

National Inquiry into Children in Immigration Detention 2014

Sydney Public Hearing

Thursday, 31 July 2014

President	I now may like to call Mr Greg Lake to give evidence. Thank you very much.
	<i>swearing in of witness</i>
Ms Sharp	Mr Lake could you state your full name for the record please?
Mr Lake	Yes, Gregory Alwyn Lake.
Ms Sharp	You were formally employed by the Department?
Mr Lake	That's correct.
Ms Sharp	When did you commence employment with the Department?
Mr Lake	January 2008.
Ms Sharp	Now in 2012 is it correct that you worked on Nauru?
Mr Lake	2012/13.
Ms Sharp	What was your position at that time?
Mr Lake	The Director of the Regional Processing Centre on Nauru.
Ms Sharp	And what were your key responsibilities there?
Mr Lake	Overall management of the Immigration Operations on Nauru.
Ms Sharp	Now did you go to Christmas Island at some stage?
Mr Lake	I spent most of 2010 on Christmas Island and a bit of January 2011.
Ms Sharp	And what was your role there on Christmas Island?
Mr Lake	Initially for the first few months as a Media Officer but from May until 2011 as the Centre Operations Director.
Ms Sharp	And you no longer work with the Department?

Mr Lake	No my resignation took effect in April last year.
Ms Sharp	And at the time you resigned you were working as the Director at Nauru?
Mr Lake	Correct.
Ms Sharp	Can I just ask you a few questions about something that is known as alternative place of detention. It's sometimes called an APOD. What is an APOD?
Mr Lake	The idea of an APOD is that it is not a full immigration detention facility in that its designed with lower security requirements to be a much more free moving place and be a lot less imposing in a security sense than a detention centre itself and so it's an alternative place of detention because its designed to be less intrusive in terms of the liberties that it deprives you of. However, someone in an APOD is not free to move in or out of that APOD facility freely.
Ms Sharp	Is it correct that an APOD can look pretty much like an immigration detention centre?
Mr Lake	APODs can look like any number of things. It can be everything from a hotel room for one night all the way through to yes some relatively high security even if it looks different and some of them look very much like detention facilities yes.
Ms Sharp	Now were you at Christmas Island when Phosphate Hill became an APOD?
Mr Lake	Correct yes I was.
Ms Sharp	Did that differ in any way from your standard immigration detention centre?
Mr Lake	Phosphate Hill originally was an immigration detention centre and the difference between the conditions when it was made an APOD and when it had been operating as a detention facility a few years earlier was simply the removal of a fence otherwise conditions internally weren't any different at all.
Ms Sharp	Now that fence was removed but were people free to come and go as they pleased?
Mr Lake	Not at all. Another fence replaced it. They're call pool fences like what you see around the average swimming in a backyard in Australia.
Ms Sharp	What about Construction Camp, were you at Christmas Island when that became an APOD?
Mr Lake	It was already an APOD when I arrived.
Ms Sharp	And did that differ in any significant way from an ordinary immigration detention centre?

Mr Lake	I would say Construction Camp looked more like an immigration detention centre than Phosphate Hill with the egress and entry facilities managed through double gates and things like that. So it was a much more restricted border or perimeter security facility.
Ms Sharp	In your experience in working with the Department, does the designation of a place as an APOD take into account what the needs of children might be who are going to be accommodated in that APOD?
Mr Lake	I suppose informally APODs can be split into two groups. One of them is a temporary APOD if you like so like the hotel rooms set up where, for example, someone might be in transit through to a hospital to see a specialist or something, you set up an alternative place at the detention for them to stay overnight. Usually they are a hotel room or a motel. What we saw on Christmas Island falls into the other category which is a more long term period of detention or a place which is designed. I use that term loosely designed to facilitate people longer term and what Construction Camp and Phosphate Hill were, in my view, inadequate facilities for that. I don't know if that answers the question but does it give you a bit of a sense of some of the differences between the APODs and whether or not they're adequate facilities at all.
Ms Sharp	When you say they were inadequate, can I ask this question specifically? Do you consider that the Phosphate Hill APOD or the Construction Camp APOD was suitable environments for children?
Mr Lake	I think if you'd asked the Department that they would say yes and in my experience one of the things we did on Christmas Island in 2010 was work as the Secretary for the Department said, to benefit the well-being of people in detention. Unfortunately the reality of both the shift in policy towards a deterrence and an unwillingness to spend money to actually build a more constructive and facilitating environment for children and families and other members in that facility and also the numbers increase that the secretary mentioned, the physical environment itself being in a location which is difficult to build an appropriate environment. All of those factors, even though you try really hard, mean that it's completely inadequate in my view.
Ms Sharp	Now there were formerly two compounds on Christmas Island where children were detained, known as the Aqua and Lilac compounds. Are you familiar with them?
Mr Lake	Yeah, interestingly Aqua and Lilac were originally constructed as an extension to the North-West Point Immigration Detention Centre, not as an APOD and it was only subsequent to their build, design, construction, everything that it was decided they may well be used for children and women, meaning that it was designed as an immigration detention centre and it just basically got used as an APOD even though the facility was never constructed with children in mind.

Ms Sharp	And children were accommodated at the Aqua and Lilac compounds?
Mr Lake	Not during my time on Christmas Island but it's my understanding they were subsequently.
Ms Sharp	Incidentally can you tell us how those compounds came to be named Aqua and Lilac?
Mr Lake	Ah, yes, I think it's quite ironic. At the time when they were being constructed was when I was up there as centre operations director and the wet season on Christmas Island, it's a tropical place, the wet season is actually pretty spectacular in its own way. The amount of water that comes out of the sky in a place like that is phenomenal and the facility had a sort of tendency to flood, so that during the construction phase the trucks would be working in mud. And in fact it was occupied by single adult male detainees during the final period of that construction. So there's men living in detention with construction going on around them in a flooded and muddied environment and so during that construction phase it was actually bit of a joke internally that we started just referring to the construction reports as Aqua and Lilac, Aqua being the first one that came about known because of its flooding and Lilac because of the kind of irony about the colour Lilac, kind of flowery but actually it was the exact opposite of the conditions there. And I don't know how it happened but it took on a life of its own and ended up being formally named that.
Ms Sharp	Now you were the director of Nauru offshore processing centre, is that right for a particular period?
Mr Lake	That's correct.
Ms Sharp	I wanted to ask you now a little bit about the transfer of detainees to Nauru and also a little bit about the pre-transfer process if I could. Now, it's the case isn't it that before any detainee is sent to Nauru they have to go through what's called a pre-transfer assessment?
Mr Lake	Correct.
Ms Sharp	And that involves the health services provider IHMS conducting an assessment of the physical and mental health of the particular detainee?
Mr Lake	I should, just before answering that say my role before Nauru was as the Director of offshore processing and transfers and it was in that capacity that I was involved with pre-transfer assessment work. It was a Canberra based role and so I wasn't on the ground during the conduct of those pre-transfers, however I was involved working with the policy areas and the children division which Katie Constantinou heads up the branch. In constructing how that pre-transfer might work, there were a lot of people

	<p>in the Department involved in what needs to be involved in a pre-transfer decision. It's not actually a decision but effectively what it does is it says immigration officers post 2012 August 13 are required by law to transfer people to a detention centre. That transfer is not a decision made by an officer. Instead they are compelled to do it. So the question is about whether it is reasonably practicable to do that and the pre-transfer assessment was designed to find out whether or not the person is actually subject to that transfer, which is usually pretty straightforward, it's based on their arrival date and then whether or not it's reasonably practicable to transfer them. That encompasses a number of things including for example whether facilities and services available in the country that are being transferred to are adequate to support their needs. It also looks at questions like does it split families, is the person's physical or mental health condition likely to be able to be adequately supported in the location they're transferred through. So that's the idea of the pre-transfer assessment. And one of the things we explored was whether or not you can actually execute the transfer of children at the same time as executing your guardianship responsibilities and look at that question in their best interests.</p>
Ms Sharp	<p>And what findings did the Department come to in that context?</p>
Mr Lake	<p>The Department looks, I think worked very hard and I actually think did a good job of trying to explore ways to make sure protections were in place to ensure the obligation to the rights of the child in making an assessment about what it would be like when they arrived on Manus and Nauru, and unfortunately that resolution was elusive. I don't think we ever got to a point where, as a Department, we could say yes, we can both work in the best interests of a child in providing adequate care and services and at the same time execute that obligation to transfer them. So the result has been that we now say, that the Department now says I'm not part of that any more. That the Department says we take the best interests of a child as a primary consideration but not the only consideration. I think that's evidence that you've been given before and I think that evidence is true and it reflects an attempt to try and reflect concern for children's wellbeing, but an attempt that they're realised in the current policy and legal framework is impossible.</p>
Ms Sharp	<p>And just one more question while we're talking about the pre-transfer assessments. It is the case that IHMS has a role in looking at the physical and mental health of the detainee for the purpose of the transfer assessment, is that right?</p>
Mr Lake	<p>It is. There's another part to that, I suppose, in that IHMS both own the contract for health and medical services on Christmas Island and mainland detention facilities, but also in the country of processing and regional processing centres, and I think there is a question to be asked about whether that creates a conflict. You know, they can say, yes you can provide services on Manus and Nauru, and incidentally if you choose to transfer them you're going to be paying us to provide that service. So I</p>

	<p>actually don't think that organisationally they are in a position to say, yes you can transfer them because they actually stood to benefit from their transfer despite the medical condition of a person. That's not to say that individual IHMS officers might not have expressed concern as part of that pre-transfer committee, which is the group who sit down and say is there any hindrance to this transfer on the basis of reasonable practicability.</p>
Ms Sharp	<p>When IHMS had expressed concerns about the physical or mental wellbeing of a detainee when this pre-transfer assessment was going on, were you aware of situations where those concerns were ignored and the detainee was transferred anyway?</p>
Mr Lake	<p>I'm aware of situations where they were transferred anyway. Not because they were ignored, but because they were considered not to be of sufficient weight to prevent the transfer. In other words, the challenges involved in providing medical services to the individual on Manus or Nauru didn't outweigh the reasonably practical tests, so they said you're still subject to transfer, and in fact many of those people have then subsequently been brought back to Australia for treatment in Australia because those services, it turns out, weren't adequate.</p>
Ms Sharp	<p>When you were at Christmas Island, are you able to tell us what kind of notification was given to people when they were going to be transferred onshore?</p>
Mr Lake	<p>Onshore or offshore?</p>
Ms Sharp	<p>Offshore or onshore.</p>
Mr Lake	<p>Okay, onshore is a lot easier, not a lot of notice at all. Effectively, it's an operational pattern, so when people wake up they then go through, you know, collecting their property, being made aware of where they're going to be going. The first thing is they're extracted in an extraction process from the detention facility. For an onshore operation it's usually just based on when the flight's going, when the charter flight will be taking them to the Australian mainland. For an offshore transfer to Manus or Nauru, there's a period of time after the extraction from the detention facility and before their transfer in which there's not a lot that happens but there's a waiting period in order to afford them an opportunity should they have contacts, and an opportunity to contact a lawyer, to do so, but they're never informed that that's what that period is for. So it's a way of kind of demonstrating natural justice without actually affording that justice to them.</p>
Ms Sharp	<p>You've previously told the Commission that while you were the Director of Offshore Transfers at Christmas Island you received a telephone call from the Minister's office about what to look for in children who were going to be transferred offshore to Nauru.</p>

	Could you tell us about that telephone call?
Mr Lake	<p>Yeah, I can. It probably requires a bit of background if that's okay. So my role as Director of Offshore Transfers and Processing involved constructing the criteria on which the people were selected for transfer. Now there's no selection or decision made about whether someone's to be transferred to an offshore processing place. However, if you've got a thousand people in detention and an aeroplane that fits 40 people, you've got to pick which forty. So what we used to do is we'd put a series of criteria and say things like they need to speak these particular languages, they need to be in these family groups so they're either going to be single adult males or people in family groups, or unaccompanied minors or whatever. They need to be people who arrive between a certain date. We might be going for the most recent arrivals or we might be going for people who've been on Christmas Island for some time, and when we were trying to do the first transfer to Manus Island, it was the first opportunity that the Government had had to transfer children because up until then Nauru didn't have regional processing centre 2 or 3 or OPC 2 and 3, and the only facilities provided for men, and because they wanted to send a deterrent message it was important to send some children, to say that children are not exempt from transfer. What happened was, we organised quite a few transfer flights that were aborted for various reasons. Sometimes political sometimes practical such as logs being put over the Manus airstrip so that the airlift couldn't land because of protest action by local people who didn't feel that the presence of a facility on their island would be good for their own wellbeing and economy. Which is a legitimate claim I guess and that put a stop to the flight so we'd organise quite a number of transfers but on the day of the first transfer when we were selecting people for the actual transfer that took place of children so the first time children were sent to Manus or Nauru, I received a phone call from the Minister's office and one of the staff members asked me if the family groups who we have selected using those criteria included any young children. Now one of the criteria that we had was that no children under 7 could be transferred and the reason for that was because the Papua New Guinea government had said no one under 7, no one who can't be inoculated against Japanese encephalitis and malaria could be transferred and at the time our advice from IHMS was that people under 7 couldn't safely be administered with the injection for Japanese encephalitis as a result we couldn't transfer people under 7. However the intention was that no one outside in the public knew that because if they did people smugglers would put people under 7 on boats and actually try and get more people into the country that way and so in order to create a deterrent for all children the age was considered to be something they wanted to blur.</p> <p>So I had a list of families with a number of family groups, some of whom had children who were sort of 7, 8, 9 and my responsibility according to this phone call was to select the children that looked the youngest. And so they asked us to put people in that final group of people for transfer which would send the message that children of</p>

	any age were deterred from transfer.
Ms Sharp	Who was that person you spoke to?
Mr Lake	It was a ministerial staff by the name of [redacted].
President	Thank you very much. You've described it very fluently the processes, you also described to us how Aqua and Lilac were named, because this has always been rather curious for me that such apparently lovely names be used for such appalling circumstances but you've also used that word "extraction". How do words you've explained Aqua and Lilac but how do these other words creep into the way in which you deal and as a relatively young man if I might say, how do you respond to the use of language like "extraction" or contrary language like Aqua knowing that the circumstances are entirely different and its masking something that you might find as a young person inhumane and unacceptable?
Mr Lake	<p>First of all, I am a young person, I am 31 and I don't think the things that I saw are something that only young people would consider to be inhumane. Secondly, I've had 12 months or so out of the Department now and have had a lot of time to reflect and clarify my thinking around the experiences that I had as a young person but someone who had a relatively senior role at the director level and at the same time as somebody who cares deeply about people and what I learned from that period of reflection is that the language is not a strategy in of itself but it is a definitely part of a broader intention to dehumanise. So we heard evidence recently about people using boat IDs instead of names, that came about because in a high level meeting about security at a facility it is not important which client has a particular illness and so instead of we call them clients, that's another language thing, but which client has a particular.... it's not important the individual it's that somebody has that and so to remove or create that arm's length thing what you do is you use boat IDs but then that creeps out and actually turns into quite an advantage in creating that dehumanisation. I mean I think in the political discussion there is a lot of language used for purposes such as illegal and terms like that which is at a political level – I mean I'll talk about that until the cows come home but that's not the point of this inquiry but certainly the way that immigration detention centres are run particularly now under a deterrent framework is designed to construct an environment where people are used as examples to say you're subject to this – it's going to be worse for you to be in Australia than it was to be where you came from. That's the whole point of the deterrence strategy is to say don't come because if you do it will be worse.</p> <p>And a way of doing that without kind of breaking laws but doing it very effectively nonetheless is to remove hope. So by extracting information and saying you don't have access to information about your circumstances we're not going to treat you in a particular way, it's never something you would hear an immigration officer say. An</p>

	<p>individual immigration officer would be very uncomfortable admitting that that's what happens but as you look around and you see the kind of language that we used and even today I still say the word client with very little kind of care it just comes out, its conditioned as part of a system if you like, that I was complicit in and yet it's designed to dehumanise if you remove information about the future for a person they lose hope which gives them that same sense of well it's worse for me to be here it's just as hopeless as it was where I came from now for me that's a nice political statement but actually my experience wasn't in the politics of this I had actually no interest in the politics of this before I started with the Department I landed in the Department almost accidentally because I wanted to move into a government job. I came in from banking I just didn't have an interest, but what I discovered is that organisationally you create a culture which says people aren't valuable, hope is not important and the best deterrent strategy is to remove someone's identity. I feel like the political discussion is nice but I got to see that on the ground and it translates into some very practical things which I understand you've heard evidence on today.</p>
President	<p>Well thank you very much I think that's a very powerful statement in which to finish and we very much appreciate you giving us your time. Thank you very much indeed. Thank you Mr Lake.</p>