COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON MIGRATION

Reference: Immigration detention in Australia

WEDNESDAY, 17 SEPTEMBER 2008

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JOINT STANDING

COMMITTEE ON MIGRATION

Wednesday, 17 September 2008

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

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

Terms of reference for the inquiry:

To inquire into and report on:

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

WITNESSES

Committee met at 12.10 pm

FLEMING, Mrs Helen, Senior Assistant Ombudsman, Office of the Commonwealth Ombudsman

McMILLAN, Professor John, Commonwealth Ombudsman, Office of the Commonwealth Ombudsman

MASRI, Mr George, Senior Assistant Ombudsman, Office of the Commonwealth Ombudsman

THOM, Dr Vivienne, Deputy Ombudsman, Office of the Commonwealth Ombudsman

CHAIR (Mr Danby)—I declare open this public hearing of the inquiry into immigration detention in Australia. Today we welcome the Office of the Commonwealth Ombudsman. The Ombudsman and his officers play a critical role in oversight of our immigration system, a role that has recently expanded with the introduction of six-monthly reviews of detention cases. The Ombudsman's own investigation powers, together with the review of individual cases, puts the office in a unique position to comment on the terms of reference for this committee's inquiry, so we thank you for your appearance today, Professor McMillan, and your colleagues.

The committee does not require witnesses to give evidence under oath, but I must remind everyone that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House. I now call on the representatives of the Ombudsman's office to give evidence. Professor McMillan, would you like to make an introductory statement?

Prof. McMillan—I will. Thank you to the committee for the opportunity to appear on this second occasion to make a further submission to the inquiry. I have already had an earlier private briefing with the committee in which I outlined the integrated oversight role that the Ombudsman plays in relation to immigration decision making generally and immigration detention activities in particular.

I will place on the record the different areas of activity. They include complaint handling, with up to 1,500 complaints a year; reports on those detained for two years or more, and over 450 such reports are prepared at the moment; own motion investigations, recently on topics such as notification of visa decisions, waiver of detention debts and freedom of information decision making. Next is monitoring activities in detention centres and in compliance and removal activity, both on an announced and an unannounced basis; regular consultation meetings with the department and participation in community and other consultative forums; and some specialist roles, notably the preparation of an individual assessment on 247 cases of immigration detention where issues of wrongful and unlawful detention were considered. So that, in outline, is the integrated comprehensive oversight role that the Ombudsman plays.

Generally, our experience in detention oversight can be summarised by saying that it raises complex, sensitive and a limitless range of difficult issues. Some of the issues that arise are substantial, sensitive and newsworthy, to do, for example, with wrongful detention or detention of women and children. But many other issues we see in detention oversight are equally important to those in detention, but often raise smaller administrative issues, about matters such

as the food that is served in detention centres, whether and where people are allowed to smoke, access to gym facilities, security of personal property and the like.

It is important, as we have identified, to have very clear principles to guide those responsible for management of detention centres and for decision making on detention and the grant of visas. It is important to have clear principles on how long people are detained, where, and the circumstances of release. On the other hand, those principles will not alone resolve any problems. Our experience is that it is equally important to have practical day-to-day strategies for dealing with the issues that arise and for which principles are, at best, an important guideline. The nature of those issues is such that problems raised by immigration detention never go away. There will always be difficult issues to deal with. Many of those are mentioned in the submission and I will highlight the areas of major concern in one moment. But it is important to say that, in the intensive oversight role that the Ombudsman has played over the last three years, we have seen noticeable improvements in detention practices and departmental responsiveness in Australia.

Some of the areas of improvement in detention practice are outlined in our submission and include such matters as greater flexibility in immigration detention arrangements, children are no longer housed in immigration detention centres, better case management practices, increased use of bridging visas and better response to court decisions.

The Ombudsman's office has also found that the department has been much more responsive to external oversight and there is greater transparency in departmental operations. The department customarily agrees with Ombudsman recommendations that are made in reports. There is regular consultation now between the department and the Ombudsman's office. We are given alerts of impending or potential problems, and we have also seen that the department is much more responsive to managing difficult cases and responding to adverse court decisions and the like.

At a practical level, though improvements of that kind have met many of the objections in principle that have been raised to Australian immigration law and practice—for example, a common criticism made of the detention regime is that there is no constitutional or legal barrier to indefinite detention—in my view, many of the improvements of recent years and activities in which my own office has been engaged mean that indefinite detention is unlikely to be a practical problem. I refer here in particular to our two-year detention reports, to our report on section 501 visa cancellations and to the minister's promulgation of new immigration detention values. Equally, the legislative requirement of what is described as mandatory detention looms large in many of the criticisms of detention practices. Once again, many of the improvements of recent years have countered that as a problem in important respects. As I will mention in a moment, reform of the bridging visa regime could go a further step to countering that as a problem.

So there have been important and substantial improvements in recent years. However, as I have said, it is a complex and sensitive area and problems will not go away. We have, in our submission, highlighted some of the areas of continuing concern where, in my view, there is scope for further improvement. One of those areas is the reform of the bridging visa regime. It is a complex regime, but bridging visas provide an opportunity to avoid inappropriate and lengthy detention.

Another problem area we see is in the impact of litigation and ministerial requests in contributing to lengthy periods of detention. Litigation and ministerial requests are a factor that are mentioned prominently in a substantial majority of the two-year detention reports that are prepared by my office. Another area for reform that could reduce length of time spent in detention is a better system for providing early and objective advice to those in detention about the legal and administrative situation in which they are placed and the options realistically facing a person.

Another issue raised in the submission is that situations arise in which there is no immediate solution in sight to a person's immigration status issues. Some of the reports published by my office deal with cases in which a person's case for staying in Australia is slender at best and yet realistically there is no practical likelihood of the immigration status issue being resolved in the short term. There has been a tendency—all in the past—for people in that situation to languish in immigration detention in the expectation that maybe there would be a change in circumstances.

These are cases where there are problems such as clarifying a person's identity; clarifying their national identity and citizenship; making travel arrangements; getting visas issued; establishing the capacity of the person, through mental health difficulties, to make an independent decision. Our view is that more focus needs to be placed on removing people from at least residence in an immigration detention centre when there is no realistic or practical likelihood of the person soon being removed from Australia. The return pending bridging visa regime went some way to addressing that problem, but it is a remaining problem.

Finally, the other area that I would mention as an area of concern relates to those whose visas have been cancelled, under section 501 of the Migration Act, on character grounds. We have concerns about whether the new risk assessment principles have been properly applied in some of those section 501 visa cancellation cases. This is a particularly important issue now. There are people whose visas were cancelled under section 501 who have been released from detention following decisions in cases such as Nystrom and Sales. There has been amending legislation which could lead to the person being returned to detention. So it is particularly important that a proper risk assessment be undertaken of whether detention is a sensible or practical option. We have reported in the two-year detention cases on instances in which people who would otherwise have been released from a state prison because of the expiration of their criminal sentence have then spent longer in immigration detention than the period imposed by a court as punishment for the offence. Those are cases of particular concern.

Chair, that outlines the comments that I would make to the committee, and I am happy to engage in further questions and discussion with the committee.

CHAIR—Thanks very much. Before I turn it over to my colleagues, we have an urgent program of reports, so I wanted to focus you straight away on the six-monthly review issue and ask you two tranches of questions which the very capable secretariat has prepared, so do not think it is my originality. They will help us very much with our first report.

The first group of questions is: will your process for the six-monthly review announced by the minister on 29 July be the same as for the two-yearly review? In conducting the six-monthly review, will you have access to the three-monthly review done by DIAC officers? Will your six-

monthly reviews be tabled in parliament as the two-year ones were? Finally, is six months too long to be in detention without access to independent oversight, in your opinion?

Prof. McMillan—My office has been in discussion with the department on developing procedures for conducting the six-month review, so there is a possibility of further change in the arrangements, but I can outline what my intention is for the six-monthly review process. Firstly, it will be guided by the same principles as the two-year review—that is, the Ombudsman's office will conduct an independent review of the circumstances that relate to a person's detention. That review will be based initially on information provided by the department in a report, much as they provide a report for the two-year detention reviews. It will be based on analysis of departmental files, where that necessity arises, and we will invite every person who is subject to a six-month review to meet personally with a staff member of my office so that their issues can be discussed.

The next point is that we expect that a report will be prepared in most, but not necessarily all, cases. The report will cover similar issues, similar headings, to those in the two-year detention report but will probably be briefer and more focused on the specific issues of why a person is in detention and what steps are currently being taken to resolve the issue of detention, any immigration status issues and any other issues arising about the experience of the person in detention—mental health issues and the like. The reports will be shorter. For example, the two-year detention reports provide a very comprehensive summary of the administrative, litigation and ministerial request history. These shorter reports are unlikely to contain all of that detail, simply in order to ensure that the reports can be prepared more quickly.

We expect that there are some cases in which an individual report may not be needed. The circumstances might be such that a few cases can be rolled into a single letter or report. If a person has already been released from detention, it is not my present intention then to prepare a six-month report, unless there are special issues that warrant being brought to the department's or the minister's attention.

As to publication, our present intention is to provide the report to the secretary of the department but then to provide a regular report to the minister, which will be a consolidated analysis of all of the cases and issues dealt with over a period, which may be between, say, one month and three months.

Mr GEORGIOU—Why are you going to the secretary with this?

Prof. McMillan—Our expectation is that these reports will focus primarily on the different purpose of ensuring that the department is properly focused on detention issues and avoiding lengthy detention. It is always open to the department to provide those reports to the minister, and it is my intention to provide a regular consolidated report or letter of advice to the minister. This is the format we followed when we did the reports on the 247 cases of detention—the referred immigration cases. In each of the 247 cases, we prepared an individual report—an assessment—that was provided to the department, and that report highlighted issues, and then we published nine consolidated reports. That was a more effective way of bringing issues both to public and parliamentary—

Mr GEORGIOU—Can the secretary release the person if you so recommend it?

Prof. McMillan—Yes.

Mr GEORGIOU—So it does not go to the minister?

Prof. McMillan—Sorry?

Mr GEORGIOU—It does not reside solely with the minister?

Prof. McMillan—There are both statutory and legal responsibilities, at the ministerial and at the department level, concerning ongoing detention. My expectation is that the reports will trigger consideration at both levels. If the practice develops that it is better for these reports to go individually to the minister as well, then I am certainly open to that, and if the minister individually requested each report then of course I have no difficulty. Where we do an individual report, we intend that a copy of that report would be provided to the person who is in detention as well.

CHAIR—Is six months too long to be in detention without access to independent oversight? Some people have argued that.

Prof. McMillan—The department has a responsibility from the moment a person has been detained, and on a continuing basis, to investigate or examine whether the person's detention was warranted and whether continuing detention is warranted, so in that sense there is no gap or hiatus. It is a clear legal responsibility on the department and it is always open to any person, from the moment of detention onwards, to complain to the Ombudsman and we can do an individual complaint investigation. But in terms of the Ombudsman doing an independent review that focuses on issues where the Ombudsman can usefully inform the department, the minister, the person in detention and perhaps the general public about the issues, I think six months; it is sometimes better to wait until issues have crystallised. Many people stay in detention only for a matter of hours or a matter of days, some weeks. My initial view is that six months is probably a good time.

CHAIR—I assume from your answer that you will have access to the three-monthly DIAC reports?

Prof. McMillan—Yes. That is a discussion that is underway with the department at the moment, but my intention is that the prime documents from which we would be working are the three-month and the five-month detention analyses undertaken by the department, then, as I say, supplemented by consultation with the person in detention.

CHAIR—Again on the six-monthly review issue, if you were conducting a six-month review of a case in which a person's identity had not been established, would you see the six-monthly review as adding any further value to the detention process? Would it be likely that your office would review the case, note that DIAC was awaiting a confirmation on an identity, and not be in a position to take further action?

Prof. McMillan—Two points in answer: firstly, if a person's identity has not been established, then the hard question we will be asking is whether, for the purposes of section 189 of the Migration Act, there can be a reasonable suspicion that the person is an unlawful noncitizen. The

committee may be aware that, I think it was in report No. 14, one of the earlier reports, and in report No. 16 or 18, that was the strong theme of those two reports: they were cases in which somebody's identity was not known. A view that I put very strongly in those reports was that the person may simply have been exercising their common law right to remain silent when dealing with authorities. Because you do not know anything about a person does not provide reasonable grounds for a suspicion that they are unlawfully in the country. In one of those cases, the person was released from detention soon after. In the other case, the person's identity was established. I think the strongly worded report we did had focused attention on that.

The second point is that an objective of bringing this independent review process forward from two years to six months is to ensure that, at a much earlier stage in the detention process, somebody independently is asking hard questions about what is being done and what realistically is the prospect for resolving a person's immigration status issues, and are all options being considered and other forms of detention, including the grant of different visas. One of the concerns we have had in the past is that issues languished until the two-year detention process cut in. That will be a strong focus.

My view is that, if the department is not in a position to answer those questions directly or has difficulty, for example, finding some of the documents that verify its independent risk assessment, we will not wait around for a month or two for that information to come to hand so that we can prepare a more fulsome six-month report. We will report immediately that there is a developing hole in the system and some urgent attention needs to be directed to this individual case.

Mrs VALE—We understand that you are working with the minister and the department in applying the new reforms to the existing detainees. Would you have any idea of how many have been released from detention centres into the community?

Prof. McMillan—A general figure that we have is that, when we started the two-year detention review process, the numbers in detention were about 150. On the last report we received, on about 15 August, the numbers who had been in detention for two years or more were down to 44. That is in immigration detention and not all in immigration detention centres, so there has been a substantial reduction there. Do we have other figures? No, no other figures at the moment. Does that answer the question or is there a further statistic—

Mrs VALE—This is under the new reforms that were announced on the 29th. Do you have any idea of how many of the existing detention population might be released under the new criteria?

Prof. McMillan—I was searching here for some other figures I had that indicated the numbers that were—and I seem to have misplaced them at the moment—in detention as at 15 August. I will see if I have the exact figures there; I had a page that I was anxiously looking at earlier and it seems to have escaped me. It was something like 340 people who were in detention, 44 who had been in detention for two years or more. There were about another 50 people who were in the 18-month to two-year category.

Mr Masri—I could add that, in the preliminary discussions with the department at the time the minister made the announcement, there was a view that, out of the then detention population

of just under 400, a figure of around 75 may be released applying the detention principles. The difficulty we have is that we are aware of the detention population in relation to those long-term detainees, those that have been detained for two years or more, but we are not that knowledgeable about the profile of those under two years. We are going on the advice that the department provided us. As we take on the six-month detention review process, we will have a much better understanding of the likely implications of the application of the new detention principles.

Mrs VALE—When you consider these new principles and the criteria that are part of the assessment, and with all the other options of detention—either community detention or alternative arrangements—do you have any comments on how you see the future of detention centres?

Prof. McMillan—The first point is that there will, even under the minister's new policy announcement, be immigration detention centres and people will be kept there. He has identified three instances in which people will remain in detention: for initial health checks, where there has been a substantial breach of visa conditions, or where there are public safety risks. So I think it is a certainty that people will remain in immigration detention centres.

Secondly, the numbers who are in facilities such as Villawood and Baxter will be substantially reduced from the numbers that have been there in the past. Thirdly, we have seen a much more flexible and liberal use of alternative arrangements—residential accommodation and release in home-stay arrangements and things like that—and I expect that that will continue. Indeed, a strong focus in our six-monthly review, as to people who are in immigration detention centres, will be why is the person in this centre and not in some alternative arrangement? It is already a strong theme in the two-year reports we do, and it will be an equally strong theme in the six-monthly reports, so I think we will see a definite change in the complexion of the issue.

Mrs VALE—When it comes to deciding the degree of risk to the community, do you have any view on how that perhaps should be assessed?

Prof. McMillan—Only that there should be some evidence on which to base a decision that somebody is a risk to the community. Evidence that will be relevant will be a person's recent pattern of behaviour—if the person has been released from prison, the offences for which a person has been convicted and the reports of parole and prison authorities on the person's behaviour. If a person has had a period outside an immigration detention centre and there have been no reports of difficult behaviour, then that is evidence of a different kind.

That is one of the issues that we have raised in some recent two-year detention reports. For example, where a person who is currently in detention was, for a period, outside a detention centre—as a result of a court decision or under a day leave arrangement—and there were no reports, we have said, 'Where is the evidence that the person's release would be a risk to the community?' The short answer is that it has to be an evidence based decision and it has to be open to independent scrutiny.

Mrs VALE—So, Professor, not just a reasonable suspicion? You really think it should be evidence based.

Prof. McMillan—Yes. The primary purpose of immigration detention is not to safeguard the community. That is a primary purpose of incarceration following conviction for a criminal offence, along with other punishment and other objectives. A primary purpose of immigration detention is to arrange for a person's removal from Australia if the person has no right under immigration law to say in Australia. So one has to approach that issue with a presumption that a person should be free to move in the community, unless either there is the immediate prospect of removal or there is some strong evidence to support a decision that detention is necessary to protect the public from safety risks.

Mrs VALE—Thank you.

Mrs D'ATH—Thank you, Professor McMillan, for your submission and for your team coming along today. Obviously one of the terms of reference of the committee is to look at alternatives to community detention centres. In doing so, the committee needs to look at the conditions in which individuals could be released into the community. On that basis, I am interested in hearing either your view or any of your team's view on, if we are to place more people in the community while awaiting the determination of their claims, what rights you believe should be afforded to them while they are undertaking that process? What do you see are the consequences if such rights are not provided—if we simply release people into the community?

Prof. McMillan—We are a compassionate society that has a commitment to social welfare objectives, and consequently we believe that a person who has no other visible means of financial support and access to housing and medical facilities should have the support of the state, through means such as income support benefits, housing assistance and facilities provided by states.

That is an introduction to saying that, if somebody is released from an immigration detention centre, there is a strong chance that the person does not immediately have independent means of financial support, so the person should be provided with support initially. Some visas allow a person to access social support benefits and to undertake work, and some visas do not.

A strong theme in recommendations that I have made in the two-year detention reports is that, when a person is released from detention to live in the community, the person should be given an appropriate visa that allows them to access benefits and to work. It compounds the problem if the person is released in the expectation that somehow somewhere a solution can be had. Clearly, it transfers the responsibility to non-government organisations and to society to provide that support, and they play a legitimate role, but government has a duty of care in that instance, when a person is released.

CHAIR—To pursue Mrs D'Ath's point, would you recommend circumstances where people were only to receive social security payments, as you describe them, and not have the ability to work?

Prof. McMillan—Yes. The department deals with a complex range of situations, and in some situations it can be appropriate that a person is given income or social support but not be given the right to undertake employment, particularly if the person is given a visa to remain in the

community but with the expectation that the person will be making travel arrangements, for example, to leave Australia.

It is perhaps inconsistent with that assumption that a person is allowed to work when they are meant to be preparing for removal from Australia, but always it is necessary for the department to stand back and ask the obvious question as to: 'A person who has been in a detention facility is now being released, and later today they are going to need a meal and they are going to need a roof over their head and it is going to be a continuing issue day to day, so what arrangements are in place?' It is not a satisfactory answer to say, 'We deal only with the immigration side of things. It is an issue for other departments and other agencies.' The department has moved some distance on that issue in recent years and recognises that it has a transition responsibility, at least when a person is released from detention.

Mrs D'ATH—You have talked about the role of your office to do reviews on people who have been in detention for more than two years. Does your office do any review or analysis of those people who are in community detention awaiting their claims being determined—the length of time that those cases are proceeding—or is it simply the length of time that people are in detention centres?

Prof. McMillan—The two-year reports cover people who are in some form of detention, whether it is in an immigration detention facility or in community detention. So we do meet with people, for example, in the private residence where they are living but under community detention, and continue to prepare a report at six-monthly intervals, if the person remains in that situation. And we ask the same questions: are the detention arrangements appropriate? Does the person have a visa or other arrangements that enable proper financial support, and are steps being taken to resolve the larger issue of the person's immigration status?

Mrs D'ATH—The committee has heard and read submissions in relation to there being quite lengthy delays in the processing of claims. From your experience, do you have any views as to how the process can be improved to ensure that people are not waiting five, six, seven years to have their outcome finally determined?

Prof. McMillan—We see that delay can occur at many stages and in many ways. It can occur when there is an initial departmental assessment of a person's case while the department is awaiting further information being provided, or the person has submitted an application for ministerial reconsideration, or the person has appealed to a tribunal, to a court, or there is ongoing litigation.

When we started the two-year detention function, we were concerned about the number of cases in which there were lengthy administrative delays, and overall we have seen an improvement in the departmental processes for making decisions and then dealing with delays. I am also aware that the parliament imposed strict time limits on tribunal processes, so tribunals had to make a decision within 90 days, and there was a higher compliance with those time limits, but the compliance rate has dropped a little in recent times. And I am aware of the issues that the tribunals face.

Overall two areas of great concern to me that are certainly contributing factors are litigation and ministerial requests. While litigation or ministerial requests are under way, the view has

been taken that no action, for example, should be taken to remove a person from Australia, so often a removal date is set aside because there is fresh litigation or a fresh ministerial request.

Controlling the litigation problem is complex, and it involves other agencies such as courts and it involves constitutional as well as legal issues. I am aware that reforms were instituted to try and resolve litigation problems. There were time limits that were introduced that, for example, were set aside by the High Court. There was the conferral of jurisdiction on the Federal Magistrates Court to have a much quicker review. But, with all of those reforms, I am not persuaded—and this is impressionistic—that a large dent has been made on the problem of protracted and frequent litigation that contributes to this. It is the topic of a separate inquiry, but it seems to me that the problem of litigation has to be acknowledged as a serious problem.

Ministerial requests are another issue. Again, it is strongly apparent from our two-year detention reports the number of ministerial requests that can be made. In earlier times, there were longer delays than seemed warranted. The problem of delays has been reduced in part, but still there is a pattern of repeated ministerial requests and suspension of other action.

One final point—and I know this is a long answer—is that there was a tendency in the past for a person to remain in an immigration detention facility while that litigation and those ministerial requests continued, and for the person to be blamed, or the view taken that the person was the author of their own misfortune. The view taken by my office was that, while we understood the problem, our concern was to reduce the length of time in detention. It mattered not what the reason was that had caused the delays, but if a person had been in detention for five or six years and there was no end in sight, then in a rational and humane system some alternative to indefinite detention had to be found. Indefinite detention was not the solution to the intractable problems that I have mentioned.

Senator HANSON-YOUNG—I have two issues that I want to touch on. In relation to the numbers that you have—you were talking about 340 people in detention as of 15 August—do they include people in those alternative arrangements?

Prof. McMillan—Yes.

Senator HANSON-YOUNG—We know that we do not have children at the moment in detention centres. Do we know how many children are in those alternative arrangements?

Mr Masri—I do not have a figure. The department can probably provide a better answer on that.

Senator HANSON-YOUNG—In general, are you aware of how many children are in those alternative arrangements and separated from their primary carer?

Prof. McMillan—Again, I am sorry I do not have the figure on that.

Senator HANSON-YOUNG—That is all right. In terms of the infrastructure of detention centres, one of your recommendations talks about the need for safe property storage and a safe environment. Do you have any response to the reports in the newspapers in July about drug use and the abuse of drugs in detention centres like Villawood?

Prof. McMillan—We are certainly aware of the reports. When we undertake detention visits, those are issues that are raised with us, sometimes anecdotally by people in detention.

Senator HANSON-YOUNG—So you have seen no evidence based claims—

Prof. McMillan—No. Here again we would make anecdotal observations at times. My staff have made anecdotal observations that somebody seems to have been affected by drugs. But that is not a professional judgement, it is an observation. But we are aware also that one of the difficulties is that you have competing principles here: on the one hand there is a strong argument for having rigorous controls and rigid systems that prevent drugs getting into facilities; on the other hand, a competing principle is that the procedures should be low key and more formal and flexible, and that provides—

CHAIR—No opportunity.

Prof. McMillan—Yes.

Senator HANSON-YOUNG—In relation to this idea of the need for safe property storage and a safe environment, and you have also mentioned constructing centres where people can have their own room as opposed to having to be in a shared situation—often you are not necessarily with your family members or other people that you know; you are put in a situation with people you do not know; different cultural backgrounds sometimes—what do you see are the big safety issues at the moment?

Prof. McMillan—The major problem that we have seen in the past is that you had a system coping with problems that it had not anticipated or been designed to cope with. A good example was Villawood Immigration Detention Centre. It was expected initially that it would be a facility where there would be a short turnaround, people would be there for a short period of time, so people were sometimes put in shared arrangements. A good example was stage 1 in Villawood, where you would get quite a number of people in reasonably cramped dormitory style accommodation arrangements, separating themselves from each other with blankets and the like, and being there for months and, in some instances, years on end. Clearly, major problems about behaviour, loss of property, theft and so on are going to arise. It took a while for procedures to be redesigned, accepting the reality that these issues were there and people were staying in detention for longer periods.

CHAIR—There are plans for further development in order to address those issues.

Prof. McMillan—Yes, and that is where we certainly have seen some improvement in recent times—an acknowledgement that property and other issues have been a real concern—but that is a frequent issue that is raised with us. The other instance in which it has been raised is where a person has been taken from one centre, or one location within a centre, to another and there was simply not a proper inventory. So we have placed a lot of attention on the need for proper recording and inventories of what property was at this location and what property was taken to that location, because in many instances it was simply a matter of surmise or counterclaim or counterallegation, and there was no empirical basis on which independent bodies like ours could make a proper assessment.

Mr GEORGIOU—Can I open by saying that I think the Office of the Ombudsman has done a fantastic job in ameliorating a regime that was highly problematic. When we were discussing the intrusion of the Ombudsman into this area, as you recollect, somebody made the observation that it would take a very brave minister not to accept a recommendation from the Ombudsman. That was part of the selling point for coming to an agreement on this matter. It seems to me that we have had lots of brave ministers running around. Can you give us some insight into how many of your recommendations have not been accepted by the minister and how many have not been accepted by the minister more than once.

Prof. McMillan—I will see if one my colleagues has the precise figures. We have some figures in the annual report, and I can provide more precise figures. On the last analysis I saw, I think about 45 per cent of recommendations were being accepted by the minister and there was about another 20 per cent being partially accepted or implemented after the event. It was probably about 20 or 30 per cent of cases where it was difficult for us to assess whether the recommendation had been accepted or not, because the minister's response in parliament did not address the recommendations.

Mr GEORGIOU—Do you think that is acceptable, that degree of lack of transparency about what is actually being decided? If it is not, how can we fix it?

Prof. McMillan—It was a great matter of concern to me that the ministerial response to the two-year detention reports was not as direct and fulsome as, in my view, the system warranted and people expected. The disappointing response that we received to the two-year detention reports was contrary to the experience of the Ombudsman in all other areas, where the general pattern we find is that over 90 per cent of our recommendations are accepted by departments when they are in individual reports.

The two-year detention reports were a different mechanism and, as I say, there were over 450 such reports. Sometimes the recommendations dealt specifically with the grant of a visa and sometimes they dealt more generally with administrative practices. But, as I say, it was a matter of concern.

One of the concerns mentioned earlier to the committee, and it was certainly taken up with the department, was that, in my view, a particular problem was that the reports did not receive the senior attention in the department that they warranted. The reports were provided directly to the minister and not to the department. However, we understand that the reports were clearly circulated within the department and, when we consulted with the department to express our concerns, it was apparent that the reports were not being read at a senior level. There was no senior-level monitoring process within the department. Indeed, by and large an officer at the executive level was deciding to whom the reports should go, and that may have been a contributing factor to the response.

But two changes we have seen that are of greater comfort to me are, firstly, that there is now a more senior-level engagement with those individual reports in the department. We are aware that officers at senior executive service level are now monitoring and controlling the process, and that is as it should be. Secondly, as the committee is aware, I met on about three occasions, personally or by video-link, with the current minister for immigration. We have gone individually through all the cases of long-term detention, and it has been apparent to me that

there is a much greater ministerial focus on those two-year detention reports, and I think the statistics indicate that that senior level and ministerial engagement has, with other changes, caused a major change in the detention population.

Mr GEORGIOU—Could you do the committee a favour and take this on notice and come back with some proposal that the committee could consider as a recommendation for a situation with regard to the treatment of your recommendations that would make you entirely relaxed and comfortable and probably make us relaxed and comfortable too?

Prof. McMillan—Yes.

Mr GEORGIOU—That is the first one.

Prof. McMillan—I would be happy to take that on board because it is a matter of great interest to me that parliamentarians, individually and collectively, should also take an interest in these reports, because the mechanism was that the report would be provided to the minister and, when it was tabled in the parliament, the minister was to respond. So I think another way of strengthening the process is for parliament as an institution to take an interest in those reports as well.

Mr GEORGIOU—You have looked at a number of detention facilities. Have you looked at Christmas Island, the new super-duper facility?

Prof. McMillan—Yes. One of my colleagues, Helen Fleming, went on a recent visit with another member of staff, which member of staff is the head of our two-year detention review team. The visit was organised by the department.

Mr GEORGIOU—Do you have a view about whether that facility is one that is suitable to incarcerate vulnerable asylum seekers in?

Prof. McMillan—Generally, the Ombudsman's office has avoided direct engagement in the larger policy issues such as mandatory detention, use of detention facilities and the like.

Mr GEORGIOU—This is a facility?

Prof. McMillan—Yes.

Mr GEORGIOU—It is not a policy, it is a facility.

Prof. McMillan—We have been given special funding to maintain active oversight of Christmas Island. We have recently been given an extra $270,000 a year in our budget, in the expectation that there could be up to 100 people a year who go through the Christmas Island facility. I am well aware of the minister's comments and speculation on the topic. The minister has commented that it is a facility that was designed and developed in an earlier age; it is being maintained at the moment for—that phrase—'a surge capacity'. So I welcome—

Mr GEORGIOU—With respect, you are not directing yourself to the question. It is about the character and suitability of a detention centre in which people who have been convicted of no

crime will be incarcerated. That, surely, does bear on a judgement on the conditions under which detainees are held.

Prof. McMillan—Without trying to avoid the question, could I say that I have personally only seen the facility when it was really ground zero, on an earlier visit to Christmas Island. I have seen it only through photographs, so I will avoid expressing a view. But, as I say, generally the practice in my office has been to avoid direct engagement with the larger issues but to say that, when government implements schemes that are tough or harsh or cause community concern, it needs to have rigorous processes in place and to ensure that they operate properly. It needs to have fully transparent arrangements so that allegations and difficulties can be dealt with. We see ourselves as part of that searching independent system that needs to be in place when facilities of this kind are established.

CHAIR—To drill down into Mr Georgiou's point, could Mrs Fleming confirm for us that, when she visited, it was empty.

Mrs Fleming—Yes, it was.

CHAIR—Did you see the more gentle alternatives that were there, like the construction camp, other places on Christmas Island?

Mrs Fleming—I did not visit Phosphate Hill, the existing facility or the construction camp, but I did attend one of the residential facilities, where people were accommodated in a house on the island.

CHAIR—So it is like an alternative thing on the island.

Mrs Fleming—It is residential housing. It was certainly a contrast to the centre.

CHAIR—Thank you.

Mr GEORGIOU—You raise the issue of mental health quite a lot in your report.

Prof. McMillan—Yes.

Mr GEORGIOU—Mental health has been raised by this committee as a fundamental issue. Despite my very high regard for the work that you have done, I must say that I am a little concerned about the failure to implement Palmer recommendation 6.11. I am not blindsiding you because I have raised this with you before.

Prof. McMillan—Yes.

Mr GEORGIOU—The Palmer recommendation was hugely significant. It went to the establishment of a commission within the office of the Ombudsman that had special staff, that had responsibilities for monitoring, that had responsibilities for dealing with the issues that were raised regarding the health of detainees. For some reason, you decided not to implement that. Given that health, and mental health in particular, is a huge problem, given that you do not have the resources to actually deal with the problems in detention centres, given that IDAG does not

have your powers or your role, given that they do not have any staff and given that they want the commission established, could you tell us firstly whether with the benefit of hindsight you feel confirmed in your decision, given the constraints that were not there when you first got involved in the thing and under the pressure of parliament you knocked back all these resources?

Prof. McMillan—Can I say that the implementation of recommendation 6.11 in the Palmer report would have required government support to provide extra funding—

Mr GEORGIOU—We were jumping through hoops to give support. Your whole function, as you note in your submission, says that with regard to the immigration function you got supplemented and supplemented, so the resources were there.

Prof. McMillan—We did not receive funding support for the development of a different professional mental health inquiry function. Possibly, although I have not fully explored this—

Mr GEORGIOU—You said you did not want it.

Prof. McMillan—it may have required legislative amendment as well to place this office in there. I do not dispute that there may be a need for an independent capacity of that kind and, if the parliament, the government, decide as a matter of policy to place it in the Ombudsman's office, then as a statutory officer I will discharge the responsibilities given. However, I did raise two concerns, that is true. I raised two concerns about the Palmer recommendation. The first concern was that it would have created a novel structure of having an office within an office, and I think that it creates awkward possibilities to have an independent office located within an office. I have supported the development of additional functions for the Ombudsman—Immigration Ombudsman, Law Enforcement Ombudsman, Postal Industry Ombudsman—but all of those are functions that sit within the present structure and ultimately the powers belong to me and are exercised by people under delegation. On one view of the Palmer recommendation, it would have required a novel and different structure.

The second concern I had was that the function as proposed by the Palmer report would have embraced not merely administrative oversight of detention health issues but would have required policy analysis on laws and practices. Generally, my view is that it is a risk to the Ombudsman's office if it becomes an alternative source of policy debate and advice. That is not to say other agencies should not perform that function, but I think one of the successes of the Ombudsman institution over 30 years in Australia is that we have had a fairly focused look at matters of implementation of policy and administrative practice and have not tried to take on uncharacteristic functions.

Mr GEORGIOU—Can I just say that I do not regard those as compelling, but that is a matter of judgement.

Prof. McMillan—Yes.

Mr GEORGIOU—What I am concerned about is that, in an environment where the situation of health, and particularly mental health, of detainees—the Rau case—led Palmer to make a fundamental recommendation about the need for independent oversight of a department that had again and again been found to be in breach of its duty of care and to have detained people that

should not have been detained, which was generating mental health problems at the rate of one every 35 milliseconds, and where there was carte blanche both in terms of the wish of the government to support Palmer—and I can speak frankly—and of the Prime Minister to do anything in resource terms to ameliorate the situation, and there was a potential that, if you did not like an independent commission, then you could have absorbed it in the same sort of way as you absorbed other functions, we have let slip a real opportunity that was within grasp and within reach and was feasible to protect vulnerable people, because it was administratively inconvenient. That does trouble me, and I would like to put that on the record.

Prof. McMillan—Can I simply say that if this committee or the government proposes that a function of that kind should be located in the Ombudsman's office, then I will take a very open-minded view of the need for the function and how it can be sensibly located within the office. I will not be necessarily an obstacle to the development of that.

Senator HANSON-YOUNG—If the concern is about it being housed within the Ombudsman's office, do you see another alternative? It is clearly an issue. You have referred to it all the way through your reports, not just the submission here but in your two-yearly reports as well. If it should not be a function of the Ombudsman, where should it fit?

Prof. McMillan—We are not the only oversight agency. There are some other oversight agencies with specialist functions. An example is the Inspector-General of Intelligence and Security. It could be a function located in the Ombudsman's office but it has developed very effectively as a small function located in another oversight agency.

Equally, it is possible that a function of this kind that requires professional medical and psychiatric judgement can be located in another office. On the other hand, it is possible certainly to confer that function on the Ombudsman's office. If it were a function conferred on my office, two things would require immediate scrutiny. One would be a need for creation of a unit that could recruit, either as full-time staff or on a consultancy basis, people with the necessary professional medical and psychiatric expertise. We simply do not have expertise in the office. Secondly, there would be a need to think of what the function is and whether it required some kind of legislative amendment to give it a proper statutory base.

But it is a possibility and, as I say, if there is a proposal by this committee or a suggestion within government that the option should be further explored, then I am happy and open-minded about considering how it could sensibly be done.

Senator McEWEN—I wanted to ask a few questions about GSL. In particular, what is your relationship like with GSL? Do you think there has been any change in the attitudes, practices and outcomes for detainees since the announcements by the government, particularly in relation to what GSL do? The committee, in its travels and visits to detention centres and facilities, I think it would be fair to say, has noticed that still very few GSL officers are from non-English-speaking backgrounds and very few have languages that would be useful in speaking to the detainees that they are attempting to assist. Do many of them still have a work history based in the penal system? Few of them seem to have skills in dealing with people with significant mental health issues. Could you comment on that?

The other thing is: also in our travels through detention centres, while we have heard ministerial statements and there have been changes at that level, has that translated to the department and then to GSL? What is your view on whether it is filtering down the line?

Prof. McMillan—Could I start with a jurisdictional legal issue, but it is an important one. One of the changes that was implemented when the Ombudsman was given these additional functions was that the jurisdiction of the office was extended to include a government service provider such as GSL—that is, private companies that deliver government services under contract with government. However, under the Ombudsman Act, it is defined as a jurisdiction that is still focused on the agency—that is, we can examine the actions of GSL officers, but any report or recommendation we make is to the department of immigration.

So, in a sense, if we get a complaint about a GSL officer or if we get a complaint about their lack of experience on language issues or cultural sensitivity, ultimately our focus is back on the department—that is, 'What systems have you implemented through the contract or through routine oversight? What response do you have to this department?' So we have not formed a comprehensive view of the suitability of GSL or its officers as a contracted service provider.

One concern we have is the division of responsibility that can occur when a government agency contracts out a function of that kind, and there can be a division of responsibility. Here is a good example: GSL's responsibility is to manage people in detention. The department's responsibility is to deal with the entire situation and, in particular, with somebody's immigration status. If a person's immigration status is not resolved, then the person stays for a longer period in immigration detention, and yet the immigration status issue is not GSL's responsibility. So we have stressed repeatedly that both the department and GSL have to work closely together, because often GSL officers may have information that will directly inform the immigration status decisions that the department has to make and it is important not to draw information barriers between the responsibilities of both.

The next point is that we do receive individual complaints about behaviour of officers, about cultural sensitivity, about the food that is provided and so on, and we make observations on the basis of unannounced as well as announced visits and provide feedback to the department on a miscellany of individual issues of that kind. Often we do not do an extended investigation, because it is in the character that, where people are in a facility 24 hours a day, there can be a multiplicity of minor incidents that of course individually cause grief for a person but it is just not practical to do an extended individual investigation into every such issue, but we do have anecdotal complaints all the time and we take up all of those complaints with the department.

We have insisted that the solution primarily is not to have an independent ombudsman's office with all the powers coming in; the solution is to have proper consultative committees on the ground and to have independent visitors and other mechanisms that can deal routinely and informally when there are signs of problems, and we have seen improvements in that area. Obviously some of my colleagues have visited the centres more than I have. Do you have anything to add, George?

Mr Masri—A couple of quick points. At the management level, there is interest in individual complaints, and we often provide GSL with a copy of a complaint where it directly relates to GSL's services or officers. Certainly over the past few years there has been a greater openness

and responsiveness to our complaints. One of the issues is to ensure that we deal with complaints in an appropriate and timely manner. I saw a lot more interest in dealing with our complaints and acknowledgement of that. Needless to say, we still get a lot of complaints that may be, directly or indirectly, GSL's responsibility, and we go through them. Sometimes there are issues around greater sensitivity in relation to people's needs or accusations about unreasonable use of force. There are some of those sorts of issues that still come to the fore.

Also in the context of our inspection role, I think they understand our role and they are often receptive to ensuring that we do not have any barriers to that. They are general observations. We are mainly dealing at the centre management level or at the Canberra central office level. There has generally been an improvement and a responsiveness to our recommendations. With some of the systemic issues that we pick up in detention centres, we not only inform Immigration but we also inform GSL management, and we try to monitor those issues.

Prof. McMillan—The issue that you raised is one which I often hear raised, and that is: is it appropriate that people who work in detention centres have been recruited from other centres of detention or imprisonment and what proportion of people do that? I should say that it is a legitimate question to raise, but our experience does not enable us to really offer informed comment on that. As I say, we see individual complaints that we take up, but it is an issue that is probably better taken up more directly with the department or with GSL by a separate inquiry.

Senator McEWEN—The committee went to the detention centre at Maribyrnong and the detention facility at Broadmeadows. The one in Broadmeadows was established essentially to provide interim accommodation for people who are detected at Tullamarine and the time limit was going to be seven days' detention, but now it seems to be used for longer term detainees and there were children in there when we were there—older children—I have to say. Are you aware of that situation? Do you have any view about a new use of the facility that was intended for a transitional arrangement?

Prof. McMillan—I have no direct experience of that particular facility. I will add the general remark that we have seen an issue arising in all facilities where arrangements are put in place on the assumption of a short period of detention and a quick turnaround, and repeatedly that expectation is not met for a whole range of reasons. Sometimes it is the request of the person in detention because it means they are physically closer to relatives or others who visit, but we see it repeatedly arise as an issue. Clearly, there is a need, in designing facilities, to have a proper understanding of the way things can develop.

Mr Masri—I have been to both the Broadmeadows and the Brisbane transit centre. The capacity is much greater than the seven-day turnaround. I think when I visited those centres there was only one detainee in the Brisbane centre and no detainee in Broadmeadows—that was only recently opened. But I think there is greater capacity for broadening the use, especially under the changes the minister announced to the detention principles and to the broader detention arrangements. In relation to the issue of children, certainly when I was there, there was no intention to detain children.

Mr GEORGIOU—That changes quite quickly.

Prof. McMillan—Yes.

Mr Masri—The issue there is: can you divide part of the facility to make it suitable? I am not sure, but it is a much less restrictive detention arrangement than at other centres.

Senator McEWEN—It is a much better facility, and I understand they are building one in Adelaide as well. But my concern is that, because it is a facility and it does not look like a detention centre, somehow children are going to be accommodated there, even for a short period of time.

Mr Masri—I think that is a broader issue about the children in a broader institution as opposed to this facility.

Senator EGGLESTON—I was particularly interested in the issue of mental health in detention centres, which has been covered by other senators, but I just make the comment that I went to Baxter sometime after the Cornelia Rau episode, and there was a nurse there who was said to have some qualifications in psychology, who did not seem to know that, when people were withdrawn and stopped talking to people and remained in their rooms, it suggested that perhaps they might be depressed. So I felt that the level of understanding of the presentation of mental illness in that detention centre, and perhaps others, was rather below what one would hope might be a bare minimum. Also there was a psychiatrist who flew in from, I think, Newcastle on an intermittent basis and I do think that a lot more attention needs to be paid to the issues of mental illness in long-term detention centres.

Prof. McMillan—As our submission says, mental health is an issue that arises repeatedly in the two-year detention cases we have done and it is also one of those issues of which there probably was not, in earlier times, adequate acknowledgement or acceptance that continuing and unresolved detention would impact on a person's mental health. There was too much of a readiness to assume that a person could bring the problem immediately to an end by signing a travel document to remove from Australia; that the person's own choices were a large contributing factor to any problems or mental health issues. That minimised mental health issues, but our society says it is important to stand back from that and if a person, for whatever reason, is encountering mental health issues, then that independently is an issue that warrants proper consideration by government, and that is the theme in our reports.

Senator EGGLESTON—In response to that, I would also make the comment that depression is a very common occurrence in prisons. Any people who have anything to do with our prisons know that, after six months, most people there are quite severely depressed, and many of them are depressed chronically for the rest of the time they are in prison. In your submission you mentioned regular and timely consideration of alternative forms of detention as an area of concern. I wondered what kinds of alternative forms of detention you might think were appropriate, and do your investigations involve scrutiny of departmental decisions to put clients in community and/or alternative forms of detention?

Prof. McMillan—I will give a brief answer but George has visited more of those, so I will get him to comment. Our role does involve inspecting the places where people are kept and sometimes these are places under departmental control, sometimes they are places under the control of an independent agency such as Red Cross, sometimes they are homes where a person has a guardianship arrangement.

Our role does involve both visiting people in those locations and inspecting them, inspecting the situation; and equally we do review the decisions whether to keep a person in an immigration detention facility or put them in alternative forms, with one important qualification: the Ombudsman's jurisdiction does not extend to ministerial decision making, and yet so many of the important decisions in this area are ministerial decisions. We have not shied away in the two-year detention reports from making recommendations to the minister and drawing attention to ministerial decisions and their consequences, but under the Ombudsman Act, I do not have a clear jurisdiction over ministerial decisions.

Mr Masri—Through individual complaints we may come across issues, particularly for those that have mental health issues. There it is making sure that there has been proper consultation with the appropriate people who could provide advice on appropriate detention placement. There are regular placement meetings and they are supposed to be individually based. Our concerns are certainly for those that have special needs and so on, and, while we are not determining that the appropriate detention arrangement is of a particular nature, what we are concerned about is that those with the medical expertise can provide the appropriate advice both to the department and to GSL about what the appropriate detention arrangements are, and that the appropriate stakeholders who should be advising the department about the appropriate detention arrangements have had the capacity to provide that advice.

Through our inspection role, we can also look at particular meetings that go to detention arrangements and ensure that the right information and processes are there. So we look at it through the individual complaints situation, through our inspection role and through the two-year detention process. Even if a decision were made one day that the appropriate detention arrangement is to leave a person in stage 1 or stage 2 of Villawood, it may be appropriate that in a month's time—changed circumstance, changed needs—another detention arrangement is more appropriate.

Senator EGGLESTON—Are there criteria for these transfers to alternative arrangements?

Mr Masri—The department does have guidelines and we need to ensure the department addresses those guidelines, and mental health and special needs are certainly components.

Senator EGGLESTON—What would be special needs?

Mr Masri—Children.

Senator EGGLESTON—Other physical illnesses, disability?

Mr Masri—Yes, or if there was an assault or an alleged assault, ensuring that they are in a safe environment; clearly, mental health.

Senator EGGLESTON—Sexual harassment.

Mr Masri—Whether they have had self-harm matters.

Senator EGGLESTON—Thank you.

Mr Masri—Applying the new detention principles, regular review of detention arrangements becomes even more important. The risk of absconding is another area, and any other general characteristics that the detainee may have.

Mr ZAPPIA—I will be brief. I appreciate the time. I had a number of issues but I will raise only one. In your submission, Professor McMillan, you say that the incidence of assault is a common source of complaint. My question is simply this: is any one particular detention centre a standout centre in respect to the number of assault complaints that you are getting?

Prof. McMillan—The centre in which we have had the most difficulty is Villawood. Part of the problem was that there was not an adequate arrangement in place for having police investigation presence on allegations of assault. They were allegations made between detainees, between detainees and officers, officers against detainees. It is complex.

Mr ZAPPIA—Assaults occurring between detainees is one thing, but there were assaults where the accusation was made against the operators of the facility?

Prof. McMillan—Yes, there have been allegations made by people in detention against officers and there have been allegations made by officers against people in detention.

Mr ZAPPIA—But in terms of allegations made against the operators of the facility, does any one particular facility have a disproportionate number of allegations made against it?

Prof. McMillan—I can work only from the complaints that are made to us and they are not necessarily a reliable indicator of other statistical trends, but certainly Villawood is the place where the most complaints are made to us.

CHAIR—One thing I do not understand in your answer is: why would there be different circumstances in which the police had the power to investigate and charge people in Victoria in Maribyrnong but not in Villawood in New South Wales?

Prof. McMillan—The same issue arises: if there is an allegation of assault occurring in a Commonwealth facility there may be a need for police presence and investigation and often that responsibility will fall to state police. We have had it as a continuing issue at Villawood, to the point where, as I have said in my submission, jointly with the New South Wales Ombudsman, we wrote to the secretary of the department of immigration, to the commissioner of the Australian Federal Police and to the commissioner of the New South Wales police to say this is a problem that needed to be addressed by the three agencies and had not been addressed. But I have not had a need to take that severe action in relation to any other detention facility. I am not aware—

Mr ZAPPIA—Is there an issue?

CHAIR—Is that because there are fewer assaults in Maribyrnong and it therefore does not present as a problem or, is it because when people raise it as a problem in Victoria it is dealt with by the police?

Prof. McMillan—That is a good question. I do not know which of the two answers is correct.

Mr Masri—It might be a combination of both, but we also saw that, in other states like South Australia when Baxter was there, there was an MOU between the immigration department and the South Australian police to actually deal with the issue of jurisdiction so that there was not only a response by the South Australian police when an allegation of assault was made but there was actually some proactive regular visits to the detention centre and so on.

That model of an MOU where the state jurisdiction can do most of the policing and deal with most of the assaults—both proactive and responsive investigation—was the model that they were looking to do in New South Wales. Villawood has the most number of complaints also because it has the largest detention population.

As I understand it, in Western Australia there was not the jurisdictional issue that there might have been in New South Wales. So there was more of an imperative in New South Wales to ensure that there was a resourced and well-structured MOU to ensure that there was police coverage.

CHAIR—As far as you know, that is not in existence yet though?

Mrs Fleming—It is not, but it is progressing.

Mr Masri—It is progressing, yes.

Prof. McMillan—The last advice we received is that—

Mr Masri—It is almost there.

Prof. McMillan—within a matter of weeks there would be an MOU signed. However, we are also aware that, in advance of an MOU being signed, there is now more regular visits by the New South Wales police to Villawood Detention Centre, so the issue is being addressed in a practical way.

CHAIR—Is the ideal situation that you identified in South Australia the case in Victoria in Maribyrnong? Is there a formal or informal understanding?

Mr Masri—I stand to be corrected because the department would be better positioned. My understanding is that there is not a formal structure similar to what occurred in South Australia, but it is informal. I could be wrong.

CHAIR—I thank the Ombudsman and all of his officers for their very exhaustive answers to our questions.

Resolved (on motion by **Senator Hanson-Young**):

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

Committee adjourned at 1.47 pm