

JOINT STANDING COMMITTEE ON MIGRATION (JSCM)
INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA
44 QUESTIONS

Responses from the Department of Immigration and Citizenship
 30 September 2008

Submission No. 129d
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Detention data

The Committee requests the following data to inform its inquiry:

1. Annual number of immigration detainees in Australia for each year from 1988 – present, and breakdowns of
 - the number of minors and women

Program Year	Detained Person Type				Total
	Female - Adult	Male - Adult	Minor	Unknown	
1989-90 *	48	122	62	14	246
1990-91	57	126	66	11	260
1991-92	42	119	25	2	188
1992-93	49	197	17	3	266
1993-94	49	161	63	5	278
1994-95	286	500	376	14	1,176
1995-96	159	349	184	1	693
1996-97	120	727	73		920
1997-98	393	1,359	110	1	1,863
1998-99	649	2,852	216		3,717
1999-00	1,025	5,627	822	3	7,477
2000-01	1,390	6,053	1,344	4	8,791
2001-02	1,785	6,307	1,224	5	9,321
2002-03	1,536	5,157	427	4	7,124
2003-04	1,586	5,053	324	1	6,964
2004-05	1,600	5,989	381		7,970
2005-06	920	5,542	425		6,887
2006-07	794	3,988	276		5,058
2007-08	640	3,744	239		4,623

* Not full year.

- the number arriving as part of a family (as a couple, or parent(s) with children)

[response currently being reviewed]

- most common nationalities
[response currently being reviewed]

- arrival type – unauthorised air arrivals, unauthorised boat arrivals, illegal foreign fishers, cancellations, visa overstayers, and others, as per DIAC's regularly updated statistical publication

Instances of Immigration Detention - By Year, By Unlawful Reason

Program Year	Unauthorised Boat	Overstayer	Cancellation	Other	Unauthorised Air	Fisherman	Total
1989-90	236	9		1			246
1990-91	173	70	1	15	1		260
1991-92	85	85	6	10	2		188
1992-93	198	51	8	8	1		266
1993-94	199	56	9	12	2		278
1994-95	1096	52	1	16	11		1176
1995-96	591	39	9	18	28	8	693
1996-97	367	120	4	32	392	5	920
1997-98	159	594	27	83	992	8	1863
1998-99	920	1109	56	115	1515	2	3717
1999-00	4185	1333	102	216	1616	25	7477
2000-01	4163	2237	1148	519	391	347	8805
2001-02	3082	3115	1567	407	393	757	9321
2002-03	28	3469	1610	840	271	906	7124
2003-04	77	3442	1448	656	404	937	6964
2004-05	1	3906	1452	480	614	1517	7970
2005-06	93	1835	724	637	719	2879	6887
2006-07	100	1349	791	790	589	1439	5058
2007-08	37	1358	600	970	426	1232	4623

- and protection visa status, as per DIAC's regularly updated statistical publication.

PV Application Outcomes for People in Immigration Detention

Final Outcome / Year	Unsuccessful PV application	PV granted or remitted awaiting grant	Total
1987-88	1	0	1
1988-89	1	0	1
1989-90	3	1	4
1990-91	1	0	1
1991-92	42	0	42
1992-93	304	0	304
1993-94	124	2	126
1994-95	336	62	398
1995-96	448	50	498
1996-97	890	107	997
1997-98	1482	479	1961
1998-99	1747	483	2230
1999-00	2059	1633	3692
2000-01	2262	4551	6813
2001-02	2059	3082	5141
2002-03	1751	108	1859
2003-04	1433	114	1547
2004-05	507	169	676
2005-06	433	243	676
2006-07	336	265	601
2007-08	162	185	347
Total			27915

Length of detention of individuals

The Committee is required to advise on the criteria that should be applied in determining how long a person should be held in immigration detention.

3. Are criteria currently applied and if so:

- what are they?
- when were they adopted?
- what is the process? - Who has authority for making decisions?
Who reviews decisions?

The legislative criteria currently applied in determining how long a person should be held in immigration detention are set out in section 196 of the *Migration Act 1958* (the Act). Section 196 provides that an unlawful non-citizen must be kept in immigration detention until he or she is removed or deported from Australia or is granted a visa. The present form of section 196, introduced earlier as section 54ZD by the *Migration Reform Act 1992*, has been in effect since 1 September 1994.

Under the Act, release from detention (other than for removal purposes) is considered on a case by case basis in relation to an application for a visa (in particular, bridging E visas) or, in exceptional cases, through the referral of a case for Ministerial consideration under section 195A of the Act, which allows the Minister to grant a visa to a detainee if it is in the public interest to do so.

Applications for bridging visas

Applications for bridging visa E are usually decided by compliance officers.

The criteria for granting bridging E visas are provided at the response to Question 38. Broadly, unlawful non-citizens who have been immigration cleared may be eligible to apply for a Subclass 050 visa and unauthorised arrivals who have bypassed immigration clearance or been refused immigration clearance may be eligible to apply for a Subclass 051 visa.

Referral of cases for consideration under section 195A

The 195A interim power is a power to be exercised personally by the Minister and is non-compellable and non-delegable.

In addition to considering release in the above situations, each detention case is currently reviewed as follows:

- by a Detention Review Manager to assess the lawfulness and reasonableness of the initial compliance decision to detain (within 24 hours if the identity of the client is known or 48 hours if identity is unknown); and
- on a monthly basis by the Detention Review Manager and a Case Manager.

Since November 2006, each client in detention has also been individually managed by a Case Manager to promote the speedy resolution of immigration issues and minimise the duration of a person's detention.

Recently, the Minister personally reviewed – in conjunction with the Commonwealth Ombudsman – all of the detention caseload that had been in detention for more than two years (a caseload of 72 clients). The results of this review were announced in May 2008.

In addition, by end September 2008, the Department plans to have completed a review of the cases of all current detainees, applying the same principles used during the Minister's review of the people held in long term detention.

The Committee is require to advise on the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks.

4. Are criteria currently applied and if so

- **what are they?**
- **when were they adopted?**
- **what is the process - Who has authority for making decisions? Who reviews decisions?**

At present, there are no additional criteria in place (other than the criteria for grant of a bridging visa or for the Minister's use of his *public interest* power under section 195A) to allow the release of a person from detention who is awaiting the outcome of a visa decision, once health and security checks have been successfully completed.

6. Is there data on how long individuals have been detained over the last 3 years in each form of detention e.g. how many people in immigration detention facilities were detained for fewer than 7 days? 7-30 days? 30 – 90 days? 90-365 days? more than 365 days?

2005-06 Financial Year

Detention Facility Type	<= 7 Days	Between 8 and 30	Between 31 and 90	Between 91 and 365	> 365
Community Detention	0	1	2	73	0
IDC/IRPC	1574	2167	1388	451	375
IRH	2	31	21	21	12
# Other Facility	2581	569	228	117	12

2006-07 Financial Year

Detention Facility Type	<= 7 Days	Between 8 and 30	Between 31 and 90	Between 91 and 365	> 365
Community Detention	1	11	22	39	70
IDC/IRPC	1067	1414	919	335	260
IRH	65	81	32	39	10
#Other Facility	1868	399	62	69	9

2007-08 Financial Year

Detention Facility Type	<= 7 Days	Between 8 and 30	Between 31 and 90	Between 91 and 365	> 365
Community Detention	1	3	8	21	50
IDC/IRPC	811	1378	466	279	194
IRH	40	28	32	42	9
ITA	154	9	1	1	0
#Other Facility	2068	368	67	40	5

Note: In the tables showing days in types of detention facilities by years (above), a person may have more than one type of placement during an episode of detention or more than one episode of detention in any year.

Temporary detention in the community such as motels, hotels, private apartments, hospitals, psychiatric facilities and foster care.

'Long-term detainees'

Since the introduction of immigration detention review by the Ombudsman in 2005:

8. How many people were/are detained for 2 years or longer, including all those who detention had begun prior to the Ombudsman being given the task of reviewing long-term detention cases?

As at 23 September 2008, 425 people had been detained for 2 years or longer since the introduction of mandatory reporting to the Ombudsman under s486 of the *Migration Act 1958*. Of the current clients in detention, 36 have been detained for 2 years or longer. Note that the response to Question 10 provides further details on this caseload.

9. What has been the average length of detention for this group?

Of that group who had been detained for over 2 years, the average length of detention is 1142 days. This includes clients who are still in detention and those who have been released.

Period between decision to remove/deport and removal

14. In how many cases was the period taken to remove/deport substantially longer than the average e.g. by 1 month? By 3 months?

The Department does not have readily available information to respond to this question. Sourcing this information would require considerable resources. The department proceeds to remove /deport as soon as an unlawful client has no further outstanding matters. Delays can occur in obtaining travel documents etc. Refer to next response.

15. What main factors account for the length of time that elapses between the decision to remove/deport and its implementation?

There are a range of factors that may affect the length of time between when a person is available to be removed and when that removal is effected, including, for example, court action by the individual to stay the removal, a new immigration matter before the Department or the Minister, delays in obtaining a travel document, a new health issue that needs to be resolved before a person is fit to travel or for other operational reasons.

People not lawfully detained

28. What are the current community-based alternatives to immigration detention?

On advice from the Committee Secretariat, the responses to questions 28 to 35 have been restricted to reporting on community and alternative detention. However, these are still forms of immigration detention under section 189 of the Migration Act. What constitutes detention is defined in subsection 5(1) of the Act.

All forms of immigration detention available under the current legislation are described in detail in the Department's submission to the JSCM. The community based alternatives available under the current legislation are:

- Community Detention (Residence Determination) and
- Alternative Temporary Detention in the Community, which, due to the restrictive requirements of the definition 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.

The Community Care Pilot (the Pilot) was developed by the Department in consultation with community groups and other organizations and arose from major reviews into immigration. It aims to provide support to address the needs of clients with exceptional circumstances in the community while their immigration outcome is being managed.

Within its approved and funded charter, the Pilot provides services to highly vulnerable clients in Sydney, Melbourne and Brisbane. Its key objectives are:

- to ensure clients' cases are managed in a timely, fair and reasonable manner while their immigration outcomes are being determined;

- provide wellbeing support to clients with exceptional circumstances;
- to support individuals to make informed choices about their immigration outcomes and thereby achieve more timely immigration outcomes.

Bridging visas

38. What are the criteria for granting a bridging visa?

If an unlawful non-citizen is held in immigration detention they are not able to be granted a Bridging Visa A, B, C or D. Such a person will generally only be able to be granted a Bridging Visa E (BE).

There are two subclasses of BE: subclass 050 (general) and subclass 051 (protection visa applicant).

Sub-class 050: In broad terms, there are 3 general situations in which a BE (subclass 050) is granted to an unlawful non-citizen who is an eligible non-citizen. They are:

- To provide lawful status to an unlawful non-citizen arranging to depart Australia; or
- To provide a lawful status to a non-citizen who is pursuing a claim of one kind or another to remain in Australia; or
- To provide lawful status to an unlawful non-citizen in criminal detention including a person in remand or a person serving a custodial sentence, so that immigration detention is unnecessary for the duration of the criminal detention.

Sub-class 051: This BV sub-class provides lawful status to certain unauthorised arrivals who have applied for a protection visa and who:

- Were refused immigration clearance; or bypassed immigration clearance and came under notice of the Department within 45 days; and
- Are under 18 years of age; or
- Are 75 years of age or more; or
- Have a special need (based on health or previous experience or torture or trauma) in respect of which a medical specialist appointed by immigration has certified that the non-citizen cannot be properly cared for in a detention environment; or
- Are the spouse or member of the family unit of an Australian citizen, Australian permanent resident or eligible New Zealand citizen.