Migration Institute of Australia

12 August 2011

Committee Secretary
Joint Select Committee on Australia's Immigration Detention Network
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

immigration.detention@aph.gov.au

Dear Committee Secretary;

Thank you for the opportunity to respond to the Joint Select Committee on Australia's Immigration Detention Network inquiry.

Please find attached a submission from the Migration Institute of Australia (MIA) in response.

The MIA would appreciate the opportunity to contribute to future consultations regarding the immigration detention network and would be pleased to meet with the Committee to discuss this submission.

Yours sincerely,

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Migration Institute of Australia

The MIA's General View on the Immigration Detention Network

The Migration Institute of Australia (MIA) is the peak body for migration advice professionals, representing more than 2200 Registered Migration Agents (RMAs) across Australia and overseas. Nearly 20 percent of Institute Members report to working on Humanitarian Program visa applications and additionally, many are, or work for, Immigration Advice and Application Assistance Scheme (IAAAS) providers.

As the Institute is not a provider of these services itself, this submission will be constrained to elements within its role as the peak professional body and will not respond to Terms of Reference that fall outside that remit.

The MIA expects submissions the Committee receives from IAAAS providers and other organisations working directly with refugees and asylum seekers will provide a practical and realistic perspective on the impacts of and issues within immigration detention.

This is particularly true as these migration advice professionals are often the voices least heard in these conversations, despite being amongst those best positioned to answer the Inquiry's Terms of Reference.

It is the general position of the MIA that immigration detention for asylum seekers is not a necessary evil upon which we must rely until a solution to humanitarian entry is reached. This article of faith proliferates amongst commentators and politicians and rests on the false presumption that asylum seekers are a "problem" to be fixed.

Asylum seekers are potential future Australians seeking a legal and legitimate entry into the country after leaving their home country under extreme duress. With few if any exceptions, they are not criminals, and they are not a threat to our society.

The Institute instead views near immediate community settlement and careful monitoring as the best approach to the treatment of asylum seekers, regardless of method of entry.

Others incarcerated in immigration detention, including visa over-stayers and suspected illegal fishers, can be processed normally within the system of Australian criminal justice facilities.

The MIA believes this change would result in reduced costs for the Treasury, reduced incidence of violence, self harm and mental health issues in detention – benefiting detainees and detention centre staff and management – and increased reputational stature for Australia on the world stage.

Not the least, it would also be doing the right thing by the asylum seekers.

As such, the MIA supports and endorses the position of the United Nations High Commission for Refugees (UNHCR), which reported to its Human Rights Council in May of this year that there is an "urgent need for Australia to develop alternatives to the current hardline and unsustainable immigration detention policies."[1] The Institute also endorses the position of various commentators, politicians and non-government organisations that have made similar pleas.

The MIA is appreciative of the fact that the *Migration Act 1958* requires detention for unlawful non-citizens and does not allow for Ministerial discretion, making this a more intractable requirement than many recognise. Similarly, community views on immigration detention, while hardly unmalleable, swing sharply in favour of its maintenance, making this position difficult for popularly elected politicians to oppose.

Given the environment described above, relatively small victories are worthy of commendation. The MIA endorses in part the "New Directions" policy announced by Senator the Honourable Chris Evans, then Minister for Immigration and Citizenship, in 2008. In particular, the Institute supports what he terms "this Government's seven key immigration values", including promises: to avoid detaining children; to make detention neither arbitrary nor indefinite; and to treat those in detention with fairness and dignity.[2]

Good efforts by Senator Evans' successor, the Honourable Chris Bowen MP, have made the release of children from detention a priority of his term as Minister.

These are positive results. It remains the MIA's position, however, that parliamentarians and the Department of Immigration and Citizenship (DIAC) should work towards ending mandatory detention through legislative amendment as soon as is practicable, particularly as the destructive politicisation of issues surrounding immigration detention demeans the whole of Australia's Migration Program as well as the reputation of the country as a compassionate and fair place of settlement for new immigrants.

Response to the Inquiry's Terms of Reference

(a) any reforms needed to the current Immigration Detention Network in Australia;

[1] Pillay, Navi. Human Rights Council 17th Session, United Nations Human Rights, Office of the High Commissioner for Human Rights. Geneva, 31 May 2011. [retrieved 11 August, http://www.hrlc.org.au/files/Navi_pillay_HCHRStatement30May2011.pdf]
[2] Evans, Senator the Honourable Chris. Speech to the Australian National University: *New Directions in Detention – Restoring Integrity to Australia's Immigration System*. 29 July 2008. [retrieved 11 August, http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm]

The immigration detention network is a complex system of immigration detention centres (IDC), immigration residential housing (IRH), immigration transit accommodation (ITA), alternative places of detention and community detention, any single site of which has its own reform needs that should be addressed individually by their staff and management, the detainees themselves, the IAAAS providers who work with the detainees and the Department.

The MIA believes that the network is not broadly understood and that the most fundamental reform needed is to the public awareness of the conditions, locations and varieties of immigration detention.

This reform could be achieved through further departmental outreach, but would be most effectively addressed through the opening of detention facilities to mass media organisations and the lessening of restrictions on certain types of information dissemination.

There exists no compelling reason to prevent the public's right to know more about the immigration detention network.

(b) the impact of length of detention and the appropriateness of facilities and services for asylum seekers;

(q) 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;

Understanding that shortening the time any detainees spends in the system is a significant DIAC priority, the Institute can only reinforce that the shorter period of time in detention, the better for all parties involved.

Similarly, the less the conditions in immigration detention resemble prison, the better. Community detention would appear a more effective approach.

(c) the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties;

(f) the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers;

(i) 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;

Recent media reports indicate there are significant problems regarding appropriate training and support for staff at immigration detention facilities. These reports are in line with information provided informally to the Institute by some Members working within the Humanitarian Program. These Members report that amongst the employees of Commonwealth agencies and contractors in immigration detention, there exists a variety of training levels, resources available and general support, with private providers often cited as poorly trained.

This type of inconsistency is a reality when developing an operation of this size and scale in isolated locales across a large country. The MIA understands the Department's difficulty in standardising and supervising training, resource and support levels. From the point of view of migration agents, however, inconsistency is a most unwelcome characteristic. The immigration status of many refugee applicants rest upon minute details to which any ambiguity and misinterpretation of rules and responsibilities amongst staff and management at detention centres is toxic.

The MIA recommends the review of any submissions received from IAAAS providers for further detail on this issue, and the encouragement of testimony from any providers who may feel inhibited from speaking on these issues due to their contracts with the government.

(d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;

(e) impact of detention on children and families, and viable alternatives;

Many asylum seekers, and particularly children asylum seekers, require mental health treatment, with the Australian Human Rights Commission publishing in the *National Inquiry into Children in Immigration Detention*: "The mental health needs of child asylum seekers will often be far greater than those of children raised in Australia, due to the damaging physical conditions, emotional trauma and nutritional deficiencies".[3]

These problems are only exacerbated by prolonged immigration detention.

[3] Australian Human Rights Commissioner. *National Inquiry into Children in Immigration Detention*, 2001. [retrieved 11 August, http://www.hreoc.gov.au/human_rights/children_detention/background/introduction.html#national]

Further, as many immigration detention facilities are located in remote areas, access to health workers and all types is impeded. This is particularly true of the Christmas Island Immigration Detention Centre and the Phosphate Hill Immigration Detention Centre, and is relevant when considering the health of detainees, children and otherwise, employees and contractors, and migration agents working at these facilities.

The Institute is currently engaged in an Australian Research Council (ARC) funded project headed by the University of Sydney investigating law, policy and practice relating to refugee and asylum seeking children and youth.

This project, "Small Mercies, Big Futures", draws on surveys of migration agents and lawyers, fieldwork with asylum seekers, and research with community organisations. It is expected to yield considerable quantitative and qualitative information regarding the impact of mandatory immigration detention on children and, where applicable, their families.

Such information will include the impact of detention on the preparation and processing of the children's claims for refugee status and asylum, as well as its physical, mental and emotional impact on the children and their subsequent role in Australian society.

The project's findings will be published progressively over the next three years, and it is hoped they will be taken into account in future policy creation.

(h) the reasons for and nature of riots and disturbances in detention facilities;

As above, the length of time in detention and the relative mental health support available to detainees must be taken into account when discussing incidences of violence within detention, as should the immigration prospects of detainees, as it has been acknowledged by the Minister that visa refusals have fuelled some of these incidences.[4]

Knowing these factors lead to low levels of order and sometimes to violence is important to the evolution of immigration detention and can assist in risk assessments and determinations of staffing and support.

Any planned large scale visa refusals should be accompanied by increased support and security and the Department should monitor the link between time in detention and development of social problems.

[4] Weber, David. *Detainee riot sparked by visa rejections*. ABC News, 10 June 2011. [retrieved 11 August, http://www.abc.net.au/news/2011-06-10/detainee-riot-sparked-by-visa-rejections/2754424]

(l) compliance with the Government's immigration detention values within the detention network;

(r) processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network; and,

The most common complaint from MIA Members about the functioning of immigration detention facilities is lack of consistency. Best practice in immigration detention may well be compliant with Government values, but it fails to meet those values because of inconsistencies in application.

This is true with regard to how the staff and management of the facilities view the role of RMAs. Whilst some personnel acknowledge RMAs as an important link to external, trustworthy sources of information that play an essential role in the future social cohesion of their clients, others regard migration advice professionals' roles as simply filling out forms, and thus treat them accordingly.

Inconsistencies have also been found in the manner in which cases are assigned, including splitting families amongst several RMAs and companies and the provision of interpreters who are either unintelligible in native languages and dialects or culturally appropriate.

Many of these facilities seem to eschew a holistic approach for asylum seekers in immigration detention. All parties need to recognise that cultural connections enhance cohesion and lessen the risks of social isolation within and outside of detention.

(g) the impact, effectiveness and cost of mandatory detention and any alternatives, including community release; and

(o) the total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees;

Accepting that immigration detention for asylum seekers will, for now, remain a central element of their processing, it is essential that children and any detainees with significant health issues be released into the community as soon as is practicable.

Immigration detention is undeniably expensive and has repeatedly proven an incubator for violence. It very likely exasperates mental health problems, too often leading to long term, chronic conditions, self harm and suicide.

Conclusion

The Institute is hopeful that this Inquiry yields positive results. Manifest problems exist within Australia's immigration detention system, but most are within reach of solution, despite significant legislative and democratic constraints on the Government and Department.

The MIA believes that many problems stem from a misplaced public understanding of detention's purpose, function and necessity. In overcoming public suspicion and finding the political will to support community settlement and careful monitoring, Australia would be able to:

- reduce costs;
- live up to its reputation for compassion and fairness;
- fulfil its international obligations;
- and improve the health and wellbeing of asylum seekers and its own employees.

Whilst moving asylum seekers into the community and visa over-stayers into regular prisons while they await deportation is not a cure all to the above, it would be a step in the right direction.