Submission to the Joint Select Committee on Australia's Immigration Detention Network

Terms of reference (s) any other matters relevant to the above terms of reference

Fisher Dore Lawyers and several other solicitors and barristers in Queensland and throughout Australia are working on cases in which persons who assert that they are under 18 years of age have been arrested and charged as adults in relation to alleged offences against the *Migration Act* 1958 (Cth). In each case, the person has been detained in an Immigration Detention Facility under the *Migration Act* before being charged.

It is common in these cases for the Australian Federal Police to have relied on a radiologist's opinion in relation to an x-ray of the suspect's wrist. The AFP's view is that such reports may be relied upon to establish whether the suspect was over 18 years of age at the time of the alleged offence.

In many cases finalised over the past six months, the charges have been dropped by the Commonwealth Director of Public Prosecutions after defence lawyers assembled expert reports and documentary evidence to support a submission that the AFP's radiologist opinion could not be relied upon to prove adulthood to the requisite evidentiary standard.

The x-ray assessment technique relied on by the AFP was discussed at pages 30 and 31 of the transcript of the Committee's proceedings on 16 August 2011:
http://www.aph.gov.au/hansard/joint/commttee/j227.pdf

DIAC apparently does not consider the technique to be appropriate for use in determining questions connected to immigration detention. The AFP however, rely on the technique in deciding whether or not to charge a suspect as an adult in the criminal courts, which charges expose the suspect to a mandatory minimum gaol term of five years with a non-parole period of three years on conviction.

The DIAC position, reflected at page 30 of the transcript of the Committee's proceedings on 16 August 2011 [above] appears to reflect that the AFP's wrist x-ray technique has been discredited by internationally recognized experts in the field. A leading expert among them is Prof. Sir Albert Aynsley-Green, Professor Emeritus of Child Health, University College London; Director, Aynsley-Green Consulting; and former Children's Commissioner for England, whose report is enclosed with this submission.

Sir Al has been a paediatric endocrinologist for 30 years and is recognized as a leading expert in relation to age assessment issues in the UK and Europe. As Children's Commissioner for England, Sir Al was instrumental in persuading the government of the United Kingdom to discontinue using wrist x-rays for age assessment purposes, a position which was reiterated in a House of Lords Debate in London in March 2011 by Lord West, the Government Minister who stated *'…it was absolutely agreed not to do so (i.e. take X-rays). There is no intention for us now to do that'.* Sir Al was knighted in 2006 for services to child and young people. His qualifications include:

- MA, MB.BS, D.Phil, Dhc, D.Univ, DCL(Hon), MD(Hon), FRCP(London and Edinburgh), FRCPCH, FMedSci, FRSA, FFPH(Hon);
- Honorary Fellow of UNICEF and Oriel College, University of Oxford;
- Former Secretary General and President of the European Society for Paediatric Endocrinology; and
- Andrea Prader Prize recipient of the European Society for Paediatric Endocrinology.

Other submissions demonstrating the unreliability of the wrist x-ray technique include:

1. A May 2007 report authored by Prof. Heaven Crawley, for the UK Immigration Law Practitioners' Association and entitled, "*When is a child not a child? Asylum, age disputes and the process of age assessment*": http://www.ilpa.org.uk/data/resources/13266/ILPA-Age-Dispute-Report.pdf [see especially pages 29, 30, 34 and 36 of the report and the studies cited therein];

2. An April 2011 United Nations Children Fund [UNICEF] Discussion Paper entitled, "*Age assessment practices: a literature review & annotated bibliography*": http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf [see especially pages 13 to 15 of the report and the studies cited therein]; and

3. A 2011 resource paper prepared by Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeothe, for the UK Immigration Law Practitioners' Association and entitled, "Working with refugee children: Current issues in best practice": http://www.ilpa.org.uk/data/resources/13326/ilpa_wking_w_refugee_chldrn_May2011.pdf

What this material demonstrates is that the wrist x-ray age assessment technique favoured by the AFP is "inaccurate" and "not fit for purpose proposed". The Committee may consider that conclusion is also supported by the number of cases in recent months in which charges have been dropped after defence lawyers obtained evidence to support a conclusion that the AFP-obtained wrist x-ray opinion could not establish adulthood to the requisite standard. This of course raises a grave concern about what may be the fate of suspects whose defence lawyers have been unable to assemble such material, for example because of the remoteness of the suspects home village in Indonesia, or because relevant experts had not been identified in Australian research.

We submit that the Committee may wish to consider the approach taken by DIAC in relation to age determination, and contrast it with the approach of the AFP. We submit that this falls within the terms of refence becuae suspects who have been subjected to a wrist x-ray opinion are routinely held in immigration detention until the AFP is ready to lay charges, and are normally returned to immigration detention while the Commonwealth DPP considers the material that is ultimately assembled by defence lawyers.

Yours faithfully,

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