

**Opening Statement to the Senate Standing Committee on Legal and
Constitutional Affairs inquiry into the
*Migration Amendment (Immigration Detention Reform) Bill 2009***

Friday 7 August 2009, Sydney

**Mr Andrew Metcalfe
Secretary, Department of Immigration and Citizenship**

Thank you Chair. I thank the Committee for inviting the Department of Immigration and Citizenship to make a submission and to appear before the inquiry into the *Migration Amendment (Immigration Detention Reform) Bill 2009*. I would like to make a brief opening statement if I may.

I am assisted today by Mr Peter Hughes PSM, the Deputy Secretary responsible for the Department's compliance, refugee, multicultural affairs and citizenship activities, Mr Bob Correll PSM, the Deputy Secretary responsible for community and detention services, border security, systems and business transformation activities, Ms Alison Larkins, First Assistant Secretary Compliance and Case Resolution Division, Ms Jackie Wilson, First Assistant Secretary Community and Detention Services Division, Mr Robert Illingworth, Assistant Secretary Compliance and Integrity Policy Branch, and Mr Ian Deane, Special Counsel, who has extensive knowledge of the Migration Act and the provisions in this Bill.

Collectively the officers here today have leadership of our detention and compliance programs and are key to the implementation of the Government's seven key immigration detention values.

The seniority of our witnesses reflects the significance the department attaches to this Bill, and our desire to assist the Committee comprehensively given the relatively short time you have to consider these very important issues.

As you well know, Australia is a country built on migration. Since 1945, Australia has welcomed nearly seven million migrants, including about 700 000 refugee and humanitarian arrivals. Hand in hand with these significant migration and humanitarian programs are other arrangements that allow visitors, students and temporary workers to

come to Australia. Migration and humanitarian entry will continue to build and enrich Australia in the decades ahead.

By international standards Australia has extremely effective and robust immigration arrangements and controls. Well over 99 per cent of temporary entrants to Australia comply with the requirement to leave Australia before their visas cease. Many of those who become unlawful will leave of their own volition shortly after their visas expire and without need for Departmental contact.

The Government's key immigration detention values, announced by the Minister on 29 July 2008, marked a significant development in the management of the small proportion of non-citizens who do not comply with their visa conditions and seek to stay in Australia when they have no right to do so. These values and related Government policies affirm the Government's commitment to strong border control, maintenance of an architecture of excision and mandatory detention of certain cohorts of unlawful non-citizens.

Significantly, the Government's key immigration detention values also reflect a concern to treat people with humanity – and in particular to give greater recognition to the vulnerabilities of children.

Our submission to the Committee outlines the substantial progress which has been made in the last 12 months in the administrative implementation of the values within the existing legislative framework.

The Bill seeks to codify in legislation key principles and provisions which will allow the immigration detention values to be implemented more broadly. The Bill will be complemented by existing and newly expanded case management and resolution services, new service providers for the provision of services in detention, and strengthened oversight of detention through senior officer and new Ombudsman reviews of detention, as well as associated Regulation change.

The Bill affirms the principle incorporated into the Migration Act in 2005 that children will be detained only as a last resort - and it adds further principles which will apply throughout Australian territory, including on excised offshore places.

The Bill also articulates the groups subject to mandatory detention and emphasises the risk management basis of detention.

Lastly, the Bill creates avenues for more flexible management of detention outside a traditional detention facility setting – provided appropriate risk assessments have been satisfied. It would enable the Minister to delegate to the Department the existing power to make residence determinations allowing suitable persons to be detained in a community setting. The Bill would also create a new mechanism – the Temporary Community Access Permission – enabling a suitably risk-assessed immigration detainee to move outside a detention facility for a specified purpose and specified time.

The Bill, and the associated administrative measures, will add to the Department's ability to intervene early in cases and to resolve immigration status. These measures will also add greater transparency, oversight and accountability around both the decision to detain and the decision to continue detention.

The reforms in the Bill will complement Australia's strong and effective border management to ensure our immigration detention system protects the Australian community while also treating people in detention humanely and with the dignity they deserve.

Thank you for giving me the opportunity to make these opening comments to the Committee.

We would be very happy to answer any questions that the Committee might have. Deputy Secretary Hughes and other departmental officers will also be available to answer any further questions you may have at the end of the day.