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JOINT STANDING COMMITTEE ON MIGRATION

Reference: Immigration detention in Australia

WEDNESDAY, 4 FEBRUARY 2009

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JOINT STANDING

COMMITTEE ON MIGRATION

Wednesday, 4 February 2009

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

Members in attendance: Mr Danby, Mrs Vale, Mrs D'Ath, Dr Stone 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

NASH, Mr Chris, National Policy Director, Refugee Council of Australia 1

POWER, Mr Paul, Chief Executive Officer, Refugee Council of Australia 1

Committee met at 12.25 pm

NASH, Mr Chris, National Policy Director, Refugee Council of Australia

POWER, Mr Paul, Chief Executive Officer, Refugee Council of Australia

CHAIR (Mr Danby)—I declare open this public hearing of the inquiry by the Joint Standing Committee on Migration into immigration detention in Australia. We welcome today representatives of the Refugee Council of Australia. I would like to commence today's proceedings by acknowledging the importance of the work that the Refugee Council undertakes, which ranges from protection and settlement assistance through to legal and advocacy services.

I understand that you have both travelled from Sydney to appear at today's hearings—thank you for coming. We look forward to your input at today's hearings. We do not require you to give evidence on oath but this is the equivalent of appearing before parliament and it warrants the same degree of seriousness. You will receive a transcript.

Mr Power—Thank you for the opportunity to speak to the committee. The Refugee Council of Australia is the national umbrella body for non-government organisations involved with refugees. We have 135 organisational members who are involved in a whole range of services. Our organisation is not involved directly in case work but our member organisations include nearly all the non-government organisations who are involved in asylum seeker support, particularly support to asylum seekers within the immigration detention system. The evidence that we are giving today is based on input and advice from our member organisations and also on the years of policy development that our organisation has done on these and related issues.

As the committee has noted, there has been a significant shift in recent years in the number of asylum seekers in detention centres from more than 3,000 in 2001 to considerably fewer than 400 now. Also, there has been significant reform within the immigration detention system since 2005. From the Refugee Council's point of view, the detention values which the Minister for Immigration and Citizenship, Senator Evans, spoke about in July attempt to build on the reforms which Amanda Vanstone commenced during her time as minister. In understanding community alternatives to detention we would see the commencement of the Community Care Pilot in May 2006 as a significant turning point. To that end, we would encourage the continuation of multiparty support for reforms to the immigration detention system.

The first report of this inquiry showed an encouraging level of multiparty support for valuable reform. We would support many of the recommendations of the first report, including: the publishing of criteria and setting of time frames for conducting health, security and identity checks; enabling conditional release from detention where there is little or no indication of risk to the community; ending the practice of charging people for their time in detention; consulting on guidelines to improve measures for the dignified removal of people required to leave Australia; instigating mechanisms to follow up people who have claimed asylum but have subsequently been removed from Australia and enshrining immigration detention reforms in legislation.

We also support the proposal to develop regular review mechanisms for ongoing detention. However, we support the views expressed in the dissenting report that the time frames proposed

are too long and that, in keeping with the minister's detention value statement, the Department of Immigration and Citizenship should be required to demonstrate a need to detain through an appropriate form of independent external review.

My colleague Chris Nash and I propose to share the presentation. I will comment on infrastructure options and the provision of services within detention centres while Chris will comment on the transparency and oversight of immigration detention and the further development of community based alternatives. Chris brings some valuable international insights. Before joining the Refugee Council of Australia he worked for four years with the European Council on Refugees and Exiles on asylum policy issues across Europe.

I will make some quick comments on infrastructure. In thinking about the infrastructure of the immigration detention system, I would strongly recommend the December 2008 immigration detention report of the Australian Human Rights Commission. This report, like their previous ones, is very comprehensive and it canvasses basically all of the major issues about detention centres which are raised by members of the Refugee Council. We would certainly affirm the goal from the minister's detention values statement of ensuring the inherent dignity of the person. I believe this is a useful principle to apply when considering the changes required to current detention infrastructure.

As the Human Rights Commission notes, the problem is the prison-like feel of the detention centres that we currently have. To quote from the commission's report:

> High wire fences, lack of open green space, walled-in courtyards, ageing buildings, pervasive security features, cramped conditions and lack of privacy combine to create an oppressive atmosphere.

The centre with the most prison-like feel is the new North West Point IDC on Christmas Island. We certainly share the Human Rights Commission's concerns about the security driven atmosphere of many of the immigration detention centres.

As the current and previous ministers have noted, there are problems with the infrastructure at Villawood. We note that the Human Rights Commission recommends the demolition of stage 1 at Villawood and major redevelopment of the rest of Villawood and the Perth IDC. I think, and our membership would agree, that the immigration residential housing facilities in Perth and Villawood provide a good model for future standards of accommodation which meet the detention values. There would have to be consideration as to appropriate levels of security, but the form of accommodation sets a new, very high standard.

There is no denying that the services to detainees in immigration detention centres have improved markedly in recent years, and it is a process of change which began four or five years ago. In our submission we refer to a number of continuing concerns and these include the need for further improvements to health and mental health services, the need for improved access to recreational activities and, in some centres, access to open space and varying levels of access to education facilities and communication facilities like the internet. We are also concerned that the infrastructure for visits is inadequate in at least two of the centres, Perth and Villawood.

Mr Nash—As Paul mentioned, I would like to make a few opening remarks concerning the issue of oversight and transparency and also look to try and develop some thinking on

alternatives to detention. Of course, the deprivation of liberty is one of the most powerful actions that can be taken by the state against an individual, and it is therefore essential that the operation of immigration detention centres is open to proper public scrutiny. The cases of Cornelia Rau and Vivian Solon are powerful reminders of the consequences of a failure to ensure adequate oversight.

The contracting of detention services to private operators has had a significant impact on both real and perceived transparency. Commercial-in-confidence requirements have shielded detention centres from the level of public scrutiny required to ensure that detainees have their rights respected and their dignity maintained as well as affecting the level of public confidence in the extent to which the government is adequately discharging its duty of care to detainees.

The Refugee Council believes that the most effective way in which transparency and accountability of detention centre operations can be ensured is through returning them to public sector control. More generally, it is important that the management and operation of detention centres continues to be subject to external scrutiny by bodies such as the Commonwealth Ombudsman and the Human Rights Commission. However, monitoring bodies should be better resourced and able to make enforceable recommendations. We consider that to be of key importance. The council also welcomes the recent decision by the Australian government to sign the Optional Protocol to the Convention against Torture which will mean that all immigration detention centres will be open to inspection by the UN Committee Against Torture and also that an individual will now have the opportunity to make complaints about his or her detention directly to the committee.

However, the Refugee Council believes that periodic review by independent monitoring bodies, even if strengthened, is not enough to ensure that Australia's immigration detention system complies with international human rights standards or to ensure that individuals are not subject to detention in an arbitrary manner. Past inadequacies have resulted in 14 occasions over the last decade of an adverse finding against Australia by the United Nations Human Rights Committee in immigration detention cases. This has caused great damage to Australia's international reputation. To ensure effective oversight and guard against this in the future, the Refugee Council believes that individuals should have an automatic right to independent review of the reasonableness of their detention with enforceable remedies.

As Paul mentioned, the Refugee Council very much welcomes the new detention principles announced in July last year, including that henceforth detention will be a measure of last resort and for the shortest period possible. However, if this policy is to be realised in practice then it is clearly essential that a range of effective alternative measures to detention are in place and properly resourced. These measures need to be able to cater for a case-by-case assessment of an individual's support needs and risk of absconding.

The available international evidence shows not only that alternatives to detention are universally more cost-effective than detention but also that such measures are generally very effective in ensuring the appearance and compliance for asylum seekers released into the community pending the resolution of their claims. In particular, models which employ concerted case management, adequate reception support and the provision of competent legal advice throughout the duration of the procedure have been found to significantly increase rates of compliance and ensure appropriate visa outcomes.

Within the Australian context, there has been an increasing recognition in recent years of the public policy benefits of alternatives to detention, as witnessed by the development of the Asylum Support and Assistance Scheme, community detention and the Community Care Pilot. However, at present far too many individuals are not eligible for these services and as a result face homelessness or destitution. It not only places vulnerable individuals at risk but undermines the development of an efficient and streamlined visa resolution system.

While the Refugee Council welcomes recent government proposals to expand work rights and abolish the so-called 45-day rule, current reform must go further by establishing a comprehensive and integrated community support model. For those individuals with community connections and the ability to support themselves, granting a bridging visa with work rights is the preferred option. However, a case managed approach for all individuals released into the community is necessary to ensure that no individuals fall through the cracks and that services are provided according to need.

The Refugee Council strongly supports the continuation and expansion of the Community Care Pilot as the best approach for ensuring supported release into the community pending resolution of status. A key component of any future system should be the comprehensive provision of legal advice to expedite the process of discerning meritorious claims, but equally reducing unfounded claims and, for those not in need of protection, to help facilitate voluntary return.

CHAIR—For vulnerable people such as those with mental health problems—say, people who have had a torture or trauma background—is community release always the best thing? Is there a risk of social isolation if the person is not familiar with the community and does not know anybody?

Mr Power—The whole question of case management is really fundamental there. I think the Community Care Pilot really does provide a model which can be developed further. One of the concerns that have been raised with us is the appropriateness of continuing to detain some individuals with torture and trauma issues in detention centres. There is concern that, at least in some cases, a recommendation to find an alternative form of detention or accommodation should be explored because of the impact that detention is having in exacerbating people's torture and trauma issues. That is a concern that has been raised with us by Foundation House in Victoria.

I think that careful case management is really fundamental. Australia has perhaps one of the best developed national networks of torture and trauma services, so the potential support is there. It is just a matter of how individual cases are managed. Certainly there is a feeling that we could definitely go further in managing the needs of people with significant torture and trauma issues. In the current immigration detention population and also over the last couple of years, people have been detained for longer periods than was necessary or conducive to supporting positive mental health.

Mr Nash—Very quickly I want to add that one of the criticisms of the Community Care Pilot at the moment is that DIAC has not always ensured successful pathways so that support can be provided by community agencies for people with serious mental health or other health needs, and that is an area in which the CCP could be improved.

CHAIR—Are the residential units in Villawood and Maribyrnong and other places suitable as community housing, in your view, or would you still consider people who are kept there to be in a form of detention?

Mr Power—Is this the Immigration Residential Housing?

CHAIR—Yes.

Mr Power—There are a couple of issues. A sense of a detention environment is, I think, a little stronger with Villawood Immigration Residential Housing than it is with Perth Immigration Residential Housing, but I think that could be relatively easily addressed because it is really to do with perimeter fencing and the configuration of the entrance to the Immigration Residential Housing.

CHAIR—So if that were changed it would—

Mr Power—Yes. But I think the other factor which is raised by a number of organisations that visit there regularly, including the Bridge for Asylum Seekers Foundation, is the level of activities for people in Villawood Immigration Residential Housing. I think that really needs to be looked at more carefully.

CHAIR—I apologise, for the reasons I have described to all of you, for having to go. I will hand over to Dana.

ACTING CHAIR (Mrs Vale)—I will go further back to your response about people who are vulnerable and who have had experience of torture or trauma and kept in detention—and I think we can all understand how that could further aggravate the trauma. But sometimes just releasing them into the community can cause another problem, can't it?

Mr Power—Definitely.

ACTING CHAIR—They could be isolated and there can be further concerns. Do you see that this is where, perhaps, sensitive case management could help alleviate that?

Mr Power—Yes, definitely. I think that case management is absolutely critical. Certainly the feedback that I am getting is that in some individual cases there is disagreement between the mental health service providers and the torture and trauma agencies about the most appropriate options for particular individuals and a concern of the torture and trauma agency, particularly in Victoria. They have raised with us the situation of some individuals, where the exacerbation of people's torture and trauma issues by continued detention is not being significantly taken into account and also that alternatives are not being explored. Ultimately, it gets down to case management, and of course that is a continuum. The only way to manage those sorts of issues is to look at each individual circumstance and also to apply the principle of detaining people only where there is a strong reason to do so and to explore other opportunities and other forms of community support.

ACTING CHAIR—Paul, in some of the interviews that we have had with people who have been in community detention and who have not had work visas and who have not really been

able to have any other activity, one of the women actually said that she found it just as bad in another way, being in community detention, because you virtually had one arm tied up behind your back. I know that you make a recommendation about work visas. In your opinion, should work visas be granted immediately they are allowed to go into community detention, or do you think there should be an appropriate waiting time?

Mr Power—Probably one of the things that needs to be explored further is where community detention starts and ends and where the release into the community options are explored. We have been looking at the whole question of the right to work for people who have been released into the community on a bridging visa. We certainly have some comments we would like to make about that. I do not know whether you have any comments about the community detention system as it currently operates, Chris.

Mr Nash—I will just lead on from what you have just said, Paul. I think there is clearly a consensus within the community sector about what we consider to be the best model for alternatives to detention in the community. Essentially there are five key elements of that. Firstly, as has been mentioned, a case management approach is essential throughout the procedure for all asylum seekers, not just those who are vulnerable. The evidence with the Community Care Pilot is that that has been very effective in identifying and meeting individual needs, but beyond that it also helps to ensure successful visa outcomes. In terms of the resources needed for that, it would require only an initial assessment, and if asylum seekers were not shown to have particular needs—able to work or support themselves—they would not need an active case management approach but it would be available to those who did.

The second key component is, again, that individuals are granted work rights and Medicare throughout the whole duration of the procedure. We all know the problems that have been historically associated with a lack of support. The welfare and health crises were precipitated by people being released not only without the right to work but also with no access to support, and these needs are clearly very important. The third key component is that there must be financial assistance for those who are unable to work. Most asylum seekers do want to work if they are able to but, like the general public, some of them are not able to find employment and therefore need financial support. For many years now, with cross-party support, the Asylum Seeker Assistance Scheme has been in operation, which provides financial support. The problem with that scheme is that there are gaps and too many people are not eligible. In that way, they fall through the cracks.

The fourth key component is the expansion of the IAAAS to ensure the provision of competent legal advice throughout the procedure. This is important not only for asylum seekers themselves but also for the state and the wider community because good legal advice helps to expedite the process of discerning meritorious applications. On the flip side, it also helps to prevent unfounded applications and, where appropriate, to support voluntary return. Many costs would be recouped by efficiency savings in having a more efficient procedure, in having fewer judicial reviews and in having fewer forced removals. The fifth key component of the model that the sector would like to see is for there to be return counselling to support voluntary return where people are found not to be in need of protection.

Those are our five key elements. The Refugee Council is calling for the expansion of the Community Care Pilot as the best way to do that because the Community Care Pilot essentially

has many of those elements already. It has four streams: firstly, the Community Assistance Scheme administered by the Red Cross; secondly, referral to IOM for return counselling; thirdly, the provision of legal advice through the IAAAS; and fourthly, brokerage services.

But the main problem with the CCP is that it covers only a very small number of asylum seekers at present because of what we consider to be overly restrictive criteria. They need to be expanded. The second problem, which I alluded to earlier, is that DIAC has not always developed sufficient relationships with service providers in the community to meet individual needs. The third problem is that, under the Community Assistance Scheme at the moment, there is no automatic provision for housing, which is clearly essential in some cases. The fourth problem is that people have noticed a tendency for referral to the IOM stream rather than to the IAAAS. I think that is more noticeable in Victoria and New South Wales than in Queensland. That is a problem in terms of having balance in the system. The fifth problem is a general lack of transparency and consistency in how it is operated. That being said, it would be a very good model if it were expanded in the right way. We would certainly support that.

ACTING CHAIR—The accommodation issue is really a concern. As an ordinary citizen looking at what resources are available for the government, I am interested in whether you have any comments on the idea of having open detention centres without closed doors. These would be centres where people could still live in hostel style accommodation and still be supported in the cafeteria or the dining room and could still have company with other people in a similar situation. I think was provided for in the 1960s at Villawood, where they had virtually open style hostel accommodation where people were not locked up; they could come and go. Do you have any comment on that? The loneliness was a very strong message that I received from people who were interviewed in Sydney. Not being able to work was a big thing, but it was the isolation more than anything. It seemed to traumatise a lot of the women especially. There is also the sense of being in fear and not feeling that they could go to sleep at night without the fear of their unit or home being raided, for want of another word. They would get support and protection in an open hostel system. I think it would be a lot more economical for the government to actually provide that. They would have security, safety, company and food. Their health issues could be met easily. It would work as long as they did not have their freedom deprived.

Mr Power—I certainly agree with what you are saying. I think we are heading in the direction of having a graded system—

ACTING CHAIR—A range perhaps?

Mr Power—Yes. Obviously there is a need for secure detention for people with whom there is some sort of security issue identified. I think the immigration residential housing model would meet the needs of most of the people for whom there is not a strong need for some sort of security measures but who are detained for a period of time.

Dr STONE—Given that most of the detainees are single men from all different sorts of backgrounds, the community housing type of accommodation at Villawood does not lend itself to a lot of single men in a house. They are family style. A lot of those men want to be protected from other individuals in detention for a range of very good reasons. You seem to be advocating the Villawood style community housing accommodation. It seems to me that that is fine for families or others who know each other very well but it is not the best accommodation for the

average, usual sort of detainee who is looking over his shoulder, wondering where these other people who are also with him are from.

Mr Power—Certainly the configuration of the housing can be developed in different ways to meet whatever the needs of groups are. I suppose I was commenting more in terms that the level of security is probably at an appropriate level for many of the people who go through the immigration detention system, particularly those who would go through it reasonably quickly. Obviously there needs to be appropriate facilities for people for whom security is much more of an issue. But if you look at the Villawood site, there is lots of scope for redevelopment there.

ACTING CHAIR—And it is close and handy to transport and to visit Sydney for people who are considered to be not of sufficient risk that they cannot be within the open community. They are human beings and they do need company, and the isolation and the loneliness was the biggest concern that was expressed by the women who were there.

Mr Power—The site there has a number of road frontages. I understand that part of the open space there is privately owned, but the majority is government owned, so there is actually a significant parcel of land. This is a personal view rather than necessarily a view of the Refugee Council, but one of the options that could be explored is the development of new, purpose-built detention facilities which actually hit the mark in terms of the appropriate level of security and of common and private living areas. To actually give consideration to redeveloping stages 2 and 3 is a subform of open community housing. It was built as a migrant hostel.

ACTING CHAIR—It was.

Mr Power—I think one of the things that people in the non-government sector see is the department spending significant amounts of money on trying to improve very substandard facilities. The Human Rights Commission makes a strong recommendation about the bulldozing of stage 1, for instance, and is conscious of the fact that the department is currently spending money on some renovation works there. It is hard to see how those renovations are going to make a substantial difference to the very bleak nature of the accommodation there, which obviously only exacerbates the likelihood of conflict between detainees and staff. That issue aside, within that site, given that the majority of people on mainland Australia who are held in detention are in Villawood, there is great scope to develop something over the medium term which actually meets the agreed current directions for immigration detention. You could have quite a separate street frontage for the detention facilities and for the community housing because there are about three access points.

ACTING CHAIR—To communal housing, for want of another term.

Mr Power—There was one little thing that I want to add. One of the things that we are picking up, and probably you are as well, is that access to individual kitchen facilities is really important for encouraging self-reliance. In fact, that was one of the major complaints in the distant past about the migrant hostel system. I am part of the Refugee Resettlement Advisory Council, and that council and all people involved in refugee settlement services are turning their minds regularly to how to improve housing options for newly arrived refugees who have been resettled. So there is some discussion about migrant hostels in that old model and what worked and did not.

Dr STONE—For a start, you do not plonk them all in inner metropolitan or outer metropolitan areas.

Mr Power—There are all sorts of flexible options around. But one thing that has come through that discussion is that the things that people who were in the migrant hostels liked the least were the common mess and not being able to cook their own food.

ACTING CHAIR—They might have liked being able to sit down and eat with groups but they wanted to be able to cook their own food.

Mr Power—Considering that people are either being prepared for permanent residency in Australia or voluntary return to their country of origin, maximising their own self-determination and dignity throughout the process is obviously to everyone's benefit.

ACTING CHAIR—It is very important.

Mr Nash—The key need is for there to be a range of options so that individual case-by-case assessment can be made. There is anecdotal evidence of some people being lonely, but equally there is anecdotal evidence of people finding support through the community, organisations in the community. Overall the Refugee Council's preferred model is a case management approach through the expansion of the Community Care Pilot. There are issues. I would agree, that open—if they are entirely open—accommodation centres can work very well and they do work well in Sweden and the Netherlands, for example. But there are also examples in Europe where they have been placed in very remote locations, where people become very isolated from the services. It might not be cost-effective to move the services to the remote location if they are going to be adequately serviced, and it means their longer term integration can be compromised. So I think there are arguments on both sides of that question.

ACTING CHAIR—You get back to case management, don't you? Somebody might want to be in a communal situation for a little while but at some stage be prepared and ready to go out into the wider community with appropriate support.

Mrs D'ATH—We have talked about the residential housing in Villawood and Perth. Putting aside the kitchen issue—because I know the kitchen issue exists in the example I am giving—I am interested in whether either of you have been into the immigration transit centres at all.

Mr Power—No, I have not. We have had feedback from people within our membership about them.

Mrs D'ATH—Can you tell us what the feedback is?

Mr Power—The centres are set up for short-term accommodation. I think people are reasonably positive, particularly in comparison to some of the solutions of the past, that the centres serve that purpose well. It is more where the centres become longer-term accommodation options that there are some issues around the capacity for people to be able to manage their own lives and issues with the facilities and service provision. They are obviously designed for people to be there for a matter of days. I have not had the opportunity to look at them closely. They are relatively new. The Brisbane ITA only opened about a year or so ago and it has had relatively

small numbers. The Melbourne centre has only been open for a few months, so we are still getting feedback. I think people are also trying to understand how the department of immigration is using those centres, what sorts of people are going into them and for what periods of time.

Mrs D'ATH—I know you cannot comment right now, but I would recommend that you go and have a look at those.

Mr Power—We certainly intend to.

Mrs D'ATH—Not only are we looking at alternatives to detention and what sort of community detention or alternative release into the community there will be but also the position of the government is that there will be some time in detention for the purposes of processing and for those people who are considered to be a security risk, and we need to consider what those facilities will look like and whether those transit centres are what we should be looking at as future detention centre facilities as opposed to what we are seeing in Villawood and Christmas Island, which look more like prisons.

Mr Power—The feedback we are getting about the level of security is that it is quite similar to, perhaps even lower than, the immigration residential housing. People are certainly more comfortable, if people are to be held for short periods of time, for them to be held in an immigration transit accommodation facility rather than an immigration detention centre. I think that the feedback is fairly positive. In their December 2008 report the Human Rights Commission make some comments about some of the additional facilities and services that could be considered, but the feedback is generally reasonably positive for a detention facility.

Mrs D'ATH—Chris, with your international experience—and Paul, you may be able to add to this as well—are you able to advise us on what you consider are good international examples that we could be looking at for alternative accommodation and also what detention facilities would be a good benchmark of what is happening overseas?

Mr Nash—I think the committee is probably familiar with UNHCR's 2006 study on alternatives to detention practice globally and that is the starting point. Looking at the picture in Europe it is the exception rather than the rule in most countries for individuals to be detained for any significant period, and most are released into the community. As I said, there are some exceptions to that. For example, in the UK that release may occur in a matter of hours after an onshore asylum application has been made. What is interesting is the UNHCR study showed the available evidence supports the fact that alternatives to detention are not only far more cost effective than detention but they are also very successful in achieving compliance and preventing absconding. If you take the benchmark of compliance for criminals on remand pending trial, those alternative custodial schemes consider a 40 to 70 per cent compliance rate as being successful, but the available evidence for asylum seekers in alternatives is between 75 and 90 per cent. Take Canada, for example, where a study by the Toronto Bail Program showed compliance of 90 per cent. In the US, the Vera Institute of Justice showed compliance of 84 per cent. In the UK, ports of arrival released information showing that between three and 12 per cent of people who were released immediately on arrival subsequently failed to show up. And in Australia, the Hotham Mission study of 200 asylum seekers back in 2001 found that none of them absconded.

I think that underlying this is a common-sense assumption that people who have reached their destination country, be it Australia or wherever, have a vested interest in complying with the procedure. They have often gone to huge lengths to get to Australia. The UNHCR study suggests that the need for detention is actually quite small. You need it in some cases, but only in a few cases. The more complex question is whether detention is necessary for people once they have received a refusal of their claim. Even there, when we look at the evidence, the UNHCR study finds that this is not always essential to ensure people comply with voluntary removal. The failed asylum seeker project in Canada, for example, achieved 60 per cent compliance through a combination of case management, practical assistance and giving individuals 30 days to sort out their affairs. The Hotham Mission, in its five-year study found that 75 or 80 per cent of those refused voluntarily complied with voluntary departure within 28 days. So I think even for those cases it is questionable whether detention should be used.

In terms of a good practice model, I think people often point to Sweden. They highlight the streamlined and integrated case management approach that ensures full support and the provision of competent advice in helping to ensure compliance because it is a non-intrusive form of scrutiny which also helps to ensure successful visa outcomes and a more efficient procedure. That is universally acknowledged as good practice but, as I mentioned earlier, the key thing is for governments to have a range of options so they can cater to individual needs, given the fact that deprivation of liberty is a very powerful interference with individual rights.

Mr Power—It was interesting that Grant Mitchell, who I gather gave evidence to the committee, is now the coordinator of the International Detention Coalition and previously was coordinator of the Hotham Mission asylum seeker project. In his role with the International Detention Coalition he was invited to speak to parliamentarians of the government of Belgium about alternatives to detention. I do not know whether he mentioned this to the committee, but they were very interested in the model developed in Australia—the Community Care Pilot, which of course was developed under the previous government in 2006. So there are not only good international examples that can be examined further but we have also got a very good example ourselves that people in Europe are actually wanting to find more information on so they can help their own policy development.

Mrs D'ATH—You mentioned community detention and release into the community and the lines between those things. If we are to release people into the community and give them work rights but still have a compliance regime where they are required to report to DIAC or wherever on a regular basis, do you consider that to still be community detention?

Mr Nash—No. If you look at the alternatives to detention in Europe they utilise a range of measures so that people can be released with residency requirements or reporting requirements. They could be released to a designated caseworker or program. They could have supervised release to family members. They could be released with a bail or bond on payment of a surety. Sometimes in Europe or elsewhere there are measures which link residence and reporting to receipt of national assistance. As we have already touched on, there are also people being released to designated open or semi-open accommodation centres. Sometimes—for example, in Germany—people are released to a designated district or municipality. And, finally, there has been some limited use of electronic tagging, although it has been found to be very expensive and not necessary in most cases.

That is the range of alternatives and, to come back to your original question, to require reporting conditions would be entirely reasonable, I think. In terms of the frequency of reporting, again, that should be done on a case-by-case basis, depending on the need. A variety of those other measures can be used to meet an individual's risk of absconding.

Mr Power—With the work rights issue, there is obviously an ongoing discussion between the community sector and government about some options. I know one of the options that is being talked about—obviously there have been no decisions made—looks at the continuation of the right to work being tied to people's compliance and preparedness either to maintain their legal status through the bridging visa system or to be actively engaged in attempting to do so. I think that is a pretty useful model to consider. We have real concerns about the 45-day rule and the way that is operating because in some ways it advantages people who understand how the system works. Certainly, the evidence of many organisations in our network who are involved in providing support to asylum seekers is that many people who have ultimately proven a genuine need for protection have made their application for protection after more than 45 days.

In fact, I think it would be useful for the committee—if you are inclined to do so—to ask the Department of Immigration and Citizenship whether they have got any statistics as to what the outcomes have been for people who have applied for protection either with the right to work or without, within 45 days, and those who have applied after 45 days. The indication that we have had from the department of immigration is that the percentage of people who have ultimately been found to be in need of protection has been greater amongst those who have applied after 45 days than before.

Mr Nash—Thirty-six per cent versus 20 per cent.

Mr Power—Yes, that was a preliminary figure that the department came up with. Ultimately, it is about having a fair process and giving people the maximum opportunity to maintain their dignity and right to self-determination through the process, with the aim of having a clear and fair decision at the end. All the things that we and others are suggesting are around good advice to people through that process and providing incentives to people to conform with the system that is established. All of that is going to be useful in the long run in developing a fairer system.

Mr Nash—The other point to make is that there is lots of anecdotal evidence and indeed internal, confidential evidence within the Red Cross statistics which do show very high compliance rates with community detention or some of the other community alternatives. It would be very helpful if research was done on those statistics and if existing statistics were made available as part of this debate and to increase public confidence in the fact that detention is not routinely necessary.

Mr Power—I think the Community Care Pilot compliance rates, from what we have heard informally, are higher even than the statistics that Chris was talking about from Europe.

Mr ZAPPIA—I have one question. It is about the pilot project that is currently underway. Is there anything about the project that you believe ought to be done differently or could be improved on?

Mr Nash—You are talking about the Community Care Pilot?

Mr ZAPPIA—Yes.

Mr Nash—Yes. I think the people who have been working on the project have identified a number of things that could be done differently. The key one concerns the eligibility criteria. At the moment they are very restrictive. As I mentioned earlier, there is a need to expand the program and to ensure a case managed approach to all asylum seekers. Secondly, there is the issue that at present the program is not always administered in an entirely transparent or consistent way. Thirdly, the sector would like to see DIAC engage far more with service providers in the community in terms of ensuring adequate pathways. Fourthly, I think there needs to be a greater focus on provision of advice through the IAAAS scheme. Fifthly, I think a problem which we again touched on earlier was the fact that at present within the community assistance component of the Community Care Pilot there is insufficient provision or at least guaranteed provision for assistance with finding accommodation. Given the current housing situation in Australia that is of key importance, particularly for vulnerable individuals.

Mr ZAPPIA—Thank you for that.

ACTING CHAIR—I am watchful of the time because we have question time at two o'clock. I want to take the opportunity to thank you both. I have personally found your evidence very valuable and very helpful. Thank you for your attendance today.

Resolved (on motion by **Mrs D'Ath**):

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

Committee adjourned at 1.12 pm