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JOINT STANDING COMMITTEE ON MIGRATION

Reference: Immigration detention in Australia

WEDNESDAY, 3 SEPTEMBER 2008

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JOINT STANDING
COMMITTEE ON MIGRATION
Wednesday, 3 September 2008

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

Members in attendance: Senators Bilyk and McEwen and Mr Danby, Mrs D’Ath, Mr Georgiou, Mr Randall and Mrs Vale

Terms of reference for the inquiry:

To inquire into and report on:

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

WITNESSES

FUNNELL, Air Marshal Ray (Retired), Member, Immigration Detention Advisory Group..... 1

HODGES, The Hon. John Charles, Chairman, Immigration Detention Advisory Group..... 1

Committee met at 12.02 pm**FUNNELL, Air Marshal Ray (Retired), Member, Immigration Detention Advisory Group****HODGES, The Hon. John Charles, Chairman, Immigration Detention Advisory Group**

CHAIR (Mr Danby)—I declare open this public hearing for the inquiry into immigration detention in Australia. The committee welcomes the Hon. John Hodges and Air Marshal Ray Funnell to give evidence on behalf of the Immigration Detention Advisory Group and we appreciate you making the time to be here today. Although the committee does not require you to give evidence under oath I have to remind you formally that this hearing is a legal proceeding of the parliament and warrants the same respect as the proceedings of the House itself. Would you like to supplement your written submission with an opening statement?

Mr Hodges—I would like to ask Ray Funnell if he would make the initial statement.

CHAIR—Please, Air Marshal, if you could commence.

Air Marshal Funnell—Good afternoon. Thank you for the opportunity you have given us to work with you on this important issue. Our submission is before you. It outlines who we are, what we do, where we have been and our views on many aspects of immigration detention. In essence we are here today to talk to that submission and to address any questions that members of the committee may have of us. By way of an opening statement I would only add that we in the Immigration Detention Advisory Group appreciate fully the task that the committee has in addressing this difficult area.

With immigration detention, ‘difficult’ is a word that constantly arises. It is a difficult area for policymakers, it is a difficult area for policy advisers, it is a difficult area for those who have to give effect to policy and it is a difficult area for the Australian people to comprehend and on which to form judgements. Most of the difficulties arise from the fact that, with immigration detention, people are placed in stressful and unusual circumstances. Emotions are frequently at a high point. Problems constantly arise and solutions that satisfy everyone are very hard to find. That is a characteristic of this area. There are no easy answers. Yet it is important that we as a nation get it right. It is important for those who are being detained, it is important for those who manage their detention in its many forms and it is important for the Australian people on whose behalf policies have been formulated and put into practice. I look forward to our discussions and to any further help we can give the committee in its important work.

CHAIR—Could we begin by throwing this open to questions or comments from any member of the committee. Who would like to begin? Deputy Chair.

Mrs VALE—Thank you very much for coming. It was interesting to read your report and the changes that you have made. I would like to know: when you visit a detention centre is there anything particular that you look out for from the outset? Or do you actually go with a clear mind and wait and see if there is anything that presents itself to you?

Mr Hodges—There may be individual issues that come up from time to time that we have been made aware of when we do a visit. But largely I think it is true to say we go into a

detention centre with an open mind. We talk to the service providers plus the DIAC staff and sometimes to quite a number of the detainees as well. We have not made a lot of visits that have been totally unannounced, although there was one done recently, I think, to Villawood. But we can, as you can probably appreciate, turn up at the gate and be let in. It is a bit of a mixture actually of when we do a visit. Sometimes there are subgroups of two or three and sometimes the whole group will go.

Mrs VALE—Did you find a difference on that visit you made that was unannounced?

Mr Hodges—I do not know that we have had an actual report. It was fairly recently.

Air Marshal Funnell—We do have a report. You may recall, John, they said that it was a better visit through being unannounced.

Mrs VALE—Really?

Air Marshal Funnell—It was just one of those things. In a way it was done to test whether it would make any significant difference. We have always been very well received in the detention centres. When you ask: do we go there with an open mind? You cannot go there with an open mind. When you have been working in this area for well over seven years, as we have, our minds are full of all the information we have gathered previously and of opinions we have formed as a result of those visits. So quite honestly you cannot go there with an open mind but what you can do and what we strive to do is be objective in our observations. We make it our business to range widely across the centres and talk with all sorts of people in all sorts of environments. That is the way in which we gain information to help us in our work in advising the minister.

CHAIR—We appreciate your coming very much. I think it is very useful to have a person from IDAG who could give us their experiences of the last few years. Being a new committee we do not want to reinvent the wheel. I was interested to follow-up on what Danna was saying. The improvements you have seen over the years to detention centres and the fact that you exist means that you do not think it is necessary to revert to public sector management of the detention centres. Firstly, is that correct? And secondly, I would be interested in your view of the change to the private sector provider and whether that has made a fundamental difference.

Air Marshal Funnell—There are two things there. I told John that I would take this on because it is an issue that I pressed very hard in the committee some years ago. We were going to the centres and consistently seeing the frustration that came about through the senior immigration people on site not having the policy clout to effect changes within the centre. They were constantly told, ‘Well, if you don’t like what we’re doing, refer it to head office.’ Head office and the department did lots of head knocking but nothing happened on the ground. We could see those frustrations and we considered whether it might not be better to revert to management in the public sector to see if you could get around that. As it turned out, through work we did with the department, a different scheme was arrived at and is in place in the centres.

As far as we are concerned it is working extremely well, because now—as I said in the submission—he who pays the piper is calling the tune. It came in almost seamlessly and it now operates very effectively indeed. Our conclusion now is that the problem has been overcome and there is no need for everything to revert to the public sector. I think that we said in the report that

if it did revert to the public sector it would be very complex to put in place and I think it would end up being much the same as it is now with the public sector having to subcontract out all sorts of arrangements including, almost certainly, security. So we believe the current system of management of the centres is working very effectively and the department agrees with us. When you talk to the people on site you get that same agreement.

Mr Hodges—It was quite evident when you visited some of the detention centres that the service provider and the immigration officials were at loggerheads. It was very noticeable in some centres on some visits. There would be a direction given by immigration that would not be carried out by the service provider. That tension existed and, of course, the losers were the detainees.

Mrs VALE—They had no authority to carry it out, either.

Mr Hodges—Because of the nature of the tenders of the day—and Ray has been sitting on the current committee to look at and determine the tenders—there was no way really that it could be resolved. You had individual strengths and weaknesses within the officers of both the department and the service provider to take into consideration. Some hard heads and hard attitudes developed on the ground in the detention centres. Again, of course, all of that meant that the detainees were losers.

Mr RANDALL—Can you explain how that has been resolved?

Air Marshal Funnell—What has now occurred is that the ultimate authority on site resides with what is referred to as the ‘DIAC Centre Executive’. That was not the case previously. If there is an issue that has to be decided it does not have to go to head office; it can be decided right there on the site.

Mr RANDALL—The substantive immigration executive is the ultimate arbiter of the final decision

Air Marshal Funnell—On site, yes.

Mr RANDALL—And that is in the relatively new contract.

Air Marshal Funnell—In fact, that came about through the renegotiation of part of the present contract.

CHAIR—Which you made an input and a suggestion into?

Air Marshal Funnell—Yes. Two of our members were members of the steering committee looking at new administrative and decision making arrangements in the centre and they pushed very hard on this issue. They pushed hard because they were the people who knew most about the actual workings in the detention centre and eventually they were successful in getting this new arrangement put in place.

Mr GEORGIU—Can you tell us what this body is that controls the tenders? You said you are on a body that—

Air Marshal Funnell—The body I am on, sir, is the Detention Services Tender Steering Committee. It is a steering committee overseeing the tender process.

Mr GEORGIU—Okay.

Air Marshal Funnell—It is chaired by one of the deputy secretaries in Immigration, Mr Bob Correll, and I am the IDAG representative on that committee.

Mr GEORGIU—Okay. It is just that Palmer recommended the establishment of an independent body to scrutinise the provision of detention services contracts, which I do not believe has been set up. I thought that might be it.

Air Marshal Funnell—No, that is—

Mr GEORGIU—Have you visited the Christmas Island facility?

Air Marshal Funnell—About half-a-dozen times.

Mr GEORGIU—Could you tell us what your opinion of that facility is. What input did you have into its design?

Air Marshal Funnell—You are talking about the new one, not the—

Mr GEORGIU—Yes, the super-duper one.

Mr Hodges—We had no input into the new one at all. I think the design was started as far back as 2001-02 in that area and we were only set up in 2001. On the first visit that we had, from memory, there were just earthworks being done. The last visit I made was about three weeks ago with the centre totally completed. There are good and bad points about the centre, I think. It could be softened a little bit; it is a fairly harsh environment in spite of the fact that I believe Christmas Island is quite a delightful place.

Mr GEORGIU—If you are on holiday.

Mr Hodges—Yes, but I think that, once the grass grows and the plants grow, things will improve. But, of course, none of us know whether it is ever going to be used. That is the other thing.

Mr GEORGIU—You have no problems with the very high levels of security and the nature of the high security areas—the necessity for that sort of centre?

Air Marshal Funnell—It was designed in a previous era. It was designed in an era when such things were seen as normal. If it was being designed today, it would not look anything like that; it would not be anything like that; and I hope it would be a fraction of its current size.

Mr Hodges—And cost, hopefully.

Mr GEORGIU—So, just to press the point, viewing it in the context of the current day, how would you evaluate it?

Mr Hodges—Less than satisfactory, I have to say. However, the present government are, I think, going to use it as I believe it is appropriate to use it, compared to the centres that were built on Manus Island, which were really not proper centres anyway. This is purpose-built but it is a bit imposing. I think it is overdone, quite frankly, but it is there and it cost a lot of money—about \$400 million—for 400 people with a surge to 800; I think they are roughly the figures. I think it would have been done differently had it been designed in the last two or three years, particularly in the last two years.

CHAIR—I would just like to pursue Mr Georgiou's point. IDAG was set up at around the same time that Christmas Island was designed and developed, but you had no input into it at any stage.

Mr Hodges—No input whatsoever.

Air Marshal Funnell—We were briefed on what was envisaged. I can recall the first briefing we received. They were talking about capacity for 1,600. We were very strongly opposed to that and it quickly came down to 800 and then it tumbled even further than that.

CHAIR—But they never sought your advice on the specific design elements or the—

Air Marshal Funnell—No.

CHAIR—Mr Georgiou is talking about the Goulburn Supermax sort of end; you know, with the extravagant sort of concrete tunnels and stuff.

Air Marshal Funnell—We have been consistent in the Immigration Detention Advisory Group in our efforts to have different approaches to security across the board in our detention facilities. As we point out in our submission there is a huge difference between those who emphasise physical security and observing people, particularly with the use of high technology, and those who get up and walk around, talk to people and engage with them, and try to help them through a very difficult period in anyone's life. That is the huge difference between physical security and its emphasis on physical facilities and observation and dynamic security, which is a much more human approach and we believe much more effective.

Mr GEORGIU—One of IDAG's key concerns was with mental health and health issues. What do you see as the limitations of IDAG's capacity to play a positive role in its present constitution? In 2004-05, a whole slurry of people were refused access to independent psychiatric care. The Commonwealth was taken to court and found to be in breach of its duty of care towards these people. You recollect the case. I am not casting anything other than posing a question about the limits on IDAG's role or powers to actually address that sort of situation or did you not think that these sorts of things were important?

Mr Hodges—Mr Chairman, if I could just answer that in saying that the culture that existed within the department of immigration and, I guess one would say, the culture of past governments all come into play. We do not really, as you appreciate, have any power at all—we

are only an advisory group. But if we go back to those earlier days when you had thousands of people arriving—something like 2½, three or four thousand people in detention—it was a vastly different scene to what we are experiencing today with under 300, in total, in detention. It is not easy to get your mind around the numbers and the difficulties that occurred in those days. Of course our knowledge was evolving all the time as well.

If you go back a few years the culture in the department was very, very difficult to break into. It took us years to break some of this down—years and years of chipping away. I think probably the major turning point was the Palmer and Comrie reports where the minister of the day appointed a new departmental secretary and some new senior officers and I think things started to change at that point. We then felt as a group that some of our views which had been pushed very, very strongly by a number of our members, particularly by those with expertise in health and mental health, were starting to have some influence.

You are going to hear both from Professor Minas and Paris Aristotle, who are two of those individuals who pushed very strongly for changes in the health and mental health area. It has been a long battle, let me assure the committee; it has not happened overnight. We always meet in private without any staff at all at every meeting. We sit for half an hour, or one hour or whatever it takes. When you have people of that calibre who sit around the table and say, ‘This is pointless being a member of this committee. We are not achieving anything. We are just being taken for granted and we are not having any real input.’ When they say, ‘I have to leave this. I just have to give it up,’ you know there are really problems afoot. That does not happen these days because we are much more integrated with the department. As you know we are not a part of the department but we are certainly very integrated with them and we do have, I believe, quite a profound influence on a lot of the decisions. They go further than that; they look to us for our advice and our opinions and often accept that advice and those opinions. So a massive change in culture has taken place within the department over the seven years we have been involved.

CHAIR—You presumably get the same kinds of briefings that we have when we are in Northern Australia from people at the Northern Command of the military. They are advising us that a lot of the change that they have been able to observe is due to the fact that they have good cooperation with Indonesia and that the AFP and various agencies of the Australian government do the normal Realpolitik thing of going to Indonesia and speaking to local mayors and Indonesian fishers about where they should not come and where they should come. Those people understand the costs to them of bringing people illegally to Australia, and our cooperation with Indonesia at all levels seems to have been, from my observation of things, one of the major factors in there not being larger numbers of people. Why was that not considered back then rather than building what I have described in the paper as a ‘stalag Australia’ on Christmas Island?

Mr Hodges—That is a difficult one to answer: why didn’t it happen four, five or 10 years ago? We have observed and we have had NORCOM briefings, and Ray and I actually went and met a Customs boat plus one of the patrol boats bringing a group of asylum seekers into port at dawn. We watched them as they were bussed to the showgrounds at Darwin. We have been through the process. We have talked to NORCOM on many occasions and had briefings. There is no doubt the intelligence that has been developed there is of enormous value to Australia and to preventing a number of these people arriving. That is not to say that some incidents have not happened; smaller ones have happened. But in recent times we just have not seen it on the

organised scale that people smugglers have been involved with in the past. The cooperation between the territory government agencies and Commonwealth agencies—Darwin is a strange place in many ways, but the smallness of it means that they have a lot of interaction, and I think they are doing a very good job and that needs to be encouraged.

Air Marshal Funnell—If I can just address that point, I think if you are looking for why it did not happen previously, there were very different political regimes in Indonesia. When the regime changed in Indonesia leading to greater cooperation with Australian authorities across the board, that brought about some significant changes. For example, once they decided they would allow the boats to return, that made a huge difference. You can imagine, if you were a people smuggler and had just extracted many thousands of dollars from people and put them on a boat, promising them Club Med on the other side of the Arafura Sea, and then two days later they are back again asking for their money and the other people waiting for a boat see what happens to them, you very quickly—

CHAIR—How many years ago was that, when there was—

Air Marshal Funnell—That was when we had the big downturn, so we are looking at about 2003. That is when we had that huge decrease. In fact, that significant plunge was first brought to our attention by the then commander of NORCOM in a briefing we got at that time. We are looking now at 2003 and I think that goes to the heart of it. To go back to a question regarding mental health asked previously by Mr Georgiou, in the section of our submission on that issue you will see that it has been a critical issue for us from the very start—from our very first meeting in April 2001. We pushed very hard for the establishment of what eventually became the Detention Health Advisory Group, which under Harry Minas's chairmanship has done great work in that very area. It is an area that we have always had a very strong focus on. It has taken a long while, but it has some real effect.

Mr GEORGIOU—That was part of the question about whether there was a need for more powers, more transparency and more public reporting by IDAG to improve its effectiveness—because you said that it was five years to set up the group, despite the minister's agreement. You were not consulted on a variety of things. Are you happy with your powers?

Air Marshal Funnell—I think we are very happy with our powers. I think we are constrained, though, because we are a ministerial advisory group. If the minister wants us to make a report he will ask us and we will do so. We do not have the authority to make public reports off our own bat.

Mrs D'ATH—You made the comment in your submission in relation to mandatory detention that you support the concept but not the term. Can you explain what you mean by that?

Air Marshal Funnell—Mandatory detention out there in the public immediately gets reactions from people. Some are way over this side and some are way over that side, but immediately you use the term you get a reaction. Many of those reactions are not based on good information or on any deep thought on the part of some people. We have discussed this many times within the group. We believe that if someone arrives in an unauthorised fashion and seeks access to Australia, its benefits and its people they should be made to provide their background—who they are and what their background is—and there should be a health check.

As far as we are concerned that is mandatory detention. The important thing is that they not be allowed full access to the Australian community until those things are established. It is up to us to develop procedures to make that happen swiftly.

As we also say in the submission, having had a lot of experience in detention centres, that would be a terrible situation in which to find oneself. Some people are dismissive and say, 'They are only in detention for 30 days.' Thirty days! Can you imagine being deprived of freedom in a strange country, perhaps not even being able to speak the language, under tremendous emotional and other stress for 30 days? Some say, 'We'll do it in 90 days.' That must seem like a lifetime. So it is up to us—let's detain these people until they establish who they are and what their background is, but let's very quickly work that out and also very quickly work out how to detain them. How to detain them may not mean locking them up in a detention facility but may mean releasing them into the Australian community with particular strictures associated with their movements and activities. That also is a form of detention.

CHAIR—You as an independent advisory group have found that these people were not a risk generally to security and once they have done these tests they are fine.

Air Marshal Funnell—Yes, you get this emphasis in the contract, because of the penalties associated with it, where the service provider does not want anyone to escape or abscond, so there is that emphasis on security. For example, at Villawood 23 people escaped overnight—they tunnelled their way out and were gone. Two weeks later, or it might have been only 10 days later, another 23 escaped, exactly the same number. Forty-six people were out there. What happened to them?

CHAIR—It sounds like *The Great Escape*.

Air Marshal Funnell—Yes. It caused no problems whatsoever. We had the breakout from Woomera, when the fences went down and people absconded from there. We have had many people over the years escape from detention facilities or while being transported from one place to another, but we know of no instance in which any of those people have created any concern for the community at large.

CHAIR—So they were not saboteurs or terrorists or bomb throwers?

Air Marshal Funnell—I do not think we have ever found a terrorist, have we, with all the checks that we have done?

Mr Hodges—No.

Mr RANDALL—But how do you know if you do not know where they are or who they are?

Air Marshal Funnell—That is the point. If you have them, that is what you have to establish—who they are and what they might do.

Mrs D'ATH—I just had one further question from that. While doing those initial checks, the background checks and the health checks—and from the comment you have just made—from your experience of the types of homes, facilities, community based housing or detention centres

we currently have in Australia, are there any you can point to that you would consider a good example of what could be used for the future? What is a suitable facility or arrangement for holding these people while these processes go through? Are there any good examples out there now that we should be looking at?

Mr Hodges—I think the development of the transit centres and the housing facilities has been of considerable advantage to lower risk people. If you are talking now about a form of detention other than the barbed wire or the high fences, then they are two examples. This is all risk assessment that has to be done—whether they are let go into the community.

One of the great problems that the present government is going to face and previous governments have faced is that, in the assessment of people for health, security, criminal activity or prior criminal activity, you have got other agencies involved. You might say, 'Let's put a limit of about 30 days or let's try to get these.' Health checks are not usually a great problem. The doctors can put them through and do the X-rays to see that there is no tuberculosis or no other communicable diseases there and they can give it a tick or the diseases can be treated.

When you get to police reports and security reports it is much more difficult because you are dealing with perhaps dozens or hundreds of countries around the world. It is very difficult to get information and to get it quickly. The objective of turning these people around in terms of those vital checks is not easy when it gets to criminal activity or the possibility of criminal activity, because you have got other agencies. In the past my experience has been that ASIO, for one, has been very slow on lots of cases. I do not know the reasons why it has been so slow. It is very difficult to get anything out of ASIO. Even if you are a minister it is difficult to get anything out of ASIO. That is one stumbling block the current government have got.

So the objectives of the current minister and the government are quite honourable in that they are saying, 'Yes, we want to turn these people around. No, we do not want to keep them in detention for long periods of time.' Again I hark back to the numbers situation because you are now dealing with very small numbers of people, whereas when we came on the scene there were thousands and the facilities were not there. If the systems are right, if they are set up correctly, then there is no reason why greater numbers cannot be handled efficiently. But it is a different landscape when you are dealing with thousands of people, trying to accommodate them, than when you have got a couple of hundred.

Air Marshal Funnell—I want to leap to the defence of ASIO here because, yes, it was slow, but the briefings I have had recently from the department are that the ASIO response is now really quite good.

Mr Hodges—But they need the pressure, Chair. They need pressure on them all the time.

Air Marshal Funnell—They have also had a huge increase in staff and resources—and as you have pointed out, John, the numbers have greatly diminished so the task is ever so much less.

CHAIR—But with all of these kinds of agencies it is not just personal evaluations; it is working out there with the Indonesians and nearby countries.

Mr Hodges—Exactly.

Air Marshal Funnell—When you consider how many of the people now detained are of Chinese background and given what has been happening in China over the last several months with the Olympics and what have you, it is small wonder that it is difficult to get rapid responses from nations like China.

Mr RANDALL—I suspect that Senator McEwen wanted to talk about residential housing, which would save me doing it. Is that correct?

Senator McEWEN—No, I was just—

Senator BILYK—Do you want to talk about residential housing?

Senator McEWEN—I have got to go.

CHAIR—I was going to turn to Senator McEwen on that. Senator McEwen, you have to go, do you?

Senator McEWEN—Yes.

Senator BILYK—You go first then, Anne.

CHAIR—You go first, Senator McEwen.

Senator McEWEN—I just want to ask a question about the role of IDAG when people are in community or alternative forms of detention. Can you make unannounced visits there? If you do, what do you find?

Air Marshal Funnell—No, we do not. We get briefed on it. We have people—for example, Paris Aristotle at Foundation House has very good contacts within the Melbourne community with people who are very much involved in community detention. Paris has a high opinion of the work undertaken by the Hotham Mission and people there. As far as I can see, community detention within the Melbourne environment is the best example we have in Australia of how to do that well. We tend, with community detention, not to intrude. If things are going well, as they are with community detention, and are helping people to reach appropriate decisions about their future without being placed in any sort of stressful circumstances, we are inclined to back off.

Mr Hodges—The non-government organisations have done a great job for the department and for the government. I would not for a moment want to underestimate the work that Red Cross and the Hotham Mission and others have done in assisting with these alternative areas of detention or that of the IOM, the International Organisation for Migration, in talking to people who have no real claims for asylum. There is a vast difference, in my observation, between a departmental officer talking to someone who really should return home and, say, someone from IOM who does that work for the department—a vast difference between the NGOs and IOM and those other bodies. We as a group have kept in very close; we are really a link between the minister and those organisations, and they do appreciate it. We meet them about twice a year in

all capitals, and I think that has helped the relationship between the department, the government and the community.

Senator McEWEN—Do you think that system will work adequately if the numbers of people in community or alternative detention increase, either because of changes in government policy and/or because of an increase in the number of people coming here seeking asylum? It seems to me the community groups do a fabulous job—

Mr Hodges—Yes.

Senator McEWEN—but they are community groups; they are not exactly well resourced.

Mr Hodges—No. They have got to be assisted resource-wise. I do not think a government can expect those groups to be acting on their own. There are some very good and compassionate people in those organisations, but they certainly do not want to be worn out, and they do need support.

Senator BILYK—In your submission, you talk about the dangers of being overly prescriptive. Could you expand on that for me. We have heard a lot about timetables—

Mr Hodges—Yes.

Senator BILYK—and how difficult it can be. I just want a bit more of an expansion on that.

Mr Hodges—That is a very important point. I might let Ray handle that because this is something our group has talked about from time to time, a Prime Minister or a minister making a statement that ‘nobody will do this or that’ when you have a variety of facilities that perhaps you could use—but you cannot because there has been a ministerial statement or a prime ministerial statement. Ray, you might like to just take that up.

Air Marshal Funnell—I quoted an example within the submission to do with immigration transit accommodation and in fact the change has now occurred. The prescription was that they would not be held for more than seven days, which was just inflexible when you could see that, if you could hold them for one more day, the whole problem would go away. But the minister or senior bureaucrat has made this statement and it has tied your hands. So, try to be a little more flexible when you make these sorts of policy pronouncements. In the same way, there are no children in detention—that is not strictly true. There are no children in detention centres but there are children in detention—in community detention, which is a form of detention. There is a great deal of difference between a child of four or five heavily dependent on their parents and a young man of 17 years and 10 months who has been living and working on his own and interacting with adult communities in, say, Indonesia, as some of our foreign fishers do, for years and years. There is a huge difference but by making a prescriptive pronouncement you put them both in the same category as far as management of them is concerned. That is where I think we can be, on occasions, too severe.

CHAIR—The implications of Senator Bilyk’s question is, if you welcome the general principles of more liberal treatment of detainees outlined by the minister, you still would not recommend legislation on this because there are individual cases that might not fit in.

Mr Hodges—Rigidity is the problem. I think if you can steer away from rigidity then there will be cases that can be handled. But if you are rigid with your rules then you will not be able to handle them.

Mrs VALE—Is there any provision in the rules to actually allow, say, a young person of 16, who might be a fisherman, to request to be able to remain with the adults with whom he is detained?

Mr Hodges—They frequently do because at a very young age, sometimes 14 and 15, they are out in the big world on the open seas fishing. The people they know well are the people they have worked with. They are minors but they really do not want to be separated. That is the sort of thing that we are talking about.

Air Marshal Funnell—You get that in an immigration detention facility where the young man looks up to his captain, the skipper of the boat. He wants to be with the crew but he is 17 so he cannot be with the crew, because we have said no children will be held in detention.

Mrs VALE—There is no provision for a young person of that age group to request to remain with the crew.

Air Marshal Funnell—You can request it.

Mrs VALE—But it still will not be allowed.

Mr Hodges—It will not happen.

Air Marshal Funnell—What they do is spend time each day with the crew but they are not domiciled with them.

Mr RANDALL—They can stay overnight, can't they?

Senator BILYK—One would think that it is a safety issue in the interests of the safety of the minor.

Air Marshal Funnell—Again—the safety of the minor. Quite honestly, to describe them as 'minors' you are just moving them to the other side of their 18th birthday.

Senator BILYK—I do not disagree with that comment. I understand that. There is still a safety issue.

Air Marshal Funnell—Safety in what respect?

Senator BILYK—There is a safety issue. We have a duty of care to anybody whether they are in a detention centre, or a community home or whatever. We have a duty of care to all those people. Personally we have an extra duty of care, if I can put it that way, to younger people. It is a balancing act really, isn't it, to try and sort out how we deal with it.

Air Marshal Funnell—It is a difficult area. Then people are lying about their age. They know that, if they say they are less than 18, they will be treated differently than if they admit to the fact that they are over 18.

Senator BILYK—Presumably we get to find out if people do lie about their age through the checks. Does it work like that?

Air Marshal Funnell—One thing that I found fascinating very early on was that they said, ‘How do you determine if they are 18 or not?’ ‘We take a wrist X-ray.’ Apparently you can tell whether a person is 18 with a degree of accuracy of about three weeks by X-raying their wrist because of the way in which bones come together as we age.

CHAIR—That is interesting.

Air Marshal Funnell—It is one of those fascinating things.

Mr RANDALL—On that point, it is well known that many of them destroy their papers or do not have papers when they arrive, so you cannot check their bona fides in terms of their age. I am sure that you are not going to disagree with me on that.

Air Marshal Funnell—No. That was certainly the case when we were getting large numbers of boat people, but that is not the way in which people are now coming into detention.

Mr RANDALL—The fisherman in detention in Darwin would fit that case. Given the time, I will move on. When we visited Baxter with the previous committee we found that children from the residential centre at nearby Port Augusta used to go out and stay with their fathers overnight or for a week. So it is permissible to stay in the centre for a period of time if they choose, I understand.

Mr Hodges—I think that has changed, though.

Air Marshal Funnell—I am pretty sure that they cannot. I would have to check. As far as detainees under 18 years of age—the foreign fishers—are concerned, I am fairly certain they do not stay overnight.

Mr Hodges—My understanding is that they do not stay overnight. The other thing, of course, is that we do not allow them to stay overnight but one or two minors can spend weeks and weeks, maybe more, on a fishing boat with that same crew and we then prevent them from being with them when we have them in detention.

Mr RANDALL—Moving on, you have responsibility for residential housing as an inspector. Do you go and visit them very often?

Air Marshal Funnell—Yes. Every time we visit a centre.

Mr RANDALL—Have you been to the small group of houses near the Perth airport?

Air Marshal Funnell—Yes.

Mr Hodges—Yes.

Mr RANDALL—Is it currently occupied?

Mr Hodges—We would have to check the figures because, week to week, these things change. That is probably the best residential housing that we have in Australia.

Mr RANDALL—I am pleased to hear you confirm the fact, as the minister has done in this brief on the seven points, that mandatory detention is an essential component of border control. As you said previously, Mr Funnell, there seems to be a stigma attached to mandatory detention as soon as you mention it. But it was one of your committee members, Gerry Hand, who was the originator of this policy as minister, I understand. On the point of the need to detain, there are many people who have been released into the community under this system and it is well documented that they do not present themselves for removal. Is that still your understanding?

Air Marshal Funnell—That is another complex issue. Many do not present themselves for removal? No, I do not think that is true.

Mr RANDALL—After a negative ministerial intervention has been made and they then go to find these people—and you have talked about the escapees—who have evaporated into the community, it is still a problem, I understand.

Mr Hodges—It is a problem and it will continue to be a problem. It is a case of weighing up and balancing what your policy is. If you lock them all up you are going to lose none except those who break out. If you let them into the community, then of course you are going to lose some.

Mr RANDALL—But this all goes to the integrity of our migration system—that we know who is here, where they are and if they are legitimately able to apply either for a protection visa or for citizenship.

Mr Hodges—That is correct—your border control is extremely important. But then you get to the stage where you have got people in fairly long-term detention, or the possibility of that, and then I think you are tipping the scales the other way. There is no question that you are going to lose some in the community. If they happen to be asylum seekers who have paid \$10,000 or \$20,000 each to come in then they are hardly likely, if they break out of a detention centre, to come forward and say, ‘I want to now go home,’ having paid their way to get here. So what you are saying, Mr Randall, is correct: you are going to lose some of them—no question about that. But it is up to the government of the day as to whether the risk is acceptable.

CHAIR—Both of you made the point: what does mandatory detention mean? It can mean a lot of things: keeping people in there for a long time or giving them security and health checks or, if it is appropriate, having a balanced attitude and putting some out in the community and perhaps not others. I note in the seven points that Mr Randall was quoting that the minister said this will be subject to regular review and that detention centres should only be used as a last resort and for the shortest practicable time. These are all principles that I am very pleased with, and I think the community is increasingly moving towards acceptance of them. How will the

new principles that the minister has set out for how immigration detention should be treated in Australia affect your work for the next 12 months?

Mr Hodges—I think that particular one is the key to it. If there is an avalanche of people who do not come forward for removal if they are supposed to be removed then there is probably going to have to be a rethink on that part of the policy. I am giving you a personal view here.

CHAIR—Is that your view too, Air Marshal?

Air Marshal Funnell—I want to connect this with something that Mr Randall said as well. Where we have been very active is in case management, and this is mentioned in our report under ‘Case management and alternative forms of detention’. We put together a lot of work on this and have continued to emphasise it since. An essential part of case management is getting people to face up fairly and squarely to all aspects of the situation in which they find themselves. It involves getting them to accept right upfront, and being properly advised right upfront, how likely they are to achieve what they are seeking—in many cases, protection—and getting good advice under non-stressful circumstances, interacting with a person who is sympathetic to their cause but is also realistic about the likely outcomes. That has been extremely effective. It is case-managing people through to making appropriate decisions.

Mr RANDALL—Did you ever visit Port Hedland when it was open?

Air Marshal Funnell—Yes, many times.

Mr Hodges—Yes.

Mr RANDALL—Do you have any advice on whether it should be disposed of rather than being leased out, given the housing shortage in Port Hedland?

Air Marshal Funnell—Our views on that had nothing to do with the housing shortage in Port Hedland. We just thought that they should have closed the place down and saved us the cost of maintaining it.

Mr RANDALL—Absolutely. So it should be disposed of?

Air Marshal Funnell—That was our view a long time ago—and, really, we do not cast our minds to Port Hedland anymore.

Mr RANDALL—But it is relevant.

Mrs VALE—On the term ‘mandatory detention’: I note on page 6 of your submission to the committee you encourage the committee to seek some more appropriate descriptor.

Air Marshal Funnell—I do indeed.

Mrs VALE—Does your committee or your advisory board have any suggestions by way of guidance?

Air Marshal Funnell—No, we hand that over to our legislators.

Mrs VALE—I just thought you might have had a preference.

Air Marshal Funnell—No, I am sorry, we do not. Just refer to it as detention.

CHAIR—Mr Hodges and Air Marshal Funnell, I will just give you one last sentence for context. This morning we met with the Deputy Speaker of Germany's Bundestag. They were astonished at our account of the last 10 years of Australian detention policy for asylum seekers et cetera. They did point out to us that in one year in the 1990s Germany received 300,000 people from the former Yugoslavia. I think that does put it into context.

Mr RANDALL—Italy also send their refugees straight through to Germany.

Mr Hodges—We are very fortunate, Chair, in the sense that we are surrounded by water, and the people we receive and the problems we have got are probably like a drop in a two-gallon bucket of water. Nevertheless, we have had and do have problems and we have got to handle them.

CHAIR—And we praise your activity and work. It helps us form a balanced and intelligent view of how our problems—which we have to see in the context of other people's problems—should be handled. So thank you very much for coming today.

Mrs VALE—It was an excellent submission, thank you.

CHAIR—Thank you for your attendance. Thank you to Hansard. I declare this meeting closed.

Resolved (on motion by **Mrs Vale**):

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

Committee adjourned at 1.01 pm