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The Parliament of the Commonwealth of Australia

# Immigration detention in Australia

Facilities, services and transparency

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

August 2009  
Canberra

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## Foreword

This is the third and final report of the Joint Standing Committee on Migration's inquiry into immigration detention in Australia.

The first report of the Committee, tabled in December 2008, made a number of recommendations that were aimed at improving accountability and ensuring that release from detention centres followed health, security and identity checks. The Committee is extremely pleased to note that the Government has already taken steps to respond to the Committee's recommendations from the first report.

The second report of the Committee, tabled in May 2009, examined the practicality of releasing people from immigration detention and recommended that the Australian Government reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements.

The Committee's last report addresses the remaining terms of reference, namely:

- options to expand the transparency and visibility of immigration detention centres (IDCs)
- 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 IDCs, Immigration Residential Housing (IRH), Immigration Transit Accommodation (ITA) and community detention.

Australia's immigration detention infrastructure has undergone significant changes over the past 30 years with the establishment of immigration residential housing, immigration transit accommodation and immigration detention facilities on Christmas Island.

The Committee acknowledges that the Australian Government has made positive steps to introduce more appropriate and humane accommodation and facilities through immigration residential housing and immigration transit accommodation.

However, the standard of the accommodation and facilities provided at immigration detention centres was of a serious concern, particularly Stage 1 at Villawood and the Perth immigration detention centre. Many detention facilities also have disproportionate and antiquated security measures such as razor/barbed wire, in particular at the North West Point immigration detention centre on Christmas Island.

The Committee has therefore recommended:

- reconstruction of Stage 1 at Villawood remains urgent and a priority of the Committee
- the upgrade of the Perth immigration detention centre proceed as proposed and the Australian Government examine long term options with the intent to establish a purpose built long-term facility
- all caged walkways, perspex barriers, and electrified fencing be removed from the North West Point immigration detention centre and replaced with more appropriate security infrastructure, and
- all razor/barbed wire fencing is removed from all immigration detention centres and replaced with more appropriate fencing.

This report also recommends that detention in immigration residential housing should be used in lieu of detention in immigration detention centres, provided that it is feasible.

In addition, the Committee received evidence from a number of organisations that highlighted some serious issues relating to the provision of immigration detention services across all immigration detention facilities. In particular, professional groups, stakeholders, advocacy groups and individuals within the community have voiced their concerns over the privatisation of detention services, immigration detention standards and inadequate health services provided to detainees on Christmas Island.

The Committee, and many other organisations, continue to have some reservations about the Department of Immigration and Citizenship's capacity to shift to a risk-averse framework where the onus is on establishing the need to detain. The primary concern of immigration detention authorities should be one of care for the well-being of detainees.



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The Committee has made the following four key recommendations which are intended to ensure that people in immigration detention, both onshore and offshore, are provided the same level of appropriate service:

- that the Department of Immigration and Citizenship engage an independent auditor, the Australian National Audit Office, to undertake a full review of the current immigration detention service providers and immigration detention facilities within the next three years
- that the Department of Immigration and Citizenship introduce a mandatory ongoing training program for all staff of the immigration detention service provider
- that the Department of Immigration and Citizenship publish the detention service standards, or the current equivalent, on its website and provide a copy of the detention service standards or the current equivalent, translated into appropriate languages, to all current and future detainees
- that the Australian Government maintain appropriate physical and mental health facilities on Christmas Island commensurate with services provided at other immigration detention centres.

The Committee notes that the Australian Government has recently signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (OPCAT). If Australia ratifies the OPCAT it will need to establish an agency possessing functional independence to conduct visits-based inspections at all 'places of detention' within all parts of Australia, as well as relevant offshore locations such as immigration detention facilities. As the Australian Human Rights Commission (AHRC) already conducts inspections of immigration detention facilities, the Committee recommends that the AHRC be granted a statutory right of access to all places of, and persons in, immigration detention in Australia.

Lastly, the Committee has also recommended that there should be improved transparency of immigration detention facilities by:

- providing the media greater access to all immigration detention facilities, whilst maintaining the privacy of people in immigration detention
- publishing regularly updated information on all immigration detention facilities, including statistics on the detainee population, on the Department of Immigration and Citizenship's website, and

- developing a set of public media protocols that apply consistently across all immigration detention facilities.

I would like to thank all who have participated in this inquiry, particularly those who have written submissions or given evidence at public hearings.

I would also like to express my appreciation to my hard working colleagues on the Committee, and the long suffering secretariat, who have participated during the course of this inquiry and who are committed to ensuring that our immigration system treats all people, regardless of their status, in a humane and compassionate manner while protecting Australia's borders in a robust and fair immigration system.

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 Sue Boyce *(from 22 June 2009)*

Senator Catryna Bilyk *(from 1 July 2008)*

Ms Yvette D'Ath MP

Senator Alan Eggleston *(to 4 February 2009)*

Senator Concetta Fierravanti-Wells *(from 4 February 2009 to 22 June 2009)*

Mr Petro Georgiou MP

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

Senator Anne McEwen

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

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

Mr Tony Zappia MP

## Committee secretariat

Secretary	Ms Sharon Bryant ( <i>from 18 May 2009</i> ) Dr Anna Dacre ( <i>to 15 May 2009</i> )
Inquiry Secretary	Mr Paul Zinkel Ms Anna Engwerda-Smith
Senior Research Officer	Mr Steffan Tissa
Office Manager	Ms Emma-Kate Martin
Administrative Officer	Ms Claire Young



## 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

ACM	Australasian Correctional Management
AHRC	Australian Human Rights Commission
AJA	A Just Australia
ASRC	Asylum Seeker Resource Centre
CBD	Central Business District
CCP	Community Care Pilot
Chilout	Children Out of Detention
DeHAG	Detention Health Advisory Group
DIAC	Department of Immigration and Citizenship
DIMIA	former Department of Immigration and Multicultural and Indigenous Affairs
FASSTT	Forum of Australian Services for Survivors of Torture and Trauma
G4S	Group 4 Securitor
GSL	Global Solutions Limited
HREOC	Human Rights and Equal Opportunity Commission
HRCA	Human Rights Council of Australia
the Human Rights Centre	Human Rights Education Centre for Human Rights Education

IAAAS	Immigration Advice and Application Assistance Scheme
IDAG	Immigration Detention Advisory Group
IDC	Immigration Detention Centre
IHMS	International Health and Medical Services
IOM	International Organisation for Migration
IRH	Immigration Residential Housing
ITA	Immigration Transit Accommodation
m <sup>2</sup>	metres squared
MRT	Migration Review Tribunal
NGO	Non-Government Organisation
NLA	National Legal Aid
NSW	New South Wales
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment
PCIRO	Preparatory Commission of the International Refugee Organisation
PIDC	Perth Immigration Detention Centre
PSS	Professional Support Services
RACS	Refugee Advice and Casework Service (Australia) Inc.
RILC	Refugee and Immigration Legal Centre
RRT	Refugee Review Tribunal
SA	South Australia
SDM	Service Delivery Model



STARTTS	NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors
the Standards	Immigration Detention Standards
THV	Temporary Humanitarian Visa
TPV	Temporary Protection Visa
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee





# List of recommendations

## Immigration detention infrastructure

### Recommendation 1

The Committee reiterates that reconstruction of Stage 1 at Villawood remains urgent and a priority of the Committee.

### Recommendation 2

At the very least, the Committee recommends that the upgrade of the Perth immigration detention centre proceed as proposed. Given the limited lease arrangements, the Australian Government should also examine long term options with the intent to establish a purpose built long-term facility.

### Recommendation 3

The Committee recommends that all caged walkways, perspex barriers, and electrified fencing be removed from the North West Point immigration detention centre and replaced with more appropriate security infrastructure.

### Recommendation 4

The Committee recommends that detention in immigration residential housing should be used in lieu of detention in immigration detention centres provided that it is feasible.

### Recommendation 5

The Committee recommends that all razor/barbed wire fencing is removed from all immigration detention centres and replaced with more appropriate fencing.

## Provision of services in detention facilities

### Recommendation 6

The Committee recommends that the Department of Immigration and Citizenship engage an independent auditor, the Australian National Audit Office, to undertake a full review of the current immigration detention service providers and immigration detention facilities within the next three years having regard to:

- the service providers' adherence to the Department of Immigration and Citizenship's service delivery model and the immigration detention standards, or their current equivalent
- whether the services provided are cost effective
- the level of service provided to detainees.

The Committee also recommends that the review feed into the contracts for either the next re-tender or renewal process.

### Recommendation 7

The Committee recommends that the Department of Immigration and Citizenship introduce a mandatory ongoing training program for all staff of the immigration detention service provider, ensuring that all staff dealing directly with people in immigration detention are assessed as competent in:

- cultural appropriateness and sensitivity
- basic counselling skills
- first aid
- managing conflict through negotiations
- the provision of appropriate security measures.

### Recommendation 8

The Committee recommends that the Department of Immigration and Citizenship publish the detention service standards, or the current equivalent, on its website and provide a copy of the detention service standards or the current equivalent, translated into appropriate languages, to all current and future detainees.

The Committee also recommends that the Department of Immigration and Citizenship should report on the performance of each immigration detention service provider against the immigration detention standards, or the current equivalent, which should be included in the Department's annual report.

#### Recommendation 9

The Committee recommends that the Australian Government maintain appropriate physical and mental health facilities on Christmas Island commensurate with services provided at other immigration detention centres.

### Transparency and visibility – immigration detention facilities

#### Recommendation 10

The Committee recommends that the Australian Human Rights Commission be granted a statutory right of access to all places of, and persons in, immigration detention in Australia.

#### Recommendation 11

The Committee recommends that the Department of Immigration and Citizenship increase the transparency of immigration detention facilities by:

- providing the media greater access to all immigration detention facilities, whilst maintaining the privacy of people in immigration detention
- publishing regularly updated information on all immigration detention facilities, including statistics on the detainee population, on the Department of Immigration and Citizenship's website, and
- developing a set of public media protocols that apply consistently across all immigration detention facilities.



## Introduction

### **Background to this report**

- 1.1 On 14 May 2008 the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, requested the Joint Standing Committee on Migration to inquire into and report on immigration detention in Australia.
- 1.2 The Committee undertook to 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 (IDCs)
  - 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 (IRH), Immigration Transit Accommodation (ITA) and community detention, and
  - options for additional community-based alternatives to immigration detention by

- ⇒ inquiring into international experience
  - ⇒ considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
  - ⇒ comparing the cost effectiveness of these alternatives with current options.
- 1.3 These wide ranging and challenging terms of reference require the Committee to examine current detention policy and values and how they are articulated in administrative practice, infrastructure, facilities and service delivery.
- 1.4 More broadly, they set the task of developing a blueprint for Australia's future immigration detention policy. They require the Committee to critically assess the role that detention plays in maintaining the integrity of Australia's immigration system, and the shape of a future immigration detention system that meets the needs of people with an unresolved immigration status and the Australian community. The terms of reference require an assessment of how to most appropriately weigh the balance between a person's right to liberty and dignity, risk concerns and cost effectiveness for the Australian taxpayer.
- 1.5 With the launch of the inquiry in May 2008, the Committee sought submissions from government agencies and advisory groups, non-government organisations, such as refugee and migrant support and advocacy groups and charitable organisations. A total of 143 submissions have been received. The list of submissions is at Appendix A.
- 1.6 The Committee has conducted public hearings and roundtables in Canberra, Sydney, Perth, Melbourne and Brisbane, and inspected all detention centres, residential housing facilities and immigration transit facilities in Australia.<sup>1</sup> A list of public hearings and visits is at Appendix B.
- 1.7 During the course of the inquiry the Committee has spoken to a number of former detainees and individuals currently in detention centres, as well as individuals and families in immigration residential housing, in community detention and living in the community on bridging visas. Invitations to the community detention client roundtable in Sydney were facilitated by the Department of Immigration and Citizenship (DIAC), and the bridging visa client roundtable in Melbourne was facilitated by the Australian Red Cross, Hotham Mission and the Asylum Seeker Resource Centre, for which the Committee is appreciative.
- 

1 With the exception of the recently opened facility for juvenile foreign fishers in Darwin, which was under construction at the time of the Committee's visit, and Immigration Transit Accommodation under construction in Adelaide.



- 1.8 The Committee would also like to acknowledge the assistance of DIAC in providing information on immigration detention facilities and the detainee population, a substantial amount of which has been used in Chapter 2.

## The development of Australia's system of mandatory detention

- 1.9 Introduced in 1992, the policy of mandatory detention was envisaged as a temporary and exceptional measure for a particular group of unauthorised arrivals or 'designated' persons who arrived by boat between 19 November 1989 and 1 September 1994. The period of detention was limited to 273 days. In 1994 this time limit was removed and mandatory detention was extended to all unlawful non-citizens.
- 1.10 Since that time, the Australian Government has invested in the construction and expansion of a network of secure detention facilities. This has included the now defunct facilities at Port Hedland in Western Australia, Baxter and Woomera in South Australia, Cocos Island, Nauru and Manus Island in Papua New Guinea. Currently in use are facilities on Christmas Island, in Sydney, Melbourne, Perth, Brisbane and Darwin.<sup>2</sup>
- 1.11 The number of people held in immigration detention was at its highest between 2000 and 2002. Between 1999 and 2001 Australia was faced with an unprecedented number of asylum seekers; around 9500 arrived unlawfully by boat from the Middle East via Indonesia.<sup>3</sup> There has been a steady reduction in the detention population since then, although the numbers continue to fluctuate in response to external factors such as natural disaster and conflict, the activities of people smugglers, trends in non-compliance and administrative compliance action.<sup>4</sup>
- 1.12 Australia's secure detention facilities, both onshore and offshore, currently have an operational capacity of over 1800 and can accommodate an additional 1600 detainees if required. At 29 May 2009 the detainee population was 798, including 62 in community detention and 127 in alternative temporary detention in the community.<sup>5</sup>

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2 An immigration transit accommodation facility is also under construction in Adelaide.

3 Department of Immigration and Citizenship, 'Unauthorised arrivals by land and sea', Fact sheets 74 & 74a, viewed on 1 November 2008 at [web.archive.org/web/20030621215427/http://www.immi.gov.au/facts/74unauthorised.htm](http://web.archive.org/web/20030621215427/http://www.immi.gov.au/facts/74unauthorised.htm) [web.archive.org/web/20030621215037/www.immi.gov.au/facts/74a\\_boatarrivals.htm](http://web.archive.org/web/20030621215037/www.immi.gov.au/facts/74a_boatarrivals.htm).

4 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Unauthorised boat arrivals arrive on Christmas Island', media release, 2 October 2008.

5 Department of Immigration and Citizenship, 'Immigration detention statistics summary' as at 29 May 2009, viewed on 22 June 2009 at [http://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-20090529.pdf](http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090529.pdf).

- 1.13 Australia's experience with mandatory immigration detention has been controversial. In this decade, government policy has progressively recognised the need to develop a range of alternatives to secure and institutional detention. In part, this has been a way of reconciling a limited and geographically dispersed detention infrastructure with the necessity of detaining people elsewhere, in transit, for medical attention, or for other reasons.
- 1.14 Pressure for development of alternatives also came from public concern about families and children in detention, in some cases for multiple years, and more diffusely from reports of the prevalence of depression, anxiety, self-harm, suicidal ideation and psychiatric disorders amongst immigration detainees.<sup>6</sup>
- 1.15 In some instances Australia may have been in breach of international human rights and the United Nations Human Rights Committee has found Australia's immigration detention regime to be in violation of its obligations under international law on seven separate occasions.<sup>7</sup> Under United Nations guidelines, the detention of asylum seekers or other immigration clients should be a measure of last resort where no other alternatives are available.<sup>8</sup> In the context of a mandatory detention system it has been difficult, until recently, to demonstrate that alternatives to secure immigration detention had been considered and found inappropriate.
- 1.16 Over recent years, the range of types of detention accommodation in Australia has expanded substantially. Currently the following types of immigration detention are available for DIAC to place unlawful non-citizens:
- immigration detention centres (secure, institutional detention)
  - alternative temporary detention in the community, which may include foster care for minors or stays in hotels, hospitals, other medical facilities or state correctional facilities (introduced in 2002)<sup>9</sup>

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6 Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention* (2004); Chilout, submission 40, 27 August 2008, p 3; Cole E, *Bail for immigration detainees, A few families too many – The detention of asylum seeking families in the UK* (2003), pp 34-35; Circle of Friends 42, submission 32, 27 August 2008, p 6.

7 Attorney-General's Department, submission 61, 27 August 2008, p 2; Nasu H, Rice S & Zagor M, submission 76, 27 August 2008, p 3; Refugee and Immigration Legal Centre, submission 130, 27 August 2008, p 7.

8 United Nations High Commissioner for Refugees, *Guidelines on applicable criteria and standards relating to the detention of asylum seekers* (1999), p 1.

9 Department of Immigration and Citizenship, submission 129, 11 September 2008, pp 18-26.

- community detention, which is supported community living arrangements for those assessed as a low flight risk and for families with children (introduced in 2005)<sup>10</sup>
  - immigration residential housing, a detention facility<sup>11</sup>, that provides family-style detention accommodation for lower risk detainees (introduced in 2006),<sup>12</sup> or
  - immigration transit accommodation, which is hostel-type accommodation for people anticipated to be removed or processed quickly (introduced in 2007).<sup>13</sup>
- 1.17 In addition, bridging visas can also be used as an alternative to immigration detention. A bridging visa makes a non-citizen temporarily lawful until a specified event occurs or until their immigration status is resolved. While the *Migration Act 1958* requires the detainment of an unlawful non-citizen, the current immigration policy is that, where it is appropriate and safe to do so, the granting of a bridging visa should be considered prior to detaining a person.<sup>14</sup>
- 1.18 Inquiry participants acknowledged that the introduction of case management and more expedient processing of cases as being positive and significant.

## Ministerial announcements

- 1.19 The Committee's inquiry has taken place during a time of significant immigration policy shifts in Australia.
- 1.20 On 29 July 2008, the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, announced a series of values that would underpin Australia's immigration detention policy.<sup>15</sup> Those seven values are:
1. Mandatory detention is an essential component of strong border control.

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10 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), Chapter 2.

11 Australian Human Rights Commission, 'Immigration detention and human rights', viewed on 31 July 2009 at [http://www.hreoc.gov.au/Human\\_Rights/immigration/detention\\_rights.html](http://www.hreoc.gov.au/Human_Rights/immigration/detention_rights.html).

12 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), Chapter 2.

13 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), Chapter 2.

14 Department of Immigration and Citizenship, supplementary submission 129f, 26 November 2008, p 9.

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

2. To support the integrity of Australia's immigration program three groups will be subject to mandatory detention:
    - all unauthorised arrivals, for management of health, identity and security risks to the community
    - unlawful non-citizens who present unacceptable risks to the community, and
    - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
  3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
  4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
  5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
  6. People in detention will be treated fairly and reasonably within the law.
  7. Conditions of detention will ensure the inherent dignity of the human person.
- 1.21 The values build on reforms implemented by the previous Government. These include the commitment not to place children in immigration detention centres, the introduction of community detention for families and other vulnerable detainees, and the increasing use of bridging visas in preference to detention.
- 1.22 In August 2008, the Government abolished temporary protection visas (TPVs). TPVs were introduced by the previous government to discourage people smuggling activities resulting in unauthorised boat arrivals and to discourage refugees leaving their country of first asylum. Now, all applicants for a protection visa who are found to engage Australia's protection obligations receive a permanent protection visa.<sup>16</sup> While the TPV regime is not considered as part of this inquiry, the experience of TPV holders living in the community whilst awaiting resolution of immigration status has informed the Committee's reflections, in the second report, on

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16 Department of Immigration and Citizenship, *Fact Sheet 68 - Abolition of Temporary Protection visas (TPVs) and Temporary Humanitarian visa (THVs), and the Resolution of Status (subclass 851) visa* (2009).

how community-based arrangements might best function in the interests of the person, the community and the Australian migration system.

- 1.23 In February 2009 the Government announced that the 'Refugee Review Tribunal (RRT) will publish its country of origin research to provide greater transparency in its decision making'.<sup>17</sup> The Government also announced that in responding to community requests the 'Migration Review Tribunal (MRT) will also double the number of decisions published online so that 40 per cent of all decisions made by the tribunals will be publicly available.'<sup>18</sup>
- 1.24 On 18 March 2009 the Migration Amendment (Abolishing Detention Debt) Bill 2009 was introduced into the Senate. The Bill seeks to amend the Migration Act to remove the liability for detention and related costs for certain persons and liable third parties and extinguishes all outstanding immigration detention debt. As the Minister for Immigration and Citizenship noted, the bill is in line with the recommendation of this Committee from its first report that the practice of charging a person for their immigration detention be abolished. People convicted of people smuggling or illegal foreign fishing will still be liable for their costs of detention and removal.<sup>19</sup>
- 1.25 As part of the 2009–10 Budget the Government announced that it 'will provide \$186.7 million over five years (including \$175.0 million in capital funding) to redevelop the Villawood Immigration Detention Centre.'<sup>20</sup>
- 1.26 In May 2009 the Government announced that it has 'committed \$ 77.4 million over four years to implement key immigration compliance and detention policy improvements in community care, status resolution and assisted voluntary returns.' The new funding is focussed on addressing prompt resolution of an individual's immigration status.<sup>21</sup>

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17 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Greater transparency for refugee and migration tribunals', media release, 17 February 2009.

18 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Greater transparency for refugee and migration tribunals', media release, 17 February 2009.

19 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Detention debt regime to be scrapped', media release, 18 March 2009; Sen the Hon J Ludwig, Migration Amendment (Abolishing Detention Debt) Bill 2009, second reading speech, *Senate Hansard*, 18 March 2009, pp 1-4.

20 Australian Government, Budget 2009-10, 'Part 3: Capital Measures', viewed on 27 May 2009 at [http://www.budget.gov.au/2009-10/content/bp2/download/bp2\\_Capital.pdf](http://www.budget.gov.au/2009-10/content/bp2/download/bp2_Capital.pdf).

21 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Budget 2009–10 – New Directions in Detention', media release, 12 May 2009.

- 1.27 On 25 June 2009 the Migration Amendment (Immigration Detention Reform) Bill 2009 was introduced into the Senate.<sup>22</sup> The Bill seeks to amend the Migration Act to support the implementation of the Government's 'New Directions in Detention policy', announced by the Government on 29 July 2008.<sup>23</sup>

## First report: Criteria for release from detention

- 1.28 To facilitate the contribution of this inquiry to the implementation of the reforms announced by the Minister, the Committee decided to report in three parts.
- 1.29 The first report, *Immigration detention in Australia: A new beginning – Criteria for release from detention*, was tabled on 1 December 2008.<sup>24</sup> This report focussed on the first two of the six terms of reference, that is:
- the criteria that should be applied in determining how long a person should be held in immigration detention, and
  - the criteria that should be applied in determining when a person should be released from immigration detention following health, identity and security checks.<sup>25</sup>
- 1.30 The report addressed these terms of reference in the context of the Minister's announcements and endorsed the application of a risk-based model to assess whether immigration detention was a proportionate and necessary response in each individual case.
- 1.31 The Committee's objective was to set transparent and open guidelines that would enable the implementation of the seven principles outlined by the Australian Government. The first report outlined guidelines for the assessment of public health, compliance, criminal and national security risks. It also considered the future shape of our immigration detention system in terms of fairness, accountability, and review mechanisms for ongoing detention. Finally, it considered removal practices and the policy of charging people for the time they spend in detention.

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22 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Detention values to be enshrined in law', media release, 25 June 2009.

23 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Detention values to be enshrined in law', media release, 25 June 2009; See paragraph 1.20.

24 The first report on Immigration Detention in Australia is available at <http://www.aph.gov.au/house/committee/mig/detention/report.htm>.

25 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008).

- 1.32 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. The report tackled those uncertainties through the following recommendations:
- five 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.
- 1.33 The report also recommended additional measures to increase oversight and transparency, such as:
- greater detail and scope for the three month review conducted by DIAC<sup>26</sup>
  - ensuring detainees and their legal representatives receive a copy of the review<sup>27</sup>
  - ensuring the six month Ombudsman's review is tabled in parliament and that the ministerial response to recommendations is comprehensive<sup>28</sup>
  - providing increased oversight of national security assessments that may affect individuals<sup>29</sup>
  - enshrining the new values in legislation,<sup>30</sup> and
  - providing for merits and judicial review of the grounds for detention after that person has been detained for more than 12 months. This

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26 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 63-70.

27 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), p 70.

28 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 70-78.

29 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 38-42.

30 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 78-84.

would apply to those who remain in detention after 12 months on the basis of a 'significant and ongoing unacceptable risk' assessment.<sup>31</sup>

- 1.34 Additionally, the Committee considered that the practice of charging a person for their own detention was considered harsh and contrary to the stated value that immigration detention was not punitive. The Committee recommended that this practice should cease and that all such debts should be waived immediately.
- 1.35 A full list of the Committee's recommendations from this report is provided at Appendix C.

## **Second report: Community-based alternatives to detention**

- 1.36 Given that the Committee's first report focussed on the criteria for release from detention, the Committee chose to next report on the conditions and material support for that release, including appropriate options for community-based alternatives to secure detention.
- 1.37 The second report, *Immigration detention in Australia: A new beginning – Community-based alternatives to detention* was tabled on 25 May 2009.<sup>32</sup> This report considered Australia's current use of alternatives to detention centres, and assessed options in international use which may have application in the Australian context.
- 1.38 Under the inquiry's terms of reference the Committee canvassed options for additional community-based alternatives to immigration detention by:
- inquiring into international experience
  - considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
  - comparing the cost effectiveness of these alternatives with current options.
- 1.39 In considering community-based alternatives to detention, the Committee also commented on the infrastructure required to meet the needs of those not in detention centres and awaiting the resolution of their immigration

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31 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), pp 90-96.

32 The second report on Immigration Detention in Australia is available at <http://www.aph.gov.au/house/committee/mig/detention/report2.htm>.



status. This provided a partial response to a further term of reference, namely:

- the preferred infrastructure options for contemporary immigration detention.

1.40 The second report of the Committee examined the practicality of releasing people from immigration detention and recommended that the Australian Government reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements.<sup>33</sup>

1.41 In addition, the Committee recommended that the Government utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved, and review the cases of those currently on residence determinations.<sup>34</sup>

1.42 The Committee also recommended that there should be improved transparency in immigration decision-making, improved access to legal advice, and improved access to voluntary return counselling in order to support the provision of information to the client and to help them decide what is going to be the best and most realistic outcome for themselves and their families.<sup>35</sup>

1.43 A full list of the Committee's recommendations from this report is provided at Appendix D.

## Structure of this report

1.44 This last report addresses the remaining terms of reference, namely:

- 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

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33 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), pp 131-33.

34 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), pp 131-33.

35 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), pp 133-41.

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

- 1.45 Chapter 2 of this report provides a factual description of the current immigration detention facilities including information on the location, size and capacity of immigration detention centres, immigration residential housing, immigration transit accommodation and community detention. This chapter also encapsulates how the community perceives immigration detention facilities and the Committee's observations of each facility.
- 1.46 Chapter 3 examines the provision of services in detention facilities historically, the current arrangements, and the status of the current tender process. Also examined is the training of personnel at immigration detention facilities.
- 1.47 The final chapter outlines the many varied national and international oversight mechanisms to ensure that people in immigration detention are treated humanely. Also discussed is the community concern about the transparency of immigration detention facilities.

## Immigration detention infrastructure

### Fitout standards

- 2.1 In 2004 the Australian National Audit Office report, *Management of the Detention Centre Contracts - Part A*, recommended that the then Department of Immigration and Multicultural and Indigenous Affairs 'develop and agree on appropriate standards for providing infrastructure in the detention facilities.'<sup>1</sup>
- 2.2 In May 2005, the Joint Standing Committee on Public Works made a similar recommendation stating:
- In respect of building codes and standards, the Committee recommends that the Department of Immigration and Multicultural and Indigenous Affairs consult with appropriate government and professional bodies to establish a national benchmark for the construction and fitout of Immigration Detention Centres and Immigration Reception and Processing Centres.<sup>2</sup>
- 2.3 In response to these recommendations, DIAC developed *Standards for Design and Fitout of Immigration Detention Facilities* which 'identifies the current standards of design and fitout of Australian immigration

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1 Australian National Audit Office, *Management of the Detention Centre Contracts-Part A*, Report No. 54 (2003-04), p 27.

2 Joint Standing Committee on Public Works, *Provision of Facilities for Maribyrnong Immigration Detention Centre Additional Accommodation and Related Works, Maribyrnong, Victoria* (March 2005), Parliament of the Commonwealth of Australia, p ix.

detention facilities, namely Immigration Detention Centres (IDCs), Immigration Transit Accommodation (ITA) and Immigration Residential Housing (IRH).<sup>3</sup>

2.4 The infrastructure standards are intended to:

...provide people in administrative detention with accommodation commensurate with Australian community standards and expectations. They ensure the standard of delivery is fundamentally humane while having regard to the operational needs of detention service providers and departmental officers in processing people into or out of Australia.<sup>4</sup>

2.5 These infrastructure standards are a working document and have guided the design of capital works at detention centres since they were established. In particular, the infrastructure standards set out the principles of design and specifications for construction and renovation of all aspects of a detention facility, including landscaping, integrated artworks and signage. The infrastructure standards also address security, cultural awareness, fire safety and occupational health. The standards will be updated from time to time.

## Immigration detention facilities

2.6 As noted in Chapter 1, the Department of Immigration and Citizenship (DIAC) currently uses the following three types of facilities to detain unlawful non-citizens<sup>5</sup>:

- Immigration Detention Centres (IDC) accommodate a range of unlawful non-citizens, mainly people who have over-stayed their visa, people in breach of their visa conditions, or people who were refused entry at Australia's international airports.<sup>6</sup>

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3 Department of Immigration and Citizenship, *Standards for Design and Fitout of Immigration Detention Facilities* (October 2007), p 7.

4 Department of Immigration and Citizenship, *Standards for Design and Fitout of Immigration Detention Facilities* (October 2007), p 7.

5 Under subsection 5(1) of the *Migration Act 1958*, non-citizen means a person who is not an Australian citizen.

6 Department of Immigration and Citizenship, 'About Immigration Detention Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/immigration-detention-facilities.htm>.

- Immigration Residential Housing (IRH), detention facilities<sup>7</sup> that provide a flexible detention arrangement to enable people in immigration detention to live in family-style accommodation.<sup>8</sup>
- Immigration Transit Accommodation (ITA), accommodation to house people who are a low security risk.<sup>9</sup>

2.7 At present, immigration detention facilities are located at:

- Villawood (established in Sydney, NSW in 1976)
- Maribyrnong (established in Melbourne, Victoria in 1966)
- Perth (established in Western Australia in 1981)
- Christmas Island (established in September 2001), and
- Darwin (established in the Northern Territory in 2006).<sup>10</sup>

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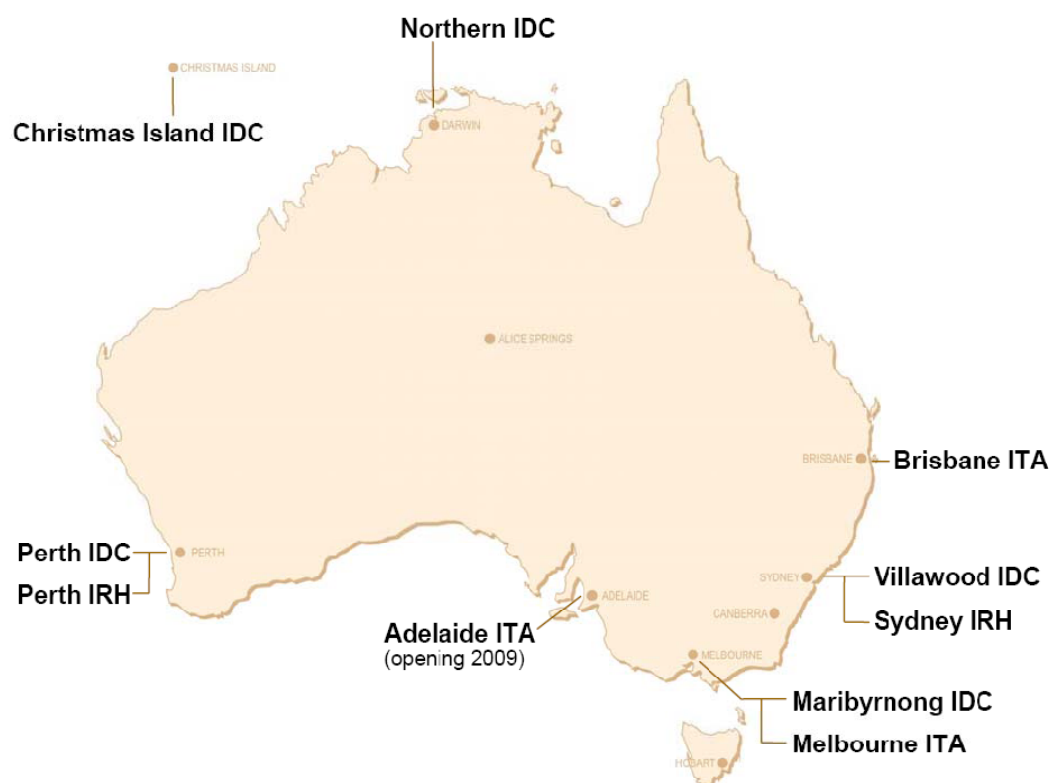
7 Australian Human Rights Commission, 'Immigration detention and human rights', viewed on 31 July 2009 at [http://www.hreoc.gov.au/Human\\_Rights/immigration/detention\\_rights.html](http://www.hreoc.gov.au/Human_Rights/immigration/detention_rights.html).

8 Department of Immigration and Citizenship, 'About Immigration Detention Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/immigration-detention-facilities.htm>.

9 Department of Immigration and Citizenship, 'About Immigration Detention Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/immigration-detention-facilities.htm>.

10 Department of Immigration and Citizenship, 'Understanding Immigration Detention', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/about/understanding.htm>.

Figure 2.1 Location of immigration detention facilities in Australia



Source Department of Immigration and Citizenship, 'Location of immigration detention facilities in Australia', viewed on 8 July 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/map-operational-facilities.pdf>.

2.8 If for any reason the current facilities are not able to accommodate an influx of unlawful non-citizens, DIAC also has contingency facilities located at Port Hedland, Western Australia, and Port Augusta, South Australia.

2.9 There are also some immigration detention facilities that are no longer operational including:

Facilities at Woomera (SA) and near Singleton (NSW) were handed back to the Government according to the 2006 Budget announcements. From August 2007, the Baxter immigration detention centre and Port Augusta immigration residential housing stopped operating as immigration detention facilities.<sup>11</sup>

2.10 As at 29 May 2009, the detainee population in immigration detention centres, immigration residential housing and immigration transit accommodation totalled 798 including 548 in immigration detention

11 Department of Immigration and Citizenship, 'Understanding Immigration Detention', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/about/understanding.htm>.

centres, 30 in immigration residential housing and 25 in immigration transit accommodation.<sup>12</sup>

## Perth immigration detention centre

- 2.11 The Perth immigration detention centre was opened in 1981. The site was originally constructed for administrative purposes for the Australian Federal Police before being adapted to use as an immigration detention centre.
- 2.12 The Perth immigration detention centre mainly caters for people who have overstayed their visa or had their visa cancelled because they failed to comply with their visa conditions. Other detainees include people refused entry to Australia at international airports and seaports, and people with a criminal conviction awaiting removal to another country.
- 2.13 The Perth immigration detention centre is located on land owned by the Perth Airport Corporation which is leased to DIAC. Each lease is for a five year period and DIAC has the option to renew the lease for a total of four times. DIAC has already renewed it three times. The current lease is due to expire on 31 December 2011 and DIAC has the option to renew one last time. If DIAC chooses to renew the lease, it will expire on 31 December 2016.<sup>13</sup>

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12 Department of Immigration and Citizenship, 'Immigration detention statistics summary' as at 29 May 2009, viewed on 22 June 2009 at [http://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-20090529.pdf](http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090529.pdf).

13 Senate Standing Committee on Legal and Constitutional Affairs, Question Taken on Notice, Supplementary Budget Estimates 2008-2009 (October 2008), (60) Output 1.5, detention, Immigration centre at Perth Airport, viewed on 22 June 2009 at [http://www.aph.gov.au/SEnate/committee/legcon\\_ctte/estimates/sup\\_0809/diac\\_qon/60\\_qon\\_21\\_Oct\\_08.pdf](http://www.aph.gov.au/SEnate/committee/legcon_ctte/estimates/sup_0809/diac_qon/60_qon_21_Oct_08.pdf).

## Location, size and capacity

- 2.14 The Perth immigration detention centre is located within the Perth Domestic Airport precinct in Redcliffe, Western Australia, some 10 kilometres north-east of the Perth central business district (CBD).<sup>14</sup> The facility is a single level brick building that occupies a level, rectangular site as a 'tee' shape of approximately 1880m<sup>2</sup>.<sup>15</sup>
- 2.15 The Perth immigration detention centre currently has the capacity to accommodate 27 people and, if required, can accommodate a surge capacity of 42 people.<sup>16</sup>

## Population profile

- 2.16 At 29 May 2009, the Perth immigration detention centre had eight people in immigration detention which consisted of seven men and one woman. Six were detained as a result of compliance action (i.e. overstaying their visa or breaching the conditions of their visa, resulting in a visa cancellation) and two were unauthorised boat arrivals.<sup>17</sup>
- 2.17 Six had not lodged a Protection Visa (PV) application while in detention; one had their PV application under merits or judicial review of a decision in relation to their application for a PV; and one had their PV application finalised without grant.<sup>18</sup>
- 2.18 The length of those detained ranged from one week to between 12 and 18 months.<sup>19</sup>

## Description of facilities

- 2.19 The Perth immigration detention centre is located in a mixed use area comprising office accommodation domestic air terminals, a large public car parking facility, a valet parking facility, airport hangers and maintenance facilities, air freight cargo terminals, the Australia Post Mail Processing Centre and a number of vacant redevelopment sites.

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14 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/perth/accommodation.htm>.

15 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 7. According to the Australian Bureau of Statistics, in 2003-04 the average site area of new houses in Australian capital cities was approximately 730m<sup>2</sup>.

16 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 7.

17 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 7-8.

18 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 7-8.

19 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 7-8.



- 2.20 The facility is a single level brick building that is divided into three wings:
- the north wing contains accommodation for men with bathroom facilities, two recreation rooms, a kitchen and dining room
  - the west wing contains six bedrooms (that may be used to accommodate women) with a dining/recreation room adjacent, an observation room, administration offices and storage rooms, control room, staff room, interview rooms, residents' property store and a foyer
  - the east wing contains accommodation and a recreational room, a visits room, administration areas and an additional resident property storage room.<sup>20</sup>
- 2.21 All operational and maintenance aspects of the centre are undertaken by the detention service provider. Chapter 3 provides an overview of the provision of services in detention facilities including information on the detention service provider.

### Community perception

- 2.22 Much of the evidence received by the Committee painted a poor picture of the Perth immigration detention centre's current facilities.
- 2.23 The Southern Communities Advocacy Legal and Education Services Community Legal Centre in Western Australia advised that it had received anecdotal evidence from former detainees that they would rather be held in a maximum security prison in Perth rather than the Perth immigration detention centre.<sup>21</sup>
- 2.24 The Australian Human Rights Commission (AHRC), formerly the Human Rights and Equal Opportunity Commission (HREOC), observed that, of the immigration detention centres that they had seen, 'the Perth Immigration Detention Centre is quite cramped and confined'.<sup>22</sup>
- 2.25 The AHRC added:
- [The AHRC] is concerned about the inadequacy of Perth Immigration Detention Centre (PIDC) in its current form, to accommodate anyone other than a small number of short term detainees.

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20 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/perth/accommodation.htm>.

21 Moss V, Southern Communities Advocacy Legal and Education Services Community Legal Centre, *Transcript of evidence*, 9 October 2008, p 6.

22 Innes G, Australian Human Rights Commission, *Transcript of evidence*, 24 October 2008, p 4.

In his visit to PIDC in 2007, the Human Rights Commissioner noted that PIDC is a small, cramped centre which is not equipped to house detainees for long periods of time. Some problems include:

- the dormitory accommodation is drab and dark.
- the two outside areas are shabby and claustrophobic. There is no greenery, poor ground covering and it is not conducive to outdoor activities.
- area 1 bathrooms are shabby and dark.
- there is no Visitors area. It is not appropriate for visiting families to have to meet in the detainee common areas.
- the education area is cramped – English classes are conducted while other detainees are on the computers or trying to access the internet. PIDC needs a dedicated education area.<sup>23</sup>

2.26 National Legal Aid (NLA) commented that the Perth immigration detention centre was noisy due to its close proximity to the airport and had very limited outdoor space.<sup>24</sup>

2.27 The Commonwealth Ombudsman highlighted the need to consider the general environment of immigration detention centres in addition to the facilities, stating:

During 2007 the Ombudsman became aware of concerns raised by detainees at the Perth IDC in relation to the air quality within the centre given the proximity to Perth International Airport. After a number of enquiries were made by our office we understand that DIAC initiated ongoing discussions and liaison with Airport authorities to ensure that the quality of the air was within authorised standards. The incident raises the need to consider the general environment of the immigration detention centre in addition to focusing on facilities within a centre.<sup>25</sup>

2.28 The Refugee Council of Australia noted that, while services in immigration detention centres have improved markedly over recent years, they still require a number of improvements including:

...the need for further improvements to health and mental health services, the need for improved access to recreational activities and, in some centres, access to open space and varying levels of access to education facilities and communication facilities like the

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23 Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission), submission 99, 27 August 2008, pp 33-34.

24 National Legal Aid, submission 137, 24 October 2008, p 11.

25 Commonwealth Ombudsman, submission 126, 3 September 2008, p 23.

internet. We are also concerned that the infrastructure for visits is inadequate in at least two of the centres, Perth and Villawood.<sup>26</sup>

- 2.29 However the Secretary of DIAC, Andrew Metcalfe, noted that many changes had been made to immigration detention centres in recent years and that 'work is currently under way at the Perth centre to improve' its facilities.<sup>27</sup> Mr Metcalfe also stated:

Perth IDC is in the process of undergoing a \$3.1 million upgrade which will include removing razor wire and installing alternative anticlimb structures, upgrading recreational courtyards and improving access, constructing additional bathrooms, refurbishing accommodation areas and improving the internal layout to enhance operational arrangements.<sup>28</sup>

### Committee observations

- 2.30 The Committee recognised that the facility in Perth is not a purpose built facility. Even though the facility was refurbished to some extent, the Committee was concerned that it was cramped and not suitable for placing detainees in long-term detention. The accommodation was also less than satisfactory, being dull and uncomfortably closed in.
- 2.31 The lack of natural light in the facility was apparent immediately and the Committee was concerned that this would affect the general wellbeing of detainees housed at the Perth facility.
- 2.32 The recreational areas provided within the Perth immigration detention centre were well below the fitout standards. The Committee observed that the gymnasium was set-up in a converted room and had limited equipment.
- 2.33 Security within the Perth immigration detention centre seemed overly excessive. In particular, the Committee observed that the courtyard was surrounded by razor wire and the recreational surroundings were stark and unsightly. However, the Committee understands that the razor wire is to be removed as part of the current upgrade.
- 2.34 Overall the Committee noted that the Perth immigration detention centre was an oppressive environment in which to accommodate detainees and, in some respects, very reminiscent of the current facilities at Villawood

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26 Power P, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 2.

27 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 24 September 2008, p 2.

28 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 6.

Stage 1. The Committee notes the announcement that over \$3 million will be spent on upgrading the facilities.

## Villawood immigration detention centre

- 2.35 The Villawood immigration detention centre was originally constructed between the early 1960s and 1970s as a migrant hostel. The buildings have been progressively adapted into a secure immigration detention centre, which was opened in 1976.<sup>29</sup>
- 2.36 Villawood immigration detention centre mainly caters for people who have over-stayed their visa permit or those who had their visa cancelled because they have failed to comply with their visa conditions. People refused entry into the country at international airports and seaports may also be detained here.<sup>30</sup>
- 2.37 As noted in Chapter 1, the Government announced that it will provide \$186.7 million over five years to redevelop the Villawood immigration detention centre.<sup>31</sup>
- 2.38 As part of that announcement, the Government stated:

The redevelopment aims to upgrade and enhance the Detention Centre to meet current standards for design and fitout of immigration detention facilities. The redevelopment project will be managed by the Department of Finance and Deregulation (Finance) and overseen by a joint Finance and Department of Immigration and Citizenship steering committee.

This measure is informed by scoping studies and preliminary design as part of the Villawood Immigration Detention Centre – redevelopment – scoping and design measure announced in the 2008-09 Budget.<sup>32</sup>

## Location, size and capacity

- 2.39 The Villawood immigration detention centre is located in a western suburb of Sydney approximately 28 kilometres from the Sydney CBD. The Centre occupies approximately an 18 hectare site that is bounded by

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29 Department of Immigration and Citizenship, 'Villawood Immigration Detention Centre in Sydney (NSW)', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/villawood/>.

30 Department of Immigration and Citizenship, 'Villawood Immigration Detention Centre in Sydney (NSW)', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/villawood/>.

31 See Chapter 1, paragraph 1.25.

32 Australian Government, Budget 2009-10, 'Part 3: Capital Measures', viewed on 27 May 2009 at [http://www.budget.gov.au/2009-10/content/bp2/download/bp2\\_Capital.pdf](http://www.budget.gov.au/2009-10/content/bp2/download/bp2_Capital.pdf).

residential and industrial areas. There are approximately 47 buildings that form the Villawood immigration detention centre on a site which has a total floor area in the order of 14,000m<sup>2</sup>.<sup>33</sup>

- 2.40 The Villawood immigration detention centre has an operating capacity of around 358 people with the ability to expand by a further 516 (surge capacity).<sup>34</sup>

### Population profile

- 2.41 At 29 May 2009, the Villawood immigration detention centre had 178 people in immigration detention comprised of 151 men and 27 women. One hundred and forty two people were detained as a result of compliance action, 34 were unauthorised air arrivals, and two were detained for other reasons (i.e. including stowaways and deserters).<sup>35</sup>
- 2.42 Of those:
- eighty three had not lodged a PV application while in detention
  - thirty nine had a PV application on hand
  - twenty five had their PV application under merits or judicial review of a decision in relation to their application for a PV, and
  - thirty one had their PV application finalised without grant.<sup>36</sup>
- 2.43 The length of those detained ranged from one week to more than two years.<sup>37</sup>

### Description of facilities

- 2.44 The Villawood immigration detention centre comprises three separate accommodation compounds, known as Stage 1, Stage 2 and Stage 3.
- 2.45 Stage 1, a high security area (currently located approximately 200m east of the main facility), is a purpose-built facility which accommodates single males, predominantly in large dormitories. It has three building wings with integrated enclosed courtyards and other shared facilities including a kitchen, dining room, washing facilities, laundry and recreation rooms including computer facilities.<sup>38</sup>

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33 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 5.

34 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 5.

35 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 5-6.

36 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 5-6.

37 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 5-6.

38 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/villawood/accommodation.htm>.

- 2.46 There is a modular demountable building providing additional shared rooms and en-suite accommodation for 40 single male residents, as well as a TV room, day room and outdoor recreation space. Support facilities include reception and processing, administration and facilities to accommodate visits.<sup>39</sup>
- 2.47 Stage 2 (single women, lower risk single men and couples) and Stage 3 (single men - medium to high risk) comprise twelve two-storey, brick residential buildings grouped around central grassed courtyards. The accommodation units have either two or three bedrooms and share a bathroom with WC, shower and vanity basin. The buildings vary from four to eight accommodation units per floor and share a common staircase.<sup>40</sup>
- 2.48 There are a number of support buildings including:
- a visitors reception and outdoor area
  - central kitchen, dining room, and laundry facilities
  - multi-purpose rooms for programmes and recreation
  - dedicated education facilities, and
  - a medical centre and multi purpose medical building.<sup>41</sup>
- 2.49 The site also accommodates office facilities for DIAC staff in demountable accommodation, and for the detention service provider in an older brick building known as the Transport and Escort Building. There is a bulk store, three heritage-listed Nissen Huts and a heritage-listed brick ammunition hut on the site.<sup>42</sup>

## Community perception

- 2.50 Villawood, being the largest detention centre in Australia's most populated city, receives many visitors from non-government organisations, churches and the general public. The Committee received a considerable amount of evidence about the Villawood immigration detention centre and its facilities.

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39 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/villawood/accommodation.htm>.

40 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/villawood/accommodation.htm>.

41 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/villawood/accommodation.htm>.

42 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 5.

- 2.51 The Jesuit Refugee Service Australia and regular visitor to the Villawood immigration detention centre stated that 'Villawood Stage 1 has an aged, outmoded and run down physical infrastructure' and that 'Stages 2 and 3 are more modern but still engender a prison-like environment.'<sup>43</sup>
- 2.52 Janet Castle, who visited the Villawood immigration detention centre for three years, noted that the immigration detention centre had an unsuitable visiting area with poor heating and furniture:
- ...at present in Villawood Immigration Detention Centre there are limited covered areas to provide shelter from the rain or sun, water, and mud, flow though the covered visiting areas when it rains heavily and there is no protection from the wind. Recently acquired heaters are scant and poorly maintained. Visiting area furniture is dilapidated and insufficient for the number of visitors.<sup>44</sup>
- 2.53 The Commonwealth Ombudsman, the Australian Red Cross, and a number of individuals who have visited Villawood have also commented on the unsuitable visiting area.<sup>45</sup>
- 2.54 As noted earlier in this chapter, the Commonwealth Ombudsman also has concerns about the environment in various immigration detention centres including Villawood. The Commonwealth Ombudsman noted that 'The lock down provisions used in Stage 1 at the Villawood immigration detention centre restricts the access of individuals to fresh air and outside exercise areas.'<sup>46</sup> The Commonwealth Ombudsman also raised the following concerns:
- unsafe infrastructure for storage of clothing and other goods in Stages 2 and 3
  - the observation rooms in Stage 1 of Villawood immigration detention centre also require attention, they do not have an intercom and detainees are expected to attract attention through waving at the CCTV camera or by banging on their room door, and
  - insufficient number of chairs and tables [and] general cleanliness of the mess and fridges.<sup>47</sup>

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43 Holdcroft D, Jesuit Refugee Service Australia, submission 73, 27 August 2008, p 4.

44 Castle J, submission 64, 27 August 2008, p 3.

45 Commonwealth Ombudsman, submission 126, 3 September 2008, p 20; Clement N, Australian Red Cross, *Transcript of evidence*, 7 May 2008, p 9; Morton K, submission 100, 27 August 2008, p 1; Prince R, submission 113, 27 August 2008, p 4; Bishop I, submission 8, 27 August 2008, p 1.

46 Commonwealth Ombudsman, submission 126, 3 September 2008, p 22.

47 Commonwealth Ombudsman, submission 126, 3 September 2008, pp 24 and 26.

- 2.55 The Australian Human Rights Commissioner was also of the view that the Stage 1 facility at Villawood was the worst that it had seen and 'called for the demolition of Stage 1 in [its] last two inspection reports.'<sup>48</sup>
- 2.56 NLA pointed out that the facilities for legal interviews are not adequate for current needs, stating that there is an insufficient number of interview rooms especially for Stages 2 and 3 detainees and that the rooms in Stage 2 and 1 have a lack of privacy; they are not sound proofed and conversations from adjoining rooms can be heard. NLA did however state that the rooms in Stage 2 had been improved 'in recent times with the addition of telephones and heating and air conditioning.'<sup>49</sup>
- 2.57 Ms Gauthier, from A Just Australia, commented that the conditions at the Villawood immigration detention centre were appalling,<sup>50</sup> while a representative of the Balmain for Refugees Group of the Balmain Uniting Church indicated that they believed there 'are no adequate facilities for personnel for treating mental health in Villawood.'<sup>51</sup>
- 2.58 The Immigration Detention Advisory Group (IDAG) was particularly critical of the Villawood immigration detention centre stating:
- ...one aspect of current detention that deserves critical comment is the condition of our largest and most important detention centre, that at Villawood in western Sydney. It does not accord with what the IDAG considers is appropriate for people held in detention. The IDAG is of course aware of the plans for improvements at Villawood. However, we would contend that the timeframe set for the project (which is an outcome of the funds being made available in successive budgets) needs to be revised and shortened.<sup>52</sup>
- 2.59 The AHRC were also concerned about the facilities of the Villawood immigration detention centre stating:
- ...the Human Rights Commissioner was particularly concerned with the prison-like appearance of Stage 1. [AHRC] staff were shocked by the dilapidated infrastructure of Stage 1 compared to other centres and facilities they visited. Of particular note were:
- dormitory 1, which is dark, depressing and lacks privacy
  - external areas, which do not have enough greenery or outlook
  - the bleak visitors facilities

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48 Innes G, Australian Human Rights Commission, *Transcript of evidence*, 24 October 2008, p 3.

49 National Legal Aid, submission 137, 24 October 2008, pp 11-12.

50 Gauthier K, A Just Australia, *Transcript of evidence*, 7 May 2008, p 3.

51 Nicholls D, Balmain for Refugees Group, *Transcript of evidence*, 7 May 2008, p 5.

52 Immigration Detention Advisory Group, submission 62, 27 August 2008, p 9.



- the dining room, without windows or natural light or decoration.<sup>53</sup>

2.60 DIAC has acknowledged that Villawood is a serious concern.<sup>54</sup> The Secretary of DIAC, Andrew Metcalfe, appearing before the Committee in March 2009 pointed out that steps were being taken to address the concerns and refurbish the Villawood immigration detention centre:

...the government has announced, as part of the 2008-2009 budget, the provision of \$1.1 million for the department to bring forward a detailed redevelopment plan for Villawood. Options for that redevelopment are being investigated to bring proposals back to government in the 2009-2010 budget – in other words, at the moment. Funding proposals for this are being progressed for the 2009-2010 budget as well. In the meantime, a number of early works are currently underway at a cost of around \$7 million, including reducing the extent of razor wire, minimising the impact of the palisade fences in stage 1 and improving the conditions in the higher-care unit in stage 3. Further works have commenced and will be completed progressively between now and July, including the creation of the new stage 3 high-care unit that provides a range of care options, improvements to the higher-security stage 1 accommodation and amenities, and a realignment and reduction of fences in stages 2 and 3.<sup>55</sup>

2.61 Most recently, the Government has announced that it will redevelop the Villawood immigration detention centre.<sup>56</sup> In particular:

The redevelopment aims to upgrade and enhance the Detention Centre to meet current standards for design and fitout of immigration detention facilities.<sup>57</sup>

## Committee observations

2.62 The Committee prefaces its comments on the facility at Villawood with the fact that its inspection of the facilities was carried out by members in April 2008. The Committee notes that on-going improvements are being

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53 Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission), submission 99, 27 August 2008, pp 32-33.

54 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 24 September 2008, p 2.

55 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 5.

56 Australian Government, Budget 2009-10, 'Part 3: Capital Measures', viewed on 1 June 2009 at [http://www.budget.gov.au/2009-10/content/bp2/html/bp2\\_capital-08.htm](http://www.budget.gov.au/2009-10/content/bp2/html/bp2_capital-08.htm).

57 Australian Government, Budget 2009-10, 'Part 3: Capital Measures', viewed on 1 June 2009 at [http://www.budget.gov.au/2009-10/content/bp2/html/bp2\\_capital-08.htm](http://www.budget.gov.au/2009-10/content/bp2/html/bp2_capital-08.htm).

implemented, and the Committee is of the understanding that the general amenity of the facility has improved.

2.63 From its initial observations, the Committee noted that facilities at Villawood, especially Stage 1, are outdated, restrictive and, in the Committee's opinion, not fit to be used for immigration detention.

2.64 The Committee noted the awkward arrangements, in place at the time, for access to limited recreational space and playing fields for those in Stage 1.

### Northern immigration detention centre

2.65 An immigration detention centre at Darwin was originally constructed following the decision announced in August 2001 to establish contingency centres.

2.66 The existing facility was upgraded during 2006 due to the increased apprehension of illegal foreign fishers in the northern waters of Australia. Most illegal foreign fishers who are detained are intended to only stay for a short period at the facility prior to repatriation to their home country.<sup>58</sup>

### Location, size and capacity

2.67 The facility is located within the fence line of Defence Establishment Berrimah in the Northern Territory. The total area of all buildings at the Northern immigration detention centre is approximately 8200m<sup>2</sup>.<sup>59</sup>

2.68 The Northern immigration detention centre has an operating capacity of around 382 people with the ability to expand by a further 546 (surge capacity).<sup>60</sup>

### Population profile

2.69 At 29 May 2009, the Northern immigration detention centre had no one in immigration detention.<sup>61</sup>

### Description of facilities

2.70 There are three distinct parts to the Northern immigration detention centre: North Compound, South Compound and the Administration area (which is external to the compounds).<sup>62</sup>

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58 Department of Immigration and Citizenship, 'Northern Immigration Detention Centre at Darwin', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/northern/>.

59 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

60 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

61 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

62 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

- 2.71 The North compound includes accommodation buildings, a kitchen mess building (which is also a cyclone shelter), outdoor and indoor recreation facilities and cabanas, ablutions, laundry, medical and visits facilities.<sup>63</sup>
- 2.72 The South compound comprises accommodation buildings, ablutions, indoor and outdoor recreation area, cabanas, a multi-use purpose built cyclone shelter, laundries, shade structures, a medical separation area, and primary medical facilities.<sup>64</sup>
- 2.73 Administration for DIAC and its detention service provider is located external to the compounds. This area is comprised of three former defence buildings which have been recently refurbished.<sup>65</sup>

### Community perception

- 2.74 In its 2008 *Immigration Detention Report* the AHRC noted that improvements had been made to the Northern immigration detention centre, such as the new dining and recreation facilities, and that 'the Northern immigration detention centre feels less restrictive than the other mainland detention centres because it has more open space.'<sup>66</sup> However, the AHRC recommended reducing the amount of high wire fencing at the Northern immigration detention centre, and ensuring that 'detainees at the Northern immigration detention centre are provided with adequate access to an open grassy space for sport and recreation.'<sup>67</sup>
- 2.75 DIAC advised that the Northern immigration detention centre was being expanded to improve the circumstances of people being detained.<sup>68</sup>

### Committee observations

- 2.76 At the time the Committee visited the Northern immigration detention centre in Darwin there were a number of illegal foreign fishers from Indonesia being held in immigration detention. The security arrangements at the immigration detention centre at the time the Committee visited appeared to be excessive given the low-risk client population and the desire of the fishers to be returned to Indonesia to be with their families. The Committee also considered that the use of barbed wire fencing surrounding the immigration detention centre was unwarranted.

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63 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

64 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

65 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

66 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 55.

67 Australian Human Rights Commission, *Immigration detention report – December 2008*, pp 55-56.

68 Department of Immigration and Citizenship, submission 129, 11 September 2008, pp 5-6.

2.77 Despite the intrusive nature of the perimeter security, the facilities inside, although basic, appeared well maintained and appropriate in terms of communal recreational space provided. With the aid of interpreters, the Committee spoke to detainees (and even engaged in some singing!). Detainees appeared satisfied with the conditions, the approach of DIAC and personnel from the detention service provider, and the handling of their cases.

## Maribyrnong immigration detention centre

2.78 The current purpose-built Maribyrnong immigration detention centre was opened in 1983. It caters for people who have over-stayed their visa or had their visa cancelled because they failed to comply with their visa conditions. People refused entry to Australia at international airports and seaports are also detained there.<sup>69</sup>

### Location, size and capacity

2.79 The Maribyrnong facility is located at Hampstead Road in Maidstone, Melbourne, 10 kilometres north-west of the Melbourne CBD and 10 kilometres south-east of the Melbourne Airport. The total area of the Maribyrnong immigration detention centre is approximately 4684m<sup>2</sup>.<sup>70</sup>

2.80 In June 2005 the Parliamentary Standing Committee on Public Works approved extension to the existing Maribyrnong facility and recommended refurbishment. The expansion and refurbishments have significantly improved the amenity, increasing the operating capacity to around 70 people with the ability to expand by a further 100 (surge capacity).<sup>71</sup>

### Population profile

2.81 At 29 May 2009 the Maribyrnong immigration detention centre had 28 people in immigration detention, consisting of 26 men and two women. Seventeen were detained as a result of compliance action; ten were unauthorised air arrivals; and one was detained for other reasons.<sup>72</sup>

2.82 Of those:

- fourteen had not lodged a PV application while in detention

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69 Department of Immigration and Citizenship, 'Maribyrnong Immigration Detention Centre', viewed on 25 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/maribyrnong/>.

70 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 2.

71 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 2.

72 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 3.

- five had a PV application on hand
- five had their PV application under merits or judicial review of a decision in relation to their application for a PV, and
- four had their PV application finalised without grant.<sup>73</sup>

2.83 The length of those detained ranged from one week to more than two years.<sup>74</sup>

### Description of facilities

2.84 The Maribyrnong facility includes:

- a new visitors reception area to improve reception amenity and security
- administration area, including a health services room for primary health care
- services provider offices, control room, kitchen and dining areas, and visitors area, and
- male and female area which includes bedrooms, recreational and educational facilities, washing and laundry areas, limited self-catering facilities and outdoor exercise areas.<sup>75</sup>

2.85 The administration wing provides office accommodation for DIAC and detention service provider staff.<sup>76</sup>

### Community perception

2.86 The Committee received relatively little comment on the facilities at the Maribyrnong immigration detention centre and noted that this could reflect the improvements made at the centre since 2005.

2.87 Sister Stancea Vichie visited Maribyrnong immigration detention centre once a week for seven years and noted that in 2005 improvements were made to the physical conditions.<sup>77</sup>

2.88 In its 2008 *Immigration Detention Report* the AHRC agreed that 'Maribyrnong has, in some ways, led the other centres in terms of positive improvements.'<sup>78</sup> The AHRC added:

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73 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 3.

74 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 3.

75 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 25 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/maribyrnong/accommodation.htm>.

76 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 2.

77 Vichie S, submission 118, 27 August 2008, p 1.

78 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 52.

Maribyrnong has had significant refurbishments done over the past few years, which make it more comfortable, modern and flexible than the other immigration detention centres. Most of the razor wire has been removed, the external courtyards have been landscaped, and there are a range of indoor recreational areas for use by detainees. The visitors' area is large, well-furnished and more comfortable than the visitors' areas in the other detention centres.<sup>79</sup>

2.89 The AHRC did however point out that the Maribyrnong immigration detention centre had some infrastructure issues which needed to be addressed including:

- soundproofing the interview rooms
- providing a dedicated space for prayers or other religious activities
- ensuring that bedrooms comply with the DIAC standards of a maximum of two persons in each bedroom during surge conditions
- providing a grassy area for sport and recreation, and
- providing adequate protection from the weather.<sup>80</sup>

2.90 DIAC noted that 'facilities have been modified and are being updated to provide better and more appropriate amenity for clients' at all immigration detention centres.<sup>81</sup>

### Committee observations

2.91 The Committee noted that the Maribyrnong immigration detention centre had recently undergone a significant upgrade. The facilities were therefore newer and provided a more socially acceptable type of facility for an immigration detention centre. In particular, razor wire had been removed and anti-climb fencing erected in its place.

2.92 The general living quarters, though basic in their inclusions, appeared to be of a better standard than observed at other immigration detention centres. The Committee noted the purpose built space for classes and organised activities, and a living area with televisions.

2.93 The visitor's reception area was among the best facilities available to people currently in detention. The Committee noted that the room was

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79 Australian Human Rights Commission, *Immigration detention report – December 2008*, pp 52-53.

80 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 53.

81 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 5.

large enough to ensure adequate personal space, with interview rooms available for added privacy.

- 2.94 The recreational space within the detention centre was prominent and also of a much higher standard to those at other immigration detention centres. The gymnasium was being used at the time of the visit as well as the basketball court. The Committee were advised that the original larger playing fields were sacrificed in lieu of the newer constructed facilities.
- 2.95 The Committee notes that the general amenity of the Maribyrnong immigration detention centre is much better than most of the facilities it has visited.

## Excised Territories

- 2.96 Subsection 5(1) of the *Migration Act 1958* (the Migration Act) provides that:

migration zone means the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes:

- land that is part of a State or Territory at mean low water; and
- sea within the limits of both a State or a Territory and a port; and
- piers, or similar structures, any part of which is connected to such land or to ground under such sea;

but does not include sea within the limits of a State or Territory but not in a port.<sup>82</sup>

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82 *Migration Act 1958*, subsection 5(1).

- 2.97 A 'non-citizen'<sup>83</sup> who lands in Australia's migration zone without a valid visa is designated as an 'unlawful non-citizen'<sup>84</sup>. Section 189(1) of the Migration Act provides that if an officer knows or reasonably suspects that a person in the migration zone is an unlawful non-citizen – that is, a person who is not a citizen and has no valid visa – the officer must detain the person. The person can, however, make a valid visa application.
- 2.98 In September 2001, the Australian Parliament passed with bi-partisan support the *Migration Amendment (Excision from Migration Zone) Act 2001*. The Migration Amendment Act created:
- a new category of person known as an 'offshore entry person'<sup>85</sup>, and
  - removed, or excised, a number of islands from Australia's migration zone including Ashmore and Cartier, Christmas, and Cocos Islands.<sup>86</sup>
- 2.99 The purpose of amending the Act was to prevent people travelling illegally to any of the above islands from making a valid visa application 'unless the Minister for Immigration determines that it is in the public interest to allow an application.'<sup>87</sup>
- 2.100 The explanatory memorandum to the Migration Amendment (Excision from Migration Zone) Bill 2001 stated:
- The purpose of excising the places and installations from the migration zone in relation to unlawful non-citizens is to prevent such persons from making a valid visa application simply on the basis of entering Australia at such a place or installation.
- 2.101 The Migration Act also provides the power for an officer to remove an offshore entry person to a declared country by placing the person on a vehicle or vessel, restraining the person in a vehicle or vessel, or removing a person from a vehicle or vessel, and using such force as is considered necessary and reasonable.<sup>88</sup>

83 Under subsection 5(1) of the *Migration Act 1958*, non-citizen means a person who is not an Australian citizen.

84 Under subsection 14(1) of the *Migration Act 1958*, a non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen. A lawful non-citizen is a national from another country who has the right to be in Australia either indefinitely or temporarily because they hold a permanent or temporary visa.

85 Under subsection 5(1) of the *Migration Act 1958*, an offshore entry person means a person who: entered Australia at an excised offshore place after the excision time for that offshore place; and became an unlawful non-citizen because of that entry.

86 *Migration Act 1958*, subsection 5(1).

87 *Migration Act 1958*, section 46A.

88 *Migration Act 1958*, section 198A.



- 2.102 If an offshore entry person is removed to a declared country, they are not considered to be in immigration detention as defined by the Migration Act.<sup>89</sup>
- 2.103 In July 2005 the Australian Parliament passed the *Migration Amendment Regulations 2005*, which excised the following additional islands:
- the Coral Sea Islands Territory, Queensland islands north of latitude 21 degrees south; Western Australian islands north of latitude 23 degrees south and Northern Territory islands north of latitude 16 degrees south.<sup>90</sup>
- 2.104 Excision does not have the effect of removing areas from Australia's sovereign territory, and thus does not affect Australians or Australian territory. However, excision prevents unlawful non-citizens who have arrived at an excised territory from accessing the visa application process (including review) of the Migration Act. The excisions have no legal effect on any other activities such as customs, quarantine or fishing laws.<sup>91</sup>

## Christmas Island immigration detention centres

- 2.105 Christmas Island is located approximately 2,800 kilometres west of Darwin, 2,600 kilometres north-west of Perth and 360 kilometres south of Jakarta. The island covers approximately 135 square kilometres, over 60 per cent of which is national park.
- 2.106 There are currently a number of detention facilities on Christmas Island including:
- a temporary facility at Phosphate Hill, which has been in use since 2001
  - the recently completed Christmas Island immigration reception and processing centre, at North-West Point, and
  - a construction camp facility, which originally developed for the accommodation of workers constructing the North West Point Immigration Detention Centre.<sup>92</sup>
- 2.107 At 29 May 2009, 443 people, including 61 children, were being held in immigration detention on Christmas Island.<sup>93</sup>

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89 *Migration Act 1958*, subsection 198A(4).

90 Parliamentary Library, 'Excising Australia: Are we really shrinking?', no. 5, 2005-06, ISSN 1449-8456, 31 August 2005, p 1.

91 Parliamentary Library, 'Excising Australia: Are we really shrinking?', no. 5, 2005-06, ISSN 1449-8456, 31 August 2005, p 1.

92 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 9, 11-12.

## Phosphate Hill immigration detention centre

### Location, size and capacity

- 2.108 The Phosphate Hill temporary immigration detention centre was opened in 2001 and is located about five kilometres from the settled areas of Christmas Island, adjacent to community recreation facilities.<sup>94</sup> The total area of the Phosphate Hill facility is approximately 1750m<sup>2</sup>.<sup>95</sup>
- 2.109 The immigration detention centre has a maximum capacity of 52 people and a surge capacity of a further 104 residents.<sup>96</sup>

### Population profile

- 2.110 At 29 May 2009, the Phosphate Hill immigration detention centre had five men in immigration detention. All five were unauthorised boat arrivals and had been in immigration detention for six months.<sup>97</sup>

### Description of facilities

- 2.111 The Phosphate Hill complex has accommodation units, a medical facility, gymnasium, classroom, recreational facilities and commercial kitchen.<sup>98</sup>
- 2.112 Accommodation units in unfenced areas are made available for children, their families, or other low-risk groups. Up to 50 people can be accommodated in family housing arrangements in unfenced areas. Most buildings are second-hand demountables. The commercial kitchen and some recreational areas were added to the Phosphate Hill complex in 2002-03.<sup>99</sup>
- 2.113 If required, a separate fenced compound is available to accommodate up to 50 adults assessed as being a higher risk.<sup>100</sup>

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93 Department of Immigration and Citizenship, submission 129w, 24 June 2009, pp 9, 11-12.

94 Department of Immigration and Citizenship, 'Accommodation at the Christmas Island Immigration Detention Centre', viewed on 22 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/christmas-island/accommodation.htm>.

95 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 11.

96 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 11.

97 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 11.

98 Department of Immigration and Citizenship, 'Accommodation at the Christmas Island Immigration Detention Centre', viewed on 22 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/christmas-island/accommodation.htm>.

99 Department of Immigration and Citizenship, 'Accommodation at the Christmas Island Immigration Detention Centre', viewed on 22 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/christmas-island/accommodation.htm>.

100 Department of Immigration and Citizenship, 'Accommodation at the Christmas Island Immigration Detention Centre', viewed on 22 June 2009 at

## Community perception

- 2.114 The Refugee Council of Australia highlighted that removal of much of the perimeter fencing has opened up the Phosphate Hill immigration detention centre to the community but that a 'significant upgrading of the centre is required to bring it up to a standard comparable with that required of detention centres on the mainland.'<sup>101</sup>
- 2.115 The AHRC, in its 2008 *Immigration Detention Report*, noted some significant concerns about the facilities at Phosphate Hill including: a low standard of accommodation, no access to the internet, and very few recreational facilities.<sup>102</sup>
- 2.116 DIAC commented that 'fencing around sections of the Phosphate Hill facilities has been removed to provide accommodation for children and families in a community environment.'<sup>103</sup>

## Committee observations

- 2.117 The Committee observed that the Phosphate Hill facilities are, on the whole, run down. The accommodation areas are cramped, lack privacy, are hot, and are also noisy when air conditioners are running. When the Committee visited on 8 July 2008 the fences surrounding Phosphate Hill had been removed, although the Committee understands that fences have again been erected around the facilities.
- 2.118 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. At the time the Committee visited Phosphate Hill, it noted that there was no suitable family accommodation space.
- 2.119 The Committee also observed that the recreational and meal areas are basic at best. The kitchen and food preparation area is derelict and substandard, and shows evidence of numerous maintenance jobs which includes extensive patching work on the floor. The patch work floor is very uneven and can be precarious in places, there is insufficient storage space, equipment is old and it is hard to comprehend how the food preparation area could be maintained to hygienic standards. The facilities do not comply with DIAC's own *Standards for Design and Fitout of*

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<http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/christmas-island/accommodation.htm>.

101 Refugee Council of Australia, submission 120, 3 September 2008, p 7.

102 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 76.

103 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 24 September 2008, p 3.

*Immigration Detention Facilities* and are in no way commensurate with Australian community standards or expectations.

- 2.120 Residents of Christmas Island remarked that they preferred the location of Phosphate Hill (and the construction camp across the road) as these facilities were more accessible to the township and to the town sport centre. This facilitated contact between the community and detainees was considered by the Christmas Island community as both positive and beneficial.
- 2.121 The Committee understands that Phosphate Hill is currently used when there is a need to separate some groups of arrivals, and in particular for those detainees who may not cope being held in the larger complex of North West Point. This may be because of trauma or psychological issues. The Committee recognises that Phosphate Hill, even with perimeter fencing, is not as intimidating as the North West Point immigration detention centre and recognises DIAC's attempts to effect more appropriate placements.

## Construction camp immigration detention centre

### Location, size and capacity

- 2.122 Located adjacent to the Christmas Island Recreation Centre and Phosphate Hill immigration detention centre, the Construction Camp is situated approximately five kilometres from the settled areas of Christmas Island. The total area of the Phosphate Hill immigration detention centre is approximately 4500m<sup>2</sup>.<sup>104</sup>

### Population profile

- 2.123 As at 29 May 2009 there were 104 people, all unauthorised boat arrivals, accommodated at the Construction Camp which included:
- thirty eight adult males
  - ten adult females
  - eighteen female minors, and
  - forty three male minors.<sup>105</sup>
- 2.124 The length of those detained ranged from one week to between one and three months.<sup>106</sup>

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104 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 9.

105 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 9.

106 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 9.

## Description of facilities

- 2.125 The accommodation consists of 88 light weight transportable accommodation buildings with shared en-suites, three recreational buildings, an administration building, laundry, stores building, kitchen dining facility, and accommodation to suit people with a disability. In total there are 105 buildings on site.<sup>107</sup>
- 2.126 The immigration detention centre, which has a low fence line surrounding it, also contains a medical facility for primary health care, gymnasium, and all weather tennis/basketball court.<sup>108</sup>

## Community perception

- 2.127 The AHRC, in its 2008 *Immigration Detention Report*, pointed out that it had some major concerns including:
- the area has no grass and very few trees
  - the bedrooms are very small and claustrophobic, and
  - no access to public phones or the internet.<sup>109</sup>
- 2.128 DIAC advised that the ‘amenity of the construction camp is being enhanced by landscaping, tree planting and construction of additional paths’ which surrounds a number of duplexes.<sup>110</sup>

## Committee observations

- 2.129 The Construction Camp immigration detention centre has superior facilities to the Phosphate Hill immigration detention centre, which is located across the road. The Committee understands that this immigration detention centre is primarily used to house family or socially connected groups of arrivals. The layout of the accommodation spaces provides privacy and also more dignity as detainees have access to separate fridges and bathrooms.
- 2.130 The Committee observed that the communal area, meal area and kitchen facilities in the Construction Camp are modern, spacious, well equipped and were generally more impressive than the Phosphate Hill immigration detention centre.

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107 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 9.

108 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 9.

109 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 77.

110 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 5.

- 2.131 At the time of the Committee's visit there were no fences around the Construction Camp although the Committee is led to understand that a fence has also now been erected.
- 2.132 The Committee also understands that DIAC endeavours to ensure that the Construction Camp houses only a small number of detainees so that there remains a good deal of physical privacy.

## North West Point immigration detention centre

### Location, size and capacity

- 2.133 The North West Point immigration detention centre is located about 20 kilometres from the main settlement on Christmas Island. The total area of the North West Point immigration detention centre is approximately 30,000m<sup>2</sup>.<sup>111</sup>
- 2.134 The North West Point immigration detention centre has an operational capacity of 400 and a surge capacity of 800.<sup>112</sup>

### Population profile

- 2.135 As at 29 May 2009 there were 334 people, all unauthorised boat arrivals, accommodated at the North West Point immigration detention centre. The length of those detained ranged from one week to between six and 12 months.<sup>113</sup>

### Description of facilities

- 2.136 The immigration detention centre has eight accommodation compounds which includes a number of support, administrative and recreational facilities including main reception, induction hall, medical facilities, kitchen/stores/laundry, internal and external visits areas, interview/conference facilities, education services and facilities, and active and passive recreational areas.<sup>114</sup>

### Community perception

- 2.137 The United Nations High Commissioner for Refugees commented that the North West Point immigration detention centre had all the characteristics of a medium security prison and 'does not believe it is an appropriate facility to accommodate asylum-seekers except, perhaps, for a very limited

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111 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 12.

112 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 12.

113 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 12.

114 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 12.

few persons whose presence in the future might pose a security threat to the local community.’<sup>115</sup>

2.138 The AHRC, in its 2008 *Immigration Detention Report*, advised that, like Villawood and the Construction Camp, it had some serious concerns about the extreme levels of security at the North West Point immigration detention centre stating:

- The Christmas Island IDC looks and feels like a high-security prison. While some of the facilities are of good quality, they are contained within an oppressive series of caged and fenced compounds and walkways. The centre is surrounded by high wire fences, and within it, each compound is contained within its own fences. Inside the centre, despite there being some open grassy areas, the excessive amount of wire fencing surrounding each compound makes one feel caged in.
- The bedrooms are small, dim and claustrophobic. The windows are obscured by metallic mesh grills.
- The highest security section of the centre, the management support unit, looks and feels extremely harsh and punitive.
- The observation rooms in the medical area do not appear to be safe for people at risk of self-harm. The outdoor area linked to the observation rooms is inappropriate for people at risk of self-harm.
- The location of the centre makes it difficult for locals to access in order to visit or provide support to detainees.<sup>116</sup>

2.139 DIAC advised that they considered the facilities at North West Point better than the facilities at the Construction Camp and Phosphate Hill.<sup>117</sup> DIAC added that they had relaxed the security arrangements and opened the security doors so that people are able to move freely and gain access to as much of the centre as possible, including the gym, the library, and the tennis court.<sup>118</sup>

## Committee observations

2.140 At the time of the Committee inspection of the North West Point immigration detention centre, the centre had not been used to house any detainees. It is now the major immigration detention centre on the island.

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115 United Nations High Commissioner for Refugees, submission 133, 17 September 2008, p 15.

116 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 76.

117 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 25.

118 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 15.

- 2.141 The Committee was appalled at the extraordinarily high level of security incorporated into North West Point and considers this security to be inappropriate and inconsistent with the current immigration principles. The level of security in terms of the height of the electrified fences, surveillance, and the segregation of staff from detainees, was considered to be excessive and inhumane and bordering on ludicrous.
- 2.142 The Committee notes reports from DIAC that many of these security measures have not been activated, and that doors between areas have been opened.
- 2.143 At the time the Committee undertook its inspection, it noted that the level of security implemented on Christmas Island is not welcomed by the residents of the island, and is not required given the island's location. The committee observed that steps taken to ensure that residents of the immigration detention centre are safe, and that they do not stray into dangerous vegetated areas, can be addressed in a more appropriate manner than containing them within electrified fences.
- 2.144 The Committee also notes that the North West Point facilities included an extensively equipped hairdressing salon and the canteen supplied a number of different board games which could be purchased by detainees. The Committee believed that this gave the impression that detainees were going to *live* there rather than being accommodated for a minimum time until their case was resolved.
- 2.145 Facilities inside the North West Point immigration detention centre are extensive and able to cater to different groups by separating areas and providing more or less security in a specific area if required. However, this security can often be intrusive.
- 2.146 There is also a significant cost for maintaining the North West Point immigration detention centre. It costs the Government \$32 million per annum to detain up to 30 people in the North West Point immigration detention centre.<sup>119</sup>
- 2.147 These excessive security measures combined with the extraordinary ongoing maintenance costs associated with the size of the immigration detention centre require careful consideration as to whether this type of facility is still an appropriate part of a contemporary immigration framework.

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119 Senate Legal and Constitutional References Committee, *Estimates* (May 2008), Parliament of the Commonwealth of Australia, p 118.



## Immigration residential housing

- 2.148 Immigration residential housing facilities are detention facilities<sup>120</sup> that provide an option for accommodating people in family-style housing in a community setting while still formally being detained.<sup>121</sup> This type of facility is one of several types of alternative residential accommodation for detained people.
- 2.149 However, participation is voluntary and subject to eligibility criteria. People who are detained are eligible to voluntarily participate in immigration residential housing depending on:
- places being available
  - health and character checks
  - an assessment verifying the detainee is not likely to abscond, and
  - any operational issues particular to the person in immigration detention or affecting the smooth management of the immigration residential housing.<sup>122</sup>
- 2.150 Those who participate are able to cook their own food and undertake trips to other locations for shopping and recreation under the supervision of the detention service provider.

## Perth immigration residential housing

### Location, size and capacity

- 2.151 Opened in 2007, the Perth immigration residential housing is located in suburban Redcliffe. The immigration residential housing is approximately two kilometres from the Perth immigration detention centre and airport and approximately 10 kilometres from Perth CBD. The site is approximately 1800m<sup>2</sup> in size. One additional property nearby has been rented to increase the capacity in the short term and is being used as an annexe to the Perth immigration residential housing.<sup>123</sup>

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120 Australian Human Rights Commission, 'Immigration detention and human rights', viewed on 31 July 2009 at [http://www.hreoc.gov.au/Human\\_Rights/immigration/detention\\_rights.html](http://www.hreoc.gov.au/Human_Rights/immigration/detention_rights.html).

121 Department of Immigration and Citizenship, 'About Immigration Detention Facilities', viewed on 22 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/immigration-detention-facilities.htm>.

122 Department of Immigration and Citizenship, 'Eligibility for Participation', viewed on 26 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/rhcs.htm>.

123 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 15.

## Population profile

- 2.152 At 29 May 2009, the Perth immigration residential housing had 14 men and four children, all unauthorised boat arrivals, in immigration detention. None of the 18 had lodged a PV application while in immigration detention. The length of those detained ranged from one week to between six and 12 months.<sup>124</sup>

## Description of facilities

- 2.153 The Perth centre comprises two single storey dwellings capable of accommodating different family compositions. Each house consists of five bedrooms, two bathrooms, kitchen and dining facilities and two living areas. One house is configured to accommodate people with disabilities.<sup>125</sup>
- 2.154 An additional building is provided for all residents and their visitors as well as being used for administration purposes. The facility is surrounded by a suburban fence and border plantings and includes security. Other outdoor areas also feature local native plants and informal landscaped areas surround the dwellings.<sup>126</sup>

## Community perception

- 2.155 When commenting on immigration residential housing facilities, the AHRC stated:

IRH facilities aim to provide family-style housing where detainees can experience greater autonomy. Detainees can prepare and cook their own food and make shopping trips and other excursions under the supervision of the detention services provider. The detainees whom HREOC spoke to in these facilities were in general happier to be in IRH than in the IDCs, due to increased freedom, privacy and autonomy.<sup>127</sup>

- 2.156 However, the AHRC did indicate that they had some concerns about the Perth immigration residential housing, as outlined in its 2008 *Immigration Detention Report*:

- a lack of onsite interpreters, and

124 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 15.

125 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 25 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/perthIRH/accommodation.htm>.

126 Department of Immigration and Citizenship, 'Accommodation and Facilities', viewed on 25 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/locations/perthIRH/accommodation.htm>.

127 Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission), submission 99, 27 August 2008, p 36.

- no onsite access to health or mental health services.<sup>128</sup>
- 2.157 The Refugee Council of Australia agreed with the AHRC's view that the facilities were softer detention environments stating that 'the immigration residential housing facilities in Perth and Villawood provide a good model for future standards of accommodation which meet the detention values.'<sup>129</sup>

### Committee observations

- 2.158 The immigration residential housing facilities are based on a less restrictive format of immigration detention. Being comparatively new facilities, the building is modern and the environment was significantly different to those observed at immigration detention centres.
- 2.159 The facility is located at the end of a suburban street and does not impose on the surrounding environment, quite easily fitting in with the surrounding houses. The fencing on the perimeter of the property is similar to those found in a normal suburban house, with the rear boundary fencing using only electronic sensors as a deterrent.
- 2.160 The recreational areas, in the view of the Committee, were favourably appointed and contained outdoor furniture and barbecue facilities.
- 2.161 Immigration residential housing is comfortable, with all of the modern conveniences of a functioning suburban home. The facilities are well equipped and have shared fully operational laundry and kitchen.
- 2.162 At the time of the Committee's inspection of the Perth immigration residential housing, two groups were being held in immigration detention: a young family with a child and two adult males who had spent considerable time in immigration detention.
- 2.163 Whilst the accommodation at the immigration residential housing allowed for the separation of the two groups, both had access to shared common reception areas which may not have been ideal for the child and her family. The Committee does acknowledge that DIAC staff were trying to expeditiously source accommodation in the community for the family.

### Sydney immigration residential housing

- 2.164 The Sydney immigration residential housing was opened in 2006 as an alternative to detention arrangements at the neighbouring Villawood immigration detention centre.

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128 Australian Human Rights Commission, *Immigration detention report – December 2008*, pp 61-62.

129 Power P, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 2.

## Location, size and capacity

- 2.165 While located next to Villawood, the Sydney immigration residential housing is a separate facility from the immigration detention centre. The Sydney immigration residential housing is approximately 8100m<sup>2</sup> in size.<sup>130</sup>
- 2.166 The Sydney immigration residential housing has a regular use capacity of eight family groupings, or 34 individuals with a surge capacity of 48.<sup>131</sup>

## Population profile

- 2.167 At 29 May 2009, the Sydney immigration residential housing had 10 men and two women in immigration detention. Five were detained as a result of compliance action, and seven were unauthorised air arrivals.<sup>132</sup>
- 2.168 Of those:
- one had not lodged a PV application while in detention
  - eight had a PV application on hand, and
  - three had their PV application finalised without grant.<sup>133</sup>
- 2.169 The length of those detained ranged from between one and three months to more than two years.<sup>134</sup>

## Description of facilities

- 2.170 The Sydney immigration residential housing comprises four blocks of two duplex units arranged in a single line. Each unit comprises three bedrooms, two living/ dining rooms, kitchen, laundry and two bathrooms and toilets. The internal arrangement of each unit is designed to enable separation of living areas (with shared kitchen and laundry) if required.<sup>135</sup>

## Community perception

- 2.171 As noted above, the Refugee Council of Australia was of the opinion that the immigration residential housing facilities are a good model. They did, however, comment that they had a couple of issues with the Villawood immigration residential housing stating:
- A sense of a detention environment is, I think, a little stronger with Villawood Immigration Residential Housing than it is

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130 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 13.

131 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 13.

132 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 13.

133 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 13.

134 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 14.

135 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 13.

with Perth Immigration Residential Housing, but I think that could be relatively easily addressed because it is really to do with perimeter fencing and the configuration of the entrance to the Immigration Residential Housing.

- I think the other factor which is raised by a number of organisations that visit there regularly...is the level of activities for people in Villawood Immigration Residential Housing. I think that really needs to be looked at more carefully.<sup>136</sup>

2.172 As with the Perth IRC, the AHRC noted, in its 2008 *Immigration Detention Report*, that there is no on-site access to health or mental health services.<sup>137</sup>

2.173 The Jesuit Refugee Service Australia was also of the opinion that immigration residential housing is the preferred model to immigration detention centres.<sup>138</sup>

2.174 The Bridge for Asylum Seekers Foundation noted that, in their experience, detainees do not complain about the accommodation but 'have problems with the lack of activities available.'<sup>139</sup>

### Committee observations

2.175 Unlike the Perth immigration residential housing which is located in the suburbs, the immigration residential housing at Villawood is housed in a less restrictive more accessible part of the detention facility.

2.176 The infrastructure at the Sydney immigration residential housing is new, up-to-date and appears to be acceptably comfortable.

2.177 The outdoor living space is also landscaped and is a stark contrast to the Villawood immigration detention centre.

### Immigration transit accommodation

2.178 Immigration transit accommodation has been introduced for short term, 'low flight risk' people who have no known medical or mental health issues.

2.179 Immigration transit accommodation offers hostel style accommodation, with central dining areas and semi-independent living. Immigration transit accommodation provides a narrower range of services at a less

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136 Power P, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 5.

137 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 60.

138 Jesuit Refugee Service Australia, submission 73, 27 August 2008, p 4.

139 Bridge for Asylum Seekers Foundation, submission 5, 27 August 2008, p 1.

intensive level than is typically offered in an immigration detention centre because of the short-stay nature of the client group.

2.180 However, immigration transit accommodation is a detention facility where detainees are not able to come and go as they please.<sup>140</sup>

## Melbourne immigration transit accommodation

2.181 The Melbourne immigration transit accommodation, which opened in June 2008, is the second of three immigration transit accommodation facilities to become operational in Australia.

### Location, size and capacity

2.182 The Melbourne immigration transit accommodation is located 15 kilometres north of Melbourne's CBD, next door to Maygar Barracks, and approximately two kilometres east of the Broadmeadow Town Centre. The Melbourne immigration transit accommodation is a double brick two storey refurbished building of approximately 1000m<sup>2</sup>.<sup>141</sup>

2.183 The Melbourne immigration transit accommodation has been designed to provide accommodation for up to 30 people.<sup>142</sup>

### Population profile

2.184 At 29 May 2009, the Melbourne immigration transit accommodation had seven men and one woman in immigration detention. Two were detained as a result of compliance action and six were unauthorised air arrivals.<sup>143</sup>

2.185 Of those:

- five had a PV application on hand
- one had their PV application under merits or judicial review of a decision in relation to their application for a PV, and
- two had not lodged a PV application while in detention.<sup>144</sup>

2.186 The length of those detained ranged from one week to between six and 12 months.<sup>145</sup>

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140 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 82.

141 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 18.

142 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 18.

143 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 18.

144 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 18.

145 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 18.

## Description of facilities

2.187 The Melbourne immigration transit accommodation has 16 bedrooms, two with single bed accommodation and en-suites. There are four sitting rooms throughout the building, a main lounge, two private visitors' rooms, internet lounge, dining room and kitchen. There is also an independent accommodation wing – 'the Maygar Annex' – provided at the rear of the building. The facility is air conditioned and the site has been extensively landscaped.<sup>146</sup>

## Community perception

2.188 The Detention Health Advisory Group stated:

The new immigration transit accommodations in Melbourne and Brisbane and residential housing units are of a high standard and are positive examples of a new approach to immigration detention focusing on short term, flexible and comfortable accommodation less likened to correctional facilities than other centres.<sup>147</sup>

2.189 The Hotham Mission Asylum Seeker Project was pleased with the services provided at the immigration transit accommodation and thought that it was a good centre even though they considered that there were some problems with food service provision that need to be improved.<sup>148</sup>

2.190 The AHRC has the same views on immigration transit accommodation and immigration residential housing, stating:

Many of the positive comments about the immigration residential housing facilities...also apply to the immigration transit accommodation facilities. The Brisbane and Melbourne ITAs provide a much higher standard of accommodation than the immigration detention centres. The facilities are newer and more comfortable. The security measures are less intrusive and, as a result, the atmosphere is more relaxed. Detainees have greater privacy, usually having their own bedroom.<sup>149</sup>

## Committee observations

2.191 The Committee visited the Melbourne immigration transit accommodation right after visiting the Maribyrnong immigration

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146 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 18.

147 Detention Health Advisory Group, submission 101, 27 August 2008, p 2.

148 Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 37.

149 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 62.

detention centre. The visit provided a stark contrast to the range of facilities currently being used by DIAC.

- 2.192 The purpose of immigration transit accommodation is to accommodate detainees for a relatively short time, and therefore detainees do not have access to onsite physical and mental health services.
- 2.193 Given the context of transit accommodation and the purpose of the facility, the Committee was of the view that the immigration transit accommodation was exceptional. The immigration transit accommodation had a minimum level of security, low fencing and was close to open recreational space.
- 2.194 The facilities available to the people using it were also of a high standard and provided different living areas within the accommodation, indoors as well as outdoors, promoting a sense of openness and space.
- 2.195 The Committee formed the view that the accommodation facilities within the immigration transit accommodation appeared to be modern, spacious and comfortable. The laundry facilities were also well equipped.

### **Brisbane immigration transit accommodation**

- 2.196 Opened in 2007, the Brisbane immigration transit accommodation was the first of three immigration transit accommodation facilities to become operational.

#### **Location, size and capacity**

- 2.197 The Brisbane immigration transit accommodation is located at Pinkenba in Queensland, adjacent to the Brisbane airport and approximately 15 kilometres from Brisbane's CBD. The Brisbane immigration transit accommodation is approximately 1065m<sup>2</sup> in size.<sup>150</sup>
- 2.198 The Brisbane immigration transit accommodation has been designed to provide accommodation for up to 29 people.<sup>151</sup>

#### **Population profile**

- 2.199 At 29 May 2009, the Brisbane immigration transit accommodation had 16 men and one child, all unauthorised boat arrivals, in immigration detention. All 17 had not lodged a PV application while in detention. The length of those detained ranged from one week to between one and three months.<sup>152</sup>

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150 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 17.

151 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 17.

152 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 17.



## Description of facilities

2.200 The Brisbane immigration transit accommodation has three accommodation buildings with individual kitchenettes and lounge/entertainment area. Also included is a common use building for kitchen, meals area, induction/interview rooms, medical room, storage, as well as offices for DIAC staff, and the detention services provider.<sup>153</sup>

## Community perception

2.201 As noted previously in this chapter, the AHRC believes that immigration transit accommodation provides a much higher standard of accommodation. They did however have a few concerns about the Brisbane immigration transit accommodation which included no access to cooking facilities and a lack of written induction materials and complaint forms for detainees.<sup>154</sup>

## Committee observations

2.202 As outlined with its observations of the Melbourne immigration transit accommodation, the Brisbane facilities provide a similar high standard of accommodation for short term detainees.

## Darwin juvenile facilities

2.203 At the time of writing this report, DIAC was in the process of constructing a purpose built facility to accommodate juvenile detainees who have been apprehended with adult crew members on boats suspected of illegal fishing activities in Australia's northern waters.<sup>155</sup>

2.204 At the moment, any juvenile that is detained is placed in a motel in Darwin where DIAC has a number of rooms reserved on an ongoing basis.<sup>156</sup>

## Location, size and capacity

2.205 These juvenile detainees are accommodated in a motel in central Darwin. Nine motel rooms are booked by DIAC on a permanent basis.

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153 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 17.

154 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 64.

155 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 83.

156 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 83.

- 2.206 The facility which is under construction will be situated on the site of the Northern immigration detention centre but outside the fence and will have a floor area of approximately 213m<sup>2</sup>. The house will have an operating capacity of 12 and a surge capacity of 16.<sup>157</sup>

### Population profile

- 2.207 As at 29 May 2009, the Darwin juvenile facility had no-one in immigration detention.<sup>158</sup>

### Description of facilities

- 2.208 The motel has 86 air conditioned units, an onsite restaurant, a saltwater swimming pool and laundry facilities. The rooms are in a corner of the motel and there is an outdoor area available for them all to sit. They have rearranged the rooms so that there are four single beds to a motel room.<sup>159</sup>
- 2.209 One of the motel rooms has had all the beds removed and been converted into a recreation room with a TV, Xbox, games etc. A second motel room has been converted into an officer's station. There is also a pool at the motel which they can use under supervision. All food is delivered from the Northern immigration detention centre and eaten at the motel.<sup>160</sup>
- 2.210 The new facility will be surrounded by a residential style fence and have four bedrooms.<sup>161</sup> The new facility is expected to be completed by the end of 2009.<sup>162</sup>

### Committee observations

- 2.211 In Darwin, the Committee also inspected the motel where juvenile illegal foreign fishers were being housed. DIAC was leasing the motel facilities where juveniles could be housed and provided with care and security.
- 2.212 At the time of the Committee visit to Darwin, a new purpose built facility was being built on the site of the Northern immigration detention centre for juvenile illegal foreign fishers.
- 2.213 Although these motel facilities were far from ideal, the Committee recognises the efforts made by DIAC and the detention service provider to provide alternative accommodation to the immigration detention centre

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157 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

158 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 4.

159 Human Rights and Equal Opportunity Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007* (December 2007), pp 21-22.

160 Human Rights and Equal Opportunity Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007* (December 2007), pp 21-22.

161 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 84.

162 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 84.

while a more suitable accommodation complex was being constructed. The Committee also notes the efforts made by DIAC to ensure that juvenile fishers, who often have strong social bonds with the crew members from the boat, are given the opportunity to have frequent contact and engage in social activities with the Indonesian fishers they may have been aboard with.

- 2.214 The Committee is supportive of the construction of a purpose built facility for juveniles and, in this instance, notes the appropriateness that the facility is housed adjacent to the Northern immigration detention centre. The Committee also notes that landscaping between the facilities was intended to add some privacy and to ensure that the juvenile facility had a pleasant view.

## **Christmas Island duplexes and community placements**

- 2.215 In addition to being placed in one of the three detention facilities on Christmas Island, detainees are also placed in the community in duplex accommodation and units that are owned by DIAC.

### **Location, size and capacity**

- 2.216 DIAC has ten duplex houses located at Drumsite, the closest of the accommodation options to the local school. The houses could be used for families or small groups.<sup>163</sup>
- 2.217 DIAC also has approximately 160 bedrooms available in bedsit units. The units are located at Poon Saan, about halfway between the Phosphate Hill immigration detention centre and the town area.<sup>164</sup>

### **Description of facilities**

- 2.218 While the Committee did not visit these facilities, information received from DIAC indicated that the houses are furnished and each duplex has three bedrooms, a living room, a kitchen and dining area, laundry facilities, a bathroom, and a small back courtyard area.<sup>165</sup>
- 2.219 Each bedsit unit is like a small studio apartment with a double bed, TV, table and chairs, kitchenette and a combined bathroom and laundry room. The bedsits are much smaller than the duplexes but some of them have adjoining doors, so two units could be joined together for use by small

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163 Australian Human Rights Commission, *Immigration detention report – December 2008*, pp 77-78.

164 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 78.

165 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 77.

groups or families. Eight of the rooms have been turned into interview rooms.<sup>166</sup>

## Community perception

- 2.220 The AHRC, in its 2008 *Immigration Detention Report*, noted that ‘the duplexes and bedsits are the least objectionable accommodation options for immigration detainees on the island, and should be used as the first preference.’<sup>167</sup>
- 2.221 NLA and the Uniting Church in Australia both noted, however, that Christmas Island may not have the appropriate resources to cater for a large detainee community with very specific needs which would, in turn, place an extra burden on the community.<sup>168</sup> NLA stated:
- ...there are broader types of community care, social welfare, professional assistance, mental and psychological problems, health problems; they have a very small resource to draw on here. So detention in the community here places a real problem on the community and it's not fair on them.<sup>169</sup>
- 2.222 The AHRC, the Forum of Australian Services for Survivors of Trauma or Torture, the Public Interest Advocacy Centre Ltd and the Federation of Ethnic Communities’ Councils of Australia all acknowledged that placing detention facilities in remote locations creates difficulties for providing appropriate medical, psychiatric, counselling and legal services.<sup>170</sup>

## Contingency facilities

- 2.223 As noted previously, DIAC has contingency facilities located at Port Headland, Western Australia, and Port Augusta, South Australia.

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166 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 78.

167 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 78.

168 National Legal Aid, submission 137, 24 October 2008, p 15; Uniting Church in Australia, submission 69, 27 August 2008, p 15.

169 National Legal Aid, submission 137, 24 October 2008, p 15.

170 Forum of Australian Services for Survivors of Trauma or Torture, submission 115, 27 August 2008, p 18; Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission), submission 99, 27 August 2008, p 34; Public Interest Advocacy Centre Ltd, submission 84, 27 August 2008, p 11; Federation of Ethnic Communities’ Councils of Australia, submission 71, 27 August 2008, p 5.

- 2.224 The Port Hedland Immigration Reception and Processing Centre and the Port Hedland immigration residential housing are located in the Pilbara town of Port Hedland, some 1760 kilometres North of Perth.<sup>171</sup>
- 2.225 The Port Hedland facility has an operational capacity to accommodate up to 504 people and a surge capacity of 720 people.<sup>172</sup>
- 2.226 The Port Hedland facilities include ten two-storey buildings of similar size and ancillary buildings, providing administration for DIAC and contractor personnel and air conditioned accommodation for people in immigration detention. At the time this report was written, this facility was being leased for two years with a return clause to DIAC at three months notice.<sup>173</sup>
- 2.227 The Port Augusta facility consists of nine three-bedroom homes, one of which provides office type accommodation for the detention services provider and one of which is able to accommodate a person with a disability. While there are currently no detainees, the facilities are available to be used at a moments notice.<sup>174</sup>
- 2.228 DIAC is also considering building an immigration transit accommodation in Adelaide.<sup>175</sup>

## Committee conclusions

- 2.229 The Committee received clear evidence during the course of this inquiry illustrating that the accommodation and facilities provided in immigration transit accommodation and immigration residential housing are more appropriate and humane than those provided at immigration detention centres.
- 2.230 There were concerns about some of the facilities at immigration detention centres that appeared like a traditional prison with extreme levels of security: detainees lacked access to fresh, good quality air and to outside exercise areas; had a lack of privacy and no access to public phones or the internet. The standard of cleanliness could be improved in some of the centres.

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171 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 20.

172 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 20.

173 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 20.

174 Department of Immigration and Citizenship, submission 129w, 24 June 2009, p 20.

175 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 5.

- 2.231 In particular, the facilities at the Perth immigration detention centre, Stage 1 at the Villawood immigration detention centre, were of a serious concern. Both immigration detention centres are in need of urgent attention and are a priority of the Committee.
- 2.232 The Committee notes the Government announcement that it will provide \$186.7 million over the next five years to redevelop the Villawood immigration detention centre. However, given the concerns about the current status of the infrastructure and facilities, the timeframe set for any redevelopment needs to be revised.
- 2.233 In addition, the Committee notes that the proposal to redevelop the Villawood immigration detention centre has yet to be referred to the Parliamentary Standing Committee on Public Works. The Committee therefore recommends that the proposed work to the Villawood immigration detention centre be referred to the Parliamentary Standing Committee on Public Works for consideration and report as a matter of urgency.

### **Recommendation 1**

- 2.234 **The Committee reiterates that reconstruction of Stage 1 at Villawood remains urgent and a priority of the Committee.**
- 2.235 The Committee also notes the intent to upgrade the facilities at the Perth immigration detention centre. An upgrade of this facility is long overdue and the Committee recommends that action be taken immediately.

### **Recommendation 2**

- 2.236 **At the very least, the Committee recommends that the upgrade of the Perth immigration detention centre proceed as proposed. Given the limited lease arrangements, the Australian Government should also examine long term options with the intent to establish a purpose built long-term facility.**
- 2.237 The Committee also observed that the security measures implemented at the North West Point immigration detention centre on Christmas were extreme and inhumane.
- 2.238 If North West Point is to be used as an immigration detention centre on an ongoing basis, the Committee recommends that more permanent

measures are required to lessen the internal security to a more appropriate level and this may involve the removal of some caged walkways, perspex barriers, and electrified fencing.

### **Recommendation 3**

- 2.239 **The Committee recommends that all caged walkways, perspex barriers, and electrified fencing be removed from the North West Point immigration detention centre and replaced with more appropriate security infrastructure.**
- 2.240 On the whole, the community perception of immigration residential housing and immigration transit accommodation was that it provided detainees a higher standard of accommodation and facilities than immigration detention centres. A few organisations commented that they were the preferred model for future standards of accommodation which meet the detention values. Community detention was also looked on as a more favourable option to detention in an immigration detention centre.
- 2.241 However, each type of these immigration detention facilities has its limitations. Various groups expressed wide ranging concerns which included a lack of onsite interpreters, no onsite access to health or mental health services, and excessive security arrangements.
- 2.242 Another concern that was brought to the attention of the Committee was the physical location of the facility, at the end of a suburban street.
- 2.243 It is the Committee's view that secure detention will continue to play an important role in our immigration system. The evidence suggests, however, that it is not necessary to keep people who meet the criteria for release in secure detention centres for long periods of time awaiting resolution of their immigration status.
- 2.244 The Committee notes the Government announcement to commit \$ 77.4 million to implement key immigration compliance and detention policy improvements which includes addressing the prompt resolution of an individual's immigration status.
- 2.245 Immigration residential housing and immigration transit accommodation are specifically designed to accommodate short term detainees. They are also able to provide optimal care and accommodation and, on occasion, are a more appropriate and humane immigration detention alternative.
- 2.246 The Committee believes that placing detainees in immigration residential housing and immigration transit accommodation for the shortest time as

possible complements the Government's intention to address the prompt resolution of an individual's immigration status.

- 2.247 The Committee notes that DIAC's website states 'People who are detained are eligible to voluntarily participate in immigration residential housing'.<sup>176</sup> The Committee also understands that DIAC's client placement model is currently under review following the recently announced reforms to the immigration detention system.
- 2.248 The Committee recommends that detention in immigration residential housing should be used in lieu of detention in an immigration detention centre provided that it is feasible.
- 2.249 The Committee is also of the view that immigration transit accommodation could be utilised by DIAC on a more regular basis, provided that detainees meet the eligibility criteria.
- 2.250 While an assessment is being made on whether an individual is eligible to be placed in an immigration residential housing or immigration transit accommodation, or released into the community, the concerns that both individuals and organisations have made about all immigration detention facilities, and in particular immigration detention centres, need to be addressed as a matter of priority.

#### **Recommendation 4**

- 2.251 **The Committee recommends that detention in immigration residential housing should be used in lieu of detention in immigration detention centres provided that it is feasible.**
- 2.252 As noted above, a number of organisations that provided evidence during the course of the inquiry raised concerns over immigration detention centres appearing like traditional prisons with excessive levels of security, noting in particular the use of razor/barbed wire fencing.
- 2.253 The AHRC, in its 2008 *Immigration Detention Report*, considered that the security-driven atmosphere at the immigration detention centres was a major concern.<sup>177</sup> The AHRC added:

This is created by the use of physical measures such as high wire fencing and razor wire, and surveillance measures such as closed

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<sup>176</sup> Department of Immigration and Citizenship, 'Eligibility for Participation', viewed on 26 May 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/rhcs.htm>.

<sup>177</sup> Australian Human Rights Commission, *Immigration detention report – December 2008*, p 22.



circuit television. The DIAC Standards state that '[t]he underlying principle for security systems at all detention facilities is that security must be as unobtrusive as possible' and that '[c]rude containment devices such as razor wire, observation platforms, correctional fencing should be avoided wherever possible.' In practice, this is far from being achieved.<sup>178</sup>

- 2.254 The Committee is of the view that the use of razor/barbed wire at immigration detention centres is a disproportionate security measure. The Committee therefore recommends that all razor/barbed wire fencing is removed from all immigration detention centres and replaced with more appropriate fencing.

### **Recommendation 5**

- 2.255 The Committee recommends that all razor/barbed wire fencing is removed from all immigration detention centres and replaced with more appropriate fencing.**

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178 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 22.



## Provision of services in detention facilities

- 3.1 The previous chapter of this report focused on the type of immigration detention facilities that are available for the Department of Immigration and Citizenship to place unlawful non-citizens.
- 3.2 This chapter focuses on the range of services provided in Australia's immigration detention facilities.

### **Overview of immigration detention services**

#### **Background**

- 3.3 Introduced in 1992, the policy of mandatory detention was envisaged as a temporary and exceptional measure for a particular group of unauthorised arrivals or 'designated' persons who arrived by boat. Since that time, the Australian Government has invested in the construction and expansion of a network of secure immigration detention facilities.
- 3.4 Prior to December 1997 detention facilities were operated by the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). Security at the detention centres was provided by the Australian Protective Service, an agency within the Attorney-General's portfolio, while other services such as food, health, education and welfare were provided either directly by DIMIA or by individual sub-contractors.<sup>1</sup>
- 3.5 In August 1996 the Commonwealth Government announced its intention to privatise the operations of Australia's immigration detention centres

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<sup>1</sup> Australian National Audit Office, Audit Report No. 54 2003-04, *Management of detention centre contracts - Part A*, pp 11, 49.

(IDCs) as part of its Budget discussion. The Government of the time had formed the view that detention services should be contestable.<sup>2</sup>

Privatisation was also viewed as a means of cost savings and improving the efficiency of immigration detention services provision.<sup>3</sup>

- 3.6 Privatisation was also favoured in the context of an increasing international and Australian trend for private delivery of government services<sup>4</sup>, particularly in correctional management.<sup>5</sup>

## Privatisation of detention services

- 3.7 The provision of immigration detention services at immigration detention facilities was subsequently outsourced in November 1997,<sup>6</sup> when Australasian Corrective Services, through the organisation's operational arm Australasian Correctional Management (ACM), was awarded the detention services contract. The contract was formally signed in February 1998.<sup>7</sup>

- 3.8 The contract was for an initial period of three years 'but was extended as a result of negotiations with ACM, a tender process, negotiations with the preferred tenderer and the formal contract transition period.'<sup>8</sup> The Detention Services Contract with ACM ran for six years.<sup>9</sup>

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2 The Public Interest Advocacy Centre, *Immigration detention in Australia: the loss of decency and humanity*, Submission to the People's Inquiry into Immigration Detention, 2006 p 5; Flood P, Report of Inquiry into Immigration Detention Procedures 2001 para 4.1, viewed on 17 June 2009 at <http://www.spareroomsforrefugees.com/pages/flood.htm>; Bente Molenaar and Rodney Neufeld, 'The Use of Privatised Detention Centers for Asylum Seekers in Australia and the UK' in Andrew Coyle, Allison Campbell and Rodney Neufeld (eds) *Capitalist Punishment: Prison Privatisation & Human Rights* 2003, p 129.

3 The Public Interest Advocacy Centre, *Immigration detention in Australia: the loss of decency and humanity*, Submission to the People's Inquiry into Immigration Detention, 2006 p 5.

4 Reserve Bank of Australia, Reserve Bank of Australia Bulletin, *Privatisation in Australia* (December 1997), p 1.

5 NSW Parliamentary Library Research Service, 'Privatisation of Prisons', Background Paper No 3/04, viewed on 7 July 2009 at [http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/0/ED4BA0B9D18C2546CA256EF9001B3ADA/\\$File/bg03-04.pdf](http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/0/ED4BA0B9D18C2546CA256EF9001B3ADA/$File/bg03-04.pdf).

6 Australian National Audit Office, Audit Report No. 1, 2005-06, *Management of detention centre contracts- Part B*, p 11.

7 Australian National Audit Office, Audit Report No.54 2003-04, *Management of detention centre contracts- Part A*, p 49.

8 Australian National Audit Office, Audit Report No.54 2003-04, *Management of detention centre contracts- Part A*, p 46.

9 Australian National Audit Office, Audit Report No.54 2003-04, *Management of detention centre contracts- Part A*, p 12.

- 3.9 At that time, DIMIA incorporated a set of Immigration Detention Standards (the Standards) into its contract with ACM.<sup>10</sup> The Standards, which were developed in consultation with the Commonwealth Ombudsman and a range of agencies, were designed to set out the Government's obligations to meet the individual care needs of detainees in a culturally appropriate way while at the same time providing safe and secure detention.<sup>11</sup>
- 3.10 The Committee received evidence from a number of organisations that highlighted concerns about the privatisation of detention services. These community concerns are detailed later in this chapter.

### Systemic issues in immigration detention centres

- 3.11 Following the privatisation of immigration detention services, evidence began to emerge indicating that there were wide-ranging systemic issues across all immigration detention centres.<sup>12</sup>
- 3.12 In September 1999, an own motion investigation<sup>13</sup> by the Office of the Commonwealth Ombudsman into the management and operation of immigration detention centres was undertaken in response to an increase in complaints and a number of reported incidents which included escapes and several allegations of detainee assaults.<sup>14</sup>
- 3.13 Following its investigation, the Commonwealth Ombudsman's Office released its *Report of Own Motion Investigation into the Department of Immigration and Multicultural Affairs Immigration Detention Centres* in 2001. The report concluded:

[The Commonwealth Ombudsman's] investigation revealed evidence at every IDC of self-harm, damage to property, fights and assaults, which suggested that there were systemic deficiencies in the management of the detainees, including individuals and groups, staff, women and children.<sup>15</sup>

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10 Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (March 2000), p 3.

11 Department of Immigration and Multicultural and Indigenous Affairs, 'Future Operation of Immigration Detention Services', media release, 17 September 1997.

12 The Public Interest Advocacy Centre, *Immigration detention in Australia: the loss of decency and humanity*, Submission to the People's Inquiry into Immigration Detention, 2006, p 6.

13 The Commonwealth Ombudsman may undertake an inquiry or investigation into a matter or systemic issue without receiving a specific complaint – thus 'own motion' investigation.

14 Commonwealth Ombudsman, *Report of Own Motion Investigation into the Department of Immigration and Multicultural Affairs Immigration Detention Centres* (2001) p 2.

15 Commonwealth Ombudsman, *Report of Own Motion Investigation into the Department of Immigration and Multicultural Affairs Immigration Detention Centres* (2001) p 2.

- 3.14 In February 2001, Phillip Flood reported on immigration detention procedures on behalf of the then Minister for Immigration and Multicultural Affairs, Phillip Ruddock. The report's main focus was on the 'allegations, instances or situations where there [was] reasonable suspicion of child abuse in detention centres' occurring between December 1999 through to November 2000.<sup>16</sup>
- 3.15 The Flood report uncovered many problems in DIMIA's processes, administration and management of detention service provision and noted that they required urgent attention.<sup>17</sup>
- 3.16 In January 2002, the Woomera Immigration Reception and Processing Centre in South Australia 'was the scene of a number of riots, as well as a prolonged hunger strike by over 200 detainees.'<sup>18</sup> Allegations were made that officers employed by ACM had 'used excessive force when dealing with detainees' and subjected detainees to racial abuse.<sup>19</sup>

### Immigration detention guidelines

- 3.17 The reports mentioned above emphasised the need for improvement and called for change. It was recognised that the provision of services within the context of immigration detention should be directly linked with respect to the human rights of people in immigration detention.
- 3.18 In response to the serious concerns raised, the Australian Human Rights Commission (AHRC), formerly the Human Rights and Equal Opportunity Commission (HREOC), developed the Immigration Detention Guidelines:
- ...to facilitate further dialogue and cooperation among the Commission, detention authorities (DIMA and ACM) and relevant non-government agencies in the development of acceptable minimum standards for immigration detention in Australia.<sup>20</sup>
- 3.19 The Immigration Detention Guidelines were based on relevant international standards which set out minimum requirements for the treatment and conditions of detained persons including the International

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16 Flood P, *Report of Inquiry into Immigration Detention Procedures* (2001), viewed on 24 June 2009 at <http://www.spareroomsforrefugees.com/pages/flood.htm>.

17 Flood P, *Report of Inquiry into Immigration Detention Procedures* (2001), paras 6.1-7.8, viewed on 24 June 2009 at <http://www.spareroomsforrefugees.com/pages/flood.htm>.

18 The Public Interest Advocacy Centre, *Immigration detention in Australia: the loss of decency and humanity*, Submission to the People's Inquiry into Immigration Detention (2006), p 6.

19 Public Interest Advocacy Centre, submission 84, 27 August 2008, p 7.

20 Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (March 2000), p 3.

Covenant on Civil and Political Rights and Covenant on Rights of the Child.<sup>21</sup>

3.20 The guidelines amongst other considerations dealt with:

- the fundamental principle that immigration detention is not a prison or correctional sentence
- establishing clear communication channels with those people in detention
- ensuring and respecting a person's rights to privacy
- encouraging community contact
- respecting religion
- encouraging education
- recreation and acceptable levels of amenity
- provision of an adequate quantity of food that is nutritional
- comfortable accommodation, and
- well supported and appropriately trained staff.<sup>22</sup>

3.21 Using the Immigration Detention Guidelines as a reference, DIMIA further developed the Standards to set out the quality of services that would be expected in immigration facilities with a substantial focus on the individual needs of a person in detention, including the gender, the culture, health and age of the person.<sup>23</sup> It was also deemed necessary that DIMIA officers at each immigration detention centre monitor the 'performance of ACM against these standards'.<sup>24</sup>

## Contract with Global Solutions Limited (Australia) Pty Ltd

3.22 At the conclusion of the ACM tenure, a contract for the provision of detention services was signed between the Commonwealth and Group 4 Falck Global Solutions Pty Ltd (G4S) on 27 August 2003. The contract

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21 Australian Human Rights Commission, 'Immigration Detention Guidelines (2000)', viewed on 25 June 2009 at [http://www.hreoc.gov.au/human\\_rights/immigration/idc\\_guidelines2000.html](http://www.hreoc.gov.au/human_rights/immigration/idc_guidelines2000.html).

22 Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (March 2000), pp 4-21.

23 Department of Immigration and Citizenship, 'Standard of Care', viewed on 1 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/about/standard-of-care.htm>.

24 Australian Human Rights Commission, 'A last resort?', viewed on 24 June 2009 at [http://www.hreoc.gov.au/HUMAN\\_RIGHTS/children\\_detention\\_report/summaryguide/4\\_facts.htm](http://www.hreoc.gov.au/HUMAN_RIGHTS/children_detention_report/summaryguide/4_facts.htm).

came into effect on 1 September 2003 ‘initially for a period of four years’.<sup>25</sup> G4S subsequently changed its name to Global Solutions Limited (Australia) Pty Ltd (GSL).<sup>26</sup>

- 3.23 The contract with GSL for the provision of detention services was based on the Standards and thus had a greater focus on client well-being, health and psychological services. In particular, the contract required GSL to ‘provide a custodial service for people held in immigration detention and take responsibility for the security, custody, health and welfare of detainees delivered into its custody by DIMIA.’<sup>27</sup>
- 3.24 Specialist services such as health care and psychological treatment were provided under subcontractual arrangements through GSL.<sup>28</sup> These services were subsequently removed ‘from the GSL contract in October 2006’.<sup>29</sup> At that time, International Health and Medical Services (IHMS) and Professional Support Services (PSS) were engaged directly by the Commonwealth to deliver health care and psychological services respectively.<sup>30</sup>
- 3.25 The contract covered arrangements at immigration detention facilities in NSW, Victoria, the Northern Territory, South Australia, Western Australia and Christmas Island. The contract was extended to also cover a broad range of new accommodation options in capital cities around Australia.<sup>31</sup>

## Initiating change across detention services

- 3.26 The complaints about standards in immigration detention centres and treatment of detainees continued after GSL took over the contract in 2003, with evidence of ‘defective practices and abuses of human rights in immigration detention centres’.<sup>32</sup>

25 Department of Immigration and Citizenship, submission 129, 11 September 2008, p 30.

26 Senate Legal and Constitutional References Committee, *Administration and operation of the Migration Act 1958* (March 2006), Parliament of the Commonwealth of Australia, p 214.

27 Senate Legal and Constitutional References Committee, *Administration and operation of the Migration Act 1958* (March 2006), Parliament of the Commonwealth of Australia, p 214.

28 The Public Interest Advocacy Centre, *Immigration detention in Australia: the loss of decency and humanity*, Submission to the People’s Inquiry into Immigration Detention, 2006 p 5; Department of Immigration and Citizenship, submission 129, 11 September 2008, p 30.

29 Department of Immigration and Citizenship, submission 129, 11 September 2008, p 130.

30 Department of Immigration and Citizenship, submission 129, 11 September 2008, p 130.

31 Department of Immigration and Citizenship, ‘Detention Services and Health Tenders’, viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/>.

32 The Public Interest Advocacy Centre, *Immigration detention in Australia: the loss of decency and humanity*, Submission to the People’s Inquiry into Immigration Detention, 2006 p 6.



3.27 In July 2005, the Palmer Report, which inquired into the circumstances surrounding the immigration detention of Ms Cornelia Rau, found the contract established between DIMIA and GSL to be flawed, stating:

The current detention services contract with Global Solutions Limited is fundamentally flawed and does not permit delivery of the immigration detention policy outcomes expected by the Government, detainees and the Australian people.<sup>33</sup>

3.28 The Palmer Report added:

The current detention services contract...is onerous in its application, lacks focus in its performance audit and monitoring arrangements, and transfers the risk to the service provider. Service requirements and quality standards are poorly defined, performance measures are largely quantitative and of doubtful value, and are financial penalties for non-compliance. This is not a basis for an effective, cooperative partnership.<sup>34</sup>

3.29 An independent review of the Detention Services Contract in February 2006 by Mr Mick Roche found that the Government's contract with GSL needed change, and that DIMIA's 'management and monitoring of the contract needed to be improved'.<sup>35</sup> The review by Mr Roche also suggested that:

...such contract changes could be used as a basis for a new tender for the Detention Services Contract. It also recommended that health and psychological services be provided under a separate contract.<sup>36</sup>

3.30 In the face of an increasing range of public criticism from various community groups, stakeholders and oversight agencies, the newly named Department of Immigration and Citizenship (DIAC) set about developing tender documentation that contained stringent contract content, the focus being to 'deliver the least restrictive form of detention, appropriate to an individual's circumstances'.<sup>37</sup>

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33 Palmer MJ, Department of Immigration and Citizenship, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (July 2005), p xiii.

34 Palmer MJ, Department of Immigration and Citizenship, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (July 2005), p 176.

35 Roche M, Department of Immigration and Citizenship, *Detention services contract review* (2006); The Public Interest Advocacy Centre, submission 84, 27 August 2008, p 8.

36 The Public Interest Advocacy Centre, submission 84, 27 August 2008, p 8.

37 Department of Immigration and Citizenship, 'Immigration detention services preferred tenderer announced', media release, 31 March 2009.

- 3.31 Whilst the Roche review concluded that the general structure of detention services contract at the time to be sound, it recommended that changes were needed.<sup>38</sup> In particular, DIAC needed to review its contract management and monitoring processes and:
- improve performance management arrangements
  - provide for input or process measures in relation to some functions
  - adjust the payment mechanisms to reflect changes in detention arrangements, and
  - meet the drafting and risk allocation issues identified by the Australian National Audit Office.<sup>39</sup>
- 3.32 DIAC agreed with the conclusions made in the Roche report and, in particular, that changes were required, stating:
- The review by Mick Roche...concluded that changes were required to [DIAC's] contract management and monitoring processes. It suggested that such contract changes could be used as a basis for a new tender for the detention services contract. It also recommended that health and psychological services be provided under a separate contract.<sup>40</sup>
- 3.33 As a result of the Roche review, DIAC announced its intention to re-tender all detention services.<sup>41</sup>
- 3.34 In an effort to impose higher standards on the detention services contractors, DIAC developed the Service Delivery Model (SDM) in consultation with stakeholders including the AHRC, Immigration

38 The Palmer Inquiry was opened to investigate the circumstances of an 11 month detention of Cornelia Rau, a German citizen holding Australian permanent residency, who was released from Baxter IDC into a psychiatric care facility. In particular, the recommendations of this report stated that a review of the GSL tender be undertaken with a view to identify where and how changes could be made. It also called for the creation of a Detention Contract Management group that would provide the DIAC with guidance on the direction on management of detention services.

39 Roche M, Department of Immigration and Citizenship, *Detention services contract review* (2006), p 4.

40 Department of Immigration and Citizenship, 'Tender for new client focused detention service arrangements', fact sheet viewed on 2 June 2009 at [http://www.immi.gov.au/about/department/perf-progress/dima-improvements/\\_fact\\_sheets/Tender\\_for\\_New\\_Client\\_Focused\\_Detention\\_Service\\_Arrangements.pdf](http://www.immi.gov.au/about/department/perf-progress/dima-improvements/_fact_sheets/Tender_for_New_Client_Focused_Detention_Service_Arrangements.pdf).

41 Department of Immigration and Citizenship, 'Tender for new client focused detention service arrangements', fact sheet viewed on 2 June 2009 at [http://www.immi.gov.au/about/department/perf-progress/dima-improvements/\\_fact\\_sheets/Tender\\_for\\_New\\_Client\\_Focused\\_Detention\\_Service\\_Arrangements.pdf](http://www.immi.gov.au/about/department/perf-progress/dima-improvements/_fact_sheets/Tender_for_New_Client_Focused_Detention_Service_Arrangements.pdf).

Detention Advisory Group and the Detention Health Advisory Group (DeHAG).

## Service delivery model

- 3.35 The SDM is a culmination of advice and feedback from legal, policy, consultants, professional bodies, community organisations and other sources and represents DIAC's new approach to delivering services to people in immigration detention.<sup>42</sup>
- 3.36 A brief on the service delivery model by DIAC, and available from its website, provides that crucial elements of the SDM are divided into four main components:
- a supportive culture
  - providing appropriate amenities
  - duty of care and case management, and
  - promoting a healthy environment.<sup>43</sup>
- 3.37 It is further outlined that the SDM represents DIAC's approach:
- to delivering quality services in a seamless manner from the client's perspective
  - identifying the values and behaviours required for the well being of people in immigration detention, and
  - providing a basis for the evaluation of service providers before they provide services and as part of ongoing performance management.<sup>44</sup>
- 3.38 Table 3.1 below outlines DIAC's nine operating principles for detention, which are based on DIAC's mission statement and its strategic themes of an open and accountable organisation, fair and reasonable dealings with clients, and well trained and supported staff.<sup>45</sup>

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42 Department of Immigration and Citizenship, 'Service Delivery Model', viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/service-delivery-model.htm>.

43 Department of Immigration and Citizenship, 'Service Delivery Model', viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/service-delivery-model.htm>.

44 Department of Immigration and Citizenship, 'Service Delivery Model', viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/service-delivery-model.htm>.

45 Department of Immigration and Citizenship, 'Service Delivery Model', viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/service-delivery-model.htm>.

Table 3.1 Operating principles of detention

1. Immigration detention is mandatory 'administrative detention', it is not indefinite or correctional
2. People in detention must be treated fairly and reasonably within the law
3. Detention service policies are founded in the principle of Duty of Care
4. Families with children will be placed in centre-based detention as a last resort
5. People in centre-based detention are to be provided with timely access to quality accommodation, health food and necessary services
6. People are detained for the shortest practicable time, especially in centre-based detention
7. People are carefully and regularly case-managed as to where they are to be located in the detention services network and the services they require
8. The assessment of risk factors underpins operational decision making
9. Detention service operations are subject to continuous improvement and sound governance.

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*Source* Department of Immigration and Citizenship website, Brief on service delivery model, p 3. viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/service-delivery-model.htm>

## New detention service provider arrangements

3.39 In May 2007 DIAC released the following requests for tender encompassing all service provision to Australia's immigration detention facilities:

- Detention Services for Immigration Detention Centres
- Health Care Services for People in Detention, and
- Detention Services for Immigration Residential Housing (IRH) and Immigration Transit Accommodation (ITA).<sup>46</sup>

3.40 In a move that signifies DIAC's willingness to incorporate major changes recommended in the Palmer and Comrie reports, the detention services contracts were divided into three main areas:

- provision of immigration health services – incorporating mental, physical and dental health
- provision of services at immigration detention centres, and
- provision of services at immigration residential housing and immigration transit accommodation.

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<sup>46</sup> Department of Immigration and Citizenship, 'Announcement re Requests for Tender', viewed on 26 June 2009 at [http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/\\_pdf/advert-13-14-april-2007.pdf](http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/_pdf/advert-13-14-april-2007.pdf).

3.41 DIAC, in noting its objectives for the new contracts, stated that:

The contracted services will be provided under a new Service Delivery Model (SDM) that will ensure people in detention are treated with dignity and respect and that DIAC's duty of care is properly exercised.<sup>47</sup>

3.42 In addition, DIAC also stated that:

The new contract encompasses a stronger focus on the rights and well-being of people in detention and provides a comprehensive framework for ongoing quality improvement, including effective performance management systems.<sup>48</sup>

3.43 DIAC deemed five-year contracts to be the appropriate duration for the service arrangements under the new tenders.<sup>49</sup>

3.44 On 24 November 2007, the Australian Labor Party (ALP) was elected to government.

3.45 The Hon Chris Evans, Minister for Immigration and Citizenship, in a statement to the *Age* newspaper stated that 'the re-tendering was well advanced when the Rudd Government came into office and the lack of alternative public-service providers would have required the current contract to be extended for at least two years'.<sup>50</sup> The Minister added:

After weighing up all the issues and costs, and giving detailed and serious consideration to the options available, the Government has determined the most prudent way forward is to finalise the current tender process.

We will impose higher standards on the detention services contractors and the department will be monitoring the contract more closely than before, it is a question of the values that apply rather than who applies them.<sup>51</sup>

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47 Department of Immigration and Citizenship, 'Detention Services and Health Tenders', viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/>.

48 Department of Immigration and Citizenship, 'Immigration detention services preferred tenderer announced', media release, 31 March 2009.

49 Department of Immigration and Citizenship, 'Immigration health services contract finalised', media release, 27 January 2009; Department of Immigration and Citizenship, 'Immigration detention services preferred tenderer announced', media release, 31 March 2009; Department of Immigration and Citizenship, 'Immigration residential housing and transit accommodation preferred tenderer announced', media release, 1 May 2009.

50 The *Age*, 'Labor breaks detention promise', viewed on 4 June 2009 at <http://www.theage.com.au/national/labor-breaks-detention-promise-20090119-7ku5.html>.

51 The *Age*, 'Labor breaks detention promise', viewed on 4 June 2009 at <http://www.theage.com.au/national/labor-breaks-detention-promise-20090119-7ku5.html>.

- 3.46 On 27 January 2009, DIAC announced it had signed a contract with the IHMS for the provision of a range of onsite primary health care services, including registered nurses, general practitioners and mental health professionals, as well as referrals to external services.<sup>52</sup>
- 3.47 In the media release announcing the contract with IHMS, it states that the negotiated contract in accordance with the SDM:
- ...will ensure people in community or facilities-based immigration detention receive health care that is fair and reasonable, commensurate with Australia's international obligations and comparable with that available to the broader Australian community.<sup>53</sup>
- 3.48 The preferred tenderer for the provision of immigration detention services was announced on 31 March 2009. DIAC reported that Serco Australia Pty Ltd (Serco) would provide services to immigration detention centres and 'a range of transport and escort services to people in detention'.<sup>54</sup>
- 3.49 On 1 May 2009 DIAC announced that GSL had been selected as the preferred tenderer for the provision of a range of services at immigration residential housing and immigration transit accommodation around Australia.<sup>55</sup>
- 3.50 At the time of writing this report, DIAC had entered negotiations with the preferred tenderers, Serco and GSL with the intention of signing contracts as soon as practicable.

## **Services currently provided across immigration detention facilities**

On its website, DIAC states that it provides a number of services to people in immigration detention including:

- education and other activities – activities such as cultural and lifestyle classes, sporting activities and excursions (fishing, shopping trips) and educational services, including English language instruction.

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52 Department of Immigration and Citizenship, 'Immigration health services contract finalised', media release, 27 January 2009.

53 Department of Immigration and Citizenship, 'Immigration health services contract finalised', media release, 27 January 2009.

54 Department of Immigration and Citizenship, 'Immigration detention services preferred tenderer announced', media release, 31 March 2009.

55 Department of Immigration and Citizenship, 'Immigration residential housing and transit accommodation preferred tenderer announced', media release, 1 May 2009.

- food – nutritional food that is culturally appropriate is served three times a day and those requiring special diets for cultural or medicinal purposes are catered for on an individual basis. Emphasis is placed on providing people in immigration detention with menu choice, self-catering activities such as barbeques, and allowing their input into food preparation. Access to tea, coffee and snacks between meals is also provided.
- religion – all immigration detention facilities have areas for prayer and worship services, and those in detention are able to practise the religion of their choice on an individual or communal basis. External clergy provide services for most major faiths and special meals are also prepared for religious festivals, such as Ramadan and Christmas.
- medical – all centres have medical facilities with nursing staff on site. Medical practitioners, dentists, psychiatrists, psychologists and counsellors are also available, either onsite or through local community services, depending on the location of the facility.<sup>56</sup>

3.51 The Australian Human Rights Commission (AHRC), in its 2008 *Immigration Detention Report*, noted that recreational activities offered at each immigration detention facility vary but ‘generally include a mix of structured activities such as pool competitions, table tennis competitions, soccer, volleyball, card nights, karaoke and movie nights.’<sup>57</sup> The report also highlighted that each facility had additional recreational activities which are available for use by detainees on an unstructured basis including access to TV, DVDs, video games, board games, newspapers, internet access and gym facilities.<sup>58</sup>

3.52 The AHRC also noted, in its *Immigration Detention Report*, that other services provided at immigration detention facilities includes:

- access to reading materials including a small collection of books or newspapers<sup>59</sup>
- some internal educational classes for detainees, generally computing classes and English as a second language,<sup>60</sup> however the education

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56 Department of Immigration and Citizenship, ‘Services Provided at Immigration Detention Facilities’, viewed on 25 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/services-at-facilities.htm>.

57 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 29.

58 Australian Human Rights Commission, *Immigration detention report – December 2008*, pp 29-30.

59 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 31.

60 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 32.

programs provided do not provide the person in detention with a recognised qualification<sup>61</sup>

- occasional cooking, music, art or craft classes, although these are generally recreational sessions rather than accredited educational classes<sup>62</sup>
- access to communication facilities, including mail, phones, fax and the internet, at mainland immigration detention centres,<sup>63</sup> and
- access to the Telephone Interpreting Service, except for the Northern immigration detention centre who has two interpreters who work onsite on a fairly regular basis.<sup>64</sup>

3.53 However, services provided at each facility can be varied due to the differences in long and short term accommodation arrangements provided across immigration detention centres, immigration residential housing, immigration transit accommodation and community detention.

3.54 In particular, immigration residential housing residents are able to cook their own food and may visit local recreational facilities and attend community-based educational and development programs when accompanied by an officer or other appropriately authorised person.<sup>65</sup>

3.55 Services provided to people in people in immigration transit accommodation are comparatively limited, due to the short-stay nature of the accommodation. Immigration transit accommodation offers a high level of independence. Provisions are provided by DIAC, and catering on site is arranged as required.

3.56 Services provided to detainees in community detention are, for the most part, provided through non-government organisations and some state welfare agencies.

3.57 Currently community care is provided by the Australian Red Cross, which holds the primary contract for the delivery of community detention services and is funded to source housing and provides allowances to people in community detention to help meet living expenses.<sup>66</sup>

3.58 People in community detention reside in houses and home units without other indications that they are being detained. There is no requirement for

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61 Department of Immigration and Citizenship, submission 129, 11 September 2008, p 31.

62 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 32.

63 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 36.

64 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 40.

65 Department of Immigration and Citizenship, submission 129, 11 September 2008, p 31.

66 Department of Immigration and Citizenship, submission 129, 11 September 2008, pp 19-20.



a detainee to be accompanied during daily activities, unlike within immigration residential housing.

3.59 As noted in the Committee's second report on immigration detention in Australia, additional services and support are offered to the most vulnerable and complex detainees through the Community Care Pilot (CCP) which includes:

- Community assistance, including assistance with food, clothing, basic living expenses, health care, and accommodation, which is provided by the Australian Red Cross. Rental assistance is limited to payment of bond and initial few weeks' rent.
- Information and counselling services, provided by the IOM. The IOM provides information on immigration processes and assistance to people and prepares them for their immigration outcome.
- Immigration advice and application assistance to vulnerable people, delivered by providers under the Immigration Advice and Application Assistance Scheme (IAAAS).
- Brokerage funds, administered by DIAC's Case Managers, allows for the one-off needs of people to be met.<sup>67</sup>

### Services currently provided on Christmas Island

3.60 For the most part, the services that are provided by DIAC across mainland immigration detention facilities are also provided on Christmas Island.

3.61 In addition to those services, DIAC advised the Committee that a number of non-government organisations also provide services to people in immigration detention on Christmas Island. Some, according to DIAC are contracted to provide certain services:

- Australian Red Cross (as a direct source contractor and as an [non-government organisation] that also regularly visits the centre in an observing capacity)
- United Nations High Commission for Refugees (regular observational visits)
- Australian Human Rights Commission (an independent statutory organisation that also make regular visits)
- The Forum of Australian Services for Survivors of Torture and Trauma (as a direct source contractor) supplies psychological

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67 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Community-based alternatives to detention* (2009), Parliament of the Commonwealth of Australia, pp 36-37; Department of Immigration and Citizenship, submission 129, 11 September 2008, p 36.

support services from its national network of providers as needed, and

- Professional migration agents and qualified interpreters assist each asylum seeker to compile statements of claims for refugee status including accompanying seekers to DIAC interviews and other parts of the process. Agents are drawn from the 10 contracted Immigration Advice and Application Assistance Scheme providers listed below:
  - ⇒ Refugee and Casework Service (Australia) Inc (RACS) (NSW)
  - ⇒ John Vrachnas (NSW/Vic)
  - ⇒ Refugee & Immigration Legal Centre Inc (RILC) (Vic)
  - ⇒ Florin Burhala & Associates P/L (Vic)
  - ⇒ Craddock Murray Neumann Lawyers (NSW)
  - ⇒ Libby Hogarth & Associates (SA)
  - ⇒ Playfair Visa and Migration Services (NSW)
  - ⇒ Legal Services Commission of SA (SA)
  - ⇒ Centrecare (incorporating Catholic Migrant Centre) (WA)
  - ⇒ Legal Aid Western Australia (WA).<sup>68</sup>

3.62 Under DIAC's current tender arrangements, detention service provider GSL is responsible for organising a program of activities for people in immigration detention on Christmas Island.

3.63 GSL has utilised the services of the Coalition for Asylum Seekers, Refugees and Detainees (CARAD) independent volunteers that had previously provided volunteer services under the auspices of CARAD, and Youth With A Mission for the delivery of those activities.<sup>69</sup>

## Health care services for people in detention

3.64 As discussed earlier in this chapter, Mr Mick Palmer's inquiry into the immigration detention of Cornelia Rau in July 2005 identified systemic weaknesses in DIAC's compliance and detention processing.<sup>70</sup>

3.65 This was followed by a report from the Commonwealth Ombudsman and Mr Neil Comrie in September 2005 that inquired into the circumstances of the Vivian Alvarez matter, identifying similar failings in DIAC administration and processing.

68 Department of Immigration and Citizenship, submission 129v, 17 June 2009, p 1.

69 Department of Immigration and Citizenship, submission 129v, 17 June 2009, p 1.

70 Department of Immigration and Citizenship, *Inquiry into circumstances of the Immigration Detention of Cornelia Rau Report* (July 2005), p 8.

- 3.66 The Commonwealth Ombudsman was asked by the Australian Government to investigate 247 cases of long term detention between 2000 and 2007. The report from the Ombudsman ‘found that 11 of these cases involved mental health and incapacity’.<sup>71</sup>
- 3.67 The findings propelled DIAC into implementing significant reforms of detention arrangements. On 1 March 2006, the former Minister for Immigration and Citizenship announced the decision to re-tender the detention services contract with the formal differentiation of health services to be provided under separate arrangements. These services would subsequently ensure that DIAC properly exercises its duty of care to people in detention.<sup>72</sup>
- 3.68 DIAC allocated additional resources to detention health services in a bid to address past criticisms.<sup>73</sup> This included establishing the DeHAG which comprised of:
- Nominees from the relevant professional health organisations in Australia and provides the Department with advice regarding the design, implementation and monitoring of detention health policy and procedures.<sup>74</sup>
- 3.69 DIAC consulted with DeHAG and other key stakeholders in developing its health services policy. The *Detention Health Framework* sets out ‘the range, level and standard of health care to be provided to people in all detention situations’.<sup>75</sup>
- 3.70 According to the detention health framework there are two main categories that have an impact on the management and delivery of health care:
- The first category consists of generic risks and issues that are associated with the restriction of freedom brought about by detention, and the cultural diversity of the detention population.

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71 Department of Immigration and Citizenship, *Detention Health Framework: A policy framework for health care for people in immigration detention* (2007), p 8.

72 Department of Immigration and Citizenship, ‘Detention Services and Health Tenders’, viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/>.

73 Department of Immigration and Citizenship, ‘Immigration Detention Health Services’, viewed on 9 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/health-services.htm>.

74 Department of Immigration and Citizenship, ‘Immigration Detention Health Services’, viewed on 9 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/health-services.htm>.

75 Department of Immigration and Citizenship, ‘Immigration Detention Health Services’, viewed on 9 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/health-services.htm>.

- The second category of health risks and issues are those that are specifically associated with the way people come into detention and their experience in their place of origin or on their journey to Australia.<sup>76</sup>

3.71 The generic health issues and risks include:

- uncertainty of the future for people across a range of immigration detention placements
- the challenge of delivery of health services in a controlled environment, especially with establishing trust within an involuntary detention environment, and
- the challenge of delivering a standard level of health care to culturally diverse populations that is empathetic and dignified.<sup>77</sup>

3.72 In addition, there is the general challenge that medical professionals are presented with in the context of managing complex health care requirements for people in detention placements.

3.73 The obvious challenges include:

- communicable diseases – for example, the prevalence of blood-borne viruses, sexually transmissible infections and other communicable diseases can be higher in some sections of the detained population than in the general population due to the poor conditions in the countries of origin.<sup>78</sup>
- mental illness – the prevalence of risk factors for mental illness among people who enter immigration detention exceeds those in the general population.<sup>79</sup>
- victims of torture and trauma – the Palmer and Comrie inquiries and subsequent reports from the Commonwealth Ombudsman have alerted DIAC to the risks posed by failing to identify torture and trauma survivors. However, identifying people who have experienced torture and trauma is complex and not all display obvious physical or psychological symptoms.<sup>80</sup>

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76 Department of Immigration and Citizenship, *Detention Health Framework: A policy framework for health care for people in immigration detention* (2007), p 40.

77 Department of Immigration and Citizenship, *Detention Health Framework: A policy framework for health care for people in immigration detention* (2007), pp 40-42.

78 Department of Immigration and Citizenship, *Detention Health Framework: A policy framework for health care for people in immigration detention* (2007), p 43.

79 Department of Immigration and Citizenship, *Detention Health Framework: A policy framework for health care for people in immigration detention* (2007), p 43.

80 Department of Immigration and Citizenship, *Detention Health Framework: A policy framework for health care for people in immigration detention* (2007), p 44.

- inadequate healthcare prior to arrival in Australia – people will reflect the general health indicators of the circumstances of their residence prior to being placed in detention.<sup>81</sup>
- 3.74 DIAC's website states that initial health assessments are provided to persons entering immigration detention to identify illness or conditions that may need to require attention for the duration of detention. Officers collect personal and medical history, and conduct a 'physical examination and formalised mental health screening and assessment'.<sup>82</sup> DIAC coordinates treatment management through:
- ...a general practitioner for all people who have a clinically identified need for ongoing medical treatment. As well as the initial health assessment there are mechanisms in place to identify health needs that may emerge during a person's time in detention, including formal monitoring processes such as the three-monthly mental health review in detention centres.<sup>83</sup>
- 3.75 As part of policy, a discharge health assessment is carried out for the person being released from any placement within the immigration detention environment. The assessment includes:
- ...the provision of a health discharge summary from the health provider to the individual, which informs future health providers of relevant health history, treatment received during detention and any ongoing treatment regimes. Where appropriate, linkages are made with relevant community health providers to facilitate ongoing care beyond discharge.<sup>84</sup>
- 3.76 It is the intention of DIAC that people to which it owes a duty of care are:
- ...provided access to clinically recommended, health care, at a standard generally comparable to the health care available to the Australian community. Health care services are provided by

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81 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention*, p 45.

82 Department of Immigration and Citizenship, 'Immigration Detention Health Services', viewed on 9 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/health-services.htm>.

83 Department of Immigration and Citizenship, 'Immigration Detention Health Services', viewed on 9 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/health-services.htm>.

84 Department of Immigration and Citizenship, 'Immigration Detention Health Services', viewed on 9 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/health-services.htm>.

qualified health professionals and take into account the diverse and potentially complex health care needs of people in detention.<sup>85</sup>

## Delivery of health care services

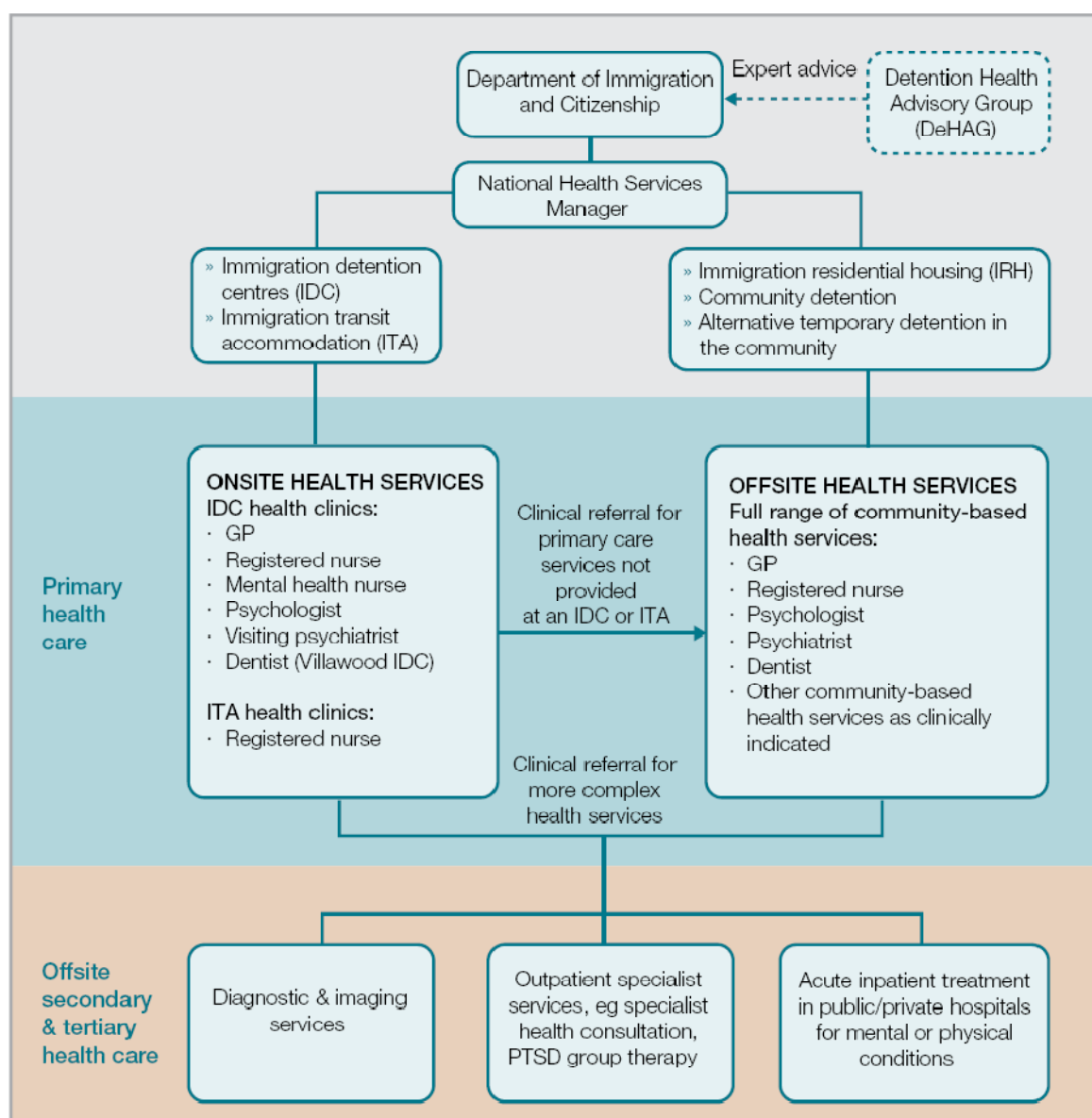
- 3.77 A health services manager (HSM) will manage and organise the delivery of health services at all DIAC detention facilities including alternative detention in the community. Under the detention health framework, the HSM 'may directly provide health care services, or broker these services through a network of external health care providers'.<sup>86</sup>
- 3.78 Figure 3.1 illustrates how health service delivery for people in immigration detention will function.

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85 Department of Immigration and Citizenship, 'Immigration Detention Health Services', viewed on 9 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/health-services.htm>.

86 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 53.

Figure 3.1 Detention health services delivery structure



Source Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention (2007)*, p 53.

## Health services provided in immigration detention centres

- 3.79 It is the responsibility of the HSM to arrange sufficient clinical consultation time for a person in detention. A consultation is with a registered nurse or general practitioner as required.<sup>87</sup>
- 3.80 DIAC has specified that there is a minimum requirement for the frequency of when health services such as 'nursing, mental health care and general practice' is made available at each detention centre. DIAC has stated that:

87 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention (2007)*, p 83.

A person in detention would not need to leave an immigration detention centre to receive a routine health assessment...or ongoing primary healthcare services.<sup>88</sup>

- 3.81 According to the DIAC policy, consultations with a nurse or general practitioner will include time for initial health assessments for those placed in an immigration detention centre; time to attend to the ongoing health care management of a person; and to conduct health discharge assessments for a person leaving detention.<sup>89</sup>
- 3.82 It is the HSM's responsibility to make any necessary arrangements for the provision of clinical recommendations for in-patient, specialist or allied health treatment.<sup>90</sup>
- 3.83 After hours health care is triaged with initial responsibility falling on the detention services provider to ensure an appropriate first-aid response. The HSM however is expected to have 'in place an after-hours, on-call, arrangement for medical advice and response to clinical events that require a primary healthcare response.'<sup>91</sup>

### Health services provided in immigration residential housing

- 3.84 As discussed earlier in this report, the provision of services within the context of immigration residential housing is limited, given the intention that detention at an immigration residential housing facility is not long term. This also includes the provision of health services.<sup>92</sup>
- 3.85 People detained within immigration residential housing are able to access health care services through community based health care providers. Appropriate arrangements are made by the HSM to ensure that people are provided with an initial health induction assessment, are able to access any treatment for ongoing conditions and also receive a discharge assessment when appropriate.<sup>93</sup>

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88 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 83.

89 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 83.

90 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 83.

91 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 83.

92 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

93 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.



### Health services provided in immigration transit accommodation

- 3.86 As in the case of detention at an immigration residential housing facility, the HSM ensures that appropriate arrangements are made for registered nurses to conduct initial onsite assessments for people who are detained.<sup>94</sup>
- 3.87 Where a special health need is identified and where a medical consultation is deemed appropriate, the HSM will refer the person requiring medical attention to the appropriate specialist or service provider.<sup>95</sup>

### Health services provided in alternative forms of detention

- 3.88 Beyond the regular detention arrangements of facilities such as detention centres, immigration residential housing or immigration transit accommodation, in limited circumstances, people may be detained in a variety of other 'accommodation settings including hospitals, motels or apartments'.<sup>96</sup>
- 3.89 As per arrangements in other facilities, the HSM coordinates the health care response to people in detention. The exception for this arrangement is where a person is being detained in a hospital, in this case all health services can be directly provided by the hospital in this instance.<sup>97</sup>

### Health services provided on Christmas Island

- 3.90 The structure of health services on Christmas Island is similar to current arrangements on mainland Australia. The HSM works with a health care provider on the island to ensure an appropriate level of health care is available to people in detention on Christmas Island. The HSM is also responsible for:

...the appropriate transfer of medical records, providing medical escorts and coordinating access to health services as clinically required at onshore destinations.<sup>98</sup>

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94 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

95 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

96 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

97 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

98 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

## Community detention

- 3.91 As is with the practice of health service delivery at immigration residential housing, the HSM coordinates the health care for people in community detention through community-based health care providers.<sup>99</sup>
- 3.92 However, DIAC acknowledges that it is necessary to ensure that people in community detention are made aware of the range of health care services available to them and most importantly how they can access these services.
- 3.93 As is the practice for the general public, DIAC makes all reasonable efforts to ensure that the treating general practitioner is located in close proximity to the residence of the person in community detention.<sup>100</sup>

## Mental health care services

- 3.94 Under a raft of improvements that were made to immigration detention health care introduced in September 2005, the Australian Government integrated a comprehensive mental health service which incorporated an enhanced and thorough mental health screening program. DIAC also adopted a range of standardised mental health screening tools.<sup>101</sup>
- 3.95 As it stands, people placed within an immigration detention environment are assessed for mental health concerns. The assessment involves a suicide and self harm assessment, which is carried out as part of initial processing of the person by the responsible detention services officer. A registered nurse carries out an 'at risk' assessment which also involves the general health assessment.<sup>102</sup>
- 3.96 Where a person is determined to be at risk, the individual is further assessed by a PSS psychologist.<sup>103</sup> In addition to the assessments conducted above:

...initial screening also includes a clinician-rated health of the nation outcomes scale and a mental state examination. All detainees who screen positive on these instruments are referred to

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99 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

100 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 84.

101 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 85.

102 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 85.

103 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 85.

a multidisciplinary mental health team for diagnosis, the development of a specific mental health management plan and ongoing mental health care. This team comprises representatives from a pool of mental health nurses, psychologists, senior counsellors, general practitioners and psychiatrists.<sup>104</sup>

- 3.97 Reassessments are arranged as required, usually at the request of individuals, or at the request of staff employed by detention health or management services. Follow up sessions are conducted at 90 days to ensure that persons in detention have not developed previously 'undetected mental health disorders'. If the management plan requires inpatient mental health treatment, this will be arranged through clinical pathways developed with identified public and private sector health providers.<sup>105</sup>

## Community concerns about detention services

### Privatisation of detention services

- 3.98 The Committee received evidence which highlighted concerns about the privatisation of detention services. The Public Interest Advocacy Centre (PIAC) were concerned about GSL's background as a provider of prison services, noting that:

It would appear that part of the reason for its troubled history in the provision of immigration detention services stems from GSL's background as a provider of prison services, which are, by their nature, very different to immigration services.<sup>106</sup>

- 3.99 The PIAC added:

The practical experience has been, however, that GSL staff (many of whom have worked as prison guards in GSL's prisons) have failed to heed this difference, and have tended to treat immigrant detainees no differently to prison inmates. In promotional material GSL describes its line of business as "Corrective Centres in Australia." This is indicative of a culture that is focussed on imprisonment, rather than administrative detention.<sup>107</sup>

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104 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 85.

105 Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007), p 85.

106 Public Interest Advocacy Centre, submission 84, p 17.

107 Public Interest Advocacy Centre, submission 84, p 17.

- 3.100 A Just Australia (AJA) were also critical of GSL's background as a prison service provider, stating:

The current contractor Global Solutions Limited (GSL) has a background as a prison service provider. Many of GSLs staff in IDCs come from, and were trained for, a prison environment and are thus highly inappropriate to work with the vulnerable caseloads found in IDCs.<sup>108</sup>

- 3.101 The Law Institute of Victoria was also of the same view, stating:

The core business of GSL, the current operator, is correction services. This core capability seems to have influenced the operation of immigration detention centres, so that they are run like prisons.<sup>109</sup>

- 3.102 There was also some concern about the differentiation of responsibility, in that a private institution servicing a non-punitive, administrative detention environment should aim to provide a service with a compassionate and humanitarian approach and without an underlying motivation 'to provide maximum returns to shareholders.'<sup>110</sup>

- 3.103 Rural Australians for Refugees, the Refugee Council of Australia (RCA) and the PIAC were all of the opinion that the privatisation of immigration detention facilities had impeded accountability and transparency.<sup>111</sup>

- 3.104 The Australian Council of Heads of Schools of Social Work were also concerned about the accountability of detention services managed by a private organisation stating:

The privatisation of detention centres and the imposition of fines for failing to meet standards created a conflict of interest for both the private operators and the department to accurately report on conditions in detention.<sup>112</sup>

- 3.105 The Brotherhood of St Laurence was of the opinion that outsourcing the management of immigration detention centres blurred the lines of responsibility stating:

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108 A Just Australia, submission 89, 27 August 2008, p 18.

109 Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, 3 September 2008, p 24

110 Flesch J, submission 12, 27 August 2008, p 2; Rural Australians for Refugees, submission 91, 27 August 2008, p 4.

111 Rural Australians for Refugees, submission 91, 27 August 2008, p 4; Refugee Council of Australia, submission 120, 3 September 2008, p 4; Public Interest Advocacy Centre, submission 84, 27 August 2008, p 7.

112 Australian Council of Heads of Schools of Social Work, submission 119, 3 September 2008, p 7.

...the practice of outsourcing the operation and day-to-day management of immigration detention centres through public private partnerships significantly obscured the division of responsibility for upholding human rights standards and international law with regards to detention.<sup>113</sup>

- 3.106 The majority of organisations listed above were of the view that detention services should not be privatised.<sup>114</sup>

## Immigration detention standards

- 3.107 Another concern brought to the attention of the Committee was that whilst it was the intent of immigration detention services that people in immigration detention are treated humanely, the requirement was not codified and failed to provide people in detention with access to effective remedies for any alleged breaches of their human rights.<sup>115</sup>

- 3.108 In particular, the PIAC were concerned that the Standards were not legislated, stating:

While the IDS may help to ensure that people in immigration detention are treated with respect and dignity, they are not enshrined in legislation and do not provide people in immigration detention with access to effective remedies for alleged breaches of their human rights.<sup>116</sup>

- 3.109 Both the AHRC and AJA agreed that the Standards should be legislated.<sup>117</sup> AJA stated:

The conditions of detention are also something that needs codification because we have the immigration detention standards, but there is no codification of the conditions of detention as there is in the state prison system, so we have the situation where a convicted criminal has more protection for the conditions in which he is kept than a vulnerable asylum seeker.<sup>118</sup>

- 3.110 The PIAC also held the opinion that there was no public scrutiny of the Standards, stating:

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113 Brotherhood of St Laurence, submission 92, 27 August 2008, p 4.

114 Public Interest Advocacy Centre, submission 84, 27 August 2008, p 4; Australian Council of Heads of Schools of Social Work, submission 119, 3 September 2008, p 7; Rural Australians for Refugees, submission 91, 27 August 2008, p 5.

115 A Just Australia, submission 89, 27 August 2008, p 12.

116 Public Interest Advocacy Centre, submission 84, 27 August 2008, p 18.

117 Australian Human Rights Commission, submission 99, 27 August 2008, p 28; Gauthier K, A Just Australia, *Transcript of evidence*, 24 October 2008, p 14.

118 Gauthier K, A Just Australia, *Transcript of evidence*, 24 October 2008, p 14.

We note that in early 2006, the Detention Services Contract between GSL and DIMA and the accompanying Immigration Detention Standards (IDS) were available through the Department's website, thereby allowing the media and members of the public to scrutinise the private administration of Australia's detention centres to some extent. However, we have recently been informed by DIAC that the Contract and the IDS are no longer publicly available. It is therefore impossible to determine whether the "new performance monitoring system" announced by DIAC in October 2006 now forms part of the contract with GSL, and if so, how it operates. It is also not clear whether any of the IDS have changed, and what role they play, if any, in the contract. Thus, there is no means of assessing the degree to which management and operation of immigration detention facilities protects detainees' rights, complies with Australia's international obligations or accords with community standards.<sup>119</sup>

- 3.111 The joint submission from Dr Hitoshi Nasu, Mr Matthew Zagor, and Associate Professor Simon Rice also noted that it was hard to assess the service providers adherence to the Standards stating:

...the [Standards] are a non-binding policy, and are impossible to enforce and difficult to access: a search of Department's website merely brings up a description of the standards, not the standards themselves.<sup>120</sup>

### Inadequate health services

- 3.112 In its submission to the inquiry, the Commonwealth Ombudsman highlighted that people in detention had raised a number of concerns about their health services, stating:

The Ombudsman's office has received a number of complaints about delays in accessing doctors. We have also received complaints following a decision by nursing staff that a referral to a doctor is not necessary...we would observe that the community standard would not normally involve a process whereby a nurse could determine whether a person should receive attention from a doctor.<sup>121</sup>

- 3.113 More specifically, the Commonwealth Ombudsman provided an example of health services provided at the Villawood immigration detention centre:

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119 Public Interest Advocacy Centre, submission 84, 27 August 2008, pp 8-9.

120 Nasu H, Zagor M, and Rice S, submission 76, 27 August 2008, p 4.

121 Commonwealth Ombudsman, submission 126, 3 September 2008, p 24.

We have received a number of complaints from detainees in Villawood IDC concerning what they considered to be changes in their medication without consultation with a doctor. On occasion, this apparent change in medication has resulted in disputes with the medical staff distributing the medication. After investigating this issue, we suggested that it would be more in keeping with community standards if detainees were given written details of their prescribed medication and for doctors to provide an updated advice to a detainee if the medication does change.<sup>122</sup>

3.114 The NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors also provided evidence of inadequate health services in immigration detention facilities, noting:

Counsellors know of cases of asylum seekers being told to drink water for toothache or being given paracetamol only when ill, and of a client with a potentially serious gastro-intestinal complaint treated only with Imodium, with no checks performed.<sup>123</sup>

3.115 The RCA has also reported that it has received a number of concerns about health services provided at immigration detention facilities in the following areas:

- child health and immunisations
- dental services
- sexual and reproductive health
- preventative health, and
- mental health, including the impact of torture and trauma.<sup>124</sup>

3.116 The RCA noted that 'there have been, at times, failures to provide adequate levels of or appropriate medical, dental and mental health care.'<sup>125</sup>

3.117 The Hotham Mission Asylum Seeker Project pointed out that individuals placed in community detention may 'not know or understand the health services that are available to them and assumes they have no right to any medical assistance in Australia.'<sup>126</sup>

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122 Commonwealth Ombudsman, submission 126, 3 September 2008, p 25.

123 NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, submission 108, 27 August 2008, p 18.

124 Refugee Council of Australia, *Australia's refugee and humanitarian program 2008-09, Community views on current challenges and future directions*, 2008, p 46.

125 Refugee Council of Australia, submission 120, 3 September 2008, p 4.

126 Hotham Mission Asylum Seeker Project, submission 93, 27 August 2008, p 16.

- 3.118 Mr Guy Coffey and Mr Steven Thompson, who have experience in psychologically assessing and treating people held in immigration detention centres, were of the opinion that DIAC had not ‘undertaken or permitted a systematic investigation of the psychological well-being of persons detained in immigration detention centres.’<sup>127</sup> Mr Coffey and Mr Thompson added:
- The inadequacies in mental health service delivery were a product of the attempt to create stand alone private mental health services for immigration detention centres. Although contractually the private services were obliged to draw on external services as required, the detention mental health services acted autonomously and external State facilities were poorly integrated into treatment approaches.<sup>128</sup>
- 3.119 Mr Coffey and Mr Thompson were also of the opinion that existing mental health services, and in particular decisions regarding mentally unwell detainees, have lacked independence from the influence of the priorities of detention managers and DIAC.<sup>129</sup>
- 3.120 The Australian Federation of AIDS Organisations Inc. acknowledged that significant improvements had been made to the delivery of health services, but that more needs to be done.<sup>130</sup>
- 3.121 The Australian Psychological Society Ltd agreed that DIAC had ‘developed good practice standards of health care for people in detention, but believe that people are better serviced by regular health services.’<sup>131</sup>
- 3.122 Overall, the view put forward by most professional groups was that detainees should have high quality medical, mental, and health services irrespective at what facility they are being housed.
- 3.123 The recommendations put forward by these groups called for a coordinated, better resourced, specialised detention health service provider that was in direct contract with the Australian Government.<sup>132</sup>

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127 Coffey G and Thompson S, submission 128, 3 September 2008, p 7.

128 Coffey G and Thompson S, submission 128, 3 September 2008, p 16.

129 Coffey G and Thompson S, submission 128, 3 September 2008, p 18.

130 Australian Federation of AIDS Organisations Inc., submission 94, 27 August 2008, p 1.

131 Australian Psychological Society Ltd, submission 105, 27 August 2008, p 2.

132 Refugee Council of Australia, *Australia’s refugee and humanitarian program 2008-09, Community views on current challenges and future directions*, 2008, p 46; Refugee and Asylum Seeker Health Network, submission pp 1-4; Australian Federation of Aids Organisations Inc, submission 94, 27 August 2008, pp 3-4.



## Independent immigration detention health review commission

- 3.124 In its submission to the inquiry, the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) noted that the Palmer Report 'documented significant deficiencies in a range of areas including access to and adequacy of appropriate health services.'<sup>133</sup>
- 3.125 The FASSTT added:
- A key Palmer Inquiry finding that has not been implemented is that there is a need for an independent body to audit the delivery of health services to people detained in immigration detention facilities. The Inquiry concluded that 'an expert body specifically dealing with health matters is required to complement and strengthen (the) efforts of bodies such as the Immigration Detention Advisory Group and the Commonwealth Ombudsman.' It recommended the establishment of an 'Immigration Detention Health Review Commission' which would among other things 'initiate reviews and audits of health care standards and the welfare of immigration detainees.' In order to ensure it was able to undertake its functions effectively, Palmer recommended that the body have a statutory basis and be staffed 'with a core of experienced people with relevant skills.'<sup>134</sup>
- 3.126 DIAC agreed that the recommendation to establish an independent immigration detention health review commission was not implemented and that 'a decision was made to establish the Detention Health Advisory Group with nominees from key Australian health bodies and that that would form the basis of the advisory structure.'<sup>135</sup>
- 3.127 However, DeHAG advised that it was not set up to discharge the responsibilities of the immigration detention health review commission recommended by the Palmer Report, and that DeHAG was an advisory body that has no role in monitoring and no statutory right of entry to detention facilities.<sup>136</sup>
- 3.128 The DeHAG was also of the view that the Palmer recommendation should be implemented and that 'such a body remains essential'.<sup>137</sup>

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133 Forum of Australian Services for Survivors of Torture and Trauma, submission 115, 27 August 2008, p 13.

134 Forum of Australian Services for Survivors of Torture and Trauma, submission 115, 27 August 2008, p 14.

135 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 24 September 2008, p 11.

136 Minas H, Detention Health Advisory Group, *Transcript of evidence*, 11 September 2008, p 43.

137 Minas H, Detention Health Advisory Group, *Transcript of evidence*, 11 September 2008, p 40.

## Lack of services on Christmas Island

- 3.129 In contrast to support services available to people in detention on mainland Australia, the geographical remoteness of Christmas Island provides a challenge to the detention service provider, other organisations that provide services to detainees (eg non-government organisations), and the local community.
- 3.130 Collectively, many submissions to the inquiry raised concerns about the inadequacy of mental health and other services on Christmas Island.<sup>138</sup>
- 3.131 In particular, the AHRC noted that it had concerns about the availability of health care for detainees on Christmas Island stating that ‘some medical needs cannot be met on the island at all.’<sup>139</sup>
- 3.132 The Forum of Australian Services for Survivors of Torture and Trauma and the AHRC both expressed significant concern about people in immigration detention on Christmas Island being able to access adequate medical, psychiatric and counselling services.<sup>140</sup>
- 3.133 In its 2008 *Immigration Detention Report*, the AHRC stated:
- There is currently almost no local capacity to meet the mental health or psychological needs of immigration detainees on the island. The local health service has only one part-time psychologist. There is no suitable facility for accommodating a detainee in need of admission to a psychiatric facility.<sup>141</sup>
- 3.134 The AHRC added that ‘the local community is not large enough or sufficiently resourced to be able to provide adequate psychological, cultural or religious support to any significant number of immigration detainees.’<sup>142</sup>
- 3.135 Michelle Dimasi, Social Researcher at the Institute for Social Research, Swinburne University, agreed that the small local community would pose a resourcing issue, stating:

Volunteers from these groups are willing to travel to places like Woomera or Maribyrnong to support asylum seekers. As

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138 Uniting Church in Australia, submission 69, 27 August 2008, p 14; Forum of Australian Services for Survivors of Torture and Trauma, submission 115, 27 August 2008, p 19; Amnesty International, submission 132, 17 September 2008, pp 11, 18.

139 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 73.

140 Forum of Australian Services for Survivors of Torture and Trauma, submission 115, 27 August 2008, p 18; Australian Human Rights Commission, *Immigration detention report – December 2008*, p 73.

141 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 73.

142 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 73.

Christmas Island is extremely remote and an airfare from Perth costs over \$2000, asylum seeker volunteer support is left up to the Christmas Island community. While the community is well experienced in providing support reliance on this community could easily result in "volunteer burnout" as the island has only 1400 residents.<sup>143</sup>

3.136 The Uniting Church in Australia was also of the view that the small local community was being placed under undue pressure to support detainees. The Uniting Church in Australia noted other concerns including that:

- church and NGO staff, who provide a wide array of legal and advocacy services as well as casework and support to asylum seekers on the mainland, would be hindered in carrying out these functions<sup>144</sup>
- the isolation of the Christmas Island detention centre makes enabling access for asylum seekers to sufficient medical and psychological care expensive, time consuming and traumatic for asylum seekers and their families,<sup>145</sup> and
- Providing asylum seekers the treatment necessary for their often complex medical needs would require flights to the mainland, which separates already extremely vulnerable families and is extremely costly. Establishing and providing these services on Christmas Island would also be incredibly expensive.<sup>146</sup>

## Training of personnel

3.137 A key theme identified during the course of this inquiry was that there was a lack of appropriate training for staff working at immigration detention facilities.

3.138 Pauline Lovitt, employed by GSL as Pastoral Care Worker between March and June 2008, stated that 'management appears to not have the skills or understanding of planning and implementing programs.'<sup>147</sup>

3.139 The AHRC, in its 2008 *Immigration Detention Report*, noted that detainees raised concerns about a lack of cultural respect shown to detainees by GSL staff.<sup>148</sup>

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143 Dimasi M, submission 52, 27 August 2008, p 5.

144 Uniting Church in Australia, submission 69, 27 August 2008, p 14.

145 Uniting Church in Australia, submission 69, 27 August 2008, p 14.

146 Uniting Church in Australia, submission 69, 27 August 2008, pp 14-15.

147 Lovitt P, submission 3, 27 August 2008, p 8.

148 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 52.

3.140 A key recommendation from the AHRC *Immigration Detention Report* was that all current and future staff should be provided with adequate training. It further outlined that:

Staff training and performance management procedures should ensure that all staff treat immigration detainees in a humane manner, with respect for their inherent dignity, and with fairness and cultural sensitivity.<sup>149</sup>

3.141 In a joint report prepared for DIAC, the Centre for Forensic Behavioural Science of Monash University and Victorian Institute of Forensic Mental Health highlighted the importance of ongoing training for staff of the detention service provider, given the emotionally charged, often sensitive situations:

Much more emphasis needs to be placed on staff training. Staff require an enhanced level of training and understanding regarding matters pertaining to cultural awareness, mental health state, distress, and indices of suicidal ideation and self harming behaviour. This needs to be delivered in an ongoing format, with further, ongoing specialist support and supervision by a senior independent mental health clinician.<sup>150</sup>

3.142 Similarly, the following comments were provided by the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors in its submission to the inquiry:

While recruitment of staff with a security background may be suitable for working with detainees with criminal backgrounds, it is not suitable for working with asylum seekers, particularly those who may have received harsh treatment by police and the military in their country of origin. Employment of people with health and welfare backgrounds, who have a professional background in or can be provided with training in working with refugees (including torture and trauma issues), cultural awareness and mental health issues would be preferable.<sup>151</sup>

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149 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 6.

150 Monash University and Victorian Institute of Forensic Mental Health, Centre for Forensic Behavioural Science, Final Report, *Review of suicide and selfharm instrument and protocol*, Prepared for Department of Immigration and Citizenship, 2008, p 6.

151 NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, submission 128, 3 September 2008, p 21.

## Additional community comments on detention services

- 3.143 In addition to the concerns raised above, the Committee heard evidence from a number of organisations recommending that:
- detainees be provided with greater access to education programs, most notably English classes, and other stimulating activities<sup>152</sup>
  - detainees be provided with appropriate spaces for worship, prayer and meditation and receive a diet in keeping with their religion,<sup>153</sup> and
  - detainees be provided with culturally appropriate food.<sup>154</sup>

## Committee conclusions

### Review of detention service contracts

- 3.144 As noted earlier in this chapter, DIAC announced that Serco, GSL and IHMS had all successfully tendered to provide services in immigration detention facilities over the next five years. The contracted services will be provided under a new SDM.
- 3.145 It is evident that there have been some serious issues relating to the provision of immigration detention services across all immigration detention facilities.
- 3.146 In particular, professional groups, stakeholders, advocacy groups and individuals within the community have voiced their concerns over the

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152 Blue Mountains Refugee Support Group, submission 1, 27 August 2008, p 1; Lovitt P, submission 3, 27 August 2008, p 8; Bridge for Asylum Seekers Foundation, submission 5, 27 August 2008, p 2; Bishop I, submission 8, 27 August 2008, p 1; Wallace A, submission 13, 27 August 2008, p 10; Gannon S, submission 22, 27 August 2008, p 3; NetAct, submission 27, 27 August 2008, p 4; The Migrant Health Service, submission 33, 27 August 2008, p 4; Walker L, submission 66, 27 August 2008, p 6; Australian Human Rights Commission, submission 99, 27 August 2008, p 9; NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, submission 108, 27 August 2008, p 18.

153 Uniting Church in Australia, submission 69, 27 August 2008, p 15; Brotherhood of St. Laurence, submission 92, 27 August 2008, p 22; Centre for Human Rights Education, submission 98, 27 August 2008, p 7; NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, submission 108, 27 August 2008, p 18; Forum of Australian Services for Survivors of Torture and Trauma, submission 115, 27 August 2008, p 31; Refugee Council of Australia, submission 120, 3 September 2008, p 10.

154 Eggins, N L, submission 2, 27 August 2008, p 1; Labor For Refugees (New South Wales), submission 55, 27 August 2008, p 3; NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, submission 108, 27 August 2008, p 22; The Justice Project Inc., submission 127, 3 September 2008, p 33; Petersen M and Gould N, submission 138, 26 November 2008, p 4.

privatisation of detention services, immigration detention standards and inadequate health services provided to detainees on Christmas Island. There must be a mechanism to ensure that any additional criticisms are dealt with in an appropriate and timely manner.

- 3.147 The Committee, and many other organisations, continue to have some reservations about DIAC's capacity to effectively achieve the necessary shift to a risk-averse framework where the onus is on establishing the need to detain. The primary concern of immigration detention authorities should be one of care for the well-being of detainees.
- 3.148 It is also equally important that the service providers continue to have a high level of accountability to the Australian Government.
- 3.149 The Committee therefore recommends that DIAC engage an independent auditor, the Australian National Audit Office, to undertake a full review of the level of service provided in immigration detention facilities to ensure that the highest standard of service is maintained.
- 3.150 The review should also focus on:
- the service providers adherence to DIAC's service delivery model and the immigration detention standards, or their current equivalent
  - whether the services provided are cost effective
  - the level of service provided to detainees.
- 3.151 The review should commence within the next three years and any findings should be responded to by DIAC and incorporated into the contracts for either the next re-tender or renewal process.

## Recommendation 6

3.152 **The Committee recommends that the Department of Immigration and Citizenship engage an independent auditor, the Australian National Audit Office, to undertake a full review of the current immigration detention service providers and immigration detention facilities within the next three years having regard to:**

- **the service providers' adherence to the Department of Immigration and Citizenship's service delivery model and the immigration detention standards, or their current equivalent**
- **whether the services provided are cost effective**
- **the level of service provided to detainees.**

**The Committee also recommends that the review feed into the contracts for either the next re-tender or renewal process.**

### Adequate training of personnel

3.153 The Committee reaffirms its view that people in immigration detention are exposed and vulnerable. As outlined in the first two reports on immigration detention in Australia, the Committee shares the view of many contributors to the inquiry, and best articulated by the AHRC, that:

...detainees are not held as criminal suspects or because they represent a risk to community safety, the most lenient detention regime is appropriate. The primary concern of immigration detention authorities should be one of care for the well-being of detainees.<sup>155</sup>

3.154 The Committee therefore considers that it is essential that all people in immigration detention are treated humanely and with respect and dignity. It is clear that this has not always been the case in the past.

3.155 The Committee acknowledges that over the past few years, DIAC and the detention service provider have sought to address the numerous deficiencies in the provision of immigration detention services through implementation of the Standards, the SDM and the announcement of the new detention service providers.

3.156 However, the Committee is acutely aware that the detention service providers can only be as good as the staff that provide the service.

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155 Australian Human Rights Commission, submission 99, 27 August 2008, p 41.

- 3.157 As such, it is the strong view of this Committee that staff, either employed directly or contracted by the detention service provider, are provided with a compulsory range of appropriate training that focuses on the vulnerability of people in such environments.
- 3.158 The training must be ongoing and all staff should be assessed as competent in the areas of cultural appropriateness and sensitivity, basic counselling and first aid. All staff should also be trained in how to deliver appropriate security measures within a non-punitive detention environment.
- 3.159 The Committee recommends that the training program be implemented by DIAC in an expedited manner.

### **Recommendation 7**

- 3.160 **The Committee recommends that the Department of Immigration and Citizenship introduce a mandatory ongoing training program for all staff of the immigration detention service provider, ensuring that all staff dealing directly with people in immigration detention are assessed as competent in:**
- **cultural appropriateness and sensitivity**
  - **basic counselling skills**
  - **first aid**
  - **managing conflict through negotiations**
  - **the provision of appropriate security measures.**

### **Immigration Detention Standards**

- 3.161 In line with its recommendations from its first and second report on immigration detention, the Committee concludes that there are opportunities to improve the accountability and transparency of DIAC's operations.



- 3.162 The SDM states that DIAC is committed to being responsive and accessible and delivering services to prescribed and publicly available standards.<sup>156</sup>
- 3.163 However, the Standards are not available from DIAC's website and it is unclear as to whether they have been incorporated into the new contracts or how DIAC monitors the performance of each service provider against the Standards.
- 3.164 The Committee requested a copy of the new tender documents that were released on 24 May 2007, which purportedly contain the Standards. The Committee was advised that the tender documents are commercial-in-confidence and thus not for public release.
- 3.165 The Committee is of the firm view that the general public, and more importantly people in immigration detention, should be provided with access to the Standards, or the current equivalent.
- 3.166 In accordance with the seven values underpinning Australia's detention policy, this will ensure that people in immigration detention have a greater understanding of the services afforded to them and provides an opportunity for detainees to comment on the appropriateness of the accommodation and the services provided.
- 3.167 In addition, the Committee, and many other groups, continue to have some reservations about the capacity of DIAC to monitor the performance of each immigration detention service provider against the SDM and the Standards. The SDM is the high level framework that identifies the values and the behaviours required for the detention service providers. The Standards provide details about the quality of services that would be expected in immigration facilities at the delivery level.
- 3.168 It is also equally important that service providers continue to have a high level of accountability to the Australian Government.
- 3.169 Accordingly, the Committee recommends that DIAC monitor and report on how each immigration detention service provider adheres to the Standards, or the current equivalent. This report, which should be undertaken annually, can be included in the DIAC's annual report.

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156 Department of Immigration and Citizenship, 'Service Delivery Model', viewed on 1 June 2009 at <http://www.immi.gov.au/about/contracts-tenders-submissions/detention-services/service-delivery-model.htm>.

## Recommendation 8

3.170 **The Committee recommends that the Department of Immigration and Citizenship publish the detention service standards, or the current equivalent, on its website and provide a copy of the detention service standards or the current equivalent, translated into appropriate languages, to all current and future detainees.**

**The Committee also recommends that the Department of Immigration and Citizenship should report on the performance of each immigration detention service provider against the immigration detention standards, or the current equivalent, which should be included in the Department's annual report.**

### Health services on Christmas Island

3.171 As noted earlier in this chapter, the geographical remoteness of Christmas Island provides a challenge to the detention service provider, other organisations that provide services to detainees, and the local community.

3.172 In particular, many submissions to the inquiry raised concerns about the inadequate physical and mental health services on Christmas Island noting that some medical needs cannot be met on Christmas Island at all.<sup>157</sup>

3.173 The Committee agrees with the AHRC's view that the local community on Christmas Island is not large enough or sufficiently resourced to be able to provide adequate health support to any significant number of immigration detainees.<sup>158</sup>

3.174 It is the Australian Government's responsibility to ensure that all people in immigration detention are treated impartially and humanely. People in immigration detention in offshore facilities such as Christmas Island should be provided the same level of service as those detained at immigration detention facilities in Australia.

3.175 The Committee recommends, therefore, that the Australian Government provide and maintain appropriate physical and mental health facilities on Christmas Island.

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157 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 73.

158 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 73.

**Recommendation 9**

- 3.176 **The Committee recommends that the Australian Government maintain appropriate physical and mental health facilities on Christmas Island commensurate with services provided at other immigration detention centres.**



## Transparency and visibility — immigration detention facilities

### Oversight mechanisms

- 4.1 In its first and second reports, the Committee examined the associated issues of accountability and review of departmental decision-making.
- 4.2 In particular, the Committee commented on the implementation of internal senior executive reviews within the Department of Immigration and Citizenship (DIAC), the six-month detention review by the Commonwealth Ombudsman, and enshrining the government's detention values in legislation.<sup>1</sup>
- 4.3 The Committee has also commented on the need for greater transparency and visibility in carrying out enforced removals from immigration detention to another country<sup>2</sup> and improved public disclosure of information about the costs of immigration detention to the Australian taxpayer.<sup>3</sup>
- 4.4 The Committee's concerns about transparency of service provision in Australian detention facilities and the costs associated with the detention

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1 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), chapter 4 and its dissenting report.

2 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), chapter 5.

3 Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention* (2009), chapter 4.

services provider contract are further articulated in the previous chapter of this report.

- 4.5 The focus of this chapter is on the various oversight mechanisms, both national and international, for monitoring the conditions of detention in Australian detention facilities.
- 4.6 There are several bodies, independent of DIAC, that monitor conditions in immigration detention facilities. These include:
- the Australian Human Rights Commission (AHRC)
  - the Immigration Detention Advisory Group (IDAG)
  - the Detention Health Advisory Group (DeHAG)
  - the Commonwealth Ombudsman, and
  - the United Nations High Commissioner for Refugees (UNHCR).
- 4.7 From time to time, the Government has also commissioned ad hoc inquiries into specific issues, incidents or capital works, such as the reports by Palmer, Roche and Comrie as well as those conducted by parliamentary committees.
- 4.8 The Australian Government also has various international human rights commitments and treaty obligations.

## Australian Human Rights Commission

- 4.9 The AHRC, formerly the Human Rights and Equal Opportunity Commission, is an independent statutory organisation established in 1986 under the *Human Rights and Equal Opportunity Commission Act 1986*.<sup>4</sup>
- 4.10 The AHRC's responsibilities fall within four main areas:
- human rights education and promotion
  - inquiring into discrimination and human rights complaints
  - human rights monitoring, and
  - policy development and legislative reform.<sup>5</sup>
- 4.11 The AHRC's work on immigration matters includes:
- making submissions to parliamentary inquiries
  - conducting national inquiries

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4 Australian Human Rights Commission, 'About the commission', viewed on 4 June 2008 at <http://www.hreoc.gov.au/about/index.html>.

5 Australian Human Rights Commission, *Annual Report 2007-08* (2008), p 8.

- investigating complaints from individuals in immigration detention regarding alleged human rights breaches, and
- examining proposed legislation, and commenting on policies and procedures relating to immigration detention.<sup>6</sup>

4.12 The AHRC also conducts annual visits to Australia's immigration detention facilities to monitor conditions in the facilities and to ensure that conditions are consistent with internationally recognised human rights standards.<sup>7</sup> The AHRC publishes an annual inspection report on those visits.

4.13 In its submission to the inquiry, the AHRC stated that:

Pursuant to its statutory functions, HREOC has also sought to protect the rights of those in immigration detention by conducting inspections of immigration detention facilities for the purpose of monitoring whether the conditions in immigration detention and the treatment of immigration detainees comply with Australia's human rights obligations. To effectively perform these functions, HREOC must have access to immigration detention facilities.

HREOC does not have a specific statutory power to enter immigration detention facilities. As a matter of practice, HREOC has always obtained access to detention facilities for the purposes of general inspections and investigating individual complaints of human rights breaches by detainees.<sup>8</sup>

4.14 In the most recent inspection report, *Immigration detention report – December 2008*, the AHRC noted that there are some limits to what they can achieve under its existing powers, stating:

The Commission does not have a specific statutory power to enter immigration detention facilities, although in practice it has been provided with access. The Commission's statutory powers that allow it to monitor conditions in immigration detention do not explicitly extend to monitoring Australia's compliance with its obligations under the Convention against Torture (although some of these obligations are reflected in other human rights treaties to which the Commission's powers apply). And, while the Commission has a statutory power to investigate complaints regarding alleged human rights breaches in detention facilities, the

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6 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 16.

7 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 16.

8 Australian Human Rights Commission, submission 99, 27 August 2008, p 30.

Commission's recommendations in these cases are not legally enforceable.<sup>9</sup>

4.15 This view was reiterated by former Human Rights Commissioner, Dr Sev Ozdowski, in his submission to the inquiry. Dr Ozdowski stated that complaints brought to the AHRC regarding human rights or civil liberties:

...pursuant to say, the ICCPR [International Covenant on Civil and Political Rights] can at best lead to a report to Parliament through the Attorney-General. [There is] no court-imposed remedy, no requirement to pay compensation, even where the Commission finds a breach.<sup>10</sup>

## Immigration Detention Advisory Group

4.16 The IDAG was established in 2001 to provide advice to the then Minister for Immigration and Multicultural Affairs on the appropriateness and adequacy of services, accommodation and amenities at the Immigration Detention Centres (IDCs).<sup>11</sup> Members are now appointed by the Minister for Immigration and Citizenship and are supported by a secretariat within DIAC.<sup>12</sup>

4.17 IDAG's terms of reference state that it will:

- advise the Minister for Immigration and Citizenship on matters relating to the detention of unlawful non-citizens in Immigration Detention Centres (IDCs), alternative and community detention arrangements. In particular, the Group will:
  - ⇒ advise on the appropriateness and adequacy of: detention services provided to detainees at IDCs; IDC accommodation and amenities; and community detention intervention arrangements;
  - ⇒ contribute to the enhancement of detention program strategies; and
  - ⇒ contribute to departmental detention program consultative processes.

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9 Australian Human Rights Commission, *Immigration detention report – December 2008*, p 18.

10 Ozdowski S, submission 58, 27 August 2008, p 27.

11 Department of Immigration and Citizenship, 'The Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag.htm>.

12 Department of Immigration and Citizenship, 'DIMA Annual Report 2000-01', viewed on 8 July 2009 at <http://www.immi.gov.au/about/reports/annual/2000-01/report19.htm>.



In addressing these issues, IDAG will:

- either individually or collectively, visit each IDC at least once a year to obtain first hand information on the operation of and environment at each centre;
- either individually or collectively liaise with non-government organisations and the community on a regular basis to obtain first hand information on issues faced by detainees accommodated in the community under detention intervention arrangements; and
- develop a work program, agreed with the Minister, identifying priority issues to be addressed over the next twelve months, noting that, from time to time, the Minister may task IDAG to examine and advise on a particular issue or issues.<sup>13</sup>

4.18 The IDAG's work on immigration matters includes:

- visiting immigration detention centres, 'with a special emphasis being placed on Villawood Immigration Detention Centre'<sup>14</sup>
- providing input into the development of immigration detention program strategies and departmental consultative processes
- seeking feedback from a range of non-government organisations, community groups and professional bodies with an interest in the immigration detention program
- convening regular meetings and teleconferences each year to identify and discuss current and emerging priority issues, and
- responding to specific requests from the Minister for Immigration and Citizenship to examine and advise on a particular issue or issues.<sup>15</sup>

4.19 Members are able to talk with staff, people in detention and detainee representative committees to obtain first-hand information on the operations and environment at each centre and alternative and community immigration detention arrangements.<sup>16</sup>

4.20 The IDAG reports to the Minister for Immigration and Citizenship and provides feedback to DIAC regarding immigration detention related

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13 Immigration Detention Advisory Group, submission 62, Appendix A, 27 August 2008, p 12.

14 Immigration Detention Advisory Group, submission 62, 27 August 2008, p. 3.

15 Department of Immigration and Citizenship, 'Purpose and Operations of the Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag-purpose.htm>.

16 Department of Immigration and Citizenship, 'Purpose and Operations of the Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag-purpose.htm>.

matters.<sup>17</sup> The IDAG advised that over the last seven or so years following their establishment, IDAG has met regularly with the Minister for Immigration for Citizenship.<sup>18</sup>

## Detention Health Advisory Group

- 4.21 The DeHAG was established in March 2006 and has a role in providing DIAC with advice regarding the design, implementation and monitoring of improvements in detention health care policy and procedures.<sup>19</sup> The DeHAG was convened for an initial period of two years.<sup>20</sup>
- 4.22 The DeHAG focuses on the development and implementation of health standards, the improvement of health data and analysis and issues relating to the improvement of policy and procedures in relation to provision of mental health and infectious disease.<sup>21</sup>
- 4.23 The DeHAG's terms of reference specify that they will provide an expert opinion regarding:
- the design, development and implementation of health policy for the health care, including mental health care, of people in immigration detention;
  - appropriate health care service standards which should be achieved in detention health services;
  - appropriate monitoring and reporting of detention health services and related information and data issues;
  - the nature and scope of potential research required to facilitate improved health outcomes and management of health care in detention services.<sup>22</sup>
- 4.24 Members of the DeHAG also visit immigration detention facilities as part of their meeting schedule.

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17 Department of Immigration and Citizenship, 'Purpose and Operations of the Immigration Detention Advisory Group (IDAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag-purpose.htm>.

18 Immigration Detention Advisory Group, submission 62, 27 August 2008, p 3.

19 Department of Immigration and Citizenship, 'Detention Health Advisory Group (DeHAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/dehag.htm>.

20 Detention Health Advisory Group, *Report Against 2006-07 Work Program* (2007), p 1.

21 Department of Immigration and Citizenship, 'Detention Health Advisory Group (DeHAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/dehag.htm>.

22 Detention Health Advisory Group, *Report Against 2006-07 Work Program* (2007), Appendix 2, p 12.

- 4.25 The DeHAG produces and publishes an annual report on its activities, the most recent of which was released in March 2008.<sup>23</sup>

## Commonwealth Ombudsman

- 4.26 The Office of the Commonwealth Ombudsman was established in 1976 under the Ombudsman Act 'and exists to safeguard the community in its dealings with government agencies, and to ensure that administrative action by Australian government agencies is fair and accountable.'<sup>24</sup>
- 4.27 The Commonwealth Ombudsman has five specialist roles: the Immigration Ombudsman, Defence Force Ombudsman, Law Enforcement Ombudsman, Postal Industry Ombudsman and Taxation Ombudsman.<sup>25</sup>
- 4.28 As part of its oversight role as Immigration Ombudsman, the Commonwealth Ombudsman investigates and reviews immigration detention administration.<sup>26</sup>
- 4.29 In the Committee's first report on immigration detention, the Committee considered in detail the role of the Commonwealth Ombudsman in relation to the recently introduced six-monthly detention reviews and the statutory two-year reviews of long-term detention cases.<sup>27</sup>
- 4.30 The Commonwealth Ombudsman also conducts a range of activities on immigration matters which includes:
- announced and unannounced inspection visits of immigration detention facilities
  - investigation of complaints from, or on behalf of, people who are held in immigration detention
  - inspection and monitoring DIAC's exercise of its compliance function including the use of search and entry powers, detention decisions and DIAC's removal and airports operations
  - own motion investigations into broader systemic issues across the range of immigration administration, and

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23 Department of Immigration and Citizenship, 'Detention Health Advisory Group (DeHAG)', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/services/dehag.htm>.

24 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

25 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

26 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

27 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008), Chapter 4.

- attendance at various detention related consultative forums.<sup>28</sup>
- 4.31 The Office of the Commonwealth Ombudsman noted that its role to inspect and monitor immigration detention centres includes monitoring whether detention service standards, including access to medical and other services and activities aimed at maintaining detainees' well-being, are being met.<sup>29</sup>
- 4.32 The Commonwealth Ombudsman added: 'As part of this function we provide feedback to DIAC as well as to its service providers including recommendations where standards have not been met or where they need to be further developed or adjusted.'<sup>30</sup>
- 4.33 As noted above, the Commonwealth Ombudsman handles complaints about immigration detention. The Commonwealth Ombudsman advised that:
- Where possible, complaints are resolved at the detention centre with discussion with the appropriate DIAC or detention service provider management. Where further investigation is required, complaints are pursued with DIAC's national office in accordance with complaint taking protocols.<sup>31</sup>

## Independent inquiries

- 4.34 As a result of public concern about the administration of immigration detention in recent years, a number of independent inquiries have also been established on an ad hoc basis to examine particular issues or incidents.
- 4.35 In particular, the Palmer and Comrie reports on the circumstances of the immigration detention of Ms Cornelia Rau and Ms Vivian Solon respectively, have had far-reaching impacts on immigration administration.
- 4.36 While their focus was chiefly on the administration of the *Migration Act 1958* by DIAC with respect to these individual cases, the reports also raised concerns about the level of general oversight in detention facilities.
- 4.37 Parliamentary committees of both Houses and the Auditor-General of Australia also exercise oversight of immigration detention facilities, and standards of service provided therein, within the scope of their legislation and referrals.

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28 Commonwealth Ombudsman, submission 126, 3 September 2008, p 1.

29 Commonwealth Ombudsman, submission 126, 3 September 2008, p 2.

30 Commonwealth Ombudsman, submission 126, 3 September 2008, p 2.

31 Commonwealth Ombudsman, submission 126, 3 September 2008, p 3.

## United Nations High Commissioner on Refugees

- 4.38 The Office of the UNHCR, established in 1950 by the United Nations General Assembly, is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems world wide. Its primary purpose is to safeguard the rights and wellbeing of refugees.<sup>32</sup>
- 4.39 The UNHCR provides a supervisory role to see whether countries, including Australia, are complying with their obligations under the 1951 UN Refugee Convention and its 1967 Protocol.<sup>33</sup> Australia ratified the 1951 UN Refugee Convention on 22 January 1954, and the 1967 protocol on 13 December 1973.<sup>34</sup>
- 4.40 The UNHCR's work on immigration matters includes:
- liaison with governments on refugee and asylum policy including training for officials working with refugees and advises authorities on best international standards in respect to legislation, policy and procedures
  - working with immigration authorities on the composition of their quotas for resettled refugees and assists in the submission of individual cases, and
  - raising awareness about UNHCR's work and refugee issues amongst parliamentarians, schools, the media and the general public.<sup>35</sup>

## International obligations

- 4.41 Australia is signatory to a number of international treaties relevant to the conditions of immigration detention, including:
- The International Covenant on Civil and Political Rights 1996 ('ICCPR')
  - The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1984 ('CAT')
  - The Convention Relating to the Status of Refugees ('Refugee Convention') (1951) and Protocol Relating to the Status of Refugees (1967)

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32 United Nations High Commissioner for Refugees, 'Basic Facts', viewed on 5 June 2009 at <http://www.unhcr.org.au/basicfacts.shtml>.

33 United Nations High Commissioner for Refugees, 'Basic Obligations', viewed on 5 June 2009 at <http://www.unhcr.org.au/basicoblig.shtml>.

34 United Nations High Commissioner for Refugees, 'Basic Obligations', viewed on 5 June 2009 at <http://www.unhcr.org.au/basicoblig.shtml>.

35 United Nations High Commissioner for Refugees, 'About Us', viewed on 5 June 2009 at <http://www.unhcr.org.au/aboutus.shtml>.

- The Convention on the Rights of the Child ('CRC')<sup>36</sup>
- 4.42 The United Nations Human Rights Committee (UNHRC) was established to monitor the implementation of the International Covenant on Civil and Political Rights and its Optional Protocol, to which Australia is a signatory. The Covenant and its Protocol allows individuals to submit complaints to the Human Rights Committee.<sup>37</sup>
- 4.43 Under the Covenant, Australia must submit a report every five years detailing the measures that have been taken to comply with the requirements of the Covenant. The reports are examined by the UNHRC in public meetings and through a dialogue with representatives of Australia to make suggestions and recommendations.<sup>38</sup>
- 4.44 In the past, the Human Rights Committee has found Australia's immigration detention framework to be in violation of its obligations under international law seven times.<sup>39</sup>
- 4.45 However, international treaties ratified by Australia are not automatically incorporated into Australian law. Entering into an international treaty imposes no obligation on Government or individuals to comply with any requirements under that treaty.<sup>40</sup> Commonwealth legislation is required to make a treaty legally binding.<sup>41</sup>
- 4.46 The Australian Government has recently signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (OPCAT).<sup>42</sup> As a party to the OPCAT, Australia is required to establish a national system of visits to all places of detention under Australia's jurisdiction and control, with the aim of preventing the mistreatment of those who are detained and make recommendations on improving internal conditions.

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36 Australian Human Rights Commission, submission 99, 27 August 2008, p 46.

37 United Nations Human Rights Committee, 'Introduction to the Human Rights Committee', viewed on 5 June 2009 at <http://www.unhchr.ch/html/menu2/6/a/introhrc.htm>.

38 United Nations Human Rights Committee, 'Introduction to the Human Rights Committee', viewed on 5 June 2009 at <http://www.unhchr.ch/html/menu2/6/a/introhrc.htm>.

39 Attorney-General's Department, submission 61, 27 August 2008, p 2.

40 Department of Foreign Affairs and Trade, 'Treaties and Treaty Making', viewed on 5 June 2009 at <http://www.dfat.gov.au/treaties/making/making3.html>.

41 Department of Foreign Affairs and Trade, 'Treaties and Treaty Making', viewed on 5 June 2009 at <http://www.dfat.gov.au/treaties/making/making3.html>.

42 The Hon Robert McClelland MP, Attorney-General, 'Australia takes action against torture', media release, 22 May 2009.

4.47 In 2008, the AHRC released a discussion paper on options for implementation of the OPCAT.<sup>43</sup>

## Lodging complaints

4.48 In addition to the numerous oversight mechanisms that monitor immigration detention facilities, detainees can also lodge complaints about the management of an immigration detention facility or their treatment while in detention. People in immigration detention can lodge a complaint with:

- the Detention Service Provider or departmental staff at the facility
- the Commonwealth Ombudsman
- the police
- State and Territory Child Welfare agencies, and
- other external agencies such as the AHRC.<sup>44</sup>

## Committee conclusions

4.49 As indicated above, there are a large number of national and international oversight mechanisms all designed to monitor and inspect immigration detention facilities, review immigration decisions, ensure that detainees are provided appropriate access to health care, handle complaints and ensure that the human rights of detainees are protected.

4.50 Each of these bodies plays a key role in monitoring immigration detention facilities and providing suggestions and recommendations to the Australian Government, primarily DIAC, on key areas of concern and many have been established or strengthened following the exposure of failings in detention administration and substandard conditions of detention in recent years.

4.51 In particular, the AHRC plays a significant role in monitoring conditions in Australia's immigration detention facilities. The AHRC publishes an annual inspection report on those visits that has been useful and

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43 Australian Human Rights Commission, 'Implementing the Optional Protocol to the Convention against Torture: Options for Australia', viewed on 8 July 2009 at [http://www.humanrights.gov.au/human\\_rights/publications/opcat/index.html](http://www.humanrights.gov.au/human_rights/publications/opcat/index.html).

44 Department of Immigration and Citizenship, 'External Scrutiny of Immigration Detention Services', viewed on 4 June 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/regulations/external-scrutiny.htm>.

- influential in disseminating information to the broader public about conditions in detention facilities as well as making recommendations.
- 4.52 However, the AHRC does not have a specific statutory power to enter immigration detention facilities.
- 4.53 The Committee is aware that the role of the AHRC is amongst the issues being currently debated as part of the National Human Rights Consultation, which is seeking public views on the adequacy of the protection and promotion of human rights in Australia.<sup>45</sup>
- 4.54 While the question of broader statutory protection of human rights in Australia is beyond the scope of this inquiry, the Committee will follow these discussions with interest. Expansion of the Commission's powers could have considerable impact on the human rights oversight of immigration detention facilities in Australia.
- 4.55 In addition, if Australia ratifies the OPCAT, it will need to establish an agency possessing functional independence to conduct visits-based inspections of all 'places of detention' within all parts of Australia as well as relevant offshore locations such as immigration detention facilities.<sup>46</sup>
- 4.56 As the AHRC already conducts inspections of immigration detention facilities, it would therefore be the logical body in which to entrust any compliance responsibilities associated with the OPCAT, and any other human rights obligations.
- 4.57 The Committee is aware that the OPCAT is currently the subject of consideration by Government and, while the OPCAT encompasses a range of places of detention broader than those examined by this inquiry, the Committee considers that this process is a good opportunity to review monitoring and access arrangements for existing immigration detention centres. At a minimum, the Human Rights Commission should be granted a statutory right of access to all places of immigration detention in Australia.

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45 National Human Rights Consultation, 'Welcome to the National Human Rights Consultation website', viewed on 8 July 2009 at <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf>.

46 Australian Human Rights Commission, 'Implementing the Optional Protocol to the Convention against Torture : Options for Australia', viewed on 8 July 2009 at [http://www.humanrights.gov.au/human\\_rights/publications/opcat/index.html](http://www.humanrights.gov.au/human_rights/publications/opcat/index.html).



**Recommendation 10**

- 4.58 **The Committee recommends that the Australian Human Rights Commission be granted a statutory right of access to all places of, and persons in, immigration detention in Australia.**

**Transparency – immigration detention facilities**

- 4.59 In its submission, DIAC advised that ‘Immigration detention is subject to continuing scrutiny from a number of external parties to ensure that people in immigration detention, including in immigration detention centres, are treated humanely, decently and fairly.’<sup>47</sup>
- 4.60 As DIAC indicated, and noted above, there are a number of oversight mechanisms that monitor the conditions within immigration detention facilities.
- 4.61 However, based on the evidence received during the course of this inquiry, it appears as though the public is not aware of these oversight mechanisms and believes that there is little transparency in operation of immigration detention facilities. Specifically, the public perception is that immigration detention facilities are not independently monitored or scrutinised; that there is limited oversight and little to no public scrutiny.
- 4.62 The Human Rights Education Centre for Human Rights Education (the Human Rights Centre) stated that ‘there is still a lack of transparency and information’ and that they have found trying to obtain information from DIAC a major problem.<sup>48</sup> The Human Rights Centre added:
- Accountability will be difficult to guarantee while immigration detention facilities remain in private hands, where a lack of transparency of government actions is in place, and where there is a lack of independent scrutiny.<sup>49</sup>
- 4.63 The Brotherhood of St Laurence also believed that the current level of transparency was inadequate stating:
- There are inadequate mechanisms for transparency, for accountability, for independent review and for mechanisms of

47 Department of Immigration and Citizenship, submission 129, 11 September 2008, p 15.

48 Briskman L, Human Rights Education, Centre for Human Rights Education, *Transcript of evidence*, 9 October 2008, p 19.

49 Briskman L, Human Rights Education, Centre for Human Rights Education, *Transcript of evidence*, 9 October 2008, p 20.

independent monitoring to see whether in fact the internal compliance mechanisms that GSL [the detention service provider] has are in fact being upheld.<sup>50</sup>

4.64 A Just Australia (AJA) commented that there 'is very limited oversight of the immigration detention regime and the centres themselves'.<sup>51</sup>

4.65 The Refugee Council of Australia was of the view that a lack of transparency is because detention centres are shielded from public scrutiny stating:

Commercial-in-confidence requirements have shielded detention centres from the level of public scrutiny required to ensure that detainees have their rights respected and their dignity maintained as well as affecting the level of public confidence in the extent to which the government is adequately discharging its duty of care to detainees.<sup>52</sup>

4.66 The Refugee Advice and Casework Service (Australia) Inc. (RACS) was also of the view that the commercial-in-confidence requirements shield detention centres from public scrutiny.<sup>53</sup> The RACS added:

The benefits of public scrutiny and transparent public administration cannot be underestimated in avoiding inhuman or degrading treatment.<sup>54</sup>

4.67 The Australian Federation of AIDS Organisations Inc., AJA, Rural Australians for Refugees, Public Interest Advocacy Centre Ltd, and the Human Rights Council of Australia (HRCA) were all of the opinion that more public scrutiny is required.<sup>55</sup> In particular, the HRCA stated:

The improvement of conditions in detention centres, to a level commensurate with Australia's human rights obligations, requires a far higher level of official, media and public scrutiny.<sup>56</sup>

4.68 The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) does, however, believe that DIAC has made good progress in opening up immigration detention facilities in recent years.<sup>57</sup>

50 Lillywhite S, Brotherhood of St Laurence, *Transcript of evidence*, 11 September 2008, p 65.

51 A Just Australia, submission 89, 27 August 2008, p 12.

52 Nash C, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 3.

53 Refugee Advice and Casework Service (Australia) Inc., submission 25, 27 August 2008, p 2.

54 Refugee Advice and Casework Service (Australia) Inc., submission 25, 27 August 2008, p 2.

55 Australian Federation of AIDS Organisations Inc., submission 94, 27 August 2008, pp 3-4; A Just Australia, submission 89, 27 August 2008, p 12; Rural Australians for Refugees, submission 88, 27 August 2008, p 3; Public Interest Advocacy Centre Ltd, submission 84, 27 August 2008, p 7; Human Rights Council of Australia, submission 80, 27 August 2008, p 7.

56 Human Rights Council of Australia, submission 80, 27 August 2008, p 7.

4.69 The Mercy Refugee Service commented that DIAC has made information on immigration detention facilities more accessible stating:

I believe the Department of Immigration has made good progress in relation to the transparency to information and some of the processes operating in relation to their present detention centres in more recent times. This is through representation at the various Community based meetings and their responses to questions and information requested, and also in some cases to e-mails or phone calls.<sup>58</sup>

4.70 The publication of fortnightly detention statistics on the Department's website, which detail the number of people in immigration detention, their location by facility, and the breakdown of men, women, children, nationality, protection visa status and length of stay, has been a positive step in improving the information publicly available about who is being held in detention.<sup>59</sup>

4.71 The New South Wales Young Lawyers Human Rights Committee suggested in its submission that this provision of information could be improved by retaining earlier editions for public access.<sup>60</sup>

4.72 Further, DIAC could also publish statistics on the number of releases from immigration detention as a result of administrative removals or deportations, the number of applications for voluntary return, and on incidents of self-harm and detainees placed on suicide watch.<sup>61</sup>

## Media

4.73 DIAC advised that its policy on media access to immigration detention centres is:

People in immigration detention may call journalists at any time. There are no restrictions but the Department asks that journalists have regard to concerns about identifying individual people in immigration detention.<sup>62</sup>

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57 The Forum of Australian Services for Survivors of Torture and Trauma, submission 115, 27 August 2008, p 13.

58 Mercy Refugee Service a Programme of Mercy Works Inc., submission 31, 27 August 2008, p 2.

59 Department of Immigration and Citizenship, 'Statistics', viewed on 8 July 2009 at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/>.

60 New South Wales Young Lawyers Human Rights Committee, submission 56, 27 August 2008, p 11.

61 New South Wales Young Lawyers Human Rights Committee, submission 56, 27 August 2008, p 11.

62 Department of Immigration and Citizenship, submission 129e, 26 November 2008, p 3.

4.74 The above notwithstanding, DIAC also advised that it has placed the following restrictions to protect the privacy of detainees and for operational requirements including:

... journalists, camera crew and photographers:

- may take cameras into the centre, but are not permitted to photograph people in immigration detention, officers of the Department or officers of the detention services provider (GSL Australia Pty Ltd) in a way that they may be identifiable, noting that pixelling/blurring of faces may not be sufficient to mask identity
- may not do any type of audio recording in the facility
- may photograph/film in interview rooms and accommodation areas when they are unoccupied
- may photograph eating, recreational, medical and religious facilities, ensuring that any people present will not be identifiable.<sup>63</sup>

4.75 However, many of the organisations that provided a submission or appeared before the Committee had a very different view on whether media had access to detention facilities and detainees.

4.76 AJA did not appear to be aware of DIAC's policy on media access and commented that, in the past, media access had been restricted.

Over the past years, the Department of Immigration and the detention service providers Australasian Correctional Management (ACM) and Global Solutions Limited (GSL), have exhibited great paranoia regarding media or public scrutiny of both IDCs and the detainees themselves. In most cases the media is barred from interviewing detained people who wish to participate. While there are privacy issues at stake, particularly for asylum seekers who may not wish to be inadvertently identified, media interviews could easily have been accommodated in the private interview rooms used for legal visits.<sup>64</sup>

4.77 AJA added that if 'they have changed that policy then that is good but, again, it really needs to be documented somewhere'.<sup>65</sup>

4.78 Project SafeCom Inc. was also of the view that media have no open access to immigration detention centres.<sup>66</sup>

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63 Department of Immigration and Citizenship, submission 129e, 26 November 2008, p 3.

64 A Just Australia, submission 89, 27 August 2008, p 15.

65 Gauthier K, A Just Australia, *Transcript of evidence*, 24 October 2008, p 14.

66 Smit J, Project SafeCom Inc., *Transcript of evidence*, 9 October 2008, p 34.

- 4.79 The Migrant Health Service advised that a former detainee reported that ‘for the first nine months of his detention, he, and the group of people who arrived with him were unable to make any contact with family, had no access to information about their rights or access to legal representation and had no access to media (newspapers, radio and television.)’<sup>67</sup>
- 4.80 The Justice Project Inc., Get Up!, the International Coalition on Detention of Refugees, Asylum Seekers and Migrants, Rural Australians for Refugees, the New South Wales Young Lawyers Human Rights Committee, and RACS were all of the opinion that the media has limited access to immigration detention facilities and detainees which they recommended should be increased.<sup>68</sup>

## Committee conclusions

- 4.81 There are a number of oversight mechanisms that monitor immigration detention facilities, both internal to, and independent of, DIAC.
- 4.82 However, based on evidence received by the Committee, it is also clear that the public is unaware of these oversight mechanisms and believes that the operation of immigration detention facilities is neither transparent nor visible.
- 4.83 It is the Committee’s view that these oversight mechanisms, and the organisations that monitor immigration detention facilities, are a key component in monitoring that detainees are provided with appropriate accommodation and facilities and are treated humanely and fairly.
- 4.84 Based on the above accounts, the Committee has formed the view that they are not transparent. The Committee believes that making the community aware of these oversight mechanisms, and the various reports that are produced, will help increase the level of transparency and visibility of process in all immigration detention facilities.
- 4.85 Another way to increase transparency is to provide comprehensive information about immigration detention facilities on DIAC’s website. The Committee acknowledges that DIAC has taken some steps to make information on immigration detention facilities more accessible but would

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67 Migrant Health Service, submission 33, 27 August 2008, p 2.

68 The Justice Project Inc., submission 127, 3 September 2008, p 9; Get Up!, submission 124, 3 September 2008, p 7; The International Coalition on Detention of Refugees, submission 109, 27 August 2008, p 21; Asylum Seekers and Migrants; Rural Australians for Refugees, submission 88, 27 August 2008, p 3; Refugee Advice and Casework Service (Australia) Inc., submission 25, 27 August 2008, p 2; The New South Wales Young Lawyers Human Rights Committee, submission 56, 27 August 2008, p 10.

like to see included disaggregated figures of detainees on Christmas Island and the number of security breaches in detention centres.

- 4.86 However, the Committee notes that most of this information is not comprehensive and also not consistent. Without the direct assistance of officers of DIAC the Committee would not have obtained information on a number of facilities, including immigration transit accommodation in Brisbane and Melbourne, the juvenile facility in Darwin, and facilities on Christmas Island. The Committee can therefore empathise with the members of the community and media who have found it difficult to obtain accurate information.
- 4.87 In order to promote its work and the inquiry, the Committee's practice is to issue a media release when it visits a detention facility. When the Committee visited the Northern immigration detention centre in Darwin in July 2008, this media release prompted an inquiry from a local media outlet who wished to take some stock footage of the interior of the detention centre. Even though the media outlet agreed not to film detainees, this request was denied by DIAC.
- 4.88 Similarly, when the Committee visited the immigration transit accommodation in Brisbane in April 2009, the secretariat forwarded a request to DIAC from the parliamentary media liaison office, which supports the work of the Committee,<sup>69</sup> to film images of the building interiors and exteriors. This was to form part of a short documentary about the work of the Migration Committee. Despite a commitment that individual detainees would not be filmed (there were only three people in the facility at the time) this request was denied by DIAC. The Committee requested that DIAC clarify the decision to deny the request to film the Brisbane immigration transit accommodation. To date, a response has yet to be received.
- 4.89 The Australian Government has taken appropriate action in the last few years to move away from detaining people in the harsher immigration detention centre environment to more liveable arrangements in the form of immigration residential housing and immigration transit accommodation. However, media is still reusing file footage of the now closed Baxter and Woomera immigration detention centres. This gives the public the perception that these are what all immigration detention facilities are like, which is no longer accurate. This underlines the necessity for DIAC to make footage available of its currently operating centres.

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69 The Parliamentary media liaison office also supports the work of all committees supported by the Department of the House of Representatives.

- 4.90 The Committee believes that it is in the best interests of DIAC, as well as those of the general public and their right to information, that access of the media to detention facilities be improved, notwithstanding the need to protect the privacy of detainees.
- 4.91 Providing greater access to the media will increase the level of transparency and visibility and allow the community greater public scrutiny and thus greater accountability.

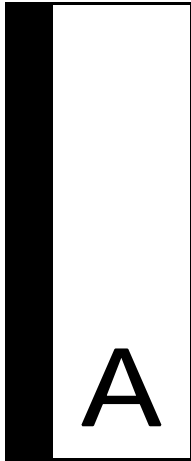
### **Recommendation 11**

- 4.92 **The Committee recommends that the Department of Immigration and Citizenship increase the transparency of immigration detention facilities by:**
- **providing the media greater access to all immigration detention facilities, whilst maintaining the privacy of people in immigration detention**
  - **publishing regularly updated information on all immigration detention facilities, including statistics on the detainee population, on the Department of Immigration and Citizenship’s website, and**
  - **developing a set of public media protocols that apply consistently across all immigration detention facilities.**

Michael Danby MP  
August 2009







## Appendix A: List of submissions to the inquiry

<b>Submission number</b>	<b>Submitted by</b>	<b>Date authorised</b>
1	Blue Mountains Refugee Support Group	27 August 2008
2	Mrs Nancy Eggins	27 August 2008
3	Ms Pauline Lovitt	27 August 2008
4	Ms Robin Gibson	27 August 2008
5	Ms Virginia Walker	27 August 2008
6	Mr Leith Maddock	27 August 2008
7	Mrs Daphne Lascaris	27 August 2008
8	Rev Isobel Bishop	27 August 2008
9	North Belconnen Congregation, Uniting Church in Australia	27 August 2008
10	Ms Diana Greentree	27 August 2008
10a	Ms Diana Greentree – SUPPLEMENTARY	27 August 2008
11	Mr Nick Armitage	27 August 2008
12	Dr Juliet Flesch	27 August 2008

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13	Ms Amalina Wallace	27 August 2008
14	Ms Marilyn Penneck	27 August 2008
15	Mrs Jean Jordan	27 August 2008
16	Mr Rex Rouse	27 August 2008
17	Ms Cynthia Pilli	27 August 2008
18	Mr and Mrs Peter and Jan McInerney	27 August 2008
19	Labor for Refugees (Victoria)	27 August 2008
20	Little Company of Mary Refugee Project	27 August 2008
21	Australian Catholic Migrant and Refugee Office	27 August 2008
22	Ms Susanne Gannon	27 August 2008
23	Montmorency Asylum Seekers Support Group	27 August 2008
24	Professor Mary Crock	27 August 2008
25	Refugee Advice and Casework Service (Australia) Inc	27 August 2008
26	Dr Anne Pedersen and Ms Mary Anne Kenny	27 August 2008
27	NetAct	27 August 2008
28	Professor Elliott Forsyth	27 August 2008
29	The Social Justice Board of the Uniting Church in Australia, WA Synod Social Responsibilities Commission, Anglican Province of Western Australia Catholic Social Justice Council, Archdiocese of Perth Council of Churches of Western Australia (WA) Inc., Religious Society of Friends, Perth Meeting, Coalition for Asylum Seekers, Refugees and Detainees (WA) (CARAD) Inc., Centre For Advocacy, Support & Education (CASE) for Refugees Inc., Edmund Rice Institute for Social Justice, Fremantle	27 August 2008

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29a	The Social Justice Board of the Uniting Church in Australia, WA Synod Social Responsibilities Commission, Anglican Province of Western Australia Catholic Social Justice Council, Archdiocese of Perth Council of Churches of Western Australia (WA) Inc., Religious Society of Friends, Perth Meeting, Coalition for Asylum Seekers, Refugees and Detainees (WA) (CARAD) Inc., Centre For Advocacy, Support & Education (CASE) for Refugees Inc., Edmund Rice Institute for Social Justice, Fremantle – SUPPLEMENTARY	26 November 2008
30	Name withheld	27 August 2008
31	Mercy Refugee Service	27 August 2008
32	Circle of Friends 42	27 August 2008
33	The Migrant Health Service	27 August 2008
34	Ecumenical Social Justice Group/Western Suburbs Inc (Brisbane)	27 August 2008
35	Australian Catholic Social Justice Council	27 August 2008
36	Sr Claudette Cusack	27 August 2008
37	Ms Bette Devine	27 August 2008
38	Ms Linda Jaivin	27 August 2008
39	Geoffrey, Donald and Gillian Allshorn	27 August 2008
40	Children Out of Detention (ChilOut)	27 August 2008
41	Buddies Refugee Support Group	27 August 2008
42	Queensland Council for Civil Liberties	27 August 2008
43	Ms Mary de Merindol	27 August 2008
44	ALP Goldstein Federal Electoral Assembly	27 August 2008
45	Ms Halinka Rubin	27 August 2008
46	Women's Electoral Lobby Australia	27 August 2008
47	Sr Anne Higgins	27 August 2008

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48	Mr Fred Johnson	27 August 2008
49	NSW Council for Civil Liberties	27 August 2008
50	Mrs Willis Ripper	27 August 2008
51	Mr Arthur Maxwell Ripper	27 August 2008
52	Ms Michelle Dimasi	27 August 2008
53	Edmund Rice Centre	27 August 2008
54	The Royal Australasian College of Physicians	27 August 2008
55	Labor For Refugees (New South Wales)	27 August 2008
56	Human Rights Committee, NSW Young Lawyers	27 August 2008
57	Researchers for Asylum Seekers	27 August 2008
58	Dr Sev Ozdowski OAM	27 August 2008
59	Ms Sue Hoffman	27 August 2008
59a	Ms Sue Hoffman – SUPPLEMENTARY	26 November 2008
60	Mr Paul Falzon	27 August 2008
61	Attorney-General's Department	27 August 2008
62	Immigration Detention Advisory Group	27 August 2008
63	Ms Margaret Bryant	27 August 2008
64	Ms Janet Castle	27 August 2008
65	Mrs Amina Daligand	27 August 2008
66	Ms Lesley Walker	27 August 2008
67	Ms Marilyn Shepherd	27 August 2008
67a	Ms Marilyn Shepherd – SUPPLEMENTARY	27 August 2008
68	Balmain for Refugees	27 August 2008
69	Uniting Church in Australia	27 August 2008
70	Ms Anna Harding	27 August 2008
71	Federation of Ethnic Communities Councils of Australia	27 August 2008

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72	CONFIDENTIAL	27 August 2008
73	Jesuit Refugee Service Australia	27 August 2008
74	Dr Michelle Foster	27 August 2008
75	Ms Doreen Roache	27 August 2008
76	Assoc Prof Simon Rice, Dr Hitoshi Nasu & Mr Matthew Zagor	27 August 2008
77	Ms Jenny Denton	27 August 2008
78	Ms Meryl McLeod	27 August 2008
79	National Ethnic Disability Alliance	27 August 2008
80	Mr Andrew Naylor	27 August 2008
81	Sr Jane Keogh	27 August 2008
82	Ms Linda Leung	27 August 2008
83	ACT Government	27 August 2008
84	Public Interest Advocacy Centre Ltd	27 August 2008
85	Australian Lawyers for Human Rights	27 August 2008
85a	Australian Lawyers for Human Rights – SUPPLEMENTARY	26 November 2008
86	Ms Trish Highfield	27 August 2008
87	Ms Helen Lewers	27 August 2008
88	Dr Helen McCue	27 August 2008
89	A Just Australia	27 August 2008
90	Joint Advocacy Statement	27 August 2008
91	Rural Australians for Refugees - Daylesford and District	27 August 2008
92	Brotherhood of St Laurence	27 August 2008
93	Hotham Mission Asylum Seeker Project	27 August 2008
93a	Hotham Mission Asylum Seeker Project – SUPPLEMENTARY	21 April 2009
94	Australian Federation of AIDS Organisations and HIV/AIDS Legal Centre	27 August 2008

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95	Ms Emily Ackland	27 August 2008
96	Ms Megumi Ogawa	23 July 2009
97	Castan Centre for Human Rights Law	27 August 2008
98	Centre for Human Rights Education, Curtin University of Technology	27 August 2008
99	Human Rights and Equal Opportunity Commission	27 August 2008
100	Ms Kath Morton	27 August 2008
101	Detention Health Advisory Group	27 August 2008
101a	Detention Health Advisory Group	4 February 2009
102	Romero Centre	27 August 2008
103	SCALES Community Legal Centre with the assistance of students from the Murdoch University School of Law	27 August 2008
103a	SCALES Community Legal Centre with the assistance of students from the Murdoch University School of Law - SUPPLEMENTARY CONFIDENTIAL	9 October 2008
104	Ms Margaret O'Donnell	27 August 2008
105	The Australian Psychological Society Ltd	27 August 2008
106	Department of Premier and Cabinet, Western Australia and other Agencies	27 August 2008
107	Ms Carmel Kavanagh	27 August 2008
108	Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)	27 August 2008
109	International Detention Coalition	27 August 2008
110	Ms Cecilia Quinn	27 August 2008
111	National Council of Women in Australia	27 August 2008
112	Mr Michael Clothier	27 August 2008
113	Ms Ruth Prince	27 August 2008
114	Queensland Government	27 August 2008

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115	Mr Paris Aristotle AM	27 August 2008
116	Ms Chris Rau	27 August 2008
117	Human Rights Law Resource Centre Ltd	27 August 2008
118	Sr Stancea Vichie	27 August 2008
119	Australian Council of Heads of Schools of Social Work (ACHSSW)	3 September 2008
120	Refugee Council of Australia	3 September 2008
121	Asylum Seeker Resource Centre	3 September 2008
121a	Asylum Seeker Resource Centre – SUPPLEMENTARY	26 November 2008
122	Mr Habib Khan	3 September 2008
123	Public Interest Law Clearing House	3 September 2008
124	Get Up!	3 September 2008
125	Law Council of Australia	3 September 2008
126	The Commonwealth Ombudsman	3 September 2008
126a	The Commonwealth Ombudsman – SUPPLEMENTARY	15 October 2008
127	Law Institute of Victoria, Liberty Victoria and The Justice Project	3 September 2008
127a	Law Institute of Victoria, Liberty Victoria and The Justice Project – SUPPLEMENTARY	26 November 2008
128	Mr Guy Coffey and Mr Steven Thompson	3 September 2008
129	Department of Immigration and Citizenship	11 September 2008
129a	Department of Immigration and Citizenship – SUPPLEMENTARY	15 October 2008
129b	Department of Immigration and Citizenship – SUPPLEMENTARY	15 October 2008
129c	Department of Immigration and Citizenship – SUPPLEMENTARY	15 October 2008

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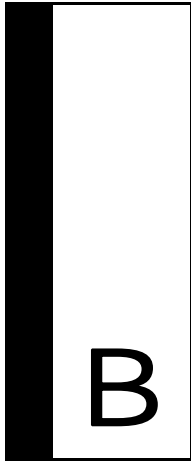
129d	Department of Immigration and Citizenship – SUPPLEMENTARY	15 October 2008
129e	Department of Immigration and Citizenship – SUPPLEMENTARY	26 November 2008
129f	Department of Immigration and Citizenship – SUPPLEMENTARY	26 November 2008
129g	Department of Immigration and Citizenship – SUPPLEMENTARY CONFIDENTIAL	26 November 2008
129h	Department of Immigration and Citizenship – SUPPLEMENTARY	26 November 2008
129i	Department of Immigration and Citizenship – SUPPLEMENTARY CONFIDENTIAL	26 November 2008
129j	Department of Immigration and Citizenship – SUPPLEMENTARY	26 November 2008
129k	Department of Immigration and Citizenship – SUPPLEMENTARY CONFIDENTIAL	26 November 2008
129l	Department of Immigration and Citizenship – SUPPLEMENTARY	26 November 2008
129m	Department of Immigration and Citizenship – SUPPLEMENTARY	4 February 2009
129n	Department of Immigration and Citizenship – SUPPLEMENTARY	11 March 2009
129o	Department of Immigration and Citizenship – SUPPLEMENTARY	18 March 2009
129p	Department of Immigration and Citizenship – SUPPLEMENTARY	21 April 2009
129q	CONFIDENTIAL	21 April 2009
129r	Department of Immigration and Citizenship – SUPPLEMENTARY	13 May 2009
129s	Department of Immigration and Citizenship – SUPPLEMENTARY	13 May 2009



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129t	Department of Immigration and Citizenship – SUPPLEMENTARY	17 June 2009
129u	Department of Immigration and Citizenship – SUPPLEMENTARY	17 June 2009
129v	Department of Immigration and Citizenship – SUPPLEMENTARY	17 June 2009
129w	Department of Immigration and Citizenship – SUPPLEMENTARY	24 June 2009
130	Refugee and Immigration Legal Centre Inc	11 September 2008
131	Ms Frederika Steen	17 September 2008
132	Amnesty International Australia	17 September 2008
133	United Nations High Commissioner for Refugees	17 September 2008
134	Ms Ngareta Rossell	15 October 2008
135	CONFIDENTIAL	15 October 2008
136	CONFIDENTIAL	15 October 2008
137	National Legal Aid	24 October 2008
138	Ms Mairi Petersen and Ms Natalie Gould	26 November 2008
139	Australian Security Intelligence Organisation	26 November 2008
139a	Australian Security Intelligence Organisation – SUPPLEMENTARY CONFIDENTIAL	4 February 2009
140	CONFIDENTIAL	4 February 2009
141	Mr Stanley Taurua	25 February 2009
142	Mr Howard Adelman	11 March 2009
143	A Just Australia and Refugee Council of Australia	21 April 2009
144	CONFIDENTIAL	3 August 2009





## Appendix B: List of public hearings and inspections

**Tuesday, 22 April 2008 – Sydney**

Site inspection of Villawood Immigration Detention Facility and immigration residential housing

**Wednesday, 7 May 2008 – Sydney**

### **Individuals**

Ms Linda Jaivin

Mr Morteza Poorvadi

### **A Just Australia**

Ms Kate Gauthier, National Coordinator

### **Amnesty International Australia**

Dr Graham Thom

### **Asylum Seekers Centre**

Ms Tamara Domicelj, Director

**Australian Red Cross**

Mr Noel Clement, General Manager, Domestic Operations

Ms Annie Harvey, Manager, ITRASS

**Balmain for Refugees**

Mrs Deborah Nicholls

**House of Welcome**

Father James Carty, Coordinator

**Mercy Refugee Service**

Sister Lorraine Phelan, On-Shore Programmes Manager, Mercy Works Inc

**Monday, 7 July 2008 – Darwin**

Visit to Headquarters Northern Command, Larrakeyah Barracks

Site inspection of hotel facilities

Site inspection of the Northern Immigration Detention Centre, Defence Establishment Berrimah

**Tuesday, 8 July 2008 – Christmas Island**

Site inspection of the Phosphate Hill Immigration Detention Facility and adjacent construction camp

Site inspection of the Christmas Island Immigration Detention and Reception Centre, North-West Point

**Wednesday, 3 September 2008 – Canberra****Immigration Detention Advisory Group**

Air Marshal Ray Funnell AC (Rtd), Member

Hon John Hodges, Chair

**Wednesday, 10 September 2008 – Melbourne**

Site inspection of Maribyrnong Immigration Detention Centre

Site inspection of Melbourne Immigration Transit Accommodation

Visit to the Asylum Seekers Resource Centre, West Melbourne

**Thursday, 11 September 2008 – Melbourne****Individuals**

Mr Guy Coffey

**Australian Red Cross**

Mr Noel Clement, General Manager, Domestic Operations

**Brotherhood of St Laurence**

Ms Serena Lillywhite, Manager, Sustainable Business

**Castan Centre for Human Rights Law**

Dr Susan Kneebone, Deputy Director

**Detention Health Advisory Group**

Assoc Professor Harry Minas, Chair

Dr Tim Lightfoot, Member

Dr Gillian Singleton, Member

**Hotham Mission Asylum Seeker Project**

Ms Caz Coleman, Project Director

Ms Stephanie Mendis, Casework Team Leader

**Law Institute of Victoria**

Ms Joanne Knight, Chairperson, Refugee Law Reform Committee

Ms Jessie Taylor, Convenor - Immigration Detention Working Group,  
The Justice Project and Liberty Victoria

**Liberty Victoria**

Mr Julian Burnside QC, President

**Refugee and Immigration Legal Centre Inc**

Mr David Manne, Coordinator/Principal Solicitor

**The Justice Project Inc**

Mr Kurt Esser, Chair

**Wednesday, 17 September 2008 – Canberra****Office of the Commonwealth Ombudsman**

Prof John McMillan, Commonwealth Ombudsman

Mrs Helen Fleming, Senior Assistant Ombudsman

Mr George Masri, Senior Assistant Ombudsman

Dr Vivienne Thom, Deputy Ombudsman

**Wednesday, 24 September 2008 – Canberra****Department of Immigration and Citizenship**

Mr Dermot Casey, Acting First Assistant Secretary

Mr Bob Correll, Deputy Secretary

Ms Arja Keski-Nummi, First Assistant Secretary, Refugee  
Humanitarian and International Division

Mr Andrew Metcalfe, Secretary

Ms Lyn O'Connell, First Assistant Secretary

**Wednesday, 8 October 2008 – Perth**

Site inspection of Perth Immigration Detention Centre and Immigration Residential Housing

Meeting with Ms G, community detention client

**Thursday, 9 October 2008 – Perth****Individuals**

Mr Stephen Khan

Dr Anne Pedersen

**Centre for Human Rights Education, Curtin University of Technology**

Professor Linda Briskman

**Centrecare Inc**

Mr Nigel Calver, Executive Manager

Mr Anthony Pietropiccolo, Director

**Project SafeCom Inc**

Mr Jack Smit, Executive Director / Project Coordinator

**Southern Community Advocacy Legal and Educational Services  
Community Legal Centre**

Ms Anna Copeland, Acting Director (Southern Community Advocacy  
Legal and Educational Services)

Ms Mary Anne Kenny, Solicitor/ Migration agent

Mrs Vanessa Moss, Solicitor/ Migration agent

**The Uniting Church in Australia**

Ms Rosemary Hudson Miller, Associate General Secretary, Justice and  
Mission

**Uniting Church in Australia - Western Australia**

Mr Mark Cox, Solicitor

**Wednesday, 15 October 2008 – Canberra****Australian Security Intelligence Organisation**

Mr Paul O'Sullivan, Director-General

**United Nations High Commissioner for Refugees**

Mr Richard Towle, Regional Representative

**Friday, 24 October 2008 – Sydney****Individuals**

Dr Sev Ozdowski OAM

**A Just Australia**

Ms Kate Gauthier, National Coordinator

**Asylum Seeker Resource Centre**

Mr Kon Karapanagiotidis, Chief Executive Officer

Ms Pamela Curr, Campaign Coordinator

Ms Maria Psihogios-Billington, Principal Solicitor

**Asylum Seekers Centre**

Ms Tamara Domicelj, Director

**Australian Human Rights Commission**

Mr Graeme Innes, Human Rights Commissioner and Disability  
Discrimination Commissioner

Ms Catherine Maywald, Policy Officer, Human Rights Unit

**Balmain for Refugees**

Ms Frances Milne

Mr Shane Prince, Counsel

**Get Up!**

Mr Edward Coper, Campaigns Director

Ms Anna Saulwick, Rights, Justice and Democracy Campaigner

**Human Rights and Equal Opportunity Commission**

Ms Susan Newell, Acting Director, Human Rights Unit

**Legal Aid NSW**

Ms Elizabeth Biok, Solicitor

Mr Bill Georgiannis, Solicitor

**Service for the Treatment and Rehabilitation of Torture and Trauma  
Survivors (STARTTS)**

Ms Deborah Gould, Clinical Psychologist

Ms Gordana Hol-Radicic, Clinical Psychologist, Acting Clinical  
Services and Research Coordinator



**Participants in roundtable of community detention clients**

Ms K

Mr U

Mrs Z

Mr W

Ms L

Mr K

Miss Z

**Thursday, 22 January 2009 – Melbourne****Asylum Seeker Resource Centre**

Ms Pamela Curr, Campaign Coordinator

Ms Maria Psihogios-Billington, Principal Solicitor

**Australian Red Cross**

Ms Melissa Bencik, Caseworker

**International Coalition on the Detention of Refugees, Asylum Seekers and Migrants**

Mr Grant Mitchell, Director

**Participants in roundtable of bridging visa clients**

Ms G D

Ms W D

Mrs F G

Mr H G

Mr S H

Ms S I

Ms L I

Mr Q L

Mr P Q

Mr G S

**Friday, 23 January 2009 – Brisbane**

**Individuals**

Ms Kerrie Woodrow

**Bric Housing**

Mr Tofiq Al Qady, Tenant/Caretaker

Ms Margaret Gleeson, Housing Worker

**Ethnic Communities Council of Queensland**

Mr Andrew Bartlett, Policy and Advocacy Advisor

**Metropolitan Association Towards Community Housing**

Mrs Carolyn Doherty, Chief Executive Officer

**Multicultural Development Association**

Ms Karen Lee, Executive Manager

**Refugee and Immigration Legal Service**

Ms Sonia Caton, Director

**Refugee Claimants Support Centre**

Miss Bess Hopgood, Joint Coordinator

**Romero Centre**

Mr Abdul Ghaznawi, Client

Mr Hassan Ghulam, Community Wellbeing Worker

Ms Kathi McCulloch, Coordinator

Ms Frederika Steen, Information Officer

**Wednesday, 4 February 2009 – Canberra**

**Refugee Council of Australia**

Mr Chris Nash, National Policy Director

Mr Paul Power, Chief Executive Officer

**Monday, 23 February 2009 – Canberra**

Site inspection of the Alexander McConachie Centre

**Wednesday, 25 February 2009 – Canberra****Griffith University**

Professor Howard Adelman, Research Professor, Detention Research Group, Key Centre for Ethics, Law, Justice and Governance.

**Wednesday, 18 March 2009 – Canberra****Department of Immigration and Citizenship**

Mr Bob Correll, Deputy Secretary

Ms Lynne Gillam, Assistant Secretary, Compliance Resolution

Mr Peter Hughes, Deputy Secretary

Ms Arja Keski-Nummi, First Assistant Secretary, Refugee Humanitarian and International Division

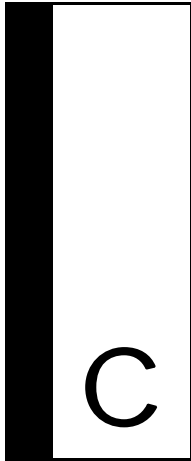
Ms Alison Larkins, First Assistant Secretary, Compliance and Case Resolution Division

Mr Andrew Metcalfe, Secretary

Mr Peter Richards, Assistant Secretary, Compliance and Integrity Support Branch

Ms Jackie Wilson, First Assistant Secretary, Community and Detention Services Division





## 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:

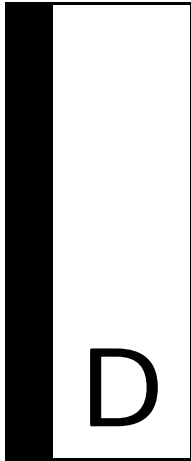
- All unauthorised arrivals, for whom health, identity and security checks have been completed.
- All unauthorised arrivals, where identity has not been conclusively established within 90 days, in the absence of a demonstrated and specific risk to the community, and except where there is clear evidence 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.



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

The Committee's second report, *Immigration detention in Australia: Community-based alternatives to detention*, was tabled in the Parliament on 5 May 2009. The Committee's recommendations from this report are reproduced below.

### Recommendations

#### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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

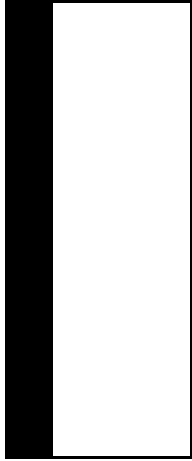
The Committee recommends that the Australian Government provide that, where permission to work on a bridging visa is granted, this permission should continue irrespective of whether a person has applied for a merits, judicial or ministerial review.

### 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.





## 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).<sup>1</sup>
- 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.<sup>2</sup>
- 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.<sup>3</sup> 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

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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](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.<sup>4</sup>

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.<sup>5</sup>

- 1.10 The Australian Human Rights Commission has also expressed its "significant concerns" about the accommodation of several children in immigration transit accommodation.<sup>6</sup>
- 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)<sup>7</sup> it does not mention the Commission's concern regarding the detention of children in immigration transit accommodation.<sup>8</sup>

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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.

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(*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.<sup>9</sup>
- 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”,<sup>10</sup> 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.”<sup>11</sup>
- 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.

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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.<sup>12</sup> 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.<sup>13</sup>
- 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).<sup>14</sup>
- 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).<sup>15</sup>
- 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."<sup>16</sup>
- 1.28 It is deeply troubling that so many children are being held at the Construction Camp Immigration Detention Centre on Christmas Island.

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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.<sup>17</sup>

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.<sup>18</sup>

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

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.<sup>21</sup> 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.<sup>22</sup>

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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).<sup>23</sup>
- 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”.<sup>24</sup>
- 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.<sup>25</sup> Professor Minas said that the Palmer recommendation “has not been implemented and it is our view that such a body remains essential.”<sup>26</sup>
- 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;**

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23 Hearing 24 September 2008 p. 11.

24 Hearing 11 September 2008 p 43.

25 Ibid.

26 Ibid, p. 40.

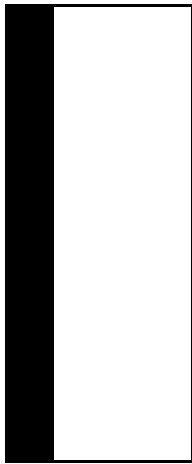
**Recommendation 5**

**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."<sup>27</sup>**

Mr Petro Georgiou MP

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



# Dissenting Report by Senator Sarah Hanson-Young

## Introduction

- 1.1 The aim of the Migration Committee's third report into immigration detention was to look into options to expand the transparency and visibility of immigration detention; preferred infrastructure options; and options for the provision of detention services and detention health services across the range of current detention facilities.

## Structure of report

- 1.2 First and foremost, issues of transparency and the provision of suitable and sufficient services can not effectively be dealt with without questioning the appropriateness of the privatisation of detention services.
- 1.3 Given the majority of individuals and organisations that provided evidence to the Committee highlighted concerns about the privatisation of detention services, the fact that the Committee's report fails to reflect this with an actual recommendation is disappointing, and clearly contravenes moves towards a more transparent and accountable immigration detention system.
- 1.4 While the Committee's report touches on the terms of reference outlined above, we are concerned that the report fails to include appropriate and detailed recommendations regarding infrastructure; security features of Immigration Residential Housing (IRH) and Immigration Transit Accommodation (ITA); immigration detention contracts; health care services; and transparency.

1.5 This report will therefore focus on five main areas of concern:

1. Infrastructure and security features;
2. Service delivery;
3. Detention facility contracts;
4. Transparency; and
5. Judicial Review.

## Infrastructure and security features

1.6 While the Committee's report includes a substantial section on immigration detention infrastructure, the Greens are concerned that the report fails to appropriately articulate detailed descriptions of the security features of all detention facilities, or put forward any concrete recommendations.

1.7 During the course of the inquiry, we heard numerous concerns surrounding the "one-stop shop" approach to immigration detention facilities as being an inappropriate way to accommodate "*vulnerable asylum seekers and low-security risk compliance cases...in the same facilities as violent criminal deportees.*"<sup>1</sup>

### **Recommendation No.1:**

**Given there are shared service areas, the Greens recommend that criminal deportees should never be held in the same facility as asylum seekers or low security risk compliance cases.**

## Perth Immigration Detention Centre

1.8 Community perception of the Perth Immigration Detention Centre (IDC) has been less than positive.

1.9 The Committee's report notes that the Southern Communities Advocacy Legal and Education Services (SCALES) Community Legal Centre in Western Australia had numerous anecdotal examples from former detainees suggesting that the state of the Perth IDC was such that many detainees would prefer to be in a maximum security prison.

1.10 Mrs Moss, Solicitor for SCALES, stated in evidence presented to the Committee that, "*The comments that I have from clients is that they think the*

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1 A Just Australia, Submission No.89,  
<http://www.aph.gov.au/house/committee/mig/detention/subs/sub089.pdf>.

*quality of care and the professionalism within a prison rather than an immigration detention centre is better. There are more things to do. It is a better regime within a prison, so they tell me, and they would prefer to be there.”<sup>2</sup>*

- 1.11 It is clear from the evidence presented to the Committee from organisations such as the Australian Human Rights Commission and the Refugee Council of Australia, to the Commonwealth Ombudsman, that the Perth IDC is an inappropriate and an inadequate environment to accommodate detainees in its current form.

**Recommendation No.2:**

**Given that the Perth Immigration Detention Centre is not a purpose built facility, the Greens recommend that the Government urgently address concerns about the general wellbeing of detainees housed at the Perth facility, and commit to looking at options for purpose built facilities, to comply with the seven key principles announced by the Minister in July last year that “Conditions of detention will ensure the inherent dignity of the human person.”**

### Villawood Immigration Detention Centre

- 1.12 Strong criticism surrounding the facilities at Villawood Detention Centre was prominent throughout the Committee process, particularly in relation to Stage 1, the high security area that accommodates single males.
- 1.13 Although the Government announced in the May Budget that they would provide \$186.7 million over five years to redevelop the Villawood immigration detention centre, the fact that the Australian Human Rights Commission has called for the demolition of Stage 1 in the last two inspection reports, action must immediately commence as a priority.

**Recommendation No.3:**

**The Greens recommend, as a priority, that the money allocated in the Budget for the Stage 1 upgrade of Villawood Immigration Detention Centre, immediately commence, with works to be completed by the next financial year.**

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2 Committee Hansard, <http://www.aph.gov.au/hansard/joint/commttee/J11139.pdf>, 09/10/08, p.7.

**Recommendation No.4:**

**We further recommend, as outlined within the UNHCR submission, that an independent mechanism be implemented to ensure the regular and transparent review of all places of detention, with particular focus on the appropriateness of accommodation and the services provided.**

**Christmas Island**

- 1.14 One of the most damaging aspects to our international standing in the way in which we treat asylum seekers, and refugees, is that of the excised zone.
- 1.15 According to SCALES, the purported justification for the policy of excised territories fails to hold up in international law, and *“is clearly designed to avoid our obligations under the Refugee Convention, a clear breach of international law.”*<sup>3</sup>
- 1.16 The remoteness and isolation of the Christmas Island detention facilities from mainland Australia, has heightened the limit in access to sufficient health facilities, the lack of resources for both island residents and detainees, and provided minimal access to torture and trauma counselling.

**Recommendation No.5:**

**Given Australia’s commitment to continuing with the excised territories of Christmas Island, Cocos Islands and Ashmore Reef, the Greens recommend that the *Migration Amendment (Excision from Migration Zone) Act 2001* be repealed in its entirety.**

**Recommendation No.6:**

**The Greens further recommend that all Immigration Detention Centre’s be located in urban areas to allow for proper service delivery and oversight and transparency.**

**Phosphate Hill**

- 1.17 Evidence submitted to the Committee indicated that the Phosphate Hill facilities are on the whole run down, with no appropriate family accommodation or privacy provided.

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3 SCALES, submission 103,  
<http://www.aph.gov.au/house/committee/mig/detention/subs/sub103.pdf>, p.15.

- 1.18 The Refugee Council of Australia argued within its submission that *“not only are asylum-seeking boat arrivals confronted with differential rights under Australian law - no access to judicial review of refugee status determination - they are met with markedly different conditions of detention.”*<sup>4</sup>
- 1.19 It is clear from the evidence provided to the Committee, given the low standard of accommodation provided, and the inappropriate facilities for families, that the current state of Phosphate Hill is unacceptable.

**Recommendation No.7:**

**The Greens recommend that no child or their family be housed in the Phosphate Hill detention facility.**

**Recommendation No.8:**

**If Phosphate Hill is continued to be used as an alternative to the North West Point detention centre, the Greens recommend that significant upgrading of the facility must commence as a matter of urgency, to bring it up to a comparable standard with that required of detention centres on the mainland.**

## Construction Camp

- 1.20 In its 2008 Immigration Detention Report, the Australian Human Rights Commission outlined their major concerns about the surroundings of the Construction Camp immigration detention centre, namely, the claustrophobic bedroom space; and the fact that detainees had no access to public phones or the internet.<sup>5</sup>
- 1.21 Although the Committee’s majority report stated that at the time of their visit, there were no fences around the facility, it is of deep concern that fences are believed to have since been erected, especially given there are 61 minors housed at the Construction Camp.

**Recommendation No.9:**

**Given the Greens do not support holding children in any form of prison-like secure detention facility, we recommend that this fence be taken down immediately.**

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4 The Refugee Council of Australia, submission 120, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub120.pdf>, p.7.

5 Australian Human Rights Commission, Immigration Detention Report – December 2008, p.77.

## North West Point detention centre

- 1.22 During evidence to the inquiry, former Human Rights Commissioner, Mr Innes stated that *“On top of all those issues on Christmas Island, the new detention facility is not only another half an hour away from the main settlement, so even further isolated, but it is a very prison-like facility, to the extent that you have got to go into a cage to borrow a library book.”*<sup>6</sup>
- 1.23 Concerns were also raised by other key community organisations around the lack of community oversight that is available when dealing with excised territories. Kate Guathier, from A Just Australia argued that with no community oversight, or media scrutiny *“there is the opportunity for extremely inhumane treatment of people.”*<sup>7</sup>

### **Recommendation No.10:**

**Due to the extraordinary level of security at the North West Point detention centre and the inappropriateness of detaining people there, the Greens recommend that this facility be closed immediately.**

### **Recommendation No.11:**

**In addition to recommendation No.5, if the excised territories are to remain, the Greens recommend that the Government ensure that the detention values and further policy developments are applied equally throughout Australia, including any such territories that are excised from the migration zone.**

## Children

- 1.24 The Greens remained concerned that the Committee’s report refers to IRH as being “family-style accommodations”, failing to acknowledge that IRH, along with community detention and transit accommodation detention facilities, are, by definition, secure forms of detention.

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6 Committee Hansard <http://www.aph.gov.au/hansard/joint/commttee/J11140.pdf>, 24/10/08, p.10.

7 Committee Hansard <http://www.aph.gov.au/hansard/joint/commttee/J11140.pdf>, 24/10/08, p.19.



- 1.25 Under the definition of immigration detention within the *Migration Act 1958*, it is clear that children should not be detained in any form of secure detention.<sup>8</sup>
- 1.26 As outlined in our comments to the second report, the Greens remain committed to 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.

#### **Recommendation No.12**

**Section 4AA of the Migration Act 1958 must be amended to explicitly state "... a minor must not be detained in any detention centres or facilities with similar conditions to detention centres under any circumstances".**

#### **Recommendation No.13**

**The Greens further recommend that a Commonwealth Commissioner for Children be established to specifically oversee the treatment of children in the immigration system.**

### **Service Delivery**

- 1.27 Despite the terms of reference identifying that appropriate forms of detention and what services are necessary for those detained are to be discussed, the Greens remain concerned that issues relating to health care provision are not adequately addressed, particularly following the recommendations that came from the Palmer Inquiry in 2005.
- 1.28 During the Melbourne hearing, the Red Cross stated that "*Living with insecurity and not knowing for a long period of time is going to have an impact on the mental health of anybody,*"<sup>9</sup> which is even more apparent for the excised territories where there is restricted access to any appropriate health care.

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8 Section 5 of the *Migration Act 1958* defines immigration detention as being: "(a) in the company of, and restrained by an officer ". For full definition of immigration detention see Section 5, p.11.

9 Committee Hansard, <http://www.aph.gov.au/hansard/joint/commtee/J11138.pdf>, 11/09/08, p.12.

**Recommendation No.14:**

**Given many submissions have pointed to the need to readdress the health criterion for asylum seekers, the Greens recommend that mental health risk assessment be included as a priority.**

**Recommendation No.15:**

**The Greens recommend that the Government mandate that all detention personnel receive specialised training in the areas of health care of refugees, including torture trauma and cultural sensitivity.**

**Recommendation No.16:**

**The Greens further recommend that an independent body experienced in the health care of culturally diverse clients be established to oversee the provision of health care to detainees.**

## Privatisation of detention services

- 1.29 The Government's recent announcement that it has renewed a new five-year contract for immigration detention services with GSL, and Serco is disappointing and strikingly at odds with the Labor's pre-election promises.
- 1.30 The fact is that there will be two different operators for detention centres, residential housing, and transit accommodation, raises concern over how the two private operators will communicate with one another and the department to ensure transparency in maintained.
- 1.31 During the course of the inquiry, we heard numerous concerns with using external for-profit contractors to provide immigration detention services; particularly given there have been many instances, according to A Just Australia, "*where arguments regarding responsibility of service delivery between the Department and service delivery contractors have resulted in unacceptable living conditions for detained people.*"<sup>10</sup>
- 1.32 The fact that both GSL and Serco have backgrounds in providing prison services, makes it highly inappropriate to provide a service for vulnerable refugees and asylum seekers found in detention.

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10 A Just Australia, Submission No.89,  
<http://www.aph.gov.au/house/committee/mig/detention/subs/sub089.pdf>.

- 1.33 Outsourcing is not an appropriate way of handling the claims and care of these vulnerable people seeking our assistance and protection, particularly when some of the detention facilities are so remote from the Australian mainland.

**Recommendation No.17:**

**The Greens recommend that the Government return all immigration detention services to public control, opening up a direct line of responsibility between the Department, the Minister and the immigration processes and services available, that occur in these detention facilities.**

**Recommendation No.18:**

**If private management of immigration detention centres continues, the contracts must emphasise the need to put welfare outcomes ahead of security and compliance to ensure that no private operator with only a prison services background is awarded the contract.**

## Transparency

- 1.34 Accountability and transparency are key to making sure human rights and justice are respected in Australia's immigration processes.
- 1.35 In its submission to the inquiry, the International Coalition on Detention of Refugees outlined the way in which Swedish detention centres operate in relation to the rights of the detainees. They stated "*detainees are made to be made to feel active in their case, by having access to media and internet to research their case and to be able to contact NGOs for advice. By doing all of the above detainees feel they are given a fair hearing, are empowered and tend to comply with decisions, removing the need for the coercive measures previously used by police and the security company.*"<sup>11</sup>
- 1.36 Given the Justice Project Inc. stated in their submission that "*the continuing exclusion of media from immigration detention centres has undermined the important role of media scrutiny in informing the public about government actions and thereby increasing transparency and accountability,*"<sup>12</sup> the Greens recommend that:

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11 The International Coalition on Detention of Refugees, Submission No. 109, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub109.pdf>.

12 The Justice Project Inc., Submission No.127, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub127.pdf>.

**Recommendation No.19:**

**As a priority, guidelines must be implemented into the Immigration Detention Standards, to include the protection of rights for detainees to speak freely to the media.**

**Recommendation No.20:**

**Given the tender process for the service contracts is over, the detention standards that service delivery operators adhere to must be made public to ensure transparency of detention processes and procedure is upheld.**

**Judicial Review of decisions**

1.37 As per our first dissenting report, co-sponsored with Mr Petro Georgiou and Senator Alan Eggleston, and the second report, 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.

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

**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;**

**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>13</sup>**

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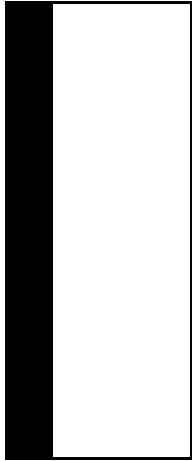
13 "New Directions in Detention - Restoring Integrity to Australia's Immigration System," 29 July 2008.

## Conclusion

- 1.39 While the Greens support many of the recommendations identified in the Committee majority's report, we remain apprehensive that some of the major concerns raised during the course of this inquiry, relating to transparency and immigration detention protocols, have been largely ignored, we have decided to present a dissenting report.
- 1.40 And while we acknowledge, as we did in the previous two reports, the work of Immigration Minister, Senator Evans, in working towards a more humane and compassionate system of immigration, the Greens believe there is still more to be done to restore Australia's commitment to refugees under our international obligations.
- 1.41 The Greens have a proud tradition of supporting those seeking our protection, and we encourage the Government to look closely at our recommendations, to ensure that our system of immigration is fair and compassionate, and reflects our commitment to assisting and protecting those most in need.

Sarah Hanson-Young  
Australian Greens' Spokesperson for Immigration  
Senator for South Australia





## Minority Report by the Hon. Dr Sharman Stone MP

- 1.1 The Joint Standing Committee on Migration commenced an inquiry into immigration detention options and issues in May 2008.
- 1.2 Unfortunately I joined the committee in 10 November 2008, after most of the evidence and inspections that form the basis of all three reports had been taken. I was not able to question those making submissions, nor visit most of the facilities.
- 1.3 The Committee visited the facilities on Christmas Island prior to the current surge commencing in September 2008, and so, its observations on the functioning of the facility are based on its appearance while empty of detainees, and without community or DIAC feedback on the functioning of the facilities or adequacy of services following the arrival of over 1000 detainees over nearly 12 months.
- 1.4 Unfortunately my several requests to officially visit and inspect the Christmas Island facility since the surge have not been facilitated. I cannot then support any recommendations in relation to the major offshore facility at Christmas Island given the absence of any relevant observation or commentary on the performance of the Island detention facilities in operation.
- 1.5 Nor was the Committee able to obtain a detailed breakdown of the costs associated with the various detention options, except for those on the Christmas Island secure facility. Neither the costs of the transit accommodation available in the capital cities nor the community detention options were provided to the Committee despite requests for the data. This makes a meaningful discussion of the viability, efficiency or alternatives to various facilities impossible.

- 1.6 No data was supplied to the Committee about security breaches, eg escapes from detention facilities, and yet the Committee made recommendations about the appropriateness and adequacy of security infrastructure. Clearly this data about security breaches was essential for a reasoned debate about the adequacy or performance of different physical infrastructure.
- 1.7 Given these data and inquiry/methodology problems I cannot support the Committee's recommendations.

The Hon. Dr Sharman Stone MP