

Introduction

Referral of the inquiry

- 1.1 The inquiry was referred by the Minister for Immigration and Citizenship, Senator the Hon Chris Evans.
- 1.2 On 5 June 2008, the Committee agreed to inquire into immigration detention in Australia. The Committee undertook to examine:
 - the criteria that should be applied in determining how long a person should be held in immigration detention
 - the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks
 - options to expand the transparency and visibility of immigration detention centres
 - the preferred infrastructure options for contemporary immigration detention
 - options for the provision of detention services and detention health services across the range of current detention facilities, including immigration detention centres, immigration residential housing, immigration transit accommodation and community detention; and
 - options for additional community-based alternatives to immigration detention by

- ⇒ inquiring into international experience
 - ⇒ considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
 - ⇒ comparing the cost effectiveness of these alternatives with current options.
- 1.3 The Committee sought submissions from government agencies and advisory groups, non-government organisations (such as refugee and migrant support and advocacy groups and charitable organisations) and people currently and formerly in immigration detention. A total of 139 submissions and 18 supplementary submissions have been received. The list of submissions is at Appendix A.
- 1.4 The Committee conducted public hearings and roundtables in Canberra, Sydney, Perth and Melbourne.
- 1.5 The Committee also inspected a number of immigration detention facilities including:
- the Maribyrnong Immigration Detention Centre and the Immigration Transit Accommodation facility in Melbourne
 - the Villawood Immigration Detention Centre and the adjacent residential housing units in Sydney
 - the Northern Immigration Detention Centre and the motel facilities temporarily used to house juvenile foreign fishers in Darwin
 - the Perth Immigration Detention Centre, residential housing units and the home of a person in community detention in Perth, and
 - the three detention centre facilities on Christmas Island – Phosphate Hill, the construction camp and the new immigration detention centre at North-West Point.
- 1.6 Public hearings and inspections are listed at Appendix B.
- 1.7 During the course of the inquiry the Committee spoke to a number of former detainees and individuals currently in detention centres, as well as individuals and families in immigration residential housing and in community detention.

The immigration detention context

- 1.8 Introduced in 1992, the policy of mandatory detention was envisaged as a temporary and exceptional measure for a particular group of unauthorised arrivals or 'designated' persons who arrived by boat between 19 November 1989 and 1 September 1994. The period of detention was limited to 273 days. In 1994 this time limit was removed and mandatory detention was extended to all unlawful non-citizens.
- 1.9 The number of people held in detention by the Department of Immigration and Citizenship (DIAC) was at its highest between 2000 and 2002. There has been a steady reduction in numbers since then to the current lowest numbers in over a decade (Appendix C).
- 1.10 Over the last decade, there has been a decrease in both the number of unauthorised arrivals to Australia in absolute terms and as a proportion of the detention population.
- 1.11 Between 1999 and 2001, Australia was faced with an unprecedented number of asylum seekers; around 9500 arrived unlawfully by boat from the Middle East via Indonesia.¹ This correlates historically with a global increase in demand for asylum from people from Iraq and the Middle East.
- 1.12 Australia receives only a small fraction of asylum claims received globally, however. For example, Australia received 5860 claims for asylum in 2002, 4300 in 2003, and 3100 in 2004. By comparison, the United Kingdom received 103 080 asylum claims in 2002, 60 050 in 2003, and 40 200 in 2004.² During 2007, a total of 647 200 individual applications for asylum or refugee status were submitted to governments and UNHCR offices in 154 countries, of which Australia received 3970; Canada 28 340, the United Kingdom 27 900 and the United States 49 170.³

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

2 United Nations High Commissioner for Refugees, *Asylum levels and trends in industrialised countries, 2004* (2005), p 8.

3 United Nations High Commissioner for Refugees, *Asylum levels and trends in industrialised countries, 2007* (2008), p 12.

- 1.13 Recent years have seen a significant decline in unauthorised boat arrivals (see figure C.2, Appendix C). Reasons for this decline include increased resources invested in security, surveillance and interception in our northern waters and increased cooperation with Indonesia and other partners in our region in managing the numbers of people attempting to sail to Australia through transit countries and people-smuggling operations.
- 1.14 It is acknowledged, however, that unauthorised arrivals to Australia will likely continue to fluctuate in response to external factors, such as natural disaster and conflict, and the activities of people smugglers.⁴ The international context has been of fluctuations in the number of asylum applications to industrialised countries. From 2003 to 2006 the number of people seeking asylum decreased dramatically, and across Europe new asylum claims more than halved from 477 000 to 216 000. There was, however, an increase of 40 per cent in asylum seeker applications made to non-industrialised countries.⁵ Analysis by the United Nations Human Rights Commission on asylum applications in 44 industrialised countries shows that numbers have been trending up through 2007 to October 2008. The Commission predicts a total rise of 10 per cent in the number of applicants for 2008 compared with 2007.⁶
- 1.15 As at 7 November 2008, there were 46 unauthorised air arrivals and 34 unauthorised boat arrivals in immigration detention. This was out of a total detention population of 279.⁷ The number of unauthorised boat arrivals in detention at this time was in fact higher than for the rest of 2008 as the first two boats to arrive in 2008 were intercepted in September and October.⁸

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

5 These trends were attributed to more restrictive asylum policies and border control measures being introduced in European industrialised nations, as well as improved security and improved living conditions in some of the major source countries of asylum-seekers. See Chapter 5 'Asylum and refugees status determination', *2006 United Nations High Commissioner for Refugees statistical yearbook*, p 45.

6 United Nations High Commissioner for Refugees, *Asylum levels and trends in industrialised countries, 2007* (2008), p 3.

7 Department of Immigration and Citizenship website, *Immigration detention statistics summary* as at 7 November 2008, viewed on 26 November 2008 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/index.htm>.

8 As at 21 November 2008, there had been three unauthorised boat arrivals in 2008, on 30 September, 6 October and 20 November.

- 1.16 The majority of the detention population, approximately 80 per cent, is currently comprised of people who have entered the country legally but have overstayed or who have breached the conditions of their visa. DIAC advises that changes in policy emphasis and improved program integrity are reducing the likelihood of detention for this group.⁹
- 1.17 There has also been a fall in the number of illegal foreign fishers in detention from 2879 individuals across 2005-06 to 1232 in the last financial year (2007-08).¹⁰ This decline is likely to be due to increased cooperation between DIAC, Customs, the Australian Navy, the Department of Fisheries and the Indonesian Government in facilitating faster repatriation of these fishers to their home regions. As of 7 November 2008 there are 14 illegal foreign fishers currently in immigration detention.¹¹
- 1.18 As of the same date there are a total of 279 people in immigration detention, compared with 449 people in November 2007 and a total of 3728 people in March 2000.¹²
- 1.19 Appendix C provides more detailed statistics on the population in immigration detention now and in the past.

Immigration detention policy framework

- 1.20 On 29 July 2008, the Minister for Immigration and Citizenship, Senator the Hon Chris Evans announced a series of values that would underpin Australia's immigration detention policy.¹³ Those seven values are:
1. Mandatory detention is an essential component of strong border control.

9 Department of Immigration and Citizenship, submission 129, p 9.

10 Department of Immigration and Citizenship, supplementary submission 129d, p 2.

11 Department of Immigration and Citizenship website, *Immigration detention statistics summary* as at 24 October 2008, viewed on 7 November 2008 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/index.htm>.

12 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Progress made in long-term immigration detention cases, media release, 24 September 2008.

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

2. To support the integrity of Australia's immigration program three groups will be subject to mandatory detention:
 - all unauthorised arrivals, for management of health, identity and security risks to the community
 - unlawful non-citizens who present unacceptable risks to the community, and
 - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
 3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
 4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
 5. Detention in 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.
- 1.21 A historical overview of legislation and major policy initiatives relating to immigration detention is provided at Appendix D.

Scope and structure of this report

- 1.22 Since the ministerial announcements, consultation has been ongoing with key stakeholders and non-government organisations to develop the implementation plan for these values.
- 1.23 To facilitate the contribution of this inquiry to the implementation of the reforms and to developing a blueprint for Australia's immigration detention policy, the Committee has taken the decision to report in three parts.

- 1.24 This first report focuses on the first two of the six terms of reference, that is:
- the criteria that should be applied in determining how long a person should be held in immigration detention, and
 - the criteria that should be applied in determining when a person should be released from immigration detention following health, identity and security checks.
- 1.25 It addresses these terms of reference in the context of the Minister's reforms and makes recommendations relating to the criteria for release and the decision to detain that are consistent with the seven values outlined.
- 1.26 Chapters 2 and 3 of this report consider the criteria for release for detention that are set out in the values announced on 29 July 2008. Chapter 2 considers the first group of people subject to mandatory detention: unauthorised arrivals, and the risk assessment and processes for completion of health, identity and security checks.
- 1.27 Chapter 3 considers the second and third groups of people subject to mandatory detention: those who either pose an unacceptable risk to the community and those who have repeatedly failed to comply with their visa conditions. It considers the criteria that should be applied in these cases.
- 1.28 Chapter 4 considers the future shape of our immigration detention system in terms of fairness, accountability, and review mechanisms for ongoing detention.
- 1.29 Chapter 5 considers processes for removal from Australia and liability for charges for the time spent in detention.
- 1.30 There are a number of key issues that are not considered within this report. In particular, there are concerns about where a person will go on release, what conditions will apply to release, and what services and support are available. The Committee will defer these important questions until its second and third reports, which are due to be released in 2009. These reports will consider alternatives to detention, including the use of bridging visas.
- 1.31 In addition, the Committee notes the commitment made by both this government and the previous government that children and their families will not be placed in immigration detention centres but will be placed in the community. The Committee views the placement of

children and families in detention facilities as an extremely important issue. Again, contemporary infrastructure and management to address the range of needs of the detention population will be addressed in detail in later reports.