COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT STANDING COMMITTEE ON MIGRATION

Reference: Immigration detention in Australia

THURSDAY, 9 OCTOBER 2008

PERTH

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JOINT STANDING

COMMITTEE ON MIGRATION

Thursday, 9 October 2008

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

Members in attendance: Senators Bilyk, Eggleston, Hanson-Young and McEwen and Mr Randall and Mr Zappia

Terms of reference for the inquiry:

To inquire into and report on:

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

WITNESSES

Committee met at 9.17 pm

COPELAND, Ms Anna Gabrielle, Director/Solicitor/Migration Agent, Southern Communities Advocacy Legal and Education Services Community Legal Centre

KENNY, Ms Mary Anne, Solicitor/Migration Agent, Southern Communities Advocacy Legal and Education Services Community Legal Centre

MOSS, Mrs Vanessa Margaret Fothergill, Solicitor/Migration Agent, Southern Communities Advocacy Legal and Education Services Community Legal Centre

KHAN, Mr Stephen , Private capacity

ACTING CHAIR (Senator McEwen)—Good morning everybody. Thank you for attending. I now declare open this public hearing for the inquiry into immigration detention in Australia. The chair and deputy chair of the committee were unable to be here today, so I will be acting chair for the public hearings.

Yesterday the committee visited Perth Immigration Detention Centre, Perth Immigration Residential Housing and a detainee in community detention. Today we are looking forward to hearing from some of the major service providers and immigration detention policy advocates in Western Australia. These include the Southern Communities Advocacy Legal and Education Service, also known as SCALES, Centrecare's Catholic migration services, Project SafeCom and Professor Linda Briskman from the Centre for Human Rights Education at Curtin University, who will give the committee some insight into her work with the People's Inquiry into Detention. We will also have the opportunity to hear from the Social Justice Board of the Uniting Church who, together with many of Western Australia's community agencies for migrants and asylum seekers, have made a joint submission to this inquiry.

Although the committee does not require witnesses to give evidence under oath, I must remind everyone that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House itself. I now call representatives of the Southern Communities Advocacy Legal and Education Service and Mr Stephen Khan to give evidence. Do you have any comments to make on the capacity in which you appear?

Ms Copeland—I am also a lecturer in law at Murdoch University.

Ms Kenny—I am a senior lecturer in law at Murdoch University and I work in a voluntary capacity now at SCALES as well.

Mrs Moss—I am also adjunct senior lecturer at Murdoch University.

ACTING CHAIR—Thank you very much. Ms Copeland, would you like to make an opening statement?

Ms Copeland—Yes, thank you. As you will see, while we welcome the recent policy developments articulated by the minister for immigration, it is our view that there is still much to do. We see that the work of this committee is crucial in taking that reform agenda forward. We

hope that you will not only scrutinise the proposed changes but also set out the measures necessary to ensure that the policy becomes practice.

I want to say a few words about SCALES and the work that we do, if I could. SCALES is a generalist community legal centre. It services the southern communities of Rockingham and Kwinana here in WA. It is also a clinical legal education program run through Murdoch law school. What that means is that law students from Murdoch University have the opportunity to go down to the community legal centre and to learn and develop their legal skills under the supervision of the solicitors there, providing legal services at the same time to those most in need.

SCALES has a longstanding and well-respected practice in the area of human rights and, more specifically, in assisting refugees and asylum seekers. This practice was begun by our previous director Mary Anne Kenny, and SCALES has been providing advice and representation under IAAAS—the Immigration Advice and Application Assistance Scheme—since 1999.

You have before you our submission. We would like to highlight a few particular issues raised in that submission. First, as we said, we welcome the policy reforms of the minister for immigration. However, it is important to note that the legislative framework has not changed. Section 189 remains and still demands that, if an officer knows or reasonably suspects that a person in a migration zone is an unlawful noncitizen, the officer must detain the person. Furthermore, this detention is put beyond the reach of the court by section 183.

Our first point is that there is a need for a legislative framework to underpin the purported reforms of the detention system. This is vital to ensure that what has happened in the past never happens again. In our view, international human rights law can offer a foundation for some of that legislative framework. As we point to in our submission, principles of our own legal system recognise that you cannot take away a person's liberty without due process and good reason. International human rights law shares this tenet as well.

We think that mandatory detention is an affront to this principle and should be abolished. It is our view that it is unjustified. It has been said that it acts as a deterrent. We would like to see the evidence that it does in fact deter. But our question really is: does it deter the persecutors of those people who come here as asylum seekers? Of course not. We have to remember that those people who arrive in this way are fleeing persecution. They have committed no crime. History has shown us, in fact, that the vast majority of people arriving by boat to Australian shores have been found to be refugees.

It is said that it is a security measure, but we doubt the necessity of such a security measure. After all, we are an island country with no land borders and have a comprehensive system of tax file numbers and national databases which makes living and working outside of this system undetected increasingly difficult. It is also difficult to see how detention could be considered necessary or justified in a global context, given Australia's very high wealth comparatively and the relatively small numbers of asylum seekers that arrive on our shores.

That the minister singles out particular groups that will be subject to detention is also of concern to us. He mentions that detention is for the assessment of health and identity. We think that detention for the assessment of these two issues is also problematic and we would like to

give you some examples. Many asylum seekers obviously arrive without identity documents, due to the fact that they are fleeing their country because of persecution. They may come from countries that have fallible systems for recording the identity of citizens and residents and it may take years to pursue inquiries into identity with their country of origin, and that might only produce a very limited possibility of success. That is the first major problem with this.

We also have problems with the way that the identity checks have been carried out in the past, and I would like to briefly tell you the story of one of our clients, who remained in detention for years because the department had an issue with his identity. The freedom of information request that we put in to determine what those issues with identity were revealed some very concerning pieces of evidence that the department was relying on to say that he was not who he said he was.

One of those pieces of evidence was a reported comment by a community leader who came to visit our client soon after he arrived. On that first visit, you can see that the comment made by the community leader to the DIAC official was, 'We have not yet decided whether to support this man as a member of our community.' What he was referring to was that this man had entered Australia with a false passport. He had not come through the humanitarian offshore program. At the time there was a lot of negative media around that issue—around the queue-jumping concept—and the vast majority of the community here had all come through the offshore program. What the community leader was attesting to was that they were not sure at that point whether they would support him, given that he had entered Australia in this way and not come through the offshore program.

We called somebody who was at that meeting—another community member—to the RRT hearing to give that evidence, so that it was very clear that was what that particular community member was referring to. The problem was that, not very long after that in the FOI documents, that comment reappeared as being relayed from one DIAC officer to another, but the relay had dropped the word 'yet', so that the quote is passed on through the department as, 'We have not decided to support this man as a member of our community.' Of course, it gets interpreted that what the leader of the community is saying is that he is not a member of that community, and that is certainly the interpretation that the department then picked up and ran with.

Another piece of information that they relied on was a comment by a DIAC officer working in an overseas post, who said, 'I don't think he is from where he says he's from. When I was a student in the Netherlands, I studied with a lot of people from that particular country and none of them had the last name that he has, so I don't think he is from where he says he comes from.' That was also quoted as a reason to doubt his identity.

The third piece of evidence which was concerning was an address book that was on our client when he arrived in Australia. It contained many different phone numbers from many different countries across Africa. Our client's story was that he had left his country and travelled through many different African countries on his way to South Africa, where he left from to come to Australia. Evidently the address book contained more numbers from one particular country, which was not the country of our client's origin, than from others. The department took from this that he was from that country, because the majority of numbers that were in that book were from that country. It is important to know that the entries into that book were written by many different people. You could tell that it was not all the same handwriting, so it was obviously a book that had been passed on and that different people had used.

So this demonstrates the imprecise and inaccurate nature of the department's inquiries into identity. As a result of the Palmer and Comrie investigation, there are now guidelines on establishing the identity of detainees in the procedures advice manual, and there is a national identity verification agency, or NIVA, which was established under the Palmer and Comrie recommendations. However, we have heard anecdotally that NIVA may have already been decentralised and the staff pushed back into other department offices and that NIVA as an identity does not exist any longer. That is of concern to us. In fact, it is important to note that this case I just relayed to you was finally resolved when NIVA became involved. With the establishment of NIVA and them taking over the case, they managed to resolve those issues.

We also have difficulty with the way that people will be assessed as being an unacceptable risk to the community, which is another issue that the minister has raised. Does this include people who are being deported due to a criminal record under section 501 of the act? If it does—and it seems that it does, from comments that the minister has made—we would point out that they have been found eligible for release into the Australian community by state based parole boards and departments of corrections, bodies that are very experienced in determining if a person is a risk to the community. It seems odd then that they would be detained on the basis that they are a risk to the community.

We have one client who remains in detention, even though he has served his time, because it seems that his country of origin is unwilling to accept him back or there are some delays there and he remains in detention while they get sorted out.

Indeed, the case of Dr Haneef raises further questions about the evidence on which assessments of security risks are based. Another concern for us is that of the excised territories. It is hard to understand any justification for this policy. It seems clearly designed to avoid our obligations under the refugee convention. Again, it is argued that it is a deterrent, but to whom?

Instead, the excise zone subjects those fleeing persecution to a technical hurdle of reaching actual land mass before they can engage Australia's obligations under the refugee convention. We believe that this policy continues to cause damage to our international reputation. In fact, the UNHCR has refused to recognise it, saying that there is no such thing as a self-proclaimed excised territory. Therefore we consider that any asylum seekers reaching Australia, whether the mainland or excised islands, fully engage Australia's responsibilities under the convention.

A more immediate problem with the excise zone is of course clarity regarding Christmas Island. While, as I said, we welcome the minister for immigration's comments, we have some questions about the process at Christmas Island—for example, what visa will they be eligible for? The temporary protection visa has been abolished, obviously. We presume that they will be eligible for permanent refugee and humanitarian visas. What kind of access to legal advice and assistance will be provided? What kind of review will be provided by the independent professionals that the minister has referred to?

The excision zone is a cynical attempt to avoid our international obligations. Worse than that, it perpetrates the idea that people who arrive lawfully at international law to seek protection are somehow not worthy of the full protections of our legal system, despite having signed up to the refugee convention.

I would like to now hand over to my colleagues. Vanessa Moss, after giving you a precis of her extensive background in this area, will further discuss the issues of impact and effective detention on our clients. Then Mary Anne Kenny, my predecessor at SCALES and senior lecturer at Murdoch, will discuss issues facing children, specific to the detention framework.

Mrs Moss—I started working in the Port Hedland detention centre in 1992 and I have been working with refugees ever since with various organisations; the Refugee Council, legal aid and more recently with SCALES. I have had many clients in the local Perth detention centre, Port Hedland and Curtin.

Rather than making any comments about the legal framework—Anna has already done that—I want to give you a couple of anecdotes about clients I have had over the years and their comments about detention. One client was a young woman who recently gave a talk in a public forum about her experience as a refugee. She talked about her time in her country of origin. Before she gave that talk I asked her was there any area of her refugee story or her experience in Australia that was off limits in this public forum: was there anything she did not want to be asked about. She said that the part of her story she could not possibly bring herself to talk about in a public forum was her experience in an Australian detention centre.

I have also had clients who have been in immigration detention and they have also been in prisons here in Perth and in the north-west. The anecdotal evidence I have got from them time and time again—and I note that they have been in the penal system not because of a crime, but they have been in there and it has been classified as immigration detention—is that the worst places to have been in are the immigration detention centres. They would rather be in a prison. They would rather be in a maximum security prison in Perth or in Roebourne prison in the north-west, rather than Port Hedland or Perth Immigration Detention Centre. That speaks volumes about the detention regime.

Ms Kenny—I want to speak briefly about detention of children, because that has obviously been one of the catalysts for change in respect of the detention system. The recent announcement by the minister is that children will not be detained in immigration detention centres. Currently in the Migration Act it says that children will only be detained as a last resort.

You will see in our submission that the legislative prohibition of detention of children should be stronger than that; that there should be a presumption that children should never be detained. I did read the transcript of your interviews with the department of immigration in Canberra about not regarding residential housing projects as immigration detention. While the conditions are better than a detention centre, it certainly is still very restrictive and still essentially detention, so we do have concerns about that. We believe that, unless it is enshrined in legislation that there be a presumption against detention of children, it will continue to happen.

I am currently engaged in some research work with Professor Mary Crock from the University of Sydney about the situation with children in immigration generally. It has been a longstanding interest of mine. You will see in our submission that one of the reasons why children have ended up in detention is because the current immigration framework does not really recognise children as having any separate immigration status of their own; it generally follows with their parents. If their parents are unlawful, the child is regarded as unlawful. If the parents decide that they want

to return to their country, the children automatically go with their parents. There has been a failure to recognise children as rights-bearers in their own right.

Recently the Commonwealth Ombudsman found that, because of that very reason, there were eight to 10 cases of children who were detained unlawfully because the department had not looked at their cases individually in terms of what was their particular immigration status. We also think that it is not enough to have one legislative provision regarding the detention of children. The whole status of children in respect of immigration does need some radical reform. I am happy to answer any further questions about that, but I wanted to make that brief comment.

ACTING CHAIR—Thank you very much everybody for your submission and for your opening statements. Can you elaborate a bit on what assistance you provide to people when they come out of detention, because this is something that has been brought to the committee's attention as well.

Mrs Moss—Under the IAAAS scheme we will provide them with assistance really until they leave detention. We are very rarely informed, before they are granted a visa, that that visa is going to be granted. Most often I hear after they have left detention that they have gone and I do not know where. They have been released in the community and that is it.

Sometimes I do get a call from people within the local community in Perth to say, 'Look, we went yesterday and picked up this person. They're part of the Sri Lankan community,' or whatever. But, really, once they have left the detention centre, that is the end of our contact with them.

They may, very rarely, come back to us. If they are on a three-year temporary protection visa, they might say, 'Look, I need help now to apply for permanent protection,' but that is extremely rare. Quite often they have already gone off to the eastern states and we simply do not know where they have gone from there. So it really does finish at that point, once they are released.

Ms Copeland—Having said that, if they have ongoing legal issues, it is quite common for us to assist them, unfunded, because we are not funded to do that at all. But, obviously, if they are facing legal issues, we do jump in and assist them with those—a wide range of issues, for example, around social security, other legal issues, or in fact questions about connection with their families.

ACTING CHAIR—What about if they have a debt arising from their detention?

Ms Copeland—Yes, indeed. That is an issue that we do come across and we would request that you look closely at this debt in detention issue. The people giving evidence a little further down today can give you some more information on that and the effect that it has on someone. But many of our clients end up with debts because of the time they spend in detention. The policy is absolutely inhumane in the way that it operates, and is unnecessary.

ACTING CHAIR—Thank you. Before I go to other senators, I should point out that at some point before morning tea we will be hearing from a witness in camera, I understand. But until we get to that point, we will go to questions.

Senator EGGLESTON—Chair. I was quite interested in your comment, Mrs Moss, about a person who preferred to be in a prison rather than a detention centre. Perhaps you could explain in more detail why that was, because I would have thought that detention centres would be more culturally sensitive in terms of looking after their meal and religious requirements; perhaps less overcrowded. Would you like to go through that for me.

Mrs Moss—The comments that I have from clients is that they think the quality of care and the professionalism within a prison rather than an immigration detention centre is better. There are more things to do. It is a better regime within a prison, so they tell me, and they would prefer to be there.

Senator EGGLESTON—But you are talking about services, like health services?

Mrs Moss—Yes, and there are things for them to do. There are activities within a prison, programs, things for them to be involved in.

Senator EGGLESTON—Working in workshops.

Mrs Moss—Yes, and that is not available in immigration detention centres. It is not just that it is indeterminate detention: clients that I have had have been indeterminately in prison or indeterminately in immigration detention, so we are not comparing a prisoner who knows he will be there for three years. We are comparing someone in open jail who does not know when they will get out because they are an asylum seeker, as opposed to the Port Hedland detention centre, so it is not that issue; it is the quality of the life that they have in the prison as opposed to an immigration detention centre.

Senator EGGLESTON—That is quite interesting.

Mrs Moss—It is, yes.

Mr RANDALL—It would be interesting to ask the reciprocal question of prisoners—whether they would prefer to be in a prison or in a detention centre.

Senator EGGLESTON—I think they would probably prefer to be in a detention centre. They do provide better food, I think. They have better accommodation and they do have activities and educational services. But I was interested in that. It was mentioned that children have no separate status and that they follow the status of their parents. Isn't that a reasonable condition to apply, because the children, until they are 18, are bound to their parents in terms of where they are and what they do?

Ms Kenny—That is true. Children often do not make the decision to come. In respect of some of the families that arrived in early 2000 or late 1999, you saw mothers with their children arriving, or families arriving. Children have not had a say in leaving one country for another. Usually they have gone with their parents, but the Convention on the Rights of the Child recognises that they themselves are individual rights bearers and we have to think about their rights as separate from their parents. As they get older, they have an evolving independence.

In some cases they do have different legal status to their parents, particularly in some cases for example with the section 501 cancellations. They themselves may be Australian citizens or permanent residents, so they are seriously affected by the immigration status of their parents. Some of the cases that the Ombudsman looked at were cases where Australian resident children or citizens had been detained because it was assumed that their status was the same as their parents. So they do have the ability to have separate rights from their parents.

Senator EGGLESTON—Are there any other cases where that occurs?

Ms Kenny—It is also important in the case of children who arrive unaccompanied, who do not come with their parents; and the treatment they receive. I think three of the people who recently arrived in Christmas Island were under 18—about 16 or 17, I understand—and how they are treated is strange. If you come with a parent, you are treated as if you are a child and your rights are ignored; you are not talked to. But if you are 16 or 17 and on your own, you are treated as if you were an adult. You are then detained and go through exactly the same process. Within the immigration system, there are not sufficient processes that recognise that children have different issues—they communicate in different ways, they may flee persecution for different reasons than adults, and so on—and we should look at them quite separately, from a child's rights perspective.

ACTING CHAIR—Thank you. We need to move on, Senator Eggleston.

Senator BILYK—You were talking about the individuality of the children and the perception of separation. I have concerns about where you draw the line. Do you have any suggestions? You have mentioned that this is what you think should occur, but can you broaden out on that and give us some suggestions on how and when you think that might need to take place? You have mentioned the 16- and 17-year-olds that come unaccompanied. As I understand, they are still treated as minors.

Ms Kenny—Yes.

Senator BILYK—So they are not treated as adults as such, but if you do not have a parent there to speak on your behalf, then you obviously have to speak for yourself. Can you expand more on what you would like to see happen?

Ms Kenny—It is an unusual situation. If you are 16 and 17 and you arrive with your parents, they will still talk to your parents and not you. In New Zealand, for example, in their refugee system, children that arrive with their parents are interviewed separately. They talk to them separately. They have officers who are trained in dealing with children, interviewing children, to talk to them to see if they have separate claims of their own. We should not just lump everybody together, talk to the parents and ignore the children. That is not regarded as acceptable any more in the family law system or the criminal law system. Why is it acceptable in the immigration system? Immigration is behind the ball in respect of its treatment of children in many ways.

As I said, it is not just refugee children, it is throughout the whole immigration system, which is why we are looking to have a review. Professor Mary Crock has approached the department to try to seek funding for this issue because we see it as a crucial issue. The department told her

that they do not see it as a priority. She is working with them on that, but that is a concern as well.

Ms Copeland—Could I just add to that? The other issue that needs to be raised with regard to children's rights is that we are not suggesting necessarily that they should be either separated from or exist in the sense of separate from the wishes of the family as a unit.

Senator BILYK—That was my next question.

Ms Copeland—We are signatories to the Convention on the Rights of the Child. What that means is that, in every dealing that we have with children, whether it be around detention, conditions of detention or assessment of protection claims, there are special standards that we need to keep in mind that do not just look at the actions of the parents; that look simply, apart from any of that, at the children and the children's rights. For example, taking us back a few years to the High Court case in B v B, you had a minister for immigration at the time arguing that it was in the best interests of a child to remain in detention in appalling circumstances where they were witnessing terrible things. That is in direct contradiction with our obligations under the Convention on the Rights of the Child.

We are not suggesting that you ask children independent of or in contrast to or conflict with the family wishes, but in the ways that we deal with them, we need to be conscious that children are rights holders, independent of what their parents may or may not have done. If they have come to this country in a way that the government does not see as legitimate, for whatever reason, that is no fault of the child and therefore we have direct responsibilities to those children.

I want to give you one last example. We had a client who had some serious health issues up in Port Hedland back when Port Hedland was operating, a child who had come with his family. We were trying to advocate to get proper health care for that young person. He had some issues with his sight because of an infection that was not being treated properly while up in Port Hedland, and his family were becoming desperate. We were asked as child advocate to go in with the department to try and advocate on behalf of that young person. We wrote to the department asking them to take action, and the department's response was, 'You don't represent that child. We need to see an authority.'

So we sent the authority paperwork up to the detention centre for the child to sign—the child had rung us and spoken with us—and the department staff at the detention centre refused to give it to the child on the basis that the child was a minor.

Obviously children who are under 18 can instruct lawyers. As Mary Anne says, it happens every day in all the other areas of our legal system. So the fact that the department took it upon themselves not to pass on information or not to pass on an authority form to a young person on the basis that they were a minor indicates the problem.

Mr RANDALL—I have some serious concerns about some of the evidence you have given and the recommendations you have made. The Australian migration system's integrity relies on many factors, including knowing who comes here. The British, for example, have relayed to me, when I have spoken briefly to our British counterparts, that they envy the fact that we actually

know who arrives in our country and who leaves, and we have got a database that confirms that. They do not and they wish they did.

What you have said this morning, unless I have misinterpreted you, is that, even if somebody arrives here with character issues, such as criminal backgrounds—and that is one of the pillars of our immigration system; that we want people to come to Australia that are going to add to Australia, not detract—that they should not be detained, or that they actually should be given a visa. Are you talking about someone who has a terrorist link or somebody who is a paedophile that you are wishing to release into the community? These are people with character issues and you are saying, 'We don't want to see anyone detained.'

Ms Copeland—No, I am sorry, that is not what we said, and I am sorry that there has been that confusion. We are against mandatory detention. We are against a policy that automatically detains—

Mr RANDALL—This current government, the previous governments before—Gerry Hand was the Labor minister who introduced mandatory detention. It is part of the Australian immigration system: it maintains the integrity of our migration that we have mandatory detention for people who are, in your terms, illegal or unlawful arrivals.

Ms Copeland—I understand that it is both sides of parliament's policy. We are against mandatory detention. What I mean by 'mandatory detention' is that it applies automatically to everybody who arrives. We have no problem with the detention of people who obviously have terrorist links or who obviously have criminal records that make them a danger to the community, if that can be shown and there is evidence of that. If there is information coming from Interpol or whatever that shows that they are a risk, then absolutely, there is a need—

Mr RANDALL—What if you do not know who they are? You said people arrive here without papers. There is a huge amount of evidence to say that these people destroy their papers before they get to Australia, knowing that, if they do not have identity documents and then claim refugee status, they will be treated differently. You have got to deal with the fact that some people want to manipulate the system of arrival.

Ms Copeland—Yes. Whenever you do a limitation on rights, it is about balancing what is necessary. We can see that the idea to send all of these people arriving by boat—because there was all this concern about terrorists entering the country in that way or them destroying documents—has been proven wrong, because of the vast majority—

Mr RANDALL—No, it has not been proven wrong at all. In fact, there are even people arriving on a daily basis in Australia by air who flush their identity documents down the toilet.

Ms Copeland—The vast majority of those people who arrived by boat have been found to be refugees, so what we are talking about is the balancing of rights. You have talked about the British situation and they are saying that they wish that they knew. The point here is: do we really want to pay such a high price for our detention policies that have happened in the past—the way that they have affected people and the impact on both the detainees and the community more broadly—in order to target—

Mr RANDALL—The community—

ACTING CHAIR—Mr Randall, we need to move on.

Mr RANDALL—I have one more question which has to be asked, and I think I am entitled to ask several questions. One of the statements you made was about one of your case studies where a person came through several countries in Africa to eventually arrive in Australia. To me, somebody who moves through a number of countries to eventually seek a destination is somebody who is seeking an outcome of their own choosing in terms of a destination.

Today, for example, regarding the arrivals that have been sent to Christmas Island, the local Afghan community representative has said, 'These people are economic refugees.' Because their identities are not clear—the old term that was used previously in a slang term, 'AfPaks'—they did not know whether they were Afghans or Pakistanis. At the end of the day, if these people are seeking an economic outcome in terms of a destination, that again is wrong because they are not genuine refugees in terms of their destination.

Ms Copeland—That is an issue to be dealt with in the processing of those claims. It is not an issue that needs to be dealt with by detention.

Mr RANDALL—If they disappear, how are you going to deal with them?

Ms Copeland—What you have said about moving through many countries in Africa, with all due respect, from my knowledge of refugee issues across the world, denies the reality of a refugee who is trying to find safety and fleeing from conflict situations in their own country. There is a necessity, often, for people in those circumstances to move through many countries. It does not necessarily mean that they are attempting to manipulate the system.

Mr RANDALL—In some minds—

ACTING CHAIR—Mr Randall, we need to move on. One last question, please.

Mr RANDALL—The final question is—I am finding it difficult to retain my thoughts.

ACTING CHAIR—I am sorry. We have got a lot of members and senators who wish to ask questions and we are on a tight time line.

Mr RANDALL—We are using that time now.

ACTING CHAIR—One last question.

Mr RANDALL—I will come back to my question when I think about it.

Senator HANSON-YOUNG—I have two specific issues. The first one is in relation to the detention of children. Perhaps, Ms Kenny, it is more directed to you. There was comment made in your opening statement about, for example, somebody who arrives by air without the official documents. Instead of a family being sent to the Perth immigration facility, they are now being

sent to the residential housing facility, and yet that is still detention. Could you expand on that for me?

Ms Kenny—I think under the act it is an alternative place of detention. So in terms of the facility, while it is a better facility than a detention centre, people are still restricted in coming and going and so on. I am not saying that they should be immediately released into the community, but that should be for a very limited period of time, and then we do have the ability to have residence determinations and allow people to remain in the community.

Those have been quite successful and I do not think that there has been any record of people absconding once they have been on a residence determination. The problem with a residence determination, of course, is that it has to go to the minister currently, which is a very time-consuming process and one really that is micromanaging cases. It would be better suited to be devolved to the department.

Senator HANSON-YOUNG—I am thinking of one particular family at the moment who are being held in residential housing. The nine-year-old girl is there living in this space with her mother and father, surrounded by other detainees, and they have got their own issues. Some of them have been held in detention for, we heard yesterday, almost 900 days, so they have obviously got their own issues in terms of dealing with that.

Do you think that is an appropriate situation for a child to be placed in, given she is not going to school, there are no other children there, and she is surrounded by adults that perhaps are not in control of their own destiny, the way that adults she would normally see are?

Ms Kenny—You have answered your own question. I do not think I can add much more to that. Yes, in the detention centres you do have a mix of people there, of course. There are people there that are pending removal, have spent time under section 501 for character reasons. There are people there that have overstayed their tourist visas. There are people there for all sorts of different reasons. It is not necessarily the best environment for a child.

Senator HANSON-YOUNG—What type of advice or support do you give specifically to children? You have mentioned the way that the immigration department operates at the moment, and that under the Migration Act children are not given their own special status in terms of their immigration claims. How do you guys manage the difference between the parents and the children?

Ms Kenny—In those sorts of cases, if you are dealing with a family, yes, usually we would speak to the parents first; talk to the parents, but then also separately try to talk to the children to explain to them what the process is and see if there are any specific issues that they would like to raise.

Senator HANSON-YOUNG—Are there any specific legal issues in relation to allowing those children who are being held in residential housing to go to school in the local area? Have you dealt with any issues in relation to that?

Ms Kenny—Vanessa would probably be a better person to ask. She has dealt with people in residential housing more than I have.

Mrs Moss—I have not come across that situation. I have had one child in residential housing. It was for a very short period of time and she was under school age. I have not had someone for whom trying to get them into a school has been an issue, so I cannot really comment.

Senator HANSON-YOUNG—I have one final question. In relation to the balancing of rights—and I think my position has been made clear on numerous occasions, that I do not support mandatory detention either—how do you see perhaps a bill of rights being able to be used as a means of balancing those rights under whatever immigration regime we have?

Ms Copeland—My view would be that it would have a very good role to play—a very positive, constructive role to play—in ensuring that those rights are looked at. We have a situation in this country where we have signed up to all of these international obligations, and immigration law is certainly the one area that has had the most breaches annually of those obligations. That is of enormous concern.

Any mechanism by which we can bring those obligations into domestic law I think is a very positive step forward and gives us a check and balance, a framework, within which we can work and within which we can hold those rights. With what has happened in immigration detention in the past—and we have all seen some of the excesses—had there been a bill of rights in a way that could be used as a measure of that, I think we would have had possibly a better outcome.

Mr ZAPPIA—My question is to Ms Copeland. In relation to mandatory detention, since the announcement to the change of policy by the Rudd government, can you provide any case examples where detention has been inappropriate?

Ms Copeland—That is a very good question. It is hard to say, because the announcement of the policy has not been followed up with a comprehensive legislative framework. So it is very hard to see how the differences might manifest themselves.

Mr ZAPPIA—So at this stage you cannot provide any examples?

Ms Copeland—No.

Mr ZAPPIA—Okay, that is fine.

Ms Copeland—Certainly we have not had any, no.

ACTING CHAIR—Is it correct that you wish to give evidence in camera about a case?

Ms Kenny—Yes.

ACTING CHAIR—Then we will go to Mr Khan, who is also going to give evidence in camera. We will have the last question from Senator Bilyk and then Mr Randall.

Senator BILYK—Following on from Mr Zappia's comments about the minister's announcement of 29 July, a lot of your evidence is historic and relates to cases previously where we know that the Rudd government is moving towards correcting wrongs that have taken place.

How have you perceived the whole issue of immigration detention since the minister's announcement?

Ms Copeland—We welcome the minister's announcement. I think the policy change is a very positive step. The difficulty we have is that, clearly, we see that over the last 11-plus years some of the worst abuses have happened because the nature of immigration law is really that a lot of the content is in regulation and there have not been checks and balances. So we would urge a comprehensive legislative framework that makes sure that that policy announcement translates into practice.

As you have read in our submission, we say that the international human rights framework that we have already signed up to presents a very good framework for that. That is the major issue that we have. In addition to that, we think that those policy announcements need to go a little bit further—that is, we believe that there is not a need for mandatory detention. We are not suggesting there is not a need in some circumstances for some detention, but the mandatory nature of detention, where it applies to everybody regardless of their particular situation, we think is not a good basis for the policy. We also would urge you to look at getting rid of the excise zones, for the reasons we have mentioned.

Ms Kenny—I think under the current law the department of immigration is given enormous power in terms of determining when a person will be released or determining that a person is an unlawful noncitizen, and we know that that has led to some problems, which were investigated by the Palmer and Comrie inquiry. Fundamentally, in order to be serious about looking more toward a model of releasing people into the community, we need to involve some independent oversight, such as in relation to the involvement of the courts, because without the courts—without those sorts of checks and balances—people can languish in detention for a long time and mistakes can occur.

The involvement of the Ombudsman has been good, but I think we need something that is stronger. Again in our submission we have said that we do believe that there should be some judicial review in respect of people held in detention.

Mr RANDALL—International evidence has indicated that people who have had an adverse finding against their appeals for citizenship do not present for removal. In the British case, for example, it is 70 per cent. We asked the department in Canberra the other day to give us the figures, and they indicated that there was a significant number of people in Australia who have an adverse determination. Do you think that these people should be detained before removal so that we at least know where they are and who they are?

Ms Copeland—I think there are a few issues there. First of all, we have to be clear that those sorts of people are not necessarily a security risk. But I accept that they are not lawful, in the sense of having a visa. You mentioned the British system. It is about balancing of rights and it is about what we want to stand for as a country.

To the detriment of detainees and the community, which we have seen can happen, do we want to make it mandatory to detain everybody arriving in order that we might catch a few people who avoid deportation or removal? In a country like Australia, with no land borders, with comprehensive tax file numbers and systems of identification, do we really, in balancing rights,

think that it is necessary to detain and deny all these people their rights to liberty, to family, to private life, to getting on with their lives and living with their families in a positive environment? Do we really want to go ahead and detain in a mandatory fashion, which has that effect, in order to catch a few people who overstay or avoid removal? I do not think we do.

Mr RANDALL—On that point, I think the rights of Australian citizens have a superior position than the rights of illegal arrivals.

Ms Copeland—But rights of Australian citizens to what? You are not suggesting that all of those people who avoid removal are a risk to the community, in the sense of committing crimes or damaging the society or the people within it? When you balance rights, you need to look at the importance of the rights that you are balancing. You are talking about taking away someone's liberty for no good reason except that this piece of legislation says that we have to do it. To me, that does not make any sense when you look at balancing that against what you are depriving people of and what you are gaining at the other end as far as security, if that is in fact what you are gaining at all.

Mr RANDALL—You forget, Ms Copeland, that these people are illegal noncitizens.

Ms Copeland—Not at international law, Mr Randall.

Mr RANDALL—I can assure you that people would be disappointed to think that you were assigning Australians to a whole range of international laws rather than the laws of this land.

Ms Copeland—The point of the international laws is that we work towards making sure that domestic laws reflect the rights that are in those international laws. Our country has a very distinguished history in this area, of developing international norms that protect and respect the dignity of people across the globe.

Doc Evatt helped with the development of the UN declaration on human rights. Do we really want to step back from that? For what benefit? Perhaps it is only for a minor issue around making sure that certain individuals, a very small number, leave the country when they are told to do so, individuals that are not necessarily a risk to the community.

Mr RANDALL—By quoting Doc Evatt, we know where you are coming from.

ACTING CHAIR—Mr Randall, we have to move on. I am superindulgent.

Senator HANSON-YOUNG—I will just clarify that the figures given from the department, they said, were for overstayers. Most of them came from Britain and the US. Around the long-term effects of detention, there have been calls recently for a royal commission or something of the like to be looking at the people who have been detained and then found to be genuine refugees and allowed to go into the community, but with little support to deal with the effects that detention has had on them. From a legal perspective, what is your opinion of needing to look at these cases, and what case do you think perhaps individuals, particularly children, would have?

Mrs Moss—I have had ongoing contact with clients that I have had since 1992 from Port Hedland and other detention centres since, and the legacy of detention is lifelong. These people carry it with them. The children that I knew in Port Hedland in 1992 and since, in detention centres, still weep over those experiences when they see more boats come in, and are concerned that others like them are going to be detained and scarred for the rest of their life by that experience. It is a very damaging thing that we have done to these people.

Senator EGGLESTON—I would like to put a proposition to you. You say you are totally opposed to mandatory detention but, as Mr Randall has said, we do not know who these people are and the purpose of detention is assessment. The joint submission of Social Justice and various other people has an annexure which lists a whole lot of countries which have a detention policy and it is all about assessing the individual. So wouldn't you concede that a period of detention is a prudent policy for a period of assessment to determine whether or not a person is who they say they are, whether they have a criminal or other record, and then perhaps we could look at other procedures? The people who are proved to be a risk or have adverse histories should continue to be detained. Do you accept or concede the need for a period of detention for initial assessment, as so many other countries have in place?

Ms Copeland—Initial assessment could be done at an initial interview. When anybody is detected or arrives, that interview takes place. Based on that interview, if there are issues raised that point to exactly what you have been talking about—that there may be a criminal record for this person—then there might be a consideration of whether in fact detention is necessary. We are not saying that detention will never be necessary. The problem that we have is that the existing law and the policy point to a policy of mandatory detention. What that means is that every single person arriving, even when it is clear that there are no issues around security, has to be detained, at least, immediately. That is just not necessary.

You say that a lot of countries have immigration detention aspects, but if you look across the world the punitive, mandatory and arbitrary nature of our detention system is one of the worst. When you compare that with Australia's situation of its relative wealth, absence of land borders and comprehensive systems that can detect people who are in the community if they are unlawful, the use of mandatory detention cannot be justified.

Mr RANDALL—So your simple answer could have been no.

Senator EGGLESTON—Canada has no detention and their experience is that illegals just disappear, so it is hard to follow people.

ACTING CHAIR—Senators and members, we have to move on. These witnesses are already 20 minutes overtime. Thank you for your questions and answers. Can I just clarify with the witnesses, do you wish to go into camera now? That will be a determination of the committee now. Is it your intention that Mr Khan is in that session or is this a separate matter?

Ms Kenny—It is a separate matter.

Mr RANDALL—Can we find out why we need to be in camera?

ACTING CHAIR—Yes, because it is dealing with a particular instance at Christmas Island, as I understand it. Is that correct?

Ms Kenny—Yes.

ACTING CHAIR—Can I have a motion from committee members that we move into camera to hear this evidence? Moved Senator Eggleston. I will put that. All those in favour? Against? Carried. That means that the rest of those present will need to leave the room, thank you.

Evidence taken in camera, but later resumed in public.

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

[11.01 am]

BRISKMAN, Professor Linda, Dr Haruhisa Handa Chair of Human Rights Education, Centre for Human Rights Education, Curtin University; Australian Council of Heads of Schools of Social Work

ACTING CHAIR—I now call Professor Linda Briskman to give evidence. Do you have any comments to make on the capacity in which you appear?

Prof. Briskman—Thank you for the opportunity to appear before you today. I am Director of the Centre for Human Rights Education at Curtin University and I am also convener of the People's Inquiry into Detention.

ACTING CHAIR—Would you like to make a statement in relation to your submission or an introductory comment?

Prof. Briskman—I would.

ACTING CHAIR—Please do so.

Prof. Briskman—Today I particularly want to focus on a few specific points arising from the evidence that came out of the People's Inquiry into Detention, which hopefully most of you know about. Our findings have been published as *Human Rights Overboard*, and this has been submitted as an exhibit to your committee.

As you will have read in our submission, the people's inquiry was auspiced by the Australian Council of Heads of Schools of Social Work. We commenced our inquiry in early 2005 and held public hearings around Australia, and received written submissions. Our most compelling evidence was the oral testimony from the 10 public hearings that we held, one-third of which were from people who had been detained, and others who spoke to us included advocates, professionals, or people who had worked in immigration detention centres. In total, we heard 200 testimonies and received 200 written submissions.

Our major concern has been the policy of mandatory detention itself, and we hope to see it wiped from the legislative and policy map. Although we are pleased to see that there have been some policy changes in recent times, we believe that they are insufficient and there exists in the community an unfortunate misconception that the worst is over.

Before making my few specific points to you today, I would like it noted that the recommendations we make arise from the four themes that we have outlined in the book. They are important to note, because what we documented is not simply historical but is evidence of what happens within an unregulated privatised system. Although we hope for 'never again', there are no guarantees that deplorable policies and practices are not repeated in the future.

Very quickly, before I get into these main points, I want to let you know that the four themes that we have outlined here are the journey into detention—and a lot of that deals with the

inappropriate use of the Australian Navy. The second main theme is the processing of refugee claims, and problems occur—as I am sure other people have talked to you about—both from the onshore and offshore processes. The offshore processes were by far the worst, particularly Nauru, and these problems are not going to go away while part of Australia remains excised, including Christmas Island.

The third theme is detention itself, and that is probably the biggest section of our book, and here of course people have been deprived of their liberty in the privatised prisons with a punitive culture, where anguish and suffering were the norm, where acts of self-harm were commonplace, and where there is evidence of cruel, inhuman and degrading treatment and punishment—you only have to look at the convention against torture to see that—and settings where many people went mad. Then there is life after detention, the final theme of our book, which included lack of support for people on release, and ongoing health and mental health problems in particular. Unless this is addressed now, it is going to be a major issue for the wellbeing of refugees and really for the wellbeing of this nation.

In making our recommendations, we focus on the removal of racism, restoring human rights and reinstating accountability. The recommendations arising from this are documented in the book, which we hope the committee will read, as what is presented will surely strike a chord, including the deaths that occurred, the mental health issues, and the cruelty meted out to children, which we have called 'organised and ritualised abuse'. We need a royal commission to fully expose the practices that occurred.

Given the time constraints, I will make some brief points today. Some of them are even more relevant given the recent boat arrivals, which have created the re-emergence of some hysteria from some politicians and sections of the media. The first point is that, despite the fact that the government is talking about a new set of values, there seems to be an overly strong emphasis on border protection and dealing with people smugglers, rather than articulating values of compassion. This may serve short-term political purposes, but it does not serve the purposes of common decency and compliance with human rights obligations, nor does it address the questions associated with the 'push factors' that cause people to flee their countries and to seek a safe haven elsewhere.

Secondly, there is still a lack of transparency and information. Getting information from the department or the minister's office remains the major problem which we have found. We still do not have enough detail on the current policies and how they are going to play out. For example, there is a question as to what is going to happen on Christmas Island after initial processing takes place. I feel great concern that people may be released onto Christmas Island itself, and maybe to the construction camp, and that we will all be duped into believing that they are not in detention. If this is so, it is reminiscent of Nauru, where we were told that people were not in detention but were on special visas that required them to live in a certain place.

Third, there are no changes to legislation and so there are no guarantees that the rights of asylum seekers will be protected now or in the future. Without changes to legislation, the current policy changes are meaningless and precarious. Fourth, and perhaps most important, is that mandatory detention is a policy that cannot be justified. It is not necessary, for the reasons that have been stated—health and security checks or to stop people absconding. Furthermore, it is outrageously expensive and is at its most cruel and heartless when used to deter others. The

deprivation of liberty is one of the most serious sanctions a state can issue against a human being.

Mandatory detention applies most to asylum seekers arriving by boat, who tend to be overwhelmingly from the Middle East and usually Muslim. This is because regular and safe modes of arrival are generally not available to people meeting this profile, and so they must cross borders without visas. In this way, mandatory detention has impacted almost exclusively on Iraqi, Afghan and Iranian people, and reflects Australians' current fear of people from these countries.

Fifth, there is a question of accountability for the past, present and future. A royal commission will help address this issue for the past. Accountability will be difficult to guarantee while immigration detention facilities remain in private hands, where a lack of transparency of government actions is in place, and where there is a lack of independent scrutiny. If some sort of targeted detention is retained, it should not be privatised.

We believe that the government can offer a fresh start based on compassion and decency, and to enable Australia to be able to hold its head high in human rights communities at home and abroad. The government should listen to the many advocates who consistently oppose the policy of mandatory detention and all that flows from it. In the words of one asylum seeker who spoke to us, 'I'm asking the government to treat the people who came as a human being, not like an animal. That's all I hope for, because I face that and I don't want it to be the same for others. We have been an example and that's it. We want to finish it.' In conclusion, I wish to state that we will be monitoring the situation until we are satisfied that racism has been removed, rights restored and accountability reinstated. Thank you.

ACTING CHAIR—Thank you, Professor Briskman. Have you seen the immigration residential housing facility in Perth?

Prof. Briskman—Yes.

ACTING CHAIR—Can you give us a view of what you think of that as a facility. The committee has been to see it. We are interested in your view.

Prof. Briskman—I had one visit there. We put out our very first brief report in November 2006 and after that we had some contact initiated by the immigration department. They invited us to visit various facilities. I must say that contact and relationships died after the particular person who contacted us left the position at the immigration department.

We visited the Perth detention centre and we went to the residential housing, and I am also familiar with the ones in Port Augusta because I used to go to Baxter quite a bit myself. It is better, obviously, than a full-blown detention centre, but it is still detention. There are still restrictions on freedom of movement. There are still guards in place 24 hours a day. It is still detention.

ACTING CHAIR—How would you see community detention working then, given that there has to be some interaction between people as they are going through the process of applying for some kind of status? What is a practical, alternative way of doing it?

Prof. Briskman—Obviously there has to be some initial processing, and the briefer that is, from our perspective, the better. After that—whatever it is; one or two days, or longer if there is some judicial oversight of that—I do not see why people cannot be accommodated in some sort of real community facility that offers them some opportunities for income for community support—that is not going to be very easy on somewhere like Christmas Island—and where they have freedom of movement.

I do not know what we are scared about with a real community setting. I think there is enough evidence from other countries to show that people do not abscond. If people are sick, if there is a health concern, people can be treated in a hospital, like everybody else can, and security checks can be done very quickly. Nobody has shown us that there have been any security concerns.

There are models in other countries, and I am sure they have been presented to you. I think they are in one of the submissions that will follow a bit later on. I think they could be looked at in more detail to see what countries that have been more compassionate than ours have been able to come up with.

Mr RANDALL—I am surprised, Professor, that in your evidence you infer that there seems to be institutionalised racism from previous governments on the basis of both religion—you said Muslim—and location—Middle East backgrounds. Do you affirm that?

Prof. Briskman—Yes, I stand by that, absolutely. What we said in our book is that, if this treatment was meted out to Australians, it just would not be tolerated. Why do we think we can—

Mr RANDALL—It does in places like Thailand and—

Prof. Briskman—I am talking about in Australia, because I can only talk about Australia. We focused on previous Australian government policy particularly.

Mr RANDALL—So the answer is, yes, you believe that successive governments have involved themselves in institutionalised racism.

Prof. Briskman—And you can see that with the conflation with terrorism, which has been an absolute nonsense and has whipped up fear in the community. Can I give the example of Cornelia Rau. Cornelia Rau suffered very greatly in detention. In fact, this is why we started the inquiry, because the Palmer inquiry was to look at the circumstances of her detention alone. At that time many advocates and many people in detention were saying, 'What about us? The sort of treatment that Cornelia was getting we've been getting, but because we are "the other"—we are not Australian residents—nobody is caring about us.' That is why we decided to run the people's inquiry, because somebody had to do it and we felt we could.

Cornelia Rau was not treated well initially, as we saw on the *Four Corners* program recently. I think many of us were devastated to see how she was actually removed from detention, from the shower. But as soon as it was found that she was an Australian resident, she was taken to a psychiatric facility and she was given the sort of treatment and respect that we would expect to be given to all people. Why should one of us, an Australian person, be treated differently to anybody else?

Mr RANDALL—What you are essentially advocating is that we just open our borders.

Prof. Briskman—No.

Mr RANDALL—Because if we do not detain people to check them, for security and health measures, are you then suggesting that we do not try and investigate whether there are any security or health measures, such as hepatitis and backgrounds in terrorist activities, as has been documented previously? You do not think we should do that?

Prof. Briskman—Not at all. I am not advocating open borders. I know some people do. There are some writers and academics that write about open borders. My position, and that of many others, is no mandatory detention. We do not close our borders to lots of other people—tourists and others who arrive here.

Mr RANDALL—Because they come legally.

Prof. Briskman—Because they come legally, but they have a choice. Asylum seekers do not have a choice.

Mr RANDALL—That could be debated.

Prof. Briskman—It can be debated. You are in Perth. Maybe we can have a debate about this sometime later.

Mr RANDALL—I live very close to Curtin University!

Prof. Briskman—Okay, we can have a public debate if you like. I am not saying that there should not be health checks. We do not do health checks on everybody who drops into this country, so there are some problems with that. If people have hepatitis or whatever it may be, then we treat them, we help them get better.

Mr RANDALL—But if they arrive here illegally, without any documentation about where they are from and who they are, aren't we obliged on behalf of the Australian citizens to do those sorts of checks?

Prof. Briskman—Yes, and you mentioned security checks. I have no problem with quick security checks being done, and we all know in an emergency situation—

Mr RANDALL—What if they will not tell you who they are and give you any idea of where they have come from? How do you do any security checks if they will not identify themselves?

Prof. Briskman—I think people do tell us who they are. I think you are coming from a different position than I am and you are perhaps implying that people are not telling the truth. I would rather start at the position that people are honest, that they have integrity and they are telling the truth. I think that has been the whole problem with asylum claims up until now; that people have been disbelieved. We have not found any security problems until now.

Mr RANDALL—That is not correct.

Prof. Briskman—Okay.

Mr RANDALL—There is quite a deal of evidence that, for example, the last two detainees on Nauru were there because of security implications.

Prof. Briskman—From what I understand—and I do not know the detail of that—there was a lot more delving that needed to be done into the security situation, and I think that was resolved. Security has not been an issue at all. With people fleeing their countries and coming from Indonesia on dreadful boats, where some people have died and put themselves and their children in danger, it is really hard to say that they are a security problem or that they are terrorists. That is not how terrorists do their work.

Senator BILYK—Professor, you are talking about calling for a royal commission into the past, the present and basically to secure the future, I suppose, into a process for detainees. Do you think that the new values put out by Minister Chris Evans in July help in answering some of those previous questions and in solving some of those issues that have previously taken place and add to a greater degree of accountability?

Prof. Briskman—It is obviously better to have a state of articulated values, because we all know where we stand. I think the set of values that the minister and the department are espousing is very different to the sorts of broad values that we are asking for, because the values, if I recall, are very strongly premised around border protection and so forth. It is about the value of treating people with more dignity, which was one of the values and is obviously one that we would applaud.

But part of the problem is, what does it mean? Does it mean detention centres are going to be nicer and prettier and have more pot plants and more outings and the razor wire will be taken down? It is still detention and people are still deprived of their liberty, and for people who have committed no crime. This, to me, is clearly wrong. So I would like to see the values being a little bit more strident in some ways to include the things that we have talked about: the racism, the rights and the accountability.

You mentioned the royal commission. Your inquiry is to be welcomed. It obviously has some limitations compared to a royal commission. Our inquiry was done on a shoestring budget and obviously has limitations. It was done with a lot of volunteer effort. A royal commission will be able to do a much more robust exposure of the past, for the present and for the future. That could include articulation of a stronger values statement that many advocates would be much happier with.

Senator BILYK—Have you actually spoken to detainees since the announcement at the end of July, so in the last 2½ months?

Prof. Briskman—Detainees who are currently in detention?

Senator BILYK—Yes.

Prof. Briskman—Yes.

Senator BILYK—Have you seen any positive changes?

Prof. Briskman—One in particular in Villawood was saying, 'Well, it's better, because people have got access to mobile phones and the internet and are treated a lot better,' but the outcomes are not necessarily better. This particular person I refer to was actually deported quite recently after 3½ years in detention. So better treatment in Villawood did not equate to the sort of outcome we would have liked for him.

There are other people I have spoken to in detention, particularly in the 501 category—not the asylum seeker category—who are in absolutely deep despair. It does not matter if the conditions are better around them, what they are saying is, 'Well, what's going to happen to us? Nobody is looking at our cases. Nobody really cares about us. Are we going to remain here indefinitely?'

One was removed recently in the 501 category after something like seven years in detention. It is appalling. So it did not matter that it moved from being dreadful to some improvements; for him the results were the same.

Senator BILYK—Yes. It is a bit hard for me to comment on that, bearing in mind I do not know the case.

Prof. Briskman—Yes, and they are only two cases.

Senator BILYK—And the reasons behind the removal, too.

Prof. Briskman—Sure.

Senator BILYK—But, overall, what I am asking is, do you think that there is a better quality of care for the time that people are in detention, bearing in mind that there will be people that will need to be detained? I do not think we can actually get away from that. Correct me if I am wrong. You do not see the need for any sort of detention of anyone that comes in? Is that your stand?

Prof. Briskman—That is a hard one to discuss. There are lots of ifs and buts and there are lots of different categories of detention.

Senator BILYK—No, that is right.

Prof. Briskman—Let's say, for the sake of brevity today, that there is a need for some detention for some people for some time. The conditions, from what I know—and I have not delved into this—are better. If you look at some of the things we have documented here, like the terrible abuses, the detention of children, the deprivation of their childhood—look at the statement of Special Envoy Justice Bhagwati some years ago when he went to Woomera; the terrible punitive culture that existed—hopefully that has improved.

Senator HANSON-YOUNG—I know a number of different organisations have been calling for a royal commission and there are a variety of different reasons. One of the things that has often been raised is looking at the long-term effect of detention on people who have then been released.

Prof. Briskman—Yes.

Senator HANSON-YOUNG—I know a case of a young girl who was separated from her mother. They were in detention together. The mother suffered severe mental trauma. The little girl was sent into a foster home and now is basically a mute. She is seven or eight but is a two-year-old in terms of her communication skills and abilities, and yet there is no support for her.

Prof. Briskman—That is right.

Senator HANSON-YOUNG—Is that the type of thing that you think a royal commission could do, or is there something else that we should be doing to look at those cases and to figure out what it is that we need to do? Because they were recognised to be given permanent residency in the end.

Prof. Briskman—Yes.

Senator HANSON-YOUNG—They are now in the community living freely, yet they have got all these issues as a result of their detention.

Prof. Briskman—What you are saying is, in the end it is the whole nonsense of it. People that have been detained three, four, five years—and children—and in the end they are recognised as refugees. Why did we go through that process? I think this is an absolutely critical issue, whether it is through a royal commission or whether it is some way of trying to track and map what is happening, because a lot of people in the community—adults as well as children—are suffering greatly.

The TPV, which thankfully has gone, was one of the worst things that we could have done to people. People who were going crazy in detention went even more crazy when they could not be unified, for example, with their families who were overseas. There is lots of family breakdown and lots of grief and distress. We need to really look at how we deal with this.

The Asylum Seekers Resource Centre wrote a report some years ago called *Dumped at the Gate*, about how people released from detention were literally dumped at the gate with no support. It is not too late now to start offering support, even to people who have been out a number of years, because I keep hearing stories. People keep ringing and talking about people with very severe trauma who may never be the same again.

Not only that, people are not having their economic and social rights recognised in many ways. It is really hard to get access to good employment. There are not really mentoring schemes for that. People who have been highly skilled in their own countries are working in the abattoirs or really are very underemployed. People find it hard to get access to basic amenities like housing.

That comes back, I am afraid, Mr Randall, to the question of racism in part. That occurs here in this state as much as anywhere else. I do not know how we do it. I do not know if we do it through a royal commission.

Mr RANDALL—Does that include Aboriginals?

Prof. Briskman—Racism against Aboriginals?

Mr RANDALL—In their housing?

Prof. Briskman—Absolutely. No doubt about it.

ACTING CHAIR—Let's stick to the topic at hand.

Prof. Briskman—Bring together the two impressions. I know it is a digression. There is a statement by Lowitja O'Donoghue, who you would all know, who asks why we treat the first peoples of this country and the most recent arrivals so abysmally. That is a critical question, but I will get back to the point. Sorry.

Senator HANSON-YOUNG—How do we move forward? It is all very well and good for us to hear statements from the minister that things are going to change; our value system is going to change. I would like to see that in legislation, frankly. I am waiting for that.

Prof. Briskman—Absolutely.

Senator HANSON-YOUNG—Yes, it is great that we are moving forward in terms of our processes, but what do we do to help those people who are still suffering from the previous process?

Prof. Briskman—We provide support, we provide services, we provide counselling. One thing that happened with the inquiry when people came to speak to us—and I do not want to spend my time bragging about that—there was some hesitancy at first from some people because they were nervous, they were still on TPVs and so forth. After they spoke they said, 'We feel a whole lot better because we feel validated, we feel believed.' We did not cross-examine people, we were not a formal inquiry.

Counselling and basic service support would help. People have left detention not even knowing how to use the postal system in this country. If we were suddenly dumped in another country and we did not know the language so well, how would we cope? I do not know if resources can be found to be contacting people individually and trying to lock them into better service support. A lot of that support, to try to help people get better and to be part of our community, was provided in the past by volunteers, just regular people in the community. There is a lot of burn-out for them. It has to be funded.

Senator HANSON-YOUNG—In terms of moving forward—and I ask you this coming from the Centre for Human Rights Education—what is your position on a bill of rights?

Prof. Briskman—That is an interesting one. We went through a bit of the process here in WA—there was going to be some sort of charter of rights—and I have been slightly involved with the one in Victoria, because we offer training for Victoria Police on human rights, coming out of their charter. We should certainly have a national bill of rights. I cannot understand why we are one of the few Western countries that do not have a bill of rights enshrined. I do not know why there is so much fear about it.

One of the things I have noticed in the Victorian context in the department that I have been doing some work in is that the question is around not so much the legalistic aspect of it—and I am not a lawyer, so I cannot speak about that—but instilling a human rights culture in organisations and our society. A bill of rights provides leverage for achieving that. I know the current government has talked about that as a possibility but I do not think it has moved past the talk as yet.

Senator HANSON-YOUNG—Still waiting for the consultation.

Prof. Briskman—They had consultation in Western Australia and then nothing happened.

Senator EGGLESTON—One of the rationales for mandatory detention was to do assessments on people. Before people come here as migrants, they have checks on their past history, whether they have criminal records or security problems. They have a chest x-ray to see whether they have TB and blood tests to see whether they have hepatitis or HIV. When people just turn up on the doorstep, isn't it rational and reasonable that we should put them through the same sorts of screening tests?

Prof. Briskman—I do not have a problem with screening, which should not take long. But turn that around a bit. A lot of people come to Australia—and I do not have the comparative figures before me—who apply for asylum once they are here. They come on valid visas, perhaps tourist or student visas. Tourists do not get health checks, as far as I know.

Senator EGGLESTON—But migrants do.

Prof. Briskman—Migrants do. Why are we targeting a particular group of people, saying they might have greater health concerns? In some ways it is getting back to Pauline Hanson's era where she was saying things like, 'People might be bringing terrible diseases to our country,' and that whips up more fear. But we can do health checks. People can still be in the community for a lot of those health checks. Some of the diseases you are talking about are not transferable that readily.

Senator EGGLESTON—A lot of the people who turned up in Port Hedland, for example, had tuberculosis, which we thought we had eradicated a long time ago. One of the other things you said was that there is no evidence to show that refugees do not abscond. I wondered what absence of evidence you were referring to, because, for example, in Canada they do not have any kind of detention and people do abscond there. They just disappear. The same applies in the United States, because I have talked to the United States immigration service, and it happens in the UK. The UK now has a detention system with no limit on the time a person can be detained for, so I do not think that statement you made is true. There is evidence around the world that people do abscond.

Prof. Briskman—I am sure there are some absconders, and I am familiar with what is happening in the UK because I was there and attended some meetings about it. There were concerns about their detention system, which in some ways was more moderate than ours but it was still detention. Where are people going to abscond to? It is not in people's interests to abscond. It is in people's interests to have their claims processed and to be granted refugee

status. There are also a lot of people who come to this country who are not asylum seekers who perhaps vanish. They overstay and some of them get caught and some do not.

Senator EGGLESTON—They do, yes.

Prof. Briskman—So why are we making these statements for asylum seekers in particular? I find that a worry.

Senator EGGLESTON—We find that people who come in as asylum seekers destroy their documents, and you have to ask why do they do that? Why are they trying to conceal their identity? Often it is because they have criminal histories, they have been associated with organisations that represent terrorist threats, they are not from the countries they claim to be from or they are running away from legal obligations in their own lands. That is why it is a good idea, I would put to you, to keep them in detention and check them out.

Prof. Briskman—I would like to see the figures on that, because I have not seen it. I have not received any evidence about it and I cannot see that any of those points you raised are a major problem. Why would we develop a whole system—a bizarre, expensive system including this big, empty, crazy facility on Christmas Island—just in case a few people are going to abscond, or one or two might have tuberculosis, if you are saying that? It does not make sense to me, I am sorry.

Senator EGGLESTON—You would not like it, I suspect, if you got tuberculosis because you spent some time with a person who was not tested who came into the country.

Prof. Briskman—That is highly unlikely. I travel a lot, as I am sure a lot of you do, and I have not come back from anywhere with terrible diseases.

Senator EGGLESTON—But it is an obvious public health issue, isn't it, and there is an obvious need to protect the Australian community from a disease which we thought we had eradicated but which is once again in this country.

Prof. Briskman—I wonder how major it is. I suspect it is not that major, and I would be much more concerned about—

Senator EGGLESTON—It is quite major if you happen to have it. It does not matter how many, does it?

Prof. Briskman—I think it does. My concern, as you know, is about protecting the rights of asylum seekers. Our rights as Australians are reasonably—not perfectly—well protected. We are in a much better position in a wealthy, Western country with good access to health care, including preventative health care.

Senator EGGLESTON—One of the reasons they come here is because our health care system is so good and free.

Prof. Briskman—No, they do not.

Senator EGGLESTON—Plus free education, plus the social security system.

Prof. Briskman—No, they do not come here for that. People come from countries where—in Iran, for example—they have access to good education. Iraq is a highly educated society. People do not come here for social and economic benefits.

Senator EGGLESTON—Even Americans come here for those services.

Prof. Briskman—They come here because they are fleeing oppression, they are fleeing terrible regimes. And these are regimes that we went in—as part of the coalition of the willing—to do something about.

Mr ZAPPIA—Professor, thank you for your submission and your presentation. One of my questions follows those from Senator Bilyk and it relates to a comment that you made along these lines, and I might be paraphrasing you: that a change of policy is meaningless and that we need changes of laws. Are you therefore suggesting that the policy changes announced by Senator Evans in July are meaningless? My second question relates to your view that the detention centres, if maintained, ought to be managed by the government and not by private operators. What would you expect to see done differently if the government did manage those centres?

Prof. Briskman—You are absolutely right on the two points that I was making. There needs to be legislation in place, as we were saying, because policy can change at the whim of the times and the whims of government.

The point about changing back to public hands is that I think there would be greater transparency. I think that this extra layer of privatisation and the profit motive that is part of that absolutely undermines the integrity of the system. I am not saying that things would be wonderful in the public sector either, because I know how difficult it is to squeeze information from the public sector, but I think there is a much greater prospect of regulation, of transparency and of decency without a privatised system.

And I am worried. I do not know if anyone here knows what is happening, but we are still waiting to hear what is going to happen with the next contract. And I do not know all the details, but there are also all these sublayers in the contracts, for health services and so forth. It is a very complex system of detention that is being run now. We do not have information on it that readily and I think we need very clear lines of accountability. Where does the buck stop? Does it stop with the private operators? Does it stop with the immigration department? Where do we turn when we want answers and solutions?

ACTING CHAIR—Thank you very much for your submission and for appearing before the committee today, Professor Briskman. We appreciate it very much.

Prof. Briskman—Thank you very much for the opportunity to be here.

[11.42 am]

SMIT, Mr Jack H, Executive Director and Project Coordinator, Project SafeCom Inc.

ACTING CHAIR—I welcome Mr Jack Smit, the Executive Director of Project SafeCom. Would you like to make an opening statement?

Mr Smit—Yes. I have a prepared statement, thank you, Acting Chair. I am using two general nouns in this statement. One is 'politicians'. I do not mean the six of you; I mean Australian federal politicians in general. So if I say 'you', I do not mean 'you, members of the committee' but 'you, politicians'. The second general noun I use is 'whistleblower' in singular form. That refers to my insider contacts in the immigration department.

Project SafeCom was established partially as a response to the *Tampa* stand-off in 2001, because *Tampa*, in our view, was not about refugees but about politicians and about the lengths they go to in order to win unwinnable elections. Australia does not have a refugee problem, it never had a refugee problem, but it has a political problem. It has a problem of politicians undermining UN conventions.

While we are also active in other policy and human rights areas, for today's hearing Project SafeCom is a counterspin initiative and a platform that fiercely announces its opinions based on the underpinnings of the Convention Relating to the Status of Refugees. Project SafeCom therefore starts with a few unwanted boat arrivals inside a nation's territory: the *Struma*, the *St Louis*, the *Patria* and the *Exodus*. The *Struma* had 770 asylum seekers on board and was bombed after being towed outside the harbour of Istanbul by Turkish authorities. Seven hundred and sixty people died. Turkey was happily egged on by statements coming from Britain, who failed to never let the boat inside its Palestinian protectorate.

The story of the refugee convention starts with nations turning back boats that fled the Holocaust, or bombing them or sinking them, or repelling refugee boats from their shores, while these same nations were at war with the regime they had fled from.

So, once formulated, the refugee convention, specifically crafted in response to boat people, provided for privileged entrance, reception and claims processing, and its presence in the Western world eliminated the notion of, quote unquote, 'unlawfulness' and, quote unquote, 'illegality' for arrivals in countries that had signed that convention. In this context, Project SafeCom is at war with any Australian politician who undermines that refugee convention.

A politician who tries to invoke notions of illegality or unlawfulness of boat people who arrive on our shores with the intent to seek asylum invokes our anger and criticism, expressed quite openly, loudly and audibly on every street corner if need be. I note that no boats with passengers trying to clandestinely settle in Australia have arrived since the First Fleet, so, as an independent citizens group, we expect the opposite from our politicians, especially in the context of the Rudd government's bid to secure a position on the UN Security Council.

We expect our government to invest considerable resources into telling the Australian public what our obligations are to boat arrivals and to other people who seek to invoke the refugee convention when they arrive here. We expect that our government, at the curriculum level at primary schools and at high schools, teaches the Australian people about the privileged entry and legality of arrival of boat people and about a fair, free and court reviewable assessment of refugee claims. And we expect that our government will proactively inform all Australians about our obligations to those who are under threat by their governments, no matter how nicely you would like to trade with those governments, because human rights are not the crumbs and leftovers after our diplomatic and trade relations are on track. Human rights are the foundation of a civil society that has fully-developed ethics, a fully developed sense of identity, a national conscience and pride as a nation. So, conversely, vilification of internationally agreed conventions and undermining of human rights standards towards the most vulnerable in society is a sign of Australia's immaturity and, when expressed by politicians, it is something we remain highly embarrassed about.

There is fury on our part that the government is not only failing to proactively tell the Australian people about our obligations under the UN convention for refugees and the International Declaration of Human Rights but we have policies that seem to have been crafted deliberately to undermine those conventions: to name a few, the Julia Gillard 'pushing the boats back' policy of 2003; the arbitrary jailing of asylum seekers who arrive by boat; the policy that is seen as a farcical joke by international jurists—that is, the excision zone, where you are out of reach of Australian refugee law if you land on one of our 4,600 islands off the coast of Australia; and the implementation of the international people-smuggling convention because it fails to distinguish between highly organised and corrupt people-smuggling rackets and a broke Indonesian fisherman from the island of Roti who gives a group of people a ride for a bit of money to sail them to the centre of their centuries-old fishing grounds, Ashmore Reef, and I am talking about Indonesian fishermen sent broke because Australia has fiddled with their United Nations indigenous fishing rights and Australia has failed to be lenient to these Indonesians about the borders or conditions of the United Nations indigenous fishing grounds.

Moving asylum seekers to convention countries and getting paid for organising the transport is not a crime but a transport service, and Project SafeCom does not support political spin when and where politicians are unwilling to clearly inform the Australian public and are not prepared to thank these people movers for bringing people to safety. It is politicians who need to carry the responsibility and the blame for the Australian public's opinion and for the vilification of asylum seekers arriving by boat. Since the introduction of mandatory jailing of asylum seekers by Gerry Hand in 1992, and even more so since *Tampa*, untold damage has been done to Australia's understanding of the status of refugees and, if politicians now just follow the polls in determining whether a policy change is politically viable or not, they will abysmally fail our country once more, because they created vilification of asylum seekers as an official government line in order to win elections. So, to now say that abandoning mandatory jailing is not viable because internal or public polling is not showing its political viability is a disgraceful continuation of a status that politicians themselves created in the first place. It was you politicians who created public vilification of asylum seekers and it is you who now need to create instruments that undo that damage. Only you can undo the layers of erroneous constructs in public opinion in our country.

ACTING CHAIR—Mr Smit, I am conscious that we have only got 20 minutes for your presentation and questions.

Mr Smit—I know. I am now moving on to the whistleblower statements that I am really keen to go through. I will now move on to raise some issues in the immigration department and I will present some material from an inside contact who I will not name. I call my contacts 'whistleblower'. Whistleblower may be one or more immigration department employees in Brisbane or Perth or Sydney or Adelaide or Canberra. Whistleblower may be male or female, but whistleblower has been in senior positions for more than a decade.

First, we have the extraordinary situation where just one officer of the department sits in judgement of a refugee claim as a primary assessor. This has led to serious problems in the claims of hundreds of refugees at the primary stage. This strange one-man situation has cost Australians millions of dollars when appeals need to go to the secondary level of the RRT, the Refugee Review Tribunal, where once again a single person sits in judgement.

In 2003 Jesuit priest Frank Brennan, then the Woomera adviser to Phillip Ruddock, concluded that the immigration department got it wrong between 62 to 87 per cent of the time when they did their primary assessments. Not only that, lawyers inform us that, if the primary assessor approves a claim, his or her decision is subject to managerial review. However, if the opposite is true and the officer refuses a claim, the decision is not subject to a review.

A former RRT member tells us that he was told plainly at the start of his lucrative annual contract that he could not approve more than 25 per cent of the cases that came before him. He did not stick to this rule, and consequently his contract was not renewed at the end of the year. I will summarise that. We have Amnesty and Human Rights Watch and HREOC to join in the primary assessment phase, as well as the RRT phase, to save us millions of dollars so that we do not get it wrong that often.

The name of Greg Wallis keeps coming back amongst advocates, the immigration department manager in Curtin detention centre and in Baxter. Greg Wallis was of course the man who made Amin Mastipour's seven-year-old daughter vanish overnight from Baxter by deporting her to Iran, knowing full well that the little girl's imprisonment in Baxter close to her father Amin was his only ray of hope in the hellhole.

Incredulously, after having been given a government job in Lebanon, he is back in Australia and reportedly working for the department. In the eyes of many prominent advocates, Mr Wallis is an example of those who have behaved heinously during the Howard years and is still working in immigration without having faced any inquiry or scrutiny. It is not without reason that Project SafeCom keeps calling for a royal commission into the immigration department.

I asked whistleblower, 'How many staff in upper and middle echelons would you sack if you were the boss?' and the answer of '10 people' came swiftly. Whistleblower wants Philip Ruddock to be brought to account for his role in the immigration department. While acknowledging that the current secretary Andrew Metcalfe recently admitted that there may have been a conflict between personal ethics and government policy on the part of the workers in the past, whistleblower adds to me, 'That's too f.... late for those of us who are seeing or have been seeing shrinks.'

Whistleblower tells me that at least six people have left the department permanently because they suffered serious psychological damage and trauma as a result of their work. Members of the inquiry: where is the open and accountable government inquiry into what caused their psychological trauma as employees of the department?

I am being told by the immigration department contacts that there are serious questions to be answered, not in the past but right now, about the allocation of tenders, about the tendering process in detention services and about the government's governance of dollars spent in detention services. I am being told also that there is suddenly a diversion of the funds to the 457 visa section and the employer nomination scheme and that there is a serious problem with staffing levels in other sections where staff are now charged with such an unmanageable and demanding workload that 'an incident on the scale of the Cornelia Rau or Vivien Alvarez disaster is just waiting to happen'.

ACTING CHAIR—Are you nearly finished, Mr Smit?

Mr Smit—I am finishing off. Members of the inquiry, Project SafeCom is not in the business of applauding politicians. We acknowledge some good changes since the Cornelia Rau inquiry and the start of the Rudd government, but we also get the impression that the current minister has never met the department without his hands being firmly protected by a set of gloves.

The department remains polluted with notions of keeping people out in terms of asylum seekers and refugees. It should be about letting people in and treating them with dignity and generosity in accordance with the UN convention intent. Several questionable practitioners who did the dehumanising and politicised bidding under a nasty regime still find a safe haven inside its confines. Thank you.

ACTING CHAIR—Thank you, Mr Smit. We are a bit pressed for time, so can we keep it to one question each.

Mr RANDALL—I will make the observation, Acting Chair, that this is basically a political statement by Mr Smit and does not necessarily warrant a full-blown response. But what I am concerned about is that he has not necessarily addressed the terms of reference of this inquiry and, as a result, I find offensive some of the unsubstantiated slurs he has made on the good officers of our public service. I can be slurred myself easily, and I go to the people every three years, but I find your statement unnecessary.

Senator EGGLESTON—Do you expect the current government to repeal the excision legislation for the islands around Australia?

Mr Smit—I have no expectations. It is a bit hypocritical to sign the UN convention and then surround your country with areas where the convention does not apply.

Mr ZAPPIA—Mr Smit, the allegations you made in relation to information that you have received from whistleblowers, have you forwarded that on to the minister, or is the first time—

Mr Smit—No, this is the first time I am making this statement.

Mr ZAPPIA—This is the first time you are presenting that?

Mr Smit—Yes.

Senator HANSON-YOUNG—Mr Smit, could you outline for the committee exactly what Project SafeCom does. Obviously you are quite passionate about human rights issues. In relation to that, a big part of human rights issues in this country has been the way we have treated asylum seekers and refugees.

Mr Smit—Yes.

Senator HANSON-YOUNG—But what is your engagement with people who are in detention, or are you just an advocacy group to government?

Mr Smit—It is a bit of both. We have done quite a bit of work with some backbenchers over the last couple of years. We have also been a bridge between people inside detention centres and the media. As you know, the media have no open access to our detention centres. So people have been quite desperate to get their story told and then gave us permission. So we worked either with news journalists for a current story or with documentary makers or current affairs programs such as *Four Corners*, *The 7.30 Report* and *Lateline* and other programs—SBS *Insight* and *Dateline*—to get their story down to the general public.

Senator HANSON-YOUNG—How are you funded?

Mr Smit—We are entirely self-funded. We have memberships. We do fundraising events. We have an online platform and we sell a considerable number of books and resources about human rights issues and Australia's treatment of refugees and asylum seekers. So it is a completely self-funded operation.

Senator HANSON-YOUNG—In terms of the number of things you have alluded to that whistleblower has said, why would somebody have come to you and been so free with this information? Why not put in a submission to the inquiry or go through another mechanism?

Mr Smit—I am not sure about the complete answer because I have not asked the complete question to my several contacts inside the immigration department, but there is certainly a factor where some—not just one but several—staff seem to be still very unhappy with the slowness of the changes. They are aware that there are changes, but also there have been a considerable number of people who feel very hurt and also damaged as a result of having to implement strategies and policies under the previous government.

Senator HANSON-YOUNG—What do you see as the result of the minister's announcements?

Mr Smit—The ANU lecture a couple of weeks ago, do you mean?

Senator HANSON-YOUNG—Yes.

Mr Smit—The seven principles?

Senator HANSON-YOUNG—Yes.

Mr Smit—I was delighted with the statements, but I want to see things in legislation. The minister was quite reluctant to commit himself to legislation. On *The 7.30 Report* he told Kerry O'Brien, 'Look, most things can be changed by regulation,' but it just ain't good enough! All it needs is a change of mood of politicians or a change of government and we are back to the old heinous days of locking everybody up, because the truth is that Labor says '90 per cent within 90 days' but there is still no legal time limit on getting people locked up. The government is still allowed to jail asylum seekers, who come by boat, for the rest of their lives, if they need to.

Senator HANSON-YOUNG—Thank you.

ACTING CHAIR—Thank you very much, Mr Smit, for your submission and for taking the time to appear before the committee today. We appreciate it very much.

Mr Smit—Thank you.

[12.02 pm]

CLAPTON, Reverend Eira, General Secretary, Council of Churches of Western Australia

COX, Mr Mark David, Solicitor/Barrister, Uniting Church in Australia, Western Australia

HUDSON MILLER, Ms Rosemary, Associate General Secretary, Social Justice Board of the Uniting Church in Australia, Western Australia

ACTING CHAIR—I now welcome representatives of the Social Justice Board of the Uniting Church in Australia and others to give evidence. Thank you for appearing before us today. Do you have any comments to make on the capacity in which you appear?

Ms Hudson Miller—Thank you. We are all appearing in our capacity, representing the other organisations, but I will let other people mention their own capacity.

ACTING CHAIR—Thank you.

Rev. Clapton—I am appearing for the Council of Churches of Western Australia and also as vice-chair of CARAD—Coalition for Asylum Seekers, Refugees and Detainees.

Mr Cox—I am a lawyer and I provide pro bono representation to asylum seekers through the assistance of the Uniting Church and I also work on submissions such as this for the human rights work of the Uniting Church.

ACTING CHAIR—Would any or all of you like to make an opening statement?

Ms Hudson Miller—Thank you. We do have a brief opening statement. Thank you for the opportunity to come today. Among the organisations that we represent exists a great deal of experience and expertise in working with asylum seekers and detainees accommodated in community alternatives and supported into full resettlement. We also represent some of the agencies specifically set up to deal with the needs of those offered temporary refugee status. CARAD was set up to deal with those who were released from remote detention centres into the community in Perth, with very little support from the federal government, and CASE for Refugees was set up as a legal service to deal with this specific group.

The Uniting Church Social Justice Unit is assisted with legal appeals and submissions to the minister, and through these groups we do hands-on work with asylum seekers and have direct experience of the processes and effects of mandatory detention. The other groups party to the submission are members and supporters and/or board members of these hands-on groups. CARAD has worked with some 4,500 asylum seekers, detainees, temporary protection visa holders and refugees since January 2000. Since 2002, CASE for Refugees has provided migration agent and legal services for over 1,280 clients, of whom approximately 85 per cent were assessed as victims of torture and trauma. We have worked closely with other services which offer counselling and support to those who experience torture and trauma, and have cared for and offered services to these clients. We are therefore very passionate about the need to

change the mandatory detention regime of the past to overcome the shortcomings of detention of refugees as it has been practised in Australia, particularly since 2000.

While we welcome the changes announced in July this year by the minister, we remain convinced that mandatory detention is unhelpful at best and deeply damaging at worst. It is not cost effective, nor does it assist in the determination process or achieve any rational or justifiable purpose any more effectively than community accommodation would, and it is harmful to asylum seekers' health, hinders their ultimate resettlement and damages Australia's interests here and abroad.

We note that others appearing before this committee have already submitted that the changes announced should actually be made into law. Some of our clients experienced long periods of detention, as there was no alternative under the Migration Act at that time. Detention for three or four years was not unusual, especially for particular national or ethnic groups, such as Iranians and Kashmiris who are amongst the most deserving of asylum and the most damaged. Some of our clients were detained for over five years.

Our clients have included children, and we continue to see the detrimental effects on some of these young people today. While the current government has said that children will no longer be detained, we note that there is a child in Perth who, along with her parents, is currently in community detention housing at the detention centre, and I understand that you went to the detention centre's community housing project yesterday. We say that much of this approach and, indeed, long-term uncertainty can be ameliorated at an early stage by having an alternative pathway of complementary humanitarian protection, for a variety of reasons, not the least being the inability of someone to prove where they come from because of the nature of conditions in their particular region.

Regarding Christmas Island, we have been involved in the detention centre on the island through the Uniting Church, Council of Churches in Western Australia and CARAD. We wish to again make the point that we oppose detention in these prison-like facilities. People who arrive unauthorised have committed no crime, and therefore it is a breach of their human rights to detain them, especially in a maximum security detention centre on an island where there is nowhere to go anyway. Security and health checks are possible without such detention.

The experience of those who were detained in the old, now decommissioned, Christmas Island detention centre shows that in almost every case incarceration has led to a reduction in mental good health of everybody, including men, and that therefore the risk of doing further harm to those who come here to Australia seeking protection from alleged persecution in their homelands is very high. I say 'including men', because it is not good enough to release women and children from detention. Most of our clients have been men.

Whilst it is policy to keep children out of detention centres, and therefore their mothers too, refugee families include menfolk, and separating them should only be done for extremely good reasons, such as the likelihood of domestic violence in the family unit. As our partners in A Just Australia have recently said, 'Adequate provision of health, legal and other services is extremely difficult and costly to provide in such a remote location.' We encourage the relocation of immigration detention and community resident services to the Australian mainland as a more

practical, commonsense, and cost-effective approach to the situation. Madam Deputy Chair, we are happy to answer any questions that you may have on our submission.

ACTING CHAIR—Thanks very much. One of the recommendations in your submission is to have an independent inspectorate. Can you elaborate on why you think that is necessary and, in particular, in the context that we already have an Immigration Ombudsman and the oversight group as well? Do you have reservations about those? Why are they different?

Ms Hudson Miller—The experience that we have had in Western Australia is with the Inspectorate of Custodial Services. The experience of reporting directly to parliament, after the minister has had a chance to respond to any of the recommendations made in the assessments, is very good. We have seen helpful improvements in prisons in Western Australia for that reason, so our experience has been positive. I know we do not have that experience across Australia. The other matter is the reporting lines that are in place. It is the reporting lines that are most significant. In some ways it is a model that the other pieces can bring together but it is not strong in and of itself. It is compartmentalised and does not have to be taken notice of in the strong way that that inspectorate is set up in Western Australia.

ACTING CHAIR—Do you have any other general comment about the role of the Immigration Ombudsman?

Ms Hudson Miller—Our experience of the Immigration Ombudsman has been that they have been helpful. They have had an overwhelming task. They were introduced too late. The recommendations are only recommendations and we think that to strengthen that role would be a better way to go.

ACTING CHAIR—Thank you.

Senator EGGLESTON—One of your points is that you feel that there should be a different model for the provision of health services in detention centres. Would you like to elaborate on that for the committee.

Mr Cox—As a practitioner, I came to a disturbing discovery in dealing with a case that I was handling with a gentleman who was suicidal and had tried to kill himself a number of times. When we tried to obtain the medical records from the department, they said, 'We don't have any.' I said, 'How can you not have the medical records for somebody that you have a duty of care to?' He said, 'We contract it out to private health services and we don't have responsibility for it. We don't even have the right of access to it,' which of course would present a logistical impossibility for somebody to fulfil their duty if they are not having an automatic right of access to and custody of their medical records. It seems profoundly absurd.

Going beyond that need for the department to retake responsibility and possession of medical records and treatment and so on, we say that the model needs to be comprehensively extended over what we see as a necessarily fundamentally different regime for dealing with asylum seekers, namely a non-mandatory detention model, so that the medical model would apply to people living in communities. They would necessarily or easily have access to state health services but that has to be pursuant to memoranda of understanding and arrangements with the

federal agencies so that there is a comprehensive health service to all people the subject of or undergoing asylum assessment.

In that way, not only do we get rid of the harmful effects of mandatory detention, which I would like to address you briefly on as a practitioner representing people making often difficult claims, but on this very point, there is a need for a medical service to acknowledge, firstly, that people who arrive vulnerable should be accommodated in circumstances other than detention and therefore need a system of medical arrangement and medical service arrangements fundamentally different from the one at the moment, which is institutionalised through a private service provider that is apparently separate from and not necessarily working in tandem with the department.

Incidentally, I should also remark that at a forum meeting with the departmental senior bureaucrats, some of them were surprised when I told them that their own department did not have custody, possession or power over medical records.

Senator EGGLESTON—That is very surprising, I think.

Mr Cox—But it was confirmed by other bureaucrats who were there. Going back to the point of what, if I may say with the greatest respect, I consider to be an overstated, misconceived notion of the threats to our health and security and the risk of absconding, of course there are those risks but they can be dealt with in more suitable alternative ways. We acknowledge that there is as a last resort a necessity for detention in some cases. Obviously there will be situations where it is necessary to place strong limitations on a person's liberty but this should be for a minimum period of time. European examples range from 24 hours to a number of days, and in some cases a number of weeks, but always subject to judicial review and only extendable on judicial order.

The vast majority of people within these systems—alternative international examples, which I have covered in the United Nations report on alternatives to detention survey in summary form in our submission—take people after a brief initial identity, health and status check, maybe a matter of hours, maybe even shorter, and place them within a variety of community arrangements, where absconding is limited by regular reporting, the provision of welfare, case management and so on, so that there is no incentive to abscond because there is a positive progression of the treatment of their case in humane circumstances and a supportive environment, with legal assistance and case management. But even where there is, in those minority of cases, a flight risk, that can be more responsibly and humanely managed through case management. I will not take you to the examples, but I would encourage you to have regard to the United Nations survey that gives examples of the small percentages of absconding in countries that have alternative models.

Senator EGGLESTON—Yes, I did look at that list. I know the United Kingdom has introduced a detention system without a limit on it. It does take a while to assess people. But coming back to this health issue, I was more interested in what you thought an adequate health service would be. One of the issues that we seem to hear about is psychological problems. It is quite common, I believe, that there is a psychiatric nurse provided as part of the complement, or there has been in the past, to detention centres, as well as a general nurse. There is usually a

general practitioner who comes in and provides services and in some places there is a visiting psychiatrist, as in Baxter, who flew in once a fortnight or something from Wollongong.

Where I thought you might be going was perhaps the need to have a more formal system of psychological assessment of detainees and a more formal arrangement for psychiatric assessment.

Mr Cox—Can I say that there is a massive, comprehensive system of medical observation through nursing, psychologists and psychiatrists, who watch the gradual and inevitable deterioration of the mental state of detainees; that there is a comprehensive system in place; that there is regular psychological assessment. I have files full of thousands and thousands of pages of the minutiae of observation of a person's gradual but inevitable degeneration. It is not so much that I am suggesting that there is an inadequacy of resources but that they are applied in incorrect ways in a situation where they inevitably cannot prevent mental health or general deterioration.

Senator EGGLESTON—Thank you.

Senator HANSON-YOUNG—Could you explain to me the interaction you have had with families in detention and families who are in residential housing—we know there is a family at the moment in residential housing here in Perth—and getting access to school and those types of normal things that kids should be doing. I know that in Adelaide the schools that are most welcoming of children in that situation tend to be the Catholic schools. They waive their fees and put in place programs to support that, so I would like to hear a little in terms of what the sector does to support those families; then also, once people have been in the past put on temporary protection visas, the ongoing support that is needed there. I say that knowing that the government has moved to remove them, but we now see people being put on bridging visas, and category E bridging visas are almost worse in terms of access to services.

Rev. Clapton—In terms of children whose family status is still in detention but in detention in a community environment, it is obviously preferable to being in a locked environment, but there are still limitations for those children in terms of living a normal life. When you are an adolescent and you want to go and stay overnight with your friends, do you take the guard or not?

We do have strong support from Catholic schools in Western Australia, who have provided, as you say, access to education that otherwise children would not have been allowed to have under various conditions attached to their immigration status. We are very grateful for that, but we would say that the ability for a child to live a normal life, a life that is not observed by guards or by volunteers acting as guards, is a matter of some importance. Children's wellbeing, particularly at certain stages in their developmental life, is related to them being like their peers. Being singled out as someone who requires a special degree of supervision is obviously going to mark that child out and give them a feeling of inferiority or strangeness in their peer group.

Senator HANSON-YOUNG—What do you see as lacking in terms of support and services? We talk about the immigration department having a duty of care. I asked a question at the hearing when the department was in front of this committee about, 'When does that duty of care stop?' Their answer was, 'Well, once they're released into the community.' As I have said, it

does not matter what kind of visa they have been given, as far as the department was concerned their duty of care stopped once they had left detention. From what I have seen, the people who have picked up that work have been organisations like your own.

Rev. Clapton—We certainly have picked up that care and concern for a large number of people who were unable to survive in the community unless we helped them. We have been an agency of last resort at CARAD. We do not go out seeking clients who can get services from other people, but our clients are people who cannot be accessed by mainstream services, particularly those who have grants from the federal government, because people's visa conditions do not allow them to access such services.

We have had to put into place pro bono arrangements for medical care, pro bono arrangements for schooling, pro bono arrangements for housing, pro bono arrangements for income support. That has cost CARAD, in its community setting, an enormous amount of money, which we have gained from donations. So we have picked up all of those concerns because we feel as though every human being has a right to safety and security in our community whilst their immigration status is sorted, whilst they are making appeals and so forth.

Senator HANSON-YOUNG—Where would you see that the duty of care should end? Who should have the duty of care?

Ms Hudson Miller—One of the other hats that I wear is as the case management coordinator for CARAD. In that capacity, I meet regularly with the department staff to look after people, in a case management way, who are vulnerable in our care in the community. This is a regular meeting and it is a very helpful meeting, where I meet with the case management staff of DIAC here and we work out ways to care for people so, in actual fact, they are not left high and dry in the community when they go out.

There is a continued engagement in that. But the limitation of that is, of course, that people on bridging visa E, without rights to work, are completely dependent on organisations such as CARAD to provide income support for them or, in some instances, communities of similar origin. Maybe some of the Burmese community here in Perth, having been here for such a long time, have some capacity to provide some support to newer arrivals from Burma. But it is a matter of ongoing concern to us, which we share with the DIAC case management team. That has been a very helpful operation. I do not know if it is ubiquitous across Australia, but it has certainly been a way that we have been able to work with the department here for a number of years.

Mr Cox—The duty of care lasts for as long as the applicant is dependent on the department—until they get a visa really, and perhaps even beyond then, because we have an obligation to assist them in resettling in Australia. I can give you an example. I have a client at the moment who is awaiting a decision who is actually living in the community but he cannot work. His relative isolation, his lack of English and his inability to work all continue to have an adverse effect on his health. He is much healthier than he was in detention, where he was suicidal. He is no longer suicidal, but he continues to suffer ill health because of his being in limbo. We consider that people in his situation should be able to work. He was actually offered a job. He is a skilled tiler. He was offered a job in the construction industry, but he cannot take it. He could also do training courses while he is waiting, but he is not allowed to do that either.

If I can endorse what was said to this committee by the Hotham Mission Asylum Seeker Project, that really addressed, in better detail than we are equipped to do today, the struggles of asylum seekers living in the community at the moment. Some of them are living on $33 a week, not from federal funding but from community donations. It is a real struggle within the present regime, even for those who are lucky enough to be living in housing in the community, because we do not have a comprehensive alternative regime. There are three pilot programs or ad hoc programs in Australia that really need to be made comprehensive so that those community based programs are the generally applicable ones.

Mr RANDALL—Thank you very much. I want to congratulate you for providing the services on the ground that you do, because, given my role as a local representative, I spend more than 20 per cent of my time on migration issues in the electorate. So I know it is a large area. The hands-on work you do compares with the philosophical and ideological statements that have been made here this morning. Mr Cox, you provide pro bono work. Are you a sole practitioner, or do you belong to a firm?

Mr Cox—No, I am a sole practitioner.

Mr RANDALL—We heard from previous evidence from one of the witnesses that a succession of governments were seen to be racial in their conduct of this issue. From the statements you made about Iranians and Kashmiris, do you agree with that?

Rev. Clapton—We would say that it is very important that all of government's policies do not discriminate unfairly against anyone on the basis of their race or religion or nationality.

Mr RANDALL—You have not answered the question, though.

Rev. Clapton—In my experience of settling refugees, both those who arrived on the humanitarian program—the orderly program, if you like—and other refugees granted asylum in the community, they struggle to get housing and to get work, and I can only explain that by discrimination about their race from other members of the community.

Mr RANDALL—I asked about governments.

Ms Hudson Miller—We have had a very unfortunate period of time in Australia where some of the human tendencies and anxieties to protect our own lives and lifestyle engendered quite a lot of overt and covert racist responses from people. We own that for ourselves. We know that when we feel vulnerable it is easier to talk about 'us' and 'them' and those kinds of things. I think that this has been a time where that has happened, and we have seen some very unfortunate incidences with both public servants and private contractors, and we have seen some fabulously sacrificial giving from private contractors and public services.

Mr RANDALL—I have two very brief questions. But you still have not answered my question. You talk about a humanitarian program where we have something like 14,000 people a year who come under that program. Do you think those who arrive, as part of the program you are talking about, that should come off the 14,000 that Australia provides annually?

Rev. Clapton—I do not believe that it should.

Mr RANDALL—It should be in addition to that. Thank you.

Rev. Clapton—There was a time when the two were not linked, and I can remember at a community consultation speaking at length with one of the former ministers for immigration about the linking of the two processes. I do not believe that they should be linked. It is possible to have an orderly migration program of 14,000 or more and deal with the small numbers of asylum seekers who arrive.

Mr RANDALL—In other words, add them on. I want to address your statement that, 'These people arrive here, having committed no crime,' but they have broken laws, our immigration laws.

Mr Cox—Under refugee law, it is against international convention and it is against customary law—

Mr RANDALL—We are talking about Australian laws, not international conventions.

Mr Cox—Australia is subject to international conventions.

Mr RANDALL—Yes, but we are not obliged to adhere to them.

Mr Cox—The suggestion that somebody is a criminal because they have been forced by persecution and other circumstances to leave their country to seek asylum, I think would be abhorrent in the minds of most. For example, whilst there were some people who did not sympathetically receive Jewish people fleeing the Holocaust, it would be abhorrent to suggest that those people fleeing the Holocaust were criminals because they went over borders without stamps in their passports.

Mr RANDALL—Mr Cox, we could use any amount of international experiences. I gave you a brief question; we would look for a brief answer. I can counter your arguments with a whole litany of other views, so I think we should finish it there.

Mr Cox—If I could just make the point, not to be argumentative—

Mr RANDALL—I was going to ask another question.

Mr Cox—Australia receives a minuscule trickle of refugees compared to other countries, so I would endorse what Reverend Clapton has said about us comfortably being able to accommodate the numbers of so-called unlawful onshore arrivals on top of those assessed overseas. But the most important thing is that most refugees do not have the luxury or the availability of accessing an embassy or a place for making an application. They leave in urgent, night-time, desperate circumstances, flee with no resources; do not necessarily have any of the litany of other things that would necessitate or be prerequisites to accessing that program. So we need to recognise our international obligation and our obligation as human beings, compassionate human beings, in a large and abundant country, to take our share of the world's suffering. Indeed, many of us sitting here today—ourselves, myself or our predecessors—have in fact come to Australia, fleeing. I came from a country where I faced imprisonment as a result of my political—

Mr RANDALL—South Africa?

Mr Cox—Correct. I was enormously lucky to be able to come to Australia, and I owe a huge debt to Australia, and that is in no small part why I do the work that I do. I have a personal recognition of the desperate circumstances that can force a person to leave your home country against your will, to leave your family and your friends, to seek asylum.

Mr RANDALL—You should be helping those in Zimbabwe.

ACTING CHAIR—Thank you for that response. I thank all of you for your submission and for taking the time to appear before the committee day. We appreciate it.

[12.35 pm]

CALVER, Mr Nigel, Executive Manager, Centrecare Inc.

ACTING CHAIR—I now invite Mr Nigel Calver from Centrecare Migrant Services to give evidence. Would you like to make a brief opening statement to the committee?

Mr Calver—Sure. Firstly, I would like to apologise for Mr Tony Pietropiccolo, our director. He is unwell and not able to attend with me. Centrecare is a not-for-profit community service organisation, providing over 80 different programs throughout the metropolitan and regional WA. We provide support to humanitarian asylum seekers, both in detention and in the community, and to entrants, once granted protection residency status.

We view the use of detention as a last resort, and only in circumstances where an individual can legitimately be considered a threat to themselves or the community. The minimum period should be a time needed to establish identity. From there it should only be justifiable when a significantly supported statement of threat is provided. If such a statement is provided, the detainee really should be given full access to the evidence behind that claim and provided with any necessary supports in order to defend the allegations.

Detention beyond what is necessary to establish identify and carry out health and security checks is excessive and deleterious to the physical and psychological health of the individual. Any criteria applied should consider the physical and mental wellbeing of the individual. The decision to seek asylum in another country should not be regarded as a punishable act. Detention, though not directly its intent, can be significantly damaging both while detained and for the rest of the person's life.

Detention centres should be transparent and visible by being located in reasonably accessible areas; therefore being accessible to support services and the community. Access to locations such as the Christmas Island centre is prohibited to all but a select few, and particularly to those who can provide moral and psychological support from either social or cultural communities.

The decision to move away from prison-like detention centres to immigration residential housing, transit housing and community detention is welcomed as a means of addressing some of the trauma and isolation experienced by asylum seekers. There have been statements made in regard to the removal of fences and other barriers from some parts of the Christmas Island facility. A fence does not define a detention centre in that regard and, just because it has been removed, it does not mean that those residing there do not feel dehumanised, isolated and punished by being there. The option to detain men but not women or children is discriminatory again. Men feel persecuted purely by their gender, and feel traumatised by the separation from loved ones. Families should never be separated nor individuals treated differently, purely based on their gender.

Finally, if an individual is not considered a danger, there is no reason why they cannot move among the community and be given the opportunity to contribute. Anyone awaiting the outcome of their application should be given work rights in order to support themselves, contribute to

their new community, and gain some personal worth. Given the labour shortage that Australia faces, it would seem reasonable and mutually advantageous for such work rights to be granted to individuals.

Irrespective of the form that detention facilities take, the services needed by asylum seekers are the same. Services that would normally be located in one facility, such as a detention centre, can be restructured to cover a district or catchment. If an asylum seeker is not detained in one location, there is nothing stopping them from commuting to use those services as opposed to the services needing to come to them. Economically this would be rather advantageous and those services could be combined with other services that are generally open to the public.

Centrecare welcomes the opportunity to contribute to this inquiry and sees that this a positive and progressive step towards a respectful and humane process of assisting asylum seekers. It is acknowledged that border control measures are necessary, but they should never perpetuate the persecution already experienced by many fleeing their homeland. Additionally, additional suffering and trauma should never knowingly be inflicted on those seeking asylum. Coinciding with these initiatives, we see a need for the Australian government to work with the international community to address the economic, social and environmental factors that lead to asylum seekers needing to leave their homeland. Thank you.

ACTING CHAIR—Thanks very much, Mr Calver. Can you elaborate on your role in detention centres.

Mr Calver—We actually have quite a small role in detention centres. We are contracted to the Department of Immigration to provide the IAAAS legal advice service and we are one of the contractors in WA who are requested to go into the detention centres and provide migration advice support.

ACTING CHAIR—And then the services that you provide to clients outside the detention centres?

Mr Calver—We are an Integrated Humanitarian Settlement Strategy contractor as well, so we provide support services to offshore refugees and to people who are granted onshore refugee status under a 202 visa and things like that. Also, some of our services will support people once they have been granted permanent residency.

ACTING CHAIR—Where do you get your funding from?

Mr Calver—From the department of immigration. We also get funding from different sections of the Catholic Church, and we get a little bit from the education department.

ACTING CHAIR—Because of your connections with the Catholic school system, I would just like to follow on from a question that Senator Hanson-Young asked a previous witness about getting children into school. Is there a program there to assist children of detainees into schools?

Mr Calver—There is a little bit of a program there. We have also found that Muslim schools have been quite supportive of assisting people, certainly from the Muslim community. It is not

overtly supported by the education department, but individual schools themselves have expressed levels of support and willingness to be flexible with people.

Mr ZAPPIA—Thank you for your submission, Mr Calver. I have a question in respect to the comment you made that people should be entitled to be employed or to seek work whilst they are out in the community. Is it your experience that there are jobs out there for them that they would be employed within if people were allowed to get jobs?

Mr Calver—Yes, certainly. To use an example, we assisted some of the Sri Lankan young men who came from Nauru who were released into the community. Within three to four weeks of them being here, some of them had already gained employment, and now probably there are only one or two of the group we worked with who do not have permanent employment. There is a clear need that can be met by people living in the community and certainly there is no shortage of work for people if they are willing and able to do it.

ACTING CHAIR—Do you know if there is any correlation between work and physical and mental health?

Mr Calver—A huge correlation—absolutely massive. Another example is that I have got somebody who we are assisting who, unfortunately, did not get their application in within 35 days and was denied work rights. Certainly his mental health is visibly deteriorating as he goes along. The way he views it is that he is wasting his days. He feels that his worth is just being taken away from him. He sees that being able to contribute to his new community is directly tied to his personal worth and, by not being able to contribute, in a way he feels that he is a burden to the people he is staying with. All of those things contribute to how much he is going downhill.

ACTING CHAIR—What kinds of support services do you provide to someone in that situation?

Mr Calver—At the moment we are providing him migration advice services and things like that. He is getting assistance through being provided with money for food and that sort of thing. We have linked him to the community for social support. We are somewhat limited, because we cannot find him a job, we cannot place him into rental housing and things like that, which are some of the services we can assist with. We try and do as much as we can to keep his morale up and support him in seeing that there is a future for him.

ACTING CHAIR—What about medical services?

Mr Calver—We have assisted him with seeing a GP and things like that, and that is either pro bono or the centres pay those bills for him.

Senator EGGLESTON—You seemed to say that you thought people should only be detained for the period that it took to assess them.

Mr Calver—Yes.

Senator EGGLESTON—What would you expect to be the outcome of that? That there would be a percentage of people who were found to have adverse past histories, medical problems, and the rest would move into the general community—

Mr Calver—Yes.

Senator EGGLESTON—or government-provided community facilities?

Mr Calver—Even if they were found to have, as you say, adverse medical conditions, that should not mean that they need to be segregated from the rest of the community.

Senator EGGLESTON—Also, adverse history in terms of criminal records.

Mr Calver—Yes.

Senator EGGLESTON—Not establishing identity.

Mr Calver—Yes.

Senator EGGLESTON—Dubious political connections.

Mr Calver—Yes. That is a grey area. I say in our statement that it is 'a threat to themselves or to the community', so they do not necessarily need to be a threat to the rest of the community but just a threat to themselves, where, I guess, a very contained environment is the best support that they can get.

Senator EGGLESTON—Do you think that the government should abolish the excision of various islands around our coast from the immigration area?

Mr Calver—Yes, most definitely.

Mr RANDALL—Why?

Mr Calver—Why? Are we talking in the sense of actually detaining people on those islands?

Mr RANDALL—Landing on them.

Mr Calver—Answering that goes a bit beyond my level of experience. Certainly I think it should be abolished as a place for detaining people, but I do not have the understanding of the international ramifications of barriers and boundaries and things like that to be able to answer that question.

Senator EGGLESTON—The government has issued these seven criteria under which they would like to see a different system of management—the seven immigration detention values and reforms announced by the minister for immigration—but they did not include the previous government's policy of excising islands. Do you think that is inconsistent?

Mr Calver—No. Maybe I am getting off-track, but the way I see it, including those islands is trying to have their cake and eat it, and in that respect they are trying to prevent people from getting to the next barrier to being allowed into the country. The way they are viewing it is that, if they land on Ashmore Reef or Christmas Island and all those sorts of areas, they are not going to allow people to get that one step closer.

Senator EGGLESTON—Centrecare provides lots of general support services to refugees, but what about specific mental health services—psychiatrists, psychologists?

Mr Calver—We have a counselling service specifically for our IHSS service clients. Unfortunately, that does not stretch to people beyond the IHSS service, but everybody who comes through that service set-up is entitled to an assessment and an ongoing counselling service for the duration of the IHSS and then they are referred on to other services if they require it. Centrecare, as a counselling organisation, does have lots of mainstream services. We do domestic violence counselling, we do family relationships, all those sorts of things. If we come across clients who are eligible in some way, or those services are appropriate for them, we will certainly refer them internally to that.

Senator EGGLESTON—Would you use private doctors, general practitioners, for example, if you felt somebody was depressed?

Mr Calver—We certainly do. In WA there is actually a really good ethnic community mental health service and there is a program called ‘access mental health’. If people need psychiatric assistance beyond just general counselling and psychological support, they can be assisted by that program to access mainstream services.

Senator EGGLESTON—That has been raised as a major issue. Would you feel that those sorts of community based services are adequate to deal with potential mental problems?

Mr Calver—They meet the needs in terms of the quality of the service they provide, but not necessarily in the quantity. They do an excellent job for the people they can help, but they cannot necessarily help everybody who needs it.

Senator HANSON-YOUNG—Given that Centrecare works with non-lawful arrivals, in terms of asylum seekers who do not come through the offshore humanitarian program, and yet you work with the humanitarian program as well, do you think we have created a two-class system of refugees?

Mr Calver—No, I do not. I view everybody as being an individual and if they have a need for assistance, irrespective of how they come to have that need, that need should be met.

Senator HANSON-YOUNG—You do not think that we treat people differently, though, based on—

Mr Calver—Most definitely.

Senator HANSON-YOUNG—That is my point.

Mr Calver—Yes.

Senator HANSON-YOUNG—The two-class system is the terminology that other people have used to try and distinguish that there are different services and levels of support given to people, depending on whether they came on planes or boats or whether they were booked to come here beforehand.

Mr Calver—Most definitely. The IHSS service is a good example of how that is structured, in that people who come through the detention centre and are released or given permanent residency through that process—who have come in illegally, been assessed and go through that—are given one visa class which entitles them to one level of service and people who come in through the offshore process are given a different visa class which entitles them to a more comprehensive level of service. So within the one process there is a differentiation. Yes, there is definitely a hierarchy of who is considered more deserving. That probably is the wrong way of putting it, but yes.

Senator HANSON-YOUNG—Have you had much to do with people who have been released from detention and have detention debts?

Mr Calver—Not that I know of, no. We probably have had clients, but I have not become aware of their detention debts.

Senator HANSON-YOUNG—In terms of the minister's announcements and the seven principles or values that have been outlined, are you starting to see some changes?

Mr Calver—Yes, most definitely.

Senator HANSON-YOUNG—What changes?

Mr Calver—The most obvious was the abolishment of the Pacific solution. That was a clear indication that there was a need for change within the structure, but also the move is more away from a border protection, isolate-Australia-at-all-costs sort of structure to recognising that people are coming here for a reason. They do not make these decisions lightly. In view of that, there needs to be a level of dignity and respect that is put into the process that supports them.

Senator HANSON-YOUNG—Do you feel that that is a sentiment or an attitude that is being reflected within the detention centres now?

Mr Calver—Yes.

Senator HANSON-YOUNG—Even though the personnel have not changed?

Mr Calver—No. Anecdotally, what I have heard from our staff who do go into detention centres is that there has been a shift in the willingness to assist people beyond the bare minimum, beyond the rigid structure.

Senator HANSON-YOUNG—That is good to hear.

Mr RANDALL—I would like to say at the beginning that I am aware of the work that Centrecare Migrant Services does and I would like to congratulate you. The Commonwealth moneys that you receive are very well spent, given the work you do on the ground with a whole range of migration issues and resettlement. I have had the opportunity to work with some of your members in terms of potential constituents—because some of them are not Australian citizens, obviously—in my electorate. Evidence was given previously that successive Australian governments have been racial in their treatment of migrants through the humanitarian stream or unlawful arrivals. Would you agree with that?

Mr Calver—I would not necessarily say racist, but the level of attention paid to some groups has been higher than others. The way that the laws or the processes have been enforced against some have been perhaps harsher than others.

Mr RANDALL—Can you give us an idea of the groups you are talking about.

Mr Calver—I am talking about the Afghans. I have worked with somebody who was actually an interpreter on Nauru with the Afghan community while they were detained there. Certainly, from what my colleague says, the level of scrutiny placed on them, the level of interrogation and investigation into their past history and their connections, seemed to be a lot higher. Again, that is just what I have heard through my colleague.

Mr RANDALL—Would you consider getting your colleague to give evidence to this committee?

Mr Calver—I could do, yes.

Mr RANDALL—That would be good. Are you aware of the abuse of any of the people that we are talking about whilst in detention?

Mr Calver—Not directly, no. When you say 'abuse', are you talking about the physical side of—

Mr RANDALL—Ill treatment, mistreatment, lack of resources.

Mr Calver—No, certainly not that I have heard.

Mr RANDALL—I know that you settle a lot of people into housing accommodation. Given the fact that there are something like 18,000 people on the waiting lists in Western Australia for public housing, I know you must find that difficult. How do you cope with that?

Mr Calver—We barely keep our head above water, is the short answer.

Mr RANDALL—So what do you do?

Mr Calver—Ninety-nine per cent of our clients will go into private housing, so we rent through private owners. We have a team of four staff who basically, by any means possible, will work to secure properties. Centrecare is an organisation. We will take on leases on behalf of clients. We will pay a month's rent in advance and then the client pays us back so that we can

give incentives to real estate agents. As an organisation, we do whatever we can to break down those barriers that a house owner would put up against renting to somebody who does not have a rental history or a job or English and those sorts of things.

Mr RANDALL—Finally, I will agree with my colleague, Senator Eggleston. The ability of people, once their status has been ascertained, to have work rights certainly does help their mental progress and their ability to become citizens involved in a country that they wish to become a member of. Do you see this in any way interfering with some of the Centrelink entitlements, or can they run parallel? That is what I am asking in a very genuine way, because I think it is highly desirable that they work.

Mr Calver—It can run parallel. Certainly a lot of the clients that we work with have a very high fear factor in regard to getting on the wrong side of Centrelink and those sorts of things, or getting themselves into a position where they are going to be denied benefits in the future. So they are more diligent in making sure they stick to the regulations in that regard.

Mr RANDALL—Thank you. Congratulations on the work you do.

Mr Calver—Thank you.

ACTING CHAIR—Thank you very much, Mr Calver, for your submission and for taking the time to appear before us today. We appreciate it.

Mr Calver—Thank you.

Resolved (on motion by **Mr Randall**):

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

Committee adjourned at 12.58 pm