FOREWORD

Responses to irregular migration vary, and views are as passionate as they are disparate. It is no secret that this inquiry unfolded within a highly contested political space, for which reason the Committee's conclusions had little chance of being unanimous. Accepting this, the Committee nevertheless sought to proceed openly and consultatively, with a view to taking an honest, no-holds-barred look at Australia's immigration detention network. Because in the midst of this bitterly contested political debate we find human beings: men, women and children whose lives should not be political fodder, people who have to live with the consequences of government decisions.

At its heart, this inquiry poses fundamental questions about our national identity. How does Australia treat people seeking asylum? What weight do we ascribe to human rights on our own borders? Is there a standard for how a civilised, humane society responds when people arrive uninvited asking for protection, irrespective of who they may be, their mode of arrival, or the challenges they pose? Whether discussing policy in Parliament or around the kitchen table, we each have to ask ourselves: does Australia pass this test?

It is a credit to the parliamentary process that so many different responses to these questions have been represented in over 3500 submissions to the inquiry, and through 15 separate hearings and site visits conducted by the Committee.

Much of the evidence received, both written and oral, was not easy or pleasant to engage with. The Committee was frequently reminded of the great human misery and suffering that is part and parcel of life for millions of people fleeing extreme conditions in countries around the world, of whom Australia sees only a tiny proportion. The Committee's particular focus was on the experiences of such people once they engage with the Australian polity, and become subject to conditions over which Australia has control.

The Committee has taken pains to comprehensively address its terms of reference, thus fulfilling the task it was given by the Parliament, but at the same time has tried to focus its attention on detention centre management, and health, security and assessment processes. It is these cornerstones of the immigration detention system that most profoundly impact on the experience of detainees.

The Committee's most fundamental conclusion is that asylum seekers should reside in held detention for as short a time as practicable. Evidence overwhelmingly indicates that prolonged detention exacts a heavy toll on people, most particularly on their mental health and wellbeing. While academics and psychologists tell us that mental health begins to erode after three months in detention, there are people with adverse security assessments in Australia's immigration system who have been detained for well over two years.

Looking inside Australia's detention network, what the Committee found were well-intentioned policies causing unintended harm. We found people who had spent months, and in many cases years, locked up without committing any crime. A branch of the immigration system premised on temporary detention for the purposes of processing, but in practice a system which had become synonymous with prolonged, and in a number of vexed cases, indefinite, incarceration.

Unsurprisingly, rates of mental illness among detainees are very high, as are rates of self harm and attempted suicide. Committee members witnessed firsthand the aftermath of such desperation during visits to detention facilities.

As well as the immeasurable human cost, however, the financial resources required to maintain such a disparate, isolated and heavily populated detention network cannot be ignored. Last financial year the Australian Government spent over $772 million on running detention facilities. The estimated cost of running detention facilities in 2011-12 approaches $629 million. As more people are transitioned out of facilities and into community detention, the projected cost of operating the community detention program in 2011-12 is $150 million. This is a better, more cost-effective alternative.

The Committee therefore applauds the very substantial efforts already underway to reduce the number of people in held detention. To date, over 3700 people have been placed in community detention or on bridging visas under new initiatives announced in late 2011. Every one of these people is one fewer requiring harmful and expensive accommodation in a detention facility.

Accordingly, the Committee is keen to ensure, without compromising the safety of the community, that not one person is held in detention longer than necessary. A number of the recommendations contained in this report are grounded in the desire to build on the successes of the community detention and bridging visa programs already underway.

To this end, the Committee recommends that all reasonable steps be taken to limit detention to 90 days, and that where people are held any longer, the reasons for their prolonged detention be made public. In associated recommendations, the Committee advocates use be made of community detention wherever possible, while any necessary assessments are conducted.

At the same time, the Committee takes the view that more can be done for those who remain, for whatever reason, in held detention. The Committee has recommended that, as a matter of policy, detainees be accommodated in metropolitan areas wherever possible, particularly children, families and those with special needs or complex medical conditions. There can be little doubt that, while the use of remote facilities has at times been necessary, they should be used only as a last resort. This will not only better serve the needs of detainees, but save on some of the vast expense required to run large-scale facilities in extremely remote locations.

One of the key matters of contention emerging from this inquiry was whether the number of staff on duty in detention facilities is always sufficient. Consistent with the findings of the Hawke-Williams Review and Comcare, and given the quantum of its contract with Serco, the Committee considers that the Department of Immigration and Citizenship ought to audit the staffing levels in detention facilities more robustly. The appropriate qualifications for Serco officers also requires deeper examination.

The level of provision of health services needs to reflect the fact that people in detention, by virtue of their particular circumstances, typically require a higher level of mental health care than the community at large. In addition, the Committee believes that the Department and Serco's mental health policies need to be synthesised, and that Serco's policy must be reformed.

Leaving aside the moral obligation to provide assistance to people in need of mental health care, its ready availability would also help to reduce the level of self harm and suicide, and enable improved medical responses when incidents do occur. Where acute care is not immediately available near a detention facility, the Committee has recommended the provision of such care within the facility on a 24-hour basis.

Children in detention was another area of particular concern to the Committee. Responding to evidence received on the subject, the Committee has recommended that the Minister for Immigration be replaced as guardian of unaccompanied minors in detention, and that a uniform child protection code be implemented across the immigration system for children seeking asylum. This should be complemented by formalised relationships between DIAC and all state and territory children's commissions.

The Department of Immigration and Citizenship needs also to improve on the provision of recreation facilities for detainees, and ensure that visits to its facilities are consistently managed across the network.

Finally, the Committee grappled with the question of security assessments, and the fact that the current system bars refugees from accessing existing avenues for a merits review of adverse decisions, resulting in practically indefinite detention for detainees with adverse assessments. While it is necessary to be mindful of the need to keep security sources and procedures confidential, the overwhelming imperative to provide procedural fairness in the system cannot be ignored where a person's liberty is at stake. The Committee believes the current system does not strike an appropriate balance. Accordingly, the Committee has recommended that the Australian Security Intelligence Organisation (ASIO) legislation be amended to allow the Security Appeals Division of the Administrative Appeals Tribunal to review ASIO security assessments of asylum seekers and refugees.

The Committee has recommended implementing further safeguards in the security assessment process, including periodic internal reviews of adverse ASIO assessments, and the exploration of whether control orders (currently used in the criminal justice

system) could allow for the release from held detention of those refugees and asylum seekers who are in indefinite detention or cannot be repatriated.

These recommendations are grounded in the Committee's belief that the system currently in place to deal with asylum seekers and refugees, evolved from a system designed to deal with different problems on a different scale and now needs to be adjusted to reflect contemporary circumstances. In forming this view, the Committee cites what it believes is a disjoint between the current system and Australia's obligations under the United Nations Covenant for Civil and Political Rights, our knowledge about the effect of held detention on those detained, and the growing recognition that detention on the scale applied over the past decade is simply not justified nor sustainable.

The truth is, Australia has for many years and under consecutive governments struggled with the challenge posed by irregular maritime arrivals. The sobering facts outlined in this report speak for themselves. Irregular people movement is an unsolicited fact of life faced by many nations around the world. A considered response mindful of legal and moral human rights obligations is the mark of a mature and civilised polity.

It is also clear that the situation in Australia's detention facilities as it was at the outset of this inquiry was, in the long run, simply unsustainable. The reasons for this are complex, but are all too often oversimplified and described through the prism of political motives. Given the enormous human and financial cost of held detention, the Committee has reached the fundamental conclusion that less harmful, far more cost-effective alternatives are available and should be pursued. To the best of its ability, what the Committee has tried to offer within the pages of this report is an honest assessment of systemic problems, and a proactive blueprint for the future.

As has been said, the Australian Government is already making significant progress in reforming the asylum seeker processing and accommodation system. The Committee is optimistic that the far-reaching measures recommended in its report will significantly complement the advances already underway, and help to bring about an immigration system which reflects our commonly held commitment to human rights, dignity, and fair process.

Mr Daryl Melham MP

Chair