



Dissenting Report by Mr Petro Georgiou MP

1.1 The Joint Standing Committee on Migration's third report of the inquiry into immigration detention, *Immigration Detention in Australia: Facilities, Services and Transparency*, reports on the following terms of reference:

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

1.2 This dissent records a number of concerns regarding this report. The first is in relation to the detention of children at immigration detention facilities both on and offshore, and the Committee's repeated failure to adequately address this issue in its reports. The second is the third report's lack of recommendation regarding the establishment of an Immigration Detention Health Review Commission. The third is that the Committee's recommendations on improving transparency in this and its other reports are inadequate in that the only reliable mechanism for ensuring independent oversight of detention decisions is through independent, judicial review.

Children in Detention

- 1.3 The issue of children being detained in immigration detention facilities has not been effectively addressed in any of the Committee's reports despite its being of direct relevance to the inquiry.
- 1.4 In my dissenting comments on the Committee's second report, *Immigration Detention in Australia: Community-Based Alternatives to Detention*, I said that the report had paid insufficient regard to evidence relating to the detention of children in immigration residential housing and immigration transit accommodation.
- 1.5 The issue of children in detention is also inadequately addressed in the Committee's third report.
- 1.6 According to the latest publicly available DIAC figures, as at 3 July 2009, there were 101 children in immigration detention, only 25 of whom were in community detention. Seven were in immigration residential housing and 69 were held in what is described as "Alternative Temporary Detention in the Community (Christmas Island)" (this term is not defined).¹
- 1.7 In discussing the infrastructure at the various detention facilities, the report makes note of a number of concerns about immigration residential housing raised by the Australian Human Rights Commission, namely the lack of interpreters and the lack of onsite access to health or mental health services.²
- 1.8 However, in raising these concerns, the report fails to mention the Commission's "significant concern" about the detention of children in these facilities.³ In its submission to the inquiry the Australian Human Rights Commission stated that:

It is important to recognise that IRH [immigration residential housing] facilities are still closed facilities, and a mix of detainees with different needs, and detention experiences, may all be contained in the same facility. HREOC has been aware of several

1 DIAC, *Immigration Detention Statistics Summary*, as at 3 July 2009 http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090703.pdf - accessed 4 August 2009.

2 Paragraphs 2.156 and 2.172.

3 Australian Human Rights Commission, *2008 Immigration Detention Report – Summary of Observations Following Visits to Australia's Immigration Detention Facilities*, pp. 60, 62, 82. See discussion of IRH in the Committee's third report at paragraphs 2.148-2.177 where the AHRC's concerns regarding children are not mentioned. Regarding ITA, see paragraphs 2.178-2.202.

cases where children and families have been detained in IRH facilities for a significant period of time. While the IRH facilities are significantly better than IDCs [Immigration Detention Centres], they are still a closed detention facility and, for children and their families, are inappropriate for anything but the briefest of periods.

- 1.9 In its submission, as well as in its *2008 Immigration Detention Report*, the Australian Human Rights Commission cited examples of families with children being detained in these facilities for two and three month periods. Its submission records that:

During 2007 inspections of immigration detention facilities, HREOC spoke to a family with a small child who was detained in IRH for two months before they were given a Residence Determination. The father told us that he had been concerned about the effect of the detention on his daughter, who was distressed at being surrounded by strangers. His wife was also pregnant.⁴

The *2008 Immigration Detention Report* cites further incidence of this:

During the Commission's 2008 visits to the immigration residential housing facilities, there was a family of five at the Sydney IRH with a baby and a five-year-old child. The family had been detained for three months. The parents spoke of the five-year-old child's confusion and distress about being detained.⁵

- 1.10 The Australian Human Rights Commission has also expressed its "significant concerns" about the accommodation of several children in immigration transit accommodation.⁶
- 1.11 While the Committee's third report mentions some of the Australian Human Rights Commission's concerns regarding these facilities (for example, lack of access to cooking facilities and lack of written induction materials and complaint forms for detainees at Brisbane ITA)⁷ it does not mention the Commission's concern regarding the detention of children in immigration transit accommodation.⁸

4 Human Rights and Equal Opportunity Commission, submission 99, p 37.

5 Australian Human Rights Commission, *2008 Immigration Detention Report*, p 82.

6 Ibid, p 63.

7 Paragraph 2.201.

8 Australian Human Rights Commission, *2008 Immigration Detention Report*, pp. 63, 82. Additionally, the Australian Human Rights Commission was concerned that ITA, a facility that is intended for very short stays, were increasingly being used for longer periods of time

- 1.12 In 2005, the Howard government implemented significant reforms to immigration detention which allowed the release, in July 2005, of all children and their families from immigration detention and their placement in “residence determinations”.
- 1.13 A principle was introduced into the *Migration Act 1958* that, in accordance with international law, “a minor shall only be detained as a measure of last resort” (s. 4AA). Instead of being detained in immigration detention, children and their families were to be released to live freely in the community under a mechanism known as a “residence determination”.
- 1.14 In my last dissent, I expressed my concern about a new tolerance of the detention of children in facilities euphemistically described as “alternative” and “family-style” facilities. A tolerance apparent in the government, the Department of Immigration, and reflected in this Committee’s reports is blurring the distinction that had formerly divided incarceration from being able to live freely in the community for children in immigration detention.
- 1.15 It must be made very clear that both immigration residential housing and transit accommodation are closed, secure environments where detainees are closely monitored by guards and are not allowed to freely come and go.
- 1.16 There are no detailed descriptions of the security arrangements in operation at immigration residential housing and immigration transit accommodation in this report. Indeed, a fundamental flaw of the report is its failure to provide detailed, factual descriptions of the security infrastructure in operation at *any* immigration detention facility, despite the dedication of Chapter Two to the provision of lengthy descriptions of the infrastructure of the immigration detention facilities currently operating in Australia.
- 1.17 When additional information from DIAC regarding security infrastructure was requested by the Committee, insufficient time was allowed for its provision. In the end, the Committee sacrificed the inclusion of substantive and highly relevant material in order to meet the requirements of arbitrarily imposed reporting timeframes.

(*ibid*, p. 63). At paragraph 2.186, the Committee’s third report cites DIAC figures indicating that the length of stay for those detained at the Melbourne ITA ranged from between one week to between six and 12 months. This length of stay is entirely inappropriate for ITA.

- 1.18 The evidence received by the Committee that children are being detained in residential housing and transit accommodation for extended periods is disturbing.
- 1.19 The third report also makes mention of the detention of children on Christmas Island. The report records that, as at 29 May 2009, what the Committee designates as the “Construction Camp Immigration Detention Centre”, held 18 female children and 43 male children.⁹
- 1.20 While the Committee Observations state that “The Committee understands that this immigration detention centre is primarily used to house family or socially connected groups of arrivals”,¹⁰ there is no comment about the detention of children at the centre.
- 1.21 It is unclear from the report what security is used at the Construction Camp or whether detainees are able to come and go freely unescorted.
- 1.22 Regarding what the Committee designates as the “Phosphate Hill Immigration Detention Centre”, the report describes it as being set up for the purpose of detaining children and families (see paragraphs 2.112 and 2.116), albeit as at 29 May 2009 there were no children being held there.
- 1.23 The Committee Observations regarding the Phosphate Hill Immigration Detention Centre describe the facilities as run down, cramped, lacking privacy, hot and noisy. The kitchen and food preparation areas are characterised as “derelict and substandard”. The facilities, they conclude, “do not comply with DIAC’s own Standards for Design and Fitout of Immigration Detention Facilities are in no way commensurate with Australian community standards or expectations.”¹¹
- 1.24 Regarding Phosphate Hill, the Committee does make an observation regarding its lack of suitability for children. In the Committee Observations at paragraph 2.118 the report says that:

A children’s playground is located on the grounds of Phosphate Hill however no other part of the immigration detention centre would be considered suitable for children.

This observation is welcome, but it would have been far stronger had it been a recommendation.

9 Paragraph 2.123. The report adds that “The length of time of those detained ranged from one week to between one and three months” (paragraph 2.124) but does not specify how long these children have been detained.

10 Paragraph 2.129.

11 Paragraphs 2.117 and 2.119.

- 1.25 With regard to both the Construction Camp and Phosphate Hill, the report is, once again, inadequate regarding the citation of the concerns of the Australian Human Rights Commission. Regarding the Construction Camp, the following concerns of the Australian Human Rights Commission are cited: the area has no grass and very few trees, the bedrooms are very small and claustrophobic and there is no access to public phones or the internet.¹² With regard to Phosphate Hill, the concerns cited are: that it provides a low standard of accommodation, no access to the internet and has very few recreational facilities.¹³
- 1.26 Not included in the report is the Australian Human Rights Commission's opinion in its *2008 Immigration Detention Report* that:
- DIAC classifies the Construction Camp as 'alternative temporary detention in the community'. The Commission is of the view that this is not accurate. **The Construction Camp is not community based accommodation; it is a facility being specifically used as a place of immigration detention** (my emphasis).¹⁴
- Also not cited is the Commission's recommendation that:
- Children should not be held in immigration detention on Christmas Island. However, if DIAC intends to continue this practice, children should be accommodated with their family members in DIAC's community based accommodation. **They should not be detained at the construction camp facility, the Phosphate Hill IDC or the new Christmas Island IDC** (my emphasis).¹⁵
- 1.27 On 29 July 2008, the Minister for Immigration and Citizenship, Senator the Honourable Chris Evans announced the endorsement by Cabinet of a set of new immigration detention values that would "guide and drive new detention policy and practice into the future". These included that "children ... will not be detained in an immigration detention centre."¹⁶
- 1.28 It is deeply troubling that so many children are being held at the Construction Camp Immigration Detention Centre on Christmas Island.

12 Paragraph 2.127.

13 Paragraph 2.115.

14 Australian Human Rights Commission, *2008 Immigration Detention Report*, p 84.

15 Ibid, p. 85.

16 Senator the Hon Chris Evans, "New Directions in Detention - Restoring Integrity to Australia's Immigration System", 29 July 2008.

1.29 I recommend the following:

Recommendation 1

Children and their families should not be held in any immigration detention facility either onshore or offshore.

Recommendation 2

The Australian Government upgrade the facilities at Phosphate Hill Immigration Detention Centre as a matter of priority to ensure that they are commensurate with Australian community standards. Until the facilities are upgraded, people should no longer be detained there. Children and families are not to be detained at the Phosphate Hill Immigration Detention Centre.

Immigration Detention Health Review Commission

1.30 The third term of reference for this report instructs the Committee to consider options for the provision of detention services and detention health services across the range of current detention facilities.

1.31 At paragraphs 3.112-123, the report cites a large volume of evidence presented to the Committee expressing concern about the adequacy of both physical and mental health services being provided to detainees. This evidence was provided to the Committee by the Commonwealth Ombudsman, the Refugee Council of Australia, the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors and the Australian Psychological Society.

1.32 The Palmer Inquiry, commissioned in the wake of public outcry over the unlawful detention of Cornelia Rau and tendered to the former Government in 2005 by Mr Mick Palmer, identified serious deficiencies in a range of areas including the provision of appropriate health services. The Inquiry found that:

Given the importance and prominence of health care services, the Inquiry considers that the lack of any focussed mechanism for external accountability and professional review of service delivery standards and arrangements is a major omission. It acknowledges the efforts made in this regard by the Immigration Detention Advisory Group and the Commonwealth Ombudsman, both of which have a much wider scope of responsibility. An expert body specifically dealing with health matters is required to complement

and strengthen these efforts The Inquiry concluded that the delivery of adequate and appropriate health care for immigration detainees, and their welfare in general, need to be safeguarded by continuous oversight by an independent, external review body.¹⁷

1.33 To effect this, the Palmer Inquiry recommended that:

The Minister for Immigration establish an Immigration Detention Health Review Commission as an independent body under the Commonwealth Ombudsman's legislation to carry out external reviews of health and medical services provided to immigration detainees and of their welfare.¹⁸

The Immigration Detention Health Review Commission would be empowered to "initiate reviews and audits of health care standards and the welfare of detainees".¹⁹ It needed to be "appropriately staffed and resourced, with a core of experienced people with relevant skills".²⁰

1.34 The health, in particular the mental health, of immigration detainees has been identified, and is now widely recognised, as a critical area of concern. The provision of health services is an area in which the Department of Immigration has repeatedly been shown to have failed in its duty of care.

1.35 Yet this hugely significant recommendation providing a mechanism of focussed external accountability and professional review of health services was never implemented.

1.36 It was revealed to the Inquiry that the Commonwealth Ombudsman had, at the time, expressed concerns about the capacity of his office to undertake this role.²¹ However, Professor McMillan told the Committee that:

if this Committee or the government proposes that a function of that kind should be located in the Ombudsman's office then I will take a very open minded view of the need for the function and how it can be sensibly located within the office.²²

17 Palmer, MJ, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, July 2005, p 153.

18 Ibid, recommendation 6.11, p xxx.

19 Ibid, p 154.

20 Ibid, recommendation 6.11, p xxx.

21 Hearing 17 September 2008 p 15.

22 Hearing 17 September 2009, p 16.

- 1.37 DIAC has confirmed that the Palmer recommendation was not implemented and that a decision had instead been made to establish the Detention Health Advisory Group (DeHAG).²³
- 1.38 However, when asked at the inquiry hearings whether DeHAG was capable of discharging the responsibilities of an Immigration Detention Health Review Commission as envisaged by Mr Palmer, Professor Harry Minas, DeHAG Chair, told the Committee that DeHAG “is not set up in a way to discharge those responsibilities”.²⁴
- 1.39 Professor Minas stressed to the Committee that DeHAG is only an advisory body. It has no role in monitoring the welfare of detainees, and no statutory right of entry to detention facilities.²⁵ Professor Minas said that the Palmer recommendation “has not been implemented and it is our view that such a body remains essential.”²⁶
- 1.40 It is unfortunate that despite having considered this evidence, the Committee chose to make no recommendation on this matter.

Recommendation 3

I recommend as a matter of urgency that the Australian Government implement the Palmer Report’s recommendation 6.11 and establishes an Immigration Detention Health Review Commission.

Transparency – Independent, Judicial Review

- 1.41 Finally, regarding transparency, I reiterate the view articulated in the dissenting report to the Committee’s first report by myself and Senators Dr Alan Eggleston and Sarah Hanson-Young that judicial review of detention decisions is the only reliable mechanism for ensuring independent oversight of detention decisions.
- 1.42 I reiterate my recommendations from that dissent, namely that:

Recommendation 4

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;

23 Hearing 24 September 2008 p. 11.

24 Hearing 11 September 2008 p 43.

25 Ibid.

26 Ibid, p. 40.

Recommendation 5

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."²⁷

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