


Submission No.	129
Date Received	

JOINT STANDING COMMITTEE ON MIGRATION

Parliament House, Canberra ACT 2600
Phone: (02) 6277 4560 Fax: (02) 6277 4427 Email: jscm@aph.gov.au

RECEIVED
04 SEP 2008
BY: MLG

Inquiry into immigration detention in Australia

*Submission from the
Department of Immigration & Citizenship*

September 2008

Table of Contents

<i>Summary</i>	5
<i>Purpose of immigration detention</i>	8
<i>Population in immigration detention</i>	9
<i>Comments on Terms of Reference</i>	13
The criteria that should be applied in determining how long a person should be held in immigration detention.....	13
The criteria that should be applied in determining when a person should be released from immigration detention following health and security checks	13
Options to expand the transparency and visibility of immigration detention centres.	15
The preferred infrastructure options for contemporary immigration detention.	18
Options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres (IDCs), Immigration Residential Housing, Immigration Transit Accommodation (ITA) and community detention.	30
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; and	
c) comparing the cost effectiveness of these alternatives with current options.	35
 <i><u>Attachment A</u> - Legislative history of immigration detention since 1992.....</i>	 39
<i><u>Attachment B</u> - Minister's speech on New Directions in Detention</i>	41
<i><u>Attachment C</u> - Visits to immigration detention facilities by public scrutiny bodies, Federal Parliamentarians and Parliamentary Committees</i>	51

Summary

1. Australia's continued growth depends upon our ability to attract people with the right skills from other countries, while our reputation as a good international citizen relies on us doing our fair share for those who are subject to persecution and who need protection.
2. In 2008-09, Australia will deliver its largest ever migration program, offer one of the most generous offshore humanitarian programs in the world and deliver a first-class settlement program to help refugees and humanitarian entrants to rebuild their lives.
3. However, Australia will only be enriched through these programs if strong mechanisms are in place to ensure the integrity of Australia's immigration system.
4. Australians are entitled to expect that our immigration system operates as intended and that there are effective but fair processes in place to deal with people who do not abide by the conditions of their stay or who attempt to misuse these processes.
5. While the Government is committed to preventing and deterring non-compliance with Australia's immigration laws (such as fraud against programs, illegal work and unlawful entry to Australia) it must also take enforcement action against those who present a security, character or health risk to the community, as well as those who repeatedly abuse Australia's immigration system.
6. The Government is committed to mandatory immigration detention to support the integrity of Australia's immigration program. Mandatory immigration detention was introduced in 1992 to apply to unauthorised boat arrivals and broadened in 1994 to apply to all unlawful non-citizens in the migration zone.
7. A legislative history of immigration detention since 1992 is at [Attachment A](#).
8. The Department of Immigration and Citizenship (the Department) is responsible for managing immigration detention, which is administrative in nature and is not used for punitive or correctional purposes.
9. Since 2005, the Department has been undergoing significant business and cultural change transformation that includes many changes designed to improve the circumstances of people detained by the Department. These include:
 - a. an increased focus towards overall program integrity and prevention, with enforcement onshore and subsequent detention only being used where necessary to manage risks to the Australian community or in relation to people who refuse to cooperate with the Department in the resolution of their immigration status;
 - b. comprehensive training and instruction for departmental officers on the initial decision to detain;
 - c. introduction of Detention Review Managers (DRMs) to independently review

the initial decision to detain a person and continue to review the cases of people in immigration detention on an ongoing basis to ensure their detention remains lawful and reasonable;

- d. increased departmental representation and oversight at immigration detention centres (IDCs);
- e. a national case management service where all people detained by the Department (except for illegal foreign fishers, airport turnarounds and other people on a fast, uncomplicated removal pathway) have a dedicated case manager to ensure that an appropriate immigration outcome is achieved in a timely, fair and reasonable manner;
- f. a community care pilot to trial the provision of essential health and welfare support, and immigration counselling for vulnerable clients in the community while their immigration status is being resolved;
- g. assisted voluntary returns from the community as an alternative to detention and removal;
- h. an enhanced client service approach that matches the needs of people in immigration detention to the most appropriate detention accommodation option (client placement model);
- i. an increased focus on health service delivery to meet the individual needs of people in detention, including an enhanced mental health service and health case management support for complex cases;
- j. changes to infrastructure at IDCs; and
- k. new Immigration Residential Housing in Sydney and Perth, expansion and upgrade of the IDC in Darwin, and new Immigration Transit Accommodation in Brisbane and Melbourne and one to open in Adelaide in 2008-09.

10. On 29 July 2008, the Government's commitment to mandatory immigration detention was affirmed by the Minister for Immigration and Citizenship, Senator Chris Evans, in a speech delivered at the Australian National University, entitled "*New Directions in Detention – Restoring Integrity to Australia's Immigration System*", see [Attachment B](#).

11. In addition to endorsing mandatory immigration detention, the Government has introduced the following Key Immigration Detention Values to guide and drive future immigration detention policy and practice. These seven values support a risk-based and humane approach to the management of people detained and ensure that they will only be placed in immigration detention centres as a last resort and for the shortest practicable time:

1. Mandatory immigration 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 immigration detention:

- a. all unauthorised arrivals, for management of health, identity and security risks to the community;
 - b. unlawful non-citizens who present unacceptable risks to the community; and
 - c. 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 (IDC);
 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, will be subject to regular review;
 5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time;
 6. People in immigration detention will be treated fairly and reasonably within the law;
 7. Conditions of immigration detention will ensure the inherent dignity of the human person.
12. The Department is in the process of implementing these values into all aspects of departmental policy and practice.

Purpose of immigration detention

13. The overall purpose of immigration detention is to support the integrity of Australia's immigration program, most importantly by:

- a. enabling health, identity and security checks to be conducted on those who arrive unlawfully in Australia;
- b. protecting the Australian public from those unlawful non-citizens who present unacceptable risks to the community; and
- c. ensure and facilitate the removal of those who repeatedly refuse to comply with their visa conditions.

Population in immigration detention

14. The number of people in immigration detention has significantly decreased over recent years. On 30 June 2003 there were 1311 people in immigration detention, and 1047 of these people were detained in IDCs. This compares with figures five years later on 15 August 2008 when only 307 people were in immigration detention, 201 of whom were detained in IDCs, the lowest numbers since June 1994. An additional 106 people were held in alternative detention arrangements and community detention. Of the 201 people in IDCs, 123 were visa overstayers, 46 were detained as a result of visa cancellation including those cancelled on character grounds and 5 were illegal foreign fishers (IFF).

15. The majority of people now in immigration detention (about 80 per cent) are those who have either overstayed their visa or breached the conditions of their visa, resulting in a visa cancellation.

16. Overall, the application of immigration detention as a measure of last resort and the increased focus on overall program integrity has halved the rate at which visa overstayers located through onshore compliance activities are taken into immigration detention. In 2004-05, around 30 per cent of compliance locations resulted in the person being detained. By 2007-08 this figure was down to less than 15 per cent.

17. People in immigration detention are detained for the shortest practicable time. Currently, about 35 to 40 per cent of all people in immigration detention have been detained for less than three months.

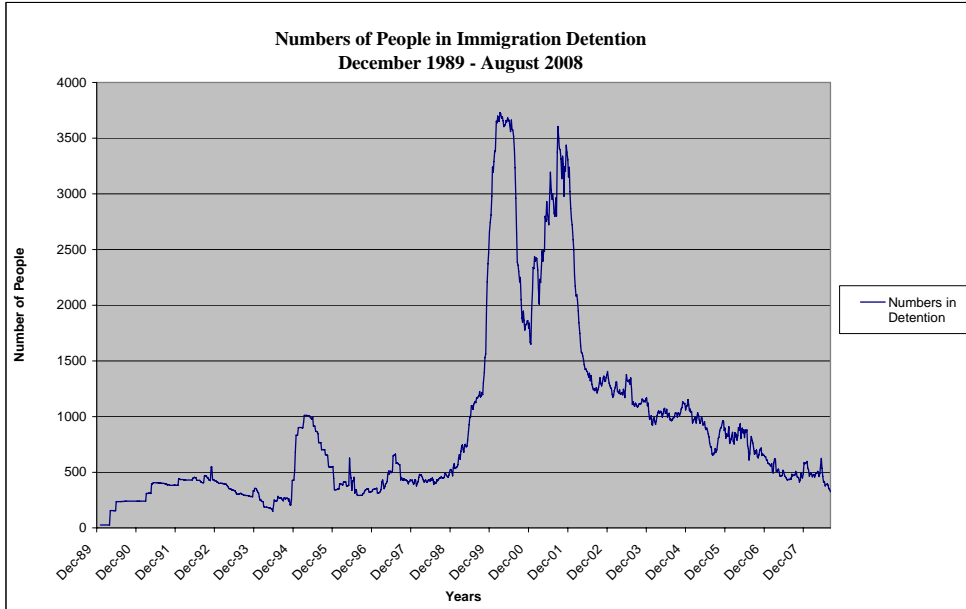
18. It should be noted that people are not detained because they seek asylum in Australia. Only about 15 per cent of people currently in immigration detention have applied for a protection visa after being detained in Australia for other reasons, such as for having had their visa cancelled on character or other grounds.

19. With regard to foreign fishers, the Australian Fisheries Management Authority is responsible for identifying, apprehending and prosecuting illegal foreign fishers. When fisheries detention ends, illegal foreign fishers become unlawful non-citizens and they are taken into immigration detention. They are returned to their country of origin as soon as reasonably practicable.

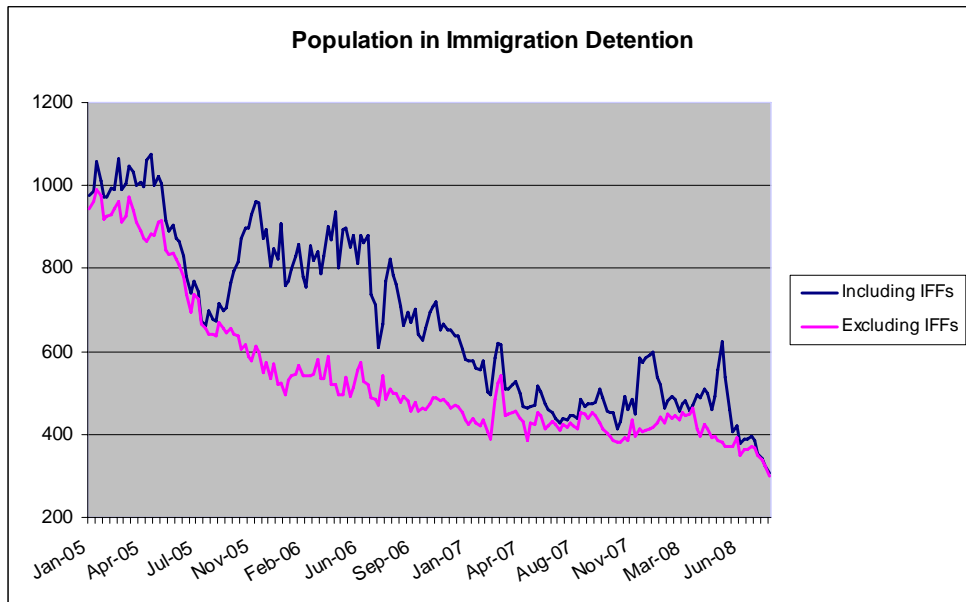
20. The following table shows the location of people in immigration detention as at 15 August 2008:

Location of people in immigration detention as at 15 August 2008	
	No. of People as at Midnight Census
Immigration Detention Centres (excluding IFFs)	
Immigration Detention Centres (excluding Christmas Island)	196
Christmas Island Immigration Detention Centre	0
Total in Immigration Detention Centres (excluding IFFs)	196
Alternative Detention (excluding IFFs)	
Immigration Residential Housing (excluding Christmas Island)	21
Immigration Residential Housing Christmas Island	0
Immigration Transit Accommodation	20
Alternative Temporary Detention in the Community	4
Restricted on Board Vessels in Ports	6
Total in Alternative Temporary Detention Arrangements	51
Community Detention	
Community Detention (excluding Christmas Island)	48
Community Detention, Christmas Island	4
Total in Community Detention Arrangements	52
Illegal Foreign Fishers (IFFs)	
Immigration Detention Centres (IFFs)	5
Alternative Temporary Detention in the Community (IFFs)	3
Total IFFs	8
TOTAL IN IMMIGRATION DETENTION	307

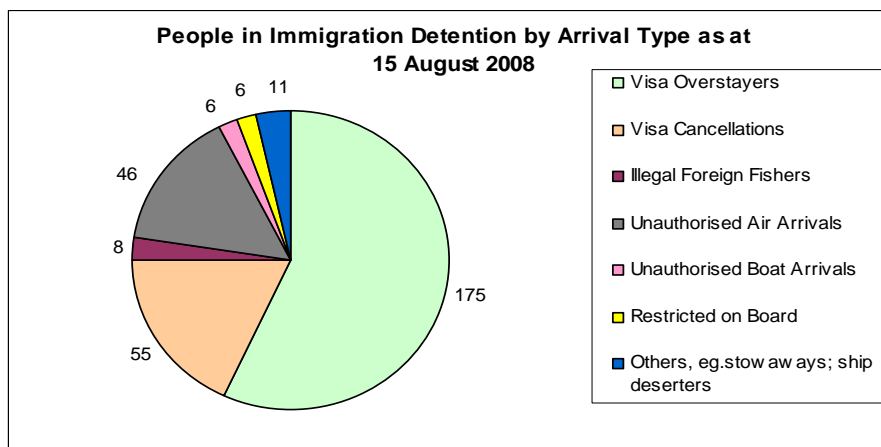
21. The following graph illustrates the fluctuations in the immigration detention population from December 1989 to August 2008:



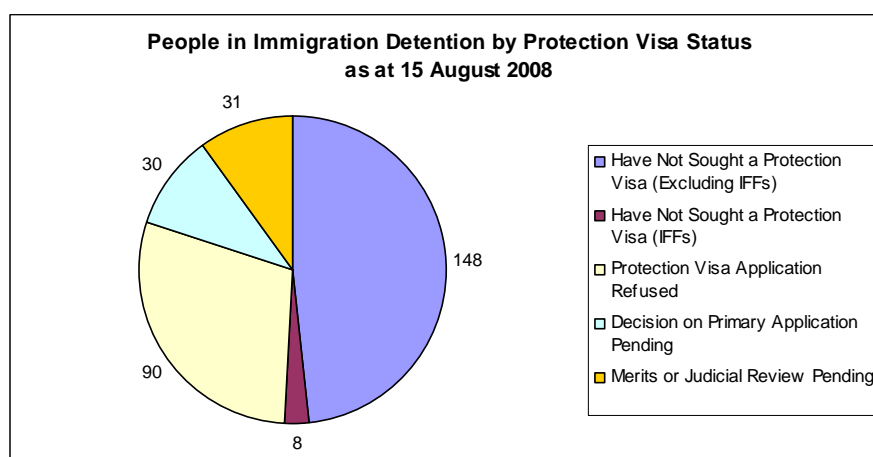
22. More recently, the following graph illustrates the significant decrease in the immigration detention population since January 2005:



23. The following pie chart shows that as at 15 August 2008 there were 230 people (about 80 per cent of the total immigration detention population) who had arrived in Australia lawfully and were then taken into immigration detention for either overstaying their visa or breaching their visa conditions, resulting in a visa cancellation. The number of people in immigration detention who had arrived unlawfully by air or boat as at 15 August 2008 was 52, representing about 17 per cent of the total immigration detention population.



24. The following pie chart shows that as at 15 August 2008 there were 156 people who had not applied for a protection visa while in immigration detention and 90 people who had their protection visa application refused. A further 31 were seeking a merits-based or judicial review of a negative decision on their initial application for a protection visa or on an application remitted for decision by the RRT or the courts, and 30 were awaiting a decision from the Department on their protection visa application. These 30 had applied for protection after having been taken into immigration detention.



25. A detailed Immigration Detention Statistics Summary for all people in immigration detention is generated weekly and published on the Department's website at the following location:

<http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/index.htm>

Comments on Terms of Reference

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

26. In determining how long a person should be held in immigration detention, the Department will be guided by the Government's following key immigration detention values:

- a. detention that is indefinite is not acceptable;
- b. detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time; and
- c. detention decisions are to be subject to regular review.

27. Applying these values, the Department will only hold a person in immigration detention for the period necessary to achieve one or more of the purposes of immigration detention set out in paragraph 13.

28. This means that in most circumstances, people will continue to be in the community on a bridging visa while either their visa application is being finalised (including through merits or judicial review process) or while they make arrangements necessary to depart from Australia.

29. In instances where individuals must be detained, placement in an IDC will only be used as a last resort. Placement in community based detention options will be used in instances where individuals do not present unacceptable risks to the community and will comply with conditions placed on them.

30. This accords with the Government's presumption that persons will remain in the community while their immigration status is resolved if they are complying with immigration processes and are not a risk to the community.

31. Where a person poses an unacceptable risk to the Australian community, or immigration detention is necessary to secure the removal of a person who has been repeatedly non-compliant with visa conditions, the period of immigration detention may be affected by:

- a. the time it takes to arrange the logistics of a person's removal from Australia;
- b. the person's refusal to accept that, having pursued all possible avenues of appeal unsuccessfully, they have no legal right to remain in Australia;
- c. circumstances which are not conducive to a safe and orderly return to their country of origin, such as a state of warfare or civil unrest;

- d. the absence of any agreed protocols for return;
- e. difficulties in effecting transit through third countries.

32. In relation to people serving a custodial sentence in a correctional facility (who have had their visas cancelled on character grounds), the Department makes every effort to time their removal with their release from custody to negate the need to hold them in an IDC. However, this is not always possible due to ongoing merits and judicial review of the cancellation decision or the unavailability of travel documents. These factors may necessitate them being transferred from correctional facilities to immigration detention facilities.

Review of long-term immigration detainees

33. Recently the Minister personally reviewed, in conjunction with the Commonwealth Ombudsman, the cases of all people who had been in immigration detention for more than 2 years with a view to resolving their immigration status.

34. On 23 May 2008, the Minister announced the outcomes of this review. Of the 72 cases reviewed, 31 people were granted or to be considered for a visa, subject to Public Interest Criteria checks, and 24 people were to be removed from Australia. The remaining 17 people are subject to ongoing proceedings, which meant their status could not be resolved at that time.

35. The Department is currently applying the principles used in the long term detainee review to review the cases of all people currently in immigration detention.

36. In addition to this review, the Department will implement the Government's commitment to ensuring that a senior departmental officer reviews a person's case every three months to certify that the further detention of the individual is justified.

37. The Department is also currently working with the Commonwealth Ombudsman's office to implement an earlier Ombudsman's review, at the 6 month mark, in addition to the current review at 2 years.

Options to expand the transparency and visibility of immigration detention centres.

38. In the context of the Government's reforms announced on 29 July 2008, detention in IDCs is only to be used as a measure of last resort and for the shortest practicable time.

39. Immigration detention is subject to continuing scrutiny from a number of external parties to ensure that people in immigration detention, including in IDCs, are treated humanely, decently and fairly.

40. These include Parliamentary Committees, the Immigration Detention Advisory Group (IDAG), the Commonwealth Ombudsman, the Human Rights and Equal Opportunity Commission (HREOC), the Detention Health Advisory Group (DeHAG) and United Nations (UN) organisations such as the UN High Commissioner for Refugees (UNHCR).

41. The Department facilitates visits by Federal Parliamentarians and Parliamentary Committees who regularly visit IDCs, Immigration Residential Housing (IRH) and Immigration Transit Accommodation (ITA) and report on conditions in these facilities. The Commonwealth Ombudsman has a statutory right to enter IDCs, IRH and ITA to investigate complaints and also can and do undertake their own inquiries into aspects of immigration detention. While HREOC has no express rights or powers of entry to immigration detention facilities the Department facilitates visits wherever possible.

42. IDAG, which was appointed in 2001, provides advice to the Minister on the appropriateness and adequacy of immigration detention services, accommodation and amenities, including alternative and community detention arrangements. The IDAG has unfettered access to all immigration detention facilities including access to all staff and people who have been detained to obtain first-hand information on the operation and environment of each arrangement. IDAG members, individually or collectively, regularly visit all immigration detention facilities at least once per year, in line with the IDAG Terms of Reference.

43. IDAG members have made a total of 27 visits to IDCs, IRH and ITA in the 2007/08 financial year. The most recent visit was to the Villawood IDC on 10 July 2008 to join the Hon Danna Vale MP on a Joint Standing Committee on Migration tour of the centre in relation to its inquiry into immigration detention in Australia.

44. IDAG members meet with a wide range of external stakeholders, including non-government organisations and community groups with an interest in the immigration detention program. IDAG implemented its national community stakeholder consultation program in April 2007 and most recently convened an IDAG Community Stakeholder Consultation on 6 May 2008 in Victoria. IDAG has met with the Commonwealth Ombudsman five times between 2002 and 2007.

45. IDAG members actively participate in departmental community consultative processes including the provision of an IDAG Chair to Community Consultative Group meetings convened at all IDCs.

46. The Commonwealth Ombudsman can investigate complaints about the administrative decisions of the Department, and actions of the Detention Services Provider (DSP), from people in immigration detention who believe they have been treated unfairly or unreasonably.

47. In addition to the general approaches received regarding immigration matters, the Ombudsman also has enhanced responsibilities in relation to immigration, including:

- a. assessing long-term immigration detainees and providing reports to the Minister for Immigration;
- b. reviewing possible wrongful immigration detention matters; and
- c. reviewing the cases of people who have been in immigration detention for more than two years.

48. The Commonwealth Ombudsman conducts regular visits to IDCs and through the course of its investigations may also conduct unannounced visits. The Commonwealth Ombudsman has unfettered access to IDCs.

49. Recently, the Minister personally reviewed, in conjunction with the Commonwealth Ombudsman, the cases of all people who had been in immigration detention for more than 2 years with a view to resolving their immigration status. The Department is currently working with the Commonwealth Ombudsman's office to implement an earlier Ombudsman's review, at the 6 month mark in addition to the current review at 2 years.

50. HREOC seeks to monitor, protect and promote human rights in Australia by holding national inquiries, reviewing legislation, making submissions to public inquiries and providing policy advice on human rights issues. In recent years, HREOC's policy work has focused on the human rights of asylum seekers and people in immigration detention, children, and other groups. HREOC conducts annual inspections to IDCs, which are facilitated by the Human Rights Commissioner and the staff of the Human Rights Unit within HREOC.

51. The inspections of the IDCs generally include the accommodation, medical, recreation and dining facilities. The inspections also provide an opportunity for people in IDCs to speak with HREOC. Under the HREOC Act, HREOC has no express rights or powers of entry to conduct unannounced inspections at IDCs. However, the Department facilitates visits wherever possible.

52. As part of this role, HREOC's report on visits conducted during 2006 noted the improvements in immigration detention management and conditions since previous years, and its 2007 report noted the continuation in improvements particularly in terms of infrastructure standards, the management of the foreign

fishers at the Northern Immigration Detention Centre, and the provision of internet facilities at IDCs.

53. The Detention Health Advisory Group (DeHAG) was formed in 2006 and plays a major role in providing the Department with independent advice on the design, implementation and monitoring of health policy and procedures in immigration detention. The DeHAG consists of the key health and mental health professional organisations, and is chaired by Associate Professor Harry Minas who is also a member of IDAG. A member of the Commonwealth Ombudsman's Office has observer status on the DeHAG board.

54. The DeHAG is comprised of nominees from the relevant professional health organisations in Australia including the Australian Medical Association (AMA), the Royal Australian College of General Practitioners, the Australian Psychological Society, the Royal Australian and New Zealand College of Psychiatrists, the Public Health Association of Australia, the Victorian Health Promotion Foundation, the Royal College of Nursing Australia and the Australian Dental Health Association. The Forum of Australian Services for Survivors of Torture and Trauma is also represented on the DeHAG board.

55. The DeHAG provides an important forum for the Department to work closely with key health stakeholders in an open and accountable fashion to improve the general and mental health of people in immigration detention.

56. Australia's immigration detention policy is also under continuing scrutiny from United Nations (UN) organisations such as the following:

- UN High Commissioner for Refugees (UNHCR)
- UN Committee on the Elimination of Racial Discrimination (CERD);
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- UN Committee on the Rights of the Child (CRC);
- UN Committee on Torture;
- UN Human Rights Committee; and
- UN Special Rapporteur on Health.

57. The Department recently provided key stakeholders with a tour of immigration detention facilities on Christmas Island and Perth. The group visited the new Christmas Island Immigration Detention Centre, community based accommodation and alternative accommodation at Phosphate Hill. The group noted and welcomed the policy of detention placements in an IDC being a last resort and for the shortest practicable time.

58. The Department is committed to the future involvement of stakeholders in the development of immigration detention facilities, for example, at the Villawood site.

59. A table listing visits by public scrutiny bodies, Federal Parliamentarians and Parliamentary Committees since January 2007 is at [Attachment C](#).

The preferred infrastructure options for contemporary immigration detention.

Introduction

60. In 2006 the Department undertook an extensive review of the previous 2004-05 long-term onshore detention strategy. These strategies provided the basis for detention capital investment in the Budgets of 2004 and again in 2006. These strategies sought to predict immigration detention demand and the demand for onshore immigration detention facilities.

61. The 2006 Budget approved the construction of three Immigration Transit Accommodation facilities to support the move toward a more domestic/ community based immigration detention arrangement for lower risk people in immigration detention. The budget also provided for further Immigration Residential Housing (IRH) in Sydney and Perth. IRH was first used in Woomera, then later in Port Augusta near Baxter IDC. In 2006 the Sydney IRH was completed and opened for operations and in 2007 the Perth IRH began operations.

Detention strategies for immigration detention centres

62. Coupled with this greater range of low security accommodation has been a commitment to improving the standard of care within existing IDCs. This has included ongoing improvements to Perth IDC, Maribyrnong IDC and Northern IDC to upgrade the level of amenity offered to people in immigration detention.

63. The first purpose built immigration detention facility was completed in April 2008 on Christmas Island. This facility remains in contingency mode.

64. Villawood IDC remains the hub of mainland immigration detention. It is the largest IDC and is the referral centre used in Eastern Australia. It contains zones for the highest risk and most secure through to residential accommodation in the Sydney IRH.

65. In May 2008 the Government committed \$1.1million to the Department of Finance and Deregulation to complete a feasibility study into the redevelopment of the Villawood IDC. The concept for the feasibility study for the redevelopment of Villawood is to use a risk based approach to the design of the new multipurpose and flexible centre.

66. The Department is currently reviewing the design concept for the Villawood redevelopment to ensure that it closely aligns with the new detention values announced by the Government on 29 July 2008. It will consult with relevant stakeholders in developing the design for consideration of the Minister.

Alternative Immigration Detention Arrangements

67. People in immigration detention are placed in the least restrictive place of detention possible. This is assessed using the Client Placement Model (CPM) which takes into consideration personal circumstances including health, welfare and security matters. The range of alternative immigration detention arrangements now available as alternatives to IDCs include:

- a. Community Detention (supported community living arrangements including foster care arrangements for unaccompanied minors)
- b. Immigration Residential Housing (low security residential housing arrangement)
- c. Immigration Transit Accommodation (hostel style accommodation)
- d. alternative temporary detention in the community, eg motels, private apartments, or with a designated person in a private house.

Community Detention

68. Community Detention is a form of immigration detention, which can only be authorised by the Minister personally under section 197AB of the *Migration Act 1958* (the Act) (described as a Residence Determination arrangement under the Act). The legislation allows people in immigration detention to be detained in the community supported by non-government organisations (NGOs) and some State welfare agencies. This form of immigration detention does not require the person in immigration detention to be in the company of, and restrained by, an officer or other appropriately authorised person.

69. While Community Detention allows a person to move about in the community without being accompanied or restrained by an officer under the Act it is still a form of immigration detention and does not give the lawful status, or the rights or entitlements, of a person living in the community on a valid visa.

70. People placed in Community Detention reside in accommodation (houses and home units) in the community with no evidence that they are being detained. Since the program commenced, family groups, women and children, unaccompanied minors and people who have special needs that cannot be met in an IDC or other facilities have been the focus for consideration for this form of immigration detention.

71. The Department has a strong commitment to respond to the needs of families and minors in immigration detention. In July 2005, all minor children and their families were moved from IDCs into Community Detention arrangements in the community.

72. All families with children and unaccompanied minors who enter into immigration detention are referred to the Minister for possible consideration for Community Detention arrangements within two weeks of being detained.

73. In line with community standards, children and unaccompanied minors in Community Detention have access to primary and secondary schooling as well as access to English language classes. Informal community based education for adults is supported and encouraged.

74. The Department has contracted the Australian Red Cross to provide community care for those in Community Detention. Red Cross case workers have regular contact with these people to ensure their health and welfare needs are met. The Red Cross assist with other options such as access to community groups to assist with the person's well being. The health care of people in Community Detention is provided by local GPs and specialists arranged through the Department's detention health providers, International Health and Medical Services (IHMS) and Professional Support Services (PSS). For unaccompanied minors, the Department has accessed the services of State welfare agencies.

75. The State welfare agencies and Red Cross are funded by the Department to source housing for people in Community Detention and provide them with a regular allowance to meet their daily living costs.

76. In response to the Government's Key Immigration Detention Values the Department is exploring options to expand the program and provide a more flexible approach to those who need to be in immigration detention and for whom Community Detention might be appropriate.

Immigration Residential Housing (IRH)

77. IRH facilities provide a domestic immigration detention environment that allows people in immigration detention a greater deal of autonomy than an IDC. People in IRH are provided with housing style accommodation in a community setting, with the opportunity to live a more self-sufficient lifestyle while they remain formally in immigration detention.

78. People assessed as suitable for placement in IRH will be assessed as low flight risk. They may be placed in IRH through two avenues:

- a. initial placement in IRH, immediately after being detained and assessed by the Department; or
- b. transfer from another placement in the Immigration Detention Network (IDN), including an IDC (people in immigration detention can request a transfer to IRH).

79. With regard to families with children, they may initially be placed in Immigration Residential Housing (IRH) or other alternative accommodation while they are being considered for placement into Community Detention.

80. The benefit of IRH accommodation is that residents are able to cook their own food and be responsible for many aspects of their household. This includes accompanied visits to local shops for groceries and other household necessities. IRH residents are also able to undertake accompanied visits to local recreational facilities and attend educational and developmental activities that are held in the community.

81. All people in immigration detention in IRH have access to appropriate health and medical services, managed by qualified health staff employed by the Health Service Manager (HSM) and delivered through community-based health services.

82. IRH accommodation is currently available in Sydney, New South Wales, which opened in August 2006 and Perth, Western Australia, which opened in March 2007.

Photographs of Sydney IRH



Photographs of Perth IRH



Immigration Transit Accommodation (ITA)

83. ITA provide hostel style accommodation for low risk people whose immigration pathway is likely to be resolved quickly. They were developed as a result of *Palmer Report* observations and a subsequent departmental review.

84. On 1 November 2007, the newly-built Brisbane Immigration Transit Accommodation (BITA) became operational and Melbourne ITA (MITA) commenced operations on 20 June 2008. A further ITA is planned for Adelaide.

Photographs of Brisbane ITA



Photographs of Melbourne ITA



Alternative temporary detention in the community

85. Establishment of places of alternative temporary detention in the community is based on the definition of Immigration Detention contained in subsection 5(1) of the Act.

86. Alternative temporary detention in the community is a form of immigration detention within the community that is used by the Department to meet the specific needs of an individual that other placement types cannot fulfil.

87. This form of immigration detention is generally intended for use only as a short term solution for a critical need, such as medical treatment or pending grant of Community Detention (Residence Determination) or at locations where there are no immigration detention facilities.

88. The most obvious circumstances of alternative temporary placements in the community include:

- motels, hotels and private apartments;
- hospitals, psychiatric facilities and other places where medical treatment is provided;
- home based care using private accommodation owned or leased by relatives or people with established close relationships with the person in detention; and
- foster care for unaccompanied minors.

Expansion of Community Detention Options

89. The Minister announced on 29 July 2008, as part of his “*New Directions in Detention – Restoring Integrity to Australia’s Immigration System*” speech, that the Government will pursue as a priority the expansion of community detention options for people in immigration detention. Further, it is expected that the Government’s new Key Immigration Detention Values will reduce both the population of people detained in IDCs and the duration of time people spend in these facilities.

90. These changes will require the Department to re-examine the nature of services provided as well as who might provide these. The Department has created a new Community and Detention Services Division (previously known as the Detention and Offshore Services Division) with the aim of ensuring a range of community based services for clients who are under immigration detention arrangements or who might be on Bridging Visas but in need of assistance.

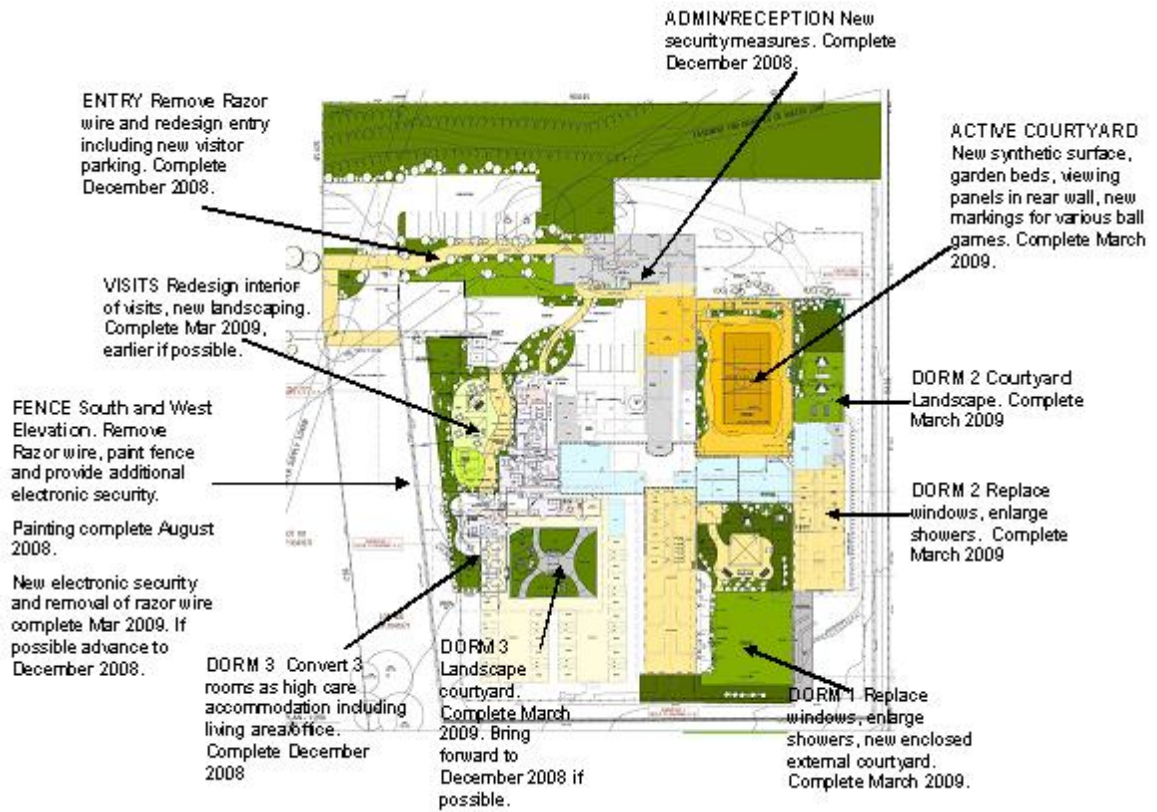
91. The expansion of community based options provide the opportunity for more engagement with community based welfare and migration services that would have the expertise and commitment to work with this population in achieving a timely immigration outcome.

92. The Department is exploring service delivery options and how NGOs can continue to play an important role in supporting our clients.

Future infrastructure design and development

93. Specific works currently underway or planned in the near future include:
- a. Some interim improvements to Villawood IDC in the value of \$7m. These works include the refurbishment of the current Management Support Unit (MSU) and improvements in Stage1 of Villawood IDC to improve the safety, security and amenity.
 - b. A longer term redevelopment of Villawood IDC is also being planned with the Department of Finance and Deregulation.
 - c. Adelaide ITA. This facility is under design and is envisaged as short term domestic/hostel accommodation. The design is under review since the recent Government announcements regarding detention.
 - d. Minor works at Christmas Island are being undertaken by the Department to improve the flexibility of existing accommodation at Phosphate Hill as community based accommodation.
 - e. A house is being built adjacent to the current Northern Immigration Detention Centre facility to accommodate juvenile foreign fishers who have been apprehended on vessels fishing illegally in Australia's northern waters and need to be properly accommodated outside of a detention facility prior to their return. Generally they are aged between 14 to 18 years of age but can include children as young as seven years. The house, which will be domestic in scale and appearance, will be able to accommodate up to 16 people but normally will not exceed 11.
94. Included on the following three pages are the proposed design drawings for interim work scheduled for Stage 1 and the Stage 3 Management Support Unit (MSU) at Villawood IDC:

VIDC STAGE 1 OVERVIEW OF WORKS AREAS



Stage 2 – 3 High Care Accommodation Upper and Lower Levels

Urgent works including entry improvements, internal painting of existing client accommodation, floor finishes, lighting upgrade to be completed by 28 August 2008.

Courtyard to be extended and landscaped. Completed March 2008.

Extension of the existing building will be completed by March 2009.

Upper Level – lower security.

New staff accommodation.

Lower level. High security Intermediate security.

UPPER FLOOR DEMOLITION

GROUND FLOOR DEMOLITION

UPPER FLOOR PLAN

GROUND FLOOR PLAN

NO.	REV.	DATE	BY	CHKD.	DESCRIPTION
1	0				ISSUED FOR PERMIT

MANAGED HEALTH SERVICES
 1741 A-14
 pator hunt architect

Options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres (IDCs), Immigration Residential Housing, Immigration Transit Accommodation (ITA) and community detention.

Current service delivery

95. The operation of immigration detention centres and other immigration detention facilities is currently contracted to the private sector.

There are currently three contracts:

- o Provision of detention services across the network;
- o Provision of health care services to people in immigration detention; and
- o Provision of psychological services to people in immigration detention.

96. The current contract between the Commonwealth and Global Solutions Pty Ltd (GSL) for the delivery of detention services commenced on 1 September 2003, initially for a period of four years. The contract has been subsequently extended until 31 March 2009.

97. The delivery of health care and psychological services was originally provided through a subcontractor arrangement by GSL. These services were novated from the GSL contract in October 2006, as recommended by the Roche Report (Detention Services Contract Review). Two organisations, International Health and Medical Services (IHMS) and Professional Support Services (PSS) are now engaged directly by the Commonwealth to deliver health care and psychological services respectively. Both contracts were originally due to expire in September 2007 but have been extended incrementally since that date. They are currently due to expire on 30 November 2008.

Immigration detention services – current situation

98. The conditions in immigration detention facilities are governed by a set of Immigration Detention Standards (IDS), which were developed in consultation with the Commonwealth Ombudsman's office and HREOC. The IDS, which form part of the current contract with the Detention Services Provider (DSP), place strong emphasis on the sensitive and appropriate treatment of people in immigration detention.

99. The performance of the DSP is measured against the IDS in Schedule 3 of the Detention Services Contract, which was signed on 27 August 2003. The current IDS came into effect on 1 October 2006.

100. The amenities provided to people in immigration detention must be appropriate to their needs, supportive of a healthy and positive environment and consistent with the Department and the DSP's duty of care obligations. Amenities must encompass each person's right to privacy, information, contact with the outside

world, religion, education, activities and recreation, food, accommodation, bedding and clothing. Amenities and services focus on the well-being of people in immigration detention.

101. A number of programs and services are run within IDCs that contribute to personal development and quality of life including education services, which include English language instruction, cultural classes, excursions and sporting activities.

102. All people in immigration detention are free to practice their religion of choice and religious services are conducted on special observation days in a culturally appropriate manner.

IDCs

103. People in IDCs receive three meals per day and can make snacks for themselves throughout the day. Feedback on meals and diet is actively sought through the monthly food consultative meeting between the people in immigration detention, departmental officers, the DSP and the Commonwealth Ombudsman.

104. A range of exercise equipment is available for ad-hoc use such as basketball courts and gym equipment.

105. Computers with internet access are supplied for the use of people in immigration detention in all IDCs. Some people in immigration detention in an IDC will also have access to personal computers. There are conditions attached to Internet usage and computer use.

106. The DSP is contracted to provide basic education programs to people in immigration detention in an IDC. These education programs may include learning English and first aid. However, education programs provided by the DSP cannot provide the person in immigration detention with a recognised qualification.

IRH

107. IRH provides a flexible and supportive housing environment for people in immigration detention. IRH facilities provide a domestic immigration detention environment that allows people in immigration detention a greater deal of autonomy than an IDC. IRH residents are able to cook their own food and be responsible for many aspects of their household. This includes accompanied visits to local shops for groceries and other household necessities. IRH residents are also able to undertake accompanied visits to local recreational facilities and attend educational and developmental activities that are held in the community.

ITA

108. ITA provide hostel style accommodation for low risk people whose immigration pathway is likely to be resolved quickly. People in ITA receive three meals a day and can make snacks for themselves throughout the day. The DSP are contracted to provide programs and activities for people in ITAs, including onsite recreational facilities. Due to the short-stay nature of ITA, educational services, such as English language classes, are not provided.

109. Each ITA contains an administration block that includes dining facilities, television, telephone and internet facilities as well as a multi use outdoor court for sporting activities such as basketball.

Immigration detention health services – current situation

110. People in immigration detention are unlawful non-citizens and therefore do not have access to Medicare benefits. The Department pays for health services through a fee arrangement with the Health Services Manager (which for example covers onsite health staffing costs) and on a cost recovery basis for third party expenses such as pharmaceuticals.

111. The overarching philosophy of detention health care is to ensure that people in immigration detention have access to clinically recommended, quality health care, at a standard generally comparable to the health care available to the Australian community, taking into account the diverse and potentially complex health care needs of people in immigration detention.

112. The Department facilitates the provision of health care to people in immigration detention through contracting out health and psychological services. Two organisations provide this service, International Health and Medical Services (IHMS) and Professional Support Services (PSS). At the end of the current contract arrangements, the Department will engage a single health services manager who will be contracted to facilitate access to all health and mental health services to people in immigration detention no matter what setting. This will include access to a national network of general practitioners and other health care providers for those people outside an IDC or in the community.

113. Under the current contract, IHMS facilitates access to health care through third party providers to people in Community Detention across Australia with the Australian Red Cross continuing to provide support services to these people. The size and utilisation of the network of providers managed by the Health Services Manager will increase as the proportion of people going into Community Detention increases.

114. In relation to mainland IDCs, the Department provides access to a range of onsite primary health care services (including registered nurses, general practitioners and mental health professionals). Access to specialist care is also available to people in IDCs with regular onsite visits by psychiatrists and referral to community health care providers as clinically indicated.

115. For ITA a limited range of primary health care is available onsite and provided by a senior registered nurse with mental health training. The nurse undertakes necessary health assessment and manages basic health needs onsite with referral to community general practitioners as clinically indicated.

116. In relation to IRH, health care services are provided by community health care providers and are coordinated by a dedicated general practitioner in the local area. The current health services providers (and in the future, the Health Services Manager), is responsible for the management of these providers through its network of providers.

117. The Royal Australian College of General Practitioners Standards for Health Services in Australian IDCs have been developed for the Department to ensure the safety and quality of health care is commensurate with that of the wider Australian community. A procurement evaluation process is underway for the development of an accreditation system and formal accreditation of the Standards is being planned to commence by the end of 2008.

118. The Department is negotiating with the Attorney-General's Department for the Indian Ocean Territories Health Services (IOTHS) to deliver all health care for people detained on Christmas Island. Currently, IHMS provides health care, in conjunction with IOTHS, and is contracted to deliver these services until 30 November 2008 (with a possible extension to 31 January 2009). A formal agreement with IOTHS should be reached within this timeframe.

119. The Department has in-principle agreements in place with all States and Territories (excluding the ACT) for the provision of health services to people in immigration detention. Since 2006, the Department has been steadily developing agreements with State and Territory Governments as represented by their respective health departments to ensure that people in immigration detention have access to hospital and acute mental health services when required. A Memorandum of Understanding (MOU) is in place between the Commonwealth and South Australia, Northern Territory, Victoria, Queensland and Tasmania. Details of agreements are being worked through with New South Wales and Western Australia.

Provision of services to people in community detention

120. As outlined in paragraph 74, the Department has contracted the Australian Red Cross to provide community care for those in Community Detention. The health care of people in Community Detention is provided by local GPs and specialists arranged through the Department's detention health providers, IHMS and PSS. For unaccompanied minors, the Department has accessed the services of State welfare agencies.

Current tender process

121. In March 2006 the Department commenced a thorough process to re-tender detention and detention health services for immigration detention facilities. The tenders were developed on the basis of previous public scrutiny of immigration detention arrangements and have been designed to fully implement the service delivery model.

122. To move on from a 'one size fits all' approach, the Department considered the different needs of people in immigration detention and the operating environments for immigration detention accommodation options. Three tenders were issued in May 2007 for:

- a. Immigration detention services to IDCs;
- b. Immigration detention services to immigration residential housing and immigration transit accommodation services; and
- c. health services for people in immigration detention on the mainland.

123. The re-tendering processes are well advanced, with responses received from industry in September 2007.

124. The Minister announced on 29 July 2008 that after weighing up all the issues and costs and the options available, the Government has determined to finalise the current tender process. Accordingly, the Department has extended the existing contracts while the current tender process is completed.

125. The broader issues of public versus private sector management of immigration detention services will be addressed following an evaluation at the end of the term of the contracts concluded as part of the current tender process.

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; and**
- c) comparing the cost effectiveness of these alternatives with current options.**

Community based alternatives

126. Currently, where people are found to be unlawfully present in Australia or to have breached their visa conditions and have had their visa cancelled, the Department has two options:

- a. to grant them a bridging visa that will provide temporary lawful status for such purposes as enabling them to make a visa application, pursue the review of a visa decision or make arrangements to leave Australia; or
- b. to detain them and remove them as soon as reasonably practicable.

127. As immigration detention is a measure of last resort, the Department generally grants bridging visas to clients in these circumstances. At any given time, approximately 7,000 people will be in Australia on bridging E visas. Bridging visas may be issued:

- a. with conditions attached, such as a requirement to regularly report to the Department; or
- b. without conditions attached, for example, with no limitation on the right to work in Australia.

128. This means that people on bridging visas are able to live lawfully in the community for a period of time, with some supporting themselves (either through savings or working) and others being supported by family, friends, community groups or charities. A sample of bridging E visa holders as at 30 January 2007 showed that approximately 37% of BVE holders had work rights as opposed to 63% who had no rights to work while in Australia. A relatively small number of those without work rights are lawful arrivals who failed to make a protection visa application within 45 days of their arrival in Australia, but where the protection visa application is still on hand. The majority of bridging E visa holders without work rights have no substantive visa application on hand. Many are engaged in litigation or are seeking Ministerial Intervention.

129. People on bridging visas (who are lawfully in the community) do not receive the same Commonwealth funded assistance from NGOs as do people who are in Community Detention (who are still classified as unlawful non-citizens in immigration detention). An important issue for bridging visas is to ensure that access to work rights and support arrangements do not encourage people without a substantive entitlement to stay in Australia to prolong their stay.

130. In considering alternative options, the Department's aim will be to ensure that while people are not left destitute while in Australia, they are not encouraged to rely solely on the Department to provide welfare arrangements for them or give rights to work where they would otherwise not be entitled to work in Australia.

131. Potential exists within the current legislation to make greater use of community-based options, subject to considerations of risk and appropriate support services, in line with the Government's policy directions. The Department will be developing a wider range of community-based options and is currently researching the management of risks through mechanisms such as reporting and monitoring requirements.

132. The Department is also developing options, for the provision of basic health, welfare and income support to help people in exceptional circumstances to live in the community while working towards an immigration outcome and to assist people who want to return to their own country but do not have the means to do so. The development of these options will be informed by the results of the Community Care Pilot and Community Status Resolution Trial currently being undertaken by the Department.

The Community Care Pilot (CCP) and the Community Status Resolution Trial (the Trial)

133. The CCP commenced in May 2006 in New South Wales and Victoria and in July 2007 was expanded to include Queensland. Employing an innovative client service model, the CCP works in conjunction with the Department's Case Managers to provide assistance to the most vulnerable and complex clients, offering:

- a. Community assistance, which is provided to clients with the Australian Red Cross as the lead delivery agency.
- b. Information and counselling services, which provides information on immigration processes and assistance to clients (whether in detention or in the community) and prepare clients for their immigration outcome. The International Organization for Migration (IOM) is the service delivery agency for this component.
- c. Providers under the Immigration Advice and Application Assistance Scheme deliver immigration advice and application assistance to vulnerable clients. This includes mentally ill people and unaccompanied minors irrespective of whether they are in detention or in the community.
- d. Brokerage funds, administered by the Department's Case Managers, allows for the one-off needs of clients to be met.

134. The evaluation of the CCP showed that the provision of health and welfare support, together with access to independent immigration advice, assists in stabilising the client's circumstances, and therefore allows the client to have a better understanding of their immigration status and resolution options. Subsequently, clients are often able to exercise an informed choice about realistic immigration pathways open to them.

135. Outcomes of both the CCP and the Trial have been very positive. Since May 2006 (as at 31 July 2008) the CCP has provided assistance to 767 highly vulnerable clients and a breakdown reveals 439 clients have since disengaged from the CCP, including 309 clients (70.38%) with a substantive immigration outcome. The average time in Australia for these 309 clients is 6 years, however after entering the CCP the average time to achieve their immigration outcome is just 10 months.

136. The Trial commenced in July 2007 as a further mechanism, under the CCP, to test Assisted Voluntary Return from the community. The Trial is administered by the IOM on behalf of the Department. Since July 2007, and as at 31 July 2008, 435 clients had been referred to IOM; of those, some 111 clients (25.5%) departed Australia voluntarily with IOM's assistance. Initial outcomes indicate that Assisted Voluntary Return from the community represents a cost effective strategy for assisting those who wish to depart Australia but do not have the means to do so, compared to the conventional detention and removal arrangements.

Cost

137. An analysis of CCP clients between May 2006 and 31 March 2008 in which costs were incurred for health, accommodation and destitution vulnerabilities identified 198 cases comprising 346 clients, which had costs incurred for one vulnerability or a combination of all.

138. CCP operating costs are managed separate of client costs and limitations in service provider reporting arrangements prevent analysis to determine a definitive day by day cost. The CCP client service model however, involves the Department's Case Managers working actively with external service providers to ensure that client needs are met appropriately, so as a result assistance may or may not warrant or result in a client cost being incurred.

Summary of International Experience

139. In the UK, people who arrive illegally who are not deemed to be a flight or safety risk live in community housing and are given welfare to support themselves whilst they await a decision on their future. Reporting schemes are used for some illegal arrivals to ensure their compliance with immigration guidelines.

140. Canada is generally keen not to detain people, and take many steps to allow people to leave immigration detention, such as compliance guarantees. Regular reviews of a person's immigration detention are also carried out, the first being within 48 hours of their detention, the second after the person has been detained for one week and then once every 30 days thereafter. In Canada the onus of why a person should be detained lies with the government, and in these review stages Citizenship and Immigration Canada (CIC) must present information to justify the continuation of detention.

141. The United States of America has "The Alternatives to Detention Program" which develops and implements programs to enhance the supervision of aliens released from custody. There are two programs currently used, the Enhanced Supervision/Reporting (ESR) Program and the Intense Supervision Appearance Program (ISAP). These programs closely supervise illegal aliens that can be released into the community to ensure their attendance at Immigration Court hearings and compliance with court orders.

142. In Sweden, the limited numbers of people that are detained fit into three categories. The first and most likely chance of a person being detained is if they cannot establish their identity adequately. The second is if the person will be quickly denied entry into Sweden or if the person has failed in their claim to stay and refuses to leave the country. Under these two reasons for detention a person can only be detained for a maximum of two weeks. The third is if it is necessary for an investigation to be conducted concerning their right to stay in Sweden; a person may only be detained for 48 hours under this circumstance.

143. Rather than detain a person for a short length of time, the Swedish Migration Board is more likely to ascertain the details of the person, issue them with an identity card and then release them into the community with welfare benefits to support them whilst they await an outcome on their bid to remain in the country. After they are released the Swedish immigration authorities will generally require that a person report to a police station at regular intervals.

Legislative history of immigration detention since 1992

Migration Amendment Act 1992

1. On 6 May 1992, the *Migration Amendment Act 1992* commenced and introduced the policy of mandatory detention of 'designated' persons, which applied to people who arrived by boat between 19 November 1989 and 1 September 1994, without authority to enter or remain in Australia. The discretion to detain illegal entrants and deportees continued.

2. The policy was expressed to be an 'interim measure' for a 'specific class of persons' to 'address only the pressing requirements of the current situation'. It was generated by concern about the possibility of a large number of unauthorised boat arrivals and the need to maintain tighter control over the migration program.

Migration Reform Act 1992

3. Major changes to the migration system were introduced by the Migration Reform Act 1992 which commenced operation on 1 September 1994. The various classifications of border arrivals, illegal entrants and deportees were replaced with a simple distinction between lawful and unlawful non-citizens. Using the Migration Amendment Act 1992 model, the amendments introduced by the Migration Reform Act 1992 required mandatory detention of all unlawful non-citizens.

4. Consequently, mandatory detention, initially envisaged as a temporary and exceptional measure for a specific group of unauthorised boat arrivals, was extended to all unlawful non-citizens.

Migration Amendment (Excision from Migration Zone) Act 2001 and Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001

5. In late September 2001, Parliament passed amendments to the *Migration Act 1958*, which barred people who arrive without lawful authority at excised offshore places from lodging a valid visa application unless the Minister, in the public interest, personally intervenes to allow them to do so while they stay in Australia and are an unlawful non-citizen.

6. The purpose behind these changes was to remove the ability for unauthorised arrivals that land on Australian offshore places from being able to access Australia's comprehensive visa application and review processes. The amendments also provide discretion to detain people who arrived unlawfully in or sought to enter those offshore places.

7. In addition, the amendments enable the removal of these people to a declared country where their claims, if any, for refugee status can be determined.

Migration Amendment (Detention Arrangements) Act 2005 (the MADA Act)

8. The MADA Act amended provisions in the *Migration Act 1958* to provide greater flexibility and transparency in the administration of the detention of persons known or reasonably suspected to be unlawful non-citizens. It:
- a. affirms the principle that children shall only be detained in traditional immigration detention arrangements (eg. immigration detention centres (IDCs) and immigration residential housing (IRH)) as "a measure of last resort".
 - b. provides a non-compellable power for the Minister to specify alternative arrangements for a person's detention and to impose conditions to apply to the detention of that person;
 - c. provides a non-compellable power for the Minister to grant a visa to a person who is in immigration detention; and
 - d. requires the Secretary of DIAC to regularly report to the Commonwealth Ombudsman on people who have been detained for two years or more and every six months thereafter, and for the Ombudsman to provide assessments and recommendations relating to those people to the Minister. The Minister is then obliged to table statements on these people.

Change to the Migration Regulations 2005

9. Another important change introduced in 2005 was the Removal Pending Bridging Visa (RPBV), which was introduced to enable the release pending removal, of people in immigration detention who have been cooperating with efforts to remove them from Australia, but whose removal is not reasonably practicable at that time. The RPBV came into effect on 11 May 2005.

10. The RPBV may be granted using the Minister's non-delegable, non-compellable public interest power to grant a visa to a person in immigration detention. This power is in section 195A of the *Migration Act 1958*.

Senator Chris Evans

Minister for Immigration and Citizenship

New Directions in Detention - Restoring Integrity to Australia's Immigration System

Australian National University, Canberra, Tuesday 29 July 2008

- Professor Kim Rubenstein, Director of the Centre for International and Public Law (CIPL)
- Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship

At my first meeting with Department officials as Minister for Immigration, I asked who was detained at the immigration detention centre on Nauru and at what stage were their claims for asylum.

I was told there were eight Burmese and 81 Sri Lankans there. Virtually all of this group had already been assessed as refugees but had been left languishing on Nauru.

When I asked why the eight Burmese had not been settled in Australia in accordance with international law there was an embarrassed silence.

Eventually the answer emerged. The Howard government had ordered they stay put. They had been left rotting on Nauru because the Howard government wanted to maintain the myth that third-country settlement was possible.

Sadly, Australia's treatment of asylum seekers had sunk this low.

The treatment of asylum seekers has been controversial in Australian political debate for many years. The length and conditions of their detention has been a particular focus of criticism.

The Rudd Labor Government was elected on a platform that included a commitment to reform and a more humane treatment of those seeking our protection.

We quickly ended the Pacific Solution – closing the offshore processing centres on Nauru and Manus Island. We abolished temporary protection visas – the symbol of the former government's continued punishment of those found to be owed our protection.

We acted quickly to resolve the legacy cases. Cornelia Rau has finally been compensated for her treatment and Robert Jovicic – the man found destitute in Belgrade after being deported on character grounds – has been given a permanent visa to get on with his life in Australia.

Attachment B

The challenge for Labor, having tackled the worst excesses of the Howard immigration legacy, is to introduce a new set of values to immigration detention – values that seek to emphasise a risk-based approach to detention and prompt resolution of cases rather than punishment. The best deterrent is to ensure that people who have no right to remain in Australia are removed expeditiously.

The Labor Party went to the last election with a commitment to maintain a system of mandatory detention and the excision of certain places from the migration zone and both commitments will be honoured.

Control and management of our borders is integral to the nation's security. The extensive patrolling of our borders by Defence, Customs and other law enforcement agencies has been maintained at existing levels.

The Labor Government has reinvigorated efforts to work closely with countries to our north to combat people-smuggling and prevent attempts at dangerous sea journeys by people seeking to enter Australia unlawfully.

We look to extend assistance to those countries to develop their capacity and enhance projects in home and transit countries to assist people displaced by conflict who may be vulnerable targets of people-smugglers and traffickers.

An architecture of excision of offshore islands and non-statutory processing of persons who arrive unauthorised at an excised place will remain.

Those unauthorised arrivals will be processed on Christmas Island.

Labor believes that the excision and offshore processing at Christmas Island will signal that the Australian Government maintains a very strong anti people-smuggling stance. It also reinforces in the minds of our neighbours that strong commitment and the value we place on their cooperation.

Although no decision has been taken on the boundaries of the current excision zone, the Rudd Government believes that a strong border security regime is in the national interest and supports the integrity of our immigration system as well as our humanitarian and refugee programs.

Labor rejects the notion that dehumanising and punishing unauthorised arrivals with long-term detention is an effective or civilised response. Desperate people are not deterred by the threat of harsh detention – they are often fleeing much worse circumstances. The Howard government's punitive policies did much damage to those individuals detained and brought great shame on Australia.

Strong border security and humane and risk-based detention policies are not incompatible. They are both hallmarks of a mature, confident and independent nation.

Attachment B

There has been strong criticism of the processing of protection claims by those persons whose unauthorised arrival was at an excised offshore place.

These criticisms include that there is a lack of transparency, that there is insufficient provision for independent advice and assistance for people in making their claims, that there is no independent review of departmental decisions and there is a lack of independent oversight of the process.

In instituting a new processing regime for those who arrived in an excised place and claim protection, we seek to remedy those deficiencies.

Henceforward, asylum seekers will receive publicly funded advice and assistance, access to independent review of unfavourable decisions and external scrutiny by the Immigration Ombudsman.

These measures will build on strengthened procedural guidance for departmental decision-makers.

In totality, these robust processes will deliver outcomes in which we can be confident and will reassure the world that we are meeting our international commitments.

The integrity of these processes will reinforce our capacity to expedite the return to their home country of people found not to be in need of protection.

The previous government was forced into major changes to its detention practices in 2005 following the Palmer and Comrie reports and heightened political and public pressure.

The changes certainly improved key aspects of the immigration detention system, reducing overall numbers detained by encouraging the department to issue bridging visas to avoid placing people in detention. However, the changes were largely superficial and never fundamentally reformed the system; many of the concerns expressed over the past decade remain.

The basic premise that people who were in the country unlawfully – whether they be unauthorised arrivals or people who have breached their visa conditions – were subject to mandatory immigration detention remained central to the government's policy.

Even though the number of unauthorised boat arrivals had slowed dramatically, long-term detention became the reality for large numbers of detainees; mostly people who had breached their visa conditions and utilised our thorough appeal processes to try to win the right to stay in Australia.

Today I want to announce that Cabinet has endorsed a policy containing seven values that will guide and drive new detention policy and practice into the future. These values will result in a risk-based approach to the management of immigration clients.

The Government's seven key immigration 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:
 - a. all unauthorised arrivals, for management of health, identity and security risks to the community
 - b. unlawful non-citizens who present unacceptable risks to the community and
 - c. 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 (IDC).
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 immigration detention centres 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.

Labor's reforms will fundamentally change the premise underlying detention policy.

Currently persons who are unlawful may be detained even though the departmental assessment is that they pose no risk to the community. That detention may be prolonged. Currently, detention is too often the first option, not the last.

Under Labor's 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. If a person is complying with immigration processes and is not a risk to the community then detention in a detention centre cannot be justified. The department will have to justify a decision to detain – not presume detention.

Labor believes that the retention of mandatory detention on arrival of unauthorised arrivals for the purpose of health, identity and security checks is a sound and responsible public policy. Once checks have been successfully completed, continued detention while immigration status is resolved is unwarranted.

The key determinant of the need to detain a person in an immigration detention centre will be risk to the community – a modern risk management approach.

The detention of those who pose unacceptable risks to the community is self-evidently sound public policy. Those with criminal or terrorist links or those whose identity is unknown may be so categorised.

Detention of those who repeatedly refuse to comply with visa conditions can also be justified, particularly immediately prior to their planned involuntary removal.

Detention in these three circumstances is necessary in ensuring the integrity of our immigration system.

The other detention values will ensure that detention policy reflects the values of Australia's democracy.

They honour our international treaty obligations. They give greater voice to our commitment to the rule of law. They acknowledge the centrality of the humane treatment of the individual.

The detention of children behind razor wire and the obvious damage done to them caused outrage in the Australian community. The Howard government could not defend that practice but never abandoned the option of again detaining children.

Labor's detention values explicitly ban the detention of children in immigration detention centres. Children in the company of family members will be accommodated in immigration residential housing (IRH) or community settings.

The expansion of community housing options and the resolution of definitional issues around what constitutes detention under the Migration Act will be pursued as priorities.

The set of values adopted are designed to drive the development of a very different detention model.

The values commit us to detention as a last resort; to detention for the shortest practicable period; to the rejection of indefinite or otherwise arbitrary detention. In other words, the current model of immigration detention is fundamentally overturned.

The Immigration Department has commenced work on an implementation plan to give effect to these values that will be developed in consultation with community interest groups and agencies such as the Human Rights and Equal Opportunity Commission (HREOC) and the Ombudsman.

Under Labor's reforms, in determining the ongoing detention of a person, the onus of proof will be reversed. A departmental decision-maker will have to justify why a person should be detained against these values that presume that that person should be in the community.

In our view the critical and harsh aspect of the Howard government's mandatory detention policy was not the initial detention phase but the continued and indefinite detention that occurred while lengthy immigration processes and appeals were completed.

Recently, I personally reviewed – in conjunction with the Commonwealth Ombudsman – all of the long-term detention caseload, those who have been in detention for more than two years. In doing the review I sought to apply the values endorsed by Cabinet to the consideration of these protracted and difficult cases.

Of the 72 cases reviewed, 31 were placed on a pathway to visas, 24 will be removed from the country and 17 people were subject to ongoing legal proceedings at the time of the review.

The lessons from this process were instructive.

Firstly, in my judgment, at least 31 of the 72 should not have been in detention.

Secondly, in two years and sometimes much longer, we had failed to successfully remove from the country 24 people who should be removed. The integrity of the system demands prompt removal of people who have no legal right to remain.

Thirdly, extensive and slow legal processes were resulting in people remaining in long-term detention.

Fourthly and most importantly, it was clear that if you asked the question ‘is there a need for this person to be in detention?’ you got a very different outcome to that provided by the current system.

In future the department will have to justify why a person should be detained. Once in detention a detainee’s case will be reviewed by a senior departmental official every three months to certify that the further detention of the individual is justified.

I will also be seeking to engage the Ombudsman in the review of cases much earlier than his current review after two years of detention. Subject to consultation, a review by his office after a period such as six months would seem more preferable.

In the meantime I have asked the department to review all current detainees and apply the same principles used during my review of the 72 people held in long-term immigration detention.

Our new model will not solve all of the complex and protracted issues that delay resolution of immigration status. There will still be people in detention, but we should see fewer people in detention for less time. The section 501 character cancellation caseload represents a particularly difficult ongoing cohort. However, our new processes should ensure much better outcomes overall.

The cost of long-term detention and the case against the current system are compelling.

The impacts on both the physical and mental health of the detainees are severe. Recent research undertaken by the Centre for Health Service Development at Wollongong University dramatically highlights the deleterious health impacts of long-term detention.

The cost to the taxpayer of detention is massive and the debt recovery virtually non-existent. In 2006-07, it cost some \$220 million to operate Australia's immigration detention system.

Enormous damage has been done to our international reputation. On 14 occasions over the last decade, the United Nations Human Rights Committee made adverse findings against Australia in immigration detention cases, finding that the detention in those cases violated the prohibition on arbitrary detention in article 9(1) of the International Covenant on Civil and Political Rights.

Immigration department staff have been left bruised by the policies they have been asked to implement and the public has lost confidence in the fairness and integrity of our immigration system.

A great deal more work needs to occur to develop a modern and robust system for management of people in immigration detention.

Immigration detention not only needs to be for the shortest duration possible but also in the least restrictive form appropriate to an individual's circumstances. The current detention options, beyond immigration detention centres, are limited and inadequate and the infrastructure is ageing and inappropriate.

The Government is interested in broadening alternative detention strategies, most particularly community-based options. The work of the federal parliamentary Joint Standing Committee on Migration will be critical in examining alternative pathways and taking forward a reform agenda.

The detention infrastructure available to government is seriously inadequate. The closure of the infamous Baxter and Woomera centres, while welcome, has meant the major capacity to house detainees beyond Villawood is the new centre on Christmas Island. Its ability to accommodate 400 people with a surge capacity of 800 makes the Christmas Island facility essential to responding to any major increase in unauthorised arrivals. Designed in 2001, it represents a maximum security environment.

Labor has moved quickly to convert the old Phosphate Hill facilities on Christmas Island to provide for children and families in a community environment and fencing around these facilities has been pulled down.

Small groups of unauthorised arrivals will be accommodated in the Phosphate Hill facilities with the new centre to be brought on line when numbers demand.

Urgent works are commencing at Villawood out of current budget resources prior to a major redevelopment. The HREOC criticisms of existing facilities at Villawood are totally justified. Priority is being given to the Stage 1 section and the management support unit. These facilities make management of the detainees extremely difficult and contribute to their alienation.

The management of detention centres has been at the centre of the concern about treatment of detainees. Labor determined in opposition to return management of detention services to the public sector.

On coming to office in December last year, the tender process for the management of detention centres was well advanced. The Immigration Department has invested \$13 million in the tender process to date and tenderers have also expended considerable costs in preparing their bids.

The post-Roche Report (2005) regime has greatly improved oversight of facility management. The new service delivery model for which tenders are sought has a strong focus on human rights, effective programs and activities for people in detention, high delivery service standards and best-practice governance arrangements. The department has also engaged in extensive consultations in developing the new model.

The absence of alternative public service providers would require the extension of the current contract arrangements for a minimum of two years. The cancellation of the tender process would expose the Commonwealth to potential compensation claims from the tenderers.

After weighing up all the issues and costs, and giving detailed and serious consideration to the options available, the Government has determined to finalise the current tender process. The department has extended the existing contracts while the current tender process is completed.

The broader policy issues of public versus private sector management of detention services will be addressed following an evaluation at the end of the term of the contracts concluded as part of the tender process.

Our focus moving forward will be on the implementation of the new detention values and new models for detention. The work of the Joint Standing Committee will help lead that conversation.

In the broader community, interest in these matters has waned as the number of unauthorised boat arrivals has significantly reduced. It is worth noting that of the current detention population of 357 – the lowest numbers since March 1997 – only six are unauthorised boat arrivals. The vast majority of our detention population are people who overstayed or breached their visa conditions.

We will continue to expect that people who come to our country enter and leave in accordance with their visa conditions; we will continue to pursue the prompt return

of those found not to be owed protection. As a result we will continue to have a detention population featuring non-citizens who are a risk to the community or who are refusing to comply with immigration processes.

And with massive displacement of persons in the Middle East and Asia, caused by conflict and natural disasters along with well established people-smuggling operations, the potential for large numbers of unauthorised arrivals remains real.

Australia's national interest demands we continue our efforts to prevent people-smuggling to our shores. The key determinate of our success in combating people-smuggling remains the cooperation and capacity of our northern neighbouring countries.

The Minister for Home Affairs, the Hon Bob Debus, and I will lead a senior Australian Government delegation to four South East Asian countries next week to build on the work already serving us well.

The policy initiatives I have detailed today are the beginning of a new approach, introducing new and more compassionate values to our detention policies.

Labor believes that this framework will both meet our border security needs and deliver appropriate treatment for those who arrive unauthorised or breach their visa conditions. Those who need protection will get it, those who do not will be expected to promptly leave Australia.

The Rudd Labor Government will reform our immigration detention policies and the treatment of asylum seekers in a way that reflects the compassion and tolerance of the Australian community.

In the future the immigration system will be characterised by strong border security, firm deterrence of unauthorised arrivals, effective and robust immigration processes and respect for the rule of law and the humanity of those seeking migration outcomes.

Thank you.

**Visits to Immigration Detention Facilities by Public Scrutiny Bodies,
Federal Parliamentarians and Parliamentary Committees**

January 2007 to July 2008

Visitor	Date	Centre	Comment
Ombudsman	08-Jan-07	Villawood IDC	Food Delegate Meeting
Ombudsman	11-Jan-07	Villawood IDC	Tour of centre
Ombudsman	12-Jan-07	Villawood IDC	Tour of centre
Australian Red Cross (ARC) CEO, Robert Tickner	17-Jan-07	Maribyrnong IDC	Tour of centre
Australian Red Cross (ARC) CEO, Robert Tickner	19-Jan-07	Villawood IDC	Tour of centre
IDAG	05-Feb-07	Villawood IDC	Tour of centre and meeting with clients.
Ombudsman	05-Feb-07	Villawood IDC	Complaints
Ombudsman	06-Feb-07	Villawood IDC	Complaints
Ombudsman	12-Feb-07	Villawood IDC	Interview clients
Ombudsman	13-Feb-07	Villawood IDC	Interview clients
Ombudsman	14-Feb-07	Villawood IDC	Interview clients
National Director ARC & WA Manager International Affairs	20-Feb-07	Perth IDC	Tour of centre and attending Community Consultative Group (CCG) meeting
National Director ARC & WA Manager International Affairs	20-Feb-07	Perth RHC	Tour of centre and attending CCG meeting
Dr Vivian Thom - A/G Ombudsman	20-Feb-07	Perth IDC	Tour of centre
Dr Vivian Thom - A/G Ombudsman	20-Feb-07	Perth RHC	Tour of centre
Ombudsman	05-Mar-07	Villawood IDC	Food Delegate's Meeting & interviewing clients
Ombudsman	06-Mar-07	Maribyrnong IDC	Tour and Inspection of centre
Ombudsman	07-Mar-07	Maribyrnong IDC	Tour and Inspection of centre
Ombudsman	07-Mar-07	Villawood IDC	Detainee consultative meeting & interviewing clients
ARC CEO Robert Tickner and Dale Cleaver	14-Mar-07	Baxter IDC	Tour of centre
DeHAG	15-Mar-07	Perth IDC	Tour of centre
DeHAG	15-Mar-07	Perth RHC	Tour of centre
IDAG	02-Apr-07	Northern IDC	Meeting with NT stakeholders, IDAG representation to GSL training

Ombudsman	02-Apr-07	Villawood IDC	Attending Food Delegates meeting and interviewing clients.
Ombudsman	04-Apr-07	Villawood IDC	Attending Detainee Consultative meeting and interviewing clients.
Ombudsman	11-Apr-07	Baxter IDC	Attending CCG meeting and interviewing clients
Ombudsman	02-May-07	Villawood IDC	Attending CCG meeting and interviewing clients
Ombudsman	07-May-07	Villawood IDC	Attending Food Delegates meeting and interviewing clients.
Ombudsman	03-May-07	Northern IDC	Meeting Centre staff, centre & Asti Motel tours
Ombudsman	04-May-07	Northern IDC	Meeting Centre staff, centre & Asti Motel tours
Ombudsman	16-May-07	Baxter IDC	Complaints
IDAG	07-Jun-07	Maribyrnong IDC	General Meeting
ARC Lewis Kaplan	13-Jun-07	Villawood IDC	General Meeting
Robert Tickner (CEO ARC) Lewis Kaplan (NSW Mgr), Hang Vo (ARC) and 1 ARC officer	02-Jul-07	Villawood IDC	Tour and discussion with managers
Don Ledger/ NSW Ombudsman	04-Jul-07	Villawood IDC	Food Meeting and Complaints in Stage One
Elisha Hill/ NSW Ombudsman	04-Jul-07	Villawood IDC	General Meeting and Complaints in Stages 2/3
IDAG Sub-Group	09-Jul-07	Villawood IDC	Meeting
ID Sub Group	11-Jul-07	Northern IDC	Meeting and Tour
DeHAG	12-Jul-07	Northern IDC	Meeting and Tour
Professor Jim Ogliff, Professor Paul Mullen,	27-Jul-07	Villawood IDC	Review of Suicide and Self Harm (SASH) Instrument and protocol used in IDCs
Professor Jim Ogliff, Professor Paul Mullen,	31-Jul-07	Maribyrnong IDC	Review of SASH Instrument and protocol used in IDCs
Ombudsman	01-Aug-07	Villawood IDC	CCG Meeting & taking complaints in Stages 2/3
Ombudsman	06-Aug-07	Villawood IDC	Food Meeting & taking complaints in Stage 1
HREOC Commissioner Innes and staff	13-Aug-07	Villawood IDC	VIDC & Sydney Immigration Residential Housing
Professor Jim Ogliff, Professor Paul Mullen,	17-Aug-07	Villawood IDC	Review of SASH Instrument and protocol used in IDCs
Ombudsman	3-Sep-07	Villawood IDC	Food meeting and taking complaints
HREOC Commissioner Innes and staff	4-Sep-07	Maribyrnong IDC	Annual Visit
Ombudsman	5-Sep-07	Villawood IDC	CCG meeting and taking complaints
HREOC Commissioner Innes and staff	17-Sep-07	Perth IDC	PIDC and PIRH
Elisha Hill, Mei Mei Wong	2-Oct-07	Villawood IDC	Womens Consultative meeting & taking complaints
Ombudsman	3-Oct-07	Villawood IDC	Detainee Consultative meeting & taking complaints

Ombudsman	8-Oct-07	Villawood IDC	Food meeting and taking complaints
HREOC Commissioner Innes and staff	8-Oct-07	Northern IDC	Annual Visit
IDAG and Secretariat	15-Oct-07	Villawood IDC	Part of 35th General Meeting
Ombudsman	24-Oct-07	Villawood IDC	Planned 2 Year Detention Review Visit
Ombudsman	30-Oct-07	Villawood IDC	CCG meeting and taking complaints
Ellisha Hill, Mei Mei Wong	01-Nov-07	Villawood IDC	Womens CCG meeting and taking complaints
Ombudsman	05-Nov-07	Villawood IDC	Food meeting and taking complaints
Ombudsman	07-Nov-07	Villawood IDC	CCG meeting and taking complaints
IDAG members Tsebin Tchen, Sr Loreto Conroy, Dr Alsalami, and Major General Glenny	15-Nov-07	Villawood IDC	VIDC and SIRH: CCG meeting, tour, lunch with detainees
HREOC Commissioner Innes and staff	19-Nov-07	Brisbane ITA	Tour and meeting staff
IDAG members Major General Warren Glenny and Dr Mohammed Taha Alsalami	22-Nov-07	Villawood IDC	IDAG presenting briefing on their role at the GSL Detention Service Officer training course
Ombudsman	23-Nov-07	Brisbane ITA	Tour and meeting staff
Ombudsman	27-Nov-07	Villawood IDC	Stage 1 CCG meeting and detainee interviews
Ombudsman	03-Dec-07	Villawood IDC	Food Delegates meeting and IRH detainee interviews
Ombudsman	05-Dec-07	Villawood IDC	Stages 2/3 CCG meeting and detainee interviews
Ellisha Hill, Mei Mei Wong	06-Dec-07	Villawood IDC	Womens CCG meeting and female detainee interviews
IDAG	11-Dec-07	Maribyrnong IDC	CCG meeting
Ellisha Hill	03-Jan-08	Villawood IDC	Women's CCG meeting and female detainee interviews
Ombudsman	08-Jan-08	Villawood IDC	Stage 1 CCG meeting and detainee interviews
Ombudsman	09-Jan-08	Villawood IDC	Stages 2/3 CCG meeting and detainee interviews
HREOC Human Rights Unit	21-Jan-08	Villawood IDC/SIRH	Tour
HREOC Human Rights Unit	24-Jan-08	Villawood IDC	Tour
IDAG Sub Group	18-Feb-08	Villawood IDC	Meeting, Tour, Lunch with detainees
Ombudsman	20-Feb-08	Villawood IDC	Interviewing detainees
HREOC	25-Feb-08	Villawood IDC	Detainee Interviews
DeHAG sub group	27-Feb-08	Brisbane ITA	Tour and meeting staff
Ombudsman	05-Mar-08	Villawood IDC	Stages 2/3 CCG meeting and detainee interviews

Elisha Hill, Mei Mei Wong	06-Mar-08	Villawood IDC	Women's CCG meeting and female detainee interviews
Ombudsman	11-Mar-08	Villawood IDC	Stage 1 CCG meeting and detainee interviews
IDAG	17-Mar-08	Perth IDC/IRH	Meeting
Ombudsman	02-Apr-08	Villawood IDC	Stage 2/3 CCG and detainee interviews
Elisha Hill and Mei Mei Wong	03-Apr-08	Villawood IDC	Women's CCG and detainee interviews
Ombudsman	07-Apr-08	Villawood IDC	Food Consultative Meeting and IRH detainee interviews
Ombudsman	08-Apr-08	Villawood IDC	Stage 1 CCG and detainee interviews
Ombudsman	14-Apr-08	Perth IDC/IRH	Detainee Interviews and Tour
JSCM Members and Secretariat	22-Apr-08	Villawood IDC	Tour and Meeting
IDAG	06-May-08	Maribyrnong IDC/MITA	Tour and Meeting
HREOC President John von Doussa	21-May-08	Villawood IDC	Tour and Meeting
IDAG/CCG Members	27-May-08	Melbourne ITA	Tour
HREOC Commissioner Innes	23-25-Jun-08	Villawood IDC/SIRH	Annual visit
IDAG member Ray Funnell	26-Jun-08	Brisbane ITA	Tour, routine review
Ombudsman	01-Jul-08	Villawood	Stage 1 CCG and detainee interviews
Ombudsman	02-Jul-08	Villawood	Stage 2/3 CCG and detainee interviews
Elisha Hill, Mei Mei Wong	03-Jul-08	Villawood	Women's CCG and detainee interviews
Ombudsman	07-Jul-08	Villawood	Food Meeting and SIRH detainee interviews
Mr Michael Danby and Hon Danna Vale	07-Jul-08	Northern IDC	Tour and Meeting
Danna Vale, Major General Warren Glenny	10-Jul-08	Villawood IDC	Tour and Meeting
HREOC Commissioner Innes and staff	14-15-Jul-08	Perth IDC/IRH	Annual visit
HREOC Commissioner Innes and staff	25-27-Aug-08	Maribyrnong IDC/MITA	Annual visit
HREOC Commissioner Innes and staff	05-Aug-08	Brisbane ITA	Annual visit