



## Appendix C: The Committee's first report of the inquiry into immigration detention in Australia

As outlined in the introduction, this report is the second in a series of three for this inquiry. The Committee's first report, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention*, was tabled in the Parliament on 2 December 2008. The Committee's recommendations from this report are reproduced below.

### 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.

### **Who should community release apply to?**

For the benefit of readers of this report, and in accordance with the Committee's recommendations above from the first report, release into the community would apply to the following groups of immigration clients:

- All unauthorised arrivals, for whom health, identity and security checks have been completed.
- All unauthorised arrivals, where identity has not been conclusively established within 90 days, 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.
- All unauthorised arrivals, where a person's security assessment is ongoing after 90 days, where there is little indication of 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.
- Section 501 detainees, subject to the 'unacceptable risk' assessment, taking 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.
- All other immigration detainees, including visa over stayers and those subject to visa cancellation:
  - ⇒ except those that pose an unacceptable risk to the community, as defined under publicly available criteria; and
  - ⇒ except those who have repeatedly been non-compliant with their visa conditions, where DIAC can demonstrate that detention 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. Removal should be effected within a short period of time, such as seven days.

- Any other person in immigration detention who, notwithstanding the criteria above, remains in immigration detention at the Committee's nominated maximum time period of 12 months, except where that person is determined to be a *significant* and *ongoing* unacceptable risk to the community.

## **Government response**

At the time of writing, the Committee believed the tabling of a government response to these recommendations to be expected shortly.

In relation to recommendation 18, and as referred to in the introduction to this report, the Committee is extremely pleased to note the introduction of the Migration Amendment (Abolishing Detention Debt) Bill 2009 into the Senate on 18 March 2009.