
The Parliament of the Commonwealth of Australia

Immigration detention in Australia

Community-based alternatives to detention

Second report of the inquiry into immigration detention in Australia
Joint Standing Committee on Migration

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Foreword

This is the second report of the Joint Standing Committee on Migration's inquiry into immigration detention in Australia.

The first report of the Committee, tabled in December 2008, made a number of recommendations that were aimed at improving accountability and ensuring that release from detention centres followed health, security and identity checks. It also recommended:

- the increased use of bridging visas to enable the release of people into the community, subject to appropriate criteria to manage risks to the community and to our immigration system, and
- that all detention charges and debt should be waived immediately.

The Committee is extremely pleased to note that the Government has already taken steps to respond to the Committee's recommendations from the first report. In particular, the introduction of the Migration Amendment (Abolishing Detention Debt) Bill 2009 into the Senate on 18 March 2009 which seeks to amend the Migration Act to remove the liability for detention and related costs for certain persons and liable third parties and extinguishes all outstanding immigration detention debt.

The Committee acknowledges that this is one of many welcome changes to Government policy on immigration detention. However, despite the changes to both policy and to administrative culture in recent times, we can and must do better.

The Committee has therefore chosen to focus this report on the conditions and material support for release into the community, including appropriate options for community-based alternatives to secure detention.

Australia has been developing alternatives to immigration detention centres since 2001, in particular through the establishment of the community detention program and the Community Care Pilot. The Committee draws on this experience, as well as the experience of different models internationally, to set out the key features of a future framework for community release.

In examining the options for community-based alternatives to detention, the Committee has drawn on the immigration detention values announced by the Minister for Immigration and Citizenship in July 2008. In particular, the report builds on the Minister's commitment that detention within an immigration detention centre is only to be used as a last resort and for the shortest practicable time.

Drawing on these values, and on the evidence received, the Committee has made a series of recommendations with three principles in mind. That is, detention alternatives must:

- ensure a humane, appropriate and supported living environment for those awaiting resolution of their immigration status
- maintain a robust and enforceable immigration system that operates with integrity throughout arrival, assessment, resettlement or departure processes for unlawful non-citizens, and
- be cost-effective and provide value for money for the Australian taxpayer.

These principles reflect our obligations to people coming to Australia and the expectations of the international community of which we are an integral part. They also reflect the expectations of the Australian community of a humane, orderly, and well-managed immigration system that continues to enrich our society.

The Committee has acknowledged that secure detention will continue to play an important role in our immigration system. The evidence suggests however, that it is not necessary to keep people who meet the criteria for release in secure detention centres for long periods of time awaiting resolution of their immigration status. Co-located, open residential accommodation in the community can provide people with safe and supportive living environments while still being accessible to the Department of Immigration and Citizenship and other service providers. Community-based alternatives can also be much more cost-effective than the current high levels of physical security or on-site staffing required within an immigration detention centre.

A more supportive living environment maintains the physical and mental well being of those awaiting an immigration decision, which can therefore facilitate a smoother transition into the Australian community where there is a positive outcome or repatriation.

In addition, the harsh psychological burdens inflicted by long and indefinite periods of detention, as well as restrictions on income, work and health care for community-based bridging visa holders, is known to have harmful long term effects on all those involved.

A new approach is needed: one that supports people who lawfully come to Australia; invests in case management; and actively seeks an expected immigration outcome.

That is why the Committee has recommended that the Australian Government:

- reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements
- utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved, and
- review the cases of those currently on residence determinations, known as community detention, with a view to granting a reformed bridging visa until their immigration status is resolved, ensuring that there is a continuation of services and support currently available to those individuals.

The Committee has also recommended that there should be improved transparency in immigration decision-making, improved access to legal advice, and improved access to voluntary return counselling in order to support the provision of information to the client and to help them decide what is going to be the best and most realistic outcome for themselves and their families.

The Committee recognises that there are basic rights, such as access to appropriate health care, housing and income that should be afforded to all people regardless of their immigration status. The Committee has therefore recommended that the Australian Government ensure that people are provided with, where needed:

- basic income assistance that is means-tested
- access to necessary health care
- assistance in sourcing appropriate temporary accommodation and basic furnishing needs

- and community orientation information, and in addition that children, in particular, are provided with
 - ⇒ safe and appropriate accommodation with their parent(s) or guardian(s)
 - ⇒ the provision of basic necessities such as adequate food
 - ⇒ primary and secondary schooling.

Where case resolution is ongoing the Committee recommends that the Government reform the bridging visa framework to grant people permission to work.

Lastly, the Committee is concerned that a reliance on the private rental market as an alternative to immigration detention facilities is inadequate and inefficient and is recommending that the Australian Government have access to a stock of furnished community-based immigration housing.

I would like to express my appreciation for my hard working colleagues on the Committee who are committed to ensuring that our immigration system treats all people, regardless of their status, in a humane and compassionate manner, while protecting Australia's borders and ensuring a robust and fair immigration system.

Mr Michael Danby MP
Chair



Membership of the Committee

Chair Mr Michael Danby MP

Deputy Chair Hon Danna Vale MP

Members Senator Andrew Bartlett *(to 30 June 2008)*

Senator Catryna Bilyk *(from 1 July 2008)*

Ms Yvette D'Ath MP

Senator Alan Eggleston *(to 4 February 2009)*

Senator Concetta Fierravanti-Wells *(from 4 February 2009)*

Mr Petro Georgiou MP

Senator Sarah Hanson-Young *(from 27 August 2008)*

Senator Anne McEwen

Mr Don Randall MP *(to 10 November 2008)*

Hon Dr Sharman Stone MP *(from 10 November 2008)*

Mr Tony Zappia MP

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Terms of reference

The Joint Standing Committee on Migration is inquiring into immigration detention in Australia. The Committee will examine:

- 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, Immigration Residential Housing, Immigration Transit Accommodation 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.

(5 June 2008)



List of abbreviations

AAT	Administrative Appeals Tribunal
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
ASAS	Asylum Seeker Assistance Scheme
ASRC	Asylum Seeker Resource Centre
AVR	Assisted Voluntary Return
BV	Bridging Visa
CCP	Community Care Pilot
Chilout	Children Out of Detention
CSRS	Community Status Resolution Service
DeHAG	Detention Health Advisory Group
DIAC	Department of Immigration and Citizenship
ESR	Enhanced Supervision/Reporting
EU	European Union
FASSTT	Forum of Australian Services for Survivors of Torture and Trauma
FOI	Freedom of Information

G4S	Group 4 Securitor
GPS	Global Positioning System
GSL	Global Solutions Limited
IAAAS	Immigration Advice and Application Assistance Scheme
ICE	Immigration and Customs Enforcement (United States Government Agency)
IDAG	Immigration Detention Advisory Group
IDC	Immigration Detention Centre
IHMS	International Health and Medical Services
IOM	International Organisation for Migration
IRH	Immigration Residential Housing
ISAP	Intensive Supervision Appearance Program
ITA	Immigration Transit Accommodation
MATCH	Metropolitan Association Towards Community Housing
MRT	Migration Review Tribunal
MSI	Migration Series Instructions
NASAVic	Network of Asylum Seeker Agencies Victoria
NGO	Non Government Organisation
NLA	National Legal Aid
PAM	Procedures Advice Manual
PBS	Pharmaceutical Benefits Scheme
RAILS	Refugee and Immigration Legal Service
RILC	Refugee and Immigration Legal Centre
RRT	Refugee Review Tribunal

STARTTS	NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors
THV	Temporary Humanitarian Visa
TPV	Temporary Protection Visa
UNHCR	United Nations High Commissioner for Refugees



List of recommendations

Recommendation 1

Given that the current bridging visa structure is shown to be complex and restrictive, the Committee recommends that the Australian Government reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements.

In reforming the bridging visa framework, specific consideration should be given to health, security and identity checks and risk assessments in accordance with the recommendations outlined by the Committee in its first report *Criteria for release from detention*.

Recommendation 2

The Committee recommends that the Australian Government utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved.

Recommendation 3

The Committee recommends that the Australian Government review the cases of those currently on residence determinations, known as community detention, with a view to granting a reformed bridging visa until their immigration status is resolved, ensuring that there is a continuation of services and support currently available to those individuals.

Recommendation 4

The Committee recommends that, for any case where a person held in some form of immigration detention is refused a bridging visa, the Australian Government require that:

- clear and detailed reasons in writing are provided to the person being detained, and that
- the person has a reasonable time limit, up to 21 days, in which to seek merits review of that refusal, commensurate with those that apply to visa applicants in the community.

Recommendation 5

The Committee recommends that the Australian Government provide means-tested access to independent migration counselling and migration legal advice to all people in immigration detention and to those living in the community on bridging visas.

In order to facilitate means-tested access to independent migration counselling, the Committee recommends that the Australian Government increase the scope of the Immigration Advice and Application Assistance Scheme and review the current eligibility criteria to make assistance under this scheme available to all people in immigration detention and to those living in the community on bridging visas.

Recommendation 6

The Committee recommends that the Australian Government:

- provide indicative processing times and criteria for the ministerial discretion provisions under the *Migration Act 1958* in order to avoid prolonged uncertainty for people, and
- provide reasons for ministerial decisions in order to improve transparency and discourage repeat requests for ministerial intervention.

Recommendation 7

The Committee recommends that the Australian Government establish a voluntary repatriation program, similar to that run by the International Organisation for Migration through the Community Care Pilot, which can be accessed by all people whether in detention or released on a bridging visa.

Recommendation 8

The Committee recommends that the Australian Government reform the bridging visa framework to ensure that people are provided with the following where needed:

- basic income assistance that is means-tested
- access to necessary health care
- assistance in sourcing appropriate temporary accommodation and basic furnishing needs, and provision of information about tenancy rights and responsibilities and Australian household management, where applicable, and
- community orientation information, translated into appropriate languages, providing practical and appropriate information for living in the Australian community, such as the banking system, public transport and police and emergency contact numbers.

Recommendation 9

The Committee recommends that the Australian Government commit to ensuring that children living in the Australian community, while their or their guardian's immigration status is being resolved, have access to:

- safe and appropriate accommodation with their parent(s) or guardian(s)
- the provision of basic necessities such as adequate food
- necessary health care, and
- primary and secondary schooling.

Recommendation 10

The Committee recommends that the Australian Government reform the bridging visa framework to grant all adults on bridging visas permission to work, conditional on compliance with reporting requirements and attendance at review and court hearings.

Recommendation 11

The Committee recommends that the Australian Government provide that, where permission to work on a bridging visa is granted, this permission should continue irrespective of whether a person has applied for a merits, judicial or ministerial review.

Recommendation 12

The Committee recommends that the Australian Government have access to a stock of furnished community-based immigration housing which:

- should consist of open hostel-style accommodation complexes and co-located housing units.
- should be available to people and families on bridging visas who do not have the means to independently organise for their housing needs in the community, and
- where rent should be determined on a means-tested basis.