopardy?

Mr Rizvi—Where it is an employer nominated case—that is, the person is a permanent resident—that does not become an issue, because the person is a permanent resident. Where the person has entered on a temporary basis, that issue can arise. So they have entered on an employer nominated arrangement, but it is for a temporary visa; that is, a subclass 457, usually.

Senator McKIERNAN—Is there a two-year period applying to that visa class?

Mr Rizvi—That visa can be anywhere from three months up to four years.

Senator McKIERNAN—In the event of the relationship between the employer and the employee breaking down, does the department see that they have got any obligation to assist the individual find other working opportunities?

Mr Rizvi—If the person has entered on a temporary resident arrangement under a subclass 457 and the employer no longer wishes to continue with the sponsorship, the employee must find an alternate sponsor or leave the country.

Senator McKIERNAN—So, if there was some coercion on the part of the employer, the employee might find themselves in a particularly vulnerable position in the circumstances that you have just described?

Mr Rizvi—That could arise.

Senator McKIERNAN—Is there any redress available to the employee who finds himself in that situation who has been mistreated by his sponsoring employer?

Mr Rizvi—If, in those circumstances, he was to approach the Department of Immigration and Multicultural Affairs, we would consult with our counterparts in DEWRSB to see what actions could be taken.

Senator McKIERNAN—How many complaints do you get of the nature we are just discussing? Do you receive any? If they come from a trade union, do you investigate them and, if so, what are the results of your investigations?

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

Senator McKIERNAN—Could you describe the procedures that are in place for the department to investigate these matters?

Mr Rizvi—Yes, we will describe those.

Senator McKIERNAN—Are you going to do that on notice?

Mr Rizvi—Yes, we will do that.

Senator McKIERNAN—Okay. Would you tell us on notice if you attend the employee's workplace to investigate the conditions? What accountability would the employer have to the Department of Immigration and Multicultural Affairs in those circumstances? Would DIMA have a right of entry to examine the books or examine working conditions, for example, on a building or construction site?

Mr Rizvi—The question of whether we have a right of entry where we have been refused entry is something that we were recently talking about obtaining legal advice on. In most instances, the employer is open about allowing us to come in and do a site visit and we do undertake those. Under the subclass 457 arrangements, the employer signs a sponsor undertaking where the employer undertakes to fulfil a range of obligations. Where the employer has not fulfilled those obligations, then there is recourse that DIMA can take.

Senator McKIERNAN—I am being careful not to ask for legal advice from the Department of Immigration and Multicultural Affairs. We will get into difficulties with another department by asking questions of that nature. I wonder if you could, on notice, further develop your response to that previous question. I am not seeking legal advice as such, but I am very interested in the department's ability to investigate claims. Would an employee working here in Australia under a sponsored visa have the normal protection that is provided by Australian law to any employee working in an employer-employee relationship, or are there restrictions upon those rights that the employee may have because of the sponsorship that they are under?

Mr Rizvi—We are getting into some fairly technical legal areas here, Senator. I may have to take the detail on notice, but I will answer that question in the broad. Where a person enters Australia on a sponsored temporary entry basis, the sponsor signs a series of undertakings, including that the relationship will operate on the basis of Australian wages and conditions. Where that is breached, the precise nature of the legal responses that we would have available to us is something I would like to take on notice.

Senator McKIERNAN—Thank you very much.

Mr Metcalfe—To supplement that answer, there may be issues for DIMA and there may well be issues under relevant industrial awards, with industry departments or occupational health and safety people. Depending on the circumstances, there may be a range of issues that are applicable, depending on the circumstances.

Senator LUDWIG—In answering the question, you might consider, if a person is operating under an award, whether or not your agreement identifies the particular jurisdiction or the award. If there is a complaint which you investigate and find there is an underpayment or something of that nature, not only might the employee then make a complaint to the relevant authority but would you assist the employee in that process as well because there might be some expense incurred? It is a broad question. I do not know whether it has arisen. You might look at your books to see whether or not those sorts of circumstances have arisen in the past.

Mr Rizvi—We will look at that.

Senator McKIERNAN—A number of issues have been publicised in the past regarding what I have just been questioning about. The most recent occasion has been an incident in Sydney where a number of tilers from Korea were subjected to pretty severe abuse by their employer. I will not go into all of the details, but the allegations are that they were being underpaid, that they contacted their trade union and, because of that, they were dismissed from their job. Not only were they dismissed; they were then visited at night by their past employer and one of the individuals was assaulted and hospitalised as a result. I am given to understand that the department has been informed of this incident. Are you in a position to supply the committee with any details regarding this specific incident of four Korean tilers on a construction site in Sydney?

Mr Rizvi—We are aware of the case. We will provide the committee with whatever details we can.

Senator McKIERNAN—A number of other questions relate to that incident which probably would be better being put on notice. They all follow on from the series of questions I have been asking. To allow us to move on, I will put these questions on notice. When you come back with answers to the earlier questions, we can revisit them. On the page I am supplying you, it is the questions from No. 18 to No. 26. Thank you. I want to go to questions about the overstayers from the Olympics, on which you provided some information on the last occasion. Since then, there has been some publicity about the number of persons who have remained in Australia. I refer to the overstayers identified particularly from the ‘Olympic family’. What is the up-to-date information regarding the Olympic overstayers?

Mr Castello—The latest figures are that there are 79 ‘Olympic family’ members remaining in Australia unlawfully. Normal compliance action is occurring to try and identify those people, to make contact with them and to seek to resolve their status, either by advising them to apply for a further visa or asking them to leave.

Senator McKIERNAN—How many have been located and how many are still at large, for want of a better expression?

Mr Castello—That is the number—79.

Senator McKIERNAN—What are the nationalities?

Senator SCHACHT—What is the definition of the ‘Olympic family’?

Mr Metcalfe—The ‘Olympic family’ are essentially the—

Senator McKIERNAN—That information is already on the record.

Senator SCHACHT—I will come back to that.

Senator McKIERNAN—I was waiting for the answer to the question.

Mr Castello—Senator, you wanted to know the nationalities.

Senator McKIERNAN—Yes, please.

Mr Castello—Would you like me to go through them?

Senator McKIERNAN—Perhaps the top five countries.

Mr Castello—The numbers are all relatively small, but I will read out the highest numbers: Japan, four; Spain, six; United Kingdom, nine; USA, seven; Nigeria, three. All the rest are either two or one. There are a number of nationalities involved.

Senator McKIERNAN—The minister has previously issued a press statement—or was it a media interview?—appealing to individuals to seek to regularise and to make application to regularise their status in Australia. I had the memory that some 100 persons were unaccounted for at the conclusion of the Olympic period. You have now given me a lesser figure. Did those people come forward voluntarily or were they located through the compliance action of the department?

Mr Castello—The number is not a static one. It relates to the number of people who were in Australia covered by the Olympic travel authority and who were still in Australia without a visa when that Olympic travel authority expired. Some of those people left the country. Others came forward and resolved their status in some other way—sought a further visa, for example, to stay for a further period for sports or other reasons. The figure has been changing

since the Olympics. The figure that I gave you is the current situation for those people who are unlawfully in Australia who previously held Olympic travel authorities. The figure will continue to change as people either leave the country or come forward and receive another visa.

Senator COONEY—How many are athletes and how many are officials? We might want to keep the athletes!

Mr Castello—Of the 79 that I mentioned, 28 were recorded as athletes, 12 as team officials, nine as media and 30 as other position holders.

Mr Farmer—Senator, all of them will be for the high jump if we get them!

CHAIR—You want brains and brawn, Senator Cooney; is that what you are telling us?

Senator SCHACHT—Can I have a breakdown of the sports?

CHAIR—You think there might be some volleyballers here, Senator Schacht.

Senator SCHACHT—As President of the Australian Volleyball Federation I would be interested to know if any of them are volleyballers. If they are over six foot six we will keep them.

Senator McKIERNAN—Are you saying you were President of the Australian Volleyball Federation?

Senator SCHACHT—We won a gold medal at the Olympics. Are there any volleyball players, Mr Castello?

Mr Castello—I do not have that information.

Senator SCHACHT—Could you get it for us. Was there a particular sport that was into overstaying—winning the gold medal for overstaying?

Mr Castello—I will endeavour to get those figures.

Senator SCHACHT—When you say the ‘other description’ of athletes, officials and then 30 others in the Olympic family, who are the others? Are these the freeloaders from the IOC?

Mr Castello—The definitions I have there are for team officials, of which there were 12, and then there were other Olympic officials, of which there were 30.

Senator SCHACHT—I think the generic term is they are ‘freeloaders’.

Mr Castello—A range of other people came under the Olympic family—

Senator SCHACHT—Yes, I know. Did you ever meet any of them? You probably didn’t, but I did.

Mr Castello—No.

Senator SCHACHT—It seemed to be one of the best gravy trains in the history of the world. I would be interested if you catch any of those 30. There were two senior IOC officials who the minister refused to grant a visa to, about whom Mr Samaranch complained to the Prime Minister. After Mr Samaranch wrote to the Prime Minister, was there any follow-up from the IOC in complaint to the Australian government about these two people—one was from Hong Kong and the other from Central Asia, I think—not being granted a visa?

Mr Castello—I am not aware of any follow-up complaints or the matter being raised again by the Olympic Committee.

Senator SCHACHT—So there was no further response to the reply that the Prime Minister or the minister gave back to Mr Samaranch?

Mr Castello—To my knowledge, that closed the correspondence and it was not taken up subsequently.

Senator SCHACHT—And they never came to Australia?

Mr Castello—Correct.

Senator SCHACHT—Were they the only two or were there others in the Olympic family who were refused a visa leading up to and during the Olympics?

Mr Castello—They were the only two that I am aware of who were Olympic family members or candidates to be recognised as Olympic family members who were formally refused.

Senator COONEY—Did ‘Eric the Eel’ go back? Do you remember him?

Mr Castello—Yes, he did.

Senator SCHACHT—I appreciate your taking that other information on notice, but if you can give me any information about the extra 30 people that would be good. Do you have any information about where they came from—which countries under the IOC banner?

Mr Castello—I do have the total by country, but I do not have the segregation in terms of country and status.

Senator SCHACHT—If you could break that down, that would be good.

Mr Castello—I can try and get that.

Senator SCHACHT—In my curiosity as a president of an Olympic sport, in seeing some of the aspects of the Olympics that Australians were not overly impressed with, I would be interested to see where those people came from. As I say, I think Australians quite rightly showed some chagrin about the way the IOC conducted itself and about the freeloading, all at the Australian taxpayer’s expense in one form or another.

[4.14 p.m.]

CHAIR—That concludes questions for output 1.1. We can now move to output 1.2, ‘Refugee and humanitarian entry and stay’.

Senator HARRADINE—You were talking earlier this afternoon, I think it was, about the risk factors of various countries. I am not sure who the officer was, but the officer was giving the committee advice on the various issues of risk factors. How and why is that information accessed and by whom?

Mr Rizvi—The risk factor criterion applies only to people applying for a visitor visa to Australia. The risk factor criterion is based on data we obtained from our own systems regarding persons who enter Australia on a visitor visa and who, at the expiry of that visitor visa, are still in Australia, whether on another visa, on a bridging visa or unlawfully. That data is aggregated by country and measured against various benchmarks. Those countries whose visitors exhibit a tendency not to return that is greater than the benchmarks are placed on the risk factor criterion. The risk factor criterion is used as a means by which to communicate to decision makers a need to investigate and seek greater levels of evidentiary material before a decision on a visitor visa application from persons from that country can be made.

Senator HARRADINE—At that stage, are you looking at persons who may present themselves as having a well-founded fear of persecution under convention criteria? I am just trying to see how those criteria fit in with the other criteria of determining refugee status or whether or not a person is removed.

Mr Metcalfe—There is no relationship between the risk factors that go to the level of processing in relation to a visitor visa application and any refugee determination process. That process, of course, relates to a person in Australia who has applied for refugee status. The refugees convention sets out the criteria for the well-founded fear of persecution. There is no relationship between those matters at all.

Senator HARRADINE—Would the elements of the risk factors be similar in your country information service?

Mr Metcalfe—No. The risk factor information is a statistical model based upon, as Mr Rizvi said, an aggregation of overstay rates.

Senator HARRADINE—I am sorry, the penny has dropped.

Mr Metcalfe—There is no relationship between the two issues.

Senator HARRADINE—Thank you.

CHAIR—Senator Schacht wants to put one issue on notice in relation to the Olympics.

Senator SCHACHT—In view of the 79 overstayers from the Olympic family—and 30 are what I might call freeloaders, but that is a bit unfair—has the minister or the government written to the IOC expressing some concern that we gave these people special entry into Australia for the Olympics and they have abused it? This is not just one or two; you have 79. If that has not been done, can I suggest to the minister that a formal letter be sent to the IOC expressing some disquiet that our immigration rules and laws have been breached by the Olympic family?

Mr Farmer—I hear what you are saying. What we are dealing with here is a very good outcome. The number of overstayers is really a tiny percentage of the total. I am just trying to get it into perspective. Compared with past games, we are dealing with a very small number that we are whittling down very quickly.

Senator SCHACHT—You are down to 79. But what I am interested in is that these people got into Australia because we gave them entry for the Olympic Games and because they claimed to hold some position within the Olympic movement. Clearly, they were coming here with no intention of leaving Australia and to use it as a way to get into Australia and then disappear. They have abused the trust of the Australian people and the Australian law. At the very least, not an unbelievably rude letter but a formal letter from Australia, from the minister, to the IOC pointing this out would not go astray, particularly for the next Olympics. I do not know what the Greek immigration laws are, but whenever they hold the Olympics in a developed country there may be people who think this is a good way to get around the laws.

Mr Farmer—Thank you for the idea. I will certainly talk to the minister about it. It may be that something like that, either to the IOC, the other sports federations or the bureau that actually sponsored these national teams—

Senator SCHACHT—But I think it should go to the IOC. They take responsibility and they tell everybody, ‘We run the Olympics.’ Every international sporting federation—I represent one which is part of a federation—is told what to do. They accept all the glory and

therefore they will have to accept some of the responsibility for things that do not go 100 per cent right.

Mr Farmer—This went almost 100 per cent right, unprecedentedly well, but I will take your point to the minister.

Senator LUDWIG—Can you help me as to whether or not you provide assistance to unauthorised arrivals to apply for protection.

Ms Bedlington—All applicants in detention, whether unauthorised arrivals or people who are taken into detention and held in detention through the process, are provided with application assistance through the IAAAS. We have a panel of providers—registered migration agents—who assist them with the preparation and lodgment of their application.

Senator LUDWIG—That scheme has not changed; no new contract has been recently let in that area to assist unauthorised arrivals?

Ms Bedlington—No. In fact, the current contracts are close to coming to an end and we are about to embark on another round of going out to tender.

Senator LUDWIG—Perhaps you can tell me a bit about that. When do the contracts come to an end?

Mr Illingworth—They expire at the end of the financial year.

Senator LUDWIG—When will they be put out to tender or are they in that process now?

Mr Illingworth—Paperwork is being prepared to advertise the tender in the national press in the next week or so.

Senator LUDWIG—Keeping a watch on the commercial-in-confidence process, when will that close? Is there a time line that we are working towards? For argument's sake, if the existing contracts are won or a new contract is awarded what is the time line for that to occur?

Mr Illingworth—The aim is that there would be a seamless transition from the existing contractors to whatever the new panel may consist of.

Senator LUDWIG—That would be when?

Mr Illingworth—It is 1 July.

Senator LUDWIG—With the IAAAS, they have the ability to retender?

Mr Illingworth—Those existing service providers are free to retender.

Senator LUDWIG—Are they separate service providers?

Mr Illingworth—It is the same scheme. The IAAAS is the scheme under which we provide funded migration agents' assistance to asylum seekers in detention.

Senator LUDWIG—So there is a range.

Ms Bedlington—Yes, there are a number of providers.

Senator LUDWIG—You would call them companies, associations, agents or individuals who have a relevant certificate or registration in that area and who then assist, and they have won individual contracts under the IAAAS. Is that what you are telling me?

Ms Bedlington—There are a number of organisations and private companies that have tendered. The people in their employ who provide the application assistance are registered migration agents.

Senator LUDWIG—All of those come up on 1 July?

Ms Bedlington—All of them come up on 30 June—just the detention ones.

Mr Illingworth—The scheme delivers a range of services including advice on general migration matters to people in the community, and the detention services component is the component that is going to be retendered.

Senator LUDWIG—Is the budget increased or is the same amount of money being put up again? Perhaps you can take that on notice or tell me about it now. Alternatively, if it is part of your budgetary process, you might tell me that too.

Mr Illingworth—The way the scheme operates for detention services is that it is demand driven. The successful contractors would have a unit price and it may vary according to volumes, but the exposure to the Commonwealth would depend on the volume of arrivals who wish to apply for protection while they are in detention, because it is an open-ended offer to any detainee.

Senator LUDWIG—What is the value of the scheme in the last financial year? Do you have figures on that?

Mr Illingworth—In 1999-2000 we spent just short of \$8 million, \$7.942 million, on the detention services component of the IAAAS.

Senator LUDWIG—How many applications have been lodged during that period? I take it the agent would then lodge the application on behalf of the client.

Mr Illingworth—It is 4,343.

Ms Bedlington—It is, of course, not completely directly translatable because they will have started on some in one financial year and lodge in the next and invoice possibly in a different period. It is close, but at the margin there would be some that would straddle the end of the financial year.

Senator LUDWIG—You are going where I am going next. I am also trying to ascertain how many of those are processed within what period and whether you track that to ensure that you are getting a return on your investment of \$8 million, whether these people are being processed in a timely and efficient way through the system. Do you track that, and do you have figures in relation to that?

Ms Bedlington—Do you mean processed by the department or processed in the sense of the IAAAS advice?

Senator LUDWIG—You provide the \$8 million through the IAAAS scheme and something in the order of 4,343 applications have been made. Of those applications that have been made, do you track them to see—

Ms Bedlington—Absolutely. We track both aspects.

Senator LUDWIG—I thought you might.

Ms Bedlington—We track to make sure that the IAAAS providers are available quickly to provide the assistance, because one of the chief reasons why we fund the assistance is to facilitate the speedy preparation of the person's application so that we minimise the period in detention. So we actually track closely the IAAAS providers' performance. Separately, once the application has been lodged, we track very closely the performance of the case manager who has responsibility for deciding the case and how long they take to decide the case.

Senator LUDWIG—Of those 4,343, are you able to provide a time line for their progress through the system, whether they take one, two, three or four months to finalisation? Finalisation might be a range of outcomes, and that is what I was looking for as well, whether that outcome be a successful application or I suppose an unsuccessful application, and what happens to them after that.

Mr Illingworth—I have got figures that range across all of the applications lodged in the financial year 1999-2000. This relates to the performance standard we set for our processing. For those lodged in the first quarter of the financial year, 80 per cent of them were processed within 84 days; for those lodged in the second quarter, it took 228 days; for those lodged in the third quarter, 221 days; for those lodged in the fourth quarter, 145 days.

Senator LUDWIG—Do you have an outcome?

Mr Illingworth—In total—this is moving to total outputs in that year, not necessarily relating to the cohort—in 1999-2000 there were 1,376 finalisations, of which there were 1,129 grants. The bulk of the applications lodged in the last financial year were finalised in this financial year. In this financial year there have been 3,375 finalisations, and grants totalling \$2,858.

Mr Metcalfe—I think what those figures are showing you is the increase in unauthorised arrivals in the first half of 1999-2000, which led to an increase in processing times, largely because departmental resources to process applications had to be brought up to deal with the surge of arrivals that we had. Then I think the figures started showing you those processing times decreasing as those resources started applying. Mr Illingworth spoke earlier today about the fact that at the moment some decisions about people who arrived here in December-January are being made within 30 days. The figures illustrate the surge of arrivals that we have had and the impact they have had on processing rates, which have now come back to acceptable levels.

Senator LUDWIG—Do you have a basket of long-term cases that you are looking at separately?

Ms Bedlington—We have, as I mentioned earlier, some cases that have been waiting longer than others, obviously. For example, at the end of December, we had 55 cases that had been waiting between six months and a year for a decision. All of those are awaiting, as I said earlier, security checks, penal checks or effective protection checks—checks that involve other governments or other agencies. There are only two cases that have been waiting more than a year. One of those is waiting on a police check and one on a security check. Generally speaking, the cases that take longer are concerned with character issues, penal checks or security checks. For obvious reasons, that is not something that we can take short cuts on.

Senator LUDWIG—No, and those questions were asked earlier, but to revisit part of that in the refugee determination area, where the asylum seeker enters Australia without identifying documents or valid papers, are the time lines that you have given us for how long it takes DIMA officers to ascertain their identity, and more specifically their country of origin, similar to what the figures reveal in the IAAAS—that you would be able to find them within a very short space of time? Can you track how long it actually does take you? You mentioned some in the long-term basket where you are still waiting for identity checks and the like. How long does it normally take you to process that type?

Ms Bedlington—Can I just clarify just to make sure we have not unwittingly led to some confusion about which group we are talking about. All unauthorised arrivals must be detained. All of the people in detention who raise claims or provide information that prima facie may engage Australia's protection obligations are provided with IAAAS assistance. In a sense, there is no difference between the IAAAS and the unauthorised arrivals caseload. The figures that Mr Illingworth has given you are one or the other.

Senator LUDWIG—That is what I was trying to make sure about.

Ms Bedlington—They are the same group. To the extent that there might be marginal differences in numbers, it will be about that straddling two financial years—about when applications were lodged, when invoices were lodged by IAAAS providers and so on. They are really the same group.

Senator LUDWIG—What I was trying to extract from that same group is a separate subset as to whether or not there were any additional or complicating problems when they do not arrive with any paperwork—whether that is the major cause of the extension of time or whether the IAAAS and the providers under that are able to work efficiently within those time frames notwithstanding the lack of paperwork. In other words, I am trying to find out whether the basket that we talked about whom you are finding it difficult to resolve are the ones that fall outside it, which is not due to just the large numbers for processing. Are these people who do not have paperwork?

Ms Bedlington—I think I understand what you are saying. The IAAAS provider does not have the onus to determine who the person is or which nationality they possess. It is quite open to them to accept the claims that the individual is making. That onus is on us. It does not in any way constrain the responsiveness of the IAAAS provider. The IAAAS provider is required, under the terms of the contract they have with us, to be available and to fit in with our processing requirements. Indeed, even through the substantial surge in arrivals, I think it would be fair to say that the IAAAS panel has been tremendously responsive to the requirements to send large numbers of people to the three detention centres. So that is not an issue for IAAAS. Identity and character checking are issues which have to be resolved by the decision maker before they can properly determine whether or not Australia owes the person protection obligations and whether they can then go on to grant or refuse the visa.

Senator LUDWIG—If we go back to the decision maker, at the point of the primary interview process or at any other point, does the interviewer decide that the asylum seeker has a genuine claim for protection or is it simply that they invoke the claim and that it moves on from there? Perhaps you can assist me with resolving the conflict in my mind about how it actually occurs.

Ms Bedlington—The decision maker has, first of all, to be satisfied who the person is and which nationality they have, the nationality being particularly important.

Senator LUDWIG—I will stop you at that point—I will let you come back to it. If they cannot decide, can you deal with that as well, and how long that takes?

Ms Bedlington—It is important for them to come to a view about the country of nationality or origin because that is the country against which they are going to decide any claims of persecution. In the absence of any documentary evidence, as I said earlier today, the person must be providing a coherent story, not raising anything that would lead us to have doubts about the fact that the person comes from the country they say they come from. We

use a range of techniques to determine that, one of which is linguistic analysis. We have a range of questions that are designed especially to test whether someone comes from somewhere. They would be expected to know the answers and, if they do not, that might raise doubts that would lead to further checking.

Senator LUDWIG—I can imagine that you would have a battery of tests.

Ms Bedlington—So the decision maker has to look at the claims the person is making and test those against the refugees convention definition about whether the harm that is feared is serious enough to constitute persecution and whether there is a real chance that that persecution will befall the person should they return. That is what we call the inclusion part in relation to the refugees convention, but that is not the end of what is required. The decision maker then has to work out whether Australia owes protection obligations to that person. Even though they might meet the definition in that sense, we may not have protection obligations. This goes to a range of other things about whether they have right of residence somewhere else where they could have effective protection, whether they have another nationality, whether in fact they are excluded, either under article 1F, which deals with war criminals, or under article 33(2), which deals with whether they have been convicted of a serious non-political crime outside the country of origin.

In addition to that, before they can be granted a visa, they have to have undergone a health test—not passed but undergone—and meet our public interest character criteria, which in effect is the same test as the exclusion parts of the convention. The inclusion part about whether they meet the refugee definition, while it takes time, is not the delaying factor in this case. The delaying factor, invariably, after we have introduced several re-engineering changes to front-end load things like health checking, ends up being about security checks and penal checks in other countries.

Senator LUDWIG—Can you then give us some times once their identity or country of origin is determined? Can we deal with that group first? How long does it take those people to be processed as asylum seekers? Let us say they are part of the inclusion group who is genuine. What is the time it takes between entering Australia and the granting of a temporary protection visa? Is there some timing on that that you have available? I am happy to take that on notice.

Mr Illingworth—The range of times it takes to deliver a finalisation reflects those sorts of factors. I mentioned earlier that already this quarter 59 protection visa applications lodged this calendar year have been decided. That is within 22.7 days. That would be, I suppose, around the inner limit. That would be either a very straightforward refusal or what you could call a very straightforward approval where the case officer essentially comes out of the interview and is convinced and there are no issues of identity or possible effective protection or security that need to be resolved. That is the best case. In relation to how long it takes for security screenings to come back and penal checks from offshore, it is essentially an open book. There are a range of countries, some of which are very responsive in effective protection checks, and others take a lot longer.

Ms Bedlington—Having said that, as I said before, currently we have only two that have been waiting longer than a year. Out of the numbers that we are talking about, those larger numbers are the extreme end. I do not know whether it applies to these two, but it certainly has to cases that have taken a long time in the past. They are generally people who are raising quite serious issues.

Senator LUDWIG—What about when they turn up as an unauthorised arrival and they are primarily assessed? What time lines are we looking at there? How long does it take?

Mr Illingworth—If they wish to apply, they can apply at any time. If we independently identify an individual as a person whom we feel should be put through the formal determination process, it would be a matter of days after arrival in the detention facility when that point is made. It is a sort of active vetting exercise. From that point, the times vary a little. Perhaps the following week after arrival they would be introduced to an IAAAS service provider. The way we deploy people to the detention facilities, essentially the service providers would go in for, say, three or four days or a week with their team and the onshore protection team would follow on immediately at the conclusion of that. The service providers would stay on site for a total of maybe eight to 10 days. The first part is filling out applications and getting to know their clients. The second part of it is attending the interviews for the primary assessment of their client's case. All of that would be over in two weeks, maybe three.

Senator LUDWIG—Can anyone be missed in that process if they do not claim protection?

Ms Bedlington—If they do not claim, they are not part of the process in one sense. Onshore protection staff carefully examine the entry interview. If we believe that they are raising claims or providing information that *prima facie* may engage Australia's protection obligations with no judgment being made about credibility or anything else, we proactively facilitate their application for a protection visa so that their claims can be fully considered. This is because it is Australia's obligation not to *refouler*; so we are putting that in train. If, however, they just say they came to Australia to get a job, we do not actively pursue them filling out an application. That does not prevent them from filling out an application. If they do, we have to deal with the application in the usual way, but we do not actively solicit it, I guess, is the way to describe it.

Senator COONEY—I asked this before. There is no Interpol, I understand, in the sense of an Interpol for migration matters, but have we as a country made any attempt to get that going? This is a problem that is common to the world. I know it used not to be so common. What efforts have we made to get some sort of intelligence?

Mr Metcalfe—There are a couple of levels that add to what I said this morning. Firstly, it is criminal activity and the police are involved in this issue. Indeed, you may recall that there was a bit of media attention a few weeks ago when the AFP sponsored a conference here in Canberra and police representatives from a large number of countries came out specifically on the issue of people-smuggling. We were involved in that conference and in presenting to that conference. To the extent that it is a criminal activity, police forces around the world are obviously involved but, because it is criminal activity in the area of immigration and illegal immigration, immigration authorities are obviously involved.

This morning I talked about the fact that, although there is no sort of global immigration forum in the way that there is for Interpol or Customs, Australia has been very active bilaterally in working with foreign immigration services. We are a member of several important working groups—for example, under the International Air Travel Association, there is a control authorities working group on which we have played a significant role for many years. There is a number of multilateral forums that we are involved with in relation to illegal immigration issues and, of course, there is a number of multilateral organisations that we are involved with in relation to refugee and asylum matters—most notably the executive committee of UNHCR and the intergovernmental consultations on migration. So, through the

range of the continuum of refugee movements, unlawful travel and whatever, we are extensively engaged. We are also working very closely with the police and they are working closely with their international colleagues on the issue.

Senator COONEY—I suppose it is a bit hard because, by their very nature, they are refugees and do not want to be identified in their own country. I am not talking about the people smugglers now but about the actual people who land here. You say, ‘Look, we’ve got to identify who you are and where you’re from to find out if you have a proper right.’ If you had some idea—

Mr Metcalfe—One of the complexities of the issues that we face is that, while many people who arrive are recognised as being refugees, some are not. There is an issue of identity or nationality fraud. There are some concerns—I think we have talked about them before. For example, some people claim to be from Afghanistan but in fact come from Pakistan; some people claim to come from other countries. They assume an identity to assist in their chances of being recognised.

Senator COONEY—What I am trying to get at is whether there is any intelligence. I cannot think of any myself to suggest to you, but has the world system for all migration countries, and other countries now as well, thought up a new system where one can identify right from the start a person who might well be a refugee, so you know that he or she does not come from Pakistan but from Afghanistan?

Mr Metcalfe—Ms Bedlington can probably say more about this, because she is directly involved in some of these forums. For example, through the intergovernmental consultations on migration and refugee issues, there is a lot of exchange of information on those sorts of issues. This involves country information but also those sorts of matters. We cooperate closely and draw the experience of others. For example, in some of the areas of linguistic testing, we have been attempting to ascertain from a person’s spoken voice whether they are from a particular place or some other place—whether you are a Queenslander or a Victorian, for example.

Senator COONEY—Yes, that is the sort of thing I was trying to think of.

Mr Metcalfe—We have engaged extensively with the European experience and, indeed, use resources in Europe to assist on that.

Senator COONEY—Thank you. Sorry, Senator Ludwig.

CHAIR—Senator Harradine, will you be continuing on 1.2 or will I go to Senator McKiernan on 1.2?

Senator HARRADINE—I am not sure whether this is the place, but this is the first occasion since the government responded to this committee’s report entitled *A Sanctuary Under Review*.

Senator McKIERNAN—It is not this committee, actually.

CHAIR—It was the references committee.

Senator HARRADINE—Same people, more or less.

CHAIR—The names have been changed to protect the innocent, I think, Senator Harradine.

Senator HARRADINE—It may have to be raised in another committee. I will go to the question. The committee described the deportation and forced abortion of Ms Z, the 8 ½-

month pregnant woman who was forced back to China, as being ‘abhorrent and a tragedy’. The committee recommended:

That all steps be taken and put in place to ensure that the situation of Ms Z never occurs again in Australia.

Has the department taken steps to ensure that that sort of thing will never occur again and, if so, what steps?

CHAIR—Senator Harradine, I would not like to spend a great deal of the time of this estimates committee on the issue.

Senator HARRADINE—I know. I am just trying to see how much money they spend on things like up-to-date information about circumstances in various countries. As I understand it, it was one of the features at the time, was it not, that there was a lack of information about the situation in the particular country in respect of its coercive population control program?

Mr Farmer—I am just waiting for the appropriate officer to come. I will just check where that person is.

CHAIR—While that happens, perhaps I could ask Senator McKiernan to continue, and then you can come back with a response and we will go from there.

Mr Farmer—I would be grateful.

Senator McKIERNAN—I am not going to continue in response to that particular report, though. Save that for another day and perhaps another place.

CHAIR—No, I understand that. Continue with your questions.

Senator McKIERNAN—I want to deal with the matter of protection visas that are granted to unaccompanied minors. What is the procedure for the grant of a protection visa to an individual who arrives here unlawfully and is not accompanied by their parent? And into whose care are they placed when the visa is granted?

Ms Bedlington—If they are truly unaccompanied, in the sense that they are not in the company of close friends or extended family, then they come under the provisions of the agreement that we have with state and territory welfare agencies. The release of an unaccompanied minor, for example, from detention on a temporary protection visa will be closely coordinated with the state to which they are going to be released.

Senator McKIERNAN—How many protection visas have you granted in that circumstance where the state is the guardian body, for want of a better term?

Ms Bedlington—My understanding is that there are 101 unaccompanied minors who have been released with a temporary protection visa since October 1999. The very great majority of these are in the age range of 16 to 18. In the very great majority of cases, we are not talking about young children; we are talking about late adolescent children.

Senator McKIERNAN—How many have been released into the care of the state?

Ms Bedlington—All of those 101. We do not categorise all children without immediate family as unaccompanied. These are the ones who are truly unaccompanied.

Senator McKIERNAN—Can you explain the difference between unaccompanied minors and truly unaccompanied minors in the department’s definition.

Ms Bedlington—I was making the point that sometimes we see on boats children under 18 who arrive without their parents. They may arrive with a cousin, they may arrive with a very

close family friend who is in a position and prepared to take responsibility for them on release or indeed their parents may already be here. The ones that, to the best of my knowledge, we count as unaccompanied humanitarian minors are the ones where we do not believe that they are accompanied by anyone who can take formal responsibility for their care.

Senator McKIERNAN—I asked earlier on for information. In the course of the Human Rights Subcommittee, we were given figures of unaccompanied minors in Curtin, Port Hedland and other detention facilities. I cannot recall, and I do not have the figures in front of me, if there was a departmental breakdown that designated unaccompanied minors and that drew the distinction that you are drawing now, Ms Bedlington. Do you formally and officially draw the distinction between unaccompanied minors and unaccompanied minors who have relatives and near relatives that can look after them?

Ms Bedlington—I am unaware of what the figures are that you were provided with. If you would like, we could take it on notice and check whether they were ones that were truly without any extended family with them or whether they were ones just without immediate family.

Senator McKIERNAN—Can I ask this question then. Most of the figures that we were provided with were in response to questions and were not, as I recall, on written sheets. They were given in response to questions from various members of the committee. Does the department draw a distinction—in a formal sense, in an official sense—between unaccompanied minors who have a near relative with them and unaccompanied minors who do not have any relatives?

Ms Bedlington—To some extent, it depends on the context of your question, Senator. If you are asking it in relation to the—

Senator McKIERNAN—I am asking a very clear and precise question, which I would have thought—

Ms Bedlington—And I am trying to answer it.

Senator McKIERNAN—No, sorry. You have come back and questioned my question to you. I have asked a very clear and precise question about whether or not the department formally or officially categorises unaccompanied minors as those with no immediate relatives to look after them or as those without relatives. I would have thought that the answer was yes or no, and I would not have thought that you would have needed to come back to me for further clarification on my question.

Ms Bedlington—I can say yes. We do draw the distinction because they are not unaccompanied if they are accompanied by extended family members.

Senator McKIERNAN—That was my understanding, but then, when I asked the question about the release of unaccompanied minors into the community, I think I was sent down on a different track of their being released into the care of the state.

Ms Bedlington—Yes, if they are unaccompanied.

Senator McKIERNAN—You have told me that 101 unaccompanied minors have been released into the care of various states.

Ms Bedlington—Yes.

Senator McKIERNAN—Those 101 were not being released into the care of immediate relatives?

Ms Bedlington—No.

Senator McKIERNAN—Can you break down which states those persons have been released into?

Ms Bedlington—Yes. None were released to New South Wales, 32 to Melbourne, 22 to Brisbane, 27 to Adelaide and 20 to Perth.

Senator McKIERNAN—Does the department—for example, in Western Australia, where 20 persons were released—then assist the state in providing for accommodation or other welfare for the people who have been released into the care of the state?

Mr Giuca—We notify the state authorities that unaccompanied minors are being released. The normal arrangement is that, for the initial period, we often provide accommodation for them until the state government can put them in suitable housing or care arrangements.

Senator McKIERNAN—Could you repeat what you said. I detected the words ‘we often’, but I am not so sure I heard you correctly.

Mr Giuca—We notify the state authorities that they are being released. If the state authorities have put in place care arrangements, they go into those care arrangements. If they have not done so at that time, which is often the case, they are placed in accommodation provided by the Commonwealth until the state authorities have in place care arrangements.

Senator McKIERNAN—The first night’s accommodation supplied by the department in the various cities is at a backpacker hostel in the city centre.

Mr Giuca—That is for adult TPV releases. For unaccompanied minors that is not the case. They often go into what we term ‘on-arrival accommodation’—often flats—which is used for refugees coming in from offshore.

Senator McKIERNAN—Why do you use the term ‘often’—that is what concerns me—when you are talking about releasing unaccompanied minors?

Mr Giuca—I am just distinguishing that in some instances they go straight into the care of the state government. Particularly when they are under 16, they will go into the care of state government. But between 16 and 18 there is often a lead time required for the state government to put in place arrangements. As a result, we use on-arrival accommodation to accommodate them.

Senator McKIERNAN—Departmental owned or leased accommodation would be available through the settlement services?

Mr Giuca—Yes.

Senator McKIERNAN—In those units—and I do not know about all the units around Australia but I do know of some in my home state—is there any adult supervision? I know there is a superintendent who looks after the grounds in some instances, but what adult supervision is there?

Mr Giuca—If there is a group of existing unaccompanied minors—and we are often talking about people between 16 and 18—they will be put in a flat together. As soon as possible, our people from the department go and visit those unaccompanied minors and also make arrangements for state welfare and other appropriate officials to go and visit them.

Senator McKIERNAN—My question went to the matter of adult supervision upon release at these units where the unaccompanied minors are first put by the department if they are not going directly into state care.

Mr Giuca—It will vary, but often they will be put in a group apartment rather than have an adult with them. We do have an accommodation service provider who does provide a role in looking at the arrangements put in place for unaccompanied minors in such a situation.

Senator McKIERNAN—I am still not sure you are answering my question. As I recall the particular block of flats I am thinking about in Stewart Hill, there is a caretaker operating in the flats. If those flats have ever been used in this instance, it is not a matter of having a superintendent in the flats supervising the activity of one unaccompanied minor—or possibly, even worse, a group of unaccompanied minors. Speaking as a parent of kids who are now in their adulthood, I would say that sometimes two or more can be even more problematic. There is not necessarily safety in numbers in these instances, particularly if there is a mix of genders. I would like you to be a little more precise about the detail of adult supervision provided to unaccompanied minors who are not released directly into the care of the state authorities.

Mr Giuca—Under the guardianship of children act there is a formal process where they are handed over to the states, but we often provide the accommodation service until the state has in place appropriate accommodation services. The state will send an appropriate official to put in place supervisory arrangements for those unaccompanied minors.

Ms Bedlington—I wonder whether you are linking acceptance by the state of the welfare supervision with the accommodation. That is not the link. On release, the actual transfer of welfare supervision responsibility takes place as part of the release. The states then have it. What Mr Giuca is describing is the fact that, particularly for these older people who are being released, if they do not have an appropriate accommodation in place, we are in effect stepping into the gap that is left by their inability to organise themselves in time, in recognition of the fact that the numbers, particularly over the period when we were releasing larger numbers, can sometimes be beyond, over a period of days, their capacity. We are actually plugging the accommodation gap, not the welfare supervision gap. That is the state's responsibility under the guardianship of children act.

Senator McKIERNAN—I am trying to find out what happens. When I first asked the question about unaccompanied minors being released I was told that they were coming in two streams, one going directly into the care of the state authority, the other who, when the state authorities are not ready, are put in departmental accommodation units. That is the stream I am talking about now. That is what I am trying to find out.

Ms Bedlington—I am just trying to explain that they are under their care, but the accommodation bed is ours.

Senator McKIERNAN—I thought you were seeking clarification of what information I was trying to elicit for myself and for the committee. That is what I thought the genesis of the question was, rather than the provision of further information. Maybe I am getting it wrong. I am not used to the questions coming the other way.

Mr Metcalfe—Just listening to that exchange, I think there may have been some confusion on this side about terminology between care and accommodation. I think that has now been clarified by Ms Bedlington—that essentially the care responsibility goes immediately to the state authority; however, we step in to assist with accommodation, because we have

accommodation if they do not. I think the point you are driving at concerns whether there is proper care and supervision of these people—usually young men—and I think what we are saying is that the state has that responsibility for all of them. We help out if we need to with accommodation until the state has those facilities in place.

Senator McKIERNAN—I want to move to the second stream of things after I have finished this. I am sorry it is taking so long. I do not claim to be the cause of it taking so long; I thought the questions were actually quite plain. We have got unaccompanied minors who enter the country illegally. Some of those have their claims for protection tested and they are granted protection. Then they are released into the community. If they are unaccompanied minors, they go into either the care of a relative or the care of the state. I am trying to find out about those who go into the care of the state. So far we have found out that, when the state authorities are not in a position to immediately provide accommodation, protection and supervision for those, they go into departmental accommodation. That is what I was trying to tease out in that stream. We can come back to the other, but I suspect that when I come back to questions about the care that is provided by the state authorities I am going to run into the blockage that it is a different department or a different government and DIMA are not going to be in a position to provide that information for me. But I do want to follow through what happens in the event of an unaccompanied minor being put into departmental accommodation when the state which the individual has been released to is not in a position to provide the accommodation for that individual.

Ms Bedlington—As you predicted, we would have to ask the states about the ones that they have in their state as to what care and supervision arrangements they have made for the people, whether they are in our accommodation or not. If you are particularly interested in that, we can go to the states and ask them for that information.

Senator McKIERNAN—I had not actually reached that point. I was still finding out about those that are in departmental accommodation. Even though they are under the care of the state, they are still in Commonwealth buildings. Does the duty of care continue to extend to individuals, particularly unaccompanied minors, who are resident, even for a short period of time, in Commonwealth accommodation? Has that been thought through by the department?

Mr Metcalfe—Essentially under the Immigration (Guardianship of Children) Act the powers of the minister as guardian are delegated to the relevant state welfare authorities, and so it is the minister's delegate in the form of the state welfare authority which has that responsibility for the child. What we are saying here is that, ordinarily, the state takes over responsibility for the young person in all aspects. However, in some situations they do not have accommodation available. The Commonwealth does have leased accommodation available and makes that available. But that does not mean that we are taking back or withdrawing from the state their responsibility as delegates under the guardianship of children act.

Senator McKIERNAN—Does the department then subsidise in any financial way the expenditure imposed upon the state on the occasion that the unaccompanied minor would be released into the care of the state, even though they are still in Commonwealth accommodation?

Ms Bedlington—The Commonwealth actually assists the states in three ways in relation to unaccompanied humanitarian minors. The first is through the general revenue grants that are calculated by the Commonwealth Grants Commission. The more specific provisions are under cost sharing arrangements where we assist with the supervision and support of

unaccompanied humanitarian minors without parents in Australia. That is in place with agreements with New South Wales, Victoria, South Australia and Western Australia, and we have a memorandum of understanding with Queensland. We reimburse on the basis of half the salary costs of a ratio of one worker to 25 minors, plus an additional one-third for on-costs. That is one specific way we assist. The other specific way we assist is by paying maintenance allowance for children who are covered by the Immigration (Guardianship of Children) Act who are under 16, so the very great majority of these, being over 16, do not come under this. That is a proportion of the Commonwealth youth allowance—70 per cent of the Commonwealth youth allowance—which usually ceases once the minor becomes eligible for other youth allowance or special benefits.

Senator McKIERNAN—How many under 16s have been released into the care of the states?

Mr Giuca—I thought I might have the figures here, but I think we will have to take that on notice.

Ms Bedlington—It is very few, but I cannot remember the exact number.

Senator McKIERNAN—You said earlier, Ms Bedlington, that the majority of the 101 who have been released to date would come in the bracket of 16 to 18 where that maintenance allowance would not be provided.

Ms Bedlington—That is right.

Senator McKIERNAN—You also mentioned in that response the Commonwealth Grants Commission. Is there a particular line in the Commonwealth Grants Commission grants for this section—that is, the unaccompanied humanitarian minors?

Ms Bedlington—My memory of the Grants Commission criteria is somewhat rusty, but I seem to recall that one of the special components of looking at a particular state's share of general revenue grants is actually children under care or some similar sort of account so that all of the children who are required to have the care and support of the state are counted.

Senator McKIERNAN—The question was: is there a line on unaccompanied humanitarian minors? Your memory is obviously not quite as rusty as mine, but I still cannot recall if there was a line in that category in the Commonwealth Grants Commission grants.

Mr Farmer—We will give you chapter and verse to the extent it exists.

Senator McKIERNAN—Thank you very much. I recall Ms Bedlington told me that none of the unaccompanied minors, who would obviously be funded under the Commonwealth Grants Commission guidelines, have gone to New South Wales, and 34 went to Victoria. Is there any additional assistance provided under those line grants to that state or any other state which receives them? Once the majority of released unaccompanied minors in the 16- to 18-year-old category have been released into the care of the state, are there any further obligations on the Commonwealth towards their welfare, other than the health criteria where a Medicare card is provided and so forth?

Ms Bedlington—And their eligibility for special benefit.

Senator McKIERNAN—So, to all intents and purposes, they are treated like an adult?

Ms Bedlington—The guardianship of the minister under the Immigration (Guardianship of Children) Act still continues, which, as Mr Metcalfe says, is delegated to the states to administer. So that continues until they are 18. In relation to other Commonwealth obligations, they are treated the same as any other TPV holder in that they have eligibility for

early health intervention services, they have eligibility to apply for special benefit and they have eligibility to apply for a Medicare card.

Senator McKIERNAN—How many unaccompanied minors do we still have in detention?

Ms Bedlington—As at 20 January, we had 30. I do not have a later figure than that.

Senator McKIERNAN—I am hesitating because, again, I do not trust my memory. I thought there was a much larger number in Woomera alone, but I do not question your figures.

Mr Metcalfe—We will double-check that figure, just to make absolutely certain.

Senator McKIERNAN—Could you provide the age and gender of those children and, if you want to, the distinction of whether they have a near relative with them or they are in fact unaccompanied minors in the sense that they are alone and without relatives in the country? Could you also provide on notice—and I would not expect you to have this here—the length of time they have been in detention and the stage of processing of their protection visas?

Mr Metcalfe—Yes, we will do that.

Senator McKIERNAN—Could you also provide on notice details of the number, if any, who have been screened out of the process and the number who have gone through all stages of the review process and been rejected? I am talking particularly about narrowing it down to the unaccompanied minors.

Mr Farmer—Yes.

Senator McKIERNAN—Thank you very much. Mr Farmer, I have on screen a draft of your opening comments in which you spoke about the minister's initiatives to protect Australia on his trips. When I was asking for a copy of your statement, Hansard heard me and electronically provided me with a draft transcript of what you said. A number of initiatives were mentioned in your opening comments, particularly the agreement with Syria which, I must confess, I was not aware of. I cannot recall seeing any publicity about the fact that an agreement was signed with Syria about returns. Could you provide us with some detail about that?

Mr Farmer—Yes. I recall, possibly incorrectly, that the minister issued a press release on that when he was overseas. In a nutshell, we signed an agreement in January with Syria which provided for a range of cooperation between the two countries in relation to this general area of unauthorised travel. It provided for visits by officials for technical and training purposes, exchange of information and, in particular, an agreement by the Syrians to accept the return of Syrians and other nationalities who have residence rights in Syria. I do not recall the exact words, but that is the general idea.

Senator McKIERNAN—Again, I am claiming responsibility for not being aware of it—it has been pretty hectic since I have returned to Australia—but I raise it because it is an important initiative. The other initiative you spoke about in your opening comments was the negotiations and the draft MOU with Vietnam. I do not want to misquote you or in any way abuse the privileges that we have in this place, but I think you did refer to a draft MOU with Vietnam about the return of criminal deportees to that country. Could you develop that a little further, because there is some question about the number of people that may come into that category?

Mr Farmer—I will ask Mr Okely to answer that question, because Mr Okely was the official referred to.

Mr Okely—I spent two days in Vietnam last week negotiating the terms of a memorandum of understanding for the return of criminal deportees in particular. The outcomes of those negotiations were that we made good progress and are looking forward to concluding an agreement some time within the next month or two.

Senator McKIERNAN—Would there be any sensitivities—and that is the first question—about giving the committee the number of nationals that would be affected as a result of these favourable negotiations? Of course, if there are any sensitivities, I will not ask further questions about the numbers.

Mr Metcalfe—I do not think there would be any reason why we could not give you that information. We will take that on notice and provide it to you.

Senator McKIERNAN—There has been some recent publicity about the number of people who have been held not only in detention but in prison in Australia awaiting removal or deportation from Australia. I guess some of them would fall into this situation that we have with Vietnam, that there are some countries that do not readily accept their nationals back into their own country and that that would make some difficulty for their removal. Could you provide the committee with a breakdown of those nationals that are held in the prisons awaiting deportation or removal, as the case may be?

Mr Metcalfe—Just to clarify exactly what you are asking for, I think the majority of the people covered by the report you were referring to—which is a recent HREOC report—were in state correctional institutions, largely having essentially served their time and now awaiting deportation to be effected. You have asked for a breakdown of the nationalities of persons in that circumstance—that is, essentially criminal deportees: people who have had residence in Australia, whose residence has been cancelled because of crimes they committed in Australia and who are waiting to return home.

Senator McKIERNAN—Yes.

Mr Metcalfe—I recalled our discussion earlier about cancellation and deportation and whatever, so I wanted to make clear what we were agreeing to.

Senator McKIERNAN—It was said in one of the media reports that I have read or that has been brought to my attention in regard to this that some of the individuals have been waiting for up to three years in prison conditions rather than in an immigration detention facility. Are there particular reasons—without going into the individual cases—why they should be held so?

Mr Metcalfe—Essentially, there are assessments made as to the most appropriate place to locate a person in immigration detention. The issues go to the obvious questions of security and whether the person would be appropriately accommodated in a detention centre with people who ordinarily are administrative detainees—people who are not criminals but who have simply overstayed their visa or arrived unlawfully or whatever. So there needs to be a case by case determination as to the appropriate place of detention for those people who are in state correctional institutions. It is the case that an assessment has been made that we simply cannot deal with their particular behavioural issues in an immigration detention centre.

Senator McKIERNAN—Who carries the cost of the detention of those people? Is it the Commonwealth, is it the department or is it the state?

Mr Metcalfe—It varies. Essentially, if the department is sent a bill by the relevant state authority, then we will pay it.

Senator McKIERNAN—Do all the states send you bills?

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

Senator McKIERNAN—I suspect you might. Mr Farmer, I had a quick look through the media releases in regard to our earlier discussions. I saw a media release, No. 6 of 2001, on international action against people smuggling, where Jordan, Syria, Turkey and Iran are mentioned. But I cannot from that particular release see detail of an agreement with Syria. If there is another media release regarding that, it has not been posted on the web, and I know from time to time the minister removes some of the releases that go out and then they are not later available. I do not know the reasons why he might seek to do that, but this particular one is one I was not aware of.

Mr Farmer—It is entirely possible that my recollection is wrong. The minister may have simply referred to these matters in press conferences.

Senator McKIERNAN—It seems to me that it is a bit of good news, useful news, that should be publicised. On the theme that we were talking about—the criminal deportees—would many or most of the individuals concerned have families within Australia that are Australian citizens or lawful Australian residents?

Mr Metcalfe—I suspect that the vast majority would have families in Australia. I will see what information we could give you without us having to go to individual files, because I suspect that that might be quite an effort. But if there is aggregate or impressionistic material, we will provide it on that basis. Coming from first principles, we are talking about people who have been living in Australia for some time, who are permanent residents, who have committed a serious crime in Australia and who have been ordered deported. Ordinarily, you would expect that they would have family or attachments in Australia. Those matters, of course, are taken into account in reaching a decision as to whether the person's crimes are such that they should be deported.

Senator McKIERNAN—With regard to the minister's trip to the Middle East, there was at the time a booklet prepared for distribution during his visit. How many copies of the booklet were produced and how many were subsequently destroyed because they were not suitable?

Mr Farmer—Would you give me 30 seconds, Senator? You have asked a factual question. We are not sure of the exact number, but it is certainly two figures—not three.

Senator McKIERNAN—I will ask the question and I would not be surprised if you took the matter on notice. How much did it cost to prepare and produce the booklet and any accompanying material such as videos or brochures? What has been done with the accompanying material, if indeed any such accompanying material was produced?

Mr Farmer—I can give you a reasonable estimation there. The costs would have been negligible because the bulk of the material was available and was distributed—things like a poster, a series of fact sheets, the video, a covering letter from the minister. What was not issued was four pages of stuff roneoed in the department.

Senator McKIERNAN—Roneoed?

Mr Farmer—I say 'wireless' too! I think we are talking about a ream or two of paper and a few quills and ink—not much cost in it.

Senator McKIERNAN—I will explain to Senator Ludwig what quills and ink are.

CHAIR—Where does that leave me?

Senator McKIERNAN—Is it planned to redo the publication? I am sorry; that is the wrong word. You have got the video. That would be the video that was launched in Parliament House in recent times with the sharks, alligators, snakes and crocodiles.

Mr Farmer—It was a different video that was prepared. The answer to your question is that we are looking to produce information for use overseas. One of the things we want to do is talk with overseas governments and organisations like UNHCR and the International Organisation for Migration about what is (a) acceptable and (b) likely to be effective in particular environments overseas. We will continue to develop this information.

Senator McKIERNAN—The matter of the typhoid outbreak was also raised during your presentation this morning. You talked about happenings in Canada in regard to that. I understand, from publicity regarding the scare, if you like, that the department was seeking to trace some other individuals who were in detention with the persons who were afflicted by the disease. Have all of those people been traced, tracked down and cleared—provided with a clean bill of health?

Ms Godwin—Again, I will confirm this specifically, but my understanding is that everyone has been traced and has been tested.

Mr Rizvi—There were 18 who were on the relevant boats—on the same boats as the persons who had typhoid, who had been released into Melbourne. They were all contacted by the Victorian health authorities, and retested for typhoid, and none of them showed any symptoms.

Senator McKIERNAN—Thank you. That is encouraging. The department was reviewing the various health checks that were done on boat people. I think this was told to us in one of the estimates committees last year. As I recall it, it was said that the standards that were in place had been put in place for people who were arriving from South-East Asian places of embarkation rather than from the Middle East and that different criteria were required because of the large number of people who were coming from the Middle East who may have different health hazards attached to them. Have those new provisions been put in place?

Mr Rizvi—New protocols for health processing are in place. They continue to be refined, however, in consultation with the Department of Health and Aged Care as well as the relevant state health authorities, in particular in Western Australia—the Perth Chest Clinic is one that we deal with very closely—and in Adelaide.

Senator McKIERNAN—All of the people have been traced who were at risk from this outbreak. They have all been cleared. This is a hypothetical question, but what additional health services, if any, would be available to those individuals if they needed them?

Mr Rizvi—We are talking about two groups here. There were the 18 in Melbourne who were retested and found not to have any difficulties. In that process, they were also advised of what the symptoms of typhoid are and, if they experienced any of those symptoms, what they should do. The second group we are talking about is the people still in the two detention centres. They are all in the process—the process has not been finalised—of being examined for typhoid. We are drawing to the close of that process. None of the remaining people has been found to have typhoid. As part of the process of testing, they are again being reminded of the importance, in particular, of good hygiene to prevent the spread of typhoid.

Senator McKIERNAN—Thank you very much. I want to conclude this part of the hearing, and I am conscious of the clock. I wonder if we can get an idea of when we might conclude. I would be of the view that we probably would not need a dinner break. We might be able to keep going, conclude it all this evening and not keep Senator Macdonald at the table waiting for his dinner.

There are reports in the media about some 200 people who are coming here from South Lebanon as part of the special humanitarian program. It is said that mostly they are South Lebanese troops and their families. How accurate are those reports?

Ms Bedlington—While Mr Giuca is looking for some more detailed information, I can say that it is true that the minister has agreed that applications from Lebanese who had fled the security zone in Lebanon and have temporary protection in Israel and close family links in Australia will be considered on a case by case basis against the special humanitarian program criteria. Notionally, up to 200 places have been set aside for such people.

Senator McKIERNAN—Is it accurate to say that the individuals were troops who previously served in the armed forces?

Mr Giuca—I think it is accurate to say that they were associated with the South Lebanese Army. Many of them are family members of people who were with that organisation.

Senator McKIERNAN—How are the character checks to be done on these people? Does it present any unique problems to the department in undertaking character checks, particularly for people who may have been involved in the armed forces?

Ms Bedlington—It does present some issues around character checks, but I would not say that they were unique. Very often with humanitarian and refugee case loads you have people who in one way or another have been concerned with military activity.

Senator COONEY—Is this an agreement we have with Israel or with Lebanon or with nobody in particular?

Ms Bedlington—I am unaware that the minister announced the government's intention in relation to this category of applicant.

Senator McKIERNAN—Was this something that was brought to the minister's attention during his recent visit to the Middle East? I noticed that the minister went to Iran, Jordan, Syria, Turkey and Iran. He did not go to Lebanon or Israel.

Mr Metcalfe—He did go to Lebanon.

Senator McKIERNAN—It is not in the press statement and that is all I can go on. The media release—No. MPS 006/2001—dated 20 January says:

At the end of a four-day visit to Iran, the Australian Minister for Immigration and Multicultural Affairs, The Hon Philip Ruddock MP, said that he had encountered in all the countries he had visited recently—Jordan, Syria, Turkey and Iran—a readiness to take international action against the global problem of people smuggling.

Mr Metcalfe—I think that may have been issued prior to his going to Lebanon. I think it may have been issued during the course of his trip.

Ms Bedlington—It is in the context of people-smuggling. His visit to Lebanon was on a range of other issues, not predominantly about smuggled case loads that we are seeing arriving on boats. I think that explains the reference to that particular clutch of countries in that press release which, as I recall, is around international cooperation to fight people-smuggling.

Mr Metcalfe—To respond to your original question, the decision to make these places available preceded his recent visit.

Senator McKIERNAN—Where was the minister's announcement made about the consideration of the applications for up to 200 people from South Lebanon? Was it by way of media release?

Mr Metcalfe—We will take that on notice. We do not have that detail with us. I think you have better access to our systems than we do at the moment.

Senator McKIERNAN—I may have access to the laptop, but I do not have control. Unfortunately, I have removed myself from that predicament.

CHAIR—Senator Ludwig appears to be the driver!

Senator McKIERNAN—Senator Ludwig is a great driver. Again, I was not aware of the minister's visit to Lebanon during this visit, and I do not know if we have information of a previous visit. I am not sure if the minister has indeed visited Lebanon, but was it during this visit that that media release refers to?

Mr Metcalfe—To clarify, I think that the media release you are referring to is in the context of the global fight against people-smuggling. That was issued during the course of his overseas travel before he went to Lebanon, and it basically sums up his discussions with key countries in the Middle East in relation to the people-smuggling issue, and, from my recollection, he then travelled on to Lebanon and, indeed, elsewhere before returning to Australia a few days later. I can check that; that is just a factual issue. I think it is well known in the public domain that the minister visited a number of countries. I think it does not mention the fact that the minister went to Sweden—and it is well known that he went to Sweden—and Geneva.

Senator McKIERNAN—That is not in the media statement.

Mr Metcalfe—The announcement in relation to the 200 people?

Senator McKIERNAN—Firstly, the announcement of the visit to Lebanon and, secondly, of the 200.

Mr Metcalfe—We can check to see what announcement was made, but I think there was an announcement before he left for overseas indicating that he was leaving. I was on holidays at the time, but I recall reading about it on a beach in Queensland.

Mr Farmer—There certainly was a media release before he left which talked about the countries he was visiting.

Mr Metcalfe—I think he left about 5 or 6 January.

Mr Farmer—Yes.

Senator McKIERNAN—I see. It says:

... Iran, Dubai, Syria, Lebanon ... before flying to Sweden, Switzerland ... to learn more about the experiences these countries have had in dealing with people smugglers and illegal arrivals.

Have the 200 people we are talking about been involved in any way in people-smuggling?

Mr Farmer—No.

Senator McKIERNAN—They are in Israel.

Mr Giuca—They have temporary residence in Israel.

Senator McKIERNAN—Were they smuggled into Israel?

Mr Farmer—No. It is a totally different case load, Senator.

Senator McKIERNAN—Is anybody able to confirm that some of the individuals would have been involved in the Khiam prison in south Lebanon and been involved in the torture of other individuals who were detained there?

Mr Giuca—These would be issues that would be looked at when the applicants are interviewed and obviously goes to the very heart of the character concerns.

Senator McKIERNAN—I am aware what Ms Bedlington said earlier about people who have been involved in the armed forces of their country. There are some countries where the armed forces run the prisons. If it were found that individuals were involved in running prisons which were involved in the subjugation of the people or a group of people within the country, would they necessarily then qualify for special protection, either under our humanitarian programs or under our special humanitarian programs in Australia?

Ms Bedlington—In some ways my answer would be that the question we would be asking is whether they would not be entitled as a result of what they did. It goes to whether in fact they were individually involved in crimes against humanity of such gravity that it would obviate their entitlement to international protection. It is a difficult question to answer in general, other than just referring back to the wording of the convention. As Mr Giuca said, it goes right to the heart of whether in fact they are entitled to protection, to the character consideration of that determination, and it would depend on the individual and the role they played, the gravity of their involvement.

Senator McKIERNAN—Would the country information service that is available to the department and to the refugee tribunal have details of the Khiam prison in south Lebanon?

Ms Bedlington—It may well. We would have to take that on notice.

Senator McKIERNAN—Yes, please. I omitted to ask a series of questions during the course of output 1.3. Could I put those on notice. They deal with ACM staffing at the Woomera detention facility, and the statement by the minister in December 2000 about the manager of that facility moving on and about advertisements that have appeared in the media about the replacement for that individual. I have some questions about output 1.4, which actually does not appear on the program, in relation to the Kosovars. I would take advice as to where we are with output 1.4. We were not asked to nominate which sections of the department we wanted to have in front of us, and output 1.4 does not actually appear on the list. I wonder where it is? It is still in existence in the sense that it is part of the portfolio additional estimates statements.

Mr Farmer—It certainly is. We are ready to try to help you.

[5.51 p.m.]

CHAIR—We will then move to output 1.4, ‘Safe haven’.

Senator McKIERNAN—Without going and revisiting the report, *A sanctuary under review*, and the response to it, where are we up to with the persons who were granted safe haven visas? The majority of those persons have already left Australia. Some remain here on bridging visas to allow them to be provided with health care. Others did not leave and were detained because they did not leave, but I understand that some of them have now been released on bridging visas into the community, and yet another group that returned to Kosovo are now coming back to Australia. Could somebody brief the committee on exactly what is happening with that? Then I want to ask some questions about the costs associated with all of those activities and whether or not the line under output 1.4 for safe havens has in fact been signed off.

Ms Bedlington—I will just give you a run-down: there are 323 Kosovar former safe haven visa holders and children who remain in Australia. They comprise 150 who lodged protection visa applications after the minister agreed to lift the bar on them applying, of which a total of 122 have been decided. Of the ones decided, 107 have been approved and 15 were refused and are currently at the Refugee Review Tribunal. Four applied on spouse grounds: three were granted and one application is still being processed. A total of 157 were granted subclass 786 temporary humanitarian concern visas and 12 are unlawful: one is in detention, two are remanded in custody and nine are at large. In addition, there is another Kosovar family of five persons who are in Port Hedland who came separately as unauthorised arrivals in March 2000. They have been refused at both the primary and the RRT stage.

Senator McKIERNAN—The supplementary estimates do not provide for any additional expenditure under this line. What is the reason for that, or has the outlay already been made? I am looking at page 21 of the portfolio additional statements.

Mr Davis—No additional resources were required at additional estimates because they were all appropriated in Appropriation Bill (No. 1) at budget time—the required resourcing. On page 19 for that output, \$5.94 million was provided at budget time and no additional resourcing was required at additional estimates. At this stage it looks like the \$5.94 million is indeed more than we require in the current year and any access funding will be sent back to consolidated revenue.

Senator McKIERNAN—The budget was in May of last year and, as I recall it, it was intended that this program would be wound up long before then. Are you indicating to me that the fact that you have some 340-odd people who were initially covered by it who are now mostly covered by different visa classes means there is no direct expenditure back to the safe haven visa class?

Mr Davis—The expenditure, as I understand it, in the safe haven area still relates to those people who are on safe haven visas. If they have moved to another visa class or have been granted other types of visas, they would no longer be calling on the resourcing of the safe haven output.

Senator McKIERNAN—If 122 have applied for protection visas and been granted a visa, that would not be a cost that would be allocated against 1.4 in the provisional budget statements.

Mr Davis—That is correct.

Senator McKIERNAN—Regarding the 15 who have been refused who are at RRT, are you saying that there is no cost to budget associated with them at all? I am sorry; I gave the wrong figure. It is 107 that were approved. A total of 150 applied: 107 would have been approved and 15 refused.

Mr Davis—If they are still on safe haven visas and have not been rejected for temporary protection visas, my understanding is that, while their review is being considered, any costs that we are bearing for accommodation or whatever would be drawn from the safe haven resourcing allocation.

Senator McKIERNAN—There are still funds in that resource allocation, are there?

Mr Davis—There are more than adequate funds at the moment. As I said, I believe that, on current estimates, we are likely to hand back a good deal of that \$5.94 million because only a small part of it appears at this stage to be required in the current year.

Senator McKIERNAN—The funds that went into the safe haven program would have paid for the return of those individuals who returned on a voluntary basis to Kosovo.

Mr Davis—Yes.

Senator McKIERNAN—And some who returned not quite so willingly.

Mr Davis—Yes.

Senator McKIERNAN—Are those people who are now returning to Australia on humanitarian visas in the main paying their own costs or does the department carry any costs?

Mr Davis—They would be dealt with like other refugees or humanitarian entrants to Australia.

Mr Giuca—The airfare is covered by the department under the humanitarian program.

Senator McKIERNAN—But it is not costed under the safe haven program.

Mr Giuca—No, it is part of the humanitarian program.

Ms Bedlington—They are counted under the humanitarian program.

Mr Davis—On page 20 of the Portfolio Additional Estimates Statements there is an item called 'Refugee, humanitarian and assisted movements—passage and associated costs'. That is the item which covers the cost of transport to Australia of such people.

Senator McKIERNAN—But that is for the general humanitarian program that is available worldwide. What I was trying to do was build a wall around the safe haven visa class by suggesting that we might perhaps look at the funding of that program and on this occasion take into account the expenditure involved in those people who are now returning to Australia.

Mr Davis—That is not the way the department has accounted for the resourcing. Once the safe haven individuals have either left the country or been granted an alternative visa the department has ceased accessing the safe haven output. If there is a subsequent process through the humanitarian program or other programs, those general resources available to the department are what are applied to people who may come from Kosovo who have previously been under the safe haven. As people move away from the safe haven visas and their status under that, that resourcing is being closed for access—once they move out of that pool.

Senator McKIERNAN—Persons coming back into Australia who were previously in Australia under the safe haven visas are in a better position than other humanitarian applicants from other parts of the world, are they not, because of the assurances that were given of consideration of their applications prior to them leaving Australia?

Mr Davis—I do not know. I will have to refer to Ms Bedlington and her people on that issue.

Mr Giuca—They are in the same position as others. There was an assurance that their applications would be looked at, and that is what indeed has happened. There will be a small number coming back who meet the criteria under the humanitarian program.

Senator McKIERNAN—How many have been approved so far out of how many applications?

Mr Giuca—We have granted 47 visas to date, of which 15 have arrived. We have a large number of applications, something in the order of 2,300 applications.

Senator McKIERNAN—Two thousand three hundred.

Mr Giuca—Yes. They are not all safe haven visa holders; these are people who have applied under the general humanitarian program. Of that number, about 1,300 are former safe haven visa holders.

Senator McKIERNAN—What I am looking for on behalf of the committee is some detailed costings on what occurred with safe havens. But what I would like to take into consideration in providing that costing is the ongoing costs. The ongoing costs I mention are those people who are now returning to Australia who are granted protection, because there is a continuing and ongoing cost in bringing those people back here and resettling them in Australia. I am asking for the inclusion of that material on the basis that the individuals, prior to leaving Australia, were encouraged to leave on the basis that they could apply to return to Australia. I do not think we can actually discount that and discount the cost of it. I would like to have a real analysis of the benefits of the safe haven program. It was a new, unique effort to provide humanitarian assistance at a time when such humanitarian assistance was needed. But it was a costly exercise for the taxpayers of Australia, and I think they are entitled to that information.

I must put something on the record here. I was not intending to visit the government response to the sanctuary review, but I am very disappointed at the government response to the recommendation that the committee made in regard to that. I am not going to delay the committee by debating it—that will happen in another forum, when we will have an opportunity to do that. But I think it is not an unreal request that that committee made, and I do not believe that it is an unreal request that this committee has made. But, rather than delaying things now, if the department feels it is an unreal request, you will take the matter on notice and come back to us with detailed reasons as to why it is not an unreal request. Hopefully you can do that earlier rather than later because, were we to seek to argue the matter out, we might need the spill-over day that is available for Senate estimates committees, which we are not going to utilise on this occasion and which indeed we did not use on the last occasion. I do think the request is not unreal, and we will pursue the matter at a later time.

Mr Farmer—Thank you, Senator. We will take that on notice and do what we can.

CHAIR—That concludes questions on outcome 1. We will move on to outcome 2, a society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably

[6.03 p.m.]

Senator SCHACHT—Are the officers the same for output 2.1 and outcome 2.3?

Mr Farmer—There might well be different officers involved.

Senator SCHACHT—My questions were more to do with Australian citizenship. This is the process of naturalisation and all those things. How many people does the department estimate are resident of Australia who are eligible to take out citizenship?

Mr Hughes—About 950,000 at June 1999.

Senator SCHACHT—So it is about 18 per cent or 19 per cent of the population.

Mr Hughes—Five per cent.

Senator SCHACHT—I am sorry, five per cent. Has that figure of five per cent been pretty steady over the last decade?

Mr Hughes—I would perhaps look at it another way, Senator. We have tended to look at it as a proportion of the eligible group of people—

Senator SCHACHT—No, I will come to that in a moment. As a total of the population, has it been reasonably consistent at around 5 per cent?

Mr Hughes—It may have been a little bit more over the last decade.

Senator SCHACHT—So there has been a slight decline in the percentage of the population?

Mr Hughes—I believe so, but looking at it the other way around—

Senator SCHACHT—No, I want to get that one first.

Mr Hughes—I believe there is a slight decline, yes.

Senator SCHACHT—Good. Now, the one you really want to tell me is the proportion—to what?

Mr Hughes—The proportion of eligible non-citizens who have taken out citizenship is about 75 per cent, which is up from about 65 per cent in 1986.

Senator SCHACHT—Has that increase in Australian citizenship, which I think we would all favour, been because there has been a reduction in the overall intake of immigrants meaning that it has therefore been easier for the figures to come down? Instead of having 150,000 or 130,000 come into the country, we are now down to 80,000, so there are fewer to chase up on the citizenship front.

Mr Hughes—It is hard to isolate the reasons. I think it has been a combination of things. It is the composition of the intake at various times and, indeed, the size of it. It has also been promotion activities that have been held at various times and perhaps just changing community values. It is very hard to isolate any single reason.

Senator SCHACHT—I know that it is several years on now since it occurred under the previous government, but has the change in the oath that people had to swear—to swear allegiance to Australia rather than to the Queen—given some encouragement to people?

Mr Hughes—Anecdotally, that has been beneficial. It has been important to some people.

Senator SCHACHT—I notice that the Irish seem to be pretty keen on it.

Mr Hughes—And Americans also.

Senator McKIERNAN—I actually want to do it again to do it properly.

Senator SCHACHT—You might want to take it on notice to give me the detail. You have got the proportion—it is about 75 per cent of the total eligible population that has now taken out citizenship. Can you do that by where the immigrants have come from?

Mr Hughes—Yes, we can.

Senator SCHACHT—I do not want you to go down to the extent of telling me that two out of four from Kirghizstan or somewhere have done it. If that is not too difficult—

Mr Hughes—It is readily available.

Senator SCHACHT—Is it? Right down to the last one from south-west Mongolia, or somewhere?

Mr Hughes—That is not so readily available. All the countries—

Senator SCHACHT—Of the world that are registered in the UN?

Mr Hughes—All the countries that have significant numbers of—

Senator SCHACHT—Which country has the highest proportion of those who have not taken out citizenship?

Mr Hughes—It would be either Japan or the United States.

Senator SCHACHT—What about Great Britain?

Mr Hughes—Great Britain is somewhere in the middle with a take-up rate of something like 65 per cent. The highest rates are a number of Asian and some Eastern European countries.

Senator SCHACHT—Up until the early eighties, British residents could get on the electoral roll.

Mr Metcalfe—1984.

Senator SCHACHT—The law was changed in 1984, was it? After that they could only vote—

Senator COONEY—They could stay on the roll. They could not stand for parliament.

Senator SCHACHT—Before 1984, if you were a resident but had not taken out citizenship, you could still keep your vote and stand for parliament. Is that correct?

Mr Hughes—That is correct.

Senator SCHACHT—After 1984, you had to go through a citizenship ceremony.

Mr Hughes—That is correct.

Senator COONEY—You could keep voting after 1984, but you could not stand for parliament after 1984.

Mr Hughes—But those who were on the electoral roll, of course, retained their vote under the change of the law at the time.

Senator SCHACHT—Do you have any information on how many of those British residents that were here before 1984 have not taken out citizenship, are still here as residents and have got the right to vote?

Mr Hughes—Something like 200,000 is the last estimate I have heard from the electoral office.

Senator SCHACHT—Has there been any sign that that is slowly declining?

Mr Hughes—I do not have any information on that.

Senator SCHACHT—Is it possible from your sources—computerised data, cross-referencing et cetera—that it can be checked?

Mr Hughes—We are dependent upon the electoral office for that. I will see what we can find out for you.

Senator SCHACHT—Anecdotally, I noticed at a citizenship ceremony I was at on Australia Day that there were three or four British residents in Australia, some of whom had been resident for 25 years, who had decided to finally take out citizenship, which I thought was a very good sign.

Mr Hughes—Again, anecdotally, it must be declining, because we know there are people who arrived here before 1984 who are taking out citizenship. I am just not sure that we have the precise figures.

Mr Metcalfe—Intuitively, the numbers would be declining because of the passage of the years as well.

Senator SCHACHT—Yes, you are relying on mortality there, Mr Metcalfe. It gets us all in the end.

Senator COONEY—It is not a bad remedy.

Senator SCHACHT—The 200,000 or thereabouts estimate is what percentage of the total number of British residents in Australia who have now taken out citizenship?

Mr Hughes—Who have taken out citizenship?

Senator SCHACHT—Yes. Have half a million or 300,000 taken it out?

Mr Hughes—I do not have the figures of British nationals who have taken out citizenship. I would have to take that on notice.

Senator SCHACHT—Thank you. Do you set down very strict guidelines for the actual conduct of the citizenship ceremony itself—about how the local council, the mayor and the community conduct it—or is a fair bit of flexibility given?

Mr Hughes—The ministers, under a power in the citizenship act, have over many years produced a handbook of guidelines about the conduct of the citizenship ceremony. There are a number of compulsory elements that have to be met to comply with the act, and there are a number of elements where there is flexibility for the council. They are advised that it is preferable to do it in a certain way, but they have some choice.

Senator SCHACHT—What are the areas they have some choice in?

Mr Hughes—Some aspects would be what sorts of gifts they give to people and what sorts of events they put on to give some significance or moment to the occasion.

Senator SCHACHT—I went to one on Australia Day which was very well done. I am not critical of it. They had a parade of flags of all the countries from which the people who were getting citizenship that night had come. Is that a flexible issue for a council?

Mr Hughes—That is a flexible issue. That is an example of one of those things where we can be innovative to add some symbolism or significance or emotional moment to the day.

Senator SCHACHT—And is the cup of tea afterwards mandatory?

Mr Hughes—That is also flexible.

Senator SCHACHT—I see. It was a very good cup of tea at Campbelltown. They conducted the ceremony very well.

Mr Farmer—Madam Chair, could I pass on a bit of very good news to Senator McKiernan. Now at citizenship ceremonies Australian citizens are able to reaffirm their citizenship oath, and the senator might find that that is in a form that he would find very congenial.

Senator McKIERNAN—Thank you, Mr Farmer.

Senator SCHACHT—Can I go along and say it myself, as one who was born here?

Mr Hughes—Yes, you can.

Senator McKIERNAN—I was going to tell you of my experience at a citizenship ceremony; the photograph appeared in the *Australian* newspaper the day after because, on that occasion, we had the then Premier and the future Premier of Western Australia at the ceremony. I wondered why. I had some questions on outcome 2.3 on Australia citizenship, some of which have been covered by Senator Schacht. Rather than duplicating, I think I will put the list in on notice and you can respond accordingly.

CHAIR—Thank you, Senator McKiernan.

Senator McKIERNAN—There is one other area that I need to cover before we leave tonight while we have Mr Davis with us relating to this particular booklet. I have nothing else.

Senator SCHACHT—I have one other question on the flexibility of the flags. I noticed at this ceremony at Campbelltown that there were people from Taiwan and others from the People's Republic of China and that both flags came in. What would you advise a council about the protocol for the use of the flag of Taiwan when we have a diplomatic policy going right back to 1973 about the recognition of the People's Republic of China? How should that flag be described?

Mr Hughes—I do not think the guidelines for councils cover anything apart from the display of the Australian flag.

Senator SCHACHT—I see. The Hong Kong flag was shown, but that is fine—that has been agreed to between Hong Kong and the People's Republic of China. Do you provide assistance to the council if they need it on where to go and get the roughly 220 different flags from around the world?

Mr Hughes—Having flags other than the Australian flag is the council's option, so we leave that to their own initiative, and many of them have plenty of initiative.

Senator SCHACHT—Yes, they certainly do.

Senator COONEY—I suppose the most comparable country to ours is Canada. Do you have any idea how many people from migrant populations become Canadians each year compared to how many become Australians each year? What sort of ceremony do they have over there? This is following on from what Senator Schacht was saying; I would be interested to know.

Senator SCHACHT—In my opinion, they have a better national flag—a flag which is distinctively Canadian.

Senator COONEY—The maple leaf.

Mr Hughes—In absolute terms, clearly more numbers per year become citizens in Canada. I cannot tell you about rates of take-up because my endeavours to get that from the Canadian authorities have shown that they are not able to keep the figures in the way that we keep them. So I cannot tell you about absolute rates. My understanding about how citizenship is conferred there is that for some years they have used a process called a citizenship judge, who is a person appointed to an office that involves making decisions on citizenship and conferring citizenship. However, in legislation that has been before the Canadian parliament for some time they are moving away from that. I am not quite sure what they are proposing to replace the citizenship judge with.

Senator COONEY—I also wanted another comparison. With the Australian population and the Canadian population, a lot depends upon the migrant base. I think Canada has a bigger proportion of people coming in as migrants; a bigger proportion of its population comes from the migrant intake than occurs in Australia. Have you asked whether there is any policy behind that?

Mr Hughes—The Canadian policy is very similar to ours for the very reasons that you mentioned. Because Canada is a migrant-receiving country, because it comes from the same constitutional background as Australia, their citizenship law has been very similar to ours—not the same, but it is the most similar of any country—and the trends in the development of their citizenship law and practices are pretty similar to ours.

Senator COONEY—There is one other matter. It follows on from something that we were discussing this morning about our intake of people with high capabilities: whether Canada is doing better in that area than we are and how many of them are becoming citizens. I suppose it is asking too much, on the figures that you have available to you.

Mr Hughes—Yes, I am afraid I cannot answer that.

Senator SCHACHT—The other day I was talking to some people—I will not name the ethnic community at the moment—to encourage them to take up citizenship, and it was explained to me that, if they did so, they would lose property and assets back in their home country. Is that a widespread problem amongst many countries or is it the exception?

Mr Hughes—I think it is generally the exception but it does occur in some countries. Obviously, that is a factor that someone from that country has to weigh up before they decide to become an Australian citizen.

Senator SCHACHT—Have we made representations to those countries, even if they do not allow any form of dual citizenship, even though they do not like losing their citizens? At the very least, in open and free societies around the world, you should be able to have access to your personal assets.

Mr Hughes—Not that I recall. It is a difficult issue because it would apply to more countries than Australia and it would be a matter of the local practice in that particular country.

Senator SCHACHT—This is not a matter on which we should spend much time, but have you heard of any anecdotal information about this or is there officially recorded a list of countries that have restrictions so that if you did take out Australian citizenship you would lose not only your citizenship back in the home country but access? You could not sell your property and take the money to Australia.

Mr Hughes—We can certainly give you a list of those countries where, as we understand, people will lose their citizenship if they take out another, including Australian citizenship, and we can give you some coverage of loss of rights of various kinds, property rights in particular.

Senator SCHACHT—In reverse, if someone gives up Australian citizenship, do we have nothing that is tit-for-tat? Do we take nothing off them, other than that they lose their citizenship?

Mr Hughes—Not that I am aware of.

Senator McKIERNAN—I have a question for Mr Davis and he does not need to come to the table for it because he can take it on notice. We had some dialogue yesterday between the committee and the Attorney-General's Department about the use of phraseology in the portfolio additional estimates statements and the matter of 'rephrasing' was used. We were told that rephrasing was a new buzz-word for what was 'carryover'. We note on pages 14 and 15 of DIMA's portfolio additional estimates statement that the words carryover and rephrasing are used. Would you take this on notice—you do not necessarily need to do it here—and see if we can get a clarification for this? It caused some confusion in the committee yesterday because it was the first occasion on which the committee had come across the word rephrasing. There was a delay. Would you take that on notice? Because we are still very much coming to grips with accrual accounting, if there are other changes in regard to this could some advance warning or explanations be given on these difficulties? Would you feed that into the system? As you are aware, it has not been a problem with DIMA today but, nonetheless, it is worth mentioning for the future.

Mr Davis—We will include in the glossary, the definitions part of the document, those definitions for you. Generally, rephrasing relates to administered programs and the word carryover is still used on the departmental side. It is really that the department of finance, in the accrual world, has introduced this word rephrasing to distinguish between the departmental and administered side of the accounts. We can provide further clarification and include definitions in the documents to assist that.

CHAIR—That was the 'accrual world', Mr Davis?

Mr Davis—Yes.

CHAIR—Sorry, Senator Macdonald?

Senator Ian Macdonald—I'm just groaning.

CHAIR—I am sorry, Senator Macdonald; I did not mean to elicit that response. Before officers actually leave the table I want to note that I know that this is Mr Page's last appearance in the estimates context after some 35 years in the department. Mr Page, on behalf of the committee I think I can safely say that we thank you very much for your contribution to this process and to all the other processes you have been involved in as a public servant over that extraordinarily extended period of time. We congratulate you on that service.

Mr Page—Thank you, Madam Chair. Since I was not required to answer a question, may I briefly respond to that?

CHAIR—Of course, Mr Page.

Mr Page—I noticed this morning that Senator Cooney singled out outcome 2 as something that he would be proud to work for. I think I can say the same about the department generally. I would also have to say that my career would have been less stimulating if I had not been required to attend this committee from time to time, so thank you.

CHAIR—You are very kind, Mr Page; thank you. As there are no other questions, I would like to thank Mr Farmer and the officers of the Department of Immigration and Multicultural Affairs for their assistance to the committee today in our consideration of additional estimates 2000-01. I would like to thank the ministers who have supported us today, Senator Macdonald, Senator Hill and Senator Ellison, and duly close this meeting.

Senator COONEY—Before you do, I think we ought to acknowledge the chair on this occasion, who is here in very interesting times—stuck with us.

CHAIR—We do live in interesting times, do we not? I close this committee hearing and remind members of the committee that there is a very brief private meeting of the committee to be held now.

Committee adjourned at 6.25 p.m.