
Australian Government

# Australian Government response to the Senate Legal and Constitutional Affairs References Committee report:

# Detention of Indonesian minors in Australia

DECEMBER 2012

## BACKGROUND

On 10 May 2012 the Senate referred the matter of detention of Indonesian minors in Australia to the Legal and Constitutional Affairs References Committees for inquiry and report.

The inquiry considered:

(a) whether any Indonesian minors are currently being held in Australian prisons, remand centres or detention centres where adults are also held, and the appropriateness of that detention;

(b) what information the Australian authorities possessed or had knowledge of when it was determined that a suspect or convicted person was a minor;

(c) whether there have been cases where information that a person is a minor was not put before the court;

(d) what checks and procedures exist to ensure that evidence given to an Australian authority or department about the age of a defendant/suspect is followed up appropriately;

(e) the relevant procedures across agencies relating to cases where there is a suggestion that a minor has been imprisoned in an adult facility; and

(f) options for reparation and repatriation for any minor who has been charged (contrary to current government policy) and convicted.

The Attorney-General's Department (AGD) made a submission to the inquiry in collaboration with the Australian Federal Police (AFP). The Commonwealth Director of Public Prosecutions (CDPP) and the Department of Immigration and Citizenship (DIAC) also lodged submissions.

Officers from AFP, AGD, CDPP and DIAC appeared before the committee on 24 August 2012.

The Committee reported on 4 October 2012, providing seven recommendations to the Australian Government. The Chair of the Committee also presented a minority report with fifteen recommendations. This document provides a coordinated Government response to the inquiry recommendations.

# Government Response: Majority Report

**Recommendation 1**

**Subject to the advice of the Office of the Chief Scientist regarding the utility of wrist X-rays as an age assessment tool, and noting evidence received by the committee raising significant doubts about this procedure, the committee recommends that the Australian Government consider removing wrist X-rays as a prescribed procedure for the determination of age under 3ZQB of the *Crimes Act 1914* and regulation 6C of the *Crimes Regulations 1990*.**

**Agreed in principle.**

On 11 January 2012 the Chief Scientist, Professor Ian Chubb AC, advised AGD on the available scientific methods for determining chronological age. The advice confirmed that wrist X-rays did not allow for precise estimation of chronological age; that results vary with ethnic and socio-economic conditions; and that there were ethical considerations.

The 'observed variation' of two years for wrist X rays, identified by the Chief Scientist, further indicated that the science of wrist X-rays and statistical analysis from that science was a contested issue that required further expert consideration.

Between January and June 2012, AGD consulted further with the Office of the Chief Scientist on a number of age determination issues. This included seeking assistance on identifying available experts to assist the Commonwealth with the science of age determination, in particular to critically analyse the scientific and statistical basis for using wrist X-rays as an age determination procedure.

On 29 June 2012, the Office of the Chief Scientist provided AGD with advice relating to statistics and wrist X-rays from Professor Patty Solomon. In her report, Professor Solomon concluded that there is not enough scientific data in either the Greulich and Pyle Atlas or the TW3 Manual for those experts to draw sufficiently precise inferences of chronological age for young Indonesian males.

In order to address this issue, AGD is considering options for legislative amendments to remove wrist X-rays be removed as a prescribed procedure for age determination in the Crimes Act and Crimes Regulations.

**Recommendation 2**

**The committee recommends that the Australian Government formalise arrangements for the Government of Indonesia to expedite the process of gathering evidence in Indonesia relating to the age of individuals who claim to be minors and are detained in Australia suspected of people smuggling offences.**

**Agreed.**

The *Foreign Evidence Act 1994* provides a mechanism for adducing material received from a foreign country in response to a mutual assistance request. The process can be complicated where a request is made to a country where government records, including birth, marriage and other identity records, are not centrally held. Even where a mutual assistance request is urgent and prioritised, it can take up to several months to receive the material sought. This mutual assistance process is assisted by the bilateral mutual assistance treaty with Indonesia, the *Treaty between Australia and the Republic of Indonesia on Mutual Legal Assistance in Criminal Matters*, done at Jakarta on 27 October 1995.

Since July 2011, the AFP has sought documents from the Indonesian National Police (INP) on a police-to-police basis. Recently the AFP commenced seeking documents from Indonesian consular officials in Australia. Where documents received through these processes indicate the person may be a minor, the AFP considers this material in deciding whether to give the person the benefit of the doubt. However, INP officials have advised the AFP that a mutual assistance request is required to obtain documents for use as evidence in prosecutions (in most cases, documents indicating the person is an adult).

The AFP continues to utilise all avenues available to it to expedite the process of gathering evidence relating to the age of Indonesian individuals detained in Australia suspected of people smuggling offences.

The defendant's legal representatives may also seek to present as evidence documents obtained from Indonesia containing information about the defendant's age or affidavits from relatives. The costs of obtaining this evidence are covered as a disbursement within a grant of legal aid.

Credible documentary evidence is not always available to support the claims of people smuggling crew about their age. Only 55 per cent of Indonesian births were recorded between 2000 and 2008. There are at least three different calendars used in parts of Indonesia, and it is commonly the case that Indonesian crew may not know their age or date of birth, and that there may be no documentation of their age or date of birth.

This recommendation reflects Australia's existing practice for making formal and informal requests for assistance to Indonesia; however any requests by Australia for the process to be expedited would be a matter for Indonesia to consider. It will always take time to obtain documents given the dispersed nature of the Indonesian archipelago, and in some cases documents may not exist.

**Recommendation 3**

**The committee recommends that the *Migration Act 1958* be amended to require that individuals suspected of people smuggling offences who claim to be minors be offered access to consular assistance as soon as practicable after their arrival in Australia.**

**Agreed in principle.**

This recommendation reflects existing practice. However, some individuals choose not to accept consular assistance.

Indonesians detained in Australia for people smuggling are able to access consular assistance in accordance with the Vienna Convention on Consular Relations (VCCR) and Australia's Arrangement on Consular Notification and Assistance (the Consular Arrangement) with Indonesia, signed on 10 March 2010.

Australia's obligations under the VCCR and the *Privacy Act 1988* prevent Australia from providing the personal particulars of any Indonesian national detained in Australia for people smuggling to Indonesian consular officials without that person's consent.

The Department of Foreign Affairs and Trade (DFAT) provides the initial notification to the Indonesian Embassy within three days that a SIEV has been boarded by Australian authorities and that Indonesian nationals, normally the crew of the vessel, are believed to be on board.

DIAC advises the Indonesian Embassy when Indonesian people smuggling crew enter immigration detention, are transferred between facilities, or leave immigration detention. Unidentified information (date of arrival, the number of individuals concerned, current location, and whether they are adults or minors) is provided where crew do not provide consent for consular notification.

**Recommendation 4**

**The committee recommends that, in cases where an Indonesian national in immigration detention claims to be a minor, the Department of Immigration and Citizenship must notify the Indonesian Embassy and relevant consular officials of that claim as soon as practicable.**

**Agreed.**

This recommendation reflects existing practice and is not restricted to Indonesian nationals who are detained for people smuggling offences. However, foreign nationals must first sign a consular notification form to agree to have their names released to the relevant consulate, and to obtain consular assistance. Some individuals choose not to accept consular assistance.

**Recommendation 5**

**The committee recommends that DIAC:**

**- explicitly inform each Indonesian crew member suspected of people smuggling of their right to contact relatives in Indonesia as soon as practicable after their arrival in Australia; and**

**- take proactive steps to assist all crew who claim to be minors to contact their families in Indonesia within seven days, or as soon as practicable, after their arrival in Australia.**

**Agreed.**

This recommendation reflects existing practice.

People smuggling crew held in immigration facilities are permitted to make domestic and international phone calls, and are allowed to try several different numbers until they make contact with their family or friends. These calls last approximately two minutes, to enable them to let the receiver know of their wellbeing. Individuals are permitted further additional time on a case by case basis. Due to poor mobile coverage in some countries, telephone contact is not always possible, which is typically understood by those trying to contact people in particular countries.

Internet access is also provided in immigration facilities after people are accommodated.

The only time phone calls are not attempted on the day of arrival is when a significant number of individuals arrive on the same day, as there is no distinction in the allocation of phone calls between people smuggling crew and other passengers arriving by boat. For example, in one instance 230 clients arrived at one time and it was not possible to make all 230 calls on that day. In situations like this, phone calls are generally completed over two or three days. DIAC considers these phone calls to be very important and it is a priority for these calls to be made as soon as possible.

**Recommendation 6**

**In accordance with Recommendation 2 of the Senate Legal and Constitutional Affairs Legislation Committee's report into the Crimes Amendment (Fairness for Minors) Bill 2011, the committee recommends that the Australian Government introduce legislation to expressly provide that, where a person raises the issue of age during criminal proceedings, the prosecution bears the burden of proof to establish that the person was an adult at the time of the relevant offence.**

**Agreed.**

Under the *Migration Act 1958,* penalties for aggravated people smuggling offences do not apply to persons where it is 'established' on the balance of probabilities that they are under the age of 18 years. However, the legislation does not specify whether the prosecution or the defence bears the burden of proof.

There has been some inconsistency in the courts as to who bears the burden of proof. However, in practice, the CDPP has taken on the obligation of establishing whether the person is a minor or an adult, in cases where the defendant raises age as an issue.

AGD is considering options for amendments to the Migration Act that would codify current practice by specifying that the prosecution bears the onus of proof in establishing age, where age is contested during a prosecution.

**Recommendation 7**

**In accordance with Recommendation 2 of the Senate Legal and Constitutional Affairs Legislation Committee's report into the Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012, the committee recommends that the Australian Government facilitate and support further deterrence and awareness raising activities in relation to people smuggling offences, with a focus on relevant communities in Indonesia.**

**Agreed.**

At the Australia-Indonesia Leaders Meeting on 3 July 2012, it was noted that Australia and Indonesia will conduct a joint public information campaign in Indonesia to prevent potential crew from being used by international people smuggling networks by helping them to understand the consequences, both in Australian and Indonesian law.

This campaign has commenced with two information sessions held in Bali and Kupang from 17-19 September 2012 for local Indonesian stakeholders and representatives.

The next phase of the awareness raising campaign is currently under development.

# Government response: Chair's further findings and recommendations

**Recommendation 1**

**The Chair of the committee recommends that the Attorney-General's Department undertake a review of all cases since 2008 where Indonesian minors may have been detained in Australia on suspicion of people smuggling offences, in order to determine:**

**- the number of minors who have been inappropriately detained in Australia; and**

**- the length of time for which those individuals were detained.**

**Disagree.**

On 2 May 2012, the Attorney-General announced a review of convicted crew whose age was raised as an issue at some stage during the investigation and/or prosecution. A total of 28 cases were reviewed after being identified by the Australian Human Rights Commission, the Indonesian Embassy and the CDPP.

On 29 June 2012, the Attorney-General announced that the outcomes of the review were that:

- 15 crew were granted early release from prison on licence as there was a doubt they may have been minors on arrival in Australia
- two crew were released early on parole
- three crew completed their non-parole periods prior to the commencement of the review and
- eight crew were assessed as likely to be adults on arrival as there was no evidence supporting suggestions they were minors at the time of arrival.

There have been 1115 crew arrive in Australia since 2008. As at 30 November 2012, 197 crew have been returned on the basis that they may have been minors. AGD has reviewed all cases were crew in Australian prisons had been convicted and age was raised as an issue at some stage during the proceedings.

**Recommendation 2**

**The Chair of the committee recommends that the Australian Government, in conjunction with state and territory governments, sufficiently resource Australia's eight legal aid commissions to enable legal aid lawyers representing suspected people smugglers who claim to be minors to travel to Indonesia to obtain relevant evidence relating to the age of their clients.**

**Agreed.**

This recommendation reflects existing practice.

Legal aid commissions can seek reimbursement of costs incurred for providing representation to people smuggling defendants (including travelling to Indonesia to seek documentary evidence of age) through the Expensive Commonwealth Criminal Cases Fund, which is administered by the Attorney-General's Department.

**Recommendation 3**

**The Chair of the committee recommends that the Australian Government introduce legislation to appoint an independent legal guardian for individuals suspected of people smuggling offences who claim to be minors, to represent their best interests while their age claims are assessed.**

**Disagree.**

Interviews for individuals suspected of people smuggling who claim to be minors are undertaken in the presence of an Independent Observer who provides support to ensure the well-being of the individual. This applies whether the interview is to determine a person's age, identity or to establish information relevant to their travel to Australia. A legal representative is not present at these interviews.

However, in the criminal investigative context, current practice reflects the need for an independent person or guardian during a criminal investigation. Under s23K of the Crimes Act, if an investigating official believes on reasonable grounds that a person who is under arrest or a protected suspect is under 18, the official must not question the person unless an interview friend is present while the person is being questioned and, before the start of the questioning, the official has allowed the person to communicate with the interview friend in circumstances in which, as far as practicable, the communication will not be overheard.

An interview friend means:

(a) a parent or guardian of the person or a legal practitioner acting for the person; or

(b) if none of the previously mentioned persons is available—a relative or friend of the person who is acceptable to the person; or

(c) if the person is an Aboriginal person or a Torres Strait Islander and none of the previously mentioned persons is available—a person whose name is included in the relevant list maintained under subsection 23J(1); or

(d) if no person covered by paragraph (a), (b) or (c) is available—an independent person.

Indonesian consular representatives are also able to advocate on behalf of Indonesian crew given their consular functions include safeguarding the interests of their minor nationals (*Vienna Convention on Consular Relations)*, provided that the individual accepts consular assistance.

**Recommendation 4**

**The Chair of the committee recommends that the *Migration Act 1958* be amended to require that legal assistance be provided to all individuals suspected of people smuggling offences who claim to be minors within three days of their arrival in Australia**

**Disagree.**

Legal Aid Commissions are currently informed when crew arrive in Australia and offer assistance as soon as practicable. However, it is not appropriate to include time frames in the legislation.

**Recommendation 5**

**The Chair of the committee recommends that the government appropriately resource National Legal Aid to station a full-time independent legal aid representative on Christmas Island, to provide legal assistance in person to all foreign boat crew who arrive there suspected of people smuggling offences.**

**Disagree.**

National Legal Aid (NLA) is not funded by governments to provide legal assistance services. NLA is a non-statutory representative group comprising the directors of all eight legal aid commissions.

Under the National Partnership Agreement on Legal Assistance Services (NPA), the Australian Government funds legal aid commissions to deliver Commonwealth legal aid service priorities, including certain migration matters. The NPA does not fund legal assistance for external territories. The Legal Aid Commission of Western Australia is funded by the Territories Division of the Department of Regional Australia to provide legal assistance services on Christmas Island. Those arrangements cover the provision of assistance to people who are residents of Christmas Island, and any person on Christmas Island who is charged with a criminal offence.

**Recommendation 6**

**The Chair of the committee recommends that the *Crimes Act 1914* be amended to require that an individual suspected of people smuggling offences who claims to be a minor can only be detained in Australia for a maximum of 14 days before being charged or released from detention.**

**Disagree.**

The Government is keen to avoid delays in investigations for persons suspected of people smuggling offences who say that they are minors. The AFP requires adequate time to consider all relevant factors when making a decision to charge a person, and has worked hard to reduce the time taken to investigate people smuggling offences and prepare a brief of evidence, setting a benchmark timeframe of 90 days from interception to laying charges.

As a result of continuing efforts to reduce time in detention, the AFP advises that for the period from 1 January 2012 to 12 November 2012, the average period of investigation from the date of formal referral of crew by DIAC to the date of charging by AFP is 74 days.

The Government is committed to further reducing delays in the investigation of people smuggling offences. Commonwealth agencies are developing solutions to address delays, including seeking identity documents from Indonesian consular officials in the first instance, pending a mutual assistance request. If available, these documents may then inform the AFP's decision about whether to give a person the benefit of the doubt about their age, prior to laying charges.

Unfortunately, there are often delays to the investigation process caused by environmental factors, which are difficult to avoid. For example, weather conditions may cause delays in conveying items of evidence, such as mobile phones and GPS equipment, which require forensic analysis by experts and equipment on mainland Australia. There may also be delays in securing interpreters of specific dialects required for interviews or investigations.

In addition, passengers on board people smuggling vessels are sometimes unwilling or unable to provide statements, which are necessary to proceed with most people smuggling prosecutions.

**Recommendation 7**

**The Chair of the committee recommends that the *Migration Act 1958* be amended to require that, where Criminal Justice Stay Certificates are issued in respect of individuals suspected of people smuggling offences who claim to be minors, those certificates should be the subject of periodic judicial review.**

**Disagree.**

A Criminal Justice Stay Certificate (CJSC) operates to stay a non-citizen's removal and does not authorise or provide a legal basis for the non-citizen's detention. As set out in the written submission to the Senate Committee provided by AGD and the AFP, the person is detained pursuant to relevant provisions of the Migration Act (s189 and s250). If a CJSC is in force the Minister of Immigration and Citizenship may consider in his absolute discretion whether it is appropriate to issue a criminal justice stay visa which would entitle the person to be released from detention. The AFP and CDPP are the competent authorities in relation to investigations and prosecutions, and the Attorney-General's delegate may issue at the request of these agencies a CJSC to stay a person's removal. The Attorney-General's delegate necessarily relies on advice from these agencies as to whether the presence in Australia of a non-citizen is required for the purposes of the administration of criminal justice. AGD currently has procedures in place for the review of CJSCs, and in response to a recommendation made by the Australian Human Rights Commission has refined its procedures for review of CJSCs to include guidance on regular follow up with the AFP or CDPP, as relevant, for confirmation of the continuing need for the CJSC to ensure cancellation of certificates promptly once a person is no longer required. The Government considers its existing procedures for review of CJSCs to be appropriate.

**Recommendation 8**

**The Chair of the committee recommends that an individual detained in Australia on suspicion of people smuggling charges who claims to be a minor must be held in community detention rather than immigration detention facilities while their case is considered, unless there is a clear reason why this would be inappropriate.**

**Disagree.**

Under s197AB of the Migration Act, only the Minister for Immigration and Citizenship can approve a community detention placement for people in immigration detention. However, this is a non-compellable power and, in considering whether to make such a determination, the Minister must consider that it is in the public interest to do so. A blanket determination covering all people suspected of people smuggling offences who claim to be minors is inconsistent with the terms of the relevant provisions.

**Recommendation 9**

**The Chair of the committee recommends that the *Crimes Act 1914* be amended to require that an investigating official may only make an application to a magistrate or judge to determine the age of an individual charged with a people smuggling offence who claims to be a minor within 30 days of:**

**- the suspect being taken into immigration detention in Australia; or**

**- the suspect first making a claim that they are a minor**

**Disagree.**

The proposed time limit of 30 days is insufficient for investigating officers to gather a thorough brief of evidence, particularly where the collection of evidence requires evidence being provided by the person's country of origin. The operational stages of the investigatory and age assessment process are outlined in the response to recommendation 6. Not only would the proposed time limit impact the ability of the AFP's to properly investigate an alleged offence it could jeopardise the ability of defendants to obtain evidence to substantiate their claims.

A person in immigration detention, or in remand in a criminal justice detention facility, can claim to be a minor at any time. It is not always the case that detainees claim to be minors at the point of interception, and it is not uncommon for claims about age to be made after the person has been detained for a period of time. Often challenges to the court's jurisdiction on the basis of age are made late in the proceedings, and in some cases claims about age are raised several times. Some age determination hearings are on the application of the defence. The defence has also, on occasion, asked that age determination proceedings be delayed while the defence gathers information.

The recommendation does not take into account these circumstances, nor does it clarify how the criminal proceedings would be dealt with should these circumstances arise. It is also unclear what should occur if an application for an age determination was not made within 30 days. Age is a fundamental question going to jurisdiction and cannot be ignored regardless of when an application is made.

**Recommendation 10**

**The Chair of the committee recommends that the Commonwealth Director of Public Prosecutions review its procedures to ensure that all age-related evidence in its possession is made available to the court during age determination hearings.**

**Disagree**

Under the policy framework announced on 8 July 2011, the AFP is to request documents containing information about the age of persons who say they are minors from their country of origin as soon as possible. However, the Government notes that it is not always possible to obtain such documentation given that other countries do not have the same requirements for identification documentation as Australia.

Based upon operational experience and expert advice, there are limitations in terms of the reliability of identity documents, as well as challenges posed by cultural and religious practices. As a result there can be issues with the admissibility of documents.

The CDPP's policy in relation to evidence in age determination hearings in people smuggling prosecutions is set out in the CDPP's Director's Litigation Instruction Number 2, which provides:

Evidence

(16) If a matter proceeds to an age determination hearing and the defendant seeks to:

- call evidence from the defendant's family or other persons from the defendant's place of origin, whether in person, by audio or by audio visual link; and/or
- the defendant seeks to call evidence to make admissible documents that the defendant wishes to tender during the hearing

the responsibility for making any arrangements to call such evidence will rest with the defendant's legal representatives, however the CDPP will cooperate as much as it is reasonably able to do so with the defendant's legal representatives.

(17) If a witness is unable to give evidence to the Court in person or by audio or audio visual link or if a defendant is unable to call the necessary evidence to make a document admissible, then generally the CDPP will not dispute the admissibility of any affidavits from the defendant's family or from other persons from the defendant's place of origin that the defendant wishes to tender nor the admissibility of any documentary evidence the defendant wishes to tender. It may be appropriate for comment to be made about the weight the Court should give to any evidence.

(18) The prosecutor may however dispute the admissibility of an affidavit or document; the information contained in the affidavit or document; call evidence or seek to cross-examine on the affidavit or document, if there are very cogent reasons for doing so.

(19) Any decision to dispute the admissibility of any such affidavits or documents should be discussed with the Deputy Director of the relevant Regional Office, and if necessary, raised with the Director.

This is a very unusual and permissive stance to be taken by a prosecuting entity, which has been taken as a result of practical issues confronting the CDPP in relation to documentary material from Indonesia. The CDPP does not have a similar approach in any other area of its practice.

This position only relates to the material that the defendant wishes to tender. The CDPP cannot require or expect that defence representatives will allow the CDPP to tender documentary material which is not admissible. Accordingly, the CDPP cannot ensure that all age-related material in its possession is made available to the court during age determination hearings.

**Recommendation 11**

**The Chair of the committee recommends that the Australian Government issue an apology to those Indonesian nationals who were detained or convicted and imprisoned in Australia for involvement in people smuggling offences, only to be later released due to concerns that they were minors at the time of offending or upon the completion of their sentence.**

**Disagree.**

In making decisions about investigation and prosecution of people smuggling crew Australian Government agencies act in good faith on the most reliable evidence available at the time. Assessing age is complex and difficult, as noted in the report. People may make claims to be minors at any stage of a prosecution.

Under the Government's current policy, in cases where age is not able to be clearly established, the person being investigated or prosecuted is given the benefit of the doubt and returned to their country of origin without charge. People being removed on this basis may in fact be adults, but they are being returned because there is a doubt whether they are adults or minors.

**Recommendation 12**

**The Chair of the committee recommends that the Australian Government:**

- **recognise the right of Indonesian minors who were wrongly detained or imprisoned in Australia to be paid appropriate compensation;**
- **initiate a thorough and transparent process to identify individuals who were wrongly detained, or convicted and imprisoned, in Australia on people smuggling charges, only to be released due to concerns that they were minors at the time of offending or upon completion of their sentence;**
- **inform these individuals of their right to seek reparation for any periods of inappropriate detention or imprisonment; and**
- **establish an appropriate administrative mechanism, subject to judicial review, for determining rights violations associated with these cases and enabling compensation payments to be made to these individuals.**

**Disagree.**

The offence of people smuggling applies equally to adults and minors: age is not relevant for this crime. Minors do not belong in adult prisons, which is why on 2 May 2012, the Attorney-General announced a review of convicted people smuggling crew whose age was raised as an issue at some stage during the investigation and/or prosecution. A total of 28 cases were reviewed after being identified by the Australian Human Rights Commission, the Indonesian Embassy and the CDPP.

On 29 June 2012, the Attorney-General announced that the outcomes of the review were that:

- 15 crew were granted early release from prison on licence as there was a doubt they may have been minors on arrival in Australia
- two crew were released early on parole
- three crew completed their non-parole periods prior to the commencement of the review and
- eight crew were assessed as likely to be adults on arrival as there was no evidence supporting suggestions they were minors at the time of arrival.

Australia has a fair system in place for assessing the age of people smuggling crew who claim to be minors, where all individuals who claim to be minors have their cases assessed on an individual basis. If there is insufficient evidence to establish whether the person is an adult or a minor, the person is given the benefit of the doubt and removed to their country of origin, unless exceptional circumstances apply.

People are free to make claims at any time against any government if they believe that a government has acted wrongly. Governments have a duty to properly consider such claims, as well as to properly defend themselves if such claims have no basis.

**Recommendation 13**

**The Chair of the committee recommends that the Australian Government investigate options for providing culturally appropriate psychological support for Indonesian minors who suffered psychological trauma as a result of being wrongfully detained in Australia on suspicion of people smuggling.**

**Disagree.**

The offence of people smuggling applies equally to adults and minors: age is not relevant for this crime. Indonesian crew of people smuggling vessels will be detained while consideration is given to whether they should be prosecuted for this offence.

**Recommendation 14**

**The Chair of the committee recommends that the Attorney-General's Department request that the states and territories afford persons convicted of people smuggling the right to remit a portion of any income earned in prison to their relatives in Indonesia.**

**Disagree.**

Parliament passed legislation expressly providing that those convicted of people smuggling offences should be liable to repay the costs of their detention. Such people are also liable to pay the costs associated with their removal (see Recommendation 15). State and Territory correctional authorities have been asked to prevent convicted people smuggling crew from remitting money overseas so that DIAC can implement the debt recovery procedures that apply to this cohort under the Migration Act. The calculation of these individual debts can only be finalised once the person is released from custody and the full costs of each case are known. Allowing overseas remittances for this cohort will compromise the outcome of this lawful debt recovery.

**Recommendation 15**

**The Chair of the committee recommends that the Australian Government immediately reverse the policy of seeking to recover the costs of detention and removal from Australia from Indonesian boat crew convicted of people smuggling offences.**

**Disagree.**

The *Migration Amendment (Abolishing Detention Debt) Act 2009* amended the Migration Act and removed liability for immigration detention and related costs for people in immigration detention. However, it remains Government policy that those engaged in people smuggling should not profit from such an activity. Hence, those people convicted of people smuggling continue to incur liability for both a detention and a removal debt. The Migration Act allows DIAC to freeze funds of people smugglers, and issue a garnishee notice to a third party, to recover that money as a means of meeting their Commonwealth debt. Under current arrangements, the extent to which removal and detention debts are recoverable depends on whether the person has funds available and the legal basis for the

person's detention in Australia. DIAC is currently able to recover both detention and removal debts from crew who on their arrival were detained under section 189(3), because of section 250, of the Act as a suspected people smuggling offender, and who have not subsequently been issued with a Criminal Justice Stay Visa (CJSV). Crew who have been issued a CJSV under past procedures are only able to have debts recovered on a voluntary basis under the same arrangements in the Migration Act that apply to all unlawful non-citizens who are being removed from Australia.