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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Administration and operation of the Migration Act 1958

THURSDAY, 29 SEPTEMBER 2005

SYDNEY

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SENATE
LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Thursday, 29 September 2005

Members: Senator Crossin (*Chair*), Senator Fierravanti-Wells (*Deputy Chair*), Senators Bartlett, Joyce, Kirk and Ludwig

Substitute members: Senator Parry for Senator Fierravanti-Wells

Participating members: Senators Abetz, Barnett, Mark Bishop, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fierravanti-Wells, Humphries, Lightfoot, Lundy, Mason, McGauran, Murray, Milne, Nettle, Payne, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Trood and Watson

Senators in attendance: Senator Crossin, Senator Kirk, Senator Nettle and Senator Parry

Terms of reference for the inquiry:

To inquire into and report on:

- the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- the outsourcing of management and service provision at immigration detention centres; and
- any related matters.

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ACHESON, Mr Richard John, Director, Community Relations Service, Community Relations Commission For a Multicultural New South Wales

KERKYASHARIAN, Mr Stepan, Chairperson, Community Relations Commission For a Multicultural New South Wales

CHAIR (Senator Crossin)—I declare open this hearing of the Senate Legal and Constitutional References Committee. This is the fourth hearing for the committee's inquiry into the administration and operation of the Migration Act 1958. The inquiry was referred to the committee by the Senate on 21 June 2005 and is being conducted in accordance with the terms of reference determined by the Senate. The committee has received over 200 submissions for this inquiry. The inquiry's terms of reference require the committee to consider:

- a. the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- b. the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- c. the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- d. the outsourcing of management and service provision at immigration detention centres; and
- e. any related matters.

Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Further copies are available from the secretariat if needed.

Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers all evidence to be given in public but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera.

I now welcome our first witnesses. You have lodged a submission with us, which for our purposes is numbered 232. I understand that you have some alterations and amendments that you wish to make to that submission.

Mr Kerkyasharian—We have a couple of errata, not any major amendments. I seek your permission to table a letter which outlines the two errata.

CHAIR—That is fine. I invite you to make a short opening statement. When that is finished, we will ask some questions.

Mr Kerkyasharian—On behalf of the Community Relations Commission For a Multicultural New South Wales, I thank you, Senator Crossin, and your committee for allowing us this opportunity to appear in front of your committee to speak to our submission and to clarify any points your committee may have flowing from that submission. We consider this inquiry to be very timely and very important. In preparing our submission, the commission consulted very widely, particularly with New South Wales government agencies as well as community organisations. The agencies we consulted and who contributed in some substantial manner to our submission were: the New South Wales Department of Education and Training, the New South Wales Department of Community Services, the New South Wales Department of Corrective Services, the New South Wales Department of Housing, New South Wales Health, New South Wales Police, the Cabinet Office of New South Wales and the Office for Women within the New South Wales Premier's Department. I want to place on record our appreciation and acknowledgment of the contributions they made.

As your committee would have seen, our submission is very comprehensive. We have addressed in great detail each of the terms of reference and have identified some significant issues, not only from a community perspective but also from the perspective of the New South Wales government and the agencies which I referred to. Our main concern is with the settlement of people within New South Wales. We acknowledge that immigration is a Commonwealth function and a Commonwealth responsibility. However, I would like to reinforce this position with your committee: one has to be very mindful that the result of any decisions made by the Commonwealth in terms of granting visas—be they temporary protection visas, visitors visas, other types of temporary visas or permanent visas—is that New South Wales has to provide services for those people and has to play a significant role in their settlement in New South Wales and their transition into Australian society.

I do not want to go through the whole submission. There are some specific points which I would like to highlight. One of the first things I want to highlight in the context of settlement is the proposed changes which the Commonwealth government intends to make regarding grants to Migrant Resource Centres. I want to home in particularly on the issue of providing advice to people about immigration regulations and requirements. Quite a significant amount of pro bono advice is provided by these centres and the changes which will be made by the immigration department in withdrawing grants for the function of providing advice to immigrants will force people to use exclusively migration agents. The Migration Act regulates the licensing and conduct of migration agents and it is important for us to know that. However, New South Wales government agencies are concerned that the Commonwealth has not worked with jurisdictions to establish an appropriate and agreed response framework for any exploitative or unlawful or illegal conduct by some of these migration agents.

The New South Wales Police are particularly concerned that state law enforcement agencies are expected to respond to such situations without adequate mechanisms in place. In other words, if someone is aggrieved, is of the view that they have been wrongly dealt with by a migration agent or if there is any fraud or an attempt at bribery et cetera, their natural reaction is to go to the New South Wales Police to report it as a crime. We feel that that is one area that has to be looked at so that there are adequate mechanisms—whether it is formalised, whether it is a memorandum of understanding or whatever—in place to facilitate that. At the same time, we are of the view that there should be a rethink about funding community agencies which have the

right qualifications to also provide some base level advice to people who are seeking to obtain visas.

The other area which I would like to highlight is that of issuing appropriate identifications to refugees. I know that there is probably an international practice, if not convention, which has been in place for decades if not 100 years about assigning 1 January as a birthday for someone whose birthday cannot be otherwise determined, but we would like to submit that a lot of care should be taken in determining the year or the age of the person. We have gone into this in detail in our submission, but there are a couple of things which are very important if the wrong date is assigned. One is the impact this might have in terms of child protection activities, because they are dependent on the year of birth, and substantial confusion may arise as to the responsibilities of educational institutions in regard to child protection laws and the allocation of use of limited resources. The year of birth is also a determinant of when someone can apply for a drivers licence and when someone can obtain the types of jobs that they may be able to do. They have an impact on consent to sexual behaviour and on the right to leave home et cetera. We submit that care should be taken, and perhaps there should be some sort of regulation or some sort of due process which allows consistency and accuracy in determining the age of someone and in the issuing of documents to back that up.

The other area that I would like to highlight today in my appearance before the committee is the issue of health care within detention centres. I do not want to go into detail, but there are some issues which have been raised with us and brought to our attention. We would like the committee to take a very close look at these matters—for example, the involvement of security staff in decisions about who receives medical assistance and when they receive medical assistance. We would submit that security staff are not necessarily qualified to make such decisions. The level of training of help staff employed in centres in relation to cross-cultural health care and refugee-specific health care, including torture and trauma, is another such issue.

Another issue is the level of use of professional interpreters. The Community Relations Commission also provides an interpreting service. We do something like 40,000 interpreting and translating assignments a year, so I think we can speak with some authority on the subject. Cross-cultural training is very important. For example, we train interpreters specifically to do interpreting in courts. We also know that when it comes to interpreting in situations of health care, it is very important that the interpreter is familiar not only with the terminology in health care but also with cultural sensitivities. The difference between a pain and an ache might have significant meaning to the medical practitioner, but it may be interchangeable for the patient, depending on that person's cultural background and knowledge of the language. It is very important that these matters are taken into account.

Another issue is whether detainees are provided with routine access to confidential consultations with health staff, without the presence of custodial staff in or near the room. Sometimes there is a cultural angle to that and that could be quite detrimental to the person seeking health care. There is also the model of care provided—that is, treatment only provided when assistance is requested versus health case management.

There is a need for coordination of medical follow-up for detainees released into the community. There is a lot of public discussion and debate at the moment about the importance of having a centralised record of the history of the health of an Australian. The argument is that in

an emergency it would be great for the medical practitioner to have immediate access to someone's health history. I am not necessarily supporting or opposing that, but, given that there is that kind of debate, it is absolutely fundamental that there is some sort of continuity in the health care management of a person once that person is released from detention.

Therefore, there is a need for the federal government, through DIMIA and the relevant agencies, to have operational agreements in place with state agencies. In the case of New South Wales, it would be with New South Wales Health so that there can be that continuation of health management. There is also a need for preventative health programs, particularly targeting women and children—immunisation et cetera. Those are the matters that I want to draw to your attention regarding health care.

There is also the issue of the health of refugees. For example, in Sydney we have identified psychological disorders, including depression, anxiety and post-traumatic stress disorder in 26 per cent of refugee groups; musculoskeletal problems, including previous injury and trauma in 24 per cent; circulatory disorders, including cardiovascular disease, in 18 per cent; digestive disorders; and infectious diseases, including tuberculosis, HIV and hepatitis B in 12 per cent. These are all very important issues which need to be specifically addressed. Would you like me to stop there?

CHAIR—If you are happy to stop, we would probably get quite a lot of benefit out of the questions we ask. I think you will find that most of what else you want to say will be raised in our questions. Your submission refers to DIMIA's conduct in the removal of school-age children and international students. You suggest that it needs to be reviewed and that protocols need to be developed with state and territory governments. Can you tell us a little bit about why you have concerns there?

Mr Acheson—Can we have a page number please?

CHAIR—I am not sure. I think it is quite early in the submission.

Mr Kerkyasharian—I have been provided with a case study. I will not mention the name of the person; I will just give the initial Z. His date of birth was October 1987. He was reported to DIMIA by the International Students Centre as noncompliant in January 2004. He was detained at Villawood on 28 January 2004 and the ISC, the International Students Centre, was advised by DIMIA of this situation only after persistent attempts by the ISC to obtain information on his situation. The ISC contacted his parents to advise them of his situation. On 11 February the ISC learnt from the college where he was studying English that he was being deported. Neither at the point of detention nor at the point of deportation were Mr Z's parents advised by DIMIA of his situation. That is just one example of how this can impact on people, where someone's parents did not know that the person was going to be detained and deported.

CHAIR—On pages 10 and 11 the issue really is the lack of notification by DIMIA to the New South Wales department of education—or even the school, it would seem.

Mr Kerkyasharian—That is the information we have been given by the department of education. If the committee is interested in some specific examples of that, I can endeavour to

get them from the department and pass them on to the committee, asking that they be treated in confidence.

CHAIR—I would be interested if you could ask the department, on our behalf, specifically what the concerns are with the interaction between DIMIA and the New South Wales department of education and, if protocols actually need to be developed, what sorts of issues they believe ought to be in those protocols.

Mr Kerkyasharian—I will seek to obtain that and pass it on to your committee.

CHAIR—On page 24 of your submission you call for an independent inquiry into the management of detention centres. What form of inquiry do you believe that should be? No doubt, it would be an independent one. There have been calls for a royal commission to look at the gravity of some of the stories or aspects of the handling of the detention centres. Would you put it to us that there should be an inquiry of that magnitude?

Mr Kerkyasharian—Our focus would be health treatment, as I outlined earlier, and also the treatment of children. We are advocating that children not be held in detention centres. There are issues about providing education and training not only for the children but also for the parents. Given that something like 90 per cent of people held in detention centres are subsequently found to be bona fide refugees, we cannot possibly ignore the practical realities. It may not be 90 per cent—it may be a bit less—but the reality is that a significant number of people held in detention centres are bona fide refugees who are going to be given permission to join Australian society as bona fide Australians. It is very important that we at least give them sufficient knowledge and education to prepare them for that eventuality. It is not simply about their health care; it is also about their education. At the very least, it would alleviate their isolation from the world—that is, in terms of knowledge. We need to let them know what is happening in the world by providing them with information, but we also need to provide them with some education about what is happening in Australia and about Australian society et cetera. Even if some of them have to be deported, because they are not bona fide refugees, I do not see anything wrong with having people overseas who have a better knowledge of Australian society.

CHAIR—Some people have put it to us this week that detention centres—unlike jails, for example—do not have an independent body that continually monitors what happens in them. There is no authority to which the detainees can complain about the treatment or that regularly goes into the centres to do an audit on how well things are going. Some people have said that should be set up. Other people have said the problems are so enormous that, before there are any major changes, perhaps there should be a royal commission to have a very good look at what is happening. Do you have a view about either of those things?

Mr Kerkyasharian—The term ‘detention centre’ has a particular meaning for me. It is a place where you incarcerate someone to prevent that person’s free movement until you have determined what to do with that person. One would expect that to be a rather temporary and short-term stay. Given our experience of detention centres in the context of immigration, I think it would be wrong to call them detention centres in the traditional understanding of the term, which I just gave. To me they are quasi jails and therefore at the very least we need to have adequate, independent oversights. Whether that is achieved through a royal commission or whether it is achieved through some form of legislative change is something I have not given a

lot of thought to. But, taking into account the fact that the detention centres are here and that there does not seem to be any immediate change to the policy of incarcerating people who arrived in Australia without a visa or without adequate documents, I think we have to recognise that they are not just detention centres where you put someone for a few days or weeks but, rather, another form of jail, and therefore the normal forms of accountability which apply in a democracy should apply to those institutions.

CHAIR—You have highlighted today a failure to provide adequate mental and physical health services in detention centres, but your submission goes a bit further to suggest that the federal government is shifting the costs of, and responsibility for, providing these services onto state agencies and community groups. Does the New South Wales government believe that is happening? Is there a need for better federal funding or some sort of memorandum of understanding between the Commonwealth and the states about who has the burden of this cost?

Mr Kerkyasharian—My colleague Richard might like to elaborate on this. There is definitely cost shifting, and one of the areas in which you can see this happening is the refugee intake, particularly refugees from the African continent. The immigration department has established a humanitarian entrant category, which is effectively a visa for refugees. But, instead of bringing them into Australia as refugees, thereby accruing responsibilities to the Commonwealth government to provide them with services in accordance with international agreements, they are bringing them in as humanitarian entrants. This means they are taking them out of the refugee category and then having the freedom and independence from international agreements to provide the kind of settlement support that the immigration department sees fit to provide.

The department does provide comprehensive support, but it is not at the same level as it would be if they were refugees. There is a significant concern where humanitarian entrants get their visas on the basis of sponsorship or proposal. The representatives of the immigration department have conceded to us at formal meetings that the sponsorship forms that are signed by sponsors are not enforceable in law. We have situations where humanitarian entrants who have been here for only a few months are then sponsoring others. The immigration department is accepting those sponsorships and bringing into Australia as humanitarian entrants people who are essentially refugees, citing the sponsorships as the evidence for the change in category.

About 18 months ago we had a situation in Newcastle, in the Hunter region of New South Wales, where people had come to the area as humanitarian entrants, sponsored by local people, but had nowhere to live. So they fronted up to the New South Wales Department of Housing and the New South Wales department had to make arrangements, taking away emergency housing set aside for people in the Hunter area, to accommodate these people, who were basically out in the street. That is cost shifting, and it is seriously undermining an emergency service that the New South Wales government has put in place for the people in the area. It shows a complete lack of cooperation and integration of services between the Commonwealth and state governments and, therefore, that is of concern. That is an example of cost shifting.

The other area of concern—and I do not have any evidence that I can put in front of the committee at the moment, but perhaps the committee itself may wish to investigate this issue—is reports that many of the people who have come to Australia recently as humanitarian entrants are now borrowing money to pay for the airfares of others they are sponsoring, and their sponsorship

is being accepted. It is not speculative to say that you may end up with a situation where someone who has been in Australia for six months and is unemployed borrows money and signs a sponsorship document that he or she will provide for another refugee and that the other refugee ends up in Australia as a humanitarian entrant, so they have the added burden of a loan which has to be repaid. I understand that there may be some community organisations or NGOs that are prepared to provide such loans. I am not sure whether or not they charge interest, but that is an area of concern. Of course, when I express concern of this nature, I want the committee to know that my commission has just commenced an inquiry into this whole issue, so it is not a concern that I am just expressing and leaving up in the air.

CHAIR—In that sense, would a royal commission enable the country to look at what is happening right across the board with immigration matters—not just detention centre issues but compliance with the act?

Mr Kerkyasharian—I consider a Senate committee to be a fairly powerful instrument of parliament.

CHAIR—We would like to think so.

Mr Kerkyasharian—At the end of it, whether or not your recommendations are implemented would rely on the full force of the Senate and your colleagues in the Senate. I am not someone who just jumps up and down straightaway and says, ‘I want another royal commission.’ I have faith in the system; I have faith in our democratic institutions. One of the recommendations we would make—and I always try to look for simple solutions where they can be found—is that DIMIA should not accept sponsorship from anyone unless they are citizens. That means that at least under the new laws, if they come into being, no-one will be able to sponsor another refugee or humanitarian entrant unless they have been in Australia for two or three years under the new arrangement. That will at least provide some sort of confidence that the person who is sponsoring has the ways and means to provide some basic support. The best solution would be that the Commonwealth devise sponsorship forms which are enforceable in law and that they see them through. This has been one of the problems with the immigration department for many decades. In the past, when people used to sign sponsorship forms, they gave complete details of their bank accounts, earning capacity and living quarters et cetera but, if they failed, virtually none of them were pursued. If someone is signing a sponsorship document, they should be held accountable and the document itself should be enforceable in law.

Mr Acheson—I have two points to pick up on the last thing Stepan raised about citizenship. The current policy is that you can sponsor someone into this country if you are a permanent resident—an eligible New Zealand citizen or an Australian citizen—which, in effect, means that noncitizens are bringing in the future citizens of this country and shaping the future make-up of what this country will be like, and that is an issue that should be looked at. The special humanitarian program is fraught with difficulty, and the Commonwealth is aware of some of those issues. In November 2003, the Standing Committee on Immigration and Multicultural Affairs, New South Wales, raised concerns with the Commonwealth about this issue and sought some sort of response about the Commonwealth’s duty of care in relation to this. It still has not been satisfied with the response it has received.

More recently, at the Ministerial Council on Immigration and Multicultural Affairs held in Adelaide in May this year, New South Wales raised the issue about services to people under the special humanitarian program—in particular, the importance of interpreting and translating services—and sought a commitment from the Commonwealth to provide interpreters for the first two years of humanitarian settlement. The Commonwealth rejected that approach, although it was supported by every other state and territory. We are seeing cost shifting not just in the area of housing, as Stepan has mentioned, but also in the area of health. Under the current arrangements for interpreting provision, if someone goes to see their doctor they can access a TIS interpreter at the Commonwealth's expense. If they go to the public health system through the states, the states bear the cost, and the majority of people will use the public health system.

Senator PARRY—Thank you for your detailed submission and, in particular, for the acronyms on page 4. I could not have survived reading the document without them, so thank you. Do the errata that you provided change any of the figures at all?

Mr Acheson—No.

Senator PARRY—I have not sighted a copy of that yet, but there is no material change in the figures?

Mr Kerkyasharian—No.

Senator PARRY—On the issue of year of birth, have you had any understated or overstated ages? I can understand the complexities; I can understand your concerns. Have you had examples where the year of birth has been understated or overstated?

Mr Acheson—We have had a specific example in a school where a young person from one of the African nations was assumed to be about 14 and she then became pregnant. That raised all the alarm bells that go on in a school system about child abuse and so on. It was then discovered that the person was 17, which is a totally different situation. That is a specific example. The other example, which is not in our submission but of which I am personally aware, is in the area of junior sports, where we are seeing young people becoming involved who are far older than the other children they are competing against and the younger children cannot compete on that level. Those sorts of situations are occurring. It is more in the school system. It is not just about the issues that raises for the school system and the policies and procedures and time it takes but also about how we adequately provide the best range of opportunities for these young people, given their level of maturity. If we cannot determine that level of maturity, we cannot target services appropriately to meet their needs.

Mr Kerkyasharian—I will add to that. There is also an issue with the police in that, if there are similarities in the names of two individuals and they have both been assigned a date of birth of 1 January of the same year—and the whole police tracking system operates on the date of birth; it is referenced to the date of birth—it can lead to confusion in identity, and there have been some cases of that.

Senator PARRY—The next issue is on page 45 of your submission, where you talk about proportions. I think this will lead into my next issue on cost apportion. You have started with the premise that New South Wales receives the largest intake of all types. The table there indicates

2,208. That is the total for humanitarian and refugee entrants. Victoria has a slightly higher number and, proportionately, by population base and funding base New South Wales is probably not receiving as many as other states. Earlier in your submission—and I have lost the page number—you say that one of the critical issues is that you are receiving a higher proportion volume-wise. I put it on the record that, percentage-wise, distribution-wise, you are really not receiving a greater burden than any other part of the country. Do you have any comment about that?

Mr Acheson—I take your point. The immediate example we would give is the issue of primary migration and secondary migration. That has been shown in a major way in the area of people who are released on TPVs. Something like 25 per cent have been released into New South Wales but 51 per cent reside in New South Wales. We have tracked those figures through Centrelink data. So there is a secondary migration aspect; it is not just where people originally settle.

Senator PARRY—I certainly accept that.

Mr Kerkyasharian—I will add to that. Particularly with TPVs and refugees and humanitarian entrants, we are dealing with people who do require a lot of support—peer group support et cetera. And, given that there are larger concentrations of migrant communities and better community infrastructures in New South Wales, we have found, as my colleague said, that even though they are released in other states it is a question of months if not weeks before they end up in New South Wales.

Senator PARRY—That is your problem for having so many lovely attractions in New South Wales. I appreciate what you said about the secondary intake, and you mentioned the figure of 51 per cent. Even so, it is still not entirely disproportionate with the population statistics around Australia. We could argue around the edges, but I would submit that New South Wales is not hard done by in that sense of proportions.

I want to move on to funding issues. We could spend all day talking about the financial arrangements between state and federal governments, and our time has just about expired as it is. I appreciate the issues. There may be some areas where federal and state negotiations need to take place in relation to funding, but as a general principle the goods and services tax does come back to New South Wales on a proportional basis. So I think it is nice to sometimes look at the bigger picture as well. There is a funding stream that does go back into health. The thrust of your report has been, if I could use the term, a cry for additional funding, and I am sure every state would say the same thing. That is just a perspective that I have. You might want to make a brief comment on that, because we could get into nuts and bolts about funding, and that could last all day.

Mr Kerkyasharian—I would like to comment. Our submission is basically trying to address the terms of reference. It is not a submission for more money. However, we thought that our submission, for the sake of being a responsible and complete submission, had to point out the financial implications as well. We would not want our submission to be devalued simply because it may inadvertently cross the line and enter the debate on GST distribution. That is not our intent. We would like that debate to take place somewhere else.

Senator PARRY—So would I.

Mr Kerkyasharian—Please take our submission seriously regarding people.

CHAIR—Of course, Senator Parry, you know that the Commonwealth have also increased their income 10-fold under the GST. But we will not go down that path.

Mr Kerkyasharian—I am not an expert in that, Senator, so I will pass.

Senator PARRY—As I said, we could go on all day if we discussed that. I just wanted to make that comment. I do appreciate the humanitarian concerns in your submission as well, but there was an overriding theme of funding.

There is a final thing I want to add. You mentioned health and the important issue of post release or tracking health records. That is one portion of what you were discussing. I cannot recall the name, but the federal government has piloted a program which is like Meditrack, where electronic records are available to follow a person around wherever they move. I think that will greatly aid people who have interpreting issues and issues of communicating their health requirements, needs and, in particular, medication. I understand that, with consent, that system can be utilised in pharmacies as well as in medical practices and hospitals around the country once it eventually operates, and I believe the pilot is successful. It is nice to know that there is something that will help. That is a very genuine concern and I think this will assist that.

Senator NETTLE—Thank you for your submission. I want to ask you about health and education. You talk in your submission about access to enrolment in state schools for children who are in detention. Can you expand on the situation for children who are living in the community, either on temporary protection visas or on bridging visas or as part of a resident's determination? It might have been in your submission, but I did not find it. What is the situation for them with respect to being able to enrol in New South Wales government schools?

Mr Acheson—I will take this on notice and clarify it if I can later. My understanding is that anyone can enrol in a New South Wales government school; that, if you are not in a detention centre, you are welcome to enrol in a state government school and that is not a problem.

Senator NETTLE—I know that special arrangements were made for children in detention—in Villawood, for example—to be able to enrol in the schools. We are just moving to a situation now—and we can talk about why—where more people are in the community whilst their claims for asylum are being assessed or whilst they are on a temporary protection visas, and I do not know what arrangements have been made. Does the New South Wales Department of Education and Training have an agreement with the Commonwealth about providing education? I know about the arrangements for when children are in detention but I do not know about the arrangements for when they are in the community. Perhaps you could come back to us with any arrangements that have been made for those people on temporary protection visas or on residence determinations or for those people who are waiting in the community for another reason whilst their claims are being assessed.

Mr Acheson—We will undertake to obtain that information and provide it to the committee.

Senator NETTLE—Thank you. We know about the circumstances of a memorandum of understanding sought to be negotiated between the South Australian government and the Commonwealth government in relation to health, particularly mental health. Are there any similar negotiations going on between the New South Wales government and the Commonwealth government for health care standards across the board for people in immigration detention centres or in the community? I have not heard of any, so I thought I would ask.

Mr Acheson—Again, I will seek to obtain further advice on that and then to provide it.

Mr Kerkyasharian—I am not aware of it, but we will double-check.

Senator NETTLE—You mentioned—and it is the same issue that Senator Parry just talked about—people who have been released into the community getting access to their medical records. I am happy if you want to take this question on notice as well. Can medical practitioners or health professionals working with those individuals get access to their previous medical records that would have been held by DIMIA for the time that they were in detention? Obviously it is an issue of continuity of care—that you want to be able to access those records. I do not know if they currently can access them or if there are problems with that.

Mr Kerkyasharian—We will check the details. The point that we are making is that there must be some sort of formalised process so that those medical records are adequately kept while the people are in detention and so that once they are released from detention their records are released to an appropriate health care professional as a consequence of some formal process. Whether that is through a centralised record or whether it is upon authorisation—by the patient saying, ‘Please send my records to this GP,’ we would like to see some sort of formal process.

Senator KIRK—You say at page 12 of your submission that the Commonwealth has not worked with jurisdictions such as your own to establish an appropriate response or framework to prevent unlawful or exploitative conduct by migration agents who are registered under the Migration Act. Could you outline for us what the existing framework is and where you think the current arrangements are inadequate and could be improved upon and what steps need to be taken?

Mr Kerkyasharian—I think I made some reference to that a bit earlier. One of the areas is where a person who has been using the services of a migration agent is aggrieved and they go to the New South Wales Police Service to complain. There needs to be some sort of arrangement, whether it is a protocol or a memorandum of understanding, whereby there are formal lines of cooperation between the New South Wales Police Service, the Australian Federal Police and the Migration Agents Registration Authority so that there can be an adequate response to a complainant.

The other area I referred to is the area of funding. At the moment some community centres funded by DIMIA, such as the migrant resource centres, provide some pro bono advice on migration issues. My understanding is that the immigration department will discontinue that kind of funding, which will have the effect of forcing people into using paid migration agents. We think that there is a need to maintain some sort of pro bono service. If it is not going to be done through the grants program then perhaps there can be some formal arrangement with the migration agents that they provide X amount of pro bono service.

Senator KIRK—You also mention on page 14 that the Commonwealth is considering granting permanent residence to all people on TPVs en masse. Could you provide us with some details in relation to that?

Mr Acheson—We have actually put in an erratum which covers that point. We have changed it to ‘if the Commonwealth’ does that. There has been some discussion about that. Our concern from a New South Wales position, if that is to occur, given the number of people that have already come into this state, is the impact it is going to have on services.

Senator KIRK—Absolutely.

Mr Acheson—If we are serious about settling people into this country, let us provide adequate services that do it, so we get a better outcome for the whole country.

Senator KIRK—That is what I was going to ask you.

Mr Kerkyasharian—Over the last 18 months in particular there has been increased cooperation between the immigration department and New South Wales, and we do appreciate that. I want to place that on the record. However, we would strongly recommend that there be some formalised arrangement where the immigration department could disclose to state instrumentalities—and I would suggest this recommendation in regard to all states—confidentially, under a memorandum of understanding or under an agreement, the demographic profile and the number of people that they would be bringing into the state, particularly refugees and humanitarian entrants, well in advance so that there could be a coordinated approach to their settlement. We have had one advice over the last 18 months, but there have been other settlements where we have had virtually no advice and sometimes maybe a couple of days notice. If we could have some sort of written agreement between New South Wales and the Commonwealth or DIMIA and the relevant agency in New South Wales where we could give guarantees of confidentiality so that we could be notified in advance, for example, that there would be 400 refugees or humanitarian settlements arriving from Sudan in six months time, then we could work together to facilitate that settlement. I do not see why that cannot happen.

Senator KIRK—I realise that you say you have amended your submission and that there has not in fact been the approach by the Commonwealth government in that regard.

Mr Acheson—It is only an if.

Senator KIRK—It is only an if. So there has not even been any informal approach made to your government in that regard?

Mr Kerkyasharian—I think our amendment says it all.

Senator KIRK—I will look at your amendment. Thank you.

Senator NETTLE—A community group appeared before us yesterday which talked about the work that they do and the help that they provide in arranging access to Medicare for asylum seekers who are living in the community. They are people who do not have access to Medicare, so they are without entitlements. The group gave examples of how they seek to make individual

arrangements with health care providers in order to enable those people to access a variety of different services—for example, they try to help women who are pregnant but do not have any capacity to have their services covered. They gave us examples of people who had been turned away from hospitals because there was a three-week waiting list for a renal ultrasound, I think, or something like that. They said that their situation involves them having to deal with whomever they have contact with in making those informal arrangements. The point you are making is that if there were a formalised system then we would not be in that situation. Do you have any guidance for those community groups who are seeking to find ways in which New South Wales health services, who have not been given those responsibilities, can assist asylum seekers, granted the argument—which I accept—that the Commonwealth has some responsibility to ensure that assistance is funded and is available. Do you have any suggestion to make to the committee whereby we could say to those people who come to us, ‘Here’s a suggestion: why don’t you try contacting or seeking to arrange things in these sorts of ways?’ Is there any process whereby we can say to staff, ‘Go here’?

Mr Kerkyasharian—I think the best solution would be to deal with the cause that is creating the situation and putting that kind of pressure on community organisations. I think that would be the solution. At the end of it, it is a question of whether New South Wales Health will have to change its policy to provide free health services to non-permanent residents—and that is the critical point—and how that would sit with the current funding arrangements with the Commonwealth regarding Medicare funding et cetera where Medicare services are available to permanent Australian residents, to citizens and to other residents under certain circumstances. The reason that kind of problem rears its head is that there are people out there who, for all intents and purposes, are supposed to live like residents but who do not have the status of residents and therefore cannot avail themselves of health services. I think we should look first at the cause.

Senator NETTLE—I agree that is the long-term way to deal with it. The difficulty remains in the short term.

CHAIR—Thank you both for your time this morning.

[10.03 am]

MALAK, Mr Abd-Elmasih, Chairperson, Federation of Ethnic Communities Councils of Australia

CHAIR—Welcome. FECCA's submission has been lodged with us, and we have numbered it 101. Do you have any changes or amendments that you need to make to that submission?

Mr Malak—No.

CHAIR—I invite you to make an opening statement and then we will go to questions.

Mr Malak—I would like to thank the committee for giving me a chance to talk about the submission. As to my approach to talking about the issues, I will probably look at them in respect of community harmony and the success or otherwise of our multicultural policy and how the administration of the Migration Act can affect, either positively or negatively, community harmony and, successfully or otherwise, our diversity. Our federation is the peak national body of all the ethnic community councils. Ours is a non-government organisation. We have an ethnic community council in each state and region. Under each council are a large number of ethnic groups in particular communities. At the last count there were something like 5,000 ethnic community group organisation members.

To start with, Australia has a very successful model of integration, support and settlement. It embraces, supports, accepts and respects people, and it benefits from that. Our economy benefits a lot from that and there are social and developmental benefits as well. There are a lot of reasons for the success of Australia's model. They are to do with our culture and our uniqueness and the whole-of-government approach that has been taken no matter which political party you are in. In these troubling times around the world, with increasing sectarian thinking, I think Australia has some sort of responsibility to actually support our model and to work on it a bit harder, because we do have our challenges and we have to accept that we need to deal with them. We need to provide our model as one of the successful models of peoples of different cultures and different religions living together in a very successful way. We really need to work on that and for this reason we need to look at how the Migration Act can affect our harmony.

My second point is this. Every year we have this nice discussion about how many people should be coming to Australia—more or fewer people—and whether Australia can afford more or fewer. We strongly argue that it is probably time to have an appropriate debate and discussion on what Australia's population capacity actually is. From the community point of view, we are not arguing for more or fewer. We are arguing for a rational objective discussion as to what our capacity is and how we are going to reach that level. Once we reach that level, we as a whole community should be happy to support the process and work together to come to that level. An ad hoc response every year is not really useful. It is not effective. It is not able to provide any benefit.

Another general issue is settlement in regions and support for people who go and live in regions. In theory, that is great and people strongly support it. But we believe that it is not going to work unless we have a whole-of-government approach at the state, federal and local levels to make the regions attractive to people from Sydney and Melbourne so that they will move to the

regions. This will not happen until we have innovation and educational and health services. What I am trying to say is that, if we really need to support the regions and to have major regional settlement, we need to have a stronger and more effective way of providing support, starting with tax exemptions for people to work in the regions, and support for moving government bodies to the regions. I remember the time when Greiner moved the department of agriculture to Orange. Everyone was saying it was not going to happen, as public servants would not go, but they went and the department has been there for probably the last 15 years. We need more leadership so as to actually move services and government departments into the regions, bringing with them infrastructure support. That in itself will actually make the regions attractive, so that people like you and I will be willing to move from, say, Sydney to go and live there.

Looking at the act and at asylum seeker issues, in general we believe that having families—particularly the children of families—out of detention centres and living in the community is really great. However, we still have a strong concern about the delay in making decisions once people have been assessed. There is no reason why people should spend years and years in detention centres. We accept there is probably a need for a small period in which to check a person's identity and to have some health checks, but there is no other reason they should be kept in a detention centre. This is especially so with refugees. The refugee council submission and some Department of Immigration and Multicultural and Indigenous Affairs reports show that about 90 per cent of what we call illegal asylum seekers become legal and get residency. We are actually banishing half of the community. We are putting them under stress for a long time. That is affecting our health system and that is affecting how quickly they are integrated into the community and how quickly they contribute to the community's success.

There is great concern about how the detention centres are managed. We do not believe the current, private management is appropriate. We do not believe the management is appropriately monitored or that there are any appropriate benchmarks or quality assurance to look after people's human rights—and we do not believe there is the ability to do that. As well, we cannot see the rationale behind having the detention centres as far as possible from other people. We believe that, if we have them as close as possible, like the one at Villawood, that will provide some sort of community support and enable people to recover and move as quickly as possible to successful settlement. I do not know if the private management issue is the reason for that or for anything else, but even if the centres are privately managed we need to have very strong, clear guidelines and management processes and legal professionals and health professionals need to be able to visit. It has been very clear in the media in the last couple of days that some lawyers have difficulty visiting detention centres but it is very easy for them to go to prisons. Even if we were to have an equal system that would be great.

One of the last issues I would like to raise is the huge concern within the ethnic community in Australia about putting people in detention centres without identifying them or giving them a chance to justify their own identity. A common joke now in the ethnic media and among some people is that they need to carry their passport all the time. That is a very serious matter. Up to now we have not had any report on the up to 200 cases which have been reported of people who have been detained inappropriately. We do not know how that has happened or how to make sure it never happens again. I understand that 200 cases is a very small number compared with the whole number, but it is big enough to create real concern among people and we really need to deal with that issue.

Senator NETTLE—Thanks for your submission. There are an increasing number of people in detention centres who are permanent residents. They are not Australian citizens; they are permanent residents who have been caught under the section of the Migration Act whereby they have committed an offence which carries a sentence of more than 12 months and therefore they have been detained. They have been sentenced for more than 12 months. I am talking about people who are permanent residents but have not taken out citizenship. Because they get caught in the courts or they have character tests, they end up in detention centres. What experience has FECCA had with people who are caught in that circumstance, where the only way they are able to escape being caught is to take out citizenship? That is the only way they can escape it but for some ethnicities there are consequences of taking out Australian citizenship. You can lose your citizenship from elsewhere if you do that. Is that an issue that has come up? I certainly acknowledge the issue you talked about before, and I know from the FECCA conference, just after the Vivian Alvarez case, that that is a big issue. But has that other issue about permanent residents who find themselves in immigration detention come up?

Mr Malak—It is definitely an issue, for a couple of reasons. First, there is a perception—and I am not sure whether or not it is true—that not all ethnic groups or all people from different cultural backgrounds are affected by the system. There is a perception that if you come from certain countries you are more likely to end up in a detention centre than a jail. The common understanding is that if people become Australian residents they have to be treated as equal to Australian citizens. We argue that people need to go to the normal prison system. Putting them in detention centres is basically giving Australian citizens two different rights. We have a second-rate right. It is not useful, it is not effective and there is a strong perception that it is done using a selective, racist approach and that if you come from a different background you will not go through that. We have no real evidence of that, but there is a very strong feeling about it and we really need to look at it. As you know, most people who are not citizens are from English-speaking backgrounds. My understanding is that a lower number of English-speaking people go to the detention centres. I am not sure if that is true or not, but that is a strong community perception.

Senator NETTLE—In the course of the inquiry we have heard similar comments about particular communities being targeted, and other witnesses have talked about racism. Feel free to expand more on what you ended your opening statement with, regarding the consequences of that feeling within the community and the difficulties that that perception causes for the work that your organisation does.

Mr Malak—I think we need to understand that in Australia we still have a very successful integration and multicultural program, which we as a community all learn, profit and gain from. I do strongly believe that the world probably needs a model like that, and we have a responsibility to work with our model and encourage it. This perception is sometimes caused by what I call the ‘foot soldier’—the local police officer or zealous immigration officer who does the wrong thing. It can undermine the hard work done by the whole community and needs a very strong response. And we have the issue of terrorism and the legislation around that.

In our community we are strongly in support of protecting the Australian border, but we need to make sure we do it in a way that does not give up our rights in the democratic system and we need to make sure we are not bought or forced to change our direction by criminal terrorists. We need to bring the whole community together to fight them as a group. We do not need to divide

our community; we have a very successful relationship. If you look back 10 or 15 years, there was a big war between Serbia and Croatia and people did not kill each other in Australia. In our community we have Greeks, Turks, Lebanese, Christians and Muslims. Whatever happened in overseas wars, people here in Australia worked together very successfully, and we need to maintain and value that.

Senator NETTLE—My last question is about the migrant resource centres and their capacity to deal with migration issues. Obviously they are going through the process of changes in the way they are funded, but I wonder if you have any comments about the kinds of pressure those migrant resource centres are under, particularly from people who are on temporary protection visas and living in the community. I am also curious about the broader issues you mentioned about perceptions within the community that they are being treated differently.

Mr Malak—With any groups which are funded by DIMIA for migrant settlement services, part of the settlement agreement is a specific condition about who we can and cannot provide services to. That has created a lot of community pressures because it is too difficult to say yes to one person and no to another. Sometimes you have to say no to those who need the service most—you have to do it—and sometimes you have to make a value judgment that providing the service for a person will probably have more benefit and outcome for the whole community. The challenge becomes very difficult. A lot of organisations go out of their way to provide a service despite the fact that they are not supported for it, but that has put a lot of pressure on them as NGO groups with a lack of resources, as well as pressure, because their data is not going to satisfy the funding body that they are doing what they are supposed to do. If somebody arrives, as far as we can we do a quick assessment. We genuinely believe that, if someone comes to the community, we should treat them as a resident, with education and health, as the community can receive benefit from this family being integrated into the community.

Senator KIRK—Thank you for your submission. I notice that on page 3 of your submission you mention that you favour the release of families—unaccompanied women and children—into receptive communities as soon as possible after the completion of health and security checks and the like. What do you mean by ‘receptive’ communities? Do you mean releasing them into urban centres or do you mean releasing them into communities where there is a high proportion of a particular ethnic population?

Mr Malak—It is probably all of that. It is a supportive structure which will help them to settle. It is a system which can have English language education and the ability to educate them and orientate them towards the system, help them with their relevant overseas qualifications and with health issues and the education of young people. It means an environment which has the resources and infrastructure to speed up their settlement process. It does not matter which region of the country it is. As I argued before, we have a community responsibility to make regional areas attractive to everyone. Sending five, 10, 20 or 50 refugees to one of the regions is not going to solve that. However, that is not to undermine some of the successes. For example, four or five doctors from the Coptic community of Egypt who obtained temporary registration as medical officers have obtained jobs in Orange and have been working there for three or four years. Orange has a small Coptic community of about 200 people. They have a priest and they built a church. A community has been developed around this group and a pharmacy has been opened there. There is a lot of success like that, but we are looking for a whole-of-government

approach to more development in the regions, rather than having an ad hoc approach where the community carries the responsibility.

Senator KIRK—How do you identify such communities? Who is consulted? Who are the parties? Should the Commonwealth have the ultimate responsibility, in consultation with the state governments and groups such as yours? Is that how you envisage this working?

Mr Malak—In general, from a consumer point of view, we have no idea—and do not care—about the difference between Commonwealth, state and local government. We need one place, one person and one phone number where we can go to ask for help. There are a lot of wasted resources between the different levels of government. Sometimes you find there is bureaucratic protection of federal or state dollars—'We need to get more or we need to get less'—and that is hurting everyone because there is a lot of waste. I think it is time to say that the community should contract the state to do it or local government or vice versa. We need to have one group that is responsible. It is not working. A lot of resources are being wasted on this.

Senator PARRY—Mr Malak, you have made some very well-founded and sound comments and I have no questions.

CHAIR—Mr Malak, your submission supports a call for a royal commission investigation into the operation of the Migration Act and particularly into the way in which deportations occur and into the management of detention centres. What has led your organisation to make that call?

Mr Malak—I mentioned previously that a real issue of concern for the community is that people will be picked up in the street and put on planes, without any transparency. This is having a great effect in the community. We would see a royal commission as providing two messages. Firstly, it would identify the real issues and, secondly, it would provide education and information to the community about the government and the community's concerns. It would provide some warning to the over-zealous immigration officer or police officer that they cannot get away with it. It is currently reported that there are about 200 people—we do not know if there are more or fewer.

We heard at the FECCA congress about a dark-skinned Indian university professor from Canberra who provided a keynote speech at a conference in Queensland and was picked up by the police. He did not have his passport and they delayed his flight. They were not able to identify him and they basically said, 'You are illegal and we have to take you to the detention centre.' It took about six hours to call the people who invited him to the conference as a keynote speaker. This person has been a senior lecturer at the Australian National University in Canberra for the last 15 or 20 years. I am sure he would be happy for me to mention his name, but I will leave that until I have asked for his permission. But I am happy to submit that to the committee if you want it. I understand that the number of incidents is small but the issue provides a lot of concern.

CHAIR—We have had comments from witnesses this week who have said that refugees are locked up just for exercising their international rights. In some instances people in detention centres are treated worse than criminals, and there was an analogy made between what happens in Baxter and what happens in Yalata prison, for example. The fact is that there is an independent body that monitors the standards at prisons but not at Baxter. Julian Burnside suggested to us on

Monday that he believes there is a government policy of mistreating people deliberately, to deter other people from behaving in particular ways. I say all that because in your submission you talk about the concerns expressed in the media and by some politicians about asylum seekers and you talk about the use of words such as ‘queue jumpers’, a term we often hear, ‘illegals’ and ‘potential terrorists’. Does the image that some are trying to build of these people concern you?

Mr Malak—I think the concern is that from some politicians, from some who you would call community leaders or public figures and, especially if you live in Sydney, from some broadcasters on talkback shows there is a lot of negativity. They say, ‘We have these terrorists coming,’ and the reality is that if you work in Lakemba or Parramatta it affects how people treat you. It is not helping to harmonise the community or create respect, but at the same time we really need to genuinely put this in perspective. The community at large is welcoming and supportive and there are a lot of good things happening.

We are looking for a balance. I strongly believe our concerns and arguments about this issue. We say these things are challenges to our successful, unique model and we need to work together to make it very close to perfect. We are not saying Australians are more racist than anyone else. Actually, I strongly believe we are probably much better than anyone in the world. I travel a lot and I think Australians are welcoming and their accepting attitude is more effective, and I think for people to be able to raise this issue is probably healthy and helps us to deal with it. We are really looking for a community which respects individuals, respects human rights and gives people a chance to grow up and integrate with the community. In the end, the quicker people can integrate, the quicker we as a community can benefit from their contribution and the quicker we can identify the criminals and get rid of them—as quickly as possible.

A balance is needed—between protecting the community by having detention centres and treating people humanely and not damaging them or having a negative effect on their mental health and mental status. That is why we argue for a very short detention period, for a supportive environment and for quick decisions. It is probably cheaper for us to have more staff and make quicker decisions than it is to keep people in detention centres, costing us many millions. Is the government doing that because they want to keep people away or not? Our organisation is probably the broadest in the world. We have members from the far Right to the far Left.

CHAIR—You talked before about the passport joke. The current immigration regime creates, as I think your submission says, a sense of alienation or concern within the community rather than integration and fair treatment. Do you think that is the case?

Mr Malak—I am trying to differentiate between the actual wording of the act and how it has been implemented—how people run it, how it has been done and how individuals can have a lot of negative effect in the community. For instance, as I said in my opening remarks, there is a lot of encouragement and support for what is happening, and then you have one of the religious leaders saying very bad things, or illegal things, and suddenly he is in the media. That is effective and successful and there are people making a lot of money from a talkback show in Sydney, bashing everyone in the world. That is a setback for us. However, despite going through that for the last 20 years, the community is still growing and its success is still growing. I do not think this negativity will stop us as a community, but it does not really make it easier for us to achieve that—it does not make us achieve that as quickly as we need; it just delays us a little bit.

CHAIR—The federal government has talked of the need to engage with Australia’s ethnic communities, particularly communities from the Middle East. Do you see that sort of sentiment as being in conflict with the current immigration policy and regime?

Mr Malak—All the elements complement each other. If you have a successful immigration regime that respects diversity and human rights, it will benefit the whole community. However, from the federation’s point of view, 25 per cent of the population in Australia now was born overseas and of every two kids born in Australia one has at least one parent from overseas. That means that the diversity of the community is here to stay. It means that it is vitally important for our harmony that we respect our diversity and support it, within an Australian framework—the legal system, being able to communicate with one language, respect for the law and the democratic system. We are not going to compromise on that. We are already diverse, and that will continue to grow, whether you have migrants or not. If you stop refugees or migrants today, that is not going to change the composition of the community.

CHAIR—I thank you on behalf of the committee for the submission from FECCA and for the time that you have provided today to appear before the committee. It is certainly appreciated.

Mr Malak—Thank you for having me.

Proceedings suspended from 10.32 am to 10.55 am

SMITH, Ms Rebecca, Advocacy Coordinator, Amnesty International Australia**THOM, Dr Graham, Refugee Coordinator, Amnesty International Australia**

CHAIR—I now welcome representatives from Amnesty International Australia, Ms Smith and Dr Thom. You have lodged your submission with us and for our purposes it has been numbered 191. Do have any amendments or alterations you need to make to that submission?

Ms Smith—No.

CHAIR—I invite you to make an opening statement. When you are finished, we will go to questions.

Ms Smith—We would firstly like to thank the committee for the opportunity to appear today to provide further evidence on the operation and the administration of the Migration Act. The notable number of submissions to this inquiry certainly indicates the breadth of concern and issues regarding the current operation of the act. Amnesty International Australia's submission focuses on the lawfulness of both the operation and administration of the Migration Act in the context of Australia's international obligations and recommends a series of reforms to restore Australia's compliance with our international obligations in this area. I will not go into those in detail, as they are set out in the submission, but I would like to highlight another area which does not fall strictly within the remit of the terms of reference: the Pacific solution. We think the Pacific solution has many similarities and generates similar concerns with respect to mental illness and the impact of isolation. Similarly, we have concerns about the Pacific solution under Australia's migration policy. We would like to welcome any questions on this and also on the other matters raised in our submission. Dr Thom would like to make some comments about complementary protection.

Dr Thom—Thank you very much again for having Amnesty International here. I want to make only a couple of comments, which are highlighted in our submission. I think it is important to note that complementary protection is one of the things that the UNHCR Executive Committee is currently looking at in Geneva. The Australian government is participating in that executive committee meeting, and a resolution or executive committee decision regarding complementary protection will probably come out in a month's time, following the meeting. I would urge this committee to have a look at that ExCom guideline and, following that, I think we need to look more closely at how complementary protection can be incorporated into the Migration Act to ensure that certain groups who are currently falling through the cracks are going to be able to receive protection in a more open and transparent way than they currently are.

The only other point I would like to make, which we do not highlight in the submission, is on issues surrounding the bridging visa E. I am aware that a number of other people who have given evidence before this committee have raised the issues around bridging visa E. Again, we are open to answer any questions. I think it is a particularly harsh bridging visa, and a number of families are currently suffering under this visa. Even the issue around not being able to do voluntary work, let alone any work—to the point where people who wanted to work for Meals

on Wheels have not been entitled to do that sort of voluntary work unless they go to the department and get specific permission—is particularly harsh.

Senator KIRK—Thank you very much for your submission. You expressed concern in your submission about the prospect of a person being held in detention for two years before the ombudsman is required to carry out an investigation into the circumstances of their detention and report to parliament. I wonder if you could advise the committee as to how you see that that could be improved. Is it simply a matter of changing the length of time before the ombudsman is required to report? Should there be some different sort of process, perhaps some other independent body that could be called upon to investigate the circumstances of detention?

Dr Thom—I think either suggestion would be an improvement. Clearly the mental health damage that can occur in those two years can be significant. The case of Shayan Badraie is an obvious example, noting that the likelihood of children being in detention has diminished with the new powers. However, the same impact can occur for adults as well. Amnesty has for many years expressed a need for an independent body able not only to investigate what is happening in detention but to articulate that publicly in an open and transparent way. One option is the Ombudsman with broadened powers so that he or she does not have to wait two years before making those findings. Another option is another independent body, more specifically targeted at detention and resourced appropriately. I think that point needs to be made because this has come up in terms of the Ombudsman's capacity to look at these issues and the expertise that is required to look at specific issues with detention. But either option would certainly be an improvement. In our report we welcome the fact that at least this is now happening but our concern is with the length of time.

Senator KIRK—You also mentioned that in your view detention should only be used in exceptional circumstances and also only after a judicial determination. Could you expand on that a little more? It seems that if there were to be a judicial determination every time a person was put into detention then that would clog up the courts. Of course, that is assuming that it would be a court order. Would it need to be a court order or could it be an order made by a tribunal or somebody independent? Perhaps you could elaborate on some of those ideas.

Dr Thom—Generally, Amnesty has always recommended that it be judicial. The fundamental right to freedom is a right that we respect and it is a universal right that we are all able to enjoy. I think that if we are going to remove somebody's rights they should be entitled to know why and should be able to challenge that decision. The United Nations High Commissioner for Refugees sets out the exceptional circumstances in which people can be detained and on what basis. Quite clearly there will be times when there will be security concerns, health concerns or character concerns, but it is important that anybody who is detained on that basis has the right to challenge that and to be aware, at least, of why that decision has been made. Will it clog up the courts? I think that will depend on how often the government decide to detain people and the length of time they decide to detain them for. If there is a presumption against detention then that situation can hopefully be avoided.

Senator KIRK—As I understand it, at the moment under section 189 it is just a reasonable suspicion that is required by the officer. Are you suggesting that perhaps the way that section is framed ought to be changed so that that can only be made as a consequence of a judicial determination, or perhaps by another independent body? That is what I am also suggesting. Is it

just a question of the independence of the decision making, or is it the provision of reasons or the ability to challenge?

Dr Thom—I think we are looking at two different things here. With regard to mandatory detention, under the current law everybody gets detained, so there is the presumption to detain. That is quite different from the department finding somebody in the community and then trying to determine whether or not this person is legal. The Palmer inquiry goes into some detail about how that determination is made, and we would support the findings of the Palmer inquiry on that. We believe that it does need to be improved, but our primary concern is with mandatory detention.

Senator NETTLE—Thank you for your submission. I want to ask you about the removal pending bridging visas. I appreciate the comments you have made in your submission, particularly about what kind of notice people are given at a point when the government decides it is practical to remove them. Have you had any interaction with people who are on or have been offered those visas? It is a policy announcement that we have heard about, but what experience have you had with how it is currently operating? Perhaps you do not know people who have been deported, so you can talk about the other end of it. What is your experience so far of how the visa is operating?

Dr Thom—We are aware of a number of people who have been released. From our perspective, this has been a positive development. As we say in our submission, we welcome the fact that there is now a way that those people who have spent considerable time in detention are able to lead a somewhat more normal life. But there are elements that we are concerned about, such as family reunion. This is the thing that is still hurting people who are released on this visa, as well as the uncertainty. Quotes like, ‘This just feels like another type of detention to us,’ have come to us already.

We have had a little bit of experience—and I believe the Asylum Seekers Centre has already spoken about this—of people who were released on habeas corpus decisions in the courts and then, when the High Court decision gave a different interpretation, were still in the community and were given bridging visa Es. Their eligibility for the RPBV has been a concern. It only applies, from the legislation, to people in detention, yet these are stateless people who are now out on visas without work rights. What is going to be done to improve their situation? Again, this leads back to discussions on complementary protection.

It is the uncertainty and the lack of family reunion that we have particular concerns with. We are aware of a husband who has not seen his children and wife in five years. He is likely to end up on this type of visa. Again, a family is left in a situation where their lives could possibly be in danger due to a particular visa. That is where Amnesty believes that Australia is not meeting its international obligations to protect the family.

Senator NETTLE—We had a discussion with the Asylum Seekers Centre about people in the community and they did not have any examples of people in the community who had actually been offered a removal pending bridging visa. They talked about examples of people receiving a letter, but that was not an offer.

Dr Thom—No.

Senator NETTLE—Have you seen any consistency in the way in which people are given offers of removal pending bridging visas? It is difficult for us to see consistency when we cannot see the process by which the decisions are made. Do you have any experience of whether opportunities to access removal pending bridging visas have been offered in a way that you would expect—or has it been different?

Dr Thom—At the moment, from what we have seen—again noting your concerns about transparency and the fact that this is a discretionary process—they have been fairly liberal in the number of people. We had a number of concerns with the way the initial visa was framed, but that was changed and that broadened the number of people who would be eligible. I think the department have worked in a way to try and help as many people as they can. This is our impression. Obviously there are still people whom we are concerned about and we are in the process of talking to the department about those individuals. The problem is the discretionary nature. What the department are doing now, as opposed to what they might be doing in 12 months time or two years time or if there is a new minister, we just do not know. That lack of transparency or guidelines on how people are eligible and when it will be offered is really the problem.

Senator NETTLE—We have sought to get that guidance also, with little success to date. In your submission you talk about the Senate Legal and Constitutional References Committee report entitled *A sanctuary under review* and the instance of Ms Z, the pregnant Chinese woman who was returned to China and who endured a forced abortion. Have you seen any change in the way in which the department has been making decisions about Chinese women who have similar claims around this issue? I met a woman in Villawood last week who has made an asylum claim on the basis of the one-child policy in China. Are you aware of the department changing the way in which it is making decisions on that issue, following this example of the woman who had a forced abortion? Maybe you are not, but I thought I would ask because you put in that example.

Dr Thom—It is a good example. I think Australia is still quite reticent to use the one-child policy when people are claiming that as the way they feel they will be persecuted on return and as the way that their child might be persecuted. If, for instance, it is the second child, what will happen to that child? I know from our colleagues in the US that the US is far more likely to grant someone refugee status on the basis of the one-child policy claim than Australia. Following that Senate report, from our experience—this is anecdotal, so please do not to take this as authoritative—we did see fewer women who were pregnant being forcibly moved in the late stages of their pregnancy. That is not to say that it has not happened, but I cannot think of an example where it has happened for a woman going back to China. However, I cannot say that we saw a particular shift in decision making following that inquiry.

Senator PARRY—On page 14, the final page of your submission, you have basically indicated that you welcome the changes, but with qualifications on each point. Just as an overview, since the handing down of the Palmer report, do you feel as though there has been continual improvement?

Dr Thom—Again anecdotally, I would say yes, particularly in our dealings with the department—although, in the past we have always had a number of formal meetings with departmental officials and have been able to express and raise concerns to try to improve things either at a state level or at a national level. I have certainly been surprised at how willing the

department has been to take on board those findings. That is not to say that things are perfect yet. As we point out in our submission, while the system of mandatory detention remains, a lot of these problems are going to continue to occur until that policy is addressed. But at the moment it would appear that there has been a move towards a cultural change in the department. There are still instances where we have felt that individual people in the department may not have taken that report on board but, by and large, at the senior levels where we have had meetings, I think they have demonstrated a willingness to address some of those findings, which we believe is certainly positive.

CHAIR—Dr Thom, I want to ask you whether or not there should be some sort of risk analysis or assessment conducted in countries of return before people are deported. Canada has a system whereby it applies some sort of risk analysis or risk assessment for deportees. Do you feel that we have come to the stage in Australia where that should be considered?

Dr Thom—The answer is yes; we do need that. We have been pointing that out for a number of years. We believe that, when people are removed, subjective tests are often applied in terms of internal relocation, safe third countries or changed circumstances. Until you actually test some of those assessments, you run the risk that people will face human rights violations. This applies particularly to areas where conflict may still be occurring or where there are different ethnic groups in different regions and an assessment has been made that, as long as people do not go back to that region, they will be safe; and what the capacity is of a particular organisation to find a person in another part of the country. This is true for countries in Africa and South America, for example. So, yes, I think better research needs to be done.

CHAIR—Who should conduct that research?

Dr Thom—I think the department have some responsibility, with the department of foreign affairs, to monitor individuals who are returned. Amnesty is not saying that there is an international responsibility on the Australian government to monitor everybody they return. Quite clearly, that is impractical and it would also be impossible. There are individuals who, when returned, do not want to have people monitoring them because they believe that will put them at further risk. So decisions need to be made about when it is and when it is not appropriate. Certainly, when the department and, subsequently, the RRT have made findings that the situation is safe on the basis of things like internal relocation, that needs to be tested. So they need to be able to monitor.

CHAIR—It has been put to us this week that some of the country information is in fact out of date, that some of the information that DFAT is using is not accurate in some instances.

Dr Thom—That is also problematic. I think both the department and the RRT have been proactive in trying to get as up-to-date information as they can, given that most of the recent asylum seekers come from places like Iraq and Afghanistan, where things are changing quite rapidly. Obviously, Amnesty International and other organisations play an important role in that, but how much weight is put on Amnesty International as opposed to the department of foreign affairs is something that we have seen in decision making and have been quite critical of in the past.

If you look at the statistics in terms of the initial further processing of Afghans on TPVs and how many were accepted and compare that to now and how many of the Afghans are being determined to be refugees on their further processing, you will see exactly where some of those problems are and, when something is fluid, how important it is to err on the side of caution when you are looking at country information. Ultimately, something like 90 per cent of the primary decisions for Afghans were overturned at the RRT, which clearly shows that something had gone wrong in the country information that they were using. Decisions were made on the basis that the Taliban were no longer active and that, therefore, it was safe for people to go back, and two years later they have proven to be totally incorrect.

CHAIR—Should there be an independent supervision of how people are deported and removed?

Dr Thom—That is certainly an option. What Amnesty has consistently called for is that, when other conventions are being considered—for instance, our obligations under the convention against torture—some independent assessment needs to be made. This is one of the problems with ministerial discretion. If you have a discretion that is supposed to cover your non-refoulement obligations under the convention against torture, you have absolutely no idea whether it is non-compellable, non-reviewable and whether or not Australia even looked at those obligations. So, if somebody is claiming that they will face persecution under the convention against torture as opposed to the refugee convention, some independent assessment needs to be made.

CHAIR—DFAT has been said to claim that direct monitoring by Australia of persons returned to a foreign country would be at odds with the international law principle of states having territorial sovereignty over matters within their borders. Is that something you would agree with?

Dr Thom—I think it depends on the level at which they conducted the monitoring and how they conducted the monitoring. Quite clearly, issues of foreign intelligence are always going to be questionable. Does Australia carry out those sorts of assessments? I think you would need to ask other departments in the government about what sorts of foreign intelligence assessments they are making. The Department of Foreign Affairs and Trade are quite clearly making assessments about persecution of particular groups which the department are then using. If we are sending people back to those countries, I think we have some responsibility to ensure that it is going to be safe and that we are not in breach of our international obligations not to refole someone.

CHAIR—I want to ask you about the excision of the islands from the Migration Act. What is your view about the appropriateness or otherwise of that legislation?

Dr Thom—Amnesty has consistently condemned that. We have a commitment to the Universal Declaration of Human Rights, and article 14 is about the fundamental right to flee persecution and seek asylum. We believe the legislation is problematic because it provides people who reach those islands with a lesser opportunity to be able to be recognised. We are aware of what the department has said about its processing, particularly of people on Nauru and in other offshore centres, but I think that, if you look at the statistics on the number of people who were initially rejected and then, once independent legal representation arrived, had those decisions changed, they show that this is where some of the problems lie. The ability to get

independent legal advice, to meet with UNHCR and to get independent country information are all issues that the Palmer inquiry identified with regard to the remoteness of the Baxter detention centre, and they are going to be much magnified when you look at places like Nauru, Manus Island and even Christmas Island.

CHAIR—I was going to ask you about that next. Christmas Island falls within my electorate of the Northern Territory. There is \$220 million worth of detention centre being built there and the cost is growing weekly, I suspect. What is your reaction to a government that now wants to put a detention centre on Christmas Island that will potentially hold 400 people, when we have heard such dramatic reports in the last three days about how inadequate access to legal and health services is even at places like Baxter? With all due respect, Baxter is probably remote if you are in Adelaide but, from where I sit, it seems pretty close compared with Christmas Island.

Dr Thom—Our concerns are exactly those. Good legal advice is quite clearly paramount for people who are trying to navigate the Migration Act and, particularly, the refugee status determination system as it operates in Australia. If the system were more in line with giving refugees or asylum seekers the benefit of the doubt, perhaps it would not be quite so important, but that is not the reality we have seen when we have come across cases where people are seeking asylum in this country. I think the situation on Nauru quite clearly highlighted that problem. Again, we think that everything the Palmer report highlighted about remoteness will be extremely problematic on Christmas Island.

CHAIR—Access to services is problematic for people who are permanent residents there. I want to ask about ministerial discretion on humanitarian grounds. Your submission says that it should be maintained, but you talk about a need for guidelines, transparency and accountability. Do you believe that there has been an increase in ministerial discretions to the point where they are now used as a safety net, rather than for exceptional circumstances?

Dr Thom—I do know that we would say it has gone quite that far but we have seen a number of cases where we believe individuals should have been picked up much earlier in the system. In some cases those individuals have had to go through years of very traumatic circumstances in trying to prove who they are and that they would suffer persecution. So it is becoming more of a safety net in that respect. It should not be that, and when we highlight the fact that ministerial discretion should remain, we do so because there will be circumstances of a humanitarian nature where we believe the discretion is important. That discretion will always be important but where there are issues of human rights there needs to be a system that operates before it gets to the minister.

Again, this is where we raise the issue of complementary protection, because if assessments are able to be made before they get to the minister then you will cut back on a great deal of suffering. There are issues regarding transparency and guidelines. For those people who have to try to navigate the guidelines in terms of getting 417 applications or 48B applications to the minister, at times it just does not seem to make sense. You may tick off every box on those guidelines and you get a letter back saying that you have not met the guidelines. You do not understand. The inability to challenge the decision is increasingly frustrating for practitioners, let alone for asylum seekers.

The most bizarre example I have seen in the last five years was a copy of a rejection letter saying, ‘You did not meet the guidelines,’ which was sent to UNHCR. How could UNHCR not meet the guidelines in terms of who we owe protection to under the refugee convention? It just seemed surreal to me that they could not even get through the first level of DIMIA processing. So there are clearly problems with the guidelines specifically and with ministerial discretion more broadly. I think moves to a system of complementary protection could address that.

CHAIR—Do you feel the Migration Act needs to be reviewed? Do you believe there needs to be a royal commission or just a change in culture and attitude?

Dr Thom—I think there does need to be something beyond a change in culture and attitude. We certainly would welcome any review of those aspects of the Migration Act that deal with our international human rights obligations. We cannot speak more broadly about the Migration Act because we are not migration agents and we do not deal with other elements of the Migration Act. It would be inappropriate for us to comment on that but Australia has treaty obligations to the Convention of the Rights of the Child, the International Covenant on Civil and Political Rights and, importantly, the convention against torture, and we need to have a look at how we can incorporate those obligations into the act.

CHAIR—Witnesses in Adelaide on Monday argued that the government should have focused on processing refugees at UNHCR centres in Indonesia. It was suggested that this would have removed the incentive for refugees to attempt to get to Australia by boat. Do you have a comment to make about that? Is there a need for a regional strategy to deal with this issue?

Dr Thom—I think a regional strategy would be useful, particularly when we are looking at those people who are making onward movements, but I do not know whether the solution is for Australia to go to Indonesia and process people there. I think that could be problematic. The funding to look after a number of those people who are currently on Lombok and in Indonesia is coming from the Australian government through IOM. Many of them still have family in Australia who have been recognised as refugees.

CHAIR—I suppose you are saying that, if we had some sort of complementary legislation, if these people were processed at UNHCR centres in Indonesia, then it would make it easier—if that is an appropriate word—for them when they get to Australia.

Dr Thom—This needs to be looked at more broadly in the context of our offshore humanitarian program. There are elements of that program which Amnesty International believes are leading the world and are very noble and important. However, there are also elements that leave people in limbo. There is a problem, particularly when you have the temporary protection visa and the removal pending bridging visa systems in Australia, which mean families are separated and the only way that they can possibly be reunited is by making secondary movements, as the government calls it.

If they end up getting caught in a country like Indonesia or Thailand, what obligations do we have to them? Issues around derivative status then become important. The Australian government has ignored derivative status for individuals who are on temporary protection visas. Again, this is an important issue that needs to be addressed. We saw that with the group of women and children who were caught on Nauru whose husbands were here in Australia. The fact

that those families were ultimately resettled in New Zealand tends to show that there are problems with the way we look at certain people who are caught offshore. We would welcome any further investigation into the people on Lombok and in Indonesia and Thailand specifically. Beyond that, I do not think we are in a position to make any substantial recommendations.

CHAIR—Do you think the government’s policy of using temporary protection visas has increased the amount of people that have come by boat, or do you think it is a deterrent?

Dr Thom—Initially it had the reverse impact of what it was attempting to achieve. Traditionally, when we have looked at people fleeing persecution and seeking asylum, most often it is the husband that will go first and take the dangerous journey and then use family reunion to try and get their family to safety. When you remove that option, all that is left is for families to travel together, so you did see more family groups coming—more women and children arriving. But, ultimately, following the *Tampa* incident, the Australian Navy turning boats around was the thing that deterred people from arriving by boat. If you look at the almost negligible number of boats that have arrived since the end of 2001, that was the thing that stopped people arriving. It was not the temporary protection visa. I think the temporary protection visa did have the very unfortunate implications of forcing women and children to take dangerous risks. That is what we saw with the SIEVX tragedy. If you look at the people who drowned, it was the women and children whose husbands were here on temporary visas.

CHAIR—Thank you both for your submissions, which are very comprehensive and well structured, and for giving us your time this morning to appear before the committee. It is appreciated.

[11.36 am]

BOWRING, Ms Lucy, Case Coordinator, Asylum Seeker Project, Hotham Mission

MARSHALL, Ms Katherine Claire, Case Coordinator and Volunteer Outreach Coordinator, Asylum Seeker Project, Hotham Mission

POULOS, Reverend Elenie, National Director, UnitingJustice Australia

CHAIR—I now welcome representatives from UnitingJustice Australia and the Asylum Seeker Project, Hotham Mission.

CHAIR—The submission you have lodged with us is for our purposes submission No. 190. It has been numbered for people who want to follow this transcript and link it to your submission. Do you need to make any amendments or alterations to your submission before you begin?

Rev. Poulos—No, I do not think we do.

CHAIR—I now invite you to make an opening statement and when you finish we will go to questions.

Rev. Poulos—Thank you for the opportunity to speak to you today. While the Palmer inquiry has exposed many flaws in the systems, structures and processes of the department of immigration, and the process of change has already begun, we believe that this inquiry is a significant opportunity to explore the administration and operation of the Migration Act in more detail.

The Asylum Seeker Project at Hotham Mission is one of the key Uniting Church agencies delivering services to asylum seekers in the community. For over eight years it has been working with asylum seekers who have no rights or entitlements, providing casework; housing; referrals to legal, medical and other services; volunteer support; and financial assistance. UnitingJustice Australia is the national justice agency of the Uniting Church and is primarily responsible for policy advice and advocacy. It is the experience of Hotham Mission, together with the grassroots work of other church agencies, groups and individual church members, which informs the lobbying and advocacy work undertaken by UnitingJustice.

The Uniting Church has a long-standing interest in the status and welfare of people seeking our country's protection and has been engaged in advocacy and the provision of services to asylum seekers and refugees since the beginnings of the church. We maintain our commitment to advocating for an end to mandatory detention of asylum seekers; an end to the Pacific solution, including the excision of islands from our migration zone; the introduction of a system of complementary protection; the introduction of a complete and thorough case management system for all asylum seekers; and an end to temporary protection visas and bridging visas without rights and entitlements.

While we do seek major policy changes in these areas, we are also committed to working with the government and the department to ensure the best possible outcome for asylum seekers and refugees under the current circumstances. We do not underestimate the significance of the changes announced by the Prime Minister earlier this year, but we still have concerns about the policy, the legislation and the procedures, especially relating to asylum seekers and refugees.

Our submission to this inquiry has focused on a small number of issues relating mostly to the effects of the Migration Act on asylum seekers and refugees. We are concerned about the increasing reliance on ministerial discretion. The Uniting Church does not believe that increasing the minister's discretionary powers is an adequate way of dealing with flaws in the Migration Act and its operation and administration. The minister's discretionary powers are non-compellable, not transparent and they lack accountability.

The Uniting Church supports the call for a system of complementary protection which would cover the assessment of cases which might trigger our obligations to protect under international treaties other than the refugee convention. These are predictable claims, not obscure and exceptional claims as would be appropriate for consideration under the powers of ministerial discretion. We are also concerned about what is, in effect, a 'destitution policy': a visa system that denies some of the country's most vulnerable and needy people access to basic state services and support is, we believe, cruel and abusive. It leaves people with no way of supporting themselves or providing for their families.

We have also identified very serious problems with compliance practices and procedures including the structure and staffing of compliance units, oversight and decision-making structures and communication both within compliance itself and between compliance and clients. These problems ultimately affect, in sometimes very serious ways, the health and wellbeing of people. The Uniting Church believe that it is unacceptable that people are harmed and abused because of poor practices, bad legislation and unnecessarily harsh and punitive policies. We are calling for fair, reliable and transparent systems and procedures that take seriously the needs and circumstances of people, our obligations under international human rights instruments and our responsibilities as a wealthy and decent democratic country.

CHAIR—Ms Marshall or Ms Bowring, do you have anything you want to say in an opening statement?

Ms Bowring—No.

Ms Marshall—No.

CHAIR—Is the Hotham Mission concerned with a particular area of Melbourne that you cover? Is it a generic name for the mission or is it geographically based?

Ms Bowring—Hotham Mission is based in the inner northern region of Melbourne. It is the parish mission; however, the Asylum Seeker Project works with people in the entire metropolitan area of Melbourne.

Senator PARRY—I really do not have any questions because your submission is quite detailed, it is similar to other submissions in some of its content and it is highly referenced to the

Palmer report. Thank you for that. I just want a point of clarification: on your final page, under ‘additional recommendations’, you have ‘cross-cultural training and standard use of interpreters’ as an improvement that you would like to see. Are you including interpreters in the cross-cultural training, or is it just the way I am reading it?

Ms Bowring—Both of those things: we would be seeking improved cross-cultural training and a more standardised use of interpreters.

Senator PARRY—Okay. How I read it was that you wanted interpreters to have a complete understanding of other cultures, which would nearly defeat the purpose of having a unique interpreter. So it is mainly just an ambiguously-worded dot point.

Senator NETTLE—You have commented early on in your submission about refugee advocates who are putting in section 417 applications to the government and their sense of making changes to the things they may otherwise advocate for because they have written a 417. Maybe I am not reading it right, but you have said that people:

are conscious that any public criticism they make could have adverse impacts on individuals they are seeking to assist.

Could you expand on that? To give you an idea of some of the comments we have had already on this issue, I think it was a psychiatrist who appeared before us in Adelaide who spoke about the implications of the mandatory detention policy not just on detainees but also on people in the community who are assisting those asylum seekers. We have had some comment, so do you want to add any more on that point?

Rev. Poulos—One of the issues I have certainly seen through the national office, where we get quite considerable requests to provide letters of support for 417 applications, is that the 417 application is seen to be the only recourse because the system is seen to be failing people. Issues around asylum seekers and refugees are such hot issues both in the media and in the press and the conditions are trying because we never know why people are accepted or refused. What is happening is that people are trying to construct 417 applications to give the best kind of outcome for the people whom they are supporting, obviously. I am certainly not saying that people are stretching the bounds of credibility or even that they are lying because I do not think they are. Without any understanding of how 417 decisions are made, it leaves people with absolutely no grounds to assess things and think: ‘Of the conditions surrounding this particular case, what is the most relevant? What is the minister going to consider in particular? What would be helpful for the minister in this case? What is irrelevant?’ It is a bit of lottery for people.

Ms Bowring—I think it often leads to asylum seekers, when they come into the office, saying, ‘I’m looking for support,’ and, as Elenie said, really questioning things: ‘What should I tell people to write? This is my story.’ They almost feel as if they need to retell their history prior to coming to Australia, which may include torture and all sorts of trauma. There is almost a danger of retraumatisation, I think. It works both ways, so perhaps supporters would feel, ‘That is something I need to know about in order to write a submission that is worthy of the minister looking at.’ I think that is a danger that we have seen with many people who come into our office.

Senator NETTLE—Have you seen any change in the way the minister is making determinations around 417 or 48B applications post-Cornelia Rau and post-Palmer? What is your experience of the changes in the way 417s are being made? Have you seen any changes?

Ms Marshall—No, I have not seen any changes in terms of the clients who we work with. There does not seem to be any distinction or point about which the minister is making decisions on any particular issue. We certainly are not seeing more of our clients being accepted at that point.

Rev. Poulos—There may be a difference—and this is completely anecdotal—between what is happening with asylum seekers in the community and the responses to 417 and 48B applications from people in detention centres. There certainly is the appearance of an increased motivation to get people out of detention centres. We have seen a number of 417 applications given positive decisions, and 48B applications as well, in larger numbers than we would have previously come to expect before that. As I said, that is purely impressionistic.

Ms Bowring—To add to that, the problem in answering that question is the lack of transparency. We cannot say why decisions are being made or not being made. It is very hard to determine if a certain issue is being picked up on. I know there have been a few occasions when we have had two very similar cases before the minister and one family received the visa and the other did not. It is very difficult to determine why that might be when you do not know what has actually been looked at and considered.

CHAIR—How do you deal with that situation? Is there anywhere you can go to ask ‘why one family but not the other’ when the situations are similar? What avenues do you have to try to deal with that frustration?

Ms Marshall—We do not have an avenue, apart from trying to talk to the department about putting up the case again, stressing our original concerns and perhaps our concerns around other cases that received a positive decision in a similar situation. With that level of advocacy, sometimes the case will get up again and the minister will decide to consider it. Whether the minister ends up making a decision or not is unclear, but that is pretty much the role that we take. It is very arbitrary and it is very unclear.

Senator NETTLE—We heard yesterday from representatives of the Asylum Seekers Centre in Sydney. They are mainly working with asylum seekers living in the community, so I presume they have a similar client group to that of the Hotham Mission. One of the issues they raised was in relation to groups of people who are currently being given residence determinations whereby they have a different set of entitlements and access to work than people who are currently living in the community and to the difficulties they are having in dealing with and explaining those differences. In your experience at Hotham, is that something you are seeing and dealing with?

Ms Bowring—At Hotham we work mainly with people who are on a bridging visa E, so we are quite strict in our intake and assessment of who we can support. However, definitely within the network of asylum seeker agencies working in Melbourne, there is confusion. There is a huge discrepancy between the visas and the entitlements. It becomes very difficult to explain to people holding those visas what their entitlements are compared with the person sitting next to

them who appears to be in a very similar situation. I would say that there has been incredible confusion among the agencies. It is set up almost like tiers of entitlement and tiers of protection.

Senator NETTLE—Have you had any experience in dealing with people who have been offered residence determinations, or are you focused just on bridging visa E? We are trying to understand how the process of the residence determinations is working.

Ms Bowring—The Hotham Mission has worked in the past with alternative places of detention, which I guess came before residence determination. The Red Cross in Melbourne is the agency that supports residence determination. I guess we are involved in the exploration of residence determinations but not so much in the implementation.

CHAIR—I want to talk about complementary protection. You raised this in your submission. Would you outline why that should be progressed and the benefits of such a measure?

Rev. Poulos—First of all, it needs to be said that Australia has made a commitment to explore complementary protection as part of its commitment to the UNHCR Agenda for Protection, so it is on the table in an international context. We believe that complementary protection would streamline the process enormously. What happens now is that everyone who comes onshore and seeks protection is funnelled into one system. But there are many reasons that people seek protection: some are under the terms of the refugee convention; others seek protection because of human rights abuses that would be covered by the convention against torture, the convention on the rights of the child—all our other treaty obligations. But what you are doing is funnelling everyone to seek refugee status as ‘refugee’ as defined by the refugee convention.

People have an initial assessment and then a Refugee Review Tribunal claim. They have to go through the same process again. They may have protection claims that are not strict refugee convention claims but are claims triggered by other treaties. But they are forced to try to prove themselves to be refugee convention refugees when in fact they are not. So they go through the system; they are turned down and turned down again. They end up in the courts, where they have no capacity to challenge the decision on the merits of the case, which is another problem. And at the very end of that they end up making a 417 request for ministerial intervention. We believe that that process overloads the system at every single point. It certainly overloads the minister. There could be complementary protection. The system that Amnesty and the Refugee Council and the National Council of Churches have proposed would be one where at that initial point of determination people are assessed: ‘Is this a refugee convention claim or is it a claim triggered by our obligations under other human rights treaties?’ At that point you have—

CHAIR—A number of streams.

Rev. Poulos—Yes. We believe that it would streamline the process. It was certainly be much kinder on people because they would have an opportunity from the very beginning to tell their story and state the reason for their claim in a very clear way, without being forced to frame it in terms of a refugee claim when it is not. It would certainly free up the minister’s office and the ministerial intervention unit. I cannot even begin to imagine the workload of that unit and the minister’s office under these conditions. We believe that that is unnecessary and that this system would clear it up.

CHAIR—Apart from the government signalling its intention to put it on the table, have you had any other response from the government about the proposal?

Rev. Poulos—No. Some time ago the minister informed us that they were looking at it but declined to talk further about it. That was in a meeting early last year.

CHAIR—So probably about 18 months ago now?

Rev. Poulos—Yes.

CHAIR—Can I ask you about cost shifting. We have particularly concentrated on the costs that are being shifted to state governments, perhaps in health and education services. But what about your experience as an NGO? Do you feel that the federal government is moving the responsibility and the costs onto organisations such as yours without complementary funding being provided?

Rev. Poulos—Absolutely. We hear it all the time from community service organisations and NGOs that are supporting people in the community. Everyone is really bowing under the strain.

CHAIR—Give us a bit of a snapshot of what sorts of costs you would incur and the kind of funding you get from the government—or do not get from the federal government—to meet those demands.

Ms Marshall—We do not get any money from the federal government. We have received small grants of money from the state government. In terms of the kinds of costs that we incur, I think we have said in our report that we have spent about \$40,000 over the last four years just on trying to fund people to voluntarily return. That is because there is no funding through the government to fund flights home, passports or any package for their return on arrival.

Senator NETTLE—This is voluntary return?

Ms Marshall—Yes, this is voluntary return. This is because of the worry from clients who do not want to go back into detention. It is the only way at the moment that they can be given an assisted removal, where the government puts them on a plane and pays for it. At the moment, they have to go into detention and there are issues around the holding of their passport. That is one of the things that are being investigated at the moment. As we understand it, the client cannot hold their own passport on the plane. On arrival, often what happens is that their passport is passed over to the customs officer. That obviously poses huge problems if that person is afraid to return. That is one of the costs that we have had to fundraise for because there is no middle ground.

Ms Bowring—In addition to the return, which has been a huge cost, there are the daily living expenses. At Hotham Mission we provide housing and financial assistance to bridging visa E holders. We spend something like \$30,000 a month on emergency cash relief for people. That is to cover basic things like food and travel. We spend about \$11,000 yearly on travel costs—we call them Metcards in Melbourne—just so that people can reach immigration compliance offices, doctors and legal centres as they need to. In addition to that there are housing costs, which are

huge yearly. We do try to source rent-free housing for people but, due to the demand, we have had to take up leases for people and enter into ongoing arrangements.

CHAIR—If the policy of the government changes and they try to process people more quickly, perhaps by granting some sort of permanency to TPV holders or releasing more people out of detention—through a whole-of-government approach or perhaps more funding or assistance for organisations like yours—what impact will that have?

Ms Bowring—The people I am talking about do not have access to work rights and they are not eligible for any kind of government income assistance through Centrelink. That is why we have to pick up every basic living cost. If we are talking about people coming out of detention on a temporary protection visa or gaining a permanent visa, they will have work rights and Centrelink assistance. That is not to say that additional specialised assistance will not be required because it will, and we know that the transition from detention into the community is a long and arduous process, given the traumas people have been through.

Rev. Poulos—The church is under a huge strain to provide the kind of support all over the country that it would like to. One of the programs that the church supports is the Bridge for Asylum Seekers Foundation here in New South Wales. Again, they are working to financially support people on bridging visa Es. They try to fundraise \$100,000 or \$200,000 a year to do that. Through its regular giving program, the Uniting Church supports agencies such as Hotham and the work of other agencies, not just Uniting Church agencies. As you would be aware, the fewer people who come into the pews on Sunday, the less money that we have to share around. It is an increasing issue for the churches. It needs to be looked at. We do not believe it is fair that people are living in the community without the right to work and to access benefits. In fact, it is against our obligations under the refugee convention that certain categories of refugees—because we do categorise them and give them different visas, so we discriminate against one refugee as opposed to another—have more rights than others.

Senator PARRY—I would not have ordinarily asked this but I will in light of questions asked by Senator Crossin. You mentioned state grants that you received from, obviously, the Victorian government. Do you know the title and amount of those grants? It is something we can place on notice if you do not have the information.

Ms Bowring—We had better take that on notice.

Senator PARRY—Please provide just the name of the grant or what program the grants are issued under. Thank you.

Senator NETTLE—What is the caseload of people you deal with at Hotham?

Ms Bowring—I think there are about 250 individuals. That consists of families, single men, single women—a variety of breakdowns.

Senator NETTLE—And they are all on bridging visa E?

Ms Bowring—The majority are on bridging visa E. There are probably a couple with bridging visa A as well, which means that they do have the entitlement to work rights. Then we have one person at the moment who is on a removal pending bridging visa.

Senator NETTLE—Do they have more entitlements than those with bridging visa E?

Ms Bowring—They do. They have access to work, Centrelink and Medicare.

Senator NETTLE—Thank you for putting in a submission that deals with disability and people with HIV. We have not had discrimination against people on the basis of them having HIV or disabilities raised with us before. Are you aware that that continues to operate? It is clear that the act allows that discrimination. Is it implemented in such a way that we see that discrimination consistently? Is it inconsistent? Is it changing?

Rev. Poulos—It is very difficult to get a handle on. Amnesty Australia and Uniting Justice started a little joint research project around this very issue some time ago. It has stalled because we have had some other things to do. The early stages of the research that has been conducted indicated that there is in fact no way to tell. There is no way to tell who is being left out because of the health requirement. The response I have had from UNHCR field officers so far indicates very strongly that they do not even bother to refer refugees with disabilities or with HIV-AIDS to Australia because they know that they will never get in.

Senator NETTLE—Wow.

Rev. Poulos—Even the US takes refugees with HIV-AIDS—in quite considerable numbers, I believe.

CHAIR—Can I ask you about the changing profile of our refugee intake. If, to coin a phrase, the boat people have stopped—we are not getting the waves of people coming by boat—but we are actually experiencing an increase in arrivals from Africa, for example, who often have a different and more complex range of issues to deal with, do you see a change? Is there a more organised whole-of-government approach, or has nothing changed? What impact is that changing demographic having on your service?

Rev. Poulos—I have some general things to say. I recently returned from the Northern Territory, where I visited a refugee service in Darwin whose client base is now totally from countries in Africa. About 250 refugees a year, all African, are now being placed in Darwin.

CHAIR—That is my hometown, by the way.

Rev. Poulos—So you know exactly who I am referring to. What is happening there is that you are getting a very high needs group being placed in a community that already is high need. There are huge issues and concerns around the population in Darwin and around Darwin. So when we put in another high-needs group we need to think very carefully about whom we place where and whether there are actually services that will help these people. It appeared to me, from the short time I spent there, that there is an attempt to provide a more whole-of-government approach.

Turning to other parts of the country, in South Australia there are huge numbers of people from African countries, particularly the Sudan, going in. There are a number of Uniting churches very heavily involved in supporting people. One of the concerns that we have at a national level is that refugees from African countries—and some more than others—have come from very traumatic situations, particularly if they have come from camps like Kakuma and have been in those camps for a very long time. We identify them and we bring them out, and that is wonderful. A great part of our program is that offshore program. The question for us is: what happens when they get here? Do we have adequate services to provide for their needs once they get here?

In particular, women at risk are a big issue—women who have been in camps like Kakuma for 10 years and have suffered multiple rapes as well as whatever torture and trauma they fled from to begin with—and the social disintegration in the camps. That whole thing means that people who arrived from these countries are very vulnerable and have very particular problems that require a great deal of specialist help. One of our concerns is: do we place these people in places where they can access that specialist help? How do we ensure that we have specialist health care professionals who are well enough trained in torture and trauma services, for example? What broader base support through other government departments are these people accessing?

CHAIR—If there is a lack of government support or ongoing government support or even a lack of whole-of-government support, does it place an ongoing burden on organisations such as yours?

Rev. Poulos—Yes, absolutely it does. Community organisations are picking up the pieces all the time. It also places burdens on the communities already in places, particularly in urban areas like Sydney and Melbourne where people come and connect to the communities—for example, they are Sudanese and connect to the Sudanese community. The people in those communities who have managed to get jobs and sort themselves out are under terrible burdens and strains in terms of supporting other people from their home countries. We saw that with communities of people from Afghanistan, Iran and Iraq and the burdens that were placed on them to support people who were coming in as refugees, when they were already struggling themselves.

Senator NETTLE—Going back to the issue of HIV and disabilities, obviously we are increasing the number of people who are coming to this country from Africa, many of whom have HIV or disabilities as a result of their experiences. Regarding the research you are doing, you said that, in the conversations you had with UNHCR, they were saying that they did not bother referring—and that might be something we want to follow up.

Rev. Poulos—I am trying to get a sense of whether there are any figures. Can we say that there have been X number of families refused entry into Australia on UNHCR's recommendation because there is a member with a disability or because they have HIV-AIDS? It is impossible to get those figures. The initial response that I am getting back from UNHCR field officers is that it is because they just do not refer them, because they know they will not get through because of the health requirement. What I need to do is look behind that and say, 'How did they learn that?'

Senator PARRY—Exactly, because that in itself is anecdotal, isn't it, and we need to firm that up.

Rev. Poulos—That is right.

Senator NETTLE—We can ask DIMIA for that information but, if DIMIA is not getting applications from people because they are being stopped a step earlier, that is where we need to know about that communication.

Rev. Poulos—That is right. That is what I am trying to sort out.

Senator NETTLE—Keep us posted.

Rev. Poulos—I will.

CHAIR—As we have no further questions, I thank you for your submission. No doubt you have travelled up from Melbourne today to see us, and we certainly appreciate that effort.

Committee adjourned at 12.14 pm