

## Introduction

### **Background to this report**

- 1.1 On 14 May 2008 the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, requested the Joint Standing Committee on Migration to inquire into and report on immigration detention in Australia.
- 1.2 The Committee undertook to examine:
  - the criteria that should be applied in determining how long a person should be held in immigration detention
  - the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks
  - options to expand the transparency and visibility of immigration detention centres (IDCs)
  - the preferred infrastructure options for contemporary immigration detention
  - options for the provision of detention services and detention health services across the range of current detention facilities, including immigration detention centres, Immigration Residential Housing (IRH), Immigration Transit Accommodation (ITA) and community detention, and
  - options for additional community-based alternatives to immigration detention by

- ⇒ inquiring into international experience
  - ⇒ considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
  - ⇒ comparing the cost effectiveness of these alternatives with current options.
- 1.3 These wide ranging and challenging terms of reference require the Committee to examine current detention policy and values and how they are articulated in administrative practice, infrastructure, facilities and service delivery.
- 1.4 More broadly, they set the task of developing a blueprint for Australia's future immigration detention policy. They require the Committee to critically assess the role that detention plays in maintaining the integrity of Australia's immigration system, and the shape of a future immigration detention system that meets the needs of people with an unresolved immigration status and the Australian community. The terms of reference require an assessment of how to most appropriately weigh the balance between a person's right to liberty and dignity, risk concerns and cost effectiveness for the Australian taxpayer.
- 1.5 With the launch of the inquiry in May 2008, the Committee sought submissions from government agencies and advisory groups, non-government organisations, such as refugee and migrant support and advocacy groups and charitable organisations. A total of 143 submissions have been received. The list of submissions is at Appendix A.
- 1.6 The Committee has conducted public hearings and roundtables in Canberra, Sydney, Perth, Melbourne and Brisbane, and inspected all detention centres, residential housing facilities and immigration transit facilities in Australia.<sup>1</sup> A list of public hearings and visits is at Appendix B.
- 1.7 During the course of the inquiry the Committee has spoken to a number of former detainees and individuals currently in detention centres, as well as individuals and families in immigration residential housing, in community detention and living in the community on bridging visas. Invitations to the community detention client roundtable in Sydney were facilitated by the Department of Immigration and Citizenship (DIAC), and the bridging visa client roundtable in Melbourne was facilitated by the Australian Red Cross, Hotham Mission and the Asylum Seeker Resource Centre, for which the Committee is appreciative.
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1 With the exception of the recently opened facility for juvenile foreign fishers in Darwin, which was under construction at the time of the Committee's visit, and Immigration Transit Accommodation under construction in Adelaide.

- 1.8 The Committee would also like to acknowledge the assistance of DIAC in providing information on immigration detention facilities and the detainee population, a substantial amount of which has been used in Chapter 2.

## The development of Australia's system of mandatory detention

- 1.9 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.
- 1.10 Since that time, the Australian Government has invested in the construction and expansion of a network of secure detention facilities. This has included the now defunct facilities at Port Hedland in Western Australia, Baxter and Woomera in South Australia, Cocos Island, Nauru and Manus Island in Papua New Guinea. Currently in use are facilities on Christmas Island, in Sydney, Melbourne, Perth, Brisbane and Darwin.<sup>2</sup>
- 1.11 The number of people held in immigration detention was at its highest between 2000 and 2002. Between 1999 and 2001 Australia was faced with an unprecedented number of asylum seekers; around 9500 arrived unlawfully by boat from the Middle East via Indonesia.<sup>3</sup> There has been a steady reduction in the detention population since then, although the numbers continue to fluctuate in response to external factors such as natural disaster and conflict, the activities of people smugglers, trends in non-compliance and administrative compliance action.<sup>4</sup>
- 1.12 Australia's secure detention facilities, both onshore and offshore, currently have an operational capacity of over 1800 and can accommodate an additional 1600 detainees if required. At 29 May 2009 the detainee population was 798, including 62 in community detention and 127 in alternative temporary detention in the community.<sup>5</sup>

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

3 Department of Immigration and Citizenship, 'Unauthorised arrivals by land and sea', Fact sheets 74 & 74a, viewed on 1 November 2008 at [web.archive.org/web/20030621215427/http://www.immi.gov.au/facts/74unauthorised.htm](http://web.archive.org/web/20030621215427/http://www.immi.gov.au/facts/74unauthorised.htm) [web.archive.org/web/20030621215037/www.immi.gov.au/facts/74a\\_boatarrivals.htm](http://web.archive.org/web/20030621215037/www.immi.gov.au/facts/74a_boatarrivals.htm).

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

5 Department of Immigration and Citizenship, 'Immigration detention statistics summary' as at 29 May 2009, viewed on 22 June 2009 at [http://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-20090529.pdf](http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090529.pdf).

- 1.13 Australia's experience with mandatory immigration detention has been controversial. In this decade, government policy has progressively recognised the need to develop a range of alternatives to secure and institutional detention. In part, this has been a way of reconciling a limited and geographically dispersed detention infrastructure with the necessity of detaining people elsewhere, in transit, for medical attention, or for other reasons.
- 1.14 Pressure for development of alternatives also came from public concern about families and children in detention, in some cases for multiple years, and more diffusely from reports of the prevalence of depression, anxiety, self-harm, suicidal ideation and psychiatric disorders amongst immigration detainees.<sup>6</sup>
- 1.15 In some instances Australia may have been in breach of international human rights and the United Nations Human Rights Committee has found Australia's immigration detention regime to be in violation of its obligations under international law on seven separate occasions.<sup>7</sup> Under United Nations guidelines, the detention of asylum seekers or other immigration clients should be a measure of last resort where no other alternatives are available.<sup>8</sup> In the context of a mandatory detention system it has been difficult, until recently, to demonstrate that alternatives to secure immigration detention had been considered and found inappropriate.
- 1.16 Over recent years, the range of types of detention accommodation in Australia has expanded substantially. Currently the following types of immigration detention are available for DIAC to place unlawful non-citizens:
- immigration detention centres (secure, institutional detention)
  - alternative temporary detention in the community, which may include foster care for minors or stays in hotels, hospitals, other medical facilities or state correctional facilities (introduced in 2002)<sup>9</sup>

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6 Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention* (2004); Chilout, submission 40, 27 August 2008, p 3; Cole E, Bail for immigration detainees, *A few families too many – The detention of asylum seeking families in the UK* (2003), pp 34-35; Circle of Friends 42, submission 32, 27 August 2008, p 6.

7 Attorney-General's Department, submission 61, 27 August 2008, p 2; Nasu H, Rice S & Zagor M, submission 76, 27 August 2008, p 3; Refugee and Immigration Legal Centre, submission 130, 27 August 2008, p 7.

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

9 Department of Immigration and Citizenship, submission 129, 11 September 2008, pp 18-26.

- community detention, which is supported community living arrangements for those assessed as a low flight risk and for families with children (introduced in 2005)<sup>10</sup>
  - immigration residential housing, a detention facility<sup>11</sup>, that provides family-style detention accommodation for lower risk detainees (introduced in 2006),<sup>12</sup> or
  - immigration transit accommodation, which is hostel-type accommodation for people anticipated to be removed or processed quickly (introduced in 2007).<sup>13</sup>
- 1.17 In addition, bridging visas can also be used as an alternative to immigration detention. A bridging visa makes a non-citizen temporarily lawful until a specified event occurs or until their immigration status is resolved. While the *Migration Act 1958* requires the detainment of an unlawful non-citizen, the current immigration policy is that, where it is appropriate and safe to do so, the granting of a bridging visa should be considered prior to detaining a person.<sup>14</sup>
- 1.18 Inquiry participants acknowledged that the introduction of case management and more expedient processing of cases as being positive and significant.

## Ministerial announcements

- 1.19 The Committee's inquiry has taken place during a time of significant immigration policy shifts in Australia.
- 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.<sup>15</sup> Those seven values are:
1. Mandatory detention is an essential component of strong border control.

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10 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), Chapter 2.

11 Australian Human Rights Commission, 'Immigration detention and human rights', viewed on 31 July 2009 at [http://www.hreoc.gov.au/Human\\_Rights/immigration/detention\\_rights.html](http://www.hreoc.gov.au/Human_Rights/immigration/detention_rights.html).

12 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), Chapter 2.

13 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), Chapter 2.

14 Department of Immigration and Citizenship, supplementary submission 129f, 26 November 2008, p 9.

15 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 The values build on reforms implemented by the previous Government. These include the commitment not to place children in immigration detention centres, the introduction of community detention for families and other vulnerable detainees, and the increasing use of bridging visas in preference to detention.
- 1.22 In August 2008, the Government abolished temporary protection visas (TPVs). TPVs were introduced by the previous government to discourage people smuggling activities resulting in unauthorised boat arrivals and to discourage refugees leaving their country of first asylum. Now, all applicants for a protection visa who are found to engage Australia's protection obligations receive a permanent protection visa.<sup>16</sup> While the TPV regime is not considered as part of this inquiry, the experience of TPV holders living in the community whilst awaiting resolution of immigration status has informed the Committee's reflections, in the second report, on

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

how community-based arrangements might best function in the interests of the person, the community and the Australian migration system.

- 1.23 In February 2009 the Government announced that the 'Refugee Review Tribunal (RRT) will publish its country of origin research to provide greater transparency in its decision making'.<sup>17</sup> The Government also announced that in responding to community requests the 'Migration Review Tribunal (MRT) will also double the number of decisions published online so that 40 per cent of all decisions made by the tribunals will be publicly available.'<sup>18</sup>
- 1.24 On 18 March 2009 the Migration Amendment (Abolishing Detention Debt) Bill 2009 was introduced into the Senate. The Bill seeks to amend the Migration Act to remove the liability for detention and related costs for certain persons and liable third parties and extinguishes all outstanding immigration detention debt. As the Minister for Immigration and Citizenship noted, the bill is in line with the recommendation of this Committee from its first report that the practice of charging a person for their immigration detention be abolished. People convicted of people smuggling or illegal foreign fishing will still be liable for their costs of detention and removal.<sup>19</sup>
- 1.25 As part of the 2009–10 Budget the Government announced that it 'will provide \$186.7 million over five years (including \$175.0 million in capital funding) to redevelop the Villawood Immigration Detention Centre.'<sup>20</sup>
- 1.26 In May 2009 the Government announced that it has 'committed \$ 77.4 million over four years to implement key immigration compliance and detention policy improvements in community care, status resolution and assisted voluntary returns.' The new funding is focussed on addressing prompt resolution of an individual's immigration status.<sup>21</sup>

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17 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Greater transparency for refugee and migration tribunals', media release, 17 February 2009.

18 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Greater transparency for refugee and migration tribunals', media release, 17 February 2009.

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

20 Australian Government, Budget 2009-10, 'Part 3: Capital Measures', viewed on 27 May 2009 at [http://www.budget.gov.au/2009-10/content/bp2/download/bp2\\_Capital.pdf](http://www.budget.gov.au/2009-10/content/bp2/download/bp2_Capital.pdf).

21 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Budget 2009–10 – New Directions in Detention', media release, 12 May 2009.

- 1.27 On 25 June 2009 the Migration Amendment (Immigration Detention Reform) Bill 2009 was introduced into the Senate.<sup>22</sup> The Bill seeks to amend the Migration Act to support the implementation of the Government's 'New Directions in Detention policy', announced by the Government on 29 July 2008.<sup>23</sup>

## First report: Criteria for release from detention

- 1.28 To facilitate the contribution of this inquiry to the implementation of the reforms announced by the Minister, the Committee decided to report in three parts.
- 1.29 The first report, *Immigration detention in Australia: A new beginning – Criteria for release from detention*, was tabled on 1 December 2008.<sup>24</sup> This report focussed 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.<sup>25</sup>
- 1.30 The report addressed these terms of reference in the context of the Minister's announcements and endorsed the application of a risk-based model to assess whether immigration detention was a proportionate and necessary response in each individual case.
- 1.31 The Committee's objective was to set transparent and open guidelines that would enable the implementation of the seven principles outlined by the Australian Government. The first report outlined guidelines for the assessment of public health, compliance, criminal and national security risks. It also considered the future shape of our immigration detention system in terms of fairness, accountability, and review mechanisms for ongoing detention. Finally, it considered removal practices and the policy of charging people for the time they spend in detention.

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22 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Detention values to be enshrined in law', media release, 25 June 2009.

23 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Detention values to be enshrined in law', media release, 25 June 2009; See paragraph 1.20.

24 The first report on Immigration Detention in Australia is available at <http://www.aph.gov.au/house/committee/mig/detention/report.htm>.

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



- 1.32 A recurring concern about the current immigration detention system has been the indefinite nature of detention, with little scope or information about the reasons or rationale for detention. The report tackled those uncertainties through the following recommendations:
- five day time frames for health checks
  - up to 90 days for the completion of security and identity checks, after which consideration must be given to release onto a bridging visa
  - a maximum time limit of 12 months' detention for all except those who are demonstrated to be a significant and ongoing risk to the community, and
  - the publication of clear guidelines regarding how the criteria of unacceptable risk and visa non-compliance are to be applied.
- 1.33 The report also recommended additional measures to increase oversight and transparency, such as:
- greater detail and scope for the three month review conducted by DIAC<sup>26</sup>
  - ensuring detainees and their legal representatives receive a copy of the review<sup>27</sup>
  - ensuring the six month Ombudsman's review is tabled in parliament and that the ministerial response to recommendations is comprehensive<sup>28</sup>
  - providing increased oversight of national security assessments that may affect individuals<sup>29</sup>
  - enshrining the new values in legislation,<sup>30</sup> and
  - providing for merits and judicial review of the grounds for detention after that person has been detained for more than 12 months. This

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26 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 63-70.

27 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), p 70.

28 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 70-78.

29 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 38-42.

30 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 78-84.

would apply to those who remain in detention after 12 months on the basis of a 'significant and ongoing unacceptable risk' assessment.<sup>31</sup>

- 1.34 Additionally, the Committee considered that the practice of charging a person for their own detention was considered harsh and contrary to the stated value that immigration detention was not punitive. The Committee recommended that this practice should cease and that all such debts should be waived immediately.
- 1.35 A full list of the Committee's recommendations from this report is provided at Appendix C.

## **Second report: Community-based alternatives to detention**

- 1.36 Given that the Committee's first report focussed on the criteria for release from detention, the Committee chose to next report on the conditions and material support for that release, including appropriate options for community-based alternatives to secure detention.
- 1.37 The second report, *Immigration detention in Australia: A new beginning – Community-based alternatives to detention* was tabled on 25 May 2009.<sup>32</sup> This report considered Australia's current use of alternatives to detention centres, and assessed options in international use which may have application in the Australian context.
- 1.38 Under the inquiry's terms of reference the Committee canvassed 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.
- 1.39 In considering community-based alternatives to detention, the Committee also commented on the infrastructure required to meet the needs of those not in detention centres and awaiting the resolution of their immigration

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31 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 90-96.

32 The second report on Immigration Detention in Australia is available at <http://www.aph.gov.au/house/committee/mig/detention/report2.htm>.

status. This provided a partial response to a further term of reference, namely:

- the preferred infrastructure options for contemporary immigration detention.

1.40 The second report of the Committee examined the practicality of releasing people from immigration detention and recommended that the Australian Government reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements.<sup>33</sup>

1.41 In addition, the Committee recommended that the Government utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved, and review the cases of those currently on residence determinations.<sup>34</sup>

1.42 The Committee also recommended that there should be improved transparency in immigration decision-making, improved access to legal advice, and improved access to voluntary return counselling in order to support the provision of information to the client and to help them decide what is going to be the best and most realistic outcome for themselves and their families.<sup>35</sup>

1.43 A full list of the Committee's recommendations from this report is provided at Appendix D.

## Structure of this report

1.44 This last report addresses the remaining terms of reference, namely:

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

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33 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), pp 131-33.

34 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), pp 131-33.

35 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), pp 133-41.

immigration detention centres, immigration residential housing, immigration transit accommodation and community detention.

- 1.45 Chapter 2 of this report provides a factual description of the current immigration detention facilities including information on the location, size and capacity of immigration detention centres, immigration residential housing, immigration transit accommodation and community detention. This chapter also encapsulates how the community perceives immigration detention facilities and the Committee's observations of each facility.
- 1.46 Chapter 3 examines the provision of services in detention facilities historically, the current arrangements, and the status of the current tender process. Also examined is the training of personnel at immigration detention facilities.
- 1.47 The final chapter outlines the many varied national and international oversight mechanisms to ensure that people in immigration detention are treated humanely. Also discussed is the community concern about the transparency of immigration detention facilities.