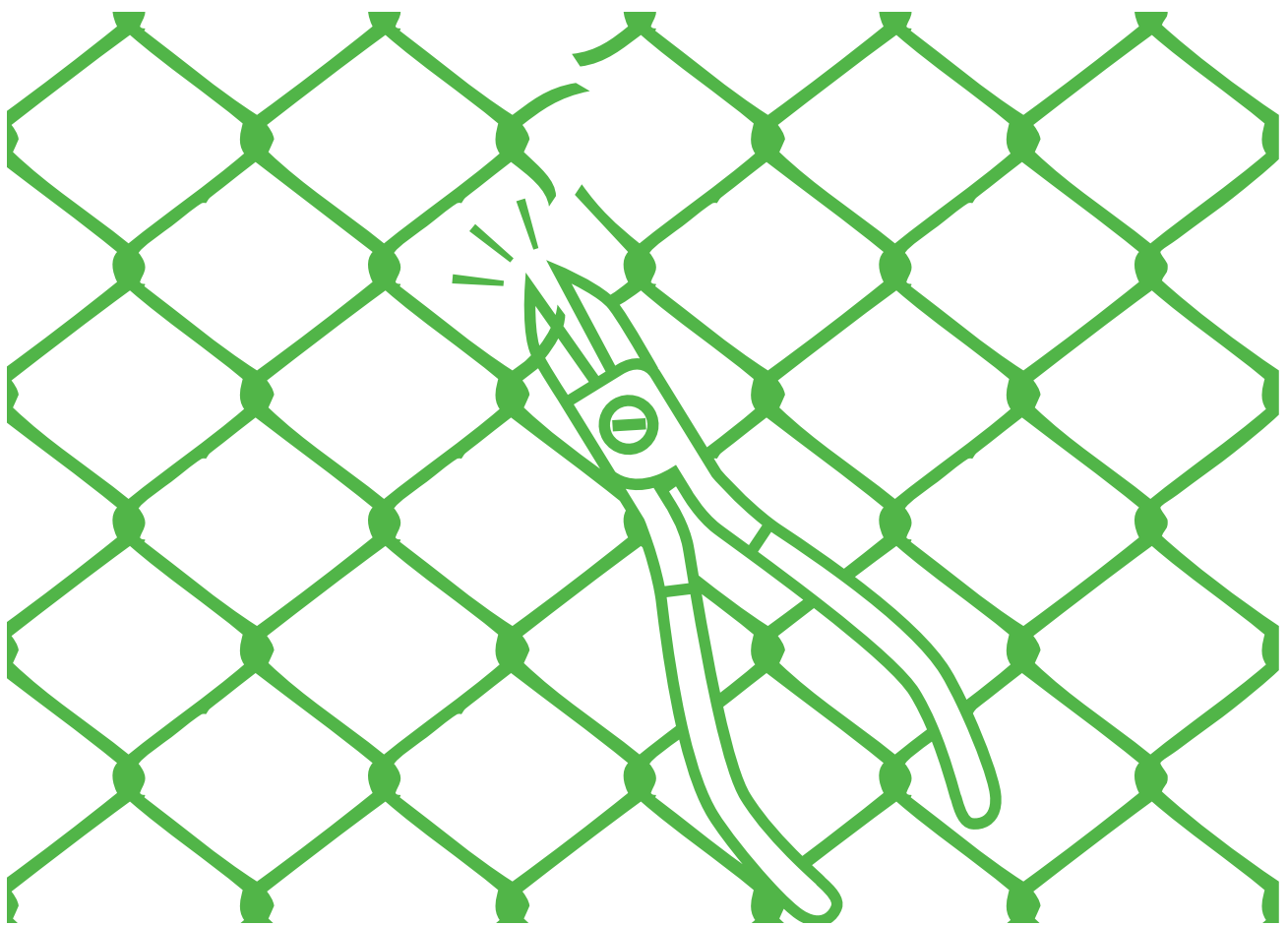


# Help call on HESTA to divest from mandatory detention.



**HESTAdivest.net | @xBorderOps**

June 2015

**HESTA owns almost 5% of the shares in Transfield Services Limited, the company that runs the Australian detention centres on Nauru and Manus Island.** HESTA is using the retirement savings of community services and health workers to help HESTA and Transfield Services profit from the harmful detention of asylum seekers. Please join in calling HESTA to end its role in financing the detention industry and for a complete and permanent divestment from mandatory detention.

## A. HESTA's investments in Transfield Services

HESTA has been purchasing shares in Transfield Services since at least March 2014,<sup>1</sup> when Transfield took over the running of the Nauru and Manus Island detention centres. This was shortly after the first death on Manus Island on 17 February 2014 of Reza Berati, a young Kurdish architect who was murdered by an employee or employees contracted to work at the centre.

HESTA began an acquisitions series of large tranches of Transfield shares on 9 September 2014.<sup>2</sup> Just days prior to this, on 5 September 2014, Manus detainee Hamid Kehzaei was pronounced dead in Brisbane after being on life support for more than a week. Hamid died from a treatable infection contracted while in detention on Manus Island. His was the second death on Manus Island.

Around the same time in September 2014, allegations of sexual abuse of those detained on Nauru, which finally prompted the Moss review, began to be publicly reported.<sup>3</sup> As evidenced in the Moss report, child sexual abuse, sexual assault and egregious mistreatment of men, women and children have been committed by

contracted staff at the Nauru detention centre. Community sector workers whose allegations prompted the review were sacked and threatened with prosecution.<sup>4</sup>

HESTA acquired sufficient shares to become a substantial shareholder (over 5% of the shares) in Transfield Services on 9 December 2014.<sup>5</sup> This significant investment brought HESTA over the threshold and required disclosure of its holdings on the Australian Stock Exchange (ASX). Though its shareholdings have fluctuated since this time, no action has been taken by HESTA in relation to divestment from Transfield Services.<sup>6</sup>

## B. Who makes decisions within HESTA?

The HESTA Board is comprised of the following representatives from employee and employer organisations. Two-thirds of the Board is required to carry a decision.

Independent Chair: Angela Emslie	
EMPLOYEE APPOINTEES	
Brett Holmes (Deputy Chair)	Australian Nursing and Midwifery Federation (ANMF)
Pip Carew	ANMF
Lisa Darmanin	Australian Services Union (ASU)
Lloyd Williams	Health Services Union (HSU)
Kelly Shay	United Voice
EMPLOYER APPOINTEES	
Richard Royle (Deputy Chair)	Australian Private Hospitals' Association
Klaus Zimmermann	Aged and Community Services Australia

1 <http://www.smh.com.au/federal-politics/political-news/australian-services-union-calls-on-hesta-to-divest-funds-from-transfield-services-over-its-links-to-manus-island-20140312-34mle.html>

2 <http://asx.com/news/pdfs.fairfaxmedia.com.au/2014/12/11/01583858-214359584.pdf>

3 <http://www.smh.com.au/federal-politics/political-news/detention-centre-child-sex-abuse-claims-number-in-dozens-20140930-10o7pv.html>

4 <http://www.abc.net.au/news/2015-03-20/no-evidence-charity-workers-lied-about-nauru-assaults-report/6336446>

5 <http://www.asx.com.au/asxpdf/20141211/pdf/42vdmfyt9d3hh.pdf>, announced 11 December 2014.

6 As at 27 February 2015, HESTA holds just under 5% of shares in Transfield Services with over 23.5 million shares. <http://tse.live.irmau.com/IRM/Company/ShowPage.aspx/PDFs/1965-10000000/Ceasingtobeasubstantialholder>

Maree O'Halloran AM	Australian Council of Social Service (ACOSS)
Dr Deborah Cole	Australian Healthcare and Hospitals Association
Gary Humphrys	Catholic Health Australia
Valerie Lyons	Leading Aged Services Australia

Many of these organisations have already taken a position against the detention of asylum seekers.

- June 2014: The ANMF re-endorsed its opposition to the use of off-shore detention centres, the detention of children and the refusal of settlement in Australia as a deterrence policy.<sup>7</sup>
- April 2014: The ACOSS Board “reaffirms our previous strong opposition to offshore processing and mandatory detention.”<sup>8</sup>
- March 2014: The ASU National Executive passed a motion calling on HESTA to divest from Transfield Services.<sup>9</sup> The motion stated:

*Social and community workers do not want their retirement savings used to support a system of mandatory detention of asylum seekers and believe it is immoral for corporations to profit from the indefinite and inhuman detention of other human beings. We also note that Transfield has no experience or background in welfare. We undertake to advocate this position to HESTA Board and to also provide our members with information on how to take individual action to ensure their money is not being invested in Transfield by exercising investment choice within the fund.*

Despite this strongly-worded motion, there has not been any further publicly available

7 [http://anmf.org.au/documents/policies/PS\\_Refugees\\_asylum\\_seekers.pdf](http://anmf.org.au/documents/policies/PS_Refugees_asylum_seekers.pdf)

8 [http://www.acoss.org.au/media/release/the\\_acoss\\_board\\_stands\\_with\\_refugees\\_and\\_asylum\\_seekers](http://www.acoss.org.au/media/release/the_acoss_board_stands_with_refugees_and_asylum_seekers)

9 <http://www.smh.com.au/federal-politics/political-news/australian-services-union-calls-on-hesta-to-divest-funds-from-transfield-services-over-its-links-to-manus-island-20140312-34mle.html>

information of the ASU’s actions for divestment.

- May 2015: The Australian Council of Trade Unions, which until March 2015 held a position on the HESTA Board, called for the closure of offshore detention centres such as the centres on Manus Island and Nauru, condemned the indefinite detention of asylum seekers and refugees including children, and condemned the outsourcing of detention services.<sup>10</sup>
- In addition, organisations such as Uniting-Care and the Welfare Rights Centre, with which other HESTA Directors are affiliated, have passed motions specifically condemning offshore processing and mandatory detention.<sup>11</sup>

## C. What is HESTA's position on Responsible Investment?

HESTA recognises that environmental, social and governance (ESG) factors are important to an investment’s long-term value.<sup>12</sup> HESTA adopted an ESG policy in January 2013 which states:

*HESTA sees the incorporation of ESG factors into the investment processes and decision making as entirely consistent with HESTA’s fiduciary duty to act in the best interests of fund members. In fact, across all ESG issues HESTA believes that good performance will deliver superior returns over the long-term and that poor performance constitutes a risk that must be taken into account in investment decisions.<sup>13</sup>*

10 <http://www.actu.org.au/actu-congress-2015/congress-policy-resolutions/a-fair-go-for-all-policies/asylum-seekers-and-refugees-a-rights-based-approach-final-policy>

11 [http://www.acoss.org.au/policy/law\\_justice/community\\_sector\\_statement\\_on\\_asylum\\_seeker\\_malaysia\\_deal\\_high\\_court\\_ruling/](http://www.acoss.org.au/policy/law_justice/community_sector_statement_on_asylum_seeker_malaysia_deal_high_court_ruling/)

12 <http://www.hesta.com.au/why-join-hesta/responsible-investment.html>

13 <http://www.hesta.com.au/Media/docs/HESTA-ESG-Policy-Final---PUBLIC-da586425-6c98-455c-b1cf-7e0bc6893ddd-1.PDF>, Page 5.

HESTA also adopted an Active Ownership Policy in September 2014 where it outlined its commitment to being an active owner in incorporating ESG issues in its ownership policies and practices. It reiterated:

*HESTA believes that ESG issues have the potential to impact investment risks and returns and that being an active owner and considering these issues alongside traditional financial and business risk factors in our ownership practices can improve long-term risk-adjusted returns to our members.<sup>14</sup>*

Regarding divestment, HESTA has stated the following:

*Generally, HESTA does not seek to divest companies in response to ESG issues, considering that it may be more effective to use the tools available to active owners, including engagement and voting, to influence a company to appropriately and adequately address ESG issues. Where this is the case active ownership may lead not only to improved performance at the asset level, but has the potential to result in improved performance across the market.*

***However, in some cases, HESTA has determined that divestment on ESG grounds may be appropriate. These cases include where a company is involved in an activity where the associated ESG issues are such that any investment in the company is inconsistent with HESTA's strategy or policy, or is assessed to be unsuitable from a financial or reputational perspective.<sup>15</sup>***

(our highlights)

Indeed, HESTA has already imposed some portfolio-wide investment restrictions and exclusions related to ESG issues: specifically, on tobacco and thermal coal.<sup>16</sup>

<sup>14</sup> <http://www.hesta.com.au/Media/docs/HESTA-Active-Ownership-Policy-13873254-519a-4ec4-8466-43e68fa3eaf6-3.PDF>, Page 4.

<sup>15</sup> Ibid, Page 5.

<sup>16</sup> [http://www.hesta.com.au/media/docs/6235INVESTMENT-CHOICES-FEB15-WEB-EDITABLE-a9050b00-6d96-4484-](http://www.hesta.com.au/media/docs/6235INVESTMENT-CHOICES-FEB15-WEB-EDITABLE-a9050b00-6d96-4484-95da-88b8e7babce-11.PDF)

It should be obvious that just as there is no question of 'best practice' in the tobacco industry or thermal coal in an era of climate change, **there can be no question of 'active ownership' to influence companies, like Transfield Services, that profit from an industry based on the detention of asylum seekers.** Just as we know that tobacco use is statistically likely to cause disease, we also know unequivocally that the detention of asylum seekers causes harm with a similarly statistical, foreseeable regularity.

Additionally, asylum seekers who have not committed a crime nor have been charged with any are being detained mandatorily and in Australia, for extremely prolonged periods of time, in a clear abuse of their human rights to seek asylum. **The mandatory detention of asylum seekers is an abuse of human rights, one of the ESG social factors.** HESTA can and should not invest in the mandatory detention industry through companies like Transfield Services.

## **D. Transfield Services: a financial risk as well as a moral hazard**

Even from a financial perspective, holding shares in Transfield Services seems imprudent. The following diagram<sup>17</sup> gives a sense of how badly Transfield Services has been performing as a company since it became a major provider of operational and facilities management services at detention centres in early 2013.<sup>18</sup> **Transfield Services' share price has both declined and underperformed relative to other share price indices, such as the ASX 100 as per the blue line in the chart.**

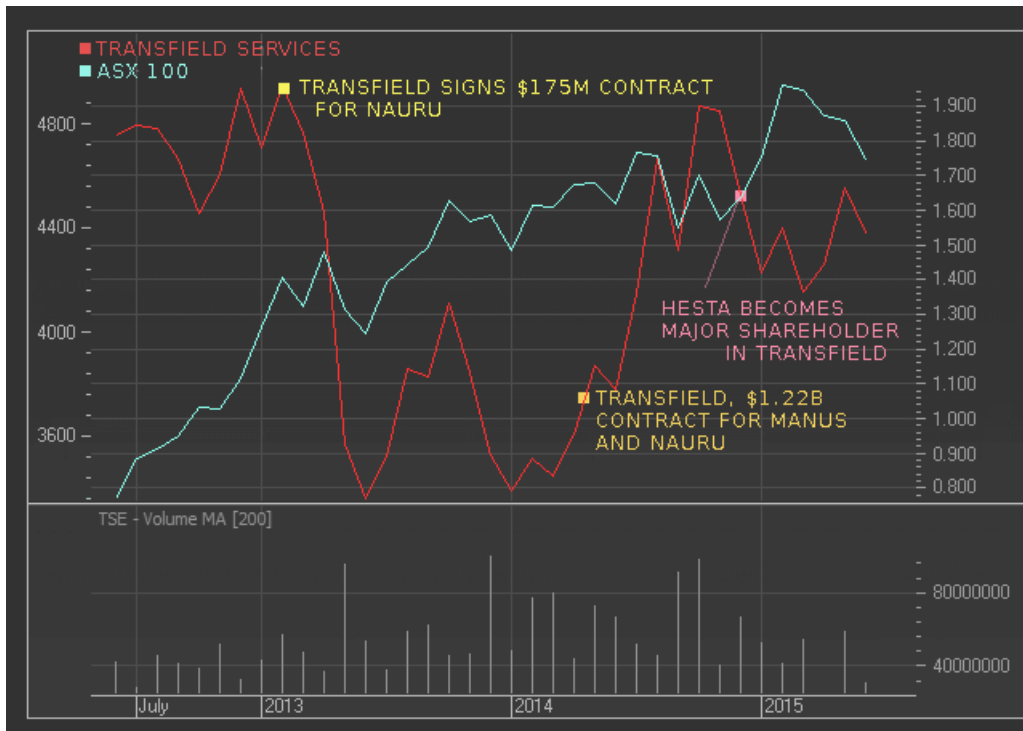
While HESTA's stake in Transfield Services remains substantial, the decline in Transfield's share value represents losses for HESTA members' retirement savings. For example, on the date of announcement to the ASX that HESTA

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[95da-88b8e7babce-11.PDF](#), Page 24.

<sup>17</sup> By <https://xborderoperationalmatters.wordpress.com/>, data sourced from the ASX, as at 21 June 2015.

<sup>18</sup> Specifically, at the Nauru detention centre since February 2013: <http://tse.live.irmau.com/IRM/Company/ShowPage.aspx/PDFs/1843-89902105/TransfieldServiceessignscontractwithDeptofImmigration>



became a substantial shareholder of Transfield Services with over 5% of the shares in Transfield (11 December 2014),<sup>19</sup> Transfield's share price was \$1.71.<sup>20</sup> On this date, HESTA had over 26.3 million shares in Transfield and the value of its investment was approximately \$45.1 million.

The last publicly available information on HESTA's shares in Transfield is from an ASX announcement by HESTA on 2 March 2015.<sup>21</sup> HESTA revealed that as at 27 February 2015, it held over 23.5 million shares in Transfield. Transfield's share price on 2 March 2015 was \$1.445;<sup>22</sup> as at 21 June 2015, Transfield's share price was \$1.535.<sup>23</sup> The worth of HESTA's shares in Transfield has declined considerably since its initial buy-in, representing a significant loss on initial investments.

**HESTA has a fiduciary duty to act in the best interests of fund members. HESTA's shares**

<sup>19</sup> <http://asxcomnewspdfs.fairfaxmedia.com.au/2014/12/11/01583858-214359584.pdf>

<sup>20</sup> <http://www.transfieldservices.com/investor/share-price-information>

<sup>21</sup> <http://asxcomnewspdfs.fairfaxmedia.com.au/2015/03/02/01604569-575220267.pdf>

<sup>22</sup> <http://www.transfieldservices.com/investor/share-price-information>

<sup>23</sup> Ibid.

**in Transfield Services represent losses for its members.** HESTA should not be continuing to risk the retirement savings of its members to bolster a company which is involved in running mandatory detention centres.

*Legal actions affecting Transfield Services*

Furthermore, Transfield is now entangled in various significant lawsuits. One class action now running in the High Court of Australia is challenging the lawfulness of the Australian Government's offshore detention arrangements and will specifically consider the contractual arrangements under which Transfield Services provides services inside the Nauru and Manus centres.<sup>24</sup> The case is seeking orders from the High Court to restrain the Government from continuing to make payments to Transfield Services under the current arrangements.

Detainees at Manus have also commenced a class action against Transfield Services (amongst others, including the Commonwealth of Australia) alleging failure to take reasonable care of detainees and the harm suffered as a result.<sup>25</sup> Additionally, there are actions underway in PNG

<sup>24</sup> <http://hrlc.org.au/highcourtchallenge/>

<sup>25</sup> <https://www.slatergordon.com.au/class-actions/current-class-actions/manus-island>



courts regarding the lawfulness of the Manus detention centre.<sup>26</sup>

HESTA should not be providing Transfield Services with the use of your retirement savings so that they can spend it on lawyers' fees to defend their inexcusable operations!

## **E. More reasons why HESTA should divest from Transfield Services**

HESTA should not be investing in Transfield Services – owning nearly 5% of the company – based on its own policies regarding ESG and Active Ownership, and its fiduciary duty to limit financial risks for its members and to act in their best interests given Transfield's performance as a company. Furthermore:

### **1. Workers in community services and health do not want the retirement savings that we have earned to be invested in an industry that damages the health and well-being of people who are interned.**

Community services and health workers are motivated to assist with, promote and sustain the health and well-being of those in our care, especially of the most vulnerable people in the community who are in the greatest need of care.

In contrast, the system of mandatory detention causes predictable, significant and long-term damage to the health and well-being of asylum seekers, who are one of the most vulnerable groups in the world today. Mandatory detention causes indisputable damage to the physical and mental health of asylum seekers. Every day, we hear fresh stories of the increasing horrors inside the Nauru and Manus centres in particular; physical and sexual abuse is terrifyingly rife. Children are particularly vulnerable to abuse and detention also causes delays and disorders in their physical, psychosocial and emotional development. The Australian mandatory detention

system effectively amounts to torture.<sup>27</sup>

We in the community services and health sector are appalled that the retirement savings that we have gained through our care work are being used to finance an industry that damages the health of people who are interned. HESTA is also supporting companies like Transfield Services that are determined to pursue the privatisation of health care and welfare.

Those of us that work in health are particularly appalled by the health impacts of detention and by the lack of access to appropriate medical care in detention centres. There are serious questions as to whether health care professionals are able to fulfill their professional and ethical obligations to patients inside detention centres,<sup>28</sup> and there have been calls from health professionals in support of divestment from the detention industry.<sup>29</sup>

The following medical groups have released recent statements condemning mandatory detention.

- May 2015: The Royal Australasian College of Physicians (RACP) called for an end to mandatory detention and the release of all asylum seekers into the community amongst other measures.<sup>30</sup>
- March 2015: 15 of Australia's peak health groups released a statement calling for the removal of children and their families from onshore and offshore detention centres and their release into the community.<sup>31</sup>

27 <http://www.theguardian.com/australia-news/2015/mar/09/un-reports-australias-immigration-detention-breaches-torture-convention>

28 Sanggaran, J.P., Ferguson, G and Haire, B, 2014, 'Ethical challenges for doctors working in immigration detention', *Med J Aust* 2014, 201 (7): 377-378.

29 Mayes, C. and Kerridge, I., 2015, *Profiting from asylum-seeker detention: Time to divest*, <http://velimblog.org/2015/06/01/boycott-or-divestment-ethical-entanglements-of-health-workers-in-mandatory-detention-facilities/>

30 <https://www.racp.edu.au/download.cfm?DownloadFile=8988EBD4-BB09-86EA-3750662DE829C87F>

31 <http://www.theguardian.com/australia-news/2015/mar/18/ama-among-15-peak-health-bodies-calling-for-all-asylum-children-to-be-freed>

26 <http://www.abc.net.au/news/2015-03-12/manus-island-asylum-seekers-fresh-challenge-against-detention/6308364>

- February 2015: The Royal Australian College of General Practitioners (RACGP) called for an end to mandatory restrictive detention for asylum seekers on humanitarian grounds.<sup>32</sup>
- February 2015: The Royal Australian and New Zealand College of Psychiatrists (RANZCP) opposed the routine, prolonged and indefinite detention of child asylum seekers under mandatory detention.<sup>33</sup>

## 2. New laws are set to make things even worse for community services and health workers inside detention centres.

Under the new Australian Border Force Act 2015, which comes into effect from 1 July 2015, doctors, counsellors and other workers at detention centres can be punished with two years in prison if they speak out against conditions in the centres or provide information to the media, amongst other far-reaching measures to control information about what happens at the Nauru and Manus centres.<sup>34</sup>

Doctors have warned that the Border Force Act clashes with at least five parts of the Medical Board of Australia's Code of Conduct – the official Australian standard for doctors.<sup>35</sup>

**It is indefensible for HESTA to invest in and support an industry where the conditions for workers and HESTA members are completely untenable.**

<sup>32</sup> <http://www.racgp.org.au/yourracgp/news/media-releases/mandatory-detention/>

<sup>33</sup> [https://www.ranzcp.org/Files/Resources/College\\_Statements/Position\\_Statements/52\\_PS-FCAP-2015-Children-in-Immigration-Detention.aspx](https://www.ranzcp.org/Files/Resources/College_Statements/Position_Statements/52_PS-FCAP-2015-Children-in-Immigration-Detention.aspx)

<sup>34</sup> <http://www.abc.net.au/news/2015-05-28/barns-newhouse-detention-centre-secrecy-just-got-even-worse/6501086>

<sup>35</sup> <http://www.abc.net.au/news/2015-06-19/doctors-warn-detention-centres-conflict-medical-code-of-conduct/6559940>

## 3. Divestment is a practical and effective way to disrupt the operations of the detention industry.

Particularly in the context of bipartisan support for mandatory detention, divestment from companies that are involved in the detention industry is a practical and strategic way to disrupt the financing of the detention industry and to work towards the closure of detention centres. If and when HESTA divests from Transfield Services, this move will send a powerful signal about the lack of public support for companies that are involved in the detention industry and further undermine the performance of Transfield Services on the stock market.

Transfield Services has already been the target of a successful boycott campaign due to its involvement in the detention industry. In February 2014, artists and art workers led the call for an artist and audience boycott of the 19th Biennale of Sydney, which Transfield Services supported through the Transfield Foundation (a joint initiative between Transfield Services and Transfield Holdings). The Managing Director of Transfield Holdings, Luca Belgiorno-Nettis, subsequently resigned from his position as Chair of the Biennale Board, and the Biennale severed its 41 year sponsorship relationship with Transfield.

In September 2014, Transfield Holdings sold its 11% stake in Transfield Services. Transfield Services will change its name and logo later this year as Transfield Holdings, its former parent company, has withdrawn its trademark from Transfield Services.<sup>36</sup>

HESTA members can play a significant role in disrupting the detention industry by calling on HESTA to withdraw its finances from Transfield Services. Detention divestment seeks to disrupt the business of borders and end mandatory detention.

<sup>36</sup> <http://tse.live.irmau.com/IRM/Company/ShowPage.aspx/PDFs/1959-10000000/HalfYearASXAnnouncement>

## F. What can I do?

HESTA is an industry super fund in an industry where there is widespread and active dissent to mandatory detention. It is meant to be run only to profit members, so if you DON'T want to profit from the death and mistreatment of asylum seekers, you can do something about it!

On our website, you will find the contact detail of all the HESTA Directors, draft correspondence, and model motions if you are a member of a union that is on the HESTA Board. Please contact the Board Directors and ask them to communicate with you directly, and publicly through HESTA and union channels, about what action they are taking at a board level to act on divestment. **Please help build the call for HESTA to completely and permanently divest from mandatory detention.**

If you have ideas for the campaign, we would love to hear from you! We are community services and health workers and other people located in Sydney, Melbourne, Brisbane and Perth. There are lots of ways that you can help out so please get in touch!

Please get tweeting on #HESTAdivest, share our Facebook page, help spread the word and get involved!

**W: [hestadivest.net](http://hestadivest.net)**

**E: [info@hestadivest.net](mailto:info@hestadivest.net)**

**F: [facebook.com/hestadivest](https://www.facebook.com/hestadivest)**

**T: [#HESTAdivest](https://twitter.com/HESTAdivest)**

For more info on divestment and analysis of the detention system:

**[xborderoperationalmatters.wordpress.com](http://xborderoperationalmatters.wordpress.com)**

*This leaflet was written, designed and printed on Aboriginal land.*

**While you're caring for others,  
HESTA is financing mandatory detention.**



**#HESTA *divest!***