

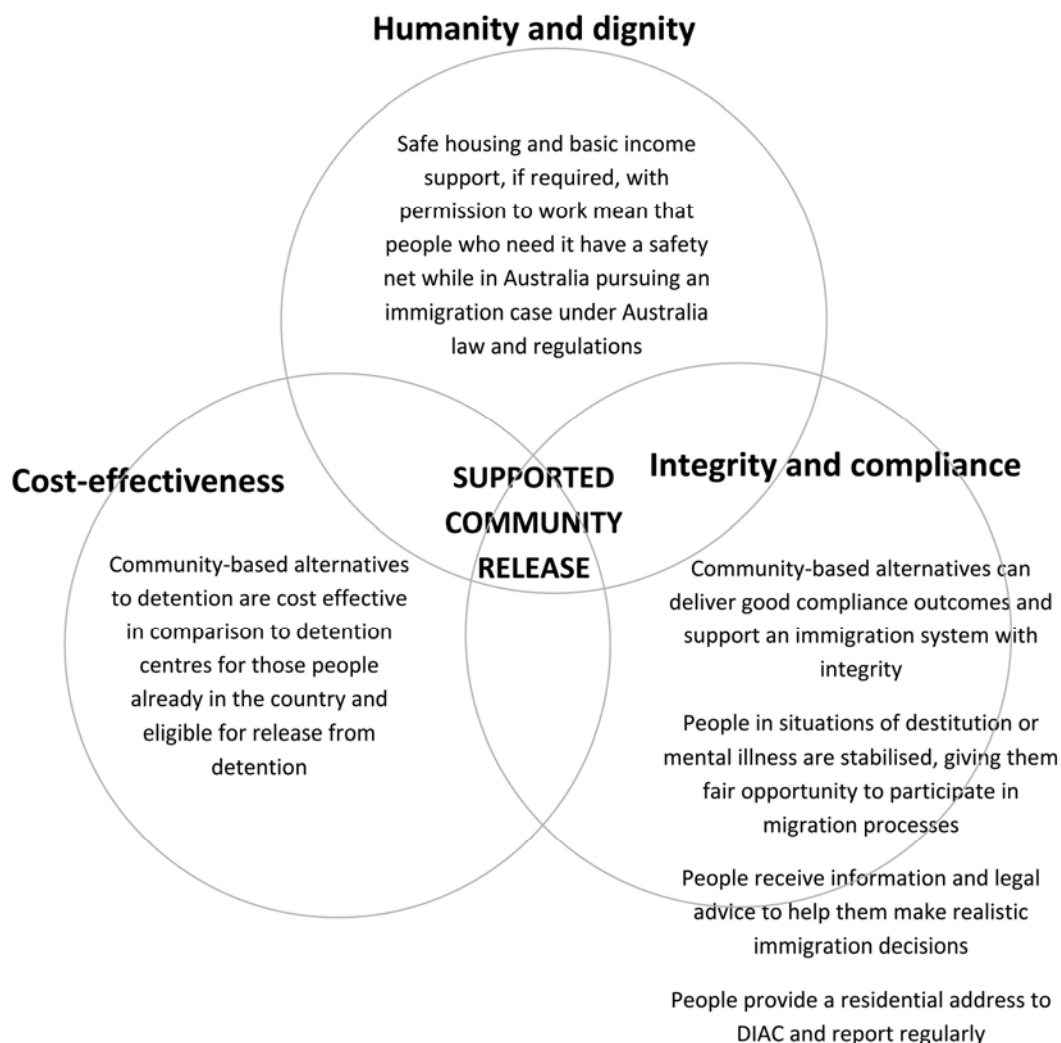
A coordinated framework for community-based alternatives to detention

- 5.1 This report is the second in a series of three reports on the inquiry into immigration detention in Australia. The purpose of this current report is to consider future options for additional community-based detention alternatives that can form part of this new beginning for immigration policy.
- 5.2 Accordingly, the Committee has established three considerations to inform and balance its assessment of community-based detention alternatives. These considerations are that community-based detention alternatives must:
- ensure a humane, appropriate and supportive living environment for those awaiting resolution of their immigration status
 - maintain a robust and enforceable immigration system that operates with integrity throughout arrival, assessment, resettlement or departure processes for unlawful non-citizens, and
 - provide cost-effectiveness and appropriate value for money.
- 5.3 Recognising the need to establish a holistic framework for the future that encompasses visa status, accommodation options, support services, processing and other issues, the Committee presents in this chapter its series of recommendations.
- 5.4 The Committee considers that there is clear evidence indicating the need for substantial change to immigration policy and the management of people awaiting case resolution. This evidence has

been documented in the first report and in the preceding chapters of this report.

- 5.5 Previous chapters have examined existing and international options for alternatives to immigration detention. Much of the evidence has been critical of deficiencies in current options. Drawing on this critique, the Committee has identified the core elements required to develop an improved framework for the future. Figure 5.1 shows that these core elements can be mutually reinforcing for the benefit of the individual and the Australian immigration system.
- 5.6 The Committee urges the Australian Government to accept the recommendations as they are presented – as an integrated framework for change that implement the immigration detention values stated by the Minister in July 2008 and balance the three considerations for community-based alternatives that have been set out by this Committee.

Figure 5.1 An integrated framework for release into the community



Bridging visas – a community-based alternative to detention

- 5.7 The Committee considers that the bridging visa framework represents a better community-based option for people than the use of community detention. Accordingly the Committee recommends that community detention is discontinued and those people assessed as suitable for release from detention centres are granted bridging visas until their departure or resolution of their cases.
- 5.8 This would be consistent with current DIAC practice of issuing bridging visas where appropriate, in preference to taking a person into detention, when unlawful non-citizens are located in the

community. It would also streamline the current approach and permit the consolidation of existing program resources for community-based bridging visa holders.

- 5.9 However, conditions placed on bridging visas are often restrictive and complex and not always consistent. The Committee believes that there is inadequate provision of services currently available to bridging visa holders. Evidence received by the Committee indicated that people can be granted and lose access to health care or permission to work at different stages of their immigration process. Losing access to these basic necessities can place individuals and families under significant strain. In particular, increased use of bridging visas without enhanced provision for support may result in some people being no better off, or even worse off, than in immigration detention.
- 5.10 The Committee acknowledges that this shift to use bridging visas as a community-based alternative to detention may necessitate reform to the existing bridging visa criteria. It is the Committee's view that a reformed bridging visa framework should include appropriate access to income, health care and housing, the specifics of which are elaborated on further in this chapter. DIAC officers will also be required to make the shift to a risk-based approach where detention is an option of last resort.

Recommendation 1

Given that the current bridging visa structure is shown to be complex and restrictive, the Committee recommends that the Australian Government reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements.

In reforming the bridging visa framework, specific consideration should be given to health, security and identity checks and risk assessments in accordance with the recommendations outlined by the Committee in its first report *Criteria for release from detention*.

Recommendation 2

The Committee recommends that the Australian Government utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved.

Recommendation 3

The Committee recommends that the Australian Government review the cases of those currently on residence determinations, known as community detention, with a view to granting a reformed bridging visa until their immigration status is resolved, ensuring that there is a continuation of services and support currently available to those individuals.

Transparency and integrity in our migration system

- 5.11 In line with its recommendations from the first report of the inquiry into immigration detention, the Committee concludes that there are opportunities to improve accountability and transparency in DIAC's decisions about who is eligible for release from immigration detention into the community and the conditions that will apply to that release.
- 5.12 It is appropriate for a person who is refused a bridging visa to be given reasons for this decision in writing. It is the view of the Committee that this makes good administrative practice. A decision in writing would also provide a person with clear and consistent information that can be translated if required, giving the individual an adequate opportunity to seek advice, legal or otherwise.
- 5.13 The Committee also notes that the length of time a person may have to seek review of the decision to refuse a bridging visa is in some instances as short as two days. This is not consistent with a just and transparent system of decision-making.
- 5.14 It is the view of the Committee that improved information to the prospective immigrant and fair opportunity for review of bridging visa decisions will result in greater clarity for people with an unresolved immigration status. It will also assist in the process of restoring public confidence in the integrity of the immigration system.

Recommendation 4

The Committee recommends that, for any case where a person held in some form of immigration detention is refused a bridging visa, the Australian Government require that:

- **clear and detailed reasons in writing are provided to the person being detained, and that**
- **the person has a reasonable time limit, up to 21 days, in which to seek merits review of that refusal, commensurate with those that apply to visa applicants in the community.**

- 5.15 The Committee notes the evidence that community-based options do not lead to increased rates of absconding as long as relevant assessment measures are used. Further, appropriate support and information may in fact stabilise a person or family in dire circumstances, enhancing their ability to navigate and make realistic decisions within our immigration system.
- 5.16 The Committee considers that access to quality, factual and competent advice is essential to the ongoing integrity of Australia's migration program. A number of contributors to the inquiry outlined the benefits of DIAC's Immigration Advice and Application Assistance Scheme (IAAAS), however as discussed in chapter 4 of this report, a significant amount of evidence drew the Committee's attention to the lack of appropriate legal advice provided to people in immigration detention or to people at risk of becoming unlawful non-citizens in the community.
- 5.17 It is the Committee's view that limited access to independent migration legal advice is prolonging case appeals and raising unrealistic expectations of immigration outcomes. Compliance and ongoing support costs are worsened by the failure to provide clear advice to people in detention or others in the community with unresolved immigration status.
- 5.18 The Committee recommends that all potential immigrants, whether in detention or in the community, have access to independent migration counselling and legal advice. Bridging visa holders may comprise people in a variety of different financial situations. Access to migration and legal counselling should therefore be means-tested.

Recommendation 5

The Committee recommends that the Australian Government provide means-tested access to independent migration counselling and migration legal advice to all people in immigration detention and to those living in the community on bridging visas.

In order to facilitate means-tested access to independent migration counselling, the Committee recommends that the Australian Government increase the scope of the Immigration Advice and Application Assistance Scheme and review the current eligibility criteria to make assistance under this scheme available to all people in immigration detention and to those living in the community on bridging visas.

- 5.19 The Committee encourages DIAC to expand the level of transparency and accountability in its decision-making. Greater provision of information to potential immigrants increases the prospects for informed and realistic decisions to be made by applicants.
- 5.20 The Committee considers that Ministerial discretion provisions may inadvertently be leading to prolonged case resolution and a lack of transparency in immigration decision-making. Repeat requests for ministerial intervention can arise because no reasons are provided to a person for ministerial decisions. The Committee recommends that reasons, time frames and criteria for decisions are provided to people who have sought ministerial intervention. The information recently published on the departmental website, outlining the process for ministerial intervention and what might be considered unique or exceptional circumstances, is a positive step in the right direction.

Recommendation 6

The Committee recommends that the Australian Government:

- **provide indicative processing times and criteria for the ministerial discretion provisions under the *Migration Act 1958* in order to avoid prolonged uncertainty for people, and**
- **provide reasons for ministerial decisions in order to improve transparency and discourage repeat requests for ministerial intervention.**

- 5.21 In the first report of the inquiry into immigration detention, the Committee considered evidence on repatriation and recommended that the Australian Government, in consultation with professionals and advocacy groups within the immigration detention field, improve the guidelines for the process of removals from Australia.
- 5.22 The Committee's recommendation recognised that greater options for voluntary removals from detention were required to facilitate the return of those individuals who were unable to establish a meritorious claim for a permanent residence in Australia.
- 5.23 The Committee recognises that voluntary repatriation is a key part of a robust immigration system. Enforced removals will occur but it is preferable to support people to voluntarily depart following a negative immigration outcome.
- 5.24 The Committee considers that an enlarged voluntary repatriation program is essential. Counselling and assistance to this group of people in making departure arrangements is required. Such a program should be accessible on a means-tested basis to all people who have or may be close to reaching the end of their immigration process, regardless of whether they are on a bridging visa or in detention.
- 5.25 With the greater use of community-based detention recommended by the Committee, it is important that voluntary repatriation programs are delivered in cases where a negative visa decision is likely, so that these people are better prepared to accept the decision and quickly make departure arrangements.

Recommendation 7

The Committee recommends that the Australian Government establish a voluntary repatriation program, similar to that run by the International Organisation for Migration through the Community Care Pilot, which can be accessed by all people whether in detention or released on a bridging visa.

Access to income, health care and housing

- 5.26 A system of community release through grant of bridging visas needs to include additional support for vulnerable people, such as through the Community Care Pilot model.
- 5.27 Some people being released from immigration detention, particularly those who may have previously had a substantive visa and have networks in the Australian community will not need this support.
- 5.28 However, there will likely be an increase in the number of people who do not have their own means of support or the capacity to easily source accommodation. The use of bridging visas as an alternative to detention also places a responsibility on the Commonwealth to ensure that people are not destitute, in urgent need of health care, or homeless in the community.
- 5.29 The Committee considers that the provision of income support and access to necessary health care should be available on a needs assessed basis to people awaiting case resolution. In recognition of the difficulties these people may face in securing accommodation and furnishing that accommodation to meet their basic needs, the Committee recommends that assistance is available similar to that currently provided through the Asylum Seeker Assistance Scheme and Community Care Pilot. Essential orientation information should also be provided to enable people to live safely in the Australian community, access and manage income support payments, and access health care and emergency services.
- 5.30 Drawing on cost data provided to the Committee in confidence, as well as international and historical evidence, the Committee concludes that providing basic income support, access to necessary health care and assistance in sourcing accommodation remains a more cost-effective option than retaining a person in secure detention.
- 5.31 The Committee suggests that the most effective mechanism to deliver these services may be through one amalgamated program (combining the current Community Care Pilot, Asylum Seeker Assistance Scheme and community detention programs) with expanded eligibility and resources.
- 5.32 The Committee also acknowledges the need for a stock of readily available immigration housing and addresses this later in the chapter.

Recommendation 8

The Committee recommends that the Australian Government reform the bridging visa framework to ensure that people are provided with the following where needed:

- basic income assistance that is means-tested
- access to necessary health care
- assistance in sourcing appropriate temporary accommodation and basic furnishing needs, and provision of information about tenancy rights and responsibilities and Australian household management, where applicable, and
- community orientation information, translated into appropriate languages, providing practical and appropriate information for living in the Australian community, such as the banking system, public transport and police and emergency contact numbers.

5.33 It is unacceptable that children are living in the community in preventable poverty, particularly given the efforts of the Australian Government in recent years to remove children and families from immigration detention centres in recognition of their particular vulnerabilities. The circumstances of children in bridging visa families without an income are incongruous with these efforts.

5.34 Therefore the Committee makes an additional recommendation to safeguard the rights and interests of children living in the community, regardless of their immigration status and notes the need to ensure that states and territories are adequately resourced to meet their obligations.

Recommendation 9

The Committee recommends that the Australian Government commit to ensuring that children living in the Australian community, while their or their guardian's immigration status is being resolved, have access to:

- safe and appropriate accommodation with their parent(s) or guardian(s)
- the provision of basic necessities such as adequate food

- **necessary health care, and**
- **primary and secondary schooling.**

Permission to work

- 5.35 It is the expectation of the Committee that reduced visa decision times will mean that fewer people are spending extended lengths of time on bridging visas in the community. This will address many of the issues (such as mental wellbeing and capacity to support oneself) that were raised in regards to the desire of people to undertake paid work.
- 5.36 Where case resolution is ongoing, or where departure arrangements cannot be made promptly, the Committee recommends that the Government reform the bridging visa framework to grant people permission to work. Given also the relatively small numbers of people involved, the Committee does not anticipate that this policy change would negatively impact on local labour markets.
- 5.37 Additionally, the Committee notes that a significant proportion of bridging visa holders, particularly those who have already been lawfully in the community and may be granted a more beneficial class of bridging visa, already have work rights from the date of lodgement of a visa application or the commencement of their bridging visa.
- 5.38 Tying work rights to compliance with reporting requirements and immigration processes will also encourage people to comply with our immigration system and identify work rights as a privilege that is conditional on the resolution of immigration status. Needless to say, reporting requirements for people who are working should be structured so as to accommodate their working hours.
- 5.39 Permission to work should be granted as a continuing condition of the person's bridging visa until such time as departure from Australia or the immigration case is resolved. Permission to work should continue regardless of whether a person has applied for a review of their immigration case. Revoking work rights in this manner diminishes the integrity of the immigration system and may result, as the Committee has heard, in people living in the community in destitution and increasingly desperate circumstances.

Recommendation 10

The Committee recommends that the Australian Government reform the bridging visa framework to grant all adults on bridging visas permission to work, conditional on compliance with reporting requirements and attendance at review and court hearings.

Recommendation 11

The Committee recommends that the Australian Government provide that, where permission to work on a bridging visa is granted, this permission should continue irrespective of whether a person has applied for a merits, judicial or ministerial review.

Community-based immigration housing

- 5.40 The Committee is concerned that a reliance on the private rental market as an alternative to immigration detention facilities is inefficient. Reliance on the private rental market may pose a barrier to releasing people from detention and so result in ongoing detention at a higher per day cost until appropriate and affordable accommodation is located. Due to the uncertain length of time a person may require accommodation, there are also difficulties regarding lease length.
- 5.41 The Committee is also concerned that reliance on the private rental market requires each property rented to then be furnished which incurs additional costs borne either by DIAC or by non-government organisations and charities.
- 5.42 The private rental market is flexible and the Committee considers it has a place in providing some special accommodation needs. However, the current reliance on private rental is not cost-effective and frequently is not able to deliver on appropriate and supported accommodation options.
- 5.43 The Committee considers that the provision of furnished community-based immigration housing is an essential element in the future. To provide a flexible range of housing options, the Committee recommends that the Australian Government have access to some

hostel-style open accommodation, as well as co-located self-contained accommodation suitable in particular for families.

- 5.44 The Committee recommends that these housing complexes are co-located, where possible, such as in a block of apartments, a row of townhouses, or a series of purpose-built accommodation units, where each person has their own private living space. This arrangement is similar to the current immigration residential housing complexes, however no security would be required in this proposed form of migration housing.
- 5.45 This arrangement would permit some social connections with other people in similar circumstances, whilst also ensuring some autonomy, privacy and flexibility for religious, cultural and personal preferences. Additionally, this facilitates the work of DIAC and other service providers who can make contact with a range of people at the same time and provide a regular presence (even if off-site or occasional) that residents can rely on. It would also assist in the provision of activities and orientation assistance for living in the Australian community.

Recommendation 12

The Committee recommends that the Australian Government have access to a stock of furnished community-based immigration housing which:

- **should consist of open hostel-style accommodation complexes and co-located housing units.**
- **should be available to people and families on bridging visas who do not have the means to independently organise for their housing needs in the community, and**
- **where rent should be determined on a means-tested basis.**

Additional Committee comments

Reporting and monitoring

- 5.46 In the series of recommendations outlined above the Committee has not pursued the options of a reformed security bond system or of electronic monitoring. While it may be valuable to keep these options open, particularly as DIAC begins to assess the compliance performance of a reformed immigration detention framework, the Committee does not see any justification for their use at this time or for major changes to the system of security bonds already in place.
- 5.47 With regards to electronic monitoring, the Committee notes the ethical and civil liberties issues, the expense attached to an effective system and building staff and technological capacity, and doubts about the reliability of the technology at its current stage of development.
- 5.48 Reporting through voice verification technologies, on the other hand, may be a positive development in the immigration field in that it could reduce the travel and effort involved in a person reporting face-to-face at a DIAC office and achieve the same objective. Any use of voice reporting technology would be subject to feasibility, cost-effectiveness and reliability. However, the Committee did not receive sufficient evidence to make a recommendation on this subject.

Hosted stays in the community

- 5.49 Taking into account the evidence received on the value of social connections in the community, both for compliance rates and for the person's wellbeing, the Committee considers that hosted stays in the community are a viable additional option and could be incorporated into the framework for community release proposed.
- 5.50 This model has in fact been employed in recent years through the temporary alternative detention classification, however the Committee considers that the requirement for a 'designated person' under that form of detention limits its effectiveness and places unreasonable responsibility on the person or family hosting another.¹

1 See chapter 2, paragraph 2.11, for further information on temporary alternative detention.

- 5.51 The Committee however, acknowledges that the proposal of hosted stays in the community does have its benefits. Where people have networks in the community and would prefer to be hosted in a home rather than live in immigration housing, this could relieve some of the pressure on DIAC in managing accommodation for people in the community.
- 5.52 Hosted stays would not need to be facilitated or overseen by DIAC. Just as the majority of bridging visa holders make, and continue to make their own arrangements for accommodation in the community, people could draw on their own networks to arrange a stay in someone's home, or alternatively this could be facilitated by willing local community groups or non-government organisations. Under the Committee's proposed recommendations, people meeting the means-test would also receive basic income support, allowing them to pay rent or board to their hosts as appropriate. As with all bridging visas, the person would be required to provide DIAC with their residential address and meet any reporting or security bond requirements.
- 5.53 The Committee has not received sufficient evidence on this subject to outline any further how hosted stays in the community might work, and as such could not make a recommendation.

Ongoing role for alternative forms of detention

- 5.54 The Committee acknowledges that there remains a place for secure immigration detention in some form, where the need can be demonstrated and as set out in the Committee's first report.
- 5.55 It is also supportive of the Minister for Immigration and Citizenship's statement that detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.²
- 5.56 In recommendations 1 and 2, above, the Committee has expressed the view that the Government reform the bridging visa framework and implement a system of bridging visa release, supported where appropriate, should be used in preference to community detention.
- 5.57 This implies that alternative temporary detention in the community, immigration residential housing and immigration transit

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

accommodation will continue to play important roles for DIAC's management of people in detention who have yet not been cleared for health, identity or security purposes, or for those awaiting immediate removal from Australia.

- 5.58 There was some concern amongst inquiry participants, however, that in the context of reforms to immigration detention, alternative forms of detention, rather than genuine alternatives *to* detention, may be used as a de facto form of community release.
- 5.59 In the Committee's view, these types of detention, while worthy developments, are still forms of detention and maintain the requirement either that a person be restricted to a particular space or that they be accompanied at all times. For this reason their use should be restricted to people who have not satisfied the conditions of release into the community.
- 5.60 For those eligible for release to community-based alternatives, the Committee considers that the framework of support outlined here represents a new beginning in Australia's immigration system. It establishes a system with integrity and cost-effectiveness while delivering a humane approach that treats all people with dignity and respect.

Michael Danby MP
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