



# Dissenting Report by Senator Sarah Hanson-Young

## Introduction

- 1.1 The aim of the Migration Committee's third report into immigration detention was to look into options to expand the transparency and visibility of immigration detention; preferred infrastructure options; and options for the provision of detention services and detention health services across the range of current detention facilities.

## Structure of report

- 1.2 First and foremost, issues of transparency and the provision of suitable and sufficient services can not effectively be dealt with without questioning the appropriateness of the privatisation of detention services.
- 1.3 Given the majority of individuals and organisations that provided evidence to the Committee highlighted concerns about the privatisation of detention services, the fact that the Committee's report fails to reflect this with an actual recommendation is disappointing, and clearly contravenes moves towards a more transparent and accountable immigration detention system.
- 1.4 While the Committee's report touches on the terms of reference outlined above, we are concerned that the report fails to include appropriate and detailed recommendations regarding infrastructure; security features of Immigration Residential Housing (IRH) and Immigration Transit Accommodation (ITA); immigration detention contracts; health care services; and transparency.

1.5 This report will therefore focus on five main areas of concern:

1. Infrastructure and security features;
2. Service delivery;
3. Detention facility contracts;
4. Transparency; and
5. Judicial Review.

## Infrastructure and security features

1.6 While the Committee's report includes a substantial section on immigration detention infrastructure, the Greens are concerned that the report fails to appropriately articulate detailed descriptions of the security features of all detention facilities, or put forward any concrete recommendations.

1.7 During the course of the inquiry, we heard numerous concerns surrounding the "one-stop shop" approach to immigration detention facilities as being an inappropriate way to accommodate "*vulnerable asylum seekers and low-security risk compliance cases...in the same facilities as violent criminal deportees.*"<sup>1</sup>

### **Recommendation No.1:**

**Given there are shared service areas, the Greens recommend that criminal deportees should never be held in the same facility as asylum seekers or low security risk compliance cases.**

## Perth Immigration Detention Centre

1.8 Community perception of the Perth Immigration Detention Centre (IDC) has been less than positive.

1.9 The Committee's report notes that the Southern Communities Advocacy Legal and Education Services (SCALES) Community Legal Centre in Western Australia had numerous anecdotal examples from former detainees suggesting that the state of the Perth IDC was such that many detainees would prefer to be in a maximum security prison.

1.10 Mrs Moss, Solicitor for SCALES, stated in evidence presented to the Committee that, "*The comments that I have from clients is that they think the*

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1 A Just Australia, Submission No.89,  
<http://www.aph.gov.au/house/committee/mig/detention/subs/sub089.pdf>.

*quality of care and the professionalism within a prison rather than an immigration detention centre is better. There are more things to do. It is a better regime within a prison, so they tell me, and they would prefer to be there.”<sup>2</sup>*

- 1.11 It is clear from the evidence presented to the Committee from organisations such as the Australian Human Rights Commission and the Refugee Council of Australia, to the Commonwealth Ombudsman, that the Perth IDC is an inappropriate and an inadequate environment to accommodate detainees in its current form.

**Recommendation No.2:**

**Given that the Perth Immigration Detention Centre is not a purpose built facility, the Greens recommend that the Government urgently address concerns about the general wellbeing of detainees housed at the Perth facility, and commit to looking at options for purpose built facilities, to comply with the seven key principles announced by the Minister in July last year that “Conditions of detention will ensure the inherent dignity of the human person.”**

### Villawood Immigration Detention Centre

- 1.12 Strong criticism surrounding the facilities at Villawood Detention Centre was prominent throughout the Committee process, particularly in relation to Stage 1, the high security area that accommodates single males.
- 1.13 Although the Government announced in the May Budget that they would provide \$186.7 million over five years to redevelop the Villawood immigration detention centre, the fact that the Australian Human Rights Commission has called for the demolition of Stage 1 in the last two inspection reports, action must immediately commence as a priority.

**Recommendation No.3:**

**The Greens recommend, as a priority, that the money allocated in the Budget for the Stage 1 upgrade of Villawood Immigration Detention Centre, immediately commence, with works to be completed by the next financial year.**

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2 Committee Hansard, <http://www.aph.gov.au/hansard/joint/commttee/J11139.pdf>, 09/10/08, p.7.

**Recommendation No.4:**

**We further recommend, as outlined within the UNHCR submission, that an independent mechanism be implemented to ensure the regular and transparent review of all places of detention, with particular focus on the appropriateness of accommodation and the services provided.**

**Christmas Island**

- 1.14 One of the most damaging aspects to our international standing in the way in which we treat asylum seekers, and refugees, is that of the excised zone.
- 1.15 According to SCALES, the purported justification for the policy of excised territories fails to hold up in international law, and *“is clearly designed to avoid our obligations under the Refugee Convention, a clear breach of international law.”*<sup>3</sup>
- 1.16 The remoteness and isolation of the Christmas Island detention facilities from mainland Australia, has heightened the limit in access to sufficient health facilities, the lack of resources for both island residents and detainees, and provided minimal access to torture and trauma counselling.

**Recommendation No.5:**

**Given Australia’s commitment to continuing with the excised territories of Christmas Island, Cocos Islands and Ashmore Reef, the Greens recommend that the *Migration Amendment (Excision from Migration Zone) Act 2001* be repealed in its entirety.**

**Recommendation No.6:**

**The Greens further recommend that all Immigration Detention Centre’s be located in urban areas to allow for proper service delivery and oversight and transparency.**

**Phosphate Hill**

- 1.17 Evidence submitted to the Committee indicated that the Phosphate Hill facilities are on the whole run down, with no appropriate family accommodation or privacy provided.

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3 SCALES, submission 103, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub103.pdf>, p.15.

- 1.18 The Refugee Council of Australia argued within its submission that *“not only are asylum-seeking boat arrivals confronted with differential rights under Australian law - no access to judicial review of refugee status determination - they are met with markedly different conditions of detention.”*<sup>4</sup>
- 1.19 It is clear from the evidence provided to the Committee, given the low standard of accommodation provided, and the inappropriate facilities for families, that the current state of Phosphate Hill is unacceptable.

**Recommendation No.7:**

**The Greens recommend that no child or their family be housed in the Phosphate Hill detention facility.**

**Recommendation No.8:**

**If Phosphate Hill is continued to be used as an alternative to the North West Point detention centre, the Greens recommend that significant upgrading of the facility must commence as a matter of urgency, to bring it up to a comparable standard with that required of detention centres on the mainland.**

## Construction Camp

- 1.20 In its 2008 Immigration Detention Report, the Australian Human Rights Commission outlined their major concerns about the surroundings of the Construction Camp immigration detention centre, namely, the claustrophobic bedroom space; and the fact that detainees had no access to public phones or the internet.<sup>5</sup>
- 1.21 Although the Committee’s majority report stated that at the time of their visit, there were no fences around the facility, it is of deep concern that fences are believed to have since been erected, especially given there are 61 minors housed at the Construction Camp.

**Recommendation No.9:**

**Given the Greens do not support holding children in any form of prison-like secure detention facility, we recommend that this fence be taken down immediately.**

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4 The Refugee Council of Australia, submission 120, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub120.pdf>, p.7.

5 Australian Human Rights Commission, Immigration Detention Report – December 2008, p.77.

## North West Point detention centre

- 1.22 During evidence to the inquiry, former Human Rights Commissioner, Mr Innes stated that *“On top of all those issues on Christmas Island, the new detention facility is not only another half an hour away from the main settlement, so even further isolated, but it is a very prison-like facility, to the extent that you have got to go into a cage to borrow a library book.”*<sup>6</sup>
- 1.23 Concerns were also raised by other key community organisations around the lack of community oversight that is available when dealing with excised territories. Kate Guathier, from A Just Australia argued that with no community oversight, or media scrutiny *“there is the opportunity for extremely inhumane treatment of people.”*<sup>7</sup>

### **Recommendation No.10:**

**Due to the extraordinary level of security at the North West Point detention centre and the inappropriateness of detaining people there, the Greens recommend that this facility be closed immediately.**

### **Recommendation No.11:**

**In addition to recommendation No.5, if the excised territories are to remain, the Greens recommend that the Government ensure that the detention values and further policy developments are applied equally throughout Australia, including any such territories that are excised from the migration zone.**

## Children

- 1.24 The Greens remained concerned that the Committee’s report refers to IRH as being “family-style accommodations”, failing to acknowledge that IRH, along with community detention and transit accommodation detention facilities, are, by definition, secure forms of detention.

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6 Committee Hansard <http://www.aph.gov.au/hansard/joint/commttee/J11140.pdf>, 24/10/08, p.10.

7 Committee Hansard <http://www.aph.gov.au/hansard/joint/commttee/J11140.pdf>, 24/10/08, p.19.

- 1.25 Under the definition of immigration detention within the *Migration Act 1958*, it is clear that children should not be detained in any form of secure detention.<sup>8</sup>
- 1.26 As outlined in our comments to the second report, the Greens remain committed to the principle that no minor or their family will only be held in a detention centre as a last resort, must be codified within the *Migration Act 1958*, and extended to include all detention facilities, to prevent the return of detaining children in remote desert camps in appalling conditions.

#### **Recommendation No.12**

**Section 4AA of the Migration Act 1958 must be amended to explicitly state "... a minor must not be detained in any detention centres or facilities with similar conditions to detention centres under any circumstances".**

#### **Recommendation No.13**

**The Greens further recommend that a Commonwealth Commissioner for Children be established to specifically oversee the treatment of children in the immigration system.**

### **Service Delivery**

- 1.27 Despite the terms of reference identifying that appropriate forms of detention and what services are necessary for those detained are to be discussed, the Greens remain concerned that issues relating to health care provision are not adequately addressed, particularly following the recommendations that came from the Palmer Inquiry in 2005.
- 1.28 During the Melbourne hearing, the Red Cross stated that "*Living with insecurity and not knowing for a long period of time is going to have an impact on the mental health of anybody,*"<sup>9</sup> which is even more apparent for the excised territories where there is restricted access to any appropriate health care.

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8 Section 5 of the *Migration Act 1958* defines immigration detention as being: "(a) in the company of, and restrained by an officer ". For full definition of immigration detention see Section 5, p.11.

9 Committee Hansard, <http://www.aph.gov.au/hansard/joint/commtee/J11138.pdf>, 11/09/08, p.12.

**Recommendation No.14:**

**Given many submissions have pointed to the need to readdress the health criterion for asylum seekers, the Greens recommend that mental health risk assessment be included as a priority.**

**Recommendation No.15:**

**The Greens recommend that the Government mandate that all detention personnel receive specialised training in the areas of health care of refugees, including torture trauma and cultural sensitivity.**

**Recommendation No.16:**

**The Greens further recommend that an independent body experienced in the health care of culturally diverse clients be established to oversee the provision of health care to detainees.**

## Privatisation of detention services

- 1.29 The Government's recent announcement that it has renewed a new five-year contract for immigration detention services with GSL, and Serco is disappointing and strikingly at odds with the Labor's pre-election promises.
- 1.30 The fact is that there will be two different operators for detention centres, residential housing, and transit accommodation, raises concern over how the two private operators will communicate with one another and the department to ensure transparency in maintained.
- 1.31 During the course of the inquiry, we heard numerous concerns with using external for-profit contractors to provide immigration detention services; particularly given there have been many instances, according to A Just Australia, "*where arguments regarding responsibility of service delivery between the Department and service delivery contractors have resulted in unacceptable living conditions for detained people.*"<sup>10</sup>
- 1.32 The fact that both GSL and Serco have backgrounds in providing prison services, makes it highly inappropriate to provide a service for vulnerable refugees and asylum seekers found in detention.

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10 A Just Australia, Submission No.89,  
<http://www.aph.gov.au/house/committee/mig/detention/subs/sub089.pdf>.



- 1.33 Outsourcing is not an appropriate way of handling the claims and care of these vulnerable people seeking our assistance and protection, particularly when some of the detention facilities are so remote from the Australian mainland.

**Recommendation No.17:**

**The Greens recommend that the Government return all immigration detention services to public control, opening up a direct line of responsibility between the Department, the Minister and the immigration processes and services available, that occur in these detention facilities.**

**Recommendation No.18:**

**If private management of immigration detention centres continues, the contracts must emphasise the need to put welfare outcomes ahead of security and compliance to ensure that no private operator with only a prison services background is awarded the contract.**

## Transparency

- 1.34 Accountability and transparency are key to making sure human rights and justice are respected in Australia's immigration processes.
- 1.35 In its submission to the inquiry, the International Coalition on Detention of Refugees outlined the way in which Swedish detention centres operate in relation to the rights of the detainees. They stated "*detainees are made to be made to feel active in their case, by having access to media and internet to research their case and to be able to contact NGOs for advice. By doing all of the above detainees feel they are given a fair hearing, are empowered and tend to comply with decisions, removing the need for the coercive measures previously used by police and the security company.*"<sup>11</sup>
- 1.36 Given the Justice Project Inc. stated in their submission that "*the continuing exclusion of media from immigration detention centres has undermined the important role of media scrutiny in informing the public about government actions and thereby increasing transparency and accountability,*"<sup>12</sup> the Greens recommend that:

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11 The International Coalition on Detention of Refugees, Submission No. 109, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub109.pdf>.

12 The Justice Project Inc., Submission No.127, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub127.pdf>.

**Recommendation No.19:**

**As a priority, guidelines must be implemented into the Immigration Detention Standards, to include the protection of rights for detainees to speak freely to the media.**

**Recommendation No.20:**

**Given the tender process for the service contracts is over, the detention standards that service delivery operators adhere to must be made public to ensure transparency of detention processes and procedure is upheld.**

## Judicial Review of decisions

1.37 As per our first dissenting report, co-sponsored with Mr Petro Georgiou and Senator Alan Eggleston, and the second report, the Greens are concerned that there is no mention of the right to judicial review of detention decisions. In particular, the dissenting report raised concern over the lack of independent oversight without indicating a view as to when that should become available.

1.38 In particular, the Greens reiterate the following dissenting report recommendations:

**A person who is detained should be entitled to appeal immediately to a court for an order that he or she be released because there are no reasonable grounds to consider that their detention is justified on the criteria specified for detention;**

**A person may not be detained for a period exceeding 30 days unless on an application by the Department of Immigration and Citizenship a court makes an order that it is necessary to detain the person on a specified ground and there are no effective alternatives to detention. This is consistent with the Minister's commitment that under the new system "the department will have to justify a decision to detain - not presume detention."<sup>13</sup>**

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13 "New Directions in Detention - Restoring Integrity to Australia's Immigration System," 29 July 2008.

## Conclusion

- 1.39 While the Greens support many of the recommendations identified in the Committee majority's report, we remain apprehensive that some of the major concerns raised during the course of this inquiry, relating to transparency and immigration detention protocols, have been largely ignored, we have decided to present a dissenting report.
- 1.40 And while we acknowledge, as we did in the previous two reports, the work of Immigration Minister, Senator Evans, in working towards a more humane and compassionate system of immigration, the Greens believe there is still more to be done to restore Australia's commitment to refugees under our international obligations.
- 1.41 The Greens have a proud tradition of supporting those seeking our protection, and we encourage the Government to look closely at our recommendations, to ensure that our system of immigration is fair and compassionate, and reflects our commitment to assisting and protecting those most in need.

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