

Introduction

Background to this report

- 1.1 On 14 May 2008 the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, requested the Joint Standing Committee on Migration to inquire into and report on immigration detention in Australia.
- 1.2 The Committee undertook to 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 (IDCs)
 - 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 IDCs, Immigration Residential Housing (IRH), Immigration Transit Accommodation (ITA) and community detention, and
 - options for additional community-based alternatives to immigration detention by

- ⇒ inquiring into international experience
 - ⇒ considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
 - ⇒ comparing the cost effectiveness of these alternatives with current options.
- 1.3 These wide ranging and challenging terms of reference require the Committee to examine current detention policy and values and how they are articulated in administrative practice, infrastructure, facilities and service delivery.
- 1.4 More broadly, they set the task of developing a blueprint for Australia's future immigration detention policy. They require the Committee to critically assess the role that detention plays in maintaining the integrity of Australia's immigration system, and the shape of a future immigration detention system that meets the needs of people with an unresolved immigration status and the Australian community. They require an assessment of how to most appropriately weigh the balance between a person's right to liberty and dignity, risk concerns and cost effectiveness for the Australian taxpayer.
- 1.5 With the launch of the inquiry in May 2008, the Committee sought submissions from government agencies and advisory groups, non-government organisations, such as refugee and migrant support and advocacy groups and charitable organisations. A total of 143 submissions have been received. The list of submissions is at Appendix A.
- 1.6 The Committee has conducted public hearings and roundtables in Canberra, Sydney, Perth, Melbourne and Brisbane, and inspected all detention centres, residential housing facilities and immigration transit facilities in Australia. A list of public hearings and visits is at Appendix B.
- 1.7 During the course of the inquiry the Committee has spoken to a number of former detainees and individuals currently in detention centres, as well as individuals and families in IRH, in community detention and living in the community on bridging visas. Invitations to the community detention client roundtable in Sydney were facilitated by the Department of Immigration and Citizenship (DIAC), and the bridging visa client roundtable in Melbourne was facilitated by the Australian Red Cross, Hotham Mission and the Asylum Seeker Resource Centre, for which the Committee is appreciative.

Ministerial announcements

- 1.8 The Committee's inquiry has taken place during a time of significant immigration policy shifts in Australia.
- 1.9 On 29 July 2008, the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, announced a series of values that would underpin Australia's immigration detention policy.¹ Those seven values are:
1. Mandatory detention is an essential component of strong border control.
 2. To support the integrity of Australia's immigration program three groups will be subject to mandatory detention:
 - all unauthorised arrivals, for management of health, identity and security risks to the community
 - unlawful non-citizens who present unacceptable risks to the community, and
 - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
 3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
 4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
 5. Detention in IDCs is only to be used as a last resort and for the shortest practicable time.
 6. People in detention will be treated fairly and reasonably within the law.
 7. Conditions of detention will ensure the inherent dignity of the human person.

¹ Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, 29 July 2008.

- 1.10 The values build on reforms implemented by the previous Government. These include the commitment not to place children in IDCs; the introduction of community detention for families and other vulnerable detainees; and the increasing use of bridging visas in preference to detention.
- 1.11 Since the ministerial announcements, consultation has been ongoing with stakeholders and non-government organisations about how best to implement the values. The Government has said it is seeking to implement the new detention values through policy and regulation in the first instance, although legislation to address more fundamental issues is expected to be introduced in late 2009.²
- 1.12 In August 2008, the Government abolished temporary protection visas (TPVs). TPVs were introduced by the previous government to discourage people smuggling activities resulting in unauthorised boat arrivals and to discourage refugees leaving their country of first asylum. Now, all applicants for a protection visa who are found to engage Australia's protection obligations receive a permanent protection visa.³ While the TPV regime is not considered as part of this inquiry, the experience of TPV holders living in the community whilst awaiting resolution of immigration status has informed the Committee's reflections, in later chapters, on how community-based arrangements might best function in the interests of the person, the community and the Australian migration system.

First report: *Criteria for release from detention*

- 1.13 To facilitate the contribution of this inquiry to the implementation of the reforms announced by the Minister, the Committee decided to report in three parts.
- 1.14 The first report, *Immigration detention in Australia: A new beginning – Criteria for release from detention* was tabled on 1 December 2008.⁴ This report focussed on the first two of the six terms of reference, that is:

2 Senator the Hon C Evans, Minister for Immigration and Citizenship, *Senate Hansard*, Supplementary Budget Estimates, Legal and Constitutional Affairs Committee, 21 October 2008, p 109.

3 Department of Immigration and Citizenship, *Fact Sheet 68 - Abolition of Temporary Protection visas (TPVs) and Temporary Humanitarian visa (THVs), and the Resolution of Status (subclass 851) visa* (2009).

4 The report is available at <http://www.aph.gov.au/house/committee/mig/detention/report.htm>. A dissenting report was tabled by three members of the Committee and is available in the same place.

- the criteria that should be applied in determining how long a person should be held in immigration detention, and
 - the criteria that should be applied in determining when a person should be released from immigration detention following health, identity and security checks.⁵
- 1.15 The report addressed these terms of reference in the context of the Minister's announcements and endorsed the application of a risk-based model to assess whether immigration detention was a proportionate and necessary response in each individual case.
- 1.16 The Committee's objective was to set open and transparent guidelines that would enable the implementation of the seven principles outlined by the Australian Government. In the first report, it outlined guidelines for the assessment of public health, compliance, criminal and national security risks. It also considered the future shape of our immigration detention system in terms of fairness, accountability, and review mechanisms for ongoing detention. Finally, it considered removal practices and the policy of charging people for the time they spend in detention.
- 1.17 A recurring concern about the current immigration detention system has been the indefinite nature of detention, with little scope or information about the reasons or rationale for detention. The report tackled those uncertainties through the following recommendations:
- 5 day time frames for health checks
 - up to 90 days for the completion of security and identity checks, after which consideration must be given to release onto a bridging visa
 - a maximum time limit of 12 months' detention for all except those who are demonstrated to be a significant and ongoing risk to the community, and
 - the publication of clear guidelines regarding how the criteria of unacceptable risk and visa non-compliance are to be applied.

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

- 1.18 The report also recommended additional measures to increase oversight and transparency, such as:
- greater detail and scope for the three month review conducted by DIAC
 - ensuring detainees and their legal representatives receive a copy of the review
 - ensuring the six month Ombudsman's review is tabled in parliament and that the ministerial response to recommendations is comprehensive
 - providing increased oversight of national security assessments that may affect individuals
 - enshrining the new values in legislation
 - establishing a maximum of 12 months in detention unless a person is determined to be a significant and ongoing risk to the Australian community, and
 - providing for merits and judicial review of the grounds for detention after that person has been detained for more than 12 months. This would apply to those who remain in detention after 12 months on the basis of a 'significant and ongoing unacceptable risk' assessment.⁶
- 1.19 Additionally, the Committee considered that the practice of charging a person for their own detention was considered harsh and contrary to the stated value that immigration detention was not punitive. The Committee recommended that this practice should cease and that all such debts should be waived immediately.
- 1.20 The Committee is extremely pleased to note the introduction of the Migration Amendment (Abolishing Detention Debt) Bill 2009 into the Senate on 18 March 2009. The Bill 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. As the Minister noted, the bill is in line with the recommendation of this Committee from its first report that the practice of charging a person for their immigration detention be

⁶ A full list of the Committee's recommendations from its first report of the inquiry into immigration detention in Australia can be found at Appendix C.

abolished. People convicted of people smuggling or illegal foreign fishing will still be liable for their costs of detention and removal.⁷

- 1.21 A full list of the Committee's recommendations from this report and a summary of the government response are provided at Appendix C.

This report: *Community-based alternatives to detention*

- 1.22 The first report of the Committee aimed to expedite processing times and ensure release from detention centres following health, security and identity checks. The first report also recommended the increased use of bridging visas to enable the release of persons into the community following a time period and conditional on appropriate checks and clearances.
- 1.23 Logically the Committee has chosen to next report on the conditions and material support for this release, including appropriate options for community-based alternatives to secure detention.
- 1.24 This second report considers Australia's current use of alternatives to detention centres, and assesses options in international use which may have application in the Australian context.
- 1.25 Under the inquiry's terms of reference, the Committee is to canvass options for additional community-based alternatives to immigration detention, by:
- inquiring into international experience
 - considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
 - comparing the cost effectiveness of these alternatives with current options.
- 1.26 In considering community-based alternatives to detention, the Committee also makes comment on the infrastructure required to meet the needs of those not in detention centres and awaiting the resolution of their immigration status. This provides a partial response to a further term of reference, namely:

7 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Detention debt regime to be scrapped', media release, 18 March 2009; Sen the Hon J Ludwig, Migration Amendment (Abolishing Detention Debt) Bill 2009, second reading speech, *Senate Hansard*, 18 March 2009, pp 1-4.

- the preferred infrastructure options for contemporary immigration detention.

1.27 As the focus of this report is on community-based alternatives, the report does not address infrastructure options for detention centres. This will be considered in the subsequent and final report.

Third report: *Transparency, infrastructure and service provision*

1.28 The Committee's third and final report for the inquiry, due to be tabled in later in 2009, will discuss the contemporary infrastructure, service and management needs of a future immigration detention and bridging visa population. This report will address the remaining terms of reference, namely:

- options to expand the transparency and visibility of IDCs
- the preferred infrastructure options for contemporary immigration detention, and
- options for the provision of detention services and detention health services across the range of current detention facilities, including IDCs, IRH, ITA and community detention.

The development of detention alternatives

1.29 Introduced in 1992, the policy of mandatory detention was envisaged as a temporary and exceptional measure for a particular group of unauthorised arrivals or 'designated' persons who arrived by boat between 19 November 1989 and 1 September 1994. The period of detention was limited to 273 days. In 1994 this time limit was removed and mandatory detention was extended to all unlawful non-citizens.⁸

1.30 Since that time, the Australian Government has invested in the construction and expansion of a network of secure detention facilities. This has included the now defunct facilities at Port Hedland in Western Australia, Baxter and Woomera in South Australia, Cocos Island, Nauru and Manus Island in Papua New Guinea. Currently in use are facilities on Christmas Island, in Sydney, Melbourne, Perth,

8 Refer to Appendix E for a timeline on immigration detention policy from 1989-2009.

Brisbane and Darwin.⁹ A historical overview of legislation and major policy initiatives relating to immigration detention is provided at Appendix D.

- 1.31 The number of people held in detention by DIAC was at its highest between 2000 and 2002. Between 1999 and 2001, Australia was faced with an unprecedented number of asylum seekers; around 9500 arrived unlawfully by boat from the Middle East via Indonesia.¹⁰ There has been a steady reduction in the detention population since then, although the numbers continue to fluctuate in response to external factors, such as natural disaster and conflict, the activities of people smugglers, trends in non-compliance and administrative compliance action (Appendix E).¹¹
- 1.32 Australia's secure detention facilities currently have an operational capacity of over 1100, although as at 20 March 2009 the detainee population was 357, including 33 in community detention and 12 in alternative temporary detention in the community.¹²
- 1.33 Australia's experience with mandatory immigration detention has been controversial. In this decade, government policy has progressively recognised the need to develop a range of alternatives to secure detention. In part, this has been a way of reconciling a limited and geographically dispersed detention infrastructure with the necessity of detaining people elsewhere, in transit, for medical attention, or for other reasons.
- 1.34 Pressure for development of alternatives has also come from public concern about families and children in detention, in some cases for multiple years, and more diffusely from reports of the prevalence of depression, anxiety, self-harm, suicidal ideation and psychiatric disorders amongst immigration detainees.¹³

9 An immigration transit accommodation facility is also under construction in Adelaide.

10 Department of Immigration and Citizenship, 'Unauthorised arrivals by land and sea', fact sheets 74 & 74a, viewed on 1 November 2008 at web.archive.org/web/20030621215427/http://www.immi.gov.au/facts/74unauthorised.htm web.archive.org/web/20030621215037/www.immi.gov.au/facts/74a_boatarrivals.htm.

11 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Unauthorised boat arrivals arrive on Christmas Island', media release, 2 October 2008.

12 Department of Immigration and Citizenship, Immigration detention statistics summary as at 20 March 2009, viewed on 31 March 2009 at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090320.pdf.

13 Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention* (2004); Chilout, submission 40, p 3; Cole E, Bail for

- 1.35 In some instances Australia may have been in breach of international human rights and the United Nations Human Rights Committee has found Australia's immigration detention regime to be in violation of its obligations under international law on seven separate occasions.¹⁴ Under United Nations guidelines, the detention of asylum seekers or other immigration clients should be a measure of last resort where no other alternatives are available.¹⁵ In the context of a mandatory detention system it has been difficult, until recently, to demonstrate that alternatives to secure immigration detention had been considered and found inappropriate.
- 1.36 Over recent years, the range of types of detention accommodation in Australia has expanded substantially. Currently the following types of immigration detention are available for DIAC to place unlawful non-citizens:
- IDCs (secure, institutional detention)
 - alternative temporary detention in the community, which may include foster care for minors or stays in hotels, hospitals, other medical facilities or state correctional facilities (introduced in 2002)¹⁶
 - community detention, which is supported community living arrangements for those assessed as a low flight risk and for families with children (introduced in 2005)
 - IRH, which is family-style detention accommodation for lower risk detainees (introduced in 2006), or
 - ITA, which is hostel-type accommodation for people anticipated to be removed or processed quickly (introduced in 2007).
- 1.37 In addition bridging visas can also be used as an alternative to immigration detention. A bridging visa makes a non-citizen temporarily lawful until a specified event occurs or until their immigration status is resolved. While the *Migration Act 1958* requires the detainment of an unlawful non-citizen, immigration policy is that,

immigration detainees, *A few families too many – The detention of asylum seeking families in the UK* (2003) pp 34-35; Circle of friends 42, submission 32, p 6.

14 Attorney-General's Department, submission 61, p 2; Nasu H, Rice S & Zagor M, submission 76, p 3; Refugee and Immigration Legal Centre, submission 130, p 7.

15 United Nations High Commissioner for Refugees, *Guidelines on applicable criteria and standards relating to the detention of asylum seekers* (1999), p 1.

16 Department of Immigration and Citizenship, submission 129, pp 18-26.

where it is appropriate and safe to do so, the granting of a bridging visa should be considered prior to detaining a person.¹⁷

- 1.38 Inquiry participants almost universally acknowledged these developments, together with improvements to case processing times and the introduction of case management, as being positive and significant.
- 1.39 As part of his announcement of the immigration detention values on 29 July 2008, the Minister for Immigration and Citizenship said under the reforms, 'Persons will be detained only if the need is established. The presumption will be that persons will remain in the community while their immigration status is resolved'.¹⁸ In consequence, he nominated the further expansion of community housing options as a priority.¹⁹
- 1.40 In its submission, DIAC noted that this work was ongoing in line with the Government's policy directions. In the department's view, 'Potential exists within the current legislation to make greater use of community-based options, subject to considerations of risk and appropriate support services'.²⁰
- 1.41 In this context, inquiry participants were supportive of the Committee's remit to explore alternatives to immigration detention. The Office of the United Nations High Commissioner on Refugees (UNHCR) stated in its submission that:

Given the negative effects of detention on the psychological well-being of those detained, the Committee [should] recommend that all possible alternatives to detention are explored before any decision is made to detain, including available community care arrangements. Particular care should be provided for vulnerable asylum-seekers, including women at risk, children, unaccompanied elderly persons, survivors of torture or trauma, and/or persons with a mental or physical disability.²¹

17 Department of Immigration and Citizenship, supplementary submission 129f, p 9.

18 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, Canberra, 29 July 2008, p 4.

19 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, Canberra, 29 July 2008, p 5.

20 Department of Immigration and Citizenship, submission 129, p 36.

21 Office of the United Nations High Commissioner for Refugees, submission 133, p 1.

- 1.42 The Refugee and Immigration Legal Centre (RILC) informed the Committee that:

The fundamental tenets of the government's new detention policy dictate that formulation and introduction of comprehensive alternatives to detention be given utmost priority. Minister Evans has recently expressed concern about the 'limited and inadequate' options currently available beyond detention centres. We welcome the government's commitment to prioritise 'expansion of community housing options'. Faithful implementation of the policy is in part dependent on this occurring.²²

- 1.43 Hotham Mission, one of the pioneers in support models for community-based immigration clients in Australia, applauded the change in policy, but expressed concern regarding how those released from detention into the community would fare and if appropriate services and support would be available:

The values that the minister outlined in relation to detention policy reflect a new era in the treatment of detainees; they speak of fairness, dignity, last resorts and unacceptable conditions. We welcome these changes, however these values do not reflect the way we currently treat the majority of people in protection process in the community, including those who have been released from detention. I believe it would not be an exaggeration to say that we do not currently have the capacity to uphold these values in community care upon release from detention.²³

Assessing the range of detention alternatives

- 1.44 Over the last fifteen years there has been significant criticism from refugee and human rights advocacy groups regarding detention conditions, the types of detention available and, when a person is released into the community on a bridging visa, the conditions that apply to some visas. In particular this advocacy, and evidence to this inquiry, has had a focus on protection visa applicants, or asylum

22 Refugee and Immigration Legal Centre, submission 137, p 23.

23 Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 26.

seekers.²⁴ There has also been significant public advocacy for children, and concern regarding the conditions of their placement and the placement of family units.

- 1.45 While asylum seekers and children now represent a minority of unlawful non-citizens in detention,²⁵ the Committee recognises the special vulnerabilities of these populations. The Committee also acknowledges the special needs of other detention populations such as foreign fishers, and in particular juveniles, who may not desire community placements. Some of those awaiting an immigration decision may experience isolation or ostracism in the community. For others, community connections and the ability to contribute meaningfully to Australian society or support their family whilst waiting on an immigration outcome will be paramount. In addition to protection visa applicants, these may include people with complex immigration cases, medical needs, stateless persons and other people who might otherwise be in immigration detention for a long and indefinite period of time.
- 1.46 There are currently a number of alternatives to secure detention in use in Australia and many of these have developed in response to the specific needs of certain detention populations. Internationally, a number of other options are used. In assessing the application of alternatives to the Australian context, the Committee has had regard for the immigration values outlined by the Minister. The Committee has also taken into account the shift to a risk-based approach to immigration detention policy.
- 1.47 In developing a set of recommendations to outline appropriate alternatives to detention, the Committee has determined that there are three key considerations. This report assesses and makes recommendations on a range of community-based alternatives to detention, having given careful regard to balancing the following three considerations:

24 The terms *asylum seeker* and *protection visa applicant* are used interchangeably in this report.

25 Department of Immigration and Citizenship, supplementary submission 129d, p 1, provides the number of minors relative to total annual detention populations from 1989-90 to 2007-08. In 2007-08, children comprised 239 or approximately 5 per cent of the 4623 people taken into immigration detention. The number of protection visa finalisations for the same year was 347. Of protection visa applicants as a whole, the majority are not in detention. As at 10 October 2008, there were 6090 protection visa applicants living in the community on bridging visas, including those seeking merits review, judicial review or ministerial intervention related to an adverse decision on a protection visa application. Department of Immigration and Citizenship, submission 129n, p 9.

- 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.

1.48 The recommendations of this report set out a range of policy and regulatory changes, program expansion and new accommodation options that will provide a more flexible, appropriate and cost-effective range of alternatives than are currently available, while maintaining high levels of compliance and ensuring the integrity of our immigration system.

Structure of the report

- 1.49 Chapter 2 of this report provides a factual overview of current Australian alternatives to secure detention, including the use of bridging visas as an alternative to detention. Alternative options from international practice are described, including reporting and monitoring options that in some countries take the place of secure detention.
- 1.50 Chapters 3 and 4 examine the evidence to the inquiry in light of the three considerations that the Committee must balance in assessing detention alternatives. Chapter 3 summarises the volume of evidence received regarding the conditions and accommodation options for alternatives to detention, and issues raised such as income support, access to health care, accommodation availability and support services.
- 1.51 Chapter 4 considers compliance in relation to alternatives to secure detention centres, and issues relating to restoring confidence in the integrity of our immigration system and ensuring robust and accountable decision processes. There are a number of policy and procedural issues which compound timing delays and so impact on transparency and expediting case resolution. This chapter also considers the financial cost of IDCs, alternative forms of detention and community-based alternatives to detention.

- 1.52 The final chapter sets out the Committee's framework for an appropriate future range of detention alternatives that implement the values announced by the Minister on 29 July 2008 and balance the Committee's considerations for an appropriate and supported living environment for people, a robust and enforceable immigration system, and a system which is cost-effective.