

Transparency and visibility — immigration detention facilities

Oversight mechanisms

- 4.1 In its first and second reports, the Committee examined the associated issues of accountability and review of departmental decision-making.
- 4.2 In particular, the Committee commented on the implementation of internal senior executive reviews within the Department of Immigration and Citizenship (DIAC), the six-month detention review by the Commonwealth Ombudsman, and enshrining the government's detention values in legislation.¹
- 4.3 The Committee has also commented on the need for greater transparency and visibility in carrying out enforced removals from immigration detention to another country² and improved public disclosure of information about the costs of immigration detention to the Australian taxpayer.³
- 4.4 The Committee's concerns about transparency of service provision in Australian detention facilities and the costs associated with the detention

1 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), chapter 4 and its dissenting report.

2 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), chapter 5.

3 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), chapter 4.

services provider contract are further articulated in the previous chapter of this report.

- 4.5 The focus of this chapter is on the various oversight mechanisms, both national and international, for monitoring the conditions of detention in Australian detention facilities.
- 4.6 There are several bodies, independent of DIAC, that monitor conditions in immigration detention facilities. These include:
- the Australian Human Rights Commission (AHRC)
 - the Immigration Detention Advisory Group (IDAG)
 - the Detention Health Advisory Group (DeHAG)
 - the Commonwealth Ombudsman, and
 - the United Nations High Commissioner for Refugees (UNHCR).
- 4.7 From time to time, the Government has also commissioned ad hoc inquiries into specific issues, incidents or capital works, such as the reports by Palmer, Roche and Comrie as well as those conducted by parliamentary committees.
- 4.8 The Australian Government also has various international human rights commitments and treaty obligations.

Australian Human Rights Commission

- 4.9 The AHRC, formerly the Human Rights and Equal Opportunity Commission, is an independent statutory organisation established in 1986 under the *Human Rights and Equal Opportunity Commission Act 1986*.⁴
- 4.10 The AHRC's responsibilities fall within four main areas:
- human rights education and promotion
 - inquiring into discrimination and human rights complaints
 - human rights monitoring, and
 - policy development and legislative reform.⁵
- 4.11 The AHRC's work on immigration matters includes:
- making submissions to parliamentary inquiries
 - conducting national inquiries

4 Australian Human Rights Commission, 'About the commission', viewed on 4 June 2008 at <http://www.hreoc.gov.au/about/index.html>.

5 Australian Human Rights Commission, *Annual Report 2007-08* (2008), p 8.

- investigating complaints from individuals in immigration detention regarding alleged human rights breaches, and
- examining proposed legislation, and commenting on policies and procedures relating to immigration detention.⁶

4.12 The AHRC also conducts annual visits to Australia’s immigration detention facilities to monitor conditions in the facilities and to ensure that conditions are consistent with internationally recognised human rights standards.⁷ The AHRC publishes an annual inspection report on those visits.

4.13 In its submission to the inquiry, the AHRC stated that:

Pursuant to its statutory functions, HREOC has also sought to protect the rights of those in immigration detention by conducting inspections of immigration detention facilities for the purpose of monitoring whether the conditions in immigration detention and the treatment of immigration detainees comply with Australia’s human rights obligations. To effectively perform these functions, HREOC must have access to immigration detention facilities.

HREOC does not have a specific statutory power to enter immigration detention facilities. As a matter of practice, HREOC has always obtained access to detention facilities for the purposes of general inspections and investigating individual complaints of human rights breaches by detainees.⁸

4.14 In the most recent inspection report, *Immigration detention report – December 2008*, the AHRC noted that there are some limits to what they can achieve under its existing powers, stating:

The Commission does not have a specific statutory power to enter immigration detention facilities, although in practice it has been provided with access. The Commission’s statutory powers that allow it to monitor conditions in immigration detention do not explicitly extend to monitoring Australia’s compliance with its obligations under the Convention against Torture (although some of these obligations are reflected in other human rights treaties to which the Commission’s powers apply). And, while the Commission has a statutory power to investigate complaints regarding alleged human rights breaches in detention facilities, the

6 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 16.

7 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 16.

8 Australian Human Rights Commission, submission 99, 27 August 2008, p 30.

Commission's recommendations in these cases are not legally enforceable.⁹

4.15 This view was reiterated by former Human Rights Commissioner, Dr Sev Ozdowski, in his submission to the inquiry. Dr Ozdowski stated that complaints brought to the AHRC regarding human rights or civil liberties:

...pursuant to say, the ICCPR [International Covenant on Civil and Political Rights] can at best lead to a report to Parliament through the Attorney-General. [There is] no court-imposed remedy, no requirement to pay compensation, even where the Commission finds a breach.¹⁰

Immigration Detention Advisory Group

4.16 The IDAG was established in 2001 to provide advice to the then Minister for Immigration and Multicultural Affairs on the appropriateness and adequacy of services, accommodation and amenities at the Immigration Detention Centres (IDCs).¹¹ Members are now appointed by the Minister for Immigration and Citizenship and are supported by a secretariat within DIAC.¹²

4.17 IDAG's terms of reference state that it will:

- advise the Minister for Immigration and Citizenship on matters relating to the detention of unlawful non-citizens in Immigration Detention Centres (IDCs), alternative and community detention arrangements. In particular, the Group will:
 - ⇒ advise on the appropriateness and adequacy of: detention services provided to detainees at IDCs; IDC accommodation and amenities; and community detention intervention arrangements;
 - ⇒ contribute to the enhancement of detention program strategies; and
 - ⇒ contribute to departmental detention program consultative processes.

9 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 18.

10 Ozdowski S, submission 58, 27 August 2008, p 27.

11 Department of Immigration and Citizenship, 'The Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag.htm>.

12 Department of Immigration and Citizenship, 'DIMA Annual Report 2000-01', viewed on 8 July 2009 at <http://www.immi.gov.au/about/reports/annual/2000-01/report19.htm>.

In addressing these issues, IDAG will:

- either individually or collectively, visit each IDC at least once a year to obtain first hand information on the operation of and environment at each centre;
- either individually or collectively liaise with non-government organisations and the community on a regular basis to obtain first hand information on issues faced by detainees accommodated in the community under detention intervention arrangements; and
- develop a work program, agreed with the Minister, identifying priority issues to be addressed over the next twelve months, noting that, from time to time, the Minister may task IDAG to examine and advise on a particular issue or issues.¹³

4.18 The IDAG's work on immigration matters includes:

- visiting immigration detention centres, 'with a special emphasis being placed on Villawood Immigration Detention Centre'¹⁴
- providing input into the development of immigration detention program strategies and departmental consultative processes
- seeking feedback from a range of non-government organisations, community groups and professional bodies with an interest in the immigration detention program
- convening regular meetings and teleconferences each year to identify and discuss current and emerging priority issues, and
- responding to specific requests from the Minister for Immigration and Citizenship to examine and advise on a particular issue or issues.¹⁵

4.19 Members are able to talk with staff, people in detention and detainee representative committees to obtain first-hand information on the operations and environment at each centre and alternative and community immigration detention arrangements.¹⁶

4.20 The IDAG reports to the Minister for Immigration and Citizenship and provides feedback to DIAC regarding immigration detention related

13 Immigration Detention Advisory Group, submission 62, Appendix A, 27 August 2008, p 12.

14 Immigration Detention Advisory Group, submission 62, 27 August 2008, p. 3.

15 Department of Immigration and Citizenship, 'Purpose and Operations of the Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag-purpose.htm>.

16 Department of Immigration and Citizenship, 'Purpose and Operations of the Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag-purpose.htm>.

matters.¹⁷ The IDAG advised that over the last seven or so years following their establishment, IDAG has met regularly with the Minister for Immigration for Citizenship.¹⁸

Detention Health Advisory Group

- 4.21 The DeHAG was established in March 2006 and has a role in providing DIAC with advice regarding the design, implementation and monitoring of improvements in detention health care policy and procedures.¹⁹ The DeHAG was convened for an initial period of two years.²⁰
- 4.22 The DeHAG focuses on the development and implementation of health standards, the improvement of health data and analysis and issues relating to the improvement of policy and procedures in relation to provision of mental health and infectious disease.²¹
- 4.23 The DeHAG's terms of reference specify that they will provide an expert opinion regarding:
- the design, development and implementation of health policy for the health care, including mental health care, of people in immigration detention;
 - appropriate health care service standards which should be achieved in detention health services;
 - appropriate monitoring and reporting of detention health services and related information and data issues;
 - the nature and scope of potential research required to facilitate improved health outcomes and management of health care in detention services.²²
- 4.24 Members of the DeHAG also visit immigration detention facilities as part of their meeting schedule.

17 Department of Immigration and Citizenship, 'Purpose and Operations of the Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag-purpose.htm>.

18 Immigration Detention Advisory Group, submission 62, 27 August 2008, p 3.

19 Department of Immigration and Citizenship, 'Detention Health Advisory Group (DeHAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/dehag.htm>.

20 Detention Health Advisory Group, *Report Against 2006-07 Work Program* (2007), p 1.

21 Department of Immigration and Citizenship, 'Detention Health Advisory Group (DeHAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/dehag.htm>.

22 Detention Health Advisory Group, *Report Against 2006-07 Work Program* (2007), Appendix 2, p 12.

- 4.25 The DeHAG produces and publishes an annual report on its activities, the most recent of which was released in March 2008.²³

Commonwealth Ombudsman

- 4.26 The Office of the Commonwealth Ombudsman was established in 1976 under the Ombudsman Act 'and exists to safeguard the community in its dealings with government agencies, and to ensure that administrative action by Australian government agencies is fair and accountable.'²⁴
- 4.27 The Commonwealth Ombudsman has five specialist roles: the Immigration Ombudsman, Defence Force Ombudsman, Law Enforcement Ombudsman, Postal Industry Ombudsman and Taxation Ombudsman.²⁵
- 4.28 As part of its oversight role as Immigration Ombudsman, the Commonwealth Ombudsman investigates and reviews immigration detention administration.²⁶
- 4.29 In the Committee's first report on immigration detention, the Committee considered in detail the role of the Commonwealth Ombudsman in relation to the recently introduced six-monthly detention reviews and the statutory two-year reviews of long-term detention cases.²⁷
- 4.30 The Commonwealth Ombudsman also conducts a range of activities on immigration matters which includes:
- announced and unannounced inspection visits of immigration detention facilities
 - investigation of complaints from, or on behalf of, people who are held in immigration detention
 - inspection and monitoring DIAC's exercise of its compliance function including the use of search and entry powers, detention decisions and DIAC's removal and airports operations
 - own motion investigations into broader systemic issues across the range of immigration administration, and

23 Department of Immigration and Citizenship, 'Detention Health Advisory Group (DeHAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/dehag.htm>.

24 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

25 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

26 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

27 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), Chapter 4.

- attendance at various detention related consultative forums.²⁸
- 4.31 The Office of the Commonwealth Ombudsman noted that its role to inspect and monitor immigration detention centres includes monitoring whether detention service standards, including access to medical and other services and activities aimed at maintaining detainees' well-being, are being met.²⁹
- 4.32 The Commonwealth Ombudsman added: 'As part of this function we provide feedback to DIAC as well as to its service providers including recommendations where standards have not been met or where they need to be further developed or adjusted.'³⁰
- 4.33 As noted above, the Commonwealth Ombudsman handles complaints about immigration detention. The Commonwealth Ombudsman advised that:
- Where possible, complaints are resolved at the detention centre with discussion with the appropriate DIAC or detention service provider management. Where further investigation is required, complaints are pursued with DIAC's national office in accordance with complaint taking protocols.³¹

Independent inquiries

- 4.34 As a result of public concern about the administration of immigration detention in recent years, a number of independent inquiries have also been established on an ad hoc basis to examine particular issues or incidents.
- 4.35 In particular, the Palmer and Comrie reports on the circumstances of the immigration detention of Ms Cornelia Rau and Ms Vivian Solon respectively, have had far-reaching impacts on immigration administration.
- 4.36 While their focus was chiefly on the administration of the *Migration Act 1958* by DIAC with respect to these individual cases, the reports also raised concerns about the level of general oversight in detention facilities.
- 4.37 Parliamentary committees of both Houses and the Auditor-General of Australia also exercise oversight of immigration detention facilities, and standards of service provided therein, within the scope of their legislation and referrals.

28 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

29 Commonwealth Ombudsman, submission 126, 3 September 2008, p 2.

30 Commonwealth Ombudsman, submission 126, 3 September 2008, p 2.

31 Commonwealth Ombudsman, submission 126, 3 September 2008, p 3.

United Nations High Commissioner on Refugees

- 4.38 The Office of the UNHCR, established in 1950 by the United Nations General Assembly, is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems world wide. Its primary purpose is to safeguard the rights and wellbeing of refugees.³²
- 4.39 The UNHCR provides a supervisory role to see whether countries, including Australia, are complying with their obligations under the 1951 UN Refugee Convention and its 1967 Protocol.³³ Australia ratified the 1951 UN Refugee Convention on 22 January 1954, and the 1967 protocol on 13 December 1973.³⁴
- 4.40 The UNHCR's work on immigration matters includes:
- liaison with governments on refugee and asylum policy including training for officials working with refugees and advises authorities on best international standards in respect to legislation, policy and procedures
 - working with immigration authorities on the composition of their quotas for resettled refugees and assists in the submission of individual cases, and
 - raising awareness about UNHCR's work and refugee issues amongst parliamentarians, schools, the media and the general public.³⁵

International obligations

- 4.41 Australia is signatory to a number of international treaties relevant to the conditions of immigration detention, including:
- The International Covenant on Civil and Political Rights 1996 ('ICCPR')
 - The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1984 ('CAT')
 - The Convention Relating to the Status of Refugees ('Refugee Convention') (1951) and Protocol Relating to the Status of Refugees (1967)

32 United Nations High Commissioner for Refugees, 'Basic Facts', viewed on 5 June 2009 at <http://www.unhcr.org.au/basicfacts.shtml>.

33 United Nations High Commissioner for Refugees, 'Basic Obligations', viewed on 5 June 2009 at <http://www.unhcr.org.au/basicoblig.shtml>.

34 United Nations High Commissioner for Refugees, 'Basic Obligations', viewed on 5 June 2009 at <http://www.unhcr.org.au/basicoblig.shtml>.

35 United Nations High Commissioner for Refugees, 'About Us', viewed on 5 June 2009 at <http://www.unhcr.org.au/aboutus.shtml>.

- The Convention on the Rights of the Child ('CRC')³⁶
- 4.42 The United Nations Human Rights Committee (UNHRC) was established to monitor the implementation of the International Covenant on Civil and Political Rights and its Optional Protocol, to which Australia is a signatory. The Covenant and its Protocol allows individuals to submit complaints to the Human Rights Committee.³⁷
- 4.43 Under the Covenant, Australia must submit a report every five years detailing the measures that have been taken to comply with the requirements of the Covenant. The reports are examined by the UNHRC in public meetings and through a dialogue with representatives of Australia to make suggestions and recommendations.³⁸
- 4.44 In the past, the Human Rights Committee has found Australia's immigration detention framework to be in violation of its obligations under international law seven times.³⁹
- 4.45 However, international treaties ratified by Australia are not automatically incorporated into Australian law. Entering into an international treaty imposes no obligation on Government or individuals to comply with any requirements under that treaty.⁴⁰ Commonwealth legislation is required to make a treaty legally binding.⁴¹
- 4.46 The Australian Government has recently signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (OPCAT).⁴² As a party to the OPCAT, Australia is required to establish a national system of visits to all places of detention under Australia's jurisdiction and control, with the aim of preventing the mistreatment of those who are detained and make recommendations on improving internal conditions.

36 Australian Human Rights Commission, submission 99, 27 August 2008, p 46.

37 United Nations Human Rights Committee, 'Introduction to the Human Rights Committee', viewed on 5 June 2009 at <http://www.unhchr.ch/html/menu2/6/a/introhrc.htm>.

38 United Nations Human Rights Committee, 'Introduction to the Human Rights Committee', viewed on 5 June 2009 at <http://www.unhchr.ch/html/menu2/6/a/introhrc.htm>.

39 Attorney-General's Department, submission 61, 27 August 2008, p 2.

40 Department of Foreign Affairs and Trade, 'Treaties and Treaty Making', viewed on 5 June 2009 at <http://www.dfat.gov.au/treaties/making/making3.html>.

41 Department of Foreign Affairs and Trade, 'Treaties and Treaty Making', viewed on 5 June 2009 at <http://www.dfat.gov.au/treaties/making/making3.html>.

42 The Hon Robert McClelland MP, Attorney-General, 'Australia takes action against torture', media release, 22 May 2009.

4.47 In 2008, the AHRC released a discussion paper on options for implementation of the OPCAT.⁴³

Lodging complaints

4.48 In addition to the numerous oversight mechanisms that monitor immigration detention facilities, detainees can also lodge complaints about the management of an immigration detention facility or their treatment while in detention. People in immigration detention can lodge a complaint with:

- the Detention Service Provider or departmental staff at the facility
- the Commonwealth Ombudsman
- the police
- State and Territory Child Welfare agencies, and
- other external agencies such as the AHRC.⁴⁴

Committee conclusions

4.49 As indicated above, there are a large number of national and international oversight mechanisms all designed to monitor and inspect immigration detention facilities, review immigration decisions, ensure that detainees are provided appropriate access to health care, handle complaints and ensure that the human rights of detainees are protected.

4.50 Each of these bodies plays a key role in monitoring immigration detention facilities and providing suggestions and recommendations to the Australian Government, primarily DIAC, on key areas of concern and many have been established or strengthened following the exposure of failings in detention administration and substandard conditions of detention in recent years.

4.51 In particular, the AHRC plays a significant role in monitoring conditions in Australia's immigration detention facilities. The AHRC publishes an annual inspection report on those visits that has been useful and

43 Australian Human Rights Commission, 'Implementing the Optional Protocol to the Convention against Torture: Options for Australia', viewed on 8 July 2009 at http://www.humanrights.gov.au/human_rights/publications/opcat/index.html.

44 Department of Immigration and Citizenship, 'External Scrutiny of Immigration Detention Services', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/external-scrutiny.htm>.

- influential in disseminating information to the broader public about conditions in detention facilities as well as making recommendations.
- 4.52 However, the AHRC does not have a specific statutory power to enter immigration detention facilities.
- 4.53 The Committee is aware that the role of the AHRC is amongst the issues being currently debated as part of the National Human Rights Consultation, which is seeking public views on the adequacy of the protection and promotion of human rights in Australia.⁴⁵
- 4.54 While the question of broader statutory protection of human rights in Australia is beyond the scope of this inquiry, the Committee will follow these discussions with interest. Expansion of the Commission's powers could have considerable impact on the human rights oversight of immigration detention facilities in Australia.
- 4.55 In addition, if Australia ratifies the OPCAT, it will need to establish an agency possessing functional independence to conduct visits-based inspections of all 'places of detention' within all parts of Australia as well as relevant offshore locations such as immigration detention facilities.⁴⁶
- 4.56 As the AHRC already conducts inspections of immigration detention facilities, it would therefore be the logical body in which to entrust any compliance responsibilities associated with the OPCAT, and any other human rights obligations.
- 4.57 The Committee is aware that the OPCAT is currently the subject of consideration by Government and, while the OPCAT encompasses a range of places of detention broader than those examined by this inquiry, the Committee considers that this process is a good opportunity to review monitoring and access arrangements for existing immigration detention centres. At a minimum, the Human Rights Commission should be granted a statutory right of access to all places of immigration detention in Australia.

45 National Human Rights Consultation, 'Welcome to the National Human Rights Consultation website', viewed on 8 July 2009 at <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf>.

46 Australian Human Rights Commission, 'Implementing the Optional Protocol to the Convention against Torture : Options for Australia', viewed on 8 July 2009 at http://www.humanrights.gov.au/human_rights/publications/opcat/index.html.

Recommendation 10

- 4.58 **The Committee recommends that the Australian Human Rights Commission be granted a statutory right of access to all places of, and persons in, immigration detention in Australia.**

Transparency – immigration detention facilities

4.59 In its submission, DIAC advised that ‘Immigration detention is subject to continuing scrutiny from a number of external parties to ensure that people in immigration detention, including in immigration detention centres, are treated humanely, decently and fairly.’⁴⁷

4.60 As DIAC indicated, and noted above, there are a number of oversight mechanisms that monitor the conditions within immigration detention facilities.

4.61 However, based on the evidence received during the course of this inquiry, it appears as though the public is not aware of these oversight mechanisms and believes that there is little transparency in operation of immigration detention facilities. Specifically, the public perception is that immigration detention facilities are not independently monitored or scrutinised; that there is limited oversight and little to no public scrutiny.

4.62 The Human Rights Education Centre for Human Rights Education (the Human Rights Centre) stated that ‘there is still a lack of transparency and information’ and that they have found trying to obtain information from DIAC a major problem.⁴⁸ The Human Rights Centre added:

Accountability will be difficult to guarantee while immigration detention facilities remain in private hands, where a lack of transparency of government actions is in place, and where there is a lack of independent scrutiny.⁴⁹

4.63 The Brotherhood of St Laurence also believed that the current level of transparency was inadequate stating:

There are inadequate mechanisms for transparency, for accountability, for independent review and for mechanisms of

47 Department of Immigration and Citizenship, submission 129, 11 September 2008, p 15.

48 Briskman L, Human Rights Education, Centre for Human Rights Education, *Transcript of evidence*, 9 October 2008, p 19.

49 Briskman L, Human Rights Education, Centre for Human Rights Education, *Transcript of evidence*, 9 October 2008, p 20.

independent monitoring to see whether in fact the internal compliance mechanisms that GSL [the detention service provider] has are in fact being upheld.⁵⁰

4.64 A Just Australia (AJA) commented that there 'is very limited oversight of the immigration detention regime and the centres themselves'.⁵¹

4.65 The Refugee Council of Australia was of the view that a lack of transparency is because detention centres are shielded from public scrutiny stating:

Commercial-in-confidence requirements have shielded detention centres from the level of public scrutiny required to ensure that detainees have their rights respected and their dignity maintained as well as affecting the level of public confidence in the extent to which the government is adequately discharging its duty of care to detainees.⁵²

4.66 The Refugee Advice and Casework Service (Australia) Inc. (RACS) was also of the view that the commercial-in-confidence requirements shield detention centres from public scrutiny.⁵³ The RACS added:

The benefits of public scrutiny and transparent public administration cannot be underestimated in avoiding inhuman or degrading treatment.⁵⁴

4.67 The Australian Federation of AIDS Organisations Inc., AJA, Rural Australians for Refugees, Public Interest Advocacy Centre Ltd, and the Human Rights Council of Australia (HRCA) were all of the opinion that more public scrutiny is required.⁵⁵ In particular, the HRCA stated:

The improvement of conditions in detention centres, to a level commensurate with Australia's human rights obligations, requires a far higher level of official, media and public scrutiny.⁵⁶

4.68 The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) does, however, believe that DIAC has made good progress in opening up immigration detention facilities in recent years.⁵⁷

50 Lillywhite S, Brotherhood of St Laurence, *Transcript of evidence*, 11 September 2008, p 65.

51 A Just Australia, submission 89, 27 August 2008, p 12.

52 Nash C, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 3.

53 Refugee Advice and Casework Service (Australia) Inc., submission 25, 27 August 2008, p 2.

54 Refugee Advice and Casework Service (Australia) Inc., submission 25, 27 August 2008, p 2.

55 Australian Federation of AIDS Organisations Inc., submission 94, 27 August 2008, pp 3-4; A Just Australia, submission 89, 27 August 2008, p 12; Rural Australians for Refugees, submission 88, 27 August 2008, p 3; Public Interest Advocacy Centre Ltd, submission 84, 27 August 2008, p 7; Human Rights Council of Australia, submission 80, 27 August 2008, p 7.

56 Human Rights Council of Australia, submission 80, 27 August 2008, p 7.

4.69 The Mercy Refugee Service commented that DIAC has made information on immigration detention facilities more accessible stating:

I believe the Department of Immigration has made good progress in relation to the transparency to information and some of the processes operating in relation to their present detention centres in more recent times. This is through representation at the various Community based meetings and their responses to questions and information requested, and also in some cases to e-mails or phone calls.⁵⁸

4.70 The publication of fortnightly detention statistics on the Department's website, which detail the number of people in immigration detention, their location by facility, and the breakdown of men, women, children, nationality, protection visa status and length of stay, has been a positive step in improving the information publicly available about who is being held in detention.⁵⁹

4.71 The New South Wales Young Lawyers Human Rights Committee suggested in its submission that this provision of information could be improved by retaining earlier editions for public access.⁶⁰

4.72 Further, DIAC could also publish statistics on the number of releases from immigration detention as a result of administrative removals or deportations, the number of applications for voluntary return, and on incidents of self-harm and detainees placed on suicide watch.⁶¹

Media

4.73 DIAC advised that its policy on media access to immigration detention centres is:

People in immigration detention may call journalists at any time. There are no restrictions but the Department asks that journalists have regard to concerns about identifying individual people in immigration detention.⁶²

57 The Forum of Australian Services for Survivors of Torture and Trauma, submission 115, 27 August 2008, p 13.

58 Mercy Refugee Service a Programme of Mercy Works Inc., submission 31, 27 August 2008, p 2.

59 Department of Immigration and Citizenship, 'Statistics', viewed on 8 July 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/>.

60 New South Wales Young Lawyers Human Rights Committee, submission 56, 27 August 2008, p 11.

61 New South Wales Young Lawyers Human Rights Committee, submission 56, 27 August 2008, p 11.

62 Department of Immigration and Citizenship, submission 129e, 26 November 2008, p 3.

4.74 The above notwithstanding, DIAC also advised that it has placed the following restrictions to protect the privacy of detainees and for operational requirements including:

... journalists, camera crew and photographers:

- may take cameras into the centre, but are not permitted to photograph people in immigration detention, officers of the Department or officers of the detention services provider (GSL Australia Pty Ltd) in a way that they may be identifiable, noting that pixelling/blurring of faces may not be sufficient to mask identity
- may not do any type of audio recording in the facility
- may photograph/film in interview rooms and accommodation areas when they are unoccupied
- may photograph eating, recreational, medical and religious facilities, ensuring that any people present will not be identifiable.⁶³

4.75 However, many of the organisations that provided a submission or appeared before the Committee had a very different view on whether media had access to detention facilities and detainees.

4.76 AJA did not appear to be aware of DIAC's policy on media access and commented that, in the past, media access had been restricted.

Over the past years, the Department of Immigration and the detention service providers Australasian Correctional Management (ACM) and Global Solutions Limited (GSL), have exhibited great paranoia regarding media or public scrutiny of both IDCs and the detainees themselves. In most cases the media is barred from interviewing detained people who wish to participate. While there are privacy issues at stake, particularly for asylum seekers who may not wish to be inadvertently identified, media interviews could easily have been accommodated in the private interview rooms used for legal visits.⁶⁴

4.77 AJA added that if 'they have changed that policy then that is good but, again, it really needs to be documented somewhere'.⁶⁵

4.78 Project SafeCom Inc. was also of the view that media have no open access to immigration detention centres.⁶⁶

63 Department of Immigration and Citizenship, submission 129e, 26 November 2008, p 3.

64 A Just Australia, submission 89, 27 August 2008, p 15.

65 Gauthier K, A Just Australia, *Transcript of evidence*, 24 October 2008, p 14.

66 Smit J, Project SafeCom Inc., *Transcript of evidence*, 9 October 2008, p 34.

- 4.79 The Migrant Health Service advised that a former detainee reported that ‘for the first nine months of his detention, he, and the group of people who arrived with him were unable to make any contact with family, had no access to information about their rights or access to legal representation and had no access to media (newspapers, radio and television.)’⁶⁷
- 4.80 The Justice Project Inc., Get Up!, the International Coalition on Detention of Refugees, Asylum Seekers and Migrants, Rural Australians for Refugees, the New South Wales Young Lawyers Human Rights Committee, and RACS were all of the opinion that the media has limited access to immigration detention facilities and detainees which they recommended should be increased.⁶⁸

Committee conclusions

- 4.81 There are a number of oversight mechanisms that monitor immigration detention facilities, both internal to, and independent of, DIAC.
- 4.82 However, based on evidence received by the Committee, it is also clear that the public is unaware of these oversight mechanisms and believes that the operation of immigration detention facilities is neither transparent nor visible.
- 4.83 It is the Committee’s view that these oversight mechanisms, and the organisations that monitor immigration detention facilities, are a key component in monitoring that detainees are provided with appropriate accommodation and facilities and are treated humanely and fairly.
- 4.84 Based on the above accounts, the Committee has formed the view that they are not transparent. The Committee believes that making the community aware of these oversight mechanisms, and the various reports that are produced, will help increase the level of transparency and visibility of process in all immigration detention facilities.
- 4.85 Another way to increase transparency is to provide comprehensive information about immigration detention facilities on DIAC’s website. The Committee acknowledges that DIAC has taken some steps to make information on immigration detention facilities more accessible but would

67 Migrant Health Service, submission 33, 27 August 2008, p 2.

68 The Justice Project Inc., submission 127, 3 September 2008, p 9; Get Up!, submission 124, 3 September 2008, p 7; The International Coalition on Detention of Refugees, submission 109, 27 August 2008, p 21; Asylum Seekers and Migrants; Rural Australians for Refugees, submission 88, 27 August 2008, p 3; Refugee Advice and Casework Service (Australia) Inc., submission 25, 27 August 2008, p 2; The New South Wales Young Lawyers Human Rights Committee, submission 56, 27 August 2008, p 10.

like to see included disaggregated figures of detainees on Christmas Island and the number of security breaches in detention centres.

- 4.86 However, the Committee notes that most of this information is not comprehensive and also not consistent. Without the direct assistance of officers of DIAC the Committee would not have obtained information on a number of facilities, including immigration transit accommodation in Brisbane and Melbourne, the juvenile facility in Darwin, and facilities on Christmas Island. The Committee can therefore empathise with the members of the community and media who have found it difficult to obtain accurate information.
- 4.87 In order to promote its work and the inquiry, the Committee's practice is to issue a media release when it visits a detention facility. When the Committee visited the Northern immigration detention centre in Darwin in July 2008, this media release prompted an inquiry from a local media outlet who wished to take some stock footage of the interior of the detention centre. Even though the media outlet agreed not to film detainees, this request was denied by DIAC.
- 4.88 Similarly, when the Committee visited the immigration transit accommodation in Brisbane in April 2009, the secretariat forwarded a request to DIAC from the parliamentary media liaison office, which supports the work of the Committee,⁶⁹ to film images of the building interiors and exteriors. This was to form part of a short documentary about the work of the Migration Committee. Despite a commitment that individual detainees would not be filmed (there were only three people in the facility at the time) this request was denied by DIAC. The Committee requested that DIAC clarify the decision to deny the request to film the Brisbane immigration transit accommodation. To date, a response has yet to be received.
- 4.89 The Australian Government has taken appropriate action in the last few years to move away from detaining people in the harsher immigration detention centre environment to more liveable arrangements in the form of immigration residential housing and immigration transit accommodation. However, media is still reusing file footage of the now closed Baxter and Woomera immigration detention centres. This gives the public the perception that these are what all immigration detention facilities are like, which is no longer accurate. This underlines the necessity for DIAC to make footage available of its currently operating centres.

69 The Parliamentary media liaison office also supports the work of all committees supported by the Department of the House of Representatives.

- 4.90 The Committee believes that it is in the best interests of DIAC, as well as those of the general public and their right to information, that access of the media to detention facilities be improved, notwithstanding the need to protect the privacy of detainees.
- 4.91 Providing greater access to the media will increase the level of transparency and visibility and allow the community greater public scrutiny and thus greater accountability.

Recommendation 11

- 4.92 **The Committee recommends that the Department of Immigration and Citizenship increase the transparency of immigration detention facilities by:**
- **providing the media greater access to all immigration detention facilities, whilst maintaining the privacy of people in immigration detention**
 - **publishing regularly updated information on all immigration detention facilities, including statistics on the detainee population, on the Department of Immigration and Citizenship’s website, and**
 - **developing a set of public media protocols that apply consistently across all immigration detention facilities.**

Michael Danby MP
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