COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON MIGRATION

Reference: Immigration detention in Australia

WEDNESDAY, 24 SEPTEMBER 2008

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JOINT STANDING

COMMITTEE ON MIGRATION

Wednesday, 24 September 2008

Members: Mr Danby *(Chair)*, Mrs Vale *(Deputy Chair)*, Senators Bilyk, Eggleston, Hanson-Young, McEwen and Mrs D'Ath, Mr Georgiou, Mr Randall and Mr Zappia

Members in attendance: Senators Bilyk and Hanson-Young, Mr Danby, Mrs D'Ath, Mr Georgiou, Mr Randall, Mrs Vale, Mr Zappia

Terms of reference for the inquiry:

To inquire into and report on:

- the criteria that should be applied in determining how long a person should be held in immigration detention
- the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks
- options to expand the transparency and visibility of immigration detention centres
- the preferred infrastructure options for contemporary immigration detention
- options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres (IDCs), Immigration Residential Housing, Immigration Transit Accommodation (ITA) and community detention
- options for additional community-based alternatives to immigration detention by
  a) inquiring into international experience;
  b) considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework;
  c) comparing the cost effectiveness of these alternatives with current options

WITNESSES

Committee met at 9.32 am

CASEY, Mr Dermot, Acting First Assistant Secretary, Department of Immigration and Citizenship

CORRELL, Mr Robert John (Bob), Deputy Secretary, Department of Immigration and Citizenship

KESKI-NUMMI, Ms Arja, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Citizenship

METCALFE, Mr Andrew, Secretary, Department of Immigration and Citizenship

O'CONNELL, Ms Lyn, First Assistant Secretary, Department of Immigration and Citizenship

CHAIR (Mr Danby)—I declare open this public hearing for the inquiry into immigration detention in Australia. I welcome the officials from the Department of Immigration and Citizenship. We are a very busy committee; we are doing three reports. Our third report is on community and alternative detention reforms. We might not focus on that as much today, though I do not want to pre-empt what other people are going to say. We may call you back, probably in the new year, to focus on those kinds of issues.

I commence today's proceedings by acknowledging the department's contribution to the inquiry to date. The department have facilitated visits by the committee to their detention centres around the country as well as giving us the opportunity to meet their clients in detention. We thank you for your appearance here today. Mr Metcalfe, you and your colleagues are welcome. We look forward to your input at today's hearing. Although the committee does not require witnesses to give evidence under oath, I remind everyone that this hearing is a legal proceeding of the parliament and warrants the same respect as the proceedings of the house. If you would like to make an opening statement, you would be most welcome.

Mr Metcalfe—Before moving to an opening statement, I will introduce my colleagues so you are aware of who does what. Bob Correll is the Deputy Secretary, who is responsible for borders, detention and technology issues in the department. Dermot Casey is the Acting First Assistant Secretary of our Community and Detention Services Division. Ms Arja Keski-Nummi is the First Assistant Secretary of the Refugee, Humanitarian and International Division. Ms Lyn O'Connell is the First Assistant Secretary of the Compliance and Case Management Division. I think that represents a good spread of expertise at the senior level of the issues the committee is inquiring into.

Thank you for the opportunity to deliver an opening statement to the inquiry. Presently the number of people in immigration detention in Australia is at its lowest level since 1994. As of the latest statistic, 12 September 2008, there were only 274 people in immigration detention, of whom 192 were located in immigration detention centres and 82 in immigration residential housing, the community or new transit accommodation centres. This compares to over 1,100 people in immigration detention, mostly in immigration detention centres, five years ago.

The department has a clear duty of care for all people in immigration detention. Since the very serious—indeed tragic—failures documented in the Palmer and Comrie reports, released in July and September 2005, the department has embarked on a major program of reforms to compliance and detention operations. Case management services have been introduced to ensure that all people entering immigration detention are actively encouraged to resolve their immigration status as quickly as possible. A community care pilot has been introduced across the three largest states to provide essential health and welfare support and immigration counselling for vulnerable clients in the community while their immigration status is being resolved. As part of this pilot a new emphasis has been placed on assisting people to return home voluntarily rather than placing them in detention prior to removal.

Since 2005, there has also been a strong focus placed on health services for people who are being detained. The Detention Health Advisory Group, known as DeHAG, was convened in March 2006 and helps the department improve the general mental health of people in detention. This expert group provides the department with professional advice regarding the design, implementation and monitoring of improvements in detention healthcare policy and procedures. In 2005, the department implemented new mental health screening arrangements to address issues identified through Mick Palmer's report. These have recently been reviewed, and the department is now implementing the recommendations from DeHAG. The department is currently negotiating a new health contract which incorporates the government's new detention values.

Many changes have been made to detention centres in recent years. Baxter and Woomera are now closed. Port Hedland has been leased out to provide accommodation to support the booming mining industry in the Pilbara. Maribyrnong facilities have been significantly improved, and work is currently under way at the Perth centre to improve those facilities. Villawood remains a serious concern. While some short-term works are currently in train to provide immediate improvements, a major redevelopment of the facility is needed and has been needed for some time. The government is committed to this redevelopment, and planning is proceeding.

New types of accommodation services are being established outside immigration detention centres, including new residential housing in Sydney and Perth, new immigration transit accommodation in Brisbane and Melbourne as well as greater use of housing available within the general community.

These improvements have been acknowledged by the Australian Human Rights Commission, which in its January 2007 report on immigration detention complimented those detention service reforms, including improvements to the physical environment and in mental healthcare developments. The Human Rights Commission also observed positive changes in staff approach and attitude towards immigration detention. The AHRC is currently preparing another report based on recent visits to immigration detention centres. Following a visit to the northern IDC, the Human Rights Commissioner, Graeme Innes, publicly stated that he believed the centre to be 'well run' and that the government had adopted a 'more caring' approach. This is further evidence of the changes that the department has been implementing and the positive influence they are having on the detention environment. We understand that the Human Rights Commissioner's full report will be released in a couple of months time.

The government's recent announcements on its new directions in detention policy will drive further substantial changes to detention, emphasising a risk based approach to who is detained and for how long. We expect to see much greater use of community based options rather than immigration detention centres.

Significant challenges remain. For example, the new Christmas Island immigration detention centre was conceived and designed in early 2000. Today it remains in contingency mode for any larger scale unauthorised arrivals. Its design, whilst modern and well equipped, does not accord with the government's new detention directions or values. In order to maintain maximum flexibility on Christmas Island, fencing around sections of the Phosphate Hill facilities has been removed to provide accommodation for children and families in a community environment. Small groups of unauthorised arrivals, should they arrive, would be accommodated in the Phosphate Hill facilities, with the new centre only being brought online if numbers demand and never being used to accommodate children.

The department is strongly committed to continuing the post-Palmer reforms, started in 2005, which will be substantially strengthened by the government's policy framework announced by the minister on 29 July this year. The framework defines the following seven key values which will drive detention policy and operations into the future: (1) mandatory immigration detention is an essential component of strong border control; (2) to support the integrity of Australia's immigration program, three groups will be subject to mandatory immigration detention—(a) all unauthorised arrivals, for management of health, identity and security risk to the community, (b) unlawful noncitizens who present unacceptable risks to the community and (c) unlawful noncitizens who have repeatedly refused to comply with their visa conditions; (3) children, including juvenile foreign fishers, and where possible their families, will not be detained in immigration detention facilities; (4) detention that is indefinite or otherwise arbitrary is not acceptable, and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review; (5) detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time; (6) people in immigration detention will be treated fairly and reasonably within the law; and (7) conditions of immigration detention will ensure the inherent dignity of the human person.

The department is of course working very closely with the minister on the implementation of these values. I note the committee's media release issued yesterday does not accurately reflect the second of these values. It states that people will not be detained unless they present a risk to the community. But this is only one of the three criteria for detention outlined above. The report of your committee will be an important consideration in how immigration detention services are delivered and how people are cared for in a humane way that maintains their dignity. We very much look forward to working with the committee. I am very happy to answer your questions.

CHAIR—Thank you, Mr Metcalfe, I appreciate your opening remarks. Before I turn to my colleagues, can I focus on your reference to the implementation of the minister's seven principles set out on 29 July. Can you outline the department's implementation plan? What are the time frames and who is the department consulting with regarding this implementation? We are all very pleased to hear that the current detention population is at an all-time low. What proportion of that population do you expect might be released under the reformed arrangements?

Mr Metcalfe—Ms O'Connell runs our division that essentially deals with immigration status so I will ask her to start off answering in response to you. Mr Correll and Mr Casey, who are responsible for the facilities themselves, will also contribute. I did not say that detention numbers are at an all-time low, but they are at a very low number—certainly the lowest in the last 12 years or so.

Ms O'Connell—There are quite a number of steps in the implementation plan for the minister's announcement of the new directions in detention, which reflects the values that Andrew Metcalfe read out earlier. The most immediate and high priority aspects are, firstly, to review all the cases and all of the claims for those currently in detention. That is for the complete number that has been referenced to date who are in any form of detention, be it a detention centre, community detention or any other form of detention. We will review all of those cases in line with the minister's review that he conducted from March to May of the 72 cases who are long-term detainees who have been in detention for more than two years. In May there was an announcement about the outcome of that review, which was done by the minister in conjunction with the ombudsman. So the first priority is to review all of the cases of those people who are currently detained. That review will be completed during October and decisions will be made, so it is too early to foreshadow the exact results of that review and what will happen in terms of the number of people still detained.

The highest priority activity is to look at greater review mechanisms in terms of the decisions to detain. We are looking at implementing a two-stage review process where there is a review within the department after three months for a person who is detained and then there is a review by the ombudsman at the six-month point. Currently the ombudsman's review is at the two-years-plus mark. This will bring forward a different type of review to the six-month point. We are in discussion with the ombudsman's office about the nature, form, type et cetera of that particular review activity.

The other high-priority activity is to look at consultation regarding the new arrangements, to seek views on exactly how they should be implemented. We expect those consultations will take place before the end of this calendar year. Those are the three, if you like, highest priority activities. There is further work that needs to be done and there is a considerable implementation plan with quite a number of activities in it. That includes looking at the detention infrastructure options, the facilities, the conditions of detention and also the changes to asylum processing that are underway. I might ask Bob to talk about some of the detention aspects.

Mr Correll—In relation to detention service facilities, two key areas of priority that are being very carefully considered at present as part of the implementation processes are, firstly, looking at Christmas Island and the arrangements to apply to Christmas Island. We have a flexible range of facilities on Christmas Island, but there is a question of how that should be advanced in the future. The new immigration detention centre remains an operating contingency mode and has not been used at all to date.

Another area where there is a very strong emphasis at present is Villawood detention centre. We see Villawood as representing clearly inadequate facilities at present. Immediate works are currently underway and are being advanced, looking to improve arrangements in stage 1, which is the high-security area of Villawood, together with work on what has been termed the 'management support unit' at Villawood. Those works are geared to provide some immediate,

short-term improvement. We are also focused on what the longer term picture should look like there. In particular, given a broad range of different client circumstances and different risk situations, what is the nature of the actual services and facilities that should be in place at Villawood? The government has flagged in its last budget the notion of advancing significant redevelopment at Villawood. The issue is ensuring that redevelopment is fully consistent with the values announced by the government.

Other areas that are also being looked at as part of the implementation plan—and, as Ms O'Connell has indicated, it is early days—are looking at the notion of an expanded range of community based services, what are the nature of those services, what is the extent to which there are opportunities for rationalisation of existing services and providing better alignment of existing services that currently apply.

CHAIR—Just to take a sidebar on Christmas Island before I ask one more question and then I will turn it over to my colleagues, is one of the things that you are looking at on Christmas Island the possibility of using the construction camp as a better resource than the interim facility that exists there, given the fact you may not want to use the centre, which you said was constructed probably in the early 1970s, earlier than 2000?

Mr Correll—The construction camp is being looked at as a key element in the overall future arrangements there.

CHAIR—Mr Metcalfe, I want to ask you a sort of futuristic question, looking backwards. What is the future that you see the department having with the mixture of people in detention centres, in alternative community accommodation and on bridging visas in the wider community? Do you see a different mixture in the future from what there is now?

Mr Metcalfe—Starting with the reforms introduced by the previous government three years ago, which made it clear that children should not be in immigration detention centres, and a range of other measures introduced at the time, the government's subsequent response to the recommendations of the Palmer report and developments since that time, most notably the minister's speech articulating new directions this year, the future as I see it involves fewer people in immigration detention centres, that being very much based around risk, repeated non-compliance, criminality and those sorts of issues. I see a very strong emphasis on quick status resolution. Over the years the committee has looked at issues relating to the duration of immigration status resolution issues—merits review and judicial review. There is a strong determination to get to the answer in relation to a person as quickly as possible: should they be allowed to stay in Australia and in what circumstances or is their future back home overseas? That brings in a whole range of issues that we could spend days talking about in relation to asylum-seeking numbers and processing, visa settings and those sorts of things.

But some things that have been introduced in the last three years, I think, show enormous merit—for example, the community care pilot; the resolution of cases in the community; counselling services so that people are able to understand their prospects of success at an early stage; early intervention; and the fact that we have managed to work very productively with the Federal Magistrates Court, the Federal Court and the High Court. Currently, the number of immigration cases in the courts and the AAT is under 1,000, whereas when I became secretary three years ago there were over 4,000 matters in the courts. All reflect, I think, the ability to

achieve good immigration outcomes for Australia, without resorting to large numbers of people in immigration detention. We are operating record levels of migration programs, student programs, temporary entry programs and tourist programs. Our overstaying numbers are miniscule, compared to Europe or the United States, which has a population of 10 million illegals. Our numbers are less than 50,000 and have remained there for some time. I am very positive about the future, but close working relationships between the department, the community sector and the courts mean that we can operate a program with integrity, without the need for immigration detention other than in extremely limited circumstances, as the minister has outlined.

Mrs VALE—Thank you for appearing. I just want to focus more precisely on your duty of care. Some of the comments you have made go to your duty of care. Firstly, can you define the nature of that duty of care and your legal obligations? Secondly, does that duty of care change with respect to people in detention, vis-a-vis people who might be in IDCs, in community detention or even on bridging visas?

Mr Metcalfe—Duty of care is of course a legal concept, but I think it is also a moral concept. We clearly have a duty of care in relation to people in immigration detention. By definition, they are being held against their will and as the detaining authority there are very high requirements placed upon us in relation to the provision of basic human needs, as well as to their health and all aspects of their care. Because they are in our custody, we have a very high duty of care. I would argue that it is not only a legal requirement but a moral requirement in terms of good and proper administration. Something that we made very clear in implementing the reforms, following the Palmer report, was to regard immigration clients in detention as clients. Technically, they are detainees but they are in fact the clients of services of the department and those services have to be as good as they can be.

At the same time there are of course these days far fewer people in immigration detention, in detention centres. We have many clients in the community. Some are on bridging visas; some may be in some form of community detention. The duty of care is less there because we are not a detaining authority, But, as I mentioned before and as Ms O'Connell mentioned, we believe that there are obligations for us to work constructively with those people, their representatives and advocates to ensure a timely resolution of their status so they can get on with their life confident as to what their status should be.

Mrs VALE—Thank you very much.

Senator BILYK—With regard to removals, can you outline to us the process that is put in place once the decision is made to remove a detainee?

Ms O'Connell—Yes, certainly. In terms of removal, it is an obligation under the act to remove someone who has no lawful right to remain in Australia. So, rather than a positive decision to remove, it is in fact an obligation of the act that somebody who is unlawful must be removed effectively. The judgement around that happening is of course as to somebody who does not have a visa, so they have unlawful status, they are not pursuing any form of merit review or processing or judicial review or any other form of activity with the department.

One of the things on the removals side that is being trialled as part of the community care pilot is a program called assisted voluntary return, which allows for someone's return provided they voluntarily wish to return from the community with some assistance. We are providing that through the IOM, the International Organisation for Migration. They are assisting us with that assisted voluntary return process. That is something that is being piloted as part of the community care pilot in terms of someone who is in the community and is voluntarily wishing to go but, for some reason, they are not able to go but wish to engage the assisted voluntary return service so they can return from the community.

Removals are typically more focused on those people who do not wish to go but have exhausted all avenues to stay. In terms of the removals processes, some removals are simply monitored. If we understand a person will depart—they may not voluntarily wish to depart but they actually will depart—then we simply monitor that on a systems based approach. We check that they do actually depart and that there is a record of their departure. Escalating from that is where somebody says they do not wish to and will not voluntarily depart, so they are involuntary. We give a notice to them that they are going to be removed. The person may be in the community; that person may be in community detention or in an immigration detention centre. As part of that process, all necessary checks are made to make sure that they have no ongoing processes and there is no prospect of any nonrefoulement that will take place, in terms of meeting our international obligations, and that they have the necessary fitness to travel, having been so certified. Arrangements are put in place for that person to be removed if they have the necessary travel documentation to be returned. Then the person is booked on a flight and removed. They may or may not be escorted. That depends on the air transport requirements in terms of removing somebody involuntarily. Sometimes the air transport requirements require that we do provide escorts for some removals.

Senator BILYK—Following on from that, what would be the procedure for someone who had been on suicide and self-harm watch while in detention? Would you explain to me what would happen with such a person? Also, would any sorts of medication or restraints be used?

Ms O'Connell—I will defer to Mr Casey as to suicide and self-harm.

Mr Casey—Senator, all medical records are checked before a person is declared as medically fit for removal. If a person has had previous mental health issues, then they would be referred for a report, from a psychiatrist and a psychologist, to determine whether in fact that person's removal would impact negatively in any clinical sense. For all people who are being removed we do require that the medical provider provide us with 'fitness to travel' documentation. If there have been any issues in relation to the person's previous health, whether it be physical or psychological, then we ask that they also consult with somebody of the appropriate professional standing who has known the person and is able to give a clinical assessment of their fitness. I think you asked about restraints.

Senator BILYK—Medication.

Mr Casey—Nobody would be medicated in order to facilitate their removal. That is prohibited.

Mr GEORGIOU—That is new.

Mr Casey—Our health provider have within their own company rules that medication would not be administered to somebody in order to facilitate their removal. If a person is on prescribed medication, they would be provided with prescribed medication that they could continue to take and provided with sufficient medication, so that they have a period of time until they return to their own country in which to renew that prescription. The length of that medication, as to how much medication we would provide, would be determined by the doctor.

CHAIR—So if someone appears to be insensible while they are travelling, it is not because under their removal procedure they have been administered drugs by contractors to you or whoever it is. So they are on medication that they normally receive and that makes them appear to be like that.

Mr Casey—In a few cases people may be prescribed medication. But there is no lawful capacity to administer medication to somebody without their consent in any circumstance.

Mr GEORGIOU—That appears to be new. Is that new?

Mr Casey—I do not know whether I would say it is new. It has certainly since I have been—

Mr GEORGIOU—Have we sent people overseas under medication?

Mr Casey—As I have said, I understand that there have been circumstances where people have been taking medication.

Mr GEORGIOU—No, sorry—

Senator BILYK—Maybe it is 'encouraged'.

Mr GEORGIOU—Have there been instances where we have deported people who have been medicated to prevent their resistance?

Mr Casey—From my knowledge as to the circumstances, I am not aware that somebody has been administered medication in order to facilitate—

Mr GEORGIOU—Could I ask somebody who does actually have a longer history and can remember whether people were deported under medication to prevent their resistance.

Mr Metcalfe—If you are asking a question in relation to if it has ever been a departmental or government policy that it is feasible for medication to be administered to render a person compliant with removal, I will take that on notice. I certainly have no knowledge of that being permissible in the last three years. One of the reasons Mr Casey came to the department from the department of health was to ensure that we essentially adopted best practice in relation to mental health and our health treatment of detainees. It has certainly improved vastly in recent years. As to whether at any time it has been like that, I will take that on notice.

Mr GEORGIOU—I note, in the new principles, that children accompanying family members will be accommodated in immigration residential housing or community settings. The commitment was that children would not be held in detention subject to some clearance

processes. They and their families were supposed to be put into the community under community residency determinations by the minister. This seems to me to be sliding away from that and opening up a situation where people can be held in secure detention arrangements and be separated from their families. Is that a misunderstanding of the options that are left over after that phraseology?

Mr Correll—I do not believe there is any suggestion here of children being separated from their families at all. The residential housing facilities that have been established are not immigration detention centres. They have been established as a type of accommodation service that provides for a much more flexible community type of arrangement. There is no suggestion in the values that children would be separated from families.

Mr GEORGIOU—Can we just stop there. Community settings are one thing; immigration residential housing is quite another. Immigration housing projects are actually secured and supervised facilities. They are under the umbrella of immigration detention facilities. Are you telling me that we are now opening the situation where, apart from during the initial assessment process, we will detain children and their families in immigration residential housing?

Mr Correll—Yes.

Mr GEORGIOU—Can I put it on record that I regard that as a breach of the commitments that were entered into that children and their families would be put into unsupervised community settings. An immigration residential setting is not a community setting; it is a highly supervised, controlled environment where people cannot come and go at will, they are under the supervision of immigration officers or contractors. That is a breach. If you can confirm that, some of us are going to go for this big time. Are you confirming that?

Mr Correll—Yes.

Mr GEORGIOU—You are confirming that under the new policy children and their families can be kept in what are termed 'other secure detention arrangements'? I will take that as a yes. The explicit intention, Mr Metcalfe would recollect, behind putting it in the act that children shall be detained as a matter of last recourse was to—after initial screening—put them and their families into the community.

Mr Metcalfe—What I can draw your attention to is principle 3 which says 'Children will not be detained in an immigration detention centre.' Principle 5 says 'Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.' I am not aware of any intention to have a situation where children would be kept in secure accommodation for anything other than a very, very short period of time, if at all.

Senator HANSON-YOUNG—What constitutes a short amount of time?

Mr Correll—It may be that broader community accommodation is being sought for a family in which case the family would be located in residential housing whilst that was obtained. Discussions with non-government representatives have raised the issue that obtaining community based housing is not an easy thing to obtain on all occasions and there can be lead

times involved in that being achieved, so the residential housing would be used in those circumstances.

Mr GEORGIOU—What is a short time?

Mr Correll—One would expect several weeks potentially—the amount of time that would be involved in securing accommodation.

Mr GEORGIOU—Let me take you back to 2005 when the department had fundamental problems getting children out of residential housing projects until they were firmly instructed they had to get kids out and they did that almost immediately. Leaving that aside, you said that there was no separation of children from their families. We have had instances of families being separated for up to a year despite constant urgings on the part of significant voluntary associations that the family be reunited. How does that fit into the principles?

Mr Metcalfe—Again I draw your attention to the fact that detention centres are used as a last resort for the shortest possible time with people will be treated fairly and reasonably. I simply again draw your attention, Mr Georgiou, to the fact that there are fewer people in detention centres now than there have been at any time in the last 12 years.

Mr GEORGIOU—A couple of weeks ago this committee was in Victoria at Maribyrnong and Broadmeadows. There was a child put into secure detention; the family was separated. This was presumably after the principles became applied. How do we explain this?

Mr Casey—Without going into the specifics of it, there was a decision made that a family who had been through a protracted process of seeking to stay in Australia were to be taken into immigration detention pending their removal. The decision was made that the father of the family, who had expressed strongly that he would harm himself or that he would forcibly resist this, would be taken to the Maribyrnong Immigration Detention Centre. The wife and one adult child and one teenager—

Mr GEORGIOU—Can we just call them children?

Mr Casey—Okay. They were accommodated at the immigration transit accommodation centre for, I believe, one night.

Mr GEORGIOU—You would not want to probe too far into why it was only one night. I am very concerned about this. I am very concerned that we are redefining the situation in that we can hold children with parents in secure detention arrangements, not just for a short period of time. I am concerned that once we start sliding down the slope of saying, 'We find it very difficult to find accommodation,' the times will protract. I do intend to pursue this and I believe this committee will pursue this.

A radical change of subject: you mentioned Palmer and you mentioned the progress that had been made since then. You mentioned in your submission, and it was also mentioned in the submissions of many other organisations, the problems with health. Palmer's recommendation 6.11 states:

The Inquiry recommends that the Minister for Immigration establish an Immigration Detention Health Review Commission as an independent body under the Commonwealth Ombudsman's legislation …

That it:

… be appropriately staffed and resourced, with a core of experienced people with relevant skills …

And that it should independently oversee and have the power to monitor the health of detainees. This was not implemented. There is no independent body of this sort that can discharge these functions. What happened?

Mr Casey—You are correct. That was not implemented. In, I think, late 2005 or early 2006 discussions took place with the Commonwealth Ombudsman, with Dr David Chaplow, who was Mr Palmer's mental health consultant on the Palmer inquiry and at the time was head of forensic psychiatry in New Zealand, and with departmental officers in light of the changes to the Ombudsman Act in 2005 that gave the Ombudsman a greater role in terms of investigating situations. The outcome of those discussions was that a decision was made to establish the Detention Health Advisory Group with nominees from key Australian health bodies and that that would form the basis of the advisory structure. It was decided not to establish an independent commission.

Mr GEORGIOU—Who decided that?

Mr Casey—That was a decision taken by the department.

Mr GEORGIOU—The department decided, given its distinguished record in the care, metal and otherwise, of detainees, not to establish an independent group with appropriate staff to oversee its health treatment of detainees. We have been told the Ombudsman was asked. We have been told that the adviser was asked. We have been told that the department was asked. Was Mick Palmer asked?

Mr Casey—Dr Chaplow represented Mr Palmer.

Mr GEORGIOU—No, was Palmer asked?

Mr Casey—I cannot recall. I will have to get back to you to tell you about that.

Mr GEORGIOU—Your documentation showed that he was not asked.

CHAIR—Who did you say represented Mr Palmer?

Mr Casey—Dr David Chaplow was the person who was part of the Palmer team who undertook the Palmer review and advised Mr Palmer in relation to mental health issues. He was, at the time, the head of forensic psychiatry in New Zealand.

Mr GEORGIOU—He could have been leaping around in the bush. He was not Palmer. It was the Palmer report and it was the Palmer recommendation. You ignored it. You did not establish—

Mr Metcalfe—Mr Chair, I think we are being slightly verballed here by Mr Georgiou. I am advised that it was a decision by the minister of the time to proceed in this particular way. It was not a decision by the department.

Mr GEORGIOU—No, you are not being verballed, because we were told that it was a decision of the department.

CHAIR—Mr Georgiou, just hold on a second. I have to go for a minute and the deputy chair will take over. If she has to go, there will have to be a resolution of the committee to have someone else chair for a few minutes. Excuse me.

ACTING CHAIR (Mrs Vale)—Thank you.

Mr GEORGIOU—No, Mr Metcalfe, I was not verballing you. I asked a direct question about who made the decision, and Mr Casey advised me that the department had made the decision.

Mr Metcalfe—On advice, Mr Georgiou, can I correct the answer, then? If the impression was that it was a departmental decision, no response to the Palmer report was within the purview of the department. The then minister took a major submission to cabinet in relation to the recommendations not only of the Palmer report but of Neil Comrie's subsequent report, and the government announced a major series of reforms in early October 2005. In relation to this particular matter, advice was taken by the psychiatric professional who assisted Mr Palmer. I know Mr Palmer well. He is a distinguished Australian. He is a very fine policeman. He is not a psychiatrist. Medical advice was sought and consultation occurred with the Ombudsman in relation to the decision taken by the government to proceed in this manner.

Mr GEORGIOU—I will leave aside your gloss on Mr Palmer's experience in the medical field but, relating to the experts in the field, including DeHAG, their perspective is that this recommendation should be implemented. It was a unanimous recommendation of DeHAG. They take the view that they exist at the pleasure of the secretary. They are not a statutory body. They do not have the necessary powers or resources to carry out independent external reviews of the health and medical services provided to immigration detainees and of their welfare. This is a fairly large issue. The Ombudsman does not have the resources and you do not have the resources but, even more importantly, given the history of the department—which actually has improved, with caveats—I would say that this is really troubling. You have a strong recommendation. You have been found in breach of your duty of care to detainees precisely on mental health grounds. Your department has a long history of being very flexible in its discharge of its duty of care. You get a recommendation and it is not implemented. Can I urge the department to reconsider advice to the minister on this particular matter because this is also going to be—

Mr Metcalfe—I think you are absolutely right. This is a matter for a government decision. It is not an issue that the department can or should decide upon, and I am sure that it is an issue that this committee will reflect upon. The point is taken, Mr Georgiou. I must say, though, that we have been very pleased with the advice provided by DeHAG. It forms a collection of some of the most senior medical professionals in Australia and represents not only psychiatric medical areas but general practitioners, the nursing area and a whole range of other areas. It has represented a major development in relation to this area. The particular point about the Palmer

recommendation was not acted upon, on advice, by the previous government. It is obviously an issue for the new government as to whether it wants us to proceed in that area.

Mr GEORGIOU—On the issue of the advice being acted upon—sometimes advice is a matter of the temper of the times, especially for a body which has no statutory existence. My recollection is that the Immigration Detention Advisory Group kept on putting up advice to the department and it was consistently ignored. The concern that Mr Palmer had was that it should be adequately staffed. Maybe as an interim step you would consider reconsidering the Palmer recommendation?

Mr Metcalfe—That is, of course, a matter for the government.

Mr GEORGIOU—There are some complex relationships between the government and the departmental head. Could I recommend you use all your resources!

Mr Metcalfe—What advice I provide to a minister is, of course, between me and the minister. Ultimately, we should be very clear about not getting confused about roles. I do not make policy and I do not make decisions of the government. I provide advice and I implement decisions, and that is what I will do with as much professionalism and influence as I possibly can.

Mr GEORGIOU—I just observe that you have no problems saying that you advised the previous government in particular ways.

ACTING CHAIR—Thank you very much. Mr Zappia has to go down to the chamber to give a speech, so I will ask him to ask his questions.

Mr ZAPPIA—Mr Metcalfe, you commented earlier that there were about 1,000 matters before the courts at the moment and I want to confirm whether that was the figure. Secondly, of those matters that go to court, can you give some indication of how many decisions uphold the department's position and how many the detainee's position? And what is the cost to the community of these court cases?

Mr Metcalfe—I might provide a clear answer on notice, if that is okay.

Mr ZAPPIA—Sure.

Mr Metcalfe—I receive a regular report in relation to litigation that the department is involved in. I understand that we now have just under 1,000. It was 998 or 999 matters variously in the Administrative Appeals Tribunal, the Federal Magistrates Court, the Federal Court and the High Court. That represents an extraordinary decline in the numbers before the courts. Interestingly, the actual number of applications continues at a relatively high figure. What that means is that finalisations are occurring more quickly. I said earlier that some very cooperative work between my department, the Attorney-General's Department and the courts has resulted in more effective processes and therefore quicker resolution on matters. Again, I will take on notice the issue of success rates, but the success rate of the government in defended matters before the courts is well above 90 per cent. I will take on notice the cost of litigation.

Mr ZAPPIA—Thank you.

Mr Metcalfe—In previous years, it has amounted to some tens of millions of dollars. I will obtain a figure for the last financial year and provide it to the committee.

Mr ZAPPIA—Thank you.

Mr RANDALL—I have a range of questions, and if I go on too long I will come back later. Firstly, I would like to congratulate you, Mr Metcalfe, and the department. I have found the recent years of dealing with your department far easier and far more understanding as a local representative. I appreciate that there is a new culture within the department and its transparency, as far as I am concerned as a local member, has been very helpful. Thank you very much.

Mr Metcalfe—Thank you.

Mr RANDALL—Your figures here say you have got 247 in detention but—and this is associated with previous questions—you have people in residential housing, transit accommodation, temporary detention, community detention et cetera. How many people that are unlawful noncitizens would be on your books?

Mr Metcalfe—We estimate that something than 50,000 people are in Australia illegally. As I have said, that figure has remained relatively stable for some time. We have been able to achieve the very significant reduction in detention that as part of status resolution for being required to ensure the availability of people while keeping that number of illegals in Australia. That figure of 50,000 is of course subject to significant churn. In fact, the largest number of overstayers in Australia, in absolute numbers, is I think citizens of the United States of America.

Ms O'Connell—That is right—just.

Mr Metcalfe—Our experience is that few of those people overstay for very long. They may just not bother renewing their visa and then they would simply leave at the end of that time.

Mr RANDALL—On that matter—and this leads on from what Mr Zappia said about cases before the courts et cetera—when people have a determination and it is deemed that they are to leave or be removed, what number of them fail to appear for removal?

Ms O'Connell—There can be a range of circumstances why people do not appear immediately for removal. Certainly, our following through of current caseload shows that quite a significant number, if given a little time to arrange their removal, will depart without any further intervention or action on the part of the department. On a recent caseload that we specifically studied in depth, almost 50 per cent—and I can come back with a precise figure—of those given a negative decision would go. Sometimes they may require a little more time than their bridging visas allow, and they would be given an extension to make those departure arrangements. Provided that they were genuinely making departure arrangements, we would allow the extension of a temporary stay. Of the remaining caseload, some of the reasons people do not depart might be that they have some immediate issue preventing their departure, such as a health condition or something like that. Equally, people may be pursuing other forms of review. They may have been through merits review and then be pursuing judicial review, and therefore they stay during those ongoing proceedings. And there are some who do not depart and remain awful, and they become subject to our compliance activity to locate them.

Mr RANDALL—That is more the point that I am going to. I have heard your broad description of those who have presented for removal, but do you have the figures on the number of people who have basically disappeared into the community and have not presented for removal after a negative decision?

Ms O'Connell—I would have to get the figures for you on those who are subject to a negative decision. We talked about the broad number of people who are unlawfully in Australia. They may be people who have come to Australia and have never pursued any other visa decision. They might have arrived on a visitor visa and then just stayed without pursuing any action. We talk about that figure of overstayers being people who may have pursued some decision, got a no and become unlawful. They are broadly the people who are unlawful in Australia. Some of them will have pursued all types of review and some of them may have pursued no types of review.

Mr RANDALL—I appreciate your background explanation of why they might be overstayers and not presenting for removal. But, seriously, maintaining the integrity of our migration system is a problem not only in Australia but worldwide—and this is what we are all about in this review and many others. I suspect that the figures cannot be accurate because, if you do not know who or where the overstayers are, it is hard to tell. I am after the figures on those who have not presented for removal after it has been deemed that they should leave. I would appreciate it if you could provide that figure.

Ms O'Connell—We will take that on notice and get you that exact figure. It will be a proportion of that group of 50,000 overstayers.

Mr Metcalfe—Indeed, we have made some important structural changes in the department over the last few months. One of those has been to place Ms O'Connell's division in the group of divisions which relate to migration, refugees and now compliance. The compliance activity is seen as a support for overall program activity. It is not a program unto itself. It is about ensuring the very objective that you outlined before: a migration system that has strong public confidence.

There are a whole variety of techniques that can be used. Traditionally, the department's approach was to have teams of field officers who went looking for people but measures such as working with employers to ensure that they do not employ illegal workers, information campaigns and those sorts of things are also very important. The other aspect though was that Ms O'Connell's division is responsible for what we call status resolution. Within the department we are very anxious to ensure the very point that you are making that as we make decisions in relation to people who have sought further stay or permanency in Australia—perhaps best known are people who may seek asylum in Australia but of course there may be people who seek to stay for other reasons and are unsuccessful—we ensure that ultimately, following any merits or judicial reviews, those people whose status has been determined as that they should leave Australia do in fact do so. That is a clear objective. People are treated very fairly, they have opportunities to make their case but, if the ultimate decision is that they should not be here, we provide support to them to leave. The community care pilot and the other measures that we have introduced in the last two or three years give us very strong hope that the earlier we can intervene and the more support we can provide for people will achieve those sorts of results rather than the traditional arrangement whereby people may simply lose contact with the department or end up in immigration detention. I think we are now finding that there are other ways in which we can manage it and we are very keen to continue to pursue those ways.

Mr RANDALL—Just as an aside, you mentioned earlier a figure of about 50,000—you explained all that—which is a rather large number of people on your books but you are obviously more successful than other countries. In comparison in Britain 74 per cent of people who get a negative decision do not present for removal.

Mr Metcalfe—It is an issue for immigration services as well. I think Australia has a very good record in this area. We have geographic advantages. The fact that three per cent of the American population is illegally in the country is an extraordinary figure, whereas the figure here is much, much less than one per cent. Our economy does not depend upon illegal work and the same issues of exploitation do not arise in the same amounts as may happen elsewhere. It still is an issue and it is something that we are very focused on. But a clear priority for this minister and indeed for previous ministers has been getting better outcomes for people where the decision has been that they should not stay. But also we are continuing to work with the people who never come near us in the first place, who come here on a tourist visa and then simply stay on in the community. That is the majority of those 50,000 people.

Mr RANDALL—Two similar questions, although I do not want to dominate—ministerial interventions I understand are at a similar level to those of the previous government and the minister's decisions are of a similar nature. I understand the figures are a two-thirds rejection with respect to ministerial interventions. Is that right?

Ms Keski-Nummi—In terms of ministerial intervention I would have to come back to you with absolute correct numbers around that but broadly speaking we have not seen a great increase in minister intervention requests. In terms of the proportion the minister may have intervened on to those where he has not intervened, I would have to come back to you on that.

Mr RANDALL—I would be interested in those figures because they have not been published. Port Hedland is no longer a detention centre, is it?

Mr Metcalfe—It was originally the BHP single men's quarters and now some other single men are living there. It is now leased out.

Mr RANDALL—I want to get that on the record. Why don't you sell it and just get rid of it?

Mr Metcalfe—It is available as a contingency. I think one of the great lessons of a decade ago is that the system came close to collapse because of extraordinarily large numbers of arrivals with simply nowhere to accommodate people. I hope and pray that we never receive those numbers of unauthorised arrivals into the future, one, because it means people are risking their lives in very dangerous seas but, two, because the system does require accommodation for identification purposes even if that is very short term.

The government's stated intention is that any unauthorised arrivals would initially be accommodated on Christmas Island. That provides a large degree of capacity, but the view is that we should retain some for contingencies. The availability is with about three months notice, from memory. It may well be in the future that there is sufficient comfort about the overall level of facilities that it is no longer needed to be owned and it could be sold. Right now it is available and back in the community assisting with the housing crisis in Port Hedland.

Mr Correll—I would like to emphasise the point that the residential housing facilities are very different in terms of standard of security than an immigration detention centre. They are clearly not an immigration detention centre. If one compared the immigration detention centre in Perth, for example, with the residential housing project in the community several kilometres away, you would see that there is absolutely no comparison in the nature of those circumstances. Children are only located in a residential housing facility for the shortest practical period of time whilst community placements are being looked for and whilst relevant health and identity checks are being undertaken. It is simply not feasible to be able to expect to be instantly able to identify a community housing option in cases for families.

I also draw the committee's attention back to value No. 3, which states very clearly:

Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.

In a 'centre'—that is the focus; it does not refer to residential housing.

Mr GEORGIOU—That is totally besides the point.

ACTING CHAIR—Could you hold that thought for a moment, Mr Georgiou?

Mr GEORGIOU—No, if there are responses added in then they need to be responded to. The point was that children were not supposed to be held, except for initial determinations, in any immigration facility other than in the community. You can gloss it as many ways as you like.

ACTING CHAIR—Perhaps we can come back to that after Mrs D'Ath has asked a question.

Mrs D'ATH—Who makes the decision to return a person or a family?

Mr Metcalfe—The decision that a person should not stay in Australia is ordinarily made by a departmental officer. The level of that officer would vary depending upon the nature of the application. For example, if it were a person seeking to stay in Australia on the basis of a family relationship with an Australian and the person did not qualify under the relevant regulations, that would be done by a middle-ranking departmental officer. Those decisions taken onshore in Australia are subject to review and frequently people exercise merits review, initially to the Migration Review Tribunal and on occasion then seek to litigate that matter through the court system. A refusal by the Migration Review Tribunal or the Refugee Review Tribunal also enlivens the non-compellable powers that the minister has, the so-called ministerial intervention process. Initially, decisions are taken by middle-ranking state public servants, but quite often the final decision is taken by a tribunal member or it may be an issue that is considered by the minister.

Mrs D'ATH—If someone or a family has asked for ministerial intervention on more than one occasion, is it the case that it is determined without consideration by the minister at all on those further occasions?

Ms Keski-Nummi—No, each time a ministerial intervention request is put in it is looked at and a decision is made against the minister's guidelines whether to refer or not. Sometimes a

second or third request may be referred to the minister, if there is substantial new information or other issues arise. But if the information is much the same as previous ministerial intervention requests then it would not normally be referred to the minister.

Mrs D'ATH—Is that explained to the individuals or families who are seeking ministerial intervention—that it is not the minister's decision to refuse it but that the department has decided not to refer it to the minister?

Ms Keski-Nummi—That would really depend on whether the individual has talked to a departmental officer before putting in a ministerial intervention request. It also depends on who their representatives might be in terms of putting in those requests. We certainly have had discussions with a number of organisations and key stakeholders about the guidelines when a case would normally be referred to the minister. I cannot categorically say that every individual who puts in a request would have that information. The letter would normally say that unless there is substantial new information it would not normally be referred to the minister.

CHAIR—Once a decision has been made that the person or family is going to be removed, is it the case that on every occasion the individual or family will be detained until they are returned?

Ms O'Connell—No, that is not the case. We use every opportunity for the client—be it a family or an individual—to return from the community. We have provisions to provide them with bridging visas so that, provided someone is making genuine departure arrangements, they can remain lawfully in the community and make those arrangements to depart. We are also now piloting the assisted voluntary return. If someone does not actually have the means to depart, or there are some other factors in relation to their return, they may use the assisted voluntary return service under the Community Care pilot. As a last resort, where someone will not depart, having been given opportunities to, we may use detention in order to remove someone.

Mrs D'ATH—Is whether the individual or family will be detained prior to their removal a discretionary decision?

Ms O'Connell—We only detain families as an absolute last resort. When we do detain families they are not placed in immigration detention centres. But it is a conscious decision to detain, yes.

Mrs D'ATH—We discussed earlier a family where the father was separated and sent to Maribyrnong Detention Centre. Once the decision is made that a family who has resided in the community for many years, and reported on a regular basis, should be returned home, what criteria are used to decide that, instead of allowing that family to return to their residence to pack their belongings, they should be detained once they turn up at a facility? What are the criteria in deciding that the family should not be able to leave?

Ms O'Connell—Where they have persistently non-complied in the past. In that example, there were numerous undertakings by the family. They were provided with bridging visas to remain in the community on departure grounds and it was clear that they would depart. There was engagement at one point of the assisted voluntary return service for them to return voluntarily. They disengaged from that service as well and did not make departure arrangements.

There was a repeated pattern of not complying with the bridging visa conditions to depart from the community. At that point, where it is very clear that they were given every opportunity to depart from the community and that given the possible use of an assisted voluntary returns service the family will not make arrangements to depart, a decision is made. It was only in that circumstance that a decision was made to detain.

Mr Metcalfe—I refer you to how that fits within the minister's direction 2(c)—unlawful noncitizens who have repeatedly refused to comply with their visa conditions. This would appear to be the case. Direction 5 says that detention in immigration detention centres is only to be used as a last resort, and is only to be used for the shortest practical time. The family was not held in a detention centre. They were held in a transit accommodation centre and it was only for 24 hours or so pending their return. Children will never be detained in immigration detention centres.

Mrs D'ATH—But they were certainly in a facility where they could not come and go as they please. That is why I use the word 'detain'—because they were not free to come and go. I understand the guidelines that the minister has released, but I am looking more at the day-to-day practice and process of the department. I am interested in knowing whether it is normal practice that, when you get to a point that an individual or family is not voluntarily participating in their return and there is a need to take more proactive steps, there is no forewarning. Is it a fact that people are led to believe that they are simply coming in for a normal reporting process and that when they come in they are told they are not allowed to leave? Is that normal practice, and why do we believe that we need to do that? I am thinking from the point of view of a normal human being that, for example, there could be a cat and dog at home or food may still be out on the table et cetera. These people have turned up just thinking they are at a normal reporting meeting—and they do not get to go home. Why do we feel the necessity to not even let those people return home and make what arrangements they need to—even if they are being accompanied—so that they can finalise matters?

Ms O'Connell—I can assure you that is not the circumstance. People regularly attend our offices. They give undertakings that they will depart. We provide them with a lawful visa. They are counselled then that unless they do make the departure arrangements we will detain them, and as to this particular circumstance that has happened on quite a number of occasions. They engaged in a voluntary return. There was a very clear expectation around making departure arrangements and—very, very consciously and persistently—departure arrangements were not made.

Mrs D'ATH—My question is not so much about a concentration on one particular case. I am more interested in the broader process. Is it normal that people are not given any warning? Do you think they are a flight risk when you have been able to track where they have lived for eight years? Is it a normal process that once that decision has been made they are not then given any warning and that you wait until they come in for their next check and then detain them?

Ms O'Connell—No, they are given warnings. There were several warnings issued in relation to that particular example, and that is the practice. It is not a sudden event. People are well and truly warned. They understand the expectations. They understand what other options there are. Having said that, some people, when given regular opportunities, warnings, briefings and counselling sessions—and when written undertakings by them to depart have been received—still in no way make preparations for departure. In the end there has to be—and we certainly

only want to use it as a last resort—an ability to be able to enforce removal where people refuse, basically, to go.

Mrs D'ATH—I get your point, but what do you mean by warning? Is it a warning that they may end up being returned? Or is it that they are going to be returned but there is no date given? In this case—and I am wanting to know if this is more the ongoing practice—is it the case that you were not actually warning this family that when they turned up to that appointment on that day they would be detained and would be removed? They were not warned that that was going to happen that day. They simply turned up thinking they were going to a normal reporting process. Is that the normal practice? When you say 'warnings', they were not given any indication that they were going to be removed that day or that they would have to report on that day for removal.

Ms O'Connell—I would have to check in that case as to whether they were or were not in relation to that day, but I would say that there was a very clear expectation—and, as I said, written undertakings—that the family would depart. Indeed, there was engagement at the assisted voluntary returns service with a view to setting the date, making the arrangements—all of those things. So I do not think that in any way it was a surprise, in that it was very clear in terms of the undertakings and expectations. That was repeated often. Unfortunately, some people believe that we will not in the end take any action to enforce removal where people simply do not voluntarily depart. We are interested in having a process—

Mrs D'ATH—Sorry, I do not mean to interrupt but I know you are just repeating the same processes. My point is not whether they were told over and over again that this could happen or whether they were given every opportunity. I do not know the details of those circumstances. I will assume, on the face of it, that that is all absolutely accurate. The point I am getting to is that final process. I understand that the process cannot go on indefinitely. I do not believe that the process should go on indefinitely. At some point, a decision has got to be made. It is more how we go about making that final decision and whether we simply as a matter of course, either for an individual or for a family who have lived here for many, many years, go through the processes. For whatever reason, the process has taken a long time. The issue is how we go about making that final decision and how we treat them as individuals in implementing that final decision. That is the point I am getting to. It is just that final process, not why that final decision had to be made in this particular circumstance. It is more the process we adopt and whether it is a matter of giving some credibility—those are my bells. I will leave it to one of the other committee members.

ACTING CHAIR—We have to go down for a division. We will be back as soon as we can.

Proceedings suspended from 10.52 am to 11.06 am

CHAIR—Thank you very much, everyone, for your patience; we are now back online. I understand that Senator Hanson-Young may have to go back to the Senate for a division, so we will go to questions from her first.

Senator HANSON-YOUNG—I would just like to pick up on some of the things that you said earlier. Just to clarify: do you have the numbers of children who are being held in any of the alternative facilities—whether in transition centres or community housing projects?

Mr Casey—Yes, we have two children in immigration residential housing, and we have 12 children who are in community detention arrangements. So, in total, of that population, 14 are children.

Senator HANSON-YOUNG—So there are no children left in transit centres?

Mr Casey—There are no children in transit accommodation.

Senator HANSON-YOUNG—Of those 14 children, are they all with their parents?

Mr Casey—Yes.

Senator HANSON-YOUNG—And there has not been any time where they have been separated?

Mr Casey—Can I just qualify that: I will check that, but my understanding is that we do not currently have any unaccompanied children who might be in community fostering arrangements. But I will check that for you.

Senator HANSON-YOUNG—That would be really helpful. On the transit centres: there is a seven day rule, isn't there?

Mr Casey—The transit accommodation is short term. The usual time frame would be that people would move in short term. But in a sense, if it is a firm rule, it is about: are people likely to leave quickly? It is not designed for people to remain there for more than—certainly for no more than two weeks.

Senator HANSON-YOUNG—Why did I think it was seven days?

Mr Casey—That was the original thing. The design concept was about seven days.

Mr Metcalfe—The genesis of the transit centres is an interesting point. To hark back to Neil Comrie's report in relation to Vivian Alvarez, Mr Comrie was very critical of—apart from all the other things that he needed to be critical about—the fact that, when Ms Alvarez was detained in Brisbane, she was kept in a motel. There were real issues as to her privacy. His view was that—acknowledging the fact that it was utterly inappropriate for her to be detained at all, given that she was an Australian citizen, and so it was illegal—

Senator HANSON-YOUNG—I have to go to a division, I am sorry; I will be back.

Mr Metcalfe—Chair, I will just place on the record that the genesis of the transit centres was to ensure—

CHAIR—That is the benefit of addressing your remarks through the chair: the chair is still there!

Mr Metcalfe—Chair, the transit centre concept actually arose from a recommendation from Neil Comrie that there should be appropriate short-term but institutional arrangements, so that

there was proper admission, care, and exit procedures for people, rather than the practice of simply keeping people in motels, on which—apart from privacy, and other reasons—there were real allegations as to the appropriate medical care for Ms Alvarez and whatever. So the concept of virtually no security, Formule 1 motel style immigration transit accommodation centres were conceived as a way to overcome the issues that Mr Comrie had identified in his review.

Mr GEORGIOU—How long had those two children in RHPs been there?

Mr Casey—I would have to take that on notice. I would not know the length of time that family had been there.

Mr GEORGIOU—There is nothing minimal about the security in the transit centres. It is quite significant.

Mr Metcalfe—It is certainly not a detention centre, Mr Georgiou. It is as far from Villawood as you could possibly get with providing some level of security. I think you know and I know that if someone wanted to leave, it would not be very difficult. It is more the appearance of security but the fence is similar to one in any Australian suburban backyard.

Mrs D'ATH—Prior to us having to leave briefly I was putting the question to Ms O'Connell about why the particular family that we have been discussing were not allowed to return to their home to grab belongings. I understand you may have additional information on that.

Ms O'Connell—I do, thank you. The information is that, after they were detained in our offices, they were taken back to the home to pack some belongings and make some arrangements about their home and the future of their belongings and then, after that period of time back at their home, they were then taken to the transit accommodation centre.

Mrs D'ATH—Are you aware of what happened when—I do not know whether it was the detention centre or wherever they normally do the reporting—they were given the decision that they would be detained. My understanding is that the husband was separated and told the news and then the remainder of the family were. They were not reunited at any stage. Do you have the facts about how that actually occurred?

Ms O'Connell—I do not have the facts as to how they were told of the decision. I know that there were some extenuating circumstances in relation to the family because of concerns in relation to the father about the potential for self-harm. There was a need to take that into account about some of the decision making. My understanding is, when the family went back to the home after being detained in our offices, that they went as a whole family not separately. I can check that, but certainly my understanding is that they went as a family. Certainly, after that when they were placed in detention the mother, adult child and young child were placed in the immigration transit accommodation and the father in the detention centre. They did see each other after they were separated.

Mrs D'ATH—You may want to check those facts because we actually spoke to the family while we were visiting and they had not seen each other. I will not go into the details why, but you might want to clarify those facts. I would ask if you take on notice to actually check whether the entire family were returned home and also the reasons why they would be separated to be

told that they are actually going to be returned home and not told as a family unit collectively. I ask you to take that on notice.

Mr Metcalfe—We will of course cooperate as much as we possibly can. I am concerned that we are getting into areas relating to the family's privacy. Now the family may well have decided to raise these issues publicly and have waived any issues about privacy, but I would perhaps ask that we cooperate with the committee secretariat so that the information can be provided in a way that protects people's privacy but are able to assure you as to how the situation occurred.

Mrs D'ATH—I do appreciate the importance of the privacy of the family. My questioning really goes to process and whether, if it occurred on this occasion, that is a normal process or in what circumstances you would see the need to tell family members separately and how that process would occur, so I appreciate that.

Ms O'Connell—I can certainly tell you that is an unusual occurrence. Decisions are normally handed down to the full family where they affect the full family. It would only be where there are some concerns about an individual member of the family.

Mrs D'ATH—Thank you. We might now move on to other issues. You say in your submission, and the minister announced in July, that detention would be for the shortest period of time to deal with issues such as health, identity and security. This may be more of a policy question, but I will ask it anyway. Why is it perceived that people who have come into Australia unlawfully pose more of a health risk than people who have come to this country in any other way?

Mr Casey—I do not think they are seen as being more unhealthy. But, when a person comes to detention, the process is that we offer them a health assessment. That helps us to satisfy our duty of care that the person does not have health conditions that will go undetected.

Mrs D'ATH—You say that you 'offer' the health check to them. But if we are making it a criterion for release—you said that we are only going to hold them until we have done the health check, identity check and unacceptable security risk check—if they choose not to have a health assessment, do we just move on to the other two elements?

Mr Casey—The one element of health that is covered by public health regulations is if somebody is deemed to pose a TB risk or other public health risk.

Mrs D'ATH—Now that you have inspected a number of centres around the country, is it correct to say that the process of assessing for TB or obvious health risks can be done within a very short period of time, such as 24 hours?

Mr Casey—The process for assessing TB normally takes a bit longer than that but, if somebody has come from a high-risk area, health checks on those sorts of things are done as soon as possible.

Mr Metcalfe—It depends on the circumstances. For example, where a group of people arrives at a very remote part of Australia—say, north of Weipa—and needs to be transported, and there are issues about their ability to fly and duty of care issues for the people themselves as well as

for the staff accompanying them, we have found in the past that TB checking can be complicated, particularly given the need for access to a proper medical facilities such as a hospital. I can recall one example in the last three years where we had some quite significant issues around properly assessing people. Indeed, in that case we had a number of people who tested positive for TB and required admission to hospital both for their own safety and for the safety of the people with them. We have received very few people arriving in an unauthorised way by sea in the last few years but, by definition, people coming in boats from countries to our north will have been living in areas where there is a high incidence of TB, and therefore proper checking is critical.

The larger numbers of people coming to immigration detention facilities these days may be people who have arrived by air without authorisation or who have been in the Australian community or indeed the Australian prison system as convicted criminals who have been the subject of a visa cancellation and/or a have a rating of 'removal from Australia'. So different considerations apply there. I think it is important to put on record that, although medical screening will happen as soon as it possibly can, we have experienced issues in the past in remote locations with people who have arrived from places with a high incidence of TB. That has been borne out by the fact that we have seen people who have tested positive for TB.

Mrs D'ATH—Considering that the minister is in the process of establishing criteria on how we can release people as quickly as possible, do you believe we can set a fixed time frame within which the health checks must be completed? Can we say the health check must be conducted within 24 or 48 hours?

Mr Metcalfe—This is probably heading towards policy advice, but, as a nonclinician, I would be reluctant to set a prescribed time because of the circumstances I have just outlined. There certainly need to be expectations as to very prompt treatment, but you may be in a remote part of Australia where the local facilities may not have that capability to assess. The whole issue here is safety of the Australian community and safety of the people themselves. The health criteria are very much set up around that particular way. There is a very clear guideline from the minister about keeping people in detention for the shortest possible time, but I personally think that, were we to say 24 hours, 36 hours, 48 hours or whatever, you would always find the exception that would make that difficult. We are in no doubt whatsoever as to the expectation of the government—that is, to ensure that the stay in detention is as short as possible for whatever reasons.

Mrs D'ATH—I will move on to the second element of what needs to be identified to allow release under alternative arrangements: identity. This committee has heard in a number of public hearings of the difficulty that some people have with providing sufficient or satisfactory evidence to the department to prove their identity. What discretion is there, and at what point do you say all reasonable attempts have been made? Or do you just hold that person indefinitely because you cannot verify their identity?

Mr Metcalfe—No, we do not. I think the figures show that that is the case. There are very few people in immigration detention, and those who are there are there for short periods of time. The number of long-stay cases—including some of the most famous cases in the past of very long-term detention—have been a result of where there have been real doubts as to a person's true identity and the ability for them to be assessed for security and other reasons as to whether they

will do harm to the Australian community. One of the reforms that were put in place—in fact before my arrival as secretary of the department—in the immediate wake of the Cornelia Rau case was the establishment of an identity verification service within the department with a far more positive and active process of seeking to establish a person's identity and, importantly, given her circumstances, to ensure very strong cooperation with missing persons units and other bodies so that someone who may have forgotten or lost their identity is in fact able to be identified. We now have several examples of how, through that service, people who were Australian citizens, who suffered from mental illness and who thought they were foreign nationals illegally in Australia have been identified, have never been in detention and have been reunited by my department with the appropriate healthcare authorities. There has been a case in Tasmania. We have a case in Queensland of a gentleman from the Ukraine who was suffering amnesia; he was identified and placed in contact with his family. So, that system, which probably always should have been there, is a welcome addition; it certainly works.

There are, of course, the cases—again, we do not see many of these but there are some—of people who actively refuse to cooperate in relation to providing identity, who destroy identity documents en route to Australia and who do not cooperate in relation to indicating who they are. Those are challenging cases and there are procedures as to how they are managed. All of this is now subject to a requirement that people are in detention for the shortest period of time.

CHAIR—The deputy chair has to go and chair the Main Committee. Would you like to quickly ask your question and we will come back to Yvette again. I am sorry, but I am just trying to manage everyone.

Mrs VALE—Just briefly, I want to ask about victims of people trafficking. How many do we have in Australia at the present time? Also, how do we deal with such people when they actually come into your purview? Do we keep them in detention? Do we deport them as urgently as possible? I am being mindful that these people, who are victims, have often been in very traumatic circumstances. I would just like to know the policy on how we treat victims of people trafficking.

Ms O'Connell—Certainly. I can provide you with a copy of the whole-of-government approach to people trafficking that outlines a series of measures. On the Immigration side, those measures now include a bridging visa that people who are the victims of trafficking are immediately provided with upon being found. We work with the Australian Federal Police and the Office for Women in terms of providing support to those people, providing immediate counselling for those people and also providing somewhere for them to stay and be looked after. They are certainly not detained and the bridging visa framework allows them to remain lawfully in the community whilst they are working with the police and other authorities. They are also supported during that time. There is care, support, accommodation—all of those things—provided for them because they need to be taken out of the arrangements that were in place. Following that, there are witness protection visas that they are eligible for and there are both temporary visas and longer term visas.

The people-trafficking arrangements are led from the Attorney-General's portfolio and Minister Bob Debus recently held a roundtable on people-trafficking measures, looking at a range of issues in terms of other possible support arrangements, possible changes to the visa framework et cetera to support people who are victims of traffickers.

Mr Metcalfe—In terms of numbers, we will take that on notice. I do not want to appear glib in such a sensitive area, but there is a slight Donald Rumsfeld comment there: we know what we know, but we do not know what we do not know.

CHAIR—Unknown unknowns.

Mr Metcalfe—That is not someone I normally quote. But certainly there has been a very determined effort to ensure that victims of trafficking are identified and are assisted through the process, as Ms O'Connell said. But any figure we give, of course, is what we know, and the extent to which there are other victims of trafficking who have not come to our attention or have not been found is something that we would not be able to comment on.

Mrs VALE—So the department actually accepts a duty of care over victims when they are identified?

Ms O'Connell—We do in terms of the bridging visa framework and supporting those people in the community, yes, and working with some of the network of support groups that are available.

Mrs VALE—Is the department proactive in trying to search out people who might be victims, or is that left to the Attorney-General's Department?

Ms O'Connell—No, we are, and I would also say there is a dedicated team within the Australian Federal Police. We work very closely with them. We have our compliance field officers trained to look for any possible signs of people trafficking—any possible warning signs at all—and upon any of those signs we refer immediately to the Australian Federal Police and they take it further in terms of investigations. Our referral rate to the AFP is considerably higher than the number of actual cases that did involve trafficking, which just demonstrates that on balance, if you like, we take the approach that, if there is any concern, we refer to the police for further investigation work.

Mrs VALE—Just one last question: are we mindful with these people of the trauma they have had and the fact that they are in Australia because they want to be but that they have been tricked in some way? Do we encourage them to stay, or are they deported as a matter of policy as soon as they are identified?

Mr Metcalfe—They are not deported as a matter of policy. They are provided with a bridging visa for immediate stay and support.

Mrs VALE—And so their individual circumstances can be considered?

Mr Metcalfe—Individual circumstances then apply.

Mrs D'ATH—If I can stay with the issue of identity. I appreciate there have been changes in the system and that they have shown positive results, which is fantastic to hear, but my question goes to those who, in whatever circumstances in the country they have come from, which may be heavily involved in conflict, have no written documentation. It is very hard to get contact with family members to verify identity. Where you cannot verify identity, at what point do you say:

'We cannot verify this person's identity. We have to say that what they put to us is accurate,' and who is the decider?

Mr Correll—I think the bottom line issue here is the issue of risk to the community overall. Therefore, someone who was in detention and the critical issue was unknown identity then (1) that individual is subject to case management and has a dedicated case manager focusing on their task and (2) the case would have been referred to the specialist identity resolution area that Mr Metcalfe referred to. There would then be an attempt to narrow down the information, to track down through various sources the identity of the individual.

Sometimes that can be a very difficult process to get resolution to, and during that process the potential risk to the community issue would be an issue that would be kept under a reviewed position. If the risk position were seen, from all the information available, to be low risk then alternative options would be looked at for the placement of that individual. That is handled under the placement model that is used within our detention areas. That placement model is based totally around risk assessment.

Mr GEORGIOU—At what stage do you say, 'We can't get this guy's travel documents; enough is enough. We have no evidentiary basis on which to think that he is a risk'? As the Ombudsman pointed out, you need an evidentiary basis for it. When do you actually—**Mr Metcalfe**—I think it is a continuum. The people who may arrive here without identity documents usually destroy them so that they cannot be readily removed from Australia. They become, usually, asylum seekers and will then volunteer their true identity. So, although they may not have a travel document, they claim to be a national of a certain country. It is not unknown that some people may claim to be nationals of a different country, which is involved in conflict or human rights abuses, because they believe that may assist their claim. That ultimately becomes an issue of careful assessment as to what their nationality might be.

But you are absolutely right: even if it has been decided that a person is not under Australia's protection obligations, there is a practical point as to whether or not there is a travel document upon which they can depart Australia. What I think we have now seen in the new ways of handling matters—re-emphasised in the minister's directions—is that people would not be in detention in this circumstance. There is a risk issue—and that is overcome quite rapidly as to whether there is a security risk or whatever to the Australian nation in this situation—and then there is a practical issue. Quite often those are the sorts of the issues that come before ministers in a ministerial intervention situation.

So, on the whole issue of identity and at what point a decision is taken that, although we do not know who you are, we do not have any ability to remove you from Australia, there is no black-and-white answer because there are so many different gradations through the processes as to where that particular point may occur.

CHAIR—Because of the divisions, we are going to be here until quarter to, so we are letting this slide along a bit. We have two or three more people who want to ask questions, so can we please keep the questions short and the answers sharp—I know they have been sharp already, but even sharper.

Mrs D'ATH—You mentioned there was a flexible range of facilities on Christmas island. We did not get the opportunity to have a look at community residents, but my understanding is that, where families are put into the community on Christmas Island, they are actually residing in the staff residence. There is no specific residence set aside. We could get an influx of 100 or 200 people coming in by boat, with a lot of families. We are aware that the staff are not already there; you would have to fly the staff in to help process and deal with those people. The staff are going to need the residence, so where are you going to put the families?

Mr Correll—In my earlier comments on Christmas Island, I mentioned that the construction camp was being looked at as a possible option in this area. The facilities there in fact are quite sound facilities. They could potentially provide the capacity for, depending on the composition of the group, around 200 people. So that is one option that is under active consideration at the present stage as to the use of that type of facility. The duplexes, which are the staff housing that you referred to, have been used for family groups to date but that has been able to be handled because the numbers have been relatively small.

So essentially our strategy for Christmas Island, which is still under review, has been to see that the range of different facilities there that are community based facilities—there are also staff flats on the island—represent, if you like, a range of different types of options that can be used depending on the circumstances of a particular boat arrival group. We believe for the future that we need to be looking more closely at establishing the community based arrangements, and this is where we think that the construction camp offers some opportunities.

Mr Metcalfe—We would be very grateful for any help you can give us with the Department of Finance and Deregulation about money!

Mr GEORGIOU—Not after the bad report on Christmas Island, mate.

Mr Metcalfe—I did not raise that, Mr Georgiou; you did.

CHAIR—Before I turn it over to Senators Hanson-Young and Bilyk, I have one short factual question for you. Are 501 detainees definitively not to be released under the new arrangements, given the cancellation of their visa on character grounds?

Ms O'Connell—Broadly speaking—and this is not the definitive answer that you have asked for—certainly the view is that an unlawful noncitizen who presents an unacceptable risk to the community would largely fall into that grouping.

Mr Metcalfe—The reason Ms O'Connell is being careful is that section 501 largely deals with criminality, but not entirely. There are people who may not be criminals but who otherwise have their visa cancelled for character reasons, such as inciting discord in the Australian community or being associated with criminals, so we are being very cautious in what we say. The vast majority of people whose visas are cancelled under section 501 have committed very serious criminal offences in Australia—murder, sex crimes—and a decision to cancel their visa is taken in the knowledge that they will be removed from Australia and that they are a risk to the community. So the answer is almost entirely yes, but you would never be completely definitive because of the other limbs of section 501.

Senator HANSON-YOUNG—Sorry I had to shout before. The minister announced on 15 July in response to claims about drugs being used in Villawood that he would refer that to the department to investigate. Have you done that, and what have been the findings?

Mr Casey—Yes, we have, through the Australian Federal Police. They have helped us engage a person who has experience in looking at similar sorts of environments, and we are currently in discussions with that person about a review of the processes and arrangements that both we and the detention service provider have in place to limit the risk of the illegal substances entering Villawood.

Senator HANSON-YOUNG—You have not finished the investigation then?

Mr Casey—We are undertaking a review of the policies and procedures to minimise the risk. In relation to the allegations that were made, particularly in the media, we have not been able to substantiate those allegations.

Senator HANSON-YOUNG—So you have not yet given a report to the minister?

Mr Casey—The report to the minister will be on the review of the processes. The minister has been advised.

Senator HANSON-YOUNG—That is great, thank you. I would just like to ask: has the department begun looking at addressing the concerns that people have about the long-term, ongoing suffering that people who have been released from detention are still experiencing in the community as a result of their detention? I am referring in particular to comments made by child psychologist Dr Jon Jureidini, from Adelaide hospital, that children in particular are suffering long term because of their detention and to what kind of responsibility we have as a duty of care once they have been released.

Mr Casey—The general view, and I know Dr Jureidini well, is that when a person leaves immigration detention as part of that process we would, through our health provider, engage them in any ongoing clinical care that they might require—that would certainly be our contemporary process—and we would try to set up, through arrangements if they are remaining in Australia, for them to be referred to appropriate healthcare providers for the future.

Senator HANSON-YOUNG—Is that restricted though by some of the Medicare and perhaps employment restrictions under bridging visas?

Mr Casey—Some people who are on bridging visas do not have the same level of access to Medicare or to work rights or issues like that. Broadly, where a person is in immigration detention we provide a range of health care. Where a person leaves immigration detention we try to provide them with information to take forward for any future health provider. But, in terms of carrying on a direct relationship with those people when they are then lawful, that is not something that our health service does.

Senator HANSON-YOUNG—Does the department see that there is perhaps a responsibility when a child is suffering from mental health issues as a result of having been in detention even though the child is now out in the community?

Mr Casey—As to the issue of responsibility, I think the ongoing care of a person after they have left detention is not a thing that we would directly be involved in, because they have become lawful and have gone into the community.

Senator HANSON-YOUNG—Whose responsibility should it be?

Mr Casey—It really is subject to the person's status when they leave detention. If there is a an ongoing healthcare need, and if they have access to the Australian healthcare system, then that would be supported through the healthcare system that is available to anyone.

Senator HANSON-YOUNG—Could you explain to me how the asylum seeker assistance scheme works?

Mr Casey—Broadly, and I have not got all the details with me, people who are in the early stages of asylum seeking and are found to be in need of support can be provided with that support through the asylum seeker assistance scheme. I can provide you with a more detailed overview of the scheme.

Senator HANSON-YOUNG—That would be good. I refer to the people who are being released into the community. We know that we have now done away with temporary protection visas. There is still a lot of concern by people working in a direct relationship with refugees in the community that some of the categories of bridging visas in particular are quite restrictive in terms of people's work rights, access to Medicare and other social services. Does the department have a plan for perhaps dealing with these restrictions into the future? Otherwise, do you see that is just the way that it is going to be?

Mr Metcalfe—That is really an issue for government policy. Those settings reflect previous government policy.

Senator HANSON-YOUNG—Sorry, I guess I am relating that directly to your comments made earlier about your implementation plan. Are there things in that plan that would address those concerns?

Mr Metcalfe—No. We are very familiar with the concerns. They have been raised for a number of years. They are not the subject of the specific announcements made by the minister on 29 July. But both the department and the minister are well aware of the issues relating to bridging visas and the various entitlements that may flow from bridging visas. That is not an area that has been the subject of announcement at this stage.

Senator HANSON-YOUNG—So there are no discussions at the moment between the department and the minister about what we could perhaps be doing? I realise it may be a policy issue but I am just wondering how much direction you have been given.

Mr Metcalfe—It is. It is inappropriate for me to talk about what discussions go on between the minister and the department. We have lots of discussions about lots of things.

Senator HANSON-YOUNG—So at this stage you have not been given any directions.

Mr Metcalfe—At this stage there have been no announcements by the minister on this issue.

Senator HANSON-YOUNG—That is great. Thank you, Mr Metcalfe.

Senator BILYK—I have a couple of questions on the budget. Before we go to those, I want to know about this. Are clients in the community on bridging visas eligible for the community care pilot or is it just for high-needs clients in community detention?

Ms O'Connell—The community care pilot does not operate for clients who are in community detention. Those arrangements are made for people who are in detention in terms of their health, accommodation et cetera. The community care pilot operates for those clients who do have a lawful status in the community, and typically those are the groups who are on bridging visas; in particular, where they have a number of vulnerability indicators. They may partake of a range of the different services under the community care pilot. Some, for example, are just using the assisted voluntary return component; others are getting the immigration counselling advice; and others are being provided with some support in the community while their cases are being resolved. Some may be receiving more than one of those services. It can be a range of those services that they are engaged in.

Senator BILYK—What is the annual budget allocated to the community detention program managed by the Red Cross?

Ms O'Connell—The community detention program is different to the community care pilot. I do have a summary of the community care pilot, if you are interested in the services, but I might ask Dermot to answer your question about community detention. There are approximately 50 people in community detention.

Mr Casey—If I were appearing before another committee I would have all the financial information but I am afraid I do not have it. I can provide it to you, though.

Senator BILYK—Thanks.

CHAIR—We will take that on notice, thank you.

Senator BILYK—What is the annual budget allocated to the Asylum Seeker Assistance Scheme—

Mr Casey—I will take that on notice to get the numbers exactly right.

Senator BILYK—and, once again, the community care pilot?

Ms O'Connell—The budget for the community care pilot for this financial year—and it is operating in three states: Queensland, New South Wales and Victoria—is $5.6 million. I am happy to provide you with the—

Senator BILYK—Sorry, what were the three states?

Ms O'Connell—Queensland, New South Wales and Victoria. I am happy to table this summary of how it operates.

Senator BILYK—Thank you.

CHAIR—I want to thank you and your staff for your indulgence. Doing both House and Senate divisions is above and beyond the call of duty for people from any department. I thank both the department and the members and senators who have been here asking questions for their attendance today. I thank Hansard, too.

Resolved (on motion by **Senator Bilyk**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.47 am