COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON MIGRATION

Reference: Immigration detention in Australia

THURSDAY, 11 SEPTEMBER 2008

MELBOURNE

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JOINT STANDING

COMMITTEE ON MIGRATION

Thursday, 11 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: Senator McEwen, Mrs D'Ath, Mr Danby, Mr Georgiou, 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 9.03 am

CLEMENT, Mr Noel, General Manager, Domestic Operations, Australian Red Cross

CHAIR—Thanks everyone for being here. I would now like to declare open this public inquiry into immigration detention in Australia. Yesterday the committee visited the Maribyrnong Immigration Detention Centre, the Melbourne Immigration Transit Accommodation and the Asylum Seeker Resource Centre in West Melbourne and I apologise for our late start.

Today we are looking forward to hearing from some of the major service providers and immigration detention policy advocates in Victoria including the Australian Red Cross, the Refugee and Immigration Legal Centre Inc., the Detention Health Advisory Group, the Hotham Mission Asylum Seeker Project, the Brotherhood of St Laurence, the Castan Centre for Human Rights Law, The Justice Project, Liberty Victoria and Law Institute of Victoria. Finally, we will be hearing from two psychologists with broad experience in clinical contact with people in immigration detention, Guy Coffey and Ida Kaplan. The committee does not require witnesses to give evidence under oath. I must remind everyone, however, that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings in the House.

Before we get the hearing underway, the committee has before it submission No. 129 provided by the Department of Immigration and Citizenship. Is it the wish of the committee that the submission be accepted as evidence and authorised for publication? There being no objection, it is so ordered.

I would like to call on the representatives of the Australian Red Cross to give evidence. Mr Clement, we will ask you to give a written statement and then we will have some questions and perhaps comments. When we do some of the confidential individual case studies, we might ask members of the public if they would leave for a few minutes and then we will resume the public hearing. Do you wish to make a statement in relation to this submission or do you want to make some introductory remarks?

Mr Clement—If I could make some introductory remarks that would be great. Thank you, Mr Chairman and honourable members. I just wanted to start by setting some context for Red Cross's comments today. Red Cross, as I am sure you are aware, is part the largest humanitarian movement in the world. We are recognised as an auxiliary to government, so we are not technically a non-government organisation. That is reflected in pledges in international meetings with the Australian government, the most recent being November of last year. We are, however, an independent, neutral and impartial organisation. They are three of our seven fundamental principles.

Our mode of operating is we work with both sides of government. We have worked with the current government and the previous two governments in this space and that is how we will continue to work. We recognise policy as a domain for government but believe that we have some contributions to make to inform that.

In this particular space, our primary concern is for how people are treated while they are going through the immigration process. We do not get involved generally in whether people should be allowed to stay or leave the country; our concern is how they are treated while they are here.

In terms of our role and experience, we have been visiting immigration detention centres since 1992, both on shore and off shore, through formal and informal agreements with the Department of Immigration and Citizenship. Our roles have primarily focussed on helping reconnect families separated by conflict and disaster, known as the tracing service, but also we have a humanitarian observer role. We visit all centres at least monthly, some on a weekly basis. We will then provide a quarterly report to the department of immigration and raise a range of humanitarian concerns with the department, some of which are reflected in the case studies that I think you want to ask me about later.

One of the other things we have done in this space is actually some work with a lot of other agencies in the sector and the department of immigration to try to find alternatives to detention. We have been the provider of the Community Detention Program for the last three years and the Community Care Pilot community assistance part of that. So, we have been quite involved in development of models to try and address some of the concerns around the humanitarian impacts of detention. That has been really over the last seven years or so.

One of the things I wanted to do up front was acknowledge some of the changes; even since we first put a submission in there have been a number of changes. Both the current and previous government have made a number of changes over the past three years in particular, starting with changes such as community detention and the Community Care Pilot program, through to detention as a last resort and the upgrades that are proposed with Villawood. One of the important things is the faster processing, particularly for protection visa claims.

One of the issues we really wanted to raise today is that it is really a duality of issue for us, both the detention environment and how people are treated, and the impact of the environment on people. Three years in community detention has taught us that really people's status is equally important. If people have unresolved immigration status and do not know what their future is, it is really hard to address mental health issues, in particular. You can address the issues impacted by the physical environment, and that is certainly very important, but if you do not address the issue of case resolution at the same time, then you are really not completely resolving mental health issues for people. There are a range of particular issues we have got that I am happy to go through under the particular terms of references if that is a useful way to proceed.

CHAIR—In the submission or in response to comments?

Mr Clement—In response to comments or I am happy to use them as a conclusion.

CHAIR—Why do you not give us a quick conclusion and then we will go into questions and comments?

Mr Clement—One key point is that we would really support the Community Care Pilot in particular as an ongoing program and to be extended nationally. There are four key planks to that program. Early intervention is critical. One of the challenges with the program is that we have been dealing with what is known as a legacy case load, that is, people who have been in the

system for five years or sometimes more. The pilot I think has done a great job in some of those cases, resolving cases in four to five months that have been in the system for five years. Early intervention is really the idea of the model. It is about working with people when they first arrive in the country regardless of what the immigration status is. It is about providing community assistance so that you are either maintaining or improving their health, providing return counselling for people who are wanting to consider options to return and assistance for that return if that is appropriate, and independent legal advice as well so people know whether or not they legitimately should be pursuing a protection visa or another course for status resolution. Those four planks for us are really critical to the program. Having any one without the others is not going to work effectively. We would really support extending that nationally and making it an ongoing program. As I said, resolving status and detention issues are both critical.

The third thing is strengthening community support at the same time. While we really support detention as a last resort, it is important we do not leave people in the community without any support. Community Care Pilot fills a gap in that space, community detention does likewise as does the Asylum Seekers Assistance Scheme; there are a range of mechanisms that can be used. It is just critical that we do not end up putting people in the community without any support. That has unfortunately happened at times in the past. There have been people who would prefer to be in the detention environment than in the community with no support at all. That would be another thing I would add.

CHAIR—Okay. Questions or comments? Who would like to start?

Mr GEORGIOU—Can I just congratulate the Australian Red Cross on both the work that it has been doing and its submission. I think the committee would be well served by a more elaborate description of your management of the programs and its interaction with other programs. I have got one criticism of the submission in that sometimes you go weak at the knees, for example, at Christmas Island. Can you just tell us what you believe should happen to Christmas Island?

Mr Clement—It is interesting because I was part of the visit to Christmas Island after writing the submission, so while we have had staff visit people on Christmas Island we had not been to the new centre. We have had concern for some time about the isolation of Christmas Island and the capacity to provide services there. There are a number of people who have needed to be medivacced to Perth, in particular, and we have provided support when people have been removed to Perth. Our preference would be that Christmas Island is not used particularly for vulnerable people. For anybody who is likely to be vulnerable, the environment at the new centre is really inappropriate. The environment has a very strong security prison-like feel to it. I can not see anybody's mental health not being impacted by being in that sort of facility for any length of time. It is isolated both geographically and on the island itself. Regarding Christmas Island, our preference would always be to bring people back to the mainland, particularly in community detention. If the decision continues that Christmas Island will be used, we would really support building an infrastructure of community detention on the island, which means building some capacity now and not waiting until there are some arrivals and then having them in the facility on the island and trying to move them back into community detention afterwards.

Mr GEORGIOU—What do you think about the facility itself?

Mr Clement—The new facility?

Mr GEORGIOU—Yes. Is it a place where you can actually put asylum seekers in its present shape?

Mr Clement—I do not believe so without impacting on people's mental health.

Mr GEORGIOU—There was another thing that puzzled me about the submission but not so much, and I will not go into the cases. One gets the impression in some cases that Immigration, despite the so-called culture change, really digs its heels in, does not deal with the problems raised by agencies, particularly mental health issues, keeps families separated for protracted periods of time without, on the face of it, any real justification and despite strong representations by organisations like Red Cross. That puzzles me given the talk that we have heard, and what I usually believe, about a change of culture in Immigration. I must say I love the department. On the basis of what you say, it strikes me that the change in culture is a bit unevenly spread, and some of the case studies do drive that point home.

Mr Clement—I am hoping the practice has changed with the latest announcements about detention as a last resort. It has been a concern even in recent years particularly about a father being kept in an immigration detention facility while the rest of the family is either in a residential housing or community detention arrangement. We do not see that as good for the family unit, particularly for the children. I guess our experience from community detention indicates that whole families can be cared for in the community. There may be other issues that we are not aware of that the department is responding to. It has been a continuing practice, not anywhere as great in numbers as it was previously but there are number of cases that have concerned us. I do not know whether that will now change with the latest changes.

The other factor in the culture change is the legacy case load issue. The whole department has been dealing for so long with people who have been in the system for a very long time. There is a real need to be able to work through that case load and start to intervene early. One of the big problems is that the system is geared towards dealing with people who are already quite unwell, who are already at the end of the system, not dealing with people at the start of the process and trying to identify the vulnerabilities at that point.

Senator McEWEN—There are different models of community detention. What would Red Cross see as ideal community detention in particular in terms of the support that we need to give people?

Mr Clement—Our idea would actually be released on a visa with support such as the Community Care Pilot. If you are asking for the actual model, it would not be community detention. To me, there is the graduated scale from an immigration detention facility through to Community Care Pilot. Community Care Pilot would be the ideal. Community detention was a really useful mechanism to get really vulnerable people out of the Immigration Detention Centre environment so to that end, it has been very successful. An independent organisation providing support is fairly critical, particularly when dealing with people who have been in the system for some time because the level of trust that people need to have in the person who is providing them that support is critical.

I would separate the provision of housing from care services. At the moment, the model is that Red Cross both organises the housing and provides the care services, which puts us in the position of being both landlord and support person, which is not best practice. If you talk to any housing service providers, you do not usually talk to your landlord about issues you might be having with family violence or whatever, because you would be concerned about what impact it might have on your tenancy. I would actually separate those to have a specialist housing provider organising and providing the housing and that support and have another independent organisation providing care services.

The other critical factor is the involvement of case management from the Department of Immigration and Citizenship so that the case resolution process happens. One of our concerns has been that people in community detention do not seem to have been a great focus for case resolution in the way that people in immigration detention centres have been. I think again that has started to shift, but it has been a concern that people have been left in community detention for a fairly extended period of time. While we have been able to do our best to maintain their mental health or improve it, the lack of status resolution and knowing what is happening in the future really prevents people being able to get on with their lives.

Mr ZAPPIA—Thanks, Mr Chairman. Mr Clement, thanks for your presentation. I have three questions and perhaps you can take them one at a time. The first is in relation to mental health. From your understanding or knowledge, what percentage of the people that are held in detention would be categorised as having a mental health problem, if you could answer that? Secondly, what percentage of the people who go into these centres end up having a mental health problem? In other words, has there ever been any evaluation done as to how many people who go in start with a mental health problem and how many end up with one?

Mr Clement—I can not give you a number to your first question; unfortunately I do not have that number. As to your second question, I can give you anecdotally what our experience has been, what our detention workers have fed back to us for a long time. It seems that three months is a fairly critical time. Our experience has been that we have had some concern about the impact on the mental health of people who have been in immigration detention for longer than three months. I do not know what is magical about three months but that is just the feedback that I have had from our detention centre staff.

Mr ZAPPIA—The second question relates to the treatment of the people within the detention centres and you made a comment about that earlier on. I am not sure how long GSL has been providing the service on behalf of the government. Has your organisation had experience with centres that are managed by GSL and centres that are not managed by GSL now or at times prior to GSL? Has there been any difference in the treatment of people in detention as a result of GSL taking over the management?

Mr Clement—We were involved in the service prior to GSL. I guess the question is how much has changed from the department of immigration's management to that of GSL; I could not comment on that. Our experience has been that GSL has been fairly open to our involvement. We have run sessions with GSL staff to inform them about Red Cross' role and they have been very receptive to that. They have also been receptive to feedback that Red Cross has provided. There are occasions where we will raise issues locally with GSL and then raise them with Immigration because it is not always clear who is responsible or if there is a block

where it sits. In general, our relationship with GSL has been positive and I think we did see some improvements.

Mr ZAPPIA—The third question: you also made reference to connecting detainees with their families. If a family is to be deported, do you have any role in ensuring that those people that are being deported will be connected with their family at the other end?

Mr Clement—Currently, we do not. The role we play is to help reconnect people who have been separated by disaster or conflict. It is led by the International Committee of the Red Cross. There actually are some significant changes to Red Cross' focus in this whole space, which means that we probably will start to look at what our role is with countries of origin, transit and return. That is not something that we are currently doing. For instance, Indonesia would be one of those key partners we would be looking at but it is not currently a role that we fulfil.

Mr ZAPPIA—Thank you.

Mrs VALE—Thank you very much, Mr Clement. I was just interested regarding the mental health aspect and I note that you say how important early intervention is. How does that impact on the mental health of detainees and also people who have been released into the community? What kind of contribution do you think the problem of the resolution of their status makes to their mental health?

Mr Clement—The resolution of status?

Mrs VALE—Yes.

Mr Clement—A massive contribution. Living with insecurity and not knowing for a long period of time is going to have an impact on the mental health of anybody.

Mrs VALE—This can also be for people in the community, not just people who are detained in detention centres?

Mr Clement—It can be. The tricky thing is that a lot of people who we have been supporting who were in immigration detention came out of that environment with significant mental health issues. We are trying to stabilise them and help in their recovery process, and that is what we are experiencing is being impacted by status resolution. I could not honestly comment on whether someone just in the community in the first place would develop significant mental health issues as a result just of status resolution, but it is always going to be unsettling to people.

Mrs VALE—How do people come to you with your Community Care Pilot program? How are they referred?

Mr Clement—Community Care Pilot is all referred through case management in the department of immigration. It has changed in the last few months where community agencies can now refer people to those case managers. Previously, it was just the case managers identifying people, which meant that because case management's priority is the legacy case load, that made up the majority of cases in the system. We are now starting to get cases that people in the community are identifying. This is probably earlier intervention but still not what I would

call proper early intervention which is really at the very onset of people arriving, identifying some vulnerability that might mean that people are likely to end up in dire straits.

Mrs VALE—Do you know what kind of criteria is used for people to be considered to be appropriate for that program?

Mr Clement—The vulnerabilities include any families with children, people who have experienced torture trauma, people with existing health issues, mental health issues and people who have come from areas of conflict. There are a range of those sorts of issues that we would say are fairly early triggers that indicate that someone is likely to be vulnerable.

Mrs VALE—Thank you very much.

Mrs D'ATH—Thank you, Mr Clement, for your submission. I have got three questions. One, from a practical perspective can you explain to us what is actually occurring when we are talking about community detention; how are these people detained in the community?

Mr Clement—Community detainees are referred by the department of immigration. Red Cross' role is to provide the housing and support services. The department of immigration will identify a case and refer it to us and discuss that case with us. We need to locate housing for the person or the family prior to the minister being able to make the residence determination. Once we have located the house, then the minister makes a residence determination which says, 'This is now your place of detention.' That person needs to live in that place. The conditions sometimes vary. Red Cross does not get involved in any of the monitoring or security arrangements. There were some significant changes that were made three years ago. We had explored alternative detention for a number of years. The big problem was that prior to those changes you had to be a designated person, so you had to be someone who physically monitored and secured someone 24 hours a day, which was not a role Red Cross was prepared to take on or could take on. With community detention, people are released really based on certain conditions. You and I would see it as more like a bail arrangement. The conditions might be regular reports to the local department of immigration or whatever other arrangements the department puts in place, for example, the department might send someone to their house to make sure they are there.

CHAIR—Do they vary according to—?

Mr Clement—My understanding is they can vary. Our role then is really supporting them like we support anybody else in the community. We organise the house, we pay for the house and we give them a fortnightly income support payment. Through the International Medical Health Services, IHMS, they get access to health services so we do some of that liaison and we do a general casework support role. Case management in the department continues to work around their case resolution. Detention service officers from the detention centres are actually involved in monitoring the conditions of their support.

One thing that I would change would be to have greater emphasis on case management. Our experience is that immigration detention officers, as much as they really have the best interests of the client in mind, I do not think have the community context understanding in the way the

case managers do. We sometimes find that they want to look over our shoulder around a whole range of issues that we are trying to address and not really understanding the context.

The other big challenge for us is we develop a care plan for everybody who comes into community detention. Our experience has been that people in the department will then make the decision about whether parts of those care plans are implemented or not. That is tricky for us as the provider if the department decides that something in particular will not be funded. If we have assessed that someone needs a particular family counselling or mental health assessment, if the department decides it is not necessary then we are caring for someone that we have assessed needs x, but we are not providing x. That occasionally has been problematic.

One of the problems is that the people in the department who are making some of those decisions are Canberra based bureaucrats who know their policy issues very well and understand the program settings very well but do not necessarily understand case work issues. It is again why I would bring case management in as a more central feature in making some of those decisions.

Mrs D'ATH—Just on the point you made, previously there had been 24-hour, seven day a week monitoring. Melbourne, for example, does not have the residential housing attached to the detention centre like Villawood has. Prior to the recent opening of the new Melbourne Immigration Transit Accommodation centre, if a family arrived, are you aware of circumstances where a family would be placed in housing and permanently monitored, as in having someone placed in that house with them at all times?

CHAIR—Meaning Melbourne?

Mrs D'ATH—Yes.

Mr Clement—I am not aware of that case in Melbourne. Community detention has provided that extra niche so if a family was to arrive they could be referred to community detention very quickly and cared for in the community in Melbourne, with us providing that support. There really should be no necessity for that. There are occasions, I understand, where alternative detention is still provided and it seems to be often with an individual in, say, a motel arrangement where the detainee is in a room and there is a GSL guard in another room. I am not always clear why the alternative detention path is taken instead of community detention; I assume there are security concerns. Prior to community detention being in place, there were a whole range of situations where people were released into the care of individuals and families in the community. This was of great concern to us because those individuals and families were taking on responsibilities as designated persons but at that time were not being provided with the support or the funding to be able to support those people. We looked at whether we should be involved in that space. We assessed one case that we determined really needed 24-hour psychiatric nursing care. That was something at the time that the department was not prepared to provide. We had to say that we could not support this person, that we could not realistically take this person into the community without that level of support. We also got some significant legal advice. Mallesons, who do pro bona legal advice for us, went through the legislation and talked to us about what changes would be necessary to enable us to provide care in the community. When the government announced that there would changes to allow families to be cared for in

the community, those were the changes that were made. It meant that there was not the requirement for designated persons to provide the 24-hour support.

Mrs D'ATH—Are you familiar with the new Melbourne Immigration Transit accommodation facility?

Mr Clement—I am absolutely aware of it being built. My understanding is it is intended for very quick turn around and largely for airport turnarounds. Our concern is that it does not start to be stretched to be used for a range of other purposes as well. I would support a range of different levels of care. I think immigration transit accommodation centres for people who are here for a short time, if it is a week or something, is a much better option than an Immigration Detention Centre, but I would not support those being used then for extended care. We would always support people being cared for in the community. It would be graduated from Community Care Pilot.

CHAIR—What about mixed purposes, for instance, having people who are on short turnarounds together with people who are about to be deported?

Mr Clement—It is difficult for me to comment on. Our preference would always be to enable voluntary return, which is one of the things that are not available to people in immigration detention centres at the moment. The UK provides it for everybody.

Mr GEORGIOU—But they are open centres, walk-in, walk-out.

Mr Clement—It is a different model. Unless you have a visa at the moment, you are not really eligible to consider voluntary return. It was really only with the introduction of Community Care Pilot that voluntary return came on the radar properly at all. What people feed back to us is that some people would rather stay around and continue to fight the decision because of fear of being removed by government and all the consequences of being removed. For some countries, it means being notified that you are a person who has been removed and that raises security concerns for some people. There is the issue of dignity. There are a range of reasons that people do not want to be removed. For us, a voluntary return option should always be explored first. Ultimately it is a decision for government as to the point at which that has been exhausted and they need to remove someone. If they need to remove someone, we favour the shortest period of detention possible, whether it is in the ITAC or in an IDC (Immigration Detention Centre). It becomes difficult for me to comment on the difference.

Mrs D'ATH—I have two more questions. You have made reference both in your submission and in your opening statement this morning about separation of families. In what circumstances is one of the parents being separated from the remainder of the family, either part of the family being kept in the community while one of the parents is in detention, or partially in residential detention housing and detention centres?

Mr Clement—They are the two scenarios that we have generally seen. A mother and children might be in the residential housing complex in Villawood and the father in the IDC, or the family might be in the community and the father in the IDC. I cannot comment on the reason that that is happening but the impact on the family has been significant. We did have one family in

community detention that chose to go back into a residential housing environment because it was closer to the IDC so they could be closer to the father.

There would be some families who might prefer to be in the IDC than be separated from the father of the family. With the current policy settings that is not possible, so the only alternative is for them to go into the residential housing complex. I am assuming that it is security reasons but I could not comment on the exact reasons why. Our experience in community detention has been that when whole family units are together, people are not likely to leave their family in the community high and dry. Like any of us, we want to support our families. Most people are not going to take their families on the run. .

Mrs D'ATH—Is it ever a case where the family is not in community detention, when in fact the other parent may actually be an Australian citizen and so are the children, so they are just normal citizens in the community?

Mr Clement—All of the above. We have scenarios where one parent is an Australian citizen and the other is not or where one parent might have been granted a visa of some sort and the rest of the family not as yet. There are a range of different scenarios.

Mrs D'ATH—My last question is not an easy one. With the length of processing that you have seen in a range of applications, what do you consider are the impediments as far as the timeframes that it is taking to deal with these applications?

Mr Clement—I think one of the key impediments has been good and appropriate legal advice up front so that people have someone independent who is able to advise them about their case and about the likelihood of success, particularly for protection visa applicants. Also unfortunately there is a financial incentive sometimes for advice to be provided that is not necessarily the sort of advice that a not-for-profit organisation would provide. I think organisations such as the Refugee Immigration Legal Centre that it is presenting next are a key part. They are a non-profit provider whose role is really just about providing that advice and for whom there is absolutely no incentive to provide advice in some way to continue a case when there is little or no merit to the case. I think just having that independence is important, so it is not the people who are making the decision about whether they should be allowed to stay or not also telling them whether their case is valid or not. I think that early advice at the onset is important.

Providing assistance to maintain people's health and welfare is the other key component of Community Care Pilot. If people are in a good state of health they are in a better position to make rational decisions for themselves. If they also have the legal advice to understand what the options are, and they can then explore voluntary return options if it is likely they need to return to their country of origin or a third country, then all those things empower people to be able to actually make some decisions about their lives. Most people in that situation are going to make a decision that is right for them and their families. That does not mean people will not go right through the process and want to have all their applications heard before they make a final decision, but at least they can be at the point of saying, 'This is the situation, this is what my legal advisors are telling me, this is where I am at in the immigration process, and I am feeling reasonably healthy, I can make an informed decision and that might be considering voluntary return options.'

CHAIR—We have got a couple of more general questions before we go very briefly into camera for about five minutes. Yesterday we visited the Asylum Seeker Resource Centre in West Melbourne. They told us that many people who visit the centre have no way of earning any income, that they are totally supporting them, that they raise money from philanthropies, fun runs and all kinds of fund raising methods that are purely private with no government assistance. Does Red Cross provide any assistance to the Asylum Seeker Resource Centre or the people that are its clients? What do you see as a way of dealing with these people; is there a different way of dealing with them? What should happen to people who do not have valid visas?

Mr Clement—We do not provide direct support to the Asylum Seeker Resource Centre and we have some limited support that we are able to provide ourselves, largely in Victoria and New South Wales. Our estimation in the past is that there are probably as many people in the community who are not getting support as those who are receiving support on programs such as the Asylum Seeker Assistance Scheme.

CHAIR—How many do you provide and how many do you think are out there?

Mr Clement—It is hard to estimate. I think there are about 400 people around Australia at the moment who receive assistance from the Asylum Seeker Assistance Scheme. I have not done a latest check but feedback from our caseworkers is that they would receive inquiries from as many people who are not eligible as are eligible. The Community Care Pilot has started to shift that because it is actually about providing support until there is a case resolution. The problem with the Asylum Seeker Assistance Scheme is that once people receive a Refugee Review Tribunal decision, they are no longer eligible for assistance. The greatest numbers of people destitute in the community are people at ministerial stage or in the courts. That has always been a big challenge. Community Care Pilot finally has started to say, 'Let's just provide support to people regardless of where they are in the immigration process until there is an immigration outcome.' But, it is a pilot at the moment; it is not extended nationally. It is not wide enough to start to take pressure off groups like the Asylum Seeker Resource Centre. A number of other agencies provide the same service.

CHAIR—So, the pilot is dealing with 400 people all around Australia?

Mr Clement—Sorry, that was the Asylum Seeker Assistance Scheme. At the moment there are 283 in Community Care Pilot.

CHAIR—How many to do you estimate are out there that you are not helping; is it the same proportion?

Mr Clement—It is very hard for me to estimate the numbers because we have never kept accurate statistics on this. I would expect that you could easily double those numbers but the Asylum Seeker Resource Centre would be in a better position to advise the sorts of numbers that they are supporting. Our case workers work a lot with agencies like Hotham Mission, often referring people once they are not eligible for the supports that we provide to other agencies, and providing what limited support we are able to ourselves.

CHAIR—One more general question.

Mr GEORGIOU—Yesterday, at Maribyrnong, the department was really strong that the mixture of 501 cases with non-501 cases in both Villawood and Maribyrnong was not problematic. They were pushed on this a little bit and I think were quite adamant. Your experience is a little different. Could you tell us about that first, and secondly, what is a solution?

Mr Clement—Our experience particularly in Villawood has been different. We have been concerned about a change in culture, particularly in stage 1 of Villawood. We have had some concerns about some bullying that we have raised previously in stage 1 and just a general prison culture starting to permeate. The particular challenges are that a lot of people who end up in stage 1 are there because of behavioural issues. There will potentially be asylum seekers with significant mental health issues whose behaviour means that they end up in stage 1. They are probably least able to deal with the impact of people who have come out of the prison environment. It is an issue we flagged ourselves to have a look at because our concern is also for the 501s themselves.

Mr GEORGIOU—It is, but there are two distinct issues.

Mr Clement—They are very distinct issues. Our belief is that they should be treated as distinct issues and that there probably should be a separate arrangement for 501 detainees (visa cancellations) and asylum seekers and other people in immigration detention.

CHAIR—This is really quite important to us. How developed is your thinking about the alternative solution?

Mr Clement—It is not greatly developed beyond that at the moment. It is one that has come on the radar particularly in the last six to 12 months. It seems there has been a greater use of the 501. It is also the change in balance. There are fewer people in immigration detention, which is fantastic, but the balance is that the ratio of 501s to other people is higher than it was previously. While it might have been a smaller factor when there was a much larger population, now that the population change has happened, I think that is where we have noticed the significant culture shift.

CHAIR—Are there any other questions to Mr Clement in a public sense? It is the wish of the committee that we take evidence from Mr Clement for five minutes in camera. Would the people in the public gallery mind excusing us for five minutes because we have to ask questions about individuals. We will not keep you long and someone will advise you as soon as we are finished.

Evidence was then taken in camera but later resumed in public—

[9.50 am]

MANNE, Mr David Thomas, Coordinator/Principal Solicitor, Refugee and Immigration Legal Centre Inc.

CHAIR—Mr Manne, would you like to make a statement or some introductory remarks?

Mr Manne—Yes, please. I appear on behalf of the Refugee and Immigration Legal Centre and we welcome the opportunity to appear before this committee in relation to the inquiry into immigration detention. We also wish to table our written submissions and a separate summary of 29 recommendations.

CHAIR—All right; since you have asked to do that, is it the wish of the committee that the submission by the Refugee and Immigration Legal Centre be accepted as evidence and authorised for publication? There being no objection, it is so ordered. Mr Manne, please proceed.

Mr Manne—We also apologise for the delay in lodgement. By way of introduction, the Refugee and Immigration Legal Centre is a specialist community legal centre providing free legal assistance to asylum seekers, refugees and disadvantaged migrants in Australia. Since its inception over 20 years ago, RILC and its predecessors have assisted many thousands of asylum seekers and migrants in the community and, indeed, in detention. Annually we assist over 3,000 disadvantaged people. More particularly for this inquiry we have been assisting clients in detention for over 12 years and have substantial case work experience in relation to that including contact for advice by detainees from remote detention centres throughout Australia at Port Hedland, Curtin, Perth, Baxter, Christmas Island and, indeed, Nauru where we have represented many people over the years.

In relation to our submissions, I just wanted to make some brief opening remarks. We have primarily addressed the following terms of reference for the committee: first, the criteria that should be applied in determining how long a person should be held in detention; secondly, the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks; and thirdly, in a limited sense options for additional community based alternatives to immigration detention. We have chosen to address these issues under three broad categories: first, the decision to detain, including ongoing detention; secondly, the form of detention; and thirdly, other issues related to community based alternatives to detention and detention debts.

A key focus of our submission comprises addressing the government's new detention policy unveiled by Minister Evans on 29 July 2008. In broad terms we strongly welcome the announcement of the new policy. Since 1992 immigration detention policy in Australia has been characterised by an approach of mandatory, indefinite and non-reviewable incarceration of innocent and often vulnerable people. Ironically many of those that we have assisted who have been subjected to that policy have in fact fled in fear of arbitrary detention and yet detention has been the default under law, policy and practice for those without a valid visa.

RILC's key concerns about this policy are threefold: first, it has involved grave violations of international human rights law; secondly, it has deviated radically from ordinary principles of deprivation of liberty under domestic law in Australia; and thirdly and most profoundly, it has routinely caused serious harm to those detained. As noted in our submission, even where exceptions exist and have existed under these laws, particularly for release of vulnerable people, there has been a fundamental failure to implement those limited exceptions themselves, and they have not only fundamentally failed to be implemented but have involved, in the implementation, undue restrictiveness. In our submission, the government's new detention policy is not only a significant development but, most importantly, the new detention values of the new necessity based approach has the real capacity, first, to bring Australia into line with international human rights requirements; secondly, to provide domestic law standards which ordinarily apply in relation to incarceration of people in Australia; and thirdly, to minimise harm and to treat people in a just and humane way. However, there are significant gaps and concerns. In our submission if these gaps are not adequately addressed, these otherwise laudable reforms could well be rendered a case of so near and yet so far.

In particular, I draw the committee's attention to a number of key issues on this front: first, our recommendation that these reforms be enshrined fully in law; secondly, that there be a comprehensive and clear operational framework including detailed guidelines for the implementation of the reforms; and thirdly, that there be proper and independent scrutiny both judicially and otherwise of the application of these reforms, these values, to people on a daily basis.

In relation to community based alternatives to detention, our key recommendations are that there be a broad range of alternatives available to people which provide the government and the Department of Immigration and Citizenship with the necessary flexibility in order to actually implement these detention values, that detention should be used only as the last resort, and in particular to ensure that they are properly resourced, for example, to avoid a situation occurring with history repeating itself where we have justifications for failure to actually release people from incarceration based on purported justifications of lack of resources, including recent comments by a former immigration minister that children were not able to be released in Australia because of lack of resources. We address that issue specifically in our submission. Finally, we recommend that the detention debt policy, which finds no peer worldwide—and one has to go back into history of Nazi Germany to find similar precedents—that that policy be abolished as being manifestly harsh and unjust. Thank you.

CHAIR—Thank you very much for your submission.

Mrs VALE—Thank you very much, Mr Manne. I note in your first three recommendations that you obviously would like some certainty to make sure that the people who administer the policy also are certain under the framework on which they are supposed to be delivering. With regard to the new reforms, have you seen that flow through initially at this stage?

Mr Manne—Do you mean the reforms since the announcement?

Mrs VALE—Yes. Is it too early to ask you that?

Mr Manne—Far too early because really at this stage I think we are still in a phase of consideration of implementation. For example, there have still been no legislative changes effected to ensure that these detention values are implemented. This will no doubt be a key issue in the future, but whatever form they take, our view is that they must involve some legislative change. It would not be possible for those reforms to be absent of any legislative reform of some sort.

Mrs VALE—this particular area of Australian justice is new to me, but the fact that no reasons are given for some of the most arbitrary decisions that are made is very strange to me. I note here in your recommendation number seven on your decisions to detain that all decisions should be made in writing, setting out full reasons and also that they are conveyed promptly to a person who is the subject of those decisions and refer also to any legal opportunities they may have. How do you think that the fact that reasons are not given really impacts on the person themselves and especially their mental health issues?

Mr Manne—The first issue that we have witnessed time and time again is that the way that the detention regime has worked or not worked, very often people who are detained do not actually understand the very basis of the detention itself, and that triggers a whole range of other problems. One of them is that they do not understand why they are detained. There is also the problem of access to independent advice about their detention. Our view is that the best possible outcome is for people to be properly informed by both the government through the department of immigration, and by someone independent of the basis of the detention and any rights that they may have in relation to, for example, challenging the basis of the detention itself or the conditions.

But what has routinely occurred is that people have not been given that information. Also in relation to the question of legal advice, something very important for the committee to consider is that the operation of section 256 of the Migration Act 1958, which has been applied in this way, is drafted in such a way where only if someone requests legal assistance will there be any facilitation of it. That has been applied in our experience in a very restrictive and narrow way so that, unless someone does make a specific request for legal assistance and quite often names someone that they want help from, they will not have access to that assistance. Our submission is that that provision should be amended, and we specifically refer to that in our submission, but to reflect the broader principles that we are advocating for that someone actually, as a matter of course, be provided with access to that legal help. We believe that to provide someone with the reasons in writing will also avoid a number of other serious concerns that we have identified, including the fact that very often it is difficult to find out who is actually responsible for the ultimate decision to detain or the ultimate decision to continue to detain someone. It may well, in some senses, be easier to identify the first person who identified the need for detention or the basis of detention being a compliance officer, but thereafter what has actually happened in the system and who has actually been accountable for deciding whether the basis was correct, and whether, for example, there is an ongoing reasonable suspicion of someone being an unlawful noncitizen, et cetera, has been very—

Mrs VALE—And the basis for that suspicion?

Mr Manne—And the basis for that suspicion, have been incredibly unclear. In fact, frankly they have sometimes been a mystery to even those who are involved in detaining the person.

CHAIR—If they do not know why people are being detained, then where does the instruction come from—the ether?

Mr Manne—Where it comes from has sometimes been somewhat of a mystery, not only to many of those involved from the Department of Immigration and Citizenship but certainly from those detained and certainly from those trying to help them. Frankly, as we note in our submission, often identification of those very fundamental issues which are central to the question of the deprivation of liberty have only been resolved through a matter of chance, I would say, in our experience, and that chance is that someone actually happens to be able to get on to a competent lawyer who actually looks at the forensics of the situation and says, 'Hold on, you should not be in here'. We have personally had this experience a number of times of actually looking at the person's actual situation carefully and then contacting the department of immigration and arguing that the person should not be detained, that they have been unlawfully and wrongfully detained and should be released immediately. I can also assure the committee that that has, on occasion, procured pretty much immediate release of a person. Part of our experience is that in some ways the system has relied on being able to find by chance the right person or navigate some sort of complex bureaucratic web to find someone who will stand up and say, 'Yes, okay, I will take responsibility for this' or 'I will look into this', and that to us is a completely unsatisfactory situation.

Mrs VALE—Do you think that is one of the reasons that nobody wants to give reasons or sign their name to particular decisions that are made about other human beings?

Mr Manne—Yes, I certainly think that there has been a very serious concern on that front which has potentially complex causes. But certainly there has been at times—and this has been noted in a number of federal court legal cases—a failure to have a clear system where people actually understand or indeed take responsibility for these matters. Yes, I guess on that front a symptom of that has been the failure I suspect to give reasons.

Mrs VALE—So, people's files could keep coming up perhaps to different officials, and especially if it comes up to an official that is a lesser status than the previous one who made a decision, that file will probably have the same outcome?

Mr Manne—It could well. That is certainly in our experience a real possibility.

Mrs VALE—That is a very profound recommendation of yours. Thank you.

Mrs D'ATH—Does the legal centre only give legal advice to those in detention or those also released in the community under visas waiting for a final decision or under community detention?

Mr Manne—We give advice and, at times, legal representation to people both in detention and in the community, so both.

Mrs D'ATH—How many people would you be providing advice to on an annual basis currently?

Mr Manne—We provide advice or assistance to over 3,000 people annually on a very broad range of matters. Not all of those people are detained, and many are not. We also advise people in detention on a quite routine basis and we are also a contractor under the Immigration Advice and Application Assistance (IAAA) Scheme.

CHAIR—So, the immigration department actually recommends you to people?

Mr Manne—That is right. We are actually referred cases to provide assistance when people want to apply for a protection visa in detention.

CHAIR—Are these 3,000 separate people or 3,000 separate cases? You may have people doing a couple of cases?

Mr Manne—Yes, it is over 3,000 transactions but usually with different people.

CHAIR—Fair enough.

Mrs D'ATH—Are you situated throughout Australia? Do you have offices in every state?

Mr Manne—No, we are just based in Melbourne but we go where the work takes us. That means, for example, that we have visited Christmas Island to assist people, Nauru, remote detention centres in Australia such as Curtin, Port Hedland, et cetera. We have assisted people on site at those centres.

Mrs D'ATH—Have you seen many examples of families being separated through detention?

Mr Manne—Yes, we have seen some examples of that in the past.

Mrs D'ATH—Have you been able to identify the reasons why one of the parents has been detained? Have they had it explained to them or have you been able to find out the reasons why they have been detained?

Mr Manne—Yes, in a sense the reason has sort of been simple. It has been one of the fundamental fault lines of the system, and that is what I mentioned at the beginning, I guess. The default under the law and policy has been to detain and that has resulted in, for example, a justification that at least one person, for example, the male head of the family, must remain in detention and to separate families in that way where, for example, the mother and children are placed into a form of community detention or residential housing while the father remains in detention. But at the end of the day, that has produced a policy that has been unduly restrictive and inflexible to say the least. It has actually also resulted in families staying together in detention in the past, of course, because they do not want to be separated. It has actually resulted in, if you like, prolonged detention of children because the family wants to remain united together.

Mrs D'ATH—You mention in recommendation 4, 'Decisions to detain should only be made by sufficiently experienced and appropriately trained decision makers'. Do I assume from that recommendation that your view is that we do not have that expertise currently coming from the decision makers?

Mr Manne—Yes. One of the various problems in the system has been that at times decisions to detain have been made by people who are not sufficiently experienced and not sufficiently well trained. That training would include understanding how to properly assess evidence and to apply that to the law, including—and I think this is a very important point—judicial decision-making developments.

It can be and has been the case, in fact, that courts have made findings in relation to matters that bear upon whether someone should be detained. For example, they have interpreted provisions in a way which may say that after someone has been refused, time does not run unless they have been properly notified in a certain way. Therefore someone will not become an unlawful noncitizen if they had not properly been notified, yet we have found that people have been detained when, if you understand the law properly, there should never have been a view taken that they were an unlawful noncitizen if you carefully looked at whether they had been properly notified in the first place and have therefore become an unlawful noncitizen. So it is examples like that where we believe it is crucial that those who make those initial decisions properly understand how the law and the facts can interact and completely change the picture depending on the circumstances.

Mrs D'ATH—Your recommendation seven would actually make that clear, transparent and the person accountable?

Mr Manne—Indeed, but I guess one thing that we would also like to emphasise is that the gravity of the decision to detain and that the person that is making that decision ought not only be sufficiently experienced but also be responsible and accountable for that decision. Our experience is that placing junior staff in a position where they have to make decisions that are that grave can cause serious problems of accountability down the line.

Mrs D'ATH—I am very interested to know, in a fairly recent timeframe, what is the longest period you as a legal centre are seeing as far as how long it is taking to get a final resolution to matters and what is the average timeframe in, say, the last 12 months to two years that it is taking to deal with cases?

Mr Manne—Do you mean people in detention?

Mrs D'ATH—Both people both in the community awaiting outcomes and people in detention. With your experience with 3,000 cases a year, on average how long is it taking to resolve these matters?

Mr Manne—I might take the question on notice. What I will also do is note that there is a very broad spectrum of timeframes which include up to nine or 10 years in some cases; in other cases five to six years, and in other cases, due to some very important and worthy reforms that were introduced about 90-day time limits, there has also been a broad trend away from those prolonged periods for decision making to something quite different, and that is quicker timeframes for decision making. In our submission, the question is a crucial one clearly because, in the event that people are detained, it will be crucial to meet the laudable principles of these reforms to ensure that prompt resolution of cases is achieved. There is certainly some way to go in our submission on that issue. Part of the issue will relate to proper resourcing, and part of the issue will relate to quality decision making. While there have been some improvements on that

front—and I would emphasise also these 90-day time limits have been very important—there is still progress to be made on that front.

CHAIR—I understand that some of the people who have long term issues have had them resolved recently by the minister and not necessarily sometimes the way that they wanted. Are you aware of how many people have cases that are nine to 10 years or five years? Are there any left? Can you quantify it?

Mr Manne—Yes, there are. It would not be possible for our organisation to have a full picture of how many cases; no doubt the department of immigration would. Certainly I am particularly aware of a number of cases where we have been assisting and, in one case, as I mentioned, it has been over nine years.

CHAIR—Without going into details, what is the blockage with something like this?

Mr GEORGIOU—Give us the details.

CHAIR—No, general principles with this particular issue. If you cannot, do not.

Mr Manne—Well, one of the components has been a remittal from the courts, so a finding of jurisdictional error on behalf of the tribunal which resulted in the matter being remitted back to the tribunal for reconsideration and thereafter the matter has gone before the minister. So there has been quite a long procedural history to it. Frankly, in the beginning, there has been a significant delay in the initial decision making. A lot of those problems of delay at the primary stage of decision making have been vastly improved, I emphasise again, by the 90-day time limit. It is not to say that the 90 days will always be appropriate. There will always be cases where 90 days is too short a timeframe. But our experience is that decision makers of both the department and tribunals have been working very conscientiously to try to meet those timeframes together with advisors and applicants, and it has made a real difference.

CHAIR—Good. I am pleased to here there is some progress.

Senator McEWEN—Yesterday the committee went to the immigration transit accommodation place at Broadmeadows which, as we understand it, was built to deal with people detected at the airport, but it now seems to have transmogrified into something else. Do you have a view about that, and also the nuances of the distinction between detention facility and detention centre?

Mr Manne—I have not visited the Broadmeadows facility so, again, I feel constrained in fully commenting on it. But I can take it on notice and go and visit it. Our broad submission is that we support the new policy in relation to ensuring that the least restrictive forms of detention are applied to people and we would be concerned if the facility was being used in a manner which was inconsistent with that principle. In our submission, one of the crucial questions in using that facility or any other facility is whether a person poses an unacceptable risk because, if they do not, our submission is that if those sorts of facilities provide for restrictiveness or constraints beyond community based alternatives, they are inconsistent with the new policy and should not be used. So, we do have concerns about those facilities.

The question that I am uncertain about here is how restrictive the form of detention those facilities are. For example, in our submission we have noted that we find it difficult to understand the basis of detention for health checks, et cetera. We are also concerned that, whatever facility is used, identity checks et cetera be done very quickly and be understood as to what we even mean by identity, because identity can mean different things in different contexts. Just as an example, it might appear on the face of it obvious what an identity check means and that people just think that it normally would mean name, date of birth and country of origin, for example, but identity can mean very different things in the context of someone arriving in Australia. For example, it could bleed into questions that are related to their substantive claims for protection. So, I guess coming back to your question, our concern is that we would only see those sorts of facilities as justifiable in circumstances where someone was held for a very short period and only if someone, on an ongoing basis, showed some form of unacceptable risk.

CHAIR—Can you explain a bit more your objection to health checks?

Mr Manne—Our principle objection is that we find it difficult to understand how checks on health could in practice amount to an unacceptable risk. In the normal course of processing, most people undergo health checks in the community. If there were some demonstrable risk to the community, our view would be that that would not be occurring. In fact, it is quite clear to us that someone undergoing health checks and having possible medical problems would not fit an unacceptable risk to the community which would justify detention. It may justify proper treatment and exploration of appropriate options for someone who had, for example, an infectious disease, but our understanding is that, under normal public policy and in fact in practice in this area, detention is not one of those options usually used. It is unclear to us on what basis it ought to be now used.

Senator McEWEN—We do not test tourists for TB or sexually transmitted diseases, do we?

Mr Manne—No, we do not. Let me give you a simple example. Our organisation assists many people each year who arrive on a valid visa and then apply for a protection visa, and at all times they remain in the community. These are people with very compelling claims where there is a very high success rate. As part of the application process, these people are required to undergo a medical examination by law and cannot be granted a protection visa if they do not. So, it is mandatory. At no point is there any consideration of detaining that person while they undergo the checks; far from it. Normally the concerns, if they do have medical problems, are about ensuring they are provided with proper care and are not placed in a situation where medical conditions could be exacerbated. All the evidence is that detention has a real capacity to do that. So it is just unclear to us. Our submission would be that there would need to be a proper justification for it, and we cannot see it.

Mr ZAPPIA—Thanks for your submission. You make the point that you provide a free service to your clients. Who funds your service?

Mr Manne—Broadly speaking, there are three different sources of funding. One of them is philanthropic funding—philanthropic and donations. The second category is a self-funding mechanism through providing professional legal training to people who are migration agents or who want to practise in the area. The third is government funding, both state and federal.

Mr ZAPPIA—In recommendation 5, you believe that decision makers should be identifiable, known and contactable. Why do you say that? What is the benefit in having that recommendation?

Mr Manne—The benefit, in part, is related to procedural fairness and also to proper and transparent decision making. On the question of procedural fairness, one of our experiences, as I have mentioned before, id that it has often been difficult to identify who is actually responsible for the decision to detain or indeed ongoing detention—not only the grounds of detention but also the conditions of detention. If it is hard to find the person responsible, it is very hard to seek remedies, and it has often been a matter of chance or a matter of complex navigation of a complex system in order to just find the person who might be able to answer the questions that you have about why the person was detained, why they are still being detained, and the conditions.

Mr ZAPPIA—Yes, I can understand the reasons behind it. I do not quite understand why those people ought to be identified.

Mr Manne—Identifiable. We are not so much talking about a public naming session or anything like that. What we are talking about is that, within the system, for example, for the person detained or for their lawyer or for others that are supporting them in other capacities—health or welfare—that it be clear who is responsible and accountable for those sorts of decisions on the question of detaining someone or the type of detention. The principle reason for making that recommendation is that in the past, frankly it has not been clear, and that has caused very, very substantial problems in the system.

Mr ZAPPIA—Can I just follow that through? Are you suggesting or implying that when you are dealing with the department, there is what I would describe as buck passing from one person to another in terms of who you should be dealing with?

Mr Manne—Yes.

Mr ZAPPIA—Okay. The third question relates to the question of bonds in recommendation 17. Again, you are suggesting that there should not be the use of bonds or that they should be abolished. Why so, given that bonds would be used in what I would call normal judicial decisions every day?

Mr Manne—There are two main reasons for that recommendation. One is that, in our view under the new policy, it would be inconsistent to impose a bond because the key question with respect to detaining someone or releasing them is whether they pose an unacceptable risk to the community. In the event that there has been a determination about that question, our submission is that it would be unnecessary to go to that further length of actually imposing a surety or bond. Frankly, a person is either a risk or they are not. The second key submission on that point is that, in practice, the imposition of sureties or bonds has often been unduly restrictive to the point that it has become really a theoretical exercise. Often the imposition of the bond has been manifestly unobtainable by the person detained, for example, figures of $10,000 or $20,000. Our submission is that it is unnecessary. The question is whether someone represents a risk, and that should be determined on the basis of other matters, not the imposition of a bond.

CHAIR—Is that what you are referring to in your rather colourful introduction when you were saying that other countries do not have bonds or other monies that they require from asylum seekers, refugees or people who are in detention?

Mr Manne—The reference in the opening was not so much to that but rather to the imposition of debts or costs of detention, which is quite a separate matter. On the question of bonds and sureties, I guess the other key submission that we would make is that there is no substantial evidence of a widespread problem with people absconding. Another basis of that submission is that actually all the evidence is that treating people properly and humanely, providing proper material support and proper legal assistance in the community, has the far greatest chance of ensuring that prompt status resolution, whatever it be, is achieved rather than harsh measures such as detention or imposition of bonds, et cetera.

Mr ZAPPIA—Are these bonds set by the department or by the courts?

Mr Manne—They are imposed by the department or the tribunal depending on at what point the person is seeking release.

Mr ZAPPIA—Okay, so it is not a departmental discretion that it can issue a bond?

Mr Manne—Incidentally, the whole question of bonds and sureties arises in relation to not so much people who are so-called unauthorised arrivals coming to Australia and seeking asylum, for example, but rather to people who originally entered on a valid visa or were immigration cleared and then, for example, were over-stayers and placed in detention. Those people can seek release on a bridging visa, and in those circumstances either the department or the Migration Review Tribunal, on appeal, can impose a bond.

Mr GEORGIOU—I would like to put on record that this is my day for being nice to everyone. I express my appreciation for the fantastic job that you and RILC have done, not least your ability to straddle taking money from the government and maintaining a high degree of autonomy. Do you think there is any way in which the values can work unless there is a precise definition of criteria for detention and what those criteria mean?

Mr Manne—No, and the fundamental reason is that our experience at times has been a rather strong and somewhat painful experience, but it has been far more painful for the clients we have assisted, where there are not proper clear criteria in relation to matters such as detention or form of detention, what you end up with routinely is an unregulated, unaccountable and unfair system which, not by design but by outcome, routinely results in prolonged and particularly harmful detention. In our submission, at its heart, the success or otherwise of these reforms will depend upon clear, comprehensive criteria which are publicly known and properly applied.

Mr GEORGIOU—The new principles have, as part of their implementation, a review after three months by a departmental officer of a departmental decision, with a possibility in six months of an ombudsman who cannot discharge his current functions of reviewing the review. Is it acceptable in any reasonable sense of acceptability that people are detained and that decisions to detain and to hold and to protract the detention is reviewable by essentially the authority that made the decision in the first place—not that I am putting words in your mouth?

Mr Manne—No. The proof is in the submission that we provided which addresses that issue, and our submission is that that part of the policy is unacceptable. It is objectionable at its core, principally for two key reasons: one is that three months is far too long to review someone's detention; and secondly, any review should be an independent review. Internal review, in our experience, is wholly inadequate as a necessary and basic safeguard. There are well established international and domestic principles in other areas of domestic law about the importance of independent decision making. The model that we would recommend on this front is one where there is that, within a very short timeframe after the decision to detain by the department of immigration, there is independent and ideally judicial scrutiny of that decision, and that there be periodic reviews thereafter of that detention by ideally a judicial officer. Our experience has also been very direct in relation to internal reviews of matters in some areas of the migration system, and our experience has been that it has often been a wholly inadequate safeguard. Often the same poor decision has been reached for similar reasons.

CHAIR—Mr Georgiou might be right about the Commonwealth Ombudsman being overtaxed or the staff being overtaxed, but do you not consider them independent? Are they not suitable as an independent reviewer of decisions made in the department?

Mr Manne—Certainly not. We certainly commend the policy of a continued role of the Ombudsman in relation to oversight of detention. But the Ombudsman would not be appropriate in relation to review scrutiny which challenges the basis of the detention.

CHAIR—Why not?

Mr Manne—Because the decision is unenforceable. Really there needs to be two layers: one is an enforceability mechanism under the rule of law where someone can challenge the basis of their detention or ongoing detention, and that should be done under the normal rules that apply under the Australian legal system for a judicial officer, and then there should be an additional layer of oversight by the Ombudsman. We have submitted that the current policy is inadequate, partly because there is no reference to how the Ombudsman would go about this and, for example, whether it would be tabled in parliament. We say that reports, including full responses by government, should be required and should be tabled in parliament, and that six months is too long. It should be a shorter timeframe. Our real concern on this front is our understanding is that the Ombudsman is having real difficulties with keeping up with the current review timeframes and current review workload, and again this comes back to this issue of proper resourcing, but if these reforms are to be properly implemented, they must be properly resourced. We think in the way that the broad policy has been framed the Ombudsman's role at the moment lacks teeth. It is not clear, for example, that government would be required to provide full and adequate responses and that they would be publicly available. We believe it is essential, as a matter of basic accountability and transparency, that that occurs.

Mr GEORGIOU—Have you been to Christmas Island?

Mr Manne—Yes.

Mr GEORGIOU—Have you seen the new facility?

Mr Manne—The new maximum security prison, yes.

Mr GEORGIOU—Is it your judgment that any vulnerable person could be detained there without there being a real prospect that they will be done significant damage?

Mr Manne—I was struck by a number of characteristics of the Christmas Island facility. One of them was that it had all of the hallmarks of a maximum security prison in almost any aspect that you could image, and that having toured the centre extensively, the conditions of it had the inherent capacity to operate in a cruel, inhuman and degrading way on people who, let us remember, in almost all cases, would be innocent people seeking protection from persecution. It is difficult to imagine how detention in that facility could not cause harm.

Mr GEORGIOU—Thank you very much.

Mrs VALE—When you look at your recommendation five about the identification of the decision makers on detention, that might solve a lot of other problems, would you not think, on the basis that if a person had to, they do not then have the cloak of anonymity that they have today, and there is nothing that quite focuses the mind like a hanging, even if you are a decision maker and you have to put your name at the bottom as to why? With respect to that decision making process, is it done today like on the face of the record or is it done at a personal interview with the prospective person to be detained? Does the decision maker have an opportunity to talk to the person that they are about to detain or not, or is it made just on the paperwork?

Mr Manne—Given the lack of clarity as to the process, it is actually very difficult to say each time a person is detained how exactly it happens. Also, the fact is that rarely when someone is detained do they have a lawyer or an advisor with them. It has not been common practice, in our experience, for someone to be able to make that phone call to a lawyer, for example, that would be normal ordinary practice under criminal law. Our understanding is that interviews conducted by the department with people in relation to whether to detain do occur but are often very brief and perfunctory, and the evidence upon which it is based may not be recorded in any proper way whereby it can then be scrutinised. In part, the evidence on which we base that experience is that, when people contact us having been detained, or when they have done this in the past, they have been very confused as to the basis of the detention. There needs to be some substantial improvements as we have noted in that practice.

Mrs VALE—Do you know any other area of public law that impacts on human beings so greatly as this area where the issues of natural justice and procedural fairness are not respected?

Mr Manne—No, I am not. It is actually a matter which in our view is often neglected. Our submission is that not only have these practices, or the failure to apply matters such as procedural fairness in this context and the detention policy itself, violated international human rights law in a flagrant way but they have actually done something particularly serious in relation to our own legal system. They have deviated radically from ordinary principles that generally apply to the treatment of individuals in Australia in our legal system such as according procedural fairness, such as the ancient right of habeas corpus—that is, the ability to challenge the basis of your detention, such as the basis of detention itself, the very basis which normally under Australian law requires protective reasons. So, in our submission, there has been this fundamental departure which, in and of itself, is a concern.

Mrs VALE—Thank you.

CHAIR—Mr Manne, thank you very much for your submission and for your appearance here today to answer all of our questions. We will now take short break.

Proceedings suspended from 10.43 am to 11.02 am

COLEMAN, Ms Caz, Project Director, Hotham Mission Asylum Seeker Project

MENDIS, Ms Stephanie, Casework Team Leader, Hotham Mission Asylum Seeker Project

CHAIR—Welcome. Do you wish to make a statement or give some introductory remarks?

Ms Coleman—Yes we do, thank you. Firstly, I would like to thank you for the opportunity to appear before you. The Hotham Mission Asylum Seeker Project welcomes the announcements by government in relation to detention conditions in Australia. We also welcome the value base of the announcements. However, we recognise that in these announcements there has been little attention to the care and management of people released from detention, a crucial element about which Hotham Mission Asylum Seeker Project appears today to provide our expertise and experience to the committee.

The lack of community care concerns us as an agency that provides minimal support to hundreds of people who have been left destitute in the community whilst awaiting determination of the outcome of their protection application or ministerial request. A number of these people have had detention experiences and continue to live in the community in destitution, denied the right to work, Medicare or any form of income. Our agency pays them $33 a week to live on. We do not claim to be addressing their basic needs nor can we claim to be curbing the inevitable mental health complications that arise from long-term destitution.

The values that the minister outlined in relation to detention policy reflect a new era in the treatment of detainees; they speak of fairness, dignity, last resorts and unacceptable conditions. We welcome these changes, however these values do not reflect the way we currently treat the majority of people in protection process in the community, including those who have been released from detention. I believe it would not be an exaggeration to say that we do not currently have the capacity to uphold these values in community care upon release from detention.

I want to illustrate that by paraphrasing the values that the minister outlined in his detention announcements in July in relation to the way Australia treats detainees. I have replaced the words ‘detention’ with ‘destitution’ and ‘immigration detention’ with ‘community’, to compare the new approach to detention with the current conditions and community. I am reading from value 3.

‘Children will not be destitute in the community.’ Unfortunately, Hotham Mission supports 114 children under the age of 17 whose parents have no access to an income. These children have no food security and cannot access basic healthcare or safe housing.

‘Destitution that is indefinite or otherwise arbitrary is not acceptable.’ The 45-day rule is the reason many of our clients have been denied the right to work. The rule is arbitrary and can result in indefinite destitution in the community.

‘Destitution in the community is only to be used as a last resort and for the shortest practicable time.’ One hundred and ninety of our clients have been in Australia for five years or more with no form of income, no access to healthcare and no right to work.

'People in the community will be treated fairly and reasonably within the law.' The provision of minimum entitlements for asylum seekers in the community is embedded in Australia's international obligations and arguably in our interests.

'Conditions in the community will ensure the inherent dignity of the human person.' Last year, our agency worked with 366 people for whom there was no dignity in being forced to live on $33 a week. This money is from community donations. They are denied the right to work, the right to basic healthcare and the right to dignity in the community.

We welcome the opportunity to talk to you today because we do not want to forget that the dignity of the human person does not end with their treatment in detention but with the measure in which we care for them upon release. Thank you again for the opportunity to appear.

CHAIR—Thank you. Ms Mendis, do you want to say something too or do you want to respond in questions?

Ms Mendis—Yes.

Mr GEORGIOU—Thank you very much for the submission, both for your personal insights and for the very useful bit on international comparisons which are actually fascinating. In terms of support for people outside of detention, can you tell us what your organisation actually does? I would rather hear it than try and feel my way through the words.

Ms Coleman—The primary focus of the support we give is around housing, financial support and casework that surrounds that support, so immigration accompaniment. We also provide some social support programs. As you know in visiting Asylum Seeker Resource Centre, there are other agencies in Melbourne providing support. We work collaboratively to try and service different needs for clients. The bulk of our work is in sourcing free housing for asylum seekers. We receive donations from community and religious organisations in which we house asylum seekers who have no ability to pay for housing or find housing themselves. Alongside that, we pay people, as I said, $33 a week to live on. The priority for us is for people with absolutely no income and no support in Australia. We do not claim the $33 a week is a liveable income but that costs us between $20,000 and $30,000 a month. The difficult thing for us is that many of our clients do have the skills to work but have been denied the right to work and so they are forced to rely on the services that we provide. Casework is an important part of what we do. It is not just in finding housing and financial relief; it is in helping people navigate the immigration process. Ms Mendis, as our team leader, does a lot of work with people in accompanying them to the Department of Immigration and Citizenship or with navigating the other legal and other health supports that come alongside that.

Mr GEORGIOU—Can you tell us how much money you receive from the Commonwealth and have you made any approaches to the Commonwealth for money?

Ms Coleman—We do not receive any funding from the Commonwealth. We receive five per cent of our budget from the state government for emergency relief, which is about $50,000 a year. We are part of the Community Care Pilot national reference committee. We have had discussions with government about funding our service. Unfortunately at this stage, the funding that is available for asylum seekers in the community is being directed through the Red Cross

which is providing services under the Asylum Seeker Assistance Scheme and the Community Care Pilot. We would argue that our case management complements a lot of that work. An example would be part of our immigration support. Do you want to give an example?

Ms Mendis—We have a lot of clients who are fearful of going to Immigration so we accompany a lot of them, if not all of them, to Immigration appointments. A lot of our clients would not go without us. A lot of our clients are nervous upon going, so we spend a lot of time preparing them for the outcome that we know is coming. We spend a lot of time sitting with them after the outcome has been given, including a lot of our clients who have been on many ministerials and become suicidal upon being told of their final decision. We have many clients who we work with on suicide watch on suicide contracts and all the casework that goes along with the housing. An important thing to note is when Caz says we provide free housing, it is free for our client but it is not free for us most of the time. We pay a large amount of rent and given that people are in their houses with $33 a week per person, we have to source food, we have to pay for utilities and we have get kids in schools. We also have to support families through all of the mental health issues that go along with being destitute.

CHAIR—Is the budget a public domain figure? Where do you get most of your income source from?

Ms Coleman—Ninety five per cent of our budget comes from community and philanthropic donations. This year's budget is $1.1 million. We have been working this year with around 260 people, so about 123 cases. Across a year we generally see about 360 people. Again, I would like to preface that by saying that the amount of money we spend is not a sustainable living wage, but it is also not necessary. Many of the clients that we work with have skills, could work if supported to do so and given the right to do so. Part of what we would see as a solution for adequate community care is a combination of support in the community through the model like the Community Care Pilot, but also the grant of work rights. Self reliance is the best option for people. In 2005, the Network of Asylum Seeker Agencies in Victoria did a skill audit of people.

It was copied by a service in New South Wales. Of the 211 people who were interviewed, 70 per cent had skills on the general skilled migration list and 40 per cent had skills that were in demand. I must say the results shocked us. We were surprised to see that. Again, with a right to be able to work and adequate support in order to do so, these are skills Australia needs. People also need an income to provide for themselves and their family. It is actually not a case of taking Australian jobs or of abusing a process. There is actually a win-win option here. We would like to see that as part of a solution for community care, not only for release from detention but also for those who arrive on a valid visa and remain in the community upon application for protection.

CHAIR—Before Mr Georgiou proceeds, can I just ask you so I have got it clear in my own mind, people who access your service and get your assistance are discrete from the Asylum Seeker Resource Centre and they are discrete from the people who are involved in the Community Care Pilot project. Are they different groups of people or do they intersect?

Ms Mendis—We have some overlap with the Asylum Seeker Resource Centre in that most of our clients have no access to Medicare so the only place to receive free medical treatment is the Asylum Seeker Resource Centre. In terms of case management, the case management of our

clients is our own. We might refer to the Asylum Seeker Resource Centre but we manage our own. None of the clients that we have included today are in the Community Care Pilot. The ones who we refer to the Community Care Pilot we release case management to the Community Care Pilot.

Ms Coleman—We have made recommendations around providing guidelines and appropriate community care. We think that the Community Care Pilot is a great model and we support the model. There are still changes I think that need to be made but at the moment it is a pilot. Eight of our cases have been accepted into that pilot out of 123 this year. You can see that it is not large enough in the sense of covering people who need support and who are left destitute in the community. Having said that, the comparisons financially are significant. This morning Noel Clement talked about the number of people in the Community Care Pilot; that budget this year was again renewed at $5.6 million. If the 211 people I talked about who were in that skills audit were given the right to work, we have economically costed that to be a $26 million contribution to the Australian economy over three years. We will actually gain if we are able to grant them the right to work and support to do so rather than bear a cost in supporting them. We do not need to. We will need to support some people who will not be able to work and do not have the resources to do so but many do not need it. We may need to provide some transitional housing options such as transition from detention to community, from entry visa to protection visa, but generally long-term self-reliance is the best option for our clients and also for Australia.

Ms Mendis—We have got a great example of a client who missed the 45-day rule when he arrived three years ago. He was not aware of the 45-day rule when he arrived here. He has a master's in social work. He has been denied the right to work for three years. His mental health has deteriorated because he frankly has nothing to do and he is living on $33 a week. He has recently been linked into mental health services and has been deemed unable to work due to his mental health issues. If he even does get a visa now he will be a greater cost to the community than he would have been if he had been allowed to work.

Ms Coleman—Another example I think that is interesting to highlight is around the contribution of work rights. We have had a number of cases actually where heads of families, males, have come out with their families and have either lost their work rights at a stage in the process or been denied work rights from the outset. Through a combination of factors, including not understanding that process, and others including destitution and having children in the community, they have worked and they have been caught working and been put in detention. They have spent time in detention, a bond has been paid for them and they have released out into the community. One example would be a case where just recently the family got an intervention by the minister. They have been in Australia for 11 years. That family were living in the community without work rights, without an income for seven years. They have got three children, twins at three and a boy at the age of 10. Those kids have been their entire lives struggling on $33 a week. The housing that we have been able to provide has been through a pro bono gift.

CHAIR—They were with you that entire period?

Ms Coleman—They were with us for seven of those years.

Mrs VALE—What was the outcome of that particular case?

Ms Coleman—They were granted a visa; they got a visa after 11 years.

Mr GEORGIOU—What amendments need to be made to the Community Care Pilot and is it capable of being generalised, that is, going from a pilot to a fully fledged program? What are the impediments to it going from a pilot to a fully fledged program?

Ms Coleman—I think the impediments at the moment are fundamentally the fact that we currently have three different programs supporting asylum seekers in the community. You have heard from Noel this morning about the Asylum Seeker Assistance Scheme; there is also the Community Care Pilot and the Community Detention Program, all of which the Red Cross administer, all of which have different budgets and all of which have different criteria. We would see that the Community Care Pilot is the most flexible and the most appropriate to respond to people in that situation. I do think that it is the model to be expanded and that there is a time in which we need to look at that whole context and bring them under the one umbrella. Some of the changes that need to be made are around criteria for entering into the program. At the moment there is a criterion that involves destitution plus a number of other triggers. Unfortunately amongst our client group, the priority of putting up a referral to the pilot means that we can see destitution and probably at least four of those triggers. A number of our people would be eligible but there is just not enough space to let them in.

Mr GEORGIOU—When you say not enough space, what does that mean?

Ms Mendis—To be able to get into the CCP program you must have a case manager through the Department of Immigration and Citizenship, DIAC, and up to 50 per cent of their caseload is taken up with detention. One of the triggers that they use is isolation in the community. What they often say is, 'Because they are with Hotham Mission, they are not isolated.' We admit that with the $33 a week and with the case management with the caseloads that we have, we are not providing the highest level of care that they would get in the CCP program.

Mr GEORGIOU—A catch-22.

Ms Mendis—Sometimes we find that the CCP Red Cross program is not at capacity but DIAC case management is at capacity so we cannot get our clients into the Red Cross.

Ms Coleman—I wanted to point out that when we look at changes into the future around either expanding Community Care Pilot or about conditions of community care, we do need to acknowledge that there has been a group of people here for an extended period of time. Their issues are more complex than what we are going to see when people start arriving for whom we will have a shorter and more accountable processing period. We are going to see a different flow once we put those things into place. At the moment, 50 per cent of our clients have been here for more than five years and for most of that time they have not been able to work. Mental health implications of long term destitution are significant. If you put people in the community with no ability to feed, house or support themselves or support their children, you are going to end up with complicated mental health factors long term.

Ms Mendis—The majority of the cases that we deal with are managing people with long-term depression and post-traumatic stress and the issues that go with that.

Mr ZAPPIA—Thank you, Chair. Two questions: those people who have been here for longer than five years and that are currently out of work or not employed, what proportion of them do you believe are genuinely employable? By that I mean, if you took aside those that perhaps have health issues, mental health issues, or might be elderly people, how many of those people could still find work if they were allowed to do so?

Ms Mendis—I would go as far to say most of them; in fact I think a lot of our clients spend most of their day searching for work. The other problem is that the minister often grants them a one-month or a three-month visa and no employer will touch someone on a one-month visa. They are unable to find the work even if they get the work rights.

Ms Coleman—I think the other difficult thing about that is they are also not eligible for any of the mainstream employment support services, so they are trying to find a job without that support when they have come to the country even with skills. There are basic things that any person would need to do in order to be able to step into a workplace when you have come from another context, such as regarding occupational health and safety and workplace orientation. Without that support as well, it is difficult to be able to find employment.

Mr ZAPPIA—My next question relates to the number of children and perhaps even those that are unemployed. Is there any particular nationality that is over represented in those statistics?

Ms Coleman—I can only speak for our clients. We have clients represented from 38 countries around the world. The highest grouping of our clients would be from Sri Lanka, at about 30 per cent.

Mr ZAPPIA—Thank you.

Mrs D'ATH—In relation to your clients and the experience of the 45-day rule, what is the reasoning behind most people actually missing that timeframe?

Ms Coleman—People come in on a valid visa that is generally longer than 45 days. They may have entered the country for whatever reason—they may be scared, they may come to safety or for any reason really, but they have a visa that is valid for three or six months. Generally people are not informed about the 45-day rule so they do not realise. They will wait for the end of their valid visa before they apply for protection but once they do that, they have missed the 45-day rule. The other significant reason is inappropriate legal advice. Often migration agents or lawyers do not advise clients about the 45-day rule. Other reasons might be a change of circumstance in their country of origin which leads them to apply and of course it is after the 45-day time limit.

Ms Mendis—There is also a lack of English; some of our clients cannot speak English upon getting here so even if they were provided information they would not understand it. Therefore they go to their community lawyers and then again the community lawyers do not know. There is a lot of misinformation.

Mrs D'ATH—Your submission described current community release arrangements as inadequate and inconsistent. Can you just explain that a bit more for us?

Ms Coleman—In the submission we outlined the main funded community related programs; there are also unfunded programs in the sense of non-Commonwealth government funded programs. We certainly fit into that in terms of the support and care that we provide being funded by the community. In terms of detention release, this actually comes out through our statistics of the number of people we used to support coming from detention. In 2003 it was 58; in 2005 it was 31. At the moment we have nine out of that total caseload that have had a detention history. The reason that has been the case is a combination of things—the Community Detention Program that was introduced through the Red Cross and also case management that has been introduced in detention and upon detention release. The department will now often see the clients that we would have seen upon being released from detention.

I think they are inadequate in the sense that the services provided within that case management are limited, and that is not necessarily the fault of the department; we currently have a massive housing crisis, as I am sure many of you know. Unfortunately in the latest green paper that was put out by federal government, there was no provision for discussing asylum seekers in the community. Part of our recommendation is also to look at a whole of government approach when looking at solutions for this group. It concerns us that at times it is not the way that the case management has been structured; there are a whole lot of other reasons that prevent the ability to source housing or community support for people in the community. It is not necessarily the department's fault.

Ms Mendis—For example, if any other person in Australia was homeless they could go to a homelessness agency and access the Housing Establishment Fund, which is a funded program to each of the housing agencies. Asylum seekers are not eligible for that even though they are living in the community. Whether they are on the CCP program or even with us, asylum seekers cannot even access mainstream housing services.

Mrs D'ATH—How do you believe we can expedite or improve the case management and the timeframes for processing these claims?

Ms Coleman—One of the key elements that we observe in our role is that case management has been a welcome introduction by the department. But, case management in the community as an independent form of support for clients is just as valuable. Returning to Ms Mendis' example, for every five minutes a client is in at the department receiving a decision, we spend another five preparing them and helping them understand the outcome. We work alongside government, alongside the department in preparing clients for those messages. We understand that people will need to return home. In fact more than 50 per cent of our clients will return home, and we support that decision where it has been a fair and just process. We help clients come to terms with that and support them to find a place to return to.

In terms of expediting the process, some of it is legal and I would refer to some of the submissions you will have received from the Refugee and Immigration Legal Centre and others. There are problems in the system in terms of repeat ministerial decisions, in particular, and timeframes for that. One of the key issues is that trusted independent legal advice is not freely accessible and not accessible at the start of the process. We only work with people really who are appealing the refugee status or have received a refusal from the Refugee Review Tribunal. We often see people with inappropriate legal advice, and with badly prepared submissions to the minister.

Ms Mendis—Or no legal advice at all.

Ms Coleman—Or no legal advice. There may have been a willing and passionate community member who has put in a letter that has triggered a request to the minister on behalf of someone else who may not have even seen it, and certainly does not cover the issues that that person wants to represent. There are a number of concerns that we would have about the process that is currently set up. We also understand that the government is keen to look at that as well, and we support that.

CHAIR—We heard advice from our last witness that people are not advised of their legal rights and that often leads to complications further down the line. Unless people ask for a lawyer or ask specifically for X lawyer from X firm, they do not get it. Is that your experience?

Ms Coleman—Yes, there is very limited free legal advice available at the start of the process. There is no legal advice available post the Refugee Review Tribunal in the sense of Immigration Advice and Application Assistance Scheme, IAAAS, support. We often see clients who have put in one, two, three, four or five ministerial requests, sometimes because the first, second and third were not adequate. They had finally found some trusted legal advice to put in a decent request at number four. We would like to see the first attempt to be an adequate request. There are two reasons for that: firstly, is it is the best for the client; secondly, it is not helpful for people to remain in Australia for extended periods of time only to be returned after five, six or seven years. It is very difficult to ask children who have been born in Australia and lived in Australia to return to a country of origin they know nothing of and do not speak the language. It would be much better for us to have a shorter processing time so that if they are refused, people can go home quickly for their benefit as well as for ours.

Ms Mendis—Another benefit of getting good legal advice early on is a lot of our clients who have received bad legal advice to start with are fearful of ever approaching a lawyer again and require a lot of case management support to actually get to something like Victoria Legal Aid, VLA.

CHAIR—Can I ask you a more basic question? Everyone has been talking about clients this morning and I just wonder about that. I am sorry it maybe a side bar, but as a term, especially with people who are destitute, I almost feel like they are approaching Clayton Utz or some big city law firm. Did this term start to be used during the previous government or does everyone use it?

Mr GEORGIOU—We used queue jumpers.

CHAIR—Confession, confession. Has the word ‘clients’ always been used and is it possible to use another word?

Ms Mendis—It is possible to use another word. Client is a common term in social work in that we are providing a professional service. In different sectors there are different terms, for example, in the youth sector, they are young people. We use clients because we are providing a professional service.

CHAIR—There is no denigration of that professional service but it is confusing me because you are describing people in very strange circumstances and I do not think of them as people who are getting professional advice from BHP about their investments.

Ms Coleman—In terms of language it is powerful, so you are right. Different sectors, like I said, call people different things.

CHAIR—Language is very powerful and you could inadvertently be making mistakes when presenting this to the public.

Ms Mendis—We could look at calling them survivors.

CHAIR—There is probably some word that is better.

Ms Coleman—We will review our language, thank you.

Mrs VALE—First of all before I get to the question I really wanted to ask you, the family that interests me is the one that has been here for 11 years. Do you have any understanding of what changed in that time? Why did it take 11 years to actually decide to grant them a visa?

Ms Coleman—We do not fundamentally know because of course it was an intervention by the minister and the minister is not compelled to provide reasons for that.

Mrs VALE—No, that is true.

Ms Coleman—In that particular case there was a protracted period of time for a number of reasons. Again, there was a period of time at federal court and I would need to check, but I think there were multiple ministerial requests. It is an extreme example, but it is one for which the outcome was a positive decision, as in a decision to stay in Australia, but it provides an example of what we do not want to see in the future.

Mrs VALE—Also there were children involved were not there?

Ms Coleman—Yes.

Mrs VALE—I can imagine how horrendous it must be for a young child who was born here and spent the better part perhaps of that 11 years here, to have to go to another country when particularly we need children in this country. That brings me to the statement that you have got here in section 3, where you say that you found:

A large percentage, around 40 % of clients, are family groupings, including 14% single mother families, with almost 30% of clients being children under the age of 15.

Ms Coleman—That is right.

Mrs VALE—Do you see a conflict here in broader government policy because we really do need people, we need children because they are our future and yet here we are making it very

difficult to accept children? First of all do you see a conflict? To me there appears to be a glaring one but I would just value your opinion on that?

Ms Mendis—A lot of those children are born here.

Mrs VALE—One could say they are home grown Australians.

Ms Mendis—Yes, and a lot of our clients when forced to think about the idea of having to go back to their country of origin think, 'Well, my children do not even know the language of that country, they only know English.'

Mrs VALE—Horrendous complications.

Ms Coleman—I think there are lots of elements that we actually need from this grouping as much as they need from us; one of them is social inclusion. The circumstances that we are describing include being prevented from access to employment and to many of the mainstream services including schools and extracurricular activities. Children can access schools but often cannot afford to do the extracurricular activities that go along with that. When looking at social inclusion as a group, part of the policy we have at the moment is putting these people right outside the community. We are not even giving them half a chance to contribute to Australia and yet we need it, I think you have highlighted that.

Mrs VALE—There are two other policy imperatives here: we need children and also we need skilled workers and your skills audit is really very informative. I cannot understand why but do you understand the reason or could you give us the reason for the fact that there is a prohibition on working in the community?

Ms Coleman—The previous government was fairly clear about the reason for bringing that prohibition in. This is not a direct quote, but I can substantiate that it was said to me, 'If you leave people in the community for long periods of time with nothing, then they might go home.' I would like to reiterate that this is a lawful process. We have policy in Australia that people can lawfully apply for protection at primary, review and the request stage to the minister and yet, we have a system that encourages people through abusing them through long-term destitution to give up their right to engage in that process.

Mrs VALE—We also need people here and we need work skills here.

Ms Coleman—That is true.

Mrs VALE—Also you spoke about the impact of long-term destitution on your client base, but particularly the impact of long-term destitution on their children. Considering you have 30 per cent of clients under the age of 15, would you like to give us your understanding about the impact of long-term destitution on those children?

Ms Mendis—One of the major impacts on children is that they have to watch their parents deteriorate mentally because they have no right to work, nowhere to go and no ability. It is a basic sense of pride and responsibility to provide for your children and they cannot even do that. They have to go from service to service begging, often with their children in tow. Often children

have to take time off school to help them go and get food items from the Asylum Centre Resource Centre because the parents have no car in which to take them home. We have spent money on excursions, uniforms and school books because parents cannot afford the basic things for children to go to school. There are even impacts in terms of basic health for their children. We are talking about getting $33 a week from us and then traipsing around agencies looking for food. The food that is given is basics like rice, lentils and dry goods. So, children do not get fresh milk, they do not get fresh bread, they do not get any meat or protein. There are long-term health effects from that too. We have also seen a lot of depression in children from having to take over the parent role, given that their parents have deteriorated.

Ms Coleman—I would just like to complement that by reminding you that mainstream agencies have not been able to support this group because they receive federal funding. Mainstream agencies that have programs that are federally funded will not support this group. When we talk about traipsing around to agencies, we are talking about community funded agencies.

Ms Mendis—Our asylum seekers do not have Health Care Cards so they cannot go to their local healthcare agency and access food vouchers because you need a Health Care Card. They do not receive concessions on any of their bills; they do not receive concessions on public transport. They may have to pay for a $10 transport ticket on $33 a week just to get to an agency. A lot of our asylum seekers again have received parking fines, public transport fines, et cetera. We have recently advocated for two children to receive a free ticket to get to and from school every day because their parents could not afford to sent them.

CHAIR—What happened?

Ms Mendis—Metlink gave us two tickets for four months only. I do not know what we are going to do in four months but we might have to try again.

Ms Coleman—The challenge that we have is that the housing donated to us is all over Melbourne; unfortunately we do not get to choose where it is. It comes from the generosity of community members with investment properties or religious organisations who have spare housing. The people we work with are housed all over Melbourne and that brings challenges to us in working with them.

Mrs VALE—This is all basically because of the particular category classification of how these people actually come to Australia. Is this a consequence of their category classification?

Ms Coleman—It is a consequence of the time in which they apply for protection. I should point out too that as I mentioned, most of the people we work with currently have a request into the Minister for Immigration and Citizenship for humanitarian intervention. At that stage they lose whatever work rights or ASAS they had. I think you heard from Noel Clement this morning that post RRT they lose those benefits. That is when the Red Cross and ourselves work very closely; they will refer straight into us once they lose all of their benefits.

Mr GEORGIOU—Sorry, it is also if you appeal judicially post RRT?

Ms Coleman—Yes it is unless, there are different visa categories. Yes, for the people we work with, that is definitely the case.

Ms Mendis—For example, we have a woman who met the 45-day rule, did all the right things, she kept her work rights and was able to work to support her husband who had serious mental health issues. She was his primary carer plus she had a six-year-old son. She not only managed to work full time but she studied part-time and finished an accounting degree while she made it through the judiciary process. Then she went to the minister and lost her right to work. Part of her accounting degree was the university would place her in employment at the end but she lost her right to work and therefore missed that placement. She then came to Hotham destitute after all that time working. The loss of pride and loss of hope meant that her mental health deteriorated. Even now, she has been actually granted work rights provisionally on health and character grounds while she gets her health and character checks done, but again she has been deemed unable to work because her mental health has deteriorated over the time that she was destitute.

Mrs VALE—What is the reason that people cannot work when they are put on appeal to the minister? What is the logic behind that?

Ms Coleman—I am not sure, you would probably need to ask the department of immigration that.

Mr GEORGIOU—It says you are at the end of the road, just go.

Ms Coleman—It is a lawful process that we provide provision for people to do and yet we provide absolutely nothing for them to live on. One could only assume that the reason is deterrence.

CHAIR—Can I ask you one final question. Do you deal with any clients in temporary alternative detention such as hospitals? Do you have any views on the Melbourne Immigration Transit Accommodation centre which we visited yesterday?

Ms Coleman—We do not currently work with anybody in a residence determination setting. Prior to 2005, we did have three cases and that was before the Community Detention Program that the Red Cross now administers. Our experience of that was that it was an extremely difficult process to manage. It compromised our service and also we felt the health and welfare of the families for whom we were caring. The major problem with that was the line of sight requirement which I believe now is different but it meant that when anyone left the property they would need to be accompanied by somebody.

You can imagine that became quite impractical and also damaging to the people we worked with. So, we do not currently do that work. I have visited Melbourne Immigration Transit Accommodation. I was pleased to see that it had some services within it that I was not expecting; I felt it was a good centre. I think there are some problems with food service provision that need to be improved. My concern with the centre is that it does not become a community release option. We have heard the announcements from the minister about community release. My concern is that conditions around community release become just that—into the community with

dignity and our support. If there are limited airport turnarounds, my concern is that it not become a place where people are housed as a low security option.

Mr GEORGIOU—I think that is what we need.

Ms Coleman—We would have serious concerns if that were to happen.

CHAIR—There would be confusion of roles for an institution like that.

Ms Coleman—I think there would be, yes.

Mrs VALE—Would that be your main concern, that it should not be used for that purpose?

Ms Coleman—We recognise the need to have centres for the provision of processing and retuning people. We understand that at times it is not desirable to put people in a centre like Maribyrnong and there may be short-term reasons for putting someone in the Broadmeadows centre. My concern would be that the Broadmeadow centre does not metamorphose into another low security community option, as a transitional option. That is not what it was intended to be and I do not believe the setting being an army barracks is an appropriate place, nor an appropriate accommodation setting for that purpose.

Mrs VALE—Are there still functioning army barracks?

Ms Coleman—My understanding is there is, just across the road.

CHAIR—It is called the Maygar barracks for some very puzzling reason. Can I thank you both very much for your presentation here this morning and for the continuing work that you do in this very important area. I do not know whether we can say as a committee we appreciate it, but thank you for being here this morning.

Ms Coleman—Thank you for the opportunity.

Ms Mendis—Thank you.

[11.44 am]

LIGHTFOOT, Dr Tim, Member, Detention Health Advisory Group

MINAS, Associate Professor Harry, Chair, Detention Health Advisory Group

SINGLETON, Dr Gillian, Advisory group member, Detention Health Advisory Group; Representative, Royal Australian College of General Practitioners

CHAIR—I now call the representatives of the Detention Health Advisory Group, DeHAG, to give evidence. Thank you very much for coming along. Would you like to make a statement or some introductory remarks?

Prof Minas—I would like to make a statement, with your permission.

CHAIR—Please do.

Prof Minas—Firstly, Mr Chairman, thank you for the opportunity to contribute to the committee's deliberations both through the submission from DeHAG and also through this conversation. There are several matters that I would like to briefly highlight because I think they are likely to be of interest to the committee. I would like to begin first by noting that DeHAG commends the minister and the government for the reforms which have already occurred such as the abolition of the temporary protection visa regime and of the inappropriately named Pacific solution, and for the new directions announced by Senator Evans on 29 July. We note that if the principles that were enunciated in that speech by Senator Evans had guided immigration policy and practice over the past period, that a great deal of harm would have been prevented. We also note that the damage that has been caused by the previous detention regime will be with us for a very long time. We also want to commend the secretary and senior officers of the department for the vigorous manner in which they have pursued the implementation of the reforms in the post-Palmer period.

The first specific point I would like to make is around Christmas Island. This is an expensive mistake. It makes no sense to maintain such an inappropriate facility during periods such as the present when there are very few people in the facility. If there were to be a surge of arrivals and if Christmas Island were to be operating at capacity, it would be extraordinarily expensive to maintain non-repressive order in such a facility and to provide even the most basic services such as health services. We think Christmas Island is a mistake and it might be time to cut our losses rather than continue with it.

The second point is that the existence of the Christmas Island facilities is the product of what has been referred to by the minister as an architecture of excision of offshore islands—I struggle to know what kind of other islands there are but offshore islands—and non-statutory processing of persons who arrive unauthorised. We regard excision as a legal sleight of hand that is explicitly designed to deprive one class of asylum seekers, that is, those who arrive by boat, of the protections afforded by Australian law. We think that this legal strategy is discriminatory, is

ethically indefensible and that it will eventually join the Pacific solution in the dustbin of failed public policy.

The commitment expressed on several occasions by the government to evidence based decision making is another issue that I would like to raise. It is welcome and it is long overdue. It has to be given substance though by substantial investment in policy relevant research. During the period of the former government, immigration research capacity in this country was very seriously degraded. A lot of rebuilding of immigration research capacity needs to be done if we are actually going to be able to generate evidence that will guide sensible decision making.

The last point is around the role of DeHAG and one of the Palmer recommendations. As the committee will be aware, DeHAG has played a role in initiating or supporting major improvements in detention health policy and practice. These include: the development of detention health standards by the Royal Australian College of General Practitioners and the process for accreditation; the development of a minimum health data set that will enable us for the first time to actually know what is happening with health in detention environments; the production of the Detention Health Framework which will guide practice; a comprehensive review and advice on procedures for protecting the Australian community from infectious diseases such as malaria, TB, HIV and pandemic influenza; and the development of a new and more appropriate approach to protecting the mental health of people in detention, including a very topical issue around suicide prevention, something that is in the press this morning.

We want to make the point that DeHAG is only an advisory group. While the advice of DeHAG is currently welcomed and acted upon, the Immigration Detention Advisory Group, IDAG, has had the experience over many years of both clear and compelling recommendations being ignored by government. The Palmer inquiry recommended, in recommendation 6.11:

> The inquiry recommends that the Minister for Immigration establish an Immigration Detention Health Review Commission as an independent body under the Commonwealth Ombudsman's legislation to carry out independent external reviews of health and medical services provided to immigration detainees and of their welfare.

This recommendation has not been implemented and it is our view that such a body remains essential.

They are the main points that I wanted to make in an opening statement.

CHAIR—Thank you very much, Professor Minas. Deputy Chair, do you want to lead off?

Mrs VALE—In your submission you spoke about the minimum reception standards that you consider to be necessary, and of course we were just talking about the rights to work and the opportunities for healthcare. How would you like to see that expanded or would you like to actually expand your comments on that, especially, can I say, in relation to the impact on children?

Dr Singleton—I have a particular interest in this area because I work pro bono at the Asylum Seeker Resource Centre. I have been there for the last four years and certainly there are a lot of people who have been victim to not being able to access Medicare and not being able to access work rights. I really think that whole process needs to be reconsidered, particularly the 45-day

rule; as Caz was saying previously, it is certainly very arbitrary and very unfair. Just looking at that aspect of the immigration policy would certainly make a significant difference and lead to less people being on bridging visas. I think we really need to make serious consideration of expanding work rights and Medicare access to people, at least during the initial period when they are applying for asylum in Australia.

Mrs VALE—Has there been any formal study or research actually done on the impact of that particular policy?

Dr Singleton—There have been a few small studies, but as Harry was saying before, there is certainly a need for increased research just to gather some evidence to determine risk stratification of individuals and families on bridging visas.

Mrs VALE—Thank you very much.

Dr Singleton—I will certainly get that information to you, if you like.

Mrs VALE—Yes, that would be really handy, thank you.

Mrs D'ATH—This is probably touching on a similar point but we have heard a lot about the mental health issues of people who are in detention and long-term detention. I am interested in knowing what your experience is for those people who have experienced delayed outcomes in the processing but have not been detained, they have been able to reside in the community during that time. Do you see mental health issues arising in those people because of the delays in processing?

Dr Lightfoot—Absolutely, without a shadow of a doubt.

Mrs D'ATH—In what ways do you believe, based on your experience, we can expedite the processing of these sorts of applications? Do you not get involved in that side of it?

Dr Lightfoot—The approach to expediting the process is ultimately responsibility of the Department of Immigration and Citizenship. There needs to be a change in the culture of the department that encourages the importance of rapid processing of clients. However, the process should not be so rapid that some complex cases get dealt with too simply. There have certainly been many, many situations over the years where the complex situations of asylum seekers themselves were made more complex by various factors, such as those that were discussed before with the Hotham Mission people. There is also what the department has done in trying to deal with those people, for example, just giving them a visa for one, two or three months and bringing them back and back and back each time rather than giving them a commitment. The immigration department's motto is all about people. They should be saying, 'We will give you a commitment to have resolved this case by a certain date. That is our plan.' They should then be free to move around in the community with the appropriate rights, including work rights, until that time.

Mrs D'ATH—Does DeHAG currently meet with clients in community and alternative detention, particularly children in these forms of detention, or with detainees transferred into medical facilities?

Dr Lightfoot—No, DeHAG is an advisory group that advises the department; we do not provide direct clinical services. We only ever meet them in person as we go and visit various detention centres in a similar way to what happened yesterday.

Mrs D'ATH—One last question: you mentioned in your submission an alternative approach suggested to community detention, can you just elaborate on how health services could be built into this process to ensure a minimum standard of care?

Dr Lightfoot—In detention centres?

Mrs D'ATH—No, in your submission you were talking about an alternative approach suggested being community detention; how would you build health services around that?

Prof Minas—We already have very good health services in the country. There is no reason why people who are going through a process for status resolution should not have access to those services. It would be the most effective way of going about it with appropriate support. It is making use of existing arrangements. It is not setting up unnecessary parallel system. What was said before about access to Medicare and access to our general health system would be the most appropriate way of dealing with this.

Dr Lightfoot—I think there is a risk that as the number of people in detention gets less and less and people get released, then we are just simply transferring the problem of mental health difficulties in detention to mental health difficulties in the community. Unless there is a significant change in the circumstances when they move from detention to the community, we will do nothing to help those people.

Mrs D'ATH—Can I just ask one last question specifically with your experience with the assistance we provide in the mental health area or the health area generally. Are we doing enough for children? Is there much focus at all about mental health of children?

Dr Singleton—For people in the community or in institutions?

Mrs D'ATH—Both, well they are not in detention, but in community detention?

Dr Singleton—Yes, I guess there are so many groups. In the community, people on bridging visas have no access at all except to pro bono doctors and psychologists in the community. If they need to be hospitalised they can be hospitalised in Victoria and can access the public hospital system in the ACT, but in the other states they cannot.

Prof Minas—The answer is no, we are not.

Mrs D'ATH—In your view, we are not doing enough?

Prof Minas—No, we are not.

Dr Singleton—There really is not much support.

Prof Minas—In fact what we are doing in some ways will exacerbate any health problems by delaying attention, by preventing any kind of early detection or early intervention. It is only when people get into serious difficulties that there is any kind of a response. It is not a smart way to deal with health problems.

Mrs VALE—It is better to prevent it occurring in the first place.

Dr Singleton—Definitely.

Mr GEORGIOU—A couple of things, the first being the Palmer inquiry. There was a huge fuss about Palmer and huge commitments to implementation. The Palmer recommendation for an independent commission under the umbrella of the Ombudsman, properly staffed to monitor, review and advise health and mental health of in detention and refugees, has not been implemented. Every so often there is some sort of implication, which you touched on earlier, by the department that somehow your group can discharge those responsibilities; can it?

Prof Minas—No, our group is not set up in a way to discharge those responsibilities. We are an advisory group. The department is entirely at liberty to ignore all of our advice. As I said before, that was our experience in IDAG for a very long time. There is no reason why in six months or a year's time, the climate changes and the advice that a group like ours gives makes no difference. We need a systematic approach to this and a way of ensuring that health services are appropriate and available.

Mr GEORGIOU—Can I clarify then: you have no role in monitoring the effectiveness of departmental programs, you have no statutory rights of entry, with all due respect, you are a nice advisory body, but at the end of the day here is a letter, we are not doing anything?

Prof Minas—Correct.

Mr GEORGIOU—Can I also reflect on the fact that your chairman, when pursued about whether IDAG's brief was sufficient, said that it was, which puzzled me.

CHAIR—That was IDAG's chairman, not the chairman of—

Mr GEORGIOU—No, no IDAG's chairman.

CHAIR—You could also respond to that, Professor Minas, if you want to.

Prof Minas—As you are very well aware, the Immigration Detention Advisory Group has right of entry, unfettered entry, to detention centres. But, it is now a very different landscape with most of the action outside of the detention centres. We need a system that will be able to cope with the new arrangements. IDAG's right, for instance, to unfettered entry, to talk to anybody, to look at any document and all the rest of it, is not that helpful any more if most people are in community arrangements of one kind or another. Those rights do not extend to the Detention Health Advisory Group. The Detention Health Advisory Group is not a ministerial advisory group; it advises the secretary of the department and, as I said before, the secretary is free to ignore that advice if he were disposed to do so.

Mr GEORGIOU—Can I take you to an article in today's newspaper? Yesterday, and in your submission, you emphasised the need for protocols for suicide prevention. The Monash Centre for Behavioural Studies has provided that report. The *Australian* has got under FOI that apparently the secretary of the department has advised that 10 of the 11 recommendations or 11 of the 12 recommendations have been accepted but not the screening tool devised by Monash. How significant is the absence of a screening tool to the ability to actually move to an effective way of dealing with potential suicide cases?

Prof Minas—A screening tool will not be absent. It was the specific screening tool from that report that the Detention Health Advisory Group did not accept; the bulk of the report was accepted. The mental health subgroup of the Detention Health Advisory Group has developed a very comprehensive approach to screening and response. It is recommended that different instruments be used for reasons of practicability, and so on. The recommendations of the mental health subgroup are to be considered at the next meeting of the Detention Health Advisory Group which is on Monday of next week. It is a comprehensive process which has been developed around screening and also about issues to do with self-harm.

Mr GEORGIOU—So, you have put in an alternative screening tool?

Prof Minas—Yes, that is right.

CHAIR—That is the only recommendation of the recommendations that has not been accepted? All the others have been accepted by the department since the Palmer review?

Prof Minas—Yes, that is correct; it is only the specific recommendation about which screening tool to use for this purpose. The mental health subgroup and the Detention Health Advisory Group felt that there was a better way to go and that is the direction that we are going.

Mr GEORGIOU—When that all comes together, assuming that the department or the minister accepts it, will that be an effective response to dealing with the possibility of suicide?

Prof Minas—Yes, we are very confident that it will be an effective response. We expect that in the next short period, over the next few months, that there will be appropriate training modules developed around this new screening and intervention approach. We expect that there will be pretty rapid implementation of this new approach around issues of screening for mental health and other health problems, but also specifically around screening for and more appropriate response to concerns about self-harm.

Mr GEORGIOU—One final issue: in 2005 there were a number of cases at Baxter where people had substantial psychiatric problems. These were reported both by voluntary groups and by people in politics as demanding independent psychiatric review. The department's response was to go to court to prevent them getting independent psychiatric review and to be found in breach of the Commonwealth's duty of care. We have had submissions indicating that the department, even this year, is resistant to assistance being given to people with problems such as post-torture trauma. How even is the change in the departmental culture and are you happy with the progress in actually getting help to people in time?

Prof Minas—It is heading in the right direction but it is very uneven. There is pretty clear leadership around the sort of change that needs to be made. Tim referred before to a change that needs to be made being the culture of the department. The changes that need to be made are pretty profound and they are changes in the ways that people think, the way people do their day-to-day work, the kinds of resources that they bring to that work, including the existence or not of appropriate criteria for decision making and the existence or not of appropriate protocols. The change in my opinion is pretty uneven and there is still a lot of room for improvement.

Dr Singleton—Can I respond to that as well? I think it is less likely now compared to two or three years ago for someone who has been exposed to trauma and torture or with significant mental health issues to be detained. It is not impossible, but I think it is less likely than it was.

Mr GEORGIOU—But it still does happen?

Dr Singleton—Definitely.

Prof Minas—We are aware that there have been significant concerns around people who have been thought to be survivors of torture who have not been appropriately referred, and so on. They are still important issues that are not resolved.

Dr Lightfoot—One of the most important aspects of the mental health issue is to prevent it happening in the first place by actually having a fair process that is rapid. A big problem is the problem of uncertainty. When you do not know what is going on and that can be for years on end, that has to be the strongest promoter of the mental health issues that occur. If there was a fair and timely process, I am sure a lot of these mental health problems would not occur.

CHAIR—So, early intervention even with people's legal rights would lead them in a direction where they would not develop a problem with mental health?

Dr Lightfoot—Yes, but also departmental responses to the case in front of them in a timely manner is very important.

CHAIR—If the minister's guidelines, such as the three month and six month review, were to be implemented, you could see that having a beneficial affect on a whole class of people's mental health?

Dr Lightfoot—I think so.

Mr ZAPPIA—Thank you Mr Chair. Professor Minas, in terms of your resources, could you advise whether you believe that the resources provided to the advisory group to undertake your role would be reasonably adequate? I am sure there is always the ability to do more if you had more. Secondly, do you have any difficulty getting necessary information from the department?

Prof Minas—We have had a very capable secretariat, people who have been very committed to the task who have worked very well, who have been responsive. I think the departmental officers who have supported DeHAG in doing its work have, in my opinion, up until now, been very good. We could do with more resources as most other organisations could but in some ways I think those resources would be better directed in other ways, for example, in enabling

systematic investigation of an issue or a research project or some other way of doing things rather than through the Detention Health Advisory Group. We have generally not had any difficulty in getting information that we have asked for. It has been provided in a timely manner and as far as we are aware the information that we have been given has been pretty full. We have not been aware of any information being systematically withheld from us.

Mr ZAPPIA—Two other questions. Do you track the health of detainees after they have been released into the community?

Prof Minas—No.

Mr ZAPPIA—Okay, so we have got no idea of what happens further down the track with their health?

Prof Minas—We are like everybody else; nobody has got any idea of what happens except for the agencies that are providing the services that we heard about earlier today.

Mr ZAPPIA—In the report to which Mr Georgiou alluded earlier on, it states that there has been one death of a person whilst in detention and possibly a couple of others. Are you aware of any other suicides that have occurred outside of detention?

Prof Minas—No, there is no systematic way that we have of tracking that. I would be surprised if there were not, but that is not a very useful response. I am not specifically aware of suicides of former detainees.

Mr ZAPPIA—Thank you.

Dr Singleton—Anecdotally there are certainly a lot of suicide attempts in the community particularly by people on bridging visas.

Mr ZAPPIA—There are suicide attempts?

Dr Singleton—Yes. I personally do not know of any successful suicides but that does not mean they do not exist.

Prof Minas—If I can just add to that. The mental health consequences of the regime that we had in place have been extreme, there is no longer any doubt about that. We can also say that those mental health consequences for many people will be very long lasting, they will be a very substantial cost to the Australian community and there will be intergenerational effects of those mental health problems that we have collectively created. In that kind of context, attempted suicide, self-harm of various kinds, but also other forms of harm, not direct self-harm, but a lot of damage has been done to people and it would not be at all unexpected that there would be suicides in that group.

Mr ZAPPIA—Thank you.

CHAIR—Any further questions?

Mr GEORGIOU—I have got one more.

CHAIR—One more and then we will finish off.

Mr GEORGIOU—Can you give us an impressionistic description of how pernicious is the bridging visa E?

Dr Singleton—Would you mind restating the question?

Mr GEORGIOU—How bad is the bridging visa E in terms of mental health?

Dr Lightfoot—The bridging visa E takes away a person's agency; it takes away a persons ability to control their own lives in any form. They cannot control it in terms of accessing all the various services and they cannot get money; we have heard all those things before. It takes away their right to control their own lives and those of their children. That is the biggest most pernicious effect that the visas have on the mental health of the bridging visa E sufferers.

Dr Singleton—It is punitive, there is no other way of saying it, and these are people who lawfully seeking asylum.

Mr GEORGIOU—It is decidedly punitive.

Dr Singleton—Yes.

Mr GEORGIOU—Thank you.

CHAIR—Professor Minas, Dr Lightfoot and Dr Singleton, thank you very much for your presentation this morning and, as we thanked the other organisations, thank you for your ongoing work too which is appreciated by this committee and the wider community.

Dr Lightfoot—Thank you for the opportunity.

[12.20 pm]

BURNSIDE, Mr Julian William Kennedy, QC, President, Liberty Victoria

ESSER, Mr Kurt William, Chair, The Justice Project Inc.

KNIGHT, Ms Joanne Elizabeth, Chairperson, Refugee Law Reform Committee; Law Institute of Victoria

TAYLOR, Miss Jessie Elizabeth, Convenor, Immigration Detention Working Group; Law Institute of Victoria; The Justice Project; Liberty Victoria

CHAIR—Welcome I now invite you to make an opening statement or some introductory remarks. I understand Mr Burnside has got to leave early.

Mr Burnside—Yes. I will have to leave at about 10 minutes to one; there is no disrespect intended.

CHAIR—None taken.

Mr Burnside—Can I begin by saying just something briefly about some fundamental matters. You have got our report, it is fairly detailed, I trust you will be able to read the submission in due time.

CHAIR—I think a lot of people have already read it.

Mr Burnside—Good. An essential starting point of this is that the people who are subject to mandatory detention are innocent people, which is something often overlooked. The previous government and the media use the word 'illegals' regularly to describe them. It is an important consideration because to lock up innocent people indiscriminately offends very basic principles which the common law has been astute to protect for a long time. To protect the individual liberty is regarded as one of the crowning achievements of the common law. There are of course circumstances where people have to be locked up, most obvious is where people are convicted of an offence that carries a jail term, and no-one could complain about that. There are circumstances where innocent people can be detained, and they are notably where a person is arrested on a charge and they may be detained before trial but even then, there is a presumption that they are entitled to bail.

Secondly, for the purpose of protecting an individual who suffers major mental health problems, they can be detained involuntarily, although the procedure for detaining them is preceded by very careful checks and they are reviewed every two weeks, at least in the Victorian system, and they are always subject to judicial oversight. In the case of infectious diseases, people can ultimately be restrained in their movements if appropriate officials are satisfied, but that is also preceded by rigorous tests, criteria to be satisfied, an opportunity to be heard and it is always subject to judicial oversight. Mandatory detention of noncitizens without visas is the only

exception in Australia to the general principle that innocent people cannot be locked up without a rigorous procedure beforehand and judicial oversight at all time.

We start from the proposition that what is being done needs to be justified and needs to be justified in a pretty rigorous way. We accept, and this is plain from our submission, that initial detention of people who arrive without papers is justifiable for the purpose of health and security checks. But, consistent with the basic principle, the initial detention should be limited in time and should only be subject to extension if a judicial officer is satisfied that an extension is justified in the circumstances. It is not adequate, in our submission, to say that because a person might disappear into the community therefore they should be locked up. That approach really is wholly inconsistent with the presumption of bail in the criminal justice system, where at least you can say of a person that it looks probable that they have committed a serious offence.

The other broad proposition to make, and I guess it flows from the first, is that NGOs who are concerned with human rights matters have uniformly condemned Australia's system of mandatory detention. Leaving aside that it is indefinite in duration, locking people up for a substantial time who have committed no offence is a very serious thing and it applies to young and old, weak and strong; the whole range.

The second thing I wanted to say against the background that mandatory detention is in itself something to be taken very seriously, is that the initial period should be capped we say at one month and any extension should only be granted if a judicial officer is satisfied that an extension is reasonable in all the circumstances, and any alternative that is available should be considered before mandatory detention is extended.

The next thing is that if a person is in mandatory detention, there are a couple of features of it that are pretty remarkable. One is that solitary confinement is regularly used with no regulations to govern it whatever, and this is despite judicial observations over the last few years about that problem. The fact that innocent people can be held at all is bad enough. The fact that those innocent people can be thrown into solitary confinement by private prison operators, acting under contract for the government, is truly shocking. The fact that their use of solitary confinement is unregulated at all is quite breathtaking in a constitutional democracy.

The next thing is the rather striking fact that not only do we lock people up who are innocent; we charge them by the day for the cost of their own detention. In connection with a case which challenged the validity of that section, counsel for the department, and I against them, carried out some research which showed that we are the only country in the world which charges innocent people the cost of incarcerating them. It is not a distinction that is deserving of much merit.

Finally could I make this observation, the Keating government introduced mandatory detention. The Howard government exploited it ruthlessly, and in our view, shamefully. The changes which are proposed sound very good and if they are implemented faithfully we would welcome them. They do not go quite far enough but they are very welcome. But, the changes have to be implemented in a way which is sufficiently robust that they cannot be reversed at the drop of a hat. I think everyone involved in this area, while welcoming the changes that were announced on 29 July, all live with some uncertainty about what would happen if another boat appeared over the horizon. It is not much good to be generous only when there is no-one needing your generosity. We need to establish a base level of decent conduct and decency in relation to

asylum seekers and others who may be subject to mandatory detention which will survive changes in the surrounding facts, otherwise, this is really a gesture at a time when it costs us nothing. We would hope that the changes will be robustly and faithfully implemented by the department. I think that is probably all I need to say by way of kicking things off.

CHAIR—Thank you very much, Mr Burnside.

Mrs VALE—I would actually like to go back to some previous submissions regarding the lack of transparency or accountability on the decisions to actually detain a particular person. Do you have any comments on that?

Mr Burnside—No-one decides to detain people; they are detained automatically by operation of the relevant sections in the act. That is one of the problems. If there were a decision making process that was governed by rational criteria, then the problem would have a very different shape. The act requires any so called unlawful noncitizen, that is to say a noncitizen without a visa, to be detained.

Mrs VALE—Just to be detained.

Mr Burnside—It says in terms that no court can order the release of a person from immigration detention. It is very striking and very remarkable.

Mrs VALE—Your submission actually comes up with a concept of an immigration detention order. Would you like to expand that for the committee?

Mr Burnside—Actually I should probably hand it over to perhaps Jess or Kurt who were more closely involved in the detailed drafting.

Mr Esser—I am happy to speak to that proposition. What follows from what Julian says is that there is no right, we say, to detain someone. The fact that a person may have arrived informally does not, in our submission, justify in any way the continued detainment of that person. We are suggesting that we extend the rule of law to people who arrive informally. In other words, we implement a system whereby the department is accountable for any period of detention beyond what is absolutely necessary in terms of identity. We all acknowledge that it is necessary for detention to occur for as long as it takes for a person's identity to be properly looked at.

Mr Burnside—Limited to one month.

Mr Esser—Yes, all of this is limited to one month.

Mr Burnside—The processes can drag out if there is no incentive to hurry them up.

Mr Esser—Identity, security and health checks, all to be completed within one month. Any period after that would require the department to go to the federal Magistrates Court and get an interim detention order. In other words, the same rules that apply elsewhere would have to apply to the department. They would have to justify to the satisfaction of the judicial officer—and we think that the federal Magistrates Court is an obvious place to go—why detention should last

beyond the period of one month. That gives a kind of transparency and a kind of responsibility and it brings the whole system into line with the norms that would otherwise attend civil society.

CHAIR—Can I follow up what deputy chair is asking and come back to something that Mr Burnside said in closing, that is, I assume that you welcome the criteria laid out in what the minister said on 29 July but you want those criteria implemented by legislation. This is one area in which this legislation would implement these criteria. Do you see any problems with that in any inflexibility or any extra cost? Is it not possible if we legislate it that there might be some inflexibility built into the system where it actually might affect people who are seeking asylum or detainees in a way that is unforseen? The other question is, are not these questions really all ultimately politics; the reason we have changed criteria is we have changed government?

Mr Burnside—Of course it is all politics. I come back to the starting point: there is an assumption in a liberal democracy that innocent people do not get locked up unless there is some very good reason for it. The spine of the present system is found in the act. The spine of the new system should be found in the act. The spine of it would be an assumption that people are not detained, permission to detain unauthorised arrivals initially for a month and then flexible possibilities for extension of that time if the court is satisfied in the circumstances that it is appropriate. As for expense, it goes the other way; immigration detention is a very expensive system but a bail system, to take a criminal justice equivalent, is very inexpensive.

I worked out figures once, and these figures are a few years out of date, that if you had the comparison between say Christmas Island detention or community release on bail-type conditions, Christmas Island would work out at something like $1,500 per person per day more expensive. That is assuming a person is on Centrelink benefits and reporting in a couple of times a week. The cost of administering a sensible bail system is about $10 per person per day. The lowest cost of immigration detention is around $120 or $130 per person per day.

CHAIR—I am sure you understand this better than most people but you ask questions you do not necessarily agree with in order to illicit answers like that.

Mr Burnside—I understand; I am used to it.

Ms Knight—If I could just answer that from the perspective of the Law Institute of Victoria. Regulations can be very flexible and they are pretty large in this area, but it is because nothing has been written down that so many abuses and confusions have happened. Who has a duty of care; how do you practically understand how a detention centre is operating; how does someone get adequate advice from a lawyer; all those sort of things. That is where the regulations can come in. It is the absence of that that I think has created such a problem. The rule of law needs to be reintroduced. I think that is why these joint groups came together to be able to present a strong explanation to the committee that the rule of law needs to come back into the forefront. The first principles are that it is innocent people we are talking about. We have learnt unquestionably the mistakes that have been made and now it is an opportunity to make history and rectify these things, within that one-month period, but to do that well within that one month and look at the community and other alternatives.

Mr Burnside—Can I supplement that with one comment that should be obvious and that is, it is easier to change regulations to go with political shifts than it is to change legislation. There is

a greater political cost associated with changing the act. That is why the spine of a new solution has to be in the act. Jess, did you want to say something?

Miss Taylor—I was just going to add that the act, as it now stands, is the legislative framework that gave rise to the decision in Al-Kateb v Godwin and that system needs to be done away with. That is the height of the inflexibility of the system that currently exists in the act. Anything that allows the High Court of Australia to find that an innocent person can be detained for the term of his natural life in administrative immigration detention needs to be done away with. I do not think anything could be less flexible than that. Probably any legislative improvement would be a significant improvement.

CHAIR—It is more than the vibe that needs to change.

Miss Taylor—It is more than the vibe, although that would not hurt either.

CHAIR—Well, the vibe has changed.

Mrs D'ATH—Can I say thank you for quite a comprehensive submission. I am very interested, based on your collective legal experience, to ask you a range of questions that very much go to your opinions on timeframes and criteria, which are very important when we are talking about these issues. We have heard as a committee recently issues about detainees being willing to return to their original country but unable to get travel documents and the delays that are occurring there. I am interested in hearing your views on that one.

The next that I am interested in is that we have also heard concerns about asylum seekers and other individuals proving identity, and I glad you clarified that point, let us not detain them for as long as we can determine their identity, there is a one month timeframe. What do you see from a legal perspective of the criteria and the timeframe for determining that identity? Do we at some point determine what are all reasonable attempts to determine this person's identity when they have no way of getting that documentation from their original country? What sort of criteria should we use and what sort of timeframe to say we have exhausted all avenues to determine proof of this person's identity? We will start with those two.

Mr Esser—There is a very good institution that makes decisions when there is contested evidence, and it is called the court. That is why we see that the court should play an integral role in all this. The courts are always accustomed to balancing competing criteria. That is why we think the court is the appropriate organ by which to make the decision about whether (a) a person's period of detention should be extended beyond a month and (b) to look into the conditions that might be appropriate. It is for courts to balance these competing rights—the right of a person who is a genuine asylum seeker to be released against the possibility that a person's identity might be the subject of fraud. These are the kinds of things that should progress by a process. It is the kind of thing courts do all the time; they make up their minds with competing evidence. We would foresee, for example, that if a person cannot prove their identity beyond a reasonable doubt that that is the subject of evidence. It would be the subject of evidence by the person who is a claimed asylum seeker it would be the subject of evidence by the department. The court should make up its mind; that is what courts do.

Mrs D'ATH—If I could just touch on that point. Do we want to see a system where an individual should have to take everything to court to have this determined or should we be having legislative criteria that says, as in many pieces of legislation in this country, that all reasonable attempts should be made to determine the identity but that if it cannot be determined within a certain period of time and those attempts have been made, then you progress with their claim? I would be concerned about every individual having to get bogged down in the court system because that does not necessarily speed the process up. I am worried about criteria or a timeframe.

Mr Burnside—First of all, identity is generally not the crucial thing. The person either has a claim for a visa to Australia or not, typically it will be a protection visa claim. If you remove it from current politics and assume it was a person arriving from Germany in 1938, and let us suppose it is plain that they are Jewish and they tell a story which is internally coherent, it probably does not matter which German Jew they are; you would still probably say that they are entitled to protection rather than being sent back to Nazi Germany. The mere fact that a person adopts a different persona may be of very little concern, except in marginal cases. I am not sure we need to get too fussed about the criteria for establishing identity. It is, as Kurt says, a question of evidence; it is a question of what the department is willing to act on. I would not like to see it getting bogged down in courts in those marginal cases where it is crucial.

Mrs D'ATH—Your experience is that you are not finding it a sticking point?

Mr Burnside—The crucial tests which would justify initial detention, we think, are health and security.

Mrs D'ATH—Sorry, I am not focusing on detention. I am focusing on final outcomes for people actually knowing whether they can stay in this country or not. Are we finding that there is delays in that process because department processes just keep going on and on and on until they try to identify that person?

Mr Burnside—Identity is not usually the sticking point, it can be sometimes.

Ms Knight—I would say security is a concept that needs to be unbundled in terms of legislative protection because it can be a never ending concept. A case can stay open for years while the external agency such as ASIO, which the Department of Immigration and Citizenship cannot control, has checks taking place. That is an area that creates great delay, and at times, great injustice. That is a concept I would hope be unbundled with a protective slant for the applicant. It is the word that everyone loves to use but it needs to be unbundled.

Mr GEORGIOU—Can I just take that point up because I want to pick up on the chairman's rather partisan contribution about changes in things. Basically there are no criteria set out in the minister's statement. There are issues about what identity means, and what Immigration will of course take identity to mean is documented proof of who you are, which is very difficult to do. One of the things that I am interested in is how far do you have to specify the criteria before what is a wonderful sounding series of principles actually becomes a reality that is capable of being administratively implemented?

Mr Burnside—I think I might have misunderstood the use of the word 'criteria'. You mean what evidence is needed to establish a person's identity?

Mr GEORGIOU—What does identity mean? You made a perfect point that a Jew out of Germany in 1938 is a Jew regardless of what his name is or whether he is a doctor or a toilet cleaner.

Mr Burnside—If they say their name is this and their actual name is that, it probably does not matter unless you are concerned that the person with that other name is a suspected terrorist and so you are actually driven back to a security concern

Mr GEORGIOU—Then you have to specify. I know how the department is going to take it. They are going to say that you have to prove that you are B Georgiou, 12 Wellesley Road, et cetera, with a document. What I am after is, how do you actually specify what identity is, what security is and what health is?

Mr Esser—I think that they are legitimate questions that the court should decide.

Mr GEORGIOU—They are also matters for legislation.

Mr Esser—There is nothing wrong with the legislation indicating the kind of criteria. For example, we could imagine that in implementing our recommendations, the Migration Act could be amended to say, 'A judge or the federal magistrate will make a determination on the available evidence and balance that question with the possibility that the'—

Mr GEORGIOU—Do not get me wrong, I love courts. You are demanding a legislative statement of these things and I am saying how do you describe identity in a bill?

Miss Taylor—This might be more general than to be necessarily useful, but I suppose in the spirit of the refugee convention, for example, the benefit of the doubt needs to be given to the applicant. It needs to be treated quite generously with the understanding that, if someone has come from the United Kingdom, then perhaps discovering their identity and all the background necessary would be a lot more of a viable idea than if someone has just come from the centre of Afghanistan. We need criteria that are flexible in terms of regulations and what needs to be proven or established in order to say that someone's identity has been satisfactorily made out. Then, if that becomes an issue that drags out detention beyond the period of a month that we have suggested, then perhaps the courts become involved at that stage. I really think that the fundamental thing is that there needs to be some kind of flexibility applied. I have sat in on a number of Refugee Review Tribunal hearings where the member has been interrogating the applicant. Afghanistan is a classic example, 'Ms Hazara from Oruzgan, where is your birth certificate, what date were you born, where was your mother born, where is her birth certificate?' That is just extraordinarily inappropriate and impossible for that person to provide. However, still nine or 10 years after the first waves of people in that particular category have arrived, the RRT is still grappling with why Afghanis do not have birth certificates. There is certainly a problem with that.

Mr GEORGIOU—That is partly the point, is it not?

Mr Burnside—Can I take a step back on this; I think you raised a really interesting question and that is what is this concern about identity, health and security. The refugee convention says nothing about identity. Identity becomes relevant only in the case of an article 1A exception. A person might qualify as a refugee but if under 1A they have been involved in crimes against humanity or war crimes, well then they are denied refugee protection. It is only if you are suggesting that sort of conduct that a person's actual identity becomes important at all.

Mr GEORGIOU—I actually agree with that.

Mr Burnside—And that is the law; the law does not say, 'Well you must be the person who you say you are.' Second, the concern about health and security and the point about initial detention being justified for health and security checks is that the health concern has to be one which would present a real risk to the community and the security concern has to be one that would present a real risk to the community. It is only by protecting the community against a real risk that you can justify locking up an innocent person, and the criteria would flow from that approach.

Mr GEORGIOU—That raises my other problem, why a month? Why should not there be a need to prove a reason for detention over the month. You are giving them—the government and its servants—carte blanche effectively for a month where there may not be an issue. They may come documented. Health screening takes three minutes.

Miss Taylor—There was quite a lot of debate about this. Erskine Rodan suggested to us that one single day is not justifiable however we thought that perhaps the department may not be altogether ready to adopt that approach. We presented it as a springboard I suppose, as a jumping off point.

Ms Knight—It is all about priorities. We can see what can happen when resources are dedicated to things. If the department wants to do security checks or health checks, these things can be done very quickly. If there is a ceiling of a month, but legislation of the principle that it should be at a maximum a month and that every effort should be made to have innocent people removed from detention before that time, then there is a check and a balance. There is a ceiling but there is also enshrined that principle that everything should happen quickly and should be resourced so that it can happen.

Miss Taylor—The suggestion of a month is made in the context of all the other recommendations that we have made about the changing of the nature of immigration detention itself. I do not think any of the four of us would be remotely happy with spending five minutes in immigration detention as it currently is, but encompassed with the rest of the recommendations we have made, we think that a month is reasonable if not somewhat generous.

Mrs D'ATH—Two final issues moving away from detention timeframes and talking about the overall processing of claims. You have already touched briefly on the security being one of the impediments that slow the process down. I am very interested in hearing what you see are other impediments to slow the process and what we can be doing at a federal government level, legislated or otherwise, to expedite claims.

Ms Knight—If I could get the ball rolling with that one. The Law Institute of Victoria has a strong view that access to legal representation is very important right from the outset. If you want people to be putting in claims that have merit for an appropriate visa and have people assisted so they can flesh out those claims, then you need a lawyer that is independent and that is also a migration agent. You do not just need a migration agent. That is a clear area that can be implemented very easily so that people are making appropriate choices. This is such a complex area of law and we are dealing with vulnerable people groups. Section 48 is an example that we would encourage you to reform. As soon as you take one step in the system, doors close. Time and time again, in my personal capacity as an immigration lawyer, I see clients that I wish I had met five years ago. They would certainly not have clogged up the system if I could have advised them appropriately of the visa to which they were entitled. Instead, they are sitting up in Minister Evans office on a 417 visa request and that may not be the appropriate place. Access to independent legal advice early on that is funded I think would be a great thing for efficiency as well as justice.

CHAIR—How do we get them appropriate legal advice? I know dealing with immigration cases in MPs offices that there are lots of migration agents that fall below the mark. There must be some immigration lawyers and also migration agents that are not appropriate or do not give good advice as well. How do we get appropriate people to the people early on? Is there some way of sifting this out or would you have them approved by the department?

Ms Knight—I think that would be unwise. It is already closely connected with the department and that has not been a success story. I would say first of all that shifting access to funding from just migration agents to lawyers who are migration agents would be a massive paradigm shift. Lawyers are heavily regulated and at the moment are duly regulated. Lawyers have their own legal professional bodies so if they are not performing to professional standards, there are consequences and they would not continue to practice. Those that seek access to public funding might be groups that opt in rather than just assuming everyone. If you took that step, that would be a fantastic shift forward. I think you would have to see how the scheme works under that and see if there were any problems to address.

Mr Esser—I would like to underline those comments most definitely. Very often the difficulties that we lawyers find of people who are in pathetic situations is that they are in those situations largely on account of incompetence at the very earliest stages. In many cases it is almost impossible to correct the errors that have been made, unless it goes to a ministerial intervention. We have all had lots and lots of cases made more difficult and sometimes impossible to fix by bad advice at an early stage.

Mr Burnside—Can I say, that brings into focus one of the problems for judicial review about the system. Judicial review is an extraordinarily narrow way in which to change a bad decision. It is not enough to show that a mistake was made; you have to show that they went outside their jurisdictional limits.

I would not want to see the court system overwhelmed with merits appeals from the RRT, but the RRT has made some awful mistakes in its time. One intermediate possibility which we would urge is that the existing judicial review framework remains in place but that there be a right to seek leave to run a merits appeal in the courts. There would be a filter at the front end so a judicial officer would have to be satisfied on the papers that there was some merit in an appeal,

that something had gone wrong that judicial review would not correct. Then the person could get a proper run in a court running the thing from the start. I do not think it would create a flood of appeals but it would certainly catch the mistakes that have created terrible injustices in the system so far.

Mrs D'ATH—My last question has to do with section 501. You make mention of that in your submission, that 'individuals facing cancellation should not be detained prior to removal'. Do we read from that you believe they should be in the community? Do you think that such clients would be a flight risk if they were waiting removal and how could this risk be addressed?

Miss Taylor—The vast majority of section 501 detainees have been moved directly from prison into immigration detention through a system of communication between state corrections departments and the federal immigration department, which is highly problematic and unregulated. The vast majority of those were notified of their visa cancellation in the minutes, in some cases, or days, before they were due to be released on parole. These are all people who have already been deemed as appropriate candidates for parole or for being released into the community. I have had personal contact with all of the remaining section 501 detainees. The vast majority of those have had substance abuse problems in the past and have undergone rehabilitation programs. A number of them that I know very well from my regular visits to immigration detention have not touched any substance, even those readily available in immigration detention centres, since they have completed those rehabilitation programs.

I believe I am safe in saying on behalf of the group that, yes, those people are absolutely appropriate candidates to be in the community until their removal is an immediate practical possibility, if in fact that removal is deemed to be the appropriate outcome.

However, we also have a few other things to say about section 501, particularly when it is exercised in relation to people who arrived in Australia as a minor, have children in Australia, have significant connections to Australia other than through their children, have serious health concerns which need to be addressed in Australia or have refoulement concerns. Those are five cases for which we think section 501 should not be exercised. If you want to know more about that then we can easily provide more information.

Mr Esser—The other problem with section 501 of course is that it is entirely subjective and subject to absolutely no review whatsoever. If you as a committee are serious about reinvesting this system with the rule of law paradigms which we are urging upon you, then you will have a very good look at section 501 and the horrendous difficulties it causes.

Miss Taylor—To a very small number of people also. It would be a very easy issue to do away with quite quickly in quite a humane way without causing too much strife.

Mr ZAPPIA—Thank you, Chair, and can I also thank The Justice Project for a very comprehensive submission which I found very useful. I have two questions, one of which is related to the use of bonds. In another submission we received, it was suggested that they should not be used at all. In yours, you actually argue quite strongly that they should be and you explain why. Is that a view that you hold very strongly or is it a view that could be open to also be considered in the alternative and that is that we do not use bonds at all?

Mr Esser—The word 'bond' is capable of misconstruction. The way we have used it in this submission is not to talk about an alternative form of conviction. In common parlance you can be convicted or you can be given a bond. What we are using the bond to mean is some kind of assurance, whether it is a cash payment perhaps or some other form of surety. We are using the word surety to mean the same as a bond. We are not wedded to the idea of that. We think that the legislation should be amended so that in the event that a person is detained beyond a month, then there is an obligation on the part of the department to approach the federal Magistrates Court and that tailored appropriate conditions be imposed. That takes into account the age, the sex of the person and the contact that they may have in the Australian community. It is up to the federal Magistrates Court to make up his mind but it is invested with powers so that appropriate conditions can be fashioned for that particular person.

Mr ZAPPIA—Can I just clarify something here? I understand the department also has the power to set a bond. Is it your view that the department should have that power?

Miss Taylor—We have suggested a number of things in the alternative in the submission. What we suggest to be an appropriate situation for the use of a bond or a similar mechanism is where the other alternatives are mandatory detention or a visa, the conditions of which are similar to bridging visa E. In those two situations perhaps a bond would be the lesser of three evils. That would probably be the framework that would suggest.

Ms Knight—We also endorse the Asylum Seeker Resource Centre approach to bridging visas that they are so complex. We agree with the idea of replacing it with a single bridging visa with full work rights and access to entitlements, so that people are not languishing in the community, unable to work or destroying themselves just by their inactivity. If things like the bridging visa E are reformed to more like a single bridging visa, then there are not going to be so many bond issues, and there would be the paradigm of only up to a month detention anyway. I think a lot of these things would not become as pressing or as prevalent as they are now if there are other community alternatives.

Mr Esser—To answer your question, Mr Zappia, it could be possible that a bond be fashioned, for example, in the terms that the person under consideration should report to a police station. That may be as much as is necessary. It may be supplemented by a forfeiture of a certain amount of money which is paid into court, for example, if a person was late, for example. It would mirror the kind of bail conditions that apply with respect to state based crime.

Ms Knight—We would always want to emphasise through different things that we have proposed in the submissions about checks and balances. We cannot just trust the department any longer. We have learnt the lessons. We cannot just say, 'You have your own criteria, no review.' They cannot any longer look someone up and down, take a bit of a disliking to them for whatever reason and just arbitrarily say '$50,000' with the person not having an advocate who is great at negotiation to get it down to $10,000. I think it is very important to remember to have checks and balances with any of those things when we are thinking of reform.

Mr ZAPPIA—My other area of interest is this: in section 4 and 5.5 of your submission, you talk about the government operating detention centres. I think earlier on there was one example used where the operators have put people into solitary confinement. The other aspect of your submission talks about delegating responsibility that perhaps should not be delegated. Can you

provide other examples of where the current operators, in your view, have perhaps not managed those centres to what would be considered an appropriate level?

Miss Taylor—How long do you have?

Mr ZAPPIA—If you want to respond to that in writing given I know we are out of time.

Miss Taylor—That would be great.

Mr Esser—I can give you an example of a person on whose behalf I acted where someone in the detention centre, who was a friend of his, made a complaint about the food. The person who made the complaint was questioned. He looked like he was about to be roughed up and my client intervened. At the point my client intervened, he was taken away and they broke his leg in two places. That is one of hundreds of examples of the kind of mistreatment that occurs in detention centres.

Miss Taylor—We would love to submit something to you in writing.

Mr ZAPPIA—I would love to see something.

Miss Taylor—Vast tomes, if you like.

Mr ZAPPIA—Please do.

Miss Taylor—Would you like to indicate a time period? Would you only like to hear about GSL rather than the previous operators or is it the whole issue of not having it in government hands that is of interest?

Mr ZAPPIA—It is the whole issue but I think GSL took over a couple of years ago?

Miss Taylor—In 2003 or 2004 maybe.

Mr ZAPPIA—We will take longer than that.

Mr Esser—Can I say, Mr Zappia, that we are not opposed to the notion that there be an organisation that contracts to the Commonwealth government to look after all aspects. What we take the greatest exception to is that that contractual arrangement is not something which is open and gives people an opportunity to sue someone.

We take the greatest objection to what happened with the previous government. The previous government contrived especially to insulate from liability the very people who are responsible for doing what they are doing. To encapsulate what we are about: we want to see the government take responsibility for what the government actually does, and we want to see a complete end to any kind of method, especially any contrived method, which would insulate the government from responsibility for what happens in the government's name.

Mr ZAPPIA—Perhaps we would look at the GSL time because we are dealing with the current detention centres as they currently are.

Ms Knight—I also think that a private company who has shareholders and who normally runs prisons is not appropriate for the new type of detention that is being envisaged of maximum of a month detention and a very different style to the prison camps that have been run. I think the principles and the objectives of an organisation need to be looked at, whilst retaining the responsibility with the administrative arm of government.

Mr ZAPPIA—Thank you.

Mr GEORGIOU—Just one last one from me. In terms of the mandatory detention for a month, can you see any downsides in letting a detainee seek to be released at any stage during that month on the grounds that there are no issues?

Mr Esser—Yes, I see merit in that. It is part of what Jo was saying that the system is terribly inflexible and any kind of responsible discretion, which is overseen by judicial oversight or some other responsible agency, meets with our approval, yes.

Miss Taylor—May I just update something in our submission? This goes to section 209 of the act which deals with people being billed for their own detention. In the third paragraph of page 20, it is mentioned that the highest debt raised during the period of 2006-07 financial year was $340,000 for a family. I just wanted to draw to your attention the deportation of a man last week to the United Kingdom who had been in detention for nine years and he was handed a bill for $512,000 which will bar him from returning to Australia to see his wife, her ailing parents and his children and grandchildren. He is in an abject state in the United Kingdom at the moment, having lived in Australia since 1982. I just wanted to add that to our submission and just mention how destructive those debts are. That is all I wanted to say about that.

Mr Esser—May I also just underline one particular point. Julian was talking about a paradigm under our open democracy where people are only locked up when it is really, really necessary. The situation for asylum seekers is not just that these people are innocent, but we have signed a refugee convention that says they are welcome. So, not only are we locking up innocent people but we are shutting the door on people who we have invited.

CHAIR—That is probably an appropriate and sombre point with which to conclude this part of our hearings. Thank you all very much for your appearance here this afternoon.

Proceedings suspended from 1.06 pm to 1.54 pm

LILLYWHITE, Ms Serena, Manager, Sustainable Business, Brotherhood of St Laurence

CHAIR—I welcome Ms Lillywhite from the Brotherhood of St Laurence to this committee. You have seen some of the other witnesses make introductory remarks; would you like to do something similar?

Ms Lillywhite—Yes I would, thank you. I wanted to thank the committee for the opportunity to participate in this very important inquiry and also to restate, as was mentioned in our submission, that the Brotherhood of St Laurence really welcomes the reforms that have been announced to date and commends Senator Chris Evans for his leadership in this area. The decision to detain in detention centres as a last resort and for the shortest practicable time is long overdue in our view and will go some way towards restoring Australia's international reputation in this regard. The submission that I have developed for you is primarily based on our experience in using the OECD Guidelines for Multinational Enterprises as a mechanism to draw attention to GSL's responsibility to both operate and manage the detention centres within a human rights' framework. We also think that the case that we raised really highlighted the convergence, if you like, of often business and welfare interests with regards to the role of voluntary mechanisms in upholding responsible business practice and also meeting societal expectations.

The case that we raised against GSL, along with other work undertaken by the Brother of St Laurence, Ecumenical Migration Centre, really confirms the need to ensure that any immigration detention policy that is developed is one that is done very much within a framework of human rights and in accordance with the international conventions and appropriate laws. We think that the emphasis must be on timely access to independent legal advice and health services, to transparent and accountable regulatory mechanisms, and also, of course, opportunities for detainees to have their cases and their situation reviewed—in short, a policy that treats detainees with dignity and respect and does not allow for indefinite and arbitrary detention, and which establishes mechanisms for independent review. We also think this is particularly important with regards to the detention of stateless persons, which is obviously an issue of growing global concern as civil unrest and conflict continues along with trafficking, people smuggling and the impact that climate change and climate change refugees will have. It is in that context that we thought the research being undertaken by the UK Equal Rights Trust in regards to stateless persons is very timely.

Briefly, the GSL case that we have referred to in our submission identified the public-private dimension as quite a significant challenge with regards to immigration. We found that there were very much blurred lines of responsibility and inadequate transparency and accountability. When we first kicked off this case and got it under way, there was a lot of ducking and weaving between both GSL and the department as to who had responsibility. When we raised concerns with regards to the day-to-day management and operation, the department advised that that was the responsibility of GSL. When we raised concerns with GSL, we were often told, 'We are just upholding the immigration policy.'

The other point I wanted to make was this PPP dimension highlighted the need for us for new and improved rigorous and transparent tendering processes. We think that a tendering process

that clearly articulates the government's new commitments to detention centre policy and practice needs to demonstrate a high regard to human rights law and standards. Given that this inquiry will give consideration to infrastructure and the acknowledgements that have been made about the ageing state of our detention facilities, the issuing of contracts needs to extend beyond, we think, just day-to-day management and support services such as health, psychiatric and legal advice.

We think it also needs to give consideration to the PPP arrangements or other contractual arrangements that would be put in place or drafted to cover any sort of redevelopment of infrastructure. In that regard, I thought you might be interested to know that the complaint mechanism of the OECD Guidelines for Multinational Enterprises was successfully used in Norway to raise concern about the practices of a Norwegian enterprise that was involved in the construction of Guantanamo Bay. Through their activities in the construction of the Guantanamo Bay facility, the company was effectively deemed to be complicit in human rights' abuses. Given the committee's intention to report in three parts, the agreements that we reached with GSL as part of our mediated outcome, particularly with regards to staff training and the establishment of mechanisms for an independent monitoring and auditing of their own compliance mechanisms, we think that they are highly relevant to the second stage of your report with regards to transparency and service provision. However, we would encourage you to look at all of the agreed agreements that were reached with GSL perhaps as a way of auditing what has occurred to date since that specific instance, as it is referred to, was concluded.

Also, I wanted to draw your attention to the report by Professor John Ruggie who is the special representative to the United Nations Secretary General with regards to business and human rights. His report is titled, *Protect, respect and remedy: a framework for business and human rights*. This report makes very clear reference to the state duty to protect, enterprises' responsibilities to respect human rights, and the need for remedies for individuals whose rights and dignity is undermined. If there is to be a continuation of public-private partnerships, I think it would be very timely to have a look at that report. Finally, I wanted to suggest that perhaps the committee could give consideration to launching or releasing the first stage of your report on 10 December 2008 in recognition of the 60th anniversary of the Universal Declaration of Human Rights. It seemed like it might be a timely launch date for you.

CHAIR—Thank you very much for that presentation and that constructive suggestion. I hope we can get to 10 December 2008 and get it out in time by then. The committee has a very extensive program of meetings and hearings and three important reports that we have to prepare. In your submission you mention the Ecumenical Migration Centre. Can you explain to the committee how the centre operates and what services it provides?

Ms Lillywhite—Certainly. The Ecumenical Migration Centre is part of the Brotherhood of St Laurence. I guess its role has changed a little over the years. Certainly during 2002 when, in conjunction with the Justice for Asylum Seekers Alliance, we prepared the report that we have attached as an appendix for you, they were very, very heavily involved in advocacy around detention centres. The current focus of the Ecumenical Migration Centre is perhaps, at the moment, more clearly focused on service delivery to refugee families with regards to settlement, and I think that is probably adequate for it at the moment. But there is provision of services, for example, a program called Given a Chance which is a program that links both mentoring of refugees in terms of job seeking skills, linking them up with a mentor and then assisting them to

gain employment. It is a very practical program that provides support and services to newly arrived Australians.

CHAIR—With respect to refugees, asylum seekers, people who are out in the community awaiting decisions on their presence in Australia, does the same group of people come to you as go to the Asylum Seeker Resource Centre or to this community care project? I am talking to the Ecumenical Migration Centre, not directly to the Brotherhood of St Laurence. Is there some integration of a section of these people, or do you have your own discrete group that you are dealing with?

Ms Lillywhite—Certainly there is collaboration between the Ecumenical Migration Centre and other refugee support agencies. In some cases, though, with the project that I outlined called Given a Chance, this mentoring, training, employment program is a project that is specifically funded for the Ecumenical Migration Centre to deliver.

CHAIR—What is it called again, please?

Ms Lillywhite—Given a Chance.

Mr GEORGIOU—You said in your discussions with DIMIA or whatever it is called nowadays and the contractors, DIMIA would say that things that were happening under the contract were not their responsibility because it was the contractor's responsibility?

Ms Lillywhite—That is right.

Mr GEORGIOU—Can you explain why they thought that made sense?

Ms Lillywhite—I do not know what their thinking was as to why they thought that made sense. It certainly did not make sense in our view. I guess the issue came about when we first lodged this case because the case was mediated by federal Treasury for the reason being that the person responsible for the OECD Guidelines for Multinational Enterprises is called a national contact point and he happens to sit in federal Treasury. When we first lodged this case and we wanted to investigate further the responsibilities of the department to ensure that the operations of the enterprise were in fact upholding human rights' provisions, our advice from Treasury at that time, and also from contacts with DIMIA, was very much along the lines that this is a public-private partnership, we are involved and responsible for the infrastructure, but the day-to-day management and operations rest with GSL.

CHAIR—When did you lodge this complaint? What is the process?

Ms Lillywhite—The complaint was raised in 1995. The process is that there is a complaint mechanism under the OECD Guidelines for Multinational Enterprises called a specific instance. What is required is that if anybody—whether it is NGOs, members of the community, whoever—has credible evidence that there is a perceived or alleged lack of compliance with any of the provisions of the OECD guidelines, you can lodge a complaint which basically outlines your concerns. In this particular instance we were concerned that GSL was not upholding the human rights' provisions of the OECD guidelines.

CHAIR—Did you say this was 1995 or 2005?

Ms Lillywhite—Sorry, 2005.

CHAIR—Okay, because I know that GSL was not around then.

Ms Lillywhite—No. Thank you for correcting me.

CHAIR—I am sorry, I was confused.

Ms Lillywhite—Yes, 2005. So there were two provisions that we felt were perhaps not being upheld: the human rights' provisions of the guidelines as well as what is called the public interest provisions of the guidelines. The public interest provisions apply if an enterprise says it is doing something and then you have a view or an opinion that it in fact it is not doing that. That can be seen as non-compliance with public interest. Once you lodge the case with federal Treasury, it is important to point out that these are voluntary mechanisms. Federal Treasury then makes contact with the enterprise and effectively says a complaint has been made and they then spend 30 days determining whether or not in fact there is adequate evidence to suggest that the complaint raised warrants being taken to the second stage or a full specific instance review. We were required to make some changes to our initial complaint. The national contact point made it very clear that our complaint could only focus on the day-to-day operations and management practices of GSL. We could not use this mechanism to question immigration policy per se. After a process of sharing of information and sharing of documentation and agreeing on what could be mediated, we resolved the situation through a formalised mediation process which was a very constructive process. I would like this opportunity to commend the then general manager of GSL, Peter Olszak, for his willingness to personally engage in that process and to not involve the lawyers. It was during that mediated outcome that we agreed on a list of 34 quite practical things that we believed GSL could do to improve conditions for detainees and to go some way towards demonstrating their commitments to operate within a human rights' framework.

CHAIR—Are those 34 in your submission?

Ms Lillywhite—Yes, they are.

CHAIR—Are they in one of the appendices?

Ms Lillywhite—In the main submission, four or five pages in.

Mr GEORGIOU—So they just said, 'We gave a contract, we are not responsible for how they implement it, that is their business. If you have a problem, you have a problem with them.'

Ms Lillywhite—Effectively.

Mr GEORGIOU—Is there any documentation of this, because I am interested in that assertion? I do not see how it can be valid in any meaningful way.

Ms Lillywhite—There is no documentation per se of the initial claims of, 'We are not doing anything outside of what is required by immigration policy.' There is no written documentation

with regards to DIMIA's claim that the day-to-day operations were the responsibility of GSL. However, on the website of the Brotherhood of St Laurence, you can find all the materials that we developed, which includes some documentation of GSL making it very clear that in their opinion they could not be questioned with regards to certain aspects, given they were just implementing Australian policy, which was, I guess, part of something that we contested. We believed that GSL did have a responsibility to uphold international law, particularly given they were in the business of detention centre management.

Mr GEORGIOU—I have just one other question. Do you have any problems with private-public partnerships on detention centres? Do you have any in-principle problems?

Ms Lillywhite—The in-principle problem we have is that where the public-private partnership contractual arrangements and tendering arrangements lack specificity, they can be easily blurred. There are inadequate mechanisms for transparency, for accountability, for independent review and for mechanisms of independent monitoring to see whether in fact the internal compliance mechanisms that GSL has are in fact being upheld. As a principle, we did not have any concern per se. Our concern was making sure that the right sort of public-private partnership arrangement is developed.

Mr ZAPPIA—Serena, thank you for the submission. I have a couple of questions on this issue where you talk about the 34 recommendations that were agreed between GSL and yourselves. You said that Peter Olszak was the manager of GSL at the time; I take it he is no longer there?

Ms Lillywhite—He actually passed away last year.

Mr ZAPPIA—All right. Secondly, has there been any monitoring of whether those 34 criteria that were agreed to have been in fact implemented and are being implemented by staff subsequent to Mr Olszak being in charge?

Ms Lillywhite—The short answer is no. There has been no external monitoring. This in fact was one of the concerns that we raised with regards to the OECD guideline complaint mechanism. We strongly recommended that the national contact point perhaps could follow up and determine whether or not there had been implementation around these 34 aspects. What we did manage to get agreement on was the final statement by the national contact point which includes all those 34 things being forwarded to, for example, the Ombudsman, what was then known as HREOC and various other related intergovernmental departments. Of course we know also that conditions have improved in some instances within the detention centre. That is not to assume it was as a direct result of this particular complaint.

But I guess the impetus for our submission was that a lot of work was done, 34 things were agreed, they were very practical things that could perhaps be useful in developing immigration policy going forward, and I guess I saw this as a very good opportunity for an audit, if you like, to be done to see just where some of those undertakings are at, particularly with regard to things like training, for example.

Mr ZAPPIA—Yes. Finally, are you aware of any instances where you believe the current management of the centres in a broad sense would contradict or conflict with what you thought was the spirit of this agreement?

Ms Lillywhite—I would have to say no. I would have to say that we have quite a constructive relationship now with GSL. In fact, Tim Hall, who is head of their public affairs, and I recently shared the platform at the Australian Centre for Corporate Social Responsibilities annual conference in February this year in Sydney to talk about our experiences. We had panel discussion around business and human rights. GSL and I both spoke about our experiences. We had the current national contact point there commenting on the usefulness of using a voluntary mechanism to investigate this, and we had analysis by Commissioner Graeme Innes and academic David Kinsley as well. We have quite a constructive relationship. In fact GSL was very much of the belief that this case assisted them in their day-to-day operations and they agreed for us to document it as a case study that could be used by an international NGO network to build capacity around the world in using the OECD Guidelines for Multinational Enterprises.

CHAIR—Are you aware of any other agencies that have used this mechanism to interface with DIAC or with GSL?

Ms Lillywhite—No, there are none others in Australia. In Australia only three cases have been raised using this particular mechanism.

CHAIR—Who were the other two, apart from you?

Ms Lillywhite—The other case involved ANZ and its provision of financial services to a Malaysian logging company, its client, with regards to the provision of financial services in Papua New Guinea. That case was rejected by the national contact point. Currently a case is pending regarding an Australian mining company and its activities in South America. Internationally, however, this mechanism has been used 160 times, predominately by trade unions and NGOs, to raise concerns around a whole range of issues. The case I mentioned with regards to Guantanamo Bay is, of course, of most relevance to this committee, given that it focused on the public-private partnership arrangement for the construction, the infrastructure, of that particular facility.

Mrs D'ATH—I am interested in exploring a bit more about alternatives to detention and your report that goes through the reception and transitional processing but then talks about the structured release program. Maybe I am missing something in the report, but it appears that the proposals you are talking about very much work around the existing visa structure. It is not proposing the removal or substantive change. For example, the community agency release is still talking about 'Eligibility for permission to work would be available in terms contained in bridging visa E and release on own undertakings has the same eligibility criteria.' We have heard quite a lot of criticism of bridging visa needs. Just on that issue, do you see the current visa system as acceptable if we went for community release or community detention as opposed to mandatory detention, or should we be looking at some other method?

Ms Lillywhite—We included that report really by way of background for you. It is dated 2002 and so obviously there have—

Mr GEORGIOU—It still holds, though?

Ms Lillywhite—It still holds up but there are some significant changes. I would actually like to take that question on notice because I was not one of the authors of this report with regard to the most appropriate visa requirement, if that is acceptable.

Mrs D'ATH—Putting aside the visa requirement, considering the experience of the Brotherhood of St Laurence in society and dealing with homelessness, if we are to move away from detention, what is your best case scenario of how we should be dealing with people, housing, financial assistance, health, social support generally?

Ms Lillywhite—Again I am not the most qualified person to answer that, and we can take that question on notice. Certainly there are very strong links with regards to the work that the government is currently doing around social inclusion and we can learn important lessons with regards to the social inclusion agenda that recognises the right to adequate housing, the right to access to appropriate services, the right to affordable and accessible legal advice, and the capacity and appropriateness of being able to access employment opportunities. A lot of that is made most possible if there are good support networks in place and if a broad range of stakeholders is involved from the community networks that have particular expertise in dealing with the varying needs of newly arrived Australians and refugee Australians as opposed to adopting a one size fits all. There are, of course, cultural differences with regards to the sorts of services and how we provide those services. I think there is some value in looking at the linkages with increased participation and wellbeing. We know there is good research around the links between active participation and inclusion in communities and society that could help support the need for broad consultation and broad engagement with non-traditional stakeholders in ensuring that community organisations are well represented.

Mrs D'ATH—All right. On the issue of processing of people when they first arrive for any period of time, I know with the GSL experience and the issues you raise, that training and experience is certainly high up there as far as the people who were doing the processing. I am interested just to expand on that issue. What sort of experience or training do you believe is essential for anyone who is going to be dealing with people coming through the process?

Ms Lillywhite—When we were raising this issue, we were able to get access to the GSL training manual and their curriculum. One of our concerns was that it was totally inadequate. There was a very strong overemphasis on security and baton charging, but a very limited amount of training around fundamental issues such as understanding what is a human rights framework, and understanding what commitments the Australian government as well as the contracting enterprise had made to uphold a human rights framework. There is need for detailed understanding of both our responsibilities in terms of signatories to the conventions we have signed as well as how you can operationalise that on a day-to-day basis. Knowledge about a human rights framework and standards would be essential. We would say there is a need for training around cultural sensitivity and an understanding of the various different cultural background of the political situation or the conflict situation from which asylum seekers have left. We know that it would be very advantageous if those people who are not just doing the screening but are also involved in the detention centres have a better understanding of the circumstances of the individuals and where they have come from. We also think that there is a need for training to ensure that, through both the screening process and again day-to-day

detention, that there is an adequate, if you like, flagging system whereby issues around potential for referral to health service, psychiatric services and so on can be highlighted.

Some sort of checklist, if you like, of at-risk indicators could be built into a training program to try to prevent and screen those very difficult issues at the earliest possible opportunity. I think there is also need for training with regards to not only just understanding the political and the geographic scenario from which detainees have come but also really developing an understanding of their own personal connections in terms of families, children, aged parents and so on.

In a completely different area of immigration that I once worked in, with regard to students and student visas, the criteria for issuing student visas, particularly with regard to mainland China, focused very much on, I guess, an at-risk set of criteria. This included, for example, does the student have a family in mainland China that they need to come back to, either ageing parents, children, husbands, wives; what level of connectiveness is there to the community; and, of course, what is their financial means? But I think training around being able to understand and identify some of those broader non-traditional factors that can influence a person's risk or otherwise would also be useful training. We could expand on a number of other things if you wanted a longer list of what the training should look like.

Mrs VALE—Following on from that, in previous hearings we have heard in some cases that, with the training available to GSL staff, some of them have come ex-corrective services, and they have tried to continue to apply that kind of model. I was particularly interested in this agreement, the outcome of the mediation. I note that number one is to have the value of basing their model on a human rights framework. I also note that this is dated April 2006. Was St Laurence happy with the way the mediation agreement was implemented? Can you see a great deal of improvement, and do you have a great deal of faith that it will continue to improve?

Ms Lillywhite—One of the limitations of the mechanism we use, the OECD Guidelines for Multinational Enterprises, is that it does not have a follow-up mechanism and it does not have a monitoring mechanism. We did our very best to encourage the national contact point to go out on a limb and do that. What we were able to reach agreement on was that the then national contact point made his final statement and that list of agreed outcomes available to a range of other organisations such as the Ombudsman, HREOC and so on. I know from conversations that I have had with GSL that they have gone some way towards implementing some of these things but not all of them. Again I think that is where there would be value in this committee thinking about what capacity there is or is not to use this as a sort of an audit checklist in your ongoing discussions to see just where it is at.

Mrs VALE—So, Ms Lillywhite, there is no comeback or audit checklist on behalf of St Laurence at all to sort of oversee and get back and say, 'Hey'?

Ms Lillywhite—No, that is not something that we have undertaken. The Brotherhood of St Laurence was involved in a coalition with four other NGOs, including the International Commission of Jurists based in Geneva, a UK NGO called Rights and Accountability in Development, and then in Australia with the Human Rights Council of Australia and also ChilOut or Children out of Detention. We saw that our initial and primary role was really to test this mechanism and to bring a new voice to the debate and concern around detention and to think

of it in the context, if you like, of a corporate responsibility framework as well as a detention framework. It was really an attempt to bring a new voice to the table and to pick up on these emerging issues of public-private partnerships and just where the responsibilities lie and the need to ensure that, regardless of whether it is or is not a PPP, the fundamentals remain for a transparent and accountable model with an independent monitoring mechanism that ensures access to appropriate legal advice throughout the process.

CHAIR—Do you have an ongoing relationship with GSL? Also, what is your view of GSL compared to their predecessors? If you do not know about the predecessors, you do not have to answer that.

Ms Lillywhite—As to the second part, I do not know enough about ACM to be able to answer that with integrity. The relationship we have with GSL is pretty much on a speaking basis in that from time to time we come together, as I mentioned earlier, to talk about this experience. I would say it is a very constructive relationship now, and should the Brotherhood of St Laurence or any of our partners choose to do ongoing work with regards to the 34 outcomes, certainly I believe we would have an open door to ongoing discussions with GSL. As I mentioned earlier, I do think that GSL showed quite a lot of good faith in coming to the table to mediate these sorts of outcomes under a mechanism that is in fact non-binding, non-judicial and voluntary, and we were very encouraged that they did agree to do that and that we were able to reach agreement on a number of very practical things. Also, they were prepared to have documented the aspects on which we could not reach agreement.

Mrs VALE—Thank you.

CHAIR—As there are no further questions, Ms Lillywhite, thank you very much for appearing on behalf of the Brotherhood. Again, as we have said to some of the other participants, we appreciate your participation in this area and that of the Brotherhood as well.

Ms Lillywhite—Thank you very much for the opportunity.

CHAIR—Please pass that on officially.

Ms Lillywhite—I will pass that on.

CHAIR—I hope you enjoyed your appearance before the committee.

Ms Lillywhite—It was a bit daunting coming after the lawyers.

CHAIR—Well, with all of us sitting here they had a lot of others as well. Thank you for doing it by yourself.

Ms Lillywhite—Thank you.

Proceedings suspended from 2.31 pm to 2.38 pm

KNEEBONE, Dr Susan, Deputy Director, Castan Centre for Human Rights Law

CHAIR—Welcome. Do you wish to make an introductory statement?

Dr Kneebone—Yes, thank you. I appear as a representative of the Castan Centre. I should also say that the Castan Centre does not have corporate views on issues, so the views I am expressing, whilst they broadly represent the sphere of interest of the Castan Centre, are largely my views—if that makes sense.

CHAIR—It does.

Dr Kneebone—I guess it would be useful for you to know what I do and what my interests are and how you might be able to draw on my expertise.

CHAIR—If there is anything beyond what is in the submission that you feel you want to tell us about these issues, you are welcome to add that.

Mr GEORGIOU—And if you want to underscore any of the issues here.

CHAIR—Precisely.

Dr Kneebone—I am an academic so I hope I can bring something to the inquiry; that is the first thing I would say. I teach refugee law; I teach it as a graduate subject. I also teach international refugee law, so I know a lot about refugee law. I also teach a course called forced migration and human rights. I try to put refugee issues into a global context. I have also a project which is looking at Australia's response to trafficking in the Greater Mekong Subregion. I have a very broad interest basically in international migration and forced migration issues. I cut my teeth first of all on refugee issues by writing an article about the Refugee Review Tribunal. It is now 10 years ago I realise, which is kind of scary. I have been researching and writing on refugee issues for 10 years. I recently completed a book called *Refugees, asylum seekers and the rule of law* which looks comparatively at other English-speaking countries, including Canada, the US, the UK and New Zealand to a certain extent. I can talk quite a lot about how, for example, obligations under the refugees convention are brought into national laws and the difference that I think that makes to the way that states respond. That in a nutshell is me.

CHAIR—You said in the outline of your submission that you had residual concerns about some of the aspects of the proposed changes by the minister in his statement on 29 August 2008. What are the residual concerns?

Dr Kneebone—My concerns are really based around the fact that refugees or asylum seekers are a special class of people in international law. They are really, technically speaking, outside the idea of immigration control because they have rights to move, and that this measure is in a sense replicating the Pacific plan by putting people into an offshore processing location.

CHAIR—There isn't anyone at Christmas Island at the moment, is there?

Dr Kneebone—I do not think there are many people. I think most people have been moved off Christmas Island recently. I am also a member of the Refugee Council of Australia. A group of NGOs and refugee advocates went to Christmas Island recently to have a look at the facilities.

CHAIR—The committee was there as well.

Dr Kneebone—Okay.

CHAIR—But you did not go?

Dr Kneebone—No, I was teaching, I do not have the money to do those sorts of things.

CHAIR—In this case the munificence of the government looked after these NGOs. They were taken there as guests of the government. Your objection to Christmas Island is an objection to it as an idea, its presence at all or the nature of the beast that is there at the end of the island?

Dr Kneebone—I guess all of those things. I guess the fact that first of all Christmas Island is excise territory. The fact that we have this notion of excise territory is one objection. But in practical terms it is really not a good solution for processing of asylum seekers, and that is my basic concern.

CHAIR—If we were to have a surge of boat people come from Indonesia and the government was to not—and I will not use Mr Georgiou's expression of incarcerate—have them in the new detention facility but were to house them in the construction camp that the people actually built?

Dr Kneebone—The Phosphate Hill facility?

CHAIR—No, not the Phosphate Hill; the construction camp that is opposite.

Dr Kneebone—The new one with all the barbed wire and so forth?

CHAIR—No.

Mr GEORGIOU—It is the camp that was used to house the construction workers that built the barbed wire place.

Dr Kneebone—I see, yes.

CHAIR—It has no fence around it but it has quite a modern kitchen and other facilities as close to a recreation centre—would you be opposed to them being accommodated there?

Dr Kneebone—That is a difficult question. I guess in theory I am opposed to the idea of making a distinction between these people and other people who arrive on shore via legitimate means. That is my bottom line. I think to talk about these people as boat people is also, strictly speaking, not accurate. With respect, it demeans their position in international law.

CHAIR—What should they be referred to as?

Dr Kneebone—They should be referred to as asylum seekers; that is their legal status. An asylum seeker is basically someone who is seeking asylum, and it is as simple as that. It is for governments to process them, but as I mentioned in my submission, a person is a refugee in the eyes of international law if they meet the refugee definition. The refugee definition is not something that is easy to apply; it is something that is quite complex and I think these people deserve and need proper and special treatment and processing.

I think we have to unpack this problem and go back a little bit further and think about how we got to this language of boat people, when it came in, what the source of the problem really is, and look at the problem in the global context which is why I started off explaining my sort of global perspective. I think we have to appreciate that Australia has a minuscule problem in relation to the rest of the world. There is a large number of people moving around the world, often for mixed motives, and we have to acknowledge that, but we also have to acknowledge that refugee status determination is a devilish thing to do, and that with the best will in the world it is not always done very well.

I think I probably start from a different way of thinking, but I do, at the same time, recognise that this is a very political issue. It is a matter of persuading the Australian public that this is really not an issue of security. It is not simply a replication of the hordes trying to get to Australia that the posters talked about in the 1920s. I teach migration law—that is another thing that I do. I teach citizenship and migration law. My class is like a mini United Nations. I have almost every nationality in the world there, I think, but a large number of Australian Asians who are either born here or overseas international students, and it is quite disturbing to go back into our history and see what responses we have had to strangers in the past. I think there is something in the national psyche that we have to all work together to try to counter to a very large extent.

Mr GEORGIOU—I would say there are some quite encouraging things in our past, too.

CHAIR—To reinforce your point about Australia seeing itself in context, I should place something on the record. This committee met the Deputy Speaker of the German Bundestag when parliament was sitting last week. When I, as chairman of the committee, had to explain to the Germans that we had 300-plus people in detention, he did explain to me that they received 300,000 people in Germany from the former Yugoslavia in one year and he was a bit bemused as to our problem. So it did set it in context.

Dr Kneebone—We really do not have a problem in world terms at all. I think part of it is our geographic position and I have really spent a lot of time over the last few years trying to get into this issue as an interdisciplinary issue, not just as a legal issue, trying to understand how geographers come at the issue, how psychologists come, and trying to understand why people move. I have heard a lot of people talk about the motives of people moving and that people do not lightly uproot themselves unless they have very good reason. When they uproot themselves, like most human beings, they will try to find other compatible human beings, so family connections and other ethnic groups are important. Whilst I say on the one hand that it is theoretically separate to migration law, on the other hand even though people are fleeing, they will, if they can, choose places where they do have some connections.

CHAIR—Along with boat people, what do you think of the term ‘economic refugee’?

Dr Kneebone—There is no such thing as an economic refugee. I think there is a lot of misunderstanding around the words economic refugee, and some of these misunderstandings were actually introduced by some very well known people in the 1990s in the context of the comprehensive plan of action. Let us face it, refugee law is hugely political, to the extent that we can depoliticise it and understand more about what people are doing and why they are doing what they are doing and how what they are doing is a response to what Western receiving states are doing. The reason I took an interest in the trafficking issue, for example, was that I had been looking at the issue of refugee women and how they were dealt with in jurisdictions around the world and, you know, pretty much let us try to keep them out a bit unless it is really, really bad. Then I heard the Australian government had thrown $20 million at trafficking. I thought, 'Hang on; how do these two ideas fit together? We are really talking in both situations about women being abused, though in different ways perhaps.'

But, of course, the way the international community has focused its energy on issues of trafficking and smuggling is just an example of the way that states actually respond to issues. They will often take, obviously, what seems to be the clearest and easiest solution which is simply to stop people moving. It is the stopping of people moving which in fact has pushed people into the arms of smugglers. So trafficking and smuggling to start with should not be mixed up together, and that is one of the issues. The fact is that the issues are all mixed up together, and there are terms like economic migrants around. It is true that many people are moving for motives that might not strictly come within the refugee convention, but unless they are properly processed we do not know whether or not they are. If we do not process them properly, we are at risk of refuelling them which is the biggest problem of the refugee convention regime.

CHAIR—We were in northern Australia at the Northern Command and were given a very interesting overview by, I think, the local air commodore, the local combined Defence Force chief person there. He explained to us that the central thing that Australia had done to stop boats coming to Australia was a much more engaged policy with Indonesia, and that Australian Federal Police and other people had been interfacing with their Indonesian colleagues. They had been at various ports and villages and with regional governments in Indonesia explaining where our economic zone was, and even distributing maps. Do you see that as legitimate activity?

Dr Kneebone—Absolutely. I think that is really what we need to be doing. I think it needs to go beyond that. I had a very interesting meeting recently with a delegation from the Indonesian department of foreign affairs who have been visiting different academics in Australia trying to get advice on how to draft legislation to deal with refugee issues. I think that indirectly they were looking for some advice on how to ratchet up the Australian government's engagement with the area. They have quite a large problem with a residual population of refugees who remain on Indonesia, and they are very unhappy about that for lots of different reasons, some of which are laudable, and some of which are interesting, if I can put it that way. Certainly regional cooperation is something that I would strongly advocate. I think it is part of what you are talking about; not just policing but something that is tied in with aid.

CHAIR—This is beyond policing, but I am just giving you an anecdote into the broader thing that he was describing.

Dr Kneebone—Yes, I hear stories. I have children who have worked in Darwin and I hear quite a lot of what goes on up in that part of the world.

Mrs VALE—In your submission, amongst other things, you also expressed concern about the proposed oversight role of the Ombudsman. Would you like to expand on those concerns? Also, do you have any suggestions for what you would consider to be a more appropriate mechanism to the oversight?

Dr Kneebone—Yes. This really goes back to the point that I was making about refugee law, and the refugee definition not being a very easy one to apply. I spend a whole course teaching postgraduate students about refugee law, and one of them is a person who works for the Department of Immigration and Citizenship making decisions, and I think she is just amazed at how much there is to it. I think that is the first thing, our starting point; determining who is or who is not a refugee is a specialised task. Coincidentally, yesterday I had a meeting with one of the minister for immigration's advisers talking about tribunals and what the best model of tribunal would be. What I said to her was that probably the Canadian model, missing out the primary department stage and going straight to a two-panel body with a lawyer and someone else with a broader cultural background—sorry to all the lawyers, but let us face it, but I do not think we want just lawyers. I realise that this is a utopian situation, or maybe not, but what I am expressing is the view that I think refugee status determination is specialised.

I heard you talking to the previous witness about screening. Yes, screening is one thing, and that has to be done very carefully and very sensitively. But I have spent a lot of time over the last 10 years looking at different forms of tribunals and decision makers and different countries and scenarios and people with different backgrounds just to get a grasp on how devilishly difficult it is. You really do have to understand something about the culture and the psychology of the person you are dealing with as well as refugee law. That is part of the issue. My concern is that the people on Christmas Island, being such a remote facility and not having very much of a community—we did have an article in a local newspaper recently on the weekend about Christmas Island that talked about the casino and the fishing club, I think it was. There is not a lot on Christmas Island.

Mr GEORGIOU—There is not a casino anymore.

Dr Kneebone—That has gone, has it?

CHAIR—Lots of red crabs.

Mrs VALE—I was thinking red crabs, but I was not going to say that.

Dr Kneebone—What I did like about that article was they had a picture of the local community and they were basically girls from Malaysian nationality in Islamic dress, which I thought was very cute. So the nature of the task is a concern. Also, in terms of the Ombudsman, whom I know as a person and a friend and for whom I have a great deal of respect, I am not just thinking of the Ombudsman as a person but as an office, and my basic point is that this is such an important task that it does need to be done with someone with specialisation. I think that it could be someone like an ombudsman; it could be some sort of mini tribunal. I think to call it an ombudsman is conveying the wrong message. It is suggesting that it is a matter of

administration, so my argument has an underlying legal argument, namely that deciding the status of a person is really deciding something so fundamental that it has to be done as a judicial process or a quasi-judicial process, if that makes sense to you.

Mrs VALE—Yes. I was just wondering if you would prefer to see a specific immigration ombudsman or panel, specifically dealing with immigration?

Dr Kneebone—Yes, that is an idea, providing that it has proper powers. Again, another issue that has been a common refrain in submissions that I have made over the years is that I think the statutory framework that we have for dealing with refugees is not adequate in this country. It is not correct to lump refugee and immigration issues together. I have often referred, for example, to the Canadian act where they do separate things out and actually give decision makers guidance on what matters to take into account, including broader human rights beyond the refugee convention. If we were to look for a best practice model of legislation within our region, I do not think we need look much further than New Zealand where you see that the refugee convention is annexed to the act. I do feel strongly that doing more than just these procedural things, they do send a message to the community that refugees are something special and separate, and that it starts to educate people about them. I think at the moment in Australia we do not have a public that is interested in these issues. The *Age* was not interested in publishing my letter the other day. They are just not interested in issues unless they are stories about detention and mental health, really sad issues.

Mrs VALE—Professor, we could really put a little more time in getting more structure that has a greater level of integrity when it comes to the outcomes of the people it processes?

Dr Kneebone—Yes. But at the end of the day you have to ask yourself, why do it there? Why have the expense of flying out these specialists, doing it all there? Why not have them on the mainland close to a city where specialists exist?

Mr GEORGIOU—They tried doing that when they tried to excise Australia as a whole.

Dr Kneebone—Yes, I know.

Mr GEORGIOU—It did not work. The reason is that they get procedural protection but they do not get access to the appeal system that applies to the refugee determination in the mainland.

Dr Kneebone—I do feel that if we put more effort into getting a better first instance hearing, which might not necessarily be from within the department, it could be the Canadian model. The Canadian model is not perfect. I am sure if somebody did the sums, we are going to come out well because so many of them who are rejected by the department then appeal to the Refugee Review Tribunal and then go on and seek judicial review, so we create bottlenecks on the high seas and we create bottlenecks in our systems. Really, it is a defensive attitude; it is an idea of putting up barriers instead of trying to actually deal with the problem more at the source.

CHAIR—Are you suggesting that after the department has done a health and security screening that a person's status be determined by a panel, like the Liquor Licensing Board or the Mental Health Review Board, with a lawyer, social worker and someone with other experience on the panel?

Dr Kneebone—Yes.

CHAIR—I think you can appear before them with lawyers but they prefer that you do not.

Dr Kneebone—Yes, I think that would be an excellent idea. I am not sure that people necessarily need lawyers at that stage depending on the composition of the tribunal. I think the Refugee Review Tribunal was initially set up with the idea of being more non-adversarial than perhaps has turned out. I think that is the sort of model that should apply in refugee status determination where you have a shared process between the decision makers and the person.

Mr ZAPPIA—In your submission you talk a lot about things like the Universal Declaration of Human Rights and other conventions that have been breached by the department, as have a number of other people who have made representations. It would seem to me that many of those representations would surely be argued in the court cases that have been held to support some of these people who are seeking asylum. Why is it, in your view, that they do not seem to be upheld by the courts, or are they being upheld, and if they are, why is it that refugees or asylum seekers do not seem to be able to get much protection from any of those agreements?

Dr Kneebone—In fact these arguments are not coming up before our court system. The way in which these issues do come before the courts, because of this decision making process that we have just talked about, involves at this point a primary decision by the department, appeal or review to the Refugee Review Tribunal, and from that point onwards, they can only go to the courts on matters of law which basically are domestic law.

Many of these human rights provisions, as is the refugee convention itself, are only partially and very imperfectly actually incorporated into our law; they are not part of our law. That is the simple explanation. I think it is also a generational thing. I think that we also have a generation of judges who really do not understand what refugee law is. I think that it is not easy to find refugee law courses even around Australia now. It is happening more and more but it is going to be a while before we get a new generation of lawyers who really understand these issues and are able to educate the judiciary.

CHAIR—Mr Zappia has got to catch a plane now.

Mr ZAPPIA—Thank you for that and thank you for your presentation.

CHAIR—Thank you for your participation today.

Mrs D'ATH—Professor, on the issue in your submission of alternative community based detention or residence in the community, obviously one of our terms of reference is to look at international experience. You briefly touched on the Canadian model not being perfect but one model that can be used. From your knowledge of other models in other nations, is there a particular model that we could look at that you think is more suitable to adapting to Australia than other models?

Dr Kneebone—I guess the model that I know the most about is the Swedish model which has been described by the Hotham Mission. I am sure you know and are abreast of the details of that. It involves a case manager and some sort of supervised release. The previous speaker was also

talking about the mentoring scheme which the Brotherhood of St Laurence has introduced. I think that asylum seekers do need assistance in coping with a new environment, so the case manager system is one that is very appropriate.

Mrs D'ATH—Thank you.

CHAIR—As there are no further questions, thank you very much for appearing and thanks to the Castan Centre for sending you along. We appreciate it.

Dr Kneebone—My pleasure. Thank you for the opportunity to speak. If I can say, Mr Georgiou, you are one of the heroes of my students and me. We talk about you quite a lot and you will be in my forthcoming book. I wish you all luck.

Mrs VALE—We will have to stand in line to talk to him now!

[3.10 pm]

COFFEY, Mr Guy, Private capacity

CHAIR—Mr Coffey, you are appearing on your own behalf. Do you want to make an opening statement?

Mr Coffey—I would like to, and thank you very much for the opportunity to appear. I should say I was drawn into working with people in the immigration detention centres through a kind of geographical misfortune, perhaps an unfortunate geographical incident, which involved me working in a mental health service down the road from the Maribyrnong detention centre. In about 1998 they began asking us to make some assessments of people detained, and that is how I became involved. Subsequently, I have continued to see people in immigration detention centres while working at Foundation House, the Victorian Foundation for Survivors of Torture.

As you know, torture and trauma services are funded by the Commonwealth to assist in the recovery and rehabilitation of persons who have come to Australia to begin new lives, having suffered persecution and often terrible losses in their countries. They are integral to Australia's Special Humanitarian Program. It is one way we demonstrate humanitarian concern for people who have fled societies with far less respect for human rights than our own.

It could hardly have been anticipated when torture and trauma services were developed several decades ago that they would come to treat people not only for the psychological harm inflicted by tyrannous regimes but also for what has happened to them in Australian immigration detention centres. On the basis of direct observations over the past 10 years, I can unequivocally say that immigration detention has caused psychological harm. My observations and those of the co-author of our submission, Steven Thompson, who has extensive experience assessing detained people at Woomera and Baxter centres, is consistent with the empirical research which is now being undertaken.

Immigration detention has produced psychological problems in many former asylum seekers. It has affected their ability to engage in the challenges of settling in a new country, to learn English, to undertake vocational training, to work, to take an active part in community life and to trust Australian institutions. For a minority of former asylum seekers, immigration detention has resulted in severe, chronic, psychiatric disability. Some specific cohorts of detained asylum seekers had experienced high rates of imprisonment and torture in their countries of origin—for example, Tamils and Iraqis. For them, immigration detention directly reinvoked these pre-migration experiences and has been particularly disturbing and harmful.

Despite immigration detention's legal character being administrative rather than criminal, it is very commonly experienced by detainees as criminalising and punitive. It often stigmatises the detainee in the eyes of his family and community. While the psychologically harmful effects of detention increase with time, for some asylum seekers with a trauma history and for other vulnerable individuals, detrimental psychological effects can be seen over the course of the first weeks and months. There has not been historically, and there is still not currently, any expeditious means of removing persons adversely affected by detention into the community. We

are still often seeing high traumatised individuals—and I am talking now about in the last six months—who psychologically deteriorated in the course of the first months in detention, who have been assessed as being at risk and who remain in detention until the grant of a visa, often by the Refugee Review Tribunal.

The processes involved in granting of bridging visas or community detention remain far too slow and cumbersome to assist this vulnerable group. The psychological effects of immigration detention often significantly affect the detainee's ability to prepare and present their protection claims. I have seen many examples where I think a detainee's capacity to do that has been so affected that there are real questions of procedural fairness.

The mental health needs of immigration detainees are complex. The mental health services which have been available to immigration detainees have been inadequate. For reasons that are puzzling, the immigration department set out in 1997 or 1998 to fashion a free standing mental health service from contractually governed private counselling and private psychiatric services which almost entirely eschewed the available health services. The wide-ranging expertise available in state public mental health services versus the various specialist statewide services and torture and trauma services were barely utilised at all. When they were, the relationship between external services and the detention centre was poorly defined and sometimes fractious. Often considerable conflict has occurred between external mental health services and detention centre management. Recommendations by external experts have often been ignored or dismissed as advocacy. Mental health service delivery to detainees is still afflicted with this legacy even though there have been some substantial improvements in utilisation of external services.

Immigration detention mental health services have often lacked the expertise and support necessary to provide adequate care to immigration detainees. Health professionals contractually employed by detention service providers or by the department have often had their professional role compromised by participating in practices that are managerial or security orientated rather than therapeutic. I am happy to talk about some examples of that if you would like me to. The merging of managerial and health professional roles has often undermined detainee's trust in detention health and mental health services. Health staff are not regarded as independent of detention centre management. It must be acknowledged, however, that treating mental health adequately in the detention environment is difficult and often impossible. Our observation is that few people with established mental illnesses recover while detained and often the best result obtainable is the arrest of further mental decline.

As expressed in our submission, which I confess might be out of step with some of the submissions you have heard today, we believe the new policy, where a presumption not to detain operates, has the potential to avoid much of the psychological harm that has resulted from mandatory detention policies. We would be very concerned however if this presumption did not extend to the period in which identity and security checks are undertaken. These checks can be prolonged and in some cases that I have been involved with, asylum seekers were detained for years until their identity was established and they received a protection visa. I had somebody last week who just received their protection visa after six or seven years of identity checking. An approach that is consistent both with the presumption of not detaining unless demonstrably necessary and the avoidance of psychological harm is the policy of allowing asylum seekers to remain in the community during health, identity and security checks. They should live in the community, I would submit, on bridging visas, and where there is prima facie evidence

suggesting grounds for a security concern, reporting requirements should be imposed with a strictness commensurate with that concern. Thank you.

Mr GEORGIOU—Thank you very much, that was very instructive. I have got a lot of sympathy with your conclusions. Can I start with a lateral question. You said in the course of your presentation that for people suffering from torture and trauma, the detention experience re-triggered that. Is there any comparative data on the impact on depression and trauma flowing from an ordinary course of imprisonment, as in a jail sentence for a crime, and the sort of problems that flow from incarceration in a detention centre?

Mr Coffey—There is a lot of forensic data on the effects of imprisonment. As you have heard today, there has been a real dearth of systematic research into the immigration detention population, which I should say has been systematically blocked; there have been a lot of people who have wanted to do that. I have seen people, and they are usually 501 cancellations who have been in prison and have been moved into the detention centre, who almost invariably compare the detention centre environment unfavourably with the prison environment. The kinds of things they mention are the availability in prison of various vocational programs, meaningful activities and study and so on and also of course a definite period of imprisonment rather than the ongoing uncertainty. In addition to that, even though they might not have agreed with their sentence, they know why they are there and it kind of makes sense, whereas many people we see in immigration detention cannot fathom why they are being detained. They have great difficulty explaining this to their family overseas who believe they must have committed some kind of crime that they have not disclosed, because why else would a person be detained. Those kinds of considerations, the uncertainty and the indeterminate length of detention, the lack of availability of meaningful activities and the sense of injustice do have deleterious psychological effects which are not necessarily, or usually, operating in a prison environment.

Mr GEORGIOU—That is very useful because I have heard, 'It's worse than prison because at least in prison I knew how long I was in for, I had definite rights that even in prison could not be infringed and this one is arbitrary.'

Mr Coffey—It is a much more transparent process: they have attended a court, they have received a sentence and they know precisely why they are there. An independent body has delivered that; it is not just through the operation of law that a person has been detained.

Mr GEORGIOU—It is very important, actually. The second issue is: has, in your judgement, the treatment of detainees suffering from depression improved over the years or has it basically remained static?

Mr Coffey—I think it has improved since the Palmer inquiry in the sense that there is more willingness to involve external services and more willingness to act on recommendations of external services rather than regarding those services as meddling advocates, which used to occur routinely. There is still this fundamental problem, as we have said in the submission, that health and in particular mental health services are not integrated with the range of services to which the rest of the community has access. Those state mental health services have developed expertise over generations and which is available to the community. For reasons which I think are bewildering, it was decided that they would start all over again and create free-standing

services within detention centres that I think are far inferior to what exists in the general community.

CHAIR—When did they commence?

Mr Coffey—Under the current contractual arrangements I think in 1997.

Mr GEORGIOU—Yes. It was an attempt to exclude the outside world from the management of the centres.

Mr Coffey—Also, it is not plain sailing for external services when they do get involved. There are all sorts of ethical difficulties that arise. Not just us, but other centres, and I know this was a constant dilemma in South Australia, would make recommendations that the person could not be treated while they remained in detention and they were ignored. There might be another request for an admission of a severely unwell person but then a requirement that they be sent back to the detention centre. We eventually put our foot down about this when I was working in a public mental health service.

In the early days, people who were profoundly disturbed with very severe psychotic illnesses, for example, would arrive in handcuffs, totally disoriented, unable to give any kind of account of themselves. They would arrive in handcuffs with two or three burly officers. What was going on there was incredibly inhumane The overriding preoccupation was one of security; the person's psychological needs were very much secondary. Of course, recommendations were made that this person must not go back to the centre and they were ignored. It created a very difficult dilemma for the external services as to whether they would be involved in a situation which they felt compromised by.

CHAIR—Did this change when GSL took over?

Mr Coffey—Not at all.

CHAIR—Did this change when the Palmer inquiry happened or did it change when the government changed?

Mr Coffey—It still has not changed. The legacy is still there but it has been ameliorated slightly. I think this will remain a problem while services are delivered through private contractual arrangements. I know there are differing opinions on that, but my observation is that when the service is contracted to the detention centre providers or even the department they become too involved, both in reality and as they are perceived, with the security requirements of the detention centre environment. Health professionals end up being put in very ethically difficult positions where they are participating in practices that are much more to do with security arrangements than they are to do with any kind of therapeutic practice.

Use of isolation is just one of many practices of that nature where detention officers and maybe health staff would arrange for people to be put in isolation. This practice has changed significantly. I saw this happening all the time until recently but it is used more sparingly now. For a whole variety of reasons, it could be that they were self-harming or suicidal, in which case isolation exacerbated the underlying condition which is causing the suicidality, or there could

have been some kind of altercation, isolation was used in a totally punitive way, totally unregulated. It would inevitably cause deterioration in the person's health. I think the philosophy was at least they cannot harm themselves in that environment, that sterile environment, so the means to cause a management issue were removed. But, it certainly was not a therapeutic practice.

CHAIR—You said you were going to give us some examples of the conflict between management and people in mental health. Do you want to use this opportunity to take what you were just saying further and give us other examples?

Mr Coffey—Yes. One is of course when external recommendations are not taken into account and whether the external provider then remains involved or not. A second is to do with the responses to suicidality, which as I explained earlier is being looked at. I had a client just a few weeks ago tell me, 'Well, I have been having thoughts of self-harm but I am not going to tell them because I'm going to be removed into a situation I don't want to be in.' The health staff are involved in that, they have to be involved. I am not being critical of the health staff; it is a function of working in that environment.

Perhaps the most egregious example—which is hearsay, I should say—I have been told of by a number of detained people, and Steven Thompson has also independently heard about this happening at Woomera and Baxter through conversations with health staff there. As part of removal procedures, a detained person would be called to a medical appointment to remove them from the detained population, as a pretext for their removal. One can very easily understand what kind of consequence that has for the trust that detained people have in the health staff. Again, I am not being at all critical of the health staff; there are all sorts of pressures and strains placed on them working in that environment. Those I know and have worked with have been very dedicated in trying to assist people in almost impossible circumstances.

I think the biggest challenge really is that you have got an environment that is fundamentally contrary to the mental health care of a person. The mental health staff are not able to say or traditionally have not been able to say, 'We cannot treat this person in here.' They are employed to treat the person and not say, 'In fact detention, doesn't allow us to treat this person.' They have got to go through the motions without any real prospect of any beneficial outcome.

CHAIR—Have you dealt with people from different detention centres, say Villawood or Maribyrnong? You said Maribyrnong, sorry, but people apart from Maribyrnong.

Mr Coffey—My experience of working within a detention centre is exclusively in Maribyrnong. I have seen people who have been detained in most of the mainland centres and also Nauru. As I said, Steven Thompson, whose views are reflected in this submission, has worked extensively with people in Baxter and Woomera.

CHAIR—Did you perceive any difference in the culture of these places one from the other? Were there any redeeming features to your work in Maribyrnong compared to other things that you have seen?

Mr Coffey—There are redeeming features. We are talking about different levels of harmfulness rather than one being a benign environment and the other not. There is no doubt that

the culture in Woomera, Baxter, and Port Hedland was different. Because of their remoteness and because certain events occurred there which involved violence, protest and so on, some people were exposed to things in that environment that do not regularly occur at Maribyrnong and Villawood, so that is a difference. There is greater access to metropolitan services in the city centres. There is no doubt that that is an advantage for those centres. I think perhaps the largest advantage is access by visitors because most detained people will say that the one bright part of their week or less dire moment in their week is the visiting that occurs through all sorts of dedicated people in the community. That is obviously very difficult to do and there are significant obstacles to that happening in the remote centres as compared to in places like Maribyrnong and Villawood. Of course the remoteness is a major concern with Christmas Island. Many of the problems that we saw both in terms of service delivery, professionals' availability and access to visitors and supporters is going to be insurmountably difficult I think in Christmas Island, even more so than it was in the mainland remote centres.

CHAIR—There are even small redeeming features there. When we were there, there was a small group of local citizens who had a policy of connecting themselves with asylum seekers who were there. Even amongst a community of a thousand there were such organisations.

Mrs VALE—Just listening to your comments, Mr Coffey, given that some form of detention centre is going to remain with us at least in the future, what kind of recommendations would you like to make to this committee and to DIAC about how we could actually prevent deleterious or harmful means being perpetrated on people regarding their mental health?

Mr Coffey—That is a very broad question, so thank you for that.

Mrs VALE—We are very much aware of the impact of detention. Do you have any recommendations?

Mr Coffey—I hope they are contained in the submission, but very briefly I can highlight a few points. The bona fide implementation of the presumption that people are not detained unless it is absolutely necessary on security grounds will have an enormously beneficial effect in avoiding a lot of harm that has happened in the past.

I am going to assume that will be implemented and in a way that will cause the vast majority of people not to be detained, including people for whom there is some doubt about their identity. If that is not the case, then we are still going to see people detained for extended periods of time. Often those are the people who are the most vulnerable, people who have had to flee their countries precipitously and have not been able to gather the means to establish their identity. So it has the potential to discriminate against the most vulnerable people.

Assuming those people are not going to be detained and assuming we are just talking about a small subset of asylum seekers for whom there is prima facie evidence that they do pose a security risk—I have never met such a person, by the way, but maybe there are such people there—how do we avoid deleterious effects? If that person has got a torture and trauma history I think it is going to very difficult to avoid deleterious effects even in the short term if they are placed in an institutional environment. I would urge that such people be placed in either community detention or on a bridging visa with very strict reporting requirements.

I do not think psychological harm is going to be avoidable in a detention centre environment. Even now, we are seeing people coming into the detention centres who have literally come out of situations of imprisonment and torture in their country of origin. They may only be in detention for a few months but it is having a very significant deleterious effect on them, and a few months is too long for that group. I think if we are going to detain that group, we are going to continue to cause harm.

CHAIR—Can I interrupt you for a moment. What kind of countries are they coming from? Without revealing the details of the individuals, can you give us the kind of circumstances that people have come out of? I am talking about the recent ones.

Mr Coffey—Yes. Sri Lanka and Nigeria and a few other countries.

CHAIR—Have they been tortured because of their political opposition to the regime or because they have been caught in the wrong places?

Mr Coffey—There are a variety of reasons, convention related reasons. These people have received protection visas usually after four or five months. Just returning to that question, though, as I said in my brief introduction there are not adequate means of identifying these people and removing them into community detention or onto bridging visas at this point, and that really needs to be addressed. I am only a clinician and I do not understand how the bureaucracy behind that decision making works. There are a variety of possibilities.

One is that there is a failure of identification. I think that has historically been the case but I hope it is not the case anymore. So the person had not been identified as having that kind of torture and trauma history. Secondly, that needs to be communicated to a case manager in the department who then needs to trigger the processes via detention health to the Community detention unit, or whatever it is called within the department, to make an expeditious decision on this. It is still not happening and I do not know why. Everyone seems to know that this person is deteriorating in detention. It is making all sorts of issues more complicated including the person representing themselves in their protection claims. They will often deteriorate to a point where they are so unwell that they present themselves in a fashion that leads to credibility doubts. Then they fail at the primary decision and maybe again at the Refugee Review Tribunal, and they are getting more and more unwell as time passes. You can see how this kind of situation compounds itself; it snowballs.

For the hopefully very small minority of people who will be detained in the future because of some kind of bona fide security concerns, we need these mechanisms working a lot better than they are currently. The bridging visa E has never worked well. Again, I do not know why because there are provisions that say, 'If a person can't be properly treated within detention they should be released.' That has been applied over the years in a totally capricious fashion. You would see some people who you think should be out and they would come out and others who are even more unwell remained in detention for years, and I just do not know why that occurred. There did not seem to be any systematic assessment of people against the criteria of that regulation.

Mr GEORGIOU—Criteria—yes, I am going to get back into that one.

Mrs D'ATH—I have one question on the issue of people who may self-harm. You talked about it potentially being detrimental to isolate them, including other measures which you did not go on to expand that are being taken to deal with people who self-harm. If we could address this in the short term, what would be the alternate means of dealing with people who are at risk of self-harm from what we are doing right now in the centres?

Mr Coffey—Self-harm is merely an outcome of a whole range of possibilities. It is a symptom of something that needs to be properly assessed and diagnosed. As is often the case, if self-harm or suicidality reflects an underlying mental illness then that needs to be treated. If that mental illness cannot be treated within the detention environment, that person should be treated where they can be treated, and that does not happen. Things are changing but what has happened historically is that it has been regarded almost as a management concern. You remove the person from the means of harming themselves and then the problem is over. It is a kind of straightjacket mentality; it is a custodial view of mental illness that harks back to the 19th century. In these circumstances, what needs to happen is that the cause of the person's distress or self-harm or mental illness is accurately diagnosed and then they get the appropriate treatment. It is not simply a matter of confining the person so they cease to be posing the problem.

Mrs D'ATH—If you could just expand on what is deemed to be appropriate treatment?

Mr Coffey—If the suicidality reflects a mental illness they should be referred to an external service, perhaps admitted, and the mental health issue treated. Because I believe significant mental illnesses cannot be treated in a detention centre, the deterioration of that person's mental illness to a point where they are suicidal should trigger very rapid consideration of placing them in a community detention environment, assuming they need to be detained because of security concerns under this new regime. Hopefully this will happen less and less because such people will not need to be detained at all because there will be no security concern. But, for that small group for whom there is a security concern, are mentally unwell and are suicidal, the vast majority of them should be either in community detention or in a psychiatric unit if they have got a significant mental illness.

Mrs D'ATH—Someone who has been told they are going to be removed from the country and then threatens self-harm, what is the best way to deal with this?

Mr Coffey—Again it depends on what their mental status is. If they are suffering from a mental illness, and I have seen many instances of this of people who have been suicidal, then they should be assessed as to whether they are fit to be removed, that is a significant issue. That is a whole other issue that needs to be looked into very carefully. People who have been suicidal have been removed I think possibly with very deleterious consequences to their wellbeing. As with any mental health or psychological problem, the origins of the self-harm or suicidality need to be corrected, identified and treated. Are you suggesting perhaps this is being done in order to delay their removal, I am sorry, is that your question?

Mrs D'ATH—No, I am not making any particular suggestion. I am just picking up on the point you made about how people are being treated right now as far as isolation and other means that may be detrimental. What I am looking at is the best way that we should be dealing with people in those circumstances. Do you believe that the assessments we are doing right now on mental health in the centres are adequate or should we be doing more?

Mr Coffey—No, they are not adequate and they have never been adequate. As I have said, we need to integrate external mental health services. We need more independent assessment and we need mental health services properly audited. We cannot rely on contractual relationships which are not ever examined as to whether they are being fulfilled or not. We need a better staffed and resourced set of mental health arrangements in the centres. There is a lot that needs to be done.

Mrs D'ATH—Thank you.

Mrs VALE—Mr Coffey, just one question, and it is just a thought. In your professional capacity and experience, how much do you think the indifference that, say, GSL or the people who are in control of our detention centres have towards the issues of mental illness reflects the indifference—that is my word—to people on issues of mental health in the general community?

Mr Coffey—Goodness me! You are asking me to comment on a wide range of people there.

Mrs VALE—Yes, it is. I just see a complete indifference in the general population regarding mental health issues when I look at it closely, even the way the mental health issues of people in the general community are treated by politicians of all levels in various forms of government.

Mr Coffey—There is indeed probably some indifference and ignorance in the general community of mental illness. There has been in recent years quite a campaign from organisations like Beyondblue to try and raise community awareness of mental illnesses, as you know. It is rather different for the person in the street who does not have any duty of care to a particular individual whereas GSL officers and GSL of course do have and so does the department and the Commonwealth. I think it is really a lack of training. Most of the officers who are given responsibilities such as watching and checking on people who are suicidal under the current suicide watch arrangements, so asking them to be quite knowledgeable in being able to make those assessments, as far as I know have no training whatsoever in that area. Many of their backgrounds are as prison wardens and they are put in an environment of people who are quite different from the prison population and amongst whom are very vulnerable individuals.

It must be said that the detention environment at times has been very difficult and volatile with lots of disturbed behaviour. It is a very complex situation that requires considerable training and knowledge in order to respond to it. I would not be too quick to blame GSL officers. I think there has been a whole range of people who have been put into situations where they have been out of their depth and they have not had sufficient training. I have had many people speak to me in confidence over the years, whether they be ASM or GSL officers or health staff, who have been utterly dismayed by the situation they have been put in. They can see these terrible injustices going on and they know they cannot really respond in the way they need to, to the detainees' needs. They have found being involved in that situation a very distressing experience.

Mrs VALE—Thank you, that been very valuable.

Mr GEORGIOU—Just one quick last question. You have spoken at length about the co-opting of professional staff or the conflicts. How different is it when you are a professional psychiatrist or psychologist in a mental institution, or whatever they call them nowadays, which is custodial?

Mr Coffey—It is entirely different.

Mr GEORGIOU—It is important. Can you just spell out why, because it follows on from the last issue that you just discussed?

Mr Coffey—First of all, you are working in a therapeutic environment which is designed to provide treatment in the best interests of that person. The person may be detained involuntarily but there are a whole range of mechanisms, as I think other people have pointed out today, whereby that involuntary detention is reviewable. Even though the person is very unwell, in my experience, and I have worked in in-patient psychiatric units, the person usually has some notion that there are people overseeing their detention, there is some independence in decision making, they can trigger a review of their detention and independent minds are brought to bear as to whether that person warrants detention according to explicit legislation. Nothing like that is in place for somebody in a detention environment. When a health professional knows that legal framework is in place, you can get on with your job and be a clinician rather than feeling caught up in all these ethical conflicts that afflict health professionals in the detention environment.

Mr GEORGIOU—Thank you, that was illuminating.

CHAIR—Mr Coffey, thank you for your exhaustive, and probably exhausting, responses to our questioning. We appreciate your coming along.

Mr Coffey—Thank you very much.

CHAIR—Thank you all for your attendance today, including Hansard and the committee staff who organised all of this.

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 3.51 pm