COMMITTEES (Migration Committee Report) – 2nd December 2008

Mrs VALE (Hughes) (6:44 PM) —It is a privilege to be able to speak on the release of the report of the Joint Standing Committee on Migration entitled *Immigration detention in Australia: a new beginning: criteria for release from immigration detention*. This report is the first of three reports under the inquiry's terms of reference. This report addresses 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, review mechanisms for ongoing detention, removal practices and detention debts. The second and third reports will be tabled in 2009 and will address alternatives to detention, financial costs, service provision and the infrastructure required to support the immigration detention framework for the future. Currently there are about 280 people in detention in Australia; that is the figure as at 7 November this year.

While this report was largely a bipartisan effort and all members agreed to the 18 recommendations, three members filed a dissenting report expressing their concerns about the appropriate time frame when access to judicial review should be available for detainees, but I will leave those members to record their points of view on this issue. I see this report and its recommendations as part of a continuing process of evolution of Australia's policy on the processing of unlawful arrivals to our shores.

Madam Deputy Speaker, you may recall that in 2005 the previous coalition government moved to improve the detention process and practice. The coalition provided that the Commonwealth Ombudsman have the obligation to review the circumstances of people held in detention for over two years and to report their advice to the minister. Further in 2005, with bipartisan support, the Howard coalition moved to prevent children and families being held in detention centres and, instead, ensured that children and their families were appropriately housed in residential housing within the community. In this regard I acknowledge the excellent contribution and hard work of the member for Pearce, Mrs Judi Moylan, the then member for Cook, Mr Bruce Baird, and the member for Kooyong, Mr Petro Georgiou, who is here in the chamber today and who is also a member of this joint standing committee. Further, it also should be noted that the previous coalition government moved to close down detention centres. Woomera was closed in 2003, Port Hedland was closed and Baxter was closed in August 2007. I believe that the 18 recommendations in this report further refine this evolutionary progress and, in fairness and equity, seek to establish the important balance of acknowledging the duty of care that the government has to people in the wider Australian community as well as preserving the sovereignty of Australia in maintaining mandatory detention as an essential component of strong border control while at the same time—and I think this is important—acknowledging the basic human rights of unauthorised arrivals and the inherent human dignity of each and every one of them.

The report attempts to set out a process of dealing with unauthorised arrivals in a manner that is open and transparent, not only for the people of Australia but for the detainees as well. I think this report has succeeded, although I am aware that there are those who have already criticised the report for going too far, as well as those who have criticised the report for not going far enough. So it seems that we have probably got the balance just about right.

Before I briefly cover the recommendations, I would like to acknowledge the excellent support to the committee that has been received from the inquiry secretariat headed by Dr Anna Dacre, inquiry secretary Ms Anna Engwerda-Smith, senior research officer Mr Steffan Tissa and office manager Ms Melita Caulfield. I wish to record my appreciation for their professional and enthusiastic support and for their active interest in the subject of this report. Most particularly, I wish to record my respect for the personal commitment and unrelenting focus by each member of the secretariat in their response to the many requests by members of the committee. I believe their conspicuous attention to detail ensured we produced a well-researched and intellectually rigorous report that will be of great interest to many Australian families.

This inquiry was undertaken against the immigration detention policy framework that was set out by the Minister for Immigration and Citizenship on 29 July 2008. I would like to cover those particular sets of values—there are seven—because they provide the basis on which we conducted the inquiry. First, mandatory detention is an essential component of strong border control. Second, to support the integrity of Australia's immigration program three groups will be subject to mandatory detention: (1) all unauthorised arrivals, for the management of health, identity and security risks to the community; (2) unlawful non-citizens who present unacceptable risks to the

community; and (3) unlawful non-citizens who have repeatedly refused to comply with their visa conditions. Third, children, including juvenile foreign fishers, and where possible their families, will not be detained in an immigration detention centre. Fourth, detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review. Fifth, detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time. Sixth, people in detention will be treated fairly and reasonably within the law. Seventh, conditions of detention will ensure the inherent dignity of the human person.

I do believe that to a greater extent this report has achieved the objectives that we set out to do against that particular policy framework, and I note that the conditions, of which there are 18 in the report, are there in the report to be read. I would like to concentrate on recommendation 18 with regard to detention costs. Before that, I would also like to record that while in Sydney the committee had the opportunity of speaking to people released on bridging visas who had previously been for many years in detention centres. It was quite striking to me on a personal basis that these people were damaged by their experience of long-term, indefinite and interminable detention. The evidence that the committee received about the length of detention was highly indicative of the fact that people have to understand how long they are placed in detention for. It was the indefiniteness, the interminable period, the not knowing and the uncertainty that caused great distress and great mental anguish that led to depression and mental illness in the people who were detained. Many had been detained for years not knowing if or when they would be released or what the outcome of the process was.

This was another problem. It seemed almost impossible for detainees to actually find out exactly where their particular application was in the pipeline of procedure and process. This is one of the reasons that we wanted to ensure with the recommendations in this report that the process and the practice was open and transparent and there were appropriate time checks—a review by DIAC itself after three months if anyone still remained in detention; an ombudsman's review that was going to be tabled in parliament; an advisory review to the minister from the ombudsman in a six-month time frame; and anyone who was maintained in detention would only be there because they were an unacceptable and significant ongoing risk to the Australian community. Those people, if they were still in detention, at the end of a 12-month period would have access to an independent tribunal review and, subsequently, if they were still unsatisfied with the result, they would then be able to proceed to judicial review. I think that really allows people who were held in detention to understand exactly the process that is going to happen to them and it will hopefully alleviate any concerns regarding depression and mental illness.

Of the people we did see on this particular occasion, all of them Asian, the middle-aged women who had been held in detention for many years—who would hardly be any assault on Australian security—were broken women. They particularly found it very hard. One gentleman, a man from Korea, was a highly qualified engineer and it seemed entirely inappropriate that a man such as that with a category of qualifications which this country actually needs right now with our skill shortages should be held in such a position. The government of course must have its mandatory checks and it must make sure of our wider duty of care to the Australian people, but it seems that there is a better way. We do not need to damage people to the extent that I saw these people damaged.

Another aspect of the process that we reported on, and it is recommendation 18, is detention debt and how that impacted on people. We actually recommended that this particular aspect of the detention process be reviewed. I understand that the minister is reviewing this. The recommendation was that it be completely abandoned. The policy for charging a detention debt began in 1992. The current charge for an individual being held in immigration detention is $125.40 a day. Spouses and dependent children are also liable for charges, with the parent or guardian being liable for the cost of a dependent child. In the last four financial years, a total of 17,355 detainees have been invoiced with a detention debt amounting to over $170 million. The committee received evidence that Australia is the only country in the world to charge people for immigration detention. Further, Australia does not charge people for other forms of detention, such as detention in prison or detention under mental health or quarantine acts. The practice of applying detention charges would not appear to provide any substantial revenue or contribute in any way to offsetting the costs of the detention policy. Further, it is likely that the administrative costs outweigh or are approximately equal to the debts recovered. In 2004-05, less than 2.5 per cent of the detention debt invoiced had been recovered. This is because most debts are either left unpaid, waived or written off by the Department of Finance and Deregulation.

The committee received evidence—and this is what was important to us—about the negative impacts of this policy on the mental health, financial security and ability to leave and return to Australia of former detainees. Even where a debt was eventually written off or waived, former detainees still received an invoice for a large amount of money, causing considerable stress and anxiety. Where a debt was written off, detainees were aware that the government could choose to call in that debt at any time, which has detrimental effects to their ability to make financial commitments and to get on with life. The policy may also be functioning as a way of keeping former detainees out of Australia, since having a debt to the Commonwealth makes it difficult to get another visa into Australia. However, if there are people who we genuinely do not want to return to this country, we do not need to rely on debts, as there are other provisions in the Migration Act that would allow DIAC or the minister to achieve this end.

The evidence that the committee received on the detention debt policy was uniformly damning, asking that the policy be abolished. No evidence was received in support of the policy, and the committee was unanimous in its recommendation—at least, no objections at all were voiced in report consideration meetings. No evidence was received to suggest that the policy was a deterrent to people coming to Australia unlawfully. I understand also that the Minister for Immigration and Citizenship has said that this policy is currently under review and has admitted that he sees little logic in it. I commend recommendation 18 to the minister, as I do all the recommendations of the committee.

I want to again thank my co-members of the committee for their diligence, for their continued interest and for the genuine openness and honesty with which this issue was deliberated on at some length by the committee. I commend the report not only to the minister but also to the people of Australia.