

CHAPTER 1

Introduction

Referral

1.1 On 16 June 2011 the Parliament established the Joint Select Committee on Australia's Immigration Detention Network.¹

1.2 The Committee was asked to examine:

- any reforms needed to the current Immigration Detention Network in Australia;
- the impact of length of detention and the appropriateness of facilities and services for asylum seekers;
- the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties;
- the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;
- the impact of detention on children and families, and viable alternatives;
- the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers;
- the impact, effectiveness and cost of mandatory detention and any alternatives, including community release;
- the reasons for and nature of riots and disturbances in detention facilities;
- the performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons;
- the health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties

1 *House of Representatives Votes and Proceedings*, No. 45, 2 June 2011, pp 602 – 605; *Journals of the Senate*, No. 33, 16 June 2011, p. 1014 – 1016.

relating to irregular maritime arrivals or other persons detained in the network;

- the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols;
- compliance with the Government's immigration detention values within the detention network;
- any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons;
- the management of good order and public order with respect to the immigration detention network;
- the total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees;
- the expansion of the immigration detention network, including the cost and process adopted to establish new facilities;
- the length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network; and
- processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network.

Interim Report

1.3 The Committee tabled an interim report on 7 October 2011. At that time the Committee had received over 3,500 submissions and held site visits and hearings on Christmas Island and in Derby, Darwin and Sydney. The Committee took the view that it required more time to adequately discharge its reference and sought an extension until 30 March 2012.

Structure of Final Report

1.4 This report is divided into eight chapters:

- Chapter 1 (this chapter) sets out the administrative arrangements for the inquiry and outlines the roles of the key organisations and government agencies involved in the immigration detention network;

- Chapter 2 provides an overview of Australia's current immigration detention network, summarises other inquiries related to the terms of reference and provides a background and brief history of Australia's policies in relation to immigration detention;
- Chapter 3 contains an analysis of the Department of Immigration and Citizenship's (DIAC) administration of its contracts with Serco as well as Serco's performance of its wide-ranging duties to run detention facilities;
- Chapter 4 examines DIAC's provision of health services to people in detention, both through its contracted service provider IHMS and through local hospitals, with a particular emphasis on the provision of mental health care;
- Chapter 5 examines the impact of detention on detainees, including children, and looks at how frontline staff working in facilities are affected;
- Chapter 6 outlines Australia's obligations under international law, and scrutinises refugee and security assessment processes conducted by DIAC and ASIO respectively;
- Chapter 7 turns to alternatives to held detention, such as community detention and bridging visas, describing potential ways to reduce the number of people in restrictive detention facilities; and
- Chapter 8 looks at disturbances in detention facilities, and includes a comprehensive summary of the report by Dr Allan Hawke and Ms Helen Williams into disturbances at the Christmas Island facility in March 2011 and at Villawood Immigration Detention Centre in April 2011.

Acknowledgements

1.5 The Committee thanks all those who contributed to the inquiry by making submissions, providing additional information or appearing before it to give evidence. The Committee is particularly grateful for the extensive assistance of DIAC in providing large quantities of information, technical advice and assistance, and coordination for the Committee's numerous site visits.

Note on references

1.6 References in this report to the Hansard for the public hearings are to the proof Hansard. Please note that page numbers may vary between the proof and the official transcripts.

Role of the Department of Immigration and Citizenship

1.7 The Department of Immigration and Citizenship (DIAC) administers the immigration detention network. This includes resolving the status of detainees and managing the performance of its contracted service providers.

1.8 DIAC may decide to detain a person under the *Migration Act 1958* if that person is determined to be an unlawful non-citizen. DIAC owes a duty of care to all people in detention, and is ultimately responsible for people in detention, even though it contracts out some responsibilities to service providers.

1.9 The majority of people in detention in Australia today are classified as Irregular Maritime Arrivals (IMAs). In June 2011 DIAC had around 960 (full time equivalent) staff undertaking IMA work. The majority are involved in direct service delivery and support roles. Just over 10 per cent are involved in corporate support role and overhead roles.²

1.10 The Department is responsible for:

- Detaining unlawful non-citizens
- Case management
- Refugee status assessment interviews and decisions
- Removing detainees from Australia
- Contract management and auditing (e.g. Serco and IHMS)
- Negotiating with states and territories for the provision of services such as education and hospital care
- Authorising use of force
- Granting visas.

Role of other commonwealth government agencies

Australian Federal Police

1.11 The Australian Federal Police (AFP) has a number of roles in the immigration detention network. At most facilities the AFP has a joint role with local police in managing order.

1.12 The AFP maintain a public order management team that is trained and equipped to respond to disturbances in detention centres presenting a threat to public order. The AFP work closely with Serco, DIAC and local police forces when such circumstances arise. Since the riots on Christmas Island in March 2011, the AFP have stationed officers in some immigration detention centres to work with Serco to gather intelligence. The Committee has been assured throughout the inquiry that the AFP,

2 Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 67.

DIAC and local police are continuing to work closely to develop a Memorandum of Understanding (MOU) to govern the policing response to incidents at detention facilities.³

1.13 The AFP have a community policing role on Christmas Island. This team responds to domestic police matters that arise in the community – and in detention centres.

1.14 The AFP also has a People Smuggling Strike Team deployed to Christmas Island. The team conducts investigations and gathers evidence in support of prosecutions of crew and organisers responsible for unauthorised boat arrivals.

Australian Security Intelligence Agency

1.15 The Australian Security Intelligence Agency (ASIO) provides security assessments for detainees. For most detainees this will occur if and when a claim for refugee status is accepted by DIAC. A less rigorous check is also conducted when a detainee is being considered for community detention.

1.16 A detailed discussion of the role of ASIO in security assessments can be found in Chapter 6.

Role of contracted service providers

Australian Red Cross

1.17 The Australian Red Cross is the lead service provider in DIAC's community detention program since the program's inception in July 2005, supporting people with no visa status who are permitted to live in the community rather than in an immigration detention facility.⁴

1.18 The program is funded by DIAC. Red Cross provides health and welfare support, while the Department has responsibility for compliance and immigration matters.

1.19 Once the Minister for Immigration determines that a person can reside in community detention, services provided by Red Cross include:

- assessment of client needs and development of a Care Plan to address identified needs;
- housing;
- assistance to arrange access to health care and education;
- community transition and orientation; and
- other welfare support needs.

3 See Chapter 8 for details.

4 DIAC, *Submission 32, Supplementary*, pp 49–50, 64.

1.20 While the Australian Red Cross is the key contracted provider of community detention services, there are over 20 other non-government organisations that have also been contracted to undertake similar work.⁵ This is discussed further in Chapter 7.

IHMS

1.21 The department signed a contract in January 2009 with International Health and Medical Services Pty Limited (IHMS) to provide general and mental health services to people in immigration detention. The contracts reflect the way forward for detention services, incorporating the major changes at DIAC since the Palmer and Comrie reports, and the Government's 'New Directions in Detention'.⁶

1.22 IHMS is required to provide health services to detainees at the same standard available in the general Australian community. Detainees that require emergency or acute care are transferred by IHMS to local hospitals. IHMS' obligations and performance under the contract is considered in Chapter 4.

Life Without Barriers

1.23 The Minister for Immigration and Citizenship is the guardian of all unaccompanied minors (UAMs) in immigration detention. Life Without Barriers provides care and support services to UAMs accommodated in APODs and community detention on mainland Australia. Life Without Barriers is also the contracted provider of independent observer services on Christmas Island and mainland Australia. The independent observer provides support to minors during entry and intelligence interviews.⁷

Serco

1.24 On 29 June 2009, the department entered into a five-year contract with Serco Australia Pty Ltd. The contract, valued at about \$370 million, covers the provision of detention services at immigration detention centres (including those on Christmas Island) and alternative places of detention as well as a range of transport and escort services to people in detention.⁸ A phased transition from the former detention service provider G4S Australia Pty Ltd started from the contract signature date.

5 Mr Noel Clement, Head of Australian Services, Australian Red Cross, *Proof Committee Hansard*, 18 November 2011, p. 45. The Palmer and Comrie reports are addressed in more detail in Chapter 2.

6 DIAC, *Submission 32, Supplementary*, pp 60–63.

7 Life Without Barriers, <http://www.lwb.org.au/Services/Refugees/Pages/default.aspx> (accessed 1 February 2012). Department of Immigration and Citizenship, *Question on Notice 43* (received 10 August 2011).

8 DIAC, *Submission 32, Immigration Detention Facilities in Australia*, p. 4.

1.25 On 11 December 2009, the department entered into a second five-year contract with Serco Australia Pty Ltd to provide services to people in immigration residential housing and immigration transit accommodation throughout Australia.⁹ Transition from the previous detention service provider G4S Australia Pty Ltd was completed in January 2010.

1.26 The two contracts are referred to throughout this report as 'the contract'. The Department released a redacted contract to the Committee on the same day that it was released under the *Freedom of Information Act 1982* to a third party applicant.

Role of other organisations

Detention Health Advisory Group (DeHAG)

1.27 The Detention Health Advisory Group (DeHAG) was established in 2006, following recommendations in the report by Mr Mick Palmer into the detention of Cornelia Rau.¹⁰ DeHAG provides advice to the Department of Immigration and Citizenship (DIAC) on detention health care policy and procedure.

1.28 DeHAG comprises an independent group of health experts who represent key Australian health and mental health professional and consumer group organisations, including:

- Australian Medical Association
- Royal Australian College of General Practitioners
- Mental Health Council of Australia
- Australian Psychological Society
- Forum of Australian Services for the Survivors of Torture and Trauma
- Victorian Health Promotion Foundation
- Royal Australian and New Zealand College of Psychiatrists
- Royal College of Nursing Australia
- Public Health Association of Australia
- Australian Dental Association.

9 DIAC, *Submission 32, Immigration Detention Facilities in Australia*, p. 5.

10 This report was commissioned by the Minister for Immigration and Multicultural and Indigenous Affairs, and also included preliminary comments on the Vivian Alvarez matter. Mick Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, July 2005, <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf> (accessed 1 February 2012).

1.29 The Council for Immigration Services and Status Resolution (CISSR) is also represented and the Commonwealth Ombudsman has observer status.

1.30 The work of the DeHAG has also been supported by two time limited sub-groups: the Mental Health Sub-Group (MHSG) which continues to focus on a range of mental health issues in the immigration detention context, and the Infectious Diseases Sub-Group (IDSG) which focused on issues surrounding infectious disease management.

1.31 DeHAG opposes mandatory restrictive detention, particularly of children, survivors of torture and trauma and other vulnerable individuals. Nevertheless, it believes that improvements may still be made even within the current framework.¹¹

Council for Immigration Services and Status Resolution

1.32 The CISSR was established in September 2009 (succeeding the Immigration Detention Advisory Group). The Minister announced on 9 February 2012 that CISSR has been renamed the Minister's Council on Asylum Seekers and Detention and that the term of the Council would be extended to September 2014.¹² No submission has been received from CISSR. The following information has been obtained from the DIAC website.¹³

1.33 CISSR is an independent advisory group to the Minister for Immigration and Citizenship charged with provision of independent advice to the Minister on policies, processes, services and programs necessary to achieve the timely, fair and effective resolution of immigration status for people seeking migration outcomes in Australia. This includes people whose immigration status is unresolved residing either in the community or in any form of detention.

1.34 In particular, CISSR provides advice on:

- policies, services and programs designed to support the timely resolution of immigration status outcomes;
- the appropriateness and adequacy of services available to assist people whose immigration status is unresolved;

11 Detention Health Advisory Group, *Submission 41*.

12 Minister the Hon Chris Bowen MP, Media Release, 9 February 2012 available online: <http://www.minister.immi.gov.au/media/cb/2012/cb182434.htm> . The Committee received evidence from council when it was called CISSR in 2011. For this reason the Council is called CISSR throughout this report.

13 <http://www.immi.gov.au/managing-australias-borders/detention/regulations/cissr/> (accessed 1 February 2012).

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- detention matters including, but not limited to, the suitability of facilities, accommodation and service arrangements.

In addressing these issues, the CISSR is required to:

- develop a work program, agreed with by the Minister, identifying priority issues to be addressed over the term of the CISSR's appointment;
- respond to specific issues identified as a priority by the Minister and provide advice accordingly;
- liaise with relevant non-government and intergovernmental organisations statutory bodies and detention service providers on a regular basis;
- regularly visit the range of detention facilities in operation to obtain information on the suitability, environment and operation of each facility;
- contribute to and provide advice about areas of research, that would aid in the improvement of policies, programs and services in areas directly related to CISSR's terms of reference; and
- provide reports on the activities of CISSR to the Minister on a regular basis.

1.35 CISSR has expressed strong support for the government's current emphasis on community detention and bridging visas. CISSR has expressed concern in the past about overcrowding in detention centres, the length of detention, and delays in processing.¹⁴

Conduct of the inquiry

1.36 Notice of the inquiry was posted on the Committee's website and in *The Australian* newspaper, calling for submissions by 26 August 2011. The Committee also advertised the inquiry in two editions of the Christmas Island newsletter, *The Islander*, in English, Malay and Chinese languages. However, submissions have been accepted by the Committee throughout the term of the inquiry.

1.37 The Committee directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions. The Committee also wrote to a number of detainee advocacy groups and invited them to contact people in detention and assist them in making a submission.

Submissions, hearings and site visits

1.38 A total of 154 formal submissions were received, as listed in Appendix 1. The Committee also received a high volume of submissions as part of an email campaign coordinated by GetUp. Approximately 1800 form letters were received requesting an

14 DIAC, *Question taken on notice*, Question 72 (received November 2012).

end to mandatory detention and approximately 1600 submissions generally opposing mandatory detention.¹⁵

1.39 The Committee also received more than a hundred submissions from people in detention. These submissions were received in confidence and the Committee arranged for submissions made in a language other than English to be translated. These submissions were accepted *in camera*, and the Committee has referred to these submissions only when the identity of detainees could be protected.

1.40 The Committee held four public hearings in Canberra, as well as hearings on Christmas Island, Adelaide, Derby, Darwin, Melbourne, Sydney and Weipa:

- Canberra on 16 August 2011, 22 November 2011, 9 November 2011 and 29 February 2012;
- Christmas Island on 6 September 2011;
- Derby, Western Australia on 7 September 2011;
- Darwin, Northern Territory on 26 September 2011;
- Sydney, New South Wales on 5 October 2011;
- Adelaide, South Australia on 15 November 2011;
- Melbourne, Victoria on 18 November 2011; and
- Weipa, Queensland on 2 December 2011.

1.41 The Committee conducted site inspections of a number of facilities in the immigration detention network including immigration detention centres, alternative places of detention (APOD) and immigration residential housing. These site inspections included:

- North West Point Immigration Detention Centre, Construction Camp APOD and Phosphate Hill APOD on Christmas Island on 5 and 6 September 2011;
- Curtin Immigration Detention Centre, Derby Western Australia on 7 September 2011;

15 These submissions are available on the committee website:
http://www.apf.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/additional_subs/index.htm

- Berrimah House APOD, Darwin Airport Lodge APOD and Northern Immigration Detention Centre in Darwin NT on 26 and 27 September 2011;
- Villawood Immigration Detention Centre and Sydney Immigration Residential Housing on 4 October 2011;
- Inverbrackie APOD, South Australia on 15 November 2011
- Scherger Immigration Detention Centre, Qld on 1 December 2011.

1.42 During site visits to Christmas Island, Darwin, Curtin and Villawood facilities the Committee held *in camera* hearings with detainees from a range of language groups. The Committee resolved that some portions of the transcript may be published or referred to in this report, so long as the identity of individual detainees is protected.