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Mr Michael Danby MP
Chairman
Joint Standing Committee on Migration
Parliament House
CANBERRA ACT 2600

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29 JUL 2008



BY: MIG

Michael
Dear Mr Danby

Thank you for your letter of 12 June 2008 regarding the Joint Standing Committee on Migration's inquiry into immigration detention in Australia.

I would firstly like to commend the Australian Government for the considerable work it has already done in such a short period of time to improve the treatment and processes applicable to people detained in immigration detention in Australia.

In particular, I commend the current Australian Government Minister for Immigration and Citizenship, the Hon Senator Chris Evans, for referring this inquiry into immigration detention in Australia to the Joint Standing Committee on Migration. The terms of reference set down for the review are indicative of a policy shift embracing a long overdue human rights' approach to immigration detention in Australia. This review confirms the Department of Immigration and Citizenship's (DIAC's) commitment, under the Core Operation Principles for immigration detention, to ensuring that immigration detention services are subject to continuous improvement and sound governance.

The current Review provides an opportunity for the Australian Government to continue to address immigration detention, which has previously been a constant blemish on our national conscience.

The enclosed submission encourages the Committee to consider Australia's international obligations regarding immigration detention and human rights. Considering these obligations, the Review also presents an opportunity for the Committee to suggest the Australian Government adopt its own Bill of Rights. The *Human Rights Act 2004* (ACT) has, and will continue to, ensure that the rights of all people living in the ACT are protected. The greater Australian community would benefit from such protection enshrined in a similar piece of legislation at the national level.

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The submission also covers my Government's plans regarding the 'Healthy Prison' and 'Throughcare' culture of the ACT's first prison, the Alexander Maconochie Centre (AMC), which will open in August 2008. The AMC provides an inspirational model for the Joint Standing Committee to consider in its Review.

I commend the reforms in immigration detention to date, and trust the Review will result in the continued development of an immigration detention system that gives utmost priority to human rights.

I look forward to learning the outcomes of the Review.

Yours sincerely

Jon Stanhope MLA
Chief Minister

28 July 2008

BY: M/G ACT Government Submission to the Joint Standing Committee on Migration's
Review of Immigration Detention in Australia.

July 2008

Firstly, I commend the evidence of the fresh approach to Australian immigration policy. Evidence of this can already be seen from the recent review announced by the Australian Government Minister for Immigration and Citizenship into the cases of people who have been held in immigration detention for a period of more than two years, ending Australia's practice of "offshore processing" and closing detention centres in Nauru and Manus Island. Closure of these offshore detention centres saw the immediate release of 72 classified refugees who were brought back to mainland Australia and settled as refugees into the Australian community. This is a welcome development for the welfare of these vulnerable persons.

Terms of Reference (TOR):

- the criteria that should be applied in determining how long a person should be held in immigration detention
- the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks

The ACT Government strongly supports the Guidelines on the treatment of Asylum Seekers prepared by the United Nations High Commissioner for Refugees (UNHCR)¹, which are based on Australia's obligations under the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention relating to the Status of Refugees* (CSR).

I encourage the Australian Government to implement the guidelines, and I understand that it is already working towards this objective. The guidelines provide that a person applying for refugee status or an asylum seeker should only be held in immigration detention in the following circumstances:

1. where it is necessary to ascertain the identity of a person seeking entry into Australia where identity is unknown or disputed; or
2. where the person has destroyed travel or identity documents, or fraudulently used such documents, in order to mislead authorities; or
3. where it is necessary for the protection of national security or public order; or
4. where it is necessary to determine the elements upon which a claim for asylum or refugee status is based.²

I note that with respect to Ground 4, the UNHCR has made it clear that:

This statement means that the asylum-seeker may be detained exclusively for the purposes of a preliminary interview to identify the basis of the asylum claim. This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim.

¹ Office of the United Nations High Commissioner for Refugees, *UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers*, (February 1999).

² *Ibid.* p 4.

This exception to the general principle [that a person should not be detained] cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.³

I also note that it is important that the detention of any person under the *Migration Act 1958* (Cth) be based on an assessment of the individual circumstances of their case, and not the subject of a mandatory or inflexible legal rule. As the Committee would be aware, the United Nations Committee on Human Rights has previously found Australia to be in breach of Article 9(1) of the ICCPR where it held people in immigration detention under section 189 of the *Migration Act 1958* without first making an individual assessment as to whether their detention was necessary in the circumstances, and by not providing adequate mechanisms for the review of decisions.⁴

TOR: options to expand the transparency and visibility of immigration detention centres

It is paramount that transparency and visibility of Australia's immigration detention system remain an utmost priority of the Australian Government. The Commonwealth Ombudsman's Office and the Human Rights and Equal Opportunity Commission (HREOC) need to continue visiting all sites where immigration detention is practised. The Australian Government must continue to respond to the reports and feedback provided by these independent organisations.

TOR: preferred infrastructure options for contemporary immigration detention

I encourage the Committee to give consideration to the recommendations of the HREOC report into mainland detention centres. The recommendations provide alternatives to mandatory detention, such as establishing temporary housing for refugee and asylum seeking claimants and immigration transit accommodation facilities.⁵ I understand that some similar alternatives have been developed, such as immigration transit accommodation to cater for persons requiring low security. It would be beneficial for the Committee to encourage the Australian Government to continue with these developments, with the recommendations of the HREOC report in mind.

Department of Immigration and Citizenship's (DIAC) Annual Report 2006-07 notes that immigration residential housing is the only infrastructure that families with children are placed. The ACT Government considers it essential, particularly considering Australia's international human rights obligations, that if children are to be placed in immigration detention, it is paramount for their physiological and physical wellbeing that this continues to be the only infrastructure used.

³ *Ibid.* p. 4.

⁴ *Danyal Shafiq v Australia*, CCPR/C/88/D/1324/2004 (13 November 2006), (para 7.2 – 7.4). See also *A v Australia*, HRC Case No. 560/1993, (para. 9.2); *Van Alphen v The Netherlands*, HRC Case No. 305/1988, (para. 5.8.)

⁵ *Ibid* (2007) pp 12-19.

The Annual Report also notes that, at the time of publication, one residential house is specially designed for persons with a disability. This is a good start, however it would be favourable if all immigration detention arrangements were designed to cater for persons with physical and mental disabilities.

Two further suggestions for consideration are community detention and the Swedish model of group homes. Community detention already exists as an option, at the discretion of the Minister for Immigration and Citizenship, for immigration detention. This model takes into consideration the fact that many persons held in immigration detention, including children, are of no threat to Australia's security. This option should continue to be explored and expanded by the Australian Government. It would be also advantageous for the Committee to consider the Swedish model of using group homes as an alternative to immigration detention centres. This model encourages the well-being of children, through the maintenance of family groupings, while in the immigration detention system.

TOR: options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres (IDCs), Immigration Residential Housing, Immigration Transit Accommodation (ITA) and community detention

As part of detention services provided, all detention custodial officers and health service providers should be trained for dealing with persons with physical, mental, sensory, developmental and intellectual disabilities. Such training is vital in ensuring that these vulnerable persons' needs are properly met. It is also essential that suitably skilled advocates are also available to persons in immigration detention who are less able to advocate for themselves.

The Committee may be aware of the Royal Australian College of General Practitioners' *Standards for Health Services in Australian Immigration Detention Centres*. These standards provide indicators of quality that can be used to provide greater accountability and they encourage a commitment to continuous improvement of health services within immigration detention facilities. The standards encourage that health services consider the diverse cultural, religious, socio-political and linguistic backgrounds that characterise immigration detention populations. From the perspective of the ACT Government, these standards should continue to be systematically integrated throughout immigration detention facilities. When persons in immigration detention centres have been determined psychologically and physically sound, they should be relocated to other less restrictive locations, such as community detention, as soon as possible.

TOR: options for additional community-based alternatives to immigration detention by:

- (a) enquiring into international experience;
- (b) considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework; and
- (c) comparing the cost effectiveness of these alternatives with current options (note: not addressed)

I would also encourage the Committee to explore the alternatives considered in the UNHCR report entitled *Alternatives to Detention of Asylum Seekers and Refugees* (April 2006), which raises the following alternatives to detention:

- a. release with an obligation to register one's place of residence with the relevant authorities and to notify them or to obtain their permission prior to changing that address;
- b. release upon surrender of one's passport and/or other documents;
- c. registration, with or without identity cards (sometimes electronic) or other documents;
- d. release with the provision of a designated case worker, legal referral and an intensive support framework (possibly combined with some of the following, more enforcement oriented measures);
- e. supervised release of separated children to local social services;
- f. supervised release to (i) an individual, (ii) family member/s, or (iii) non-governmental, religious or community organisations, with varying degrees of supervision agreed under contract with the authorities;
- g. release on bail or bond, or after payment of a surety (often an element in release under (f));
- h. measures having the effect of restricting an asylum-seeker's freedom of movement (that is, de facto restrictions) – for example, by the logistics of receiving basic needs assistance or by the terms of a work permit;
- i. reporting requirements of varying frequencies, in person and/or by telephone or in writing, to (i) the police, (ii) immigration authorities, or (iii) a contracted agency (often an element combined with (f));
- j. designated residence in (i) State-sponsored accommodation, (ii) contracted private accommodation, or (iii) open or semi-open centres or refugee camps; and
- k. electronic monitoring involving 'tagging' and home curfew or satellite tracking.⁶

Considering such alternatives to immigration detention would be valuable for the successful settlement of these persons in the Australian community in the event that they are granted protection visas. In a previous submission to the *National Inquiry into Children in Immigration Detention* in 2002, I highlighted that Companion House, a torture and trauma counselling service in the ACT, cites concerns for people released from detention centres. These serious concerns include: mental health issues, gaps in schooling, unsettled family life, high levels of anger (particularly amongst adult males), and a lack of sense of belonging to the community. The aforementioned suggestions for alternatives to immigration detention centres provide ways of minimising these negative consequences to both individuals' well-being and, if approved, their successful settlement in Australia.

⁶ United Nations High Commissioner for Refugees, *Alternatives to Detention of Asylum Seekers and Refugees* (April 2006), pp 22-23. <http://www.unhcr.org/refworld/docid/4472e8b84.html>

Treatment of detainees whilst in ACT Custody

The Committee would be aware that under the *Migration Act 1958*, people detained under section 189 may be held in a State or Territory prison or remand facility pending their transportation to a dedicated immigration detention centre.

I am pleased to inform the Committee that in September 2008, the ACT will open a new prison and remand facility known as the Alexander Maconochie Centre (AMC). People detained in the ACT under Section 189 will, from time to time, be held in the AMC pending their removal to a dedicated immigration detention centre.

The ACT Government believes if the experience of a person's imprisonment results in deterioration in the ability of that person to operate effectively and lawfully within society, or if that person is treated in a way which is likely to leave them in an embittered or disaffected state on release, then the overall purpose of the criminal justice system will have been prejudiced. As a result, The AMC was designed in accordance with the *Human Rights Act 2004* (ACT) and will be at the cutting edge of prison management. It will be Australia's only prison and remand facility which takes full account of Australia's international human rights' obligations in relation to the humane treatment of all detainees.

An essential goal of the AMC project is to foster a culture of a 'Healthy Prison' and 'Throughcare'. To facilitate this culture, everyone in the AMC should feel safe, be treated with respect as a fellow human being, be encouraged to improve himself or herself and is given the opportunity to do so through the provision of purposeful activity. Additionally, detainees will have the opportunity and means to maintain contact with their families, better preparing them for release.

The ACT Government will be required by the *Corrections Management Act 2007* (ACT) to ensure that all detainees in the AMC are provided with meaningful educational opportunities, have proper access to medical and mental health care, and have sufficient opportunity to exercise cultural, religious and spiritual observances.

The AMC will be suitable for all types of visitors, including children, family and friends, professional workers and volunteers and those with disabilities. The facilities are to be family and children friendly, promote a relaxed atmosphere through excellent natural light levels, soft colour furnishings and low profile furniture, and where necessary provide privacy.

People detained in the AMC under the *Migration Act 1958* who have not been convicted of any offence and who are not being detained for punitive purposes will be treated differently to those prisoners who are under sentence, and will be afforded a greater range of liberties and privileges whilst in detention.

The ACT Government is committed to transparency and accountability of the AMC's performance outcomes being measured against the national average of other jurisdictions and published by the Productivity Commission in the *Report on Government Services*.

I urge the Australian Government and other States and Territories to look to the Alexander Maconochie Centre as an inspirational model reflecting best practice in the humane management and treatment of detainees in line with Australia's international human rights' obligations.