



Joint Select Committee on Australia's Immigration Detention Network

Final Report

March 2012

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FOREWORD

Responses to irregular migration vary, and views are as passionate as they are disparate. It is no secret that this inquiry unfolded within a highly contested political space, for which reason the Committee's conclusions had little chance of being unanimous. Accepting this, the Committee nevertheless sought to proceed openly and consultatively, with a view to taking an honest, no-holds-barred look at Australia's immigration detention network. Because in the midst of this bitterly contested political debate we find human beings: men, women and children whose lives should not be political fodder, people who have to live with the consequences of government decisions.

At its heart, this inquiry poses fundamental questions about our national identity. How does Australia treat people seeking asylum? What weight do we ascribe to human rights on our own borders? Is there a standard for how a civilised, humane society responds when people arrive uninvited asking for protection, irrespective of who they may be, their mode of arrival, or the challenges they pose? Whether discussing policy in Parliament or around the kitchen table, we each have to ask ourselves: does Australia pass this test?

It is a credit to the parliamentary process that so many different responses to these questions have been represented in over 3500 submissions to the inquiry, and through 15 separate hearings and site visits conducted by the Committee.

Much of the evidence received, both written and oral, was not easy or pleasant to engage with. The Committee was frequently reminded of the great human misery and suffering that is part and parcel of life for millions of people fleeing extreme conditions in countries around the world, of whom Australia sees only a tiny proportion. The Committee's particular focus was on the experiences of such people once they engage with the Australian polity, and become subject to conditions over which Australia has control.

The Committee has taken pains to comprehensively address its terms of reference, thus fulfilling the task it was given by the Parliament, but at the same time has tried to focus its attention on detention centre management, and health, security and assessment processes. It is these cornerstones of the immigration detention system that most profoundly impact on the experience of detainees.

The Committee's most fundamental conclusion is that asylum seekers should reside in held detention for as short a time as practicable. Evidence overwhelmingly indicates that prolonged detention exacts a heavy toll on people, most particularly on their mental health and wellbeing. While academics and psychologists tell us that mental health begins to erode after three months in detention, there are people with adverse security assessments in Australia's immigration system who have been detained for well over two years.

Looking inside Australia's detention network, what the Committee found were well-intentioned policies causing unintended harm. We found people who had spent months, and in many cases years, locked up without committing any crime. A branch of the immigration system premised on temporary detention for the purposes of processing, but in practice a system which had become synonymous with prolonged, and in a number of vexed cases, indefinite, incarceration.

Unsurprisingly, rates of mental illness among detainees are very high, as are rates of self harm and attempted suicide. Committee members witnessed firsthand the aftermath of such desperation during visits to detention facilities.

As well as the immeasurable human cost, however, the financial resources required to maintain such a disparate, isolated and heavily populated detention network cannot be ignored. Last financial year the Australian Government spent over \$772 million on running detention facilities. The estimated cost of running detention facilities in 2011-12 approaches \$629 million. As more people are transitioned out of facilities and into community detention, the projected cost of operating the community detention program in 2011-12 is \$150 million. This is a better, more cost-effective alternative.

The Committee therefore applauds the very substantial efforts already underway to reduce the number of people in held detention. To date, over 3700 people have been placed in community detention or on bridging visas under new initiatives announced in late 2011. Every one of these people is one fewer requiring harmful and expensive accommodation in a detention facility.

Accordingly, the Committee is keen to ensure, without compromising the safety of the community, that not one person is held in detention longer than necessary. A number of the recommendations contained in this report are grounded in the desire to build on the successes of the community detention and bridging visa programs already underway.

To this end, the Committee recommends that all reasonable steps be taken to limit detention to 90 days, and that where people are held any longer, the reasons for their prolonged detention be made public. In associated recommendations, the Committee advocates use be made of community detention wherever possible, while any necessary assessments are conducted.

At the same time, the Committee takes the view that more can be done for those who remain, for whatever reason, in held detention. The Committee has recommended that, as a matter of policy, detainees be accommodated in metropolitan areas wherever possible, particularly children, families and those with special needs or complex medical conditions. There can be little doubt that, while the use of remote facilities has at times been necessary, they should be used only as a last resort. This will not only better serve the needs of detainees, but save on some of the vast expense required to run large-scale facilities in extremely remote locations.

One of the key matters of contention emerging from this inquiry was whether the number of staff on duty in detention facilities is always sufficient. Consistent with the findings of the Hawke-Williams Review and Comcare, and given the quantum of its contract with Serco, the Committee considers that the Department of Immigration and Citizenship ought to audit the staffing levels in detention facilities more robustly. The appropriate qualifications for Serco officers also requires deeper examination.

The level of provision of health services needs to reflect the fact that people in detention, by virtue of their particular circumstances, typically require a higher level of mental health care than the community at large. In addition, the Committee believes that the Department and Serco's mental health policies need to be synthesised, and that Serco's policy must be reformed.

Leaving aside the moral obligation to provide assistance to people in need of mental health care, its ready availability would also help to reduce the level of self harm and suicide, and enable improved medical responses when incidents do occur. Where acute care is not immediately available near a detention facility, the Committee has recommended the provision of such care within the facility on a 24-hour basis.

Children in detention was another area of particular concern to the Committee. Responding to evidence received on the subject, the Committee has recommended that the Minister for Immigration be replaced as guardian of unaccompanied minors in detention, and that a uniform child protection code be implemented across the immigration system for children seeking asylum. This should be complemented by formalised relationships between DIAC and all state and territory children's commissions.

The Department of Immigration and Citizenship needs also to improve on the provision of recreation facilities for detainees, and ensure that visits to its facilities are consistently managed across the network.

Finally, the Committee grappled with the question of security assessments, and the fact that the current system bars refugees from accessing existing avenues for a merits review of adverse decisions, resulting in practically indefinite detention for detainees with adverse assessments. While it is necessary to be mindful of the need to keep security sources and procedures confidential, the overwhelming imperative to provide procedural fairness in the system cannot be ignored where a person's liberty is at stake. The Committee believes the current system does not strike an appropriate balance. Accordingly, the Committee has recommended that the Australian Security Intelligence Organisation (ASIO) legislation be amended to allow the Security Appeals Division of the Administrative Appeals Tribunal to review ASIO security assessments of asylum seekers and refugees.

The Committee has recommended implementing further safeguards in the security assessment process, including periodic internal reviews of adverse ASIO assessments, and the exploration of whether control orders (currently used in the criminal justice

system) could allow for the release from held detention of those refugees and asylum seekers who are in indefinite detention or cannot be repatriated.

These recommendations are grounded in the Committee's belief that the system currently in place to deal with asylum seekers and refugees, evolved from a system designed to deal with different problems on a different scale and now needs to be adjusted to reflect contemporary circumstances. In forming this view, the Committee cites what it believes is a disjoint between the current system and Australia's obligations under the United Nations Covenant for Civil and Political Rights, our knowledge about the effect of held detention on those detained, and the growing recognition that detention on the scale applied over the past decade is simply not justified nor sustainable.

The truth is, Australia has for many years and under consecutive governments struggled with the challenge posed by irregular maritime arrivals. The sobering facts outlined in this report speak for themselves. Irregular people movement is an unsolicited fact of life faced by many nations around the world. A considered response mindful of legal and moral human rights obligations is the mark of a mature and civilised polity.

It is also clear that the situation in Australia's detention facilities as it was at the outset of this inquiry was, in the long run, simply unsustainable. The reasons for this are complex, but are all too often oversimplified and described through the prism of political motives. Given the enormous human and financial cost of held detention, the Committee has reached the fundamental conclusion that less harmful, far more cost-effective alternatives are available and should be pursued. To the best of its ability, what the Committee has tried to offer within the pages of this report is an honest assessment of systemic problems, and a proactive blueprint for the future.

As has been said, the Australian Government is already making significant progress in reforming the asylum seeker processing and accommodation system. The Committee is optimistic that the far-reaching measures recommended in its report will significantly complement the advances already underway, and help to bring about an immigration system which reflects our commonly held commitment to human rights, dignity, and fair process.

Mr Daryl Melham MP

Chair

ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ACCG	Australian Children's Commissioners and Guardians
ACS	Australasian Correctional Services
AFP	Australian Federal Police
ANAO	Australian National Audit Office
APOD	Alternative places of detention
ASIO	Australian Security Intelligence Organisation
ASRC	Asylum Seeker Resource Centre
BV	Bridging Visas
BVE	Bridging Visa E
CAS	Community Assistance Support
CGN	Country Guidance Notes
CISSR	Council for Immigration Services and Status Resolution
CRC	Convention on the Rights of the Child
CSM	Client Service Managers
CSO	Client Service Officer
CPSU	Community and Public Sector Union
DASSAN	Darwin Asylum Seekers Support and Advocacy Network
DeHAG	Detention Health Advisory Group
DIAC	Department of Immigration and Citizenship
EAP	Employee Assistance Program
ERT	Emergency Response Team
ESL	English as a Second Language

FASSTT	Forum of Australian Services for Survivors of Torture and Trauma
Gilbert and Tobin	The Gilbert and Tobin Centre of Public Law within the University of New South Wales Faculty of Law
HREOC	Human Rights and Equal Opportunity Commission
HSS	Humanitarian Settlement Services
IAAAS	Immigration Advice and Application Assistance Scheme
ICCPR	International Covenant on Civil and Political Rights
IDC	Immigration Detention Centre
IDSG	Infectious Diseases Sub-Group
IHMS	International Health and Medical Services Pty Limited
IMA	Irregular Maritime Arrivals
IMP	Individual Management Plan
IMR	Independent Merits Review
IOTHS	Indian Ocean Territories Health Service
IRH	Immigration Residential Housing
ITA	Immigration Transit Accommodation
JR	Judicial Review
Keep Safe	Keep Safe Psychological Support Program Policy
MHSG	Mental Health Sub-Group
Migration Act	<i>Migration Act 1958</i> (Cth)
MITA	Melbourne Immigration Transit Accommodation
MOU	Memorandum of Understanding
NIDC	Northern Immigration Detention Centre
NSWCCL	New South Wales Council for Civil Liberties
NWP	North West Point

OEP	Offshore Entry Persons
POE	Protection Obligations Evaluation
POD	Place of Detention
POS	Personal Officer Scheme
PSP	Psychological Support Program
RACGP	Royal Australian College of General Practitioners
RACS	Refugee Advice and Casework Service
RFDS	Royal Flying Doctor Service
RISE	Refugees, Survivors and Ex-detainees
RRT	Refugee Review Tribunal
RSA	Refugee Status Assessment
RSD	Refugee Status Determination
SASH	Suicide and Self Harm
SASH OBS	Suicide and Self Harm Observation
Serco	Serco Australia Pty Ltd
UAM	Unaccompanied minor
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNSW	University of New South Wales
VIDC	Villawood Immigration Detention Centre
WACHS	Western Australia Country Health Service

RECOMMENDATIONS

DIAC's contract with Serco

Recommendation 5

3.78 The Committee recommends that the Department of Immigration and Citizenship appoint an independent expert to inquire into the appropriate qualifications for Serco Client Service Officers and make appropriate amendments to its contract with Serco.

Recommendation 9

3.104 The Committee recommends that Serco develop and implement improved proactive procedures to support staff following critical incidents.

Provision of health services to people in detention (especially mental health services)

Recommendation 6

3.91 The Committee recommends that the Department of Immigration and Citizenship effectively contract manage Serco's implementation of the Psychological Support Program Policy.

Recommendation 7

3.92 The Committee recommends that the Department of Immigration and Citizenship work with Serco and the Detention Health Advisory Group to reform the Keep Safe policy to ensure it is fully consistent with the Psychological Support Program Policy, as soon as possible.

Recommendation 8

3.93 The Committee recommends that the Department of Immigration and Citizenship ensure that Serco provides adequate Detention Health Advisory Group -endorsed mental health training to Serco officers who implement the Psychological Support Program Policy.

Recommendation 10

3.109 The Committee recommends that the Department of Immigration and Citizenship ensure Serco has appropriate procedures and training in place so that only where International Health and Medical Services personnel are not available can senior Serco managers participate in the secondary dispensing of medication.

Recommendation 14

4.38 The Committee recommends that International Health and Medical Services staff be rostered on a 24 hour a day basis at all non-metropolitan detention facilities.

Recommendation 15

4.39 The Committee recommends that the Department of Immigration and Citizenship assess, on a case by case basis, the need for International Health and Medical Services staff to be rostered on a 24 hour a day basis at metropolitan detention facilities.

Recommendation 16

4.69 The Committee recommends that the Department of Immigration and Citizenship work with International Health and Medical Services to pilot regular mental health outreach services in detention facilities.

Recommendation 17

4.91 The Committee recommends that the Department of Immigration and Citizenship develop a transport capability to transfer detainees with non-acute injuries to remote hospitals.

Reforms to the existing network

Recommendation 1

3.34 The Committee recommends that the Department of Immigration and Citizenship continue to robustly contract manage Serco's obligation to provide appropriate activities for detainees.

Recommendation 2

3.36 The Committee recommends that the Department of Immigration and Citizenship consider other accommodation or recreation options for detainees when the amenity of a facility is compromised due to construction or maintenance projects.

Recommendation 12

3.128 The Committee recommends that the Department of Immigration and Citizenship require Serco local managers to apply a consistent practice and procedure protocol to visits across the network, in accordance with the information provided on the department website.

Recommendation 13

3.129 The Committee recommends that the Department of Immigration and Citizenship continue to improve visitor facilities across the network.

Children in detention

Recommendation 19

5.95 The Committee recommends that relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.

Recommendation 20

5.109 The Committee recommends that the Department of Immigration and Citizenship develop and implement a uniform code for child protection for all children seeking asylum across the immigration system.

Recommendation 21

5.110 The Committee further recommends that the Department of Immigration and Citizenship adopt Memoranda of Understanding with children's commissions or commissioners in all states and territories as soon as possible.

Reforms to detention policy

Recommendation 18

5.65 The Committee recommends that, as a matter of policy, the Department of Immigration and Citizenship accommodate detainees in metropolitan detention facilities wherever possible, in particular children and families, and those detainees with special needs or with complex medical conditions.

Recommendation 22

5.119 The Committee recommends that the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the shortest practicable time, and subject to an assessment of non-compliance and risk factors, as enunciated by the *New Directions* policy.

Recommendation 23

5.120 The Committee further recommends that asylum seekers who pass initial identity, health, character and security checks be immediately granted a bridging visa or moved to community detention while a determination of their refugee status is completed, and that all reasonable steps be taken to limit detention to a maximum of 90 days.

Recommendation 24

5.121 The Committee recommends that the Department of Immigration and Citizenship be required to publish on a quarterly basis the reasons for the continued detention of any person detained for more than 90 days, without compromising the privacy of the individuals.

Recommendation 29

7.16 The Committee recommends that the Department of Immigration and Citizenship consider publishing criteria for determining whether asylum seekers are placed in community detention or on bridging visas.

Recommendation 30

7.91 The Committee recommends that the Australian Government and the Department of Immigration and Citizenship seek briefing on control orders in use by the criminal justice system and explore the practicalities of employing similar measures for refugees and asylum seekers who are in indefinite detention or cannot be repatriated.

Reforms to processing of protection claims and security assessments

Recommendation 25

6.61 The Committee recommends that the Department of Immigration and Citizenship consider revising and enhancing its system of quality control to oversee those Refugee Status and Assessment and Independent Merits Review processes still underway.

Recommendation 26

6.96 The Committee recommends that the Australian Government move to place all asylum seekers who are found to be refugees, and who do not trigger any concerns with the Australian Security Intelligence Organisation following initial security checks, and subject to an assessment of non-compliance and risk factors, into community detention while any necessary in-depth security assessments are conducted.

Recommendation 27

6.151 The Committee recommends that the Australian Government and the Australian Security Intelligence Organisation establish and implement periodic, internal reviews of adverse Australian Security Intelligence Organisation refugee security assessments commencing as soon as possible.

Recommendation 28

6.152 The Committee recommends that the Australian Security Intelligence Organisation Act be amended to allow the Security Appeals Division of the Administrative Appeals Tribunal to review the Australian Security Intelligence Organisation security assessments of refugees and asylum seekers.

Implementation of Hawke–Williams Recommendations

Recommendation 3

3.56 The Committee recommends that the Department of Immigration and Citizenship conduct robust auditing of Serco staffing ratios and training, in line with the recommendations in the Comcare report and the Hawke-Williams review.

Recommendation 4

3.64 The Committee reiterates the recommendation made by the Commonwealth Ombudsman that the Department of Immigration and Citizenship, conduct a review of the quality and management of incident reporting across immigration detention network, and also assess Serco's capacity to monitor its own compliance with the reporting guidelines.

Recommendation 11

3.118 Consistent with the findings of the Hawke-Williams review, the Committee recommends that the government finalise a security protocol between Serco, the Australian Federal Police and local police in each state and territory.

Recommendation 31

8.59 The Committee recommends that the Department of Immigration and Citizenship continue to work towards implementing all of the recommendations made by the Hawke-Williams review, and that the Minister for Immigration and Citizenship report to the Parliament no later than 20 September 2012 on progress in implementing the review recommendations.

CHAPTER 1

Introduction

Referral

1.1 On 16 June 2011 the Parliament established the Joint Select Committee on Australia's Immigration Detention Network.¹

1.2 The Committee was asked to examine:

- any reforms needed to the current Immigration Detention Network in Australia;
- the impact of length of detention and the appropriateness of facilities and services for asylum seekers;
- the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties;
- the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;
- the impact of detention on children and families, and viable alternatives;
- the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers;
- the impact, effectiveness and cost of mandatory detention and any alternatives, including community release;
- the reasons for and nature of riots and disturbances in detention facilities;
- the performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons;
- the health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties

1 *House of Representatives Votes and Proceedings*, No. 45, 2 June 2011, pp 602 – 605; *Journals of the Senate*, No. 33, 16 June 2011, p. 1014 – 1016.

relating to irregular maritime arrivals or other persons detained in the network;

- the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols;
- compliance with the Government's immigration detention values within the detention network;
- any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons;
- the management of good order and public order with respect to the immigration detention network;
- the total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees;
- the expansion of the immigration detention network, including the cost and process adopted to establish new facilities;
- the length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network; and
- processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network.

Interim Report

1.3 The Committee tabled an interim report on 7 October 2011. At that time the Committee had received over 3,500 submissions and held site visits and hearings on Christmas Island and in Derby, Darwin and Sydney. The Committee took the view that it required more time to adequately discharge its reference and sought an extension until 30 March 2012.

Structure of Final Report

1.4 This report is divided into eight chapters:

- Chapter 1 (this chapter) sets out the administrative arrangements for the inquiry and outlines the roles of the key organisations and government agencies involved in the immigration detention network;

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- Chapter 2 provides an overview of Australia's current immigration detention network, summarises other inquiries related to the terms of reference and provides a background and brief history of Australia's policies in relation to immigration detention;
 - Chapter 3 contains an analysis of the Department of Immigration and Citizenship's (DIAC) administration of its contracts with Serco as well as Serco's performance of its wide-ranging duties to run detention facilities;
 - Chapter 4 examines DIAC's provision of health services to people in detention, both through its contracted service provider IHMS and through local hospitals, with a particular emphasis on the provision of mental health care;
 - Chapter 5 examines the impact of detention on detainees, including children, and looks at how frontline staff working in facilities are affected;
 - Chapter 6 outlines Australia's obligations under international law, and scrutinises refugee and security assessment processes conducted by DIAC and ASIO respectively;
 - Chapter 7 turns to alternatives to held detention, such as community detention and bridging visas, describing potential ways to reduce the number of people in restrictive detention facilities; and
 - Chapter 8 looks at disturbances in detention facilities, and includes a comprehensive summary of the report by Dr Allan Hawke and Ms Helen Williams into disturbances at the Christmas Island facility in March 2011 and at Villawood Immigration Detention Centre in April 2011.

Acknowledgements

1.5 The Committee thanks all those who contributed to the inquiry by making submissions, providing additional information or appearing before it to give evidence. The Committee is particularly grateful for the extensive assistance of DIAC in providing large quantities of information, technical advice and assistance, and coordination for the Committee's numerous site visits.

Note on references

1.6 References in this report to the Hansard for the public hearings are to the proof Hansard. Please note that page numbers may vary between the proof and the official transcripts.

Role of the Department of Immigration and Citizenship

1.7 The Department of Immigration and Citizenship (DIAC) administers the immigration detention network. This includes resolving the status of detainees and managing the performance of its contracted service providers.

1.8 DIAC may decide to detain a person under the *Migration Act 1958* if that person is determined to be an unlawful non-citizen. DIAC owes a duty of care to all people in detention, and is ultimately responsible for people in detention, even though it contracts out some responsibilities to service providers.

1.9 The majority of people in detention in Australia today are classified as Irregular Maritime Arrivals (IMAs). In June 2011 DIAC had around 960 (full time equivalent) staff undertaking IMA work. The majority are involved in direct service delivery and support roles. Just over 10 per cent are involved in corporate support role and overhead roles.²

1.10 The Department is responsible for:

- Detaining unlawful non-citizens
- Case management
- Refugee status assessment interviews and decisions
- Removing detainees from Australia
- Contract management and auditing (e.g. Serco and IHMS)
- Negotiating with states and territories for the provision of services such as education and hospital care
- Authorising use of force
- Granting visas.

Role of other commonwealth government agencies

Australian Federal Police

1.11 The Australian Federal Police (AFP) has a number of roles in the immigration detention network. At most facilities the AFP has a joint role with local police in managing order.

1.12 The AFP maintain a public order management team that is trained and equipped to respond to disturbances in detention centres presenting a threat to public order. The AFP work closely with Serco, DIAC and local police forces when such circumstances arise. Since the riots on Christmas Island in March 2011, the AFP have stationed officers in some immigration detention centres to work with Serco to gather intelligence. The Committee has been assured throughout the inquiry that the AFP,

2 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 67.

DIAC and local police are continuing to work closely to develop a Memorandum of Understanding (MOU) to govern the policing response to incidents at detention facilities.³

1.13 The AFP have a community policing role on Christmas Island. This team responds to domestic police matters that arise in the community – and in detention centres.

1.14 The AFP also has a People Smuggling Strike Team deployed to Christmas Island. The team conducts investigations and gathers evidence in support of prosecutions of crew and organisers responsible for unauthorised boat arrivals.

Australian Security Intelligence Agency

1.15 The Australian Security Intelligence Agency (ASIO) provides security assessments for detainees. For most detainees this will occur if and when a claim for refugee status is accepted by DIAC. A less rigorous check is also conducted when a detainee is being considered for community detention.

1.16 A detailed discussion of the role of ASIO in security assessments can be found in Chapter 6.

Role of contracted service providers

Australian Red Cross

1.17 The Australian Red Cross is the lead service provider in DIAC's community detention program since the program's inception in July 2005, supporting people with no visa status who are permitted to live in the community rather than in an immigration detention facility.⁴

1.18 The program is funded by DIAC. Red Cross provides health and welfare support, while the Department has responsibility for compliance and immigration matters.

1.19 Once the Minister for Immigration determines that a person can reside in community detention, services provided by Red Cross include:

- assessment of client needs and development of a Care Plan to address identified needs;
- housing;
- assistance to arrange access to health care and education;
- community transition and orientation; and
- other welfare support needs.

3 See Chapter 8 for details.

4 DIAC, *Submission 32, Supplementary*, pp 49–50, 64.

1.20 While the Australian Red Cross is the key contracted provider of community detention services, there are over 20 other non-government organisations that have also been contracted to undertake similar work.⁵ This is discussed further in Chapter 7.

IHMS

1.21 The department signed a contract in January 2009 with International Health and Medical Services Pty Limited (IHMS) to provide general and mental health services to people in immigration detention. The contracts reflect the way forward for detention services, incorporating the major changes at DIAC since the Palmer and Comrie reports, and the Government's 'New Directions in Detention'.⁶

1.22 IHMS is required to provide health services to detainees at the same standard available in the general Australian community. Detainees that require emergency or acute care are transferred by IHMS to local hospitals. IHMS' obligations and performance under the contract is considered in Chapter 4.

Life Without Barriers

1.23 The Minister for Immigration and Citizenship is the guardian of all unaccompanied minors (UAMs) in immigration detention. Life Without Barriers provides care and support services to UAMs accommodated in APODs and community detention on mainland Australia. Life Without Barriers is also the contracted provider of independent observer services on Christmas Island and mainland Australia. The independent observer provides support to minors during entry and intelligence interviews.⁷

Serco

1.24 On 29 June 2009, the department entered into a five-year contract with Serco Australia Pty Ltd. The contract, valued at about \$370 million, covers the provision of detention services at immigration detention centres (including those on Christmas Island) and alternative places of detention as well as a range of transport and escort services to people in detention.⁸ A phased transition from the former detention service provider G4S Australia Pty Ltd started from the contract signature date.

5 Mr Noel Clement, Head of Australian Services, Australian Red Cross, *Proof Committee Hansard*, 18 November 2011, p. 45. The Palmer and Comrie reports are addressed in more detail in Chapter 2.

6 DIAC, *Submission 32, Supplementary*, pp 60–63.

7 Life Without Barriers, <http://www.lwb.org.au/Services/Refugees/Pages/default.aspx> (accessed 1 February 2012). Department of Immigration and Citizenship, *Question on Notice 43* (received 10 August 2011).

8 DIAC, *Submission 32, Immigration Detention Facilities in Australia*, p. 4.

1.25 On 11 December 2009, the department entered into a second five-year contract with Serco Australia Pty Ltd to provide services to people in immigration residential housing and immigration transit accommodation throughout Australia.⁹ Transition from the previous detention service provider G4S Australia Pty Ltd was completed in January 2010.

1.26 The two contracts are referred to throughout this report as 'the contract'. The Department released a redacted contract to the Committee on the same day that it was released under the *Freedom of Information Act 1982* to a third party applicant.

Role of other organisations

Detention Health Advisory Group (DeHAG)

1.27 The Detention Health Advisory Group (DeHAG) was established in 2006, following recommendations in the report by Mr Mick Palmer into the detention of Cornelia Rau.¹⁰ DeHAG provides advice to the Department of Immigration and Citizenship (DIAC) on detention health care policy and procedure.

1.28 DeHAG comprises an independent group of health experts who represent key Australian health and mental health professional and consumer group organisations, including:

- Australian Medical Association
- Royal Australian College of General Practitioners
- Mental Health Council of Australia
- Australian Psychological Society
- Forum of Australian Services for the Survivors of Torture and Trauma
- Victorian Health Promotion Foundation
- Royal Australian and New Zealand College of Psychiatrists
- Royal College of Nursing Australia
- Public Health Association of Australia
- Australian Dental Association.

9 DIAC, *Submission 32, Immigration Detention Facilities in Australia*, p. 5.

10 This report was commissioned by the Minister for Immigration and Multicultural and Indigenous Affairs, and also included preliminary comments on the Vivian Alvarez matter. Mick Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, July 2005, <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf> (accessed 1 February 2012).

1.29 The Council for Immigration Services and Status Resolution (CISSR) is also represented and the Commonwealth Ombudsman has observer status.

1.30 The work of the DeHAG has also been supported by two time limited sub-groups: the Mental Health Sub-Group (MHSG) which continues to focus on a range of mental health issues in the immigration detention context, and the Infectious Diseases Sub-Group (IDSG) which focused on issues surrounding infectious disease management.

1.31 DeHAG opposes mandatory restrictive detention, particularly of children, survivors of torture and trauma and other vulnerable individuals. Nevertheless, it believes that improvements may still be made even within the current framework.¹¹

Council for Immigration Services and Status Resolution

1.32 The CISSR was established in September 2009 (succeeding the Immigration Detention Advisory Group). The Minister announced on 9 February 2012 that CISSR has been renamed the Minister's Council on Asylum Seekers and Detention and that the term of the Council would be extended to September 2014.¹² No submission has been received from CISSR. The following information has been obtained from the DIAC website.¹³

1.33 CISSR is an independent advisory group to the Minister for Immigration and Citizenship charged with provision of independent advice to the Minister on policies, processes, services and programs necessary to achieve the timely, fair and effective resolution of immigration status for people seeking migration outcomes in Australia. This includes people whose immigration status is unresolved residing either in the community or in any form of detention.

1.34 In particular, CISSR provides advice on:

- policies, services and programs designed to support the timely resolution of immigration status outcomes;
- the appropriateness and adequacy of services available to assist people whose immigration status is unresolved;

11 Detention Health Advisory Group, *Submission 41*.

12 Minister the Hon Chris Bowen MP, Media Release, 9 February 2012 available online: <http://www.minister.immi.gov.au/media/cb/2012/cb182434.htm> . The Committee received evidence from council when it was called CISSR in 2011. For this reason the Council is called CISSR throughout this report.

13 <http://www.immi.gov.au/managing-australias-borders/detention/regulations/cissr/> (accessed 1 February 2012).

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- detention matters including, but not limited to, the suitability of facilities, accommodation and service arrangements.

In addressing these issues, the CISSR is required to:

- develop a work program, agreed with by the Minister, identifying priority issues to be addressed over the term of the CISSR's appointment;
- respond to specific issues identified as a priority by the Minister and provide advice accordingly;
- liaise with relevant non-government and intergovernmental organisations statutory bodies and detention service providers on a regular basis;
- regularly visit the range of detention facilities in operation to obtain information on the suitability, environment and operation of each facility;
- contribute to and provide advice about areas of research, that would aid in the improvement of policies, programs and services in areas directly related to CISSR's terms of reference; and
- provide reports on the activities of CISSR to the Minister on a regular basis.

1.35 CISSR has expressed strong support for the government's current emphasis on community detention and bridging visas. CISSR has expressed concern in the past about overcrowding in detention centres, the length of detention, and delays in processing.¹⁴

Conduct of the inquiry

1.36 Notice of the inquiry was posted on the Committee's website and in *The Australian* newspaper, calling for submissions by 26 August 2011. The Committee also advertised the inquiry in two editions of the Christmas Island newsletter, *The Islander*, in English, Malay and Chinese languages. However, submissions have been accepted by the Committee throughout the term of the inquiry.

1.37 The Committee directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions. The Committee also wrote to a number of detainee advocacy groups and invited them to contact people in detention and assist them in making a submission.

Submissions, hearings and site visits

1.38 A total of 154 formal submissions were received, as listed in Appendix 1. The Committee also received a high volume of submissions as part of an email campaign coordinated by GetUp. Approximately 1800 form letters were received requesting an

14 DIAC, *Question taken on notice*, Question 72 (received November 2012).

end to mandatory detention and approximately 1600 submissions generally opposing mandatory detention.¹⁵

1.39 The Committee also received more than a hundred submissions from people in detention. These submissions were received in confidence and the Committee arranged for submissions made in a language other than English to be translated. These submissions were accepted *in camera*, and the Committee has referred to these submissions only when the identity of detainees could be protected.

1.40 The Committee held four public hearings in Canberra, as well as hearings on Christmas Island, Adelaide, Derby, Darwin, Melbourne, Sydney and Weipa:

- Canberra on 16 August 2011, 22 November 2011, 9 November 2011 and 29 February 2012;
- Christmas Island on 6 September 2011;
- Derby, Western Australia on 7 September 2011;
- Darwin, Northern Territory on 26 September 2011;
- Sydney, New South Wales on 5 October 2011;
- Adelaide, South Australia on 15 November 2011;
- Melbourne, Victoria on 18 November 2011; and
- Weipa, Queensland on 2 December 2011.

1.41 The Committee conducted site inspections of a number of facilities in the immigration detention network including immigration detention centres, alternative places of detention (APOD) and immigration residential housing. These site inspections included:

- North West Point Immigration Detention Centre, Construction Camp APOD and Phosphate Hill APOD on Christmas Island on 5 and 6 September 2011;
- Curtin Immigration Detention Centre, Derby Western Australia on 7 September 2011;

15 These submissions are available on the committee website:
http://www.apf.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/additional_subs/index.htm

- Berrimah House APOD, Darwin Airport Lodge APOD and Northern Immigration Detention Centre in Darwin NT on 26 and 27 September 2011;
- Villawood Immigration Detention Centre and Sydney Immigration Residential Housing on 4 October 2011;
- Inverbrackie APOD, South Australia on 15 November 2011
- Scherger Immigration Detention Centre, Qld on 1 December 2011.

1.42 During site visits to Christmas Island, Darwin, Curtin and Villawood facilities the Committee held *in camera* hearings with detainees from a range of language groups. The Committee resolved that some portions of the transcript may be published or referred to in this report, so long as the identity of individual detainees is protected.

CHAPTER 2

Overview of Australia's immigration detention network

Introduction

2.1 This chapter provides an outline of Australia's Immigration Detention Network. A brief history of the network is provided, followed by a snapshot of the network today, and summaries of recent inquiries into the management of the network.

Background to mandatory detention

2.2 While it is beyond the scope of this inquiry to provide a substantial and detailed history of Australia's immigration detention policy, a brief background is provided here in order to provide context for the discussion later in the chapter.¹⁶

2.3 Prior to the introduction of mandatory detention, unauthorised arrivals were detained on a discretionary basis, as provided for under the *Migration Act 1958*. Up until 1989 immigration detention was used mostly for compliance cases – that is, for people who had breached the terms of a valid visa and were awaiting deportation.¹⁷

2.4 In 1989 the Australian Government introduced administrative detention for all people entering Australia without a valid visa and people who subsequently became unlawful.¹⁸ The *Migration Legislation Amendment Act 1989* contained significant changes, including:

- mandatory deportation of unlawful non-citizens after a grace period of 28 days;
- costs of detention and deportation becoming a debt to the Australian Government;
- increased penalties for becoming an illegal entrant—from a maximum fine of \$1000 and/or up to six months imprisonment, to a maximum fine of \$5000 and/or up to two years imprisonment; and
- increased bail for illegal entrants, from \$2000 to \$20 000.¹⁹

16 A detailed history is available in DIAC's submission to this inquiry and in background notes by the Parliamentary Library. See DIAC, *Submission 32*; Janet Phillips and Harriet Spinks, *Immigration detention in Australia*, Background Note, Parliamentary Library, 23 January 2012, pp 1–16,

http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1311498/upload_binary/1311498.pdf;fileType=application/pdf (accessed 24 January 2012).

17 DIAC, *Submission 32*, *Supplementary*, p. 23.

18 DIAC, *Submission 32*, *Supplementary*, p. 197.

19 Sections 5, 8, 12 and 14, *Migration Legislation Amendment Act 1989* (Cth).

2.5 The new provisions applied to all unlawful non-citizens and were intended to help facilitate the processing of refugee claims, assist humanitarian programs and reduce the cost of locating people in the community. The focus was on preventing people who arrive without a valid visa from entering the Australian community until their identity and status had been established. The Act allowed persons entering without a valid visa to be detained and potentially deported. Legislation originally imposed a 273 day limit on detention, but was amended in 1994 to remove this limit, allowing for indefinite detention.²⁰

2.6 As it currently stands, the Migration Act requires people who are not Australian citizens and who are in Australia unlawfully to be detained. Unless a visa is granted, unlawful non-citizens must be removed from Australia as soon as reasonably practicable.²¹ Section 273 of the Migration Act gives the Minister for Immigration the power to establish and maintain IDCs, and to make regulations for their operation.²²

2.7 People who are not Australian citizens are 'unlawful' if they do not have a valid visa giving them permission to be in Australia. Usually, 'unlawful non-citizens' are people who have arrived in Australia without a visa, overstayed their visa, or had their visa cancelled.

2.8 Ever since 2001 a distinction has been made between people who are processed offshore and those who are processed on the Australian mainland.²³ Arrivals are treated as either Offshore Entry Persons (OEPs)—otherwise known as Irregular Maritime Arrivals (IMAs)—or they are processed as non-OEPs. The terms IMA and OEP refer to people who have been intercepted outside of Australia's migration zone at an excised offshore place.

2.9 Current government policy is that all IMAs are mandatorily detained for identity, health and character checks while their claims to stay in Australia are processed.²⁴ In contrast, unlawful non-citizens who arrive by plane to Australia are generally given bridging visas which permit them to live, and sometimes work, in the community.²⁵ Processing arrangements for both OEPs and non-OEPs in detention are detailed in Chapter 6.

2.10 In 2011, the processing of IMAs underwent its first significant change since the introduction of the *Migration Amendment (Excision from Migration Zone) Act 2001*. Precipitating this change was the Minister's declaration that Malaysia was a country to which asylum seekers who entered Australia at Christmas Island could be

20 DIAC, *Submission 32, Supplementary*, p. 23.

21 DIAC, *Submission 32*, p. 27.

22 DIAC, *Submission 32*, p. 192.

23 *Migration Amendment (Excision from Migration Zone) Act 2001* (Cth).

24 DIAC, *Submission 32, Supplementary*, p. 193.

25 DIAC, *Submission 32*, p. 46.

taken for processing. On 31 August 2011 the High Court ruled that the Minister's declaration was invalid under the *Migration Act 1958*.²⁶

2.11 Following this ruling, and due in part to overcrowding in detention facilities, the Australian Government announced an expansion of the community detention program and a move to allow suitable OEPs to be placed on bridging visas.²⁷ That avenue had previously been used predominantly for processing non-OEPs.

Reforms

2.12 A number of significant reforms have been made to the policy and conditions of mandatory detention since 2005. As a matter of policy, though not always practice, children are not detained in immigration detention centres.

Detention of children

2.13 The Human Rights and Equal Opportunity Commission (HREOC) stated in 1988 that the detention of children was a breach of international and Australian human rights standards. The report also called for children and other vulnerable people to only be detained in exceptional circumstances. HREOC stated in 2004 that the mandatory detention of unauthorised arrivals who are children is inconsistent with the Convention on the Rights of the Child.²⁸

2.14 HREOC's findings and recommendations were initially rejected by the Howard Government, which reaffirmed its commitment to mandatory detention of all unauthorised arrivals, including children. In 2005, however, the Howard Government announced a number of changes to immigration policy, including community detention, which resulted in some families with children being released into community detention.²⁹

The Palmer and Comrie Reports

2.15 The Palmer and Comrie Reports published in 2005 drew to public attention systemic problems within DIAC. The reports were the result of inquiries into the

26 *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 by his litigation guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32. A summary of the judgment prepared by the High Court is available online: <http://www.hcourt.gov.au/publications/judgment-summaries> (accessed 27 February 2012).

27 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Immigration Minister, *Media release*, 13 October 2011, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 6 March 2012).

28 Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention*, April 2004, http://www.hreoc.gov.au/human_rights/children_detention_report/index.html (accessed 10 December 2011). The Human Rights and Equal Opportunity Commission has since been renamed the Australian Human Rights Commission.

29 DIAC, *Submission 32, Supplementary*, pp 23–24; *Migration Amendment Regulations 2005 (No 2)*.

wrongful detention of an Australian citizen and a permanent Australian resident, and, in one case, wrongful deportation.

Palmer report

2.16 The Palmer Report, published in July 2005, was an inquiry by Mr Mick Palmer into the circumstances in which a permanent resident, Ms Cornelia Rau, was held in detention as a suspected unlawful non-citizen.³⁰

2.17 Mr Palmer's recommendations included the need to improve training, arrangements with State and Territory Governments (over, for example, the use of correctional services centres, police powers, etc), alternatives to detention, the need to develop identity techniques, mental health arrangements, the environment of immigration detention, data management, record keeping, and problems in DIAC State Offices (including Queensland, NSW and South Australia).

2.18 Mr Palmer also dealt with the issues which contributed to a malaise in DIAC, and to an apparent deafness to concerns voiced repeatedly by a wide range of stakeholders. Mr Palmer identified a culture within DIAC that ignored criticism, was too defensive, bureaucratic and unwilling to make improvements.

Comrie Report

2.19 The Comrie Report, published in September 2005, resulted from an inquiry undertaken by Mr Neil Comrie on behalf of the Commonwealth Ombudsman.³¹

2.20 Mr Comrie inquired into the circumstances in which an Australian citizen, Ms Vivian Alvarez Solon, was detained and deported. The Comrie Report supported a large number of the recommendations made by Mr Palmer. It highlighted problems in the Queensland Office of DIAC, made recommendations about the IT systems in the Department and focused on issues to do with the mental health of detainees. The report agreed with Mr Palmer on issues of culture within DIAC. It recommended that the cultural issues in the Queensland Office (from where the two cases had originated) be addressed as a matter of urgency, and that checks be made in all other offices to ensure that the problems in the Queensland Office were not widespread.³²

30 Mr Mick Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report*, 2005, Australian Government, Canberra.

31 Commonwealth Ombudsman, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, 2005, Australian Government, Canberra, http://www.immi.gov.au/media/publications/pdf/alvarez_report03.pdf (accessed 1 February 2012).

32 Commonwealth Ombudsman, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, 2005, Australian Government, Canberra.

Implementation of recommendations in the Palmer and Comrie reports

2.21 Since 2005 DIAC has made significant efforts to implement the recommendations made in the Palmer and Comrie reports. The Commonwealth Ombudsman has also noted the efforts that DIAC has made to change policy and culture within DIAC.³³

2.22 The 2008 independent review of DIAC's implementation of the recommendations found that the recommendations had been 'substantially implemented'. Where implementation was incomplete, plans were in place to address this.³⁴

Detention Health Framework 2007

2.23 The Detention Health Framework was released in November 2007 in collaboration with the Detention Health Advisory Group (DeHAG). Its release was seen by DIAC as the culmination of cultural change within the Department following the systemic problems discussed above.³⁵

2.24 The Framework was developed at a time when the majority of people in detention were not IMAs, but rather people with visa cancellations or people who made asylum claims after entering Australia lawfully, usually by airplane. As a consequence, it addressed a different detention cohort, with lower rates of self harm, and who generally were not on a negative pathway.

2.25 Nonetheless, the Framework does discuss mental health and there have been signs that DIAC is responding to the changing health needs of the detainee population.³⁶ The Department completed the roll-out of new mental health policies in November 2010. Key among these policies is the Psychological Support Program (PSP), which is targeted at supporting detainees at risk of self harm or suicide.³⁷ DIAC is conducting a review of the implementation of these policies, and expects to finalise this shortly.³⁸

33 DIAC, *Submission 32, Supplementary*, p. 38.

34 Ms Elizabeth Proust, *Evaluation of the Palmer and Comrie Reform Agenda – including Related Ombudsman Reports*, 2008, <http://www.immi.gov.au/about/department/perf-progress/evaluation-report/> (accessed 22 February 2012).

35 DIAC, *Submission 32, Supplementary*, p. 60; *Detention Health Framework: a policy framework for health care for people in immigration detention*, DIAC, November 2007, Foreword and pp 24–25.

36 *Detention Health Framework: a policy framework for health care for people in immigration detention*, DIAC, November 2007, Foreword and pp 24–25.

37 DIAC, *Submission 32, Supplementary*, p. 61.

38 DIAC, *Submission 32, Supplementary*, p. 63.

2.26 In late 2011, DIAC advised that it had recently developed a revised mental health awareness training program which had been piloted and now was being rolled out to Serco, DIAC and IHMS staff.³⁹

Reforms in 2008 and 2010

2.27 Reforms to immigration detention policy were introduced by the Rudd Government in 2008. The New Directions in Detention policy established seven key principals of immigration detention policy:

1. Mandatory 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 detention:
 - (a) all unauthorised arrivals, for management of health, identity and security risks to the community;
 - (b) unlawful non-citizens who present unacceptable risks to the community; and
 - (c) unlawful non-citizens 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 an immigration detention centre.
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, would 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 detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.⁴⁰

2.28 The reforms retained the original detention system, overlaid with an increased emphasis on processing and releasing asylum seekers more quickly. Asylum seekers who are irregular maritime arrivals are still subject to mandatory detention but can now access legal advice to assist them to make their initial claim, and apply for an independent review of adverse findings.

39 DIAC, *Submission 32*, Supplementary, p. 63.

40 Minister for Immigration and Citizenship, Senator the Hon. Chris Evans, "New Directions in Detention—Restoring Integrity to Australia's Immigration System", speech at the Australian National University, Canberra, 29 July 2008; DIAC, *Submission 32*, Supplementary, 24.

2.29 The current government's policy is that children who arrive without valid visas will not be held in immigration detention centres. When necessary for a variety of reasons (such as keeping family members together), children are accommodated in low-security facilities.⁴¹ These include immigration residential housing, transit accommodation and community detention. The emphasis is on allowing children and their families to move into the wider community as soon as practicable, with support from non-governmental and state welfare agencies as necessary.⁴²

2.30 In 2010, the Department was still working towards implementing the policy announcement made in 2008, and some children were still in restrictive detention. In October 2010 the Gillard Government announced it was stepping up efforts to move children out of immigration detention centres and into community-based accommodation.⁴³

2.31 Following the High Court's decision that impacted on the Malaysia solution, the Prime Minister and the Minister for Immigration and Citizenship announced that more IMAs would be moved into community detention and placed on bridging visas.⁴⁴

2.32 On 25 November 2011 the Minister for Immigration, the Hon Chris Bowen MP, announced that the first group of IMAs would shortly be placed on bridging visas.⁴⁵ The Minister advised that he expected about 100 IMAs would be released each month. People considered for a bridging visa will have passed identity, security and character checks, and will be assessed as refugees or cooperating with the removal process. Those released into the community will be subject to reporting conditions. Breach of the conditions will result in cancellation of the visa. Community detention and bridging visas are discussed in detail in Chapter 7.

2.33 The rest of this chapter provides a snapshot of the immigration detention network today.

Types of detention

2.34 The immigration detention network contains five types of detention accommodation: immigration detention centres, alternative places of detention,

41 DIAC, *Submission 32, Supplementary*, p. 92.

42 DIAC, *Submission 32, Supplementary*, p. 27.

43 DIAC, *Submission 32, Supplementary*, p. 27.

44 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *Media release*, 13 October 2011, available at <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 6 March 2012).

45 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *Media Release*, 25 November 2011, <http://www.chrisbowen.net/media-centre/media-releases.do?newsId=5240> (accessed 22 February 2012).

immigration residential housing, immigration transit accommodation and community detention.⁴⁶

Immigration Detention Centres

2.35 Immigration Detention Centres (IDCs) primarily accommodate individuals with a higher risk profile. IDCs traditionally were designed to accommodate people who had overstayed their visa, or breached their visa conditions and had their visa cancelled, or been refused entry at Australia's entry ports. In recent years IDCs have also been used to accommodate IMAs.⁴⁷

2.36 IDCs are currently located at:

- Villawood, New South Wales
- Maribyrnong, Victoria
- Perth, Western Australia
- Christmas Island, Indian Ocean
- Northern, Northern Territory
- Curtin, Western Australia
- Scherger, Queensland
- Yongah Hill (currently under construction in Western Australia)
- Wickham Point, Northern Territory⁴⁸

Immigration Residential Housing (IRH)

2.37 In 2001 the then Minister for Immigration announced a pilot immigration residential housing program. This program housed eligible families with children in a more domestic and independent environment. It was assessed as a success and implemented on a broader scale in the following years.⁴⁹

2.38 DIAC describes Immigration Residential Housing (IRH) as a 'less institutional, more domestic and independent environment' for low risk detainees, particularly families with children.⁵⁰ Families' eligibility for IRH is based on:

- availability of IRH accommodation;
- satisfactory completion of identity and health checks;

46 Material for this section is derived from DIAC, *Submission 32, Supplementary*, pp 193–194.

47 DIAC, *Submission 32, Supplementary*, p. 193.

48 DIAC, *Submission 32, Supplementary*, p. 193. Pontville Immigration Detention Centre was decommissioned following the transfer of the final group of detainees on 6 March 2012; The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *Media release*, 'Pontville Detention Centre Decommissioned', 6 March 2012.

49 DIAC, *Submission 32, Supplementary*, p. 26.

50 DIAC, *Submission 32, Supplementary*, p. 193.

- low flight risk;
- any operational issues particular to the person in detention; and
- any operational issues particular to the effective management of the IRH.

2.39 Immigration residential housing is in three locations across Australia: in Sydney adjacent to the Villawood IDC, in Perth near the Perth IDC and in Port Augusta, South Australia.⁵¹

Immigration Transit Accommodation

2.40 Immigration Transit Accommodation (ITA) was introduced for short-term, low flight risk people and is located in Brisbane, Melbourne and Adelaide. Generally, individuals with a low-risk risk profile on a removal pathway and are expected to depart Australia shortly, are placed in ITA.⁵²

2.41 ITA is hostel-style accommodation, with shared meals areas and semi-independent living. Because of the short-stay nature of the detainee group, less support services are provided than in IDCs.⁵³

Alternative Places of Detention (APOD)

2.42 Alternative places of detention (APODs) are places that have been specifically authorised for immigration detention that are not an IDC, IRH or community detention. APODs generally accommodate people who present a minimal risk to the Australian community. APODs include hospital accommodation in cases of necessary medical treatment; schools for facilitating education to school-aged children and rented accommodation in the community (hotel rooms, apartments).⁵⁴

2.43 APODs can also include accommodation in the community made available through arrangements with other government departments or commercial facilities, such as Defence Housing at Inverbrackie, South Australia and Darwin Airport Lodge. Correctional facilities are also used as APODs where appropriate.⁵⁵

Residence Determination (Community Detention)

2.44 Residence determination, usually referred to as community detention, was introduced in June 2005 and is a type of detention where people to reside in the community without being formally monitored.⁵⁶ The determination can only be made by the Minister, and this ministerial power is non-delegable and non-compellable,

51 DIAC, *Submission 32, Supplementary*, p. 193

52 DIAC, *Submission 32, Supplementary*, p. 194.

53 DIAC, *Submission 32, Supplementary*, p. 194.

54 DIAC, *Submission 32, Supplementary*, p. 194.

55 DIAC, *Submission 32, Supplementary*, p. 89.

56 DIAC, *Submission 32, Supplementary*, p. 194.

although detainees can make a request to the Department to consider whether their case should be referred to the Minister for placement in community detention.⁵⁷

2.45 Residence determination does not give a person any lawful status in Australia, nor are they permitted to work or study. Detainees must agree to the conditions of their residence determination arrangements. These conditions include a mandatory requirement to report regularly to the Department or its contractor, and to reside at the address specified by the Minister.⁵⁸

2.46 Expanded residence determination (community detention) arrangements for unaccompanied minors and vulnerable families were announced by the Prime Minister and the Minister for Immigration and Citizenship on 18 October 2010.⁵⁹ Following this announcement, between 18 October 2010 and 26 September 2011, a total of 1981 individuals were approved for transfer into community detention, including 608 accompanied children and 305 unaccompanied minors. As at 26 September 2011 there were 1073 people in community detention and no children in IDCs.⁶⁰

2.47 The Prime Minister announced a likely further expansion in the use of residence determination in 13 October 2011.⁶¹

2.48 The Committee heard that the Australian Red Cross is the lead contracted service provider for this program, supported by subcontracted nongovernment organisations. The funding covers costs such as housing, residential/out-of-home care for unaccompanied minors, case workers, an allowance to meet daily living costs and a range of activities including recreational excursions.⁶²

2.49 Children in the program have access to schooling, including English language classes. Health care is provided through the Department's contracted detention health provider, International Health and Medical Services. The community detention program is discussed in more detail in Chapter 7.

Expansion of the network from 2008

2.50 The significant increase in the number of IMAs in recent years has required an expansion of Australia's immigration detention network. This included the

57 DIAC, *Submission 32, Supplementary*, pp 89–90.

58 DIAC, *Submission 32, Supplementary*, p. 194.

59 DIAC, *Submission 32, Supplementary*, p. 194; The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, 'Government to move children and vulnerable families into community-based accommodation', *Media release*, 18 October 2010.

60 DIAC, *Submission 32, Supplementary*, p. 27.

61 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Immigration Minister, *Media release*, 13 October 2011, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 6 March 2012).

62 DIAC, *Submission 32, Supplementary*, p. 194. See also, Mr Noel Clement, Head of Australian Services, Australian Red Cross, *Proof Committee Hansard*, 18 November 2011, pp 44–45.

development of facilities to accommodate IMAs on the mainland after their initial reception and processing on Christmas Island, as well as an expansion of residence determination to move children and vulnerable families into community detention. The following discussion of the expansion of the immigration detention network was provided to the Committee by DIAC.⁶³

2.51 In 2009 the increasing number of IMAs meant that the newly-built facility at North West Point on Christmas Island quickly became full, which meant other accommodation options were needed. Transfers to ITAs in Brisbane and Melbourne began in November 2009, and then to Northern IDC in December 2009. In March and April 2010 small numbers of IMAs were transferred to Villawood IDC and Brisbane Virginia Palms APODs. The transfers were on a case-by-case basis and determined on a number of factors, including vulnerability. As a result, 545 people were transferred to the mainland between 1 November 2009 and 9 April 2010.

2.52 In February 2010 the Minister announced measures to ease congestion at the Christmas Island immigration facilities, including the transfer of IMAs in the final stages of a positive pathway to the Northern Immigration Detention Centre in Darwin, and the transfer of a group of unaccompanied minors to the Port Augusta immigration facility.

2.53 On 18 April 2010 the government announced it would re-open the RAAF Base Curtin to accommodate IMAs. On 1 June 2010 the government made a further announcement that a site in Leonora, Western Australia, would be used to temporarily house family groups of IMAs.

2.54 In September 2010 the Minister announced immigration detention accommodation for families and unaccompanied minors in Melbourne, and for single adult men in northern Queensland and in Western Australia. This announcement intended that the:

- Melbourne ITA (MITA) would be expanded for use by families and children (The proposed expansion did not proceed because the subsequent decision to move children and vulnerable families into the community meant this large expansion was no longer needed. However, there was a smaller and temporary expansion of MITA with the leasing of several demountable buildings).
- Scherger Air Force Base (near Weipa in Queensland) would be adapted to accommodate up to 300 single adult men.
- Curtin Immigration Detention Centre would be expanded to accommodate up to 1200 single adult men.

2.55 The Prime Minister and the Minister for Immigration and Citizenship announced on 18 October 2010 that the Australian Government would expand the

63 DIAC, *Submission 32, Supplementary*, pp 201–204.

existing residence determination program and move most children and a significant number of vulnerable families into community detention by the end of June 2011. In addition, the government announced the commissioning of two new detention facilities to house IMAs.

- Yongah Hill (Northam) in Western Australia was originally supposed to accommodate 1500 single men. In May 2011, the Minister announced the facility would accommodate 600.
- Inverbrackie in South Australia would accommodate family groups.⁶⁴

2.56 In response to continuing pressures on immigration detention accommodation, the Minister announced an update on the government's IMA accommodation strategy on 3 March 2011.⁶⁵ This updated strategy involved the commissioning of more appropriate detention accommodation, the expansion of some existing facilities, the decommissioning of less suitable accommodation, and the expanded use of existing residence determination powers for unaccompanied minors and vulnerable families.

2.57 The following mainland facilities were commissioned or expanded:

- a new immigration detention centre at Wickham Point (35 kilometres south-east of Darwin);
- expansion of the Darwin Airport Lodge by up to 435 places at existing facilities adjacent to the current accommodation;
- continued use of the facility at RAAF Base Scherger near Weipa in Queensland for a further 12 months, until 2012.

2.58 In addition, the Minister announced, on 5 April 2011, the government's intention to lease a Defence facility to build a new IDC in Pontville near Hobart to eventually accommodate 400 people. All of this increased accommodation meant the government could close the Virginia Palms APOD in Brisbane and the Asti Hotel APOD in Darwin by mid-2011, and reduce the proposed capacity of the Yongah Hill Centre.

2.59 On 25 July 2011, the Minister announced that newly arriving IMAs would be transferred to Malaysia, a course of action subsequently rendered unviable by a decision of the High Court.⁶⁶

64 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, 'Government to move children and vulnerable families into community-based accommodation', *Media release*, 18 October 2010.

65 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, 'Government announces new and expanded immigration detention accommodation', *Media Release*, 3 March 2011.

66 *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 by his litigation guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32. A summary of the judgment prepared by the High Court is available online: <http://www.hcourt.gov.au/publications/judgment-summaries> (accessed 27 February 2012).

Decisions relating to detainee placement within the network

2.60 All detainees receive regular reviews by DIAC and periodic reviews by the Commonwealth Ombudsman which include an assessment of the detainee's placement within the network.⁶⁷ DIAC considers recommendations for detainee placement and weighs this against the risks to the Australian community.

Cost of detention

2.61 The cost administering and operating detention facilities across the network in the 2010-2011 financial year was \$772.17 million.⁶⁸ The cost of community detention during the same period was \$15.734 million.⁶⁹

2.62 It is difficult to assess the cost of held detention on a per capita basis.⁷⁰ What is clear, though, is that overall the costs of held detention are much higher than the costs incurred for community detention. The costs of held and community detention are discussed in more detail in Chapter 7.⁷¹

Detainees held in each location

2.63 On 31 January 2012 there were 4783 people accommodated in immigration detention facilities. Of these,

- 3031 were in immigration detention centres
- 171 were in immigration residential housing or immigration transit accommodation
- 1581 were in alternative places of detention.⁷²

2.64 A further 1600 people were placed in community detention (under a Residence Determination by the Minister).⁷³

2.65 The table on the following page provides a snapshot of the location of detainees across the network.

67 DIAC, *Submission 32, Supplementary*, p. 93.

68 DIAC, answer to question on notice, Q13 (received 10 August 2011).

69 DIAC, answer to question on notice, Q42 (received 10 August 2011).

70 DIAC, answer to question on notice, Q16 (received 10 August 2011).

71 For a detailed discussion, see also Harriet Spinks, Elibritt Karlsen and Nigel Brew, 'Australian Government spending on irregular maritime arrivals and counter-people smuggling activity', *Background Note*, Parliamentary Library, 6 December 2011.

72 DIAC, *Immigration Detention Statistics Summary*, 31 January 2012, p. 4.

73 DIAC, *Immigration Detention Statistics Summary*, 31 January 2012.

People in Immigration Detention Facilities and Alternative Places of Detention					
Place of immigration detention ¹	Men	Women	Children	Total	Change from Previous Summary (31/12/11)
Christmas Island IDC	440			440	- 78
Curtin IDC	856			856	- 64
Maribymong IDC	66	12		78	- 20
Northern IDC (Darwin)	203			203	- 101
Perth IDC	34			34	+ 6
Pontville IDC	312			312	- 69
Scherger IDC	283			283	+ 9
Villawood IDC	311	64		375	+ 11
Wickham Point IDC	450			450	+ 66
Total in IDCs	2955	76	0	3031	- 240
Perth Immigration Residential Housing	4			4	- 4
Port Augusta Immigration Residential Housing	4	10	14	28	- 1
Sydney Immigration Residential Housing	11	6	6	23	- 3
Adelaide Immigration Transit Accommodation	4			4	- 2
Brisbane Immigration Transit Accommodation	51			51	+ 5
Melbourne Immigration Transit Accommodation	59		2	61	- 12
Total in Immigration Residential Housing and Immigration Transit Accommodation	133	16	22	171	- 17
Alternative Places of Detention ² (Christmas Island)	207	52	133	392	+ 50
Alternative Places of Detention (Mainland)	605	211	373	1189	- 105
Restricted on Board Vessels in Port				0	0
Total	3900	355	528	4783	- 312
People in Community under Residence Determination	685	364	551	1600	+ 234

Source: DIAC, *Immigration Detention Statistics Summary*, 31 January 2012

Length of detention

2.66 In its submission to the Committee, DIAC reported that the number of IMAs who have spent more than 12 months in detention has increased significantly since September 2010, going from virtually nil to nearly 2000 IMAs.⁷⁴ The explanation given for the rapid and dramatic increase was that:

Several factors have worked in combination to overburden Australia's immigration detention and asylum processing system. These include the suspension of processing of Sri Lankan and Afghan asylum claims and the increased number of people in detention on negative pathways.⁷⁵

2.67 DIAC advised the Committee that families and unaccompanied minors are usually placed in community detention or in alternative places of detention within 6 to 8 weeks of arriving on Christmas Island.⁷⁶ This is an improvement on previous time frames, which sometimes saw people detained on Christmas Island for months.

Services provided in immigration detention facilities

2.68 A wide range of services are provided at each immigration detention facility, these include access to:

- health services;
- active case management services;
- private and official visitors;
- legal and consular services;
- external government and non-government oversight bodies;
- educational programs, including English-language instruction;
- cultural, recreational and sporting activities;
- religious services;
- telephones, newspapers and television;
- library services;
- computers and the Internet;
- culturally appropriate meals and snacks and unlimited access to chilled water, tea, coffee, milk and sugar; and
- incidental items for purchase.⁷⁷

74 DIAC, *Submission 32, Supplementary*, p. 58.

75 DIAC, *Submission 32, Supplementary*, p. 58.

76 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 24.

77 Serco, *Submission 42*, p. 18.

2.69 The services provided by DIAC's contracted services providers, IHMS and Serco, are discussed in more detail in Chapters 3 and 4.

Infrastructure establishment and maintenance

2.70 One of the key concerns of the Committee is the infrastructure challenge faced by DIAC given the increase in the number of detainees in recent years and the need to accommodate them in an appropriate manner. DIAC advised that it strives to ensure that the infrastructure across the immigration detention network is consistent with the government's Detention Values announced in 2008 and supports the flexible management of people in detention. A number of factors present challenges to the existing infrastructure, including:

- the need to rapidly upscale operations in response to sudden increases in IMA numbers. This creates significant operational challenges, particularly at facilities that are not purpose-built for use as an immigration detention facility;
- the remoteness of a number of immigration detention facilities;
- an increase in regulatory requirements over the past decade that increase the costs and time involved in setting up and running facilities. These include laws related to environment, heritage, occupational health and safety and planning laws; and
- the limited availability of Commonwealth land that is appropriate for the establishment of detention facilities.⁷⁸

2.71 As the Committee conducted site visits, particular concerns were raised about Villawood IDC. This IDC has suffered considerable damage during the riots and disturbances in April 2011, and now a lot of the amenity of the facility is compromised because of construction upgrades. While the Committee appreciates the need to improve the facility, it recognises the adverse impact that the construction phase can have on detainees and staff.

2.72 The Villawood IDC was described by the Department as not fit for purpose, and the subject of:

...wide ranging criticism, including from the Red Cross, the Commonwealth Ombudsman and the Australian Human Rights Commission (AHRC). The AHRC, in particular, has raised concerns about infrastructure and facilities at VIDC in each of its annual inspection reports from 1999 onwards, noting that the centre has "dilapidated infrastructure".⁷⁹

2.73 However, the Department also noted the Government's provision of \$186.7 million in the 2009–10 Budget to redevelop the centre to provide better amenities and

78 DIAC, *Submission 32, Supplementary*, pp 12, 207.

79 DIAC, *Submission 32, Supplementary*, p. 11.

improved privacy for people in detention, while also providing appropriate security at the facility.⁸⁰

2.74 Other facilities visited by the Committee which elicited particular concern included Curtin IDC and Northern IDC.

Location of detention facilities

2.75 The Committee appreciates the difficulties faced by DIAC in identifying locations at which to establish detention facilities, some of which are outlined above, and are discussed also in Chapter 5. The Department explained the factors that it considers when selecting future sites as follows:

[T]here is not a formal set of criteria, but there are a number of factors which we take into consideration. We certainly look firstly at whether there is available Commonwealth property, whether through the Department of Defence or through the Commonwealth Land Register managed by the Department of Finance and Deregulation. We also look at the suitability or the availability of accommodation, including for the department and for service provider staff, and obviously the access to utilities—power, water, sewerage, telecommunications and transport services—or that the required services could be brought up to speed quickly and efficiently. We consider already established infrastructure on the potential site. In the case of Scherger, for example, there were already buildings on site that could be used for accommodation. There is also consideration of whether there is an existing site already established in the area, consideration of the impact on the local community, the environmental impact and any heritage issues.

For future feasibility assessments for possible centres we are looking at issues of how quickly can the site be established, what capacity can be supported by the site, what support is available from the state or local government, what sort of people could be accommodated at the site, can the local community support the facility and whether the service provider is able to adequately offer services.⁸¹

2.76 However, despite these considerations, the Department advised the Committee that the main criteria considered when identifying sites for IDCs was availability of land, and/or ready-made accommodation facilities. For this reason Defence sites in remote areas were often selected as they could be used almost without delay. For example, Scherger IDC, located outside Weipa in Queensland, was selected for this reason:

[T]he key point about Scherger was that it was available, and the things that influenced its availability were the fact that it was a defence site; it was easily able to be signed up, in a sense, or an MOU developed; and there was existing defence infrastructure that we could draw upon, which meant that

80 DIAC, *Submission 32, Supplementary*, p. 11.

81 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 59.

we were looking in remote locations. Many people have told us that the remote locations are not optimum for us.⁸²

2.77 DIAC acknowledged that from a health and security perspective remote facilities are not ideal. DIAC stressed that when they have more time to select sites, then more appropriate sites in metropolitan areas can be developed:

[W]hen we have more time we can look at facilities that are closer to urban centres and we can take more time in establishing the services there. The sites that we have got opening up now—most recently in Pontville, and now in Wickham Point and Yongah Hill in northern locations—are much closer to urban centres where services, including security services as well as health services, are available.⁸³

2.78 There can be little doubt of the extra challenges brought about by maintaining multiple detention facilities in remote or very remote locations. In addition to the obvious costs of building infrastructure in such places, the transport of detainees, staff, large quantities of food and other supplies are very much more expensive than they would be in metropolitan areas. The challenges presented by remote facilities are revisited throughout this report.

2.79 The issue is not just remoteness, but also whether a facility has been purpose built. For example, DIAC told the Committee that it would prefer to use Wickham Point over Northern IDC, Darwin. The Secretary of the Department explained how he would prefer to use NIDC:

[We] believe that Northern, which was initially and primarily developed as a place for Indonesian fishermen, is not an appropriate facility for long-term asylum seeker detentions, particularly of failed asylum seekers. It is our strong desire to reduce the population there by using other facilities such as Wickham Point which are more fit for purpose. But I do not think we see any ability at this stage to close Northern altogether; rather, we will try to reduce the population and make the stays there for a shorter period of time.⁸⁴

Security

2.80 DIAC's contract with Serco outlines a Philosophy of Security Services. Security at detention facilities is managed cooperatively between Serco, DIAC's Regional Manager and the Health Services Manager to provide integrated and effective services. The contract has a number of provisions that require Serco to ensure that immigration detention facilities provide a safe and secure environment for

82 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 59.

83 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 58.

84 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 42; see also Mr Greg Kelly, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 26 September 2011, p. 58.

all people within. Serco is required to prepare a security risk assessment for each facility, and for each person in detention. Visitors to detention centres are screened.⁸⁵

2.81 The Detention Services Manual for each detention facility provides that reasonable force or restraint can only be used against a detainee as a last resort. Strict criteria set out the limited circumstances where reasonable force or restraint can be used, and identify other strategies that must be used first.⁸⁶

2.82 Local police and the AFP also attend detention centres from time to time. This may be to respond to violent disturbances, but also to investigate criminal matters referred by Serco.⁸⁷ The local police and the AFP still have powers to act in detention facilities, even though Serco is responsible for general management.⁸⁸ A detailed discussion of the roles of the Police, Serco and DIAC during major incidents is contained in Chapter 8.

Incident reporting

2.83 DIAC officers are required under work health and safety law to report all incidents that they are involved in or witness. During 2010–2011, DIAC received 11 workers' compensation claims relating to irregular maritime arrivals.⁸⁹ DIAC must notify Comcare of serious incidents that occur in immigration detention facilities. This includes DIAC staff, but also Serco staff and people in detention. During 2010–2011 DIAC made 171 notifications to Comcare. The majority of these related to attempted or actual self harm and major disturbances in the facilities.⁹⁰ Comcare's assessment of safety in detention facilities is discussed further in this chapter.

2.84 Serco is required to report and respond, in the first instance, to all incidents in immigration detention centres. Reporting must be done initially verbally to DIAC, and this is followed up by making a written record in DIAC computer systems. Serco is also required to maintain its own Incident Management Log.⁹¹

2.85 IHMS advised that it has established protocols to respond to incidents in detention facilities. This includes proper communication and cooperation and the withdrawal of staff where necessary.⁹²

Health services

2.86 All detainees are provided with an initial health assessment when first entering immigration detention, including a physical examination and mental health

85 DIAC, *Submission 32, Supplementary*, p. 77.

86 DIAC, *Submission 32, Supplementary*, pp 83–84.

87 DIAC, *Submission 32, Supplementary*, p. 80.

88 DIAC, *Submission 32, Supplementary*, p. 84.

89 DIAC, *Submission 32, Supplementary*, p. 74.

90 DIAC, *Submission 32, Supplementary*, p. 74.

91 DIAC, *Submission 32, Supplementary*, p. 83.

92 International Health and Medical Services, *Submission 95*, p. 5.

screening. The Committee was told that detainees receive appropriate health care, commensurate with the level of care available to the broader community.⁹³

2.87 People in facility-based detention are generally provided with primary health care services onsite, with referrals made to external providers as required. IHMS is charged with provision of both the initial health assessment and the onsite primary and mental health medical services, as well as the coordination of referrals and treatment management where detainees have ongoing medical treatment needs, or acute needs.

2.88 Where detainees reside in community detention or immigration residential housing, they are generally provided with health care by community-based health providers. Upon discharge from detention, persons are provided with a discharge health assessment, which informs future health providers of the detainee's relevant health history, treatment received, and ongoing treatment regimes.⁹⁴ Medical services are discussed in detail in Chapter 4.

Legal services

2.89 IMAs who claim asylum are provided with legal assistance through the Immigration Advice and Application Assistance Scheme (IAAAS) during the Refugee Status Assessment (RSA) and the Internal Merit Review (IMR) processes. This also applies to the new processing arrangements, that are discussed in Chapter 6.

2.90 The High Court held in November 2010 that asylum seekers who have arrived in excised off shore locations are entitled to procedural fairness and may seek judicial review of adverse decisions regarding refugee status.⁹⁵

2.91 If an IMA receives a negative IMR assessment the Department provides information that sets out their judicial review rights. IMAs at this point can seek assistance from state and territory legal aid services or advocacy groups, the Department does not directly fund any further legal assistance. The Committee notes advice to the Department from Professor John McMillan, former Commonwealth Ombudsman, that it would be premature to announce a new legal assistance, advice or recommendation scheme for the RSA or IMR processes, or for judicial review but that the situation regarding legal assistance for judicial review should be reviewed regularly.⁹⁶

93 DIAC, *Submission 32, Evolution of the Australian Legislative Framework and Policy for Immigration Detention*, p. 6.

94 DIAC, *Submission 32*, p. 61.

95 *M61/2010E and M69/2010 v Commonwealth of Australia & Ors* [2010] HCA 41. A judgment summary prepared by the High Court is available online:

<http://www.hcourt.gov.au/publications/judgment-summaries> (accessed 27 February 2012).

96 Professor John McMillan AO, *Regulating Migration Litigation after Plaintiff M61*, 2011,

<http://www.immi.gov.au/media/publications/pdf/2011/mcmillan-review-regulating-migration-litigation.pdf> (accessed 2 February 2012), p. 3.

2.92 As a result of evidence gained during a visit to Curtin IDC in May the Australian Human Rights Commission has criticised the Department for failing to provide detainees with full information about review rights. The Department has responded by improving the fact sheet that is provided to detainees.⁹⁷

Education for children

2.93 Education for school aged children is the responsibility of DIAC, who the Committee heard aim to ensure that all school aged children receive education in accordance with community standards and relevant state or territory laws.⁹⁸

2.94 Children who are accommodated in APODs receive schooling either locally in the community or in detention through arrangements made by Serco. Children living in community detention are enrolled in government or non-government schools, selected on the basis of how close the school is to the child's home, and the availability of English as a Second Language classes (ESL).⁹⁹

2.95 The Department has made arrangements with State and Territory governments and non-government providers, and pay for the services provided. With the expansion of Community Detention it is anticipated that many agreements will need to be renegotiated.¹⁰⁰

2.96 The Department has not always provided full enrolment of students when it is clear that the students will only be staying in the area for a short period of time. For example, at Leonora APOD which accommodates UAMs for 6 week periods while community detention arrangements are made, DIAC has not traditionally provided schooling. At Port Augusta, Serco has provided an English as a Second Language (ESL) teacher for school aged children, and the SA Education Department has been providing some educational material to that teacher.¹⁰¹

2.97 Serco provides education for children who are not enrolled in school, including for children who are not yet old enough to enrol. Serco is responsible for providing education and recreation activities within detention centres, however, DIAC is responsible for arranging education of school age detainees with the local state and territory authorities.¹⁰² Where DIAC encounters difficulties in negotiating student spaces – as it did in Port Augusta – students can be left without schooling for months. Serco explained how it saw its obligations under the contract:

97 Australian Human Rights Commission, *2011 Immigration Detention at Curtin*, pp 24–25, http://www.hreoc.gov.au/human_rights/immigration/idc2011_curtin.html. See also DIAC's response, http://www.hreoc.gov.au/human_rights/immigration/idc2011_curtin_response.html.

98 DIAC, *Submission 32*, p. 79.

99 DIAC, *Submission 32*, p. 79.

100 DIAC, *Submission 32*, p. 79.

101 Ms Cheryl Clay, Regional Manager, Serco, *Proof Committee Hansard*, 15 November 2011, pp 69–70.

102 Mr Steve Johnson, Director, DIAC, *Proof Committee Hansard*, 15 November 2011, p. 69.

As far as Serco are concerned, we can try to provide programs and activities. The policy and provision of education is a separate issue which is managed by the department.¹⁰³

2.98 As a result, a number of students were not attending school and were only receiving training from a Serco provided ESL teacher. In the Committee's view, this reflects poorly on DIAC, and reinforces how important it is that DIAC effectively manage its relationships with local state and territory providers.

Education and activities for adults

2.99 Serco is required to provide education and recreational activities for adult detainees and children who are not enrolled in school: at a minimum, one activity in the morning and one in the afternoon.¹⁰⁴ The Department and Serco have acknowledged that increased numbers of detainees has put pressure on Serco's ability to provide adequate activities within the existing infrastructure.¹⁰⁵

Visitors and community engagement

2.100 As provided for in the Immigration Detention Values, detainees must have access to visitors.¹⁰⁶ DIAC's website outlines the process that must be followed in order to visit a person in immigration detention.

2.101 Immigration detention facilities are by their nature closed facilities. However, members of the public are able to visit people in detention by special arrangement. A prospective visitor will need to provide the following information on a template form available on the Department's website, at least 24 hours before the intended visit:

- Personal details of the visitor;
- Name of the detainee and location;
- Purpose of visit (legal, personal, other); and
- Proposed time (that must be within standard visiting hours).¹⁰⁷

2.102 Approval is at the discretion of the Serco Centre Manager and DIAC. Once a visitor arrives, he or she must pass through a security check point (similar to the security process at an airport) and will usually have limited access to the facility. This might include access to a visits area, such as the purpose built building in Villawood

103 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 15 November 2011, p. 70.

104 DIAC, *Submission 32*, p. 59.

105 DIAC, *Submission 32*, p. 59; Serco, *Submission 42*, pp 15–16.

106 DIAC, *Submission 32*, p. 93.

107 DIAC, *Serco Visitor Application Form*, <http://www.immi.gov.au/managing-australias-borders/detention/pdf/idc-visitor-application-form.pdf> (accessed 2 February 2012). The processes are similar for visits to Immigration Residential Housing and Immigration Transit Accommodation: <http://www.immi.gov.au/managing-australias-borders/detention/visiting/visiting.htm> (accessed 2 February 2012).

IDC, or it might be limited to picnic style tables in the open air (such as Inverbrackie). Lawyers may have access to interview rooms, if they are available.

2.103 The Committee received evidence from advocacy groups such as Darwin Asylum Seekers and Advocacy Network and members of the public that raised concerns about the difficulty in arranging visits to people in immigration detention facilities.¹⁰⁸

External review and oversight

2.104 The immigration detention network is the subject of regular external review and oversight by government integrity agencies such as the Australian Human Rights Commissioner and the Commonwealth Ombudsman. Non-government organisations such as Amnesty International, the Australian Red Cross and the United Nations High Commission for Refugees also report on the network. From time to time, usually following a crisis in the network, the Department has commissioned independent reviews. The organisations discussed in this section are referred to throughout this report.

Commonwealth Ombudsman

2.105 The Commonwealth Ombudsman conducts inspections of immigration detention centres, reports on the condition of people held in immigration detention, and investigates complaints about the administrative actions of DIAC.¹⁰⁹

Inspections

2.106 The Commonwealth Ombudsman's program of inspection visits to immigration detention centres, including Christmas Island, and other places of immigration detention, aims to:

- monitor the conditions and services provided to detainees;
- assess whether those services comply with the immigration values and obligations of DIAC and the contracted service provider;
- monitor the non-statutory refugee status assessment process (for detainees who have arrived in an excised territory such as Christmas Island, and claim asylum);
- deal with complaints from detainees; and
- interview detainees who have been detained for more than six months.

108 Mr Rohan Thwaites, Darwin Asylum Seekers Support and Advocacy Network, *Proof Committee Hansard*, 26 September 2011, p. 2. See also Chapter 3.

109 Commonwealth Ombudsman, *Submission 131*.

Reporting on people held in immigration detention

2.107 Under the *Migration Act 1958* (Migration Act), the Ombudsman is required to review the cases of people held in immigration detention for two years or more.

2.108 Section 486N of the Migration Act requires DIAC to provide a report to the Ombudsman within 21 days of a person having been in detention for two years. If the person remains in detention, DIAC must provide fresh reports to the Ombudsman at six-monthly intervals.

2.109 The Ombudsman provides the Immigration Minister with an assessment of the appropriateness of the person's detention arrangements under section 486O of the Act.

2.110 In practice, DIAC and the Ombudsman have agreed that DIAC will provide a report to the Ombudsman every six months while a person is detained. The Ombudsman will then report back to the Secretary of DIAC on the appropriateness of the person's detention arrangements.

2.111 The six-month review process runs parallel to the statutory process, whereupon the Ombudsman reports to the Minister on detentions of more than two years. In practical terms, it provides faster feedback from the Ombudsman to DIAC and more frequent external scrutiny of individual detention cases. Once a person has been detained for two years, they become subject to the statutory reporting regime outlined above.

Complaint handling

2.112 The Ombudsman can decide to investigate complaints made by people in detention about administrative action taken by DIAC or its contractors. The Ombudsman may also investigate other administrative matters, whether or not a complaint is received.

Recent public reports

2.113 The Commonwealth Ombudsman has periodically raised concerns about overcrowding in detention centres, delays in processing applications and the remoteness of detention facilities. The former Commonwealth Ombudsman has expressed concern that the detention values are not being consistently complied with. While acknowledging that the detention network and processing have been put under considerable strain with the increase of IMAs, the Commonwealth Ombudsman called for detention practices to be reviewed by DIAC to ensure they are in line with the detention values.¹¹⁰

110 Commonwealth Ombudsman, *Submission 131*, p. 6.

Australian Human Rights Commission

2.114 The Australian Human Rights Commission has conducted national inquiries and annual inspections focusing on the treatment of detainees in immigration detention in Australia, in particular, asylum seekers. The reports of these inquiries and inspections make recommendations to the Australian Government aimed at protecting the human rights of asylum seekers in immigration detention.¹¹¹

2.115 The Australian Human Rights Commission has visited many immigration detention facilities across the network and has prepared detailed reports that identify human rights concerns, and also documents areas where DIAC's performance has improved over time.¹¹²

2.116 The Australian Human Rights Commission has expressed serious concerns about the length of time many people spend in immigration detention, and the impact of this on their mental health. The Commission is alarmed at high rates of self harm across the detention network and draws particular attention to:

- delays in processing claims for asylum;
- delays in finalising ASIO security assessments;
- detention of long-term residents whose visas have been cancelled under section 501 of the *Migration Act 1958*; and
- detention of people who have received adverse security assessments and those who are found not to be owed protection but are stateless or cannot be returned to their country of origin.

2.117 The Commission has urged the government to find "durable solutions" for individuals who are in indefinite detention and to release people from detention as soon as possible. The Commission is further concerned that the proper treatment of people in detention is not being safeguarded despite the contractual obligations of private service providers and external scrutiny processes. As an alternative the Commission has encouraged the expansion of the community detention system.¹¹³

Comcare

2.118 Comcare works in partnership with employees and employers to reduce the human and financial costs of workplace injuries and disease in the Commonwealth jurisdiction. In July 2011 Comcare made a number of findings as a result of its investigation into work health and safety in seven facilities across the immigration

111 Australian Human Rights Commission, *Submission 112*.

112 See for example, Australian Human Rights Commission, *Submission 112*, attachments 1–4.

113 Australian Human Rights Commission, *Submission 112*, pp 4–6.

detention network.¹¹⁴ This report was released in August 2011 under the *Freedom of Information Act 1982*.

2.119 The investigation was initiated because of concerns held by Comcare about the health and safety of federal workers, contractors and detainees in the immigration detention network. These concerns arose, in part, because of recent reports of the Commonwealth Ombudsman and the Australian Human Rights Commission.

2.120 Comcare concluded that standards of work health and safety varied across the network. For example, the Inverbrackie Alternative Place of Detention was assessed as having the highest standard at the time of the visits. Villawood Immigration Detention Centre was assessed as having the most serious concerns. A number of improvements were observed to have occurred over the course of the investigation.

2.121 The investigator found that DIAC failed to meet its legislated work health and safety obligations in five areas of significant risk: risk management, staffing ratios, training for DIAC staff and contractors, critical incident management, and managing the diversity of detainees.

2.122 The investigation report that has been provided to DIAC includes a series of recommendations for work health and safety improvements to address these areas of risk. Comcare requires an action plan from DIAC in response to the recommendations by 22 August 2011.¹¹⁵ The Committee asked Comcare for a copy of the action plan on 22 November 2011.¹¹⁶ No response was received, an outcome the Committee considers totally unacceptable.

2.123 DIAC advised that it continues to work with Comcare to respond to the risks identified in the report, and has already made changes to the management of Villawood IDC.¹¹⁷ Recent changes include:

- establishing a dedicated health and safety team and the national detention facility health and safety team, to provide specialised work health and safety support for staff and managers working in detention facilities;
- developing national work health and safety guidance for staff and managers at facilities, which was expected to be finalised and implemented across the network by October 2011;
- developing a national detention facility hazard inspection schedule, which was distributed in July 2011;

114 *Investigation Report on National Detention Facilities*, available online: http://www.comcare.gov.au/about_us/freedom_of_information/disclosure_log/foi_requested_documents/report_from_investigation_eve00205473 (accessed 1 November 2011).

115 Comcare, 'Comcare Work Health and Safety Investigation: Immigration Detention Facilities', *Media release*, 10 August 2011. http://www.comcare.gov.au/about_us/freedom_of_information

116 *Proof Committee Hansard*, 22 November 2011, p. 42.

117 DIAC, *Submission 32*, p. 76.

- detention facility ‘environmental scans’ conducted during 2011, involving comprehensive review of current work health and safety practices, identification of risks and training needs and collection of evidence from local activities for the Department's monitoring obligations under the *Occupational Health and Safety Act 1991*;
- establishing with Comcare a process for recording incidents both within DIAC and at Comcare;
- reconciliation of results to enable Comcare to strengthen its guidance on reporting of incidents;
- engaging professional services from Price Waterhouse Coopers to help develop a suite of risk assessments and risk management plans for managing detention services contracts; and
- conducting risk assessment workshops at all sites during July and early August 2011.¹¹⁸

2.124 During the Adelaide hearing the Committee asked DIAC to provide an update on its compliance with the Comcare Report. DIAC advised that it was responding periodically to issues raised by the report, and had discussed some issues with Serco:

There are a variety of recommendations covering a variety of different issues. Time frames are being dealt with through all of those. They are not simple, easy issues. They go to quite complex issues that require changes over time and we are in continuing dialogue with both Comcare and Serco in respect of the implementation of those recommendations.¹¹⁹

Australian National Audit Office

2.125 The Auditor-General is an independent officer of the Parliament who is responsible for providing auditing services to the Parliament and public sector entities. The Australian National Audit Office (ANAO) supports the Auditor-General to perform this role.¹²⁰

2.126 The ANAO is currently conducting an audit on DIAC's management of the provision of individual management services to people in immigration detention.¹²¹ The ANAO is also due to table an audit of the effectiveness of ASIO's arrangements for providing timely and soundly based security assessments of individuals in winter 2012.¹²²

118 DIAC, *Submission 32*, p. 77.

119 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 15 November 2012, p. 68.

120 *Auditor General Act 1997* (Cth).

121 Australian National Audit Office, *Audits in Progress*, <http://anao.gov.au/Publications/Audits-in-Progress/2012/Spring/Provision-of-Individual-Management-Services-to-People-in-Immigration-Detention> (accessed 14 March 2012).

122 Australian National Audit Office, *Audits in Progress*, www.anao.gov.au/Publications/Audits-in-Progress?page3 (accessed 14 March 2012).

Review into riots and disturbances at Christmas Island and Villawood

2.127 In addition to external oversight and accountability, the Department has also commissioned its own independent reviews from time to time. The most recent and relevant of this was the review by Mr Allan Hawke AO and Ms Helen Williams AM into the incidents at Christmas Island and Villawood in early 2011. This review is covered in detail in Chapter 8, but it bears summarising here by way of background.

Background

2.128 Dr Allan Hawke AO and Ms Helen Williams AM were commissioned to conduct the inquiry into the Christmas Island and Villawood riots, in March and April 2011 respectively, through an investigation into the management and security at the relevant IDCs. The reviewers were to report to the Minister and to make recommendations to strengthen security and prevent similar incidents occurring again. Particular attention was paid to:

- the clarity of roles and responsibilities between Serco and DIAC in managing the IDC and in managing the incident;
- how breaches of security were achieved, what access detainees of the centre had to tools to assist with such breaches, and, if relevant, how such access occurred;
- the extent of any prior indicators or intelligence that would have assisted in the prevention and/or management of the incident;
- the adequacy of infrastructure, staffing and detainee management in maintain appropriate security at the centre;
- the adequacy of training and supervision of DIAC and Serco staff;
- the effectiveness of the communication and coordination between the relevant government agencies and contractors; and
- the appropriateness of the response measures taken to the incident.¹²³

2.129 The reviewers made 48 recommendations to the Minister, which were accepted in full. Key recommendations related to infrastructure, security, training, staffing numbers and communication with state police. The report and its findings are considered again in Chapter 8.

Review of Humanitarian Settlement Services by Mr David Richmond AO

2.130 Mr David Richmond was commissioned by the Minister for Immigration and Citizenship to conduct a review of humanitarian settlement services (HSS), a program

123 Dr Allan Hawke AO and Ms Helen Williams AM, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, pp 17–18, <http://www.immi.gov.au/media/publications/pdf/2011/independent-review-incident-christmas-island-villawood-full.pdf> (accessed 1 February 2012).

run by the Department of Immigration and Citizenship.¹²⁴ The key objectives of the program are to provide on-arrival support to recipients of humanitarian visas. The report was provided in September 2011.

2.131 The report does not review the immigration detention network, but it does discuss the impact that increased numbers of irregular maritime arrivals (IMAs) has had on HSS, and also discusses how the community detention program could be better managed to prepare detainees who receive protection visas for the HSS program.

2.132 The report identifies a number of stresses on the program. Relevantly, the rise of IMAs has impacted upon the effectiveness of the HSS program in two ways.

2.133 First, the Department is currently trying to decrease the number of people in restrictive detention, placing them into community detention. Mr Richmond was concerned that, as community detention also involves the use of outsourced services, this may increase DIAC's coordination risks with the HSS program. For example, IMAs who have been detained in IDCs or APODs, but then move to community detention may expect the same level of support when they move to the HSS program. Mr Richmond noted that each phase provides different levels of support and services and the expectations of IMAs need to be effectively managed.

2.134 Secondly, the increase in IMAs – many of whom are single adult males – has changed the demographic of clients served by the HSS program. Mr Richmond noted:

In the current environment of increased numbers (particularly of onshore arrivals from detention), very significant increases in the numbers of single adult males and unaccompanied minors, and significantly rising expectations about service standards and quality, inevitably some of these features present challenges to the Contract.¹²⁵

2.135 Mr Richmond appreciated that once a person has been granted a protection visa, the imperative is to move that person out of detention as soon as possible (as the individual is now a permanent resident of Australia). However, this imperative must be balanced against the capacity of HSS contractors to source appropriate accommodation and support for the client.¹²⁶

2.136 Overall Mr Richmond concluded that DIAC's oversight and management of the program is adequate, but areas of improvement were identified.¹²⁷

124 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, <http://www.immi.gov.au/living-in-australia/settle-in-australia/find-help/hss/review-of-hss-richmond.pdf> (accessed 1 February 2012).

125 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, p. 8.

126 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, p. 10.

127 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, p. 27

Findings in the inquests into the deaths at Villawood in 2011

2.137 The NSW Coroner handed down findings in relation to the deaths of three detainees at Villawood IDC on 19 December 2011. The Coroner found that Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders had died from self inflicted injuries in September, November and December 2010. The Coroner's report makes sobering reading. The Coroner found that DIAC, IHMS and Serco cannot 'escape criticism for the manner in which that duty was fulfilled in caring for the inmates at Villawood at least in the last months of 2010'.¹²⁸

2.138 The Coroner observed that people in immigration detention are at a greater risk of self harm than people in the general community. For this reason DIAC and its contractors owe a higher standard of care. The Coroner found that appropriate mental health screenings and protocols were not in place, or at least not carried out, to minimise the risk or treat appropriately any of the men who died. DIAC Case Managers were constantly changing, IHMS did not keep adequate records, Serco officers were not adequately trained to follow procedures, and all parties failed to record and share information.¹²⁹ The Coroner concluded:

In all three deaths, some of the actions of some staff were careless, ignorant or both, and communications were sadly lacking. [Suicide and Self Harm] procedures were not followed by DIAC or Serco personnel, DIAC failed to ensure that Serco and IHMS were fulfilling the terms of the contract between them and there were startling examples of mismanagement on the part of DIAC, Serco and IHMS.¹³⁰

2.139 The Coroner made a number of recommendations to DIAC, Serco and IHMS to improve procedures in detention centres. The Coroner recommended that DIAC:

- revise procedures in relation to use of force in removing a detainee from Australia, in particular where that person has made a threat of self harm;
- ensure that case managers are aware that they must make referrals for risk assessments to IHMS as soon as risk factors are observed;
- ensure that all referrals to IHMS are made in writing, and documented on a central database; and
- ensure that all staff keep proper records of any relevant observations made of detainees, and any information received from IHMS, DIAC or Serco.

128 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, New South Wales Coroner, 19 December 2011, p. 10, [http://www.lawlink.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/VillawoodFindings-redacted.pdf/\\$file/VillawoodFindings-redacted.pdf](http://www.lawlink.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/VillawoodFindings-redacted.pdf/$file/VillawoodFindings-redacted.pdf) (accessed 1 March 2012).

129 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, New South Wales Coroner, 19 December 2011, p. 11.

130 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, NSW Coroner, 19 December 2011, p. 11.

2.140 The Coroner recommended that Serco develop procedures to better respond to detainees who have been assessed as being at risk. For example,

- ensuring that the outcome of a risk assessment is sought when a detainee has been referred to IHMS;
- documenting the presence of risk factors on detainee files;
- ensuring that all Serco officers in the area are aware when there is a need for higher support for a detainee; and
- developing a policy on use of force, including de-escalation techniques and appropriate planning to reduce risks.¹³¹

2.141 The Coroner recommended that IHMS develop a standard procedure for risk assessments that takes into account all relevant information, train staff on these procedures and notify DIAC and Serco on the outcome of all risk assessments in writing.¹³² The Coroner also recommended that DIAC, IHMS and Serco work to develop better communication processes, and that DIAC consider changing the clinical governance structure at Villawood so that all the processes are overseen by a psychiatrist, and consider using trained negotiators in local and federal police forces.

2.142 The Secretary of DIAC, Mr Andrew Metcalfe, advised the Committee during its last hearing on 29 February 2012 that DIAC was in the process of responding to all the recommendations, with some significant changes already made. For example, the recommendation in relation to clinical governance was implemented in August 2011.¹³³ DIAC has not yet made a formal response to the report, but expected to do so imminently.

Conclusion

2.143 This chapter has provided a broad outline of the immigration detention network in Australia: the types of facilities, location and infrastructure challenges. The key responsibilities of DIAC and its contracted service providers have been set out, along with the experience of detainees within the network. The rise of IMAs in recent years has put considerable pressure on the network and on the services provided by DIAC, IHMS and Serco. Oversight and integrity agencies such as the Commonwealth Ombudsman and the Australian Human Rights Commission have reported regularly on pressures within the system and the need for change. These organisations, as well as independent reviewers, have made recommendations for improvements to the system.

2.144 In the next two chapters the Committee examines in more detail the important services that IHMS and Serco are contracted to deliver.

131 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, NSW Coroner, 19 December 2011, p. 16.

132 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, NSW Coroner, 19 December 2011, p. 16.

133 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 23.

CHAPTER 3

The Department's administration of its contract with Serco

Introduction

3.1 This chapter examines the key contractual obligations of Serco Australia Pty Ltd (Serco) as the detention service provider, and the effectiveness of the Department of Immigration and Citizenship (DIAC) in relation to contract management. Firstly, an outline of Serco's key obligations under the contract is provided, as well as key issues that arose during the course of the inquiry.

3.2 The Committee has identified areas where Serco's performance can be improved, and areas where the contract needs to be revisited. In large part the issues identified by the Committee have already been commented on by oversight bodies, DIAC and even Serco itself. The Committee recognises the pressure placed on Serco to quickly respond to a sharp increase in the number of detainees over 2010–2011. Nevertheless, the Committee identified a number of gaps between what Serco's policies provide should happen in particular circumstances and the reality on the ground.

3.3 The Committee also identified weaknesses in the detention services contract. The contract has been described by both Serco and DIAC as outcomes focused. The contract does not provide clear guidance on how Serco's obligations under the contract should be achieved. This presents challenges for contract management, particularly when it comes to staffing ratios.

Background

3.4 The Australian Protective Service, a Commonwealth Government agency, managed detention facilities on behalf of the Department up until 1997. Following a competitive tendering process, the government outsourced the management of Immigration Detention Centres to Australasian Correctional Services (ACS).¹³⁴ Under contract ACS was required to guard, feed and transport detainees, and ensure that health, education and welfare needs were met.¹³⁵

3.5 Amidst concerns that the contract did not represent value for money, and rising numbers of people in detention, the contract was retendered in 2001. On 27 August 2003 the government entered into a contract with GSL Australia Pty Ltd.¹³⁶

134 Subcontracted to Australasian Correctional Management Pty Ltd

135 Department of Immigration and Citizenship, *Submission 32*, p. 16.

136 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 195.

3.6 Following reforms in immigration detention standards, DIAC released a request for tender on 24 May 2007 for the provision of services for detainees in immigration detention centres, immigration transit accommodation and immigration residential housing, which are variously described in Chapter 2. As a result of the tender, two contracts were entered into with Serco.

3.7 On 29 June 2009, DIAC, on behalf of the Commonwealth, entered into a contract with Serco for detention services for a five year period.¹³⁷ A phased transition from the former detention service provider G4S Australia Pty Ltd started from the contract signature date.¹³⁸

3.8 On 11 December 2009, the Department entered into a second five-year contract with Serco to provide services to people in immigration residential housing and immigration transit accommodation throughout Australia. Transition from the previous detention service provider G4S Australia Pty Ltd was completed in January 2010.¹³⁹

3.9 The two contracts are referred to throughout this report as 'the contract'.¹⁴⁰

3.10 When the contract was negotiated the detention population was under 300 and located at seven sites. The detainee population was compliant and low risk. These circumstances have changed. Following a recommendation from the Hawke-Williams Review, DIAC and Serco are currently discussing an amendment to the Objectives section of the contract to improve the expression of the immigration detention values.¹⁴¹

Serco's key obligations under the contract

3.11 When the contract was executed in June 2009, Serco agreed to be responsible for managing seven immigration detention facilities (IDF).¹⁴² Since 2009 Serco has agreed with DIAC to provide services to eleven additional IDFs.¹⁴³ Some of these

137 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 195.

138 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 195.

139 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 195.

140 The Department released the contract to the committee on the same day that it was released under the *Freedom of Information Act 1982* to a third party applicant; DIAC, answer to question on notice, Q34 (received 2 September 2011).

141 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 36. See Chapter 8.

142 Serco, *Submission 42*, p. 12. These facilities were Maribyrnong (Melbourne, VIC), Northern (Darwin, NT), Villawood (Sydney, NSW), Perth (WA) and Northwest Point (Christmas Island) IDCs and Phosphate Hill and Construction Camp APODs (Christmas Island).

143 Serco, *Submission 42*, p. 12. These facilities were Lilac/Aqua IDC (Christmas Island); Adelaide APOD (West Richmond, SA); Asti Motel APOD (Darwin, NT); Virginia Palms Motel APOD (Boondall, Qld); Leonora Lodge and Gwalia Lodge LTAPODs (Leonora, WA); Darwin Airport Lodge LTAPOD (Darwin, NT); Pontville IDC (Hobart, Tas); Yongah Hill IDC (Northam, WA); Wickham Point IDC (Darwin, NT); Curtin IDC (Derby, WA); and Scherger IDC (Weipa, Qld).

facilities, such as the Asti Motel in Darwin, are no longer in operation. As discussed previously, Serco is responsible for maintaining infrastructure. However DIAC is responsible for sourcing and providing detention facilities.

3.12 Under the contract Serco is required to provide a wide range of services to detainees on behalf of DIAC. These services include:

- providing accommodation including bedding and bathroom facilities;
- catering, which includes the provision of a minimum of three meals per day and the accommodation of particular requirements such as halal, kosher and vegetarian foods;
- arranging access to religious practitioners, prayer rooms, services and other religious activities;
- providing access to television, library services and other educational and entertainment facilities;
- arranging access to visitors (including visitor accommodation), a mail service and to telephones, computers and the internet;
- arranging access to interpreters;
- arranging excursions to locations or venues external to the IDCs;
- facilitating a schedule of programs and activities (participation in which is voluntary) targeted at enhancing the mental health and wellbeing of clients;
- administering an income allowance program and operating shops and a hairdressing service;
- recreational and sporting facilities; and
- supplying and replenishing clothes, footwear, toiletries, hygiene products and other personal items.¹⁴⁴

3.13 Serco is also required to report on incidents, maintain perimeter security, act in accordance with the immigration detention values and maintain facilities.

3.14 The terms of DIAC's contract with Serco are flexible and allow DIAC to request a reduction or, more commonly, an increase in services provided by Serco. When a new IDC is opened, Serco is required to respond promptly. During the Canberra hearing, Mr John Moorhouse, Deputy Secretary, DIAC, particularly highlighted Serco's responsiveness to DIAC's need to accommodate a rising number of detainees:

144 Serco, *Submission 42*, p. 18.

I would like to have it on the record that what they have done in standing up facilities in challenging locations at very short notice is a considerable achievement for any organisation, and, as a senior manager, I would not like to have had to do the scale of what they have had to do in the time frame that they have had to do it. I am not wishing to be an apologist for them. We do actively work with them. But I do think that, at the same time, the scale of the challenge with which they have been presented needs to be acknowledged, and their capacity to respond to that.¹⁴⁵

3.15 Each month DIAC considers Serco's degree of compliance with the contract. In every month since the abatement process commenced Serco has been subject to abatement – that is, a penalty fee for failing to comply in full with its terms. No incentive payments have been paid.¹⁴⁶

3.16 The Committee received evidence from detainees about the quality of services received from Serco. Many detainees expressed contentment or indifference to the services provided by Serco. However there were some recurring complaints, particularly from detainees in remote areas. These issues are discussed in detail in Chapter 5.

3.17 In this chapter the Committee discusses the key issues that arose during the inquiry. For a detailed assessment for Serco's services to people in detention, readers are referred to detailed inquiries conducted by the Australian Human Rights Commission and the Commonwealth Ombudsman.¹⁴⁷

Support to people in detention

3.18 Serco advises that it is committed to supporting and promoting the wellbeing of people in detention. This can be achieved by ensuring that IDCs are humane and that workers within the centres respect human dignity. Serco's key policy document is the *Wellbeing of People in Detention policy and procedure manual*.¹⁴⁸ The manual is designed to give staff an overview of Serco's approach to assisting detainees, and also provides specific guidance to equip officers in responding to physical and psychological elements associated with detainee health and wellbeing.¹⁴⁹

145 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 31.

146 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 36.

147 See, for example, the reports in relation to immigration detention on the Australian Human Rights Commission's website, http://www.hreoc.gov.au/human_rights/immigration/index.html (accessed 27 February 2012) and the Commonwealth Ombudsman's website, <http://www.ombudsman.gov.au/reports/immigration-detention-review/> (accessed 27 February 2012).

148 Serco, *Submission 42, Attachment 4*.

149 Serco, *Submission 42*, p. 21

3.19 The Wellbeing Policy, and the contract, provide for the creation of individual management plans (IMPs) for each detainee within five days of their arrival in a centre. These plans:

- identify and record the religious, cultural and welfare needs of detainees;
- allocate a personal officer to each detainee, who will meet regularly with the detainee;
- document and define responses to detainee needs;
- complement the case management carried out by DIAC; and
- provide a point of reference for the Health Services Manager.¹⁵⁰

3.20 Serco must participate in a weekly department review of the individual management plans with the Regional Management of DIAC and the Health Services Manager, or more frequently as directed by DIAC.¹⁵¹ The contract also requires Serco to allocate each detainee to a staff member, as part of the Personal Officer Scheme (POS).

3.21 The Commonwealth Ombudsman, other oversight agencies and the Hawke-Williams Review have reported concerns that in some facilities, due to the high number of detainees and pressure on Serco staffing levels, Serco has not been compliant with these requirements. Dr Hawke and Ms Williams observed that the personal officer scheme had not been fully implemented on Christmas Island or Villawood IDC. Individual Management Plans were not in place for all detainees on Christmas Island, and those that were in place were not being regularly reviewed.¹⁵²

3.22 Serco acknowledged in its submission to the inquiry that the Personal Officer Scheme was not in place in all facilities due to 'external pressures':

This program is yet to be implemented in some facilities, due to difficulties created by overcrowding and other external pressures. Serco believes that the Personal Officer program is extremely valuable and is committed to deploying it universally once circumstances allow. In the meantime, in facilities where it has not yet been possible to implement the program, Serco ensures that all employees are trained to make certain that clients feel able to communicate all issues without fear of negative consequences.¹⁵³

3.23 Mr Steve Johnson, State Director South Australia, explained to the Committee that the implementation of the Personal Officer Scheme is audited by the local DIAC contract manager at each facility. For example, in South Australia:

150 Serco, *Submission 42*, p. 21; see also *Attachment 5*.

151 DIAC, *Submission 32, Supplementary*, p. 65.

152 Dr Allan Hawke AO and Ms Helen Williams AM, Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre, 31 August 2011, p. 9, www.immi.gov.au/media/publications/pdf/2011/independent-review-incidents-christmas-island-villawood-full.pdf (accessed 1 February 2012).

153 Serco, *Submission 42*, p. 22

The implementation of the Personal Officer Scheme is one of the contract performance measures which is audited by the DIAC contract team on each of the sites in South Australia. We have a performance metric. We look at a range of the performance issues which lead to that abatement or incentive scheme...The Personal Officer Scheme is audited in terms of the number of entries, the regularity of entries, around the case noting by Serco staff against their individual client allocations... we organise an audit program to deal with what we think are the pertinent issues for each particular site in terms of ensuring the optimum performance and dealing with issues which we think are contemporary at that particular place.¹⁵⁴

3.24 DIAC advised the Committee that the Personal Officer Scheme had been audited once during the previous 12 months at Northern IDC and the Darwin Airport Lodge Alternative Places of Detention.¹⁵⁵

Committee view

3.25 The Committee believes that the Personal Officer Scheme and Individual Management Plans are important mechanisms to support people in detention. The Committee notes that DIAC has accepted a recommendation from the Hawke-Williams Review in relation to improved monitoring of these programs and that the Auditor-General is currently conducting an audit of DIAC's management of Serco's compliance with these contractual obligations.¹⁵⁶

Programs and activities

3.26 Serco is required to provide meaningful programs and activities to people in detention. This must consist of structured and unstructured programs, both within the facility and on supervised external excursions. Two programs must be provided per day, one in the morning and one in the afternoon. The contract does not say whether this means that two activities must be available to each detainee a day, or whether there just needs to be two activities each day in each centre.¹⁵⁷ Serco advised the Committee that it interprets this requirement broadly and provides more than two activities a day per a centre.¹⁵⁸

3.27 Since the surge in arrivals in late 2009, Serco has struggled to meet the requirements of the contract for provision of activities. In part this is due to a lack of facilities. For example, recreational rooms on Christmas Island and at Curtin IDC were used to accommodate detainees, while other facilities such as Northern IDC

154 Mr Steve Johnson, Director, DIAC, *Proof Committee Hansard*, 15 November 2011, p. 63

155 DIAC, answer to question on notice, Q226 (received 22 March 2012).

156 Australian National Audit Office, *Audits in Progress*, <http://anao.gov.au/Publications/Audits-in-Progress/2012/Spring/Provision-of-Individual-Management-Services-to-People-in-Immigration-Detention> (accessed 14 March 2012). See also Chapter 2.

157 Immigration Detention Centre Contract, Schedule 2, Section 2.2.1, Clause 1.10.

158 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 15 November 2011, pp 70–71.

were not properly equipped to begin with.¹⁵⁹ The challenge has also arisen because of a lack of suitable staff to run the activity programs and the increased risk profile of detainees.¹⁶⁰

3.28 The members of the Council for Immigration Services and Status Resolution (CISSR) documented concerns about Serco's provision of programs and activities in 2010, particularly in Villawood IDC and Christmas Island.¹⁶¹ CISSR tracked Serco's work in this area and was able to identify improvements over time. In June 2011 Serco presented information to CISSR about its new activities model and pilot scheme of activities for single adult men, single adult women, minors and families. The Chair of CISSR, Mr Paris Aristotle, was critical of Serco. The minutes record Mr Aristotle asking:

[W]hen [will] the concept...move into actual activities given that Serco is contractually obliged to provide these activities now and isn't delivering. He asserted the project is a good exercise but was concerned it would only further delay implementation of activities.

...

The Chair questioned why there are no penalties on Serco given they have had three years to deliver these activities. As good as the proposed model may be he stressed that something needs to be done now.¹⁶²

3.29 During the CISSR meeting DIAC is recorded as observing that the abatements it had imposed on Serco for failing to meet activities requirements had not resulted in 'the impacts needed but should also be balanced against the necessary speed of upscale in the system'.¹⁶³

3.30 The Hawke-Williams Review found that at the time of the incidents at Christmas Island and Villawood, March and April 2011, meaningful programs were not fully operational, and made recommendations for the program to be overhauled.¹⁶⁴

3.31 The AHRC visited Curtin IDC in May 2011 and reported a number of concerns relating to programs and activities available to detainees. The AHRC

159 Dr Allan Hawke AC and Ms Helen Williams AO, *Independent Review of the Incidents at Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, pp 136–137.

160 Dr Allan Hawke AC and Ms Helen Williams AO, *Independent Review of the Incidents at Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, p. 137.

161 DIAC, answer to question taken on notice, Q 72 (received 2 December 2011).

162 DIAC, answer to question taken on notice, Q 72, (received 2 December 2011), CISSR Minutes, June 2011, p. 21

163 DIAC, answer to question taken on notice, Q 72, (received 2 December 2011), CISSR Minutes, June 2011, p. 21

164 Dr Allan Hawke AC and Ms Helen Williams AO, *Independent Review of the Incidents at Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, p. 136.

recommended that DIAC improve the facilities available to detainees, and ensure that Serco provided a sufficient number of meaningful activities as required by the contract. The Australian Human Rights Commission noted that many recreational buildings had been converted to accommodation dormitories, the playing field was under construction and there were insufficient telephones and internet access.¹⁶⁵

3.32 In late February 2012 the Committee asked DIAC to provide an update on the status of the implementation of the Hawke-Williams recommendations in relation to activities. DIAC informed the Committee that progress had been made, but there is still a way to go. Mr Ken Douglas told the Committee:

There is an active working group that comprises people from both the department and Serco who are presently working their way through a detailed set of programs and activities to enhance what is already being rolled out. That working group is expected to come back to the department with its findings in the course of the next few weeks, so we should expect to see some further increased activity in this area in the next month or two.¹⁶⁶

Committee view

3.33 The Committee recognises that activities within the detention centre environment are important for detainees. This reality is reflected in the detention services contract. However, as the Hawke-Williams Review noted, Serco has failed to provide activities to the standard required by the contract. Hawke-Williams recommended that Serco and DIAC deploy a revamped programs and activities model. This recommendation was accepted by DIAC, and Serco is developing a revised activities model.¹⁶⁷

Recommendation 1

3.34 The Committee recommends that the Department of Immigration and Citizenship continue to robustly contract manage Serco's obligation to provide appropriate activities for detainees.

3.35 The Committee observed during site inspections that while DIAC has planned improvements for a number of facilities, such as Northern IDC and Villawood IDC, the amenity of such facilities is greatly reduced during the construction phase. For example, when the Committee visited Northern IDC it viewed plans for new playing fields.¹⁶⁸ The Committee is concerned that during the construction phase, which can

165 Australian Human Rights Commission, *Immigration detention at Curtin*, 2011, http://www.hreoc.gov.au/human_rights/immigration/idc2011_curtin.html (accessed 15 February 2012).

166 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 36.

167 *Minister's Response*, Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre, November 2011, <http://www.immi.gov.au/media/publications/pdf/2011/response-independent-review-incidents-christmas-island-and-villawood-full.pdf> (accessed 16 February 2012), p. 13.

168 Committee site visit, Northern Immigration Detention Centre, 27 September 2011.

run into months and sometimes years, detainees do not have adequate access to open areas for exercise. At Villawood IDC the Committee also viewed detailed plans for improvements to Villawood IDC, a project which is due to be completed in 2015.¹⁶⁹ Again, the Committee is concerned in this instance of the loss of amenity that may be inconsistent with the immigration detention values.

Recommendation 2

3.36 The Committee recommends that the Department of Immigration and Citizenship consider other accommodation or recreation options for detainees when the amenity of a facility is compromised due to construction or maintenance projects.

Serco's ability to subcontract

3.37 Under its contract with DIAC, Serco may subcontract some services.¹⁷⁰ For example, Serco has engaged MSS Security and Wilson Security to provide assistance with security at IDCs. Subcontracted security staff are intended to *supplement* rather than replace Serco officers. Serco described the distinction between its officers and contracted staff:

Serco officers continue to occupy positions that require direct client contact and subcontracted staff are generally allocated to roles with relatively minimal client interaction (such as perimeter security and staffing surveillance or monitoring stations).¹⁷¹

3.38 Serco explained in its submission the standard of service delivery required by its contractors:

Both MSS Security and Wilson Security are required to hold all appropriate licences and staff made available to Serco must have appropriate expertise and qualifications sufficient to enable them to be authorised as officers under the Act. Regular checks are undertaken to verify that subcontractors' licences and qualifications are in order. Were either MSS Security or Wilson Security to fail to meet the required standards, they would be exposed to contractual penalties including, potentially, termination.¹⁷²

3.39 The Committee received evidence during hearings which raised concerns about the roles that contracted security staff performed in some IDCs, particularly on Christmas Island. Ms Kaye Bernard, General Secretary, Union of Christmas Island Workers told the Committee that the distinction between MSS guards and Serco officers was not clear in practice, and that detention centres are altered when politicians visit:

169 Mr Greg Kelly, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 5 October 2011, p. 105.

170 Immigration Detention Centre Contract, Clause 23.

171 Serco, *Submission 42*, p. 11.

172 Serco, *Submission 42*, p. 11.

MSS work in all positions within the detention facilities as...client service officers or detention officers. They work in all areas. When politicians come to town, things change. My understanding is that there was a drag to pull the MSS workers out, those who are not meant to be—or who the committee has been told are not meant to be—in the compounds.¹⁷³

3.40 United Voice, the union that represents about 80 per cent of Serco Immigration Officers on mainland Australia, reported that for the most part subcontracted security staff 'are used exclusively for security purposes and do not engage with detainees'.¹⁷⁴ However, it has been reported to United Voice from mainland officers who have gone on secondment to Christmas Island facilities, that MSS security guards are being used there more extensively. United Voice reported:

Members sent on recent secondments to Christmas Island confirm this, saying that MSS Security guards were being deployed in all areas of the IDC at North West Point, including as escorts for interviews and activities. The Serco-employed officers at the centre reportedly manage the situation by providing the MSS guards on-the-job training in order to prevent serious incidents from arising. However, the use of untrained subcontractor staff inside detention centres creates unnecessary risks for both staff and detainees.¹⁷⁵

3.41 The Committee asked Serco to respond to these concerns. Serco reiterated its intention that MSS officers have a different and distinct role to Serco officers and are not generally in contact with detainees. During the Darwin hearing Mr Chris Manning, Managing Director, Serco, told the Committee:

The role of MSS is typically to provide additional security on perimeters, which allows Serco to free up staff to carry out the duties that are provided for in the contract. Day to day there are many MSS staff operating around the network, and they will fulfil those responsibilities. From time to time there may be a local variation, but in general terms that is their role.¹⁷⁶

3.42 During the course of the inquiry the Committee received a sample of incident reports produced by DIAC.¹⁷⁷ In one report, a detainee was found wounded in his room by a MSS officer. The presence of the MSS officer appeared to be inconsistent with assurances provided by Serco about the role of contractors. The Committee asked DIAC to comment on Serco's use of security subcontractors, in the context of the incident report. Mr John Moorhouse informed the Committee:

We have tried to be brutally honest. We do not want to gild the lily in terms of what we are dealing with. In relation to that particular incident it is

173 Ms Kaye Elizabeth Bernard, National Secretary, Union of Christmas Island Workers, *Proof Committee Hansard*, 6 September 2011, p. 18.

174 United Voice, *Submission 55*, p. 10.

175 United Voice, *Submission 55*, p. 10.

176 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 26 September 2011, p. 80.

177 DIAC, answer to question on notice, Q21 (received 16 August 2011). A sample of incident reports was subsequently provided *in camera* to the Committee.

absolutely true that people who provide security services should not be dealing with clients. But I am pleased that, as any other Australian would, when they saw someone in a situation of need they helped. You do not say, 'It's not my job; I'm going to wait for the right person to come along.' I think that incident report needs to be seen in that context. It is not the situation that should happen. The MSS guards should be providing perimeter security and that is the end of it—not necessarily perimeter security, but security for particular facilities.¹⁷⁸

3.43 The Committee urges DIAC to remain vigilant in auditing this aspect of the contract with Serco. The issue is more profound on Christmas Island than in mainland facilities, perhaps in part because of Serco's difficulty is attracting suitable numbers of qualified staff. The Committee believes that MSS officers are less likely to encroach on the role of Serco officers where the ratio of Serco officers to detainees is appropriate.

Adequate Serco officer staffing

3.44 A recurring issue as the Committee travelled to detention facilities and held hearings was the ratio of detention centre staff to detainees. Inadequate staffing numbers can have an adverse impact on detainees, Serco officers and security. The contract does not stipulate the ratio of Serco staff to detainees. Serco is simply required to provide sufficient numbers of adequately trained staff to provide a proper service.

3.45 The Union of Christmas Island workers reported that employees had raised concerns about staff to detainee ratios since 2009, but had not observed any improvement in this area.¹⁷⁹ United Voice reported that 72 per cent of members it surveyed felt like the immigration facility they worked in was under staffed, and this was their principal complaint. Mr David McElrea explained to the Committee during the Sydney hearing the impact this has on a centre:

The principal problem is a lack of staffing, a lack of people on the ground to deal with issues and to deal with what might happen in the course of the day. If people have to take detainees off site and there is an escort, your numbers drop and all of a sudden you can be left with one person for, say, 200, which is unsafe for the staff member and also for the detainees.¹⁸⁰

3.46 DIAC advised the Committee that it did not require a particular level of staffing in detention centres, it was concerned with outcomes:

[W]e have contract managers and detention operations staff who are responsible for making sure that the outcomes are delivered, that the facility

178 Mr John Moorhouse, Deputy Secretary, DIAC *Proof Committee Hansard*, 9 December 2011, p. 36.

179 Ms Kaye Elizabeth Bernard, National Secretary, Union of Christmas Island Workers, *Proof Committee Hansard*, 6 September 2011, p. 11.

180 Mr David McElrea, National Office Director, United Voice, *Proof Committee Hansard*, 5 October 2011, p. 47.

is managed properly and that the services that are meant to be delivered are delivered. The government has contracted Serco because of its expertise in managing facilities to appropriately manage this contract and the detention facilities. It would be simply inappropriate for us to then say, 'We don't trust you to make the appropriate judgments and we're going to monitor your deployment of staff and tell you how to do the work.'¹⁸¹

3.47 DIAC emphasised that while it would not dictate staffing numbers to Serco, it was still interested in Serco's staffing levels, particularly where this impacted on the quality of services provided to detainees and security:

I would not want to give the impression that we are not interested in what Serco's staffing levels are. They are the subject of quite active and quite vigorous dialogue at times. There have been a number of issues in relation to this, including the availability of adequate staff for things like programs and activities as new facilities were being stood up and also the issue I mentioned in terms of what was Serco's role in relation to public order management or the good order of the facilities. So there have been a number of aspects of the operation of the centres that have been the subject of active and sometimes vigorous dialogue between us.¹⁸²

3.48 DIAC assured the Committee that it will, and has, imposed abatements on Serco for breaches of the contract that occur as a result of low staff numbers. For example, if insufficient activities are provided or if a detainee absconds.¹⁸³ As discussed earlier, abatements do not always result in a change in behaviour.

3.49 The Committee asked DIAC to respond to the United Voice Survey results. DIAC advised that determining an ideal ratio of staff to detainees was a complex task:

[The] the level of staffing in a centre varies over the course of the year in anticipation of the number and type of people who will be positioned in that centre. So, at any given point in time, it is likely that people will have a view about whether or not the staffing is adequate. The number on any given day is likely to be affected by unscheduled absences. There are a whole range of factors. If I can reflect on my own personal experience, I do not think I have worked in a single workplace in my career where the majority of people in that workplace believed they had sufficient staff to do the job.

It is a really difficult set of interpretations...where we have focused most of our attention is on whether the staffing and activity levels provided in a centre are sufficient to meet that centre's needs in terms of programs and activities, in terms of access to services and amenities, and in terms of meeting the company's commitment to us about the activities or the way

181 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 26.

182 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 31.

183 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, pp 26–27.

that it would engage with the clients of those centres. It is a matter we take under constant review, but I also think at times it is a 'how long is a piece of string' question...[R]eally the issue is whether or not there are activities and engagement with the clients and whether the services that are undertaken to be provided are being delivered. No doubt everybody at some stage would like to think that, with more staff, they could do better.¹⁸⁴

3.50 The Committee is concerned that the staff to detainee ratio can be further diluted by the requirement that Serco officers must escort detainees during activities outside the centre, for example, to attend the emergency department. Serco assured the Committee that the staffing levels are determined to manage this risk:

The staffing profiles that are developed take into account the requirement to provide transport and escort activities. That could include school and trips to the medical centre. There is a proportion of staffing built into the daily entitlement at that centre to support those activities. Of course, if there is an emergency or a significant number of clients are going on an excursion, it would be reasonable to expect that some of the staff from the centre would accompany that particular excursion, because the majority, or a fair proportion, of the clients could be outside with the excursion.¹⁸⁵

3.51 Sometimes additional staffing services this will mean that Serco can recover a further payment from DIAC. The Committee asked in what circumstances this would occur:

For example, additional security staff may be needed if an infrastructure project is underway. That would obviously fall within the infrastructure project costs. By and large, the routine management of the centre would fall within the fixed price of the contract, but there are examples where we would seek recovery of additional costs.¹⁸⁶

3.52 Comcare found that DIAC failed to comply with health and safety obligations in relation to staffing ratios, including in relation to Serco staffing levels. Comcare advised that:

DIAC failed to have a staff/detainee ratio level identified and implemented. Nor did it have a system for ensuring that ratios are adjusted according to identified levels of risk. In doing so, it failed to take all reasonably practicable steps to provide a working environment (including systems of work) that was safe for DIAC employees and contractors (and without risk to their health).¹⁸⁷

184 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 32.

185 Mr Peter McIntosh, Director of Operations, Serco, *Proof Committee Hansard*, 15 November 2011, p. 47.

186 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 15 November 2011, p. 48.

187 Comcare, *Investigation Report on National Detention Facilities*, p. 4, http://www.comcare.gov.au/about_us/freedom_of_information/disclosure_log/foi_requested_documents/report_from_investigation_eve00205473 (accessed 1 November 2011).

3.53 Comcare recommended that as part of a comprehensive risk assessment DIAC should document a staff/detainee ratio and identify adequate levels of staff and coping strategies if the optimum ratio is unachievable at a particular time.¹⁸⁸

3.54 Dr Hawke and Ms Williams also identified a staffing shortage at North West Point in the lead up to the riots and recommended that DIAC agree on a system for collecting Serco staffing metrics and assessing staffing capability at each centre and that this be distributed for use across the network.¹⁸⁹

Committee view

3.55 The Committee remains concerned about the staff to detainee ratios in many immigration detention centres. The Committee notes DIAC's acceptance of the Hawke-Williams Review recommendations that DIAC conduct robust auditing of Serco staffing levels. This would involve collecting Serco staffing metrics and assessing staffing capability, and ensuring both are adequate to respond to the risk profile of each detention facility.

Recommendation 3

3.56 The Committee recommends that the Department of Immigration and Citizenship conduct robust auditing of Serco staffing ratios and training, in line with the recommendations in the Comcare report and the Hawke-Williams Review.

Serco's incident reporting

3.57 The contract outlines the process that Serco must follow when reporting incidents. Serco is required to provide a verbal report of an incident within a specified period and to record the incident on DIAC's system. Serco must also maintain an Incident Management Log. This log details the time, date, and location of the incident and action taken.¹⁹⁰ Serco must also work to prevent incidents arising, and manage the length and extent of incidents once they arise.¹⁹¹

3.58 The Committee received evidence that questioned the adequacy of Serco's incident reporting, and was particularly concerned by allegations made by the Union of Christmas Island Workers that Serco does not report all incidents.¹⁹² The Committee asked Serco to respond to this allegation. Serco acknowledged the

188 Comcare, *Investigation Report on National Detention Facilities*, p. 5. See also Chapter 2.

189 Dr Allan Hawke AO and Ms Helen Williams AM, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, Recommendation 37. See also Chapter 8.

190 Department of Immigration and Citizenship, *Submission 32*, p. 84. See also the Immigration Detention Centre Contract, Clause 56 (pp 66–67) and Schedule 2 (Statement of Work).

191 Immigration Detention Centre Contract, Part 14, Clause 56.

192 Ms Kaye Elizabeth Bernard, National Secretary, Union of Christmas Island Workers, *Proof Committee Hansard*, 6 September 2011, p. 11.

seriousness of the claim and rejected it. Mr John Couttie, Deputy Regional Manager, Serco, told the Committee:

I would refute the matter most strongly. As I am sure you are all aware, the contract that we work under comes under the closest scrutiny from the department, and the department work hand in hand with us on a daily basis and are therefore aware of any incidents that take place. All incidents that take place are also recorded in the department's database, known as PORTAL. I think if you look, for example, at last month, we recorded over 400 incidents, raising from minor all the way through to critical. There is clear evidence that we document and, in fact, report every single incident from minor, as I say, through to critical.¹⁹³

3.59 Comcare found that DIAC was not properly reporting incidents to Comcare. While DIAC had improved its incident reporting in recent months, Comcare observed that it still often becomes aware of incidents in detention centres through media reports rather than through DIAC.¹⁹⁴

3.60 The Commonwealth Ombudsman's Office is also dissatisfied with Serco's incident reporting, advising the Committee:

The Ombudsman has investigated complaints and matters arising from detention reviews and visits to detention centres which have raised serious concerns about the consistency, competency and integrity of incident reporting within the detention network.¹⁹⁵

3.61 For example, the Commonwealth Ombudsman observed that incident reporting into allegations of sexual assault contained inaccuracies and omissions of crucial material. Further, competent and consistent descriptions of the circumstances of the matter and action taken by Serco are lacking and detainee witness statements are not routinely taken.¹⁹⁶

3.62 The Commonwealth Ombudsman suggested that DIAC conduct a review of the quality and management of incident reporting across immigration detention network, and also assess Serco's capacity to monitor its own compliance with the reporting guidelines.¹⁹⁷

Committee view

3.63 The Committee remains concerned about Serco's incident reporting. The Committee recognises Serco's intention to report all incidents, however, queries the adequacy of the reporting that is provided.

193 Mr John Couttie, Deputy Regional Manager, Serco, *Proof Committee Hansard*, 6 September 2011, p. 82.

194 Comcare, *Investigation Report on National Detention Facilities*, p. 12. See also Chapter 2.

195 Commonwealth Ombudsman, *Submission 13*, p. 17.

196 Commonwealth Ombudsman, *Submission 13*, p. 17.

197 Commonwealth Ombudsman, *Submission 13*, p. 17.

Recommendation 4

3.64 The Committee reiterates the recommendation made by the Commonwealth Ombudsman that the Department of Immigration and Citizenship, conduct a review of the quality and management of incident reporting across immigration detention network, and also assess Serco's capacity to monitor its own compliance with the reporting guidelines.

Training of staff

3.65 As part of its obligations under the contract, Serco staff must meet minimum training standards.¹⁹⁸ Serco must employ two levels of custodial staff:

- Client Service Managers (CSMs)
- Client Service Officers (CSOs)

3.66 CSMs have a Certificate Level IV in Security Operation (or equivalent) and a minimum of five years experience in managing security. CSOs have a Certificate II in Security Operations (or equivalent) *or* can obtain these qualifications within six months of commencing employment.¹⁹⁹ Both classifications are responsible for ensuring that detainees are safe, secure and are required to personally interact with detainees on a daily basis.

3.67 Serco advised the Committee that all CSOs complete a one month induction course that includes training in:

- cultural awareness and cross-cultural communication;
- human rights;
- mental health awareness and suicide awareness;
- duty of care owed to clients, Immigration Detention Values and other key principles in relation to immigration detention and the Act;
- first aid;
- client interaction and general communication skills;
- induction, reception and visitation procedures;
- maintaining logs and registers;
- fire awareness;
- welfare and occupancy checks;
- use of reasonable force in immigration detention;
- security screening, search powers and control, defensive and restraint techniques;

198 Immigration Detention Centre Contract, Clause 21.2.

199 Immigration Detention Centre Contract, Schedule 2, Section 2.2.3, Annexure A, Clause 1.5.

- occupational health, safety and the environment;
- incident management protocols;
- working with children and child protection issues; and
- emergency response and contingency plans.²⁰⁰

3.68 The Committee is aware of a number of concerns raised by advocacy groups, peak bodies, unions and staff about the standard of training for Serco officers. Comcare found that DIAC had failed to ensure that Serco staff were sufficiently trained and therefore competent and confident to perform their roles.²⁰¹ Particular concerns were also raised about the adequacy of mental health training received by Serco officers. During the Sydney hearing, Serco acknowledged that this consisted of 4.5 hours during induction training.²⁰²

3.69 During the Christmas Island hearings Ms Kaye Bernard, from the Union of Christmas Island Workers, told the Committee that Serco officers she had spoken to were concerned about a lack of training:

They are very concerned because they believe that they are ill equipped to deal with what they are dealing with out there in particular in relation to the mental health of some of the people that they are posted on SASH watch with. If it is a high-risk person they are meant to stand at arm's length from that person.²⁰³

3.70 Some Serco workers also reported to Ms Bernard that they had not completed the four week induction program before commencing work:

They are being trained on the floor. Serco say in their advertisement that it is a four-week training course. Some of our members, most recently a group from Perth, believe they were misled as to the training that was going to be delivered to them. They did 10 days in Perth and then were told that the rest of their training would be undertaken on Christmas Island. They thought they were coming to a training school here on Christmas Island and that was not the case. They were put into the detention facility and in control of compounds after 10 days and after not receiving the certificate II in security operations. They were put in there on their own. Many of them were put in there without even having a facilities induction, so they did not actually know where things were.²⁰⁴

200 Serco, *Submission 42*, p. 19; Attachment 1.

201 Comcare, *Investigation Report on National Detention Facilities*, p. 4. Available online: http://www.comcare.gov.au/about_us/freedom_of_information/disclosure_log/foi_requested_documents/report_from_investigation_eve00205473 (accessed 1 November 2011). Comcare made the same observation about DIAC staff.

202 Mr Chris Manning, Managing Director, *Proof Committee Hansard*, 5 October 2011, p. 82.

203 Ms Kaye Elizabeth Bernard, National Secretary, Union of Christmas Island Workers, *Proof Committee Hansard*, 6 September 2011, p. 14.

204 Ms Kaye Elizabeth Bernard, National Secretary, Union of Christmas Island Workers, *Proof Committee Hansard*, 6 September 2011, p. 14.

3.71 Ms Bernard made the point that a number of improvements had occurred recently at Christmas Island since the new Regional Manager had arrived, as he had commenced implementing the training requirements that are in place under the contract.²⁰⁵

3.72 United Voice identified a number of weaknesses in Serco's training. The general complaint was that training was inadequate, and the training that was provided was generally inappropriate to the particular work environment.²⁰⁶ Particular issues raised by members include:

- The four week induction training is only three weeks of actual training, and one week on the floor of a detention facility;
- The first intake of staff at Inverbrackie APOD started working before the induction training had been completed;
- Some staff sent to Christmas Island on secondment reported that they were not provided with site-specific induction training, or taught about incident reporting; and
- Insufficient weight is placed on cultural awareness and mental health training.²⁰⁷

3.73 A survey conducted by United Voice indicated that its members particularly want more mental health, human rights, and suicide prevention training. They also do not feel equipped to dispense medication to detainees once IHMS staff have left for the day.

3.74 United Voice advised the Committee that Serco had responded to the concerns that it raised about training and significant improvements had been made.²⁰⁸ Mr David McElrea attributed the improvement to a combination of union representation, the Comcare inquiry and this parliamentary inquiry. Mr McElrea noted that training for the most recent Pontville facility recruits was of a high standard, and hoped that this would continue.²⁰⁹

3.75 Dr Hawke and Ms Williams observed that while training provided by Serco to staff appeared to be well designed and tailored to particular roles, 'it was not possible

205 Ms Kaye Elizabeth Bernard, National Secretary, Union of Christmas Island Workers, *Proof Committee Hansard*, 6 September 2011, p. 14.

206 United Voice, *Submission 55*, p. 15.

207 United Voice, *Submission 55*, pp 16–17.

208 United Voice, *Submission 55*, p. 17.

209 Mr David McElrea, National Office Director, United Voice, *Committee Hansard*, 5 October 2011, p. 49.

on the evidence available to determine whether all of their staff had received appropriate training or were appropriately qualified'.²¹⁰

3.76 DIAC has a role in monitoring the training provided to Serco officers as part of its contact management processes. DIAC was able to advise how many staff had received refreshed training, but was not able to comment on how many staff had not received training.²¹¹ DIAC expressed concern over the training of Serco officers, commenting that the officers may meet the requirements of the contract, but this requirement may not be high enough to equip officers to perform their duties:

It is the case that client service officers can begin their duty without having the full qualification they need, but they are given specific, limited roles and mentored by an experienced person until they have the qualifications. So they do not have the full qualifications, but they do meet the requirements of the contract. It is not what we would like—we would like everyone to be fully trained—but they are, in a sense, qualified in the terms of contract. That is probably the wrong way of putting it, but they do meet the requirements of the contract if they have limited duties and they are being mentored.²¹²

Committee view

3.77 Client Service Officers (CSOs) are required to have a Certificate II in Security Operations (or equivalent) or be able to obtain these qualifications within six months of commencing employment. Given the cultural diversity in detention centres, the risk profiles of detainees and the high rate of self harm the Committee is concerned that the standard of training required for CSOs is inadequate for the demands of this position, particularly as full qualification is not necessarily required from a CSO's commencement. The Committee appreciates that this standard of training is set by the contract, but considers that consideration should be given to revising the standard.

Recommendation 5

3.78 The Committee recommends that the Department of Immigration and Citizenship appoint an independent expert to inquire into the appropriate qualifications for Serco Client Service Officers and make appropriate amendments to its contract with Serco.

Implementation of DIAC'S Psychological Support Program

3.79 The Committee has concerns about Serco's implementation of DIAC's Psychological Support Program (PSP) through its own Keep Safe Psychological

210 Dr Allan Hawke AO and Ms Helen Williams AM, Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre, 31 August 2011, p. 10.

211 DIAC, answer to question on notice, Q193 (received 2 December 2011). DIAC advised that 1800 staff received PSP Training in 2010.

212 Mr John Moorhouse, Deputy Secretary, *Proof Committee Hansard*, 9 December 2011, p. 36.

Support Program Policy (Keep Safe).²¹³ Both policies are designed to support detainees at risk of self harm or suicide. The Committee is especially concerned about the ability of individual Serco officers to implement these policies.

3.80 As discussed in Chapter 2, the PSP policy is jointly administered by DIAC, Serco and IHMS. Once a detainee is put on the PSP, the detainee is reviewed every 12 hours by IHMS. In addition there is a meeting every day between DIAC, IHMS and Serco to consider the ongoing support needs of the detainee.²¹⁴

3.81 During site visits the Committee witnessed many detainees sitting or standing with a Serco officer in very close proximity at a number of facilities across the network. Serco officers told the Committee that the detainees were on suicide watch, requiring the officer to stay within 1.5 metres of the detainee, and check on them every 30 minutes. A psychologist employed by IHMS on Christmas Island during 2010 explained the process:

One of the most available and frequently used methods the mental health team would use was to put the client on suicide watch (referred to as "SASH OBS" by staff at that time) with or without the client's consent. This would usually [mean] that (at that time) an untrained Serco officer was given responsibility to care for and accompany an acutely suicidal client through a very difficult time for the next 24 hours, at least.

I would hear varying accounts of what kind of 'care' the Serco officer would be able to offer. Some were very good at being a kind and beneficent presence that the person needed to shepherd them back to mental stability, while I heard that others just said "hello" every now and then and made sure they had not created a noose for themselves with their bed sheets while they were not looking.

The constant monitoring of the SASH OBS intervention would often be perceived as punitive by the client, and (depending on which type of "care" was offered by the Serco officer) would sometimes increase the detainee's distress and paranoia about the situation they were in.²¹⁵

3.82 DIAC, IHMS and Serco all told the Committee that this approach was not dictated by the PSP or the Keep Safe policies. During the Sydney hearing IHMS confirmed that the requirement that Serco officers be within an arms length of a detainee on suicide watch was not an IHMS policy, or approved by IHMS.²¹⁶

3.83 The Keep Safe policy does not specify that Serco officers must maintain a distance of 1.5 metres from detainees who are at risk of self harm, but it does specify

213 Serco, response to question on notice, Q54 (received 17 November 2011).

214 Mr Stephen Reynolds, Regional Manager Victoria, DIAC, *Proof Committee Hansard*, 18 November 2011, p. 57.

215 Name withheld, *Submission 154*, p. 5. The policies and procedures for this process have changed and are no longer called SASH Watch.

216 Dr Dick Hooper, Regional Managing Director, IHMS, *Committee Hansard*, 5 October 2011, p. 66.

that Serco must provide 'constant one-on-one monitoring of and engagement with the individual in a safe and secure place'.²¹⁷ During the Melbourne hearing, Serco advised the Committee that the Keep Safe procedure had been prepared by Serco, in consultation with IHMS and DIAC:

The best way to describe the policies and procedures within the detention environment is that there is a hierarchy of procedures and procedural guidance. The PSP policy is implemented by Serco, and it is the overarching policy by which we manage the PSP. We have written an additional policy that supports that document. Its principal aim is to provide our management and our staff on the ground with procedural guidance—things such as standardised documentation to be able to support the PSP.²¹⁸

3.84 The person who monitors the Keep Safe policy in Serco appears to be qualified to perform that role.²¹⁹ Serco was at pains to emphasise that the Keep Safe policy was developed in light of the PSP policy.²²⁰

3.85 The Detention Health Advisory Group (DeHAG) confirmed that it had no involvement in developing the Keep Safe policy, and indeed considered the implementation on the policy to be extremely damaging to detainees.²²¹ Professor Louise Newman, Chair, explained why the policy was so concerning:

We have advised the department of this in the development of the PSP approach, that what was called the suicide and self-harm, or SASH, policy that Serco was operating with was contributing to people getting worse and more agitated. We have been trying to get a bit of a cultural change around that. We only had that sort of level of observation, when someone really needed to go to hospital and should not have been maintained in detention for immediate safety concerns. It is not best practice and in most cases it is contraindicated. Part of the issue is the lack of training, and we are trying to get information on the lack of roll-out of training on basic mental health processes and how to actually deal with these situations, particularly for Serco, who are not trained. They should not necessarily be seen as clinicians but they have an important role in being the front line in response to behavioural disturbance.²²²

217 Mr Peter McIntosh, Director of Operations, Serco, *Proof Committee Hansard*, 18 November 2011, p. 47; Serco, response to question on notice, Q54 (received 17 November 2011).

218 Mr Peter McIntosh, Director of Operations, Serco, *Proof Committee Hansard*, 18 November 2011, p. 47.

219 Serco, answer to question on notice, Q15 (received 29 February 2012). The qualifications and experience include: BA(Hons) in Social Sciences, qualifications in probation and social work, accredited teacher for Social Work/Probation studies, MBA and was awarded an OBE for services to criminal justice.

220 Mr Chris Manning, Managing Director, *Proof Committee Hansard*, 18 November 2011, p. 49.

221 See Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 5.

222 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 5.

3.86 Professor Newman advised that the Department had initiated a response in relation to these concerns, and an advisory panel had been established. However, in her view progress on this review had 'stalled'.²²³ DeHAG placed responsibility with Serco for not implementing the policy correctly, but also with DIAC for failing to properly contract manage Serco's implementation.²²⁴

3.87 The Australian Human Rights Commission expressed 'serious' concern about the implementation of the PSP policy across the network:

The Commission also remains seriously concerned about the ongoing selfharm that is occurring in immigration detention facilities. The prevention of self-harm in detention and psychological support for people at risk of self-harm are addressed by DIAC's Psychological Support Program policy (PSP policy). The Commission is concerned that the PSP policy has not been adequately implemented across the detention network. In particular, the Commission has been concerned during a number of detention visits to learn that many staff have not received PSP training. It is not appropriate that monitoring is done by Serco staff who do not have appropriate qualifications or training. There is a need for a national framework for the delivery of PSP training on a rolling basis to ensure that all relevant Serco, DIAC and IHMS staff are provided with initial and refresher training.²²⁵

3.88 The Committee asked DIAC whether it had any ongoing concerns about Serco's implementation of the PSP policy. DIAC explained that it had discussed this issue with Serco:

There was a point where we had to ensure that the policies that we were applying were reflected adequately in the Serco policies. The SERCO Keep SAFE policies were policies that they had brought as an international organisation dealing with a number of different scenarios, prisoners and so on, where people are in detention and needing care. Our psychological support program in many respects overlapped with Serco's Keep SAFE program and we have had to make sure that their policies align with our expectations. There was a period when that was a subject of active negotiation.²²⁶

3.89 In late 2011 DIAC advised that it had recently developed a revised mental health awareness training program which had been piloted and now was being rolled out to Serco, DIAC and IHMS staff.²²⁷ The evidence before the Committee suggests that the problem is not necessarily with the Keep Safe policy, but its implementation

223 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 5.

224 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 9.

225 Australian Human Rights Commission, *Submission 112*, p. 31.

226 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 35.

227 DIAC, *Submission 32, Supplementary*, p. 63.

by officers who have not had adequate training. The Committee fervently hopes that once this training is complete some of the issues identified above will be addressed.

Committee view

3.90 The Committee is concerned that Serco's implementation of DIAC's Psychological Support Program through its Keep Safe policy may not achieve the outcomes intended. The Committee is especially concerned by criticism of the policy by the Detention Health Advisory Group, who argued that Serco's on-the-ground implementation of the policy may be harmful to detainees. The Committee also received evidence that Serco officers have not received sufficient mental health training to properly implement the Keep Safe policy.

Recommendation 6

3.91 The Committee recommends that the Department of Immigration and Citizenship effectively contract manage Serco's implementation of the Psychological Support Program Policy.

Recommendation 7

3.92 The Committee recommends that the Department of Immigration and Citizenship work with Serco and the Detention Health Advisory Group to reform the Keep Safe policy to ensure it is consistent with the Psychological Support Program Policy, as soon as possible.

Recommendation 8

3.93 The Committee recommends that the Department of Immigration and Citizenship ensures that Serco provides adequate Detention Health Advisory Group-endorsed mental health training to Serco officers who implement the Psychological Support Program Policy.

Support for Serco officers

3.94 The Committee received evidence from Serco employees and unions that criticised the adequacy of support provided to Serco officers, particularly following distressing incidents.²²⁸ The unions also advised that many Serco employees felt ill-equipped to handle the heightened tension and despair in immigration facilities.

3.95 During the hearings on Christmas Island, Ms Kaye Bernard, General Secretary of the Union of Christmas Island Workers advised the Committee:

[Serco officers] are very concerned because they believe that they are ill equipped to deal with what they are dealing with out there in particular in relation to the mental health of some of the people that they are posted on

228 Support for Serco officers is also discussed in Chapter 5.

SASH watch with. If it is a high-risk person they are meant to stand at arm's length from that person.²²⁹

3.96 A similar concern was expressed by Mr David McElrea of United Voice during the Sydney hearings. Mr McElrea described the support provided to detainees as 'quite limited', explaining

I know there is the employee assistance service that Serco provides, but I do not think there is any proactive support. Our members feel somewhat abandoned with respect to things like cutting people down, dealing with self-harm and so forth. I do not think they feel like they are adequately supported or there is enough of a proactive attempt to speak to them about how that might be affecting them. I have spoken to them. Some of them are big tough blokes and they break down talking about it. I am sure you have spoken to them yourselves. I think the assistance that is provided is quite typical of this company. There are great glossy brochures and paper systems, but on the ground it is quite lacking.²³⁰

3.97 United Voice also cited a number of disturbing examples of threats being made against Serco staff.²³¹ Following questioning by the Committee, DIAC has reported 871 incidents of alleged or witnesses inappropriate behaviour by detainees towards Serco officers, during 1 October 2009 to 30 June 2011.²³²

3.98 Serco provides support to employees through its Employee Assistance Program. This program makes counselling and psychological support available to employees free of charge.²³³ Serco assured the Committee that it was serious about supporting its workers, explaining that:

We have the employee assistance program. We are particularly focused on ensuring our staff have the right support. We care passionately about their safety and wellbeing. We have a process in place to call upon an employee assistance program which would provide for counsellors to come on to the site to talk to the staff. There would be other actions carried out by management to make sure that the staff were properly cared for and had the opportunity to reflect on what had happened. We also employ permanent, appropriately-qualified psychologists to support that process as well. Serco outlined recent improvements that it had made to its training program for officers, including regular refresher training.²³⁴

229 Ms Kaye Elizabeth Bernard, National Secretary, Union of Christmas Island Workers, *Proof Committee Hansard*, 6 September 2011, p. 14.

230 Mr David McElrea, National Director, United Voice, *Committee Hansard*, 5 October 2011, p. 49.

231 Mr David McElrea, National Director, United Voice, *Committee Hansard*, 5 October 2011, p. 49.

232 DIAC, answer to question on notice, Q24 (received 15 August 2011).

233 Serco, *Submission 42*, p. 20

234 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 15 November 2011, p. 49.

3.99 Serco informed the Committee of the steps taken to support staff following a serious incident, explaining that:

We do critical incident debriefing and, if we do have a serious incident, one of the two full-time psychologists will attend that centre as soon as possible and provide ongoing critical-incident debriefing to those staff at the centre. They will identify any people that we feel could be at risk and maintain contact with those individuals. Then they will follow that up if necessary with more specialist support as required.²³⁵

3.100 The number of workers compensation claims across the network appear high. For example, Serco advised that as at 31 October 2011 there were 14 live workers compensation claims at Northern IDC and there were 13 at Inverbrackie APOD.²³⁶ The Committee asked DIAC whether it had discussed the high rate of claims among Serco staff. DIAC advised the Committee that this was a matter for Serco, not DIAC.²³⁷

3.101 In addition to the obvious impact of self harm on detainees, the Committee recognises that the high rates of self harm adversely impact Serco Officers. Mr John Moorhouse recognised the unusually difficult environment that Serco and DIAC staff work in:

It is not something that most people in the working community have to face in their job; it is a profoundly challenging thing to have to deal with people who are self-harming. I want to convey a sense that we do understand the pressures on Serco staff. We want to support them to the extent we can with proper training and also, very importantly, we want to try to reduce some of the profound challenges they are facing through better management of facilities, through better management of behaviour and through reduction in self harm. I would like to put on the record that we have had substantial reduction in the level of self-harm since August. I think that comes not just from reducing populations but from more active management of these issues, better staff capability, and a range of other issues which we have been trying to put in place.²³⁸

3.102 In its report on the Curtin IDC, the AHRC expressed concern about the impact that a lack of training had on Serco officers who were required to conduct the Psychological Support Program observation.²³⁹ This view was reflected by United Voice, who told the Committee that the support provided by Serco to staff was

235 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 15 November 2011, p. 49.

236 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 15 November 2011, p. 71.

237 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, pp 25–26.

238 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 33.

239 Australian Human Rights Commission, *Immigration Detention at Curtin*, 2011, p. 35.

limited, and reactive rather than proactive.²⁴⁰ DIAC reported that 1800 staff had received general mental health training as part of the Psychological Support Program Policy rollout in 2010, however were not able to identify how many staff had not received this training.²⁴¹

Committee view

3.103 The Committee recognises that working in a detention centre environment can be challenging at times. The Committee notes that in some facilities detainee threats of self harm and actual self harm occur daily, and Serco staff have high rates of workers' compensation claims. The Committee believes that adequate counselling and training can go some way to relieving the pressures felt by some Serco officers.

Recommendation 9

3.104 The Committee recommends that Serco develop and implement improved proactive procedures to support staff following critical incidents.

Dispensing medication

3.105 The Serco confirmed during the Sydney hearing that Serco officers are required under the contract to carry out secondary dispensing of medication. Mr McIntosh explained to the Committee:

We have a very detailed and comprehensive policy that covers the issuing of secondary medication. There are a number of clear guidelines. It needs to be done under the written direction of the health services manager, the senior IHMS person. It is only carried out during the hours that IHMS are not in attendance. There is very detailed documentation that needs to be provided. The medication is handed over from IHMS to the Serco staff at the end of the IHMS shift. It is provided in blister packs or Webster packs. Serco staff are not unscrewing vials of pills and issuing the pills from there. It is prepackaged and provided with very clear directions on how it is to be issued to the clients. But we are happy to provide that policy also on notice if required.²⁴²

3.106 Serco advised the committee that Serco officers are not directed to dispense medication and staff who dispense medication do so voluntarily. Those who do assist are usually 'relatively senior staff members and are paid at a slightly higher rate.' The Serco officers who do dispense medication receive local on the job training from IHMS.²⁴³ Professor Louise Newman, Chair of the Detention Health Advisory Group

240 Mr David McElrea, National Office Director, United Voice, *Proof Committee Hansard*, 5 October 2011, p. 49.

241 DIAC, answer to question taken on notice, Q193 (received 15 August 2011).

242 Mr Peter McIntosh, Serco Immigration Services, *Proof Committee Hansard*, 5 October 2011, p. 81.

243 Serco, answer to question on notice, Q58–Q60 (received 17 November 2011).

advised the committee that in her professional view, Serco officers should not be dispensing medication, as they are not properly trained to do so.²⁴⁴

3.107 During the Adelaide hearings, the Committee asked Serco to comment on what would happen if a Serco officer accidentally gave the wrong medicine to a person. Serco confirmed that staff provide the relevant dosage prepared by IHMS in a blister pack to the detainee, and the detainee administers the medication themselves.²⁴⁵ In relation to liability, Serco advised:

The employer would be responsible for certain elements of the administration of its staff, including to provide the appropriate training and so on, and that is how we would apply every case and review every case on a case-by-case basis. Clearly you would not expect an employer to say that in all obvious cases there was no liability by any employee, but clearly there are degrees. If there were negligence, for example, there would be degrees of negligence. But in general terms my understanding is that the employer is responsible for the actions of its staff. Any employer would be, in accordance with Australian law.²⁴⁶

Committee view

3.108 The Committee was unable to form a view on whether or not junior staff were required to dispense medication to detainees. Serco has advised the Committee that only senior managers at some facilities dispense medication, and that a rigorous process is followed. However the Committee is aware of claims that junior officers who feel that they have not had adequate training have nonetheless been required to dispense medication. The Committee accepts that if this has occurred, it is not in line with Serco procedures. The Committee also accepts that primary dispensing of medication is done by trained and appropriately qualified IHMS staff.

Recommendation 10

3.109 The Committee recommends that the Department of Immigration and Citizenship ensure Serco has appropriate procedures and training in place so that only where International Health and Medical Services personnel are not available can senior Serco managers participate in the secondary dispensing of medication.

244 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 8.

245 Mr Chris Manning, 15 November 2011, *Proof Committee Hansard*, pp. 46–47. See also the Serco Secondary Dispensing of Medication Policy, Serco, answer to question on notice, Q54 (received 17 November 2011).

246 Mr Chris Manning, Managing Director, Serco, 15 November 2011, *Proof Committee Hansard*, p. 47.

Serco's role in providing security services

3.110 Serco acknowledges that it has a responsibility to provide security services in IDCs, in collaboration with DIAC, the Australian Federal Police and local state or territory police.²⁴⁷ Disturbances in IDCs during 2011 highlighted a need to clarify the extent to which Serco is responsible for ensuring good order in centres it manages. The Hawke-Williams Review particularly concerned itself with this question, and this is discussed in Chapter 8.

3.111 Serco describes its security model as a combination of 'dynamic security' which 'overlays established security systems'. Dynamic security is apparently an approach that focuses on the interaction between staff and detainees.²⁴⁸ This approach, while arguably consistent with the Immigration Detention Values, is not an effective approach when faced by people who are non-compliant with the system.

3.112 Serco observes that the Minister is specifically granted powers under section 273 of the *Migration Act* to establish and maintain detention centres. The Minister may also make regulations in relation to the operation and regulation of IDCs, including in relation to supervising detainees. Serco accepts and supports the strict limits on the powers that it may exercise in relation to detainees, particularly in relation to the use of force during serious disturbances.²⁴⁹

3.113 However, Serco believes that this has resulted in a lack of clarity about its role and the limits of its powers. Serco explained to the Committee:

As a consequence, there is insufficient clarity for detention centre operators around the limits on their obligations and powers in relation to use of force, to ensure the good order and control of immigration detention facilities.²⁵⁰

3.114 For this reason Serco has highlighted to the Committee a need for final and binding interagency co-operation and communications protocols between Serco, DIAC, the AFP and relevant local police.²⁵¹ The Committee understands that such a protocol is currently being drafted and is in the final stages of negotiation.²⁵²

3.115 Following the disturbances in Villawood and on Christmas Island in early 2011, DIAC has worked with Serco to increase its emergency response capabilities. Serco has trained over 90 staff to be part of the Emergency Response Team (ERT), and is working towards equipping a total of 120 people in the ERT.²⁵³

247 Serco, *Submission 42*, p. 13.

248 Serco, *Submission 42*, p. 13; Detention Services Contract: Immigration Detention Centres, Schedule 2: Statement of Work, p. 3.

249 Serco, *Submission 42*, p. 37.

250 Serco, *Submission 42*, p. 37.

251 Serco, *Submission 42*, p. 37.

252 See Chapter 8.

253 Mr Greg Kelly, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2012, p. 29.

3.116 The Hawke-Williams Report considered this issue as well, finding that the lack of clarity around Serco's role contributed to the delayed response to the riots. Serco's role in providing security services is discussed in more detail in Chapter 8.

Committee View

3.117 The Committee recognises the importance of Serco having a clear understanding of its power and responsibilities for security. The Hawke-Williams Review illustrates problems that can arise during a serious disturbance when all relevant parties do not know where their responsibility begins and ends.

Recommendation 11

3.118 Consistent with the findings of the Hawke-Williams Review, the Committee recommends that the government finalise a security protocol between Serco, the Australian Federal Police and local police in each state and territory.

Visitor arrangements

3.119 As discussed in Chapter 2, DIAC and Serco have agreed on a process for arranging visits in detention facilities. Generally, an online form must be completed and lodged at least 24 hours prior to the visit containing the prospective visitor's details and the reason for the visit.

3.120 During the hearings in Darwin, Darwin Asylum Seekers Support and Advocacy Network explained to the Committee that their members find it difficult to arrange visits in the NIDC. Forms must be lodged not only 24 hours before the intended visit, but also during business hours. Sometimes a response is not received, and the visit cannot proceed. DASSAN explained that it has raised these concerns with DIAC:

We have spoken extensively with the department and with Serco about trying to address some of those issues. Some of them are logistical issues, or that is what we are told. The impact on people in detention and the impact on people in the community who are all really busy and try to organise their time to offer support for people is really negative. Our position, which is what we have said to DIAC and to Serco, is that they have to get it right. It is not really a difficult thing to do. Our understanding is that in other places in Australia it is much easier. Supporting people in detention is something that is supported; it is something that we get constant feedback on, including from DIAC and Serco, that it is very positive for people in detention. One of the issues here in Darwin is that we would like to see that process be more actively supported by the department and by Serco, and we would like to see it happen more easily.²⁵⁴

254 Ms Justine Davis, Member, Darwin Asylum Seekers Support and Advocacy Network, *Proof Committee Hansard*, 26 September 2011, p. 3.

3.121 Ms Walker, from the Adelaide Hills Circle of Friends explained the challenges encountered when visiting detainees in Port Augusta:

I will give an example of the difficulty in getting to visit people at Port Augusta. Last year I became aware that there were Afghani young people there. I have quite a good network throughout the country but I was unable to find anyone who could help me find a name to put on my visit application form. The Afghanis came and went. More recently, I managed to befriend a friend of a friend and I went to visit Port Augusta last Saturday for the first time. So it took me 18 months to gather one single name to put on a visit form, gather that person's consent and go up and visit them.²⁵⁵

3.122 Ms Lesley Walker said that the system an Inverbrackie worked well, as long as the the prospective visitor had sufficient information about the detainee:

The system here works really well as long as you have the name and house number of a person in Inverbrackie detention centre. It is a bit clumsy, in that in other detention centres you can fax through your visitor application form. But I am told there is no fax facility at Inverbrackie so one must scan the form, sign it, scan it and email it. Apart from that, which is a bit inconvenient for some people who do not have access to those processes, it goes fairly smoothly and processing of the application happens within about 24 hours.²⁵⁶

3.123 The Committee asked Ms Walker how she knew who to visit:

Usually it is through a friend of a friend—maybe someone who has been in detention and knows someone who is still in detention—who is out on community detention or a visa. They say, 'Lesley, I'd like to visit my friend,' or 'Will you visit my friend?' And I say, 'Will you please check with your friend that they want you or me to come.' There is phone contact, so that is easily arranged.²⁵⁷

3.124 The Committee was told that the Serco Centre Manager, in conjunction with the DIAC duty manager, has responsibility for approving applications from visitors.²⁵⁸ Serco explained that 'it is not our policy to allow unapproved visits. If a visit is approved at short notice, we do our best to facilitate it'.²⁵⁹

255 Ms Lesley Walker, Member, Adelaide Hills Circle of Friends, *Proof Committee Hansard*, 15 November 2011, p. 24.

256 Ms Lesley Walker, Member, Adelaide Hills Circle of Friends, *Proof Committee Hansard*, 15 November 2011, p. 25.

257 Ms Lesley Walker, Member, Adelaide Hills Circle of Friends, *Proof Committee Hansard*, 15 November 2011, p. 28.

258 Ms Lesley Walker, Member, Adelaide Hills Circle of Friends, *Proof Committee Hansard*, 15 November 2011, p. 51.

259 Mr Peter McIntosh, Director of Operations, Serco, *Proof Committee Hansard*, 15 November 2011, p. 52. See also Serco, question taken on notice, Q1 and Q2 (received February 2012).

Committee view

3.125 The Committee believes that it is important that detainees have access to visits from friends, family and legal advisors in the community, and notes that this is one of the Immigration Detention Values.

3.126 The Committee received evidence across the country from people who encountered difficulties attempting to visit detainees. More complaints were received by people attempting to visit centres in remote areas. The Committee notes that DIAC has detailed information on its website about the process to be followed, including that a form must be filled out and 24 hours notice must be given. However, evidence provided to the Committee suggests that Serco and DIAC's implementation of this procedure is not consistent across the network.

3.127 The Committee also received complaints about the facilities available to visitors in facilities across the network. For example, at Inverbrackie APOD detainees and visitors have access to outdoor picnic tables. However the Committee acknowledges that DIAC is working to improve this and had recently built a visits area. The Committee also notes improved visitor facilities at Villawood IDC.

Recommendation 12

3.128 The Committee recommends that the Department of Immigration and Citizenship require Serco local managers to apply a consistent practice and procedure protocol to visits across the network, in accordance with the information provided on the Department website.

Recommendation 13

3.129 The Committee recommends that the Department of Immigration and Citizenship continue to improve visitor facilities across the network.

DIAC's administration of the contract

3.130 The DIAC regional management team at each IDC is responsible for effective administration of the contract, and ensuring that Serco provides services in a manner consistent with the terms of the contract and key DIAC policies. Dr Hawke and Ms Williams explained that the team:

- undertake day to day audits, including chairing and providing secretariat support for monthly facility audit meetings.
- manages the relationship with Serco on contract, security and facilities management issues, including reviewing and managing resolution of a daily issues log;
- reports on issues, including undertaking performance management activity, and responds to queries;
- develop and maintain standard operating procedures and identify training needs; and

- assist with incident management and resolution, including participating in the duty phone roster.²⁶⁰

3.131 The Hawke-Williams Review found that DIAC staff needed to be better trained in contract management, and more familiar with the provisions of the contract.²⁶¹

3.132 As discussed earlier, the Department quite deliberately takes an outcomes based approach to auditing Serco's compliance with the contract. The Secretary of the Department explained:

This contract was conceived and written in response to the Cornelia Rau case. It was very much focused on delivering outcomes rather than being prescriptive. It was a quiet conscious policy decision taken by the previous government in relation to setting up a contract where the service provider would be held accountable for the results, rather than trying to tell them how to do their job. The tender process commenced on that basis and, of course, it is a matter of record that the number of people in immigration detention when Serco took on the contract was far smaller than it has been in recent times.²⁶²

3.133 DIAC informed the Committee that it had contracted Serco to provide a service on its behalf, and that DIAC considers Serco to be the experts in detention services and consequently does not attempt to intervene on matters of detail:

One of the things that we have sought to do in our higher level discussions with Serco is to allow them to do their job. This might be a strange way of putting it but, through the contract, we have bought their expertise. We have sought to allow them to use their expertise to do their job well. We hold them accountable for the outcomes—please do not misunderstand me; I am not trying to say this is a hands-off, laissez-faire approach; we do hold them accountable for the outcomes—but we do not try to tell them how to do their job.²⁶³

3.134 DIAC advised that it has never made a payment to Serco, based on the incentive payment scheme, since the contract was signed. Rather, it has imposed abatements every month since the abatement period commenced in March 2010.²⁶⁴

260 Dr Allan Hawke AO and Ms Helen Williams AM, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, p. 148.

261 Dr Allan Hawke AO and Ms Helen Williams AM, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, p. 156.

262 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 34.

263 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 34.

264 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 36.

The Secretary, Mr Andrew Metcalfe, acknowledged that there were areas where the contract could be improved, however DIAC worked within the existing contract:

I will be surprised if this committee does not provide us with recommendations as to changes to the contract. Indeed, there may be a philosophical issue some members pursue as to whether the services should be provided in an outsourced manner or within government. That is an issue for politicians to deal with. But we have a contract, we are committed to making it work and we constantly are seeking to refine and change the procedures to improve outcomes. I think we can claim some success in that respect.²⁶⁵

3.135 The abatement indicator matrix includes items such as catering, programs, activities, transport, security, maintenance. Self harm and disruptive behaviour have not been included, as these are matters that are considered outside Serco's control.²⁶⁶

3.136 DIAC and Serco are required to conduct an audit each month against the abatement indicator metrics. This has been conducted each month since March 2010 for each IDC. The total abatements during March 2010–June 2011 is \$14.8 million. The IRH/ITA Contract provides that a similar audit must be conducted quarterly. Four reviews were conducted over May 2010 to April 2011, and the total abatements during that period was \$215,000.²⁶⁷

3.137 The Auditor-General is conducting an audit of DIAC's management of Serco's delivery of services to detainees, which will be tabled in 2012.²⁶⁸

Conclusion

3.138 The Committee notes that Serco has been required to respond to serious logistical challenges presented by the surge in detainees. This surge, the Committee notes, was not anticipated at the time that the detention services contracts were negotiated.

3.139 The Committee also recognises that the overwhelming majority of Serco officers come to work each day with the intention of providing adequate services to people in detention, and that generally Serco has developed policies and procedures to assist Serco officers to perform their duties.

3.140 However, the Committee cannot ignore the fact that Serco is being paid a very large sum of money to provide these services to the Commonwealth, and that payments are based on a contracted level of service. It is therefore disappointing and disturbing to learn of numerous shortcomings in service delivery. Staffing levels are inadequate, and place detainees and staff at serious risk. The program of activities in

265 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 34.

266 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, pp 36–37.

267 DIAC, response to question on notice, Q103 (received 21 November 2011).

268 See Chapter 2.

detention, one of the few things a detainee can do to keep themselves occupied, is still at a pilot stage and not fully implemented. Implementation of visitor protocols is haphazard, and can lead to confusion and frustration, a scenario the network cannot afford to encourage.

3.141 At least as alarming as these examples is the fact that a significant proportion of officers on duty in centres are not adequately trained to perform the roles expected of them, in spite of the clear widespread existence of complex mental health issues, and high rates of self harm.

3.142 The Committee's overall view is that Serco has not performed to the standard expected. While each detainee is housed, fed and clothed, the contract requires a higher standard than this and, even given all the complex and difficult circumstances of the detention environment, the Committee simply received too many examples of Serco failing to make the grade. The Committee hopes that implementation of the recommendations in this chapter will go some way to addressing these shortcomings.

3.143 The Committee is pleased that the recommendations from the Hawke-Williams Review has prompted further reforms of Serco's service delivery and has also highlighted the need for DIAC staff to be equipped to actively manage delivery of the contract.

3.144 In the next chapter the Committee examines the delivery of health services to people in immigration detention.

CHAPTER 4

Provision of health services to people in detention

4.1 In this chapter the Committee considers the provision of health services to people in the immigration detention network.²⁶⁹ The Department of Immigration and Citizenship (DIAC) provides health services through its contracted provider, International Health and Medical Services Pty Ltd (IHMS), and also through local hospitals and allied health professionals.

4.2 The Committee notes at the outset that, while this chapter deals with all forms of healthcare provision, it is the provision of mental health care that the evidence most often related, and consequently that received the Committee's keenest focus. This is consistent with the findings in Chapter 5, which examines the impact that detention has on the health of detainees and concludes that the level of mental illness among detainees as the most pressing area of concern.

4.3 This chapter builds on the background set out in Chapter 2, starting with a description of the Detention Health Framework, including some criticisms made of it, before examining evidence relating to the provision of health care in more detail. The chapter also picks up on some observations made in Chapter 3 about the Psychological Support Program, and observations made in Chapter 5 regarding the impact of detention on the mental health of detainees.

The Detention Health Framework

4.4 DIAC's key policy framework for health services for people in immigration detention is the Detention Health Framework.²⁷⁰ The Framework has been in place since 2007, and a review was conducted in early 2011. A number of recommendations were made to assist the Department to respond to the challenges presented by the current increase in detention population. The Detention Health Advisory Group (DeHAG), whose role is described in Chapter 2, as well as other key stakeholders, contributed to the development of the framework and the recent review.²⁷¹

4.5 The key objectives of the framework are to ensure that

- the Department's policies and practices for health care for people in immigration detention are open and accountable;

269 Discussion on health in detention was drawn from DIAC, *Submission 32, Supplementary*, and from the Detention Health Framework. The Framework can be accessed at www.immi.gov.au/managing-australias-borders/detention/services/detention-health-framework.pdf

270 DIAC, *Detention Health Framework*, 2007.

271 DIAC, *Submission 32*, p. 60.

- people in immigration detention have access to health care that is fair and reasonable, consistent with Australia's international obligations and comparable to those available to the broader Australian community; and
- ensure that quality of health services provided to people in immigration detention is assured by independent accreditation.²⁷²

Criticism relating to the implementation of health service policy

4.6 Criticisms of health service policy implementation relate to both the Detention Health Framework, and to the Psychological Support Program policy (PSP).

4.7 DeHAG remains dissatisfied with the implementation of the Detention Health Framework, its Chair, Professor Louise Newman, advising the Committee during the Melbourne hearing:

DeHAG has provided a submission outlining our central concerns about this psychological impact of prolonged detention, difficulties in provision of health and mental health support, and services across the immigration system. We would like to stress that in our view there has been a significant failure in implementation of current policies which we were involved in developing, which could potentially reduce the risk of the mental damage that we are seeing across the system at the moment—specifically the psychological support policies and policies related to survivors of torture and trauma.²⁷³

4.8 Particular problems that DeHAG have identified relate to the provision of mental health services, and include difficulties that IHMS has in meeting the psychological needs of detainees and of having independent reviews of complex cases in the system. In relation to DIAC, DeHAG expressed concerns about DIAC's reviews of the system of mental health screening, identification of detainees at risk, and identification of how best to assist them.²⁷⁴

4.9 The evidence the Committee received from a former IHMS employee, which is recounted in some detail later in this chapter, also goes to seeing inconsistencies between the objectives set out in the Framework, and the 'on the ground' experience in centres.

4.10 The Psychological Support Program (PSP) policy was developed by DIAC in consultation with DeHAG, IHMS, Serco and other stakeholders. The PSP sets out the actions that IHMS, DIAC and Serco will take to assist and manage people in detention with mental illness. The phased implementation of the PSP was completed in November 2010. Unfortunately the policy had not been implemented in Villawood

272 DIAC, *Submission 32*, p. 60.

273 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 1.

274 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 1.

IDC at the time of the three deaths in late 2010, which were subject to an inquiry by the NSW Coroner.

4.11 DeHAG described the PSP Policy as best practice:

I think the PSP policy is what we would see as best practice. It looks at risk reduction. It does not support the old practice, which is of isolation and observation in a very direct way. The evidence suggests—and this is evidence from prison studies and from a whole range of mental health facilities—that that can make people more anxious and worse. It actually advises re-engaging people. You might need a content area. It advises staff not to isolate people in that way and to maintain contact with them, and it gives them some basic strategies.²⁷⁵

4.12 However, the Committee heard that there is a disconnect between the PSP, a policy document which apparently represents best practice, and the implementation of that policy by Serco, who are responsible for running the detention facilities on a daily basis.

International Health and Medical Services' role in health care

4.13 International Health and Medical Services (IHMS) is DIAC's contracted health services provider. For people detained in immigration facilities, most primary health services are provided onsite by IHMS. Referrals are made to external health services providers in the community as clinically required.

4.14 Emergency and acute care is provided by local hospitals. For people in community detention and immigration residential housing, health care services are provided exclusively by community-based health providers.

4.15 DIAC signed two contracts in January 2009 with IHMS to provide general and mental health services to people in immigration detention.²⁷⁶ One contract is for services on mainland Australia, the other is for health services on Christmas Island. Transition from the previous health contracts was completed in May 2009. Unlike the contract with Serco, the contract with IHMS does not contain an abatement system to penalise the company for underperformance.

4.16 The two IHMS contracts were recorded on AusTender as worth \$293 million, although this amount varies as changes are made.²⁷⁷ In 2011, a new contract was entered into with IHMS to replace the two earlier contracts and to provide more support to detainees, including more psychiatric care.²⁷⁸ From 31 March 2012 all health services will be provided under the *Health Services Contract*. The value of the

275 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 9.

276 Health Services Contract 2009. Question on Notice.

277 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 28

278 DIAC, answer to question on notice, Q296 (received 15 March 2012).

contract is now estimated to be \$769.3 million. The Department has requested additional mental health services to be provided on a temporary basis, the history behind this decision is discussed in more detail below.²⁷⁹

4.17 IHMS is contracted to provide health services to detainees at the standard available in the general Australian community. Emergency and acute care is provided by local hospitals and specialists.

4.18 Under the Health Services Contract, IHMS is required to meet particular accreditation standards, which were developed by the Royal Australian College of General Practitioners, and form part of the Detention Health Framework. The four types of health services that IHMS is required to provide to detainees are:

- health assessments and screening;
- identification and treatment of communicable diseases;
- general health care services; and
- mental health services.²⁸⁰

4.19 The mission statement for IHMS provides:

IHMS will provide a level of healthcare to people in immigration detention consistent with that available to the wider Australian community, taking into account the diverse and potentially complex health needs of people in detention.

These services will be provided in a professional manner that is clinically appropriate, without any form of discrimination, with appropriate dignity, humanity, cultural and gender sensitivity, and respect for privacy and confidentiality.²⁸¹

4.20 DeHAG have raised persistent and serious concerns about the ability of IHMS to provide adequate services to detainees within the bounds of the contract. Professor Louise Newman gave evidence during the Melbourne hearing that in her view to improve the services provided to detainees – particularly in relation to mental health – the service contract required amendment.²⁸² In particular, DeHAG questioned the ability of IHMS to provide adequate health services to people who continue to be detained, even against professional advice. Professor Newman described the situation of people being treated at hospital for a mental illness, and then returned to detention. The impact of this policy is serious:

The irony of the current situation—even though IHMS might be attempting to improve service provision, which I think is a very positive thing—is that, within the system of prolonged restrictive detention, people's mental health

279 DIAC, answer to question on notice, Q296 (received 15 March 2012).

280 DIAC, *Submission 32*, Supplementary, p. 61.

281 IHMS, *Submission 95*, p. 4.

282 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 6.

is unlikely to improve significantly. Even if we threw in there another 1,000 mental health workers, be they psychologists or psychiatrists, we would still have a crisis which is a broad, systemic crisis.²⁸³

4.21 The contract is also limited insofar as IHMS is not funded to provide paediatric services to children. DeHAG informed the Committee that they had sought to remedy this, but has been unsuccessful thus far.²⁸⁴

Health assessments and screening

4.22 All detainees receive a health assessment when they enter immigration detention and when they depart immigration detention. The initial assessment includes taking a personal and medical history and conducting a physical examination and mental health screening. IHMS has incorporated advice from DeHAG about the appropriate approach to be taken when conducting this assessment, particularly with children. At this stage early identification and referral may occur for detainees affected by torture and trauma.²⁸⁵

4.23 IHMS coordinates the management and treatment of any health issues that are identified (this will sometimes result in referral, for example, for Torture and Trauma to the local hospital on Christmas Island). Regular monitoring and screening also occurs once a detainee has entered detention, for example, regular mental health checkups every three months.

4.24 IHMS conducts a discharge health assessment for each person who leaves immigration detention. IHMS prepares a health discharge summary that documents relevant health history, treatment provided and any ongoing treatments.²⁸⁶ Where appropriate, linkages are made with relevant community health providers to facilitate ongoing care beyond discharge.

4.25 While children certainly receive health screening, DeHAG believes that this is not consistent with general standards in the community of paediatric practice. Professor Louise Newman explained the concern, and the problems with getting an appropriate response from IHMS:

We have recommended the screening of any children who enter into the detention system in terms of their health and development, as would happen in the general community related to the standards of paediatric practice. We have raised that with the department. We have formulated a policy and an outline of what that would involve in a way that it could be implemented in, hopefully, a reasonable way across the system. We have discussed it with IHMS. We have been told that, because it is not a contractual arrangement

283 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 2.

284 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 2.

285 DIAC, *Submission 32, Supplementary*, p. 60.

286 DIAC, *Submission 32, Supplementary*, p. 60.

between the department and IHMS, it cannot occur. Yet we have a detention health framework, which we were involved in formulating, looking at basic standards of care.²⁸⁷

4.26 DeHAG advised the Committee that it had raised this issue with DIAC, and as of November 2011, had not received a response.²⁸⁸ The problem is exacerbated by the terms of the contract with IHMS.

Communicable diseases

4.27 IHMS screens all people who enter immigration detention for communicable diseases, such as syphilis, tuberculosis (TB), hepatitis B and hepatitis C. DIAC advised the Committee that:

The incidence is very low, despite high numbers of arrivals, and is generally representative of the populations from which people originate or the country in which they have lived before arriving in Australia.²⁸⁹

4.28 DIAC advises that when a communicable disease is identified or suspected it is IHMS' responsibility to work with local public health authorities to manage the disease. For example, quarantining the individual and providing appropriate treatment. The committee received further assurances on this point during hearings.²⁹⁰

General health care services

4.29 IHMS is required by the contract to provide primary health care services on-site. These services include a general practitioner, nurse, counsellor and psychologist. IHMS coordinates health care for people in community detention through practices based in the community. Where further services are identified as clinically required (for example, psychiatry services), IHMS refers the detainee to external or tertiary health providers.

4.30 The Committee heard that general healthcare services provided by IHMS were of a good standard, thanks not only to IHMS but also to locally provided health services, on whom detention facilities often rely for acute care. Having said that, a limited number of facilities have 24-hour paramedic services on hand, due to their remoteness. Others do not, and rely instead on a restricted clinic service during the day, with only telephone assistance out of hours.²⁹¹

287 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 2.

288 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 4.

289 DIAC, *Submission 32, Supplementary*, p. 62.

290 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, pp 38–39.

291 Ms Helen Lonergan, Director of Nursing, International Health and Medical Services, *Proof Committee Hansard*, 7 September 2011, p. 11.

4.31 Indeed, rather than the quality of general care provided, it was this hours of operation issue that elicited most concern. The service that IHMS provides at each facility varies according to local conditions and the needs of the detainee population. For example, IHMS runs a 24 hour paramedic/overnight nursing service at Christmas Island, Scherger IDC and Curtin IDC. In all other facilities, IHMS staff work a day shift, and any issues that emerge outside this period are dealt with by a telephone service attended to by nurses. During the Sydney hearing, Mr Ian Gilbert reminded the Committee that the contracted service was building around a primary healthcare at a community equivalent standard.²⁹²

4.32 In practical terms, what this means is if a detainee is injured in a serious way during business hours, then the detainee will receive first aid care from IHMS and then be transferred to a local hospital. If the injury occurs outside of these hours, then it would be incumbent for a Serco officer to call 000 to report the injury and obtain assistance.

4.33 IHMS advised that while the contract was flexible enough for a 24 hour service to be provided, the arrangements had been developed with a community model in mind:

If you go back to the original philosophy of the contracted service, it was very much around primary healthcare at a community equivalent standard. At a site like Villawood, for example, which was an originally contracted site, that is very much the philosophy in play. And you are correct; if there is an incident or a medical question that needs to be asked after hours, then we do have a telephone service that is answered by nurses.²⁹³

4.34 Mr Gilbert also said that:

It is stipulated in the contract that they are not only in accordance with the timeframes as stipulated by the document itself but also to offer a community equivalency level of care. But in saying that there is also a capacity to extend and be flexible. That is an ongoing dialogue that could happen locally on the ground between the local management teams to extend hours, if it is a short-term requirement. Or equally, through discussion with our Canberra colleagues, to adjust the service delivery model more permanently.²⁹⁴

4.35 The New South Wales Coroner's Report on three deaths at Villawood in 2010 highlighted the risks inherent in having a clinic only during week days. Mr Josefa Rauluni received notice on Friday, 17 September 2010 that his recent request for Ministerial intervention (to allow him to remain in Australia) had failed

292 Mr Ian Gilbert, General Manager, International Health and Medical Services, *Committee Hansard*, 5 October 2011, p. 60.

293 Mr Ian Gilbert, General Manager, International Health and Medical Services, *Proof Committee Hansard*, 5 October 2011, p. 60.

294 Mr Ian Gilbert, General Manager, International Health and Medical Services, *Committee Hansard*, 5 October 2011, p. 60.

and he would be removed from Australia to Fiji on Monday, 20 September 2010. IHMS advised DIAC the day before, 16 September 2010, that 'no immediate risk issues are identified' with Mr Rauluni. However, Mr Rauluni committed suicide on Monday, 20 September 2010. The Coroner noted that DIAC's policy is to avoid providing notice of removal to detainees on Fridays, as detainees are usually in 'more than usual distress' when negative decisions are received. However this policy was not followed on this occasion. No assessment of Mr Rauluni was made after he received the negative decision on Friday, indeed he was not able to receive any support from IHMS over the weekend as the clinic was not open.²⁹⁵

4.36 Another consequence of IHMS not maintaining a 24 hour, seven day a week service at many IDCs is an increased role for Serco officers in relation to the handing out of medication. This is addressed in detail elsewhere in the report.

Committee view

4.37 The Committee notes that the Australian Human Rights Commissioner recommended in its 2011 Report on Villawood IDC that DIAC should 'require at least a minimal IHMS presence at Villawood IDC twenty four hours per day, seven days per week'.²⁹⁶ The Committee acknowledges that IHMS is contracted to provide services consistent with the standard available in the general community. However the Committee is mindful that rates of self harm and mental illness amongst people in detention are much higher than in the general community, as discussed in Chapter 5, and that the level of care reasonably required is possibly higher as a consequence. The Committee is concerned that IHMS does not maintain a 24 hour presence in detention facilities that record high rates of self harm or in all centres that are remote.

Recommendation 14

4.38 The Committee recommends that International Health and Medical Services staff be rostered on a 24 hour a day basis at all non-metropolitan detention facilities.

Recommendation 15

4.39 The Committee recommends that the Department of Immigration and Citizenship assess, on a case by case basis, the need for International Health and Medical Services staff to be rostered on a 24 hour a day basis at metropolitan detention facilities.

295 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, New South Wales Coroner, 19 December 2011, pp 2–5, 11.

296 Australian Human Rights Commission, *Immigration Detention at Villawood*, 2011, http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.html (accessed 5 March 2012).

Mental health services

4.40 IHMS provides mental health services to detainees, or refers detainees to networked community providers. Mental health professionals include registered counsellors, mental health nurses, psychologists and psychiatrists.

4.41 A number of studies, including some commissioned by DIAC, have found a link between restrictive immigration detention and the development of mental health problems.²⁹⁷ This link is particularly strong amongst asylum seekers and people who have been in detention for more than a couple of months. Such findings are consistent with the evidence received by the Committee, as well as its observations during visits to numerous detention facilities around Australia.²⁹⁸

4.42 The Committee received extensive evidence from detainees and advocacy groups that mental health services in detention facilities are inadequate and unresponsive to the needs of detainees. A typical sentiment was expressed by Darwin Asylum Seeker Support and Advocacy Network, who raised concerns about the number of mental health staff working in Northern IDC:

DASSAN has been informed that there are only two psychologists and four mental health nurses provided by IHMS for asylum seekers detained in the NIDC. Considering that NIDC has a capacity of over 500, which it regularly reaches, we consider that the Government needs to drastically increase the contracted number of IHMS mental health staff in detention centres.²⁹⁹

4.43 Remote facilities make the situation even harder to manage. For example, IHMS said that it was very challenging to find a psychiatrist to come out to the IDC at Curtin, and that they were currently only able to obtain services once a month.³⁰⁰ A mental health services manager has been recruited, and Curtin is being used as a pilot for psychiatric video-conferencing assessments.³⁰¹ It is as well such innovative responses were taking place, as the local services are not in a position to offer large-scale assistance. The Committee heard from the Operations Manager of the Kimberley Health Service that local mental health services were operating at capacity.³⁰²

4.44 The President of the Australian Human Rights Commission (AHRC) expressed concern about how the mental health support needs of detainees are met, particularly because IHMS has a reactive rather than proactive care model:

297 DIAC, *Submission 32, Supplementary*, p. 62.

298 The impact of detention is discussed in Chapter 5.

299 Darwin Asylum Seekers Support and Advocacy Network, *Submission 51*.

300 Ms Helen Lonergan, Director of Nursing, International Health and Medical Services, *Proof Committee Hansard*, 7 September 2011, p. 7.

301 Ms Helen Lonergan, Director of Nursing, International Health and Medical Services, *Proof Committee Hansard*, 7 September 2011, p. 7.

302 Ms Bec Smith, Operations Manager, Operations Manager, Derby Health Service, *Proof Committee Hansard*, 7 September 2011, p. 1.

In some facilities like Villawood we were disturbed to find that there is no outreach service provided by mental health carers—that is, unless a person self-identifies as someone who might be in need of mental health care they do not receive it. No-one goes out into the detention centre to see whether there are people there showing signs of needing the services of a mental health carer.³⁰³

4.45 The Committee asked IHMS to respond to the AHRC's concern that there was no outreach service conducted in the IDCs to check that no one with a mental health issue was falling through the cracks. IHMS explained that staff walk through the communal areas in the centres checking on detainees when there has been a distressing incident. Dr Hooper elaborated on IHMS' approach during the Sydney hearing:

What we have is the principle that we would be comfortable to walk into areas. Certainly when there is an event or an incident one of our responses with Serco and with DIAC is that we would go into communal areas and try to identify anyone who was in distress. In a normal response, we have sufficient guarantees of security and our staff are happy to work with Serco in the areas. If a client wishes to access care, the normal process is they would notify us with a notification form and then we would identify an appointment time for them to come to see us. But we are conscious that that is not going to pick up everybody. Therefore, insofar as security allows, we are walking in the various areas and we are working with the Serco officers on the ground to identify where there is unmet need to be met by actually going to clients.³⁰⁴

4.46 During the Christmas Island hearing, local IHMS staff confirmed that they do not go out into the centres checking up on people as matter of course.

We will provide an outreach as different clinics are set up. As far as walking around, we would tend not to do that. Our focus is at the clinic and...there are so many different ways of being referred and we tend to focus on that.³⁰⁵

4.47 Another significant concern of the AHRC was the model of care provision for mental health support: the person with responsibility is not a psychiatrist but instead a nurse or a psychologist. This concern was shared by the psychiatrist that accompanied the AHRC to Curtin immigration detention centre, and by the NSW Coroner.³⁰⁶

303 Ms Catherine Branson QC, President, Australian Human Rights Commission, *Committee Hansard*, 5 October 2011, p. 55.

304 Dr Dick Hooper, Regional Managing Director, International Health and Medical Services, *Committee Hansard*, 5 October 2011, p. 65.

305 Dr Clayton Spencer, Medical Director, International Health and Medical Services, *Proof Committee Hansard*, 6 September 2011, p. 49.

306 Ms Catherine Branson QC, Australian Human Rights Commissioner, *Committee Hansard*, 5 October 2011, p. 55; *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, NSW Coroner, 19 December 2011, p. 12.

4.48 The Committee asked IHMS to respond to the concerns raised by the HRC. Mr Gilbert emphasised that the model of care provided by IHMS to detainees is a community model:

Our mental health nurses have access to psychiatric support. We are following the community model. A lot of the cases are manageable by mental health nurses. They are supported on site by general practitioners in terms of prescribing/understanding, and they are supported by a psychiatrist in terms of professional leadership.³⁰⁷

4.49 Following questioning from the Committee, IHMS told the Committee that it was working with DIAC to enable more regular visits by psychiatrists. However, it is acknowledged that provision of a very regular service would be out of step with the standard available in the community, particularly in remote areas where the local community do not have access to regular psychiatric support. During the hearing on 5 October 2011, IHMS acknowledged that the needs of people in detention – especially from a mental health perspective – are different from mainstream Australia:

We are working with the department creating an enabling process that we can have psychiatric support more freely available at our sites. That is a discussion that is going on with the department at the moment. What we are saying is that we do not need a full-time psychiatrist. We just need to make sure that we have access much more freely. Looking across the range of facilities, some of which are in very remote areas and some of which are in metropolitan areas, the need for immediate onsite psychiatric support is qualitatively different. So, that discussion is going on with the department now and that is a constructive discussion. I do not have a timeframe...but that is a discussion that is active at the moment.³⁰⁸

4.50 The IHMS submitted a letter sent to DIAC on 26 October 2011 requesting a change in its service model for detainees.³⁰⁹ The key reasons were:

An increasing number of clients are prescribed psychotropic medications for extended periods. Although initially these are prescribed by general practitioners a need for specialist review is necessary when treatment has only a partial or no effect.

An ever increasing number of clients with T&T (torture and trauma) history with significant symptomatology (or due to other issues and are at a higher risk for mental state deterioration) with limited coping strategies.

An ever increasing number of clients who have been in detention more than 18 months, as per the department's mental health policy a review by a psychiatrist is suggested.³¹⁰

307 Dr Dick Hooper, Regional Managing Director, International Health and Medical Services, *Committee Hansard*, 5 October 2011, p. 61.

308 Dr Dick Hooper, Regional Managing Director, International Health and Medical Services, *Committee Hansard*, 5 October 2011, p. 61.

309 International Health and Medical Services, *Additional Information* (received 4 November 2011).

4.51 The Committee is pleased to note that the Department agreed to fund to temporarily this request in December 2011, but concludes that there is much more work to be done to bring mental health services in detention facilities to an acceptable level.³¹¹

Evidence from a former IHMS psychologist

4.52 The Committee received evidence from a former IHMS psychologist who was employed to provide services to detainees on Christmas Island in 2010. The Committee accepted the submitter's request for the name to be withheld. The submitter was the only psychologist employed during the time, and was part of a multidisciplinary mental health team that provided services to 1800 detainees. The Committee is grateful for this evidence as it provides an insider's account of the provision of mental health services.

4.53 The Committee heard that the submitter did not receive an induction or orientation and workspaces were so crowded that there was not sufficient access to a computer or work station.³¹² More significantly, the submitter was surprised that she was not required to provide proper psychological services, only counselling, and that sessions needed to be for less than 50 minutes.³¹³

4.54 IHMS advised the Committee that it had formed a multidisciplinary team to respond to the health needs of detainees, and particular services such as Torture and Trauma counselling were provided by the Indian Ocean Territories Health Service:

IHMS, under the Health Services Contract, is responsible for primary and mental health services and the co-ordination of specialist and allied health services externally. Referral services are utilised by IHMS where appropriate and a client requires a higher level of care, including referrals to psychiatrists, specialists and public health services. On Christmas Island, torture and trauma counselling, for example, is conducted by the Indian Ocean Territories Health Service (IOTHS), which has an appropriate team equipped to cater for this need.³¹⁴

4.55 The three monthly mental health checks were also identified as problematic. Detainees who were due for a check would have their name listed on a noticeboard in English under the hearing 'Mental Health', no time was given and the detainees were expected to turn up at the clinic. The psychologist reports that she was permitted only

310 International Health and Medical Services, *Additional Information* (received 4 November 2011).

311 This is funded as a temporary amendment to the Health Services Contract. DIAC, answer to question taken on notice, Q296 (received 15 March 2012).

312 Name withheld, *Submission 154*, p. 1.

313 Name Withheld, *Submission 154*, pp 2–3.

314 International Health and Medical Services, *Response to Submission 154*, p. 3.

15 minutes for each check and any issues that arose were not to be dealt with at that time but referred to another appointment.³¹⁵

4.56 IHMS responded that mental health services were in high demand, and to ensure that all detainees who were in need access the service:

[T]here is an emphasis on efficiently delivering services so all members of the client population can receive the attention and care they need. In order to achieve this there needs to be a balance and a value for time management, so all clients can receive treatment when needed. IHMS complements these services and demands with the use of external specialists as required.³¹⁶

4.57 The submitter also argued that there was a conflict of interest because IHMS viewed DIAC as the client, not the detainees. This constrained the psychologist's ability to advocate on behalf of her clients, or to speak directly to DIAC or Serco staff.³¹⁷

4.58 IHMS responded that people in detention are clients, in accordance with the Government's Detention Key Values and the Health Services Contract:

The work undertaken by IHMS for these "clients" is, of course, carried out in accordance with the terms of the contract executed with the Commonwealth. For the purpose of staff within the Immigration Detention Facilities these are the clients they attend to on a daily basis.³¹⁸

4.59 The concern about conflict of interest has also been expressed by DeHAG. The Chair of DeHAG, Professor Louise Newman explained:

I think the net result of some of these concerns is that the professional bodies—and this has been raised as well by all our groups and by the medical colleges and the AMA—are deeply concerned about the compromising position of professionals working within the system and the ethical dilemmas that this raises. Many of our member organisations are concerned that the professional people working within the system—be they psychologists, mental health nurses or psychiatrists—are intrinsically being compromised in that the system militates against them providing care in the way that they would expect to practise it. In fact, professionally, in terms of our ethical obligations—these are international standards of practice—we feel that currently it is very difficult to practise at the appropriate level.³¹⁹

4.60 The submitter explained other challenges of treating people in detention, observing that the treatment model was more akin to a psychiatric hospital setting:

315 Name Withheld, *Submission 154*, p. 7.

316 International Health and Medical Services, *Response to Submission 154*, p. 3.

317 Name Withheld, *Submission 154*, p. 3.

318 International Health and Medical Services, *Response to Submission 154*, p. 3.

319 Professor Louise Newman, Chair, Detention Health Advisory Group, *Proof Committee Hansard*, 18 November 2011, p. 2.

It seemed that the model of service was based on a model of mental health often applied to a psychiatric hospital setting. This is a setting where patients have been admitted usually following a crisis and have been diagnosed with a psychiatric/mental illness and have usually had some experience with mental health services prior to being admitted. Also, under this model of service, rates of recovery from mental illness without long (or indefinite) courses of drug therapy are notoriously low.³²⁰

4.61 The Committee believes that the 'on the ground' experience in detention centres is at time inconsistent with the ideals set out in the Detention Health Framework. The psychologist pointed out that an immigration detention centre is not a psychiatric hospital, but has some of the characteristics of one. This was not appropriate for people who required:

[A] client-centred, preventative model of care, with community interventions, focussing on fostering and maintaining a sense of safety in the centre (where possible) and empowerment for the individual through both psychological treatment and institutional operations and procedures, so that it was part of their everyday experience.³²¹

4.62 IHMS rejected this characterisation of its mental health service, explaining to the Committee:

It should be noted there is no correlation between the model of mental health care provided in the Immigration Detention Network and that which is provided in an institutional setting or in a public hospital. The provisioned health services, including mental health services, are equivalent to those which are available to members of the general community. IHMS does not operate services following an institutional model, a stance which is encouraged by the Health Services Contract with the Commonwealth.³²²

4.63 The psychologist acknowledged that the mental health services were good at identifying mental illness, however staff were not trained or funded to prevent mental illness:

At some point in an effective psychological intervention, you need to move beyond responding to immediate risks and actually deal with the problems that cause the self harm.³²³

4.64 The Committee invited IHMS to respond to the psychologist's criticism of the mental health service model. IHMS acknowledged that the demand for mental health services had increased over the past 18 months, and advised that it had been working collaboratively with DIAC to meet the growing needs of detainees.³²⁴

320 Name Withheld, *Submission 154*, p. 4.

321 Name Withheld, *Submission 154*, p. 4.

322 International Health and Medical Services, *Response to Submission 154*, pp 4–5.

323 Name Withheld, *Submission 154*, p. 6.

324 International Health and Medical Services, *Response to Submission 154*, p. 4.

4.65 IHMS pointed out that DIAC has strong audit controls in place to ensure compliance with the contract. In addition to this it considered itself responsive to DIAC's request for assistance to comply with external oversight.³²⁵

Committee view

4.66 The Committee is concerned that IHMS is funded to provide a reactive rather than proactive mental health care model. IHMS staff do not routinely walk through IDCs to check up on the general detainee population. Rather, they wait until a detainee self identifies as having difficulty, or until Serco or DIAC refer a person. The Committee believes that given the vulnerability of many people in detention, and the increasing rates of mental health issues, IHMS should adopt a proactive approach to care. This is consistent with recommendations by the Australian Human Rights Commission.

4.67 To this end, the Committee is pleased that since 2010 there have been a number of reforms to the IHMS treatment model and that DIAC has recently negotiated an expansion of psychiatric services to detainees.

4.68 The Committee also recalls its observations in Chapter 3, relating to proper implementation of the PSP Policy, and the need to synthesise it with Serco's co-existing Keep Safe policy, and reiterates the importance of the related recommendations in achieving significant improvements in mental health care in detention. In Chapter 5 the Committee details the adverse impact that detention has on the mental health of detainees and notes the large number of studies conducted in Australia and overseas that substantiate the link between detention and mental illness.³²⁶ The Committee believes that it is crucial that adequate mental health services are provided to people held in immigration detention, and that IHMS should be proactive in providing this service.

Recommendation 16

4.69 The Committee recommends that the Department of Immigration and Citizenship work with International Health and Medical Services to pilot regular mental health outreach services in detention facilities.

Provision of health services in remote communities

4.70 As the Committee travelled around the country, conducted site visits and held hearings, it received evidence of the challenges faced by DIAC, Serco, IHMS and others when providing health services in remote communities. The Committee also heard from local hospitals who provide acute and emergency care to detainees. Generally, the Committee found that IHMS and local hospitals had a close working

325 International Health and Medical Services, *Response to Submission 154*, p. 5.

326 DIAC, *Submission 32, Supplementary*, p. 62.

relationship. However, concerns were raised that people with mental health issues in remote communities might not have those needs adequately met.

4.71 The President of the Human Rights Commission, the Hon. Catherine Branson QC, told the Committee:

We are anxious to recognise that those who work with IHMS, the people we have met, seem anxious to do the very best they can for the people who are in their care. But we believe that particularly in the remote facilities the level of medical services is inadequate and the level of mental health services in particular is inadequate.³²⁷

4.72 DeHAG is concerned that people with complex health needs in remote immigration facilities may not have those needs met.³²⁸ This is because of the difficulty in providing adequate health care, but also the impact that remoteness can have on a detainee's mental health. Further, people in remote facilities are disconnected from social and family groups:

It should be noted that separating individuals from their families and from normal social interactions for prolonged periods is clearly also a risk factor for psychological health problems.³²⁹

4.73 IHMS agreed that the remote location of some detention facilities created challenges for the organisation. For example, workers needed to be sourced who were happy living in remote communities, part time workers would need to be flown in and out, the size and quality medical facilities in the centres varied and emergency services provided by the local hospital were sometimes under pressure.

4.74 Ms Helen Lonergan, the Director of Nursing for IHMS at Curtin IDC explained the particular challenges experienced by her staff:

The working environment at Curtin has been challenging to date due to its remoteness, harsh environment and also the rapid population growth. Until recently, staff accommodation shortages have meant that we have not been able to deploy adequate numbers of staff. Also, we have had restricted clinic space, and that has been a very difficult work environment. However, in the past month we have been able to obtain 20 additional accommodation spaces within the community and we have recruited more staff. Also, the working conditions will improve somewhat very shortly with the provision of a more adequate health facility. We refer clients to Derby emergency care, but we are constantly mindful to minimise the impact it has on the public health system and the community.³³⁰

327 Ms Catherine Branson QC, President, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 55.

328 Detention Health Advisory Group, *Submission 41*, p. 3

329 Detention Health Advisory Group, *Submission 41*, p. 3

330 Ms Helen Lonergan, Director of Nursing, International Health and Medical Services, *Proof Committee Hansard*, 7 September 2011, p. 7.

4.75 DIAC agreed with IHMS that Curtin IDC presented particular challenges because of its remoteness. DIAC found it difficult that Curtin was located so far from Derby, and also struggled to recruit staff.³³¹ Specialist health services are challenging to source due to the remoteness of Derby, resulting in detainees being sent to Perth or Broome for treatment.³³²

Locally provided health services

4.76 Through arrangements made by and paid for by DIAC, detainees who require acute or emergency care are referred to local health care providers by IHMS. The costs associated with this service are billed to IHMS, who then recover the cost from DIAC. In addition, some state and territory local health services receive additional funding to meet overhead costs and additional staffing requirements.³³³ These arrangements have been made by DIAC through in-principle agreements or Memoranda of Understanding (MOUs). The Department is currently revisiting all arrangements and working on updated MOUs that reflect current arrangements and requirements.³³⁴

4.77 The Committee received evidence from local health service providers on Christmas Island, Darwin, Curtin and Weipa. With the exception of Darwin all these health services are provided to remote or regional communities. The potential impact on local communities by a detention population was considered carefully by the Committee. Areas for improvement have been identified, particularly in relation to IHMS' relationships with local healthcare providers and the need for MOUs. However, the Committee was satisfied overall by the close cooperation between IHMS and local providers. The Committee tested concerns that the detention population was adversely impacting on local communities. The Committee believes that on the whole arrangements have been put in place to lessen the impact on local health services.

4.78 As the Committee travelled around conducting hearings, it was assured that detainees are not given priority over other people in the local community. All people who present at the hospital are treated according to triaging processes that consider urgency and need. As Ms Chalmers, from Country Health South Australia, submitted:

I believe that, in terms of the treatment they receive, they are prioritised in the same way. However, this is a formal arrangement between the state and

331 Mr Greg Kelly, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 7 September 2011, p. 12.

332 Ms Helen Lonergan, Director of Nursing, International Health and Medical Services, *Proof Committee Hansard*, 7 September 2011, p. 7.

333 DIAC, *Submission 32*, p. 79.

334 DIAC, *Submission 32*, p. 79.

the government to ensure that there is activity based remuneration for these patients.³³⁵

4.79 The Committee was also concerned that the presence of detainees in small communities might adversely impact on waiting lists for inpatient surgery. In relation to Mount Barker Hospital, the Committee was advised this was not the case:

The dominant services we have provided have been birthing, where we definitely do not have a waiting list; antenatal and postnatal care, which is provided in accordance with good practice; and allied health services.³³⁶

Christmas Island

4.80 The provision of health services on Christmas Island presents unique challenges, given its extreme remoteness and obvious lack of ground access. On Christmas Island the Indian Ocean Territories Health Service (IOTHS) provides services to the local communities of Christmas Island and Cocos (Keeling) Islands. A MOU is being developed between the Department of Regional Australia, the IOTHS and DIAC. In practice, the IHMS and IOTHS have a working relationship on the ground.³³⁷

4.81 The IOTHS provides torture and trauma counselling to detainees and additional services when referred by IHMS. During the hearings on Christmas Island, Dr Julie Graham explained to the Committee:

On a day-to-day basis we do not have regular contact with the detention services. Our health service provides X-ray facilities, we provide pathology services, we provide in-patient care and we provide psychological services from a trauma and torture team on referral from IHMS.³³⁸

[We] get people who are requiring inpatient care and we get a mix of general medical, so people with heart conditions, infections, pneumonias. We get clients with orthopaedic injuries—broken bones—that may need referral to the mainland for surgical improvement. We get surgical cases: so, people who have general conditions seen in mainland populations.³³⁹

4.82 Where members of the community or detainees have medical needs that cannot be met on the island, they are flown to Perth for treatment. The IOTHS explained that there had been an increase demand for services in the past two years, both from the detention population and the local community:

335 Ms Helen Chalmers, Chief Operating Officer, Country Health South Australia, *Proof Committee Hansard*, 15 November 2011, p. 15.

336 Ms Helen Chalmers, Chief Operating Officer, Country Health South Australia, *Proof Committee Hansard*, 15 November 2011, p. 16.

337 Dr Julie Graham, Director, Public Health and Medicine, Indian Ocean Territories Health Service, *Proof Committee Hansard*, 6 September 2011, p. 47.

338 Dr Julie Graham, Director, Public Health and Medicine, Indian Ocean Territories Health Service, 6 September 2011, p. 46.

339 Dr Julie Graham, Director, Public Health and Medicine, Indian Ocean Territories Health Service, 6 September 2011, p. 49.

Our general practice presentations are up 30 per cent compared to two years ago. Our A&E presentations are up 80 per cent. About six months ago we looked at the counselling requirements of people coming through, and generally two to three consultations a day were related to psychological aspects. That covered both community members and staff out at the centre, and was to deal with changes in community. Any change creates stress, and so we were looking at across-the-board mental health aspects. We have actually identified that with the department and at the moment are looking at engaging another psychologist on-island as a community based psychologist.³⁴⁰

4.83 The IOTHS gave evidence that although the number of admissions to the hospital had increased, the hospital usually only ran at 30 or 40 per cent capacity.³⁴¹ Aside from increased mental health services, which the IOTHS was working on, generally other services were not adversely impacted by the centre.³⁴² Dr Graham did observe that the changes that the detention facilities have had on the island had resulted in an increased need for mental health services by the local community:

Certainly, when you look at any environment and at a small environment like this, change provides stress, and communication or lack of communication provides stress. The facilities within the health service are generally quite good. We do not have mainland capabilities. We are not a mainland facility. The communication side of what is going on, what is happening within the detention services, what is happening within the community—that is one complaint. We get a lot of from community members that they do not know what is going on within the centre, within the service, within the community. As I said, the mental health aspect has been highlighted, and we are working on that. We have put in another medical scientist to cope with the load from a laboratory perspective.³⁴³

4.84 The Committee notes that the tragic sinking of SIEV221 off the shores of Rocky Point in late 2010 may also have contributed to the increased need for mental health services.

Derby

4.85 Derby Health Service is part of the Western Australia Country Health Service (WACHS) in the Kimberly. The Derby Health Service of course provides services to people in remote communities. Ms Bec Smith explained to the Committee the service provided to detainees:

340 Dr Julie Graham, Director, Public Health and Medicine, Indian Ocean Territories Health Service, 6 September 2011, p. 49.

341 Dr Julie Graham, Director, Public Health and Medicine, Indian Ocean Territories Health Service, 6 September 2011, p. 53.

342 Dr Julie Graham, Director, Public Health and Medicine, Indian Ocean Territories Health Service, 6 September 2011, p. 54.

343 Dr Julie Graham, Director, Public Health and Medicine, Indian Ocean Territories Health Service, 6 September 2011, p. 54.

Generally WACHS, Kimberley, come into contact with clients from the Curtin detention centre accessing a number of services but most commonly through referral to our medical officers and specialists for more complex investigations or treatment unable to be provided by IHMS staff or on-site at Curtin; emergency treatment by our emergency departments; diagnostic pathology as referred by IHMS staff; diagnostic radiology as referred by IHMS staff; and the ambulance transfer of clients from Curtin to Derby.³⁴⁴

4.86 As Derby is a remote community, the Committee was particularly interested in any particular pressures placed on the local health service as a result of the IDC. The Committee heard that the detainee population put additional pressure on ambulance, specialist and mental health pressures.

4.87 In relation to ambulance services, Ms Smith explained the impact that the IDC had on the local health service, particularly in relation to ambulance services:

The main continued issues that WACHS, Kimberley, are facing are to do with our ambulance transport. Each ambulance transfer or call-out to Curtin detention centre is a 90 minute call-out. We run that ambulance service from our emergency department, where it takes a nurse and an orderly out of the hospital for 90 minutes. Since the opening of Curtin we have had about 60 ambulance calls. We have had conversations with IHMS and DIAC to provide a patient transport system for the less acute. We still accept that we need to do the priority 1 acute ambulance calls, but would appreciate assistance with ambulance transfers of non-acute to lessen the burden.³⁴⁵

4.88 Specialist services also presented difficulties. Given the remote location of Derby, specialist services were already in high demand, however, the needs of the detainee population exacerbated this pressure.³⁴⁶ In relation to mental health services, the health service was already operating at capacity, so any further referrals from the IDC was challenging.³⁴⁷

4.89 The health service explained that both it and the IHMS had learnt from past experience to improve the services that are provided to detainees. Following an incident in January 2011, that was not handled well, procedures were put in place between IHMS, Serco, DIAC and the local health service. Ms Smith explained:

Following that event I believe there was great communication between the service providers, IHMS, DIAC, the hospital and Serco, in terms of how we would manage that better the next time. There was another voluntary

344 Ms Bec Smith, Operations Manager, Derby Health Service, *Proof Committee Hansard*, 7 September 2011, p. 1.

345 Ms Bec Smith, Operations Manager, Derby Health Service, *Proof Committee Hansard*, 7 September 2011, p. 1.

346 Ms Bec Smith, Operations Manager, Derby Health Service, *Proof Committee Hansard*, 7 September 2011, p. 1.

347 Ms Bec Smith, Operations Manager, Derby Health Service, *Proof Committee Hansard*, 7 September 2011, p. 1.

starvation event in April and that was handled exceptionally well. Each agency had learned to work together and we had a better outcome from the April event. The regional director had submitted a letter, I believe around March after the first suicide, prompting communication between IHMS and DIAC to increase their psychiatric services on site because we were unable to provide additional services for them.³⁴⁸

Committee View

4.90 The Committee recognises the pressures that emergencies at remote detention centres such as Curtin IDC and Christmas Island place on local ambulance services. The Committee believes that DIAC should work with its contracted service providers to develop a transport capability for non-acute injuries.

Recommendation 17

4.91 The Committee recommends that the Department of Immigration and Citizenship develop a transport capability to transfer detainees with non-acute injuries to remote hospitals.

IHMS external support and scrutiny

4.92 All the staff used by IHMS maintain appropriate specialist medical training appropriate to their roles. Additionally, IHMS provides induction training to staff that covers:

- IHMS company background and mission statement
- Immigration detention values
- Delivery of services
- Site specific information, including the profile of the detainee population
- Health information systems
- Clinical management and oversight; and
- Interactions with the Department and Serco.³⁴⁹

4.93 IHMS provides an ongoing education program. For example, senior staff participate in peer support and professional development conferences four times a year.³⁵⁰

4.94 IHMS staff have access to an employee assistance program, that includes free counselling:

348 Ms Bec Smith, Operations Manager, Derby Health Service, *Proof Committee Hansard*, 7 September 2011, p. 2.

349 International Health and Medical Services, *Submission 95*, p. 3.

350 International Health and Medical Services, *Submission 95*, p. 3.

We offer our staff an employee assistance program. All our staff are given the name of an external provider that they can access 24 hours a day. After any major event there would be a debriefing of that event as well. Sometimes—for example, at the Christmas Island riots—we have sent counsellors to the island for our staff. We had them there for a period of time so our staff could access them whenever they felt they needed to talk to them.³⁵¹

Auditing

4.95 Both IHMS and DIAC have commissioned or conducted audits of the delivery of health services to people in detention. In addition to the quarterly audit of health and medication records, IHMS has arranged for four audits to occur:

During 2009: Internal audit against the RACGP standards conducted by IHMS head office personnel at a number of facilities.

April 2011: Internal audit at Christmas Island facilities against RACGP standards conducted by IHMS head office personnel.

May-Jun 2011: A detailed audit of the management processes and governance of health services, commissioned by IHMS and conducted by International SOS (parent company).

June 2011: Each site conducted a self-assessment against the RACGP Standards³⁵²

4.96 The Department has commissioned four reviews.

- Review of Health Service Delivery Model Christmas Island, completed in June 2010
- Review of Health Service Delivery Model Mainland Detention Facilities, completed October 2010
- Royal Australian College of General Practitioners (RACGP) Accreditation Pilot, completed October 2010
- Review of Christmas Island Detention Health Services Clinical Governance Processes, completed May 2011³⁵³

4.97 The Committee has not had the opportunity to assess these reviews, and so cannot comment on any findings or recommendations made. However, the Committee believes that DIAC is taking an active role in reviewing the standard of health services delivered to people in detention.

4.98 The Commonwealth Ombudsman, Australian Human Rights Commissioner and DeHAG also have an oversight role.

351 Ms Helen Lonergan, Director of Nursing, International Health and Medical Services, *Proof Committee Hansard*, 7 September 2011, p. 11.

352 DIAC, answer to question take on notice, Q106 (received 17 November 2011).

353 DIAC, answer to question take on notice, Q106 (received 17 November 2011).

Conclusion

4.99 The Committee believes that in all the circumstances, provision of general medical services to detainees is adequate. Likewise, the Committee considers that DIAC is working well with local health care providers to ensure that detainees receive acute and emergency care that is consistent with the standard available in the local community.

4.100 Local providers are doing an excellent job providing services to the detainee populations and have developed good working relationships with IHMS and DIAC officers based locally. The Committee is pleased that through co-operation, communication, and a fee-for-service model, services to local Australians do not appear to be adversely impacted by the presence of immigration detention facilities.

4.101 Nevertheless, as outlined above, the Committee does believe that some improvements can be made, particularly in relation to ambulance services in remote communities such as Derby and Christmas Island.

4.102 However, the Committee's view of mental health service provision is very different. Indeed, from evidence presented to it through submissions and at hearings, and from the Committee's observations at numerous site visits, it is clear that acute mental illness is widespread across the detention network. It is equally apparent that mental health services are severely inadequate to deal with the quantum and severity of cases, and that urgent improvement is required.

4.103 To this end, the Committee is aware of recent enhancements to DIAC's contract with IHMS, including a substantial expansion in the number of mental health professionals available to offer treatment, and hopes that these will result in better mental health support for detainees.³⁵⁴

4.104 In the final analysis, however, the Committee is sympathetic to Professor Louise Newman's view that no matter how many mental health professionals are made available, an elevated level of mental illness in detention settings is probably inevitable.³⁵⁵ It is to the effect of detention that the Committee now turns its attention.

354 DIAC, Question on Notice, 29 February 2012 (received 15 March 2012).

355 Professor Louise Newman, Chair, DeHAG, *Proof Committee Hansard*, 18 November 2011, p. 2.

CHAPTER 5

The impact of detention

Being an asylum seeker is an inherently stressful status for any person. They await a decision from the Australian Government that will profoundly affect the rest of their lives – it may indeed have a life or death consequence. The decision-making process is a complex and alien experience over which they have little control, may little understand and which may take a long and indeterminate time to conclude. Many are separated from family members who have been left in circumstances of danger and deprivation. The pressures of enduring prolonged uncertainty over such critical aspects of one's existence are profound.³⁵⁶

Background

5.1 The Committee received considerable evidence on the impact of detention on the mental health of detainees, notably children, as well as the resulting strain on the detention network and staff who operate and work in facilities. Evidence was taken on the complex and multifaceted causes and effects of the strain which has resulted in sporadic eruptions of violence at a number of detention facilities. The Committee paid particular attention to the special circumstances and needs of children in detention.

5.2 The Committee visited the majority of detention centres around the country during the course of its inquiry. Some of the evidence before the Committee was sensitive in nature, and the subject matter inspires passionate views. In many facilities, detainees bore the physical evidence of self harm: those who had been treated for self-inflicted wounds were clearly visible. The Committee has sought to conduct its inquiry with sensitivity towards all concerned, and has therefore chosen not to delve into specific examples.

5.3 This chapter outlines the negative effects of detention and recommends a number of measures to alleviate them.

Negative effects on detainees

5.4 A substantial and growing body of empirical evidence exists describing the adverse effects mandatory detention has on health, particularly mental health:

356 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45*, p. 2.

Numerous...studies, conducted in Australia and internationally, corroborate the link between restrictive immigration detention and the development of mental health problems. Various medical and mental health organisations also oppose prolonged restrictive detention, including the Australian Medical Association.³⁵⁷

5.5 The proportion of detainees affected by their detention bears careful reflection. The Committee was told that:

One study by the Physicians for Human Rights found clinically significant symptoms of depression were present in 86% of detainees, anxiety in 77% and PTSD [post traumatic stress disorder] in 50% with approximately one quarter reporting suicidal thoughts.³⁵⁸

5.6 A submission from Suicide Prevention Australia cited extensive academic research spanning a decade. The studies were numerous and the conclusions unambiguous: detention corrodes mental health. One study estimated that:

...the rates of suicidal behaviour among men and women in Australian IDC are approximately 41 and 26 times the national average, respectively.³⁵⁹

5.7 Another study, completed in 2004 and cited by the Australian Psychological Society, looked at parents and children who had spent approximately two years in Australian detention centres. The study found that every individual assessed 'met diagnostic criteria for at least one current psychiatric disorder.'³⁶⁰

5.8 The overwhelming majority of submissions to this inquiry consistently highlighted these adverse effects. Media reports of instances of attempted and inflicted self harm barely scratch the surface of what has clearly become an endemic problem in Australia's detention facilities, and one that must be addressed in the interests of detainees and the staff who work with them, as well as the integrity of the country's immigration detention policy.

5.9 This section will look at the ways in which people are affected by prolonged detention.

Manifestations of mental health problems

5.10 Common symptoms of disorders among detainees are forgetfulness and confusion, frustration, anger, loss of appetite, anxiety, poor hygiene, insomnia, self harm, as well as thoughts of, and attempts at, suicide.³⁶¹ These symptoms and behaviours now appear commonplace among the long-term detainee population. According to refugee advocacy groups the symptoms and behaviours of people in held

357 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 62.

358 International Detention Coalition, *Submission 69*, p. 4.

359 Suicide Prevention Australia, *Submission 67*, p. 33.

360 The Australian Psychological Society, *Submission 108*, p. 7.

361 Refugee Advice and Casework Service, *Submission 28*, p. 4.

detention are in stark contrast to those of asylum seekers who are placed in the community.³⁶²

5.11 Frontline employees working in detention centres explained their experience of the mental deterioration that detainees undergo:

The type of behaviour people engage in differs depending on the person. They can become more reclusive, they stop talking, they're not their usual bubbly self. But others become aggressive, and especially you get these natural born leaders who get a group of people together to support their cause and that's when you end up with 20 people on a roof. But the quiet ones are the ones you have to watch. The loud and proud ones, you always know where they are, because you can hear them. It's the others that you have to keep a close eye on, and if you haven't seen or heard from them in a few hours then you need to go and find them and check up on them. They are the ones that are likely to slash up or try to hang themselves. We don't worry as much about the loud ones.³⁶³

5.12 Another employee related how detainees manifest perceptible changes over time:

It's both the physical and mental well-being of clients that's affected. And you can see it change in the space of a week. If I go off shift and come back a week later, I will see the changes. They will have put on weight, for one thing. Because they have nothing to do but cooking and eating and watching a bit of TV. They're also agitated. And over time, good relationships change. People revert into their shells, they become introverted, they stop talking. And then some people start to be admitted into mental health institutions – some of our cases have started to get more serious, as well. The longer they're here, the more they need medication. They go to the health clinic to get drugs just to get through it.³⁶⁴

5.13 An alarming number of detainees have resorted to self harming. The Committee is not able to accurately estimate the current number or frequency of self harm incidents, however it appears to be a regular occurrence. DIAC figures indicate there were 386 self harm incidents in 2010–11.³⁶⁵ The Chair of the Council for Immigration Services and Status Resolution (CISSR), Mr Paris Aristotle AM, in April 2011 'named increased rates of self-harm as indicative of the crisis within the detention system and a general deterioration of mental health.'³⁶⁶

5.14 The Committee sought a professional psychiatric opinion on whether people self harm in order to expedite their release or otherwise manipulate the process. Dr

362 Refugee Advice and Casework Service, *Submission 28*, p. 4.

363 United Voice, *Submission 55*, p. 22.

364 United Voice, *Submission 55*, p. 22.

365 DIAC, *Question on Notice 41* (received 16 August 2011), p. 2.

366 Council for Immigration Services and Status Resolution 9th General Meeting minutes, p. 3, Department of Immigration and Citizenship, *Question on Notice 72* (received 2 December 2011).

Gynther, a psychiatrist with extensive experience working with detainees, explained that a proper assessment is required to separate those who are mentally ill from those whose actions are calculated to achieve an end:

Some of the people we see are severely damaged and are in the middle of a psychiatric condition. Their self harm seems to be related purely to their desperation and does not have a goal in mind. Others we have seen do seem to have a goal—saying that, we don't feel these people have a major psychiatric disorder—they are desperate, at the end of their rope, and they have done this maybe in the hope that it is like their last playing card—the last chip they can put down. I think it is a reasonable thing that people do. If you have nothing else, and you can see no future, it is the sort of desperate thing that someone will do. Then we have to try to deal with that on the phone too, trying to make a judgment about whether this is a manipulative thing—and a totally understandable manipulative thing—that we should deal with in one way, or else is this truly a psychiatric problem that we need to be treating with high doses of antidepressant medication? That is a really difficult assessment on the phone. That is part of the reason they should be in a place where they can be seen face-to-face because that is part of the possible presentation.³⁶⁷

5.15 Although instances of self harm driven by a desire to manipulate the process exist, Dr Gynther explained that the majority of self harm incidents were due to real mental illness.³⁶⁸

5.16 As well as incidents of self harm, there have been numerous suicide attempts and nine deaths in detention centres in the 24 months to February 2012.³⁶⁹ Suicide attempts are rarely reported in the media, and DIAC was not able to provide the Committee with the exact number of suicide attempts during this period:

The detention service provider [Serco] is required to report all self harm or threatened self harm incidents on the departmental reporting system. Detention service provider staff are not qualified to assess whether a self harm incident is actually a suicide attempt.³⁷⁰

5.17 While the Committee recognises the difficulty Serco staff may in some circumstances have in differentiating suicide attempts from other forms of self harm, the Committee considers it far from ideal that DIAC is unaware of the number of detainees trying to take their own lives.

5.18 Nonetheless, there is every reason to believe that suicide attempts occur with troubling frequency. Adult male detainees in high security detention facilities appear

367 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 2.

368 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 3.

369 To date, coronial inquests have found the cause of death in three of the nine deaths to be suicide. Inquests for the other six deaths are ongoing. See DIAC, *Question on Notice 297*, p. 1. See also *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, New South Wales Coroner, 19 December 2011; Chapter 2.

370 DIAC, *Question on Notice 297* (received 15 March 2012), p. 1.

to be at greatest risk of suicide. They are also subject to the longest processing times.³⁷¹

5.19 The Committee noted the professional opinions of psychiatrists with experience of caring for detainees suffering from depression. Providing psychiatric help for detainees with severe mental illness can, the Committee heard, be a Sisyphean task:

As prolonged detention is the major precipitating stress for psychiatric admission, staff and patients see our interventions as hopeless and futile as eventually patients are always returned to Scherger [detention facility] for further detention. A return to detention is a return to an elevated risk of suicide...It is my opinion that the process of prolonged detention is abusive. The ends cannot justify the means when it involves the knowing abuse of innocent people.³⁷²

5.20 The Committee also heard that at times people who had attempted suicide were being placed back into detention despite advice to the contrary from psychiatrists. Ms Pamela Curr of the Asylum Seeker Resource Centre brought evidence of this to the Committee's attention:

I have got three letters from three different psychiatrists for three men who were in Toowong Private Hospital [a psychiatric facility] and in those letters the psychiatrists in each case said that they did not recommend a return to detention because they felt that in each case the patient would suffer a relapse of symptoms. In those cases their advice was ignored. The patients were sent to the detention environment at the BTR and they were left there, as we have said, for three weeks before they were eventually sent to community detention.³⁷³

5.21 The Committee sought clarity on this matter from DIAC. Mr John Moorhouse, Deputy Secretary, explained that the Department considered alternative detention options when managing people who had been medically assessed as being severely mentally ill:

That would influence our decisions in a number of different ways. If it were open to us to place a person in community detention, that would be one response we could make to it. Of course, at the present time we have the capacity to place a person in the community on bridging visas if we feel that is appropriate and the person could cope and they had the support from family and friends that might make that feasible. But, if we did not have either of those options available to us, we would look to the least challenging form of detention that is available to us, and that is what we do. So, with people who are struggling in detention who might not be

371 Average processing times are available in Department of Immigration and Citizenship, *Question on Notice 8* (received 16 August 2011).

372 Dr Bruce Gynther, *Submission 152*, p. 2.

373 Ms Pamela Curr, Campaign Coordinator, Asylum Seeker Resource Centre, *Proof Committee Hansard*, 18 November 2011, p. 18.

eligible for community detention or a bridging visa, for one reason or another, we would look to place them in facilities such as immigration residential housing, which is as close as possible to normal living conditions, usual community living conditions, within a detention environment.³⁷⁴

5.22 The Committee also learned that mental health staff can have a detainee moved to a psychiatric facility if they consider it to be necessary, rather than sending them back to detention. However, this decision has to be weighed not only on the basis of the patient's state, but also the resources required:

If we want someone in a psychiatric hospital we can do that. We will transfer them to the Cairns Base Hospital, where there is a psychiatric ward. It is not a light decision. To transfer a person to Cairns Base Hospital requires utilising the RFDS [Royal Flying Doctor Service]. There is a logistical problem in doing so with only one plane in the cape. If we try to organise it and there is a heart attack case somewhere else, or a car crash up in Cape York, that plane will not be available. Or, if the plane is doing our transfer, and there is a car crash somewhere else, the car crash call will have to wait. So it is not a decision done lightly.³⁷⁵

5.23 Patients at risk of suicide are nevertheless at times returned to detention after a hospital visit. Dr Gynther submitted that DIAC had been responsive to his advice on how best to handle such situations in the past:

At times we have made statements to the department saying that we think a person is a huge risk. I actually spoke to someone from immigration detention because a yes paper was on someone's out tray and hurried it along so that it was signed, because I felt the person was at incredibly high risk of suicide if that piece of paper was not signed. If someone remained at risk and really sick, we would keep them in hospital indefinitely if necessary, but we treat with medications and when you are away I think the stress of the place diminishes.³⁷⁶

5.24 Another psychiatrist the Committee spoke to, Dr Jon Jureidini, agreed that placement played an important part in managing mental health:

My experience has been that people do not get to see me until things are pretty bad, and by the time I am seeing them they have been damaged by the experience of being in immigration detention. So part of the beginning of any healing process involves them being placed in a different form of detention that is not damaging to them.³⁷⁷

374 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 34.

375 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 2.

376 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 7.

377 Dr Jon Jureidini, *Proof Committee Hansard*, 15 November 2011, p. 33.

5.25 Dr Jureidini, however, stated that in his experience as a mental health professional he had limited ability to ensure detainees with mental health problems were appropriately placed:

I have not been able to make it happen. There has been legal action taken which has made it happen. There has been high-level action. In the time that Jonathan Phillips was Director of Mental Health Services in South Australia, he was able to take action to get certain people placed in psychiatric hospitals when they needed to be, but at my level of intervention my experience—the kind of modal experience, if you like—is to be told, 'Yes, we'll help you with this, but actually it's not us who needs to do it; it's DIMIA' [DIAC]. You go to DIMIA and they say, 'No, you need to talk to IMHS about it.' You go back to IMHS and they send you back to DIMIA. So I have felt completely impotent in working within the system to be able to help anybody to get the mental health care they need in the vast majority of cases that I have been involved in where families or children have been in immigration detention.³⁷⁸

5.26 Speaking specifically about the impact of detention on people with children to care for, Dr Jureidini added that placement in less restrictive held detention, such as Alternative Places of Detention (APODs), was not a silver bullet for dealing with the negative effects:

[L]ocking up somebody where it is relatively nice does not protect them from the worst effects of being locked up.³⁷⁹

How mental illness can influence assessment outcomes

5.27 Furthermore, psychologists working with detainees posited that major depressive disorders had the potential to influence refugee status determination outcomes by compromising people's ability to present a coherent, fact-based protection claim at critical times during the assessment process. As put by Mr Guy Coffey, a clinical psychologist with 14 years of experience in assessing detainees and former detainees:

A major depressive disorder can impair attention and short term memory and introduce biases and distortions in the recollection of personal history. Anxiety disorders can reduce concentration and short term memory. Post traumatic conditions often result in an inability to accurately recollect or describe traumatic events. Suffering from a disturbed mental state, therefore, may disrupt an asylum seeker's capacity to coherently and consistently put their claims through instructions to their lawyer and at refugee status interviews. These effects, according to the severity of the disorder, may be subtle or conspicuous. They more often compromise the asylum seeker's ability to provide a detailed and consistent account of their experiences than render them "unfit to testify". The mental state of the

378 Dr Jon Jureidini, *Proof Committee Hansard*, 15 November 2011, p. 33.

379 Dr Jon Jureidini, *Proof Committee Hansard*, 15 November 2011, p. 36.

detained population has significant implications for procedural fairness in status resolution, which I believe have not been fully acknowledged.³⁸⁰

5.28 The Committee sought other professional opinions on this point. Dr Gynther explained how people with post-traumatic stress disorder could have difficulty engaging with the outside world:

People with post-traumatic stress disorder just withdraw. They withdraw from friends and they have a loss of interest in activities. They are models of this sort of thing. If you give a rat an electric shock, it will run away. If you tie it down and give it repeated electric shocks, eventually it just lies down. The same thing happens to people.³⁸¹

5.29 The Refugee Advice and Casework Service (RACS), a legal centre assisting asylum seekers, concluded from experience:

From a legal perspective, the mental health effects of mandatory and prolonged detention have an alarmingly negative effect on an applicants' legal case. As mental health deteriorates, applicants are less and less able to effectively engage with the POD process, which relies on accurate and detailed recall of past (often traumatic) events, in order to be found to be credible by a decision-maker. RACS reiterates that the depression and anxiety experienced by many applicants during detention awaiting the outcome of their cases results in poor memory and concentration, anger, frustration, and indignation. These negative emotions have an enormously detrimental effect on our clients' abilities to present their claims properly. Some of RACS' clients have reached states of such serious mental illness, frequently at the appeal and review stages of their protection determination, that we have professional concerns about their ability to give instructions and to understand their situation.³⁸²

5.30 RACS also stated that DIAC's own analysis of cases overturned on IMR (independent merits review) between January and April 2011, which indicates that the psychological state of detainees was a contributing factor in the overturn in 25 per cent of sampled cases, was further proof of the scale of this problem.³⁸³

5.31 When asked whether mental health was considered when deciding protection claims, DIAC stated:

[W]ere a person to provide such an assessment, of course it would be taken into account. All matters that a person brings to our attention are taken into account, but we would not normally commission such a report. However, there is a well-known phenomenon that a person may over time provide

380 Mr Guy Coffey, *Submission 44*, p. 13.

381 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 4.

382 Refugee Advice and Casework Service (Australia), *Submission 28*, p. 6.

383 Refugee Advice and Casework Service (Australia), *Submission 28*, p. 7.

more information to us, and that I think in some way accounts for the overturn rate that we see in relation to decisions upon review.³⁸⁴

5.32 DIAC First Assistant Secretary, Ms Vicki Parker, added that a person's 'mental health and mental state can be quite relevant in terms of credibility, which goes to the protection assessment.'³⁸⁵

Committee view

5.33 The Committee accepts that DIAC seeks to consider alternative placement options where available when managing detainees with severe mental illness. The Committee is of the view that it is a regrettable consequence of overcrowding in the detention system that detainees who are at risk of suicide are at times transferred straight from hospital back into high security detention facilities. The Committee urges the Department to continue to monitor detainees with severe mental illness and ensure their management is in line with medical advice.

5.34 The Committee remains concerned about the impact mental health degradation can have on an asylum seeker's ability to coherently make their claim for protection. The Committee notes that medical professionals have stated that mental illness can impair a person's ability to engage with the outside world, and is therefore concerned that people could be failing to recount important information to decision-makers without necessarily exhibiting other signs of mental illness. The Committee acknowledges that DIAC will take mental health assessments into consideration if they are provided by the detainee; however, it must also be recognised that detainees are not in a position to commission their own medical assessments.

Exacerbation of previous trauma

5.35 Detainees are often people who have feared or experienced some degree of persecution or trauma prior to leaving their countries of origin. The effects of mandatory detention should be assessed against this backdrop of pre-existing psychological vulnerability.

5.36 In 2006 DIAC funded a study conducted by the University of Wollongong which looked at health profiles of people in detention centres to 'identify an appropriate health data collection system to provide a capacity to analyse the health of people in immigration detention.' The study concluded that asylum seekers were more likely than other detainees—such as people who have overstayed or breached their visa—to suffer increased health problems.³⁸⁶

384 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 34.

385 Ms Vicki Parker, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 34.

386 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 62.

5.37 The Australian Psychological Society commissioned a comprehensive literature review in 2008, looking at the psychological vulnerability of refugees. The review identified:

- The significant psychosocial impact of the refugee experience, including experiences of pre-migration trauma, migration and resettlement.
- That people seeking asylum are at risk of mental health problems based on specific risk factors including loss and trauma both prior to and post arrival. Mental health problems may be expressed in various ways depending on cultural background, personal experience and reception factors.
- The important role that post-migration stressors may have on adjustment, including the experience of loss, restricted access to appropriate supports, and limited educational and employment opportunities.
- The heightened risk of mental health problems among refugees who are placed in detention, especially children.³⁸⁷

5.38 Dr Gynther agreed that asylum seekers were particularly vulnerable as a group due to previous trauma:

I think that that the actual process of prolonged involuntary detention is an abusive process. The detainees that come to Scherger have come from overseas. They have often been subject to trauma and significant loss where they have come from, and then when they are detained for prolonged periods of time they are effectively re-traumatised by the process. Many of the patients have post-traumatic stress disorder, and one of the many symptoms of post-traumatic stress disorder is loss of trust in others after how you have been treated. That loss of trust is further amplified by the way we treat people—by prolonged detention. I think this actually damages the patients in the long term. It produces psychiatric illness and long-term damage for these people, whether they are eventually released into the community or returned to where they have come from. I think we are actually causing them harm. I think that morally we cannot use a process that causes people harm with the purpose of, say, preventing other people coming here. We cannot use this process as a deterrent, because the cost of this is harm to other people.³⁸⁸

5.39 As put by the Australian Psychological Society, detention is in itself traumatic, and it exacerbates the effect of other traumas:

Detention has been found to have an independent, adverse effect on mental health by exacerbating the impacts of previous traumas, and is in itself an ongoing trauma.³⁸⁹

387 The Australian Psychological Society, *Submission 108*, pp 5–6.

388 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 1.

389 The Australian Psychological Society, *Submission 108*, p. 3.

5.40 In contrast, research shows that asylum seekers with pre-existing trauma experience positive outcomes when they are 'afforded adequate rights and provided with appropriate legal, settlement, mental health, education and employment supports.'³⁹⁰

5.41 However, those who are re-traumatised as a result of detention have far worse outcomes once they are released into the community:

I think by locking up people in this way where they see no future, it goes on endlessly and they do not know what will happen to them it, again, erodes that trust. I think we are basically re-traumatising people...That means that, when they are released into the community, they will have more severe symptoms of post-traumatic stress disorder, a harder time relating to other people because of their loss of trust because that is further undermined, a harder time relating to their families and a harder time being a productive member of the community.³⁹¹

Contributing factors

5.42 A number of circumstances associated with prolonged detention contribute to poor mental health outcomes. These include deprivation of freedom, a sense of injustice and inhumanity, isolation, and growing feelings of demoralisation and hopelessness.³⁹² These factors conflate to slowly, persistently corrode mental health, resulting in both psychological and physical deterioration.

5.43 The Australian Human Rights Commission identified a number of factors contributing to the degradation of mental health across the detention network:

The Commission is troubled about a number of key factors that, in combination, are placing extreme pressures on asylum seekers and refugees in detention facilities. These include the psychological impacts of being detained for long periods with no certainty about when they will be released or what will happen to them when they are; confusion about the refugee status assessment process and frustration about delays with processing; frustration and uncertainty about ASIO security assessment processes and delays; and the fact that they are informed that if they seek judicial review of their negative refugee assessment, they will remain in immigration detention for the duration of that process.³⁹³

5.44 Further evidence before the Committee consistently pointed to similar exacerbating features of the detention experience. These include:

- the undefined, uncertain length of detention;

390 The Australian Psychological Society, *Submission 108*, p. 6.

391 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 4.

392 See the Australian Psychological Society, *Submission 108*, p. 7.

393 Australian Human Rights Commission, *Submission 112*, p. 28.

- the remoteness of facilities and harshness of climatic and geographic environments;
- perceptions of unjust treatment and unjustified incarceration; and
- the absence of meaningful, stimulating activity.

5.45 These circumstances, which make prolonged detention a harrowing experience, are not only individually challenging but can also produce a powerfully negative mix:

The sense one is being incarcerated without just cause, the indefinite term of detention, the control exerted over the minutiae of one's life, the lack of privacy, the monotony and lack of worthwhile activities, the isolation and difficulty communicating, exposure to acts of violence, growing tensions with other detainees and with detention officers – all these circumstances undermine the asylum seeker's psychological well being over time.³⁹⁴

Indefinite periods of detention

5.46 From physicians, psychiatrists, human rights groups and refugee advocates, to academics, lawyers and detainees themselves, the Committee heard a consistent message from submitters and witnesses over the course of this inquiry: it is the length of time people spend in an information vacuum in detention that is the primary problem and contributor to stress. Not a single submission put forth arguments to the contrary.

5.47 The previously mentioned 2006 University of Wollongong study, published in 2010, looked at 720 health records from 2005–06 and found that people detained for longer periods had a 'significantly larger' number of health problems, both mental and physical.³⁹⁵

5.48 Research also shows that only 3 per cent of people detained for under three months developed new mental health problems, whereas that proportion rose to 44.6 per cent when people were detained for more than two years.³⁹⁶

5.49 According to the Refugee Advice and Casework Service asylum seekers routinely spend up to 18 months in detention while their applications are processed and outcomes determined.³⁹⁷

5.50 DIAC's own figures³⁹⁸ as at 31 January 2012 are as follows:

394 Mr Guy Coffey, *Submission 44*, p. 9.

395 DIAC, *Submission 32, Supplementary*, p. 62.

396 Mr Guy Coffey, *Submission 44*, p. 8.

397 Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 1.

Figure 9

Length of Time in Detention as at 31 January 2012		
Period Detained	Total	% of Total
7 days or less	53	0.8%
8 days - 31 days	390	6.1%
32 days - 91 days	1967	30.8%
92 days - 182 days	923	14.5%
183 days - 365 days	1003	15.7%
366 days - 547 days	1124	17.6%
548 days - 730 days	750	11.7%
Greater than 730 days	173	2.7%
Total	6383	100%

Source: DIAC

5.51 In answers to questions put on notice, DIAC informed the Committee that the average processing time from arrival (for Irregular Maritime Arrivals – IMAs) to visa grant was 279 days as of 18 July 2011.³⁹⁹ This figure does not, however, take into account those asylum seekers who are on a negative assessment pathway. Those in the latter category can spend considerably longer in detention, and the Committee came across many cases of people spending around or upwards of two years in detention.

5.52 Particular distress has also been observed among detainees waiting while security assessments are conducted by the Australian Security Intelligence Organisation (ASIO). These clearances are not conducted within a set timeframe, nor are detainees kept abreast of their progress. This latter point is a significant cause of anxiety.⁴⁰⁰

A time limit on detention

5.53 Given that the length of detention appears to be a chief factor in mental health deterioration, the Committee considered calls for a time limit to be imposed. Evidence was heard from organisations such as the Law Council of Australia:

We are also arguing for a time limit on detention. A number of submitters have said 30 days; some people say 60 days. All we are saying is that there needs to be a time limit, because at the moment it is arguably indefinite, and that is a breach of Australia's obligations.⁴⁰¹

398 DIAC, Immigration Detention Statistics Summary, 31 January 2012, p. 8, available at: <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20120131.pdf> (accessed 29 February 2012).

399 DIAC, *Question on Notice 8* (received 16 August 2011), p. 1.

400 Refugee Advice and Casework Service, *Submission 28*, p. 3.

401 Ms Rosemary Budavari, Co-Director, Criminal Law and Human Rights, Law Council of Australia, *Proof Committee Hansard*, 22 November 2011, p. 3.

5.54 This call for time limits to be placed on detention was echoed by a number of other submissions, such as the Australian Human Rights Commission,⁴⁰² the UNHCR,⁴⁰³ the Australian Psychological Society,⁴⁰⁴ Refugee Advice and Casework Service (RACS),⁴⁰⁵ and the Refugee Council of Australia (RCA).⁴⁰⁶ The RCA called for this limit to be set at 30 days, 'during which time an analysis of health, identity and security risks can be undertaken.'⁴⁰⁷ RACS nominated a 90-day limit.⁴⁰⁸

5.55 The Committee considered the view of the President of the Australian Human Rights Commission, Ms Catherine Branson:

We have long urged that indefinite detention be abandoned, because it is the indefinite nature of the detention as much as its length and its location that we know to be damaging to people's mental health. No doubt expert evidence would have to be taken about what is a reasonable time to do the checks that you have identified, but on the face of it 30 days seems to be reasonable. I think it is very concerning that, as I understand it, two-thirds of those people presently in detention have been there for longer than six months.⁴⁰⁹

5.56 Others, such as Amnesty International, expressed support for imposing time limits without nominating a specific time.⁴¹⁰

5.57 Some witnesses added that detention beyond any set time limit should be subject to judicial review:

Any attempt to detain an asylum seeker for more than 30 days should be subject to independent judicial review. This approach would ensure the potential risks to the community are managed appropriately without inflicting further harm on vulnerable people attempting to flee persecution. It would also allow for continued detention in cases where genuine risks exist.⁴¹¹

5.58 A submission from the regional representative of the United Nations Commissioner for Human Rights (UNHCR) points to the government's *New*

402 Australian Human Rights Commission, *Submission 112*, p. 5.

403 United Nations High Commissioner for Refugees, *Submission 110*, p. 18.

404 The Australian Psychological Society, *Submission 108*, p. 3.

405 See Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 1.

406 See Ms Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, *Proof Committee Hansard*, 5 October 2011, p. 8.

407 Ms Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, *Proof Committee Hansard*, 5 October 2011, p. 8.

408 Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 1.

409 Ms Catherine Branson, President, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 55.

410 Dr Graham Thom, *Proof Committee Hansard*, 18 November 2011, p. 11.

411 Ms Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, *Proof Committee Hansard*, 5 October 2011, p. 8.

Directions in Detention policy and expresses concern that the key values identified do not appear to have been adhered to:

Despite previous assurances of the Government of Australia that the New Directions in Detention policy would apply to territories excised from the migration zone, UNHCR is concerned that the Key Immigration Detention Values have not been systematically applied in territories excised from the 'migration zone' or to persons arriving in excised territories.

...

While noting the discretionary nature of the power to detain in an excised offshore place under current legislation, UNHCR is disappointed that the Key Immigration Detention Values have not been explicitly and systematically applied to refugees, asylum-seekers and stateless persons throughout Australia, including those defined as Irregular Maritime Arrivals (IMAs) and subject to the regime of 'offshore processing'.⁴¹²

Remoteness

5.59 The remoteness of detention facilities isolates detainees in a physical sense by making it difficult for service providers, doctors and lawyers to pay regular, necessary visits. This in turn contributes to prolonging detention:

I have no doubt that the remoteness of location and the obstacles that it presents—and there are quite a number of them—in terms of advice and processing have resulted in prolonged detention of people. I think one of the really important aspects of it is that, the longer someone is detained in these remote locations, usually the less able they become to actually engage fully in the process, because of the damage that it does to people... When people become so damaged and so harmed by the detention, as we know that they do, it becomes more difficult for them to fully engage in the process of explaining their case, presenting evidence and working with their advisers.⁴¹³

5.60 Dr Bruce Gynther told the Committee how remoteness was also affecting the quality of psychiatric care detainees were receiving:

The remote location of the Scherger facility means it is usually not possible to have a psychiatrist or psychiatric registrar on site to assess patients. A videoconference assessment or a relayed assessment from a Medical Officer or Mental Health Nurse is far from ideal for these complex cases. Transfer of the patients from Weipa to Cairns is difficult, and at times not desirable for patient management.⁴¹⁴

5.61 He added that maintaining remote detention centres which were not close to a major public hospital carried with it a considerable risk:

412 United Nations High Commissioner for Refugees, *Submission 110*, p. 4.

413 Mr David Manne, Executive Director, Refugee and Immigration Legal Centre Inc., *Proof Committee Hansard*, 18 November 2011, p. 28.

414 Dr Bruce Gynther, *Submission 152*, p. 2.

...[T]he degree and quality of the psychiatric care that we can offer is really suboptimal. Even though we strive very hard and liaise with the mental health nurses that are located in Weipa and the doctors at Weipa Hospital and everyone does the best they can, in the end, for patients with really severe psychiatric conditions who are suicidal and who have major depression or post-traumatic stress disorder, I am making decisions over the phone about their management, and it is just not acceptable. These patients should have been admitted routinely. They should be close to a major hospital so they can be admitted routinely, whereas with any other psychiatric admission they would be seen within 24 hours by a training psychiatric doctor or a psychiatrist, and then decisions can be made about their treatment and their longer term management. I think that, with the way the situation is now, we are just waiting for disaster, and I think that a tragedy is very likely to occur.⁴¹⁵

5.62 The Committee is aware that Dr Gynther was speaking specifically about Scherger detention centre, in Far North Queensland. However, the point applies to other remote centres.⁴¹⁶

5.63 Remoteness also curbs regular human contact with visitors, be they friends, family or advocacy groups. Those who do persist despite this obstacle informed the Committee that they found it increasingly difficult to spend time with detainees due to tighter restrictions on visitors being imposed:

In the past, on previous visits, we were allowed into the main compound to sit under a tree, and not only could we see the people who were on our list but anyone could come up and speak with us. A couple of months ago, on our visit, we actually collected some information; we distributed some forms and we sent those off to this detention inquiry, because people wanted to have a voice and some felt that they had not necessarily had their voices heard during the visit by the inquiry, because that was time limited. But, on the most recent visit, the rules suddenly seemed to change. My colleague was not allowed into the main compound. She was shepherded off to a room and only allowed to see six people on the list. Other people had requested, through other detainees, to see her. They gave another list with additional names to Serco, who refused—something about security reasons. People were very disappointed. I think there is so much anxiety and tension in detention that to stop people extending the hand of human kindness is just criminal, really.⁴¹⁷

5.64 For those whose families are overseas, family contact is even more problematic. Detainees report that fear for family members who may face persecution in their countries of origin is among their greatest sources of anxiety. In situations where the detainee was the principal breadwinner, their ongoing inability to earn

415 Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 1.

416 The impact of remoteness on health services to detainees is discussed in detail in Chapter 4.

417 Dr Linda Briskman, Director, Centre for Human Rights Education, Curtin University, *Proof Committee Hansard*, 18 November 2011, p. 32.

money can have serious consequences for the family's livelihood. Psychologists report that abandonment of family contacts is frequently a concerning sign that a detainee has lost hope.⁴¹⁸

Recommendation 18

5.65 The Committee recommends that, as a matter of policy, the Department of Immigration and Citizenship accommodate detainees in metropolitan detention facilities wherever possible, in particular children and families, and those detainees with special needs or with complex medical conditions.

Absence of meaningful activity

5.66 Generally speaking, the Committee found from its visits to detention centres that living conditions were of varying quality but provided for people's basic needs. Although detainees identified particular inadequacies in terms of the standard of food and accommodation available, these seemed to be of secondary concern.⁴¹⁹

5.67 As one submitter put it:

[Length of detention] issues are of more concern to detainees than the fact that the taps don't drip or that there is coloured play equipment in the compound. In general the physical facilities are sterile but adequate. It's the *indefinite* powerlessness, hopelessness and the lack of freedom, choice, privacy and creativity that is so cruel. There are no torture marks on their bodies but the torture by bureaucracy is real and I have witnessed its effects.⁴²⁰

5.68 And in the words of a former detainee:

If they make all the walls or fence with gold, there is nothing different, there is nothing changed, prison is prison, still this system keeps me in detention for no reason.⁴²¹

5.69 Serco's contractual obligations to provide programs and activities are covered in greater detail in Chapter 3. However, in this context the Committee briefly observes that recreational options available to detainees vary across the centres, according to factors such as whether facilities are purpose built, their location and the length of time the each is to be used as a detention facility.⁴²² Each detention site has a manager who is responsible for developing a monthly Programs and Activities Plan. The plan aims to reflect detainee needs, which Serco identifies through consultation. Plans deliver both structured and unstructured programs that:

- enhance detainee physical and psychological wellbeing;

418 Mr Guy Coffey, *Submission 44*, p. 7.

419 The Committee received *in camera* evidence from detainees on this point.

420 Ms Fabia Claridge, *Submission 7*, pp 2–3.

421 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45*, p. 3.

422 See Serco, *Submission 42*, p. 15.

- help build positive relationships both between detainees and between detainees and staff; and
- help maintain security on site.⁴²³

5.70 Submitters questioned the adequacy of available recreational activities, however, arguing that most were 'ways to pass time but are not related to any objective or to the acquisition of any particular skill,' with English classes being the exception. Available activities 'occupy a small part of the day and the rest of the time is spent wiling away the hours.'⁴²⁴

5.71 The Human Rights Commission also pointed out that depression was preventing detainees from participating in what little activity was available to them to pass the time, which further increased the severity of the problem and led to possible overreliance on medication:

During recent visits, the Commission heard from people in detention about the psychological harm that prolonged detention was causing them. People at Villawood spoke of experiencing high levels of sleeplessness, feelings of hopelessness and powerlessness, thoughts of self-harm or suicide, and feeling too depressed, anxious or distracted to take part in recreational or educational activities. The Commission was troubled by the palpable sense of frustration and incomprehension expressed by many people. This appeared to have contributed to marked levels of anxiety, despair and depression, leading to high use of sedative, hypnotic, antidepressant and antipsychotic medications and serious self-harm incidents.⁴²⁵

5.72 As a consequence of waning mental health and little opportunity to engage in purposeful activity, detainees often 'come to see recreational activities as increasingly pointless.'⁴²⁶ After prolonged detention, even the most determined are defeated:

Despite the obstacles, some asylum seekers make a concerted effort to maintain a routine by spending time privately learning English, observing prayer times, writing emails to friends and exercising regularly. After an extended period of detention, however, this tends to be the exception.⁴²⁷

5.73 This absence of meaningful activity compares negatively even with the prison experience:

It is notable that arrangements in many prisons provide more opportunity for worthwhile activities including work of various kinds and the possibility of study through an external educational institution. Although

423 See Serco, *Submission 42*, p. 22.

424 Mr Guy Coffey, *Submission 44*, pp 4–5, p. 11.

425 Australian Human Rights Commission, *Submission 112*, p. 28.

426 Mr Guy Coffey, *Submission 44*, p. 5.

427 Mr Guy Coffey, *Submission 44*, p. 11.

administrative and purportedly nonpunitive, in this respect conditions in immigration detention centres are inferior to that of many prisons.⁴²⁸

Powerlessness over own fate and perceptions of unfairness

5.74 People's experience of detention is also affected by how they perceive the situation they are in. Many report feeling 'criminalised', or, as one detainee put it in a submission from the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT):

We were wondering: why are we here? Are we criminals? We killed someone? We stole something? Why do they detain us?⁴²⁹

5.75 FASSTT explained that this is a common feeling among detainees:

Detention facilities are experienced as prisons because they treat people as presenting such risks to the community that they must be confined behind fences and subject to constant surveillance. It should also be recalled that many asylum seekers were imprisoned in their countries of origin and detention facilities represent all too vivid reminders of the persecution that they have fled. By aggravating past trauma, immigration detention may cause harm that impairs people's health and wellbeing for a significant period following their release to settle in Australia (the majority of asylum seekers) or return to their country of origin.⁴³⁰

5.76 As put by Mr Guy Coffey, a clinical psychologist:

The legal distinction between administrative and punitive custody is not apparent to the detained asylum seeker. Detention is often viewed as unjust, and increasingly with the passage of time, as an affront to the legitimacy of their claims - that they are being punished for asking for protection.⁴³¹

5.77 The detention experience is so regimented that people are not allowed to make ordinary decisions about their daily lives.⁴³² Detainees may be subject to highly intrusive treatment, including strip searches.⁴³³ This, along with a lack of understanding of the process they are in or how it is different from criminal incarceration, leaves many detainees feeling confused, unjustly punished and ashamed:

The fact of the deprivation of liberty becomes increasingly oppressive with time. A majority of asylum seekers, particularly after about 6-9 months of detention and after one or more negative visa application decisions, experience detention as punitive and criminalising. Commonly they implore you to explain what offence they have committed and why they are being

428 Mr Guy Coffey, *Submission 44*, p. 11.

429 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45*, p. 3.

430 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45*, p. 3.

431 Mr Guy Coffey, *Submission 44*, p. 4.

432 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45*, p. 3.

433 See DIAC, Detention Services Manual, Chapter 8, *Question on Notice 77* (received 6 December 2011, updated 15 March 2012).

punished. The legal account of their predicament, that under Australian law unlawful non citizens must be detained, usually doesn't allay a growing sense that something retributive is occurring. Those in centres shared with people detained due to visa cancellation owing to serious offending point to the injustice of being categorised with them. For some asylum seekers, the extensive security related interviews, which are usually far longer than the interviews assessing refugee status, suggest to them there is a greater focus on anti-people smuggling operations, and identifying threats to public security than on assessing the need for protection. Many of those in contact with their families have increasing difficulty explaining why they are still detained and face questions from family members as to whether they have committed an offence.⁴³⁴

5.78 The Committee also received evidence suggesting that some detainees believe the assessment process for refugee status is capricious and potentially subject to political interference. Many detainees are of the view that assessment criteria are not uniform, and that certain assessors interpret the frame of reference for protection visas more harshly than others. This sense of injustice—justified or otherwise—exacerbates feelings of helplessness and anger.⁴³⁵

5.79 This belief was echoed during *in camera* hearings the Committee held with a number of detainees across the network.

5.80 Visitors to detention facilities similarly reported finding them to be highly controlled environments. Dr Linda Briskman, director of the Curtin University's Centre for Human rights, described her experience of being kept under surveillance during visits to facilities, extrapolating from that that detainees must experience far worse treatment:

I have experienced being accompanied to the toilet by two men. Another colleague, who was there last week, had her tampon box inspected before she went to the toilet. If we are experiencing this sort of surveillance and control, we can only imagine what it is like for the asylum seekers.⁴³⁶

The after-effects of detention

5.81 Studies indicate that the harm caused by prolonged detention continues to affect people once they are in the community. People who experience negative mental health effects as a consequence of detention frequently continue to suffer a sense of powerlessness and compromised self esteem beyond the period of detention:

[Studies] found that along with significant psychological harm caused while in detention, psychological consequences of detention continue post-release even after the gaining of permanent residency. The severe difficulties experienced by all participants in this study included a sense of insecurity

434 Mr Guy Coffey, *Submission 44*, p. 4.

435 See for example Ms Fabia Claridge, *Submission 7*, p. 3.

436 Dr Linda Briskman, Director, Centre for Human Rights Education, Curtin University, *Proof Committee Hansard*, 18 November 2011, p. 32.

and injustice, relationship difficulties (half the participants identified that they resorted to isolating themselves), profound changes to view of self (loss of role as protector and provider for families and a more general loss of agency) and mental health symptoms such as depression, anxiety, PTSD, low quality of life and persistent and debilitating problems with concentration and memory.⁴³⁷

5.82 This, of course, means that former detainees experience difficulty adjusting once they enter the wider society. Studies show:

[S]everal years after being released from detention, most participants showed clinically significant levels of depression and symptoms of post traumatic stress disorder. The difficulties participants spoke of in their current lives appear to be a direct transposition of the kinds of harm experienced while detained. It is contended that the enduring nature of these adverse psychological effects can be understood in terms of changes to core belief systems affecting views of the self and relationships, and values about justice and humanity.⁴³⁸

5.83 The psychological harm caused by detention may therefore impact on the settlement process once people are granted permanent protection visas, as most asylum seekers are, and settled into the community. This, in turn, 'inevitably requires further government investment in public, health and mental health services,' while asylum seekers 'who are deported are returned with increased vulnerability.'⁴³⁹

Effects on children in detention

5.84 Submissions disclosed strong condemnation of the detention of children. The Committee did not receive any evidence supporting the detention of children, and examples of opposition to the practice are far too numerous to cite exhaustively. The views of a few organisations are listed below.

5.85 The Australian Human Rights Commission (Human Rights Commission):

The Commission has repeatedly raised concerns about the mandatory detention of children, the number of children in immigration detention and the prolonged periods for which many children are detained...

... The Commission welcomes the movement of a significant number of families and unaccompanied minors from secure detention facilities into community detention since October 2010...

... However, the Commission is concerned that a substantial number of children, including unaccompanied minors, remain in immigration detention. At 30 June 2011, 991 children were in immigration detention in Australia, including 478 in closed immigration detention facilities. The

437 The Australian Psychological Society, *Submission 108*, p. 7. See also Mr Guy Coffey, *Submission 44*, p. 8.

438 Study by Coffey et al, quoted by the Australian Psychological Society, *Submission 108*, p. 7.

439 The Australian Psychological Society, *Submission 108*, p. 8.

Commission remains opposed to the mandatory detention of children because it breaches Australia's international human rights obligations and creates a high risk of serious mental harm.⁴⁴⁰

5.86 Suicide Prevention Australia:

The psychological vulnerabilities of child refugee claimants held in IDC have produced much local and international concern and research. The 2002 review by Thomas and Lau investigated the mental health of child and adolescent detainees observing that posttraumatic stress symptoms are common. These are demonstrated in such symptoms as: very high anxiety, social withdrawal, regressive behaviours, flashbacks, sleep disturbance, exaggerated startle responses, poor concentration, conduct problems, aggressive behaviour, delinquency, nightmares and acting out. Holding young people in immigration detention is a negative socialisation experience, accentuating developmental risks, threatening the bonds between children and their caregivers, limits educational opportunities, traumatic psychological impact and reduces the potential to recover from pre-migration trauma (APS 2008).⁴⁴¹

5.87 The Detention Health Advisory Group (DeHAG) expressed its fundamental opposition to placing children in any form of restrictive detention.⁴⁴² The Northern Territory Branch of the Australian Medical Association referred to the detention of asylum seeker children as 'a form of child abuse'.⁴⁴³

5.88 The Committee heard that children in detention are at particular risk of suffering long-term consequences. These can manifest in varied ways and to different extents depending on the circumstances of the individual. Impacts can be physical, psychological, or both, and can affect ongoing development:

It has been well demonstrated that prolonged and indefinite immigration detention can have significant adverse impacts on the health, safety and welfare of the children subject to detention and their families. During the Inquiry, the Commission found that prolonged detention in remote facilities prevented children from enjoying their right to the highest attainable standard of health. Significant numbers of children in immigration detention experienced psychiatric illnesses, such as depression and post-traumatic stress disorder, that were either caused or exacerbated by long-term detention. The Inquiry also found evidence that the detention environment contributed to developmental delay in some young children. Further, the Inquiry was presented with numerous examples of self-harm by children in immigration detention, particularly among longer-term detainee children.⁴⁴⁴

440 Australian Human Rights Commission, *Submission 112*, p. 66.

441 Suicide Prevention Australia, *Submission 67*, p. 34.

442 Detention Health Advisory Group, *Submission 41*, p. 7.

443 Northern Territory Branch of the Australian Medical Association, *Submission 142*, p. 1.

444 Australian Human Rights Commission, *Submission 112*, p. 69.

5.89 The Committee also notes that the psychological wellbeing of parents has significant bearing on how well children are able to cope in detention:

As a rule of thumb, if you have a small child who is in a stressful and distressing environment, the strongest predictor and mediator of how they are going to do in that environment is the wellbeing of their parents. If their parents are strong and well supported, then they tend to be able to get children through adversity. So, almost universally, it has been the case with the young children whom we have seen in immigration detention over the years who are doing very badly that their parents have got to the point where they are not able to carry out the ordinary protective parenting that they were capable of carrying out when they arrived in Australia. That pattern has been repeated. We have written that up and it is published and it is quite a clear pattern that occurs. It has been the same in Inverbrackie, as it was in Woomera and Baxter [former high security detention facilities].⁴⁴⁵

5.90 The Committee received no evidence to contradict the view that detention was an unhealthy and damaging environment for children.

Unaccompanied minors

5.91 The most recent figures available to the Committee indicate that, as at 14 March 2012, there were 254 unaccompanied minors in immigration detention facilities, and 130 in community detention.⁴⁴⁶

5.92 Save the Children, the Australian branch of the world's largest independent child rights development organisation, pointed out that unaccompanied children were at particular risk:

Children held in immigration detention centres are at high risk of serious mental harm. They may witness riots, suicide attempts and self-harming behaviour. Often parents are powerless to comfort distressed children who may experience feelings of hopelessness and depression, in the case of unaccompanied children, there are simply no guardians to reassure them.⁴⁴⁷

5.93 As a particularly vulnerable group, unaccompanied children are entitled to 'special protection and assistance' under the United Nations Convention on the Rights of the Child (UNCRC), which states:

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

445 Dr Jon Jureidini, *Proof Committee Hansard*, 15 November 2011, pp 35–36.

446 DIAC, *Question on Notice 298* (received 22 March 2012), p. 1.

447 Save the Children Australia, *Submission 50*, p. 2.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.⁴⁴⁸

5.94 The Human Rights Commission, among others, raised concerns relating particularly to unaccompanied minors. The Commission was:

...concerned that there continues to be an inherent conflict of interest in having the Minister or his DIAC delegate act as the legal guardian of unaccompanied minors in immigration detention. The Commission has repeatedly recommended that an independent guardian should be appointed for all unaccompanied minors in immigration detention. DIAC has informed the Commission that it acknowledges the 'perceived conflict of interest' and has informed the Commission that policy work is being progressed to improve the guardianship regime.⁴⁴⁹

Committee view

5.95 The Committee notes community concern regarding the guardianship of unaccompanied minors, and recognises the potential for a conflict of interest to arise where the Minister is simultaneously responsible for detaining asylum seekers for the purposes of processing their claims and acting in the best interest of unaccompanied minors seeking asylum. The Committee is of the view that the legal guardianship of unaccompanied minors in immigration detention should be transferred from the Minister for Immigration as soon as practicable.

Recommendation 19

5.96 The Committee recommends that relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.

Psychological impacts on children

5.97 The Human Rights Commission has spoken to many children in detention and their families over a number of years. Many, the Commission reports, express 'confusion, frustration and distress about their situation.'⁴⁵⁰ Other submissions echo this view. Headspace, the National Youth Health Foundation, spoke of the scale and severity of the problem:

Some commentators have stated that the severity of mental health issues is linked to children's ongoing detention and that the impact of detention outweighs that of pre-migration experiences in the development of mental health issues. One study of 20 children found that after two years in

448 *United Nations Convention on the Rights of the Child*, article 20.

449 Australian Human Rights Commission, *Submission 112*, p. 70.

450 Australian Human Rights Commission, *Submission 112*, pp 69–70.

detention all children were diagnosed with at least one psychiatric disorder and 80 per cent were diagnosed with multiple disorders, compared with only one child from initial assessment (time of arrival).⁴⁵¹

5.98 The Committee is also deeply troubled by the fact that a number of children currently find themselves in indefinite detention.⁴⁵² This is understandably having a seriously detrimental effect on the mental health of entire families, but most alarmingly on children who are in this predicament by virtue of a parent's adverse assessment. The Committee spoke to a number of people in this situation, and believes all are negatively impacted by the circumstances they find themselves in. The following refers to a psychiatric assessment of one such child and his family:

The second family member I am most concerned about is [], the three year old son. The history and brief observation of him indicate that he may be abnormally sad and anxious and could be malnourished. I am certainly concerned that his normal development has been seriously disrupted and continues to be.⁴⁵³

Overall the [] family appear to be a normal family, with normal and caring relations between each other, who have been very adversely affected by the environments in which they have been living for the last two years, and continue to be so. Neither Mr nor Mrs [] have any significant personality disturbance. The attitude of both appeared to be sadness, puzzlement and helplessness, with an absence of anger or resentment. Mrs [] is seriously depressed at present, but her premorbid functioning, prior to the last two and a half years, was good, and there was no history of previous depressive or other psychiatric illness. Her depressive state can be appropriately understood in terms of the severe stressors she and her family have been experiencing during the last two and a half years, and the major uncertainty about what will happen to them.⁴⁵⁴

Human rights obligations towards children

5.99 Recent improvements notwithstanding, other submissions questioned Australia's fulfilment of its obligations towards children in detention under international human rights standards. A number were of the view that the Australian legislative regime was in breach of Article 37(b) of the United Nations *Convention on the Rights of the Child* (UNCRC),⁴⁵⁵ which states:

451 Headspace, *Submission 37*, p. 5.

452 DIAC advised the Committee that, as at 28 February 2012, three children were in indefinite detention due to a parent's adverse security assessment. Another child, a protection visa holder, is also in indefinite detention with parents who have adverse ASIO assessments and who have requested that the child remain with them instead of being released. See DIAC *Question on Notice 299* (received 15 March 2012), p. 1.

453 Professor Ben Saul, *Submission 130, Attachment*, p. 65.

454 *Submission 130, Attachment*, p. 65.

455 See for example Gilbert and Tobin Centre of Public Law, *Submission 21*, p. 6; Australian Human Rights Commission, *Submission 112*, p. 67; Amnesty International, *Submission 115*, p. 9.

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.⁴⁵⁶

5.100 The UNCRC is not enforceable in Australian courts.

5.101 In 2005 the Howard Government amended section 4AA of the *Migration Act* 1958, affirming 'that a minor shall only be detained as a measure of last resort.'

5.102 Then in 2008 the Rudd Government's *New Directions* policy stated:

Children, including juvenile foreign fishers, and, where possible, their families, will not be detained in an immigration detention centre.⁴⁵⁷

5.103 While children are not held in high security immigration detention centres, they nonetheless continue to be detained in restrictive detention facilities. As of 30 June 2011 there were 991 children held in Australia's immigration detention facilities.⁴⁵⁸ On 31 January 2012 that number was 528,⁴⁵⁹ while on 14 March 2012 the number of children in detention stood at 479, of whom 59 were awaiting transfer into community detention.⁴⁶⁰

5.104 Furthermore, a submission from the Australian Children's Commissioners and Guardians (ACCG) pointed to the absence of a uniform, national policy on child safety in Australia's immigration detention network:

The arrangements for notification, investigation and response to suspected abuse of children vary significantly from one detention centre to the next. Other than in South Australia, there are no clear protocols in place between the Commonwealth Government and the relevant statutory child protection agencies for the reporting of child abuse and neglect.⁴⁶¹

5.105 To address this, ACCG called for Memoranda of Understanding (MOUs) to be introduced between DIAC and relevant state and territory authorities.

5.106 The Human Rights Commission added workers were often unaware of procedures in place regarding children in detention and also called on every Australian jurisdiction to introduce clear protocols:

456 *United Nations Convention on the Rights of the Child*, article 37(b).

457 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *media release*, 29 July 2008, available at <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm> (accessed 22 February 2012).

458 DIAC, *Question on Notice 4* (received 10 August 2011), p. 2.

459 DIAC, *Immigration Detention Statistics Summary*, 31 January 2012, p. 7, available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20120131.pdf (accessed 29 February 2012).

460 DIAC, *Question on Notice 298* (received 22 March 2012), p. 1.

461 Australian Children's Commissioners and Guardians, *Submission 35*, p. 4.

We do not think it has to be the same across the country, but we do think in every jurisdiction there should be a protocol and a proper understanding about what is the procedure to be followed with respect to child welfare...We have spoken to people in authority in detention centres who have not known what was the appropriate course to adopt if, for example, there was an allegation of child abuse or if they found a child at risk. It is very often state and territory authorities who are nearest to where the children are and therefore most suitable to step in and protect children at risk, but they need to understand what their authority is. Those within the centres need to know when to contact them and how to do that.⁴⁶²

Committee view

5.107 The Committee shares community unease regarding the wellbeing of children in detention, and is concerned by the absence of a uniform code outlining child protection obligations, including the reporting of suspected child abuse. The Committee believes strong arguments exist for the establishment of such a code.

5.108 Recognising that an MOU between DIAC and South Australia's Department for Families and Communities already exists, the Committee supports calls for MOUs to be established between DIAC and children's commissions or commissioners across the states and territories. The Committee is of the view that these MOUs should stipulate protocols for reporting, investigating and responding to suspected child abuse and should apply to the management and care of all asylum seeker or refugee children within the immigration system, including those in community detention and on bridging visas.

Recommendation 20

5.109 The Committee recommends that the Department of Immigration and Citizenship develop and implement a uniform code for child protection for all children seeking asylum across the immigration system.

Recommendation 21

5.110 The Committee further recommends that the Department of Immigration and Citizenship adopt Memoranda of Understanding with children's commissions or commissioners in all states and territories as soon as possible.

Recent improvements

5.111 At the outset of this inquiry DIAC pointed towards a growing body of evidence underpinning efforts to speed up the removal of children from held detention:

462 Ms Catherine Branson, Australian Human Rights Commissioner and President, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 54.

Recent studies have highlighted that detention has an impact on children and families with many noting that detention can be associated with post-traumatic stress disorder, high levels of depression and poor mental health as well as an increase in the deterioration of mental health along with time spent in detention.

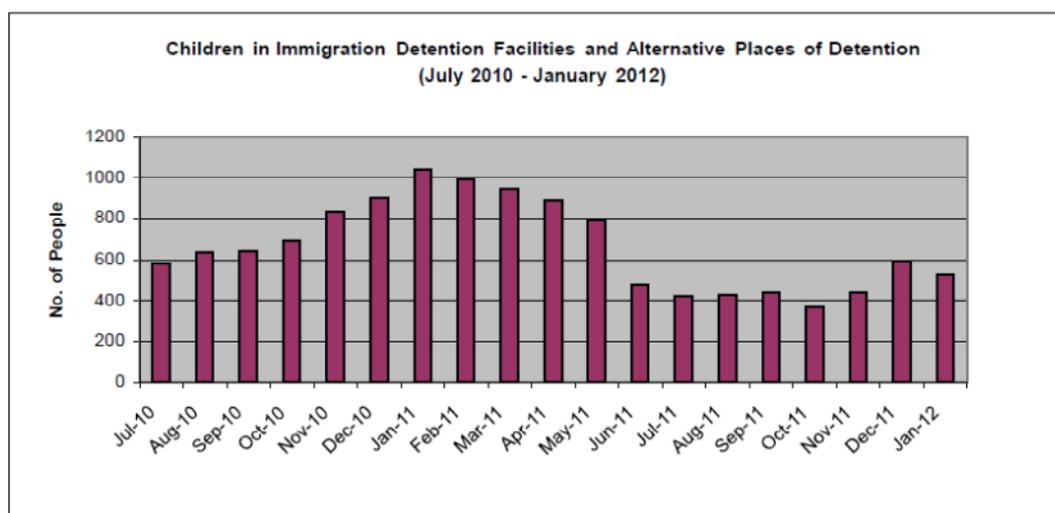
CISSR and other stakeholders have recommended that, under a mandatory detention legislative framework, vulnerable individuals and families should be placed in arrangements such as community detention.⁴⁶³

5.112 DIAC informed the Committee that children were increasingly being taken out of held detention:

Women, children and vulnerable people have been increasingly accommodated in community detention and other alternative detention arrangements. These provide an environment more suitable for the needs of these groups than immigration detention centres.⁴⁶⁴

5.113 The DIAC charts below⁴⁶⁵ illustrate this movement in recent months:

Figure 6



Note: Immigration Detention Facilities in Figure 6 refer to Immigration Residential Housing and Immigration Transit Accommodation.

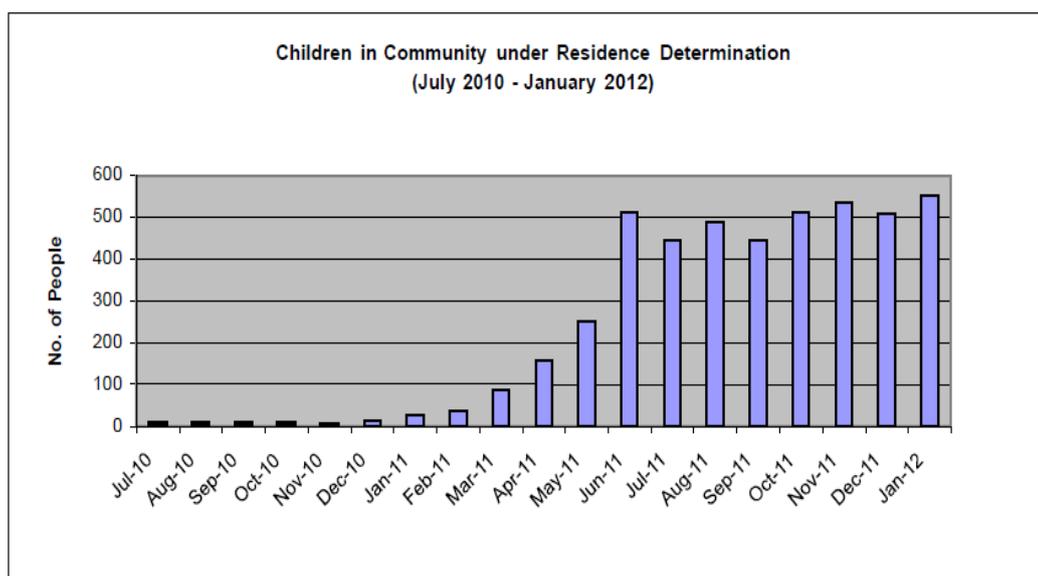
Source: DIAC

463 DIAC, *Submission 32*, pp 63–64.

464 DIAC, *Submission 32, Supplementary*, p. 5.

465 DIAC, *Immigration Detention Statistics Summary*, 31 January 2012, available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20120131.pdf (accessed 29 February 2012).

Figure 7



Source: DIAC

5.114 In October 2010 the number of children in community detention was only 10.⁴⁶⁶ At its final hearing, the Committee heard that 1500 children had been approved for community detention. On 29 February 2012, Mr Andrew Metcalfe, Secretary of DIAC, reported considerable progress towards removing children from detention environments:

All eligible unaccompanied minors who arrived in Australia prior to 30 November 2011 have been granted community detention. All accompanied children and their families who arrived in Australia prior to 31 October 2011 have been granted community detention. At the same time, over 1,400 clients have transitioned out of community detention following the grant of a protection visa.⁴⁶⁷

Committee view

5.115 The Committee acknowledges and commends the substantial effort that is required in moving large numbers of people, including children, out of held detention. The Committee notes DIAC's considerable efforts towards this goal.

5.116 The Committee also acknowledges that this endeavour is in keeping with the spirit of the *New Directions* policy announced in 2008, which includes the undertaking that:

466 Mr Andrew Metcalfe, *Proof Committee Hansard*, 29 February 2012, p. 22.

467 Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship, *Proof Committee Hansard*, 29 February 2012, p. 22.

Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.⁴⁶⁸

5.117 The Committee stresses, however, that since this policy was announced in 2008 many people have remained in held detention for over a year, some for over two years. The Committee finds such long periods of detention for people who have passed identity, health and character checks to be unacceptable. The Committee therefore supports calls for all reasonable steps to be taken to limit the duration of detention of asylum seekers, during which period initial health, identity and security checks can be completed, and after which either community detention or bridging visas should be granted. The Committee points to evidence from the Australian Human Rights Commission and the UNHCR indicating that detaining asylum seekers for any other purpose than assessing identity, health and security status may be contrary to Australia's obligations under international law.

5.118 The Committee is deeply concerned by the fact that children whose refugee parents are currently not being released into the community due to adverse security assessments also face indefinite detention. The Committee takes very seriously evidence provided by psychiatrists concerning the immediate and long-term psychological and developmental effects living in detention with no prospect of release can have on a young child, and finds the circumstances these children are in to be unacceptable. The Committee is aware that it is best for these children to remain with their parents, and is cognisant of the arguments concerning their refugee parents' possible release, discussed elsewhere in this report. However, despite the complex nature of this problem, the Committee firmly believes the government must take immediate, concrete steps to remedy this situation.

Recommendation 22

5.119 The Committee recommends that the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the shortest practicable time, and subject to an assessment of non-compliance and risk factors, as enunciated by the *New Directions* policy.

Recommendation 23

5.120 The Committee further recommends that asylum seekers who pass initial identity, health, character and security checks be immediately granted a bridging visa or moved to community detention while a determination of their refugee status is completed, and that all reasonable steps be taken to limit detention to a maximum of 90 days.

468 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, transcript of New Directions policy speech, 29 July 2008, available at: <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm> (accessed 23 February 2012).

Recommendation 24

5.121 The Committee recommends that the Department of Immigration and Citizenship be required to publish on a quarterly basis the reasons for the continued detention of any person detained for more than 90 days, without compromising the privacy of the individuals.

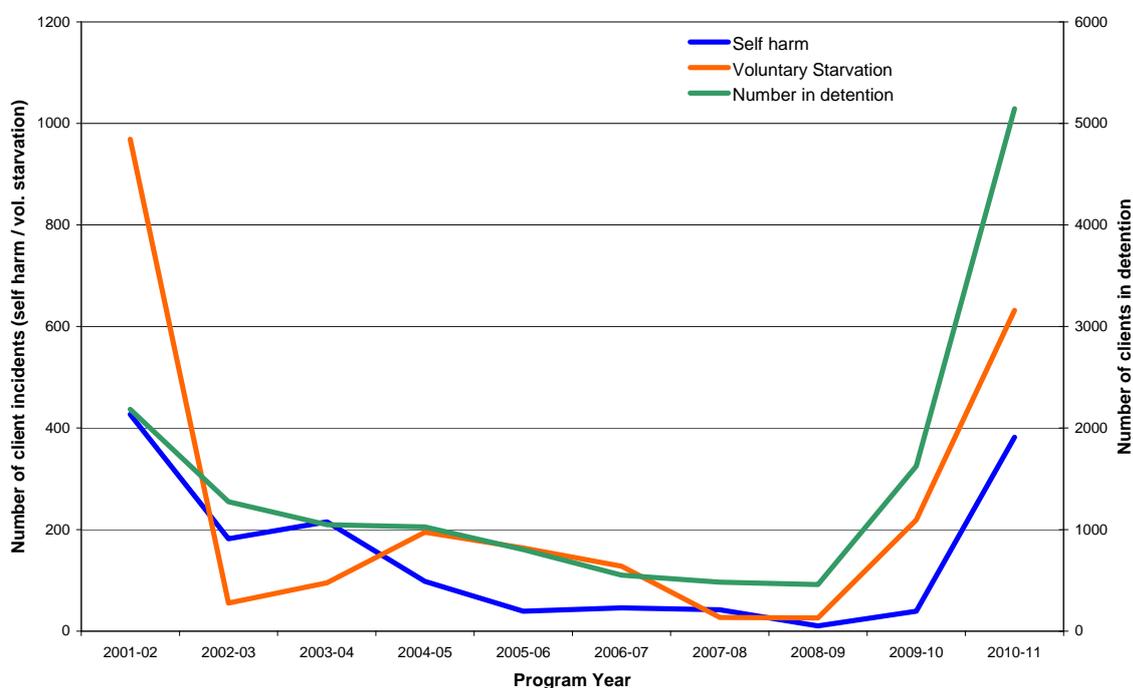
Impact of prolonged detention on the detention network

5.122 Pressure on the detention network is strongly correlated with pressure on people in detention and rising rates of distress and self harm:

For example, the high numbers of IMAs in 2001 and 2002 correlated with the high numbers of detainees engaging in voluntary starvation and self-harm. This is similar to today's situation.⁴⁶⁹

5.123 As pressure on individuals increases, so do instances of riots and other disturbances. The response to and management of riot situations is covered elsewhere in this report. This section looks at the causes of disturbances.

5.124 DIAC provided a graph illustrating this correlation between serious incidents in detention and the number of detainees (2001/02–2010/11):⁴⁷⁰



Source: DIAC

469 DIAC, *Submission 32, Supplementary*, p. 62.

470 DIAC, Figure 13, *Submission 32, Supplementary*, p. 63.

5.125 Due to a sharp increase in arrivals, the detention network has been in surge conditions since the end of 2009.⁴⁷¹ This has led to overcrowding, which in turn exacerbates the pressure on detainees and the network. It can, according to the Detention Health Advisory Group (DeHAG), also 'increase the risk of adverse outcomes.'⁴⁷²

Riots, incidents and disturbances

5.126 According to DIAC records, 9157 incident reports were received from Serco between 1 October 2009 and 30 June 2011.⁴⁷³ Incident classifications range from minor to critical and cover everything from minor accidents to serious accidents, violence, media presence and escape from detention.

5.127 Causes of incidents are multifaceted. Overwhelmingly, submissions to this inquiry held that violent, destructive and disruptive behaviour was one of the negative by-products of prolonged detention and a detention system which is failing to process cases in a timely and transparent fashion. A submission from the New South Wales Council for Civil Liberties (NSWCCL) pointed to the perceived injustice of mandatory detention, in some cases magnified by conditions of detention, which acts to motivate sporadic eruptions of disruptive conduct by detainees. People's 'normal inhibitions against violent, destructive and otherwise wrongful behaviour' are broken down by prolonged mandatory detention.⁴⁷⁴

5.128 An example provided by Australian Lawyers for Human Rights illustrated how emotions can boil over:

An ALHR member is visiting an asylum seeker currently detained at the NIDC [Northern Immigration Detention Centre] who was accepted as a refugee in May 2010 but is still awaiting a security clearance. The prolonged nature of this process has caused considerable distress and anxiety to this man. In June 2011, he embarked on a five day hunger strike on the roof of NIDC. There are many other cases similar to this at NIDC.⁴⁷⁵

5.129 The Australian Psychological Society explained that both inward and outward aggression were predictable responses in certain situations, such as detention:

Social psychologists have documented that extreme behaviour is a common outcome in situations where people lack personal control, social connection and hope. Long-term detention can be a dehumanising experience for detainees, and it is recommended that elevated rates of aggression directed outwards and inwards as self-harm be understood as predictable responses to this context and not as manipulative or attention seeking behaviour.⁴⁷⁶

471 DIAC, *Question on Notice 92* (received 29 February 2012), p. 1.

472 The Detention Health Advisory Group, *Submission 41* (received 16 August 2011), p. 3.

473 DIAC, *Question on Notice 21* (received 16 August 2011), 2011, p. 1.

474 NSW Council for Civil Liberties (NSWCCL), *Submission 140*, pp 1–2.

475 Australian Lawyers for Human Rights, *Submission 129*, p. 9.

476 Australian Psychological Society, *Submission 108*, p. 4.

5.130 Looking at the occurrence of disturbances within immigration detention facilities, the Australian Human Rights Commission referred to the link between mounting distress and frustration and outward acts of violence and property destruction:

The Commission does not condone acts of violence or property destruction in immigration detention facilities. It is important to recognise, however, the context which preceded these disturbances. The Commission believes that the issues relating to the processing of claims for asylum described above have contributed to the recent unrest in immigration detention facilities. Many people had been held in detention for a year or more, with no end in sight, and without the ability to challenge their ongoing detention in a court. Many were acutely frustrated by the time being taken to process their refugee claims, serious delays with security assessments and a lack of regular updates on progress with cases. Some were feeling pressured to return to countries where they believed they faced persecution or danger. The significant uncertainty, frustrations and tensions experienced by people in detention may have contributed to the unrest that has been seen in immigration detention facilities in recent months.⁴⁷⁷

5.131 DIAC, Serco and Australian Federal Police (AFP) critical incident management and response plans and implementation are outlined in Chapter 8.

Committee view

5.132 The Committee holds that individuals are responsible for maintaining proper conduct. However, apportioning responsibility for individual and group behaviour can become problematic when conditions beyond the individual's control are not conducive to optimal mental health and appropriate cognitive functioning. The Committee does not excuse criminal behaviour where and if it exists. However, the Committee cautions that maintaining a system in which desperate people are kept confined without charge for prolonged periods is almost guaranteed to result in further disturbances and possibly even violent outbursts of pent-up emotion. The Committee believes that focusing on minimising the time people who have passed identity, health and character checks spend in detention will help not only them, but also those managing the detention network.

Impact on staff

5.133 Frontline workers are employed across the detention network from a variety of occupational backgrounds. Their roles vary, but include providing security, support and welfare, as well as cleaning services and food preparation. They spend many hours in the detention environment, and this can have a negative effect on them as well as the detainees themselves. As put by United Voice, a union with coverage of employees engaged in frontline operation of detention facilities:

477 The Australian Human Rights Commission, *Submission 112*, p. 32.

In many ways, the experiences and conditions of workers within the immigration detention network mirror those experienced by asylum seekers. Employees are faced with a work environment which is often unsafe. They experience impediments such as a lack of training and understaffing which prevent them from performing their jobs to the best of their abilities...Moreover, immigration detention network employees are subject to public scrutiny and vilification for the work they do from both sides of the political spectrum. Despite being on the front-line of the Government's immigration detention system, they receive limited support from both their employer Serco Australia Pty Ltd (Serco) - contracted to run the centres - and the Department of Immigration and Citizenship (DIAC). At the same time, workers are severely restricted in their ability to speak publicly about their experiences within the immigration detention network, due to the strict confidentiality agreement entered into between the Federal Government and Serco. Serco in turn imposes confidentiality restrictions on its employees. United Voice believes that this lack of transparency is detrimental to the overall well-being of both workers and asylum seekers within the immigration detention network.⁴⁷⁸

5.134 A submission from the Castan Centre for Human Rights Law, Monash University, cited the example of a staff member who managed the Woomera facility (no longer used for detention) for 18 months:

I was suicidal. I couldn't go out of the house. I couldn't get off the couch. I was basically a vegetable.⁴⁷⁹

5.135 The submission added that many of the concerns from Woomera were now present in detention facilities across the country, with troubling consequences:

It has been reported that overstaffing, inadequate staff training and minimal counselling have contributed to trauma among contractors employed by Serco. One former guard employed at Christmas Island reported that binge drinking is common among staff and that some reported for work in an intoxicated state in order to manage the stress entailed in performing their duties.⁴⁸⁰

5.136 In this vein, the Australian Psychological Society described how the mental health of workers in detention centres can be compromised:

Psychologists have long been concerned for the health, safety and wellbeing of those working in these detention centres, as they can eventually be overwhelmed by despair, and with various methods become disengaged from the clients in order to protect their own mental health. This can be a particular concern in remote locations, where workers are without their families, alcohol is cheap and there are few leisure alternatives and

478 United Voice, *Submission 55*, p. 3.

479 The Castan Centre for Human Rights, Monash University, *Submission 96*, p. 7.

480 The Castan Centre for Human Rights, Monash University, *Submission 96*, p. 7.

few support systems, staff can be easily relaxed in a way in which their own mental health needs can become compromised.⁴⁸¹

5.137 A statement from a detention centre employee, quoted in a submission from the Community and Public Sector Union (CPSU), raised the question of adequate training for staff to be able to cope with the environment they work in:

“I currently work in a detention centre that houses families with babies and young children and unaccompanied minors... I am exposed to clients on a daily basis. Some of this exposure is pleasant and some not. I also am exposed to some of the specific incidents that occur at a detention centre on a day to day basis including details of self harm incidents. Although I have worked in the public service for many years I have not been exposed to such raw and direct personal interaction which I have no skill sets to deal with.”⁴⁸²

5.138 The question of adequate training for Serco employees is covered in Chapter 3 of this report. However, the Committee is cognisant of the effect inadequate skills can have on a person's ability to cope with a stressful working environment.

5.139 Detention centre staff also report feeling judged negatively by the community, or indirectly held responsible because they implement policies they play no part in deciding:

[D]etention centre workers feel unjustly associated with the public negativity surrounding the system of immigration detention itself. They feel scrutinised within public debate as perpetrators of detention, while the care and consideration that they put into helping detainees is not acknowledged.⁴⁸³

5.140 Serco informed the committee that its staff have access to an independently provided employee counselling service. The service operates a confidential Employee Assistance Program (EAP) which provides:

- telephone based professional counselling and support services
- face to face off-site professional counselling and onward referral if required for all Serco employees and their immediate families at no cost;
- advice on work-related issues affecting psychological aspects of occupational health and safety issues; and
- critical incident support at the workplace when required.⁴⁸⁴

481 The Australian Psychological Society, *Submission 108*, pp 17–18.

482 Quoted by Community and Public Sector Union, *Submission 62*, p. 9.

483 United Voice, *Submission 55*, p. 12.

484 Serco, *Submission 42*, p. 32.

5.141 As discussed in Chapter 2, Comcare also conducted a work health and safety investigation of seven detention facilities in 2011. The investigation was initiated due to concerns about the health and safety of workers, contractors and detainees:

The concerns included the impact of work pressure and the risk of harm and mental stress. We were aware of early reports on similar issues from the Commonwealth Immigration Ombudsman and the Australian Human Rights Commission. The investigation was conducted during a period of extraordinary demand on IDFs and challenging pressures on safety and systems. Acknowledging that system, the investigation found that overcrowding consistently presented as the most prevalent concern of staff and detainees.⁴⁸⁵

5.142 Following the investigation and report, in November 2011 Comcare told the Committee that DIAC was implementing its action plan, which will improve standards in risk management, staff rations, training for employees, critical incident and detainee diversity management. Comcare advised they were monitoring the implementation of this action plan.⁴⁸⁶

5.143 At a public hearing on 22 November 2011 the Committee requested that a copy of this plan be provided by Comcare. The plan was not provided at the time of writing, 28 March 2012, despite repeated approaches to Comcare.

Committee view

5.144 The Committee is aware that officers working in detention facilities are far more exposed to the human cost of detention than policymakers. Few can be immune to the impact of working in an environment where many people at any given time are anxious, angry or depressed, where watching people resort to self harming has become a routine fact of life. As put by DIAC Deputy Secretary John Moorhouse:

Detaining people is a confronting task. It is not an easy thing to do. If anyone thinks that locking other people up is easy, they have never had to do it. It is not easy; it is a challenging thing for us in the department and it is a challenging thing for the people who work with us...[I]t has been challenging for us as we have had to step up and build up the network. I am privileged to work with a very large group of professional and capable people, but I do not have enough people with the sort of experience and expertise that I would like. I have some great people but never enough of them, and it is exactly the same for the people who are right in the front line, the Serco staff.⁴⁸⁷

485 Mr Steve Kibble, Deputy Chief Executive Officer, Comcare, *Proof Committee Hansard*, 22 November 2011, p. 41.

486 Mr Steve Kibble, Deputy Chief Executive Officer, Comcare, *Proof Committee Hansard*, 22 November 2011, p. 41.

487 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 35.

5.145 The Committee therefore supports DeHAG's call for staff to be given 'ready access to debriefing and psychological support including on site counsellors as required.'⁴⁸⁸

488 The Detention Health Advisory Group, *Submission 41*, p. 6.

CHAPTER 6

The assessment process

Introduction

6.1 Determining the outcome of claims for refugee status entails two separate but related assessment processes. The first, conducted by the Department of Immigration and Citizenship (DIAC), determines whether claimants are genuine refugees in need of protection. The second process is a security assessment conducted by the Australian Security Intelligence Organisation (ASIO).

6.2 This second process begins only if and once a person is assessed as being a refugee in need of protection. Those found not to be refugees are subject to deportation, and are not assessed further unless they appeal the initial negative assessment. These people are referred to as being on 'negative pathways'. On 29 June 2011, there were over 2500 people on negative pathways in detention.⁴⁸⁹

6.3 Once refugees are security assessed, they are either released into the community, or, if they receive adverse ASIO assessments, they are kept in detention, indefinitely.

6.4 At present, the majority of asylum seekers remain in detention for the duration of these processes. The average time spent in detention is 297 days.⁴⁹⁰ Most people who seek asylum in Australia are ultimately found to be refugees and issued protection visas.⁴⁹¹

6.5 The first part of this chapter will outline the two assessment processes asylum seekers undergo. In the second part the Committee will focus on the length and consequences of this process.

Legal framework

6.6 The *United Nations 1951 Convention relating to the Status of Refugees* (the Refugee Convention) defines who is a refugee, their rights and the obligations—both legal and moral—of states. Until the *1967 Protocol*, the Refugee Convention applied only to post-World War II European refugee situations. These limitations were removed by the *1967 Protocol* to allow the Refugee Convention to apply to refugees

489 Department of Immigration and Citizenship, *Submission 32, Key Strategic Themes*, p. 50.

490 DIAC, *Question on Notice 84* (received 8 December 2011), p. 1.

491 For number of arrivals and protection visa grants see DIAC, *Asylum Statistics—Australia Quarterly Tables, December Quarter 2011*, <http://www.immi.gov.au/media/publications/statistics/asylum/> (accessed 27 March 2012), and DIAC, *Annual Report 2012-11*, pp 119–121, <http://www.immi.gov.au/about/reports/annual/2010-11/pdf/report-on-performance.pdf> (accessed 27 March 2012).

in any country. Together, the *1967 Protocol* and Refugee Convention form the cornerstones of refugee protection worldwide.⁴⁹²

6.7 People from anywhere in the world, whether Irregular Maritime Arrivals (IMAs) or not, have a legal right to make claims for asylum in countries which have signed up to the abovementioned treaties, irrespective of their method of arrival. As a signatory to the abovementioned treaties, Australia has a legal obligation to assess all claims for asylum against criteria defined at Article 1A of the Refugee Convention.⁴⁹³

6.8 The visa process for determining who comes into Australia is regulated under the *Migration Act 1958* (the Act). The Act was amended by the *Migration Amendment (Excision from Migration Zone) Act 2001*, which barred non-citizens who first entered Australia at an excised offshore place without a valid visa from applying for such a visa during their stay in the country.

Assessing protection claims

6.9 Depending on people's mode of arrival, there are currently two different avenues of assessment of protection claims, dependent on asylum seekers' place of arrival. Those who enter Australia's migration zone who are *not* offshore entry persons (OEPs) can immediately apply for a protection visa (Class XA)(Subclass 866).⁴⁹⁴

6.10 However, OEPs arriving at an excised offshore place cannot lodge applications for a protection visa. Under the Protection Obligation Determination (POD) process, which applies to OEPs, the Migration Act prevents a person who arrives at an excised offshore place and is not in possession of a valid visa making an application for a visa. Any protection claims made since the introduction of the POD process are subject to the process.⁴⁹⁵

6.11 OEPs are sent to Christmas Island, where they begin their separate assessment process.⁴⁹⁶

Protection visa assessments for non-OEPs

6.12 Since 2005, DIAC has been required to reach protection visa decisions within 90 days of receipt of an application. Approximately 60 per cent of such decisions were made within the required timeframe in 2010-11. Where this 90-day requirement is not satisfied DIAC reports this to the Minister and these reports are tabled in Parliament.⁴⁹⁷

492 DIAC, *Submission 32, A Historical Perspective of Refugees and Asylum Seekers in Australia 1976-2011*, p. 2.

493 *1951 Convention Relating to the Status of Refugees*, article 1A.

494 DIAC, *Submission 32, Key Strategic Themes*, p. 46.

495 DIAC, *Submission 32, Key Strategic Themes*, p. 46.

496 See DIAC, *Submission 32, Policy Evolution*, p. 24.

497 DIAC, *Submission 32, Key Strategic Themes*, p. 46.

6.13 The application process begins when a person applies for a protection visa. As soon as they provide personal identifiers, their application is accepted and their eligibility for a bridging visa assessed:

Asylum seekers who have arrived in Australia's migration zone and who subsequently lodged a Protection visa application may receive a bridging visa. In most cases, the bridging visa allows applicants to remain lawfully in Australia while their Protection visa application is being finalised. Consequently, most Protection visa applicants are not detained for long periods, and they often live in the community while their application for protection is being assessed or reviewed.⁴⁹⁸

6.14 At this point applicants undergo health, identity and character checks. A DIAC officer assesses the case and determines whether further information is required from the applicant. The applicant is then invited to an interview with their allocated decision-maker. If more information is required from the applicant, it may be requested during the interview or at any other point of the assessment process.

6.15 On the basis of the information provided, the relevant DIAC officer makes a decision to grant or refuse a protection visa. The applicant is then informed of this decision and their right to review in the case of a refusal.

6.16 Asylum seekers who are found to be refugees are offered permanent protection in Australia, subject to appropriate health screening, meeting the character requirement and passing security checks.⁴⁹⁹

6.17 Applicants not granted a protection visa may seek a review with the Refugee Review Tribunal (RRT) with the power to review protection visa applications. This power is subject to the Minister's decision that a review or change in decision would be contrary to the national interest.

6.18 This review process is explained later in this chapter.

Protection determination process for OEPs

6.19 OEPs are prevented by the Migration Act from making a valid application for a protection visa. If they raise a protection claim, it is subject to the POD process.

6.20 The POD process represents a recent change in the department's assessment processes. It was introduced on 1 March 2011, replacing the previous Refugee Status Determination (RSD) process after a High Court decision on 11 November 2010 which found that Irregular Maritime Arrivals (IMAs) should be afforded natural justice and provided access to judicial review.

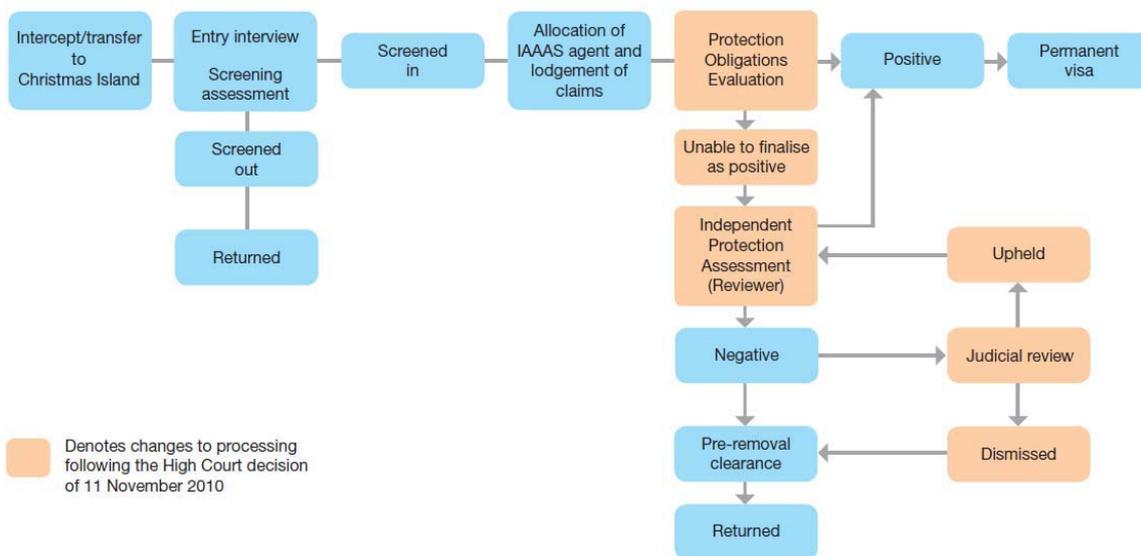
498 DIAC, *Submission 32, Key Strategic Themes*, p. 49.

499 DIAC, *Submission 32, Key Strategic Themes*, p. 46. Subsection 501(6) of the *Migration Act 1958* defines the circumstances in which a person would fail the character test. See DIAC, *Question on Notice 296* (received 22 March 2012), p. 1.

6.21 Irrespective of their date of arrival, IMAs who received a primary assessment interview after 1 March 2011 are now processed under the POD process.⁵⁰⁰ Claims for protection subject to the POD process are assessed on an individual basis against the criteria at Article 1A of the Refugee Convention, and in accordance with Australian legislation, case law and up-to-date information on conditions in the applicant's country of origin.

6.22 Applicants must put their claims in writing. All applicants are invited to an interview to discuss their claims and provide more information if required. Procedural fairness applies to all applicants in responding to information that may affect the outcome of their assessment.⁵⁰¹

6.23 The following diagram provided by DIAC outlines the POD process:



Source: DIAC

6.24 The POD process is non-statutory and has two parts: a Protection Obligations Evaluation (POE) stage and, in the event of a negative decision at this stage, an Independent Protection Assessment.

Protection Obligations Evaluation (POE)

6.25 The POE determines whether an IMA is owed protection under the Refugee Convention. To determine this, claims are assessed against criteria set out by the Refugee Convention and considered in accordance with case law. Assessors draw on currently available country information. For reasons of procedural fairness, IMAs have the opportunity to comment on the information being considered if they believe

500 DIAC, *Submission 32, Key Strategic Themes*, p. 48.

501 DIAC, *Submission 32, Key Strategic Themes*, p. 46.

it could be adverse to their case, and can update country information if there is a change in conditions in their country of origin.⁵⁰²

6.26 To make a POE decision, the Department draws on a range of sources, including:

- the Department's Country Research Service, which collects information from a variety of sources, such as international human rights groups, Australian posts overseas, foreign governments, academics, international media and other organisations;
- departmental guidelines and advice on refugee law, protection policy and procedures; and
- client statements, which may include supporting material and additional comments. These are provided in writing or during an interview, with the help of an interpreter if necessary.⁵⁰³

6.27 If the POE finds that an IMA is owed protection, the appropriate recommendation is made to the Minister, who then exercises their power to lift the bar, allowing the IMA to apply for a protection visa.

6.28 It is important to note that people who arrived as IMAs and received their primary assessment before the POD process came into being on 1 March 2011 continue to be processed under the old Refugee Status Assessment (RSA) and the Independent Merits Review (IMR) processes.

6.29 Those processed under the new POD process do not themselves have to lodge applications for decisions to be reviewed. Instead, if DIAC is not satisfied that a person is a refugee, their case is automatically referred for an independent protection assessment.⁵⁰⁴

Opportunity for review

6.30 Australia's immigration detention population currently consists mostly of those who have received a negative protection visa decision and are involved in process of review.⁵⁰⁵ Several avenues exist to enable these asylum seekers and/or DIAC to review negative decisions.

Refugee Review Tribunal

6.31 Non-OEPs whose applications for protection visas are refused are able to apply to the RRT for an IMR in relation to their case. Alternatively, they may apply to

502 DIAC, *Submission 32, Key Strategic Themes*, p. 48.

503 DIAC, *Submission 32, Key Strategic Themes*, p. 48.

504 DIAC, *Submission 32, Key Strategic Themes*, p. 48.

505 DIAC, *Submission 32, Key Strategic Themes*, p. 54.

the Administrative Appeals Tribunal if their application was rejected for character reasons.⁵⁰⁶

6.32 The RRT is an independent statutory body which ‘...provides a non-adversarial setting in which to hear evidence’. It has the power to review protection visa application decisions – unless the Minister is of the view that such a review would be against the national interest. Applicants’ claims are examined by the tribunal against the provisions of the Refugee Convention.⁵⁰⁷ The RRT may:

- uphold the primary decision—agreeing that the applicant is not entitled to a Protection visa
- vary the primary decision
- refer the matter to the department for reconsideration—the department then makes a fresh assessment of the application, considering the RRT’s directions and recommendations
- set aside the department’s decision and substitute a new decision—if the RRT finds the applicant is entitled to a Protection visa.⁵⁰⁸

6.33 When undertaking its reviews, the RRT considers the merits of each protection visa application anew, taking into account any relevant new information, such as information supplied by the applicant or changes in country information.⁵⁰⁹

Independent Protection Assessment

6.34 When a person who arrived offshore receives a negative decision at the POE stage, their case moves into the second part of the POD process, the Independent Protection Assessment phase. At this stage an independent assessor considers the case and its supporting information. The assessor may also interview the refugee claimant before making a recommendation about whether or not they should be found to be a refugee. The number of assessors was increased to 124 in June/July 2011, and a Principal Reviewer and 3 Senior Reviewers appointed to strengthen professional supervision.⁵¹⁰

6.35 In November 2010 the High Court found that people processed under arrangements applying to OEPs were being denied procedural fairness in the review of their claim. Following this decision, IMAs who are the subject of a negative Independent Protection Assessment are able to seek judicial review of their assessment. The review considers whether *legal errors* were made over the course of the decision-making process, but does not reconsider IMA claims. When judicial

506 DIAC, *Submission 32, Key Strategic Themes*, p. 46.

507 DIAC, *Submission 32, Key Strategic Themes*, p. 46.

508 DIAC, *Submission 32, Key Strategic Themes*, pp 46–47.

509 DIAC, *Submission 32, Key Strategic Themes*, p. 47.

510 DIAC, *Submission 32, Key Strategic Themes*, p. 48.

reviews find that legal errors have been made, the original Independent Protection Assessment decision is set aside and a new assessment made.⁵¹¹

6.36 Liberty Victoria acknowledged this important outcome for asylum seekers arriving by sea, but drew the Committee's attention to the potential for this to increase time spent in detention:

It is inevitable that applications for judicial review, and the time taken to finalise these, will add to the time spent in detention by unsuccessful applicants for asylum (DIAC estimates it will add 'many months' to time spent in detention).⁵¹²

6.37 Non-OEPs whose applications for a protection visa have been refused already had the right to appeal to a court for review.

6.38 Seeking judicial review concurrently triggers an International Treaties Obligations Assessment.

International Treaties Obligations Assessment

6.39 A person who is not found to engage protection obligations may under the provisions of the *Migration Act* be subject to removal from Australia. The removal process:

...takes into account Australia's *non-refoulement* (non-return) obligations under other international human rights instruments, other than the Refugee Convention, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. The removal process also takes into account other unique or exceptional circumstances that may warrant referral of a person's case to the minister under section 195A of the Migration Act.⁵¹³

6.40 For this reason, judicial reviews of negative protection decisions also trigger an International Treaties Obligations Assessment, which takes into consideration Australia's *non-refoulement* obligations in cases where a person is facing removal from the country. If appropriate, the assessment results in protection being extended to people who are not found to be refugees but who may not be returned to their country of origin due to a risk of torture, cruel, inhuman or degrading treatment, punishment or violation of their right to life, as well as in other exceptional circumstances.⁵¹⁴

511 DIAC, *Submission 32, Key Strategic Themes*, p. 49.

512 Liberty Victoria, *Submission 39*, p. 10.

513 DIAC, *Submission 32, Supplementary*, p. 49.

514 DIAC, *Submission 32, Key Strategic Themes*, p. 49.

Criticisms of the assessment process and its length

Processing times

6.41 At the outset of this inquiry the Committee sought to establish why so many people were spending significant periods of time in detention, prolonged detention being the underlying cause of so much distress, mental illness and community concern. Despite fluctuations, the Committee is concerned that overall processing times remain too long, and because the longstanding government policy has been to detain people for the duration of their processing, longer processing times translate directly to longer periods in detention.⁵¹⁵ On this point, Liberty Victoria submitted that:

The primary reason for such lengthy periods of detention is the time taken to process the protection claims (and subsequent appeals and reviews) of people arriving by sea. Such people are dealt with according to the 'non-statutory' refugee assessment process. Under the refugee status assessment and independent merits review process, applicants can expect to wait 12 months from arrival to finalisation of merits review. Most people are detained throughout the processing of their application for asylum and subsequent appeals and reviews.⁵¹⁶

6.42 The Committee understands that DIAC, together with ASIO, has implemented a number of strategies aimed at improving the process, which should result in shorter processing times and better mental health outcomes for detainees. In its submission the department points to this refined process and cites improved processing times in 2011:

The department has significantly reviewed its determination process as a result of the November 2010 High Court decision. This included introducing the POD process in March 2011, which resulted in a faster initial assessment of claims and a more efficient referral process for negatively assessed clients.

Early provision of the latest country information to migration agents, along with client entry interviews, has assisted agents to prepare more comprehensive statements of claims at the primary stage.

A significant number of IMA cases were resolved in the 2010-11 program year. In total, 2816 people were released from immigration detention. Of these, 2738 people were granted Protection visas and 78 were voluntarily removed from Australia.

The department also has a process known as a Pre-Review Examination, which was implemented from 22 August 2011 and involves checking if original decisions on refugee status of IMAs waiting for independent merits review are still valid and current.⁵¹⁷

515 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45*, p. 4.

516 Liberty Victoria, *Submission 39*, p. 9.

517 DIAC, *Submission 32, Key Strategic Themes*, p. 53.

6.43 The department also noted that streamlined security checking was helping to speed up processing times:

In January 2011 the Australian Security Intelligence Organisation (ASIO) developed an intelligence-led and risk-managed security assessment framework for IMAs who meet Article 1A of the Refugee Convention. Since December 2010 only IMAs found to meet Article 1A of the Refugee Convention are referred to ASIO for security assessment.⁵¹⁸

6.44 This new framework was implemented in March 2011 and enabled ASIO to prioritise long-standing cases. Around 3000 IMAs found to be refugees were security assessed under the new framework between mid-March 2011 and 8 August 2011.⁵¹⁹ This ASIO security assessment process is discussed later in this chapter.

6.45 Liberty Victoria was not of the view that DIAC's new POD process represented a significant improvement:

The Department of Immigration and Citizenship...was required to overhaul its non-statutory process following the High Court's decision in *M61 v Commonwealth*. It has now announced the new 'protection obligation evaluation' process, which commenced in March 2011. It is beyond the scope of this submission to comment at length on the nature of this process, its fairness and its similarities with the 'refugee status assessment'. However, Liberty notes that the only substantial difference between the new and old procedures appears to be that, now, unfavourable assessments will be automatically referred to independent review. It seems likely this will result in only a modest improvement to the speed of the process.⁵²⁰

Processing suspension

6.46 On 9 April 2010 the Minister for Immigration, Minister for Foreign Affairs and Minister for Home Affairs announced that the government would not be processing new asylum claims by Sri Lankan nationals for three months or those from Afghan nationals for six months.⁵²¹ The policy intention was to ensure that decision-making was based on up-to-date, accurate realistic information about the country circumstances in those two places.⁵²²

6.47 The suspensions were not extended. The government lifted the suspension for Sri Lankan asylum seekers on 6 July 2010 and for Afghan asylum seekers on 30 September 2010.⁵²³

518 DIAC, *Submission 32, Key Strategic Themes*, p. 53.

519 DIAC, *Submission 32, Key Strategic Themes*, p. 53.

520 Liberty Victoria, *Submission 39*, p. 9.

521 DIAC, *Submission 32, Key Strategic Themes*, p. 52.

522 See discussion with Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 9.

523 DIAC, *Submission 32, Key Strategic Themes*, p. 52.

6.48 However, over the course of the suspension the number of asylum seekers, specifically those from Afghanistan, increased significantly. The processing freeze also resulted in longer periods of detention for existing detainees.⁵²⁴

Identifying asylum seekers

6.49 In cases where IMAs are found to be owed protection, those who arrive with inadequate identification documents may experience added delays due to concerns about the integrity of their claims. Lack of documentation can also impede the issuing of travel documents for those subject to deportation, which in turn increases the time they spend in detention.⁵²⁵

6.50 When the Committee pursued the issue of inadequate documentation, it was reassured that the majority of asylum seekers are in a position to provide adequate identification within two to four weeks of arrival.⁵²⁶

Quality of information used in assessment

6.51 Country Guidance Notes (CGNs) were introduced by DIAC in 2010 as part of a range of measures designed to help case officers assess asylum seeker claims:

The CGNs are designed to support robust, transparent and defensible decision making, regardless of the outcome. The CGNs draw on many sources including reports by government and non-government organisations, media outlets and academics. Before they are released, the CGNs are circulated for comment to key stakeholders including other government agencies such as the Department of Foreign Affairs and Trade and the Attorney-General's Department, as well as nongovernment organisations specialising in asylum and protection issues.⁵²⁷

6.52 CGNs assist refugee case officers to:

- locate and synthesise country of origin information relevant to assessing claims presented by asylum seekers to Australia
- identify relevant issues for consideration
- conduct robust and transparent analysis of claims.⁵²⁸

6.53 Guidance notes currently exist for Afghanistan, Iran, Iraq and Sri Lanka. All CGNs are updated as required and are available on the DIAC website.⁵²⁹

524 See discussion with Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 10.

525 DIAC, *Submission 32, Key Strategic Themes*, p. 52.

526 Ms Janet Mackin, Assistant Secretary, DIAC, and Mr Steven Karras, Acting Regional Manager Christmas Island, DIAC, *Proof Committee Hansard*, 6 September 2011, pp 38–39.

527 DIAC, *Submission 32, Key Strategic Themes*, p. 52.

528 For more on CGNs see <http://www.immi.gov.au/media/publications/country-guidance-notes.htm> (accessed 14 December 2011).

6.54 As well as CGNs, refugee case officers routinely use DIAC's country information database (CISNET) when making their assessments. The database includes but is not limited to information that is already in the public domain. Specific documents available on CISNET can be assessed by external stakeholders under Freedom of Information legislation.⁵³⁰

6.55 The quality of RSA and IMR decision-making processes has attracted considerable criticism from a number of quarters. For example:

RSA and IMR decisions are often sloppy and riddled with errors, such as text from one decision being copied and pasted into another decision without changing relevant details such as names, dates and places.

It is imperative that a system of quality control be implemented to oversee the RSA and IMR decision-making processes. At present, the process is inconsistent and arbitrary, and unduly subject to the personal whims and fancies of the individual reviewer. This should not be so.⁵³¹

6.56 Furthermore, the Committee is aware that detainees have questioned the accuracy of country information used to inform decision-making, asserting that the information could be prolonging and even skewing the process as a result.⁵³²

6.57 In a recent ruling, the Federal Magistrates Court of Australia found that a particular DIAC reviewer appeared to be biased, taking an 'inflexible and mechanical' approach when reviewing refugee claims by Afghan ethnic Hazara minorities. The court found that the reviewer did not afford procedural fairness, in particular:

- The reviewer used a repeated formula or template for his recommendation;
- The formula or template was applied inflexibly by the reviewer in relation to this review of the applicant's claims and the claims of several other IMR applicants;
- The IMR reviewer had used the same formula or template as a precedent for recommendations in relation to other IMR applications prior to the applicant's IMR's advisor's submissions.⁵³³

Committee view

6.58 The Committee notes the differences in assessment processes for onshore and offshore arrivals seeking asylum, and draws attention to the view of the UNHCR:

529 See <http://www.immi.gov.au/media/publications/country-guidance-notes.htm> (accessed 12 December 2011).

530 DIAC, *Submission 32, Key Strategic Themes*, p. 52.

531 Liberty Victoria, *Submission 39*, p. 11.

532 This represented the general views of a number of submissions made *in camera*.

533 Federal Magistrates Court of Australia, *SZQHI v Minister for Immigration & Anor* [2012] FMCA72 (9 February 2012).

UNHCR is of the view that the offshore procedures for assessing refugee status should be as closely aligned as possible with onshore procedures and subject to appropriate legal frameworks and accountability, and due process. The current policy creates a bifurcated system whereby those arriving by air receive greater procedural safeguards than those arriving by sea. It is arguable that this is a discriminatory policy that is also at variance with Australia's obligations under Article 31(1) of the 1951 Convention relating to the Status of Refugees, which provides that:

The Contracting States shall not impose penalties, on account of their illegal entry or presence on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article I, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

6.59 The Committee believes that Australia's assessment processes should be consistent with our obligations under the convention. To this end, the Committee notes recent changes allowing DIAC to use existing powers more flexibly in assessing IMA asylum seekers, notably by approving them for bridging visas.⁵³⁴

6.60 Furthermore, the Committee notes concerns raised by organisations such as Liberty Victoria about the pre-POD assessment process, the RSA, and the associated IMR. The Committee is concerned that a significant number of people in detention are still subject to old processes, simply because they arrived prior to the new, improved POD process being implemented. The Committee is troubled by allegations of inconsistency in assessment, and is of the view that an enhanced quality control system would have the dual benefit of ensuring probity and easing stakeholder concerns.

Recommendation 25

6.61 The Committee recommends that the Department of Immigration and Citizenship consider revising and enhancing its system of quality control to oversee those Refugee Status Assessment and Internal Merits Review processes still underway.

Security assessments

6.62 Responsibility for determining entry of non-citizens to Australia rests with DIAC,⁵³⁵ and DIAC decides whether and when to refer a person applying for a visa to ASIO for security assessment. The timing of ASIO security assessments of IMAs and

534 See Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 22.

535 Australian Security Intelligence Organisation, *Submission 153*, p. 1.

of onshore arrivals seeking protection visas is not mandated by legislation; it is a matter of government policy.⁵³⁶

6.63 ASIO informed the Committee that its function in this regard is to 'support the department of immigration [DIAC] in its management of irregular maritime arrivals.'⁵³⁷ ASIO's role and responsibilities are mandated by the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act):

The ASIO Act specifies ASIO's remit as 'security', which it defines as the protection: of Australia and Australians from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence systems, and foreign interference; and of Australia's territorial and border integrity from serious threats.⁵³⁸

6.64 Individuals are assessed against security threats set out in Section 4 of the ASIO Act:

That includes espionage, sabotage, threats to our defence systems, promotion of communal violence, and protection of border integrity is the last one. Here, the particularly relevant one is an issue of politically motivated violence, which, of course, contains within it the whole question of terrorism.⁵³⁹

6.65 Following a security assessment, ASIO may provide one of three findings:

- (a) non-prejudicial finding, which means there are no security concerns that ASIO wishes to advise;
- (b) a qualified assessment, which means that ASIO has identified information relevant to security, but is not making a recommendation in relation to the prescribed administrative action; or
- (c) an adverse assessment in which ASIO recommends that a prescribed administrative action be taken (cancellation of a passport, for example), or not taken (not issuing access to a security controlled area, for example).⁵⁴⁰

6.66 Security assessments are made without regard to social or family circumstances of the individual being assessed so as to retain objectivity and ensure that people are assessed exclusively in terms of the potential security threat they pose. Similarly, character tests are not applied at the time of assessment:

536 See discussion with Committee at public hearing: *Proof Committee Hansard*, 22 November 2011, pp 35–36.

537 Mr David Irvine, Director-General, Australian Security Intelligence Organisation, *Proof Committee Hansard*, 22 November 2011, p. 24.

538 ASIO, *Submission 153*, p. 1.

539 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 24. Also see ASIO Act 1979, s. 4.

540 ASIO, *Submission 153*, p. 2.

Security assessments are not character checks and character factors such as criminal history, dishonesty or deceit are only relevant if they have a bearing on security considerations. Character is not itself sufficient grounds for ASIO to make an adverse security finding. Assessments of character not relevant to security are required to be made by DIAC.⁵⁴¹

6.67 ASIO only conducts security assessments of asylum seekers able to apply for protection visas. In the three years 2008-09, 2009-10, 2010-11, ASIO did not issue a single adverse assessment for *onshore* arrivals seeking protection visas. From January 2010 to November 2011, 54 adverse assessments were issued for offshore arrivals.⁵⁴²

Streamlining the assessment process

6.68 Prior to December 2010, it was government policy that every IMA would be subject to a full security assessment upon arrival. This meant that IMAs were subject to 'parallel processing', that is, both protection determination and security assessments conducted upon arrival:

Under this policy, ASIO's resources were expended providing assessments for a large number of individuals who did not require security assessment because they were not ultimately assessed to be genuine refugees.⁵⁴³

6.69 That is no longer the case. Following an internal review by ASIO of its assessment processes in 2010, ASIO implemented changes to '...ensure an intelligence-led and risk-managed approach to security assessments and security assessment referral.' To this end, in December 2010 the government decided to abandon parallel processing:

As part of these changes, the Government agreed in December 2010 that only those IMAs who were assessed to be genuine refugees (known as '1A met' [having met the definition of a refugee under Section 1A of the Refugee Convention]) would be referred to ASIO for security assessment.⁵⁴⁴

6.70 More about the genesis of the new framework was explained by ASIO Director-General David Irvine in this way:

This referral process has been developed in consultation with DIAC. What it has done, particularly recently, is enable us to streamline security checking for what I will call non-complex cases and that it is commensurate with the level of risk that they present. What it does is allow us to focus our most intensive security investigation effort into the groups or individuals of most security concern. The result is, I believe, particularly in recent times, that our security checking has become more thorough and more effective.

541 ASIO, *Submission 153*, p. 2.

542 See discussion with Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 30.

543 ASIO, *Submission 153*, p. 3.

544 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 35.

In fact, this is evidenced in the number of adverse security assessments, which have increased as a result of our ability to focus on these complex cases.⁵⁴⁵

6.71 Separately, ASIO reported improvements as a result of the new framework:

The impact of these measures has been a significant reduction in the number of IMAs in detention solely awaiting security assessment.⁵⁴⁶

How the triaging process works

6.72 When asylum seekers arrive, they are processed by DIAC. Once DIAC determines that a person qualifies for refugee status, they are measured against the triaging process. The triaging process is designed to establish, implement and apply security criteria in order to identify which refugees DIAC should refer to ASIO for security assessment.

6.73 The Committee was told by Mr Irvine that the 80 to 85 per cent of refugees who are measured against the triaging process then go through required immigration processes and to a recommendation to the Minister. The 15 to 20 per cent of refugees that DIAC refers to ASIO go through a more rigorous security assessment, and, '...if they are found to be non-prejudicial they go back through the ordinary way.'⁵⁴⁷

6.74 Mr Irvine gave an example of this process in operation:

Let us suppose that 116 people arrive. Immigration collects information about those people relative to their claims, their names, their personal details and so forth. That is then measured against what we would regard as indicators for concern, and about 80 per cent to 90 per cent of people would not trigger those indicators of concern. Then they would then go on and be processed in the normal way to a decision by the minister that they be given protected visas. Those people who do trigger concerns—and they might be, say, 15 per cent or whatever of that 116—are then subject to a more thoroughgoing ASIO investigation in which we have access to all of the information that they have provided during the immigration process relative to their claims, and details about them, and that then forms the basis for our investigation. Out of that comes one of three results. The first is a non-prejudicial finding whereby we simply advise the department of immigration that we have no concerns about that person. The second is that we could issue what I will call qualified security assessments—and we have issued a number of these—where we identify that there are some security issues but we do not think they represents such a risk to security that a visa should not be issued. The third is where we have identified security issues

545 Mr David Irvine, Director-General, ASIO, Legal and Constitutional Affairs Legislation Committee, *Estimates Hansard*, 25 May 2011, p. 107.

546 ASIO, *Submission 153*, p. 4.

547 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 26.

and assess that person for whatever security reason to represent a threat to security such that a visa should not be issued.⁵⁴⁸

Process for in-depth security assessments

6.75 ASIO only conducts in-depth security assessments when refugees are referred for such assessments by DIAC, 'unless something comes to light where we discover that, for whatever reason, we need to look at something.'⁵⁴⁹

6.76 However, although DIAC refers individuals to ASIO for such assessments, the criteria for referral are set by ASIO. Asked whether DIAC determines what goes to ASIO for assessment, DIAC Secretary Andrew Metcalfe told the Committee, 'ASIO determines what goes to ASIO.'⁵⁵⁰

6.77 In August 2011 Mr Metcalfe gave evidence regarding the application of ASIO guidelines for referral:

...ASIO has advised us on what it requires to be done and that is what is being done...We [DIAC officers] are trained and briefed, and we apply their guidelines as we do around the world on this issue.⁵⁵¹

6.78 The Committee understood from this evidence that DIAC officers are involved in measuring people against criteria, determined by ASIO, to assess which cases need to move to a more in-depth security check.

6.79 ASIO was also asked about this process, and informed the Committee that ASIO and DIAC had agreed in May 2011 that all security triaging would be performed solely by ASIO:

Prior to and following the commencement of the Framework in April 2011, ASIO provided Department of Immigration and Citizenship (DIAC) officers with training on the implementation of the security indicators. ASIO also established appropriate administrative procedures to enable DIAC to undertake this function as directed by Government in December 2010.

Since June 2011, all triaging pursuant to the framework is undertaken by ASIO; this includes establishing the security criteria as well as implementing and applying the criteria for security assessment referral. However, DIAC may provide feedback on the security indicators within the Framework as required.⁵⁵²

548 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 25.

549 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 35.

550 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 12.

551 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 13.

552 ASIO, *Question on Notice 315* (received 16 December 2011), p. 2.

6.80 The Committee noted from the evidence above that DIAC provides feedback on security assessments, but it was not entirely clear when and if DIAC officers make referral assessments without involvement from ASIO. The Committee was informed by DIAC that the two organisations work closely together in this regard, and that 'there is a symbiotic interdependency' between them.⁵⁵³

6.81 The criteria for referral were not disclosed by ASIO for security reasons.

Committee view

6.82 The Committee notes evidence that the new intelligence-led assessment framework established by ASIO in March 2011 has, according to evidence from DIAC Secretary Andrew Metcalfe, 'vastly reduced the number of people in long-term detention.'⁵⁵⁴ The Committee considers this a very positive initiative and commends both ASIO and DIAC for their work in implementing the new framework.

Process for asylum seekers going into community detention

6.83 The Committee heard that ASIO conducts a particular security assessment for anyone DIAC decides to release into the community. This assessment, however, is a much shorter, simpler process than that undertaken in order to issue a permanent visa. This shorter process is able to be completed in around 24 hours, and gives ASIO the opportunity to inform DIAC of any concerns regarding a particular individual before that individual is placed in community detention.⁵⁵⁵

6.84 Furthermore, this shorter assessment is already routinely performed for *every* refugee referred to ASIO by DIAC, whether in community detention or a detention facility, *prior* to the more in-depth assessment taking place.⁵⁵⁶

6.85 The Committee notes that ASIO is not prevented or inhibited in any way whatsoever from performing in-depth security assessments once people are in community detention:

At the moment Immigration is referring to us anyone it wishes to release into community detention. That does not prejudice in any way our ability subsequently, once they have been declared 1A met, to conduct a much different assessment process.⁵⁵⁷

553 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 33.

554 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 33.

555 See Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, pp 30–31.

556 See the Committee's discussion with Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 31.

557 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 31.

Concerns around security assessments

6.86 The Committee took a great deal of evidence on the issue of security assessments. These can broadly be divided into three themes:

1. The length of time taken to complete security assessments.
2. The need to detain people for the duration of the assessments.
3. Adverse assessments and the lack of opportunity for review.

6.87 Given the undeniable impact of prolonged detention on mental health and the serious consequences of an adverse security assessment, the Committee spent considerable time examining the security assessment process and evaluating the criticisms levelled at it.

Length of the process

6.88 As previously stated, the indeterminate duration of the security assessment process has been identified as a major contributing factor to distress among detainees.

6.89 The Committee heard that round 80 per cent of ASIO assessments are completed in less than a week. It can take many months to complete security assessments for the other 20 per cent of cases which are more complex and time-consuming.⁵⁵⁸

6.90 ASIO contended that its security assessments were not the primary factor in lengthy processing times:

At 12 August 2011, there were around 5,232 irregular maritime arrivals in immigration detention, of which 448 had been found to be refugees and were awaiting security assessment – this represented eight per cent of those in detention at that time.⁵⁵⁹

6.91 ASIO also stated:

Processing priorities for security assessments and the order in which they were progressed were also directed by DIAC. For example, prior to May 2010 DIAC directed complex, long-term IMA detention cases be afforded lower priority for security assessment, in order to clear less-complex cases to address serious accommodation limitations on Christmas Island.

In early 2010, ASIO undertook a review of its internal assessment process, with a view to streamlining and improving through-put. As a result, processing times were sped up and additional resources assigned to the

558 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 24.

559 ASIO, *Submission 153*, p. 6.

security assessments function. These measures were, however, overtaken by the rapid increase in IMA arrivals throughout the year.⁵⁶⁰

6.92 Evidence provided by the Director-General of ASIO indicated that a small proportion of cases take significant time to resolve. Mr Irvine spoke of the number of people in detention awaiting security clearances:

At the moment, we reckon that about 80 per cent of our assessments are completed in less than a week. The 20 per cent or less of remaining cases are what we call complex cases, which do require a much longer time if you are going to do a thorough assessment, basically with cause. At the moment, out of however many people are currently in detention, in community detention or are awaiting the conclusion of the process, there are 463 people awaiting a security assessment from ASIO.⁵⁶¹

6.93 Mr Irvine also confirmed for the Committee that ASIO would be able to conduct its in-depth security assessments while asylum seekers were in community detention or on bridging visas while their applications for protection were being processed.⁵⁶²

Committee view

6.94 From the evidence provided by ASIO, the Committee understands that placing people in community detention following an initial, routine security check does not prejudice any subsequent, in-depth security assessment ASIO may provide prior to a permanent visa being issued and a refugee being released into the community. From this it follows that refugees whose initial security checks do not produce red flags could be placed in community detention while their in-depth assessment is underway. The Committee is of the view that asylum seekers found to be refugees should therefore be taken out of detention facilities and placed in community detention, unless initial ASIO checks produce cause for concern.

6.95 The Committee recognises that refugees in detention awaiting ASIO security assessments comprise a relatively small portion of the detention population. The Committee also recognises that people in this category have not yet passed the in-depth security assessment required for a permanent visa, but notes that they have cleared initial security checks, and that placement in community detention does not prejudice ASIO's ability to conduct in-depth assessments. The Committee is therefore of the view that refugees who pass initial security assessments are of sufficiently low risk to national security to be transferred from detention facilities to community detention while in-depth security assessments are completed. This would significantly

560 ASIO, *Submission 153*, p. 3.

561 These figures are current as of 22 November 2011. See Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 24.

562 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, pp 35–36.

reduce the amount of time refugees who are not deemed to be a risk to national security spend confined in detention facilities.

Recommendation 26

6.96 The Committee recommends that the Australian Government move to place all asylum seekers who are found to be refugees, and who do not trigger any concerns with the Australian Security Intelligence Organisation following initial security checks, and subject to an assessment of non-compliance and risk factors, into community detention while any necessary in-depth security assessments are conducted.

Adverse assessments and the lack of opportunity for review

6.97 Ultimately, security assessments can determine the outcome of a person's bid for asylum in Australia. When a person is found to be a refugee but receives an adverse security assessment, the nature of that assessment (which is not known to them) in most cases results in the refugee not being able to gain entry into the Australian community, irrespective of any genuine need for protection. There are a considerable number of people currently detained in Australia's immigration detention facilities that have been assessed as genuine refugees but have nonetheless received adverse security assessments.

6.98 Being a signatory to the *1951 Convention Relating to the Status of Refugees* (the Refugee Convention) and its 1967 Protocol Relating to the Status of Refugees (the Protocol), Australia does not *refouler* (return) 'people to countries where they have a well-founded fear of persecution for reasons of race, nationality, political opinion or membership of a particular social group.'⁵⁶³ A consequence of this policy is that refugees who receive adverse security assessments can be left, effectively, in indefinite detention. Many have been kept in detention for significant periods of time, with no resolution to their individual cases in sight. Some have children who were born, or are growing up, in detention facilities. Adverse security assessments mean people cannot be released into the community or sent to third countries, but their refugee status means they cannot be repatriated.

6.99 As previously noted, ASIO does not decide what action to take once it makes an adverse security assessment. ASIO simply provides advice to DIAC, which acts on an assessment:

The consequences of an ASIO security assessment depend on the purpose for which it is made, and the relevant legislation, regulation or policy. In most visa categories, a visa may not be issued (or be cancelled) where ASIO determines the applicant to be directly or indirectly a risk to security. The enabling legislation in this instance is the *Migration Act 1958*, especially the *Migration Regulations 1994* and public interest criterion

563 DIAC, *Submission 32*, p. 45.

4002. ASIO itself is not permitted by the ASIO Act to take any administrative action.⁵⁶⁴

6.100 The Committee notes ASIO's assurance that adverse assessments are not made easily, or often:

I think it is important to put on the record that ASIO is, in fact, highly discriminating in the use of such assessments. We issue them only when we have strong grounds to believe that a person represents a security threat. That is reflected in the relatively small number of adverse security assessments issued. Of the nearly 7,000 security assessments that we have undertaken since January 2010, in relation to IMAs, we have issued only 54 adverse assessments and 19 qualified security assessments. That represents about one per cent of IMA security assessment cases. We therefore do not take a decision to issue an adverse security assessment lightly and nor are we contemptuous of or *blase* about the human rights of the individuals involved. We take very seriously our responsibility to behave ethically and professionally and, obviously, with the utmost probity.⁵⁶⁵

6.101 However, refugees with adverse security assessments do not have legal recourse to a review of this assessment. The impossible situation these people are in is perhaps one of the greatest challenges currently facing the immigration detention system. The next section addresses this point.

What to do with the hard cases

6.102 Even though the overall detention population decreased during 2011, the number of asylum seekers held in detention for longer than 12 months saw a significant increase since September 2010.⁵⁶⁶ The Department informed the Committee that this was in large part due to an increase in the number of detainees on negative pathways; that is, those who received negative initial decisions which were subsequently under review. Negative pathway cases present significant detainee management challenges, and their growth has contributed significantly to the burden of the detention and asylum processing systems.⁵⁶⁷

6.103 The Department also cited the following exacerbating factors:

- the significant and rapid increase in the number of arrivals in 2010
- increasing complexity of claims
- new cohorts of IMAs with different claims
- changes to country of origin information resulting in greater complexity of assessments for clients seeking asylum

564 ASIO, *Submission 153*, pp 2–3.

565 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 24.

566 DIAC, *Submission 32, Key Strategic Themes*, p. 57.

567 DIAC, *Submission 32, Key Strategic Themes*, p. 58.

- changing country information also resulted in the temporary suspension of processing of new asylum claims from people from Sri Lanka and Afghanistan for periods of three and six months respectively
- difficulties in determining clients' identity and, in some instances, their country of residence
- infrastructure pressures and detention incidents limiting access to some IDFs
- completing third country checks
- processing times for completion of security assessments
- the need to reconsider a number of client decisions at the Independent Merits Review stage resulting from the November 2010 High Court decision.⁵⁶⁸

6.104 There are currently, broadly speaking, two groups of people in prolonged detention: confirmed refugees who failed the security test and therefore cannot be released or returned to their country of origin, and people who have failed to gain refugee status but still cannot be deported or repatriated. Although their bids for protection failed before any security assessment even occurred, these people also effectively find themselves in indefinite detention.

Non-refugees who cannot be repatriated

6.105 A growing number of cases have become subject to protracted delays due to delays in obtaining the documentation necessary for repatriation. The Department advised the Committee that difficulties in securing travel documents for these people is likely to become an increasing problem for some cohorts, 'particularly where governments of other countries are reluctant to facilitate involuntary return of their nationals.'⁵⁶⁹ Similarly protracted delays have been identified in securing return options for stateless asylum seekers who are not found to be refugees.⁵⁷⁰

Refugees in indefinite detention

6.106 In other instances, some refugees are being held in what amounts to indefinite detention. They have no prospect of release or deportation, and no legal right to a merit review of their adverse security assessment.⁵⁷¹ Significant concerns about the ethical and moral implications of issuing a security assessment which indefinitely

568 DIAC, *Submission 32, Key Strategic Themes*, p. 51.

569 DIAC, *Submission 32, Key Strategic Themes*, p. 52.

570 DIAC, *Submission 32, Key Strategic Themes*, p. 52. Note: Individuals who lack identity as nationals of a state for legal purposes and are not entitled to rights, benefits and protections ordinarily available to a country's nationals are considered to be 'stateless'.

571 For a discussion on how many refugees issued with adverse security assessments see Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 30.

removes liberty without disclosing evidence of the justification for such an assessment were expressed.⁵⁷²

6.107 The Committee also received comprehensive evidence from legal experts on the matter. The evidence before the Committee outlines why these legal experts specialising in security, human rights and refugee law have concluded that Australia is in breach of its obligations under international law.⁵⁷³ Professor Jane McAdam from the Gilbert and Tobin Centre of Public Law, University of New South Wales (UNSW), unequivocally stated:

Australia's policy of mandatory detention undeniably violates this country's obligations under international law. Countless international and domestic reports have explained why this is so, including those by the UN Human Rights Committee, the UN Working Group on Arbitrary Detention, the UN Committee on the Rights of the Child, the UN Committee Against Torture, the UN Committee on Economic, Social and Cultural Rights, the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; the Australian Human Rights Commission, and many reputable international and national human rights NGOs.⁵⁷⁴

6.108 The Committee was informed that under Australian law only some individuals have recourse to a review of adverse security assessments:

Qualified or adverse ASIO security assessments may be appealed to the Administrative Appeals Tribunal (AAT) if the applicant is an Australian citizen or permanent resident, or holds a special visa or special purpose visa. Non-Australian citizens who are applying for a visa are entitled to file an application in the Federal Court or High Court and seek judicial review in respect of an adverse security assessment. Such a review involves a court's determining the legality of administrative decisions and does not extend to the merits.⁵⁷⁵

6.109 Professor Ben Saul from the Sydney Centre for International Law explained:

[Refugees] are unable to effectively challenge the adverse security assessments issued by ASIO, upon which the decisions to refuse them refugee protection visas and to detain them are based. In particular:

- (i) The reasons and evidence for their adverse security assessments have not been disclosed to them, because ASIO has decided to refuse any disclosure to them (including even a redacted summary);

572 See for example Ms Pamela Curr, Campaign Coordinator, Asylum Seeker Resource Centre, *Proof Committee Hansard*, 18 November 2011, p. 17; Mr Richard Towle, Regional Representative, UNHCR, *Proof Committee Hansard*, 18 November 2011, p. 10.

573 For details see Professor Ben Saul, *Submission 130, Attachment*, pp 1–72.

574 Professor Jane McAdam, Gilbert and Tobin Centre of Public Law, UNSW, *Proof Committee Hansard*, 5 October 2011, p. 22.

575 ASIO, *Submission 153*, p. 3.

- (ii) They enjoy no statutory rights to judicially challenge their assessments under the Australian Security Intelligence Organisation Act 1979 (Cth) ('ASIO Act'), or to review the merits of the assessments before any administrative tribunal;
- (iii) Australian courts are not empowered to review the substantive 'merits' of adverse security assessments, but are confined to limited judicial review of them for errors of law ('jurisdictional error');
- (iv) Such judicial review at common law is *practically* unavailable, because Australia has not disclosed to them any reasons for, or evidence substantiating, their adverse security assessments, and they are therefore unable to identify any prima facie errors of law which would permit them to legitimately commence proceedings, without risking abuse of the courts' process and incurring costs orders;
- (v) They are unable to compel disclosure of the reasons for, or evidence substantiating, their adverse security assessments, both because the courts have accepted that procedural fairness at common law is reduced to 'nothingness' in their circumstances (as long as the ASIO Director-General has given genuine consideration to whether disclosure would not prejudice national security), and/or public interest immunity would preclude disclosure to them anyway; and
- (vi) There is no other special judicial procedure enabling their adverse security assessments, and thus their detention, to be tested to the standard demanded by article 9(4).⁵⁷⁶

6.110 Examples were cited, including:

The ASIO adverse security assessments are a real problem. As you know, there is no appeal process available. I met a man in Scherger who has evidence that he showed me. ASIO had issued him with an adverse security assessment because of his activities in Sri Lanka during a given period of time. He showed me his documents saying he was not there; he was in a refugee camp in India. What opportunity he has he got to appeal? We have written to ASIO and we have written to the IGIS. What opportunity does he have to make a case? None. Currently there is a 17-year-old boy. He left his country as a teenager. He is stateless. He is illiterate; he is not even literate. He has never been to school. He has been assessed as a security risk. We have grave concerns about the indefinite nature of the detention of people.⁵⁷⁷

6.111 Notwithstanding the impact indefinite detention is having on mental health, there is a genuine national security concern that must be addressed within the framework of any solution to this seemingly intractable problem. The Committee

576 Professor Ben Saul, Sydney Centre for International Law, University of Sydney, *Submission 130*, pp 2–3.

577 Ms Pamela Curr, Campaign Coordinator, Asylum Seeker Resource Centre, *Proof Committee Hansard*, 18 November 2011, p. 17.

noted that those seeking a right of appeal for refugees in indefinite detention accepted that some people may pose a risk to national security which must be addressed:

There obviously is always justification for detaining certain people who may be a national security risk, but in every circumstance like that the Law Council has always argued that the reaction needs to be proportionate to the particular threat that that person poses. So that question needs to be examined in each individual case and there needs to be provision for review of that if different circumstances come to light, or different information comes to light. At the moment, there is no opportunity for review of that assessment.⁵⁷⁸

6.112 Mr Richard Towle, the Australian representative of the United Nations Commissioner for Human Rights, spoke of the need, and ways, to balance national security with fairness:

We have proposed in our submission a practice that is used in several countries around the world—Canada; New Zealand, my home country; and the United Kingdom—where a bridge can be built between the security assessment and the confidentiality surrounding that and the right for someone to know at least the basic elements of the case against him or her. That is an appropriate way of finding a balance between often two competing sets of interests.⁵⁷⁹

6.113 The Committee pursued the matter with Mr David Irvine, Director-General of ASIO, who explained that even the criteria—let alone specific reasons in individual cases—for issuing adverse assessments were not able to be released:

Once the criteria for making assessments are known, then you will find very quickly that all the applicants will have methods of evading or avoiding demonstrating those characteristics.⁵⁸⁰

6.114 A submission from Professor Saul, from the University of Sydney, contended that not providing evidence upon which the assessment is based is a violation of article 9(4) of the *International Covenant on Civil and Political Rights* (ICCPR):

Where detention is purportedly justified by a State on security grounds, the requirement of substantive judicial review of the grounds of detention under article 9(4) necessarily requires a judicial inquiry into the information or evidence upon which a security assessment is based. Without access to such evidence, a court is not in a position to effectively review the substantive grounds of detention.⁵⁸¹

578 Ms Rosemary Budavari, Co-Director, Criminal Law and Human Rights, Law Council of Australia, *Proof Committee Hansard*, 22 November 2011, p. 8.

579 Mr Richard Towle, United Nations High Commissioner for Human Rights, *Proof Committee Hansard*, 22 November 2012, p. 9.

580 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 28.

581 Professor Ben Saul, *Submission 130, Attachment*, p. 40.

6.115 Currently, however, Professor Saul explained that refugees merely receive letters 'cast in near-identical terms', which state:

'ASIO assesses [author name] to be directly (or indirectly) a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*.⁵⁸²

6.116 The Director-General of ASIO reiterated to the Committee that it was not ASIO's decision to deny opportunity for review, but that the law as it stands would only permit Australian citizens and a few select categories of people to appeal against ASIO assessments. He drew the Committee's attention to the words of Justice Robert Hope in 1977:

At that time he considered the whole question of appeals against the ASIO assessment process. He recommended that Australian citizens, and a few other categories of people, should be allowed to appeal but he recommended against appeal rights for noncitizens. What he wrote was this:

The claim of noncitizens who are not permanent residents but who are in Australia to be entitled to such an appeal is difficult to justify, particularly as they have no general appeal, and I shall recommend that they shall have no such right.

That was actually taken up in section 36 of the [ASIO] act. That is the legal basis on which we are operating.⁵⁸³

Refugees with adverse assessments already living in the community

6.117 The Committee sought evidence from ASIO concerning precedents for people with adverse security assessments being released into the community. The Committee noted one case in which a family had received an adverse assessment in 2002, but had since been released. The Committee pointed out that in this particular instance, the asylum seekers in question applied for protection visas onshore having arrived by plane—that is, they were not IMAs—and sought clarification on whether refugees deemed to be a potential threat to national security were being treated differently depending on their means of arrival.

6.118 The Committee was informed by the Director-General of ASIO that such people were subject to a high degree of resource-intensive monitoring:

I am comfortable—that is probably not the word I would use—with a very small number, but I simply would not have the resources to provide the level of monitoring and so on that would be required over a long period of time for anyone with an adverse assessment to be in the community...

582 Professor Ben Saul, *Submission 130, Attachment*, p. 25.

583 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 28.

...I do not want to go into it too deeply, but the question then reflects on the levels of quality of monitoring and the quality assurance that I can give the government in terms of national security considerations. It is a concern.⁵⁸⁴

6.119 The Committee notes that the Council for Immigration Services and Status Resolution (CISSR)⁵⁸⁵ had earlier discussed options for undertaking risk analysis of refugees with negative security assessments:

The Chair raised the idea of using the National Security Monitor to undertake risk analysis of negative security assessments. He saw as appropriate the use of an independent person to look at the application of security assessment of people in detention and the risk they pose.⁵⁸⁶

6.120 Minutes from the CISSR meeting in question, however, do not indicate that a workable way forward was identified:

...[T]he National Security Monitor is a relatively new role set up under legislation to deal primarily with counter-terrorism issues. It was not intended to be used in the way suggested by the Council and she would prefer to speak with Duncan Lewis at Prime Minister and Cabinet (PM&C) about pursuing this avenue before preparing a proposal for the Minister.⁵⁸⁷

Committee view

6.121 The Committee reiterates its concern regarding the indefinite detention of refugees with adverse security assessments. While the Committee understands and appreciates that these questions are necessarily viewed through the prism of national security, the Committee remains deeply troubled by the fact that those with adverse assessments cannot obtain evidence-based justifications for their status, and is mindful that assessments effectively determine people's freedom and, in many cases, that of their children.

6.122 The Committee notes ASIO's view that disclosing reasons behind a negative assessment to the individuals in question could impact on ASIO's ability to gather reliable background information. However, the Committee is not convinced that disclosing relevant information to a security-cleared third party, or a security-cleared

584 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 33.

585 The Council for Immigration Services and Status Resolution (the CISSR) is an advisory council to the Minister for Immigration and Citizenship, offering independent advice on policies, processes and services relating to resolution of immigration status. See Department of Immigration and Citizenship, *Question on Notice 72*. As of 9 February 2012, CISSR is known as the Minister's Council on Asylum Seekers and Detention (MCASD). See <http://www.minister.immi.gov.au/media/cb/2012/cb182434.htm> (accessed 22 March 2012).

586 DIAC, *Question on Notice 72, CISSR 10th General Meeting Minutes 27-28 June 2011* (received 2 December 2011), p. 14.

587 DIAC, *Question on Notice 72, CISSR 10th General Meeting Minutes 27-28 June 2011* (received 2 December 2011), p. 14.

legal representative of the individual, would be so detrimental as to justify detention without charge for the term of the individual's natural life.

6.123 Furthermore, being aware that a number of refugees have received permanent visas and are living in the community despite adverse security assessments, the Committee believes that ASIO is able to discern varying levels of risk posed by individuals with adverse security assessments.

6.124 The Committee is of the view that the government should take immediate steps to resolve how best to afford refugees an opportunity to appeal the grounds for their indefinite detention without compromising national security, and it is this matter to which the chapter now turns.

Establishing a right of review

6.125 The Committee explored various ways in which a right of review of security assessments could be established. In particular, the Committee notes Professor Ben Saul's reference to Article 9 of the International Covenant on Civil and Political Rights (ICCPR), whereby decisions to prolong detention require periodic reviews so that the grounds for detention can be assessed:

Thus, even if detention may be initially justified on security grounds, article 9 requires periodic review of such grounds and precludes indefinite detention flowing automatically from the fact of original grounds justifying detention.⁵⁸⁸

6.126 The Committee heard from ASIO that it would work within any legal framework that was established:

Whether IMAs or any other applicants for visas who are rejected on security grounds should be afforded merits review is essentially a matter for the government. Should the government introduce a merits review process for IMAs who are subject to adverse or qualified assessments, we will then work within that legal framework.⁵⁸⁹

6.127 The Committee asked Mr Irvine whether he could foresee negative implications arising from that right being established:

I think that is advice I would have to give the government. But what I would say is: there are a number of factors that you would need to take into account...What form of merits review would you have? Where would it go? What protections for other national security considerations would you have, including as far as I am concerned elements of national interest but also sources and methods for ASIO? What is the scope of that process? Would merits review apply to someone who we knocked back as a suspected spy for a foreign power, someone we gave an adverse assessment to on the

588 Professor Ben Saul, *Submission 130, Attachment*, p. 29.

589 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 29.

basis that we thought that person might be coming to Australia to pursue the acquisition of parts of weapons of mass destruction or something like that or to conduct sabotage? How would the merits review process in those circumstances protect us from a foreign government probing our sources and methods and so on? You would need to be very careful about how you applied such a process. Subsequently, there would be all sorts of resource and other implications, but that would be something for the government to decide.⁵⁹⁰

6.128 The Committee also spoke to Dr Vivienne Thom, Inspector-General of Intelligence and Security. Dr Thom informed the Committee that of 1111 complaints concerning ASIO's handling of security assessments for visa reasons in 2010-11, only 27 per cent related to refugee visa applications. The others were mostly made by offshore visa applicants. The number of complaints issued by refugees in detention totalled 209, with this figure being comparable to previous years.⁵⁹¹ Dr Thom stressed that her reviews of ASIO processes did not currently extend to merit reviews of its decisions:

We can look at the process that ASIO has followed, to ensure that it is lawful and proper. For example, we look to see whether the correct legal tests and thresholds were satisfied and whether the relevant ASIO officer was authorised to take action.⁵⁹²

6.129 Dr Thom discussed the possibility of review rights being extended to noncitizens:

I note that one of my predecessors, Mr Bill Blick, in his 1998-99 annual report recommended to the then Attorney-General that the government introduce legislation to provide a determinative review process for refugee applicants where they have valid asylum claims. It is worth noting that at the time he said it would apply to no more than a handful of cases in any one year. It should also be remembered that Mr Blick's comments were made 12 years ago, prior to 9-11 and in a different environment. In the 2006-07 annual report, while not endorsing Mr Blick's recommendation, Mr Ian Carnell said that he thought it would be worthwhile revisiting this proposal. Mr Carnell also noted at the time that the number would be very small and hence cost would not be a barrier. I would comment that I do not disagree with Mr Carnell's suggestion that perhaps it is appropriate to re-examine this issue. It is a matter that is attracting major public attention, but it is a complex matter that will require careful consideration of national

590 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 29.

591 Dr Vivienne Thom, Inspector-General of Intelligence and Security, *Proof Committee Hansard*, 22 November 2011, p. 37.

592 Dr Vivienne Thom, Inspector-General of Intelligence and Security, *Proof Committee Hansard*, 22 November 2011, p. 37.

security issues and the rights of individuals, because these decisions do have serious impacts on individuals.⁵⁹³

6.130 The Committee sought many views in looking for a way to balance the situation of refugees in indefinite detention with national security considerations. The Law Council of Australia stated:

There are a number of options that are on the table. One is that the committee could look at removing the current restriction for people to apply for merits review of their security assessment in the Administrative Appeals Tribunal. That restriction does not apply to Australian citizens but it does apply to noncitizens. One recommendation which has been made both by the Human Rights Commission and the Inspector-General of Intelligence and Security is that that restriction be removed, so that people can actually test the merits of that decision.⁵⁹⁴

6.131 The United Nations High Commissioner for Human Rights pointed to appropriate means of finding a balance between the competing interests of national security and fairness:

We have made some suggestions around that—the possible use of a special advocate system, the use of redacted evidence that can be looked at, and the possible lifting of the restriction for refugee or asylum-seeker claimants to access an appeal mechanism, such as the Administrative Appeals Tribunal. Those are all areas where we think an appropriate accommodation or balance can be found between these two difficult sets of issues. I can, of course, answer more questions about that, if you wish.⁵⁹⁵

6.132 The Committee acknowledges widespread support for the establishment of a merits review process for adverse security assessments. The following sections outline review mechanisms the Committee has considered. Some of the mechanisms may be complementary and able to be implemented simultaneously.

Internal ASIO reviews

6.133 The Committee considered the potential benefits of requiring ASIO to conduct periodic reviews of all adverse assessments. The Law Council posited that a negative assessment was, at present, seemingly permanent:

At the moment, our understanding is that, once you have an adverse ASIO assessment, you have that virtually for life. There may be information that

593 Dr Vivienne Thom, Inspector-General of Intelligence and Security, *Proof Committee Hansard*, 22 November 2011, p. 37.

594 Ms Rosemary Budavari, Co-Director, Criminal Law and Human Rights, Law Council of Australia, *Proof Committee Hansard*, 22 November 2011, p. 7.

595 Mr Richard Towle, United Nations High Commissioner for Human Rights, *Proof Committee Hansard*, 22 November 2011, p. 10.

can come to light later in the process which would justify a review of that assessment.⁵⁹⁶

6.134 Although ASIO is 'always prepared if a person is referred or additional information comes to light to revise our judgement,' there is currently no requirement for to conduct *periodic* reviews.⁵⁹⁷

6.135 As matters stand reviews are possible but not routine. A case has to be referred to ASIO by DIAC, or the former has to reach the decision to conduct a review on the basis of new information that has come to light.⁵⁹⁸ Such reviews have not produced new outcomes in the past. Mr Metcalfe informed the Committee that he could recall only one case where a revised ASIO assessment resulted in a different outcome for someone:

The only case that I can recall of a reconsideration which resulted in a person being treated differently was one of the last [people] detained on Nauru and who was brought to Australia because of severe mental illness. In that case, ASIO subsequently revised their opinion and indicated that the person was not a security concern. Of the current case load, there is no appeal mechanism against an adverse security assessment of a person who is not a visa holder, and that of course is a policy matter for the Attorney-General.⁵⁹⁹

Expanding the powers of the Federal Court

6.136 Another option considered by the Committee was that of a panel of security-cleared Federal Court judges reviewing evidence, with refugees subject to adverse ASIO assessments being represented by security cleared lawyers, otherwise known as special advocates. Professor Ben Saul explained special advocate procedure in place in Britain, Europe and Canada:

The function of a special advocate is twofold. Firstly, they have a role in testing the government's argument that the evidence or information cannot be safely disclosed, and then if they win that argument and the evidence can be safely disclosed to the person, the person has a shot at testing its merits before the procedure. If it is not admitted, the special advocate then performs a second function, which is making submissions on behalf of the client, without instructions from the client, about the reliability of the

596 Ms Rosemary Budavari, Co-Director, Criminal Law and Human Rights, Law Council of Australia, *Proof Committee Hansard*, 22 November 2011, p. 7.

597 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 34.

598 Mr David Irvine, Director-General, ASIO, *Proof Committee Hansard*, 22 November 2011, p. 34.

599 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 46.

evidence on the merits. So at least somebody then is testing the merits of the evidence.⁶⁰⁰

6.137 Were a similar system to be adopted here, one of the key changes be a broadening of what judges could examine or test. At present, judges may on occasion look at evidence or lawyers may receive security clearance on an *ad hoc* basis. However, judges are currently empowered to look only at errors of law, not the merits of a case.⁶⁰¹

6.138 The Committee sought views on how well such a system would function in place of a tribunal, were the law to be changed so that a judge could have broader powers of testing the merits of a particular security assessment, whilst satisfying ASIO's concerns about revealing sensitive information. Professor Saul was of the view that expanding the powers of the Federal Court in such a way would be possible, and explained different versions of the concept:⁶⁰²

You could do it where the person gets to see the information and test it before that procedure, or you could do it in the more limited compromised fashion, which is through the special advocate process, which is what happens in the Special Immigration Appeals Commission in the UK and in a different manner in Canada. I think the broader point is that it would certainly enhance public confidence in justice if you had a federal judge involved in some kind of process like that and it would go a long way towards meeting Australia's international human rights obligations to provide a fair hearing in these cases.⁶⁰³

6.139 The Gilbert and Tobin Centre of Public Law within the University of New South Wales Faculty of Law (Gilbert and Tobin) had reservations about such a proposal:

In our opinion, the constitutional impediments to reposing in a Chapter III court the powers to review both for errors of fact and of law would prevent the Federal Court from exercising a true merits review function over security assessments made by ASIO. This is an executive function which cannot be exercised by a court constituted under Chapter III of the Constitution. As far as we can see, the only ways of having a judicial officer exercise a merits review function over decisions of ASIO is either to have a statutory review function granted to a Federal Court judge acting as *persona designata* or to have that function granted to a tribunal which has Federal Court judges as members. We have not been able to come up with an alternative which is within the Commonwealth's legislative competence.⁶⁰⁴

600 Professor Ben Saul, *Proof Committee Hansard*, 5 October 2011, p. 17. For a detailed analysis of legal approaches to the security assessment of refugees in overseas jurisdictions see Professor Ben Saul, *Submission 130, Supplementary*, pp 1–6.

601 See discussion with Professor Ben Saul, *Proof Committee Hansard*, 5 October 2011, pp 17–18.

602 Professor Ben Saul, *Proof Committee Hansard*, 5 October 2011, pp 17–18.

603 Professor Ben Saul, *Proof Committee Hansard*, 5 October 2011, p. 18.

604 Gilbert & Tobin, *Submission 21, Attachment 1*, p. 1.

6.140 Instead, legal experts from Gilbert and Tobin expressed a preference for making use of an existing tribunal, instead of expanding the roles and responsibilities of judges:

Our concern with this possibility is more of a practical nature than a constitutional impediment. There is a practical limit to what judges (with existing case loads and other responsibilities) can do by way of investigating the merits of an ASIO decision without the benefit of hearing argument, both for and against the decision under review. If the investigative burden of assessing the merits of ASIO determinations falls solely on individual judges acting outside the scope of their usual duties, it is likely that the scope for challenging these determinations will be reduced as a matter of fact. It would be preferable to take advantage of the institutional advantages of an existing tribunal to perform this task.⁶⁰⁵

6.141 Considering the above evidence, the Committee turned to the possibility of utilising the Administrative Appeals Tribunal for merit reviews of adverse refugee security assessments.

Administrative Appeals Tribunal

6.142 The Committee considered the feasibility of establishing a right of merit review for refugees through the Administrative Appeals Tribunal (AAT). Professor Saul reminded the Committee that:

Section 36 of the ASIO Act provides that the procedural fairness protections of Part IV of the ASIO Act, including merits review before the Administrative Appeals Tribunal ('AAT'), do not apply to a person who is not an Australian citizen or a permanent resident. The authors accordingly are unable to challenge the merits of their security assessments in the AAT.⁶⁰⁶

6.143 Refugees in this situation, the Committee heard, 'are in an incredible bind', and have no hope except that the ASIO Director-General may change his or her mind and decide to disclose evidence:⁶⁰⁷

You get no merits tribunal at the outset, because the Administrative Appeals Tribunal, AAT, review is simply precluded by the ASIO Act. If it comes before a merits tribunal in the immigration context, no information is usually before that tribunal. For offshore entry persons you do not even get that kind of tribunal. If you try to go to the Federal Court, which you can do in theory, firstly it is impossible to identify jurisdictional error or errors of law if you have not seen the case against it, so it is very difficult to commence proceedings. Secondly, if you get in the door you are usually knocked out for one of two reasons. Firstly, procedural fairness is diminished in the words of the Full Federal Court in the Leghaei case to nothingness if the ASIO Director-General considers that it is not safe to

605 Gilbert & Tobin, *Submission 21, Attachment 1*, p. 2.

606 Professor Ben Saul, *Submission 130, Attachment*, p. 15.

607 Professor Ben Saul, *Proof Committee Hansard*, 5 October 2011, p. 17.

provide any evidence because that would prejudice national security. Secondly, ASIO can rely on public interest immunity to preclude the admissibility of evidence in court in any case.⁶⁰⁸

6.144 Gilbert and Tobin considered whether the ASIO Act precludes merits reviews, adding that a mechanism for reviews of ASIO security assessments already exists within the AAT:

The Australian Security Intelligence Organisation Act 1979 (Cth) provides at section 65(1) that a Minister who has received a security assessment from ASIO:

may, if satisfied that it is desirable to do so by reason of special circumstances, require the [AAT] to inquire and report to the Minister upon any question concerning that action or alleged action of [ASIO], and may require the [AAT] to review any such assessment or communication and any information or matter on which any such assessment or communication was based, and the [AAT] shall comply with the requirement and report its findings to the Minister.⁶⁰⁹

6.145 Gilbert and Tobin pointed to the Security Appeals Division, already in existence within the AAT and constituted subject to section 21AA of the *Administrative Appeals Tribunal Act 1975* (the AAT Act). The AAT Act purportedly allows a Tribunal constituting a) a Presidential Member, and b) two other members (of which one has to possess knowledge or experience relating to the needs and concerns of immigrants) assigned to the Security Appeals Division to review adverse assessments made by ASIO.

6.146 The Committee took further evidence on the workings of the Security Appeals Division of the AAT:

The Security Appeals Division conducts its proceedings in private and may determine who is able to be present during the course of a hearing, although there is scope for the applicant and / or the applicant's representative to be present...The Security Appeals Division's findings are able to be appealed to the Federal Court under section 44 of the AAT Act and are also subject to judicial review for jurisdictional error.⁶¹⁰

6.147 The Committee concludes that mechanisms for merits reviews of adverse assessments exist and could be used to review such assessments of refugees, were it not for the stipulations in section 36 of the ASIO Act.

608 Professor Ben Saul, *Proof Committee Hansard*, 5 October 2011, p. 17.

609 See Gilbert & Tobin, *Submission 21, Attachment 1*, p. 2.

610 See Gilbert & Tobin, *Submission 21, Attachment 1*, p. 2.

Committee view

6.148 The Committee recognises the need to protect national security, and does not doubt that ASIO is highly discriminating in the use of adverse security assessments. However, the Committee resolutely rejects the indefinite detention of people without any right of appeal. Such detention, effectively condemning refugees who have not been charged with any crime to detention for the term of their natural life, runs counter to the basic principles of justice underpinning Australian society. For this reason, the Committee urges the government to find a solution which will protect national security whilst also protecting the rights of refugees under international law.

6.149 The Committee notes that ASIO already, on occasion, reviews particular cases if additional information comes to light and/or on referral from DIAC. The Committee is of the view that ASIO could partly address community concerns by establishing periodic reviews of its adverse refugee security assessments. The Committee did not take evidence on how often such reviews should take place, and is mindful of the resources necessary for such an undertaking. The Committee suggests that 12-monthly reviews are a positive starting point.

6.150 Fundamentally, however, the Committee believes that extending the right of merit reviews to refugees with adverse security assessments is the most straightforward way of protecting against indefinite detention and ensuring probity. Provisions effectively barring refugees from appealing adverse security assessments were inserted into the ASIO Act in 1979 and were designed for a different time, a time when Australia was not grappling with the challenges presented by large numbers of asylum seekers in detention. Those provisions have regrettably resulted in some dramatic, potentially life-shattering consequences for refugees who receive adverse security assessments. The Committee is firmly of the view that the ASIO Act can be amended to allow for refugees and other non-citizens currently in indefinite detention to have access to relevant details of their case without impinging on national security. Merit reviews are currently available for Australian residents who receive similar adverse security assessments. On the balance of evidence gathered during the course of this inquiry, the Committee sees no compelling reason to continue to deny non-residents the same access to procedural fairness.

Recommendation 27

6.151 The Committee recommends that the Australian Government and the Australian Security Intelligence Organisation establish and implement periodic, internal reviews of adverse Australian Security Intelligence Organisation refugee security assessments commencing as soon as possible.

Recommendation 28

6.152 The Committee recommends that the Australian Security Intelligence Organisation Act be amended to allow the Security Appeals Division of the Administrative Appeals Tribunal to review the Australian Security Intelligence Organisation security assessments of refugees and asylum seekers.

CHAPTER 7

Alternatives

Background

7.1 Previous chapters of this report explored the key features of immigration detention, as well as the reasons for and effects of prolonged detention. The Committee considered a sizeable volume of evidence on the consequences of the current system on mental health outcomes among the detention population, and concluded that a different policy framework was needed to reduce the amount of time people spend in detention facilities.

7.2 This chapter will look at ways of transitioning asylum seekers and refugees from detention centres. Specifically, the chapter will look at the ways people are being managed by the immigration system while they are in community detention or on bridging visas, the two main options available to the Department of Immigration and Citizenship (DIAC) as alternatives to held detention.

7.3 The Committee believes that, with appropriate exceptions, processing asylum claims while people are in community detention or on bridging visas offers a workable alternative to held detention in facilities, and in turn better implementation of the government's *New Directions* policy.

Recent expansion of the immigration detention network

7.4 There has been a significant increase in the number of irregular maritime arrivals (IMAs) in recent years, leading to a growth in the number of detention facilities on the Australian mainland. These were outlined in Chapter 2.

7.5 The past year has also seen a significant increase in the use of alternatives to held detention such as bridging visas and community detention. This is the result of a shift in the fundamental conceptual underpinning of immigration detention policy. As put by DIAC Secretary Andrew Metcalfe, the focus has shifted to whether people *need* to be detained from an immigration processing point of view, or whether they can be conditionally released but available for the immigration process:

Based upon the experience we have had over the years, we believe that we can continue a proper process of immigration assessment about status without the need for everyone to be in held detention facilities. That obviously has benefits for cost and benefits for the individuals themselves in relation to their circumstances.⁶¹¹

611 Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 93.

Bridging visas

7.6 Bridging visas (BVs) are temporary, non-substantive visas.⁶¹² They allow non-citizens to reside lawfully in Australia, and thereby 'avoid being subject to mandatory detention.'⁶¹³

7.7 Asylum seekers are generally issued with Bridging Visa E (BVE). This is a temporary visa open to a number of groups of people other than asylum seekers, but it is the one most commonly used for asylum seekers. Under the conditions of a BVE, asylum seekers have the right to seek work, and may have limited access to some basic assistance from the government. This assistance is means tested and only extended where it is necessary to allow someone to continue to live in the community.⁶¹⁴

7.8 A holder of a bridging visa becomes a lawful non-citizen not subject to mandatory detention. Circumstances in which bridging visas may be granted include those in which a non-citizen:

- has made an application for a substantive visa which has not been decided;
- has applied for revocation of an automatic student visa cancellation;
- has applied for merits review of a decision to refuse an application for a substantive visa, of a decision to cancel a visa, or of a decision not to revoke a cancellation;
- has applied for judicial review of a decision in relation to a substantive visa;
- is awaiting the outcome of a request for the exercise of the Minister's intervention powers;
- is in criminal detention; and
- is making, or is the subject of, arrangements to depart Australia.⁶¹⁵

7.9 There have been a number of important policy shifts during the course of this inquiry following a 2011 High Court ruling which curbed plans for asylum seekers to be processed in third countries. The Prime Minister and Minister for Immigration

612 Under the *Migration Act 1958*, a substantive visa is a visa other than a bridging, criminal justice or enforcement visa. See *Migration Act 1958*, s. 5.

613 DIAC, *Submission 32, Evolution of the Australian Legislative Framework and Policy for Immigration Detention*, p. 4.

614 The Hon. Julia Gillard, MP, Prime Minister, and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *press conference*, 13 October 2011, available at <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 22 February 2012).

615 See DIAC, *Bridging Visas*, <http://www.immi.gov.au/allforms/pdf/1024i.pdf> (accessed 3 November 2011).

announced that the government would be placing more IMAs on bridging visas, where appropriate and once they have passed identity, security and character checks.⁶¹⁶

7.10 As a consequence, the government has had to prepare contingency plans in the event of increased offshore arrivals, and has decided to make more use of existing mechanisms previously used predominantly for onshore arrivals.

7.11 In November 2011 it was announced that a number of asylum seekers would be released on bridging visas under the new framework of expanded bridging visa use. The announcement made clear that asylum seekers on a positive pathway, that is, those who have been found to be refugees, or those who had not yet commenced the independent review process, would now be considered for placement in the community through bridging visas. The Committee was informed that people who had spent the longest time in detention would be considered first.⁶¹⁷

7.12 Since then and as at 13 February 2012, 257 asylum seekers had been granted BVEs, with around another 100 scheduled to be issued the following day.⁶¹⁸ By 28 February 2012, 495 people who were in detention had been granted BVEs and were due for release. These were all people who had passed initial health, identity and character checks.⁶¹⁹ The Department advised plans for further releases under the BVE program, with the potential to for hundreds more to be released each month:

The rate at which we are currently processing people would see us releasing about 400 people per month on bridging visas.⁶²⁰

7.13 Whereas previously bridging visas had been available but not generally used for asylum seekers arriving by boat, under the new framework the following criteria were to be applied to determine priority in issuing BVEs to asylum seekers:

- the length of time spent in detention;
- any vulnerabilities, such as identified torture or trauma experiences;
- behavioural record during time spent in detention; and
- the ability of family and friends living in the community to provide accommodation and support.⁶²¹

616 The Hon. Julia Gillard, MP, Prime Minister, and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *press conference*, 13 October 2011, available at <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 22 February 2012).

617 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 25.

618 Mr Greg Kelly, First Assistant Secretary, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 92.

619 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 22.

620 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 25.

7.14 At present, all refugees and asylum seekers (except refugees with adverse security assessments and refugees/asylum seekers with problematic behavioural management histories) are eligible for BVEs. DIAC representatives explained how new groups of detainees were now being considered for BVEs:

In addition to being 1A met or at merits review, we also took into account whether people had adverse security or not, obviously, or people who may have had behavioural issues while they were in the detention facilities as well. With that in mind, we are now starting to work on other groups as well and also starting to consider people who are at JR [judicial review]. My team has been working closely with Ms Pope's [DIAC] team, particularly for some people who might be assessed as vulnerable and who are at the JR stage, to have those people in community detention if bridging visas cannot work at this stage.⁶²²

Committee view

7.15 The Committee commends DIAC for its considerable efforts to prioritise the release on BVEs of asylum seekers who have spent the longest time in detention. The Committee understands that a number of criteria are applied when deciding whether to release an individual into the community on a BVE or place them in community detention. Although these criteria have been publicly stated a number of times by both DIAC and the Minister, the Committee is aware that no clear, published guidelines exist. The Committee believes that publication of the criteria for deciding whether an individual is placed in community detention, or released into the community on a bridging visa, would be beneficial.

Recommendation 29

7.16 The Committee recommends that the Department of Immigration and Citizenship consider publishing criteria for determining whether asylum seekers are placed in community detention or on bridging visas.

7.17 Once issued, BVEs allow the holder to work, but not receive Centrelink payments. Asylum seekers retain access to modest government-funded support whilst in the community.⁶²³

7.18 The Committee heard arguments questioning the requirement for asylum seekers or refugees on BVEs to work. The Asylum Seeker Resource Centre (ASRC) raised specific concerns around language impediments compromising safety:

With people coming out on the bridging visa, my understanding is that the government would like them to get jobs. We have said it is dangerous for

621 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *media release*, 25 February 2011.

622 Mr Greg Kelly, First Assistant Secretary, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, pp 92–93.

623 The Hon. Chris Bowen MP, Minister for Immigration and Citizenship, *media release*, 25 February 2011.

people to work if they do not speak English. Particularly working in factories and those sorts of low-paid work, which is where they will find their jobs, they need to speak English in order to be safe, and so we have asked that they consider some sort of English classes to assist them.⁶²⁴

7.19 ASRC added:

We would not in any way stand in the way of people coming out of detention, because we know that that is a life and death situation, but we run an employment program and we know that people need support to find work. They come from cultures where the idea of a resume does not exist; jobs are found through family networks et cetera. So what we do is train people up in how to go to an interview, how to find work and all those things.⁶²⁵

7.20 Gilbert and Tobin Centre of Public Law expressed serious concerns with BVEs. While those on BVEs have entitlements to work in theory, in practice they are often unable to find work due to obstacles such as a lack of photo identification and the short duration of the visa. The requirement for them to work and support themselves means that many 'face poverty and homelessness as a result of these conditions.'⁶²⁶ Gilbert and Tobin added:

Placing asylum seekers in situations where they are unable to work and are not receiving sufficient social assistance may place Australia in breach of its obligations under article 7 of the ICCPR. In the UK, the courts have found that the removal of subsistence support from asylum seekers resulting in their destitution was a breach of these rights. While the House of Lords acknowledged that there is no general public duty to house the homeless or provide for the destitute, it said that the State does have such a duty if an asylum seeker 'with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life'.⁶²⁷

7.21 On 29 February 2012 the Department informed the Committee that approximately 13 out of 495 people who had been released on bridging visas since November 2011 had been able to find employment to date, noting that 140 of the 495 had only received their visa on the previous day. Of the 107-strong cohort released by the end of December 2011, 13 had found employment by 7 January 2012.⁶²⁸

7.22 Seeking to better understand how people released from detention on bridging visas were supported through the transition to finding employment, the Committee asked DIAC about the support services available. The Department explained that

624 Ms Pamela Curr, Campaign Coordinator, Asylum Seeker Resource Centre, *Proof Committee Hansard*, 18 November 2011, p. 21.

625 Ms Pamela Curr, Campaign Coordinator, Asylum Seeker Resource Centre, *Proof Committee Hansard*, 18 November 2011, p. 21.

626 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 21*, p. 9.

627 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 21*, p. 10.

628 DIAC, *Question on Notice 291* (received 15 March 2012), p. 1.

people were indeed assisted, not merely released from detention centres and expected to be self-sufficient from the start. This is done by first assessing them for support under the Community Assistance Support (CAS) scheme, which can provide them with accommodation for up to six weeks if necessary.⁶²⁹

7.23 The CAS program was established in 2006 as the 'Community Care Pilot' and renamed in 2009. The program provides immigration information and advice, as well as counselling, health and welfare support to vulnerable individuals and families within the immigration system residing lawfully in the community while their cases are being processed. The CAS program differs from the community detention program in that people may have entitlements to work, access to Medicare and study. They are also responsible for sourcing their own accommodation, which has led to some problems and criticism:

Significant numbers of individuals within the CAS program remain at risk of becoming destitute or homeless, despite receiving assistance, due to their extreme vulnerability. This places Australia at risk of breaching its obligations under international human rights law not to subject individuals to cruel, inhuman or degrading treatment.⁶³⁰

7.24 DIAC Deputy Secretary John Moorhouse explained that newly released BVE holders also have access to a case worker provided by the Red Cross, if required. After the initial, transitional period:

...the people then move on either to be independent by working or through their own resources, or, if necessary, they have access to the Asylum Seeker Support Scheme, whichprovides 89 per cent of Special Benefit.⁶³¹

7.25 Assessment of income support includes several factors, such as whether individuals have existing family links within the community which they can rely on for accommodation. Those who have family support bypass some of the available network support. Those who receive income support are expected to use it to cover rent for accommodation sourced by the Red Cross while they transition towards employment and self-sufficiency.⁶³²

Community detention

7.26 Community detention, or residence determination as it is otherwise known, was introduced in June 2005. The term 'residence determination' refers to the process by which the Minister for Immigration and Citizenship specifies that a person may

629 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, pp 27–28.

630 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 21*, p. 9.

631 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, pp 27–28.

632 See DIAC, *Proof Committee Hansard*, 29 February 2012, pp 28–29.

live in community detention.⁶³³ It enables certain asylum seekers to reside in the community without needing to be accompanied by an officer while their applications for refugee status are being processed. Residence determination does not give a person lawful status or the right to work or study in Australia.⁶³⁴

Numbers in community detention

7.27 In August 2011 DIAC provided the Committee with the following figures on people transferred into community detention:

Between 18 October 2010 and 27 July 2011 1601 individuals (823 adults, 514 accompanied children and 264 unaccompanied minors) have been approved for community detention:

- 1504 individuals (769 adults, 486 accompanied children and 249 unaccompanied minors) have been moved into community detention
- 69 individuals (30 adults and 25 children and 14 unaccompanied minors) were approved for community detention but granted protection visas before they moved into community detention
- 28 individuals (24 adults and 4 accompanied minors) have been approved by the Minister and are in the process of moving into community detention⁶³⁵

7.28 Since then, however, and during the course of this inquiry, the community detention program has continued to expand at a rapid rate. DIAC estimated that, as at 13 February 2012, there were 1576 people in community detention. Included in this figure were 1047 adults and 529 children. Of the 529 children, 133 were unaccompanied minors.⁶³⁶

7.29 Many more people had been approved by February 2012, but not yet moved out of detention facilities and into community detention. DIAC advised that as at 15 February 2012, over 3200 people had been approved for community detention. Of these, 1582 had already been moved.⁶³⁷

7.30 There were approximately 700 children in 'held detention' on October 2010. As at 17 February 2012, there were more than 660 children already in or transitioning into community detention. This figure represents 64 per cent of asylum seeker

633 This power was established by the insertion of section 197AB into the *Migration Act 1958* in 2005.

634 DIAC, *Submission 32, Evolution of the Australian Legislative Framework and Policy for Immigration Detention*, p. 7.

635 DIAC, *Question on Notice 42* (received 10 August 2011), p. 1.

636 See Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 79.

637 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *media release*, 17 February 2012.

children. Of the 660 children, 212 were unaccompanied minors. This figure represents 57 per cent of unaccompanied asylum seeker minors.⁶³⁸

7.31 By 14 March 2012, the number of children in held detention stood at 479, while 544 were in community detention. Children in the community detention program have access to schooling, which includes English language classes.⁶³⁹

7.32 These shifting numbers make establishing a firm grasp on the number of people going through the system difficult. The Committee is aware that these numbers do not reflect the totality of the work DIAC does to process people out of the immigration detention system and onto either permanent visas, or departure from the country. Numbers cited for the community detention population do not include people already on the other side of the immigration process, and, as pointed out by Mr Andrew Metcalfe, targets are by definition difficult to reach:

[F]igures will show that a large number of people have been and are still in community detention...We were getting close to the target or the commitment of the majority being in community detention by the end of June only to find that some had been granted visas, and so the target was coming back again. We were very strongly committed to moving children and families into community detention but our own visa processes were continuing to make that a moving objective.⁶⁴⁰

How community detention works

7.33 Where the Minister considers it appropriate and in the public interest, he or she has the power to determine that detainees are to reside in a specific location rather than in a detention facility under held detention arrangements. This power is non-delegable and non-compellable.⁶⁴¹ In practice, residence determinations allow people to be moved into community detention, where they reside and move about freely in the community without needing to be accompanied or restrained by an officer.⁶⁴²

7.34 When they are identified as appropriate for community detention, asylum seekers must be informed of, and agree to, the conditions of their residence determination.⁶⁴³ Once placed, they must only reside at the address specified by the Minister, and must satisfy a number of conditions, including reporting regularly to DIAC and/or their service provider.⁶⁴⁴

638 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *media release*, 17 February 2012.

639 DIAC, *Submission 32, Immigration Detention Network Facilities in Australia*, p. 3.

640 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 16 August 2011, p. 21.

641 DIAC, *Submission 32, Evolution of the Australian Legislative Framework and Policy for Immigration Detention*, p. 7.

642 DIAC, *Submission 32, Evolution of the Australian Legislative Framework and Policy for Immigration Detention*, p. 7.

643 DIAC, *Submission 32, Immigration Detention Network Facilities in Australia*, p. 3.

644 DIAC, *Submission 32, Immigration Detention Facilities in Australia*, p. 3.

7.35 Like others in immigration detention, people in community detention are allocated a departmental case manager. This officer is the detainee's primary contact point with DIAC and works to resolve the client's immigration status.⁶⁴⁵

Work rights

7.36 People held in community detention currently do not have the right to work. Their basic financial needs are met by government funding, and they are financially supported by DIAC during their stay in community detention:

Clients in community detention are supported by the department through a financial allowance which is set at 89% of the Centrelink income support payments (excluding rent assistance and family benefits payment). Clients are expected to cover their food, other groceries, public transport and other costs such as clothing from this allowance. Educational expenses and travel to and from school for minors in community detention are covered by the department.⁶⁴⁶

7.37 It is important to note that unaccompanied minors can access extra funds:

In addition unaccompanied minors are able to access a \$200 seasonal clothing allowance in the first year. The cost of organised activities for unaccompanied minors of up to \$2000 per year is also covered by the department, for example to cover the cost of a soccer club membership, art or music classes, or excursions during school holidays.⁶⁴⁷

7.38 The Committee explored the question of work rights for people in community detention. Ms Tanya Jackson-Vaughan, Executive Director of the Refugee Advice and Casework Service (RACS), felt that people on bridging visas benefited from more self-sufficiency than those in community detention because of their ability to earn their own money:

If they are given work rights they are less of a burden on Australia, because they are actually supporting themselves. If they are not given work rights the Australian taxpayer has to pay for their food and board. People on bridging visas in the community, who are often given work rights, are more self-sufficient. It is a better way of integrating into society if you are involved working in the community.⁶⁴⁸

7.39 RACS did not explicitly propose extending work rights to people in community detention, but did not see why doing so would pose a problem, either.⁶⁴⁹

645 DIAC, *Question on Notice 42* (received 10 August 2011), p. 1.

646 DIAC, *Question on Notice 44* (received 10 August 2011), p. 1.

647 DIAC, *Question on Notice 44* (received 10 August 2011), p. 1.

648 Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 5.

649 Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 5.

Gilbert and Tobin Centre of Public Law expressly advocated extending the right to work to people in community detention.⁶⁵⁰

7.40 The Chair of the Council for Immigration Services and Status Resolution (CISSR) was of the view that more people should be placed on bridging visas instead of in community detention:

...[A]t the moment in community detention you do not have work rights, so a father or a mother with a young family in community detention is not necessarily going to be able to work and take responsibility for feeding the family and for its welfare in an independent way. I think that is counterproductive. I also think it is more expensive to the community, whereas if some people were able to work on bridging visas, as well as have appropriate amounts of assistance—I am not talking about enormous amounts of assistance every day and so forth—to help facilitate that then it would be more effective and cost-effective for us. It would mean people would have to function more independently, like anyone else in the community. Also, I think it would help sustain their mental health.⁶⁵¹

7.41 While the Committee is aware of the virtues of bridging visas, it is clear that not everybody in community detention is a good candidate for such a visa. Living on a bridging visa requires a far higher degree of self-reliance. DIAC is looking at moving people from community detention onto bridging visas where appropriate:

[W]e will be looking at who in community detention could be considered for the grant of a bridging visa where that might work for them and for us. The main issue is not putting someone who is vulnerable at risk by granting work rights then the person has to be self-sufficient, particularly in relation to accommodation. So it is balancing those risks. That is the reason we are not intending to grant bridging visas to unaccompanied minors. But to the single adult men, if they are recovering and feeling up to it and have the opportunity, then it might be a good.⁶⁵²

7.42 As more people—including adult men—are moved from held detention into community detention, anecdotal evidence suggests moving those that are ready onto bridging visas instead produces positive outcomes:

We now have a growing bank of experience with vulnerable adult men, and the level of incidents and issues with them is surprisingly low, to date. They appear to get on with their lives and take the opportunities that community detention offers. When they are assessed as being in a state where that

650 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 21*, p. 8.

651 Mr Paris Aristotle, Chair, Council for Immigration Services and Status Resolution, *Proof Committee Hansard*, 18 November 2011, p. 39.

652 Ms Kate Pope, First Assistant Secretary, Community Programs and Children Division, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 104.

might be beneficial to them they also have the opportunity to move onto bridging visas and therefore to work.⁶⁵³

7.43 Additionally, the Committee notes that refugees who have passed through both held and community detention report that the latter system prepares them for life in the wider Australian community, indicating that community detention represents a positive stepping stone from held detention to bridging visas and/or permanent release:

As part of consultation with clients who now have permanent status and who were previously in detention centres, we asked their opinion of community detention compared to being detained in a detention centre. There was an overwhelming opinion that community detention was a very significantly better alternative to detention centres, better prepares people for life in Australia (within the boundaries of visa determination), has considerably less negative impact on mental health and that the government should aim to use this form of detention for as many people as possible.⁶⁵⁴

7.44 The Committee notes concerns outlined earlier that bridging visas do not, in practice, always allow people to fulfil their obligations to work and support themselves.

Committee view

7.45 The Committee is firmly of the view that use of the community detention program must continue to grow in order to take pressure off detention facilities across the country and curb spiralling mental health problems among the detainee population.

7.46 The Committee is also of the view that bridging visas represent a positive alternative for people who are ready to take responsibility for themselves and their families in order to become self-sufficient within the community. However, the Committee believes that many people are not ready and cannot cope with moving straight from held detention and onto bridging visas, particularly victims of torture and trauma and those who have spent a long time in detention and whose mental health has deteriorated as a consequence. For this reason the Committee believes DIAC is doing the right thing by placing most people in community detention rather than on bridging visas. The Committee urges DIAC to continue regularly assessing people held in community detention for BVE suitability.

Contracts with Non-Government Organisations

7.47 DIAC informed the Committee that it had signed a contract with two non-government organisations (NGOs) to deliver services for people in community detention, the Australian Red Cross and Life Without Barriers.

653 Ms Kate Pope, First Assistant Secretary, Community Programs and Children Division, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 104.

654 AMES, *Submission 86*, pp 13–14.

7.48 Life Without Barriers is contracted to assist the Australian Red Cross in providing support to unaccompanied minors. The Red Cross provides care and welfare for those in community detention under contract with DIAC. The key features of this contract are:

- accommodation is sourced which is suitable to client's needs;
- accommodation is furnished according to the standard household formation package;
- client is provided with a financial allowance;
- client has access to health services facilitated, including mental health as required;
- client is supported to enrol children at schools, use public transport and amenities, and linked with community groups and other providers as required;
- a client care plan is prepared for every client outlining their needs and support;
- monthly reports prepared for each client/family group; and
- all incidents that occur while in community detention are reported to the department.⁶⁵⁵

7.49 The Red Cross is also required to provide 24-hour, live-in care and support for unaccompanied minors.⁶⁵⁶ The Red Cross has in turn entered into a number of sub-contracted arrangements in order to deliver care and services to people in community detention. Organisations providing services include AMES, Anglicare, the Multicultural Development Association, Hotham Mission Asylum Seeker Project, Uniting Care, Jesuit Refugee Services, Life Without Barriers, Wesley Mission, Berry St, Catholic Care, Marist Youth Care and Mackillop Family Services.⁶⁵⁷

7.50 The Committee heard that DIAC's community detention partnerships with NGOs were highly effective:

I would have to say the way in which the department has gone about implementing that in partnership with a very wide range of NGOs—the principal one being the Red Cross, but there are over 20 other non-government organisations doing the work—has been outstanding. The success in putting that program together in the time frame that it was put together and the outcomes from it to date, I think, speak for themselves and would bear any scrutiny, really, in regards to the program's viability but also the program as a means of effectively managing processing

655 DIAC, *Question on Notice 43* (received 10 August 2011), p. 1.

656 DIAC, *Question on Notice 42* (received 10 August 2011), p. 2.

657 DIAC, *Question on Notice 43* (received 10 August 2011), p. 1.

arrangements for people in circumstances where their wellbeing can be maintained at the most optimal level possible.⁶⁵⁸

Housing for community detention

7.51 DIAC works with NGOs to rent a range of properties in which to house people in community detention:

For the most part, they are houses rented on the open market. They range anywhere from two-bedroom to four- or five-bedroom houses. The five-bedroom houses are suitable for a group of unaccompanied minors with a carer, for example. We also have properties that have been made available to use by faith-based organisations.⁶⁵⁹

7.52 Properties are identified and rented with the assistance of the Australian Red Cross, which registers its interest with real estate agents across the country and distributes staff across the states according to the number of properties available:⁶⁶⁰

The Red Cross is going to real estate agents basically saying, 'We need properties of this broad description,' and the real estate agents are responding to that, and so, naturally enough, the ability to respond will vary city by city. I have visited one family in community detention in Melbourne to see personally the sorts of circumstances that people are in and I would describe it as a very modest bungalow in the far outer suburbs, quite appropriate but certainly not anything grand—far from it.⁶⁶¹

7.53 Care is taken to ensure sensitivity to specific community circumstances when necessary:

For example, we did not seek property in Brisbane for a time after the floods, recognising that there might be other people who needed those properties, so we stayed out of the Brisbane market for a while.⁶⁶²

7.54 Properties are required to meet state and territory-specific building code regulations, and key performance indicators outlining the expected standard are set out in DIAC's contract with the Red Cross.⁶⁶³

658 Mr Paris Aristotle AM, Chair, Council for Immigration Services and Status Resolution, *Proof Committee Hansard*, 18 November 2011, p. 36.

659 Ms Kate Pope, First Assistant Secretary, Community Programs and Children Division, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 80.

660 Ms Kate Pope, first Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, pp 39–40.

661 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 40.

662 Ms Kate Pope, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 40.

663 Ms Kate Pope, first Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 39.

7.55 Mr Andrew Metcalfe, Secretary of DIAC, stressed that the department is very careful to avoid competing with low income earners for the bottom end of the rental market:

We are very conscious of that. Part of the consultations in moving to the expansion of the community detention scheme, about a year ago, was consulting with FaHCSIA, the department of housing, who made that very point as to the competition for rental properties, particularly for people with low income in certain cities. That, I think, has seen the natural placement of people vary by city, depending upon the availability of accommodation. But we are conscious, as Ms Pope has said, of the fact that others are looking in the same market as well...The only other comment I would make is that we are also mindful that the services required for people are not just physical accommodation, but some people may have other needs as well—whether it is torture or trauma or other needs—that Red Cross would take into account in relation to their placement in particular cities. The result of that, a year down the track, as Ms Pope says, is that we tend to be bigger in some cities than others, and that probably reflects the reality of the market.⁶⁶⁴

7.56 Properties are rented in every state and territory except the Northern Territory:

...because detention makes a reasonably high call on the community and property in the Northern Territory already. Also, rental rates are quite high, occupancy is pretty low and there are a limited number of services for people in the community. For those reasons, we do not place anyone in the Northern Territory. This is at this stage, because in the future it might be viable.⁶⁶⁵

7.57 AMES, which provides support services to people in community detention through a contract with the Red Cross, suggested that DIAC would do well to discuss with asylum seekers their expectations of the standard of housing before they are placed in community detention. Providing housing of a standard which people would not be able to afford once released on a visa could be counterproductive to helping them cope with future life transitions:

AMES is very familiar with what is realistic housing for HSS clients and is very aware that where clients must move into poorer quality housing or housing that is an area with less services when they are granted permanent visas that this can cause problems.⁶⁶⁶

Committee view

7.58 The Committee believes DIAC has established highly effective relationships with NGOs, which help deliver what is shaping up to be a very successful community detention program. The fact that the program is succeeding whilst undergoing rapid

664 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 40.

665 Ms Kate Pope, First Assistant Secretary, Community Programs and Children Division, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 80.

666 AMES, *Submission 86*, p. 15.

expansion is testimony to the considerable efforts of the agencies—government and non-government—and individuals involved.

The cost of community detention

7.59 In August 2011 DIAC estimated the cost of community detention for financial year 2010–11 to be \$15.734 million.⁶⁶⁷ Funding for the program covers the costs of housing, care for unaccompanied minors, case workers, an allowance to meet daily living costs and activities such as recreational excursions. Healthcare is provided by DIAC's contracted detention health provider, International Health and Medical Services (IHMS).⁶⁶⁸ This gives people access to contracted health providers including GPs, medical specialists and mental health counsellors; however, they are not eligible for Medicare.⁶⁶⁹ Non-government organisations (NGOs) are employed by DIAC to ensure that asylum seekers placed in community detention receive appropriate support. The Department also provides funding for the work NGOs do to source housing and cover living expenses.⁶⁷⁰

7.60 The Department added that this cost could be attributed to a large expansion over a short period of time, and could not be extrapolated to calculate the cost per person:

The costs incurred to date reflect the high initial costs for the program (such as securing leases, connection fees for utilities and provision of household goods in each property). These initial costs are higher than can be expected for future financial years due to the expansion of the program from around 50 clients in January 2011 to over 1500 in June 2011.

As such, a cost per person per day equation would not accurately reflect the costs for community detention at this point in time.⁶⁷¹

7.61 This figure was later updated to \$17.3 million.⁶⁷² In February 2012, DIAC estimated the cost of community detention for FY2011–12 would run to \$150 million in total. The cost for FY2011–12 as at 31 December 2011 was \$50.8 million, however this was due to grow in the second half of the financial year due to a rapid expansion of the community detention program. These figures, however, are not an exact projection:

...[I]t is an approximate figure...we need to look at how people stream to community detention as opposed to bridging visas as well...[B]ridging visas started taking effect in December, so some of the cohort that were going to

667 DIAC, *Question on Notice 42* (received 10 August 2011), p. 1.

668 DIAC, *Submission 32, Immigration Detention Facilities in Australia*, p. 3.

669 DIAC, *Question on Notice 44* (received 10 August 2011), p. 1.

670 DIAC, *Submission 32, Evolution of the Australian Legislative Framework and Policy for Immigration Detention*, p. 7.

671 DIAC, *Question on Notice 42* (received 10 August 2011), p. 1.

672 DIAC, *Question on Notice 51* (received 8 November 2011), p. 1.

community detention might as well go to bridging visas, and we will need to look at how those clients stream into those different programs.⁶⁷³

7.62 It is clear that these calculations will be more accurate once economies of scale are realised and there is a more seamless flow of arrivals into community detention.⁶⁷⁴

The cost of operating detention facilities

7.63 The Committee considered the cost of the community detention program against the cost of holding people in detention facilities, bearing in mind that as people are transitioned into community detention the number of people needing to be managed in detention facilities will reduce.⁶⁷⁵ The department provided the following table indicating estimated costs of running each detention facility in 2011–12:

673 Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 79.

674 Mr Andrew Metcalfe, Secretary, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 86.

675 For a detailed discussion, see also Harriet Spinks, Elibritt Karlsen and Nigel Brew, 'Australian Government spending on irregular maritime arrivals and counter-people smuggling activity', *Background Note*, Parliamentary Library, 6 December 2011.

Facility Name	2011-12			
	Administered	Departmental	Total	Estimated Months Operational
	\$ m	\$ m	\$ m	
Adelaide Immigration Transit Accommodation	3.30	0.20	3.50	12
Brisbane Immigration Transit Accommodation	2.60	0.40	3.00	12
Christmas Island – all sites	179.00	21.00	200.00	12
Curtin Immigration Detention Centre	78.70	9.25	87.95	12
Darwin Alternative Places of Detention	42.50	5.00	47.50	12
Northern Immigration Detention Centre	24.00	4.00	28.00	12
Inverbrackie Alternative Place of Detention	27.00	3.00	30.00	12
Leonora Alternative Place of Detention	6.00	0.30	6.30	12
Maribyrnong Immigration Detention Centre	14.50	1.50	16.00	12
Melbourne Immigration Transit Accommodation	2.00	0.50	2.50	12
Pontville Immigration Detention Centre	13.50	1.50	15.00	10
Port Augusta Immigration Residential Housing	7.50	0.50	8.00	12
Perth Immigration Detention Centre	5.50	1.00	6.50	12
Perth Immigration Residential Housing	1.50	0.50	2.00	12
Scherger Immigration Detention Centre	26.00	4.00	30.00	6
Villawood Immigration Detention Centre	26.00	2.50	28.50	12
Sydney Immigration Residential Housing	3.00	0.50	3.50	12
Yongah Hill Immigration Detention Centre	17.50	2.50	20.00	7
Wickham Point Immigration Detention Centre	65.00	7.50	72.50	8
Across Network*	8.00	10.00	18.00	12
TOTAL	553.10	75.65	628.75	

Source: DIAC

7.64 Costs are not always attributable to a particular detention centre.⁶⁷⁶ The costs outlined include:

- services provided by Serco;
- services provided by IHMS;
- services provided by the Australian Red Cross;
- services provided by Life Without Barriers;
- interpreting services;
- air charters and other travel;
- utilities, repairs and maintenance;

⁶⁷⁶ DIAC states that 'some expenses apply across the network and cannot be attributed to a specific centre. Some costs, which in previous years could not be directly attributed to a specific centre, have been allocated for budget purposes.' See DIAC, *Question on Notice 19* (received 10 August 2011, updated 21 November 2011), p. 1.

- communication and IT costs;
- education services for IMAs; and
- DIAC staff directly involved in the management of detention centres.⁶⁷⁷

7.65 The Department stressed that estimated costs are not fixed:

It is important to note that...estimates could vary depending on dynamic factors such as the number of clients at a facility during the year, the mix of the client caseload in a facility, specific client needs, processing times and any change to operational requirements that may be necessary.⁶⁷⁸

7.66 To this end, costs are not captured on a *per capita* per day basis due to fluctuating cost drivers such as the number of people within a facility and the services required.⁶⁷⁹

7.67 The confirmed costs of running detention facilities across the network in previous financial years were as follows:

- FY2008-09: \$147.57 million;
- FY2009-10: \$295.55 million;
- FY2010-11: \$772.17 million.⁶⁸⁰

7.68 The cost of community detention, both realised and projected, must therefore be assessed against the cost of holding refugees and asylum seekers in detention facilities. The costs involved in community detention represent an alternative application of available resources.

7.69 The expenditure on community detention eases financial pressure by reducing reliance on detention facilities which require far more resources to operate than the community detention system. Moving asylum seekers and refugees out of detention facilities and into community detention brings about a very significant reduction in costs.

How well does community detention work?

7.70 The Committee asked DIAC whether there was ongoing monitoring of the community detention program to gauge how well the extent to which people are still able to be processed *without* being in held detention. The Secretary of DIAC assured the Committee that placing people in community detention still facilitated the necessary processing and assessments:

677 DIAC, *Question on Notice 19* (received 10 August 2011, updated 21 November 2011), p. 1.

678 DIAC, *Question on Notice 19* (received 10 August 2011, updated 21 November 2011), p. 1.

679 See DIAC, *Question on Notice 16* (received 10 August 2011), p. 1.

680 For a detailed breakdown see DIAC, *Question on Notice 13* (received 10 August 2011), p. 2.

Yes, it has not been entirely without incident, as you would expect—you would not expect anything involving hundreds of people to be entirely without incident—but we believe it does provide the department with the necessary access to our clients in terms of status determination without them being required to be held in detention facilities, often in fairly remote locations.

7.71 The Committee notes that placing people in community detention while their claims for asylum are being processed has neither impeded the processing nor resulted in significant additional problems requiring intervention. It has, however, produced markedly better mental health outcomes for detainees, which is critical to minimising the harm caused by prolonged detention in confined facilities. The Committee notes that DIAC is aware of these important benefits:

[P]eople tend to improve in their mental health almost immediately [upon being moved from facilities and into community detention]. That does not mean that they do not necessarily have adverse reactions to things associated with their immigration pathway as they go along, but in general they deal with those things better than they had before.⁶⁸¹

7.72 The Committee is aware that expansion of the community detention program received support from many submitters to this inquiry, and that none argued against further expansion.⁶⁸² Examples are numerous, but include Mr Paris Aristotle, Chair of the Council for Immigration Services and Status Resolution (CISSR), who lent his support in this way:

Personally, I believe that, given the success of community detention, it actually would be beneficial to anybody. As for the need to have very stringent classifications—to date, the priority has been families and unattached minors, and other vulnerable groups have been incorporated into it now. It is also being looked at for both single young men and unattached adult men, and by 'unattached' I mean that they are here without their families and that is a major concern for them.⁶⁸³

7.73 The Hon. Catherine Branson QC, President of the Australian Human Rights Commission:

The commission also urges the Australian government to make greater use of community based alternatives to detention, which can be cheaper and more effective in facilitating immigration processes and are more humane

681 Ms Kate Pope, First Assistant Secretary, Community Programs and Children Division, DIAC, Legal and Constitutional Affairs Legislation Committee, *Senate Estimates Hansard*, 13 February 2012, p. 104.

682 See for example Australian Human Rights Commission, *Submission 112*; Labor for Refugees (Victoria), *Submission 24*; The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45*; AMES, *Submission 86*; Gilbert and Tobin Centre of Public Law, UNSW, *Submission 21*. (Gilbert and Tobin recommended abolishing mandatory detention, but expanding community detention as an alternative.)

683 Mr Paris Aristotle, Chair, Council for Immigration Services and Status Resolution, *Proof Committee Hansard*, 18 November 2011, p. 36.

than holding people in detention facilities for prolonged periods. Australia's system of mandatory, prolonged and indefinite detention is in urgent need of reform...

...The commission urges a continued expansion of the community detention program so that all families and unaccompanied minors as well as other vulnerable individuals are placed into community detention.⁶⁸⁴

7.74 The Refugee Advice and Casework Service (RACS):

The government's use of community detention for families and children could be considered a success and demonstrates that there is a viable alternative to IDCs. RACS recommends that community detention programs be significantly expanded to encompass all detainees who do not pose security threats, with priority given to vulnerable persons.⁶⁸⁵

7.75 AMES added to the consensus:

We propose that placing people in the community rather than expanding the network through the establishment of new facilities is a much preferred option. In addition to representing a more humane option for clients, it is likely to be more cost effective and afford much greater flexibility to manage varying numbers. Management of clients in community detention is also an area that is more likely to be taken up by not for profit and community agencies. A number of these agencies, including Red Cross as the lead agency and others such as AMES, have existing expertise with this client group to contribute to the program.⁶⁸⁶

7.76 Support for the community detention alternative also came from refugees and former detainees. One such example was the not-for-profit organisation Refugees, Survivors and Ex-detainees (RISE). Their submission expressed concern at the number of people still in detention, while still commending positive moves toward increased use of community detention:

The current community detention system is administered by Red Cross, which unlike SERCO is an experienced and established humanitarian organisation. R.I.S.E welcomes the release of more asylum seekers and refugees in the community in the last few months.⁶⁸⁷

7.77 Noting the many positive views on community detention and its capacity to enable the immigration process to run smoothly without holding people in detention facilities any longer than necessary, the Committee also considered the question of whether such minimal detention is likely to encourage people to abscond. The

684 Ms Catherine Branson, President, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 51.

685 Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 2.

686 AMES, *Submission 86*, p. 13.

687 Refugees, Survivors and Ex-detainees, *Submission 119*, p. 22.

Committee heard that this was not the case, and that in fact high compliance rates were an added benefit of community-based as opposed to held detention:

Community based arrangements are not only far more humane in immigration detention but have also been shown to be extremely effective. International research has revealed that few asylum applicants abscond when released into community arrangements with appropriate supervision or reporting requirements. In fact, the use of alternatives to detention encourages compliance with immigration authorities and systems, including voluntary return if applications are unsuccessful. Treating asylum seekers with dignity, humanity and respect encourages compliance, whereas individuals who believe they have been treated very poorly and have suffered depression and deep anxiety as a result of long-term detention are less likely to cooperate—trends certainly reflected in Australia's experience.⁶⁸⁸

7.78 This view was echoed in a submission from the International Detention Coalition, which pointed to research indicating that:

...asylum seekers and irregular migrants were found to be a low risk to abscond if they are in a lawful process awaiting a decision on their case in their destination country.⁶⁸⁹

7.79 Similar findings were cited by the Australian Human Rights Commission, informing the Committee that more than 90 per cent of asylum seekers comply with their conditions of release when they are released with proper supervision and access to facilities.⁶⁹⁰

7.80 The United Nations High Commissioner for Refugees (UNHCR) conducted a detailed analysis of compliance patterns. This analysis conclusively indicates that people are less likely to abscond if they feel they are being treated fairly.⁶⁹¹

Committee view

7.81 The Committee acknowledges considerable support for the community detention program, and notes the praise of Chair of the Council for Immigration Services and Status Resolution (CISSR):

I think the community detention program has been incredibly successful. There have been very few incidents with community detention. There are always challenges, sometimes relating to minors—in fact, there was an incident last week in Melbourne. But I think in any program that involves dealing with minors, whether they are young people seeking asylum or they are young people from the Australian community, there are inevitable

688 Ms Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, *Proof Committee Hansard*, 5 October 2011, p. 7.

689 International Detention Coalition, *Submission 69*, p. 9.

690 Australian Human Rights Commission, *Submission 112*, p. 74.

691 For in-depth analysis of this issue see UNHCR, *Back to Basics*, available at: <http://www.unhcr.org/refworld/docid/4dc935fd2.html> (accessed 22 February 2012).

challenges. I think the scope for community detention to be expanded is great. There is no reason why it could not be extended beyond where it is being extended at the moment. Certainly, my understanding is that that is where things have been heading. There are challenges in locating appropriate accommodation and housing, and there are sometimes challenges in being able to wrap the level of services that is required around people. But, having said that, they are just challenges; and, between the department and the non-government agencies involved, they have been able to overcome those challenges to date. I think has been an incredible success.⁶⁹²

7.82 The Committee particularly notes support for the program from organisations such as the Australian Human Rights Commission, and UNHCR.⁶⁹³ The Committee strongly encourages the government to continue expanding the community detention program.

Community detention or BVs for intractable cases?

7.83 In previous chapters of this report the Committee referred to refugees and asylum seekers in detention who are at present not able to be released into the community or sent back to their country of origin. The reasons for this are varied, but there are two broad categories of people in question:

- Refugees unable to be released into the community due to adverse ASIO assessments; and
- Asylum seekers found *not* to be refugees who are stateless or non-returnable.

7.84 The Committee is aware that people in these situations represent perhaps the most intractable problem faced by asylum policymakers and those charged with its implementation. These groups find themselves in prolonged or indefinite detention, and often suffer the overwhelming adverse effect of this on mental health.

7.85 The Committee is aware that some people in the second category would be able to return to their country of origin were they to formally apply for a passport from the government in question. This is something many of them choose not to do, for various reasons. However, the Committee is aware that these people have a way out of prolonged detention in Australia. The people in the first category, and many from the second category who *do not* have the option to return anywhere because they are stateless and cannot obtain citizenship elsewhere, represent some of the toughest problems within our immigration system today.

7.86 This being the case, the Committee considered whether community detention or bridging visas could be used in these circumstances in order to alleviate some of the

692 Mr Paris Aristotle AM, Chair, Council for Immigration Services and Status Resolution, *Proof Committee Hansard*, 18 November 2011, p. 36.

693 See Australian Human Rights Commission, *Submission 112*; UNHCR, *Submission 110*.

harm being caused by prolonged detention while outcomes are being determined. To this end, the Committee explored whether the current system could accommodate intractable cases by employing monitoring systems similar to those found in the criminal justice system. Mr Paris Aristotle once again provided the Committee with a valuable insight:

You could attach conditions to bridging visas similar to bail conditions, for example, if you wanted to; you could have frequent and regular reporting requirements; you could incorporate concepts like electronic bracelets so that you could know where people were. We have available in our legal system the control orders that have been applied to other people—for example, those who were transferred to Australia from Guantanamo Bay in the past, or others that there have been concerns about. So there are mechanisms available for dealing with people in these circumstances that, in my view, would be infinitely better than leaving them locked up in detention centres for long periods of time, especially where there has been a level of involvement in the activities of an organisation like, for example, the LTTE, which controlled all of the north of Sri Lanka, where it is very difficult to escape having some sort of relationship with them. Being able to make a clear judgment about how serious the risk is is quite difficult. So I am certainly in favour of examining the utilisation of things like electronic bracelets or the use of systems, similar to those applied using control orders, or bail conditions as currently exist in the criminal justice system. And I think we could manage that.⁶⁹⁴

7.87 A useful overview of conditional release approaches internationally was provided by Gilbert and Tobin Centre for Public Law. Included in this overview is a look at approaches to electronic monitoring employed in the United States. Gilbert and Tobin raised a number of concerns around electronic monitoring, including questions of legality under international law and the stigmatisation of detainees. While these points are concerning and necessitate further contemplation, the Committee notes that electronic monitoring in combination with community detention is likely in principle to be feasible.⁶⁹⁵

7.88 The Committee also heard that removing people from high-stress detention environments, where they are caught up in a cycle of despair and frustration, quite often assists them to make more rational choices about their lives and the options available to them:

The benefits of people being processed in community based arrangements are clearly evident in comparison to people being detained for very long periods of time. It is more desirable but also has the potential to yield better outcomes both in terms of processing arrangements and in people's ability to deal with and contemplate what the next decision should be that they have to make about their futures. This is very difficult when you are in a

694 Mr Paris Aristotle AM, Chair, Council for Immigration Services and Status Resolution, *Proof Committee Hansard*, 18 November 2011, p. 37.

695 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 21, Attachment 2*, pp 6–7.

superheated detention centre environment where tempers are flaring and where group-think seems to dominate the way in which people make decisions. In community based arrangements there is more potential to protect people's psychological wellbeing, which assists them to make more rational decisions about where they are in the process, and that in my view includes whether or not they should continue to pursue a claim or whether or not they should make a decision about returning if they have indeed been found not to need protection. It is very difficult to see those decisions being made effectively in detention centres, and history tells us you get better outcomes in the community.⁶⁹⁶

Committee view

7.89 The Committee understands why, at present, people with adverse security assessments and non-refugees are not being released into the community. At the same time, the Committee remains deeply concerned about spiralling mental health problems among the detainee population, and believes all reforms aimed at harm minimisation must be explored for everyone concerned, including those with adverse assessments. While it is extremely encouraging to see the government endeavouring to move increasing numbers of people through the system as quickly as possible, those in the most intractable situations must not be overlooked. In full acknowledgement of the complex issues involved, the Committee believes no case should be left unaddressed if this results in prolonged detention without charge.

7.90 The Committee is cognisant of the issues and potential risks involved with releasing refugees with adverse security assessments or non-refugees into the community, but believes these must be carefully weighed against the proven human cost of holding people in detention with little or no prospect for release. For this reason the Committee believes the bridging visa and/or community detention programs present an avenue worth exploring.

Recommendation 30

7.91 The Committee recommends that the Australian Government and the Department of Immigration and Citizenship seek briefing on control orders in use by the criminal justice system and explore the practicalities of employing similar measures for refugees and asylum seekers who are in indefinite detention or cannot be repatriated.

696 Mr Paris Aristotle AM, Chair, Council for Immigration Services and Status Resolution, *Proof Committee Hansard*, 18 November 2011, p. 37.

CHAPTER 8

Nature and causes for disturbances in detention centres: the Hawke–Williams Review

Background

8.1 The Committee is grateful for the detailed and comprehensive review conducted by Dr Allan Hawke AO and Ms Helen Williams AM into the riots and disturbances at Northwest Point Immigration Detention Centre (IDC) on Christmas Island and at Villawood IDC.⁶⁹⁷ The report spans almost 200 pages, and the Committee does not propose to repeat the full detail here. Rather, this chapter will discuss the most significant findings.

8.2 On 18 March 2011 the Minister for Immigration and Citizenship, Senator the Hon. Chris Bowen, announced a review into the Christmas Island riots in March 2011. Subsequently the terms of reference for the inquiry were expanded to include the riots in Villawood Immigration Detention Centre (IDC) which took place in April of the same year.

8.3 Dr Hawke and Ms Williams were commissioned to conduct the inquiry. The expanded terms of reference stated that the reviewers were to investigate and report to the Minister on the management and security at the Christmas Island and Villawood IDCs, and to make recommendations to strengthen security and prevent similar incidents occurring again. Particular attention was paid to:

- the clarity of roles and responsibilities between Serco and DIAC in managing the IDC and in managing the incident;
- how breaches of security were achieved, what access detainees of the centre had to tools to assist with such breaches, and, if relevant, how such access occurred;
- the extent of any prior indicators or intelligence that would have assisted in the prevention and/or management of the incident;
- the adequacy of infrastructure, staffing and detainee management in maintain appropriate security at the centre;
- the adequacy of training and supervision of DIAC and Serco staff;
- the effectiveness of the communication and coordination between the relevant government agencies and contractors; and

697 Dr Allan Hawke AO and Ms Helen Williams AM, Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre, 31 August 2011, <http://www.immi.gov.au/media/publications/pdf/2011/independent-review-incident-christmas-island-villawood-full.pdf> (accessed 1 February 2012). Hereafter 'Hawke-Williams Review'.

- the appropriateness of the response measures taken to the incident.⁶⁹⁸

8.4 The review focused on the relationship between DIAC and Serco in responding to the incidents. The actions of the Australian Federal Police (AFP) were outside the scope of the inquiry. Dr Hawke and Ms Williams made 48 recommendations, all of which were accepted by DIAC. The recommendations are aimed at the improved management of good order in IDCs. While the review focused particularly on Christmas Island and Villawood IDCs, other recommendations can be applied to the detention network more generally, and to the management of the Detention Services Contract. The Minister has asked the Department to report on implementation of the recommendations in the middle of 2012.⁶⁹⁹

The nature of the riots and disturbances in detention facilities

8.5 The incident on Christmas Island commenced on 11 March 2011. Detainees gained unrestricted access to all parts of the IDC, breached the perimeter fence and were able to move freely around Christmas Island. In the following days:

Mass non-compliance and fires caused considerable damage to detention infrastructure over the following days; the safety of staff and some detainees was under threat and sections of the Christmas Island community also felt threatened. Order was restored only after control of the incident was handed over to the Australian Federal Police (AFP).⁷⁰⁰

8.6 The incident at Villawood IDC started on 20 April 2011 when two detainees gained access to the roof of an accommodation block in Fowler compound to protest. The protest escalated into a riot and authorities lost control of both the Fowler and Hughes compounds:

Fires were set, extensive damage was caused to infrastructure, and detainees and staff were at significant risk of harm. The last two detainees remaining on the roof agreed to come down on 30 April 2011.⁷⁰¹

The reasons for the disturbances in detention facilities

8.7 The reviewers concluded that the occurrence of these incidents should not have been surprising, but acknowledged that the severity and speed of escalation was less predictable.

8.8 DIAC commissioned Mr Keith Hamburger, from Knowledge Consulting, to assess the security arrangements at Villawood IDC and on Christmas Island in early

698 Hawke-Williams Review, pp 17–18.

699 *Minister's Response*, Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre, November 2011, <http://www.immi.gov.au/media/publications/pdf/2011/response-independent-review-incidents-christmas-island-and-villawood-full.pdf> (accessed 16 February 2012) (Hereafter 'Minister's Response').

700 Hawke-Williams Review, pp 4, 53–66.

701 Hawke-Williams Review, pp 4, 70–78.

2010.⁷⁰² Mr Hamburger reached 19 findings and made 5 recommendations in the final report that was provided to DIAC on 14 October 2010.⁷⁰³ Crucially, he concluded that the facilities on Christmas Island were overcrowded and understaffed, staff and detainee safety was compromised, detainee mental health was at risk due to a lack of meaningful activity and intelligence gathering was limited due to staff shortages.⁷⁰⁴

8.9 Unfortunately the final report was not provided to the DIAC Secretary or to the Minister until after the incidents at Christmas Island in March 2011. Dr Hawke and Ms Williams described the failure to provide the report to the Secretary and the Minister as 'highly regrettable'.⁷⁰⁵ Nonetheless, the Committee notes that Mr Hamburger's interim report was provided to DIAC in May 2010, and the Secretary and the former Minister were aware of its contents, and had initiated measures to respond to concerns raised.⁷⁰⁶

8.10 In relation to Christmas Island, the department had received other regular warnings about the effect of overcrowding:

Organisations and professional bodies had been warning of significant management issues associated with overcrowding, including processing delays and the impact on services and amenities on Christmas Island. There were indications that the risk of a major incident was increasingly more likely if these factors were not addressed.⁷⁰⁷

8.11 In relation to Villawood IDC, managers were aware of general threats of the likelihood of disturbances around the Easter period. However, protests often occurred at Easter, and no intelligence conveyed serious or specific details of the threat.⁷⁰⁸

8.12 The reviewers found that in the days leading up to the disturbances at both facilities Serco and DIAC had made efforts to mitigate the risks involved. However, the 'scale' and 'severity' of the incidents made it very difficult for Serco to effectively manage the incidents and maintain control over the centres. Ultimately, the reviewers concluded that the causes of the disturbances also challenged the ability of both Serco and DIAC to respond.⁷⁰⁹

8.13 The reviewers noted that the majority of detainees involved in the incidents were on negative pathways, and this was the predominant motivation for their actions:

702 Hawke-Williams Review, p. 43.

703 Mr Keith Hamburger AM, *Assessment of the Current Immigration Detention Arrangements at Christmas Island*, Knowledge Consulting, 14 October 2010; DIAC, answer to question on notice, Q306 (received 23 March 2012).

704 Mr Keith Hamburger AM, *Assessment of the Current Immigration Detention Arrangements at Christmas Island*, Knowledge Consulting, 14 October 2010, pp 4–9.

705 Hawke-Williams Review, p. 44.

706 Hawke-Williams Review, p. 44; Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 31.

707 Hawke-Williams Review, pp 4, 42–45.

708 Hawke-Williams Review, pp 4, 112–118.

709 Hawke-Williams Review, pp 5, 121.

Although the length of processing time is a contributing factor, a strong motivation from detainees who have received a negative decision flows from their reaction to having paid a significant sum of money to people smugglers to facilitate their travel to Australia with an accompanying "promise" of receiving a visa. Having received the wrong outcome in their eyes is manifesting itself in non-compliance, inappropriate behaviours, disturbances and resort to self harm by these detainees.⁷¹⁰

8.14 This view is consistent with the evidence provided to this Committee during the course of the inquiry.

The management of good order and public order

8.15 The reviewers examined the respective responsibility of DIAC, Serco and the AFP in maintaining and restoring good order (and public order) in the network. The Detention Services Contract was found to contain a clear description of Serco's role in the IDCs. However, as discussed in Chapter 3, the contract was negotiated and signed in a very different detention context to the present day. Dr Hawke and Ms Williams explained:

[T]he Detention Contract was designed in the context of a small and relatively compliant detention population where the emphasis was on establishing a physical and social environment that mitigated the risk of non-compliance. The contract is less helpful, therefore, in formulating management responses to critical incidents and in understanding roles and responsibilities in that context.⁷¹¹

8.16 The Detention Services Contract focuses on preventing disturbances. However, this focus was unhelpful when, for whatever reason, preventative strategies have not been successful and the situation has escalated.⁷¹²

8.17 Five key elements were identified to maintain good order in an IDC:

- physical security, including infrastructure that accommodates the placement of detainees with varying degrees of security risk and vulnerability risk profiles as well as appropriate guarding capacity (broadly infrastructure is provided by DIAC and is maintained and operated by Serco, and guarding capacity is provided by Serco);
- dynamic/operational security where Serco personnel are highly visible, engaging regularly with detainees so that they provide both a deterrence to security breaches and are alert to issues or concerns;
- ongoing intelligence and analysis concerning potential risks supported by Serco's dynamic security model; the onus is on Serco to gather,

710 Hawke-Williams Review, p. iii.

711 Hawke-Williams Review, pp 5, 82.

712 Hawke-Williams Review, p. 84.

analyse and report information that is relevant to managing risk within an IDC;

- management by Serco of the day-to-day needs of detainees and the provision of meaningful activities and programs; and
- detainee case management by DIAC, supported by providing a clearly articulated pathway for detainees balanced by their understanding that provision of correct background information and identity documentation will assist timely status resolution.⁷¹³

8.18 The contract provides that Serco bears responsibility for incident prevention and management. However, the reviewers concluded that responsibility for management of critical incidents and restoring public order when large numbers of detainees are non-compliant is unclear. Dr Hawke and Ms Williams concluded that:

The Contract does not give sufficient attention to behavioural management in the context of a detention population where a significant and increasing number of those in detention are on a negative pathway.

Prevention rather than cure is a sound strategic approach so long as the framework also caters for situations where prevention becomes increasingly difficult and critical incidents more likely.⁷¹⁴

8.19 Dr Hawke and Ms Williams observed that the management of public order in detention services will always be made more difficult by a larger detainee population.⁷¹⁵

Management of Capacity in IDCs

8.20 Dr Hawke and Ms Williams looked to the effect that increases in numbers of people in immigration detention have had in the past, concluding that the incidents at Christmas Island and Villawood were consistent with historical experience:

Previous waves of IMAs in the late 1990s and early 2000s were characterised by levels of mass non-compliance of similar scale and intensity to the present surge, with riots by detention populations at Baxter, Curtin, Port Hedland, Villawood and Woomera and frequent instances of self harm across all immigration detention facilities.⁷¹⁶

8.21 Following a number of external reviews in 2005 that identified ways that the detention network could be improved, the then government embarked on a series of reforms to the detention network:

At that time, asylum seekers arriving by boat and the numbers of people in immigration detention were negligible. In fact, immediately prior to arrival of the first boat of this current wave, there were only 247 people in the

713 Hawke-Williams Review, p. 5.

714 Hawke-Williams Review, pp 5, 85–88.

715 Hawke-Williams Review, p. 6.

716 Hawke-Williams Review, p. 6.

detention network, all on the mainland. DIAC's focus was on implementing the Government's New Directions policy, including resolving the status of low risk unlawful non-citizens in the community by placing them on Bridging Visas with strict reporting conditions and detaining those representing a higher risk in an immigration detention facility. The corollary of this strategy, given low numbers in the network, was to identify those facilities that could be closed or mothballed.⁷¹⁷

8.22 When the current surge began DIAC and Serco were faced with a number of logistical challenges. DIAC needed to source appropriate accommodation for the rising number of IMAs and qualified decision makers for their asylum claims. Serco needed to quickly increase the scale of the service it provided to DIAC. This included increasing the number of trained client service officers it had. Dr Hawke and Ms Williams found that these issues distracted DIAC and Serco from other matters:

Given that arrivals at Christmas Island for most of this period averaged over 600 people per month, 200 more than the purpose-built NWP design capacity and over double the average daily national detention population for 2008, Serco, and a large part of DIAC, were almost entirely preoccupied with the complex challenge of increasing their capacity to manage the immigration detention population.⁷¹⁸

8.23 Processing of applicant claims slowed down during this period. The reviewers noted that only 42 per cent of IMAs who arrived between January 2010 and May 2010 had their status resolved by May 2011.

Changes to accommodation arrangements on Christmas Island as a result of the surge

8.24 North West Point IDC on Christmas Island is the only purpose built medium risk IDC in the immigration detention network.⁷¹⁹ However, when it was first used by the government it was operated as a low risk facility. The high security Red Compound was not in use, and the electric fence was activated. Detainees were relatively free to move throughout the different compounds, and security roller doors that limited access between compounds were not maintained.

8.25 As the numbers of IMAs increased, beds were put in education rooms and further accommodation (Aqua and Lilac) compounds were built on the perimeter of the IDC. While these facilities were under construction, part of the NWP perimeter fencing was removed, allowing detainees in Aqua and Lilac to enter NWP and, as a consequence, the sterile zone between the inner and outer perimeter fences around NWP.⁷²⁰

717 Hawke-Williams Review, pp 6, 39–40.

718 Hawke-Williams Review, pp 6, 40–42.

719 Hawke-Williams Review, p.7.

720 Hawke-Williams Review, p. 7.

8.26 Dr Hawke and Ms Williams observed that the move to create more accommodation worked with a low risk detainee population, but did create some risks that had serious consequences during the incident, including that:

- it was no longer possible to place and segregate detainees according to their risk profiles;
- there was no way to compartmentalise the facility easily in the event of a critical incident, to contain threats on the one hand, and provide sanctuary for those not wishing to be involved on the other;
- fencing turned out to be wholly inadequate for the risk profile of the detainees, providing only minimal deterrence, an issue of considerable concern for an IDC close to local communities and not easily supported in the event of an emergency; and
- the temporary nature of Christmas Island accommodation, and use of demountables in both the CIIDC and VIDC, provided easy access to a range of items that could readily be fashioned into weapons.⁷²¹

Physical environment

8.27 During the incidents on Christmas Island a number of other aspects of the physical environment at NWP hampered the authority's response. Not all security features worked. For example, a lot of CCTV failed or did not provide necessary coverage and the roller doors at NWP could be forced open by detainees.⁷²²

Key recommendations

8.28 The review's recommendations were grouped under six headings.

Clarity of roles and responsibilities between Serco and DIAC in managing security and the incidents

8.29 Dr Hawke and Ms Williams found that there was a lack of clarity of roles and responsibilities between DIAC and Serco in relation to the management of security and response to incidents at IDCs. To begin with, the authors believed that the contract did not strike the right balance between fairness to people in detention and the purpose of immigration detention – which was described as a compliance tool to protect the integrity of the Australian immigration system and manage the risks to the Australian public.⁷²³ The authors also found that DIAC had not developed up-to-date incident and reporting policies.

8.30 Dr Hawke and Ms Williams recommend that:

721 Hawke-Williams Review, pp 7, 49–53.

722 Hawke-Williams Review, p. 8.

723 Hawke-Williams Review, p. 82.

- DIAC consider possible amendment to the Detention Services Contract, in consultation with Serco, to improve the enunciation in the purpose of detention in the Objectives Section of the Contract in line with the Immigration Detention Values (R1);
- DIAC finalise and publish the “incident management and reporting” section of its Detention Services Manual, ensuring clear delineation of Serco’s and DIAC’s roles (R2);
- the three core incident management documents for Christmas Island are revisited, finalised and promulgated among relevant parties (R3);
- an MOU concerning the operational roles and responsibilities of DIAC, the AFP and local Police Forces in relation to incident management be finalised in all jurisdictions, operationally tested and made known to all relevant staff (R4); and
- the issue of hand-over between DIAC and the AFP or the local Police Force be clarified, a protocol developed, tested and promulgated to support the hand-over, and consideration be given to whether the Contract should be amended to provide greater clarification in this area (R5).⁷²⁴

8.31 DIAC accepted each of these recommendations and work on incident management and reporting and the MOU is at an advanced stage.⁷²⁵

Breaches of security and detainee access tools to enable breaches

8.32 The reviewers found that security measures in place in Christmas Island IDC had not been activated. This was because the centre was first used for a compliant population, with low numbers of detainees. With the changing risk profile of the detainees the reviewers believed that risk mitigation measures should be implemented. The reviewers found that the infrastructure at VIDC was inappropriate for the detainee groups accommodated there, and that visitor screening processes were not sufficiently robust at both centres. Further, staff had not been trained to secure vehicles and objects that could be fashioned into weapons.⁷²⁶

8.33 Dr Hawke and Ms Williams recommended that:

- as was intended by the design of the Christmas Island IDC, the roller doors to the NWP Accommodation Compounds not be used as the primary means by which detainees enter or exit these compounds. It was also recommended that consideration be given to the value of reactivating the key-card system for use at times of increased tension (R6);

724 Hawke-Williams Review, p. 11.

725 Minister's Response, pp 3–4.

726 Hawke-Williams Review, pp 95–101.

- more substantial weld-mesh or solid materials be used rather than chain-link gates and fencing in medium or high security IDCs to provide additional protection against damage and breach (R7);
- staff induction training and procedures emphasise the need to secure vehicles and storage areas in the vicinity of immigration detention places (R8);
- use of aerosol cans be banned and prevented from entering medium and high security IDCs (R9);
- consideration be given to means of disconnecting electricity supply to detainee accessible areas during serious incidents without interfering with the operation of security infrastructure, such as lights and CCTV cameras (R10);
- thorough and consistent risk assessments be conducted for secure compounds within the Immigration Detention Network, particularly following significant alterations to the design of an IDC, and that control and restraint equipment not be located within them unless these risk assessments have been carried out (R11);
- given the impact of detainees on the roof of the Macquarie Residential Block on Serco's ability to maintain control during the April 2011 incident, DIAC and Serco consider further strategies to maintain effective dynamic security within Fowler in a range of possible scenarios, such as the provision of appropriate "anti-climb" infrastructure to prevent people from accessing roofs (R12);
- more stringent screening of visitors to IDCs be undertaken in line with controls at Australia's airports and that improved exclusion zones be put in place around IDC perimeters (R13);
- dangerous items usually located in kitchens or Medical Centres be appropriately secured within those locations, and that a protocol be developed that dangerous items be removed from such places at times of increased tension within an IDC (R14); and
- DIAC articulate more clearly the responsibility of public order management so that an agreed position is established with DIAC, Serco, the AFP and other police forces (R15).⁷²⁷

8.34 DIAC accepted all these recommendations, and a number of changes have already been implemented. For example, the roller doors to NWP are no longer used as a primary point of entry and DIAC is working with Serco to ensure existing visitor screening policies are followed. Scheduled capital works at Villawood will be developed in line with the recommendations.⁷²⁸

727 Hawke-Williams Review, pp 11–12.

728 Minister's Response, pp 5–7

Intelligence or indications that would have assisted management of prevention

8.35 The reviewers found that Serco was not fully meeting its obligations under the contract to conduct security and people risk assessments at each centre. The reviewers queried whether staff conducting risk assessment were fully qualified for this role, and were concerned that Serco and DIAC were not acting jointly from the very beginning of the incident on Christmas Island.⁷²⁹

8.36 Dr Hawke and Ms Williams recommended that:

- Serco's commitments under the Contract in relation to both Security Risk Assessments at each Centre, and People in Detention Risk Assessments for each detainee be met fully as a matter of priority (R16);
- consideration by DIAC and Serco be given to whether additional qualifications are required for Detention Service Provider Personnel undertaking the security intelligence function and that the Contract be amended to specify the level of qualification required (R17); and
- a protocol be developed between DIAC, Serco and the AFP on the formation and operation of a Joint Intelligence Group as part of incident response and management, with specific reference being given to the respective parties' roles and responsibilities (R18).⁷³⁰

8.37 DIAC accepted these recommendations in full. DIAC undertook to audit Serco's compliance with the contract in relation to risk assessments and support training for officers performing the security intelligence function. DIAC noted that the Joint Intelligence Group has been operating at Christmas Island since March 2011, and DIAC is looking formalise this arrangement in writing with Serco and the AFP.⁷³¹

Maintaining appropriate security at the IDCs: infrastructure and detainee management

8.38 Dr Hawke and Ms Williams identified a number of areas where the management of the infrastructure of the two IDCs could be improved and where DIAC and Serco could improve detainee management. Significantly, the reviewers identified a number of existing policies and programs that had not been fully implemented by DIAC and Serco. This assessment touches on some of the issues discussed in Chapter 5, regarding the impact of detention on detainees.

8.39 Dr Hawke and Ms Williams recommended:

- in order to ensure that the electric fence remains an effective means of monitoring the extensive NWP perimeter, it be regularly activated,

729 Hawke-Williams Review, pp 109–118.

730 Hawke-Williams Review, pp 109–118.

731 Minister's Response, p. 8.

maintained and tested by Serco, and that upgrading with appropriate materials be placed on DIAC's capital expenditure plan (R19);

- DIAC investigate use of more sturdy material in the construction of gates and roller doors and their locking and operation mechanisms in medium and high security compounds (R20);
- the panel of fencing removed to allow runway access to Lilac and Aqua Compounds be fully reinstated and maintained to re-establish NWP perimeter security (R21);
- future construction or upgrading of detention infrastructure be planned to allow for sufficient medium and high risk infrastructure within the Immigration Detention Network to match the risk profile (R22);
- DIAC prepare options to maintain contingent immigration detention infrastructure capacity for Government consideration (R23);
- given the limitations of the "open centre" compound formation, which is suitable only for low risk detainees, DIAC commission further design work to determine the compound formations most appropriate for the different types of detainee security risk (R24);
- particularly if medium or high risk detainees are to be accommodated in a Compound, fencing be supported by detection or deterrence infrastructure, including CCTV, and that Serco personnel be trained in its operation (R25);
- Red Compound be regularly tested and maintained and all staff familiarised with its operation and use (R26);
- an infrastructure solution be developed to address the ease with which detainees accessed the Macquarie Residential Block roof, having regard to any impact on the overall security of Fowler (R27);
- the Personal Officer Scheme be fully implemented at all IDCs in the network in line with the requirements of the Contract and that Serco ensure Individual Management Plans are completed for all detainees and regularly reviewed (R28);
- DIAC enhance further its Case Management capacity with a view to aligning IMA oversight more closely with the domestic Compliance caseload, and complete Comprehensive Case Management Assessments for all IMAs in accordance with its Detention Related Decision-Making Control Framework provisions (R29);
- DIAC provide Case Managers with accurate information on the options available to detainees and progress of their case (R30);
- DIAC give priority to finalising and implementing its Status Resolution Focussed Communication Framework and that this include the development of more specific engagement strategies for detainees on

arrival concerning the importance of providing full and complete identity information wherever possible (R31);

- Serco and DIAC develop and deploy a revamped programs and activities model, focussing specifically on:
 - enhancing self determination and decision making;
 - providing skills for life after detention, whether that be in Australia or elsewhere;
 - maintaining or promoting a work ethic; and
 - enhancing detainee well being, by providing each detainee with achievable goals (R32);
- Serco and DIAC finalise development and implementation of the Client Incentive and Earned Privilege Scheme (R33);
- consultative committees, a visits program and social education programs be features of the Security Services Plan of each IDC (R34);
- DIAC finalise their end-to-end business model for resolving IMA status (R35); and
- DIAC develop advice for the Government on options for managing detainees on a negative pathway, particularly those who have been found not to be refugees, but where removal is problematic (R36).⁷³²

8.40 DIAC accepted each of these recommendations in full and is working towards implementing them. A number of infrastructure recommendations have been added to the capital expenditure plans for the IDCs. DIAC advised that it is working with Serco to ensure that it is implementing the Personal Officer Scheme, Individual Management Plans, and providing activities across the detention network. A number of improvements to case management and status resolution have also been implemented.⁷³³

Adequacy of support for DIAC and Serco staff

8.41 The reviewers identified low Serco staff numbers at Christmas Island IDC and incomplete training records for Serco staff, and that this weakness had not been properly contract managed by DIAC. Serco and DIAC officers lacked the experience to effectively manage incidents at IDCs.

8.42 Dr Hawke and Ms Williams recommend that:

- DIAC agree on a system for collecting Serco staffing metrics and assessing staffing capability at each Centre and that this be distributed for use across its network (R37);

732 Hawke-Williams Review, pp 13–14, 123–143.

733 Minister's Response, pp 8–14.

-
- DIAC require Serco to maintain records on the certification and qualifications for personnel that are provided under the Contract, and Regional Management Teams audit these regularly (R38);
 - Serco run live exercises in incident management based on joint incident management protocols involving all relevant stakeholders at least annually and preferably more often where there is a risk of volatility in the detainee population (R39);
 - DIAC review its training requirement in contract management for senior level staff in IDCs to ensure both that they have skills in contract management more generally and that they understand the more specific requirements of the Detention Contract and its provisions (R40);
 - the DIAC training model continue to be sufficiently resourced to provide role specific training that incorporates face-to-face training, mentoring and site induction (R41);
 - DIAC improve training of DIAC Regional Managers and their staff following finalisation of joint incident management protocols, with particular reference to identifying:
 - roles and responsibilities in local and national command suites;
 - methods of communication and coordination within the command suites; and
 - protocols more generally, including in relation to contractual matters such as “hand-over/hand-back” and the roles and responsibilities of other stakeholders within the command suite (R42).⁷³⁴

8.43 DIAC accepted these recommendations in full, and has been working towards improving training for case managers and contract managers. It has also improved its auditing of Serco's compliance with the contract. The department has undertaken to develop joint incident management protocols.⁷³⁵

Effectiveness of relationship between the Government and Contractors

8.44 The reviewers found that DIAC and Serco had a strong working relationship with good day to day communication and coordination. However, communication and coordination during a major incident was not as strong. Further, management of information in relation to incidents could be improved.

8.45 Dr Hawke and Ms Williams recommended that DIAC:

734 Hawke-Williams Review, p. 158.

735 Minister's Response, pp 15–16.

- move to one mandated source of recording detainee location, utilising a single system or database, and that it ensure that data is entered in a timely manner by all relevant parties
- clarify the roles and responsibilities with regard to end-to-end management of IMA caseload needs;
- clarify rules for data entry of milestone events for detainees; and
- improve the quality and consistency of data entry practices in relation to decision hand downs (R43);
- conduct a systemic review of the quality, timeliness and accuracy of incident reporting and post-incident reviews to ensure that Serco is fulfilling its reporting obligations under the Contract (R44);
- review the SitRep system to consider whether it is the most efficient and effective means of alerting those who need to know about incidents occurring within the Detention Services Network. The review should include development of a priority order of significance or urgency in place of the current single distribution list so that the most important or urgent SitReps can be directed to key people (R45);
- decide whether it needs its own incident logs and adopt clearer protocols in line with Serco's Occurrence Log to ensure record keeping is as comprehensive and accurate as possible (R46);
- and Serco develop a Command Suite protocol which sets out the level of responsibility of the key players in incident management and defines the purpose, structure and personnel required (R48); and that Serco
- explore whether it would be useful to have video conferencing capacity between its existing Canberra Command Suite and local Command Suites during an incident, noting that there may not be standing Command Suites in all locations (R47).⁷³⁶

8.46 DIAC accepted these recommendations, and is close to fully implementing them.

Evidence received by the Committee

8.47 The Committee received evidence throughout the inquiry that is consistent with the findings reached by Dr Hawke and Ms Williams. DIAC recently advised that it has actioned all the recommendations, of which 23 are already fully implemented.⁷³⁷ The Committee is pleased that the Department has taken the recommendations seriously and is actively working on their implementation.

736 Hawke-Williams Review, pp. 161–165.

737 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 40.

8.48 Particular issues pursued by the Committee include DIAC's finalisation of MOUs with state and territory local police and the AFP, the AFP's decision to withdraw public order management officers from Christmas Island, and Serco's delivery of recreational and activity programs.

Removal of AFP officers from the Christmas Island

8.49 In November 2011 the AFP decided to remove the team of officers who were trained in public order management from Christmas Island. DIAC told the Committee that a senior Canberra-based DIAC officer was made aware of the AFP's decision to withdraw officers from Christmas Island. The DIAC officer expressed strong concern to the AFP, and raised this concern with the Secretary. However DIAC ultimately accepted that this was a decision for the AFP. Mr John Moorhouse, Deputy Secretary of DIAC, explained:

[It] is my understanding that there was a senior DIAC officer on the island at the time of the proposal to withdraw—that is, a first assistant secretary responsible for detention services—and that she and other DIAC staff did express our concern about the potential increased risks that would be presented by the withdrawal of the operational response group staff from AFP. But we understand that, at the same time, the AFP are required to balance a range of pressures across their area of responsibility. So, essentially, the decision to withdraw is a matter for the AFP...yes, we did express our concern about the potential impacts of that.⁷³⁸

8.50 DIAC acknowledged that the disturbances would likely have been contained if AFP had maintained a public order management presence on Christmas Island. However, DIAC advised the Committee that the AFP's view at the time was that 'they have a whole range of issues they need to manage at any one time and deploying a significant resource in a quite remote place like Christmas Island chews up a lot of those resources'.⁷³⁹ In its evidence to the Committee, the AFP explained its decision to remove public order management officers this way:

In November 2010 we took a decision to remove those resources from the island based on their utilisation and based on our need to reconstitute what is a finite resource so that were able to use it flexibly against a range of activities including our offshore requirements, possible calls on it from other detention centres and also our normal day-to-day high-risk activities in our normal policing activities which those particular assets are used to support. In doing that we set up arrangements whereby intelligence assessments were being provided to the AFP on a regular basis about issues at the centre. We would have used those in conjunction with the feedback from our people on island to determine if other resources were required. Our drawdown, however, was always predicated on the ability to be able to

738 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 36.

739 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 38.

surge back on the island. We surged onto the island on a number of occasions over that preceding 12 months.⁷⁴⁰

8.51 The Committee accepts that this decision is outside the control of DIAC, and the decision was made on an operational level by the Assistant Commissioner of the AFP.⁷⁴¹ The Committee notes that following the commencement of the incidents on Christmas Island in March 2011 the AFP quickly increased its numbers from 32 to 202 officers.⁷⁴²

Development of the MOU

8.52 Throughout this inquiry the Committee has asked DIAC for updates on the progress of MOUs with state and territory police forces. Repeatedly the Committee has been advised that finalisation of MOUs is imminent. At the final hearing in Canberra on 29 February 2012, the Committee was again told that finalisation was imminent. In response to questioning, the department advised that the core terms of the agreements had been met, the remaining delays related to 'issues of cost and compensation'. DIAC explained that it was seeking value for money:

When there has been criticism expressed, asking 'Why don't we have the MOUs in place?' the answer I would like to give to that is we have the core elements of the MOU, the agreement in relation to responsibilities and response already in place. What we are negotiating with other jurisdictions is primarily in relation to money—how much we will pay them for the services they are providing. It is not generally a dispute, but we are seeking to ensure value for money for the Commonwealth.⁷⁴³

8.53 The Committee accepts that DIAC has a duty to ensure that the Commonwealth obtains value for money, and is pleased that the core elements of all the MOUs have been finalised. The Committee hopes that, in line with the Hawke-William recommendations, all MOUs are shortly signed.

Other matters

8.54 A number of the recommendations made by Dr Hawke and Ms Williams have arisen in evidence provided to the Committee which is contained in other chapters of this report. Particular examples include weaknesses in Serco's compliance with the contract and DIAC's contract management, as well as processing challenges and the changing risk profile of detainees.

740 Assistant Commissioner Frank Prendergast, Australian Federal Police, *Proof Committee Hansard*, 6 September 2011, p. 56.

741 Assistant Commissioner Frank Prendergast, Australian Federal Police, *Proof Committee Hansard*, 6 September 2011, p. 60.

742 Assistant Commissioner Frank Prendergast, Australian Federal Police, *Proof Committee Hansard*, 6 September 2011, p. 55.

743 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 39.

Committee view

8.55 Dr Hawke and Ms Williams have detailed the widespread destruction that the disturbances and riots in the IDCs caused. The Committee saw the remnants of the destruction during site visits to Christmas Island in September 2011 and Villawood IDC in October 2011. The reviewers observed that the reasons for the riots were grounded in a number of factors. These factors included over-crowding, loss of amenity, a change in detainee demographic, delays in processing and frustration amongst some detainees that they did not get what they had paid people smugglers for: a visa.

8.56 The severity of the riots was exacerbated by policy and training deficiencies of both DIAC and Serco, and by the AFP's decision to withdraw specially trained public order management officers from Christmas Island in late 2010.

8.57 The Committee has carefully considered the 48 detailed recommendations made by Dr Hawke and Ms Williams, all of which were accepted by the Minister, who asked DIAC to report back to him by July 2012.

8.58 While the reviewers were focused on the riots and disturbances, the Committee believes that their findings can be usefully applied to other aspects of the detention network and its administration, because they go to the heart of providing an ordered and safe experience for detainees. The review's recommendations will improve issues identified throughout the Committee's entire report, recommendations relating to mental health, contract management, risk assessment, training, compliance, protocols and policies, inter agency cooperation and status resolution. For these reasons the Committee believes it is important that the Parliament and the Australian public are assured that all the recommendations have been implemented in a fulsome and timely manner.

Recommendation 31

8.59 The Committee recommends that the Department of Immigration and Citizenship continue to work towards implementing all of the recommendations made by the Hawke-Williams review, and that the Minister for Immigration and Citizenship report to the Parliament no later than 20 September 2012 on progress in implementing the review recommendations.

Mr Daryl Melham MP
Chair

Senator Sarah Hanson-Young
Deputy Chair

Mr Adam Bandt MP

Senator Trish Crossin

Mr Robert Oakeshott MP

Senator Glenn Sterle

Ms Maria Vamvakinou MP

COALITION MEMBERS AND SENATORS DISSENTING REPORT

1. Introduction

Coalition Members and Senators of the Committee are pleased to present their dissenting report on the Joint Select Committee's Inquiry into Australia's Immigration Detention Network.

On 11 March 2011 several hundred detainees breached the perimeter fence of the Christmas Island Immigration Detention Centre (CIIDC). Over the following days there were riots, fires, attacks and threats of attacks by detainees against other detainees and Commonwealth officers, and destruction of Commonwealth property.

Local residents were in fear as detainees roamed unrestrained around the Island, with as many as 200 detainees assembling at the Christmas Island airport and refusing to leave. Christmas Island Administrator Brian Lacy stated on March 18 "the people on this island have never had that experience before... so that is something very difficult for them to swallow, a difficult pill to swallow"¹.

Detention centre employees were trapped and forced to take cover as detainees rampaged. Threats were made to kill specific Serco staff members². Property was damaged; buildings and tents were set alight. Fires burned through the evening. Fences were torn down and used to fashion weapons³. During the evening of 16 March, detainees wearing masks, armed with poles, branches and sticks, threw Molotov cocktails at the Australian Federal Police. Order was restored by the AFP on 19 March 2011.

Up to 400 hundred detainees were involved in vandalism, destruction of Commonwealth property and threatened harm to either themselves or others. Only 100 were ever positively identified⁴ and none so far have been convicted of any offences.

On 20 April 2011 two detainees climbed onto the roof of Fowler Compound at the VIDC. Their protest escalated into a riot. Fires were lit, extensive damage was caused, roof tiles were thrown at rescue officers in the fray. All demountable

¹ ABC Online *Extra Police sent to quell Christmas Island riots*, ABC News 18 March 2011. www.abc.net.au/news/2011-03-18/extra-police-sent-to-quell-christmas-island-riots/2652240.

² Hawke & Williams, "Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre" 31 August 2011, released publicly 29 November 2011, page 59. Hereafter referred to as 'Hawke and Williams'.

³ DIAC, answers to questions on notice, q 129, received 29 February 2012.

⁴ Hawke & Williams, page iii.

buildings in Fowler were burned to the ground. Gas cylinders in the Kitchen and Dining complex exploded.

Three protesters remained on the roof for 11 days before finally consenting to come down after negotiations with the second most senior immigration official in the country, who was reduced to standing on a box to peer into a roof cavity to speak with detainees.

Some 60 IMA detainees were actively involved in the disturbance⁵.

In total, five riots at Sydney's Villawood, Christmas Island and Darwin detention centres during 2010 and 2011 had a combined estimated cost of \$17.6 million⁶.

These events appalled Australians right across the nation and demanded an explanation.

Following the riots, the Minister for Immigration and Citizenship referred these matters for an independent review by Dr Allan Hawke and Mrs Helen Williams on 18 March and 20 April respectively.

On 2 June 2011 the Coalition succeeded in establishing a Joint Select Committee Inquiry to investigate and report on how these events occurred and more broadly examine issues within Australia's immigration detention network.

On 31 August 2011 Dr Hawke and Mrs Williams presented their findings to the Minister with 48 recommendations "intended to facilitate the management of good order in the Immigration Detention Centre Network". This report was not released to the public until 29 November 2011; the day after Parliament had risen for that year.

This dissenting report by Coalition Members and Senators seeks primarily to address in more detail matters relating to the riots and the rolling crisis in our immigration detention network that is now costing Australian taxpayers, through the Department of Immigration and Citizenship, more than \$1.1 billion per year, compared to just \$85 million year in 2007/08.

⁵ Hawke & Williams, p. iii.

⁶ Supplementary Budget Estimates, 2011-12 Finance and Deregulation Portfolio, QoN F30.

2. Summary of key findings

Coalition Members and Senators believe that the rolling crisis that overwhelmed our immigration detention network was not the product of a policy of mandatory detention but the simple failure of a border protection policy that resulted in too many people turning up on too many boats. Prior to 2008, the number of incidents in the detention network was negligible and the system was stable and under control.

What these events demonstrated is that you can't run an effective immigration detention network under a mandatory detention policy if you are not going to support a strong border protection policy regime at the same time, as practised by the Howard Government. The combination of strong border protection policies and mandatory detention are critical to avoid the chaos that has occurred in our detention network under this Government's failed and non-existent border protection policies.

The Hawke/Williams review of the Christmas Island and Villawood riots found that these incidents were "not entirely unpredictable"⁷. There had been numerous reports and events that indicated that a major incident was brewing. Critical amongst these reports was a draft received from Knowledge Consulting in May 2010 by DIAC that was briefed to then Minister for Immigration and Citizenship, Senator Evans.

In addition, there was a stream of information and situation reports flowing to Ministers about escalating tensions within the network. This included the fact that by the time of the riots the number of critical incidents occurring in the immigration detention network, which includes serious harm, assaults and serious damage had risen from one per month at the end of 2009 to 1 every 5 ½ hours in the first quarter of 2011⁸.

⁷ Hawke & Williams, p. 4.

⁸ DIAC, answers to questions on notice, q 48, received 17 November 2011.

Hawke/Williams found that the riots were primarily the result of:

- significant overcrowding caused by a significant surge in irregular maritime arrivals (IMAs) to Australia
- an increase in the length of detention caused by extended processing times and the introduction of an asylum freeze for new arrivals in April 2010
- the increasing proportion of detainees on negative pathways and changes in the source of detainees entering the network of detention.

The Coalition Members and Senators of the Committee concur with this assessment. However, we do not consider that these forces occurred spontaneously. We do not consider they were a naturally occurring phenomenon for whom no-one was responsible.

The Hawke/Williams Review was never asked the question by the Government, ‘Who was responsible?’ However, when Dr Hawke was asked this question when he appeared before the Committee on February 29 in Canberra he responded as follows:

Dr Hawke: Under our Westminster system I think that is pretty clear—the government, the minister and the department.

Mr MORRISON: So the minister is responsible for ensuring the detention network is in place?

Dr Hawke: It is the job of the minister⁹.

The Coalition Members and Senators of the Committee consider that the forces that came together to cause the riots were the consequence of policy decisions and responses made by the Australian Government that brought these forces into being and disabled the Government from averting the chaos that overwhelmed our immigration detention network, as follows:

⁹

Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 12.

- 1) the Government's decision to abolish the proven border protection regime inherited from the Howard Government that preceded the unprecedented surge in IMAs to Australia and the rapid escalation of the detention population;
- 2) The refusal of Senator Evans as Minister for Immigration and Citizenship to take action prior to the 2010 Federal Election to implement any of the following measures in response to clear, documented and repeated warnings about rising tensions and stress in the detention network – in particular the draft Hamburger report received in May 2010 :
 - a) restore polices that would deter IMAs from coming to Australia;
 - b) abolish the discriminatory asylum freeze he had put in place just a few months earlier that was exacerbating the problem;
 - c) take steps to further expand the detention network to cope with further IMAs in the absence of deterrence measures.
- 3) The inability of Minister Bowen to adequately reduce the population at the Christmas Island IDC at North West Point because of the failure of his predecessor to provide adequate capacity elsewhere in the network prior to the 2010 election.
- 4) The failure of Minister Bowen, as Minister for immigration and Citizenship, to comprehensively respond to the clear warnings of escalating tensions and the likelihood of a serious incident by ensuring that the Government, through DIAC, was prepared to respond to such an incident, including
 - a) failure to rectify key security weaknesses identified in the physical infrastructure at these facilities,
 - b) failure to ensure clear joint operational procedures for key agencies working with DIAC were in place in each facility to guide the Government's response to a major incident,
 - c) failure to resolve the ambiguity of roles and responsibilities of key agencies, including state and federal police, Serco and DIAC to deal with a major public order incident.
- 5) The failure of Ministers Evans and Bowen to instruct DIAC to review contractual arrangements with Serco, given the dramatic change in conditions in the operating environment in which Serco were now seeking to provide their

services, that removed the opportunity to consider what additional requirements would be necessary to address the challenges of this new environment.

Of particular note, it was concerning that the NSW Assistant Police Commissioner Frank Mennilli gave evidence to the Inquiry stating that in August 2010, he had sought to conduct a desk-top scenario with DIAC and Serco to test their response to a major incident including a fire at Villawood. As an indicator of DIAC's lack of urgency and appreciation of the risks, Mr Mennilli reported that he was told the scenario was "unrealistic and that situation would not arise"¹⁰.

In addition, Coalition Members and Senators:

- 1) stress that while serious matters have been raised regarding the performance of Serco, this does not excuse the Government from their accountability for the services they have contracted Serco to provide – the Government may contract out the performance of these services but they can never contract out their accountability – any failing of Serco is a failing of the Government;
- 2) acknowledge the increased risks to safety and injury faced by staff working in our immigration detention network as a result of the rolling crisis in the detention network and
- 3) sound a warning about the impact on Australia's settlement services program from the increasing number of IMAs and the Government's decision of last November to implement mainstream community release through community detention and bridging visa policy.

A summary of Coalition Member and Senators' positions on the recommendations of the Majority report agreed by the Labor, Green and Independent Members and Senators are attached at Appendix A.

In addition the Coalition Members and Senators of the Committee make the following additional recommendations:

¹⁰ Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, pp. 28-29.

Recommendation 1:

Coalition Members and Senators recommend that the Government restore the proven measures of the Howard Government, abolished by the Rudd and Gillard Governments, to once again deter illegal boat arrivals to Australia, including, but not restricted to the following measures:

- Restoration of the Temporary Protection Visa policy for IMAs
- Re-establishment of offshore processing on Nauru for all new IMAs by reopening the taxpayer funded processing centre on Nauru; and
- Restoration of the policy to return boats seeking to illegally enter Australian waters, where it is safe to do so.

Recommendation 2:

Coalition Members and Senators recommend that the Australian Government finalise the memorandum of understanding between DIAC, the AFP and state/territory police forces and reach a binding agreement that clearly stipulates who is responsible for policing and responding to incidents at Australian Immigration Detention Centres.

Recommendation 3:

Coalition Members and Senators recommend that the AFP and State/Territory police are funded adequately in order to carry out their regular operational policing responsibilities along with policing the immigration detention centres and responding to incidents.

Recommendation 4:

Coalition Members and Senators recommend that the Australian Government ensure that security infrastructure, including CCTV cameras, security fences and

other essential security elements be operational, ready and be of a high standard of functionality and that DIAC, with assistance from Serco, is to undertake a review of infrastructure (including security infrastructure) across the broader immigration detention network.

Recommendation 5:

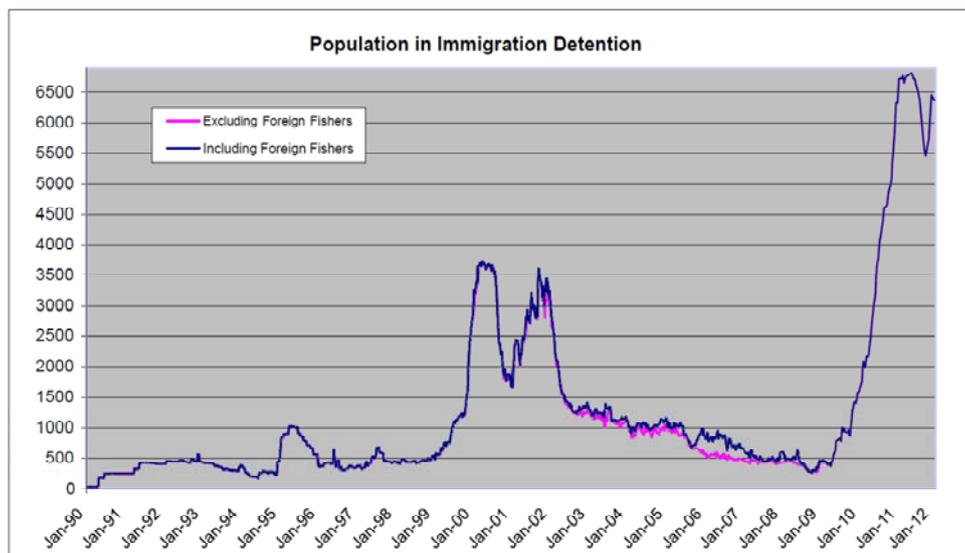
Coalition Members and Senators recommend that the Australian Government seek advice on amendments and addition to the regulations under the Migration Act to clarify the responsibilities and powers of persons who operate detention centres around the limits on their obligations and powers in relation to use of force, to ensure the good order and control of immigration detention facilities.

Recommendation 6:

Coalition Members and Senators recommend that a minimum quota of 11,000 places of the 13,750 permanent places for the Refugee and Humanitarian program be reserved for offshore applicants, in parallel with the introduction of Temporary Protection Visas for all IMAs.

3. Tearing Down John Howard's Wall

On 23 November 2007, there were only four people in Australia's detention network who had arrived by boat, known as irregular maritime arrivals (IMAs)¹¹, none of them were children. The total detention population at the time was 449, including 21 children and had been reduced from around 3,600 in January 2002¹².



Source: DIAC, Immigration Detention Statistics

The annual budget in 2007/08 for offshore asylum seeker management was \$85 million. That year, 5 boats had arrived carrying 148 people¹³. In the previous six years, following the introduction of Operation Relex to turn back boats where it was safe to do so, off shore processing at Nauru and Manus Island (known as the Pacific Solution) and temporary protection visas, 272 people had arrived as IMAs on just 16 boats. That is an average of less than 3 boats and 50 people per year.

¹¹ DIAC, *Immigration Detention Statistics Report 23-11-07*, answers to questions on notice, q 2, received 10 August 2011.

¹² DIAC, *Immigration Detention Statistics Summary 31-01-12*, p.5.

¹³ Phillips, J. & Spinks, H. 2011 *Boat arrivals in Australia since 1976*, Parliamentary Library Social Policy Section, updated 24 January 2012, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals

Just days before the 2007 election, the Leader of the Opposition, Kevin Rudd announced that it was Labor policy to turn the boats back¹⁴. There was no proviso given that this would only be done where it was safe to do so. This policy was abandoned upon Labor's election to Government.

On 8 February 2008, then Minister Evans issued a press release proclaiming the end of the Pacific Solution when he resettled the remaining 21 asylum seekers on Nauru in Australia¹⁵. On 13 May 2008 the Minister announced that the government was abolishing Temporary Protection Visas¹⁶. This came into effect from 9 August¹⁷.

There was no evidence provided to the Inquiry that DIAC warned against the abolition of these measures. Whether this occurred is not known. The only conclusions that can be drawn are that the Government either proceeded against the advice of the Department or, alternatively, the Department concurred with the policy change and got it horribly wrong.

Since that time the Rudd and Gillard Governments have removed every remaining brick in the wall of border protection that had been established by the Howard Government. The most recent being the abolition of parallel processing for IMAs and non-IMAs that now gives full access to the courts for boat arrivals and the effective abolition of mandatory detention through the mainstream community release and bridging visa program announced last November¹⁸.

¹⁴ Kelly, P. & Shanahan, D., "Rudd to turn back boatpeople", *The Australian* www.theaustralian.com.au/national-affairs/defence/rudd-to-turn-back-boatpeople/story-e6frg8yx-1111114943944, 23 November 2007.

¹⁵ Senator the Hon. Chris Evans, Minister for Immigration and Citizenship *Last Refugees Leave Nauru*, 8 February 2008. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2FYUNP6%22>

¹⁶ Minister for Immigration and Citizenship, "Budget 2008-09 – Rudd Government scraps Temporary Protection Visas", www.minister.immi.gov.au/media/media-releases/2008/ce05-buget-08.htm, 13 May 2008.

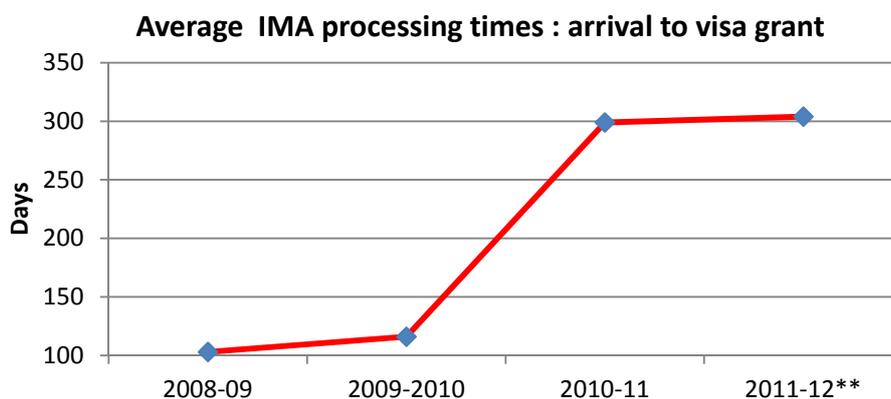
¹⁷ Department of Immigration and Citizenship Annual Report 2008-09 '1.2.2. Protection Visas (onshore)' www.immi.gov.au/about/reports/annual/2008-09/html/outcome1/output1-2-2.htm.

¹⁸ The Hon. Chris Bowen MP, Minister for Immigration and Citizenship, *Bridging visas to be issued for boat arrivals*, 25 November 2011, www.minister.immi.gov.au/media/cb/2011/cb180599.htm.

In the eighteen and half months following the abolition of TPVs until the riots breaking out on Christmas Island in March 2011, 10,525 people arrived as IMAs on 213 boats, including the tragic case of SIEV 221, where 50 lives were lost¹⁹. That is an average of almost 3 boats and over 130 people per week.

When the riots broke out on Christmas Island in March 2011, there were 6,507 people who were IMAs in the immigration detention network, out of a total detention population of 6,819, including 1,030 children, of which only 87 were in community detention²⁰. This was almost double the previous detention population peak in early 2000²¹.

At this time 57.2% of the detention population had been there for more than 6 months²². 11.4% had been there for more than 12 months. Average processing times tripled from 103 days in 2008-09²³ to 304 days in 2010-11²⁴.



** to 13 September 2011

¹⁹ Joint Select Committee on the Christmas Island Tragedy of 15 December 2010 Report, 29 June 2011, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=christmas_island_ctte/christmas_island/report/index.htm.

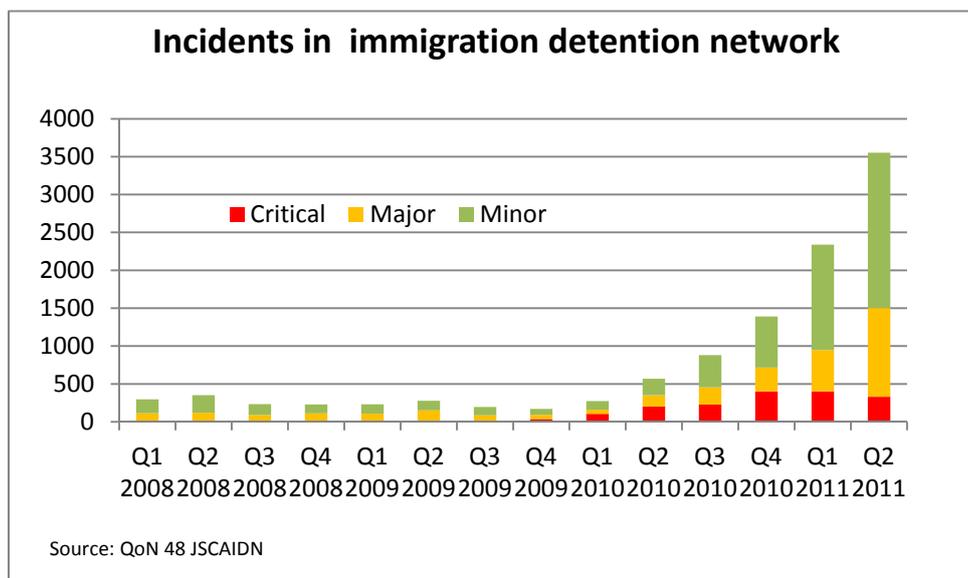
²⁰ DIAC, *Immigration Detention Statistics Report 11-03-11*, answers to questions on notice, q 2, received 10 August 2011.

²¹ DIAC, *Immigration Detention Statistics Report 11-03-11*, Figure 2, answers to questions on notice, q 2, received 10 August 2011.

²² DIAC, *Immigration Detention Statistics Report 11-03-11*, Figure 8, answers to questions on notice, q 2, received 10 August 2011.

²³ DIAC, answers to questions on notice, q 7, received 10 August 2011.

As the boats kept arriving and the detention population kept increasing, so did the number of incidents. At the beginning of 2008 there was just one critical incident per month²⁵. By the time of the riots there was an average of more than four critical incidents per day.

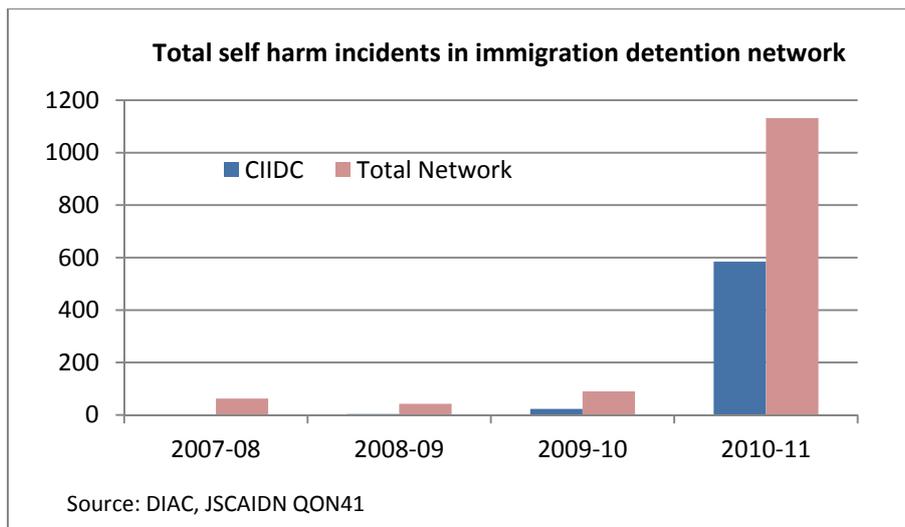


The total number of incidents up until the end of June 2011 increased more than ten fold.

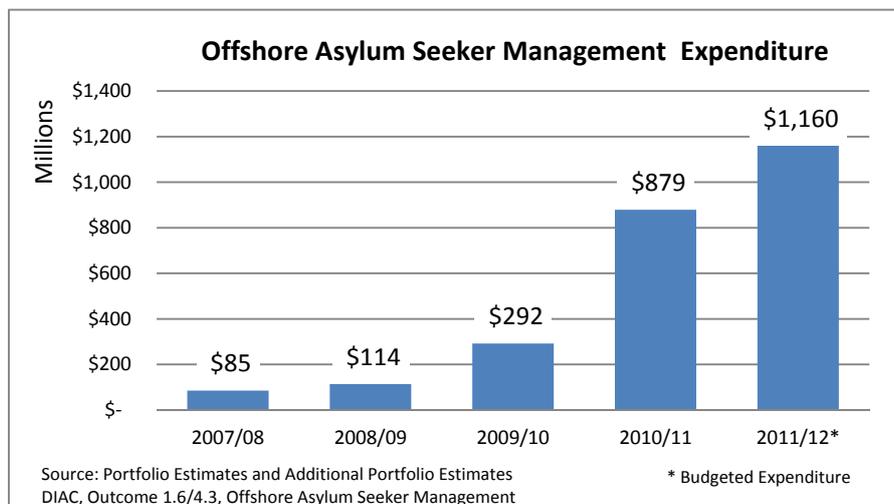
A significant proportion of these incidents involved self harm by detainees. More than 60% of the incidence of self harm was occurring on Christmas Island, when the incidence of these events rose sharply in 2010/11.

²⁴ DIAC, *Submission 32*, Figure 9: Averaging Processing times for irregular maritime arrivals from arrival to visa grant.

²⁵ DIAC, answers to questions on notice, q 48, received on 17th November 2011.



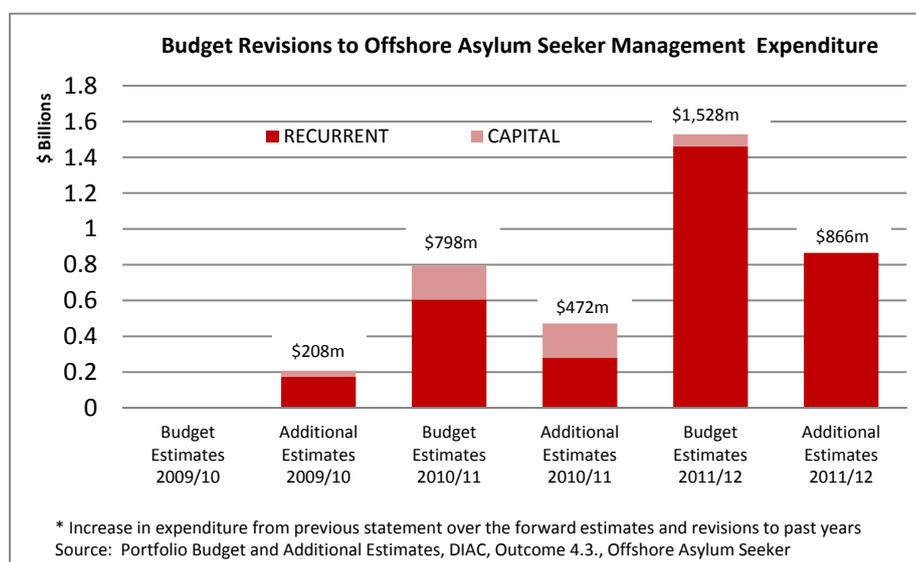
As the situation in the detention network continued to deteriorate, the budget for offshore asylum seeker management in that year (2010/11) by that time blew out to \$879 million.



This included an increase of \$295 million in recurrent expenditure over the budgeted figure in that year, for which an additional appropriation was sought in February 2010 in Appropriation Bill No. 3.

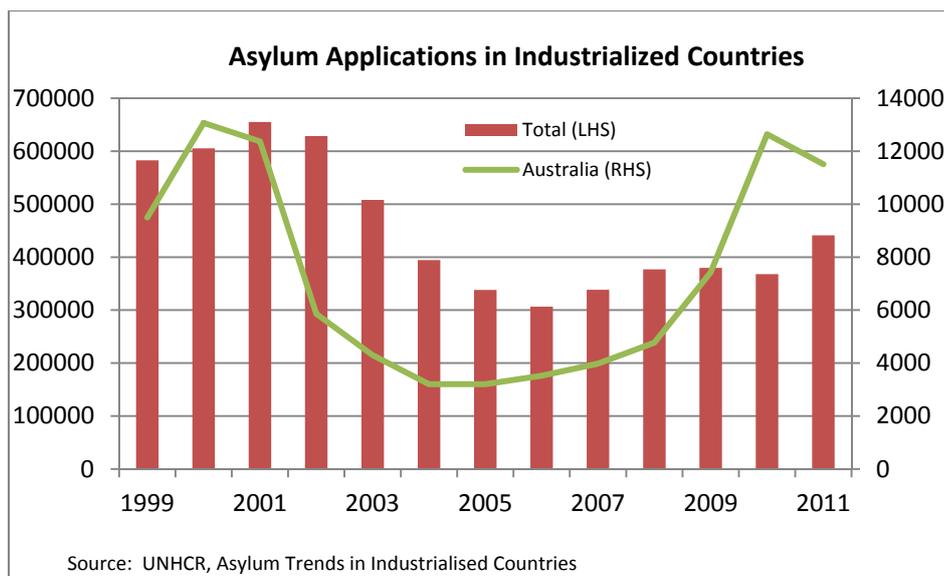
This additional appropriation in 2010/11 was more than the entire operational costs of running the Pacific Solution over almost six years, namely \$289 million according to the statement released by Senator Evans on 8 February 2008²⁶, in which he described the Coalition's policy that cost \$289 million as 'costly'. A few months later the Government announced a budget for 2011/12 in excess of \$1.1 billion.

In total, the cumulative variation in actual and budgeted expenditure for offshore asylum seeker management over the forward estimates since 2009/10 is now \$3.9 billion including capital and recurrent expenditure.



The last time Australia experienced a surge in IMAs was between 1999 and 2001. During that time 12,171 IMAs arrived on 181 boats. In 2001 there were 1.5 million more people classified around the world refugees as there are today. In addition, the number of asylum applications in industrialised countries, was 48% higher in 2001 than it is today.

²⁶ Senator the Hon. Chris Evans, Media Release, *Last Refugees Leave Nauru*, 8 February 2008. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2FYUNP6%22>



There are always circumstances that drive people to flee their country and seek a better life elsewhere. These are what we call push factors. Sadly, push factors have been a constant on the international scene for centuries, and certainly over recent decades. The fact that asylum applications and the number of people classed as refugees has declined since we experienced the last surge does not mean these factors are irrelevant in absolute terms. However, they do not explain Australia's experience in recent years.

The number of people seeking asylum around the world, while less than it was when we had our last surge, still represents an insatiable level of demand. Evidence provided by Richard Towle on behalf of the UNHCR confirmed this fact, when he said that of a total refugee population of 10.4 million there were current 750,000 people in need of urgent resettlement and only 80,000 resettlement places available²⁷.

Australia is the most significant provider of these places per capita of any nation. However, demand for resettlement will always outstrip supply. Less than 1% of the world's refugee population will be resettled²⁸. The most common outcome will be life in a camp or returning home.

²⁷ Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 12.

²⁸ Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 12.

In short the push factors, even at reduced levels, are constant. There are two issues that then work to create a surge in IMAs to Australia.

Firstly, a genuine regional refugee crisis where people seeking asylum are generated from within our region, such as occurred with the Indochinese Refugee Crisis we experienced in the 1980s through to early 1990s. It is interesting to note that during this regional crisis, very few Indochinese asylum seekers arrived in Australia by boat²⁹ compared to either the current surge or that which occurred from 1999 to 2001.

To the extent that there is a current regional refugee crisis, the single largest source of asylum seekers in our region is from Myanmar. Yet, the Burmese represent a negligible cohort of those arriving in Australia as IMAs³⁰. Almost exclusively, Burmese refugees are provided resettlement in Australia through our offshore refugee and humanitarian program.

We do not have a regional refugee crisis that is driving people to get on boats to Australia. Regional push factors are not at work in the current surge of arrivals. People coming to Australia as IMAs are what are known as secondary movers, i.e. they have moved beyond the country of first asylum. They have selected our region, and Australia, in particular, as the place they have chosen to seek asylum. This selection is a function of pull factors, which is the second reason why IMAs will seek to come to Australia.

In late 2001 the Howard Government recognised the impact of pull factors and acted to further strengthen the suite of measures already in place that included temporary protection visas (TPVs). TPVs denied permanent visas to IMAs found to be refugees, including denial of access to family reunion.

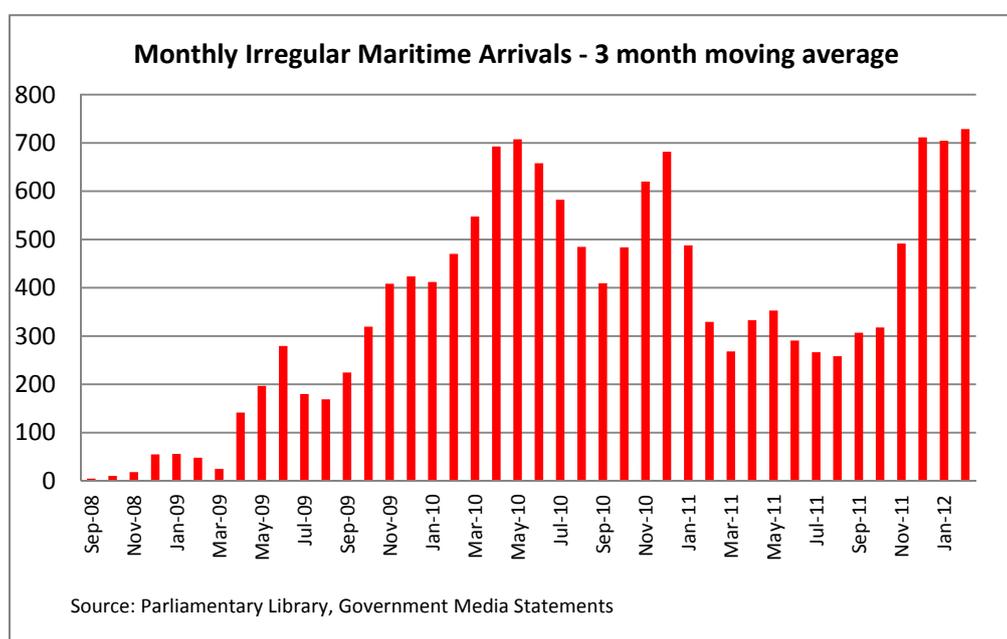
²⁹ Phillips, J. & Spinks, H., *Boat arrivals in Australia since 1976*, Parliamentary Library Social Policy Section, updated 24 January 2012
www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals

³⁰ DIAC, answers to questions on notice, q 6 and q 8, received 10 August 2011.

The Howard Government's new measures included the establishment of offshore processing at Nauru and later Manus Island and Operation Relex to turn boats back where it was safe to do so. At the same time the Howard Government excised certain territories from Australia's migration zone, including Christmas Island, and established a different processing regime for IMAs. This approach has also now been abolished by the Gillard Government.

In 2001, 5,516 people arrived on 43 boats. In response to the stronger measures introduced by the Howard Government, in 2002, not a single person arrived by boat as an IMA.

As it now stands, 15,964 people have arrived as IMAs in the four years since the abolition of the former Government's measures on 289 boats. This is more than arrived in total during almost 12 years under the Howard Government.



The reversal of the strong border protection measures inherited by the current Government has undeniably sent a message to would-be IMAs and people smugglers that Australia is once again open for business.

Evidence provided by the Department of Immigration and Citizenship, based on interviews with recently arrived IMAs, found that the median price paid for the journey to Australia was \$10,000³¹. On this basis, it would appear the people smugglers have grossed more than \$150 million since Australia's border protection polices were softened. Rather than smashing the people smugglers business model, it has thrived under the softer policies of both the Rudd and Gillard Governments.

Recommendation 1: Restore the Coalition's proven border protection regime

Coalition Members and Senators recommend that the Government restore the proven measures of the Howard Government, abolished by the Rudd and Gillard Governments, to once again deter illegal boat arrivals to Australia, including, but not restricted to the following measures:

- Restoration of the Temporary Protection Visa policy for IMAs
- Re-establishment of offshore processing on Nauru for all new IMAs by reopening the taxpayer funded processing centre on Nauru; and
- Restoration of the policy to return boats seeking to illegally enter Australian waters, where it is safe to do so.

³¹ DIAC, answers to questions on notice, Legal and Constitutional Affairs Committee, Additional Budget Estimates Hearing, 21 February 2011, Q 141; DIAC, answers to questions on notice, Legal and Constitutional Affairs Committee, Supplementary Budget Estimates Hearing, 19 October 2010, Q 61.

4. Paralysed by Denial

The Christmas Island and Villawood riots and the litany of problems that have occurred in the detention network, that have been detailed in the course of this Inquiry, can be traced back to one key cause - **too many people turned up on too many boats**.

In their report into the Christmas Island and Villawood Riots, Dr Hawke and Mrs Williams put it this way by concluding³²:

In less than 18 months, the detention population grew from a few hundred to over 6,000 people.

The management task inherent in dealing with the rapidity and size of this increase proved highly challenging.

The immigration detention infrastructure was not able to cope with either the number or the varying risk profiles of detainees. Providing sufficient accommodation for the increasing number of detainees, particularly on Christmas Island where IMAs are brought and assessed, became an ongoing preoccupation for DIAC, which had to compromise standards of accommodation and services.

The Christmas Island IDCs became chronically overcrowded and amenities were placed under severe stress. Significant capacity constraints on the Island, with a small population remote from mainland Australia, were also problematic, including in sourcing accommodation for additional staff, guards and interpreters.

The context in which the [Government Immigration Detention] Values were developed also led to decisions about operation of the centres, including not to use certain security features that formed part of the design of the medium security North West Point (NWP) facility on Christmas Island. While understandable in an environment of low numbers and a relatively compliant detainee population, these decisions hampered the response when stronger measures were required to restore and maintain public order.

³² Hawke & Williams, pp 3-4.

The rapid increase in arrivals also overwhelmed the refugee status and security assessment processing resources despite DIAC's action to train additional staff. This became a particular concern for IMAs whose driving motivation was to obtain a visa enabling them to stay in Australia.

In this environment, problems of health, including mental health, increased, and detainee anger and frustration rose, often producing violent reactions and self harm. The growing number in detention on negative pathways, that is, those found not to be a refugee at either the primary or the review stage, exacerbated the situation.

During the course of this Inquiry, serious issues have been identified concerning the Government's management of our detention network. These issues also go to the practice of immigration detention and how the Government responded, or failed to respond, to the built up pressure that led specifically to the riots. However beyond these issues it is impossible to avoid the big picture problem – the elephant in the room - namely, the impact of the Government's weaker border policies.

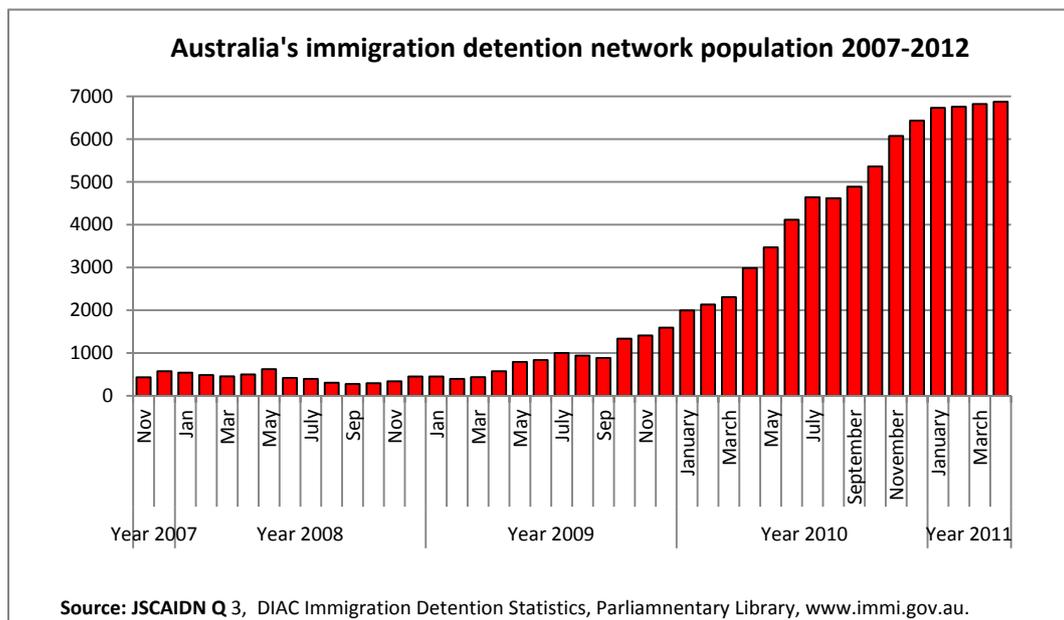
To inquire into the chaos that overwhelmed our immigration detention network, with significant human and financial costs, without making reference to the significant increase in arrivals, and the reasons for this increase, is like talking about a flood and refusing to acknowledge the rain.

The surge in boat arrivals that was the primary contributor to the collapse of the detention network flowed from the Government decision to weaken the measures they inherited from the Coalition in November 2007.

The constant denial by the Government of the impact of their own policy decisions on the surge in arrivals paralysed the Government from taking necessary decisions to avert losing control of the detention network for more than a year prior to the riots.

Most critical was the Government's failure, despite repeated warnings known to the Minister and Secretary of the Department, to either properly plan to accommodate more IMAs or take any action to deter such arrivals prior to the 2010 federal election. Worse still, their decision to introduce a new discriminatory asylum freeze, only served to exacerbate the situation.

The following chart shows the increase in the detention population in the lead up to the Christmas Island and Villawood riots.



A summary of key changes following the election of the Rudd Government to weaken the measures put in place by the Howard Government have been summarised in the previous section.

New Detention values

In addition to these changes, Minister Evans announced on 29 July 2008 seven new “detention values”³³ dictating that people would be detained as a ‘last resort’, rather than as standard practice. IMAs would be detained on arrival for identity, health and security checks, but once these have been completed the onus would be on the Department to justify why a person should continue to be detained. The Minister pledged to legislate these values; however this pledge was never honoured, with the government abandoning the proposed legislation.

Ongoing detention would be justified for people considered to pose a security risk or those who did not comply with their visa conditions. This would result in the majority of people being released into the community while their immigration status was resolved.

33

Senator the Hon. Chris Evans, *New Directions in Detention – Restoring Integrity to Australia’s Immigration System*, speech to the Australian National University, Canberra, 29 July 2008. www.minister.immi.gov.au/media/speeches/2008/ce080729.htm.

A new and expanded appeals process

At the same time, changes were also announced to the processing of IMAs at excised offshore places³⁴. IMAs arriving at an excised place would be processed on Christmas Island, where they would undergo a new non-statutory refugee status assessment process with new access to taxpayer funded advice and representation. Unlike the process on Nauru, IMAs would also be able to apply for a review of a negative decision through an independent panel. The role of the Ombudsman was expanded to provide external scrutiny.

In November 2010, this ‘non – statutory’ process was struck down by the High Court as it was deemed to have created a nexus between the Minister exercising what were supposed to be his discretionary powers to lift the statutory bar to allow off shore entry persons to make an application for a protection visa and the conduct of the non statutory process he had instigated³⁵. In other words, the Minister, through his own process, had removed his own discretion and opened up refugee status determination to judicial review.

Abolition of detention debt

The Government’s Bill³⁶ to abolish detention debt passed into law on 8 September 2009 and removed the statutory requirement that asylum seekers were liable for the cost of their detention³⁷. This policy was introduced by the Labor Government in 1992³⁸ and maintained by subsequent governments. The Act also had the effect of extinguishing all immigration detention debts outstanding at the time of commencement.

³⁴ Senator the Hon. Chris Evans, “Labor unveils new risk-based detention policy”, 29 July 2008, www.minister.immi.gov.au/media/media-releases/2008/ce08072.htm.

³⁵ PLAINTIFF M61/2010E v COMMONWEALTH OF AUSTRALIA & ORS; PLAINTIFF M69 of 2010 v COMMONWEALTH OF AUSTRALIA & ORS [2010] HCA 41, 11 November 2010, www.hcourt.gov.au/assets/publications/judgment-summaries/2010/hca41-2010-11-11.pdf

³⁶ *Migration Amendment (Abolishing Detention Debt) Act 2009* (Cth).

³⁷ DIAC, Submission 32, p. 19.

³⁸ Phillips, J. & Spinks, H., *Immigration detention in Australia*, Parliamentary Library Social Policy Section, 23 January 2012. www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/Detention#_ftn62

Oceanic Viking – “The Tampa in reverse”

On 30 September 2008, the first boat to arrive illegally in Australia since December 2007 turned up on our shores.

During the next 15 months, another 67 boats would arrive carrying 3021 people, including the vessel that triggered the Oceanic Viking debacle, where 78 asylum seekers had been transferred to the Oceanic Viking and taken to Indonesia for processing. They refused to disembark in Indonesia and engaged in a stand off with the Australian Government who conceded by offering a special deal of accelerated assessments and resettlement³⁹.

The Oceanic Viking incident received significant coverage in the region. The Coalition contends that the Government’s mishandling of this issues, from their mega phone diplomacy with Indonesia to the concessions granted to those on board the Oceanic Viking and then their attempts to deny such a special deal significantly eroded the Government’s credibility on this issue⁴⁰.

The Oceanic Viking incident had the effect of a “Tampa in reverse”. Prime Minister Howard’s action to turn the Tampa away and establish off shore processing in Nauru sent a very strong and clear signal about the resolve of the Australian Government. While considerable credit is due to the numerous measures put in place by the Coalition, the resolute action of a determined Prime Minister proved decisive.

By contrast the capitulation by the Rudd Government, the special deals offered and then sought to be denied, with the Prime Minister seeking to distance himself from the operation and the decisions taken, showed a Government that lacked resolve and decisiveness on this issue⁴¹.

³⁹ The Hon. Chris Bowen MP, “Government to seek resolution of outstanding Oceanic Viking cases”, 15 October 2010, www.minister.immi.gov.au/media/cb/2010/cb155479.htm

⁴⁰ “The Letter to the Oceanic Viking Passengers”, Sydney Morning Herald, 12 November 2009, www.smh.com.au/world/the-letter-to-the-oceanic-viking-passengers-20091111-ia3k.html

⁴¹ Wade, M., “Secret plan to boost migrants from Sri Lanka”, Sydney Morning Herald, 19 November 2009, www.smh.com.au/national/secret-plan-to-boost-migrants-from-sri-lanka-20091111-i9zs.html;

Allard, T., “Home by Christmas: Rudd lays out the welcome mat”, Sydney Morning Herald, 12 November 2009, www.smh.com.au/world/home-by-christmas-rudd-lays-out-the-welcome-mat-20091111-ia3j.html.

Following the Oceanic Viking incident, the rate of arrivals by IMAs increased even further.

Tents and a riot on Christmas Island

By November 2009, all IMAs were still being detained exclusively at Christmas Island and the population at the various centres on the Island increased to over 1500 people⁴². These facilities were built to accommodate just 1200 people at surge capacity⁴³. Later that month a riot broke out between Sri Lankan and Afghan detainees. 11 people were charged and three⁴⁴ were later convicted. The riot resulted in serious injuries to detainees, which in three cases required a medivac transfer to the mainland for treatment⁴⁵.

In December 2009, additional AFP officers with public order management training were deployed to Christmas Island. That same month, marquees, or tents, were erected adjacent to the red compound for detainee accommodation, due to the overcrowding of other facilities⁴⁶. The Minister maintained that this was a temporary requirement and that there was sufficient capacity to accommodate expected arrivals when questioned at a press conference in January 2010⁴⁷.

QUESTION: How full is Christmas Island?

CHRIS EVANS: There's sufficient capacity to deal with more arrivals. We put some extra capacity in already and we're increasing the capacity to around 2200. More accommodation's coming online currently, so we have capacity to deal with arrivals. We're doing our best to obviously limit the arrivals and prevent people taking these dangerous journeys, but we do have ongoing extra capacity at Christmas Island.

QUESTION: Do you think those cramped conditions could contribute to people's deteriorated mental state?

CHRIS EVANS: When I was on the island last Friday, they're not cramped conditions. We're managing well. We've had to put in some temporary

⁴² Hawke & Williams, p. 41.

⁴³ Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, "Christmas Island will cope with boat arrivals", 9 July 2009, www.minister.immi.gov.au/media/media-releases/2009/ce09060.htm.

⁴⁴ ABC News, "Asylum seekers guilty over detention riot", 4 November 2010, www.abc.net.au/news/2010-11-04/asylum-seekers-guilty-over-detention-riot/2324232.

⁴⁵ Hawke & Williams, p. 41.

⁴⁶ DIAC, *Supplementary Submission*, p. 202.

⁴⁷ Senator the Hon. Chris Evans, Doorstop, Canberra, January 26 2010 "Australia Day, immigration detention", www.minister.immi.gov.au/media/speeches/2010/ce100126.htm.

accommodation while the more permanent accommodation comes on stream. But some of it came on stream in the last week or so, more will come on in the next few weeks. People are being looked after appropriately. This was despite an AFP report into the November 2009 incident which found that overcrowding on Christmas Island was a danger, that internal tensions were increasing and that the location of the tents was ill advised:

“That report noted, inter alia, that NWP was overcrowded, the tent locations posed a major security risk as they could not be locked down, there were internal tensions based on ethnic lines and standover tactics related to access to reduced amenities were present within the detainee population.”⁴⁸

In March 2011, these same tents were still being used and were burnt to the ground during the riots⁴⁹.

After the November 2009 incident, the decision was taken to construct the low security Aqua and Lilac compounds adjacent to the North West Point IDC that would accommodate an additional 600 detainees. The final 400 beds in Aqua compound came on line in May 2010⁵⁰. The compounds would be the scene for the riots less than a year after they opened.

Off-shore goes on–shore

In evidence to the Inquiry, DIAC stated that they discussed capacity issues on Christmas Island with Minister Evans in January 2010 and the need to move clients (as DIAC refers to detainees) to other centres on the mainland⁵¹. At that time there were 1648 IMAs on Christmas Island, including 1362 at North West Point⁵².

Yet on January 14 Minister Evans was quoted in the Herald Sun saying “we’ve still got some spare capacity at Christmas Island and we’ve been expanding to meet that demand”⁵³. The Government sought to maintain the perception that Christmas Island was capable of handling additional arrivals, into February and beyond, with the Prime Minister stating on February 2, in response to the arrival of 181 IMAs on

⁴⁸ Hawke & Williams, p. 41.

⁴⁹ Hawke & Williams, p. 64.

⁵⁰ DIAC, Supplementary Submission, p. 202; Hawke & Williams, p. 41.

⁵¹ DIAC, answers to questions on notice, q 294, received 15 March 2012.

⁵² DIAC, *Immigration Detention Statistics Report 8-01-2010*, answers to questions on notice, q 2, received 10 August 2011.

⁵³ Packham, B. & Lewis, S., “Immigration Department warns Federal Government to start processing asylum-seekers on mainland”, Herald Sun, 14 January 2010, www.heraldsun.com.au/news/immigration-department-warns-federal-government-to-start-processing-asylum-seekers-on-mainland/story-e6frf7jo-1225818992473.

one boat, that Christmas Island “remains the best place to accommodate people” and that “my advice from officials is there is still capacity there”⁵⁴.

Yet in the demand predictors provided by Serco to DIAC, submitted to the Inquiry, from 4 November 2009 through to 5 February 2010⁵⁵, indicated that the Christmas Island IDC would be operating at above 100% of capacity for the next three months.

On 10 February the Minister announced that the Northern IDC at Darwin would be used for transfers for IMAs on positive pathways in the final stages of processing⁵⁶. It was not until mid March that the Government started transferring IMAs to Northern⁵⁷ (). By that time the IMA population on Christmas Island had risen to 1870 IMAs including 1546 at North West Point⁵⁸.

The Minister described the facilities at Northern IDC as ‘purpose built’⁵⁹. However, these facilities were designed to accommodate illegal foreign fishers, not IMAs, for short stays of up to a month⁶⁰. In the period ahead, Northern would play host to IMAs for periods of up to and even beyond 12 months and would also become the scene of riots, protests, breakouts and serious self harm.

⁵⁴ The Hon. Kevin Rudd MP, Interview with Lyndal Curtis, ABC AM, 2 February 2010, www.abc.net.au/am/content/2010/s2807350.htm.

⁵⁵ Serco Demand Predictors, provided to Inquiry on 18 November 2011, q 309 – 314.

⁵⁶ DIAC, answers to questions on notice, q 294, received 15 March 2012.

⁵⁷ McPhedran, I., “22 moved to NT as Christmas Island simmers”, Northern Territory News, 19 March 2010, www.ntnews.com.au/article/2010/03/19/132951_ntnews.html.

⁵⁸ DIAC, *Immigration Detention Statistics Report 12-03-2010*, answers to questions on notice, q 2, received 10 August 2011.

⁵⁹ Senator the Hon. Chris Evans, “Suspension on processing all new applications from asylum seekers from Sri Lanka and Afghanistan”, 9 April 2010, www.minister.immi.gov.au/media/speeches/2010/ce100409.htm

⁶⁰ DIAC, answers to questions on notice, q 171, received 21 November 2011.

The asylum freeze and re-opening of Curtin

On April 9, 2010 Minister Evans held a joint Press Conference with the Minister for Foreign Affairs and the Minister for Home Affairs⁶¹ to announce that the Rudd Government would be suspending the processing of new asylum claims from Sri Lankan nationals for three months and Afghan nationals for a period of six months.

Those affected by the suspension remained indefinitely in immigration detention until the suspensions were lifted (in July 2010⁶² for Sri Lankans and September 2010 for Afghans⁶³). At the beginning of the freeze there were 1290 Afghans, including 163 children in the detention network⁶⁴. Six months later there were over 2230 Afghans in detention, including almost 336 children in the network⁶⁵.

The Hawke Williams Review concluded that the decision “impacted adversely on the future management of detainees”⁶⁶ and that it was a factor that contributed to the overcrowding, the lack of capacity and the extended length of time people were in detention.

A further study commissioned by DIAC in March, by Knowledge Consulting, noted in their draft report in May 2010 that “*the policy decision...concerning the pause in processing of IMA’s intercepted post this announcement will create two classes of*

⁶¹ Senator the Hon Chris Evans, Joint Press Conference with Ministers Smith and O’Connor, “Suspension on processing of all new applications from asylum seekers from Sri Lanka and Afghanistan”, 9 April 2010, www.minister.immi.gov.au/media/speeches/2010/ce100409.htm; Senator the Hon. Chris Evans, Joint Press Release with Ministers Smith and O’Connor, “Changes to Australia’s Immigration Processing System”, 9 April 2010. www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm.

⁶² The Hon. Julia Gillard MP, “Speech to the Lowy Institute” 6 July 2010, www.pm.gov.au/press-office/moving-australia-forward.

⁶³ The Hon. Chris Bowen MP, Doorstop, Canberra, “Government’s decision to lift suspension of processing of Afghan asylum seeker claims, Opposition comments”, 30 September 2010, www.minister.immi.gov.au/media/cb/2010/cb155266.htm

⁶⁴ DIAC, *Immigration Detention Statistics Report 16-04-2010*, answers to questions on notice, q 2, received 10 August 2011.

⁶⁵ DIAC, *Immigration Detention Statistics Report 8-10-2010*, answers to questions on notice, q 2, received 10 August 2011.

⁶⁶ Hawke & Williams, p. 30.

IMA's within the NWP IDC. This will increase pressure on placement and segregation which has already reached a dysfunctional and unsafe situation"⁶⁷.

The Minister himself admitted the impact the Afghan asylum freeze had in placing significant pressure on the detention network in a press conference on 30 September 2010:

*BOWEN: I've been very clear and upfront about the fact that the suspension in the processing of asylum claims for people from Afghanistan has been one of the causes, one of the factors in relation to an expansion in the number of people in detention in Australia. That is self evident; I don't think it's a revelation*⁶⁸.

At the same time as the discriminatory asylum freeze was announced, the Government announced it would also reopen and redevelop the Curtin IDC⁶⁹ that was closed by the Howard Government, providing an additional capacity for 600 persons, despite plans prepared for DIAC to develop the site for up to 1800 detainees. This was the only expansion to the network for single male accommodation that would be later available to reduce pressure on the population at the North West Point facility on Christmas Island.

The network was also slightly expanded for families through the conversion of a mining camp in Leonora for a 238 bed alternative place of detention for families⁷⁰, and the leasing of the Darwin Airport lodge, with 400 beds for the same purpose⁷¹. There were no further decisions taken by the Government until after the 2010 election.

⁶⁷ Hamburger, K., 'Draft Report – Assessment of the Current Immigration Arrangements at Christmas Island', 13 May 2010, page 4, provided by DIAC answers to questions on notice, q 306, received 23 March 2012. Hereafter referred to as 'Hamburger Draft Report'.

⁶⁸ The Hon Chris Bowen MP, Doorstop, Canberra, September 30 2010, www.chrisbowen.net/media-centre/transcripts.do?newsId=3753.

⁶⁹ Senator the Hon. Chris Evans, "Curtin to hold suspended asylum seekers", 18 April 2010, www.minister.immi.gov.au/media/media-releases/2010/ce10030.htm.

⁷⁰ Senator the Hon. Chris Evans, "Leonora site prepares for irregular maritime arrival transfer", 1 June 2010 <http://www.minister.immi.gov.au/media/media-releases/2010/ce10044.htm>.

⁷¹ The Hon. Chris Bowen MP, "Government to move children and vulnerable families into community-based accommodation", 18 October 2010, www.minister.immi.gov.au/media/cb/2010/cb155484.htm.

During this period the number of people in the detention network increased by approximately 2,000 IMAs. The population on Christmas Island was almost 2500 by this point, including 1893 at North West Point⁷².

The Hamburger Report – The ‘canary in the mine’

On May 13, 2010, DIAC was provided with draft interim report by Keith Hamburger AM from Knowledge Consulting⁷³. Knowledge Consulting had been requested by DIAC to conduct an assessment of the current arrangements at the Christmas Island detention centre⁷⁴.

On Page 28 the report sounded the following warning:

*“DIAC advise that there is no evidence of fall off at this stage in the numbers of IMA’s arriving... the author argues that it is reasonable to assert that if the severe overcrowding at NWP remains then **it is likely that a serious incident will occur in the next six months and highly likely during the next twelve months**, particularly if the pause in processing results in significant numbers of clients spending much longer in detention in a state of uncertainty in severely overcrowded conditions.*

The report’s many other findings included the following:

- *“**North West Point Immigration Detention Centre is overcrowded and understaffed; much of the temporary sleeping accommodation is not fit for purpose; staff and client safety is compromised; processes for client case management are conceptually sound but implemented is degraded through lack of client placement options and staff shortages: intelligence gathering is compromised due to staff shortages; centre maintenance and services are under stress; and client mental well being is at risk due to lack of meaningful activity; the foregoing raise significant Duty of Care Issues for DIAC and Serco**” Finding 2, page 4/22*
- *“Concerning early warning signs of deterioration in client morale are evident at NWP which if not addressed have the **potential to escalate into a serious incident or incidents;**” Finding 5, page 5/23:*

⁷² DIAC, *Immigration Detention Statistics Report 23-11-07*, answers to questions on notice, q 2, received 10 August 2011.

⁷³ Hamburger Draft Report, May 2010.

⁷⁴ Hawke & Williams, page 43.

- *“The fundamental underlying challenge is that there are **far too many clients accommodated in NWP for the current capacity of the infrastructure**, far too many of them are not engaged in meaningful or purposeful activities or programs, client frustration is starting to increase and the potential has now emerged for clients to spend longer periods in an overcrowded, unproductive and frustrating environment” Finding 12, page 7/33*
- *“Lilac Compound’s physical infrastructure is not of a standard for a client category of Single Adult Male Medium Risk... this factor coupled with crowded accommodation (200 clients), lack of meaningful activity for clients and challenges in delivering intensive case management by DIAC and SERCO will potentially result in clients not being compliant with their circumstances. **This places Lilac Compound in a High Risk category for serious incidents in the months ahead**” Finding 13, page 7/36*
- *“the security within Lilac, Aqua and Phosphate Hill Compounds is not at the level required for the category of client accommodated or proposed to be accommodated there, that is Single Adult Males – Medium Risk” Finding 19, page 9*
- *“DIAC and the private contractor are relying to a significant extent upon the assumption that IMA’s will remain compliant for good order to be maintained at the Christmas Island Detention facilities” page 17*
- *“If as in circa 2000 many clients lose confidence in the official processes and if this is compounded by boredom and inactivity, client’s mental well being will be adversely affected and the assumption of “compliant clients” will quickly unravel. The likely consequence is that clients as in 2000 and post will begin to rebel against authority. This potentially could follow the same path of **hunger strikes and self harming, riots, burning and trashing of infrastructure, mass escapes, serious injuries to IMA’s and staff** including post traumatic stress, loss of reputation for the Department and the private contractor and loss of political capital by the government of the day” page 18*
- *“If a potential worst case scenario as described above was to occur, then the **best efforts of staff and or emergency services to contain unruly and or unlawful behaviour would be severely compromised** by the current overcrowding and the inadequate temporary accommodation facilities. There is also the added challenge of the delay factor in getting support personnel to the Island should a serious incident occur unexpectedly” page 18*

The first recommendation of this report was to “take immediate action to commence reducing the number of clients accommodated within NWP IDC” (page 9).

However the report then noted that:

*“DIAC officers have advised that Recommendation 1 is not a practical recommendation while the off shore processing and mandatory detention policy is in place as **there is insufficient immigration detention accommodation elsewhere to allow the overcrowded situation at Christmas Island to be relieved to the extent envisaged by the Recommendation.***

*Therefore as previously stated in this Report it is reasonable to assert that **DIAC does not currently have the capacity to implement a policy of off shore processing and mandatory detention of IMA’s without resorting to overcrowding and temporary facilities which brings into play Duty of Care issues affecting clients and staff**⁷⁵.”*

The report then argued:

“This leads the author to the conclusion that Recommendation 1 requires consideration at policy level concerning:

- *alternative arrangements for processing and detaining IMA’s within the framework of current policy; or*
- *making adjustments to current policy until such time as DIAC can achieve an appropriate level of detention infrastructure; or*
- *continue with the current overcrowded arrangements with additional resources and initiatives to improve circumstances for clients while working to achieve appropriate detention infrastructure provision⁷⁶;*

The author then made a specific note in relation to this third option noted above that “for a range of practical operational reasons as covered in this Report this (third option) is considered to be High Risk Option that will be unlikely to mitigate the risks to a reasonable level”. This was the option adopted by default by the Government.

⁷⁵ Hamburger Draft Report, May 2010, p. 10.

⁷⁶ Hamburger Draft Report, May 2010, p. 11.

This report was the ‘canary in the mine’. Following this report there was no major decision to expand the immigration detention network until after the next federal election.

When the Government received this report there were 3,471 people in the detention network, including 2,292 on Christmas Island⁷⁷. By the time a decision was made to expand the detention network after the election in September, an additional 1,990 people turned up on 39 boats and the detention population increased to almost 5,000 people⁷⁸.

The Government’s failure to act at this critical moment pushed the detention network to a point of no return and set the stage for the problems and crises that would present themselves in 2011.

The Government failed at this critical juncture to either:

- a) adopt the Coalition’s proven policies to deter illegal boat arrivals to Australia, as recommended by the Coalition,
- b) abolish the discriminatory asylum freeze they had put in place just a few months earlier that was exacerbating the problem as highlighted in the Hamburger report and recommended by the Coalition, or
- c) take steps to expand the detention network to cope with further IMAs in the absence of deterrence measures as recommended in the Hamburger report.

Coalition Members and Senators do not support the abolition of mandatory detention or the Government’s recently introduced policy for mainstream community release and bridging visas for IMAs. However, we note that prior to the election, Minister Evans was not even prepared, at this time, to take even these actions that now constitute Government policy to address rising tensions in the network. In short, Minister Evans decided to do nothing.

⁷⁷ DIAC, *Immigration Detention Statistics Summary 14-05-2010*, answers to questions on notice, q 2, received 10 August 2011.

⁷⁸ DIAC, *Immigration Detention Statistics Summaries 10-09-2010 and 30-09-2010*, answers to questions on notice, q 2, received 10 August 2011.

Through this period the Government remained in denial about the impact of their policy decisions on the arrival of illegal boats and the thousands of IMAs who were turning up and putting extreme pressure on the immigration detention network.

Instead of taking any action to avert the numerous problems now clearly identified, the Government and Minister Evans appeared to be locked in denial. It would appear the Government was politically paralysed and simply unable to make any decision before the 2010 federal election because of the political implications of those decisions.

A decision to further expand the immigration detention network and reverse the asylum freeze would be an admission of their failures, that their border protection polices were non existent and they knew that things were only going to continue to get worse.

Alternatively, the Government was also not prepared, at that time, to adopt the position advocated by the Greens for mainstream community detention and bridging visas. This policy was embraced by the government a year after the election and is substantively reflected in the majority report that has been agreed by the Government, Greens and Independent members of the Committee.

As a result, the system was left to fester until after the election, by which time the die had largely already been cast.

Dr Hawke and Mrs Williams highlighted the critical impact of the lack of capacity when they gave their evidence to the Inquiry on 29 February 2012:

Mr MORRISON: The environment that was created through the significant increase in the number of arrivals, the increased length of time that people were in detention for a variety of reasons—but I have no doubt that one was the stressing of the resources available for assessment as well as what was becoming a much longer appeal process; the government had announced a new appeal process, so there was an independent merit appeals panel that was put in place—and, as you say, a change in the case-mix over that period of time were a fairly volatile cocktail.

Dr Hawke: We pointed that out, I think, in our report.

Mr MORRISON: Would you add to that the lack of capacity within the detention network at the time? Was that a critical factor, do you think?

Dr Hawke: Yes, that was a critical factor, and you can see the subsequent actions that have been taken to address that issue. The other issue was, I think, not really widely understood: a lot of those people on negative pathways were not able to be returned to their home or to third countries, and that is a particularly difficult issue, I think, for us in Australia⁷⁹.

The Government knew of the warnings

The Government have sought to deflect responsibility for not acting on the Hamburger report on the basis that the Hawke/Williams Review noted that the final report provided in October was not the subject of “specific” brief to either the Department Secretary or the Minister⁸⁰. However, evidence provided to the Inquiry demonstrates that the final report was little more than an administrative formality, that the findings of the final report mirrored those provided in the draft in May and that these findings were well known to the Government, the Minister and the Department Secretary.

In evidence before the Inquiry on 29 February, the Secretary of the Department Andrew Metcalfe confirmed that ***“I was aware of the draft report's existence, I was aware of its major recommendations and the then Minister and his office were also aware of it”⁸¹***.

The Secretary also confirmed in evidence on 29 February 2012 and 9 December 2011, that the recommendations of the draft report were substantially the same as that provided in the final report, provided to the Department in October⁸².

⁷⁹ Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 4.

⁸⁰ Hawke & Williams, page 44.

⁸¹ Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 29 February 2012, p. 31.

⁸² Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 29 February 2012, p. 31.

Mr MORRISON: If I go back to your evidence when we last spoke, you said that the draft report's recommendations and findings, the major thrust of the report, was no different in May from what it was in October. Are you happy for us to take that?

Mr Metcalfe : I stand by that.

Mr MORRISON: In the Hawke-Williams review there is a summary of the key findings which dealt with overcrowding, pressures on the system and what those meant more broadly for the network. Can we take that all as read?

Mr Metcalfe : Yes.

The Secretary also confirmed that the then Minister, Senator Evans, was also aware of the contents of this draft report. On December 9, Mr Metcalfe gave the following evidence⁸³:

Mr MORRISON: .. You had this report in May. Was Minister Evans aware of the report?

Mr Metcalfe : My understanding is that the minister or his office was briefed, but I would have to check as to the precise way that was done.

Mr MORRISON: He was aware of the general conclusions, then, of the report that you received in May?

Mr Metcalfe : That is my understanding.

This was then confirmed in response to a question on notice (268) as follows⁸⁴:

Question: Was Minister Evans aware of the report?

Answer: The office of the then Minister was aware of the May 2010 draft report titled 'Assessment of the Current Immigration Detention Arrangements at Christmas Island'.

⁸³ Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 9 December 2011, p. 20.

⁸⁴ DIAC, answers to questions on notice, q 268, received 29 February 2012.

While the Hawke Williams Review found that the final report, provided in October, had not been briefed to the new Minister or the Secretary⁸⁵, by his own testimony Mr Metcalfe had been aware of the findings of the report for months and the Minister had been briefed. In fact, Mr Metcalfe was adamant in his testimony that DIAC had not been idle with this information.⁸⁶

Mr MORRISON: But, on the issues that were highlighted in the final report, I am sure that Mr Hamburger at that point would have had a pretty clear idea about what was happening in the centres. You may have wished to finetune some of the elements of his report, but what I am asking is: in terms of some of the key weaknesses that were identified, had they been identified in May?

*Mr Metcalfe: My understanding is that they were and that **we were certainly conscious of the issues that he was raising** in May but we continued to work with him, and it was some time before we received the final report. But **we did not sit on our hands** in May—*

Also on this day, Mr Metcalfe was asked about what the incoming Minister, Mr Bowen, had been advised with respect to these reports⁸⁷.

Mr MORRISON: Did the incoming brief make general reference to the fact that a series of reports had identified overcrowding and security risks within the detention network?

Mr Metcalfe: Yes.

Mr MORRISON: It referred to actual reports? I am not talking about specific reports, but it generally referred to reports?

Mr Metcalfe: There was a reference to the fact that we had had a number of reports. I think that is referred to in the Hawke-Williams report.

Mr MORRISON: Did the minister ask to see any of those reports?

⁸⁵ Hawke & Williams, p. 44.

⁸⁶ Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 9 December 2011, p. 20.

⁸⁷ Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 9 December 2011, p. 47.

Mr Metcalfe : I would have to check on that. Certainly the minister, by his actions, clearly understood the urgency of the matter and moved with alacrity in relation to the issue.

On notice, DIAC responded to the last question as follows: “*Since becoming Minister in September 2010, the Minister has received regular and frequent briefing on the substantive issues around detention accommodation and management of the immigration detention network, including briefing on a range of reports prepared about immigration detention matters*”⁸⁸.

It is inconceivable that Mr Metcalfe, an experienced and senior public official, who was conscious of the findings of the draft Hamburger Report had not relayed the import of the findings in these ‘frequent briefings’ to the new Minister. If he failed to do so, he would have been negligent in his duties.

Whether they were referred to as findings of the report is irrelevant to the question of whether the Minister knew of the situation on Christmas Island, in terms consistent with what had been described in the report.

The fact the Minister may not have seen the actual report is a semantic technicality. Of course DIAC should have provided the Minister with a specific formal brief on the matter on both the draft report in the incoming brief and the final report when it became available. DIAC have acknowledged this oversight. However this failure should not be overstated.

This does not mean that the Minister was not aware of the situation on Christmas Island, nor does it excuse him from being informed, nor the Government.

Firstly, Minister Evans was briefed of the draft report that was substantially the same as the final report. The Executive was therefore aware. The fact that the Government did not execute an effective handover between their own Ministers is a matter of their own culpability.

⁸⁸ DIAC, answers to questions on notice, q 283, received 29 February 2012.

Secondly, the fact the Minister either chose not to avail himself of the ‘reports’ referred to in his incoming brief or request his office to review those ‘reports’, demonstrates either an unlikely disinterest or a lack of necessity. In the latter case such a lack would be caused by the fact the Minister was already aware of the situation, based on other briefings provided by DIAC or, in particular, the Department Secretary.

It is not credible for the Government to dismiss this report and the serious implications it holds for the Government’s failure to act at a critical time.

The Government clearly had knowledge that a crisis was brewing on Christmas Island. The substantive import of this Hamburger report was already known and insufficient steps were taken by the Government to address its findings, most significantly the former Minister for Immigration and Citizenship Senator Evans.

The result was that when it became even more critical to reduce pressure on Christmas Island in the summer 2010/11 by transferring detainees to the mainland, there was simply not the capacity in the network to achieve this, as the draft Hamburger report had warned.

This was despite the decisions taken by the new Minister in September to expand the network. Given the lead times involved this decision came too late.

Prime Minister Gillard maintained denial

This position of denial did not alter following the change in leadership from Prime Minister Rudd to Prime Minister Gillard in late June 2010.

The asylum freeze was maintained and there was no decision to expand the network, in fact any suggestion that the network would be expanded was actively rejected by the Prime Minister, including within just a few weeks of the election date⁸⁹.

⁸⁹ “PM defends refugee detention plans”, Sydney Morning Herald, 29 September 2010, <http://news.smh.com.au/breaking-news-national/pm-defends-refugee-detention-plans-20100929-15wwn.html>.

The only decision taken by the Prime Minister is her now infamous proposal to establish a regional processing centre in East Timor in her speech to the Lowy Institute on 6 July 2010 in Sydney⁹⁰. This announcement was made with no policy detail or even any advance discussion with the Government of East Timor or consultation with key regional partners, in particular Indonesia as joint chair of the Bali Process.

Instead of implementing a genuine policy response to the emerging crisis in the detention network, Prime Minister Gillard opted for a pre-election political fix that was quickly exposed, and has now since been abandoned.

Building the detention centre revolution

By the time of the election on 21 August 2010, some 7374 asylum seekers had arrived unlawfully in Australia by boat since Labor took power in November 2007 and some 4619 people were in the detention network, including 650 children. More than half of those detainees – 2408 - were in immigration detention on Christmas Island⁹¹.

Minister Bowen acknowledged on coming into the role that “existing facilities are operating at capacity and there is a need for more beds to be made available until outstanding applications can be finalised... these arrangements are required as a matter of priority to ease the pressure on existing facilities”⁹².

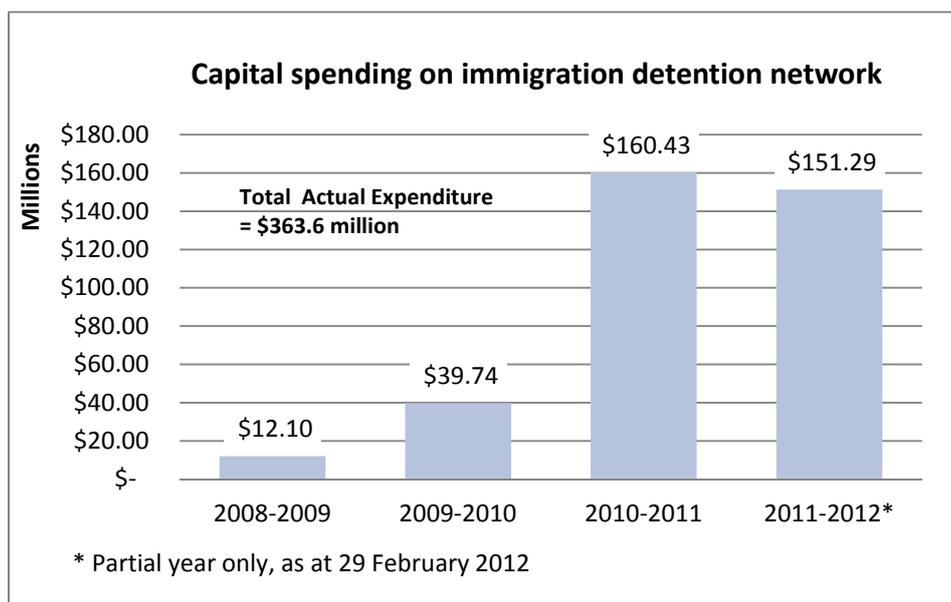
It is remarkable that what seemed obvious to the new Minister immediately after the election had been dismissed by the Prime Minister only weeks before.

⁹⁰ The Hon Julia Gillard MP, *Moving Australia Forward*, Address to the Lowy Institute, Sydney, 6 July 2010 www.pm.gov.au/press-office/moving-australia-forward.

⁹¹ DIAC, *Immigration Detention Statistics Summary 13-08-2010*, answers to questions on notice, q 2, received 10 August 2011.

⁹² The Hon. Chris Bowen MP, “Additional immigration detention accommodation”, 17 September 2010 <http://www.minister.immi.gov.au/media/media-releases/2010/cb10064.htm>.

Having refuted suggestions during the election that the Government would expand the mainland detention network if re-elected, and having made no commitment to do so, the Government embarked on what could only be described as a “building the detention centre revolution” after the election, with the largest expansion of the immigration detention network on record.



A breakdown of capital spending through to budget 2011/12 by state and facility is attached at Appendix C. This expansion had been assisted by what DIAC described as ‘contingency works’ to commence site preparation, ground works and perimeter fencing, to proceed with Stage 2 at Curtin for 600 additional beds and to establish the facility at Scherger Air Force base near Weipa.

Evidence of these works being undertaken before the election campaign were denied by the Government and DIAC prior to the election, with formal decisions to proceed not being taken until September by the new Minister.

On 17 September, the newly appointed Minister Bowen announced that Scherger Airforce Base would be “adapted to accommodate up to 300 single men... while capacity at the existing Curtin Immigration Detention Centre will be expanded in coming months, allowing for up to 1200 single adult men to be housed there”⁹³.

⁹³ The Hon Chris Bowen MP, “Additional immigration detention accommodation”, 17 September 2010 www.minister.immi.gov.au/media/media-releases/2010/cb10064.htm.

Melbourne Immigration Transit Accommodation was also to be expanded to hold more families and children in the shorter term⁹⁴.

The impact of those additional 1000 detention beds was swallowed up in less than two months – another 1054 people had already arrived by boat by 4 November 2010.

On 18 October, the Prime Minister and Minister Bowen had also announced the commissioning of two new detention facilities at Northam and Inverbrackie⁹⁵, providing up to 1900 additional beds.

In the six months between September 2010 and March 2011, those additional 2,900 detention beds had already been absorbed by the arrival of another 2,848 people.

On 3 March 2011 the Minister announced a new centre at Wickham Point in Darwin (1500 beds) and the expansion of the Darwin Airport Lodge by up to 400 beds⁹⁶. On 5 April 2011, the Minister announced that the Pontville defence facility would become the site of a temporary new detention centre to accommodate up to 400 single adult men⁹⁷.

As noted, these decisions all came too late to deal with what was about to occur on Christmas Island.

⁹⁴ Minister Bowen Interview with Steve Price, 18 November 2010
www.minister.immi.gov.au/media/cb/2010/cb155899.htm.

⁹⁵ Prime Minister & Minister for Immigration and Citizenship, Joint Media Release, “Government to move children and vulnerable families into community-based accommodation”, 18 October 2010 www.minister.immi.gov.au/media/cb/2010/cb155484.htm.

⁹⁶ The Hon. Chris Bowen MP, “Government announces new and expanded immigration detention accommodation”, 3 March 2011, www.minister.immi.gov.au/media/cb/2011/cb159679.htm.

⁹⁷ The Hon. Chris Bowen MP, “New short-term detention centre in Tasmania”, 5 April 2011 www.minister.immi.gov.au/media/cb/2011/cb163979.htm.

5. Failure to Adequately Prepare for the Inevitable

The Hawke/Williams review of the riots at Villawood and Christmas Island concluded that:

“That these incidents took place, particularly at the CIIDC, was not entirely unpredictable, although their severity and speed of escalation was surprising. Organisations and professional bodies had been warning of significant management issues associated with overcrowding, including processing delays and the impact on services and amenities on Christmas Island. There were indications that the risk of a major incident was increasingly more likely if these factors were not addressed.”⁹⁸

Inability to adequately reduce population on Christmas Island

On 6 December 2010, DIAC wrote to Serco advising their demand prediction for all sites in the Detention Network for January, February and March 2011, as required under the Detention Services Contract⁹⁹. For each month the prediction was that North West point would be over 100% of capacity. The population on Christmas Island at that time was now 3029, with 2148 at North West Point¹⁰⁰.

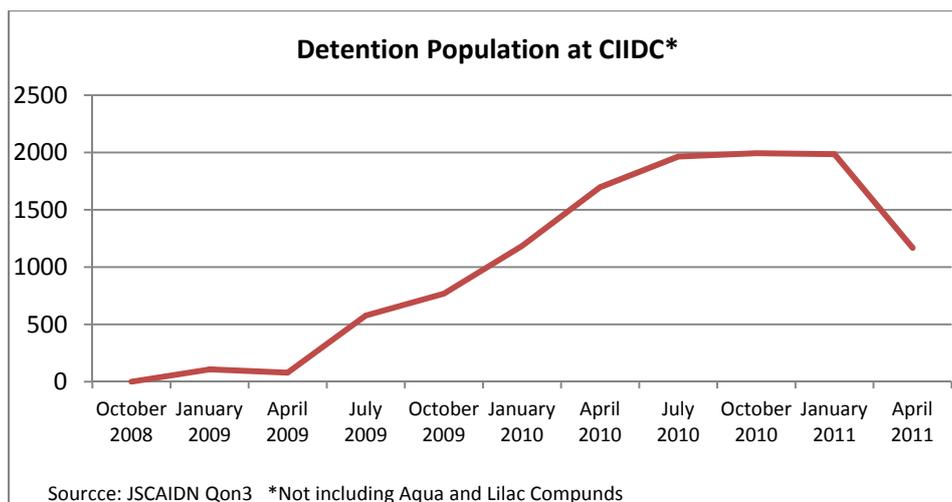
This was confirmed in their report of January as well. By the time of the riot in March, the Hawke/Williams review noted that there were 2,539 detainees on Christmas Island, 1841 of whom (single males) were accommodated at the NWP, Lilac and Aqua compounds¹⁰¹.

⁹⁸ Hawke & Williams, p. 4.

⁹⁹ Serco Demand Predictors, provided to Committee on 18 November 2011, q 309 – 314.

¹⁰⁰ DIAC, Immigration Detention Statistics Summary, answers to questions on notice, q 2, received on 10 August 2011.

¹⁰¹ Hawke & Williams, p. 46.



There was simply inadequate capacity elsewhere in the network to transfer a sufficient number of detainees off Christmas Island. Minister Bowen was now reaping what Minister Evans had sown in indecision before the last election. As to who was accountable for this out come, Dr Hawke was very clear in his evidence to the Committee¹⁰².

Mr MORRISON: Who was responsible for ensuring that our detention network had sufficient capacity to cope with the increasing level of arrivals that we saw take place over 2010 and leading up to those riots? Who was responsible for ensuring that our detention network was capable of dealing with that surge of arrivals?

Dr Hawke: Under our Westminster system I think that is pretty clear—the government, the minister and the department.

Mr MORRISON: So the minister is responsible for ensuring the detention network is in place?

Dr Hawke: It is the job of the minister.

¹⁰² Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 12.

More risk factors emerge

By this time other factors, in addition to overcrowding were now emerging, impacting adversely on conditions more generally in the detention network and more specifically on Christmas Island.

These included an increase in the length of time IMAs were in detention and an increase in the proportion of detainees on 'negative pathways'. As noted earlier in this report in 2010/11 the average number of days to process assessment almost trebled to more than 300 days.

According to Hawke/Williams the percentage of IMAs on negative pathways in the network increased from 23% in early December to 47% by the end of March¹⁰³. On Christmas Island, the figures were more constant, but did indicate a rise of 28% to 32% over the same period. These factors were highlighted in the Hawke/Williams review, who summarised the impact as follows:

Moving from a detention cohort that is largely on a positive pathway or still being assessed at the primary stage, to a cohort which increasingly is receiving negative decisions at either the primary or review stage, particularly if assessment has taken significant periods of time, or which has received negative decisions previously and for whom no other resettlement option has been forecast, changes the whole dynamic of a centre. It becomes one where hopelessness is a significant factor which contributes to increasing disregard for the rules of the centre and, for some, increasing resentment and a desire for revenge against those making decisions about their life, most notably DIAC and Serco officers. Indeed, the attitude of those who have received a negative decision infects those who are still waiting for the outcome¹⁰⁴.

The emergence of these pressures was also identified in the Hamburger Report provided to DIAC back in May 2010.

DIAC also identified that a change in the nationality of IMAs entering the network was also elevating the risk. DIAC Assistant Secretary Ms Mackin gave the following evidence to the Inquiry on Christmas Island¹⁰⁵:

¹⁰³ Hawke & Williams, p. 36.

¹⁰⁴ Hawke & Williams, p. 37.

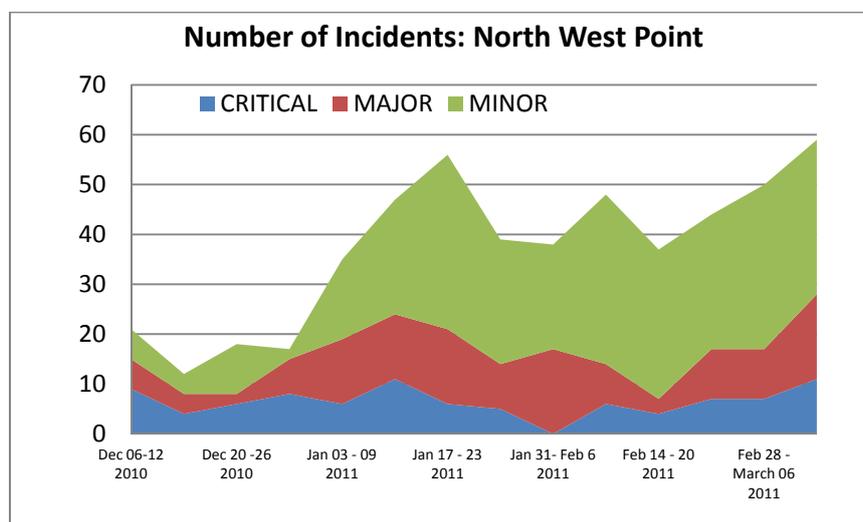
¹⁰⁵ Mackin, J. Assistant Secretary, Department of Immigration and Citizenship, Committee Hansard, Christmas Island, 6 September 2011, p. 42.

Ms Mackin : I would need to double-check the figures but anecdotally there was an increasing number of Iranians arriving by boat coming to Christmas Island, we were transferring people from the island so there were fewer Afghans and fewer Sri Lankans here.

Mr MORRISON: Did that change in DIAC's view, from a practical perspective of the risk management issues within the centre, the risk profile in the centre and from your perspective?

Ms Mackin : I think the answer is yes. The Iranian clients tend to be more—when you compare them, for example, to the Afghan or Sri Lankan clients—from the middle class, well-educated, urban environment. So they have different and higher expectations than some of the other cohorts. I think their expectations were higher. From talking to numbers of people, I understand that they claim not to have known that they would be detained when they arrived. So they were angry from an early stage. This is from my engagement with clients. So I think the risk profile increased with the increasing number of Iranian clients.

At the same time the numbers of incidents being reported were also increasing. Between early December and the riots in March the total number of incidents reported at North West Point increased by over 180%¹⁰⁶.



¹⁰⁶ DIAC, answers to questions on notice, q 23, received 15 August 2011.

Minister briefed on emerging tensions

As the signs of rising tension in the network and on Christmas Island emerged, regular reports were being provided to the Minister.

During the course of the Inquiry it was confirmed that the Minister's office received regular briefs on the state of the detention network. In the first hearing DIAC confirmed as follows¹⁰⁷:

Mr MORRISON: But what are the key indicators that you are tracking to understand the performance, the temperature, if you like, and the wellbeing of the network as the whole? What are the key indicators that you look at on a regular basis and that you advise the minister of, I assume, on a regular basis that tell us what is going on?

Mr Metcalfe : There are obvious figures such as the sheer numbers of people in detention and in the various centres, broken down. There is a particular focus, of course, on any particular groups such as minors or families—who have, of course, been located in separate places—and now more recently community detention as a separate area. They are reporting about length of time in detention for particular groups and those sorts of issues. It is essentially, as Ms Wilson said, reporting that has been able to be broken down in particular ways and disaggregated as necessary to perform a function of ensuring that senior officers as well as the minister understand what is happening on a very regular basis.

Mr MORRISON: So this happens on a weekly basis?

Mr Metcalfe : Yes.

Mr MORRISON: And how long has that been taking place?

Mr Metcalfe : I would have to check, but certainly my recollection is that it is been for the last couple of years.

Ms Wilson : My recollection is that it has been at least since early 2009. But we will have to take that on notice.

In addition it was confirmed that the Minister receives reports on all critical incidents in the network when they occurred and daily reports on the outcomes of morning meeting on Christmas Island between the AFP, DIAC, Serco and other agencies.

¹⁰⁷ Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 16 August 2011, p. 5.

When questioned about the amount, type and frequency of information flowing to the Secretary of DIAC and the Minister and his office, Dr Hawke and Mrs Williams suggested there was potentially too much information¹⁰⁸:

Ms Williams: I think we did discuss the fact that there was so much going through that the department should look at that and decide whether in fact some of it should go further—some should go to everybody; some should be drawn out in particular—because so much information was going through that it was really hard to cope with.

Mr MORRISON: But you are comfortable that the key decision makers here, the secretary to the department and the minister himself, were fully apprised of the situation that was occurring, particularly from October through to March and April, when these events occurred?

Dr Hawke: 'Fully' is a bit of a word that I do not think we can answer, but were we satisfied that the processes—

Mr MORRISON: About the flow of information?

Dr Hawke: of information flow were in place?

Mr MORRISON: And that reports were being provided on a regular and timely basis to the minister, in that process?

Dr Hawke: We were.

In addition, Minister Bowen visited Christmas Island in October to be briefed on and tour the facilities¹⁰⁹.

Minister Bowen affirmed the depth and quality of the information he was furnished with in a press release on 17 September 2010 where he stated “since becoming Minister for Immigration and Citizenship, I’ve received the most up-to-date advice about accommodation requirements”¹¹⁰.

In addition, the Centre Risk Assessment for NWP (and Lilac/Aqua) warned in January 2011 that the “increased tensions within the compounds, with incidents of

¹⁰⁸ Hawke, A. & Williams, H, Committee Hansard, Canberra, 29 February 2012, p. 4.

¹⁰⁹ Committee Hansard, Christmas Island Hearing, 6 September 2011, p. 28.

¹¹⁰ The Hon Chris Bowen MP, “Additional Immigration Detention Accommodation”, Press Release, 17 September 2010, www.chrisbowen.net/media-centre/media-releases.do?newsId=3710.

minor altercations and aggressive behaviour becoming common when access to services is impeded, may be attributed to the high client numbers”¹¹¹.

In February 2011, the Commonwealth Ombudsman noted in his report “the stage has been reached where the current scale of operations on Christmas Island, as very remote from the mainland, and supporting infrastructure and services is not sustainable”¹¹².

Security risks overlooked on Christmas Island

The Minister was clearly aware of the rising tensions and DIAC was making efforts to reduce the population on Christmas Island. As noted earlier, these efforts were significantly constrained by the failure of the previous Minister to make a decision to further expand the network after the draft Hamburger Report in May.

DIAC’s efforts to reduce the population on Christmas Island were acknowledged in the Hawke/Williams Review and confirmed in DIAC’s evidence on Christmas Island by Ms Mackin¹¹³.

Ms Mackin : We continued to make transfers off the island to mainland centres as much as we could. We had increased our case management on the island to try to manage people on the island. We increased the number of reviewers to come to the island. So we were trying to work on the processing side of things—to speed things up for people—because a lot of the complaints were in relation to processing times and length of time in detention. In order to shorten the time in detention, we tried to increase the rate of processing. There was an arrangement made, in terms of security clearances, to make them come through more quickly as well. So there were a range of processes—

¹¹¹ Serco Centre Security Risk Assessment, North West Point, p. 3, in Hawke Williams, p. 112.

¹¹² Hawke & Williams, p. 45.

¹¹³ Mackin, J. Assistant Secretary, Department of Immigration and Citizenship 2011, Committee Hansard, Christmas Island, 6 September 2011, p. 43.

On March 11, the riots at Christmas Island began and by March 17 the AFP had to regain control of the facility. The details of these events are set out in the Hawke/Williams review. The events exposed some significant security weaknesses that DIAC failed to address in the lead up to the riots.

These weaknesses had been identified by Serco, the AFP, Comcare, the Hamburger report and included the following:

- Failure to install CCTV in Aqua and Lilac compounds
- Failure to maintain and activate the electric fence at North West Point
- Failure to put in place a critical incident response management plan between DIAC, Serco and the AFP on Christmas Island
- Failure to address the risk presented by the tent accommodation located adjacent to the red compound
- Failure to restore AFP officers with training in advanced public order management to Christmas Island following their removal in November 2010
- Failure to rectify infrastructure deficiencies in the connecting fence that connected the Aqua/Lilac compounds with the NWP IDC that were breached during the riots and used to fashion weapons.

These failures are addressed in detail in the Hawke/Williams Report.

To elaborate, in the course of these events it was clear that Serco did not have the capacity to deal with the type of violence and unrest that subsequently occurred. Nor, it would seem, were they ever contracted to provide such a level of security.

What became clear in the course of the Inquiry from these events is that when it all goes wrong, it falls to the police to restore order. This would be reinforced at Villawood six weeks later. DIAC seemed to be unaware of this limitation and had not factored this into their preparations, limited as they were.

For this reason, the departure of properly trained AFP officers from Christmas Island and the failure of the Government to restore those officers left the Island considerably exposed. Any incident after their departure had to be responded to from Perth. Such response would be conditional on availability of aircraft and prevailing weather conditions in the vicinity of Christmas Island that can be highly unpredictable, particularly at that time of year.

Assistant Commissioner Prendergast who is also National Manager for International Deployment for the Australian Federal Police noted the following at the Christmas Island hearing:

Mr Prendergast : The constraint for us is the airframe. So, depending on how quickly we can charter a plane, get support from ADF or source aircraft, that is the constraint. We have done it in 24 hours. We have, I think, done it quicker on occasion. We have taken slightly longer on occasion. In response to your question, though, the responsibility for order in the centre obviously rests with the people who run the centre, DIAC and Serco. We have police on island who will respond if required and have responded to incidents at the centre, but our contingencies were, if there was a major public order incident, to surge the required resource back onto island¹¹⁴.

From Friday to Sunday, there was no capacity on Christmas Island to restore order if necessary by force. This left the Island and its residents highly exposed. After the riots the AFP maintained officers with appropriate public order management training on the island, despite the fact that the population had been significantly reduced.

Despite the constant warnings regarding the likelihood of a serious incident at North West Point, there did not seem to be a sense of urgency from DIAC to address outstanding security matters as part of their preparations.

When asked about these issues DIAC responded through Ms Mackin as follows¹¹⁵:

¹¹⁴ Prendergast, F. Assistant Commissioner, Australian Federal Police, Committee Hansard, Christmas Island, 6 September 2011, p. 57.

¹¹⁵ Mackin, J. Assistant Secretary, Department of Immigration and Citizenship, Committee Hansard, Christmas Island, 6 September 2011, p. 43.

Mr MORRISON: So you tried to get people out by speeding up the processes and getting more people in the system. But we did not turn on the fence, we did not fix the fence between Aqua and Lilac, we did not put CCTV into Aqua and Lilac and we did not call back the AFP. So there were things being done on the processing side, but on the security side, are you aware of any changes implemented locally?

Ms Mackin : Not that I am aware of.

The absence of a critical incident response management plan, confirmed by DIAC, Serco, the AFP and in the Comcare report¹¹⁶ was evidence of this lack of preparation.

Furthermore infrastructure issues were also not addressed. According to evidence provided by Serco at the Christmas Island hearing, Serco had provided monthly reports from July 2010 through to February 2011 regarding the need for DIAC to rectify security risks identified with infrastructure at North West Point and the Aqua and Lilac Compounds¹¹⁷. These risks had also been identified by the AFP in their own assessment of the infrastructure security risks. These matters were still unaddressed at the time the riots broke out.

This was mirrored in the Department's decision not to activate the electric fence at North West Point. Not only was it not activated, but it was unable to be activated as the fence had not been maintained¹¹⁸.

Evidence put before the Committee highlighted the critical need for high quality CCTV footage of incidents at detention facilities in order to be able to identify perpetrators and monitor developing incidents within detention facilities.

The Hawke/Williams review theorised that the lack of a security focus by DIAC may have been a result of confusion within DIAC about consistency of high security operations with the Government's new detention values¹¹⁹.

¹¹⁶ Comcare, *Investigation Report EVE0020547*, 21 July 2011.

¹¹⁷ Serco, 6 September 2011, pp 69-82.

¹¹⁸ Hawke & Williams, p. 7.

¹¹⁹ Hawke & Williams, page 7.

Whether this is the case or not, there should be a clear understanding by DIAC, as the agency responsible for the network, that security matters must be afforded an equally high priority with all their other obligations.

Villawood follows Christmas Island into chaos

On 19 March 2011, the day after Minister Bowen announced an Inquiry into the Christmas Island riots, an improvised device made from a can of fly spray and canola cooking oil was discovered inside the computer room at Villawood Detention Centre¹²⁰. The floor was slicked with canola oil and the building set alight.

Centre staff put out the fire and called police. The Minister's office received a situation report on the fire at 0406 hours¹²¹, however details of the improvised device were not advised to the Minister.

Just after 8.00am, around six weeks later on Wednesday April 20, detainees climbed onto a roof at the Villawood detention centre and commenced a protest. Later that night and into the early hours of the following day, the Villawood detention centre was on fire and a full scale riot was in progress. These events are also detailed in the Hawke/Williams¹²² Review.

Unlike Christmas Island, overcrowding was not identified as a key cause of the riots at Villawood. Nor were any IMAs transferred from Christmas Island believed to have been involved in the riots.

Of critical significance in the case of Villawood was the increasing numbers of detainees on negative pathways, including the key protagonists who played a key role. Dr Hawke drew attention to this in his evidence before the Inquiry in February¹²³:

Dr Hawke : .. increasingly people were identified to be on a negative pathway, and then a large number of those were identified as being ringleaders or critically involved in the incidents that occurred at both Christmas Island and Villawood ... In Villawood's case, 60 detainees were actively involved; 25 were

¹²⁰ The Hon Chris Bowen MP, Interview with Ray Hadley, 2GB Mornings 4 May 2011 www.chrisbowen.net/media-centre/transcripts.do?newsId=4442.

¹²¹ DIAC answers to questions on notice, q.175, 8 December 2011.

¹²² Hawke & Williams, page 66.

¹²³ Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 3.

identified as persons of interest, which increased to 40; nine had been charged at the time we finalised our report; and all of those had received a negative decision at the primary stage. So the conclusion we were coming to was that these were not genuine refugees and they were reacting to the fact that they had paid a people smuggler to come to Australia on the promise of getting settlement in Australia. That was not going to happen, so they were going to vent their anger on the system.

Mr MORRISON: *So they got a no and they rioted. That is basically what happened.*

Dr Hawke : I think that is a fair conclusion.

It is interesting to note that in the nine months following the riots, the number of permanent protection visas provided to IMAs tripled, the primary acceptance rate for refugee status determination doubled and four out of every five negative decisions were being turned into positives on appeal¹²⁴. Combine this with the fact that 50% of everyone in the detention network next financial year will be in the community¹²⁵ and it would seem, based on these results, that the rioters appear to have got what they wanted.

The concerns with the events at Villawood are as follows:

- lack of appreciation of the potential risk of serious incidents and the need to prepare for such incidents by DIAC as revealed by the NSW Police, and
- failure to address ambiguities in the responsibilities between state police and the commonwealth regarding response to disturbances of this nature on the mainland

¹²⁴ DIAC, *Asylum Statistics – Australia, Quarterly Tables – December Quarter 2011*, www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-december-quarter-2011.pdf **NOTE:** Primary protection visa grants rates for boat arrivals have increased from 27.8% in the March quarter (during which the Christmas Island riots occurred) to 55.3% in the December quarter, as shown in Table 16, page 11. The number of permanent visa grants in the three quarters leading into the riots was 454, 307 and 425 (September, December and March quarters respectively) compared with after the riots 1510, 1725 and 1120 (June, September and December quarters) as per Table 2, page 2. It appears on the face of it that a key change following the riots has been that the number of visas issued more than tripled – in short, they just let them out. Even when there is a “No”, Table 18 on page 12 shows that in four out of five cases that negative decision is overturned by Labor’s appeals process.

¹²⁵ Additional Senate Estimates Hearing, Legal and Constitutional Affairs Committee, Evidence from Department of Immigration and Citizenship, Canberra, 13 February 2012.

These matters were not addressed in the Hawke/Williams report as the NSW Police were not interviewed by the authors during the course of their review¹²⁶.

Dismissing the threat at Villawood

NSW Police Assistant Commissioner Frank Mennilli gave evidence at the Sydney Inquiry that he had attending a meeting with DIAC and Canberra two days before the riots commenced at Villawood.

At the meeting Mr Mennilli said he raised concerns about the ability of detainees to gain access to the roof and strategies to deal with a major incident such as a fire. His evidence is noted below¹²⁷:

Mr Mennilli: I also raised concerns in relation to strategies that would be put in place regarding a serious or critical incident at the detention centre—something like a fire.

*Police from the South West Metropolitan Region, over the last 12 months, have conducted and structured two tabletop scenario exercises for Serco staff and DIAC. I took a direct involvement in one of those exercises and escalated the scenario to a fire within the centre, and what the response would be and what the contingency plans would be. At the end of the scenario a debrief was conducted and **I was told that the scenario was unrealistic and it would never happen.***

Mr MORRISON: Thank you. So, they said at that time it was an unrealistic scenario?

Mr Mennilli : The first tabletop exercise was in approximately August 2010, and the last one was on 1 September 2011. One of the things that I put in place as part of that scenario exercise was to actually escalate the incident: ‘We now have a situation where the fire has engulfed the centre. What will you do?’

Mr MORRISON: What was their response?

¹²⁶ Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 9.

¹²⁷ Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, pp. 28-29.

Mr Mennilli : At that stage they said, 'We have a number of structures in place,' and I said, 'What will you do with the detainees at that time if they are at risk?' 'We would open the gates.'

Mr MORRISON: They would open the gates?

*Mr Mennilli : They would open the gates so that they could be released from that particular area. .. At the debrief I was told that **the scenario that I put to them was unrealistic and that situation would not arise.***

The dismissal of the potential of a serious incident by Serco and DIAC in the exercise described by Mr Mennilli highlights, once again, the causal nature in which security matters that fall within DIAC's responsibilities for the detention network appear to be appreciated.

Failure to resolve ambiguities over police response

In his evidence to the Inquiry in Sydney Mr Mennilli stated that it was not the role of the New South Wales police force to respond to or maintain any issues of the Villawood Detention Centre and that the New South Wales police force virtually has no responsibility for the day-to-day running of the centre.

Mr Mennilli advised that at the meeting with DIAC only two days before the commencement of the rooftop protest at Villawood he raised these issues once again, as follows¹²⁸:

At the meeting on 19 April I raised my ongoing concerns in relation to legal issues regarding the management of the Villawood Detention Centre. It is Commonwealth property and it is unclear in relation to what powers the New South Wales police force has in relation to any involvement within the detention centre. On information I have had done since that time, because there has been legal guidance given by the Commonwealth and also information from the state, crown solicitor advice, they conflict.

¹²⁸ Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 29.

I have been told there is a total of 11 different acts that could be utilised in relation to dealing with a situation at the Villawood Detention Centre, which is something I think would be extremely difficult for a constable responding to an incident there. I have been told that the Commonwealth Places (Application of Laws) Act is an act that gives the New South Wales police force powers to enter the detention centre, but under our own powers of the LE(PR)A, the Law Enforcement (Powers and Responsibilities) Act 2002, we can go into the centre in a life and death situation or a breach of the peace, but once that has been resolved we must leave.

There is also the issue that we have no authority to move detainees in and around the Villawood Detention Centre, because they are within the confines of the detention centre, and under the Migration Act that is where they remain. If a New South Wales police officer has information and we have been asked to investigate a matter, if we need to arrest a detainee, in essence we need to apply for a criminal justice stay proceedings or stay certificate to remove the individual from the detention centre. Even then, bearing in mind that some of these matters would be minor matters, if the individual appeared before the court and was granted bail they would then have to be returned back to the centre.

He said that “*after the meeting in Canberra there were a number of legal issues that I asked to be clarified and to this date, in my mind, that has not been addressed*”¹²⁹.

Mr Mennilli commented that “*draft MOU that I have been forwarded virtually states that the New South Wales police force will run the day-to-day activity of the detention centre. It talks about not only the New South Wales police force attending the centre in relation to critical incidents; it talks about dealing with all incidents within the detention centre—minor matters in relation to malicious damage to property, minor assault and even complaints between staff and detainees. That is not our role*”¹³⁰.

¹²⁹ Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 28.

¹³⁰ Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 34.

It is almost a year since the riots at Villawood and there is still no MOU that has been completed with the NSW Police in relation to these matters¹³¹.

At 11.25pm on April 20, NSW Police were informed that the first fire had been started and attended the scene. The NSW Police did not believe they had the authority to enter the site other than to provide protection to the NSW Fire Brigade officers who were attending to the fire.

Mr MORRISON: So, the only way that the New South Wales police were actually able to enter the detention centre where the fires and the riots were taking place was by fulfilling their responsibilities in protecting the fire brigade officers?

Mr Mennilli : That is correct.

Mr MORRISON: So, you were not there to break up a riot?

Mr Mennilli : No.

Mr MORRISON: You were not there to move detainees, quell violence or restore public order? You were simply there to protect the fire brigade officers?

Mr Mennilli : That is correct. I gave a direction to ensure that they did that and also that, if there was any person involved on any attacks on the fire brigade or interfered with that incident, they would be arrested¹³².

After completing these tasks NSW Police undertook to maintain a presence at the perimeter until the early hours of the morning, consistent with an arrangement between Mr Mennilli and AFP Assistant Commissioner Jabbour who were moving resources from other areas to the detention centre.

Evidence provided by Serco at the Sydney hearing revealed that those managing the incident for Serco on the night of the riot were oblivious to the legal ambiguities regarding the ability of the NSW Police to provide support. Mr John Hayes who

¹³¹ Colvin, A. Deputy Commissioner of Operations, Australian Federal Police, Additional Estimates, Legal and Constitutional Affairs Committee, 14 February 2012.

¹³² Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 30.

was centre manager at Villawood for Serco at the time of the riots, gave the following evidence:

- *“it was my understanding that, if the situation escalated to such an extent that it was an incident that Serco with our resources were unable to manage, then we would seek the assistance of the New South Wales police”¹³³, and*
- *“At the time of this incident I anticipated to get assistance from the New South Wales police; I was not aware of any ambiguity”¹³⁴.*

Serco noted that they made a request of the NSW Police at approximately 12.30 am on April 21 and they were advised that it was not their jurisdiction¹³⁵. They then approached the AFP at around 1.45am. The AFP then arrived on site a few hours later. They had earlier advised Serco that they did not have the capacity in Sydney to deal with the incident. The AFP later deployed approximately 70 personnel to Villawood, most arriving about midday on 21 April. At its height there were about 105 AFP personnel supporting the operation¹³⁶.

At about 1.30 it became clear that Serco was on their own. This was of particular concern as Serco do not have staff trained in advanced public order management, i.e. they cannot put down a riot. Serco Managing Director Mr Manning explained to the Inquiry what happened next.

Mr Manning : In this situation clearly staff and client safety was paramount, and so I am sure Mr Hayes will tell us that he took steps to secure those facilities that could be secured to make sure that the clients who had had to evacuate from one part of the compound to another were kept safe, and indeed that whatever could be done to limit the damage with the use of fire appliances was being done. This was not a complete loss of control. This was limiting the damage which had occurred¹³⁷.

¹³³ Hayes, J. Serco Regional Manager, Northern Immigration Detention Centre, Committee Hansard, Sydney, 5 October 2011, p. 70.

¹³⁴ Hayes, J. Serco Regional Manager, Northern Immigration Detention Centre, Committee Hansard, Sydney, 5 October 2011, p. 70.

¹³⁵ Hayes, J. Serco Regional Manager, Northern Immigration Detention Centre, Committee Hansard, Sydney, 5 October 2011, p. 71.

¹³⁶ Murray, C., Australian Federal Police, Committee Hansard, Sydney, 5 October 2011 p. 39.

¹³⁷ Manning, C., Serco Managing Director, Committee Hansard, Sydney, 5 October 2011, p. 71.

In short, they locked down the facility to contain the damage and let the rioters and fires peter out. These events demonstrated the real time consequences of the failure of the Government to ensure clarity in the roles and responsibilities that relate to ensuring security at these facilities. Key personnel managing the situation on the ground were unaware of these ambiguities and were making decisions based on false understandings.

Similar problems have been identified throughout the Inquiry in Western Australia, Queensland and Darwin. With the exception of the Northern Territory, clarification of these issues remains outstanding.

Coalition Members and Senators are concerned that evidence given at the most recent Senate Additional Estimates hearings revealed that DIAC has not concluded any memorandum of understandings (MOUs) with the AFP or any of the states or territories except Tasmania, which will have no affect as the Tasmanian Pontville detention centre has closed.

The Coalition recommends that these MOUs be finalised as quickly as possible to prevent further uncertainty regarding the policing and responses to incidents at detention centres.

Evidence put before the Committee highlighted the need for public order management training for Serco staff and local police. This should be included in the MOUs established between the states and territory police, DIAC and Serco.

The Coalition is concerned that community policing is suffering in remote areas, such as Weipa, Darwin and Derby where local police are often called into service the needs of the detention centre, forcing police to be drawn from their regular operational duties.

Evidence put before the Committee strongly indicates that community policing suffers in remote detention centre locations and that the Federal Government needs to ensure local police are adequately resourced in order to ensure that regular operational policing responsibilities do not suffer.

Evidence put before the Committee indicated that Commonwealth payments for policing services at detention centres are not adequate as it only covers the police that are responding to incidents at the detention centres and not covering regular operational duties that are being neglected as a result of call-outs to detention centres.

The Coalition recommends that the Federal Government ensure that state and territory police are adequately reimbursed for call-outs to detention facilities and for operational gaps created by these call-outs.

Getting detainees off the roof

Questions were also raised about allowing the detainees to remain on the roof for a period of eleven days. The AFP gave the Government advice that forced removal could not be implemented safely.

The Inquiry heard that this advice conflicted with the opinion provided by the NSW Police through Assistant Commissioner Mennilli who observed to the Inquiry in his evidence as follows¹³⁸:

Mr MORRISON: On 21 April, putting aside the issue of authority, if you had the authority, do you believe the New South Wales police could have got people off the roof that night?

Mr Mennilli : I believe I could have.

Mr MORRISON: Obviously at any time between 21 and 29 April, as people sat on the roof for 11 days, had you been given that authority then the New South Wales police could have devised a strategy to have done that safely?

Mr Mennilli : I believe we would have been able to do it.

On April 29, DIAC requested NSW Police assistance to remove the detainees from the roof at Villawood. In response the NSW Police sought legal advice about their authority to use force on the site. Mr Mennilli told the Inquiry “the situation was extremely difficult and my personal view was that I was quite confident that I could

¹³⁸ Mennilli, F. Assistant Commissioner New South Wales Police , Committee Hansard, Sydney, 5 October 2011, p. 31.

put in place the tactics and the resources to do it, but I would have to use force”¹³⁹. After receiving the advice the NSW Police did not believe they had the authority to act in that situation.

The detainees remained on the roof until the Deputy Secretary of the DIAC, Mr Moorhouse, got on top of two boxes and put his head into the roof cavity and dealt directly with those who were protesting¹⁴⁰. Unlike the other detainees who were taken to Silverwater prison for their involvement in the riots, those with whom Mr Moorhouse dealt remained at Villawood. This action was taken on the same day that protestors gained access to the roof of the electorate office of Minister Bowen in Sydney, and were removed within three hours by the NSW Police¹⁴¹.

Mr Mennilli expressed concern about the Deputy Secretary’s direct involvement in this process¹⁴².

Mr Mennilli : ...since that time any future negotiation will be hampered by the end result. Again, I can only speculate on the information that was received in relation to agreements that were made with individuals for them to come down and who was speaking to the individuals. What would happen in future is that any individual who would go up onto the roof would not speak to a negotiator but would automatically want to speak to the manager or someone from DIAC to make a deal. So, it would seem to hamper any future dealings.

Mr MORRISON: Let me understand that last point that you made. So, you think an expectation may now exist that if someone gets on the roof they will be able to deal with someone from DIAC and a manager?

Mr Mennilli : That is correct. To my knowledge, nothing has been done to mitigate the issue of preventing people from getting on the roof.

¹³⁹ Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 32.

¹⁴⁰ Moorhouse, J. Deputy Secretary, DIAC, Budget Estimates, Senate Legal and Constitutional Affairs Committee, 24 May 2011; Rehn, A. & Jones, G., *Villawood riot’s soapbox solution*, the Daily Telegraph, 25 May 2011.

¹⁴¹ “Rooftop protest ends at Minister’s office”, Sydney Morning Herald, 29 April 2011.

¹⁴² Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 33.

Recommendation 2

Coalition Members and Senators recommend that the Australian Government finalise the memorandum of understanding between DIAC, the AFP and state/territory police forces and reach a binding agreement that clearly stipulates who is responsible for policing and responding to incidents at Australian Immigration Detention Centres.

Recommendation 3

Coalition Members and Senators recommend that the AFP and State/Territory police are funded adequately in order to carry out their regular operational policing responsibilities along with policing the immigration detention centres and responding to incidents.

Recommendation 4

Coalition Members and Senators recommend that the Australian Government ensure that security infrastructure, including CCTV cameras, security fences and other essential security elements be operational, ready and be of a high standard of functionality and that DIAC, with assistance from Serco, is to undertake a review of infrastructure (including security infrastructure) across the broader immigration detention network.

Recommendation 5

Coalition Members and Senators recommend that the Australian Government seek advice on amendments and addition to the regulations under the Migration Act to clarify the responsibilities and powers of persons who operate detention centres around the limits on their obligations and powers in relation to use of force, to ensure the good order and control of immigration detention facilities.

6. You Can't Contract Away Accountability

Coalition members and Senators note that the majority report makes strong criticisms of Serco as the operator contracted to run our immigration detention network, stating at paragraph 3.142 that “*Serco has not performed to the standard expected*”.

Coalition Members and Senators agree that there have been numerous instances brought to the attention of the Inquiry that raise significant concerns, in particular *staffing and training practices and deficiencies in activities programme*. It is appropriate to recommend improvement in their practices.

However, Coalition Members and Senators also stress that any and every failure ascribed to Serco as a contractor is equally a failure of the Government that contracted them and their construction, management and oversight of that contract.

The Government rightly contracts out the delivery of these services. The Coalition does not believe that these services could be more efficiently and effectively delivered by a Federal government agency. It does not follow that public agencies at other levels of Government, including corrective services authorities, might not also be potential providers of these services under contract in states and territories where they also have operations.

Regardless of the contracting model adopted, it is critical to understand that while Government may contract out these services they can never contract away their responsibility and accountability for the delivery of these services. This always resides with the Department and the Minister.

At paragraph 1.7 the majority report identifies this stating “*The Department of Immigration and Citizenship administers the immigration detention network. This includes resolving the status of detainees and managing the performance of its contracted service providers*”.

In his evidence to the Inquiry in Sydney the Managing Director of Serco, Mr Manning noted in relation to the incidents at Villawood that *“The levels of violence that were witnessed on that night and the incident which escalated to the levels that it did were not contemplated when we signed the contract in June 2009. This was a contract based on a compliant client base, not on one which demonstrated the behaviours we saw that night.”*¹⁴³

This point made by Mr Manning has been a recurring theme before the Inquiry. As the number of boat arrivals and the detention population increased, and the detention network was expanded, there does not appear to have been any fundamental recognition from the Government of how the situation had changed and whether the contractual arrangements would need to be recalibrated.

The apparent failure of Ministers Evans and Bowen to review the contracting model after the significant changes in circumstances is another example of how the Government operated in a state of denial. From DIAC’s perspective, operating in a constant of crisis would have frustrated attempts to undertake such a review.

It is possible that such a review may have resulted in a number of changes that in some cases may also have resulted in even greater costs including;

- the need to establish staff/detainee rations, as discussed in the next section.
- higher standards of training, not just in the care of detainees but in maintaining order within the centre.
- requirement for DIAC to support infrastructure upgrades to improve physical security within the facilities (as recommended to this Inquiry)
- clarify roles and responsibilities to respond to major incidents (as recommended to this Inquiry)

¹⁴³ Manning, C. Serco Managing Director, Committee Hansard, Sydney, 5 October 2011, p. 71.

- increased intelligence resources to reinforce dynamic security within the network
- agreement from the Government to provide Serco with additional powers to maintain order within the network (as recommended to this Inquiry)

It is also possible such a review may also have led to consideration of different contract models. Also, adopting some of these changes may have incurred even greater costs. However, by ignoring the change in circumstances these costs were visited, at least in part, in the chaos and crisis that consumed the network.

7. Supporting Australians Working in the Detention Network

Record arrivals of asylum seeker have collapsed Australia's immigration detention network, putting detention centre staff, including DIAC officers, Serco employees and Australian Federal Police officers, at significant risk.

Coalition members of the committee recognise that Serco staff, in particular, have borne the brunt of detainees' frustration, agitation and violence in Australia's detention centres through no fault of their own. These experiences culminated but were not limited to the riots experienced in 2010.

There have been 871 reported incidents of alleged or observed inappropriate behaviour by detainees or other persons in the detention network to Serco staff since they took over the detention services provider contract on 1 October 2009, to 30 June 2011¹⁴⁴. According to the Department, this inappropriate behaviour includes "alleged or observed abusive/aggressive behaviour, physical and sexual assaults, involvement in disturbances and damage to facilities".

Police were notified 264 times of possible criminal behaviour.

According to the DIAC, "In relation to DIAC staff, nine "client aggression" incidents occurring at immigration detention facilities have been recorded in the last 12 months in the department's Occupational Health and Safety (OHS) incident register. As at 30 June 2011, there is no record of workers' compensation as a result of any of these incidents."¹⁴⁵

DIAC Deputy-Secretary, Mr John Moorhouse, told the inquiry:

¹⁴⁴ DIAC, answers to questions on notice, q 24 and q 30, received 16 August 2011.

¹⁴⁵ DIAC, answers to questions on notice, q 24 and q 30, received on 16 August 2011.

“It is a big ask to ask Serco staff and our own staff to deal some with some of the personally challenging situations we face in the work we do. I want to acknowledge the professionalism and dedication of the Serco staff and the fact that we can always do more. We are intent on trying to give people as much support as we can. Where issues are brought to our attention we will certainly have a look at them to see whether we feel there are deficiencies in terms of the outcomes which are being achieved. I do not want to leave the impression that we are not taking the issue seriously. It is something we take very seriously. We can always do better and there are a series of other issues which impact on those observations. They include the quality of the leadership which we would provide from DIAC and the quality of the leadership within Serco. We have been working with Serco to build up those capabilities as well so that we can better support and guide our staff, who are doing a very challenging job.”¹⁴⁶

The Comcare report of July 2011 was damning in its condemnation of the Department’s failure to adequately meet its Occupational Health and Safety obligations in regard to DIAC officials and Serco contracted staff, as well as detainees.

“Key areas of non-compliance were evident across all facilities. Of particular concern was the lack of effective risk assessment of DIAC’s systems of work”, the report states¹⁴⁷.

DIAC was found to have failed to comply with its health and safety obligations across five areas in all detention facilities; risk management, staffing ratios, staff training, critical incident management and diversity of Third Parties¹⁴⁸.

The report noted in its Findings of Fact:

“I find no evidence that positive behaviours (by Serco staff in particular) in one IDF... are being identified by DIAC and considered for uniform implementation at other IDFs.”¹⁴⁹

¹⁴⁶ Moorhouse, J. Deputy Secretary, DIAC, Committee Hansard, Canberra, 9 December 2011, p. 33.

¹⁴⁷ Comcare, *Investigation Report EVE0020547*, 21 July 2011, p. 3.

¹⁴⁸ Comcare, *Investigation Report EVE0020547*, 21 July 2011, p. 4.

¹⁴⁹ Comcare, *Investigation Report EVE0020547*, 21 July 2011, p. 6.

Furthermore, the report found:

“...that the differences between detainees and their associated needs, whether they be; cultural, racial, religious or their personal stage in detention are not sufficiently identified by DIAC to ensure that they are taken into consideration so that the current levels of tension might be reduced; I find that the staff/detainee ratio is not sufficiently risk assessed and documented to identify and ensure adequate levels of staffing at all times; I find that the current levels of DIAC staff training are insufficient and not targeted to the particular requirements of roles¹⁵⁰.”

Hawke and Williams make at least a dozen separate references to direct threats and attacks against staff during their recount of the violence during the Christmas Island riots in 2010. Serco, DIAC and interpreting staff were repeatedly made targets, forced to lock themselves in secure rooms within the compound to take cover and await intervention.

The threat to staff was on particular display during the riots. On 11 March 2011, the trouble began when detainees scaled the fence of the Lilac and Aqua Compounds and forced up a series of roller doors allowing them access to move freely within North West Point. Rocks were thrown at centre staff¹⁵¹.

As the situation unravelled on 12 March, detainees in the Aqua Accommodation Compound threw rocks at staff. They were forced to retreat.

On 13 March as tensions rose, a staff member was punched four times by an unknown detainee¹⁵². During the afternoon, “catering staff were trapped in the kitchen at the Aqua Accommodation Compound and bolt cutters were needed to evacuate them”¹⁵³.

¹⁵⁰ Comcare, *Investigation Report EVE0020547*, 21 July 2011, pp 6, 7.

¹⁵¹ Hawke & Williams, p. 54.

¹⁵² Hawke & Williams, p. 57.

¹⁵³ Hawke & Williams, p. 57.

During the evening, detainees surrounded the Red Compound armed with tent poles and concrete blocks, trapping 13 Serco staff, two interpreters, 14 detainees and one senior DIAC officer inside for a harrowing half an hour. “It was confirmed lives were at risk”¹⁵⁴. The AFP were forced to use CS gas and bean-bag projectiles during the course of the evacuation.

In the days that followed, threats were made to kill specific Serco staff members who had been involved in segregating ringleaders to the Red Compound.

On Monday 14 March, eight Serco officers had to re-enter the Red Compound to release the remaining detainees, “at significant risk of harm from violent and abusive detainees”¹⁵⁵.

After nightfall, Christmas Island deteriorated again and a Serco staff member was struck by a detainee wielding a mop. A fire was set in a demountable building and when the Serco team responded to the fire, some detainees threw rocks at them.

On 15 March, it was noted again “that staff were feeling unsafe”. From as early as 2am, detainees approached Serco staff requesting protection against stoning from other detainees for refusing to join the fray or protecting Serco staff from violence. Just after 8pm, “a Serco officer was slapped by a detainee from North West Point who had entered the Lilac and Aqua Accommodation compounds and threats were made against his life”¹⁵⁶.

On Wednesday 16 March, Hawke and Williams note that concerns for detainee and staff safety were prevalent throughout the day and resulted in Serco, DIAC and IHMS staff, in addition to CISSR members and vulnerable detainees being evacuated from parts of CIIDC just before 9pm.

¹⁵⁴ Hawke & Williams, p. 58.

¹⁵⁵ Hawke & Williams, p. 59.

¹⁵⁶ Hawke & Williams, p. 60.

Additionally, Serco officers were withdrawn from the White Accommodation Compound after 9pm following further threats by detainees who were upset the AFP had employed CS gas to disperse a group of detainees who had been hurling rocks at them.

On 17 March, during the peak disturbance and handover to the AFP, staff were once again in danger. Serco evacuated staff from the Red Compound Marquees and later that evening, from the Blue, Gold and Green Accommodation Compounds after detainees began smashing windows in the main kitchen.

From 10pm onwards, “detainees targeted staff and other detainees inside the Recreation Compound by throwing rocks and those inside were evacuated through the rear of the building into the sterile zone”¹⁵⁷.

At 10:21pm, control was formally handed to the AFP by DIAC. Serco staff who were not in the Command Centre were evacuated from CIIDC.

Control was only formally handed back to DIAC on 29 March, when Serco resumed their normal responsibilities for the running of the centre.

Similar attacks on staff were documented during the Villawood riots in April.

The riot began when two detainees climbed onto the roof of the Macquarie Residential block in the morning of 20 April. Within ten minutes, the detainees were threatening to hurl roof tiles on the Serco staff stationed below. Twenty-five minutes later, the detainees had removed roof tiles in readiness to follow through on their threat¹⁵⁸.

Two hours later, as noted by Hawke and Williams, “roof top protestors were refusing to negotiate... they continued, however, to behave in an inappropriate manner and at 10:20hrs threatened to throw a roof tile at, and sexually assault, a

¹⁵⁷ Hawke & Williams, p. 63.

¹⁵⁸ Hawke & Williams, p. 70.

female interpreter who was engaging with them on behalf of Serco. This interpreter was withdrawn from Fowler at this time”¹⁵⁹.

Just after 2pm, detainees in Fowler “behaved in an abusive and aggressive manner to Serco activities staff, including a detainee who broke two plastic chairs and threw them into the sterile zone... detainees on the roof again threw tiles at 14:49hrs when Serco brought drinks to the negotiators”¹⁶⁰.

Prior to 8pm, “30 detainees approached Serco staff as the detainees on the roof of the Macquarie Residential Block lowered a rope made from bed sheets. Detainees on the roof... threw roof tiles to the ground... when staff approached the building. All Serco staff consequently retreated to a safe distance”¹⁶¹.

Around 9pm, one detainee began to shout and attempted to accost a Serco staff member but other detainees intervened.

Just before 10pm, two detainees on the roof began to fight against themselves and Serco staff within Fowler “withdrew to a position from which they could safely observe events”¹⁶².

As the violence intensified, Serco officers again withdrew in preparation to withdraw from Fowler if the need arose. Intelligence suggested the protestors “planned to burn down and wreck the VIDC”.

At 11:15pm, tiles were thrown at Serco staff.

A group of detainees charged at Serco staff in Fowler; staff withdrew to the Murray Block which detainees then set upon. The adjacent office building was set alight. Staff soon withdrew from Fowler to the Visits Centre.

¹⁵⁹ Hawke & Williams, p. 71.

¹⁶⁰ Hawke & Williams, p. 71.

¹⁶¹ Hawke & Williams, p. 72.

¹⁶² Hawke & Williams, p. 72.

Fires burned in four different buildings; chaos reigned and by 23:37, 100 detainees from Fowler had joined in.

Just before midnight, rocks were thrown at Serco staff as well as NSW Police and Fire and Rescue NSW Fire-fighters who had been stationed outside the VIDC perimeter.

In the early hours of the morning, detainees broke through the vehicle gates between Fowler and Hughes and began “assaulting Serco staff and other detainees”¹⁶³.

The Department has confirmed “there is not a mandated staff ratio for immigration detention centres and other facilities. As per clause 3.2 of the immigration detention centre contract (the contract), the department relies on the skill and expertise of the service provider. As such Serco must ensure that the personnel levels at facilities are adequate to deliver the services in accordance with the contract.”¹⁶⁴

The union representing a high percent of Serco workers – United Voice – told the Inquiry it was concerned about the lack of flexible staffing ratios that took into account the situation in detention centres as it evolved throughout the day:

“If people have to take detainees off site and there is an escort, your numbers drop and all of a sudden you can be left with one person for say 200 which is unsafe for the staff member and also for the detainees. That is the principal problem. There is no real consistency or guidance as to what those staffing levels should be”¹⁶⁵.

¹⁶³ Hawke & Williams, p. 74.

¹⁶⁴ DIAC, answers to questions on notice, q 15, received 10 August 2011.

¹⁶⁵ McElrea, D. National Office Director, United Voice, Committee Hansard, Sydney, 5 October 2011, p. 46.

Comcare also noted in its report:

“23.2 Staffing Ratios

Section 16(2)(a) OHS Act

DIAC failed to have a staff/detainee ratio level identified and implemented. Nor did it have a system for ensuring that ratios are adjusted according to identified levels of risk. In doing so, it failed to take all reasonably practicable steps to provide a working environment (including systems of work) that was safe for DIAC employees and contractors (and without risk to their health)”¹⁶⁶.

Coalition Members and Senators of the Committee have supported recommendations in the majority report regarding staff/detainee ratios. While recognising the need to ensure flexibility in these contracts, we also concur that the absence of standards on staff/detainee and performance management in this area has left staff and detainees exposed to great risks. While not wishing to be prescriptive in this matter, we believe it is necessary that such ratios be employed in an appropriate and practical form to support staff and detainees. Such requirements would need to be reflected in contract conditions.

¹⁶⁶ Comcare, *Investigation Report EVE0020547*, 21 July 2011 p. 4.

8. Warnings for Settlement Services

Australia runs the most generous resettlement program per capita in the world. Less than one percent of the world's 10.4 million refugees will be resettled in any one year.

Regional Representative of the United Nations High Commissioner for Refugees, Mr Richard Towle, told the Inquiry:

“Australia's resettlement program is one of the best-run and most effective resettlement programs in the world, both in numerical terms and in substantive terms... it is generous in numbers and it is generous in terms of its quality and its delivery of humanitarian support. There is no question of that.”¹⁶⁷

Mr Towle went on to stress that “We have to use it [resettlement] strategically because we know it is very limited. We have to use it in a way that is confined really only to those people who are most deserving in terms of acute protection needs or where it can be used in a strategic way to resolve a very longstanding and protracted refugee displacement situation.... there has always been a triaging of need.”¹⁶⁸

Each year, the number of applications for resettlement in Australia greatly exceeds the number of available places. Of the 54,243 offshore applications entered for a humanitarian/refugee visa in 2010-11, there were just 8,971 visas granted.

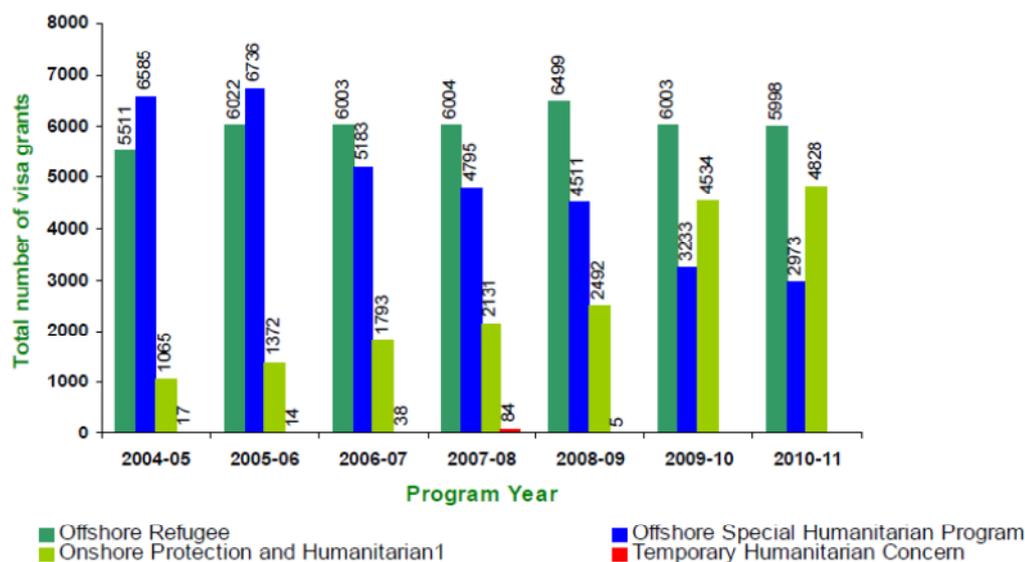
Internationally, as the IMA cohort increasingly assumes a greater percent of resettlement places, our capacity to accept refugees from UN camps and sites of conflict is significantly hampered.

¹⁶⁷ Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 11.

¹⁶⁸ Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 12.

When the Howard government left office, one in 400 protection visas were granted to those who had arrived by boat¹⁶⁹. Today, that figure is one in five.¹⁷⁰

Humanitarian Program Visa Grants by category 2004-05 to 2010-11



Source: Richmond HSS Review, Figure 1, page 117

Professor Andrew Markus of the Monash University Scanlon Foundation recently observed “With the increase in boat arrivals, Special Humanitarian Program places have been cut by more than half and in 2010-11 there was a success rate of just 10% (2,973 visas granted from 28,319 applications)”¹⁷¹.

¹⁶⁹ DIAC, *Asylum Statistics – Australia Protection Visa Statistics*, published September 2011, last accessed 17 November 2011,

www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-2010-11-section1.pdf; Phillips, J. & Koeth, E. & Karlsen, E. *Seeking Asylum; Australia’s Humanitarian program*, Parliamentary Library Social Policy & Law and Bills Digest Sections, 21 January 2011, last accessed 16 November 2011,

www.aph.gov.au/library/pubs/bn/sp/SeekingAsylum.htm.

¹⁷⁰ DIAC, *Humanitarian Program Outcomes for 2010-2011*, last accessed 16 November 2011, www.immi.gov.au/media/statistics/pdf/humanitarian-program-outcomes-2010-11.pdf

¹⁷¹ Scanlon Foundation Social Cohesion Program, Monash University, *Population and Immigration: Refugee Resettlement January 2012*, www.arts.monash.edu.au/mapping-population/--documents/refugee-resettlement-fact-sheet.pdf.

Domestically, as asylum seekers continue to arrive by boat in unprecedented numbers, our capacity to support refugees who are accepted for resettlement is increasingly strained.

The Richmond report argues that the increased numbers of asylum seeker arrivals under this government are diverting and essentially competing for vital resources from Australia's resettlement program. Mr Richmond gave evidence to the Inquiry that:

- *“The HSS environment... has been directly impacted in my view by the current issues in relation to border protection and the detention system, particularly through the substantial increase in the number of irregular maritime arrivals”¹⁷²*
- *“the providers are under some stress in order to cope with the IMA group in a way that was perhaps not provided for and expected in the contract. This does stress their organisational capacity and puts them under pressure”¹⁷³*
- *“as it builds up, the pressure on the same scarce resources will present a challenge for housing and the support services provided by both the public and private sectors and, of course, the actual capacity of providers to recruit the quality staff necessary to support these things”¹⁷⁴.*

The community detention and bridging visa initiatives will further complicate this matter, threatening to undermine and compromise the quality and supply of resources available for permanent resettlement of genuine refugees. He notes in his report:

“In the current environment of increased numbers (particularly of onshore arrivals from detention), very significant increases in the numbers of single adult males and unaccompanied minors, and significantly rising expectations about service standards and quality, inevitably some of these features present

¹⁷² Richmond, D., Committee Hansard, Canberra, 29 February 2012, p. 14.

¹⁷³ Richmond, D., Committee Hansard, Canberra, 29 February 2012, p. 16.

¹⁷⁴ Richmond, D., Committee Hansard, Canberra, 29 February 2012, p. 18.

challenges to the Contract. At the same time, recent DIAC initiatives such as community detention and programs for unaccompanied minors which also involve outsourcing to Providers may increase DIAC's coordination risks in and around HSS",¹⁷⁵.

Furthermore, in evidence to the inquiry, Mr Richmond alluded to additional complications posed to providers by an increase in the IMA cohort within Australia's resettlement program;

"Significant number of adult single males in that IMA cohort presents real challenges for housing for the providers... I think the big challenge is that because there are significant numbers of people in the detention system, there is already a sort of pipeline of people who have some challenging characteristics and they have to be assisted and supported if indeed they do become refugees holding visas",¹⁷⁶.

Australia has a clear responsibility to those we undertake to resettle and support. It is imperative that the government ensure these places are made available to those who are in dire need. Furthermore, the government must take all practicable steps to ensure support is provided to assist these people as they transition and build a new life here.

It is unacceptable that continued rates of asylum seeker boat arrivals, which show no sign of abating, should compromise the integrity and capacity of our resettlement program and services. These are the human costs of Labor's failed border protection policies, and they are high.

¹⁷⁵ Richmond, D., *Review of Humanitarian Settlement Services (HSS) Performance Measures and Contract Management*, September 2011, p. 8, publicly released on 13 December 2011 www.immi.gov.au/living-in-australia/settle-in-australia/find-help/hss/review-of-hss-richmond.pdf.

¹⁷⁶ Richmond, D. Committee Hansard, Canberra, 29 February 2012, p. 15.

Recommendation 6

Coalition Members and Senators recommend that a minimum quota of 11,000 places of the 13,750 permanent places for the Refugee and Humanitarian program be reserved for offshore applicants, in parallel with the introduction of Temporary Protection Visas for all IMAs.

Senator Cory Bernardi

Senator Michaelia Cash

Mr Michael Keenan MP

Mr Scott Morrison MP

Attachment A

Coalition Members' Position on Majority Report Recommendations

COMMITTEE RECOMMENDATION	COALITION MEMBERS POSITION
3.34 The Committee recommends that the Department of Immigration and Citizenship continue to robustly contract manage Serco's obligation to provide appropriate activities for detainees.	Supported
3.36 The Committee recommends that the Department of Immigration and Citizenship consider other accommodation or recreation options for detainees when the amenity of a facility is compromised due to construction or maintenance projects.	Supported
3.56 The Committee recommends that the Department of Immigration and Citizenship conduct robust auditing of Serco staffing ratios and training, in line with the recommendations in the Comcare report and Hawke-Williams review.	Supported
3.64 The Committee reiterates the recommendation made by the Commonwealth Ombudsman that the Department of Immigration and Citizenship, conduct a review of the quality and management of incident reporting across immigration detention network, and also assess Serco's capacity to monitor its own compliance with the reporting guidelines.	Supported
3.78 The Committee recommends that the Department of Immigration and Citizenship appoint an independent	Supported

expert to inquire into the appropriate qualifications for Serco Client Service Officers and make appropriate amendments to its contract with Serco.	
3.91 The Committee recommends that the Department of Immigration and Citizenship effectively contract manage Serco's implementation of the Psychological Support Program Policy.	Supported
3.92 The Committee recommends that the Department of Immigration and Citizenship work with Serco and the Detention Health Advisory Group to reform the Keep Safe policy to ensure it is consistent with the Psychological Support Program Policy, as soon as possible.	Supported
3.93 The Committee recommends that the Department of Immigration and Citizenship ensures that Serco provides adequate Detention Health Advisory Group-endorsed mental health training to Serco officers who implement the Psychological Support Program Policy.	Supported
3.104 The Committee recommends that Serco develop and implement improved proactive procedures to support staff following critical incidents.	Supported
3.109 The Committee recommends that the Department of Immigration and Citizenship ensure Serco has appropriate procedures and training in place so that only where International Health and Medical Services personnel are not available can senior Serco managers participate in the secondary dispensing of medication.	Supported
3.118 Consistent with the findings of the Hawke-Williams review, the Committee recommends that the	Supported See also Coalition member

government finalise a security protocol between Serco, the Australian Federal Police and local police in each state and territory.	recommendations
3.128 The Committee recommends that the Department of Immigration and Citizenship require Serco local managers to apply a consistent practice and procedure protocol to visits across the network, in accordance with the information provided on the Department website.	Supported
3.129 The Committee recommends that the Department of Immigration and Citizenship continue to improve visitor facilities across the network.	Does not oppose, subject to budget
4.38 The Committee recommends that International Health and Medical Services staff be rostered on a 24 hour a day basis at all non-metropolitan detention facilities.	Not supported, should continue to be based on circumstances assessed by DIAC at each facility.
4.39 The Committee recommends that the Department of Immigration and Citizenship assess, on a case by case basis, the need for International Health and Medical Services staff to be rostered on a 24 hour a day basis at metropolitan detention facilities.	Supported
4.69 The Committee recommends that the Department of Immigration and Citizenship work with International Health and Medical Services pilot regular mental health outreach services in detention facilities.	Supported
4.91 The Committee recommends that the Department of Immigration and Citizenship develop a transport capability to transfer detainees with non-acute injuries to remote hospitals.	Not supported
5.65 The Committee recommends that,	Not supported

<p>as a matter of policy, the Department of Immigration and Citizenship accommodate detainees in metropolitan detention facilities wherever possible, in particular children and families, and those detainees with special needs or with complex medical conditions.</p>	
<p>5.96 The Committee recommends that relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.</p>	<p>Not supported</p>
<p>5.109 The Committee recommends that the Department of Immigration and Citizenship develop and implement a uniform code for child protection for all children seeking asylum across the immigration system.</p>	<p>Not opposed, but further assessment required of legal and operational implications of such a Code and a more specific proposal of what such a Code might constitute</p>
<p>5.110 The Committee further recommends that the Department of Immigration and Citizenship adopt Memoranda of Understanding with children's commissions or commissioners in all states and territories as soon as possible.</p>	<p>Not supported, Minister's guardian powers are considered sufficient</p>
<p>5.119 The Committee recommends that the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the shortest practicable time, and subject to an assessment of non-compliance and risk factors, as enunciated by the <i>New Directions</i> policy.</p>	<p>Coalition policy is for mandatory detention to be observed for all IMAs until their status is determined. Under Coalition policy all new IMA's would be processed offshore at Nauru.</p>
<p>5.120 The Committee further recommends that asylum seekers who pass initial identity, health, character and security checks be immediately granted a bridging visa or moved to community detention while a</p>	<p>Not supported. Residence determination powers should be reserved for those designated as vulnerable.</p>

<p>determination of their refugee status is completed, and that all reasonable steps be taken to limit detention to a maximum of 90 days.</p>	
<p>5.121 The Committee recommends that the Department of Immigration and Citizenship be required to publish on a quarterly basis the reasons for the continued detention of any person detained for more than 90 days, without compromising the privacy of the individuals.</p>	<p>Not supported. Existing reporting requirements and accountability provisions are sufficient.</p>
<p>6.61 The Committee recommends that the Department of Immigration and Citizenship consider revising and enhancing its system of quality control to oversee those Refugee Status Assessment and Internal Merits Review processes still underway.</p>	<p>Supported</p>
<p>6.96 The Committee recommends that the Australian Government move to place all asylum seekers who are found to be refugees, and who do not trigger any concerns with the Australian Security Intelligence Organisation following initial security checks, and subject to an assessment of non-compliance and risk factors, into community detention while any necessary in-depth security assessments are conducted.</p>	<p>Not supported</p>
<p>6.151 The Committee recommends that the Australian Government and the Australian Security Intelligence Organisation establish and implement periodic, internal reviews of adverse Australian Security Intelligence Organisation refugee security assessments commencing as soon as possible.</p>	<p>Not supported</p>
<p>6.152 The Committee recommends that the Australian Security Intelligence</p>	<p>Not supported</p>

<p>Organisation Act be amended to allow the Security Appeals Division of the Administrative Appeals Tribunal to review Australian Security Intelligence Organisation security assessments of refugees and asylum seekers.</p>	
<p>7.16 The Committee recommends that the Department of Immigration and Citizenship consider publishing criteria for determining whether asylum seekers are placed in community detention or on bridging visas.</p>	<p>Not supported. Residence determination powers should be reserved for those assessed as vulnerable and remain at the discretion of DIAC.</p>
<p>7.91 The Committee recommends that the Australian Government and the Department of Immigration and Citizenship seek briefing on control orders in use by the criminal justice system and explore the practicalities of employing similar measures for refugees and asylum seekers who are in indefinite detention or cannot be repatriated.</p>	<p>Not opposed, however Coalition members do not support release of detainees who have a negative security assessment or have been deemed to not satisfy the general or criminal conduct provision of the character test.</p>
<p>8.59 The Committee recommends that the Department of Immigration and Citizenship continue to work towards implementing all of the recommendations made by the Hawke-Williams review, and that the Minister for Immigration and Citizenship report to the Parliament no later than 20 September 2012 on progress in implementing the review recommendations.</p>	<p>Supported, however the Minister should be required to provide a report in a statement to the House of Representatives by 21 June 2012.</p>

Attachment B

Boat arrivals since the Labor Government unwound the Coalition's strong border protection policies

Headline numbers

Total number of arrivals since August 2008: **15,964**

Total number of boats since August 2008: **289**

Total number of arrivals since polling day (21 August 2010): 134 Boats, containing 8615 people

Boats in Calendar Year 2012: 17

People in Calendar Year 2012: 1310

Boats in Calendar Year 2011: 69

People in Calendar Year 2011: 4730

Boats in Calendar Year 2010: 135

People in Calendar Year 2010: 6889

Boats in Calendar Year 2009: 61

People in Calendar year 2009: 2856

Boats in Financial Year 11/12: 59

People in Financial Year 11/12: 4364

Boats in Financial Year 10/11: 89

People in Financial Year 10/11: 4949

Boats in Financial Year 09/10: 117

People in Financial Year 09/10: 5614

Unauthorised arrivals: selected financial years			Unauthorised arrivals: selected calendar years		
1996-97	365	13 boats	1996	660	19 boats
1997-98	157	13 boats	1997	339	11 boats
1998-99	921	42 boats	1998	200	17 boats
99-2000	4,175	75 boats	1999	3,721	86 boats
2000-01	4,137	54 boats	2000	2,939	51 boats
2001-02	3,039	19 boats	2001	5,516	43 boats
2002-03	0	0 boats	2002	0###	0 boats
2003-04	82	1 boat	2003	53	1 boat
2004-05	0	0 boats	2004	0####	0 boats
2005-06	61	8 boats	2005	11	4 boat
2006-07	133	4 boats	2006	60	6 boats
2007-08	25	3 boats	2007	148	5 boats
2008-09	1,033	23 boats	2008	179#*	7 boats
2009-10	5,614*##	117 boats	2009	2,856	61 boats
2010-11	4949	89 boats	2010	6,889	135 boats
2011-12	4364	59 boats	2011	4730	69 boats

* Two boats arrived on 8 October with one towing the other and all passengers in one boat – counted as two boats

** Two boats arrived 24/25 November but passenger numbers not disaggregated

*** - includes five that drowned before a boat was rescued and towed to Cocos Island in May 2010

see fact sheet 74a – DIAC –2002 – nil boats

15pax on one boat returned to Indonesia in 2004 – not included as did not arrive in Australia see fact sheet 74a – DIAC –2002

*Library did not include 18 crew – see Question taken on notice 49 DIAC June 2009

15pax on one boat returned to Indonesia in 2004 – not included as did not arrive in Australia see fact sheet 74a – DIAC –2002

Total number of boats	Date of interception	Number of passengers and crew per boat	Monthly Total passengers and crew	Annual passengers and crew	Monthly total boats	Annual number of boats
1	30 Sep 2008	14	14		1	1
2	6 Oct 2008	17	17		1	2
3	20 Nov 2008	12				3
4	28 Nov 2008	12	24		2	4
5	3 Dec 2008	40				5
6	7 Dec 2008	47				6
7	16 Dec 2008	37	124	179	3	7
8	17 Jan 2009	20	20	20	1	1
9	14 Mar 2009	54	54	54	1	2
10	2 Apr 2009	50				3
11	2 Apr 2009	63				4
12	8 Apr 2009	39				5
13	15 Apr 2009	51				6
14	22 Apr 2009	32				7
15	25 Apr 2009	57				8
16	29 Apr 2009	7				9
17	29 Apr 2009	72	371	445	8	10
18	5 May 2009	53				11
19	10 May 2009	34				12
20	25 May 2009	78	165	610	3	13
21	9 Jun 2009	4				14
22	15 Jun 2009	50				15
23	23 Jun 2009	54				16
24	28 Jun 2009	194	302	912	4	17
25	11 Jul 2009	73	73	985	1	18
26	13 Aug 2009	77				19
27	29 Aug 2009	55	132	1117	2	20
28	7 Sep 2009	8				21
29	12 Sep 2009	87				22
30	13 Sep 2009	69				23
31	15 Sep 2009	62				24
32	16 Sep 2009	55				25
33	23 Sep 2009	100				26
34	27 Sep 2009	12				27
35	27 Sep 2009	32				28
36	30 Sep 2009	43	468	1585	9	29
37	1 Oct 2009	72				30
38	9 Oct 2009	55				31
39	12 Oct 2009	60				32
40	18 Oct 2009	43				33
41	21 Oct 2009	24				34
42	22 Oct 2009	32				35

Total number of boats		Number of passengers and crew per boat	Monthly Total passengers and crew	Annual passengers and crew	Monthly total boats	Annual number of boats
43	23 Oct 2009	33				36
44	26 Oct 2009	1				37
45	29 Oct 2009	38	358	1943	9	38
46	4 Nov 2009	27				39
47	5 Nov 2009	16				40
48	14 Nov 2009	52				41
49	15 Nov 2009	31				42
50	16 Nov 2009	11				43
51	16 Nov 2009	43				44
52	20 Nov 2009	52				45
53	23 Nov 2009	58				46
54	26 Nov 2009	52				47
55	26 Nov 2009	31				48
56	27 Nov 2009	26	399	2342	11	49
57	3 Dec 2009	57				50
58	4 Dec 2009	18				51
59	6 Dec 2009	42				52
60	9 Dec 2009	53				53
61	10 Dec 2009	63				54
62	15 Dec 2009	55				55
63	18 Dec 2009	59				56
64	26 Dec 2009	9				57
65	28 Dec 2009	11				58
66	29-Dec 2009	33				59
67	30 Dec 2009	52				60
68	31 Dec 2009	62	514	2856	12	61
69	3 January 2010	80				1
70	3 January 2010	32				2
71	8 January 2010	30				3
72	10 January 2010	16				4
73	13 January 2010	43				5
74	22 January 2010	33				6
75	23 January 2010	38				7
76	26 January 2010	51	323	323	8	8
77	1 February 2010	175				9
78	4 February 2010	88				10
79	6 February 2010	49				11
80	12 February 2010	51				12
81	18 February 2010	45				13
82	20 February 2010	13				14
83	24 February 2010	47				15
84	25 February 2010	47				16

Total number of boats	Date of interception	Number of passengers and crew per boat	Monthly Total passengers and crew	Annual passengers and crew	Monthly total boats	Annual number of boats
85	28 February 2010	58	573	896	9	17
86	3 March 2010	50				18
87	6 March 2010	83				19
88	7 March 2010	30				20
89	10 March 2010	49				21
90	11 March 2010	27				22
91	11 March 2010	12				23
92	13 March 2010	42				24
93	19 March 2010	95				25
94	21 March 2010	22				26
95	23 March 2010	22				27
96	23 March 2010	57				28
97	24 March 2010	97				29
98	27 March 2010	8				30
99	29 March 2010	41				31
100	29 March 2010	44				32
101	31 March 2010	67	746	1642	16	33
102	3 April 2010	82				34
103	4 April 2010	54				35
104	6 April 2010	21				36
105	7 April 2010	103				37
106	8 April 2010	70				38
107	10 April 2010	10				39
108	10 April 2010	40				40
109	11 April 2010	27				41
110	11 April 2010	35				42
111	16 April 2010	81				43
112	21 April 2010	48				44
113	22 April 2010	12				45
114	26 April 2010	51				46
115	27 April 2010	45				47
116	28 April 2010	54				48
117	29 April 2010	26	759	2401	16	49
118	3 May 2010	41				50
119	6 May 2010	28				51
120	9 May 2010	59				52
121	10 May 2010	41				53
122	10 May 2010	83				54
123	11 May 2010	50				55
124	12 May 2010	25				56
125	13 May 2010	55				57

Total number of boats	Date of interception	Number of passengers and crew per boat	Monthly Total passengers and crew	Annual passengers and crew	Monthly total boats	Annual number of boats
126	16 May 2010	92				58
127	17 May 2010	47				59
128	18 May 2010	41				60
129	30 May 2010	55	617	3018	12	61
130	4 June 2010	57				62
131	4 June 2010	30				63
132	5 June 2010	49				64
133	5 June 2010	44				65
134	8 June 2010	37				66
135	12 June 2010	64				67
136	12 June 2010	55				68
137	16 June 2010	36				69
138	18 June 2010	26				70
139	18 June 2010	48				71
140	23 June 2010	53				72
141	26 June 2010	99	598	3616	12	73
142	2 July 2010	77				74
143	4 July 2010	36				75
144	6 July 2010	46				76
145	12 July 2010	39				77
146	13 July 2010	74				78
147	14 July 2010	87				79
148	21 July 2010	43				80
149	21 July 2010	45				81
150	28 July 2010	85	532	4148	9	82
151	10 August 2010	59				83
152	15 August 2010	21				84
153	17 August 2010	52				85
154	18 August 2010	34				86
155	21 August 2010	25				87
156	22 August 2010	21				88
157	26 August 2010	38				89
158	28 August 2010	39				90
159	31 August 2010	35	324	4472	9	91
160	1 September 2010	87				92
161	2 September 2010	61				93
162	7 September 2010	62				94
163	14 September 2010	91				95
164	20 September 2010	51				96
165	29 September 2010	20	372	4844	6	97
166	1 October 2010	27				98

Total number of boats	Date of interception	Number of passengers and crew per boat	Monthly Total passengers and crew	Annual passengers and crew	Monthly total boats	Annual number of boats
167	1 October 2010	41				99
168	4 October 2010	73				100
169	7 October 2010	58				101
170*	8 October 2010	0				102
171	8 October 2010	77				103
172	9 October 2010	69				104
173	11 October 2010	12				105
174	13 October 2010	59				106
175	21 October 2010	90				107
176	22 October 2010	82				108
177	23 October 2010	27				109
178	24 October 2010	64				110
179	27 October 2010	47				111
180	28 October 2010	29	755	5599	15	112
181	2 November 2010	82				113
182	2 November 2010	62				114
183	3 November 2010	12				115
184	3 November 2010	72				116
185	5 November 2010	25				117
186	6 November 2010	81				118
187	8 November 2010	3				119
188	11 November 2010	42				120
189	17 November 2010	118				121
190	18 November 2010	57				122
191**	24 November 2010	0				123
192	25 November 2010	74				124
193	26 November 2010	40				125
194	30 November 2010	65	733	6332	14	126
195	1 December 2010	100				127
196	10 December 2010	44				128
197	11 December 2010	65				129
198	14 December 2010	11				130
199#	15 December 2010	90				131
200	16 December 2010	57				132
201	19 December 2010	60				133
202	21 December 2010	70				134
203	25 December 2010	60	557	6889	9	135

2011 Total number of boats	Date of interception	Number of passengers and crew per boat	Monthly Total passengers and crew	Annual passengers and crew	Monthly total boats	Annual number of boats
204	4 January 2011	92				1
205	8 January 2011	81	173	173	2	2
206	6 February 2011	52				3
207	8 February 2011	55				4
208	20 February 2011	46				5
209	26 February 2011	105	258	431	4	6
210	4 March 2011	18				7
211	4 March 2011	25				8
212	12 March 2011	35				9
213	16 March 2011	50				10
214	17 March 2011	145				11
215	21 March 2011	61				12
216	30 March 2011	39	373	804	7	13
217	8 April 2011	53				14
218	12 April 2011	46				15
219	17 April 2011	55				16
220	22 April 2011	53				17
221	22 April 2011	81				18
222	29 April 2011	80	368	1172	6	19
223	5 May 2011	63				20
224	7 May 2011	87				21
225	14 May 2011	33				22
226	16 May 2011	57				23
227	16 May 2011	21				24
228	30 May 2011	56	317	1489	6	25
229	4 June 2011	59				26
230	7 June 2011	61				27
231	24 June 2011	67	187	1676	3	28
232	8 July 2011	70				29
233	21 July 2011	54				30
234	21 July 2011	64				31
235	24 July 2011	51				32
236	31 July 2011	56	295	1971	5	33
237	7 August 2011	52				34
238	11 August 2011	106				35
239	12 August 2011	62				36
240	19 August 2011	73	293	2264	4	37
241	9 September 2011	74				38
242	23 September 2011	68				39
243	23 September 2011	113				40
244	28 September 2011	77	332	2596	4	41

2011						
Total		Number of	Monthly Total	Annual	Monthly total	Annual
number of	Date of interception	passengers	passengers and	passengers	boats	number of
boats		and crew per	crew	and crew		boats
		boat				
245	1 October 2011	72				42
246	19 October 2011	55				43
247	19 October 2011	16				44
248	23 October 2011	81				45
249	23 October 2011	47				46
250	30 October 2011	57	328	2924	6	47
251	1 November 2011	94				48
252	2 November 2011	51				49
253	6 November 2011	60				50
254	8 November 2011	57				51
255	14 November 2011	95				52
256	21 November 2011	79				53
257	22 November 2011	121				54
258	23 November 2011	44				55
259	23 November 2011	100				56
260	31 November 2011	114	815	3739	10	57
261	1 December 2011	105				58
262	2 December 2011	22				59
263	2 December 2011	78				60
264	6 December 2011	56				61
265	6 December 2011	167				62
266	8 December 2011	80				63
267	9 December 2011	52				64
268	9 December 2011	74				65
269	13 December 2011	58				66
270	14 December 2011	102				67
271	16 December 2011	79				68
272	24 December 2011	118	991	4730	12	69

2012						
Total		Number of	Monthly Total	Annual	Monthly total	Annual
number of	Date of interception	passengers	passengers and	passengers	boats	number of
boats		and crew per	crew	and crew		boats
		boat				
273	2 January 2012	37				1
274	2 January 2012	16				2
275	7 January 2012	121				3
276	17 January 2012	76				4
277	19 January 2012	58	308	308	5	5
278	11 February 2012	127				6
279	15 February 2012	127				7
280	15 February 2012	71				8
281	17 February 2012	65				9
282	17 February 2012	71				10
283	18 February 2012	81				11
284	21 February 2012	147				12
285	22 February 2012	100				13
286	22 February 2012	98	887	1195	9	14
287	6 March 2012	26				15
288	13 March 2012	37				16
289	24 March 2012	52	115	1310	3	17

Estimated number of arrivals on boat that sank off Christmas Island

**JOINT SELECT COMMITTEE ON AUSTRALIA'S
IMMIGRATION DETENTION NETWORK**

Q302

Question: Could the department provide the total capital spend on Australia's detention network since 2007. That is existing facilities that were there in November 2007—including Christmas Island obviously—as well as all other facilities that have come since. Could you provide us with a breakdown of the capital costs, which would include extensions, refurbishments and all of those things, by year and by facility, up to the current time, please.

Answer: The capital works spend for all detention facilities by financial year and by facility is shown below:

State	Location	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012 (*)
NSW	Villawood IDC	\$302,952	\$4,365,818	(\$271,181)	\$3,874,105	\$1,334,970
	Sydney IRH	\$0	\$0	\$298,934	\$240,516	\$0
VIC	Maribyrnong IDC	\$713,933	\$180,248	\$375,656	\$1,143,254	\$1,609,847
	Melbourne ITA	\$3,196,681	\$329,651	\$255,042	\$444,879	\$3,850,959
QLD	Brisbane ITA	\$2,160,460	\$672,532	\$15,737	\$2,652,556	\$16,251
	Scherger IDC	\$0	\$0	\$0	\$4,641,220	\$117,195
SA	Baxter IRPC	\$44,693	\$0	\$0	\$0	\$0
	Port Augusta IRH	\$0	\$0	\$40,338	\$424,313	\$34,582
	Adelaide ITA	\$2,367	\$1,024,739	\$172,777	\$2,608,206	\$48,773
	Inverbrackie APOD	\$0	\$0	\$0	\$6,323,045	\$1,778,950
WA	Perth IDC	\$214,070	\$2,354,029	\$512,598	\$0	\$0
	Perth IRH	\$26,716	\$10,197	\$26,690	\$0	\$9,467
	Curtin IDC	\$0	\$0	\$2,906,051	\$111,420,544	\$8,454,936
	Yongah Hill IDC	\$0	\$0	\$0	\$5,613,127	\$96,300,309
	Christmas Island (**)	\$292,924,858	\$375,032	\$33,964,774	\$14,033,116	\$10,417,282
NT	Northern IDC including Berrimah House	\$4,541,863	\$2,594,224	\$1,188,039	\$4,222,725	\$8,312,510
	Wickham Point IDC	\$0	\$0	\$0	\$11,692	\$8,102,024

**JOINT SELECT COMMITTEE ON AUSTRALIA'S
IMMIGRATION DETENTION NETWORK**

Q302

TAS	Pontville IDC	\$0	\$0	\$0	\$2,541,875	\$10,780,355
	General asset replacement all sites	\$18,978	\$197,636	\$255,701	\$237,936	\$119,100

* This is as at 29 February 2012

** This includes Christmas Island IDC, Christmas Island – Aqua/Lilac, Christmas Island – Construction Camp and Christmas Island – Phosphate Hill.

*** No capital funding was allocated to Leonora, Jandakot or the Darwin Airport Lodge

ADDITIONAL COMMENTS

Senator Sarah Hanson-Young for the Australian Greens

Introduction

Australia is obliged to protect the human rights of all asylum seekers and refugees who arrive in our country, regardless of how or where they arrive, and whether they arrive with or without a visa. Our obligations to vulnerable people who are fleeing persecution arise from Australia's commitment to international treaties, and a shared sense of justice and fairness as a safe, prosperous and humanitarian nation.¹

The Australian Greens welcomed the opportunity to participate in the Joint Select Committee on Australia's Immigration Detention Network because it was apparent that, after decades of controversy and inflammatory public debate in this important area of policy, successive Australian governments have not yet found a workable solution for humanely, safely, and cost-effectively accessing the asylum applications of people who arrive by boat.

In conducting its investigations the Committee travelled across Australia and received a massive volume of information and submissions. The evidence presented to the Committee was overwhelmingly clear that Australia's immigration detention network is in crisis.

Chapter 5 of the Committee Report provides a thorough survey of the crisis and the impact it is having on the men, women and children who are confined in places of detention, as well as the staff and services providers working in the centres. The evidence put before the Committee was explicit that detention centres are places of hopelessness, suffering and mental illness. The immigration detention network is highly expensive and unwieldy to maintain, and daily life within the centres lacks adequately clear practices and procedures to minimise some of the significant harm being caused to asylum seekers and staff.

The Australian Greens support the recommendations of the Committee Report. Having observed the extent of the crisis from a multiplicity of angles, the Committee has put forward a range of effective and practical measures to address the crisis.

The Australian Greens endorse the Committee Report recommendations in the belief that implementation of those reforms would go a long way towards fixing the detention system. The Greens assert that wherever possible, the recommendations

¹ 1951 Convention Relating to the Status of Refugees; 1967 Protocol Relating to Refugees; 1948 Universal Declaration of Human Rights; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1966 International Covenant on Civil and Political Rights; and the 1989 Convention on the Rights of the Child.

outlined in the Committee Report must be incorporated into Australia's legal framework through amendments to existing legislation.

The recommendations in the Committee Report and these Additional Comments would make possible an immigration detention network which would be:

- Healthier and more humane for asylum seekers through clear and mandated time limits on detention, regular judicial review of extended detention, and no children in detention;
- More cost effective through improved procedures and training in detention centres, and properly rigorous auditing of service provider outcomes;
- Less damaging for detainees through review of security decisions, greater use of community detention and bridging visas, and the removal of the conflict of interest regarding unaccompanied minors.

The importance of immediate legislative reform

The past two decades of immigration detention practices have demonstrated that non-legislative reforms are incapable of withstanding the vicissitudes of governmental or ministerial changes, nor the 'toxic' political rhetoric that regrettably distorts public discussion of asylum seeker policy.²

The *New Directions for Detention* values-based approach announced by the Minister for Immigration on 29 July 2008 included, amongst seven key principles, a policy undertaking that 'detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time'. As the Committee heard from a succession of witnesses, the *New Directions* policies have largely not been carried out in practice, to the great detriment of detained asylum seekers, service providers in the detention network and Australian taxpayers and agencies.

It is critical that the *Migration Act 1958* (Cth) (*Migration Act*) and relevant legislation be urgently amended to ensure the longevity and resilience of the reforms proposed by the Committee report and herein. This is the only way that Australia can draw closer to achieving a humane, cost-effective, and secure detention network.

Time limits on detention

As at 29 February 2012 there were 4122 people in detention who had been there for over 92 days, amounting to 62% of current immigration detainees. Of that group, there were 253 people who had been in detention for greater than 730 days.³ Asylum seekers continue to be detained for unacceptable periods of time at great risk to their mental health and well-being.

² Mr Richard Towle, UNHCR Australia, as quoted in 'Asylum seekers turned off toxic Australia', *ABC News Online*, Samantha Hawley, 26-27 March 2012.

³ *Immigration Detention Statistics Summary to 29 February 2012*, published on Department of Immigration and Citizenship website March 2012.

We refer to and endorse **recommendation 22 [5.118]** of the Committee Report which calls on the Australian Government to 'take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the *shortest practicable time*, and subject to an assessment of non-compliance and risk factors, as enunciated by the *New Directions* policy'.

The Committee has resolved that the government must take immediate, concrete action to remedy this situation. The Committee has proposed at **recommendation 23 [5.119]** that 'all reasonable steps be taken to limit detention to a maximum of 90 days'.

The Australian Greens believe the first and most crucial remedial step is to amend the *Migration Act* so that time limits on detention are enshrined in Australian law.

A large cohort of submitters to the Inquiry supported the call for legislative reform so as to ensure specific time limits on detention. The United Nations High Commissioner for Refugees said in its written submission:

The UNHCR recommends that the presumption against detention should be explicitly incorporated into Australia's legal framework and that all efforts should be made to avoid the situation of protracted detention and possibility of indefinite detention in Australia.

The UNHCR recommends that asylum-seekers should not be detained beyond the purpose of assessing identity, health and security checks. Detention should not extend to a determination of the merits because this is not a legitimate ground for detention.⁴

The Law Council of Australia also called for the enactment of provisions imposing time limits on detention:

The Law Council is also disappointed that the Government's subsequent policies and legislative reforms do not appear to fully comply with the seven values [*New Directions*] described above ... In light of these developments, without implementing these values in legislation, it is difficult to have confidence that these values will continue to guide Government policy making in this area. Implementing the principles in legislation will help solidify Australia's commitment to ensuring its laws and policies comply with international human rights standards.⁵

In its written submission the Gilbert & Tobin Centre for Public Law called for the *Migration Act* to be amended to reflect a presumption against detention unless

⁴ United Nations High Commissioner for Refugees, *Submission 110*, p. 1.

⁵ Law Council of Australia, *Submission 101*, p. 12.

justified.⁶ The Refugee and Immigration Legal Centre, represented by Mr David Manne, also called for the implementation of policies to limit detention.⁷

Other groups that gave unequivocal support for legislated time limits on detention include the Law Council of Australia, Labor for Refugees (Vic), Forum of Australian Services for Survivors of Torture and Trauma, Migration Institute of Australia, Jesuit Refugee Service Australia, Castan Centre for Human Rights, Refugee Advice and Casework Service NSW, Liberty Victoria, International Detention Coalition, Australian Psychological Society, Uniting Church Australia, Refugee Council of Australia and the International Refugee and Migration Law Project UNSW.

It should be noted that numerous organisations who made submissions to the inquiry called for mandatory detention of asylum seekers to be abolished altogether, on the basis that it does not accord with the rule of law and Australia's human rights obligations.⁸

A number of submitters to the Inquiry supported the Greens' long-time call for time limits of 30 days to be placed on immigration detention. The Australian Medical Association (Northern Territory) recommended that detention of asylum seekers should be limited to 30 days for adults and 3 days for children.⁹ Amnesty International noted that a 30 day time limit would be comparable to other countries.¹⁰ The Australian Greens continue to broadly support the position that 30 days is an appropriate maximum time frame for initial checks.

The Committee was provided with a great deal of evidence showing that the extended duration of detention is directly linked, indeed underlies, many of the core problems associated with immigration detention, including unrest in immigration detention centres, costs to tax payers for privatised management of the centres, costs to society for supporting asylum seekers once they are finally released, difficulties in accessing services in remote locations, and lack of appropriate care and protection for children. Most importantly, extended detention is crucially linked to the mental health crisis that is a constant concern in Australia's immigration detention network, leading to

⁶ Gilbert & Tobin Centre of Public law, *Submission 21*, p. 2.

⁷ Mr David Manne, Refugee and Immigration Law Centre, *Proof Committee Hansard*, 11 November 2011, p. 24.

⁸ Ms Pamela Curr, Asylum Seeker Resource Centre, *Submission 54*, p. 3; Ms Tanya Jackson-Vaughan, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 2; Ms Lucy Morgan of Refugee Council of Australia, *Proof Committee Hansard*, 5 October 2011, p. 8; The Hon. Catherine Branson, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 51; Law Council of Australia, *Proof Committee Hansard*, 16 August 2011, p. 1; Professor John Langmore, Anglican Public Affairs Commission, *Submission 36* p. 2; Oxfam Australia, *Submission 132*; Northern Territory Legal Aid Commission, *Submission 329*; Monash Law Students' Society, *Submission 148*.

⁹ Dr Peter Morris, Australian Medical Association (NT), *Proof Committee Hansard*, 26 September 2012, p. 9.

¹⁰ Dr Graeme Thom, Amnesty International, *Proof Committee Hansard*, 18 November 2011, p. 13.

over-medication, self-harm, suicide attempts and, in a small but tragic number of scenarios, deaths of asylum seekers.

The link between time limits and mental health was put clearly in written materials and in person by Dr Jon Jereidini, a Professor of clinical psychiatry at the University of Adelaide who has been working with detainees since 2002. He informed the Committee:

If I talk about it just from the point of view of protecting people's mental health, then from that point of view I do not have a problem with detention, provided it is a matter of weeks rather than months, in order to allow processing and those kinds of things that people seem to believe need to happen in a closed environment... But I do think that when it is sustained beyond those weeks it does become dangerous, and it has been extremely damaging to many people, and not just, I might add, to the people who have been detained but also those who have detained them. Increasingly, we have become aware over the years of the damage done to people working in those environments. From the point of view of protecting people's mental health, detention must be kept to a matter of weeks rather than months.¹¹

As reflected in **recommendation 23 [5.119]** the Committee has resolved that detention of 90 days or less would be a workable and safe period of detention. The detention of adults for no more than three months, while health, identity and security checks are undertaken, would bring vast improvements to the network as a whole.

A time limit on detention to 90 days was supported by a number of submitters to the Inquiry, including the Chair of the Council for Immigration Services and Status Resolution, Mr Paris Aristotle, who noted that as people start to become unwell after 90 days of detention then 90 days should serve as the outer limit.

The Australian Greens see recommendation 23 of the Committee Report as a clear opportunity to begin taking 'all reasonable steps'. In the context of this Inquiry and its significantly beneficial raft of recommendations we support the time limit of 90 days. Consequentially, amendment of the *Migration Act* to achieve this reform should be the top priority coming out of this extensive inquiry process.

Positing time limits as a policy goal (that may be readily departed from on the basis of momentary political imperative) rather than as a legislative requirement (that requires approval by both houses of federal parliament to be changed) will not lead to genuine and long-term reform of detention practices in Australia.

Current and future Australian governments must be compelled by law to ensure that time limits are adhered to by all public or private agencies responsible for accommodating asylum seekers while initial checks are completed.

¹¹ Dr Jon Jureidini, *Proof Committee Hansard*, 15 November 2011, p. 33.

Recommendation 1

***Migration Act* to be amended to ensure that a time limit on detention, preferably 30 days, is adhered to, over which time initial health, identity and security checks can be conducted to ensure there is no risk to the community.**

Judicial Review of Extended Detention

Where the Department of Immigration forms the view that a person needs to be detained beyond the mandated time limit, there must be clear processes in place to ensure that the continuing detention is adequately explained, scrutinised and justified.

Recommendation 24 [5.120] of the Committee Report requires the Department to publish reasons on a quarterly basis for the ongoing detention of any person beyond 90 days. This reform would provide a basic level of scrutiny and transparency for people in the broader Australian community, such as legal and community advocates, to be regularly informed of the situation within the centres and circumstances relating to individual detainees, and is intended to promote a best case scenario where people will not be detained beyond 90 days without observably good reason.

It is a long-standing policy of the Australian Greens that extended detention – beyond the initial time limited detention for health, identity and security checks – must be subject to judicial review at intermittent periods with the onus on the Department of Immigration to prove why it is necessary.

The need for automatically required judicial review of extended detention was supported by numerous submitters to the inquiry.¹² The Australian Human Rights Commission noted that, in light that the indefinite detention of asylum seekers is not currently reviewable by any court, Australia is currently acting in breach of its international obligations according to articles 9(40) of the International Covenant on Civil and Political Rights and 37(d) of the Convention on the Rights of the Child.¹³ The Commission noted that, in order to ensure that detention is not arbitrary, the decision to detain or continue detaining must be subject to prompt judicial review.

Recommendation 2

Detention beyond the legislated time limit must be justified before a court and subject to periodic review by the court from that point, with the onus on the Department of Immigration to make the application and show why extended detention is necessary for that individual.

¹² Refugee Council of Australia; International Refugee and Migration Law Project UNSW, Law Council of Australia, Gilbert and Tobin Centre for Public Law, ChilOut, Castan Centre for Human Rights, Australian Psychological Society, UNHCR, Uniting Church Australia (non-exhaustive list).

¹³ Australian Human Rights Commission, *Submission 112*, p. 17.

Cost and Remoteness

One of the main reasons that immigration detention is so expensive is due to the remoteness and isolation of many of the centres. It is impractical to the point of impossibility for detainees and service providers to access quality services and for the network to attract well-trained, experienced staff on a cost-efficient basis when detention centres are so remotely situated.

The Committee was told the remoteness of centres causes problems across the board including: service providers and the Department of Immigration have difficulties attracting staff, and particularly teachers;¹⁴ detainees do not have access to essential services and community support;¹⁵ detainees find it difficult to obtain legal advice and give instructions;¹⁶ the feeling of physical remoteness adds to the alienation and depression experienced by detainees;¹⁷ and it is difficult for service providers to obtain culturally appropriate resources, excursions and communications facilities for detainees.¹⁸

The Committee was advised on 10 August 2011 that the cost of running the held detention network over recent years have been as follows:

2011-2012	\$628.75 million ¹⁹ (note: this figure does not appear to take into account updates on account of recent contract variations) ²⁰
2010-2011	\$772.17 million
2009 – 2010	\$295.55 million
2008 – 2009	\$146.57 million ²¹

The projected cost of community detention of \$150 million for financial year 2011-2012 was provided in February 2012, after a relatively large-scale increase in

¹⁴ Mr Greg Kelly, Detention Operations Division DIAC, *Proof Committee Hansard*, 7 September 2011, p. 12. Regarding the difficulties of recruiting teachers see Serco, *Question on Notice* 14.

¹⁵ Mr Rohan Thwaites, DASSAN, *Proof Committee Hansard*, 26 September 2011, p. 1.

¹⁶ Professor Jane McAdam, International Migration and Refugee Law Project, *Proof Committee Hansard*, 5 October 2011 p. 25.

¹⁷ Ms Michelle Dimasi, Asylum Seekers Christmas Island, *Proof Committee Hansard*, 18 November 2011, p. 31.

¹⁸ Serco, *Question on Notice* 14.

¹⁹ DIAC *Question on Notice* 19 received 10 August 2011.

²⁰ Note that on 9 February 2012 it was announced that Serco (alone) had renegotiated a contract with Department of Immigration worth \$1.03 billion over the forward estimates. There have also been contract variations (expansions) with IHMS in 2012 that are not included in this 2011-2012 figure. This figure does not include complete capital works costs.

²¹ DIAC *Question on Notice* 13, p. 2.

community detention placements in late 2011-early 2012 (community detention having been initially projected in August 2010 to cost \$15.74 million in 2011-2012). However the Department of Immigration commented in Senate Estimates that the community detention program was not yet equipped to manage the scale of client movements, and as such 'there are still a lot of setup costs, and economies of scale are not realised and so on. The time will come when there is more of a seamless flow of arrivals into accommodation, and not the need to be continually renting new properties'.²² The Department Secretary Mr Andrew Metcalfe voiced his presumption that 'in due course there will be a lower average cost because those setup costs... will be rolled across multiple clients. So while there is a setup cost, the ongoing costs are going to average out to a lower number'.²³

Clearly, as a costs saving measure at least, asylum seekers should be moved into the community as quickly as possible. Where asylum seekers must be briefly detained, it should be in detention centres that are close to metropolitan services rather than in impractical and expensive remote locations.

Recommendation 3

Remote and isolated detention centres should be decommissioned.

Children

Chapter 5 of the majority report canvasses the unequivocal and extensive evidence given by a vast number of submitters in condemnation of the continued detention of children. Children continue to be housed in secure accommodation including transit accommodation and 'alternative places of detention' or 'APODs', i.e. detention facilities in all but name. As at 29 February 2011 there were 496 children in detention-like facilities.²⁴

The Australian Greens maintain that no child should be placed in detention of any description beyond a maximum 12 day period while initial health, security and identity checks to be conducted. Throughout that initial detention, the Department of Immigration should be required by the *Migration Act* to ensure that children are only ever placed in appropriately low security, family friendly environments in a metropolitan area.

The Australian Greens endorse **recommendation 18 [5.65]** of the Committee Report and support enshrining this recommendation in the *Migration Act*.

²² Ms Kate Pope, Community Programs and Children Division, DIAC, *Senate Estimates Hansard*, 13 February 2012, p. 86.

²³ Mr Andrew Metcalfe, Secretary, DIAC, *Senate Estimates Hansard*, 13 February 2012, p. 86.

²⁴ *Immigration Detention Statistics Summary to 29 February 2012*, published on Department of Immigration and Citizenship website March 2012.

The argument that detention is an entirely unsuitable place for children was supported by key children's advocates throughout the inquiry process. The Australian Children's Commissioners and Guardians recommended that children be accommodated outside detention facilities while awaiting decisions about protection.²⁵ Save the Children used its written submission to ask the Committee to recommend revision of the *Migration Act* so that child asylum seekers are not subject to mandatory detention.²⁶ Dr Peter Morris of the Australian Medical Association of NT described the detention of children and their families as 'a form of child abuse'.²⁷

ChilOut recommended that the government develop alternative accommodation facilities in order for detention to adhere to the principle that is a last resort. Here it should be noted that the 'APOD' facilities are not family appropriate alternatives to detention. Family appropriate facilities should not bear a close resemblance to other detention facilities, should be not be staffed by security guards, should have a welcoming and community-like environment, and should exclude regular night-time head checks.

The Australian Greens point to the Inverbrackie place of detention (Adelaide Hills, South Australia) as the most child and family appropriate of existing immigration detention centres, and a basic example of what family reception centres should be like for families undergoing initial short-term health and security assessments prior to being transferred into the community.

ChilOut made the following submission:

Detaining children violates their basic human rights. But when they are housed in locked facilities such as Christmas Island, it is the responsibility of the government and its contractors, in this case Serco Asia Pacific, to take the very best care of the children. There is irrefutable evidence that the detention regime damages people. Allowing that effectively state-perpetrated damage to extend to children should be absolutely unconscionable in a developed, civilised society.²⁸

The Refugee Council of Australia encouraged the government to make greater use of its residential determination powers to release children and families from detention and from 'APODs' in sites such as Phosphate Hill on Christmas Island.²⁹

²⁵ Ms Pam Simmons, Children's Commissioners and Guardians, *Proof Committee Hansard*, 5 November 2011, p. 1; Australian Children's Commissioners and Guardians, *Submission 35*, p. 2.

²⁶ Ms Suzanne Dvorak, Save the Children, *Submission 50*, p. 2.

²⁷ Dr Peter Morris, Australian Medical Association (NT), *Proof Committee Hansard*, 26 September 2011, p. 9.

²⁸ Ms Kate Gaultier, ChilOut, *Submission 49*, p. 6.

²⁹ Refugee Council of Australia, *Question on Notice*, p. 213.

The Committee was provided with ample evidence demonstrating why detention centres, or detention-like environments, are inappropriate for children:

- Children's mental health is severely negatively impacted by indefinite mandatory detention, as demonstrated by evidence that between 1 July 2011 and 26 September 2011, 26 minors were involved in self-harm incidents including 19 actual self-harm attempts;³⁰
- There are no trained paediatricians working at the Darwin Airport Lodge, which is currently listed as an APOD. Rather, there are a few workers with paediatric experience and a psychologist 'skilled in working with children and families';³¹
- Schooling within immigration detention or detention-like facilities is not subject to the national quality agenda in the Early Childhood Development Strategy;³²
- There are difficulties retaining and accommodating teachers on Christmas Island;³³
- In some instances, such as in Port Augusta, children have been receiving education that is substandard, ad hoc and incommensurate to their needs;³⁴
- There is no contractual requirement for detention service provider staff who deal with children to have a Working with Children check unless it is required under relevant state legislation.³⁵

³⁰ DIAC, *Question on Notice* 166, submitted 2 December 2011.

³¹ Ms Alexis Aposteellis, Senior Operations Manager, IHMS, *Proof Committee Hansard*, 26 September 2011, p. 28.

³² Ms Pam Simmons, Australian Children's Commissioners and Guardians, *Proof Committee Hansard*, 5 November 2011, p. 3.

³³ Mr Alan Thornton, Deputy Principal Christmas Island District High School, *Proof Committee Hansard*, 6 September 2011, p. 4.

³⁴ Evidence regarding provision of teaching by ESL teacher using tailored 'materials' rather than lessons incorporating full curriculum due to unavailability of teachers see; Ms Cheryl Clay, Regional Manager of Serco Immigration Services, *Proof Committee Hansard*, 5 November 2011, p. 70-71. Also the Hon Catherine Branson, AHRC, *Proof Committee Hansard*, 5 October 2011, p. 57.

³⁵ DIAC, *Question on Notice* 101, *Question on Notice* 102, submitted 29 September 2011.

Recommendation 4

The best interests of the child should be enshrined in the *Migration Act* as the paramount in decisions regarding the accommodation of all children.

Recommendation 5

***Migration Act* to be amended to remove any mandatory detention of children.**

Recommendation 6

***Migration Act* to be amended to place time limits on children and their families being accommodated in low security family appropriate facilities prior to being moved into the community.**

Recommendation 7

Children should not be subject to ASIO security checks beyond the standard security checks used at airports (i.e. checks against the Central Movement Alert List).

Recommendation 8

All asylum seeker children of school age (early childhood, primary and secondary) must be given access to local schooling.

Recommendation 9

Children should only be housed in facilities where all service providers and officers who interact with them have obtained a Working with Children check.

Unaccompanied minors

Serious concerns about the guardianship of unaccompanied minors were raised in the course of the Inquiry. Many of the experts and advocates appearing before the Committee expressed their intense dismay at the clear and apparent conflict of interest of the current situation, where the Minister for Immigration is simultaneously the person responsible for the detention of unaccompanied minors and their legal guardian.

The Australian Human Rights Commission told the Committee that there is an inherent conflict in interest in allowing the Minister or his delegates to be the guardian when the Minister is also responsible for the granting of visas or continuation of

detention.³⁶ This view was supported by the Australian Children's Commissioners and Guardians.

As legal guardian the Minister is required to act in the best interests of the child, yet the Minister is also the person responsible for continued detention, which is manifestly *not* in the child's best interest. Furthermore, the Department of Immigration advised the Committee that the Minister or departmental delegate is responsible for arranging legal representation for the unaccompanied minor, that is, for a legal challenge which will ultimately be against the Minister.³⁷

Almost all submitters agreed that the Minister should be removed as the legal guardian of unaccompanied minors as a matter of urgency.³⁸

The Australian Greens wholeheartedly endorse the Committee Report's **recommendation 19 [5.95]** that the Minister be replaced as legal guardian of unaccompanied minors. This is a reform that the Australian Greens have been calling for over years. The Minister cannot be relied upon to fulfil these dual and conflicting roles. We look forward to the next steps in the process, which should be an investigation of how to best implement this particular reform as a matter of urgency.

Mental Health

The Australian Greens share the view of experts who gave evidence to the Committee that the extended and indefinite periods of detention is directly causative to the high levels of mental illness in the detention network.

Chapter 4 of the Committee Report provides a thorough survey of mental health services in the detention network and illustrates why the level of mental illness among detainees was the most pressing area of concern throughout the Inquiry. We acknowledge the evidence contained within Chapter 4, particularly the information given by Professor Louise Newman in her role as Chair of the Detention Health Advisory Group (DeHAG) and other mental health specialists.

As per the Committee Report, we draw the conclusion that acute mental illness is widespread amongst the detention network and current services are severely inadequate to deal with the quantum and severity of cases. The crisis at hand was illustrated by the Department of Immigration, who noted that 'self harm incidents as

³⁶ The Hon. Catherine Branson, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 52.

³⁷ Mr Greg Kelly, Detention Operations Division, DIAC, *Proof Committee Hansard*, 26 September 2011, p. 64; and Ms Alison Hanley, Northern Territory Legal Aid, *Proof Committee Hansard*, 26 September 2011, p. 35.

³⁸ Including but not limited to Refugee and Immigration Legal Centre, Liberty Victoria, ChilOut, Australian Lawyer's Alliance, Amnesty International, AHRC.

reported by service providers to DIAC have experienced a 12 fold increase between 2009-2010 and 2010-2011'.³⁹

Dr Jon Jureidini noted that by time people in detention see clinical psychological or psychiatric experts who are outside the services provided by IHMS, 'they are already damaged by immigration detention. It is necessary to move such people to start healing them'.⁴⁰

In the hearing at Scherger immigration detention centre in Weipa, Dr Bruce Gynther, a psychiatrist working for the Cairns and Hinterland Health Service District who regularly sees detainees, told the Committee that the long and indefinite duration of mandatory detention, and the remoteness of detention centres, must be seen to be closely linked to the development or exacerbation of mental health problems:

I think that that the actual process of prolonged involuntary detention is an abusive process.

[Prolonged detention] actually damages the patients in the long term. It produces psychiatric illness and long-term damage for these people, whether they are eventually released into the community or returned to where they have come from. I think we are actually causing them harm.

The way things are set up now, with the remote location of Scherger, means that, when patients are admitted with psychiatric conditions to Weipa Hospital, the degree and quality of the psychiatric care that we can offer is really suboptimal. Even though we strive very hard and liaise with the mental health nurses that are located in Weipa and the doctors at Weipa Hospital and everyone does the best they can, in the end, for patients with really severe psychiatric conditions who are suicidal and who have major depression or post-traumatic stress disorder, I am making decisions over the phone about their management, and it is just not acceptable.⁴¹

As outlined in Chapter 4 of the Committee Report, many of the members of the Committee were staggered to learn that in remote detention centres such as in Darwin and Weipa, there are no trained mental health specialists or nurses from evening to morning on weeknights, and in some there are no specialist mental health workers on site through the weekend. Serco staff who are confronted with the constant tide of mental health, self-harm or suicide incidents have no recourse for assistance beyond calling a triage phone line in Sydney for advice from a mental health worker.

The Department of Immigration and International Health and Medical Services (IHMS) acknowledged some of the shortfalls in psychiatric and psychological assistance, and have recently expanded IHMS' contract for health services. However it

³⁹ DIAC *Question on Notice* 41.

⁴⁰ Dr Jon Jureidini, *Proof Committee Hansard*, 15 November 2011, p. 32.

⁴¹ Dr Bruce Gynther, *Proof Committee Hansard*, 2 December 2011, p. 1.

is unacceptable that remote centres like those on Christmas Island have no full time psychiatrist on staff, and only one psychiatrist who visits the Island up to 8 times per month.⁴² The Regional Medical Director of IHMS confirmed that specialists have generally been arranged to visit detention centres not on a set timeframe, but on an 'objective needs basis'.⁴³

The Committee Report in **recommendation 15 [4.39]** proposes reforms that go significantly towards addressing this glaring inadequacy in services by requiring that IHMS staff be rostered on a 24 hour basis at all non-metropolitan detention facilities. Likewise, **recommendation 16 [4.69]** requires that the Department of Immigration work with IHMS to provide proactive health and mental health outreach services in detention facilities.

Recommendations 5, 6, 7, 8, 9, 10 of the Committee Report offers crucial recommendations that, once implemented, would assist to address the mental health crisis in the detention network, through enhanced consultation with the expert panel DeHAG, improved staff training in the areas of mental health care, and more transparent, accountable and consistent processes across the agencies and workforce that form the immigration detention network.

There are still thousands of people in detention who have been there for many months and are growing increasingly unwell. It is important that those people receive quality assessment and treatment. As such the Australian Greens propose that detainees, particularly long-term asylum seekers, be able to apply for funding for independent psychological and psychiatric reports.

Recommendation 10

IAAAS funding to be expanded to cover independent psychological and psychiatric reports.

Staff Training

The Committee Report at **recommendations 5 [3.78]** and **6 [3.91]** suggests new methodologies and quality assurance processes for the recruitment of service provider staff and the day-to-day implementation of the DeHAG approved Psychological Support Program policy. In **recommendation 8 [3.93]** and **9 [3.104]** the Committee Report suggests ways for service provider staff to be more adequately trained to deal with mental health issues and cope with critical incidents.

The immediate implementation of these reforms is integral to fixing the mental health malaise in the immigration detention network. Improved and more transparent training for Serco staff (Client Services Officers) is utterly necessary.

⁴² DIAC, *Question on Notice* 58.

⁴³ Dr Dick Hooper, IHMS, *Proof Committee Hansard*, 5 October 2011, p. 61.

The Committee was provided with deeply concerning evidence of a serious disconnect between the agencies, and between the staff hierarchies or departments within each agency. Although now partly remedied, it was previously the case that DeHAG had not been consulted in relation to the development of Serco's procedures for managing people at risk of self-harm.⁴⁴ The Committee was confronted to see, while touring various detention centres, demonstrations of the 'Keep Safe' practice which saw Serco staff standing 1.5m away from a person at risk of self harm for hours on end.

Seeing as 'IHMS does not provide advice to Serco as to how to interact with a person on suicide watch' it is crucial that Serco employ and train staff who will be well equipped to handle the vulnerable people in detention.⁴⁵ While 90 day time limits to detention would assist with reducing current mental ill-health levels, it is crucial that all staff interacting with asylum seekers, including subcontractors in supposedly 'non-client facing roles', are trained in relevant skill sets.

While the Serco/Department of Immigration contract requires that Serco staff attend mental health training prior to commencing work in a facility, the Committee heard evidence from various witnesses that across the detention network there are significant inconsistencies in training duration, and most staff start work in the centres without completing more than a four week training package, which is equivalent to a Security Office (or night-club bouncer) training.

The 2009-2010 Serco Client Services Officer training manual which was released onto the Crikey website in March 2012 did not inspire any further confidence, as the manual was shoddily cobbled together, clearly based on prison officers' training materials, overtly focused on violent techniques for restraining detainees and lacked any thorough or appropriate training for new staff working in a human rights capacity with shell-shocked, vulnerable and culturally diverse newly-arrived asylum seekers.

There should be no service provider staff working with asylum seekers who do not have full and appropriate training.

ASIO security assessments

Chapter 6 of the Committee Report provides an excellent overview of the process for ASIO security assessment of people in detention, including changes in practice by ASIO in late 2010 which triaged, or streamlined, assessment processes. The Australian Greens endorse the findings of the Committee that 'placing people in community detention following an initial, routine security check does not prejudice any subsequent in-depth security assessment ASIO may provide prior to a permanent visa being issued and a refugee being released into the community' (page 157). This conclusion is reflected in **recommendation 26 [6.96]** of the Committee Report.

⁴⁴ DIAC *Question on Notice* 197

⁴⁵ Dr Dick Hooper, Regional Medical Director, IHMS, *Proof Committee Hansard*, 5 October 2011, p. 66.

The bleak situation of indefinite mandatory detention that faces an increasing number of people who have been found to have an adverse security assessment by ASIO was of great concern to the Committee, and to the Australian Greens. We urge the Department of Immigration and ASIO to take urgent action to provide people with pathways out of detention.

The Committee Report advises at **recommendation 28 [6.152]** that the ASIO Act be amended to allow the Administrative Appeals Tribunal to review security assessments of refugees and asylum seekers. This proposal was backed by numerous submitters and witnesses to the inquiry, including Amnesty International, the Australian Human Rights Commission, the Refugee and Immigration Law Centre and Professor Ben Saul.

UNHCR recommended 'a process by which a bridge can be built between the security assessment and the confidentiality surrounding that and the right for someone to know at least the basic elements of the case against them', which is the practice in Canada, New Zealand and the United Kingdom.⁴⁶ The Refugee and Immigration Law Centre pointed out to the Committee that the inaccessibility of legal review of ASIO decisions as a great burden on the immigration network and on the people subject to the adverse findings.

The Australian Greens view this area to be in critical need of reform. It is unthinkable that we continue to detain individuals indefinitely on the basis of adverse security assessments which are not reviewable or disclosed. We endorse the findings of the Committee Report but we wish to re-state the importance of finding an appropriate mechanism for releasing the grounds of the adverse assessment, without which no meaningful review can be anticipated.

Recommendation 11

Relevant legislation to be amended to ensure that detainees have access to a fair and independent review of a negative ASIO security assessments, with appropriate disclosure of the grounds of the adverse security findings regardless of whether judicial or merits review, and with flexible options for protecting national security on a case-by-case basis.

Recommendation 12

Appointment of a special advocate to conduct reviews of negative ASIO assessments where there is concern maintaining confidentiality of sensitive material.

⁴⁶ Mr Richard Towle, United Nations High Commission for Refugees, *Proof Committee Hansard*, 16 August 2011.

Recommendation 13

Legal assistance should be funded at all stages of resolution of people's immigration status, including increased resources for Legal Aid Commissions and IAAAS agents for merits or judicial review.

Recommendation 14

Where an interview is to be conducted between the Department of Immigration and a minor that will have ramifications on visa assessment, there must be a legal advocate present or an accredited Independent Third Person present.

Community detention

The Committee Report includes recommendations which aim to encourage the swift movement of asylum seekers from immigration detention into community detention. Placing time limits of 90 days through amendment of the *Migration Act* is the best way to achieve this outcome.

Community detention is not only significantly cheaper than placing people immigration detention but it is the only humane and healthy solution. Mr Richard Towle of the UNHCR advised the Committee:

The UNHCR has observed empirically that, internationally, people cope better if they are in community based settings with support of their communities than if in detention and can make better and more informed decisions about returning should their refugee status be denied.⁴⁷

The Chair of the Council for Immigration Services and Status Resolution, Mr Paris Aristotle, noted that 'the processing of people in the community yields benefits in terms of processing arrangements and people's ability to deal with and contemplate what the next decision should be'.⁴⁸ Mr Aristotle also made a suggestion that is strongly supported by the Australian Greens, that 'in order for community detention to be expanded, it is preferable that standards were legislated so that there is consistency'.⁴⁹

⁴⁷ Mr Richard Towle, United Nations High Commission for Refugees, *Proof Committee Hansard*, 16 August 2011, p. 10.

⁴⁸ Mr Paris Aristotle, *Proof Committee Hansard*, 18 November 2011, p. 37.

⁴⁹ Mr Paris Aristotle, *Proof Committee Hansard*, 18 November 2011, p. 36.

The Australian Human Rights Commission urged the Australian government to make greater use of community based alternatives to detention, as they can be cheaper and more effective in facilitating alternatives to detention.⁵⁰

The Australian Greens take note of the constructive criticisms also raised in relation to community detention and other community based programs. We deem it crucial that all people on bridging visas have work rights, which assist them to lead productive lives, gain skills and support themselves. As noted by the Refugee Council of Australia, allowing people to be self-sufficient is preferable financially and otherwise.⁵¹

As well as expanding the capacity for people to work who are able to do so, services to assist people to find work need to be expanded. Many people seeking protection come from cultures where job seeking occurs through family networks rather than through formal application and resumes.⁵²

Similarly, the process for accessing health and medical services need to be streamlined, including some administrative aspects. The Committee heard evidence that some asylum seekers on bridging visas do not have Commonwealth certified photo identification, which leads to 'significant difficulties in meeting the identity requirements to accept a Medicare application over the counter at a Medicare office. That is a significant problem and it takes up a great deal of time for the contractors, like the Australian Red Cross, that provide the support programs to many asylum seekers in trying to overcome these difficulties'.⁵³

Recommendation 15

People on community detention or bridging visas must be able to make use of public provision of health services and access public referral services.

Recommendation 16

Families and unaccompanied minors who are placed on bridging visas should be automatically also placed on the Community Assistance Support program.

Recommendation 17

All asylum seekers on bridging visas should be provided with Commonwealth certified photo identification.

⁵⁰ The Hon. Catherine Branson, AHRC, *Proof Committee Hansard*, 5 October 2011, p. 52.

⁵¹ Ms Lucy Morgan, Refugee Council of Australia, *Proof Committee Hansard*, 5 October 2011, p. 11.

⁵² Ms Pam Curr, ASRC, *Proof Committee Hansard*, 18 November 2011.

⁵³ Ms Alice Noda, Gilbert & Tobin Centre for Public Law, *Proof Committee Hansard*, 5 October 2011p. 25.

Recommendation 18**All people on bridging visas should have work rights.****Conclusion**

In 2010-2011, 6316 people sought asylum at our airports, compared to 5175 people who arrived by boat, but only the latter cohort will face mandatory detention for months or years in Australia's immigration detention network.⁵⁴ 90 per cent of applicants who suffer through this unfair system are ultimately found to be genuine refugees, yet we continue to detain them for extended durations in demonstrably unhealthy circumstances and at our own great expense.⁵⁵

The government has a duty of care to fix the crisis in the immigration detention network. On a policy and political basis successive governments can keep lurching from one 'bandaid solution' to the next, or they can show the wisdom and courage to embark on reforms that are long overdue. True reforms should have been implemented as the result of earlier mental health crises and the wrongful detention of Cornelia Rau and many others in the early 2000s.

The government failed to do this and we are now seeing history repeat itself. Legislated time limits would solve many of these issues. The Government must act on these recommendations because they will make a difference.

Senator Sarah Hanson-Young

Mr Adam Bandt MP

Deputy Chair

⁵⁴ Immigration Department and Citizenship, *Nation Building Annual Report*, 2010-11, p. 119.

⁵⁵ Immigration Department and Citizenship, *Nation Building Annual Report*, 2010-11.

ADDITIONAL COMMENTS

Mr Robert Oakeshott MP

This inquiry has been a detailed examination of one of Australia's most challenging issues and I endorse the recommendations of the majority report of the committee. I am particularly pleased to see greater confidence emerging through the successes of community detention, as well as a recommendation to address the anomalies regarding the rights of appeal to ASIO security checks. Both of these have important policy implications for improving just and timely results within this process, even though it is acknowledged both are laced with political controversy in modern Australian debate.

I therefore thank Committee Chair Mr Daryl Melham MP for the manner in which he has conducted the inquiry.

The report and the recommendations are detailed. My reason for some additional comments is to emphasise the longer-term strategy for detention in Australia, and how this relates to the broader, longer-term plans for tackling people smuggling, people trafficking, related transnational crime and immigration.

I would hope Australia, in the long-term, commits to:

- all arrivals being treated consistently by Australian law, regardless of the method of arrival;
- greater use of alternatives to mandatory detention, with mandatory detention being the option of last resort, if at all;
- keeping families together;
- greater regional consideration and engagement on all relevant issues related to mandatory detention within Australia, including greater investment in regional co-operation strategies on people smuggling, people trafficking and related transnational crime, as well as even greater investment in regional strategies on refugee assessment and orderly settlement;
- Australia pursuing more vigorously the longer-term strategy of regional assessment, detention and settlement. Australia, wherever possible, should be seeking opportunities to integrate domestic and international law into all legal considerations relevant to the concept of detention and alternatives to detention;
- Greater access to the use of transparent, timely, consistent, and relevant data across all agencies, and making best use of this data to improve all considerations relevant to the concept of detention and alternatives to detention;
- Australia leading the Asia-Pacific region in developing strong regional protocols for transparent, timely, consistent, and relevant data and information

swapping across jurisdictions, particularly with transit countries and wherever possible source countries. This is to assist with timely assessment, as well as assisting with minimising people smuggling, people trafficking, and related transnational crime; and

- a detention policy in Australia that integrates with other areas of Government policy. Some examples include but are not limited to policies on rural workforce shortage, the ability or not to access HECS in education whilst in detention, regional development, sports and the arts.

This is an important report that Government should consider carefully as part of an overall review of all aspects of refugee and asylum seeker policy in Australia. I do challenge Government that this isn't put in the political "too hard basket", and that sensible reform occurs as a consequence of this extensive and detailed work.

Mr Robert Oakeshott MP

Mr Daryl Melham MP

APPENDIX 1

Submissions received by the Committee

- 1 Regine Andersen
- 2 Barbara Lloyd
- 3 Lyn Kennedy
- 4 Bruce Haigh
- 5 Sally Mchenry
- 6 Nicholas Wood
- 7 Fabia Claridge
- 8 Matt Hilton
- 9 Queenscliff Rural Australians for Refugees
- 10 Robin Reich
- 11 Hadi Zaher
- 12 Margaret Tonkin
- 13 ACT Refugee Action Committee
- 14 Kiera Stevens
- 15 Weh Yeoh
- 16 Ros Erskine
- 17 Halina Rubin
- 18 Bette Devine
- 19 Stancea Vichie
- 20 Ms Ellen O'Gallagher and Ms Rosemary McKenry
- 21 Gilbert and Tobin Centre of Public Law, University of NSW
- 22 Mary Arch
- 23 Hotham Mission Asylum Seeker Project

- 24 Labor for Refugees (Victoria)
- 25 Labor for Refugees (NSW)
- 26 Name Withheld
- 27 Coalition for Asylum Seekers Refugees and Detainees (CARAD)
- 28 Refugee Advice and Casework Service Australia
- 29 Linda Hucker
- 30 Australian Catholic Bishops Conference
- 31 Refugee Rights Action Network (Eastern States)
- 32 Department of Immigration and Citizenship
- 33 Terry Lustig
- 34 The Refugee Action Collective Victoria
- 35 Australian Children's Commissioners and Guardians
- 36 Anglican Public Affairs Commission
- 37 headspace
- 38 Australian Federation of Islamic Councils
- 39 Liberty Victoria
- 40 Halina Strnad
- 41 Detention Health Advisory Group
- 42 Serco
- 43 The Humanist Society of Victoria
- 44 Guy Coffey
- 45 Forum of Australian Services for Survivors of Torture and Trauma
- 46 Graeme Swincer
- 47 Queensland Council for Civil Liberties
- 48 Martin Clementson
- 49 ChilOut

- 50 Save the Children
- 51 Darwin Asylum Seekers Support and Advocacy Network
- 52 Catherine Dignam
- 53 Name Withheld
- 54 Asylum Seeker Resource Centre
- 55 United Voice
- 56 Migration Institute of Australia
- 57 Brigidine Asylum Seekers' Project
- 58 Peter Monie
- 59 CASE for Refugees
- 60 Mirella Green
- 61 Roslyn Richardson
- 62 Community and Public Sector Union
- 63 Linda Jaivin
- 64 Jesuit Refugee Service Australia
- 65 Grusha Leeman
- 66 Marilyn Shepherd
- 67 Suicide Prevention Australia
- 68 Refugee and Immigration Legal Service Inc
- 69 International Detention Coalition
- 70 Mr Kevin and Ms Maureen Liston
- 71 Jesuit Social Services
- 72 Rosie Scott
- 73 Mary Ward
- 74 Name Withheld
- 75 Name Withheld

- 76 Mev Bardiqi
- 77 Christopher Monie
- 78 Sally Woodliff
- 79 Ian Lording
- 80 Chris Quin
- 81 Lawry Herron
- 82 Emma Koskovic
- 83 Dianne Hiles
- 84 Jocelyn Chey
- 85 Lesley Walker
- 86 AMES
- 87 Australian Lawyers Alliance
- 88 Ballarat Circle of Friends
- 89 Grayem White
- 90 Ms Sharon Tisdale and Mr Tony Yates
- 91 Women's Equity Think Tank
- 92 Surf Coast Rural Australians for Refugees
- 93 Spectrum Migrant Resource Centre
- 94 *Confidential*
- 95 International Health and Medical Services
- 96 Castan Centre for Human Rights Law
- 97 Peter Ward
- 98 Refugee Advocacy Network
- 99 The Network of Immigrant and Refugee Women of Australia
- 100 Refugee Action Network Newcastle
- 101 Law Council of Australia

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- 102 Saraswathi Griffiths-Chandran
- 103 Eva Raik
- 104 Public Interest Law Clearinghouse NSW
- 105 Carmel Cowan
- 106 Michelle Guy
- 107 Australian Tamil Congress
- 108 The Australian Psychological Society
- 109 National Legal Aid
- 110 United Nations High Commissioner for Refugees
- 111 Canberra Multicultural Community Forum
- 112 Australian Human Rights Commission
- 113 Uniting Church in Australia
- 114 Justine Davis
- 115 Amnesty International Australia
- 116 Moreland City Council
- 117 Asylum Seekers Christmas Island and Centre for Human Rights Education,
Curtin University
- 118 Mr Rae Jones, Ms Helen Hughes and Ms Alyse Jones
- 119 Refugee Survivors and Ex-detainees
- 120 Federation of Ethnic Communities' Councils of Australia
- 121 The Brotherhood of St Laurence
- 122 Laurence Gillespie
- 123 Terry Fisher, Fisher Dore Lawyers
- 124 Refugee Council of Australia
- 125 Bronwyn Ritchie
- 126 Avril Duck

- 127 Kendall Lovett and Mannie De Saxe, Lesbian and Gay Solidarity - Melbourne
- 128 Name Withheld
- 129 Australian Lawyers for Human Rights
- 130 Ben Saul, Sydney Centre for International Law, The University of Sydney
- 131 Commonwealth Ombudsman
- 132 Oxfam Australia
- 133 Name Withheld
- 134 Alexander Nash
- 135 Christine Cummins
- 136 Alexandra Bhathal
- 137 Philip Tann
- 138 Ruth Sims
- 139 John Browning
- 140 NSW Council for Civil Liberties
- 141 Coalition for Asylum Seekers Refugees and Detainees
- 142 Australian Medical Association, NT Branch
- 143 National Children's and Youth Law Centre
- 144 Balmain for Refugees
- 145 Paul Webb
- 146 Fabia Claridge
- 147 William Mudford
- 148 Monash Law Students' Society Just Leadership Program
- 149 Gordon Williamson
- 150 Annette Arieni
- 151 Volette Turnier
- 152 Bruce Gynther

153 Australian Security Intelligence Organisation

154 Name Withheld

Additional Information received by the Committee

1. Response to question on notice numbers 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15, 16, 17, 18, 27, 31, 32, 33, 37, 38, 39, 40, 42, 43, 44, 45, 46 and 47 provided by the Department of Immigration and Citizenship, on 10 August 2011.
2. Response to question on notice numbers 8, 10, 12, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 41 provided by the Department of Immigration and Citizenship, on 15 August 2011.
3. Response to question on notice number 20 provided by the Department of Immigration and Citizenship, on 16 August 2011.
4. Document tabled by the Department of Immigration and Citizenship on 16 August 2011.
5. Response to question on notice numbers 37, 38 and 39 provided by the Department of Immigration and Citizenship, on 29 August 2011.
6. Document tabled by Serco on 7 September 2011.
7. Response to questions on notice received by Ms Kaye Bernard on 22 September 2011.
8. Response to questions on notice received by Mr Brian Lacy on 26 September 2011.
9. Additional information received by Department of Immigration and Citizenship on 28 September 2011.
10. Response to question on notice 49, 52, 53, 65, 66, 69, 70, 71, 74, 78, 79, 80, 81, 85, 88, 90, 99, 101 and 108 provided by the Department of Immigration and Citizenship, on 29 September 2011.
11. Document tabled by United Voice on 5 October 2011.
12. Additional information received by Department of Immigration and Citizenship on 14 October 2011.
13. Response to questions on notice received by the Australian Human Rights Commission on 24 October 2011.

14. Response to questions on notice received by Refugee Council of Australia on 25 October 2011.
15. Response to questions on notice received by the Northern Territory Legal Aid Commission on 28 October 2011.
16. Response to question on notice 55, 62 and 94 provided by the Department of Immigration and Citizenship, on 1 November 2011.
17. Response to questions on notice received by Gilbert + Tobin Centre of Public Law on 3 November 2011.
18. Medical Service Proposal provided by International Health and Medical Services on 4 November 2011.
19. Response to question on notice 50, 51, 56, 58, 67, 68, 82, 86, 89, 93, 95, 96, 97, 100, 102, 105, 107 and 109 provided by the Department of Immigration and Citizenship, on 8 November 2011.
20. Document tabled by Mr Jamie Briggs MP on 15 November 2011.
21. Document tabled by Serco on 15 November 2011.
22. Document tabled by Ms Lesley Walker on 15 November 2011.
23. Response to questions on notice received by the Australian Federal Police on 16 November 2011.
24. Response to question on notice 48, 61 and 106 provided by the Department of Immigration and Citizenship, on 16 November 2011.
25. Response to questions on notice provided by Serco on 17 November 2011.
26. Document tabled by Ms Pamela Curr on 18 November 2011.
27. Additional information received by the Australian Federal Police on 18 November 2011.
28. Additional information received by Ms Pamela Curr on 21 November 2011.
29. Response to question on notice 103, 111, 115, 118, 123, 124, 137, 139, 140, 148, 159, 161, 163, 168, 171, 191, 194, 195, 196, 202, 204, 208 and 210 provided by the Department of Immigration and Citizenship, on 21 November 2011.
30. Response to question on notice 60, 63, 104, 113, 114, 116, 119, 126, 130, 132, 136 and 209 provided by the Department of Immigration and Citizenship, on 24 November 2011.

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31. Additional information received by the South Australian Government on 30 November 2011.
 32. Response to questions on notice received by the Australian Federal Police on 1 December 2011.
 33. Document tabled by the Department of Immigration and Citizenship on 2 December 2011.
 34. Response to question on notice 54, 72, 73, 166, 193 and 205 provided by the Department of Immigration and Citizenship, on 2 December 2011.
 35. Response to question on notice 77, 110, 131, 133, 143, 162, 167, 174, 182, 185, 186, 187, 188, 201 and 207 provided by the Department of Immigration and Citizenship, on 6 December 2011.
 36. Response to question on notice 35 provided by the Department of Immigration and Citizenship, on 8 December 2011.
 37. Response to question on notice 64, 84, 87, 98, 112, 125, 127, 141, 144, 151, 164, 169, 175, 181, 198, 199, 200 and 203 provided by the Department of Immigration and Citizenship, on 9 December 2011.
 38. Document tabled by the Department of Immigration and Citizenship on 9 December 2011.
 39. Response to questions on notice received by Guardian for Children and Young People on 12 December 2011.
 40. Response to questions on notice received by the Australian Security Intelligence Organisation on 16 December 2011.
 41. Response to questions on notice received by the South Australian Police on 16 December 2011.
 42. Response to question on notice 59, 134, 135, 155, 172 and 197 provided by the Department of Immigration and Citizenship, on 20 December 2011.
 43. Response to questions on notice received by the Commonwealth Director of Public Prosecutions on 3 January 2012.
 44. Additional information received by the Australian Security Intelligence Organisation on 5 January 2012.
 45. Response to questions on notice received by the Australian Federal Police on 10 January 2012.

46. Response to question on notice 75, 76, 83, 91, 117, 120, 145, 150, 153, 173, 176, 180, and 192 provided by the Department of Immigration and Citizenship, on 10 January 2012.
47. Response to question on notice 57, 128, 149, 156, 157, 158 and 170 provided by the Department of Immigration and Citizenship, on 31 January 2012.
48. Response to question on notice 142, 152, 165, 183, 218, 219, 231, 234, 237, 259, 262, 264, 265, 269 and 272 provided by the Department of Immigration and Citizenship, on 7 February 2012.
49. Response to question on notice 216, 225, 227, 232, 236, 285, 286, 287 and 288 provided by the Department of Immigration and Citizenship, on 16 February 2012.
50. Response to question on notice 3, 92, 129, 138, 146, 147, 177, 217, 220, 223, 224, 228, 230, 233, 235, 239, 240, 241, 242, 243, 244, 246, 247, 248, 249, 250, 251, 255, 258, 260, 266, 268, 270, 271, 273, 275, 276, 278, 279, 283 and 289 provided by the Department of Immigration and Citizenship, on 28 February 2012.
51. Response to question on notice 125 and 127 provided by the Department of Immigration and Citizenship, on 29 February 2012.
52. Response to questions on notice provided by Serco on 29 February 2012.
53. Document tabled by the Department of Immigration and Citizenship on 29 February 2012.
54. Response to question on notice 1, 4, 35, 77, 121, 122, 154, 178, 211, 212, 213, 214, 215, 225, 238, 252, 253, 254, 260, 261, 263, 270, 277, 281, 290, 291, 294, 296, 297, 299, 300, 301, 304 and 305 provided by the Department of Immigration and Citizenship, on 15 March 2012.
55. Response to questions on notice, received Dr Allan Hawke and Mrs Helen Williams' on 15 March 2012
56. Response to question on notice 160, 221 and 257 provided by the Department of Immigration and Citizenship, on 20 March 2011.
57. Response to question on notice 184, 189, 190, 226, 229, 245, 256, 274, 280, 284, 292, 293, 295, 298, 302 and 303 provided by the Department of Immigration and Citizenship, on 22 March 2012.
58. Response to question on notice 267, 282 and 306 provided by the Department of Immigration and Citizenship, on 23 March 2012.

APPENDIX 2

Witnesses who appeared before the Committee

Tuesday, 16 August 2011

Parliament House, Canberra, Australian Capital Territory

Department of Immigration and Citizenship

DOUGLAS, Mr Ken, *First Assistant Secretary, Detention Infrastructure and Services Management*

FLEMING, Mr Garry, *First Assistant Secretary, Border Security, Refugee and International Policy Division*

KELLY, Mr Greg, *First Assistant Secretary, Detention Operations Division*

METCALFE, Mr Andrew Edgar Francis, *Secretary*

MOORHOUSE, Mr John, *Deputy Secretary, Immigration Detention Services Group*

POPE, Ms Kate, *First Assistant Secretary, Community Programs and Children Division*

SOUTHERN, Dr Wendy, *Deputy Secretary, Policy and Program Management Group*

WARDOS, Mr Peter, *Deputy Secretary, Client Services Group*

WILSON, Ms Jackie, *Deputy Secretary, Business Services Group*

Tuesday, 6 September 2011

Function Room, Recreation Centre, Christmas Island

Australian Federal Police

LINES, Superintendent Chris, *Manager, Operations and Missions*

MARTINEZ, Acting Superintendent Pedro, *Operational Response Group*

PRENDERGAST, Assistant Commissioner Frank, *National Manager, International Deployment*

Christmas Island District High School

THORNTON, Mr Alan Noel, *Deputy Principal*

Christmas Island Police

SWANN, Sergeant Peter

Department of Immigration and Citizenship

KARRAS, Mr Steven, *Acting Regional Manager Christmas Island*

MACKIN, Ms Janet, *Assistant Secretary, Detention Operations Branch*

Indian Ocean Territories

GRAHAM, Dr Julie Leanne, *Director, Public Health and Medicine*

LACY, Mr Brian James, *Administrator of Christmas Island*

International Health and Medical Services

SPENCER, Dr Clayton, *Medical Director, Primary Health and Community Care*

WHITTAKER, Mr Jeff, *General Manager*

Private capacity

MABERLY, Mr Paul
TISDALE, Ms Sharon

Serco Immigration Services

COUTTIE, Mr John Samuel, *Deputy Regional Manager, Serco Immigration Services*
HARRISON, Mr John Edward, *Regional Manager*
MANNING, Mr Christopher William, *Managing Director*
McINTOSH, Mr Peter Andrew, *Director, Operations*

Union of Christmas Island Workers

BERNARD, Mrs Kaye Elisabeth, *General Secretary*
THOMPSON, Mr Gordon, *Shire President and Union President*

Wednesday, 7 September 2011

Curtin Immigration Detention Centre, Derby, Western Australia

Department of Immigration and Citizenship

KELLY, Mr Greg, *First Assistant Secretary, Detention Operations Divisions*
SOKOLOFF, Mr Troy John, *Deputy Regional Manager, Curtin Immigration Detention Centre*

International Health and Medical Services

HUTCHINGS, Mr Russel, *Regional Operations Manager*
LONERGAN, Ms Helen, *Director of Nursing*

Serco

BONACCORSO, Mr Mark Angelo, *Centre Manager, Curtin Immigration Detention Centre*
CAMPBELL, Mr David Maxwell, *Chief Executive Officer*
HASSALL, Mr Antony David, *Chief Operating Officer, Immigration Services*

Shire Derby West Kimberley

ARCHER, Mrs Elsia, *Shire President*
KIRWAN, Ms Holly, *Coordinator Detainee Services, WA Country Health Service, Kimberley*
SMITH, Ms Bec, *Operations Manager, Derby Health Service*

Monday, 26 September 2011

Rydges Airport Hotel, Darwin, Northern Territory

Australian Federal Police

JABBOUR, Assistant Commissioner Ramzi *Manager, Crime*
SYKORA, Commander Peter, *Manager, Crime*

Australian Medical Association (NT Branch)

MORRIS, Dr Peter S, *Royal Darwin Hospital*

WATSON, Dr Sara, *Director, Medical Services and Education, Royal Darwin Hospital*

Darwin Asylum Seekers Support and Advocacy Network

DAVIS, Ms Justine, *Member*

RUDGE, Mr Zac, *Member*

THWAITES, Mr Rohan, *Member*

WALTERS, Ms Adrienne, *Member*

Department of Immigration and Citizenship

DAVIS, Mr Allan, *Regional Manager North*

KELLY, Mr Greg, *First Assistant Secretary, Detention Operations Division*

International Health and Medical Services

APOSTOLELLIS, Mr Alexis, *Senior Operations Manager*

BROWN, Ms Allison, *Mental Health Services Manager*

YOUNG, Dr Peter, *Medical Director, Mental Health Services*

Northern Territory Legal Aid Commission

COX, Ms Suzan QC, *Director*

HANLEY, Ms Alison Emily, *Solicitor*

HUSSIN, Ms Fiona Levene, *Coordinator, Policy and Projects*

Northern Territory Police

KELLY, Assistant Commissioner Grahame David

Serco Immigration Services

DIXON, Mr Ashley John, *Deputy Director, Operations*

HAUGHIAN, Mrs Maxine, *Centre Manager, Darwin Airport Lodge*

MANNING, Mr Chris William, *Managing Director, Immigration Services*

MURRAY, Commander Clive, *Manager, Operations Support*

STUART, Miss Karen Michelle, *Centre Manager, NIDC*

Wednesday, 5 October 2011

Lyceum Room, Wesley Conference Centre, Sydney, New South Wales

Australian Federal Police

MURRAY, Commander Clive, *Manager, Operational Support, International Deployment Group*

SYKORA, Commander Peter, *Manager, Crime*

JABBOUR, Assistant Commissioner Ramzi, *Manager, Crime*

Australian Human Rights Commission

BRANSON, Ms Catherine, *Australian Human Rights Commissioner and President*

MAYWALD, Ms Catherine, *Senior Policy Officer, Human Rights Unit*

Department of Immigration and Citizenship

INGRAM, Mr Steve, *Assistant Secretary*

KELLY, Mr Greg, *First Assistant Secretary*

MACKIN, Ms Janet, *Assistant Secretary*

VAN RAAK, Ms Karen, *Director*

Gilbert and Tobin Centre of Public Law, University of New South Wales

McADAM, Professor Jane, *Director International Refugee and Migration Law Project*

NODA, Mrs Alice Elizabeth, *Research Assistant*

WEEKS, Mr Gregory Paul, *Lecturer, Faculty of Law*

International Health and Medical Services

GARDNER, Mr Michael, *Regional Managing Director*

GILBERT, Mr Ian, *General Manager*

HOOPER, Dr Dick, *Regional Medical Director*

New South Wales Police Force

EARDLEY, Superintendent David George, *Superintendent, Bankstown Local Area Commander*

MENNILLI, Assistant Commissioner Carmine (Frank)

Refugee Advice and Casework Service

JACKSON-VAUGHAN, Ms Tanya, *Executive Director*

Refugee Council of Australia

MORGAN, Ms Lucy, *Information and Policy Officer*

Serco Immigration Services

HAYES, Mr John, *Regional Manager, Northern Immigration Detention Centre*

MANNING, Mr Chris William, *Managing Director*

McINTOSH, Mr Peter Andrew, *Director of Operations*

MOODY, Mr Craig Robert, *Senior Operations Manager, Villawood Immigration Detention Centre*

Sydney Centre for International Law

SAUL, Professor Ben, *Professor of International Law*

United Voice

McELREA, Mr David James, *National Office Director*

Tuesday, 15 November 2011

Hilton Hotel, Adelaide, South Australia

Adelaide Hills Circle of Friends

WALKER, Ms Lesley Helen Isabelle, *Member*

Australian Children's Commissioners and Guardians

SIMMONS, Ms Pam, *Guardian for Children and Young People, South Australia*

Country Health South Australia

CHALMERS, Ms Helen, *Chief Operating Officer*

DI SISTO, Mr Nino, *Cluster Director*

Department of Immigration and Citizenship

DOUGLAS, Mr Kenneth James, *First Assistant Secretary, Detention Infrastructure and Services Division, Department of Immigration and Citizenship*

JOHNSON, Mr Steve, *Director, Detention Services South Australia, Department of Immigration and Citizenship*

Private capacity

JUREIDINI, Dr Jon

Serco

ALEXANDER, Ms Denise, *Centre Manager, Inverbrackie*

CLAY, Ms Cheryl, *Regional Manager*

MANNING, Mr Chris, *Managing Director*

McINTOSH, Mr Peter, *Director of Operations*

South Australian Department of Education

PAGE, Ms Lynley, *Policy Adviser*

TUNBRIDGE, Ms Helen, *Director*

South Australia Police

KILLMIER, Ms Bronwyn Anne, *Assistant Commissioner*

Friday, 18 November 2011

St James Conference Centre, Melbourne, Victoria

Amnesty International

THOM, Dr Graham Stephen, *Refugee Coordinator*

Asylum Seeker Resource Centre

CURR, Ms Pamela Mary, *Campaign Coordinator*

Asylum Seekers Christmas Island

DIMASI, Ms Michelle, *Director*

Australian Red Cross

CLEMENT, Mr Noel, *Head of Australian Services*

DE VRIES, Ms Lisa, *National Manager, Migration Support Programs*

Council for Immigration Services and Status Resolution

ARISTOTLE, Mr Paris, AM, *Chair*

Curtin University

BRISKMAN, Dr Linda Ruth, *Director, Centre for Human Rights Education*

Department of Immigration and Citizenship

KELLY, Mr Greg, *First Assistant Secretary, Detention Operations Division, Department of Immigration and Citizenship*

REYNOLDS, Mr Stephen, *Regional Manager Victoria, Detention Operations Branch, Department of Immigration and Citizenship*

Detention Health Advisory Group

NEWMAN, Professor Louise Kathryn, *Chair*

Refugee and Immigration Legal Centre

MANNE, Mr David Thomas, *Executive Director*

Serco Immigration Services

JAKES, Mr Scott, *Team Leader, Melbourne Immigration Transit Accommodation*

MANNING, Mr Christopher, *Managing Director*

McINTOSH, Mr Peter Andrew, *Director of Operations*

MILLS, Mr Alan John, *Centre Manager, Maribyrnong Immigration Detention Centre*

Tuesday, 22 November 2011

Parliament House, Canberra, Australian Capital Territory

Australian Security Intelligence Organisation

HARTLAND, Ms Kerri, *Deputy Director-General*

IRVINE, Mr David Taylor, *Director-General*

Comcare Criminal

KIBBLE, Mr Steve, *Deputy Chief Executive Officer*

QUARMBY, Mr Neil, *General Manager*

Commonwealth Ombudsman

LARKINS, Ms Alison, *Acting Ombudsman*

MASRI, Mr George, *Senior Assistant Ombudsman*

Community and Public Sector Union

TULL, Mr Michael, *National President*

Commonwealth Director of Public Prosecutions

DE CRESPIGNY, Mr Mark, *Senior Assistant Director*

THORNTON, Mr John, *First Deputy Director*

Inspector General of Intelligence and Security

THOM, Dr Vivienne

Law Council of Australia

BUDAVARI, Ms Rosemary Margaret, *Co-Director, Criminal Law and Human Rights*

United Nations High Commissioner for Refugees

TOWLE, Mr Richard, *Regional Representative*

Friday, 2 December 2011

Weipa Town Authority Council Chambers, Weipa, Queensland

Department of Immigration and Citizenship

DAVIS, Mr Allan, *Regional Manager North*

DOUGLAS, Mr Ken, *First Assistant Secretary*

MACKIN, Ms Janet, *Assistant Secretary*

Private capacity

GYNTHER, Dr Bruce Douglas, *Private capacity*

Queensland Police

TAYLOR, Chief Superintendent Paul Gregory, *Queensland Police Service*

WORTH, Acting Detective Sergeant Byron Ashley, *Queensland Police Service*

Serco Immigration Services

MANNING, Mr Chris, *Managing Director*

McINTOSH, Mr Peter Andrew, *Director of Operations*

MILLS, Mr Alan John, *Centre Manager, Maribyrnong Immigration Detention Centre*

STUART, Ms Karen Michelle, *Centre Manager, Scherger Immigration Detention Centre*

Friday, 9 December 2011

Parliament House, Canberra, Australian Capital Territory

Department of Immigration and Citizenship

ALLEN, Mr Stephen, *First Assistant Secretary*

BIDDLE, Mr Steve, *Assistant Secretary*

CALLANAN, Mr Christopher, *First Assistant Secretary*

DOUGLAS, Mr Ken, *First Assistant Secretary*

FARRELL, Mr Craig, *First Assistant Secretary*

HARDY, Ms Jenny, *Chief Lawyer*

KELLY, Mr Greg, *First Assistant Secretary*

McCAIRNS, Mr Gavin, *First Assistant Secretary*

METCALFE, Mr Andrew, *Secretary*

MOORHOUSE, Mr John, *Deputy Secretary*

NIBLETT, Ms Julie, *Assistant Secretary*

POPE, Ms Kate, *First Assistant Secretary*

SHEEHAN, Mr Stephen, *First Assistant Secretary*

SOUTHERN, Dr Wendy, *Deputy Secretary*

WALSH, Mr David, *Acting First Assistant Secretary*

WILSON, Ms Jackie, *Deputy Secretary*

Wednesday, 29 February 2012
Parliament House, Canberra, Australian Capital Territory

Department of Immigration and Citizenship

ALLEN, Mr Stephen, *First Assistant Secretary*

DOUGLAS, Mr Ken, *First Assistant Secretary*

KELLY, Mr Greg, *First Assistant Secretary*

MACKIN, Ms Janet, *Acting First Assistant Secretary*

METCALFE, Mr Andrew, *Secretary*

MOORHOUSE, Mr John, *Deputy Secretary*

PARKER, Ms Vicki, *First Assistant Secretary*

SOUTHERN, Dr Wendy, *Deputy Secretary*

Private capacity

HAWKE, Dr Allan

RICHMOND, Mr David, AO

WILLIAMS, Ms Helen