

# COALITION MEMBERS AND SENATORS DISSENTING REPORT

## Introduction

Coalition Members and Senators of the Committee are pleased to present their dissenting report on the Joint Select Committee's Inquiry into Australia's Immigration Detention Network.

On 11 March 2011 several hundred detainees breached the perimeter fence of the Christmas Island Immigration Detention Centre (CIIDC). Over the following days there were riots, fires, attacks and threats of attacks by detainees against other detainees and Commonwealth officers, and destruction of Commonwealth property.

Local residents were in fear as detainees roamed unrestrained around the Island, with as many as 200 detainees assembling at the Christmas Island airport and refusing to leave. Christmas Island Administrator Brian Lacy stated on March 18 "the people on this island have never had that experience before... so that is something very difficult for them to swallow, a difficult pill to swallow"<sup>1</sup>.

Detention centre employees were trapped and forced to take cover as detainees rampaged. Threats were made to kill specific Serco staff members<sup>2</sup>. Property was damaged; buildings and tents were set alight. Fires burned through the evening. Fences were torn down and used to fashion weapons<sup>3</sup>. During the evening of 16 March, detainees wearing masks, armed with poles, branches and sticks, threw Molotov cocktails at the Australian Federal Police. Order was restored by the AFP on 19 March 2011.

Up to 400 hundred detainees were involved in vandalism, destruction of Commonwealth property and threatened harm to either themselves or others. Only 100 were ever positively identified<sup>4</sup> and none so far have been convicted of any offences.

On 20 April 2011 two detainees climbed onto the roof of Fowler Compound at the VIDC. Their protest escalated into a riot. Fires were lit, extensive damage was caused, roof tiles were thrown at rescue officers in the fray. All demountable

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<sup>1</sup> ABC Online *Extra Police sent to quell Christmas Island riots*, ABC News 18 March 2011. [www.abc.net.au/news/2011-03-18/extra-police-sent-to-quell-christmas-island-riots/2652240](http://www.abc.net.au/news/2011-03-18/extra-police-sent-to-quell-christmas-island-riots/2652240).

<sup>2</sup> Hawke & Williams, "Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre" 31 August 2011, released publicly 29 November 2011, page 59. Hereafter referred to as 'Hawke and Williams'.

<sup>3</sup> DIAC, answers to questions on notice, q 129, received 29 February 2012.

<sup>4</sup> Hawke & Williams, page iii.

buildings in Fowler were burned to the ground. Gas cylinders in the Kitchen and Dining complex exploded.

Three protesters remained on the roof for 11 days before finally consenting to come down after negotiations with the second most senior immigration official in the country, who was reduced to standing on a box to peer into a roof cavity to speak with detainees.

Some 60 IMA detainees were actively involved in the disturbance<sup>5</sup>.

In total, five riots at Sydney's Villawood, Christmas Island and Darwin detention centres during 2010 and 2011 had a combined estimated cost of \$17.6 million<sup>6</sup>.

These events appalled Australians right across the nation and demanded an explanation.

Following the riots, the Minister for Immigration and Citizenship referred these matters for an independent review by Dr Allan Hawke and Mrs Helen Williams on 18 March and 20 April respectively.

On 2 June 2011 the Coalition succeeded in establishing a Joint Select Committee Inquiry to investigate and report on how these events occurred and more broadly examine issues within Australia's immigration detention network.

On 31 August 2011 Dr Hawke and Mrs Williams presented their findings to the Minister with 48 recommendations "intended to facilitate the management of good order in the Immigration Detention Centre Network". This report was not released to the public until 29 November 2011; the day after Parliament had risen for that year.

This dissenting report by Coalition Members and Senators seeks primarily to address in more detail matters relating to the riots and the rolling crisis in our immigration detention network that is now costing Australian taxpayers, through the Department of Immigration and Citizenship, more than \$1.1 billion per year, compared to just \$85 million year in 2007/08.

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<sup>5</sup> Hawke & Williams, p. iii.

<sup>6</sup> Supplementary Budget Estimates, 2011-12 Finance and Deregulation Portfolio, QoN F30.

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## Summary of key findings

Coalition Members and Senators believe that the rolling crisis that overwhelmed our immigration detention network was not the product of a policy of mandatory detention but the simple failure of a border protection policy that resulted in too many people turning up on too many boats. Prior to 2008, the number of incidents in the detention network was negligible and the system was stable and under control.

What these events demonstrated is that you can't run an effective immigration detention network under a mandatory detention policy if you are not going to support a strong border protection policy regime at the same time, as practised by the Howard Government. The combination of strong border protection policies and mandatory detention are critical to avoid the chaos that has occurred in our detention network under this Government's failed and non-existent border protection policies.

The Hawke/Williams review of the Christmas Island and Villawood riots found that these incidents were "not entirely unpredictable"<sup>7</sup>. There had been numerous reports and events that indicated that a major incident was brewing. Critical amongst these reports was a draft received from Knowledge Consulting in May 2010 by DIAC that was briefed to then Minister for Immigration and Citizenship, Senator Evans.

In addition, there was a stream of information and situation reports flowing to Ministers about escalating tensions within the network. This included the fact that by the time of the riots the number of critical incidents occurring in the immigration detention network, which includes serious harm, assaults and serious damage had risen from one per month at the end of 2009 to 1 every 5 ½ hours in the first quarter of 2011<sup>8</sup>.

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<sup>7</sup> Hawke & Williams, p. 4.

<sup>8</sup> DIAC, answers to questions on notice, q 48, received 17 November 2011.

Hawke/Williams found that the riots were primarily the result of:

- significant overcrowding caused by a significant surge in irregular maritime arrivals (IMAs) to Australia
- an increase in the length of detention caused by extended processing times and the introduction of an asylum freeze for new arrivals in April 2010
- the increasing proportion of detainees on negative pathways and changes in the source of detainees entering the network of detention.

The Coalition Members and Senators of the Committee concur with this assessment. However, we do not consider that these forces occurred spontaneously. We do not consider they were a naturally occurring phenomenon for whom no-one was responsible.

The Hawke/Williams Review was never asked the question by the Government, ‘Who was responsible?’ However, when Dr Hawke was asked this question when he appeared before the Committee on February 29 in Canberra he responded as follows:

*Dr Hawke: Under our Westminster system I think that is pretty clear—the government, the minister and the department.*

*Mr MORRISON: So the minister is responsible for ensuring the detention network is in place?*

*Dr Hawke: It is the job of the minister<sup>9</sup>.*

The Coalition Members and Senators of the Committee consider that the forces that came together to cause the riots were the consequence of policy decisions and responses made by the Australian Government that brought these forces into being and disabled the Government from averting the chaos that overwhelmed our immigration detention network, as follows:

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<sup>9</sup>

Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 12.

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- 1) the Government's decision to abolish the proven border protection regime inherited from the Howard Government that preceded the unprecedented surge in IMAs to Australia and the rapid escalation of the detention population;
  - 2) The refusal of Senator Evans as Minister for Immigration and Citizenship to take action prior to the 2010 Federal Election to implement any of the following measures in response to clear, documented and repeated warnings about rising tensions and stress in the detention network – in particular the draft Hamburger report received in May 2010 :
    - a) restore polices that would deter IMAs from coming to Australia;
    - b) abolish the discriminatory asylum freeze he had put in place just a few months earlier that was exacerbating the problem;
    - c) take steps to further expand the detention network to cope with further IMAs in the absence of deterrence measures.
  - 3) The inability of Minister Bowen to adequately reduce the population at the Christmas Island IDC at North West Point because of the failure of his predecessor to provide adequate capacity elsewhere in the network prior to the 2010 election.
  - 4) The failure of Minister Bowen, as Minister for immigration and Citizenship, to comprehensively respond to the clear warnings of escalating tensions and the likelihood of a serious incident by ensuring that the Government, through DIAC, was prepared to respond to such an incident, including
    - a) failure to rectify key security weaknesses identified in the physical infrastructure at these facilities,
    - b) failure to ensure clear joint operational procedures for key agencies working with DIAC were in place in each facility to guide the Government's response to a major incident,
    - c) failure to resolve the ambiguity of roles and responsibilities of key agencies, including state and federal police, Serco and DIAC to deal with a major public order incident.
  - 5) The failure of Ministers Evans and Bowen to instruct DIAC to review contractual arrangements with Serco, given the dramatic change in conditions in the operating environment in which Serco were now seeking to provide their

services, that removed the opportunity to consider what additional requirements would be necessary to address the challenges of this new environment.

Of particular note, it was concerning that the NSW Assistant Police Commissioner Frank Mennilli gave evidence to the Inquiry stating that in August 2010, he had sought to conduct a desk-top scenario with DIAC and Serco to test their response to a major incident including a fire at Villawood. As an indicator of DIAC's lack of urgency and appreciation of the risks, Mr Mennilli reported that he was told the scenario was "unrealistic and that situation would not arise"<sup>10</sup>.

In addition, Coalition Members and Senators:

- 1) stress that while serious matters have been raised regarding the performance of Serco, this does not excuse the Government from their accountability for the services they have contracted Serco to provide – the Government may contract out the performance of these services but they can never contract out their accountability – any failing of Serco is a failing of the Government;
- 2) acknowledge the increased risks to safety and injury faced by staff working in our immigration detention network as a result of the rolling crisis in the detention network and
- 3) sound a warning about the impact on Australia's settlement services program from the increasing number of IMAs and the Government's decision of last November to implement mainstream community release through community detention and bridging visa policy.

A summary of Coalition Member and Senators' positions on the recommendations of the Majority report agreed by the Labor, Green and Independent Members and Senators are attached at Appendix A.

In addition the Coalition Members and Senators of the Committee make the following additional recommendations:

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<sup>10</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, pp. 28-29.

**Recommendation 1:**

Coalition Members and Senators recommend that the Government restore the proven measures of the Howard Government, abolished by the Rudd and Gillard Governments, to once again deter illegal boat arrivals to Australia, including, but not restricted to the following measures:

- Restoration of the Temporary Protection Visa policy for IMAs
- Re-establishment of offshore processing on Nauru for all new IMAs by reopening the taxpayer funded processing centre on Nauru; and
- Restoration of the policy to return boats seeking to illegally enter Australian waters, where it is safe to do so.

**Recommendation 2:**

Coalition Members and Senators recommend that the Australian Government finalise the memorandum of understanding between DIAC, the AFP and state/territory police forces and reach a binding agreement that clearly stipulates who is responsible for policing and responding to incidents at Australian Immigration Detention Centres.

**Recommendation 3:**

Coalition Members and Senators recommend that the AFP and State/Territory police are funded adequately in order to carry out their regular operational policing responsibilities along with policing the immigration detention centres and responding to incidents.

**Recommendation 4:**

Coalition Members and Senators recommend that the Australian Government ensure that security infrastructure, including CCTV cameras, security fences and

other essential security elements be operational, ready and be of a high standard of functionality and that DIAC, with assistance from Serco, is to undertake a review of infrastructure (including security infrastructure) across the broader immigration detention network.

**Recommendation 5:**

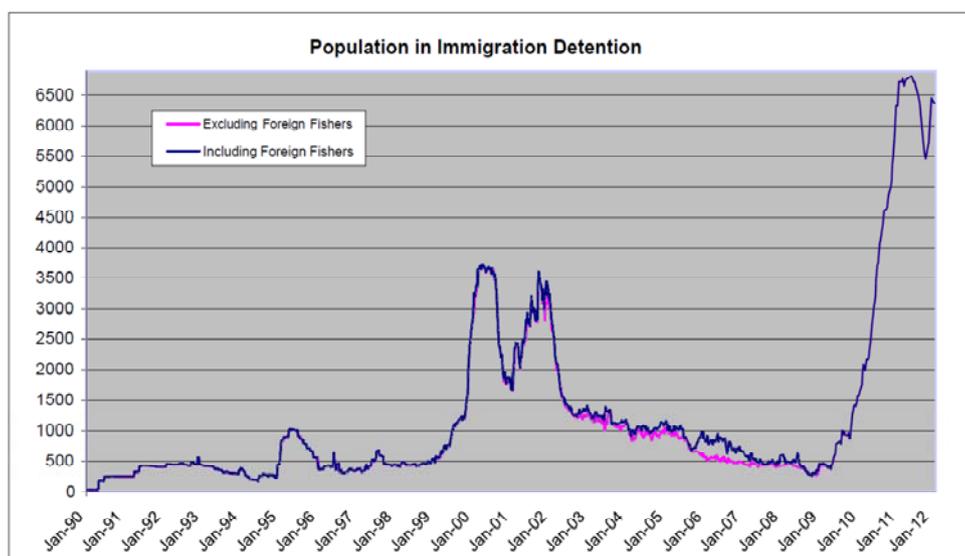
Coalition Members and Senators recommend that the Australian Government seek advice on amendments and addition to the regulations under the Migration Act to clarify the responsibilities and powers of persons who operate detention centres around the limits on their obligations and powers in relation to use of force, to ensure the good order and control of immigration detention facilities.

**Recommendation 6:**

Coalition Members and Senators recommend that a minimum quota of 11,000 places of the 13,750 permanent places for the Refugee and Humanitarian program be reserved for offshore applicants, in parallel with the introduction of Temporary Protection Visas for all IMAs.

## Tearing Down John Howard's Wall

On 23 November 2007, there were only four people in Australia's detention network who had arrived by boat, known as irregular maritime arrivals (IMAs)<sup>11</sup>, none of them were children. The total detention population at the time was 449, including 21 children and had been reduced from around 3,600 in January 2002<sup>12</sup>.



Source: DIAC, Immigration Detention Statistics

The annual budget in 2007/08 for offshore asylum seeker management was \$85 million. That year, 5 boats had arrived carrying 148 people<sup>13</sup>. In the previous six years, following the introduction of Operation Relex to turn back boats where it was safe to do so, off shore processing at Nauru and Manus Island (known as the Pacific Solution) and temporary protection visas, 272 people had arrived as IMAs on just 16 boats. That is an average of less than 3 boats and 50 people per year.

<sup>11</sup> DIAC, *Immigration Detention Statistics Report 23-11-07*, answers to questions on notice, q 2, received 10 August 2011.

<sup>12</sup> DIAC, *Immigration Detention Statistics Summary 31-01-12*, p.5.

<sup>13</sup> Phillips, J. & Spinks, H. 2011 *Boat arrivals in Australia since 1976*, Parliamentary Library Social Policy Section, updated 24 January 2012, [www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/BoatArrivals](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals)

Just days before the 2007 election, the Leader of the Opposition, Kevin Rudd announced that it was Labor policy to turn the boats back<sup>14</sup>. There was no proviso given that this would only be done where it was safe to do so. This policy was abandoned upon Labor's election to Government.

On 8 February 2008, then Minister Evans issued a press release proclaiming the end of the Pacific Solution when he resettled the remaining 21 asylum seekers on Nauru in Australia<sup>15</sup>. On 13 May 2008 the Minister announced that the government was abolishing Temporary Protection Visas<sup>16</sup>. This came into effect from 9 August<sup>17</sup>.

There was no evidence provided to the Inquiry that DIAC warned against the abolition of these measures. Whether this occurred is not known. The only conclusions that can be drawn are that the Government either proceeded against the advice of the Department or, alternatively, the Department concurred with the policy change and got it horribly wrong.

Since that time the Rudd and Gillard Governments have removed every remaining brick in the wall of border protection that had been established by the Howard Government. The most recent being the abolition of parallel processing for IMAs and non-IMAs that now gives full access to the courts for boat arrivals and the effective abolition of mandatory detention through the mainstream community release and bridging visa program announced last November<sup>18</sup>.

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<sup>14</sup> Kelly, P. & Shanahan, D., "Rudd to turn back boatpeople", *The Australian* [www.theaustralian.com.au/national-affairs/defence/rudd-to-turn-back-boatpeople/story-e6frg8yx-1111114943944](http://www.theaustralian.com.au/national-affairs/defence/rudd-to-turn-back-boatpeople/story-e6frg8yx-1111114943944), 23 November 2007.

<sup>15</sup> Senator the Hon. Chris Evans, Minister for Immigration and Citizenship *Last Refugees Leave Nauru*, 8 February 2008. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2FYUNP6%22>

<sup>16</sup> Minister for Immigration and Citizenship, "Budget 2008-09 – Rudd Government scraps Temporary Protection Visas", [www.minister.immi.gov.au/media/media-releases/2008/ce05-buget-08.htm](http://www.minister.immi.gov.au/media/media-releases/2008/ce05-buget-08.htm), 13 May 2008.

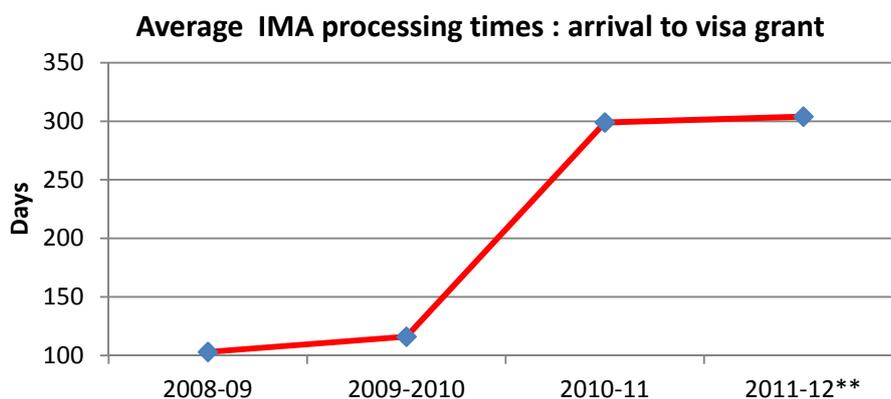
<sup>17</sup> Department of Immigration and Citizenship Annual Report 2008-09 '1.2.2. Protection Visas (onshore)' [www.immi.gov.au/about/reports/annual/2008-09/html/outcome1/output1-2-2.htm](http://www.immi.gov.au/about/reports/annual/2008-09/html/outcome1/output1-2-2.htm).

<sup>18</sup> The Hon. Chris Bowen MP, Minister for Immigration and Citizenship, *Bridging visas to be issued for boat arrivals*, 25 November 2011, [www.minister.immi.gov.au/media/cb/2011/cb180599.htm](http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm).

In the eighteen and half months following the abolition of TPVs until the riots breaking out on Christmas Island in March 2011, 10,525 people arrived as IMAs on 213 boats, including the tragic case of SIEV 221, where 50 lives were lost<sup>19</sup>. That is an average of almost 3 boats and over 130 people per week.

When the riots broke out on Christmas Island in March 2011, there were 6,507 people who were IMAs in the immigration detention network, out of a total detention population of 6,819, including 1,030 children, of which only 87 were in community detention<sup>20</sup>. This was almost double the previous detention population peak in early 2000<sup>21</sup>.

At this time 57.2% of the detention population had been there for more than 6 months<sup>22</sup>. 11.4% had been there for more than 12 months. Average processing times tripled from 103 days in 2008-09<sup>23</sup> to 304 days in 2010-11<sup>24</sup>.



\*\* to 13 September 2011

<sup>19</sup> Joint Select Committee on the Christmas Island Tragedy of 15 December 2010 Report, 29 June 2011, [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=christmas\\_island\\_ctte/christmas\\_island/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=christmas_island_ctte/christmas_island/report/index.htm).

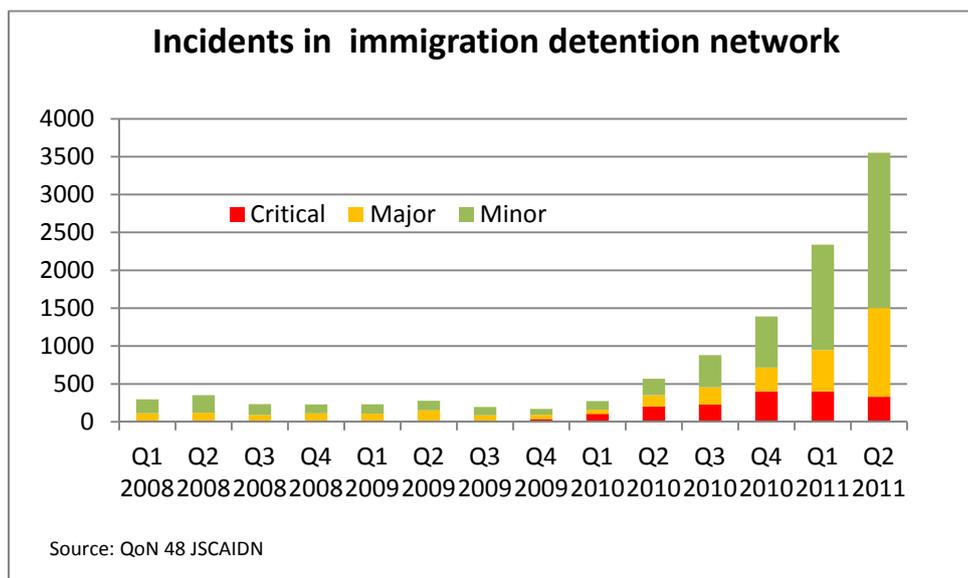
<sup>20</sup> DIAC, *Immigration Detention Statistics Report 11-03-11*, answers to questions on notice, q 2, received 10 August 2011.

<sup>21</sup> DIAC, *Immigration Detention Statistics Report 11-03-11*, Figure 2, answers to questions on notice, q 2, received 10 August 2011.

<sup>22</sup> DIAC, *Immigration Detention Statistics Report 11-03-11*, Figure 8, answers to questions on notice, q 2, received 10 August 2011.

<sup>23</sup> DIAC, answers to questions on notice, q 7, received 10 August 2011.

As the boats kept arriving and the detention population kept increasing, so did the number of incidents. At the beginning of 2008 there was just one critical incident per month<sup>25</sup>. By the time of the riots there was an average of more than four critical incidents per day.

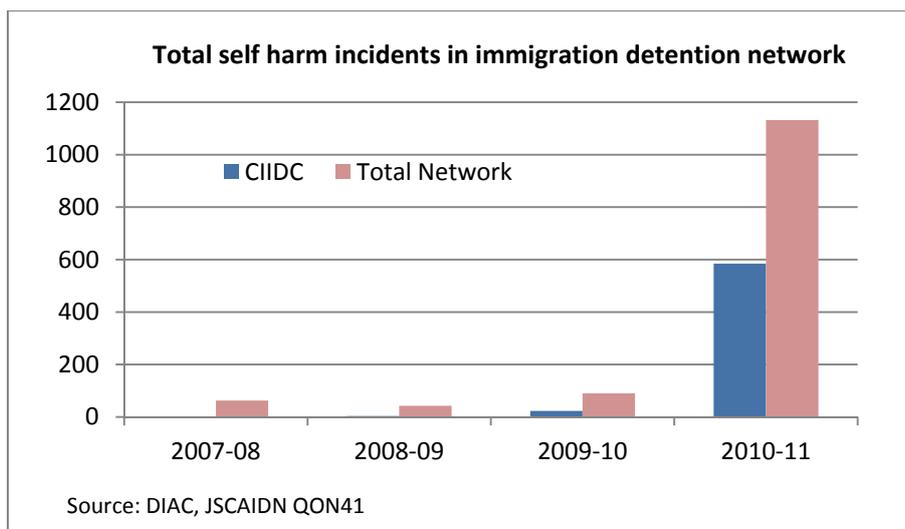


The total number of incidents up until the end of June 2011 increased more than ten fold.

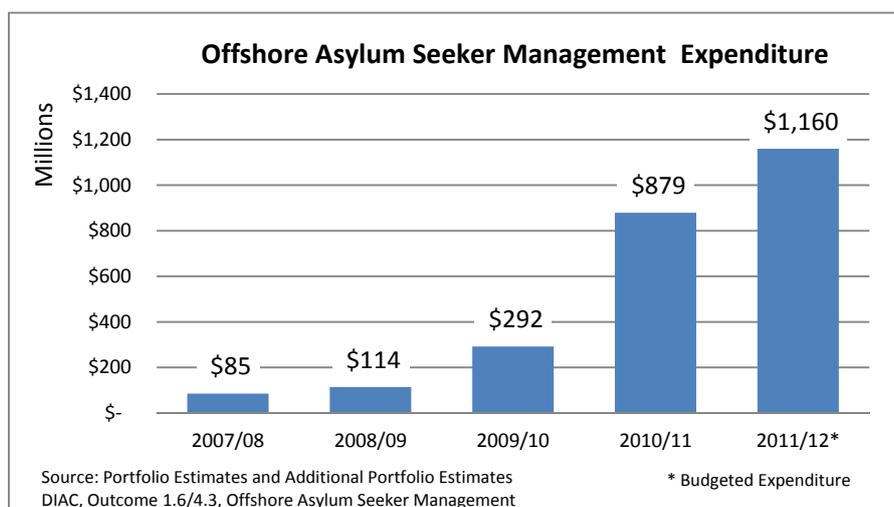
A significant proportion of these incidents involved self harm by detainees. More than 60% of the incidence of self harm was occurring on Christmas Island, when the incidence of these events rose sharply in 2010/11.

<sup>24</sup> DIAC, *Submission 32*, Figure 9: Averaging Processing times for irregular maritime arrivals from arrival to visa grant.

<sup>25</sup> DIAC, answers to questions on notice, q 48, received on 17<sup>th</sup> November 2011.



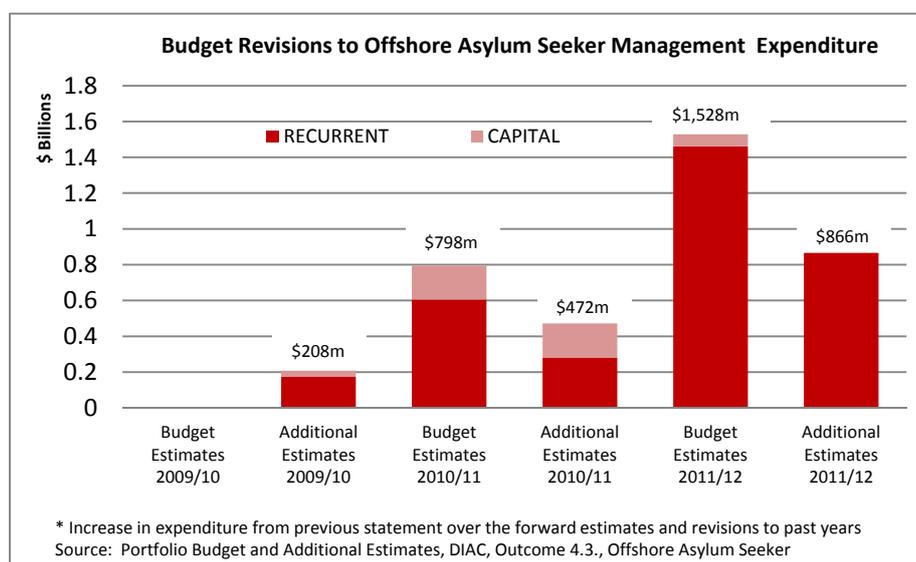
As the situation in the detention network continued to deteriorate, the budget for offshore asylum seeker management in that year (2010/11) by that time blew out to \$879 million.



This included an increase of \$295 million in recurrent expenditure over the budgeted figure in that year, for which an additional appropriation was sought in February 2010 in Appropriation Bill No. 3.

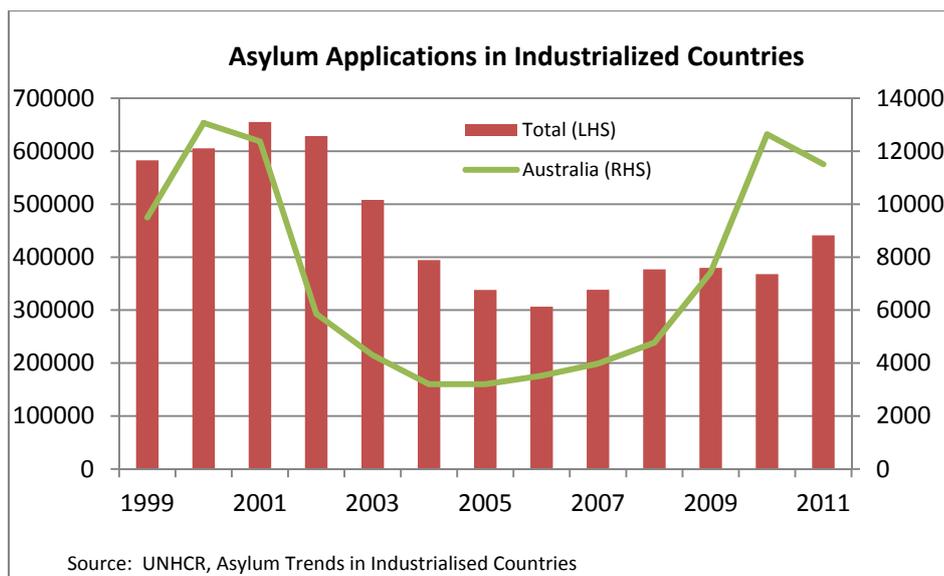
This additional appropriation in 2010/11 was more than the entire operational costs of running the Pacific Solution over almost six years, namely \$289 million according to the statement released by Senator Evans on 8 February 2008<sup>26</sup>, in which he described the Coalition's policy that cost \$289 million as 'costly'. A few months later the Government announced a budget for 2011/12 in excess of \$1.1 billion.

In total, the cumulative variation in actual and budgeted expenditure for offshore asylum seeker management over the forward estimates since 2009/10 is now \$3.9 billion including capital and recurrent expenditure.



The last time Australia experienced a surge in IMAs was between 1999 and 2001. During that time 12,171 IMAs arrived on 181 boats. In 2001 there were 1.5 million more people classified around the world refugees as there are today. In addition, the number of asylum applications in industrialised countries, was 48% higher in 2001 than it is today.

<sup>26</sup> Senator the Hon. Chris Evans, Media Release, *Last Refugees Leave Nauru*, 8 February 2008. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2FYUNP6%22>



There are always circumstances that drive people to flee their country and seek a better life elsewhere. These are what we call push factors. Sadly, push factors have been a constant on the international scene for centuries, and certainly over recent decades. The fact that asylum applications and the number of people classed as refugees has declined since we experienced the last surge does not mean these factors are irrelevant in absolute terms. However, they do not explain Australia's experience in recent years.

The number of people seeking asylum around the world, while less than it was when we had our last surge, still represents an insatiable level of demand. Evidence provided by Richard Towle on behalf of the UNHCR confirmed this fact, when he said that of a total refugee population of 10.4 million there were current 750,000 people in need of urgent resettlement and only 80,000 resettlement places available<sup>27</sup>.

Australia is the most significant provider of these places per capita of any nation. However, demand for resettlement will always outstrip supply. Less than 1% of the world's refugee population will be resettled<sup>28</sup>. The most common outcome will be life in a camp or returning home.

<sup>27</sup> Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 12.

<sup>28</sup> Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 12.

In short the push factors, even at reduced levels, are constant. There are two issues that then work to create a surge in IMAs to Australia.

Firstly, a genuine regional refugee crisis where people seeking asylum are generated from within our region, such as occurred with the Indochinese Refugee Crisis we experienced in the 1980s through to early 1990s. It is interesting to note that during this regional crisis, very few Indochinese asylum seekers arrived in Australia by boat<sup>29</sup> compared to either the current surge or that which occurred from 1999 to 2001.

To the extent that there is a current regional refugee crisis, the single largest source of asylum seekers in our region is from Myanmar. Yet, the Burmese represent a negligible cohort of those arriving in Australia as IMAs<sup>30</sup>. Almost exclusively, Burmese refugees are provided resettlement in Australia through our offshore refugee and humanitarian program.

We do not have a regional refugee crisis that is driving people to get on boats to Australia. Regional push factors are not at work in the current surge of arrivals. People coming to Australia as IMAs are what are known as secondary movers, i.e. they have moved beyond the country of first asylum. They have selected our region, and Australia, in particular, as the place they have chosen to seek asylum. This selection is a function of pull factors, which is the second reason why IMAs will seek to come to Australia.

In late 2001 the Howard Government recognised the impact of pull factors and acted to further strengthen the suite of measures already in place that included temporary protection visas (TPVs). TPVs denied permanent visas to IMAs found to be refugees, including denial of access to family reunion.

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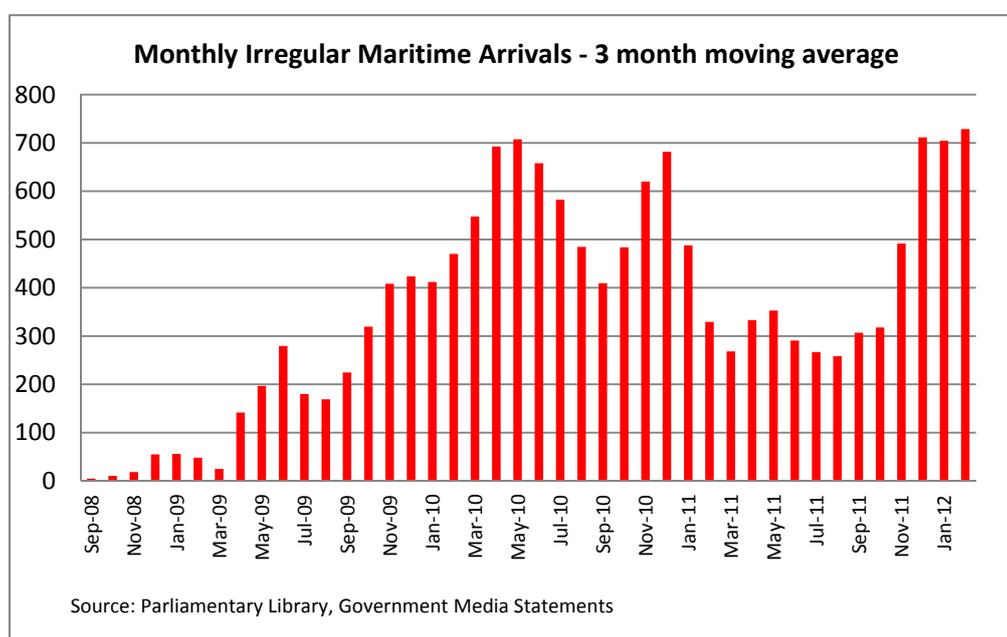
<sup>29</sup> Phillips, J. & Spinks, H., *Boat arrivals in Australia since 1976*, Parliamentary Library Social Policy Section, updated 24 January 2012  
[www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/BoatArrivals](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals)

<sup>30</sup> DIAC, answers to questions on notice, q 6 and q 8, received 10 August 2011.

The Howard Government's new measures included the establishment of offshore processing at Nauru and later Manus Island and Operation Relex to turn boats back where it was safe to do so. At the same time the Howard Government excised certain territories from Australia's migration zone, including Christmas Island, and established a different processing regime for IMAs. This approach has also now been abolished by the Gillard Government.

In 2001, 5,516 people arrived on 43 boats. In response to the stronger measures introduced by the Howard Government, in 2002, not a single person arrived by boat as an IMA.

As it now stands, 15,964 people have arrived as IMAs in the four years since the abolition of the former Government's measures on 289 boats. This is more than arrived in total during almost 12 years under the Howard Government.



The reversal of the strong border protection measures inherited by the current Government has undeniably sent a message to would-be IMAs and people smugglers that Australia is once again open for business.

Evidence provided by the Department of Immigration and Citizenship, based on interviews with recently arrived IMAs, found that the median price paid for the journey to Australia was \$10,000<sup>31</sup>. On this basis, it would appear the people smugglers have grossed more than \$150 million since Australia's border protection polices were softened. Rather than smashing the people smugglers business model, it has thrived under the softer policies of both the Rudd and Gillard Governments.

### **Recommendation 1: Restore the Coalition's proven border protection regime**

Coalition Members and Senators recommend that the Government restore the proven measures of the Howard Government, abolished by the Rudd and Gillard Governments, to once again deter illegal boat arrivals to Australia, including, but not restricted to the following measures:

- Restoration of the Temporary Protection Visa policy for IMAs
- Re-establishment of offshore processing on Nauru for all new IMAs by reopening the taxpayer funded processing centre on Nauru; and
- Restoration of the policy to return boats seeking to illegally enter Australian waters, where it is safe to do so.

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<sup>31</sup> DIAC, answers to questions on notice, Legal and Constitutional Affairs Committee, Additional Budget Estimates Hearing, 21 February 2011, Q 141; DIAC, answers to questions on notice, Legal and Constitutional Affairs Committee, Supplementary Budget Estimates Hearing, 19 October 2010, Q 61.

## Paralysed by Denial

The Christmas Island and Villawood riots and the litany of problems that have occurred in the detention network, that have been detailed in the course of this Inquiry, can be traced back to one key cause - **too many people turned up on too many boats.**

In their report into the Christmas Island and Villawood Riots, Dr Hawke and Mrs Williams put it this way by concluding<sup>32</sup>:

*In less than 18 months, the detention population grew from a few hundred to over 6,000 people.*

*The management task inherent in dealing with the rapidity and size of this increase proved highly challenging.*

*The immigration detention infrastructure was not able to cope with either the number or the varying risk profiles of detainees. Providing sufficient accommodation for the increasing number of detainees, particularly on Christmas Island where IMAs are brought and assessed, became an ongoing preoccupation for DIAC, which had to compromise standards of accommodation and services.*

*The Christmas Island IDCs became chronically overcrowded and amenities were placed under severe stress. Significant capacity constraints on the Island, with a small population remote from mainland Australia, were also problematic, including in sourcing accommodation for additional staff, guards and interpreters.*

*The context in which the [Government Immigration Detention] Values were developed also led to decisions about operation of the centres, including not to use certain security features that formed part of the design of the medium security North West Point (NWP) facility on Christmas Island. While understandable in an environment of low numbers and a relatively compliant detainee population, these decisions hampered the response when stronger measures were required to restore and maintain public order.*

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<sup>32</sup> Hawke & Williams, pp 3-4.

*The rapid increase in arrivals also overwhelmed the refugee status and security assessment processing resources despite DIAC's action to train additional staff. This became a particular concern for IMAs whose driving motivation was to obtain a visa enabling them to stay in Australia.*

*In this environment, problems of health, including mental health, increased, and detainee anger and frustration rose, often producing violent reactions and self harm. The growing number in detention on negative pathways, that is, those found not to be a refugee at either the primary or the review stage, exacerbated the situation.*

During the course of this Inquiry, serious issues have been identified concerning the Government's management of our detention network. These issues also go to the practice of immigration detention and how the Government responded, or failed to respond, to the built up pressure that led specifically to the riots. However beyond these issues it is impossible to avoid the big picture problem – the elephant in the room - namely, the impact of the Government's weaker border policies.

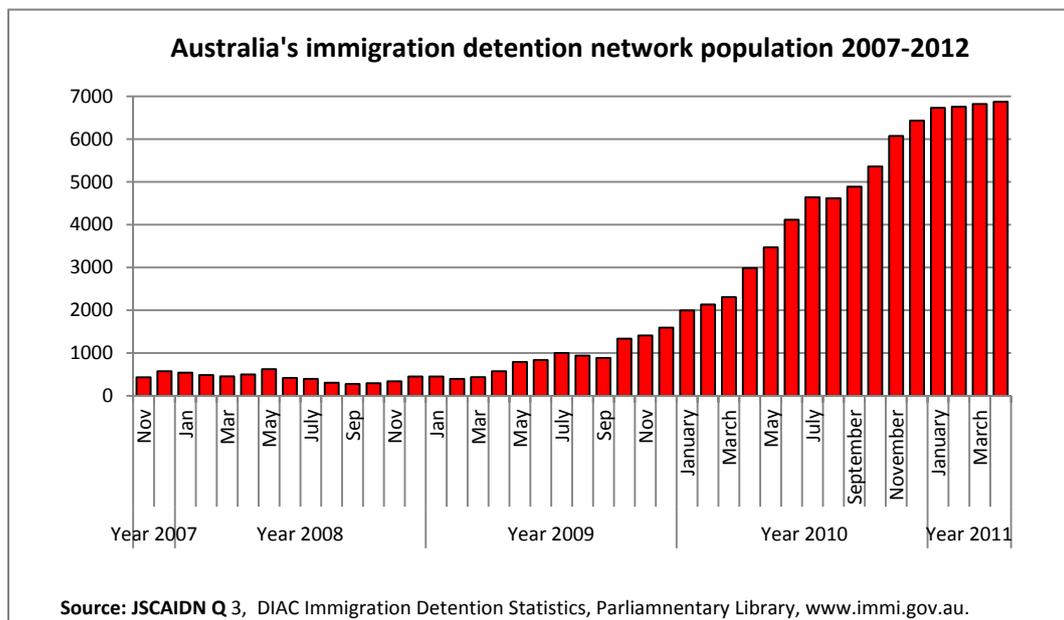
To inquire into the chaos that overwhelmed our immigration detention network, with significant human and financial costs, without making reference to the significant increase in arrivals, and the reasons for this increase, is like talking about a flood and refusing to acknowledge the rain.

The surge in boat arrivals that was the primary contributor to the collapse of the detention network flowed from the Government decision to weaken the measures they inherited from the Coalition in November 2007.

The constant denial by the Government of the impact of their own policy decisions on the surge in arrivals paralysed the Government from taking necessary decisions to avert losing control of the detention network for more than a year prior to the riots.

Most critical was the Government's failure, despite repeated warnings known to the Minister and Secretary of the Department, to either properly plan to accommodate more IMAs or take any action to deter such arrivals prior to the 2010 federal election. Worse still, their decision to introduce a new discriminatory asylum freeze, only served to exacerbate the situation.

The following chart shows the increase in the detention population in the lead up to the Christmas Island and Villawood riots.



A summary of key changes following the election of the Rudd Government to weaken the measures put in place by the Howard Government have been summarised in the previous section.

### **New Detention values**

In addition to these changes, Minister Evans announced on 29 July 2008 seven new “detention values”<sup>33</sup> dictating that people would be detained as a ‘last resort’, rather than as standard practice. IMAs would be detained on arrival for identity, health and security checks, but once these have been completed the onus would be on the Department to justify why a person should continue to be detained. The Minister pledged to legislate these values; however this pledge was never honoured, with the government abandoning the proposed legislation.

Ongoing detention would be justified for people considered to pose a security risk or those who did not comply with their visa conditions. This would result in the majority of people being released into the community while their immigration status was resolved.

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Senator the Hon. Chris Evans, *New Directions in Detention – Restoring Integrity to Australia’s Immigration System*, speech to the Australian National University, Canberra, 29 July 2008. [www.minister.immi.gov.au/media/speeches/2008/ce080729.htm](http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm).

## A new and expanded appeals process

At the same time, changes were also announced to the processing of IMAs at excised offshore places<sup>34</sup>. IMAs arriving at an excised place would be processed on Christmas Island, where they would undergo a new non-statutory refugee status assessment process with new access to taxpayer funded advice and representation. Unlike the process on Nauru, IMAs would also be able to apply for a review of a negative decision through an independent panel. The role of the Ombudsman was expanded to provide external scrutiny.

In November 2010, this ‘non – statutory’ process was struck down by the High Court as it was deemed to have created a nexus between the Minister exercising what were supposed to be his discretionary powers to lift the statutory bar to allow off shore entry persons to make an application for a protection visa and the conduct of the non statutory process he had instigated<sup>35</sup>. In other words, the Minister, through his own process, had removed his own discretion and opened up refugee status determination to judicial review.

## Abolition of detention debt

The Government’s Bill<sup>36</sup> to abolish detention debt passed into law on 8 September 2009 and removed the statutory requirement that asylum seekers were liable for the cost of their detention<sup>37</sup>. This policy was introduced by the Labor Government in 1992<sup>38</sup> and maintained by subsequent governments. The Act also had the effect of extinguishing all immigration detention debts outstanding at the time of commencement.

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<sup>34</sup> Senator the Hon. Chris Evans, “Labor unveils new risk-based detention policy”, 29 July 2008, [www.minister.immi.gov.au/media/media-releases/2008/ce08072.htm](http://www.minister.immi.gov.au/media/media-releases/2008/ce08072.htm).

<sup>35</sup> PLAINTIFF M61/2010E v COMMONWEALTH OF AUSTRALIA & ORS; PLAINTIFF M69 of 2010 v COMMONWEALTH OF AUSTRALIA & ORS [2010] HCA 41, 11 November 2010, [www.hcourt.gov.au/assets/publications/judgment-summaries/2010/hca41-2010-11-11.pdf](http://www.hcourt.gov.au/assets/publications/judgment-summaries/2010/hca41-2010-11-11.pdf)

<sup>36</sup> *Migration Amendment (Abolishing Detention Debt) Act 2009* (Cth).

<sup>37</sup> DIAC, Submission 32, p. 19.

<sup>38</sup> Phillips, J. & Spinks, H., *Immigration detention in Australia*, Parliamentary Library Social Policy Section, 23 January 2012. [www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/Detention#\\_ftn62](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/Detention#_ftn62)

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## Oceanic Viking – “The Tampa in reverse”

On 30 September 2008, the first boat to arrive illegally in Australia since December 2007 turned up on our shores.

During the next 15 months, another 67 boats would arrive carrying 3021 people, including the vessel that triggered the Oceanic Viking debacle, where 78 asylum seekers had been transferred to the Oceanic Viking and taken to Indonesia for processing. They refused to disembark in Indonesia and engaged in a stand off with the Australian Government who conceded by offering a special deal of accelerated assessments and resettlement<sup>39</sup>.

The Oceanic Viking incident received significant coverage in the region. The Coalition contends that the Government’s mishandling of this issues, from their mega phone diplomacy with Indonesia to the concessions granted to those on board the Oceanic Viking and then their attempts to deny such a special deal significantly eroded the Government’s credibility on this issue<sup>40</sup>.

The Oceanic Viking incident had the effect of a “Tampa in reverse”. Prime Minister Howard’s action to turn the Tampa away and establish off shore processing in Nauru sent a very strong and clear signal about the resolve of the Australian Government. While considerable credit is due to the numerous measures put in place by the Coalition, the resolute action of a determined Prime Minister proved decisive.

By contrast the capitulation by the Rudd Government, the special deals offered and then sought to be denied, with the Prime Minister seeking to distance himself from the operation and the decisions taken, showed a Government that lacked resolve and decisiveness on this issue<sup>41</sup>.

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<sup>39</sup> The Hon. Chris Bowen MP, “Government to seek resolution of outstanding Oceanic Viking cases”, 15 October 2010, [www.minister.immi.gov.au/media/cb/2010/cb155479.htm](http://www.minister.immi.gov.au/media/cb/2010/cb155479.htm)

<sup>40</sup> “The Letter to the Oceanic Viking Passengers”, Sydney Morning Herald, 12 November 2009, [www.smh.com.au/world/the-letter-to-the-oceanic-viking-passengers-20091111-ia3k.html](http://www.smh.com.au/world/the-letter-to-the-oceanic-viking-passengers-20091111-ia3k.html)

<sup>41</sup> Wade, M., “Secret plan to boost migrants from Sri Lanka”, Sydney Morning Herald, 19 November 2009, [www.smh.com.au/national/secret-plan-to-boost-migrants-from-sri-lanka-20091111-i9zs.html](http://www.smh.com.au/national/secret-plan-to-boost-migrants-from-sri-lanka-20091111-i9zs.html);

Allard, T., “Home by Christmas: Rudd lays out the welcome mat”, Sydney Morning Herald, 12 November 2009, [www.smh.com.au/world/home-by-christmas-rudd-lays-out-the-welcome-mat-20091111-ia3j.html](http://www.smh.com.au/world/home-by-christmas-rudd-lays-out-the-welcome-mat-20091111-ia3j.html).

Following the Oceanic Viking incident, the rate of arrivals by IMAs increased even further.

### **Tents and a riot on Christmas Island**

By November 2009, all IMAs were still being detained exclusively at Christmas Island and the population at the various centres on the Island increased to over 1500 people<sup>42</sup>. These facilities were built to accommodate just 1200 people at surge capacity<sup>43</sup>. Later that month a riot broke out between Sri Lankan and Afghan detainees. 11 people were charged and three<sup>44</sup> were later convicted. The riot resulted in serious injuries to detainees, which in three cases required a medivac transfer to the mainland for treatment<sup>45</sup>.

In December 2009, additional AFP officers with public order management training were deployed to Christmas Island. That same month, marquees, or tents, were erected adjacent to the red compound for detainee accommodation, due to the overcrowding of other facilities<sup>46</sup>. The Minister maintained that this was a temporary requirement and that there was sufficient capacity to accommodate expected arrivals when questioned at a press conference in January 2010<sup>47</sup>.

*QUESTION: How full is Christmas Island?*

*CHRIS EVANS: There's sufficient capacity to deal with more arrivals. We put some extra capacity in already and we're increasing the capacity to around 2200. More accommodation's coming online currently, so we have capacity to deal with arrivals. We're doing our best to obviously limit the arrivals and prevent people taking these dangerous journeys, but we do have ongoing extra capacity at Christmas Island.*

*QUESTION: Do you think those cramped conditions could contribute to people's deteriorated mental state?*

*CHRIS EVANS: When I was on the island last Friday, they're not cramped conditions. We're managing well. We've had to put in some temporary*

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<sup>42</sup> Hawke & Williams, p. 41.

<sup>43</sup> Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, "Christmas Island will cope with boat arrivals", 9 July 2009, [www.minister.immi.gov.au/media/media-releases/2009/ce09060.htm](http://www.minister.immi.gov.au/media/media-releases/2009/ce09060.htm).

<sup>44</sup> ABC News, "Asylum seekers guilty over detention riot", 4 November 2010, [www.abc.net.au/news/2010-11-04/asylum-seekers-guilty-over-detention-riot/2324232](http://www.abc.net.au/news/2010-11-04/asylum-seekers-guilty-over-detention-riot/2324232).

<sup>45</sup> Hawke & Williams, p. 41.

<sup>46</sup> DIAC, *Supplementary Submission*, p. 202.

<sup>47</sup> Senator the Hon. Chris Evans, Doorstop, Canberra, January 26 2010 "Australia Day, immigration detention", [www.minister.immi.gov.au/media/speeches/2010/ce100126.htm](http://www.minister.immi.gov.au/media/speeches/2010/ce100126.htm).

*accommodation while the more permanent accommodation comes on stream. But some of it came on stream in the last week or so, more will come on in the next few weeks. People are being looked after appropriately. This was despite an AFP report into the November 2009 incident which found that overcrowding on Christmas Island was a danger, that internal tensions were increasing and that the location of the tents was ill advised:*

*“That report noted, inter alia, that NWP was overcrowded, the tent locations posed a major security risk as they could not be locked down, there were internal tensions based on ethnic lines and standover tactics related to access to reduced amenities were present within the detainee population.”<sup>48</sup>*

In March 2011, these same tents were still being used and were burnt to the ground during the riots<sup>49</sup>.

After the November 2009 incident, the decision was taken to construct the low security Aqua and Lilac compounds adjacent to the North West Point IDC that would accommodate an additional 600 detainees. The final 400 beds in Aqua compound came on line in May 2010<sup>50</sup>. The compounds would be the scene for the riots less than a year after they opened.

### **Off-shore goes on–shore**

In evidence to the Inquiry, DIAC stated that they discussed capacity issues on Christmas Island with Minister Evans in January 2010 and the need to move clients (as DIAC refers to detainees) to other centres on the mainland<sup>51</sup>. At that time there were 1648 IMAs on Christmas Island, including 1362 at North West Point<sup>52</sup>.

Yet on January 14 Minister Evans was quoted in the Herald Sun saying “we’ve still got some spare capacity at Christmas Island and we’ve been expanding to meet that demand”<sup>53</sup>. The Government sought to maintain the perception that Christmas Island was capable of handling additional arrivals, into February and beyond, with the Prime Minister stating on February 2, in response to the arrival of 181 IMAs on

<sup>48</sup> Hawke & Williams, p. 41.

<sup>49</sup> Hawke & Williams, p. 64.

<sup>50</sup> DIAC, Supplementary Submission, p. 202; Hawke & Williams, p. 41.

<sup>51</sup> DIAC, answers to questions on notice, q 294, received 15 March 2012.

<sup>52</sup> DIAC, *Immigration Detention Statistics Report 8-01-2010*, answers to questions on notice, q 2, received 10 August 2011.

<sup>53</sup> Packham, B. & Lewis, S., “Immigration Department warns Federal Government to start processing asylum-seekers on mainland”, Herald Sun, 14 January 2010, [www.heraldsun.com.au/news/immigration-department-warns-federal-government-to-start-processing-asylum-seekers-on-mainland/story-e6frf7jo-1225818992473](http://www.heraldsun.com.au/news/immigration-department-warns-federal-government-to-start-processing-asylum-seekers-on-mainland/story-e6frf7jo-1225818992473).

one boat, that Christmas Island “remains the best place to accommodate people” and that “my advice from officials is there is still capacity there”<sup>54</sup>.

Yet in the demand predictors provided by Serco to DIAC, submitted to the Inquiry, from 4 November 2009 through to 5 February 2010<sup>55</sup>, indicated that the Christmas Island IDC would be operating at above 100% of capacity for the next three months.

On 10 February the Minister announced that the Northern IDC at Darwin would be used for transfers for IMAs on positive pathways in the final stages of processing<sup>56</sup>. It was not until mid March that the Government started transferring IMAs to Northern<sup>57</sup> (). By that time the IMA population on Christmas Island had risen to 1870 IMAs including 1546 at North West Point<sup>58</sup>.

The Minister described the facilities at Northern IDC as ‘purpose built’<sup>59</sup>. However, these facilities were designed to accommodate illegal foreign fishers, not IMAs, for short stays of up to a month<sup>60</sup>. In the period ahead, Northern would play host to IMAs for periods of up to and even beyond 12 months and would also become the scene of riots, protests, breakouts and serious self harm.

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<sup>54</sup> The Hon. Kevin Rudd MP, Interview with Lyndal Curtis, ABC AM, 2 February 2010, [www.abc.net.au/am/content/2010/s2807350.htm](http://www.abc.net.au/am/content/2010/s2807350.htm).

<sup>55</sup> Serco Demand Predictors, provided to Inquiry on 18 November 2011, q 309 – 314.

<sup>56</sup> DIAC, answers to questions on notice, q 294, received 15 March 2012.

<sup>57</sup> McPhedran, I., “22 moved to NT as Christmas Island simmers”, Northern Territory News, 19 March 2010, [www.ntnews.com.au/article/2010/03/19/132951\\_ntnews.html](http://www.ntnews.com.au/article/2010/03/19/132951_ntnews.html).

<sup>58</sup> DIAC, *Immigration Detention Statistics Report 12-03-2010*, answers to questions on notice, q 2, received 10 August 2011.

<sup>59</sup> Senator the Hon. Chris Evans, “Suspension on processing all new applications from asylum seekers from Sri Lanka and Afghanistan”, 9 April 2010, [www.minister.immi.gov.au/media/speeches/2010/ce100409.htm](http://www.minister.immi.gov.au/media/speeches/2010/ce100409.htm)

<sup>60</sup> DIAC, answers to questions on notice, q 171, received 21 November 2011.

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## The asylum freeze and re-opening of Curtin

On April 9, 2010 Minister Evans held a joint Press Conference with the Minister for Foreign Affairs and the Minister for Home Affairs<sup>61</sup> to announce that the Rudd Government would be suspending the processing of new asylum claims from Sri Lankan nationals for three months and Afghan nationals for a period of six months.

Those affected by the suspension remained indefinitely in immigration detention until the suspensions were lifted (in July 2010<sup>62</sup> for Sri Lankans and September 2010 for Afghans<sup>63</sup>). At the beginning of the freeze there were 1290 Afghans, including 163 children in the detention network<sup>64</sup>. Six months later there were over 2230 Afghans in detention, including almost 336 children in the network<sup>65</sup>.

The Hawke Williams Review concluded that the decision “impacted adversely on the future management of detainees”<sup>66</sup> and that it was a factor that contributed to the overcrowding, the lack of capacity and the extended length of time people were in detention.

A further study commissioned by DIAC in March, by Knowledge Consulting, noted in their draft report in May 2010 that “*the policy decision...concerning the pause in processing of IMA’s intercepted post this announcement will create two classes of*

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<sup>61</sup> Senator the Hon Chris Evans, Joint Press Conference with Ministers Smith and O’Connor, “Suspension on processing of all new applications from asylum seekers from Sri Lanka and Afghanistan”, 9 April 2010, [www.minister.immi.gov.au/media/speeches/2010/ce100409.htm](http://www.minister.immi.gov.au/media/speeches/2010/ce100409.htm); Senator the Hon. Chris Evans, Joint Press Release with Ministers Smith and O’Connor, “Changes to Australia’s Immigration Processing System”, 9 April 2010. [www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm](http://www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm).

<sup>62</sup> The Hon. Julia Gillard MP, “Speech to the Lowy Institute” 6 July 2010, [www.pm.gov.au/press-office/moving-australia-forward](http://www.pm.gov.au/press-office/moving-australia-forward).

<sup>63</sup> The Hon. Chris Bowen MP, Doorstop, Canberra, “Government’s decision to lift suspension of processing of Afghan asylum seeker claims, Opposition comments”, 30 September 2010, [www.minister.immi.gov.au/media/cb/2010/cb155266.htm](http://www.minister.immi.gov.au/media/cb/2010/cb155266.htm)

<sup>64</sup> DIAC, *Immigration Detention Statistics Report 16-04-2010*, answers to questions on notice, q 2, received 10 August 2011.

<sup>65</sup> DIAC, *Immigration Detention Statistics Report 8-10-2010*, answers to questions on notice, q 2, received 10 August 2011.

<sup>66</sup> Hawke & Williams, p. 30.

*IMA's within the NWP IDC. This will increase pressure on placement and segregation which has already reached a dysfunctional and unsafe situation*"<sup>67</sup>.

The Minister himself admitted the impact the Afghan asylum freeze had in placing significant pressure on the detention network in a press conference on 30 September 2010:

*BOWEN: I've been very clear and upfront about the fact that the suspension in the processing of asylum claims for people from Afghanistan has been one of the causes, one of the factors in relation to an expansion in the number of people in detention in Australia. That is self evident; I don't think it's a revelation*<sup>68</sup>.

At the same time as the discriminatory asylum freeze was announced, the Government announced it would also reopen and redevelop the Curtin IDC<sup>69</sup> that was closed by the Howard Government, providing an additional capacity for 600 persons, despite plans prepared for DIAC to develop the site for up to 1800 detainees. This was the only expansion to the network for single male accommodation that would be later available to reduce pressure on the population at the North West Point facility on Christmas Island.

The network was also slightly expanded for families through the conversion of a mining camp in Leonora for a 238 bed alternative place of detention for families<sup>70</sup>, and the leasing of the Darwin Airport lodge, with 400 beds for the same purpose<sup>71</sup>. There were no further decisions taken by the Government until after the 2010 election.

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<sup>67</sup> Hamburger, K., 'Draft Report – Assessment of the Current Immigration Arrangements at Christmas Island', 13 May 2010, page 4, provided by DIAC answers to questions on notice, q 306, received 23 March 2012. Hereafter referred to as 'Hamburger Draft Report'.

<sup>68</sup> The Hon Chris Bowen MP, Doorstop, Canberra, September 30 2010, [www.chrisbowen.net/media-centre/transcripts.do?newsId=3753](http://www.chrisbowen.net/media-centre/transcripts.do?newsId=3753).

<sup>69</sup> Senator the Hon. Chris Evans, "Curtin to hold suspended asylum seekers", 18 April 2010, [www.minister.immi.gov.au/media/media-releases/2010/ce10030.htm](http://www.minister.immi.gov.au/media/media-releases/2010/ce10030.htm).

<sup>70</sup> Senator the Hon. Chris Evans, "Leonora site prepares for irregular maritime arrival transfer", 1 June 2010 <http://www.minister.immi.gov.au/media/media-releases/2010/ce10044.htm>.

<sup>71</sup> The Hon. Chris Bowen MP, "Government to move children and vulnerable families into community-based accommodation", 18 October 2010, [www.minister.immi.gov.au/media/cb/2010/cb155484.htm](http://www.minister.immi.gov.au/media/cb/2010/cb155484.htm).

During this period the number of people in the detention network increased by approximately 2,000 IMAs. The population on Christmas Island was almost 2500 by this point, including 1893 at North West Point<sup>72</sup>.

### **The Hamburger Report – The ‘canary in the mine’**

On May 13, 2010, DIAC was provided with draft interim report by Keith Hamburger AM from Knowledge Consulting<sup>73</sup>. Knowledge Consulting had been requested by DIAC to conduct an assessment of the current arrangements at the Christmas Island detention centre<sup>74</sup>.

On Page 28 the report sounded the following warning:

*“DIAC advise that there is no evidence of fall off at this stage in the numbers of IMA’s arriving... the author argues that it is reasonable to assert that if the severe overcrowding at NWP remains then **it is likely that a serious incident will occur in the next six months and highly likely during the next twelve months**, particularly if the pause in processing results in significant numbers of clients spending much longer in detention in a state of uncertainty in severely overcrowded conditions.*

The report’s many other findings included the following:

- *“**North West Point Immigration Detention Centre is overcrowded and understaffed; much of the temporary sleeping accommodation is not fit for purpose; staff and client safety is compromised; processes for client case management are conceptually sound but implemented is degraded through lack of client placement options and staff shortages: intelligence gathering is compromised due to staff shortages; centre maintenance and services are under stress; and client mental well being is at risk due to lack of meaningful activity; the foregoing raise significant Duty of Care Issues for DIAC and Serco**” Finding 2, page 4/22*
- *“Concerning early warning signs of deterioration in client morale are evident at NWP which if not addressed have the **potential to escalate into a serious incident or incidents;**” Finding 5, page 5/23:*

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<sup>72</sup> DIAC, *Immigration Detention Statistics Report 23-11-07*, answers to questions on notice, q 2, received 10 August 2011.

<sup>73</sup> Hamburger Draft Report, May 2010.

<sup>74</sup> Hawke & Williams, page 43.

- *“The fundamental underlying challenge is that there are **far too many clients accommodated in NWP for the current capacity of the infrastructure**, far too many of them are not engaged in meaningful or purposeful activities or programs, client frustration is starting to increase and the potential has now emerged for clients to spend longer periods in an overcrowded, unproductive and frustrating environment” Finding 12, page 7/33*
- *“Lilac Compound’s physical infrastructure is not of a standard for a client category of Single Adult Male Medium Risk... this factor coupled with crowded accommodation (200 clients), lack of meaningful activity for clients and challenges in delivering intensive case management by DIAC and SERCO will potentially result in clients not being compliant with their circumstances. **This places Lilac Compound in a High Risk category for serious incidents in the months ahead**” Finding 13, page 7/36*
- *“the security within Lilac, Aqua and Phosphate Hill Compounds is not at the level required for the category of client accommodated or proposed to be accommodated there, that is Single Adult Males – Medium Risk” Finding 19, page 9*
- *“DIAC and the private contractor are relying to a significant extent upon the assumption that IMA’s will remain compliant for good order to be maintained at the Christmas Island Detention facilities” page 17*
- *“If as in circa 2000 many clients lose confidence in the official processes and if this is compounded by boredom and inactivity, client’s mental well being will be adversely affected and the assumption of “compliant clients” will quickly unravel. The likely consequence is that clients as in 2000 and post will begin to rebel against authority. This potentially could follow the same path of **hunger strikes and self harming, riots, burning and trashing of infrastructure, mass escapes, serious injuries to IMA’s and staff** including post traumatic stress, loss of reputation for the Department and the private contractor and loss of political capital by the government of the day” page 18*
- *“If a potential worst case scenario as described above was to occur, then the **best efforts of staff and or emergency services to contain unruly and or unlawful behaviour would be severely compromised** by the current overcrowding and the inadequate temporary accommodation facilities. There is also the added challenge of the delay factor in getting support personnel to the Island should a serious incident occur unexpectedly” page 18*

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The first recommendation of this report was to “take immediate action to commence reducing the number of clients accommodated within NWP IDC” (page 9).

However the report then noted that:

*“DIAC officers have advised that Recommendation 1 is not a practical recommendation while the off shore processing and mandatory detention policy is in place as **there is insufficient immigration detention accommodation elsewhere to allow the overcrowded situation at Christmas Island to be relieved to the extent envisaged by the Recommendation.***

*Therefore as previously stated in this Report it is reasonable to assert that **DIAC does not currently have the capacity to implement a policy of off shore processing and mandatory detention of IMA’s without resorting to overcrowding and temporary facilities which brings into play Duty of Care issues affecting clients and staff**<sup>75</sup>.”*

The report then argued:

*“This leads the author to the conclusion that Recommendation 1 requires consideration at policy level concerning:*

- *alternative arrangements for processing and detaining IMA’s within the framework of current policy; or*
- *making adjustments to current policy until such time as DIAC can achieve an appropriate level of detention infrastructure; or*
- *continue with the current overcrowded arrangements with additional resources and initiatives to improve circumstances for clients while working to achieve appropriate detention infrastructure provision<sup>76</sup>;*

The author then made a specific note in relation to this third option noted above that “for a range of practical operational reasons as covered in this Report this (third option) is considered to be High Risk Option that will be unlikely to mitigate the risks to a reasonable level”. This was the option adopted by default by the Government.

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<sup>75</sup> Hamburger Draft Report, May 2010, p. 10.

<sup>76</sup> Hamburger Draft Report, May 2010, p. 11.

This report was the ‘canary in the mine’. Following this report there was no major decision to expand the immigration detention network until after the next federal election.

When the Government received this report there were 3,471 people in the detention network, including 2,292 on Christmas Island<sup>77</sup>. By the time a decision was made to expand the detention network after the election in September, an additional 1,990 people turned up on 39 boats and the detention population increased to almost 5,000 people<sup>78</sup>.

**The Government’s failure to act at this critical moment pushed the detention network to a point of no return and set the stage for the problems and crises that would present themselves in 2011.**

The Government failed at this critical juncture to either:

- a) adopt the Coalition’s proven policies to deter illegal boat arrivals to Australia, as recommended by the Coalition,
- b) abolish the discriminatory asylum freeze they had put in place just a few months earlier that was exacerbating the problem as highlighted in the Hamburger report and recommended by the Coalition, or
- c) take steps to expand the detention network to cope with further IMAs in the absence of deterrence measures as recommended in the Hamburger report.

Coalition Members and Senators do not support the abolition of mandatory detention or the Government’s recently introduced policy for mainstream community release and bridging visas for IMAs. However, we note that prior to the election, Minister Evans was not even prepared, at this time, to take even these actions that now constitute Government policy to address rising tensions in the network. In short, Minister Evans decided to do nothing.

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<sup>77</sup> DIAC, *Immigration Detention Statistics Summary 14-05-2010*, answers to questions on notice, q 2, received 10 August 2011.

<sup>78</sup> DIAC, *Immigration Detention Statistics Summaries 10-09-2010 and 30-09-2010*, answers to questions on notice, q 2, received 10 August 2011.

Through this period the Government remained in denial about the impact of their policy decisions on the arrival of illegal boats and the thousands of IMAs who were turning up and putting extreme pressure on the immigration detention network.

Instead of taking any action to avert the numerous problems now clearly identified, the Government and Minister Evans appeared to be locked in denial. It would appear the Government was politically paralysed and simply unable to make any decision before the 2010 federal election because of the political implications of those decisions.

A decision to further expand the immigration detention network and reverse the asylum freeze would be an admission of their failures, that their border protection polices were non existent and they knew that things were only going to continue to get worse.

Alternatively, the Government was also not prepared, at that time, to adopt the position advocated by the Greens for mainstream community detention and bridging visas. This policy was embraced by the government a year after the election and is substantively reflected in the majority report that has been agreed by the Government, Greens and Independent members of the Committee.

As a result, the system was left to fester until after the election, by which time the die had largely already been cast.

Dr Hawke and Mrs Williams highlighted the critical impact of the lack of capacity when they gave their evidence to the Inquiry on 29 February 2012:

*Mr MORRISON: The environment that was created through the significant increase in the number of arrivals, the increased length of time that people were in detention for a variety of reasons—but I have no doubt that one was the stressing of the resources available for assessment as well as what was becoming a much longer appeal process; the government had announced a new appeal process, so there was an independent merit appeals panel that was put in place—and, as you say, a change in the case-mix over that period of time were a fairly volatile cocktail.*

*Dr Hawke: We pointed that out, I think, in our report.*

*Mr MORRISON: Would you add to that the lack of capacity within the detention network at the time? Was that a critical factor, do you think?*

*Dr Hawke: Yes, that was a critical factor, and you can see the subsequent actions that have been taken to address that issue. The other issue was, I think, not really widely understood: a lot of those people on negative pathways were not able to be returned to their home or to third countries, and that is a particularly difficult issue, I think, for us in Australia<sup>79</sup>.*

## **The Government knew of the warnings**

The Government have sought to deflect responsibility for not acting on the Hamburger report on the basis that the Hawke/Williams Review noted that the final report provided in October was not the subject of “specific” brief to either the Department Secretary or the Minister<sup>80</sup>. However, evidence provided to the Inquiry demonstrates that the final report was little more than an administrative formality, that the findings of the final report mirrored those provided in the draft in May and that these findings were well known to the Government, the Minister and the Department Secretary.

In evidence before the Inquiry on 29 February, the Secretary of the Department Andrew Metcalfe confirmed that ***“I was aware of the draft report's existence, I was aware of its major recommendations and the then Minister and his office were also aware of it”<sup>81</sup>***.

The Secretary also confirmed in evidence on 29 February 2012 and 9 December 2011, that the recommendations of the draft report were substantially the same as that provided in the final report, provided to the Department in October<sup>82</sup>.

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<sup>79</sup> Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 4.

<sup>80</sup> Hawke & Williams, page 44.

<sup>81</sup> Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 29 February 2012, p. 31.

<sup>82</sup> Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 29 February 2012, p. 31.

*Mr MORRISON: If I go back to your evidence when we last spoke, you said that the draft report's recommendations and findings, the major thrust of the report, was no different in May from what it was in October. Are you happy for us to take that?*

*Mr Metcalfe : I stand by that.*

*Mr MORRISON: In the Hawke-Williams review there is a summary of the key findings which dealt with overcrowding, pressures on the system and what those meant more broadly for the network. Can we take that all as read?*

*Mr Metcalfe : Yes.*

The Secretary also confirmed that the then Minister, Senator Evans, was also aware of the contents of this draft report. On December 9, Mr Metcalfe gave the following evidence<sup>83</sup>:

*Mr MORRISON: .. You had this report in May. Was Minister Evans aware of the report?*

*Mr Metcalfe : My understanding is that the minister or his office was briefed, but I would have to check as to the precise way that was done.*

*Mr MORRISON: He was aware of the general conclusions, then, of the report that you received in May?*

*Mr Metcalfe : That is my understanding.*

This was then confirmed in response to a question on notice (268) as follows<sup>84</sup>:

*Question: Was Minister Evans aware of the report?*

*Answer: The office of the then Minister was aware of the May 2010 draft report titled 'Assessment of the Current Immigration Detention Arrangements at Christmas Island'.*

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<sup>83</sup> Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 9 December 2011, p. 20.

<sup>84</sup> DIAC, answers to questions on notice, q 268, received 29 February 2012.

While the Hawke Williams Review found that the final report, provided in October, had not been briefed to the new Minister or the Secretary<sup>85</sup>, by his own testimony Mr Metcalfe had been aware of the findings of the report for months and the Minister had been briefed. In fact, Mr Metcalfe was adamant in his testimony that DIAC had not been idle with this information.<sup>86</sup>

*Mr MORRISON: But, on the issues that were highlighted in the final report, I am sure that Mr Hamburger at that point would have had a pretty clear idea about what was happening in the centres. You may have wished to finetune some of the elements of his report, but what I am asking is: in terms of some of the key weaknesses that were identified, had they been identified in May?*

*Mr Metcalfe: My understanding is that they were and that **we were certainly conscious of the issues that he was raising** in May but we continued to work with him, and it was some time before we received the final report. But **we did not sit on our hands** in May—*

Also on this day, Mr Metcalfe was asked about what the incoming Minister, Mr Bowen, had been advised with respect to these reports<sup>87</sup>.

*Mr MORRISON: Did the incoming brief make general reference to the fact that a series of reports had identified overcrowding and security risks within the detention network?*

*Mr Metcalfe: Yes.*

*Mr MORRISON: It referred to actual reports? I am not talking about specific reports, but it generally referred to reports?*

*Mr Metcalfe: There was a reference to the fact that we had had a number of reports. I think that is referred to in the Hawke-Williams report.*

*Mr MORRISON: Did the minister ask to see any of those reports?*

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<sup>85</sup> Hawke & Williams, p. 44.

<sup>86</sup> Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 9 December 2011, p. 20.

<sup>87</sup> Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 9 December 2011, p. 47.

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*Mr Metcalfe : I would have to check on that. Certainly the minister, by his actions, clearly understood the urgency of the matter and moved with alacrity in relation to the issue.*

On notice, DIAC responded to the last question as follows: “*Since becoming Minister in September 2010, the Minister has received regular and frequent briefing on the substantive issues around detention accommodation and management of the immigration detention network, including briefing on a range of reports prepared about immigration detention matters*”<sup>88</sup>.

It is inconceivable that Mr Metcalfe, an experienced and senior public official, who was conscious of the findings of the draft Hamburger Report had not relayed the import of the findings in these ‘frequent briefings’ to the new Minister. If he failed to do so, he would have been negligent in his duties.

Whether they were referred to as findings of the report is irrelevant to the question of whether the Minister knew of the situation on Christmas Island, in terms consistent with what had been described in the report.

The fact the Minister may not have seen the actual report is a semantic technicality. Of course DIAC should have provided the Minister with a specific formal brief on the matter on both the draft report in the incoming brief and the final report when it became available. DIAC have acknowledged this oversight. However this failure should not be overstated.

This does not mean that the Minister was not aware of the situation on Christmas Island, nor does it excuse him from being informed, nor the Government.

Firstly, Minister Evans was briefed of the draft report that was substantially the same as the final report. The Executive was therefore aware. The fact that the Government did not execute an effective handover between their own Ministers is a matter of their own culpability.

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<sup>88</sup> DIAC, answers to questions on notice, q 283, received 29 February 2012.

Secondly, the fact the Minister either chose not to avail himself of the ‘reports’ referred to in his incoming brief or request his office to review those ‘reports’, demonstrates either an unlikely disinterest or a lack of necessity. In the latter case such a lack would be caused by the fact the Minister was already aware of the situation, based on other briefings provided by DIAC or, in particular, the Department Secretary.

It is not credible for the Government to dismiss this report and the serious implications it holds for the Government’s failure to act at a critical time.

The Government clearly had knowledge that a crisis was brewing on Christmas Island. The substantive import of this Hamburger report was already known and insufficient steps were taken by the Government to address its findings, most significantly the former Minister for Immigration and Citizenship Senator Evans.

The result was that when it became even more critical to reduce pressure on Christmas Island in the summer 2010/11 by transferring detainees to the mainland, there was simply not the capacity in the network to achieve this, as the draft Hamburger report had warned.

This was despite the decisions taken by the new Minister in September to expand the network. Given the lead times involved this decision came too late.

### **Prime Minister Gillard maintained denial**

**This position of denial did not alter following the change in leadership from Prime Minister Rudd to Prime Minister Gillard in late June 2010.**

The asylum freeze was maintained and there was no decision to expand the network, in fact any suggestion that the network would be expanded was actively rejected by the Prime Minister, including within just a few weeks of the election date<sup>89</sup>.

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<sup>89</sup> “PM defends refugee detention plans”, Sydney Morning Herald, 29 September 2010, <http://news.smh.com.au/breaking-news-national/pm-defends-refugee-detention-plans-20100929-15wwn.html>.

The only decision taken by the Prime Minister is her now infamous proposal to establish a regional processing centre in East Timor in her speech to the Lowy Institute on 6 July 2010 in Sydney<sup>90</sup>. This announcement was made with no policy detail or even any advance discussion with the Government of East Timor or consultation with key regional partners, in particular Indonesia as joint chair of the Bali Process.

Instead of implementing a genuine policy response to the emerging crisis in the detention network, Prime Minister Gillard opted for a pre-election political fix that was quickly exposed, and has now since been abandoned.

### **Building the detention centre revolution**

By the time of the election on 21 August 2010, some 7374 asylum seekers had arrived unlawfully in Australia by boat since Labor took power in November 2007 and some 4619 people were in the detention network, including 650 children. More than half of those detainees – 2408 - were in immigration detention on Christmas Island<sup>91</sup>.

Minister Bowen acknowledged on coming into the role that “existing facilities are operating at capacity and there is a need for more beds to be made available until outstanding applications can be finalised... these arrangements are required as a matter of priority to ease the pressure on existing facilities”<sup>92</sup>.

It is remarkable that what seemed obvious to the new Minister immediately after the election had been dismissed by the Prime Minister only weeks before.

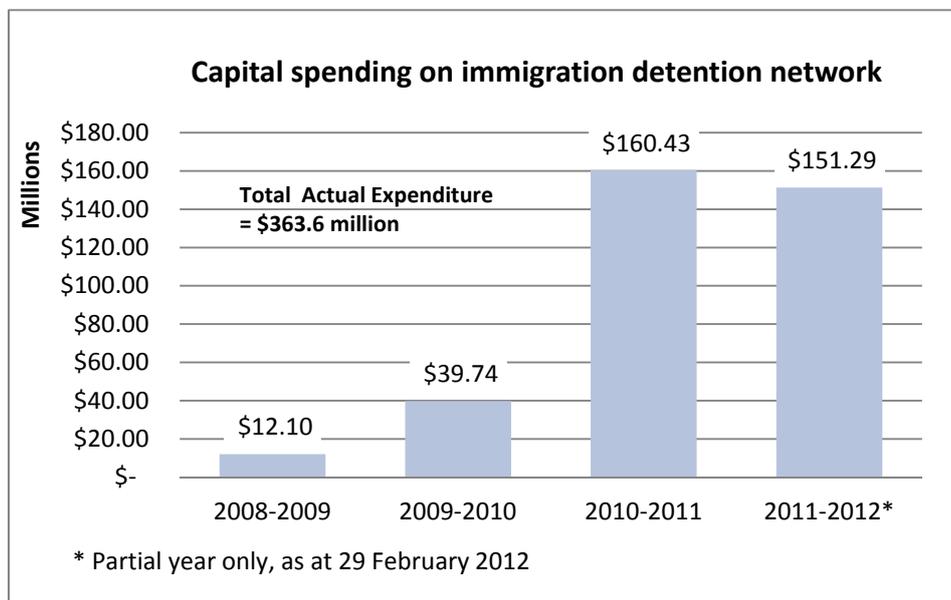
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<sup>90</sup> The Hon Julia Gillard MP, *Moving Australia Forward*, Address to the Lowy Institute, Sydney, 6 July 2010 [www.pm.gov.au/press-office/moving-australia-forward](http://www.pm.gov.au/press-office/moving-australia-forward).

<sup>91</sup> DIAC, *Immigration Detention Statistics Summary 13-08-2010*, answers to questions on notice, q 2, received 10 August 2011.

<sup>92</sup> The Hon. Chris Bowen MP, “Additional immigration detention accommodation”, 17 September 2010 <http://www.minister.immi.gov.au/media/media-releases/2010/cb10064.htm>.

Having refuted suggestions during the election that the Government would expand the mainland detention network if re-elected, and having made no commitment to do so, the Government embarked on what could only be described as a “building the detention centre revolution” after the election, with the largest expansion of the immigration detention network on record.



A breakdown of capital spending through to budget 2011/12 by state and facility is attached at Appendix C. This expansion had been assisted by what DIAC described as ‘contingency works’ to commence site preparation, ground works and perimeter fencing, to proceed with Stage 2 at Curtin for 600 additional beds and to establish the facility at Scherger Air Force base near Weipa.

Evidence of these works being undertaken before the election campaign were denied by the Government and DIAC prior to the election, with formal decisions to proceed not being taken until September by the new Minister.

On 17 September, the newly appointed Minister Bowen announced that Scherger Airforce Base would be “adapted to accommodate up to 300 single men... while capacity at the existing Curtin Immigration Detention Centre will be expanded in coming months, allowing for up to 1200 single adult men to be housed there”<sup>93</sup>.

<sup>93</sup> The Hon Chris Bowen MP, “Additional immigration detention accommodation”, 17 September 2010 [www.minister.immi.gov.au/media/media-releases/2010/cb10064.htm](http://www.minister.immi.gov.au/media/media-releases/2010/cb10064.htm).

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Melbourne Immigration Transit Accommodation was also to be expanded to hold more families and children in the shorter term<sup>94</sup>.

The impact of those additional 1000 detention beds was swallowed up in less than two months – another 1054 people had already arrived by boat by 4 November 2010.

On 18 October, the Prime Minister and Minister Bowen had also announced the commissioning of two new detention facilities at Northam and Inverbrackie<sup>95</sup>, providing up to 1900 additional beds.

In the six months between September 2010 and March 2011, those additional 2,900 detention beds had already been absorbed by the arrival of another 2,848 people.

On 3 March 2011 the Minister announced a new centre at Wickham Point in Darwin (1500 beds) and the expansion of the Darwin Airport Lodge by up to 400 beds<sup>96</sup>. On 5 April 2011, the Minister announced that the Pontville defence facility would become the site of a temporary new detention centre to accommodate up to 400 single adult men<sup>97</sup>.

As noted, these decisions all came too late to deal with what was about to occur on Christmas Island.

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<sup>94</sup> Minister Bowen Interview with Steve Price, 18 November 2010  
[www.minister.immi.gov.au/media/cb/2010/cb155899.htm](http://www.minister.immi.gov.au/media/cb/2010/cb155899.htm).

<sup>95</sup> Prime Minister & Minister for Immigration and Citizenship, Joint Media Release, “Government to move children and vulnerable families into community-based accommodation”, 18 October 2010 [www.minister.immi.gov.au/media/cb/2010/cb155484.htm](http://www.minister.immi.gov.au/media/cb/2010/cb155484.htm).

<sup>96</sup> The Hon. Chris Bowen MP, “Government announces new and expanded immigration detention accommodation”, 3 March 2011, [www.minister.immi.gov.au/media/cb/2011/cb159679.htm](http://www.minister.immi.gov.au/media/cb/2011/cb159679.htm).

<sup>97</sup> The Hon. Chris Bowen MP, “New short-term detention centre in Tasmania”, 5 April 2011 [www.minister.immi.gov.au/media/cb/2011/cb163979.htm](http://www.minister.immi.gov.au/media/cb/2011/cb163979.htm).

## **Failure to Adequately Prepare for the Inevitable**

The Hawke/Williams review of the riots at Villawood and Christmas Island concluded that:

*“That these incidents took place, particularly at the CIIDC, was not entirely unpredictable, although their severity and speed of escalation was surprising. Organisations and professional bodies had been warning of significant management issues associated with overcrowding, including processing delays and the impact on services and amenities on Christmas Island. There were indications that the risk of a major incident was increasingly more likely if these factors were not addressed.”<sup>98</sup>*

## **Inability to adequately reduce population on Christmas Island**

On 6 December 2010, DIAC wrote to Serco advising their demand prediction for all sites in the Detention Network for January, February and March 2011, as required under the Detention Services Contract<sup>99</sup>. For each month the prediction was that North West point would be over 100% of capacity. The population on Christmas Island at that time was now 3029, with 2148 at North West Point<sup>100</sup>.

This was confirmed in their report of January as well. By the time of the riot in March, the Hawke/Williams review noted that there were 2,539 detainees on Christmas Island, 1841 of whom (single males) were accommodated at the NWP, Lilac and Aqua compounds<sup>101</sup>.

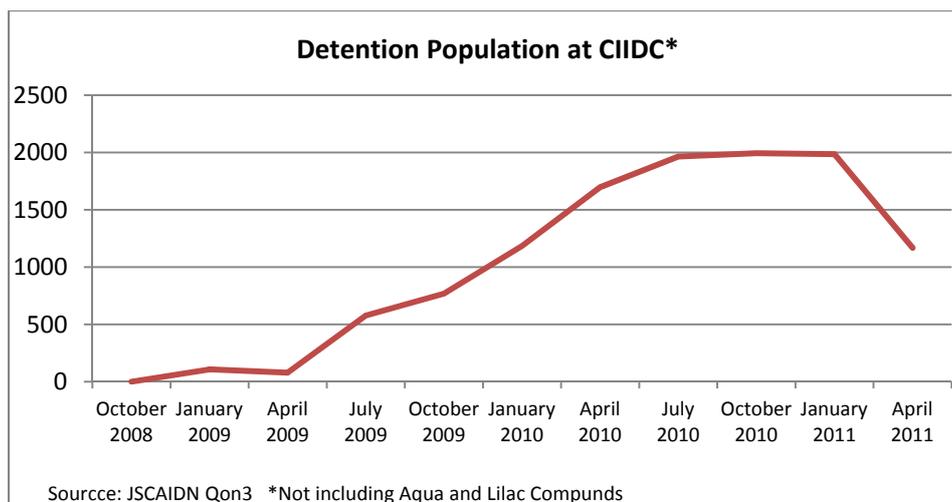
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<sup>98</sup> Hawke & Williams, p. 4.

<sup>99</sup> Serco Demand Predictors, provided to Committee on 18 November 2011, q 309 – 314.

<sup>100</sup> DIAC, Immigration Detention Statistics Summary, answers to questions on notice, q 2, received on 10 August 2011.

<sup>101</sup> Hawke & Williams, p. 46.



There was simply inadequate capacity elsewhere in the network to transfer a sufficient number of detainees off Christmas Island. Minister Bowen was now reaping what Minister Evans had sown in indecision before the last election. As to who was accountable for this out come, Dr Hawke was very clear in his evidence to the Committee<sup>102</sup>.

*Mr MORRISON: Who was responsible for ensuring that our detention network had sufficient capacity to cope with the increasing level of arrivals that we saw take place over 2010 and leading up to those riots? Who was responsible for ensuring that our detention network was capable of dealing with that surge of arrivals?*

*Dr Hawke: Under our Westminster system I think that is pretty clear—the government, the minister and the department.*

*Mr MORRISON: So the minister is responsible for ensuring the detention network is in place?*

*Dr Hawke: It is the job of the minister.*

<sup>102</sup> Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 12.

## More risk factors emerge

By this time other factors, in addition to overcrowding were now emerging, impacting adversely on conditions more generally in the detention network and more specifically on Christmas Island.

These included an increase in the length of time IMAs were in detention and an increase in the proportion of detainees on 'negative pathways'. As noted earlier in this report in 2010/11 the average number of days to process assessment almost trebled to more than 300 days.

According to Hawke/Williams the percentage of IMAs on negative pathways in the network increased from 23% in early December to 47% by the end of March<sup>103</sup>. On Christmas Island, the figures were more constant, but did indicate a rise of 28% to 32% over the same period. These factors were highlighted in the Hawke/Williams review, who summarised the impact as follows:

*Moving from a detention cohort that is largely on a positive pathway or still being assessed at the primary stage, to a cohort which increasingly is receiving negative decisions at either the primary or review stage, particularly if assessment has taken significant periods of time, or which has received negative decisions previously and for whom no other resettlement option has been forecast, changes the whole dynamic of a centre. It becomes one where hopelessness is a significant factor which contributes to increasing disregard for the rules of the centre and, for some, increasing resentment and a desire for revenge against those making decisions about their life, most notably DIAC and Serco officers. Indeed, the attitude of those who have received a negative decision infects those who are still waiting for the outcome<sup>104</sup>.*

The emergence of these pressures was also identified in the Hamburger Report provided to DIAC back in May 2010.

DIAC also identified that a change in the nationality of IMAs entering the network was also elevating the risk. DIAC Assistant Secretary Ms Mackin gave the following evidence to the Inquiry on Christmas Island<sup>105</sup>:

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<sup>103</sup> Hawke & Williams, p. 36.

<sup>104</sup> Hawke & Williams, p. 37.

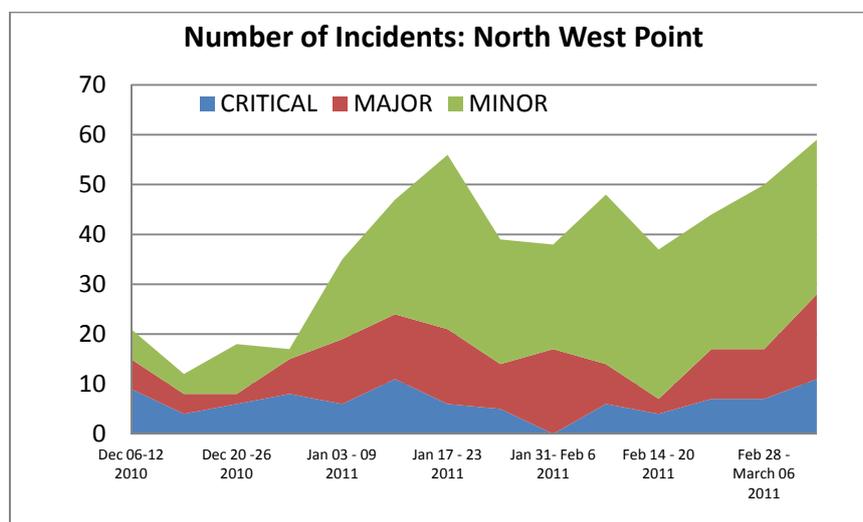
<sup>105</sup> Mackin, J. Assistant Secretary, Department of Immigration and Citizenship, Committee Hansard, Christmas Island, 6 September 2011, p. 42.

*Ms Mackin : I would need to double-check the figures but anecdotally there was an increasing number of Iranians arriving by boat coming to Christmas Island, we were transferring people from the island so there were fewer Afghans and fewer Sri Lankans here.*

*Mr MORRISON: Did that change in DIAC's view, from a practical perspective of the risk management issues within the centre, the risk profile in the centre and from your perspective?*

*Ms Mackin : I think the answer is yes. The Iranian clients tend to be more—when you compare them, for example, to the Afghan or Sri Lankan clients—from the middle class, well-educated, urban environment. So they have different and higher expectations than some of the other cohorts. I think their expectations were higher. From talking to numbers of people, I understand that they claim not to have known that they would be detained when they arrived. So they were angry from an early stage. This is from my engagement with clients. So I think the risk profile increased with the increasing number of Iranian clients.*

At the same time the numbers of incidents being reported were also increasing. Between early December and the riots in March the total number of incidents reported at North West Point increased by over 180%<sup>106</sup>.



<sup>106</sup> DIAC, answers to questions on notice, q 23, received 15 August 2011.

## Minister briefed on emerging tensions

As the signs of rising tension in the network and on Christmas Island emerged, regular reports were being provided to the Minister.

During the course of the Inquiry it was confirmed that the Minister's office received regular briefs on the state of the detention network. In the first hearing DIAC confirmed as follows<sup>107</sup>:

*Mr MORRISON: But what are the key indicators that you are tracking to understand the performance, the temperature, if you like, and the wellbeing of the network as the whole? What are the key indicators that you look at on a regular basis and that you advise the minister of, I assume, on a regular basis that tell us what is going on?*

*Mr Metcalfe : There are obvious figures such as the sheer numbers of people in detention and in the various centres, broken down. There is a particular focus, of course, on any particular groups such as minors or families—who have, of course, been located in separate places—and now more recently community detention as a separate area. They are reporting about length of time in detention for particular groups and those sorts of issues. It is essentially, as Ms Wilson said, reporting that has been able to be broken down in particular ways and disaggregated as necessary to perform a function of ensuring that senior officers as well as the minister understand what is happening on a very regular basis.*

*Mr MORRISON: So this happens on a weekly basis?*

*Mr Metcalfe : Yes.*

*Mr MORRISON: And how long has that been taking place?*

*Mr Metcalfe : I would have to check, but certainly my recollection is that it is been for the last couple of years.*

*Ms Wilson : My recollection is that it has been at least since early 2009. But we will have to take that on notice.*

In addition it was confirmed that the Minister receives reports on all critical incidents in the network when they occurred and daily reports on the outcomes of morning meeting on Christmas Island between the AFP, DIAC, Serco and other agencies.

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<sup>107</sup> Metcalfe, A. Secretary Department of Immigration and Citizenship, Committee Hansard, Canberra, 16 August 2011, p. 5.

When questioned about the amount, type and frequency of information flowing to the Secretary of DIAC and the Minister and his office, Dr Hawke and Mrs Williams suggested there was potentially too much information<sup>108</sup>:

*Ms Williams: I think we did discuss the fact that there was so much going through that the department should look at that and decide whether in fact some of it should go further—some should go to everybody; some should be drawn out in particular—because so much information was going through that it was really hard to cope with.*

*Mr MORRISON: But you are comfortable that the key decision makers here, the secretary to the department and the minister himself, were fully apprised of the situation that was occurring, particularly from October through to March and April, when these events occurred?*

*Dr Hawke: 'Fully' is a bit of a word that I do not think we can answer, but were we satisfied that the processes—*

*Mr MORRISON: About the flow of information?*

*Dr Hawke: of information flow were in place?*

*Mr MORRISON: And that reports were being provided on a regular and timely basis to the minister, in that process?*

*Dr Hawke: We were.*

In addition, Minister Bowen visited Christmas Island in October to be briefed on and tour the facilities<sup>109</sup>.

Minister Bowen affirmed the depth and quality of the information he was furnished with in a press release on 17 September 2010 where he stated “since becoming Minister for Immigration and Citizenship, I’ve received the most up-to-date advice about accommodation requirements”<sup>110</sup>.

In addition, the Centre Risk Assessment for NWP (and Lilac/Aqua) warned in January 2011 that the “increased tensions within the compounds, with incidents of

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<sup>108</sup> Hawke, A. & Williams, H, Committee Hansard, Canberra, 29 February 2012, p. 4.

<sup>109</sup> Committee Hansard, Christmas Island Hearing, 6 September 2011, p. 28.

<sup>110</sup> The Hon Chris Bowen MP, “Additional Immigration Detention Accommodation”, Press Release, 17 September 2010, [www.chrisbowen.net/media-centre/media-releases.do?newsId=3710](http://www.chrisbowen.net/media-centre/media-releases.do?newsId=3710).

minor altercations and aggressive behaviour becoming common when access to services is impeded, may be attributed to the high client numbers”<sup>111</sup>.

In February 2011, the Commonwealth Ombudsman noted in his report “the stage has been reached where the current scale of operations on Christmas Island, as very remote from the mainland, and supporting infrastructure and services is not sustainable”<sup>112</sup>.

### **Security risks overlooked on Christmas Island**

The Minister was clearly aware of the rising tensions and DIAC was making efforts to reduce the population on Christmas Island. As noted earlier, these efforts were significantly constrained by the failure of the previous Minister to make a decision to further expand the network after the draft Hamburger Report in May.

DIAC’s efforts to reduce the population on Christmas Island were acknowledged in the Hawke/Williams Review and confirmed in DIAC’s evidence on Christmas Island by Ms Mackin<sup>113</sup>.

*Ms Mackin : We continued to make transfers off the island to mainland centres as much as we could. We had increased our case management on the island to try to manage people on the island. We increased the number of reviewers to come to the island. So we were trying to work on the processing side of things—to speed things up for people—because a lot of the complaints were in relation to processing times and length of time in detention. In order to shorten the time in detention, we tried to increase the rate of processing. There was an arrangement made, in terms of security clearances, to make them come through more quickly as well. So there were a range of processes—*

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<sup>111</sup> Serco Centre Security Risk Assessment, North West Point, p. 3, in Hawke Williams, p. 112.

<sup>112</sup> Hawke & Williams, p. 45.

<sup>113</sup> Mackin, J. Assistant Secretary, Department of Immigration and Citizenship 2011, Committee Hansard, Christmas Island, 6 September 2011, p. 43.

On March 11, the riots at Christmas Island began and by March 17 the AFP had to regain control of the facility. The details of these events are set out in the Hawke/Williams review. The events exposed some significant security weaknesses that DIAC failed to address in the lead up to the riots.

These weaknesses had been identified by Serco, the AFP, Comcare, the Hamburger report and included the following:

- Failure to install CCTV in Aqua and Lilac compounds
- Failure to maintain and activate the electric fence at North West Point
- Failure to put in place a critical incident response management plan between DIAC, Serco and the AFP on Christmas Island
- Failure to address the risk presented by the tent accommodation located adjacent to the red compound
- Failure to restore AFP officers with training in advanced public order management to Christmas Island following their removal in November 2010
- Failure to rectify infrastructure deficiencies in the connecting fence that connected the Aqua/Lilac compounds with the NWP IDC that were breached during the riots and used to fashion weapons.

These failures are addressed in detail in the Hawke/Williams Report.

To elaborate, in the course of these events it was clear that Serco did not have the capacity to deal with the type of violence and unrest that subsequently occurred. Nor, it would seem, were they ever contracted to provide such a level of security.

What became clear in the course of the Inquiry from these events is that when it all goes wrong, it falls to the police to restore order. This would be reinforced at Villawood six weeks later. DIAC seemed to be unaware of this limitation and had not factored this into their preparations, limited as they were.

For this reason, the departure of properly trained AFP officers from Christmas Island and the failure of the Government to restore those officers left the Island considerably exposed. Any incident after their departure had to be responded to from Perth. Such response would be conditional on availability of aircraft and prevailing weather conditions in the vicinity of Christmas Island that can be highly unpredictable, particularly at that time of year.

Assistant Commissioner Prendergast who is also National Manager for International Deployment for the Australian Federal Police noted the following at the Christmas Island hearing:

*Mr Prendergast : The constraint for us is the airframe. So, depending on how quickly we can charter a plane, get support from ADF or source aircraft, that is the constraint. We have done it in 24 hours. We have, I think, done it quicker on occasion. We have taken slightly longer on occasion. In response to your question, though, the responsibility for order in the centre obviously rests with the people who run the centre, DIAC and Serco. We have police on island who will respond if required and have responded to incidents at the centre, but our contingencies were, if there was a major public order incident, to surge the required resource back onto island<sup>114</sup>.*

From Friday to Sunday, there was no capacity on Christmas Island to restore order if necessary by force. This left the Island and its residents highly exposed. After the riots the AFP maintained officers with appropriate public order management training on the island, despite the fact that the population had been significantly reduced.

Despite the constant warnings regarding the likelihood of a serious incident at North West Point, there did not seem to be a sense of urgency from DIAC to address outstanding security matters as part of their preparations.

When asked about these issues DIAC responded through Ms Mackin as follows<sup>115</sup>:

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<sup>114</sup> Prendergast, F. Assistant Commissioner, Australian Federal Police, Committee Hansard, Christmas Island, 6 September 2011, p. 57.

<sup>115</sup> Mackin, J. Assistant Secretary, Department of Immigration and Citizenship, Committee Hansard, Christmas Island, 6 September 2011, p. 43.

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*Mr MORRISON: So you tried to get people out by speeding up the processes and getting more people in the system. But we did not turn on the fence, we did not fix the fence between Aqua and Lilac, we did not put CCTV into Aqua and Lilac and we did not call back the AFP. So there were things being done on the processing side, but on the security side, are you aware of any changes implemented locally?*

*Ms Mackin : Not that I am aware of.*

The absence of a critical incident response management plan, confirmed by DIAC, Serco, the AFP and in the Comcare report<sup>116</sup> was evidence of this lack of preparation.

Furthermore infrastructure issues were also not addressed. According to evidence provided by Serco at the Christmas Island hearing, Serco had provided monthly reports from July 2010 through to February 2011 regarding the need for DIAC to rectify security risks identified with infrastructure at North West Point and the Aqua and Lilac Compounds<sup>117</sup>. These risks had also been identified by the AFP in their own assessment of the infrastructure security risks. These matters were still unaddressed at the time the riots broke out.

This was mirrored in the Department's decision not to activate the electric fence at North West Point. Not only was it not activated, but it was unable to be activated as the fence had not been maintained<sup>118</sup>.

Evidence put before the Committee highlighted the critical need for high quality CCTV footage of incidents at detention facilities in order to be able to identify perpetrators and monitor developing incidents within detention facilities.

The Hawke/Williams review theorised that the lack of a security focus by DIAC may have been a result of confusion within DIAC about consistency of high security operations with the Government's new detention values<sup>119</sup>.

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<sup>116</sup> Comcare, *Investigation Report EVE0020547*, 21 July 2011.

<sup>117</sup> Serco, 6 September 2011, pp 69-82.

<sup>118</sup> Hawke & Williams, p. 7.

<sup>119</sup> Hawke & Williams, page 7.

Whether this is the case or not, there should be a clear understanding by DIAC, as the agency responsible for the network, that security matters must be afforded an equally high priority with all their other obligations.

## Villawood follows Christmas Island into chaos

On 19 March 2011, the day after Minister Bowen announced an Inquiry into the Christmas Island riots, an improvised device made from a can of fly spray and canola cooking oil was discovered inside the computer room at Villawood Detention Centre<sup>120</sup>. The floor was slicked with canola oil and the building set alight.

Centre staff put out the fire and called police. The Minister's office received a situation report on the fire at 0406 hours<sup>121</sup>, however details of the improvised device were not advised to the Minister.

Just after 8.00am, around six weeks later on Wednesday April 20, detainees climbed onto a roof at the Villawood detention centre and commenced a protest. Later that night and into the early hours of the following day, the Villawood detention centre was on fire and a full scale riot was in progress. These events are also detailed in the Hawke/Williams<sup>122</sup> Review.

Unlike Christmas Island, overcrowding was not identified as a key cause of the riots at Villawood. Nor were any IMAs transferred from Christmas Island believed to have been involved in the riots.

Of critical significance in the case of Villawood was the increasing numbers of detainees on negative pathways, including the key protagonists who played a key role. Dr Hawke drew attention to this in his evidence before the Inquiry in February<sup>123</sup>:

*Dr Hawke : .. increasingly people were identified to be on a negative pathway, and then a large number of those were identified as being ringleaders or critically involved in the incidents that occurred at both Christmas Island and Villawood ... In Villawood's case, 60 detainees were actively involved; 25 were*

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<sup>120</sup> The Hon Chris Bowen MP, Interview with Ray Hadley, 2GB Mornings 4 May 2011 [www.chrisbowen.net/media-centre/transcripts.do?newsId=4442](http://www.chrisbowen.net/media-centre/transcripts.do?newsId=4442).

<sup>121</sup> DIAC answers to questions on notice, q.175, 8 December 2011.

<sup>122</sup> Hawke & Williams, page 66.

<sup>123</sup> Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 3.

*identified as persons of interest, which increased to 40; nine had been charged at the time we finalised our report; and all of those had received a negative decision at the primary stage. So the conclusion we were coming to was that these were not genuine refugees and they were reacting to the fact that they had paid a people smuggler to come to Australia on the promise of getting settlement in Australia. That was not going to happen, so they were going to vent their anger on the system.*

*Mr MORRISON: So they got a no and they rioted. That is basically what happened.*

*Dr Hawke : I think that is a fair conclusion.*

It is interesting to note that in the nine months following the riots, the number of permanent protection visas provided to IMAs tripled, the primary acceptance rate for refugee status determination doubled and four out of every five negative decisions were being turned into positives on appeal<sup>124</sup>. Combine this with the fact that 50% of everyone in the detention network next financial year will be in the community<sup>125</sup> and it would seem, based on these results, that the rioters appear to have got what they wanted.

The concerns with the events at Villawood are as follows:

- lack of appreciation of the potential risk of serious incidents and the need to prepare for such incidents by DIAC as revealed by the NSW Police, and
- failure to address ambiguities in the responsibilities between state police and the commonwealth regarding response to disturbances of this nature on the mainland

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<sup>124</sup> DIAC, *Asylum Statistics – Australia, Quarterly Tables – December Quarter 2011*, [www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-december-quarter-2011.pdf](http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-december-quarter-2011.pdf) **NOTE:** Primary protection visa grants rates for boat arrivals have increased from 27.8% in the March quarter (during which the Christmas Island riots occurred) to 55.3% in the December quarter, as shown in Table 16, page 11. The number of permanent visa grants in the three quarters leading into the riots was 454, 307 and 425 (September, December and March quarters respectively) compared with after the riots 1510, 1725 and 1120 (June, September and December quarters) as per Table 2, page 2. It appears on the face of it that a key change following the riots has been that the number of visas issued more than tripled – in short, they just let them out. Even when there is a “No”, Table 18 on page 12 shows that in four out of five cases that negative decision is overturned by Labor’s appeals process.

<sup>125</sup> Additional Senate Estimates Hearing, Legal and Constitutional Affairs Committee, Evidence from Department of Immigration and Citizenship, Canberra, 13 February 2012.

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These matters were not addressed in the Hawke/Williams report as the NSW Police were not interviewed by the authors during the course of their review<sup>126</sup>.

## Dismissing the threat at Villawood

NSW Police Assistant Commissioner Frank Mennilli gave evidence at the Sydney Inquiry that he had attending a meeting with DIAC and Canberra two days before the riots commenced at Villawood.

At the meeting Mr Mennilli said he raised concerns about the ability of detainees to gain access to the roof and strategies to deal with a major incident such as a fire. His evidence is noted below<sup>127</sup>:

*Mr Mennilli: I also raised concerns in relation to strategies that would be put in place regarding a serious or critical incident at the detention centre—something like a fire.*

*Police from the South West Metropolitan Region, over the last 12 months, have conducted and structured two tabletop scenario exercises for Serco staff and DIAC. I took a direct involvement in one of those exercises and escalated the scenario to a fire within the centre, and what the response would be and what the contingency plans would be. At the end of the scenario a debrief was conducted and **I was told that the scenario was unrealistic and it would never happen.***

*Mr MORRISON: Thank you. So, they said at that time it was an unrealistic scenario?*

*Mr Mennilli : The first tabletop exercise was in approximately August 2010, and the last one was on 1 September 2011. One of the things that I put in place as part of that scenario exercise was to actually escalate the incident: ‘We now have a situation where the fire has engulfed the centre. What will you do?’*

*Mr MORRISON: What was their response?*

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<sup>126</sup> Hawke, A. & Williams, H., Committee Hansard, Canberra, 29 February 2012, p. 9.

<sup>127</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, pp. 28-29.

*Mr Mennilli : At that stage they said, 'We have a number of structures in place,' and I said, 'What will you do with the detainees at that time if they are at risk?' 'We would open the gates.'*

*Mr MORRISON: They would open the gates?*

*Mr Mennilli : They would open the gates so that they could be released from that particular area. .. At the debrief I was told that **the scenario that I put to them was unrealistic and that situation would not arise.***

The dismissal of the potential of a serious incident by Serco and DIAC in the exercise described by Mr Mennilli highlights, once again, the causal nature in which security matters that fall within DIAC's responsibilities for the detention network appear to be appreciated.

### **Failure to resolve ambiguities over police response**

In his evidence to the Inquiry in Sydney Mr Mennilli stated that it was not the role of the New South Wales police force to respond to or maintain any issues of the Villawood Detention Centre and that the New South Wales police force virtually has no responsibility for the day-to-day running of the centre.

Mr Mennilli advised that at the meeting with DIAC only two days before the commencement of the rooftop protest at Villawood he raised these issues once again, as follows<sup>128</sup>:

*At the meeting on 19 April I raised my ongoing concerns in relation to legal issues regarding the management of the Villawood Detention Centre. It is Commonwealth property and it is unclear in relation to what powers the New South Wales police force has in relation to any involvement within the detention centre. On information I have had done since that time, because there has been legal guidance given by the Commonwealth and also information from the state, crown solicitor advice, they conflict.*

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<sup>128</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 29.

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*I have been told there is a total of 11 different acts that could be utilised in relation to dealing with a situation at the Villawood Detention Centre, which is something I think would be extremely difficult for a constable responding to an incident there. I have been told that the Commonwealth Places (Application of Laws) Act is an act that gives the New South Wales police force powers to enter the detention centre, but under our own powers of the LE(PR)A, the Law Enforcement (Powers and Responsibilities) Act 2002, we can go into the centre in a life and death situation or a breach of the peace, but once that has been resolved we must leave.*

*There is also the issue that we have no authority to move detainees in and around the Villawood Detention Centre, because they are within the confines of the detention centre, and under the Migration Act that is where they remain. If a New South Wales police officer has information and we have been asked to investigate a matter, if we need to arrest a detainee, in essence we need to apply for a criminal justice stay proceedings or stay certificate to remove the individual from the detention centre. Even then, bearing in mind that some of these matters would be minor matters, if the individual appeared before the court and was granted bail they would then have to be returned back to the centre.*

He said that “*after the meeting in Canberra there were a number of legal issues that I asked to be clarified and to this date, in my mind, that has not been addressed*”<sup>129</sup>.

Mr Mennilli commented that “*draft MOU that I have been forwarded virtually states that the New South Wales police force will run the day-to-day activity of the detention centre. It talks about not only the New South Wales police force attending the centre in relation to critical incidents; it talks about dealing with all incidents within the detention centre—minor matters in relation to malicious damage to property, minor assault and even complaints between staff and detainees. That is not our role*”<sup>130</sup>.

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<sup>129</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 28.

<sup>130</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 34.

It is almost a year since the riots at Villawood and there is still no MOU that has been completed with the NSW Police in relation to these matters<sup>131</sup>.

At 11.25pm on April 20, NSW Police were informed that the first fire had been started and attended the scene. The NSW Police did not believe they had the authority to enter the site other than to provide protection to the NSW Fire Brigade officers who were attending to the fire.

*Mr MORRISON: So, the only way that the New South Wales police were actually able to enter the detention centre where the fires and the riots were taking place was by fulfilling their responsibilities in protecting the fire brigade officers?*

*Mr Mennilli : That is correct.*

*Mr MORRISON: So, you were not there to break up a riot?*

*Mr Mennilli : No.*

*Mr MORRISON: You were not there to move detainees, quell violence or restore public order? You were simply there to protect the fire brigade officers?*

*Mr Mennilli : That is correct. I gave a direction to ensure that they did that and also that, if there was any person involved on any attacks on the fire brigade or interfered with that incident, they would be arrested<sup>132</sup>.*

After completing these tasks NSW Police undertook to maintain a presence at the perimeter until the early hours of the morning, consistent with an arrangement between Mr Mennilli and AFP Assistant Commissioner Jabbour who were moving resources from other areas to the detention centre.

Evidence provided by Serco at the Sydney hearing revealed that those managing the incident for Serco on the night of the riot were oblivious to the legal ambiguities regarding the ability of the NSW Police to provide support. Mr John Hayes who

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<sup>131</sup> Colvin, A. Deputy Commissioner of Operations, Australian Federal Police, Additional Estimates, Legal and Constitutional Affairs Committee, 14 February 2012.

<sup>132</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 30.

was centre manager at Villawood for Serco at the time of the riots, gave the following evidence:

- *“it was my understanding that, if the situation escalated to such an extent that it was an incident that Serco with our resources were unable to manage, then we would seek the assistance of the New South Wales police”<sup>133</sup>, and*
- *“At the time of this incident I anticipated to get assistance from the New South Wales police; I was not aware of any ambiguity”<sup>134</sup>.*

Serco noted that they made a request of the NSW Police at approximately 12.30 am on April 21 and they were advised that it was not their jurisdiction<sup>135</sup>. They then approached the AFP at around 1.45am. The AFP then arrived on site a few hours later. They had earlier advised Serco that they did not have the capacity in Sydney to deal with the incident. The AFP later deployed approximately 70 personnel to Villawood, most arriving about midday on 21 April. At its height there were about 105 AFP personnel supporting the operation<sup>136</sup>.

At about 1.30 it became clear that Serco was on their own. This was of particular concern as Serco do not have staff trained in advanced public order management, i.e. they cannot put down a riot. Serco Managing Director Mr Manning explained to the Inquiry what happened next.

*Mr Manning : In this situation clearly staff and client safety was paramount, and so I am sure Mr Hayes will tell us that he took steps to secure those facilities that could be secured to make sure that the clients who had had to evacuate from one part of the compound to another were kept safe, and indeed that whatever could be done to limit the damage with the use of fire appliances was being done. This was not a complete loss of control. This was limiting the damage which had occurred<sup>137</sup>.*

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<sup>133</sup> Hayes, J. Serco Regional Manager, Northern Immigration Detention Centre, Committee Hansard, Sydney, 5 October 2011, p. 70.

<sup>134</sup> Hayes, J. Serco Regional Manager, Northern Immigration Detention Centre, Committee Hansard, Sydney, 5 October 2011, p. 70.

<sup>135</sup> Hayes, J. Serco Regional Manager, Northern Immigration Detention Centre, Committee Hansard, Sydney, 5 October 2011, p. 71.

<sup>136</sup> Murray, C., Australian Federal Police, Committee Hansard, Sydney, 5 October 2011 p. 39.

<sup>137</sup> Manning, C., Serco Managing Director, Committee Hansard, Sydney, 5 October 2011, p. 71.

In short, they locked down the facility to contain the damage and let the rioters and fires peter out. These events demonstrated the real time consequences of the failure of the Government to ensure clarity in the roles and responsibilities that relate to ensuring security at these facilities. Key personnel managing the situation on the ground were unaware of these ambiguities and were making decisions based on false understandings.

Similar problems have been identified throughout the Inquiry in Western Australia, Queensland and Darwin. With the exception of the Northern Territory, clarification of these issues remains outstanding.

Coalition Members and Senators are concerned that evidence given at the most recent Senate Additional Estimates hearings revealed that DIAC has not concluded any memorandum of understandings (MOUs) with the AFP or any of the states or territories except Tasmania, which will have no affect as the Tasmanian Pontville detention centre has closed.

The Coalition recommends that these MOUs be finalised as quickly as possible to prevent further uncertainty regarding the policing and responses to incidents at detention centres.

Evidence put before the Committee highlighted the need for public order management training for Serco staff and local police. This should be included in the MOUs established between the states and territory police, DIAC and Serco.

The Coalition is concerned that community policing is suffering in remote areas, such as Weipa, Darwin and Derby where local police are often called into service the needs of the detention centre, forcing police to be drawn from their regular operational duties.

Evidence put before the Committee strongly indicates that community policing suffers in remote detention centre locations and that the Federal Government needs to ensure local police are adequately resourced in order to ensure that regular operational policing responsibilities do not suffer.

Evidence put before the Committee indicated that Commonwealth payments for policing services at detention centres are not adequate as it only covers the police that are responding to incidents at the detention centres and not covering regular operational duties that are being neglected as a result of call-outs to detention centres.

The Coalition recommends that the Federal Government ensure that state and territory police are adequately reimbursed for call-outs to detention facilities and for operational gaps created by these call-outs.

### **Getting detainees off the roof**

Questions were also raised about allowing the detainees to remain on the roof for a period of eleven days. The AFP gave the Government advice that forced removal could not be implemented safely.

The Inquiry heard that this advice conflicted with the opinion provided by the NSW Police through Assistant Commissioner Mennilli who observed to the Inquiry in his evidence as follows<sup>138</sup>:

*Mr MORRISON: On 21 April, putting aside the issue of authority, if you had the authority, do you believe the New South Wales police could have got people off the roof that night?*

*Mr Mennilli : I believe I could have.*

*Mr MORRISON: Obviously at any time between 21 and 29 April, as people sat on the roof for 11 days, had you been given that authority then the New South Wales police could have devised a strategy to have done that safely?*

*Mr Mennilli : I believe we would have been able to do it.*

On April 29, DIAC requested NSW Police assistance to remove the detainees from the roof at Villawood. In response the NSW Police sought legal advice about their authority to use force on the site. Mr Mennilli told the Inquiry “the situation was extremely difficult and my personal view was that I was quite confident that I could

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<sup>138</sup> Mennilli, F. Assistant Commissioner New South Wales Police , Committee Hansard, Sydney, 5 October 2011, p. 31.

put in place the tactics and the resources to do it, but I would have to use force”<sup>139</sup>. After receiving the advice the NSW Police did not believe they had the authority to act in that situation.

The detainees remained on the roof until the Deputy Secretary of the DIAC, Mr Moorhouse, got on top of two boxes and put his head into the roof cavity and dealt directly with those who were protesting<sup>140</sup>. Unlike the other detainees who were taken to Silverwater prison for their involvement in the riots, those with whom Mr Moorhouse dealt remained at Villawood. This action was taken on the same day that protestors gained access to the roof of the electorate office of Minister Bowen in Sydney, and were removed within three hours by the NSW Police<sup>141</sup>.

Mr Mennilli expressed concern about the Deputy Secretary’s direct involvement in this process<sup>142</sup>.

*Mr Mennilli : ...since that time any future negotiation will be hampered by the end result. Again, I can only speculate on the information that was received in relation to agreements that were made with individuals for them to come down and who was speaking to the individuals. What would happen in future is that any individual who would go up onto the roof would not speak to a negotiator but would automatically want to speak to the manager or someone from DIAC to make a deal. So, it would seem to hamper any future dealings.*

*Mr MORRISON: Let me understand that last point that you made. So, you think an expectation may now exist that if someone gets on the roof they will be able to deal with someone from DIAC and a manager?*

*Mr Mennilli : That is correct. To my knowledge, nothing has been done to mitigate the issue of preventing people from getting on the roof.*

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<sup>139</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 32.

<sup>140</sup> Moorhouse, J. Deputy Secretary, DIAC, Budget Estimates, Senate Legal and Constitutional Affairs Committee, 24 May 2011; Rehn, A. & Jones, G., *Villawood riot’s soapbox solution*, the Daily Telegraph, 25 May 2011.

<sup>141</sup> “Rooftop protest ends at Minister’s office”, Sydney Morning Herald, 29 April 2011.

<sup>142</sup> Mennilli, F. Assistant Commissioner New South Wales Police, Committee Hansard, Sydney, 5 October 2011, p. 33.

**Recommendation 2**

Coalition Members and Senators recommend that the Australian Government finalise the memorandum of understanding between DIAC, the AFP and state/territory police forces and reach a binding agreement that clearly stipulates who is responsible for policing and responding to incidents at Australian Immigration Detention Centres.

**Recommendation 3**

Coalition Members and Senators recommend that the AFP and State/Territory police are funded adequately in order to carry out their regular operational policing responsibilities along with policing the immigration detention centres and responding to incidents.

**Recommendation 4**

Coalition Members and Senators recommend that the Australian Government ensure that security infrastructure, including CCTV cameras, security fences and other essential security elements be operational, ready and be of a high standard of functionality and that DIAC, with assistance from Serco, is to undertake a review of infrastructure (including security infrastructure) across the broader immigration detention network.

**Recommendation 5**

Coalition Members and Senators recommend that the Australian Government seek advice on amendments and addition to the regulations under the Migration Act to clarify the responsibilities and powers of persons who operate detention centres around the limits on their obligations and powers in relation to use of force, to ensure the good order and control of immigration detention facilities.

## **You Can't Contract Away Accountability**

Coalition members and Senators note that the majority report makes strong criticisms of Serco as the operator contracted to run our immigration detention network, stating at paragraph 3.142 that “*Serco has not performed to the standard expected*”.

Coalition Members and Senators agree that there have been numerous instances brought to the attention of the Inquiry that raise significant concerns, in particular *staffing and training practices and deficiencies in activities programme*. It is appropriate to recommend improvement in their practices.

However, Coalition Members and Senators also stress that any and every failure ascribed to Serco as a contractor is equally a failure of the Government that contracted them and their construction, management and oversight of that contract.

The Government rightly contracts out the delivery of these services. The Coalition does not believe that these services could be more efficiently and effectively delivered by a Federal government agency. It does not follow that public agencies at other levels of Government, including corrective services authorities, might not also be potential providers of these services under contract in states and territories where they also have operations.

Regardless of the contracting model adopted, it is critical to understand that while Government may contract out these services they can never contract away their responsibility and accountability for the delivery of these services. This always resides with the Department and the Minister.

At paragraph 1.7 the majority report identifies this stating “*The Department of Immigration and Citizenship administers the immigration detention network. This includes resolving the status of detainees and managing the performance of its contracted service providers*”.

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In his evidence to the Inquiry in Sydney the Managing Director of Serco, Mr Manning noted in relation to the incidents at Villawood that *“The levels of violence that were witnessed on that night and the incident which escalated to the levels that it did were not contemplated when we signed the contract in June 2009. This was a contract based on a compliant client base, not on one which demonstrated the behaviours we saw that night.”*<sup>143</sup>

This point made by Mr Manning has been a recurring theme before the Inquiry. As the number of boat arrivals and the detention population increased, and the detention network was expanded, there does not appear to have been any fundamental recognition from the Government of how the situation had changed and whether the contractual arrangements would need to be recalibrated.

The apparent failure of Ministers Evans and Bowen to review the contracting model after the significant changes in circumstances is another example of how the Government operated in a state of denial. From DIAC’s perspective, operating in a constant of crisis would have frustrated attempts to undertake such a review.

It is possible that such a review may have resulted in a number of changes that in some cases may also have resulted in even greater costs including;

- the need to establish staff/detainee rations, as discussed in the next section.
- higher standards of training, not just in the care of detainees but in maintaining order within the centre.
- requirement for DIAC to support infrastructure upgrades to improve physical security within the facilities (as recommended to this Inquiry)
- clarify roles and responsibilities to respond to major incidents (as recommended to this Inquiry)

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<sup>143</sup> Manning, C. Serco Managing Director, Committee Hansard, Sydney, 5 October 2011, p. 71.

- increased intelligence resources to reinforce dynamic security within the network
- agreement from the Government to provide Serco with additional powers to maintain order within the network (as recommended to this Inquiry)

It is also possible such a review may also have led to consideration of different contract models. Also, adopting some of these changes may have incurred even greater costs. However, by ignoring the change in circumstances these costs were visited, at least in part, in the chaos and crisis that consumed the network.

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## Supporting Australians Working in the Detention Network

Record arrivals of asylum seeker have collapsed Australia's immigration detention network, putting detention centre staff, including DIAC officers, Serco employees and Australian Federal Police officers, at significant risk.

Coalition members of the committee recognise that Serco staff, in particular, have borne the brunt of detainees' frustration, agitation and violence in Australia's detention centres through no fault of their own. These experiences culminated but were not limited to the riots experienced in 2010.

There have been 871 reported incidents of alleged or observed inappropriate behaviour by detainees or other persons in the detention network to Serco staff since they took over the detention services provider contract on 1 October 2009, to 30 June 2011<sup>144</sup>. According to the Department, this inappropriate behaviour includes "alleged or observed abusive/aggressive behaviour, physical and sexual assaults, involvement in disturbances and damage to facilities".

Police were notified 264 times of possible criminal behaviour.

According to the DIAC, "In relation to DIAC staff, nine "client aggression" incidents occurring at immigration detention facilities have been recorded in the last 12 months in the department's Occupational Health and Safety (OHS) incident register. As at 30 June 2011, there is no record of workers' compensation as a result of any of these incidents."<sup>145</sup>

DIAC Deputy-Secretary, Mr John Moorhouse, told the inquiry:

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<sup>144</sup> DIAC, answers to questions on notice, q 24 and q 30, received 16 August 2011.

<sup>145</sup> DIAC, answers to questions on notice, q 24 and q 30, received on 16 August 2011.

*“It is a big ask to ask Serco staff and our own staff to deal some with some of the personally challenging situations we face in the work we do. I want to acknowledge the professionalism and dedication of the Serco staff and the fact that we can always do more. We are intent on trying to give people as much support as we can. Where issues are brought to our attention we will certainly have a look at them to see whether we feel there are deficiencies in terms of the outcomes which are being achieved. I do not want to leave the impression that we are not taking the issue seriously. It is something we take very seriously. We can always do better and there are a series of other issues which impact on those observations. They include the quality of the leadership which we would provide from DIAC and the quality of the leadership within Serco. We have been working with Serco to build up those capabilities as well so that we can better support and guide our staff, who are doing a very challenging job.”<sup>146</sup>*

The Comcare report of July 2011 was damning in its condemnation of the Department’s failure to adequately meet its Occupational Health and Safety obligations in regard to DIAC officials and Serco contracted staff, as well as detainees.

“Key areas of non-compliance were evident across all facilities. Of particular concern was the lack of effective risk assessment of DIAC’s systems of work”, the report states<sup>147</sup>.

DIAC was found to have failed to comply with its health and safety obligations across five areas in all detention facilities; risk management, staffing ratios, staff training, critical incident management and diversity of Third Parties<sup>148</sup>.

The report noted in its Findings of Fact:

“I find no evidence that positive behaviours (by Serco staff in particular) in one IDF... are being identified by DIAC and considered for uniform implementation at other IDFs.”<sup>149</sup>

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<sup>146</sup> Moorhouse, J. Deputy Secretary, DIAC, Committee Hansard, Canberra, 9 December 2011, p. 33.

<sup>147</sup> Comcare, *Investigation Report EVE0020547*, 21 July 2011, p. 3.

<sup>148</sup> Comcare, *Investigation Report EVE0020547*, 21 July 2011, p. 4.

<sup>149</sup> Comcare, *Investigation Report EVE0020547*, 21 July 2011, p. 6.

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Furthermore, the report found:

“...that the differences between detainees and their associated needs, whether they be; cultural, racial, religious or their personal stage in detention are not sufficiently identified by DIAC to ensure that they are taken into consideration so that the current levels of tension might be reduced; I find that the staff/detainee ratio is not sufficiently risk assessed and documented to identify and ensure adequate levels of staffing at all times; I find that the current levels of DIAC staff training are insufficient and not targeted to the particular requirements of roles<sup>150</sup>.”

Hawke and Williams make at least a dozen separate references to direct threats and attacks against staff during their recount of the violence during the Christmas Island riots in 2010. Serco, DIAC and interpreting staff were repeatedly made targets, forced to lock themselves in secure rooms within the compound to take cover and await intervention.

The threat to staff was on particular display during the riots. On 11 March 2011, the trouble began when detainees scaled the fence of the Lilac and Aqua Compounds and forced up a series of roller doors allowing them access to move freely within North West Point. Rocks were thrown at centre staff<sup>151</sup>.

As the situation unravelled on 12 March, detainees in the Aqua Accommodation Compound threw rocks at staff. They were forced to retreat.

On 13 March as tensions rose, a staff member was punched four times by an unknown detainee<sup>152</sup>. During the afternoon, “catering staff were trapped in the kitchen at the Aqua Accommodation Compound and bolt cutters were needed to evacuate them”<sup>153</sup>.

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<sup>150</sup> Comcare, *Investigation Report EVE0020547*, 21 July 2011, pp 6, 7.

<sup>151</sup> Hawke & Williams, p. 54.

<sup>152</sup> Hawke & Williams, p. 57.

<sup>153</sup> Hawke & Williams, p. 57.

During the evening, detainees surrounded the Red Compound armed with tent poles and concrete blocks, trapping 13 Serco staff, two interpreters, 14 detainees and one senior DIAC officer inside for a harrowing half an hour. “It was confirmed lives were at risk”<sup>154</sup>. The AFP were forced to use CS gas and bean-bag projectiles during the course of the evacuation.

In the days that followed, threats were made to kill specific Serco staff members who had been involved in segregating ringleaders to the Red Compound.

On Monday 14 March, eight Serco officers had to re-enter the Red Compound to release the remaining detainees, “at significant risk of harm from violent and abusive detainees”<sup>155</sup>.

After nightfall, Christmas Island deteriorated again and a Serco staff member was struck by a detainee wielding a mop. A fire was set in a demountable building and when the Serco team responded to the fire, some detainees threw rocks at them.

On 15 March, it was noted again “that staff were feeling unsafe”. From as early as 2am, detainees approached Serco staff requesting protection against stoning from other detainees for refusing to join the fray or protecting Serco staff from violence. Just after 8pm, “a Serco officer was slapped by a detainee from North West Point who had entered the Lilac and Aqua Accommodation compounds and threats were made against his life”<sup>156</sup>.

On Wednesday 16 March, Hawke and Williams note that concerns for detainee and staff safety were prevalent throughout the day and resulted in Serco, DIAC and IHMS staff, in addition to CISSR members and vulnerable detainees being evacuated from parts of CIIDC just before 9pm.

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<sup>154</sup> Hawke & Williams, p. 58.

<sup>155</sup> Hawke & Williams, p. 59.

<sup>156</sup> Hawke & Williams, p. 60.

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Additionally, Serco officers were withdrawn from the White Accommodation Compound after 9pm following further threats by detainees who were upset the AFP had employed CS gas to disperse a group of detainees who had been hurling rocks at them.

On 17 March, during the peak disturbance and handover to the AFP, staff were once again in danger. Serco evacuated staff from the Red Compound Marquees and later that evening, from the Blue, Gold and Green Accommodation Compounds after detainees began smashing windows in the main kitchen.

From 10pm onwards, “detainees targeted staff and other detainees inside the Recreation Compound by throwing rocks and those inside were evacuated through the rear of the building into the sterile zone”<sup>157</sup>.

At 10:21pm, control was formally handed to the AFP by DIAC. Serco staff who were not in the Command Centre were evacuated from CIIDC.

Control was only formally handed back to DIAC on 29 March, when Serco resumed their normal responsibilities for the running of the centre.

Similar attacks on staff were documented during the Villawood riots in April.

The riot began when two detainees climbed onto the roof of the Macquarie Residential block in the morning of 20 April. Within ten minutes, the detainees were threatening to hurl roof tiles on the Serco staff stationed below. Twenty-five minutes later, the detainees had removed roof tiles in readiness to follow through on their threat<sup>158</sup>.

Two hours later, as noted by Hawke and Williams, “roof top protestors were refusing to negotiate... they continued, however, to behave in an inappropriate manner and at 10:20hrs threatened to throw a roof tile at, and sexually assault, a

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<sup>157</sup> Hawke & Williams, p. 63.

<sup>158</sup> Hawke & Williams, p. 70.

female interpreter who was engaging with them on behalf of Serco. This interpreter was withdrawn from Fowler at this time”<sup>159</sup>.

Just after 2pm, detainees in Fowler “behaved in an abusive and aggressive manner to Serco activities staff, including a detainee who broke two plastic chairs and threw them into the sterile zone... detainees on the roof again threw tiles at 14:49hrs when Serco brought drinks to the negotiators”<sup>160</sup>.

Prior to 8pm, “30 detainees approached Serco staff as the detainees on the roof of the Macquarie Residential Block lowered a rope made from bed sheets. Detainees on the roof... threw roof tiles to the ground... when staff approached the building. All Serco staff consequently retreated to a safe distance”<sup>161</sup>.

Around 9pm, one detainee began to shout and attempted to accost a Serco staff member but other detainees intervened.

Just before 10pm, two detainees on the roof began to fight against themselves and Serco staff within Fowler “withdrew to a position from which they could safely observe events”<sup>162</sup>.

As the violence intensified, Serco officers again withdrew in preparation to withdraw from Fowler if the need arose. Intelligence suggested the protestors “planned to burn down and wreck the VIDC”.

At 11:15pm, tiles were thrown at Serco staff.

A group of detainees charged at Serco staff in Fowler; staff withdrew to the Murray Block which detainees then set upon. The adjacent office building was set alight. Staff soon withdrew from Fowler to the Visits Centre.

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<sup>159</sup> Hawke & Williams, p. 71.

<sup>160</sup> Hawke & Williams, p. 71.

<sup>161</sup> Hawke & Williams, p. 72.

<sup>162</sup> Hawke & Williams, p. 72.

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Fires burned in four different buildings; chaos reigned and by 23:37, 100 detainees from Fowler had joined in.

Just before midnight, rocks were thrown at Serco staff as well as NSW Police and Fire and Rescue NSW Fire-fighters who had been stationed outside the VIDC perimeter.

In the early hours of the morning, detainees broke through the vehicle gates between Fowler and Hughes and began “assaulting Serco staff and other detainees”<sup>163</sup>.

The Department has confirmed “there is not a mandated staff ratio for immigration detention centres and other facilities. As per clause 3.2 of the immigration detention centre contract (the contract), the department relies on the skill and expertise of the service provider. As such Serco must ensure that the personnel levels at facilities are adequate to deliver the services in accordance with the contract.”<sup>164</sup>

The union representing a high percent of Serco workers – United Voice – told the Inquiry it was concerned about the lack of flexible staffing ratios that took into account the situation in detention centres as it evolved throughout the day:

“If people have to take detainees off site and there is an escort, your numbers drop and all of a sudden you can be left with one person for say 200 which is unsafe for the staff member and also for the detainees. That is the principal problem. There is no real consistency or guidance as to what those staffing levels should be”<sup>165</sup>.

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<sup>163</sup> Hawke & Williams, p. 74.

<sup>164</sup> DIAC, answers to questions on notice, q 15, received 10 August 2011.

<sup>165</sup> McElrea, D. National Office Director, United Voice, Committee Hansard, Sydney, 5 October 2011, p. 46.

Comcare also noted in its report:

“23.2 Staffing Ratios

*Section 16(2)(a) OHS Act*

*DIAC failed to have a staff/detainee ratio level identified and implemented. Nor did it have a system for ensuring that ratios are adjusted according to identified levels of risk. In doing so, it failed to take all reasonably practicable steps to provide a working environment (including systems of work) that was safe for DIAC employees and contractors (and without risk to their health)”<sup>166</sup>.*

Coalition Members and Senators of the Committee have supported recommendations in the majority report regarding staff/detainee ratios. While recognising the need to ensure flexibility in these contracts, we also concur that the absence of standards on staff/detainee and performance management in this area has left staff and detainees exposed to great risks. While not wishing to be prescriptive in this matter, we believe it is necessary that such ratios be employed in an appropriate and practical form to support staff and detainees. Such requirements would need to be reflected in contract conditions.

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<sup>166</sup> Comcare, *Investigation Report EVE0020547*, 21 July 2011 p. 4.

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## Warnings for Settlement Services

Australia runs the most generous resettlement program per capita in the world. Less than one percent of the world's 10.4 million refugees will be resettled in any one year.

Regional Representative of the United Nations High Commissioner for Refugees, Mr Richard Towle, told the Inquiry:

“Australia's resettlement program is one of the best-run and most effective resettlement programs in the world, both in numerical terms and in substantive terms... it is generous in numbers and it is generous in terms of its quality and its delivery of humanitarian support. There is no question of that.”<sup>167</sup>

Mr Towle went on to stress that “We have to use it [resettlement] strategically because we know it is very limited. We have to use it in a way that is confined really only to those people who are most deserving in terms of acute protection needs or where it can be used in a strategic way to resolve a very longstanding and protracted refugee displacement situation.... there has always been a triaging of need.”<sup>168</sup>

Each year, the number of applications for resettlement in Australia greatly exceeds the number of available places. Of the 54,243 offshore applications entered for a humanitarian/refugee visa in 2010-11, there were just 8,971 visas granted.

Internationally, as the IMA cohort increasingly assumes a greater percent of resettlement places, our capacity to accept refugees from UN camps and sites of conflict is significantly hampered.

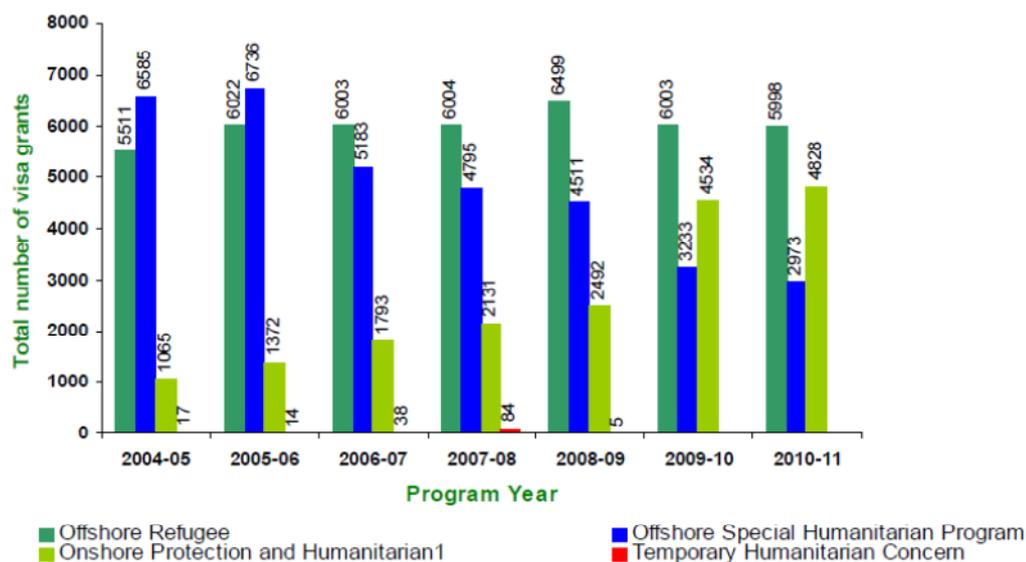
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<sup>167</sup> Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 11.

<sup>168</sup> Towle, Mr Richard, Regional Representative United Nations High Commissioner for Refugees, Committee Hansard, Canberra, 22 November 2011, p. 12.

When the Howard government left office, one in 400 protection visas were granted to those who had arrived by boat<sup>169</sup>. Today, that figure is one in five.<sup>170</sup>

### Humanitarian Program Visa Grants by category 2004-05 to 2010-11



Source: Richmond HSS Review, Figure 1, page 117

Professor Andrew Markus of the Monash University Scanlon Foundation recently observed “With the increase in boat arrivals, Special Humanitarian Program places have been cut by more than half and in 2010-11 there was a success rate of just 10% (2,973 visas granted from 28,319 applications)”<sup>171</sup>.

<sup>169</sup> DIAC, *Asylum Statistics – Australia Protection Visa Statistics*, published September 2011, last accessed 17 November 2011,

[www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-2010-11-section1.pdf](http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-2010-11-section1.pdf); Phillips, J. & Koeth, E. & Karlsen, E. *Seeking Asylum; Australia’s Humanitarian program*, Parliamentary Library Social Policy & Law and Bills Digest Sections, 21 January 2011, last accessed 16 November 2011,

[www.aph.gov.au/library/pubs/bn/sp/SeekingAsylum.htm](http://www.aph.gov.au/library/pubs/bn/sp/SeekingAsylum.htm).

<sup>170</sup> DIAC, *Humanitarian Program Outcomes for 2010-2011*, last accessed 16 November 2011, [www.immi.gov.au/media/statistics/pdf/humanitarian-program-outcomes-2010-11.pdf](http://www.immi.gov.au/media/statistics/pdf/humanitarian-program-outcomes-2010-11.pdf)

<sup>171</sup> Scanlon Foundation Social Cohesion Program, Monash University, *Population and Immigration: Refugee Resettlement January 2012*, [www.arts.monash.edu.au/mapping-population/--documents/refugee-resettlement-fact-sheet.pdf](http://www.arts.monash.edu.au/mapping-population/--documents/refugee-resettlement-fact-sheet.pdf).

Domestically, as asylum seekers continue to arrive by boat in unprecedented numbers, our capacity to support refugees who are accepted for resettlement is increasingly strained.

The Richmond report argues that the increased numbers of asylum seeker arrivals under this government are diverting and essentially competing for vital resources from Australia's resettlement program. Mr Richmond gave evidence to the Inquiry that:

- *“The HSS environment... has been directly impacted in my view by the current issues in relation to border protection and the detention system, particularly through the substantial increase in the number of irregular maritime arrivals”<sup>172</sup>*
- *“the providers are under some stress in order to cope with the IMA group in a way that was perhaps not provided for and expected in the contract. This does stress their organisational capacity and puts them under pressure”<sup>173</sup>*
- *“as it builds up, the pressure on the same scarce resources will present a challenge for housing and the support services provided by both the public and private sectors and, of course, the actual capacity of providers to recruit the quality staff necessary to support these things”<sup>174</sup>.*

The community detention and bridging visa initiatives will further complicate this matter, threatening to undermine and compromise the quality and supply of resources available for permanent resettlement of genuine refugees. He notes in his report:

“In the current environment of increased numbers (particularly of onshore arrivals from detention), very significant increases in the numbers of single adult males and unaccompanied minors, and significantly rising expectations about service standards and quality, inevitably some of these features present

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<sup>172</sup> Richmond, D., Committee Hansard, Canberra, 29 February 2012, p. 14.

<sup>173</sup> Richmond, D., Committee Hansard, Canberra, 29 February 2012, p. 16.

<sup>174</sup> Richmond, D., Committee Hansard, Canberra, 29 February 2012, p. 18.

challenges to the Contract. At the same time, recent DIAC initiatives such as community detention and programs for unaccompanied minors which also involve outsourcing to Providers may increase DIAC's coordination risks in and around HSS",<sup>175</sup>.

Furthermore, in evidence to the inquiry, Mr Richmond alluded to additional complications posed to providers by an increase in the IMA cohort within Australia's resettlement program;

"Significant number of adult single males in that IMA cohort presents real challenges for housing for the providers... I think the big challenge is that because there are significant numbers of people in the detention system, there is already a sort of pipeline of people who have some challenging characteristics and they have to be assisted and supported if indeed they do become refugees holding visas",<sup>176</sup>.

Australia has a clear responsibility to those we undertake to resettle and support. It is imperative that the government ensure these places are made available to those who are in dire need. Furthermore, the government must take all practicable steps to ensure support is provided to assist these people as they transition and build a new life here.

It is unacceptable that continued rates of asylum seeker boat arrivals, which show no sign of abating, should compromise the integrity and capacity of our resettlement program and services. These are the human costs of Labor's failed border protection policies, and they are high.

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<sup>175</sup> Richmond, D., *Review of Humanitarian Settlement Services (HSS) Performance Measures and Contract Management*, September 2011, p. 8, publicly released on 13 December 2011 [www.immi.gov.au/living-in-australia/settle-in-australia/find-help/hss/review-of-hss-richmond.pdf](http://www.immi.gov.au/living-in-australia/settle-in-australia/find-help/hss/review-of-hss-richmond.pdf).

<sup>176</sup> Richmond, D. Committee Hansard, Canberra, 29 February 2012, p. 15.

**Recommendation 6**

Coalition Members and Senators recommend that a minimum quota of 11,000 places of the 13,750 permanent places for the Refugee and Humanitarian program be reserved for offshore applicants, in parallel with the introduction of Temporary Protection Visas for all IMAs.

Senator Cory Bernardi

Senator Michaelia Cash

Mr Michael Keenan MP

Mr Scott Morrison MP