



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT SELECT COMMITTEE ON THE CHRISTMAS ISLAND
TRAGEDY

Incident of 15 December 2010

(Public)

THURSDAY, 16 JUNE 2011

CANBERRA

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JOINT SELECT COMMITTEE ON THE CHRISTMAS ISLAND TRAGEDY

Thursday, 16 June 2011

Members in attendance: Senators Fielding, Hanson-Young and Marshall, and Mr Husic, Mr Keenan and Mrs Markus

Terms of reference for the inquiry:

To inquire into and report on:

The incident of 15 December 2010 in which an irregular entry vessel foundered on rocks at Rocky Point on Christmas Island, including:

- (a) operational responses of all Commonwealth agencies involved in the response, relevant agency procedures, and inter-agency coordination;
- (b) communication mechanisms, including between Commonwealth and State agencies;
- (c) relevant onshore emergency response capabilities on Christmas Island;
- (d) the after-incident support provided to survivors;
- (e) the after-incident support provided to affected Christmas Island community members, Customs, Defence and other personnel;
- (f) having regard to (a) to (e), the effectiveness of the relevant administrative and operational procedures and arrangements of Commonwealth agencies in relation to the SIEV 221 incident and its management; and
- (g) being mindful of ongoing national security, disruption and law enforcement efforts and the investigations referred to below, to consider appropriate information from the Australian Federal Police and the Australian Customs and Border Protection Service (including Border Protection Command) to determine, to the extent that it is possible, the likely point of origin of the vessel.

The committee should have regard to and be mindful of independent parallel investigations into the incident including the investigation by the State Coroner of WA and investigations by the Australian Federal Police, and conduct its inquiry accordingly.

WITNESSES

**ANDREW, Ms Fiona, former Assistant Secretary, Christmas Island, Department of Immigration and
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**MACKIN, Ms Janet, Branch Head, Irregular Maritime Arrivals, Department of Immigration and
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ANDREW, Ms Fiona, former Assistant Secretary, Christmas Island, Department of Immigration and Citizenship

KELLY, Mr Greg, First Assistant Secretary, Detention Operations, Department of Immigration and Citizenship

MACKIN, Ms Janet, Branch Head, Irregular Maritime Arrivals, Department of Immigration and Citizenship

Committee met at 16:05

CHAIR (Senator Marshall): I declare open this hearing of the Parliamentary Joint Committee on the Christmas Island Tragedy. I advise witnesses that although the committee prefers all evidence to be given in public, a request to give all or part of your evidence in camera will be considered. Evidence taken in camera may, however, subsequently be made public by order of the Senate or of this committee. I also remind witnesses that giving false or misleading evidence to the committee may constitute a contempt of the Senate.

Before the committee starts taking evidence I advise all witnesses appearing before the committee that they are protected by parliamentary privilege with respect to their evidence. This gives them special rights and immunities, because people must be able to give evidence to committees without prejudice to themselves. Any act which disadvantages a witness as a result of evidence given before the Senate or any of its committees is treated as a breach of privilege. If a witness objects to answering a question the witness should state the grounds upon which the objection is to be taken and the committee will determine whether it will insist on an answer, having regard to the ground that is claimed. If the committee determines to pursue an answer, a witness may request that the answer be given in camera.

I now welcome representatives of the Department of Immigration and Citizenship. I note that the Senate has resolved that an officer of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy. It does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

CHAIR: Ms Andrew, I note that you have returned from annual leave to attend this hearing and I want to extend the committee's appreciation for that effort. I also note that you were on the island at the time of the tragedy and, like everyone else involved at the time, have suffered some trauma as a consequence of that. So if you feel uncomfortable at any stage or seek protection of the chair, simply let me know and you will receive that protection, and we will move on accordingly. The committee will simply ask questions on matters of fact, and they will do that with due respect to your position. I now invite you to make some general remarks to the committee if you wish, to be followed by some questions.

Ms Andrew: I have no remarks.

CHAIR: Thank you. Senator Fielding has some questions.

Senator FIELDING: I know it must still be very difficult—we, as a committee, have seen some of the footage of the very horrific day, and know that it must still be very difficult. One of the issues that we had with some of the submissions were around including survivors in the memorial service. What can you recall about that whole process of how the decision was made in the end not to? Could you take us through the steps?

Ms Andrew: I think the idea of a memorial service, or some sort of service for the community, was first mooted sometime in the first week. On 17 December there had been a fairly substantial protest up at Construction Camp and Phosphate Hill, and part of that protest had involved the survivors and their families. There had been a fair amount of anger directed at the community at that protest. Comments were made such as 'We watched you standing on the rocks drinking cups of coffee, smoking cigarettes, and you did nothing to help us. Our families died and you just watched.' So initially I was very against any client involvement in the memorial service because I was very aware that the community had suffered substantially. They had seen things that they should never have

seen and I was very concerned to protect the community. I did not want the community in any way exposed to that anger. We certainly kept that from the community as much as we could, up until recently really.

During the following week the administrator and his wife, Brian and Joan Lacy, visited the survivors and that same degree of anger was expressed to them. I recall that Brian was quite taken aback by it and my impression was that he was not expecting it either. I then went on leave for a couple of weeks in early January. When I came back the mood had softened somewhat I would have to say. At that stage I became a little bit more open to the idea that the clients could be involved in the memorial service. But I was also aware that the community was divided. Some felt that it was important that the survivors attend and some felt that they should not attend. I was always very conscious of walking a very fine line between the divided community.

About 25 February we had a very substantial disturbance up at the construction camp and the mood of the Phosphate Hill and construction camps changed considerably at that time. It was a little bit more fractious than it had been so I was very worried about that. Then we understood that the clients would be moving to community detention. We initially thought that they would be moving to community detention or to the mainland before the service took place. So in many respects that sort of resolved the issue, for me anyway, that they would not be on the island. As it turned out, they were on the island. They were moved to community detention, or most of them were moved to the mainland—some had already moved, but the remainder moved to the mainland the day after the service.

I recall that the day before the service I attended a meeting involving the Indian Ocean Territories Health Service and our health service provider IHMS, and Serco were also there. It was about a particular client, one of the family members—he was not a survivor but he was a family member. The meeting was specifically about him, but at the end of the meeting I do recall that I said, 'What is your view about the others attending the service?' and they said, 'Look, they are in a positive state of mind, they are leaving the next day, let's not do anything to upset that'. So I was reasonably happy with that.

Senator FIELDING: I appreciate the background. I think it is important to know that in the community there were still people for and other people maybe not so happy about that being done. We certainly know that, without disclosing any details, there was still some concern from some survivors that people were maybe perceived to be standing around and not helping. I can see how that happened, but that has stilled some of the confusion for me. Thank you for that; I appreciate it.

Ms Andrew: Certainly as the mood softened so did the stance towards the community. I think when the survivors themselves realised that there was a positive outcome, that they were moving to the mainland, they actually became quite grateful to the community. But to my way of thinking the service was about the fact that 42 people were saved. I was concerned that the survivors thought that 50 people had died, so there was a slightly different perspective.

CHAIR: Can you take us through the initial processes that DIAC followed in relation to how the survivors were treated and what was happening to them would have been communicated to them?

Ms Andrew: Our case managers became involved from the outset. Also we had brought in substantial support from the mainland. There were child psychiatrists, there was an enhanced mental health team, we had Life Without Barriers; we had a number of support mechanisms in place. We had increased our own case management capacity on the island to deal with the survivors and other family members already in detention on the island. And we were also very mindful that there were three police investigations going on at the same time. There was the coronial inquiry from the AFP and Western Australia Police and there was also a criminal investigation being run. There was ongoing communication all the time with the survivors. I do recall that early on—in fact I think it was within the first 48 hours—it became evident that one of the worst times for them was about 5 o'clock in the morning just as they were waking up. We arranged that the psychiatrist and the mental health team would be available at 5 am and right through until they went to bed. We had Life Without Barriers providing support as well from 5 am onwards.

Senator HANSON-YOUNG: I am interested to get some more information about how you made decisions about where certain people should go, who they should be housed with within the facility and what types of arrangements were made for various different groups—obviously there were people who had lost their families, orphaned children and unaccompanied minors, but then there were family groups as well. What was the process? Was everybody treated the same? Were there special conditions? Please give us some information on that.

Ms Andrew: At that time we had about 2,600 people in detention so our flexibility was somewhat limited. What we did try to do was that as soon as we identified any family member who was already in detention, say at

North West Point or in Construction Camp, we united the survivors with their families. We kept them together as much as possible.

Senator HANSON-YOUNG: That happened for everyone who had—

Ms Andrew: That happened for everyone and it was ongoing. Initially our case manager spent a lot of time with the people in North West Point to try to identify family members. But it kept on happening throughout the next couple of months that people would keep putting their hands up and say, 'Actually I am a cousin' and then we would verify that. So people were self-identifying as family members right throughout the process. As soon as they did self-identify and we were happy that they were family members we would bring them together. Those people we housed at Phosphate Hill Charlie Compound which neighbours Phosphate Hill Alpha and we kept the survivors at Phosphate Hill Alpha and Phosphate Hill Charlie.

Senator HANSON-YOUNG: What was the reason for the separation of the facilities?

Ms Andrew: Mainly space. They are completely adjacent to each other. There was free interaction between the two.

Senator HANSON-YOUNG: Were they only survivors and those who had been identified as relatives, or were there other people in either of those facilities?

Ms Andrew: As I recall, it may not have been totally but it was certainly mainly survivors. The majority would have been just survivors and their family members. There may have been other friends and support groups but they would have been small in number.

Senator HANSON-YOUNG: So there was no-one housed in Construction Camp then?

Ms Andrew: I am trying to think where the orphan Seena was. Seena may have been in Construction Camp with the family but I am not sure. I would have to investigate that one.

Senator HANSON-YOUNG: Okay. While you have raised Seena's case, we have heard several times in various submissions about how distraught he was—and understandably, as it was pretty horrific. It would be horrific for anyone involved, let alone a little boy like him. One of the things that was said was he was so distraught that he did not understand that his parents had actually died. I put this to the Head of Medical Staff while we were on Christmas Island. She dismissed that. What type of medical care, counselling and support was he given as a direction of DIAC, specifically, if any?

Ms Andrew: Any medical care he would have been given—

CHAIR: I am not sure it is fair to describe anyone's evidence as simply dismissing that. I do not know if you have had a chance to read Dr Yoong's response.

Ms Andrew: I have.

CHAIR: Well, you are aware of what Dr Yoong said. Thank you.

Ms Andrew: In any medical support that went to him, the other two orphans would have been on the advice of the health service provider, Dr Ling and her staff. Certainly, in regard to him, the young boy, finding out about the death of his parents, there was a lot of discussion that went on about who should be the one to advise him about that.

Senator HANSON-YOUNG: Discussion in?

Ms Andrew: With us and the health service provider and the mental health professionals that we have brought to the island. The view was that it should be the family members that should tell him. I am aware that there was some delay; that they could not actually bring themselves to tell him that.

Mr HUSIC: Sorry, can I ask a question. Was it Dr Ling who made the assessment about the best method of treatment for him?

Ms Andrew: No, not Dr Ling herself but the mental health team.

Mr HUSIC: But she would have been involved in that?

Ms Andrew: She would have been involved.

Mr HUSIC: Okay. And would have been aware of the steps that would have been taken.

Ms Andrew: Yes.

Mr HUSIC: Thank you..

CHAIR: Senator Hanson-Young?

Senator HANSON-YOUNG: How much communication was there between your team and Serco and the health service about monitoring how people were going, what type of additional support they may need?

Ms Andrew: It was ongoing. It was ongoing both here and in Canberra, with our detention health people and IHMS based on the mainland and through our case management people, who case conference the needs of our clients on a regular basis and hold weekly client placement meetings. The ongoing needs of the group were discussed regularly, if not daily.

Senator HANSON-YOUNG: What were the professional qualifications and experience of the counsellors that were brought in?

Ms Andrew: I cannot answer that. I would have to take that one notice?

Senator HANSON-YOUNG: Could you?

Ms Andrew: Yes.

Senator HANSON-YOUNG: What I am particularly interested in as well is: were they sought by DIAC or were they sought through the existing medical service?

Ms Andrew: My understanding is they were sought through the health service, the IHMS.

Senator HANSON-YOUNG: Yes. Was that at DIAC's direction or was that at their own discretion?

Ms Andrew: Again, I am not in the position to answer that because that was arranged by our detention health people. But I would imagine that our detention health people and IHMS management would have got together and worked out the way the response was going to be delivered.

Senator HANSON-YOUNG: Correct if I am wrong but my understanding is that the counsellors that were made available were brought specifically onto Christmas Island. They were not the existing—

Ms Andrew: No, there were additional counsellors brought onto the island.

Senator HANSON-YOUNG: Yes, specifically for the survivors.

Ms Andrew: That is right.

Senator HANSON-YOUNG: What was the availability of interpreters in the Charlie and Alpha facilities while the survivors were there?

Ms Andrew: I recall there were additional interpreters brought on the island. Interpreters are always a highly sought after commodity throughout Australia, not just by immigration, but there are never enough. We did bring in extra interpreters, but there are always shortfalls.

Senator HANSON-YOUNG: Is there currently a quota for x number of asylum seekers in one facility equals x number of interpreters of those speaking that language? Is there some type of quota system that you use to try and ascertain what you need?

Ms Andrew: No, not really. It really depends on the breakup of the languages and the availability of interpreters as to how we meet the needs. It also depends on the type of service that we are providing. Sometimes we can supplement our interpreting services with the Telephone Interpreting Service but when you are dealing with mental health issues you really need on-site interpreters. When you are dealing with lengthy interview processes, you want on-site interpreters. From time to time there are opportunities for us to use the Telephone Interpreting Service but other times we need to use on-site interpreters.

Mr Kelly: It depends on what services we are delivering in a particular facility at a time—whether we are undertaking entry interviews, RSA or POD interviews, or whether it is IMR reviews of individuals' applications et cetera. There will be a needs base for the type of interpreter and the number of interpreters required at any particular time.

Senator HANSON-YOUNG: Thank you for clarifying that, Mr Kelly. Was there an assessment made that there needed to be extra support perhaps in Charlie or Alpha, or were the number of interpreters that you would have allocated pretty standard across the board?

Ms Andrew: I do recall that we brought in extra interpreters and they were to provide additional services to Phosphate Alpha and Charlie, particularly because we were providing quite a heightened level of service to those two areas and so the interpreter needs increased—so yes, there would have been.

Senator HANSON-YOUNG: When the decisions were being made about whether people would be sent to the mainland, had their interviews started?

Ms Andrew: They had undergone a range of interviews by that stage. They had been interviewed fairly extensively by the police at that time; they had certainly gone through the entry interview process.

Senator HANSON-YOUNG: So they had been interviewed by the AFP in relation to the criminal case?

Ms Andrew: Yes, that is right, and to the identification of the deceased. There were a number of extensive interviews. Then we started the entry interview process, which is a—

Senator HANSON-YOUNG: For their application?

Ms Andrew: No, that is just to ascertain exactly who they are and to do initial screening. Then we had also started the RSA, the refugee status assessment, interview process.

Senator HANSON-YOUNG: So that had started?

Ms Andrew: That had started. In fact, I believe it had been completed. So they had been extensively interviewed and in fact that was one of the issues we had to deal with that they were interviewed out.

Senator HANSON-YOUNG: What type of advocacy or independent support did they have throughout those interviews?

Ms Andrew: They have IAAAS providers who would have helped them through the refugee status assessment process and we provide Life Without Barriers support to minors throughout all processes.

Senator HANSON-YOUNG: So for the other interviews there would have just been AFP and then an interpreter?

Ms Andrew: That is as I understand it.

Senator HANSON-YOUNG: Okay.

Ms Andrew: And Life Without Barriers where appropriate.

Senator HANSON-YOUNG: For unaccompanied minors?

Ms Andrew: Unaccompanied minors.

Senator HANSON-YOUNG: How were the funeral arrangements communicated to people and the decision to bring them to Sydney?

Ms Andrew: That was done the day before. It was done by our case managers, with the assistance of Serco and with the mental health team also nearby. It was done very carefully. It was communicated to them that they would be travelling to Sydney to attend the funerals. There were quite specific talking points that our staff spoke to, which included things such as they would be attending the funerals, they would be provided with clothing and they would be returning to the island.

Senator HANSON-YOUNG: So they were told they would be returning to the island. Had they been told how long they would be in Sydney?

Ms Andrew: Yes. They were told two nights.

Senator HANSON-YOUNG: How long did they end up staying?

Ms Mackin: They stayed an extra night because of the flight problems.

Ms Andrew: It was stormy, and they actually ended up having to stay near Broome.

Mr Kelly: At the Willare Roadhouse.

CHAIR: Well, there is another extra night in Sydney.

Ms Mackin: Actually, they did spend an extra night in Sydney. I cannot recall why they spent the extra night in Sydney. Their first night in Sydney was at a motel because we thought that was the most appropriate place. We declared that to be an alternate place of detention. As it turned out, there were other people staying at the motel that were not very respectful of people from another culture coming to stay in the motel, so we decided to move them the following morning to the Villawood Immigration Residential Housing. There was enough room. We sort of squashed people up and they stayed there, so that was their second night.

A lot of them had families in Sydney so they wanted an opportunity for the families to come and visit them at the Villawood Detention Centre. That was possible, but it would not have been possible to manage had we left them in the motel, and that was done. So that was the night they got there, the night after the funeral and the following day—was it the following day that they got to stay an extra day? I am sorry, I might have to take on notice how many days they stayed. It might have been one extra day in Sydney and one extra day on the way home because of the weather on Christmas Island, but we can confirm that.

Senator HANSON-YOUNG: Had any of the survivors asked about not being sent back to Christmas Island?

Ms Andrew: I was not there when they were advised. I think some said, 'Why do we have to come back?' But I think generally the mood was that they were very happy that they were going to the funerals. That was first and foremost in their minds.

Senator HANSON-YOUNG: Did any of them have any independent advocates with them when that discussion happened?

Ms Andrew: No, I do not believe so.

Senator HANSON-YOUNG: When they were in Villawood did they have a chance to interact with anyone else beyond who was in the residential housing section, or were they just confined to that, aside from family, who you suggest came and visited.

Ms Andrew: I am not really qualified to answer what happened in Villawood.

Ms Mackin: No, I do not know. We could take that on notice, Senator.

Senator HANSON-YOUNG: Sure. Who arranged the funeral?

Ms Andrew: The AFP, I believe.

Ms Mackin: The AFP arranged the funeral and they used a funeral director from New South Wales, whose name I cannot now recall. But all the arrangements were made through this funeral director by the AFP.

Senator HANSON-YOUNG: Was there a reason why survivors were told only one day before the funeral that they were going?

Ms Andrew: My recollection is that they were told some days in advance that we would be taking steps to move them to the mainland for the funerals. But I have to say that this was done in somewhat of a hurry. The bodies were released by the WA coroner and then the AFP arranged the funerals fairly quickly after that, so it did not give us much time to undertake any sort of communication strategy or to arrange their attendance at the funerals.

Senator HANSON-YOUNG: So who else was made aware of the funeral? Who was told, apart from the survivors?

Ms Andrew: On Christmas Island?

Senator HANSON-YOUNG: On Christmas Island and in Sydney.

Ms Andrew: I am not aware of who was told in Sydney, but certainly on Christmas Island the clients were told, and certainly the service providers knew that they were going to the funerals.

Ms Mackin: In Sydney there was the imam who conducted the ceremony. He was told by the AFP; the AFP had a meeting with him. It is a matter for the AFP, but I understand that the imam also contacted some members of the family in Sydney.

Senator HANSON-YOUNG: The imam did? As far as you are aware—I understand that this is really a question for the AFP.

Ms Mackin: As far as I am aware, it was the imam who was in touch with some family members. There were a number of family members who did attend the funerals in Sydney—not the Christian burial but for the Muslim burial a number of family members turned up.

Senator HANSON-YOUNG: So there was no facilitation from DIAC to communicate to any other relatives?

Ms Mackin: Not that I am aware, Senator.

Senator HANSON-YOUNG: How long after arriving on Christmas Island were survivors moved to the mainland?

Ms Andrew: It was only a matter of a couple of weeks, I believe.

Senator HANSON-YOUNG: Was everybody moved at once?

Ms Andrew: We did have some people who had been medically transferred and they were in Perth. The orphan children were the first to be moved and their families. They were moved in the 10 days prior to the service, I think.

Senator HANSON-YOUNG: They went prior?

CHAIR: I think you have specified the dates. That is actually in the submission.

Mr HUSIC: I was going to ask a question as I was confused about the reference to the 24-hour notice. I was confused because there was a suggestion made that it was 24 hours, but my understanding from the submission is that it was on 7 February that advice was received that the bodies had been identified and they would be released

for burial and that the remaining bodies were buried on the 15th and families were told on the 14th when it would actually happen. But there was notice on the 7th, judging by the submission. It is at the bottom part of page 7.

Ms Andrew: They were advised that the bodies would be released for burial. But I think it was only the day before, from my memory, that the survivors were advised that they would be travelling to the mainland for the funerals. Our case managers were engaged in a series of meetings with the survivors about the arrangements. The survivors had been very anxious to have their families buried, so as soon as the bodies were released we were quite keen to tell them that they had been released and would be buried. Once they had been released then the AFP had to ascertain the families' particular wishes for burial.

Ms Mackin: I was a little bit involved in that. The AFP had been in contact with the family members on the mainland. Originally there were to be funerals in Melbourne and Sydney. Family members then changed their mind about them wanting to be repatriated. So I think that there was a bit of toing and froing in that period of time when the bodies were released as to what was going to happen to them. Initially some people said they wanted them to be repatriated, then they said they wanted them to be buried and vice versa. There was a little bit of confusion around that. The actual dates for the funerals were a little while in being settled. I think also it is fair to say that when we are moving people from Christmas Island to the mainland the normal practice is that we give 24-hours notice. That is a normal management decision that we make. There was a bit of confusion in the two weeks from the date of release of the bodies and the funeral arrangements being settled.

Senator HANSON-YOUNG: The thing is that they were not being removed from Christmas Island.

Ms Mackin: No. They travelled from Christmas Island.

Senator HANSON-YOUNG: It was just a return.

Mr PERRETT: In terms of the burial process, I understand that it is a Muslim practice to try to bury the next day?

Ms Mackin: That is right.

Mr PERRETT: Obviously that was not possible. Does that change the time frames for faith practices for a burial?

Ms Andrew: That was one of the difficulties that we faced and that added stresses to the client group. They wanted their families buried as soon as they possibly could and of course we could not do that because we were subject to the wishes of the WA coroner.

Mr Kelly: Just to elaborate on that, it is often a difficulty that we face. In fact the Muslim preference is to be buried before the sun goes down on the day that they die.

Mr PERRETT: Yes, I have it in my electorate quite often.

Mr Kelly: Yes, and clearly in this case both the families and DIAC were in a difficult situation with the coronial investigation and the bodies being held by the coroner at that point in time. It continues to create issues for any deaths that we have in immigration detention. Although with the tragedy on Christmas Island they were not at that point in immigration detention. Clearly, the survivors were and the impact on them was clearly an issue for their own mental health and we were trying to deal with that at the time as well.

CHAIR: I might digress off to another subject. We can come back to wherever you like. Was there any property recovered after the tragedy from the asylum seekers and if so, what was done with that?

Ms Andrew: There was property gathered and that was kept by the Federal Police or WA police—I am not too sure which one—for evidentiary purposes.

CHAIR: So you do not know what has happened to it?

Ms Mackin: Yes, I do know what has happened to it. The AFP, following the funerals, released that property into DIAC. We made arrangements to have that property sent. They were already in community detention at that stage so we made arrangements for that property to be delivered to those people who were in community detention.

CHAIR: Alright. So they were able to identify whose property was what. Was it a lot or was it a little?

Ms Mackin: For example, there was a ring from Seena's dad that was able to be given to him and an amount of money that was found on the body of his father. That was also given to him. That is something specific I know.

CHAIR: Are we just talking about property that was on bodies? I was thinking about property that would have been salvaged from the wreckage if there was any, or from the search.

Ms Mackin: Yes, there would have been some of that as well. I am just aware of those two particular things. I know the AFP came to somebody in my branch and went through the property. They divided it up, addressed it and it was sent off and delivered to those people.

CHAIR: Was it explained to the survivors that that was all that was able to be recovered?

Ms Andrew: Yes.

CHAIR: So it is not as if they are still waiting for things to come?

Ms Andrew: Certainly that was the property issue. They asked for their property a number of times while they were on Christmas Island. We had to say that we could not release the property and that it was currently in the care of the police and would be released to them in due course.

Mr PERRETT: But they understood it was still their property? They understood that concept—bailment or whatever it is?

Ms Andrew: No, not necessarily, but that was one of the issues that we faced.

CHAIR: It is our understanding that all available property has now been returned?

Ms Mackin: That is my understanding, Senator, yes.

CHAIR: Thank you. Senator Hanson-Young?

Senator HANSON-YOUNG: After the funerals, all of the survivors were then taken back to Christmas Island and, over a couple of weeks and in different groups, were brought onto the mainland for community detention. Did they all go into community detention?

Ms Mackin: I thought they all came in one group.

Ms Andrew: Some of them did go into community detention straightaway, but they were all moved to the mainland initially. I believe some went into residential housing pending a community detention placement becoming available.

Senator HANSON-YOUNG: That was in Sydney, was it?

Ms Andrew: Yes.

Senator HANSON-YOUNG: Out of that group, how many of them are still in community detention?

Ms Mackin: There are nine who have been granted visas and I think 29 who may still be in community detention.

Mr HUSIC: What class of visas?

Ms Mackin: Protection visas. There was one woman who was granted a humanitarian visa, a class 200 visa. She was a woman who returned to Iran with the bodies of two of her children, and we granted her that visa before she left. Her husband had already been here in detention before the 221 arrived, and he remained behind. He was granted a visa at about the same time that she was granted the offshore visa. For the most part they were protection visas granted.

CHAIR: We will be reporting at the end of this month. For our report, on notice, could you give us an up-to-date assessment of where everyone is at as of, say, today?

Ms Mackin: Yes, I could try to do that today.

CHAIR: No, no—as of today.

Ms Mackin: Oh, as of today. Of course, Senator, yes.

Mr PERRETT: A commendable response!

CHAIR: Yes, you were too enthusiastic to please.

Senator HANSON-YOUNG: What type of ongoing support arrangements are in place for those people who are still in community detention?

Ms Andrew: I have got something on that in my bag.

Mr PERRETT: While we are waiting, does anyone know what the funeral arrangements are at Christmas Island? If there is no undertaker, does no-one ever get buried there?

Ms Andrew: No. No-one gets buried on Christmas Island. It has been a number of years since there was a burial, I believe.

Ms Mackin: We did some talking points today for what current support there is, so I will read those points. The survivors of the Christmas Island boat tragedy have been provided with appropriate care and support

throughout their immigration processing and have been closely managed by DIAC's case management teams. Medical and mental health and wellbeing was the immediate priority following the tragedy. Survivors requiring medical treatment were transported to the local Christmas Island hospital. This is not what you are asking me. Placing survivors into community detention was the department's priority. In community detention the survivors continue to be case managed and have continued to receive health and mental health support. Links with English language classes have been facilitated for all survivors. All school-aged children have been enrolled in school and some additional intensive English language lessons have been provided.

Some additional activities have been organised to support them, and survivors have been helped to link with their own community members and to stay in touch with their family members. A number of clients have been granted protection visas and continue to be case managed and provided settlement services through the Humanitarian Settlement Services program.

Mr Kelly: So it ultimately depends on what part of the program they are currently with, so if they actually have protection visas then we can assist them through the HSS scheme, which is available to all refugee and humanitarian entrants arriving in Australia, or if they are still in immigration detention through the community detention program then we provide access to those services through the case management processes.

Senator HANSON-YOUNG: I know I have kind of been going in chronological order, but I now want to jump back. What was the reason for keeping the survivors on the island for as long as they were kept?

Ms Andrew: That was ultimately a decision that was made in our national office and with ministerial support or advice. Initially we certainly had advice from our health service provider that they needed to be kept together. We were anxious to ensure that they were linked in with family members already in detention on Christmas Island. They were subject to criminal investigation and coronial inquiries. They were needed in order to go through victim identification. So certainly in the initial phases their presence was needed on Christmas Island, but when it comes to ongoing detention on Christmas Island I cannot answer that.

Senator HANSON-YOUNG: You have given a more detailed response to that question than anyone else has. Everybody else who I have asked the question of has said the advice was to keep them together. I accept that; that is the psychological assessment. My question is: was the assessment of DIAC that that could only be done on Christmas Island? When there were so many people, as you have already identified—over 2,000 in detention on Christmas Island—it seems as though it would have been easier, or at least doable, to keep them together somewhere on the mainland. Was there ever a discussion about moving them all as a group?

Ms Andrew: Not that I was party to.

Senator HANSON-YOUNG: Okay.

Ms Mackin: I am not aware either. I joined the detention group in the middle of January, so I was not around at the time. But certainly since I joined the group I was not aware of any discussion about moving them as a group before all the things that Ms Andrew discussed around AFP investigations were concluded. So I am not aware of any discussion around that either.

Mr HUSIC: I am looking at this, on page 6 of the department's submission, the fourth paragraph down. They make reference to Dr Stephen Fenner's visit. There are a whole stack of conditions that are put there—or not conditions, but statements made about advice about how the whole group as a whole should be managed. They were to be kept together, and the subsequent recommendations were for the survivors to be moved to the mainland as soon as they had been provided with the opportunity to visit the wreck site, which I understood occurs—there is reference to it on page 7—and the funerals for the deceased had taken place, which is also on page 7. Who would have managed the liaison with Dr Fenner?

Ms Andrew: That would have been our detention health people in Canberra.

Mr HUSIC: All right.

Mr KEENAN: Who generally makes the judgment about where people are positioned—people that have been moved from Christmas Island—and at what level within the department is that decision made?

Ms Andrew: We transfer people from the island all the time. Generally that is a decision that is made locally but in conjunction with ongoing communication with our national office. That revolves around the needs of the particular client group, where they are in the process, where other family members might be located and services that are in place to support them. There are a whole range of factors that go into the reasons why we might transfer people to the mainland. But with this particular client group, given the special nature and the special support systems that had to be in place, this was discussed at a very senior level within the department.

Mr KEENAN: But it was subject to ministerial advice. So the minister made the decision about where these 42 would be housed?

Ms Andrew: I do not know that the minister made that specifically, but it certainly—

Mr KEENAN: It went to his office and that answer came out from his office, so presumably the minister would have been the one who was responsible for that.

Ms Andrew: I imagine his office would have engaged, yes.

Senator HANSON-YOUNG: There has been some—

Mrs MARKUS: Just for the record, Ms Andrew, who would Dr Fenner have reported to or given advice to within the department?

Ms Andrew: Any advice that would have been provided to IHMS would have gone to our detention health people.

Mr Kelly: And ultimately the advice from detention health would have gone to Jackie Wilson. At that point in time, I am not sure whether she was still First Assistant Secretary or Deputy Secretary, but the discussion was certainly at senior levels within the department. I apologise, I also was not in the chair at that point in time either.

The brief to the minister as opposed to—as, Mr Keenan, you might have said—the minister's making a decision, would have been about the aspects of the advice that we were receiving and the recommendations on how we would treat particular groups of people and individuals at any particular point in time as opposed to seeking ministerial direction or agreement or approval on that.

Mr KEENAN: So the department just comes and tells the minister what is happening with the people?

Mr Kelly: Certainly the department provides advice to the minister on matters of operational requirements and needs. There is no doubt that the minister and his office would provide advice back to the department in terms of things that they would like to see happen with respect to that, and we would expect ministers and their officers to do so.

Mr KEENAN: Obviously this was a sensitive issue with the 42 survivors, and when Ms Andrew was talking about 'ministerial advice', I was not 100 per cent sure what she meant. Does that mean advice from the minister coming down or subject to you guys giving the minister advice? I am just a bit confused.

Ms Andrew: As Mr Kelly said, I think it is a two-way process.

Mr KEENAN: Okay. But in this instance the minister was the ultimate decision-maker when it came to where the 42 were housed?

Ms Andrew: I do not think we could say that he was the ultimate decision-maker. But certainly he was involved in the decision-making process.

Mr PERRETT: I assume a recommendation from the psychiatrist goes to whoever the psychiatrist is reporting to; I assume they do not say, 'Let's do nothing until the minister's office makes a decision.'

Ms Andrew: No.

Mr PERRETT: You make decisions—you are paid to make decisions—so you have operational decisions which are ongoing and which may be informed by the minister's pronouncements.

Mr KEENAN: But isn't it a formal process? Wouldn't a note go up and something come back in an annotated way or something, or was it just an informal process where people talked and made some sort of decision? There must be some sort of formal process.

Mr Kelly: The minister agrees to community detention.

Senator HANSON-YOUNG: He has to sign off on each individual case.

Mr Kelly: Absolutely. But movement off the island—movement between facilities—is business as usual for the department. We do that on a daily basis without reference, necessarily, to the minister or his office. In terms of community detention placements and bearing in mind that CD was very new at that point in time, the minister signed—

Senator HANSON-YOUNG: Not necessarily; it has been around since 2005.

Mr Kelly: I accept that, Senator; but in terms of the current caseload that we are dealing with—

Senator HANSON-YOUNG: Sure.

Mr Kelly: that is, the group of survivors of the tragedy, this was a relatively new process in respect of the current, dare I say it, wave of arrivals into Australia.

Mr KEENAN: I suppose what I am trying to understand is: in this instance, because clearly there are sensitivities—which is completely understandable—around these particular 42, is the department explaining to the minister what is happening, or are they saying, 'Can you make a decision on this, minister, about what's going to happen?'

Mr Kelly: We provide advice to the minister on a daily basis. With respect to this group, we would be regularly providing advice to the minister on the survivors. This would be one of probably many submissions that would have gone to the minister. As I said, I was not there at the time, but I would have expected many submissions and many conversations with the minister's office to have occurred over that period.

Senator HANSON-YOUNG: The question still remains: why provide the advice? Is it because you need the action? Are you providing advice to get something actioned from the minister?

Mr Kelly: We have agreed that in terms of community detention placements the minister signs off on those.

Senator HANSON-YOUNG: What about in relation to this group of 42, to remove them from Christmas Island to the mainland?

Mr Kelly: In terms of community detention placements, as I said, the minister has asked to sign off on all of those placements. This group, in the main, were going into community detention. Those not going into community detention were granted visas. In the case of being granted visas the minister would again have been asked to lift the bar under a 46A submission to enable him to allow the application to then be formally lodged and finalised in that respect. As I said, in all events the minister would have been informed and advised and have made decisions in respect of the individuals in this group.

Senator HANSON-YOUNG: There have been reports in relation to the decision about survivors being moved to the mainland, particularly around the time of the funeral, that understandably people were saying, 'Why would we bring people to the mainland only to send them back to Christmas Island, only to bring them back again?' Everyone can see why that question was asked. I do not think it is illogical. It is unconfirmed, but the reports were that the advice from Jackie Wilson, as the assistant secretary at the time, was that they should not have been sent back to Christmas Island.

Mr Kelly: The arrangements in respect of community detention for the survivors were not in place. They were ultimately in place shortly after their return to Christmas Island, enabling them to be placed shortly afterwards. So within a 10-day period of the funerals community detention was finalised. It was not something that started post the funeral arrangements; it was something that had been in train before the funeral arrangements but could not be finalised prior to the funeral being conducted.

Senator HANSON-YOUNG: My final question is in relation to the fact that some of the submissions that we have received indicate that not all the survivors could distinguish between their interviews with the AFP and their interviews with DIAC. Do you think that is a fair assessment?

Ms Andrew: We heard that too, and our case manager spent a bit of time trying to explain the process through. We were very aware that they had undergone a number of interviews with the police and we were conscious that we were commencing entry interviews, followed shortly thereafter by refugee status assessment interviews. We had to spend some time with them and explain the whole process, which we did, and we also had to clarify, to some extent, the part of the process that they would have undergone had they arrived normally on Christmas Island rather than under the tragic circumstances that they did. We did spend some time going through the processes with them. We were very conscious, as I think I mentioned earlier, that they had been interviewed out.

Senator HANSON-YOUNG: And was that issue raised with you from advocates and the independent legal assistant?

Ms Andrew: I am not aware of it being raised by advocates. I am aware of it being raised by the clients themselves—just general disgruntlement.

Senator HANSON-YOUNG: Thank you.

CHAIR: Again, Ms Andrew, thank you very much for coming back from leave and assisting the committee in its inquiry. Thank you for your efforts through this process. Thank you, Ms Mackin and Mr Kelly, and thank you, committee members.

Committee adjourned at 17:03