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## SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA

From the  
**Detention Health Advisory Group**

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BY: *MIG*

### Introduction

Thank you for creating this opportunity to contribute to the debate on immigration detention in Australia. DeHAG (Detention Health Advisory Group) has been advising DIAC on this issue for the last 2 years, particularly in regards to optimizing the provision of health care within immigration detention centres<sup>1</sup>. We have noted some significant improvements since the establishment of DeHAG and congratulate the department's Detention Services branch on their work. This submission is prepared on behalf of DeHAG members.

### Executive summary

We believe that further improvements are possible within the current legislative framework, to improve efficiency and reduce the risk of adverse physical and mental health outcomes for detainees. We believe that there are a number of key issues in immigration detention which require review, these will be addressed in more detail throughout this submission. In summary these include:

- The need to use immigration detention only as a last resort to minimize the risk of adverse mental health outcomes and to reduce costs.
- Increased use of alternatives to detention in preference to detention centres. This approach does emphasize the need for a response to the bridging visa inquiry, including consideration of cessation of the 45 day rule and to enable individuals and families on bridging visas to access Medicare and work rights.
- The need for quality research to promote evidence based decision making to assist in risk stratification of individuals in order to determine who would be best managed in less restrictive environments and for those detained the most appropriate environment for their risk category.
- Improved efficiency of the immigration detention system to reduce the need for prolonged detention and to minimize the number of ex prisoners requiring detention. Consideration of separation of these individuals if deemed to be at risk of violence or bullying from lower risk clients
- There is an urgent need for improvement of current suicide and self harm protocols within detention centres, which are well recognised to be inadequate and may increase rather than de-escalate an individual's risk.

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<sup>1</sup> DeHAG report against work program 06-07

## **Decision to detain**

We acknowledge that the Government has a responsibility to deal with immigration matters, that such responsibility overlaps with security and humanitarian issues and that detention centres have a place amongst the range of options available to the department. Immigration detention centres or transit accommodations undoubtedly have a role in the management of a number of subgroups of individuals, namely;

1. Individuals assessed as being at high risk of absconding (ie 'flight risks') who either are deemed to be a risk to public safety or who risk not being compliant with Departmental requirements if released.
2. Individuals who arrive without adequate health screening who are thought to be at risk of illnesses of public health significance where immediate hospitalization is considered unnecessary ( ie *type A and B infectious disease particularly air borne types found in Health (Infectious Diseases) Regulations 2001*)
3. New arrivals awaiting security checks.

Unfortunately, there is little research data available to assist in assessing an individual's risk of absconding. We strongly advocate the development of a research program in immigration (supported by academic institutions) that investigates inter alia, risk factors for absconding and possible public safety implications, if any, of reducing security measures for the majority of clients who are detained. Anecdotally, the impression is that flight risk of clients seeking asylum is very low.

## **Alternatives to detention**

We suggest that a significant number of people currently in immigration detention who do not meet these criteria be managed in less restrictive and arguably less costly environments, which are more likely to lead to improvements in mental health and individual sense of agency and purpose. We commend DIAC on its readiness to fund alternative less restrictive forms of detention for individuals and families believed to be 'low risk' and emphasise the importance of avoiding the detention of children within centres. The new immigration transit accommodations in Melbourne and Brisbane and residential housing units are of a high standard and are positive examples of a new approach to immigration detention focusing on short term, flexible and comfortable accommodation less likened to correctional facilities than other centres.

Alternative approaches to detention, may include clients being case managed in the general community on Bridging Visas or in community detention if this is deemed inappropriate. For this approach to be effective temporary access to Medicare (most importantly for children and elderly clients but preferably for all) and work rights would be needed for clients on Bridging Visa Es.

We strongly believe that the Case Management approach has demonstrated effectiveness and should be expanded. Case managers ideally should follow individual clients through to the end of the immigration process and be committed to appropriate handover to Australian community services at the end of a successful application (or indeed to services in the country to which the client is being returned. This may require the development of Memorandums of Understanding, and other agreements with agencies in those countries. It is well recognised that detention, particularly prolonged detention, may lead to adverse mental and physical health outcomes and economically be very costly. Immigration detention should be an option of last resort rather than the default position as currently tends to occur.

## **Determining duration of detention**

In considering the appropriate duration of detention we accept that there is a trade off between the rapid processing that is possible when clients are available for interview and assessment in a detention centre and the reasonable demands for freedom from unnecessary confinement (which

may lead to slower processing). We would submit that after 2 weeks in detention, cases must be reviewed, preferably in conjunction with an independent authority (ie the Ombudsman's office or other nominated independent authority such as a detention review panel). At review the Department would need to justify why further time is needed in detention and why the client cannot be managed in a less restrictive environment. The Ombudsman or other nominated independent authority should maintain an active interest in clients not released after a further 2 weeks.

A major concern which has necessitated the need for facilities providing longer term accommodation is the commonality of delays in processing cases. We believe that the current minister is to be commended for dealing with a number of clients whose matters have been pending for over 2 years. The Department and the Immigration Ombudsman are also to be commended in assisting the minister in this matter. It is vitally important that the minister continue this process. However, as of 27<sup>th</sup> June 2008, 52 individuals remain detained who have been in Australian detention for over 2 years<sup>2</sup>. As the backlog of cases is cleared, attention should focus on ensuring the rapid processing of new arrivals in detention environments.

A notable subgroup of the detention centre population is the significant number of individuals who are detained on subtype 501 cancellations prior to deportation to their countries of origin. These sometimes problematic individuals are in detention pending removal following completion of a prison term. Anecdotally, some issues related to bullying and increased rates of illicit drug use and blood borne virus identification within immigration detention centres, have largely been related to this group

We strongly recommend that prisoners that have immigration matters pending or who may be eligible for a s501 cancellation should be identified by Correctional services and the Department early on in their prison term and discussed at regular meetings between the departments. These individuals should be supported in accessing legal advice and appropriate support with their claims whilst in the corrections environment. This early detection of immigration cases should then be resolved before the individual's prison term is completed allowing removal immediately upon their release without the need for a period in immigration detention. Also risk stratification (based on evidence from research that is currently lacking) would allow appropriate management of ex-prisoners needing immigration detention in the same way as other clients are managed. It is important to recognize that ex-prisoners have served their time and do not by default require immigration detention.

As the current providers of detention services are best known for their work in prison settings there appears to be a tendency to manage all detainees in a way more befitting a corrections environment. As suggested above, this approach may be suitable for a small proportion of the current detention centre population, but should not be the way in which most clients are managed. Contracts with providers should reflect this position.

### **Accountability**

DIAC and the detention services branch should be acknowledged for the significant amount of community and stakeholder consultation which has occurred particularly since the release of the Palmer and Comrie reports. We support the continuation of the involvement of community consultation groups, and bodies such as the Ombudsman's office and IDAG in overseeing the immigration detention centres and alternative detention environments.

We emphasize the importance of the need for an independent authority to oversee monitoring and review of individuals and families who have been detained for more than 2 weeks as outlined previously in this document and support the work of the Ombudsman in identifying and investigating the cases of individuals who have been in detention for over 2 years.

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<sup>2</sup> DIAC detention statistics summary 27/6/08

## **Preferable infrastructure options for Immigration detention centres**

We fully support the review of current SASH (suicide and self harm) protocols which are in place in immigration detention centres. It is well recognised that these protocols are inadequate and potentially harmful to clients. We acknowledge that the Department is developing evidence-based policies and procedures in regard to Suicide and Self harm issues which include environmental considerations such as avoiding the need to isolate clients who are deemed to be at risk and protocols which allow the provision of support and likely de-escalation of crises situations, for non medical personnel.

Immigration Detention Centres can be unpleasant or even dangerous places for some clients. Clients can be placed together with others who may be using illicit substances, are violent or who bully. As mentioned previously, reducing the number of individuals on subtype 501 visa cancellations may assist with this. There is a need for evidence based policies and procedures to deal with these problems. Research is obviously needed to support this. Environmental design should obviously reflect the need to separate high risk individuals from others.

We thank you for the opportunity to make this submission. Please contact me if you have any concerns or questions regarding these issues.

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Chair  
Detention Health Advisory Group on behalf of DeHAG

## **DeHAG membership**

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