ADDITIONAL COMMENTS

Senator Sarah Hanson-Young for the Australian Greens

Introduction

Australia is obliged to protect the human rights of all asylum seekers and refugees who arrive in our country, regardless of how or where they arrive, and whether they arrive with or without a visa. Our obligations to vulnerable people who are fleeing persecution arise from Australia's commitment to international treaties, and a shared sense of justice and fairness as a safe, prosperous and humanitarian nation.[1]

The Australian Greens welcomed the opportunity to participate in the Joint Select Committee on Australia's Immigration Detention Network because it was apparent that, after decades of controversy and inflammatory public debate in this important area of policy, successive Australian governments have not yet found a workable solution for humanely, safely, and cost-effectively accessing the asylum applications of people who arrive by boat.

In conducting its investigations the Committee travelled across Australia and received a massive volume of information and submissions. The evidence presented to the Committee was overwhelmingly clear that Australia's immigration detention network is in crisis.

Chapter 5 of the Committee Report provides a thorough survey of the crisis and the impact it is having on the men, women and children who are confined in places of detention, as well as the staff and services providers working in the centres. The evidence put before the Committee was explicit that detention centres are places of hopelessness, suffering and mental illness. The immigration detention network is highly expensive and unwieldy to maintain, and daily life within the centres lacks adequately clear practices and procedures to minimise some of the significant harm being caused to asylum seekers and staff.

The Australian Greens support the recommendations of the Committee Report. Having observed the extent of the crisis from a multiplicity of angles, the Committee has put forward a range of effective and practical measures to address the crisis.

The Australian Greens endorse the Committee Report recommendations in the belief that implementation of those reforms would go a long way towards fixing the detention system. The Greens assert that wherever possible, the recommendations

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[1] 1951 Convention Relating to the Status of Refugees; 1967 Protocol Relating to Refugees; 1948 Universal Declaration of Human Rights; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1966 International Covenant on Civil and Political Rights; and the 1989 Convention on the Rights of the Child.

outlined in the Committee Report must be incorporated into Australia's legal framework through amendments to existing legislation.

The recommendations in the Committee Report and these Additional Comments would make possible an immigration detention network which would be:

- Healthier and more humane for asylum seekers through clear and mandated time limits on detention, regular judicial review of extended detention, and no children in detention;
- More cost effective through improved procedures and training in detention centres, and properly rigorous auditing of service provider outcomes;
- Less damaging for detainees through review of security decisions, greater use of community detention and bridging visas, and the removal of the conflict of interest regarding unaccompanied minors.

The importance of immediate legislative reform

The past two decades of immigration detention practices have demonstrated that non-legislative reforms are incapable of withstanding the vicissitudes of governmental or ministerial changes, nor the 'toxic' political rhetoric that regretfully distorts public discussion of asylum seeker policy.[2]

The *New Directions for Detention* values-based approach announced by the Minister for Immigration on 29 July 2008 included, amongst seven key principles, a policy undertaking that ‘detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time’. As the Committee heard from a succession of witnesses, the *New Directions* policies have largely not been carried out in practice, to the great detriment of detained asylum seekers, service providers in the detention network and Australian taxpayers and agencies.

It is critical that the *Migration Act 1958* (Cth) (*Migration Act*) and relevant legislation be urgently amended to ensure the longevity and resilience of the reforms proposed by the Committee report and herein. This is the only way that Australia can draw closer to achieving a humane, cost-effective, and secure detention network.

Time limits on detention

As at 29 February 2012 there were 4122 people in detention who had been there for over 92 days, amounting to 62% of current immigration detainees. Of that group, there were 253 people who had been in detention for greater than 730 days.[3] Asylum seekers continue to be detained for unacceptable periods of time at great risk to their mental health and well-being.

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[2] Mr Richard Towle, UNHCR Australia, as quoted in 'Asylum seekers turned off toxic Australia', *ABC News Online*, Samantha Hawley, 26-27 March 2012.

[3] *Immigration Detention Statistics Summary to 29 February 2012*, published on Department of Immigration and Citizenship website March 2012.

We refer to and endorse **recommendation 22 [5.118]** of the Committee Report which calls on the Australian Government to 'take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the *shortest practicable time*, and subject to an assessment of non-compliance and risk factors, as enunciated by the *New Directions* policy'.

The Committee has resolved that the government must take immediate, concrete action to remedy this situation. The Committee has proposed at **recommendation 23 [5.119]** that 'all reasonable steps be taken to limit detention to a maximum of 90 days'.

The Australian Greens believe the first and most crucial remedial step is to amend the *Migration Act* so that time limits on detention are enshrined in Australian law.

A large cohort of submitters to the Inquiry supported the call for legislative reform so as to ensure specific time limits on detention. The United Nations High Commissioner for Refugees said in its written submission:

> The UNHCR recommends that the presumption against detention should be explicitly incorporated into Australia's legal framework and that all efforts should be made to avoid the situation of protracted detention and possibility of indefinite detention in Australia.
>
> The UNHCR recommends that asylum-seekers should not be detained beyond the purpose of assessing identity, health and security checks. Detention should not extend to a determination of the merits because this is not a legitimate ground for detention.[4]

The Law Council of Australia also called for the enactment of provisions imposing time limits on detention:

> The Law Council is also disappointed that the Government's subsequent policies and legislative reforms do not appear to fully comply with the seven values [*New Directions*] described above … In light of these developments, without implementing these values in legislation, it is difficult to have confidence that these values will continue to guide Government policy making in this area. Implementing the principles in legislation will help solidify Australia's commitment to ensuring its laws and policies comply with international human rights standards.[5]

In its written submission the Gilbert & Tobin Centre for Public Law called for the *Migration Act* to be amended to reflect a presumption against detention unless

[4] United Nations High Commissioner for Refugees, *Submission 110*, p. 1.

[5] Law Council of Australia, *Submission 101*, p. 12.

justified.[6] The Refugee and Immigration Legal Centre, represented by Mr David Manne, also called for the implementation of policies to limit detention.[7]

Other groups that gave unequivocal support for legislated time limits on detention include the Law Council of Australia, Labor for Refugees (Vic), Forum of Australian Services for Survivors of Torture and Trauma, Migration Institute of Australia, Jesuit Refugee Service Australia, Castan Centre for Human Rights, Refugee Advice and Casework Service NSW, Liberty Victoria, International Detention Coalition, Australian Psychological Society, Uniting Church Australia, Refugee Council of Australia and the International Refugee and Migration Law Project UNSW.

It should be noted that numerous organisations who made submissions to the inquiry called for mandatory detention of asylum seekers to be abolished altogether, on the basis that it does not accord with the rule of law and Australia's human rights obligations.[8]

A number of submitters to the Inquiry supported the Greens' long-time call for time limits of 30 days to be placed on immigration detention. The Australian Medical Association (Northern Territory) recommended that detention of asylum seekers should be limited to 30 days for adults and 3 days for children.[9] Amnesty International noted that a 30 day time limit would be comparable to other countries.[10] The Australian Greens continue to broadly support the position that 30 days is an appropriate maximum time frame for initial checks.

The Committee was provided with a great deal of evidence showing that the extended duration of detention is directly linked, indeed underlies, many of the core problems associated with immigration detention, including unrest in immigration detention centres, costs to tax payers for privatised management of the centres, costs to society for supporting asylum seekers once they are finally released, difficulties in accessing services in remote locations, and lack of appropriate care and protection for children. Most importantly, extended detention is crucially linked to the mental health crisis that is a constant concern in Australia's immigration detention network, leading to

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[6] Gilbert & Tobin Centre of Public law, *Submission 21*, p. 2.

[7] Mr David Manne, Refugee and Immigration Law Centre, *Proof Committee Hansard*, 11 November 2011, p. 24.

[8] Ms Pamela Curr, Asylum Seeker Resource Centre, *Submission 54*, p. 3; Ms Tanya Jackson-Vaughan, Refugee Advice and Casework Service, *Proof Committee Hansard*, 5 October 2011, p. 2; Ms Lucy Morgan of Refugee Council of Australia, *Proof Committee Hansard*, 5 October 2011, p. 8; The Hon. Catherine Branson, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 51; Law Council of Australia, *Proof Committee Hansard*, 16 August 2011, p. 1; Professor John Langmore, Anglican Public Affairs Commission, *Submission 36* p. 2; Oxfam Australia, *Submission 132*; Northern Territory Legal Aid Commission, *Submission 329*; Monash Law Students' Society, *Submission 148* .

[9] Dr Peter Morris, Australian Medical Association (NT), *Proof Committee Hansard*, 26 September 2012, p. 9.

[10] Dr Graeme Thom, Amnesty International, *Proof Committee Hansard*, 18 November 2011, p. 13.

over-medication, self-harm, suicide attempts and, in a small but tragic number of scenarios, deaths of asylum seekers.

The link between time limits and mental health was put clearly in written materials and in person by Dr Jon Jereidini, a Professor of clinical psychiatry at the University of Adelaide who has been working with detainees since 2002. He informed the Committee:

> If I talk about it just from the point of view of protecting people's mental health, then from that point of view I do not have a problem with detention, provided it is a matter of weeks rather than months, in order to allow processing and those kinds of things that people seem to believe need to happen in a closed environment... But I do think that when it is sustained beyond those weeks it does become dangerous, and it has been extremely damaging to many people, and not just, I might add, to the people who have been detained but also those who have detained them. Increasingly, we have become aware over the years of the damage done to people working in those environments. From the point of view of protecting people's mental health, detention must be kept to a matter of weeks rather than months.[11]

As reflected in **recommendation 23 [5.119]** the Committee has resolved that detention of 90 days or less would be a workable and safe period of detention. The detention of adults for no more than three months, while health, identity and security checks are undertaken, would bring vast improvements to the network as a whole.

A time limit on detention to 90 days was supported by a number of submitters to the Inquiry, including the Chair of the Council for Immigration Services and Status Resolution, Mr Paris Aristotle, who noted that as people start to become unwell after 90 days of detention then 90 days should serve as the outer limit.

The Australian Greens see recommendation 23 of the Committee Report as a clear opportunity to begin taking 'all reasonable steps'. In the context of this Inquiry and its significantly beneficial raft of recommendations we support the time limit of 90 days. Consequentially, amendment of the *Migration Act* to achieve this reform should be the top priority coming out of this extensive inquiry process.

Positing time limits as a policy goal (that may be readily departed from on the basis of momentary political imperative) rather than as a legislative requirement (that requires approval by both houses of federal parliament to be changed) will not lead to genuine and long-term reform of detention practices in Australia.

Current and future Australian governments must be compelled by law to ensure that time limits are adhered to by all public or private agencies responsible for accommodating asylum seekers while initial checks are completed.

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[11] Dr Jon Jureidini, *Proof Committee Hansard,* 15 November 2011, p. 33.

Recommendation 1

***Migration Act* to be amended to ensure that a time limit on detention, preferably 30 days, is adhered to, over which time initial health, identity and security checks can be conducted to ensure there is no risk to the community.**

Judicial Review of Extended Detention

Where the Department of Immigration forms the view that a person needs to be detained beyond the mandated time limit, there must be clear processes in place to ensure that the continuing detention is adequately explained, scrutinised and justified.

Recommendation 24 [5.120] of the Committee Report requires the Department to publish reasons on a quarterly basis for the ongoing detention of any person beyond 90 days. This reform would provide a basic level of scrutiny and transparency for people in the broader Australian community, such as legal and community advocates, to be regularly informed of the situation within the centres and circumstances relating to individual detainees, and is intended to promote a best case scenario where people will not be detained beyond 90 days without observably good reason.

It is a long-standing policy of the Australian Greens that extended detention – beyond the initial time limited detention for health, identity and security checks – must be subject to judicial review at intermittent periods with the onus on the Department of Immigration to prove why it is necessary.

The need for automatically required judicial review of extended detention was supported by numerous submitters to the inquiry.[12] The Australian Human Rights Commission noted that, in light that the indefinite detention of asylum seekers is not currently reviewable by any court, Australia is currently acting in breach of its international obligations according to articles 9(40) of the International Covenant on Civil and Political Rights and 37(d) of the Convention on the Rights of the Child.[13] The Commission noted that, in order to ensure that detention is not arbitrary, the decision to detain or continue detaining must be subject to prompt judicial review.

Recommendation 2

Detention beyond the legislated time limit must be justified before a court and subject to periodic review by the court from that point, with the onus on the Department of Immigration to make the application and show why extended detention is necessary for that individual.

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[12] Refugee Council of Australia; International Refugee and Migration Law Project UNSW, Law Council of Australia, Gilbert and Tobin Centre for Public Law, ChilOut, Castan Centre for Human Rights, Australian Psychological Society, UNHCR, Uniting Church Australia (non-exhaustive list).

[13] Australian Human Rights Commission, *Submission 112*, p. 17.

Cost and Remoteness

One of the main reasons that immigration detention is so expensive is due to the remoteness and isolation of many of the centres. It is impractical to the point of impossibility for detainees and service providers to access quality services and for the network to attract well-trained, experienced staff on a cost-efficient basis when detention centres are so remotely situated.

The Committee was told the remoteness of centres causes problems across the board including: service providers and the Department of Immigration have difficulties attracting staff, and particularly teachers;[14] detainees do not have access to essential services and community support;[15] detainees find it difficult to obtain legal advice and give instructions;[16] the feeling of physical remoteness adds to the alienation and depression experienced by detainees;[17] and it is difficult for service providers to obtain culturally appropriate resources, excursions and communications facilities for detainees.[18]

The Committee was advised on 10 August 2011 that the cost of running the held detention network over recent years have been as follows:

2011-2012	$628.75 million[19] (note: this figure does not appear to take into account updates on account of recent contract variations)[20]
2010-2011	$772.17 million
2009 – 2010	$295.55 million
2008 – 2009	$146.57 million [21]

The projected cost of community detention of $150 million for financial year 2011-2012 was provided in February 2012, after a relatively large-scale increase in

[14] Mr Greg Kelly, Detention Operations Division DIAC, *Proof Committee Hansard*, 7 September 2011, p. 12. Regarding the difficulties of recruiting teachers see Serco, *Question on Notice* 14.

[15] Mr Rohan Thwaites, DASSAN, *Proof Committee Hansard*, 26 September 2011, p. 1.

[16] Professor Jane McAdam, International Migration and Refugee Law Project, *Proof Committee Hansard*, 5 October 2011 p. 25.

[17] Ms Michelle Dimasi, Asylum Seekers Christmas Island, *Proof Committee Hansard*, 18 November 2011, p. 31.

[18] Serco, *Question on Notice* 14.

[19] DIAC *Question on Notice* 19 received 10 August 2011.

[20] Note that on 9 February 2012 it was announced that Serco (alone) had renegotiated a contract with Department of Immigration worth $1.03 billion over the forward estimates. There have also been contract variations (expansions) with IHMS in 2012 that are not included in this 2011-2012 figure. This figure does not include complete capital works costs.

[21] DIAC *Question on Notice* 13, p. 2.

community detention placements in late 2011-early 2012 (community detention having been initially projected in August 2010 to cost $15.74 million in 2011-2012). However the Department of Immigration commented in Senate Estimates that the community detention program was not yet equipped to manage the scale of client movements, and as such 'there are still a lot of setup costs, and economies of scale are not realised and so on. The time will come when there is more of a seamless flow of arrivals into accommodation, and not the need to be continually renting new properties'.[22] The Department Secretary Mr Andrew Metcalfe voiced his presumption that 'in due course there will be a lower average cost because those setup costs… will be rolled across multiple clients. So while there is a setup cost, the ongoing costs are going to average out to a lower number'.[23]

Clearly, as a costs saving measure at least, asylum seekers should be moved into the community as quickly as possible. Where asylum seekers must be briefly detained, it should be in detention centres that are close to metropolitan services rather than in impractical and expensive remote locations.

Recommendation 3

Remote and isolated detention centres should be decommissioned.

Children

Chapter 5 of the majority report canvasses the unequivocal and extensive evidence given by a vast number of submitters in condemnation of the continued detention of children. Children continue to be housed in secure accommodation including transit accommodation and 'alternative places of detention' or 'APODs', i.e. detention facilities in all but name. As at 29 February 2011 there were 496 children in detention-like facilities.[24]

The Australian Greens maintain that no child should be placed in detention of any description beyond a maximum 12 day period while initial health, security and identity checks to be conducted. Throughout that initial detention, the Department of Immigration should be required by the *Migration Act* to ensure that children are only ever placed in appropriately low security, family friendly environments in a metropolitan area.

The Australian Greens endorse **recommendation 18 [5.65]** of the Committee Report and support enshrining this recommendation in the *Migration Act.*

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[22] Ms Kate Pope, Community Programs and Children Division, DIAC, *Senate Estimates Hansard*, 13 February 2012, p. 86.

[23] Mr Andrew Metcalfe, Secretary, DIAC, *Senate Estimates Hansard*, 13 February 2012, p. 86.

[24] *Immigration Detention Statistics Summary to 29 February 2012*, published on Department of Immigration and Citizenship website March 2012.

The argument that detention is an entirely unsuitable place for children was supported by key children's advocates throughout the inquiry process. The Australian Children's Commissioners and Guardians recommended that children be accommodated outside detention facilities while awaiting decisions about protection.[25] Save the Children used its written submission to ask the Committee to recommended revision of the *Migration Act* so that child asylum seekers are not subject to mandatory detention.[26] Dr Peter Morris of the Australian Medical Association of NT described the detention of children and their families as 'a form of child abuse'.[27]

ChilOut recommended that the government develop alternative accommodation facilities in order for detention to adhere to the principle that is a last resort. Here it should be noted that the 'APOD' facilities are not family appropriate alternatives to detention. Family appropriate facilities should not bear a close resemblance to other detention facilities, should be not be staffed by security guards, should have a welcoming and community-like environment, and should exclude regular night-time head checks.

The Australian Greens point to the Inverbrackie place of detention (Adelaide Hills, South Australia) as the most child and family appropriate of existing immigration detention centres, and a basic example of what family reception centres should be like for families undergoing initial short-term health and security assessments prior to being transferred into the community.

ChilOut made the following submission:

> Detaining children violates their basic human rights. But when they are housed in locked facilities such as Christmas Island, it is the responsibility of the government and its contractors, in this case Serco Asia Pacific, to take the very best care of the children. There is irrefutable evidence that the detention regime damages people. Allowing that effectively state-perpetrated damage to extend to children should be absolutely unconscionable in a developed, civilised society.[28]

The Refugee Council of Australia encouraged the government to make greater use of its residential determination powers to release children and families from detention and from 'APODs' in sites such as Phosphate Hill on Christmas Island.[29]

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[25] Ms Pam Simmons, Children's Commissioners and Guardians, *Proof Committee Hansard*, 5 November 2011, p. 1; Australian Children's Commissioners and Guardians, *Submission 35*, p. 2.

[26] Ms Suzanne Dvorak, Save the Children, *Submission 50*, p. 2.

[27] Dr Peter Morris, Australian Medical Association (NT), *Proof Committee Hansard*, 26 September 2011, p. 9.

[28] Ms Kate Gaultier, ChilOut, *Submission 49*, p. 6.

[29] Refugee Council of Australia, *Question on Notice*, p. 213.

The Committee was provided with ample evidence demonstrating why detention centres, or detention-like environments, are inappropriate for children:

- Children's mental health is severely negatively impacted by indefinite mandatory detention, as demonstrated by evidence that between 1 July 2011 and 26 September 2011, 26 minors were involved in self-harm incidents including 19 actual self-harm attempts;[30]
- There are no trained paediatricians working at the Darwin Airport Lodge, which is currently listed as an APOD. Rather, there are a few workers with paediatric experience and a psychologist 'skilled in working with children and families';[31]
- Schooling within immigration detention or detention-like facilities is not subject to the national quality agenda in the Early Childhood Development Strategy;[32]
- There are difficulties retaining and accommodating teachers on Christmas Island;[33]
- In some instances, such as in Port Augusta, children have been receiving education that is substandard, ad hoc and incommensurate to their needs;[34]
- There is no contractual requirement for detention service provider staff who deal with children to have a Working with Children check unless it is required under relevant state legislation.[35]

[30] DIAC, *Question on Notice* 166, submitted 2 December 2011.

[31] Ms Alexis Apostelellis, Senior Operations Manager, IHMS, *Proof Committee Hansard*, 26 September 2011, p. 28.

[32] Ms Pam Simmons, Australian Children's Commissioners and Guardians, *Proof Committee Hansard,* 5 November 2011, p. 3.

[33] Mr Alan Thornton, Deputy Principal Christmas Island District High School, *Proof Committee Hansard*, 6 September 2011, p. 4.

[34] Evidence regarding provision of teaching by ESL teacher using tailored 'materials' rather than lessons incorporating full curriculum due to unavailability of teachers see; Ms Cheryl Clay, Regional Manager of Serco Immigration Services, *Proof Committee Hansard,* 5 November 2011, p. 70-71. Also the Hon Catherine Branson, AHRC, *Proof Committee Hansard*, 5 October 2011, p. 57.

[35] DIAC, *Question on Notice* 101, *Question on Notice* 102, submitted 29 September 2011.

Recommendation 4

The best interests of the child should be enshrined in the *Migration Act* as the paramount in decisions regarding the accommodation of all children.

Recommendation 5

***Migration Act* to be amended to remove any mandatory detention of children.**

Recommendation 6

***Migration Act* to be amended to place time limits on children and their families being accommodated in low security family appropriate facilities prior to being moved into the community.**

Recommendation 7

Children should not be subject to ASIO security checks beyond the standard security checks used at airports (i.e. checks against the Central Movement Alert List).

Recommendation 8

All asylum seeker children of school age (early childhood, primary and secondary) must be given access to local schooling.

Recommendation 9

Children should only be housed in facilities where all service providers and officers who interact with them have obtained a Working with Children check.

Unaccompanied minors

Serious concerns about the guardianship of unaccompanied minors were raised in the course of the Inquiry. Many of the experts and advocates appearing before the Committee expressed their intense dismay at the clear and apparent conflict of interest of the current situation, where the Minister for Immigration is simultaneously the person responsible for the detention of unaccompanied minors and their legal guardian.

The Australian Human Rights Commission told the Committee that there is an inherent conflict in interest in allowing the Minister or his delegates to be the guardian when the Minister is also responsible for the granting of visas or continuation of

detention.[36] This view was supported by the Australian Children's Commissioners and Guardians.

As legal guardian the Minister is required to act in the best interests of the child, yet the Minister is also the person responsible for continued detention, which is manifestly *not* in the child's best interest. Furthermore, the Department of Immigration advised the Committee that the Minister or departmental delegate is responsible for arranging legal representation for the unaccompanied minor, that is, for a legal challenge which will ultimately be against the Minister.[37]

Almost all submitters agreed that the Minister should be removed as the legal guardian of unaccompanied minors as a matter of urgency.[38]

The Australian Greens wholeheartedly endorse the Committee Report's **recommendation 19 [5.95]** that the Minister be replaced as legal guardian of unaccompanied minors. This is a reform that the Australian Greens have been calling for over years. The Minister cannot be relied upon to fulfil these dual and conflicting roles. We look forward to the next steps in the process, which should be an investigation of how to best implement this particular reform as a matter of urgency.

Mental Health

The Australian Greens share the view of experts who gave evidence to the Committee that the extended and indefinite periods of detention is directly causative to the high levels of mental illness in the detention network.

Chapter 4 of the Committee Report provides a thorough survey of mental health services in the detention network and illustrates why the level of mental illness among detainees was the most pressing area of concern throughout the Inquiry. We acknowledge the evidence contained within Chapter 4, particularly the information given by Professor Louise Newman in her role as Chair of the Detention Health Advisory Group (DeHAG) and other mental health specialists.

As per the Committee Report, we draw the conclusion that acute mental illness is widespread amongst the detention network and current services are severely inadequate to deal with the quantum and severity of cases. The crisis at hand was illustrated by the Department of Immigration, who noted that 'self harm incidents as

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[36] The Hon. Catherine Branson, Australian Human Rights Commission, *Proof Committee Hansard*, 5 October 2011, p. 52.

[37] Mr Greg Kelly, Detention Operations Division, DIAC, *Proof Committee Hansard*, 26 September 2011,p. 64; and Ms Alison Hanley, Northern Territory Legal Aid, *Proof Committee Hansard*, 26 September 2011, p. 35.

[38] Including but not limited to Refugee and Immigration Legal Centre, Liberty Victoria, ChilOut, Australian Lawyer's Alliance, Amnesty International, AHRC.

reported by service providers to DIAC have experienced a 12 fold increase between 2009-2010 and 2010-2011'.[39]

Dr Jon Jureidini noted that by time people in detention see clinical psychological or psychiatric experts who are outside the services provided by IHMS, 'they are already damaged by immigration detention. It is necessary to move such people to start healing them'.[40]

In the hearing at Scherger immigration detention centre in Weipa, Dr Bruce Gynther, a psychiatrist working for the Cairns and Hinterland Health Service District who regularly sees detainees, told the Committee that the long and indefinite duration of mandatory detention, and the remoteness of detention centres, must be seen to be closely linked to the development or exacerbation of mental health problems:

> I think that that the actual process of prolonged involuntary detention is an abusive process.
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> [Prolonged detention] actually damages the patients in the long term. It produces psychiatric illness and long-term damage for these people, whether they are eventually released into the community or returned to where they have come from. I think we are actually causing them harm.
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> The way things are set up now, with the remote location of Scherger, means that, when patients are admitted with psychiatric conditions to Weipa Hospital, the degree and quality of the psychiatric care that we can offer is really suboptimal. Even though we strive very hard and liaise with the mental health nurses that are located in Weipa and the doctors at Weipa Hospital and everyone does the best they can, in the end, for patients with really severe psychiatric conditions who are suicidal and who have major depression or post-traumatic stress disorder, I am making decisions over the phone about their management, and it is just not acceptable.[41]

As outlined in Chapter 4 of the Committee Report, many of the members of the Committee were staggered to learn that in remote detention centres such as in Darwin and Weipa, there are no trained mental health specialists or nurses from evening to morning on weeknights, and in some there are no specialist mental health workers on site through the weekend. Serco staff who are confronted with the constant tide of mental health, self-harm or suicide incidents have no recourse for assistance beyond calling a triage phone line in Sydney for advice from a mental health worker.

The Department of Immigration and International Health and Medical Services (IHMS) acknowledged some of the shortfalls in psychiatric and psychological assistance, and have recently expanded IHMS' contract for health services. However it

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[39] DIAC *Question on Notice* 41.

[40] Dr Jon Jureidini, *Proof Committee Hansard,* 15 November 2011, p. 32.

[41] Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 1.

is unacceptable that remote centres like those on Christmas Island have no full time psychiatrist on staff, and only one psychiatrist who visits the Island up to 8 times per month.[42] The Regional Medical Director of IHMS confirmed that specialists have generally been arranged to visit detention centres not on a set timeframe, but on an 'objective needs basis'.[43]

The Committee Report in **recommendation 15 [4.39]** proposes reforms that go significantly towards addressing this glaring inadequacy in services by requiring that IHMS staff be rostered on a 24 hour basis at all non-metropolitan detention facilities. Likewise, **recommendation 16 [4.69]** requires that the Department of Immigration work with IHMS to provide proactive health and mental health outreach services in detention facilities.

Recommendations 5, 6, 7, 8, 9, 10 of the Committee Report offers crucial recommendations that, once implemented, would assist to address the mental health crisis in the detention network, through enhanced consultation with the expert panel DeHAG, improved staff training in the areas of mental health care, and more transparent, accountable and consistent processes across the agencies and workforce that form the immigration detention network.

There are still thousands of people in detention who have been there for many months and are growing increasingly unwell. It is important that those people receive quality assessment and treatment. As such the Australian Greens propose that detainees, particularly long-term asylum seekers, be able to apply for funding for independent psychological and psychiatric reports.

Recommendation 10

IAAAS funding to be expanded to cover independent psychological and psychiatric reports.

Staff Training

The Committee Report at **recommendations 5 [3.78]** and **6 [3.91]** suggests new methodologies and quality assurance processes for the recruitment of service provider staff and the day-to-day implementation of the DeHAG approved Psychological Support Program policy. In **recommendation 8 [3.93]** and **9 [3.104]** the Committee Report suggests ways for service provider staff to be more adequately trained to deal with mental health issues and cope with critical incidents.

The immediate implementation of these reforms is integral to fixing the mental health malaise in the immigration detention network. Improved and more transparent training for Serco staff (Client Services Officers) is utterly necessary.

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[42] DIAC, *Question on Notice* 58.

[43] Dr Dick Hooper, IHMS, *Proof Committee Hansard*, 5 October 2011, p. 61.

The Committee was provided with deeply concerning evidence of a serious disconnect between the agencies, and between the staff hierarchies or departments within each agency. Although now partly remedied, it was previously the case that DeHAG had not been consulted in relation to the development of Serco's procedures for managing people at risk of self-harm.[44] The Committee was confronted to see, while touring various detention centres, demonstrations of the 'Keep Safe' practice which saw Serco staff standing 1.5m away from a person at risk of self harm for hours on end.

Seeing as 'IHMS does not provide advice to Serco as to how to interact with a person on suicide watch' it is crucial that Serco employ and train staff who will be well equipped to handle the vulnerable people in detention.[45] While 90 day time limits to detention would assist with reducing current mental ill-health levels, it is crucial that all staff interacting with asylum seekers, including subcontractors in supposedly 'non-client facing roles', are trained in relevant skill sets.

While the Serco/Department of Immigration contract requires that Serco staff attend mental health training prior to commencing work in a facility, the Committee heard evidence from various witnesses that across the detention network there are significant inconsistencies in training duration, and most staff start work in the centres without completing more than a four week training package, which is equivalent to a Security Office (or night-club bouncer) training.

The 2009-2010 Serco Client Services Officer training manual which was released onto the Crikey website in March 2012 did not inspire any further confidence, as the manual was shoddily cobbled together, clearly based on prison officers' training materials, overtly focused on violent techniques for restraining detainees and lacked any thorough or appropriate training for new staff working in a human rights capacity with shell-shocked, vulnerable and culturally diverse newly-arrived asylum seekers.

There should be no service provider staff working with asylum seekers who do not have full and appropriate training.

ASIO security assessments

Chapter 6 of the Committee Report provides an excellent overview of the process for ASIO security assessment of people in detention, including changes in practice by ASIO in late 2010 which triaged, or streamlined, assessment processes. The Australian Greens endorse the findings of the Committee that 'placing people in community detention following an initial, routine security check does not prejudice any subsequent in-depth security assessment ASIO may provide prior to a permanent visa being issued and a refugee being released into the community' (page 157). This conclusion is reflected in **recommendation 26 [6.96**] of the Committee Report.

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[44] DIAC *Question on Notice* 197

[45] Dr Dick Hooper, Regional Medical Director, IHMS, *Proof Committee Hansard*, 5 October 2011, p. 66.

The bleak situation of indefinite mandatory detention that faces an increasing number of people who have been found to have an adverse security assessment by ASIO was of great concern to the Committee, and to the Australian Greens. We urge the Department of Immigration and ASIO to take urgent action to provide people with pathways out of detention.

The Committee Report advises at **recommendation 28 [6.152]** that the ASIO Act be amended to allow the Administrative Appeals Tribunal to review security assessments of refugees and asylum seekers. This proposal was backed by numerous submitters and witnesses to the inquiry, including Amnesty International, the Australian Human Rights Commission, the Refugee and Immigration Law Centre and Professor Ben Saul.

UNHCR recommended 'a process by which a bridge can be built between the security assessment and the confidentiality surrounding that and the right for someone to know at least the basic elements of the case against them', which is the practice in Canada, New Zealand and the United Kingdom.[46] The Refugee and Immigration Law Centre pointed out to the Committee that the inaccessibility of legal review of ASIO decisions as a great burden on the immigration network and on the people subject to the adverse findings.

The Australian Greens view this area to be in critical need of reform. It is unthinkable that we continue to detain individuals indefinitely on the basis of adverse security assessments which are not reviewable or disclosed. We endorse the findings of the Committee Report but we wish to re-state the importance of finding an appropriate mechanism for releasing the grounds of the adverse assessment, without which no meaningful review can be anticipated.

Recommendation 11

Relevant legislation to be amended to ensure that detainees have access to a fair and independent review of a negative ASIO security assessments, with appropriate disclosure of the grounds of the adverse security findings regardless of whether judicial or merits review, and with flexible options for protecting national security on a case-by-case basis.

Recommendation 12

Appointment of a special advocate to conduct reviews of negative ASIO assessments where there is concern maintaining confidentiality of sensitive material.

[46] Mr Richard Towle, United Nations High Commission for Refugees, *Proof Committee Hansard,* 16 August 2011.

Recommendation 13

Legal assistance should be funded at all stages of resolution of people's immigration status, including increased resources for Legal Aid Commissions and IAAAS agents for merits or judicial review.

Recommendation 14

Where an interview is to be conducted between the Department of Immigration and a minor that will have ramifications on visa assessment, there must be a legal advocate present or an accredited Independent Third Person present.

Community detention

The Committee Report includes recommendations which aim to encourage the swift movement of asylum seekers from immigration detention into community detention. Placing time limits of 90 days through amendment of the *Migration Act* is the best way to achieve this outcome.

Community detention is not only significantly cheaper than placing people immigration detention but it is the only humane and healthy solution. Mr Richard Towle of the UNHCR advised the Committee:

> The UNHCR has observed empirically that, internationally, people cope better if they are in community based settings with support of their communities than if in detention and can make better and more informed decisions about returning should their refugee status be denied.[47]

The Chair of the Council for Immigration Services and Status Resolution, Mr Paris Aristotle, noted that 'the processing of people in the community yields benefits in terms of processing arrangements and people's ability to deal with and contemplate what the next decision should be'.[48] Mr Aristotle also made a suggestion that is strongly supported by the Australian Greens, that 'in order for community detention to be expanded, it is preferable that standards were legislated so that there is consistency'.[49]

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[47] Mr Richard Towle, United Nations High Commission for Refugees, *Proof Committee Hansard*, 16 August 2011, p. 10.

[48] Mr Paris Aristotle, *Proof Committee Hansard*, 18 November 2011, p. 37.

[49] Mr Paris Aristotle, *Proof Committee Hansard*, 18 November 2011, p. 36.

The Australian Human Rights Commission urged the Australian government to make greater use of community based alternatives to detention, as they can be cheaper and more effective in facilitating alternatives to detention.[50]

The Australian Greens take note of the constructive criticisms also raised in relation to community detention and other community based programs. We deem it crucial that all people on bridging visas have work rights, which assist them to lead productive lives, gain skills and support themselves. As noted by the Refugee Council of Australia, allowing people to be self-sufficient is preferable financially and otherwise.[51]

As well as expanding the capacity for people to work who are able to do so, services to assist people to find work need to be expanded. Many people seeking protection come from cultures where job seeking occurs through family networks rather than through formal application and resumes.[52]

Similarly, the process for accessing health and medical services need to be streamlined, including some administrative aspects. The Committee heard evidence that some asylum seekers on bridging visas do not have Commonwealth certified photo identification, which leads to 'significant difficulties in meeting the identity requirements to accept a Medicare application over the counter at a Medicare office. That is a significant problem and it takes up a great deal of time for the contractors, like the Australian Red Cross, that provide the support programs to many asylum seekers in trying to overcome these difficulties'.[53]

Recommendation 15

People on community detention or bridging visas must be able to make use of public provision of health services and access public referral services.

Recommendation 16

Families and unaccompanied minors who are placed on bridging visas should be automatically also placed on the Community Assistance Support program.

Recommendation 17

All asylum seekers on bridging visas should be provided with Commonwealth certified photo identification.

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[50] The Hon. Catherine Branson, AHRC, *Proof Committee Hansard*, 5 October 2011, p. 52.

[51] Ms Lucy Morgan, Refugee Council of Australia, *Proof Committee Hansard,* 5 October 2011, p. 11.

[52] Ms Pam Curr, ASRC, *Proof Committee Hansard,* 18 November 2011.

[53] Ms Alice Noda, Gilbert & Tobin Centre for Public Law, *Proof Committee Hansard,* 5 October 2011p. 25.

Recommendation 18

All people on bridging visas should have work rights.

Conclusion

In 2010-2011, 6316 people sought asylum at our airports, compared to 5175 people who arrived by boat, but only the latter cohort will face mandatory detention for months or years in Australia's immigration detention network.[54] 90 per cent of applicants who suffer through this unfair system are ultimately found to be genuine refugees, yet we continue to detain them for extended durations in demonstrably unhealthy circumstances and at our own great expense.[55]

The government has a duty of care to fix the crisis in the immigration detention network. On a policy and political basis successive governments can keep lurching from one 'bandaid solution' to the next, or they can show the wisdom and courage to embark on reforms that are long overdue. True reforms should have been implemented as the result of earlier mental health crises and the wrongful detention of Cornelia Rau and many others in the early 2000s.

The government failed to do this and we are now seeing history repeat itself. Legislated time limits would solve many of these issues. The Government must act on these recommendations because they will make a difference.

Senator Sarah Hanson-Young

Deputy Chair

Mr Adam Bandt MP

[54] Immigration Department and Citizenship, *Nation Building Annual Report*, 2010-11, p. 119.

[55] Immigration Department and Citizenship, *Nation Building Annual Report*, 2010-11.