
The Parliament of the Commonwealth of Australia

Immigration detention in Australia: A new beginning

Criteria for release from immigration detention

First report of the inquiry into immigration detention in Australia
Joint Standing Committee on Migration

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Canberra

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Contents

Foreword	vii
Membership of the Committee	xiii
Terms of reference	xv
List of abbreviations	xvii
List of recommendations	xix

THE REPORT

1 Introduction	1
Referral of the inquiry	1
The immigration detention context	3
Immigration detention policy framework	5
Scope and structure of this report	6
2 Criteria for release – health, identity and security checks	9
Current framework for release from detention	10
Health, identity and security checks for unauthorised arrivals	13
Detention for the purposes of health checks	14
Assessing public health risks	15
Committee comment	21
Detention for the purposes of identity checks	24
Defining identity	28
Assessing identity risks	29
Committee comment	32

Detention for the purposes of security checks	33
Time frames for security assessments	34
Assessments of security risk	38
Committee comment	41
3 Criteria for release – unacceptable risk and repeated non-compliance	45
Unacceptable risk to the community	46
Risk assessment of section 501 detainees	47
Committee comment	52
Repeated visa non-compliance	54
Committee comment	56
Short-term detention prior to removal	58
Application of release criteria to excised places	59
4 Review mechanisms for ongoing detention	61
Framework for the review of ongoing detention	62
Three month review by the Department of Immigration and Citizenship	63
Committee comment	69
Six month review by the Commonwealth Ombudsman	70
Committee comment	77
Giving effect to the reforms	78
Calls for legislative change	81
Committee comment	83
Options for merits and judicial review for ongoing detention	84
Committee comment	89
Length of time in detention	90
Committee comment	94
5 Removals and detention charges	99
Removal of unlawful non-citizens from Australia	100
Removal practice by the Department of Immigration and Citizenship	101
Accounts of enforced removal	103
Preferred removal options	108
Committee comment	109

Detention charges	112
Debt waiver and write-off	114
Accumulation and management of detention debt	116
Criticisms of detention charges	117
The impact of detention debt on ex-detainees	119
Committee comment	124

APPENDICES

Appendix A: List of submissions to the inquiry	127
Appendix B: List of public hearings and inspections	135
Appendix C: Overview of immigration detention population	143
Numbers of people in immigration detention	143
Immigration detention population by mode of arrival	144
Source countries of people in detention	147
Length of immigration detention	148
Appendix D: Time line for immigration detention policy 1989–2008	151
Appendix E: Types of immigration detention.....	155
Appendix F: Bridging visas.....	159
Appendix G: Notice of detention debt and invoice.....	163

DISSENTING REPORT

Dissenting report by Mr Petro Georgiou MP, Senator Dr Alan Eggleston and Senator Sarah Hanson-Young	165
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LIST OF TABLES

Table 2.1	Reasons for release from immigration detention	12
Table 3.1	Convictions of section 501 visa cancellations in detention as at 7 May 2008	49
Table 5.1	Projected costs accumulated by person in immigration detention	113
Table 5.2	Waiver and write-off of detention debts	114
Table 5.3	Comparisons of debt invoiced and breakdown of debt collected	116
Table C.1	Nationalities of people detained 2000-01 to 2007-08 (ranked by majority)	148
Table E.1	Total number of days spent in immigration detention- July 2005 to June 2008	158
Table F.1	Bridging visa categories available to people in immigration detention	161

LIST OF FIGURES

Figure 2.1	Public health risk profiles for unauthorised arrivals.....	16
Figure 4.1	Commonwealth Ombudsman's report on immigration detainee Mr X.....	80
Figure C.1	Trends in immigration detention in Australia from 1989 to 2007	144
Figure C.2	Trends in immigration detention by arrival type and/or reason for detention	145
Figure C.3	People in immigration detention during 2007-08, by arrival type/reason for detention.....	147
Figure C.4	Percentage of detention population with a length of stay less than three months.....	149
Figure C.5	People in immigration detention by period detained at 30 June 2008.....	149
Figure G.1	Notice of detention debt.....	163



Foreword

In April of 2008, the Joint Standing Committee on Migration inspected the Villawood Immigration Detention Centre, Australia's largest immigration detention centre. In Villawood, a variety of people are detained including people who have overstayed business or tourist visas, former international students who have breached their visa conditions, people with criminal histories whose visas have been cancelled, stowaways, stateless persons and people seeking Australia's protection from religious and political persecution. At the time of the Committee's visit, there were nationals of 97 countries in detention, the majority being from the People's Republic of China. There were 249 people in Villawood, representing just over half the nationwide detention population of 488. Between the Committee's visit and the time of writing, the number detained nationwide had fallen to 279.

With the insights gained, the Committee organised a roundtable to hear first-hand from former detainees and from regular visitors to Villawood. Members and Senators listened to evidence that detainees who posed no risk to the community were being held without just cause and to the detriment of their mental health. Concerns were expressed that the current immigration detention system is arbitrary and continues to lack transparency in its administration.

Australian policy, prior to the election of the current Government, saw too many people spending years in immigration detention, with little hope for a resolution of their case. Many in Villawood had been in detention for less than three months. However at the time of the Committee's visit there were 46 people at Villawood who had been in detention for over two years. Happily this number has declined markedly following the Minister's personal overview of long-term cases. Nevertheless, despite the changes to both policy and to administrative culture in recent times, we can and must do better.

Injustices of immigration detention prompted the Committee to develop a more humane evidence-based approach to immigration detention. This inquiry takes a wide view in examining the criteria for release from detention. We have asked how long it is reasonable to hold a person in detention. As part of the inquiry, we

will consider community alternatives to detention and how international experience can assist in innovative and more compassionate approaches. The inquiry will also examine the infrastructure needs and services that should be available to support our immigration detention policy in the future.

Our Joint Migration Committee inquiry was also committed to restoring dignity, justice and certainty to our treatment of those in immigration detention. In addition to the extensive program of hearings undertaken, the Committee has met with current and former detainees, and visited a range of community detention housing, residential housing units, transit centres and detention centres at Perth, Maribyrnong (Melbourne), the Northern Immigration Detention Centre (Darwin), and Villawood (Sydney), and at Christmas Island both the temporary facility at Phosphate Hill (still in use) and the monster \$400 million 'super max' site (which is yet to be used).

Partway through this inquiry, the Australian Government made a major policy announcement outlining seven values that would underpin future immigration detention policy. On 29 July 2008 the new Minister for Immigration and Citizenship, Senator the Hon Chris Evans, announced that three groups would be subject to mandatory detention: unauthorised arrivals for the purpose of health, identity and security checks; those who pose an unacceptable risk to the community; and those who have been repeatedly non-compliant with visa conditions or immigration processes. Outside these criteria, the Minister expects that a person can reside in the community while their immigration status is resolved.

Minister Evans' announcements signalled a paradigm shift in Australian policy. The presumption of detention that defined the policy of the previous Government has shifted to an assumption of release following minimum checks. The onus will be on the Department of Immigration and Citizenship to demonstrate that detention is necessary.

This Committee welcomes the announcement of these values and the commitment of the current Australian Government to a fairer and more humane system for asylum seekers and others who are detained in immigration custody.

The first two terms of reference for the Committee's inquiry are concerned with criteria for release from detention and length of detention. In the context of the Minister's announcements the Committee agreed it was appropriate to report separately and as a priority on these terms of reference. *Immigration detention in Australia: A new beginning* is the first of three reports by this Committee on immigration detention policy in Australia.

The Committee's objective was to set open and transparent guidelines that would enable the implementation of the new values of the Australian Government. Our suggestions were prepared in the absence of advice of the Department of Immigration and Citizenship as to its benchmarks. The Committee has sought to identify what we believe to be the issues for implementation arising from the release criteria outlined in the Minister's statement of values.

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. This report tackles those uncertainties and sets out the following clear and definite guidelines for detaining individuals:

- 5 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.

The report also recommends additional measures to increase oversight and transparency, such as:

- greater detail and scope of the three month review conducted by the Department of Immigration and Citizenship
- ensuring detainees and their legal representatives receive a copy of the review
- ensuring the six month Ombudsman's review is tabled in parliament and that the ministerial response to recommendations is comprehensive
- providing increased oversight of national security assessments that may affect individuals
- enshrining the new values in legislation
- establishing a maximum of 12 months in detention unless a person is determined to be a significant and ongoing risk to the Australian community, and

- opening the door to merits and judicial review of the grounds for detention after that person has been detained for more than 12 months. This would apply to those who remain in detention after 12 months on the basis of a 'significant and ongoing unacceptable risk' assessment.

Finally, the Committee has reported on two other issues related to the release from detention. The first issue concerns the procedures for removal from Australia of persons who are in this country unlawfully and have exhausted all avenues of appeal to stay. Many persons voluntarily depart Australia and the Department of Immigration and Citizenship facilitates arrangements for others. However there are also harrowing stories of persons forcibly removed, or losing possessions when taken into detention for the purposes of removal. The Committee lacked critical information to set out new procedures for removals but identified a number of factors to be included in the development of guidelines for removals. The Committee has also recommended the extensive involvement of external professionals and advocacy groups in deportations.

Secondly the Committee considered the practice of charging a person for their own detention. This practice was considered harsh and contrary to the stated value that immigration detention is not punitive. The Committee strongly recommends that all debts should be waived immediately.

Any discussion of immigration detention policy in Australia raises the legacy of past approaches, past failings, and past shame. As the Committee heard in evidence, there are many individuals in Australia and elsewhere around the world, as well as their families and loved ones, who continue to struggle to rebuild their lives and recover from their experience in immigration detention in Australia.

However it is the intention of the Committee for this report, and the two that follow, to look constructively to the future – to build from the new Government values statement, a rational and humane immigration detention system. This new system would align Australia with its obligations under the international laws and conventions to which we are party. Above all it would accord with the national ethos of a 'fair go'.

My colleagues on the Committee hold a range of views about immigration detention policy, but I believe I can say that all engaged with this inquiry with a genuine interest, commitment and desire to find the best outcomes both for the Australian community and those in immigration detention.

I would like to thank all who have participated in this inquiry to date, particularly those who have written submissions or given evidence at public hearings. I am also grateful to the Department of Immigration and Citizenship for facilitating the

Committee's meetings with detention clients. Thanks are especially due to the Committee secretariat for their work during the inquiry, our endless meetings and in producing the report.

Hopefully this will be not just a new beginning for people held in detention, but for Australian society in determining the detention time, nature and treatment of those who come to our shores.

Mr Michael Danby MP
Chair



Membership of the Committee

Chair Mr Michael Danby MP

Deputy Chair Hon Danna Vale MP

Members Senator Andrew Bartlett *(to 30 June 2008)*

Senator Catryna Bilyk *(from 1 July 2008)*

Ms Yvette D'Ath MP

Senator Alan Eggleston

Mr Petro Georgiou MP

Senator Sarah Hanson-Young *(from 27 August 2008)*

Senator Anne McEwen

Senator Helen Polley *(to 1 July 2008)*

Hon Dr Sharman Stone MP *(from 10 November 2008)*

Mr Don Randall MP *(to 10 November 2008)*

Mr Tony Zappia MP

Committee secretariat

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Terms of reference

The Joint Standing Committee on Migration is inquiring into immigration detention in Australia. The Committee will 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
- options for additional community-based alternatives to immigration detention by
 - a) inquiring into international experience
 - b) considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework
 - c) comparing the cost effectiveness of these alternatives with current options.

(5 June 2008)



List of abbreviations

AHRC	Australian Human Rights Commission
AIDS	Acquired Immune Deficiency Syndrome
ASIO	Australian Security Intelligence Organisation
ASRC	Asylum Seeker Resource Centre
DeHAG	Detention Health Advisory Group
DIAC	Department of Immigration and Citizenship
DOHA	Department of Health and Ageing
GSL	Global Solutions Limited
FASSTT	Forum of Australian Services for Survivors of Torture and Trauma
HIV	Human Immunodeficiency Virus
IDAG	Immigration Detention Advisory Group
IGIS	Inspector-General of Intelligence and Security
IOM	International Organisation for Migration
MAL	Movement Alert List
MOC	Medical Officer of the Commonwealth

MSI	Migration Series Instructions
MRT	Migration Review Tribunal
PAM	Procedures Advice Manual
RILC	Refugee and Immigration Legal Centre
RRT	Refugee Review Tribunal
SCALES	Southern Communities Advocacy Legal and Education Service
TB	Tuberculosis
UNHCR	United Nations High Commissioner for Refugees



List of recommendations

2 Criteria for release – health, identity and security checks

Recommendation 1

The Committee recommends that, as a priority, and in line with the recommendations of the Australian National Audit Office, the Department of Immigration and Citizenship develop and publish criteria setting out what constitutes a public health risk for immigration purposes.

The criteria should draw on the treatment standards and detention provisions that otherwise apply to all visa applicants and to Australian citizens and residents who pose a potential public health risk.

The criteria should be made explicit and public as one basis on which immigration detainees are either approved for release into the community or temporarily segregated from the community.

Recommendation 2

The Committee recommends that the Department of Immigration and Citizenship establish an expected time frame such as five days for the processing of health checks for unauthorised arrivals.

This expected time frame should be established in consultation with the Immigration Detention Advisory Group, the Detention Health Advisory Group, the Department of Health and Ageing, the Commonwealth Ombudsman and the Human Rights Commission.

An optimum percentage of health checks of unauthorised arrivals should be completed within this time frame. The department should include in its annual report statistics on the proportion of health checks so

completed, and where health checks took longer than five days, specify the reasons for the delay.

Recommendation 3

The Committee recommends that, in line with a risk-based approach and where a person's identity is not conclusively established within 90 days, the Australian Government develop mechanisms (such as a particular class of bridging visa) to enable a conditional release from detention. Conditions could include reporting requirements to ensure ongoing availability for immigration and/or security processes.

Release from immigration detention should be granted:

- in the absence of a demonstrated and specific risk to the community, and
- except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.

Recommendation 4

The Committee recommends that, in line with a risk-based approach, and where a person's security assessment is ongoing after 90 days of detention, the Australian Government develop mechanisms (such as a particular class of bridging visa) to enable a conditional release from detention. Conditions could include stringent reporting requirements to ensure ongoing availability for immigration and/or security processes.

Release from immigration detention should be granted:

- where there is little indication of a risk to the community, as advised by the Australian Security Intelligence Organisation, and
- except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.

Recommendation 5

The Committee recommends that, where a person's security assessment is ongoing after six months of detention, the Australian Government empower the Inspector-General of Intelligence and Security to review the substance and procedure of the Australian Security Intelligence Organisation security assessment and the evidence on which it is based.

The Committee recommends that the Inspector-General provide advice to the Commonwealth Ombudsman as to whether there is a legitimate basis for the delays in security assessment. This advice should be

incorporated into the evidence considered by the Ombudsman in conducting six-month reviews.

3 Criteria for release – unacceptable risk and repeated non-compliance

Recommendation 6

The Committee recommends that the Department of Immigration and Citizenship develop and publish the criteria for assessing whether a person in immigration detention poses an unacceptable risk to the community.

Recommendation 7

The Committee recommends that the Department of Immigration and Citizenship individually assess all persons in immigration detention, including those detained following a section 501 visa cancellation, for risk posed against the unacceptable risk criteria.

In the case of section 501 detainees, the Department of Immigration and Citizenship should take into account whether or not the person is subject to any parole or reporting requirements; any assessments made by state and territory parole boards and correctional authorities as to the nature, severity and number of crimes committed; the likelihood of recidivism; and the immediate risk that person poses to the Australian community.

Recommendation 8

The Committee recommends that the Department of Immigration and Citizenship clarify and publish the criteria for assessing the need for detention due to repeated visa non-compliance. The criteria should include the need to demonstrate that detention is intended to be short-term, is necessary for the purposes of removal and that prior consideration was given to:

- reissue of the existing visa, or
- a bridging visa, with or without conditions such as sureties or reporting requirements.

Recommendation 9

The Committee recommends that the Australian Government apply the immigration detention values announced on 29 July 2008 and the risk-based approach to detention to territories excised from the migration zone.

4 Review mechanisms for ongoing detention

Recommendation 10

The Committee recommends that the Department of Immigration and Citizenship develop and publish details of the scope of the three month detention review.

The Committee also recommends that the review is provided to the person in immigration detention and any other persons they authorise to receive it, such as their legal representative or advocate.

Recommendation 11

The Committee recommends that the House of Representatives and/or the Senate resolve that the Commonwealth Ombudsman's six month detention reviews be tabled in Parliament and that the Minister for Immigration and Citizenship be required to respond within 15 sitting days.

The Minister's response should address each of the Commonwealth Ombudsman's recommendations and provide reasons why that recommendation is accepted, rejected, or no longer applicable.

Recommendation 12

The Committee recommends that, as a priority, the Australian Government introduce amendments to the *Migration Act 1958* to enshrine in legislation the reforms to immigration detention policy announced by the Minister for Immigration and Citizenship.

The Committee also recommends that, as a priority, the Migration Regulations and guidelines are amended to reflect these reforms.

Recommendation 13

The Committee recommends that, provided a person is not determined to be a significant and ongoing unacceptable risk to the Australian community, the Australian Government introduce a maximum time limit of twelve months for a person to remain in immigration detention.

The Committee recommends that, for any person not determined to be a significant and ongoing unacceptable risk at the expiry of twelve months in immigration detention, a bridging visa is conferred that will enable their release into the community.

Where appropriate, release could be granted with reporting requirements or other conditions, allowing the Department of Immigration and Citizenship to work towards case resolution.

Recommendation 14

The Committee recommends that, for any person who after twelve months in detention is determined to be a significant and ongoing unacceptable risk to the Australian community, the Australian Government amend the *Migration Act 1958* to give that person the right to have the decision reviewed by an independent tribunal and subsequently have the right to judicial review.

5 Removals and detention charges

Recommendation 15

The Committee recommends that where enforced removal from Australia is imminent, the Department of Immigration and Citizenship provide prior notification of seven days to the person in detention and to the legal representative or advocate of that person.

Recommendation 16

The Committee recommends that the Australian Government consult with professionals and advocacy groups in the immigration detention field to improve guidelines for the process of removal of persons from Australia. The guidelines should give particular focus to:

- greater options for voluntary removal from immigration detention
- increased liaison with a detainee's legal representative or advocate
- counselling for the detainee to assist with repatriation
- a pre-removal risk assessment that includes factors such as mental health, protection needs and health requirements
- appropriate procedures for enforced removals that minimise trauma
- adequate training and counselling for officers involved in enforced removals
- appropriate independent oversight at the time of enforced removals, and
- criteria for the use of escorting officers for repatriation travel.

Recommendation 17

The Committee recommends that the Australian Government instigate mechanisms for monitoring and follow-up of persons who have claimed asylum and subsequently been removed from Australia.

Recommendation 18

The Committee recommends that, as a priority, the Australian Government introduce legislation to repeal the liability of immigration detention costs.

The Committee further recommends that the Minister for Finance and Deregulation make the determination to waive existing detention debts for all current and former detainees, effective immediately, and that all reasonable efforts be made to advise existing debtors of this decision.