

Tabled Document 5
By: Senator Cash

Date: 21 May 2012

Tuesday, 24 May 2011

Senate

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We know with certainty some of the estimates—because it depends upon the number of people who are already here and who will continue to be in detention ...

I then say:

There is nothing new in the information that has been provided tonight. We already know what the figures are—the fact that it was budgeted for 2,000—

which was the figure I was given for 2010-11. We were now looking at approximately 3½ thousand in February and I was given a figure for what you budgeted for at the end of the financial year. The evidence I was given by Mr Sheehan or Mr Correll was 6,600. So you were able to give me in February the estimate for 30 June this year. Has that changed?

Mr Metcalfe: Firstly, there has been a significant policy announcement which I did not have knowledge of, even though work was obviously underway and we discussed it at length yesterday. The inclusion of figures of cost in the forward estimates was a process undertaken by my department and the Department of Finance and Deregulation where provisions that had been made for some years for arrival numbers of, I think, 200 were clearly no longer applicable. We were clearly seeing much larger numbers of people arriving and the estimates needed to be adjusted accordingly. As Ms Wilson has described, the figure is derived from what we relatively know—which is the people who are here, their processing times and their likely outcomes—together with an estimation of what might be coming in the future.

I have been at pains to point out, and I am sure that you will agree with me, that the inclusion and derivation of those figures is not an informed view from an intelligence perspective about actual arrivals; it is a formulation that has been derived. The Department of Finance and Deregulation believed that a more realistic forward estimate needed to be provided and hence the concept of the five-year rolling average. So we have been through that at length.

Senator CASH: Can I confirm that the five-year rolling average has been abandoned for the 2011-12 estimates?

Mr Metcalfe: Yes, because the government has now made some major policy changes. Because they have a political ring to them, I have not used the words, 'Stop the boats' but I have frequently used words about breaking the people smugglers' business model. Those are words used in the regional co-operation framework. The government believes that these policy measures will be effective and therefore has sought to significantly reduce the estimates of future arrivals, which is what occurred 10 years ago.

Senator CASH: But basically the figure provided for 2011-12 is no longer based on the five-year rolling average, as we discussed in February?

Mr Metcalfe: That is quite correct.

Senator CASH: Also, the 750 does not include the 800 that are earmarked to go to Malaysia under the five-for-one swap deal?

Mr Metcalfe: The 800 are only if they are required. We will not send people to Malaysia if there is no-one to send. That would be a difficult thing for us to achieve.

Senator CASH: But the 750 does not include the 800?

Mr Sheehan: No, one number is lower than the other.

Senator CASH: I just want to make sure that you are sending 800 to Malaysia. What have you budgeted for in the budget? The 750?

Mr Sheehan: For the 750 arrivals and an average occupancy of around 6½ thousand.

Senator CASH: You cannot give me now the expected number of arrivals until 30 June. Does that mean that the figure—

Mr Sheehan: The number for the 2010-11 year?

Senator CASH: Yes, in February I was given the number of 6,600.

Mr Sheehan: It is still the same number.

Senator CASH: I just need to work through this. There were 4,484 arrivals as at 30 April 2011. You have stated that the expectation is still 6,600 before the end of June. That is over 1,000 arriving—

Mr Metcalfe: No, this is where you are confused. The material that is in the budget does not represent an informed view about what will occur in the next four weeks.

Senator CASH: Is that because of the major policy change?

Mr Metcalfe: There is no suggestion that we are expecting 1,500 people in the next four weeks. We have had a major policy change and a great deal of work is being done to put that into effect and to make Australia's determination in this area known. As we saw with a not dissimilar measure in 2001-02, it does have the capacity to have a major impact on the people-smuggling business model.

Senator CASH: You budgeted for 750 in the 2011-12 budget. Can you just remind me where the 800 for Malaysia are budgeted for in the budget papers?

Mr Sheehan: It is in the front part of the DIAC budget statements, Senator, on page 17, under program 4.3. There is \$26.342 million in 2011-12, \$16.267 million—can you see that number, Senator?

Senator CASH: No, I do not have it in front of me. I wanted you to actually take us through it.

Mr Sheehan: There is \$16.267 million in 2012-13 and \$11.769 million—

Mr Metcalfe: We can read it into the *Hansard*, Senator, if that is what you want.

Senator CASH: Yes.

Mr Sheehan: in 2013-14 and \$11.303 million in 2014-15. In addition, there are other departmental expenses—about four lines from the bottom on page 18. The line for 'Regional Cooperation Framework—Transfer of Irregular Maritime Arrivals to Malaysia', program 4.3, sets out \$2.507 million for 2011-12; \$1.95 million for 2012-13; \$3.843 million for 2013-14; and \$1.947 million for 2014-15.

Senator CASH: Thank you very much. Just to confirm once more: the amounts you have budgeted for in 2011-12 are for 750 arrivals.

Mr Metcalfe: That is correct. The government believes its policies will work.

Senator CASH: Does that include the number of crew arriving?

Mr Metcalfe: That would incorporate crews.

Mr Sheehan: That is total arrivals estimated, Senator.

Senator CASH: Okay. If there are additional arrivals over that number, will there be budgetary applications?

Mr Sheehan: IMAs, no win, no loss—we will be here at the next Senate estimates, potentially looking at variations to that.

Senator CASH: Very briefly, since August 2008, how many IMAs have been returned?

Mr Metcalfe: We will just get Mr Illingworth to come and assistance, Senator. I think we discussed some of these figures yesterday.

Senator CASH: We did. Some I have taken from what I was told to ask today, and there might be a bit of overlap.

Mr Metcalfe: Right. But you have a specific figure of August 2008, have you?

Senator CASH: Yes, since August 2008, if you have that.

Mr Illingworth: Senator, to 16 May this year, there have been 217 passengers and 72 crew.

Senator CASH: That have been returned?

Mr Illingworth: Yes.

Senator CASH: Mr Sheehan, can I just go back to the IMAs and the estimates there. Can I just confirm that you are saying there will be people to send to Malaysia because you are budgeting for an overflow of 750 beyond the 800?

Mr Sheehan: We are budgeting for 750 arrivals in 2011-12 as part of our modelling cost estimations for program costs.

Senator CASH: Do the 750 include anyone who might be sent to Manus Island?

Mr Sheehan: No, not arrivals.

Senator CASH: Not arrivals?

Mr Sheehan: Not arrivals—but, in terms of average occupancy, where someone comes to the island for two or three days and there are costs involved, that would be included as part of the complex formula for overall costs, because that is part of our average occupancy, if you follow me. It would be three days at one-365th.

Mr Metcalfe: Senator, could I just clarify the response that was provided. I think you asked if the 750 would include people who might be transferred to an offshore processing facility like Manus Island. My understanding is that it is all in one budget line and that it is that budget line that would be impacted by any transfers to an overseas processing centre. So that 750 would be included as part of those transfers.

Senator CASH: Perhaps I could phrase it slightly differently: the 750 does not include anyone sent to Malaysia or to Manus Island?

Mr Sheehan: Manus Island is included in the 750.

Senator CASH: So Manus Island is included in the 750?

Mr Sheehan: Yes, but not Malaysia.

Senator CASH: But Malaysia is not included in the 750?

Mr Metcalfe: Be very careful. It may or may not be Manus Island. We discussed that yesterday. It is a shorthand way that you are describing transfer to a processing centre in a third country.

Senator CASH: I understand that last night the evidence was that if Manus Island did not go ahead, we would need to revise the budget down. Was that my understanding?

Mr Metcalfe: I think the advice was that there is no capital provision for the establishment of an offshore centre because those costs could only be determined on more precise information about where such a centre might be. As we discussed at length yesterday, we are awaiting further advice from the Papua New Guinea government in relation to that matter. Is that the point you were raising, Senator?

Senator CASH: Yes.

Mr Metcalfe: The distinction being between the processing and accommodation costs, which, as Mr Sheehan explained last night, are within the one line item of offshore arrivals under 4.3. The thing that is not provided for in the budget is the capital cost of establishing a centre, for the reasons we explained last night.

Senator CASH: If the Manus Island processing centre were to go ahead, is the Manus Island provision within the budget just a simple transfer of Australian expenses to PNG? That is really what it is.

Mr Metcalfe: Essentially, it is being treated within 4.3. We drew your attention to the particular element of the PBS last night. The cost would be treated as if the persons were in Australia because it would be processing, we would expect, by Australian officials and those sorts of arrangements would be applicable. They are quite different to the Malaysian arrangements we described. The thing that is not in the budget, and which would need to be the subject of a separate request for funding, is the issue of any capital cost, and we discussed that last night. I am getting nods from my chief finance officer. I said last night that I do not get out of bed without talking to the lawyer; but I do not get into bed without checking with the finance officer. It is very important to have his agreement!

Senator CASH: Then there is no real provision for Manus Island if we are really just transferring Australian expenses over to PNG? There is no real provision for Manus Island?

Mr Metcalfe: Yes there is. As we have said, it is within that 4.39 line.

Senator CASH: Even if the Manus Island provision is just a simple transfer of Australian expenses to PNG in the event that it goes ahead?

Mr Sheehan: Which is what I was explaining last night. In our modelling we looked at average costs based on the processing at Christmas Island.

Mr Metcalfe: We could take you back to that line item if that would help.

Mr Sheehan: On page 53, where we started the administrative component of \$709,376,000 and also \$186,000 which are the departmental expenses that go with it, that is where you would find a generic assessment and processing centre.

Senator CASH: If Manus Island does not go ahead, will that money that is allocated in the budget still be spent?

Mr Metcalfe: Essentially, that money assumes that some people may come to Australia. Some of that money, as we have just been discussing, is for the people who are already here.

They are here, we have to pay for them and we have to process them. An estimate of arrivals next year incorporates 750. That is purely an estimate; it is not a government statement about what will happen. That does include the provision for processing of those persons either in Australia or in an offshore place. It is a more similar type of activity because, as we saw in the past with countries under the Pacific strategy, those costs will flow to Australia. It is quite a separate concept to the transfer agreement with Malaysia that we have been discussing. That is how that forward estimate of 750 has been nominally employed. However, if the government's policy position is successful and works in the way that some of the measures, particularly the tow-backs that occurred in 2001-02, severely disrupted the people-smuggling business model by making it no longer attractive for people to risk their lives coming to Australia then of course the numbers could be different. As I have said before, time will tell in relation to that.

Senator CASH: The 750 includes Manus Island but not Malaysia. If Manus Island does not go ahead—and the evidence we had yesterday is that we are still waiting for official confirmation from PNG as to whether they will proceed with a processing centre—the money will be spent in Australia, and that is why it has not been announced as a new budget measure. It is money that will be spent in Australia.

Mr Sheehan: It could be spent in Australia.

Mr Metcalfe: It will not be spent if it is not needed.

Mr Sheehan: Yes, if it is not needed.

Senator CASH: I am glad to hear that. I have some questions in relation to those who have arrived since the Malaysian deal was announced.

Mr Metcalfe: Yes, I will get the right officers to the table.

Senator CASH: Since 7 May 2011, how many boats have been intercepted and how many asylum seekers were on board?

Mr Allen: There have been three boats intercepted since the announcement. They carried a total of 110 people, minus six crew.

Senator CASH: Could you provide me with the number of men, women and children?

Mr Allen: I might go boat by boat and I will start with SIEV247. That had a total of 33 persons on board. They comprised one Indonesian crew member, 24 Afghans, six Pakistanis and two Iranians. Of this group there were 23 single adult males and nine unaccompanied minors. There were no women on board that boat. SIEV248 had a total of 56 persons on board, comprising two Indonesian crew members, 15 stateless persons and 39 Iranians. Of this group, there were nine family groups, comprising eight males, seven females, five boys, three girls, three unaccompanied females and 28 single adult males. The final boat, SIEV249, which was intercepted and has not yet reached Christmas Island, had 21 people on board. They comprised one crew member, 19 single adult males and one unaccompanied minor, who was also male.

Senator CASH: I thought you said SIEV249 had not actually reached Christmas Island.

Mr Allen: No, that is still in transit.

Senator CASH: Have any of these individuals engaged Australia's non-return obligations?

Mr Metcalfe: No. They cannot because we are not going to process them.

Senator CASH: Have any of them raised that, though? I understand you are saying that our response to them will be no, but have any of these 110 people raised protection claims or our non-return obligations?

Mr Allen: I am advised that some of the clients have raised a desire for protection, yes.

Senator CASH: Do you have figures as to how many have raised a protection claim?

Mr Allen: I would have to take that on notice.

Senator CASH: Do you know if these clients are currently located on Christmas Island from SIEV247 and 248, or are they asylum seekers on SIEV249, which has not actually made it to Christmas Island?

Mr Allen: I believe that the claims are in relation to the people who are already at Phosphate Hill—so the two boats that have arrived, yes.

Senator CASH: The ones that have made it to Christmas Island?

Mr Metcalfe: Normally that would occur when the department takes responsibility following the transfer from the Customs Service and, as we discussed last night, when identity and health checks are done. I am pretty sure the motivation that people would have in coming here would be to seek asylum, so it is not surprising that some would have raised that issue with us.

Senator CASH: But certainly the evidence is that there are asylum seekers that have raised protection claims with us?

Mr Metcalfe: They are asylum seekers, yes.

Senator CASH: Have any of these asylum seekers—and we are talking about the 110—received any financial payment on behalf of the Australian government?

Mr Allen: Just to be precise, the 110 includes crew. So, if you are talking about asylum seekers in the broad, it is a smaller number.

Senator CASH: I will be more specific in describing them as asylum seekers. Have any of these asylum seekers—and we might include crew in this—received any financial payment on behalf of the Australian government or had access to telephone or internet facilities since their arrival in Australia? What other, if any, benefits have they received?

Mr Allen: They do have access to the landline telephones and to the internet. In terms of benefits received, as with other detainees they are entitled to accrue points.

Senator CASH: A points system?

Mr Allen: That is correct.

Senator CASH: If they are not going to be processed, how do they accrue points? Are they allowed to participate in the day-to-day activities that other detainees are participating in—for example, English lessons?

Mr Allen: There are activities and programs that have been organised for these people. This includes access to sporting equipment. There is an English language officer who has been working with these clients and they have also been encouraged amongst themselves, because some of the clients speak English, to instruct other clients.

Senator CASH: Will any of the asylum seekers who will have arrived after 7 May and before the agreement is completed with the Malaysian government be eligible to be sent to Malaysia under the proposed five-for-one swap? Are they earmarked for Malaysia?

Mr Metcalfe: The government has made it clear that these people will not have their claims processed in Australia and that they should pursue those claims in an overseas country.

Senator CASH: Is that overseas country Malaysia?

Mr Metcalfe: I have indicated that the minister has been quite careful in saying that it will be an overseas country where appropriate opportunities exist to raise any refugee claims.

Senator CASH: Would that include Malaysia or is Malaysia excluded from that?

Mr Metcalfe: That could include Malaysia.

Senator CASH: But these asylum seekers are not specifically earmarked for Malaysia?

Mr Metcalfe: We are awaiting the finalisation of any arrangements before we make detailed announcements about that.

Senator CASH: Where will these people be sent and when will they be sent there? More particularly, on what basis are they being detained?

Mr Metcalfe: They are being detained under section 189 of the Migration Act, which provides for all immigration detention—everyone detained under the act is detained under that section. The announcements as to when and where they will be sent will be made in due course.

Senator CASH: How long is it anticipated that they will be detained on Christmas Island?

Mr Metcalfe: For the shortest time possible, but that obviously depends on the finalisation of the arrangements we have been discussing.

Senator CASH: Basically, unfortunately, if Malaysia does not agree to a processing centre, we will have to look for another third country to take those people?

Mr Metcalfe: I do not get into hypotheticals. I refer you again to the joint prime ministerial statement.

Senator CASH: Let us refer to that and to the DIAC website, which states:

Australia and Malaysia will enter into an arrangement that undermines the people smuggling business model.

The Australian Government envisages this arrangement will mean that:

- 800 irregular maritime arrivals, who arrive in Australia after the announcement on 7 May 2011, will be transferred to Malaysia for refugee status determination ...

How does that statement actually sit with the fact that these people are not necessarily earmarked for Malaysia? Are they part of that 800?

Mr Metcalfe: We will be repeating a great deal of evidence from yesterday, but essentially the material on the department's website reflects the government's announcements. It is there for public information and advice. The circumstances of the 100-plus people who have arrived since 7 May will be the subject of announcements, but the government has made it very clear and I have been formally directed, as I discussed last night, not to undertake any processing in Australia. However, contrary to some public statements that have been made

recently, they will be returned to a place of safety where they can pursue any claims in accordance with international procedures.

Senator CASH: Can I confirm that someone arriving before the Malaysian bilateral agreement is concluded will not be subject to the deal with Malaysia, the five-to-one swap?

Mr Metcalfe: I refer you to my evidence of yesterday.

Senator CASH: I would appreciate it if you would restate it because yesterday I was told that I could ask some questions and could not ask some questions. I would appreciate it if you could restate that evidence for the purposes of outcome 4 today as opposed to outcome 2.

Mr Metcalfe: I would prefer to check the *Hansard* because I know you will hold me to—

Senator CASH: No. It is quite simple. Can people who arrive before the agreement is concluded with Malaysia be sent to Malaysia?

Mr Metcalfe: No-one will be sent to Malaysia until the agreement is complete.

Senator CASH: Exactly. So what will happen to these 110?

Mr Metcalfe: They may be eligible for travel to Malaysia after the agreement is complete.

Senator CASH: So there appears to be potentially another 800 that we are talking about.

Mr Metcalfe: No, we are not. Which 800?

Senator CASH: If these ones are not necessarily going to Malaysia—

Mr Metcalfe: I think I have been quite clear. These people will not be processed in Australia. They will be transferred to a place overseas, as the minister has indicated. Whether they comprise some of the 800 for Malaysia or whether they go to another country will be the subject of announcements in due course. Of course, the number of 800 for Malaysia is a number that we can go up to, but it may well be that that number is not needed.

Senator CASH: I just want to confirm that anyone who arrived here before 7 May 2011 will not be subject to—

Mr Metcalfe: They have—

Senator CASH: They have raised a protection claim.

Mr Metcalfe: Invariably they have.

Senator CASH: Yes, they have.

Mr Metcalfe: They have been detained by the department and are subject to the refugee status assessment processes that have been in place for some time.

Senator CASH: So will the people who arrive between now and the date the agreement is completed able to be sent to Malaysia?

Mr Metcalfe: We will not send anyone to Malaysia until the agreement with Malaysia is complete.

Senator CASH: So you are saying that those people are currently not able to be sent to Malaysia but when the deal is completed they may form part of the 800 who are able to be sent to Malaysia.

Mr Metcalfe: The government has indicated that those people will be sent to a place overseas.

Senator CASH: To a place overseas?