



## Additional comments by Senator Sarah Hanson-Young

### Introduction

- 1.1 The aim of the Migration Committee's second report into immigration detention was to look into options for additional community alternatives to immigration detention.
- 1.2 While the Committee's report focuses on community detention, the Australian Greens are concerned that no other alternatives to secure forms of detention have been addressed.
- 1.3 We are also concerned about the lack of attention given to children in alternative detention arrangements, given the considerable amount of concern that was raised during the inquiry process.
- 1.4 This report will therefore focus on four main areas of concern:
  1. Children in detention
  2. Access to legal advice
  3. Judicial review
  4. Support for refugee and asylum seeker service providers.
- 1.5 Although appropriate forms of detention, and what services are necessary for those detained will be included in the third report, including the Christmas Island detention facility, the Greens remain concerned that this report fails to appropriately deal with other alternatives to secure detention.

## Children in detention

- 1.6 While the Greens acknowledge the Minister's directive that no children are to be held in detention centres, we remain concerned that children continue to be housed in other forms of secure detention, such as community, residential, and transit accommodation.
- 1.7 The principle that no minor, or their family, will only be held in a detention centre as a last resort, must be codified within the *Migration Act 1958*, and extended to include all detention facilities, to prevent the return of detaining children in remote desert camps in appalling conditions.
- 1.8 Given that the committee majority also failed to recommend that those deemed **not** to be a security or health risk to the community should not be detained in any form of detention, the Greens strongly recommend that the following be adopted.

### Recommendation 1

**No child, or family, should be detained in any form of secure detention, while their visa application is being processed and:**

- **those deemed not a security or health risk to the community, should not be detained in any form of secure detention;**

**The *Migration Act 1958* must be amended immediately to reflect the above recommendations.**

## Access to legal advice

- 1.9 In evidence provided to the committee, the Refugee Council of Australia advocated that a key component to implementing a model for alternatives to detention would be through expanding '*The IAAAS (Immigration Advice and Application Assistance Scheme) to ensure the provision of competent legal advice throughout the procedure*'.<sup>1</sup> There needs to be an expansion in access to the free IAAAS scheme to ensure the provision of competent legal advice throughout the application procedure.

---

1 Nash C, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 6.

## Recommendation 2

The IAAAS system could be reformed, as suggested by A Just Australia, by expanding it as follows:

- All applicants for protection visas attend a mandatory interview with an IAAAS agent, who will provide basic migration advice and ensure that the applicant understands their legal rights as well as the criteria for qualifying for an onshore protection visa; and
- IAAAS assistance is expanded to include applicants seeking ministerial intervention.<sup>2</sup>

1.10 Although the 2009 Budget provided funding to ensure the Community Care Pilot is formally turned into an ongoing program, the fact that the early intervention strategy did not include funding for legal advice is disappointing. The committee's recommendations for reforming the bridging visa framework falls well short of ensuring that adequate and appropriate legal advice is provided to all individuals applying for a visa.

1.11 There needs to be a greater effort to reduce the need for ongoing detention and it is important that the Australian Government moves to expand alternatives to detention, to ensure that people are not left destitute while their visa status is determined, and reviewing the current bridging visa program is a step in the right direction.

## Judicial review of decisions

1.12 As per our last dissenting report, co-sponsored with Mr Petro Georgiou, and Senator Dr Alan Eggleston, the Greens are concerned that there is no mention of the right to judicial review of detention decisions. In particular, the dissenting report raised concern over the lack of independent oversight without indicating a view as to when that should become available.

1.13 While the Greens believe the Committee's recommendation to implement a new bridging visa model is step towards the right direction, we are concerned that there is no independent external scrutiny.

1.14 In particular, the Greens reiterate the following dissenting report recommendations:

---

2 A Just Australia website, 'AJA policy for legal advice', viewed on 19 May 2005 at [http://www.ajustaustralia.com/informationandresources\\_researchandpapers.php?act=papers&id=111](http://www.ajustaustralia.com/informationandresources_researchandpapers.php?act=papers&id=111).

- A person who is detained should be entitled to appeal immediately to 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;
- 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'.<sup>3</sup>

## Support for refugee and asylum seeker service providers

- 1.15 Given the Australian Government offers minimal funding to key service providers assisting asylum seekers and refugees in Australia, we recommend that monetary support is provided, through a grants fund, as directed by the Minister, to specialised service delivery agencies who work with refugees and asylum seekers.

### **Recommendation 3**

**Any funding that is provided should be directed towards those providers that offer the following services:**

- **Health**
- **Appropriate accommodation**
- **Job seeker advice**
- **Community orientation**
- **Legal advice.**

## Conclusions

- 1.16 While the Greens support many of the Committee's recommendations, we are concerned that they do not go far enough in ensuring that the system of immigration in Australia is truly reformed.

---

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

- 1.17 And while we acknowledge the work Immigration Minister, Senator the Hon. Chris Evans, has done in striving towards a more humane and compassionate system of immigration, there is still much more work to be done to restore Australia's commitment to refugees under our international obligations.
- 1.18 The Greens have a proud tradition of supporting those seeking our protection, and we encourage the Government to look closely at our recommendations, and those articulated in Mr Georgiou's dissenting report, to ensure that our system of immigration is fair and compassionate, and reflects our commitment to assisting and protecting those most in need.

Senator Sarah Hanson-Young