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**SUBMISSION BY
THE INTERNATIONAL COALITION ON DETENTION OF REFUGEES, ASYLUM
SEEKERS AND MIGRANTS
TO THE
JOINT STANDING COMMITTEE ON MIGRATION INQUIRY
INTO IMMIGRATION DETENTION
IN AUSTRALIA**

The International Coalition on Detention of Refugees, Asylum Seekers and Migrants (IDC) is a coalition of non-governmental organizations, faith based groups, academics and individuals working around the world providing legal, social, medical and other services, carrying out research and reporting, and doing advocacy and policy work on behalf of refugees, migrants, and asylum seekers. The Coalition has more than 150 members from more than 40 countries, including more than 15 Australian member organizations.

The International Detention Coalition welcomes the inquiry into immigration detention in Australia as an opportunity to ensure that Australia's detention policy is in line with international standards and Australia's international obligations, and to place on the public record the serious human rights concerns that have been raised by individuals and organizations over the past 15 years of indefinite, non-reviewable mandatory detention policy.

IDC's core position on immigration detention

The International Detention Coalition believes that detention of refugees, asylum seekers and migrants should be avoided. Alternatives such as supervised release, regular reporting requirements or posting bail, should be considered and pursued before detention. A person should only be deprived of his/her liberty if this is in accordance with a procedure prescribed by law and if after a careful examination of the necessity and proportionality of deprivation of liberty in each individual case, the authorities have concluded that resorting to non-custodial measures (alternatives to detention) would not be sufficient.

Where detention is considered to be absolutely necessary and authorized under international, regional and national standards, governments should ensure that it is used only for initial identification of persons or for legitimate removal or security purposes and only as a last resort. Any decision to detain must be subject to regular judicial review and the time period must be reasonable.

Refugees, asylum seekers and migrants must not be subject to indefinite detention. Conditions of detention must comply with human rights standards, and there must be regular independent monitoring of places of detention. Certain groups – such as pregnant or lactating women, children, survivors of torture and trauma, elderly persons or the disabled – should not be placed in detention.

Summary of Recommendations to the Australian Government

Length, Review and Oversight

- 1) A legislative and detention policy framework be developed in accordance with UNHCR guidelines in relation to purpose, length, review, release and rights of immigration detainees
- 2) A detention review process be developed that is independent and which incorporates an administrative and judicial process
- 3) Australia should accede to the Optional Protocol of the Convention Against Torture (OPCAT)
- 4) Voluntary return options to be extended to detainees, based on an assessment that individuals who pose minimal risks can be made lawful for the basis of departure.
- 5) Risk assessment tools and the case management model to be further resourced and developed.

Alternatives to Detention

- 6) Alternative Places of Detention (APD) and Immigration Residential Centres should be used as a last resort.
- 7) If Immigration Transit Accommodation Centres (ITACS) are to remain, they could potentially become open centres, as occurs in Europe and New Zealand.
- 8) The continued use of APD, particularly guards holding detainees in motel rooms, should cease and the MSI 371 be revised to take into account residence determination and community care pilot developments.
- 9) Community Detention, while a better option, should be used only where other community-based options are not possible.
- 10) If there are no health, character or public interest concerns, then Bridging Visa release options with Community Care Pilot-type support should be made available as the priority option.
- 11) Individuals released from detention should be granted the right to work, in order to self-sustain where possible, and which has the connected right to Medicare as a taxpayer.

The needs of children and families

- 12) The detention of one parent should only occur as a last resort and all considerations made for reunification of the family unit in the best interests of the child.
- 13) In terms of Christmas Island, we propose that families, unaccompanied minors and individuals with health issues to be transferred to the mainland under Community Detention arrangements.

Introduction

Improvements to Australia's detention policy

There has been significant change in Australia's detention policy and practice over the past 3 years. Most significantly being the transferral of detainee children and families into the community under Residence Determination. In addition, there have been significant improvements in relation to detention conditions, release options, health and oversight since the Palmer and Comrie Reports. The Department of Immigration has on a number of areas worked closely with welfare organisations, such as in the formation and oversight of the Community Care Pilot.

The Minister of Immigration, Chris Evans' recent announcement to stop the use of indefinite detention and only use detention as a last resort is a vital step in improving Australia's treatment of detainees. This follows other positive developments, such as the closure of off-shore detention on the Pacific Island of Nauru and Manus Island.

However Australia still has further to go in relation to ensuring detainee rights, oversight and conditions are in line with international standards. Further work needs to be done on developing a framework for detainee rights and appropriate release options, such as the Community Care Pilot, and of fundamental importance is the question of how detention will be made reviewable. This inquiry provides an important opportunity to highlight possible solutions in line with the terms of reference.

Outline of this submission

The International Detention Coalition submission aims to contribute to dialogue on the following areas:

- Length detention
- Criteria for release
- Rights and conditions
- Transparency and visibility
- Alternatives to detention

The submission will include a cover letter which draws attention to two appendices, which the author wrote or co-wrote: 1) *Asylum Seekers in Sweden*¹, and 2) *Alternative approaches to asylum seekers: Reception and Transitional Processing System (JAS, 2002)*.² In addition, the submission aims to draw attention to the document, *Improving Outcomes and Reducing Costs for Asylum Seekers (JAS, 2003)*³, which outlines a full-costing of a community-based model of care, as well as the international research into *Alternatives to Detention of Asylum Seekers and Refugees* by Ophelia Field⁴.

Both the Swedish and the Reception and Transitional Processing System (JAS) models aims to ensure detention is used as a last resort, and is balanced with a functioning reception regime, based on a comprehensive risk assessment, case worker support, independent oversight and implemented according to specific process stages and review mechanisms.

1. Length detention and categories of detention

The UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers⁵ state that there should be a 'presumption against detention' and should only be used where it is determined to be necessary and proportionate to the objective to be achieved, where alternative measures have been fully considered and for the shortest possible time. (UNHCR, 1999)

1 *Asylum Seekers in Sweden*, Grant Mitchell, August 2001

2 *Reception and Transitional Processing System*, Justice for Asylum Seekers (JAS) Alliance, 2002. Please note, the JAS paper written pre-2005, however highlights the review and release options important. This paper written for asylum seekers, but also takes into account the treatment of others held in immigration detention facilities.

3 <http://www.melbourne.catholic.org.au/ccjdp/pdf/ImprovingOutcomesandReducingCostsforAsylumSeekers.pdf>

4 <http://www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=4474140a2>

5 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, December 1999

Furthermore any decision to detain should include an administrative or judicial body overseeing the need, terms and conditions of ongoing detention. Following identity, health and security clearance, individuals should be released into the community into supported living arrangements. Sweden, for example, has developed a legislative and detention policy framework in accordance with UNHCR guidelines in relation to purpose, length, release, rights and review process of immigration detention:

“According to Swedish Immigration Law all asylum seekers who arrive in Sweden without documentation are detained until their identification has been investigated, taking usually from 2 weeks to 2 months. However the government has also stipulated that detention in Sweden shall only be employed if supervision is deemed inadequate. In practice this means that asylum seekers may be signed into the detention centre and subsequently released into the reception centre after an initial assessment. This is often the case for families, single women and unaccompanied youths.

There are three categories of detainees. Firstly ID or identification detention, allowing for aliens to be detained if their identity is unclear. This category can be held in detention for 2 weeks while their identification is being ascertained. This can be extended to a maximum of 2 months.⁶

The second category is investigation detention, where the right of the detainee to be released into the community is being investigated. This is generally when there are questionable aspects to the alien's identity and further investigation is needed, particularly if there is a possibility of national security being at risk if they are released. This category can be held in detention for 2 months and extended to a maximum of 4 months. It can happen that a detainee will move from an ID to an Investigation category, meaning they can be held in detention up to 6 months. Identity investigations are undertaken by the Migration Board's Asylum Bureau with aid from the Foreign Affairs Department and the Police.

The third category is when the alien is in all probability to be deported shortly or that they will go into hiding if released. This is also for a maximum of 2 months, usually for the duration of the preparation of travel documents. In 1999 an Indian national was held in detention for almost 8 months as he arrived without documentation and was held on each of the categories and was to be deported. Since the Indian government was unwilling to provide travel documents for the client he was finally released into the Swedish community awaiting travel documents, as he could no longer be held in detention under Swedish law.⁷” (See Appendix 1, page 4)

2. Criteria for release, review mechanisms and oversight

2.1 Criteria for release

In terms of the criteria that should be applied in determining a person's release from immigration detention following health and security checks, there are a number of examples to draw from:

- Health checks in Sweden are undertaken in most cases within a period of 1 week or less
- In Canada, the issue of identification has been dealt with using a sworn affidavit from the detainee where no official documentation is available.
- The JAS model outlines a comprehensive risk assessment model looking at a combination of factors; 1) Health and self harm risk; 2) Absconding risk; 3) Community Risk, including security concerns.⁸ (See Appendix 2, pages 24 and 25)
- Risk assessment is a useful tool to screen out those who do not need to be detained, to transition individuals into appropriate community settings (See Section 3), as well as assessing who can be made lawful for the purpose of voluntary departure
- Risk assessment has been successfully used in Sweden, Canada and the UK for these purposes.

⁶ All the above detention categories and requirements are listed in: Rikslagen (State Law) 1996:1379

⁷ Asylum Seekers in Sweden, Grant Mitchell, August 2001

⁸ Reception and Transitional Processing System, Justice for Asylum Seekers (JAS) Alliance, 2002.

- Central to any risk assessment model in Australia, is the role of the DIAC Case Manager in assessing individual cases, both in terms of need and risk and making recommendations in relation to the need to detain and appropriate alternatives.
- Detainee risk assessments have on an ad-hoc basis been utilised over the past 3 years in IDCs across Australia, most notably in assessing eligibility for referral for residence determination, removal pending bridging visas or to various forms of alternative places of detention.
- These risk assessment tools and the case management system need to be further resourced and developed to include assessment of:
 - 1) All unauthorised arrivals on entry
 - 2) All cases identified by Compliance in the community
 - 3) Individuals currently in detention

2.2 The role of Case Management

Prior to late 2005, there was a one-size-fits-all response to detention in Australia, with little assessment of individual circumstance or the need to detain. With the introduction of the Case Management system in 2006 DIAC has since had a comprehensive mechanism by which individual circumstance, history, need and risk could be assessed to improve decision making, responsiveness to need and overall client outcomes.

The DIAC Case Management role developed is remarkably similar to that developed and successfully implemented in Sweden. The multidisciplinary role is not a decision-maker, but provides ongoing assessment, support and recommendation to the Department and client throughout their immigration pathway. The role has a central focus on assessing and overseeing the broader welfare, need and barriers to immigration outcomes for an individual in the migration stream deemed as vulnerable. Case Management aims to ensure a fair and expeditious process, with the client being informed and empowered throughout the process. The role also aims to improve DIAC decision-making in relation to detention and removal, ensuring informed assessment of circumstance, as opposed to the assumptions made prior to 2005, most notably those relating to the detention and removal of Vivian Solon Alvarez.

The further development and resourcing of the Case Management model is integral to any transition from a detention-based to a community-based reception model and to ensure detainee and community client needs are appropriately managed.

2.3 Detention pending removal concerns

The unnecessary detention pending removal of detainees is a continuing concern in Australia, particularly as no voluntarily return options currently exist for detainees.

All individuals in immigration detention in Australia with no legal basis to remain are by law required to be removed under the Migration Act as soon as practicable. Removal in this context is defined as the Departmental intervention to remove an unlawful non-citizen from Australia, and includes: 1) the process of withholding of travel documents, 2) handing people over to authorities on arrival, 3) being registered as a person detained and removed, affecting future travel, and 4) not being empowered to make their travel arrangements and depart in dignity. In addition, certain countries require to be informed of individuals 'removed' from another state, which does not occur for individuals voluntarily returning.

This 'removal' process can lead to high levels of anxiety and place certain individuals returning at heightened risk by being made known to authorities. Many detainees choose to remain in detention and appeal their cases due to a fear of the removal process.

Detainees in Australia refused a visa have no option but removal by the Government. This includes clients in the Red Cross care under the Community Detention Program, who have no right to voluntarily depart the country with dignity. The voluntary repatriation program run by the International Organisation for Migration (IOM) currently funded through the Community Care Pilot for eligible bridging visa holders urgently needs to be extended to detainees, based on an assessment that individuals who pose minimal risks can be made lawful for the basis of

departure. A number of European countries, including the UK, provide this voluntary return option for detainees through the IOM.

UK Example: Detention Centres: Voluntary Assisted Return Programmes (VAARP)

Since August 2005, detainees in the UK have been able to seek assistance from the IOM to voluntarily depart the country. All detainees are informed of this program, which includes assistance to explore departure options, to leave independently with dignity and to receive repatriation assistance. This options is available to detainees with no set removal direction (i.e. the process of removal has begun) and is approved by the Home Office.⁹

2.23 Detention Review

While the IDC welcomes the Minister of Immigration's recent decision to ensure all detention cases should be subject to periodic review by a senior departmental official, the IDC would like to highlight the importance of a review process that is independent and which incorporates both an administrative and judicial process in relation to the detention of individuals.

Article 9 of the ICCPR states that: 'Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful'¹⁰.

The IDC believe it is vital that a detainee is informed of the reason they are detained, for how long, how this can be reviewed, and what legal recourse and advice is available to them. These are fundamental rights of individuals detained.

There are a number of examples to explore in relation to the review of detention:

1) The Swedish model includes both administrative and judicial review mechanisms: 'It is important to note that all detainees (in Sweden) are aware of their rights in detention and the length of time they can be held in detention. All detainees have a right under Swedish law to appeal their being held in detention. They can appeal each category that they are held on, firstly to the Local Court and then to the Alien Appeals Board. Asylum Seekers are kept in detention only for the period of time it takes to ascertain their identities, not for the duration of their asylum procedure. The average stay in a Swedish detention centre is 47 days. Once released they are placed in the Carlslund Refugee Reception Centre (an open centre).'

¹¹

2) The JAS model outlines the introduction of an independent representative panel comprising representatives from the DIAC/Government, health, judiciary and community, that oversees and monitors client and internal and community release conditions and complaints. 'The independently chosen panel will meet regularly to make decisions based on risk assessments and security and administrative issues. The workload demands flexibility and prompt response, with a possible magistrate's level of judicial overview for urgent matters. The panel should ideally have the power to commission reports. Independent watchdogs, such as HREOC and the Ombudsman, will continue their external observation of the centres. The role of the Assessment Panel includes:

- Decision-making on compliance and risk assessment;
- Reviewing client categories and working between DIMIA, security, case worker and asylum seeker;
- Ensuring accountability, responsibility and overseeing duty of care requirements, such as health care, case management and security;
- Ensuring adequate training of staff and appropriateness of services in issues of cross-culture, gender, child protection, religion and trauma.' (Appendix 2, page 22)

⁹ <http://www.ncadc.org.uk/archives/field%20newszines/oldnewszines/newszine74/IOM-VAARP.html>

¹⁰ <http://www2.ohchr.org/english/law/ccpr.htm>

¹¹ Asylum Seekers in Sweden, Grant Mitchell, August 2001

2.4 Transparency of Immigration Detention Centres and detainee rights and conditions

The loss of liberty for detainees places individuals in a vulnerable situation, being dependent on authorities for their protection and welfare, and in itself demands transparency and independent oversight and monitoring to ensure individuals are not at further risk and that their rights are upheld.

Monitoring of detention is based on the regular scrutiny of all aspects and forms of detention, in order to ensure the rights, security and welfare of detainees are recognized, and protected, in accordance with international standards. This protection includes detention conditions and humane standards of treatment, and procedural rights, including the presumption against detention, that detention is not arbitrary, that it is time limited, that alternatives have been explored, that there is access to fair procedures for refugee status determination and visa options and that there is respect for the principle of non-refoulement.

In terms of Australia there have been significant improvements regarding monitoring of detention. In 2005 the Committee on the Rights of the Child stated that there was no regular system of independent monitoring of detention conditions in Australia¹², however since then there has been the development of a formal Immigration Ombudsman with a detention mandate, a strengthening of the Human Rights and Equal Opportunity Commission (HREOC) monitoring of complaints and conditions, as well as the existing work of the Immigration Detention Advisory Group and Immigration Detention Health Advisory Group.

The IDC however believes that monitoring of detention to ensure the rights, security and welfare of detainees are recognized and protected in accordance with international standards, needs ideally to be a mix of international and domestic mechanisms. It is thus vital that the Australian Government accedes to the Optional Protocol of the Convention Against Torture (OPCAT), which demands the development of a system-wide, functioning national preventative mechanisms for detainees, with the principle of unhindered visits to all detainees without distinction. We also believe that greater access to places of detention by NGOs and welfare groups is required.

Recommendations:

- A legislative and detention policy framework be developed in accordance with UNHCR guidelines in relation to purpose, length, review, release and rights of immigration detainees
- A detention review process be developed that is independent and which incorporates an administrative and judicial process
- Australia should accede to the Optional Protocol of the Convention Against Torture (OPCAT)
- Voluntary return options to be extended to detainees, based on an assessment that individuals who pose minimal risks can be made lawful for the basis of departure.
- Risk assessment tools and the case management model to be further resourced and developed.

3. Alternatives to detention

Alternatives to detention in Australia have been developing since the August 2001 introduction of the residential Housing Project in Woomera, based on the Swedish concept of group homes which Minister Ruddock visited earlier that year. Since that time a range of alternatives have been developed.

With the introduction of the Migration Series Instruction (MSI) 371 on Alternative Places of Detention (APD) in December 2002, the concept of Alternative Places of Detention was developed, whereby a person could be detained outside a detention facility held by a 'designated' person. These arrangements included staff of schools, hospitals and community

12

[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(4341200FE1255EFC59DB7A1770C1D0A5\)~right-of-child.pdf/\\$file/right-of-child.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(4341200FE1255EFC59DB7A1770C1D0A5)~right-of-child.pdf/$file/right-of-child.pdf)

agencies taking on the designated role. These arrangements were superseded by legislative change in 2005 under Section 197AB, whereby under the concept 'Residence Determination', the Minister had the discretion to determine any place to be a place of detention. This was the arrangement by which children and family were released in late 2005 under the care of the Australian Red Cross, which has worked successfully since that period, and is now called 'Community Detention'.

In addition, there has been the development of low security detention facilities such as Immigration Transit Accommodation Centres and Immigration Residential Housing (IRH) for the management of short-term turn around cases and individuals with low security concerns and specialist needs.

The development of the Community Care Pilot (CCP) has seen a further enhancement of alternatives to detention, and is in fact the most ideal model of care and processing for asylum seekers and vulnerable individuals in the migration stream in Australia. The CCP is unique as it is a comprehensive early intervention model, aimed at DIAC overseeing complex cases through their Case Management system, while utilising the Australian Red Cross for welfare assistance in the community (social work, housing, living assistance etc), legal assistance through the Immigration Advice and Application Assistance Scheme (IAAAS) scheme and voluntary return advice and assistance through the International Organisation for Migration. This concept of care is similar to that provided in Sweden under the broader reception policy model of community-based holistic care to asylum seekers awaiting an immigration outcome.

Although initially developed to assist DIAC manage and support early-identified complex community cases through their immigration pathway, it has increasingly been used to manage long-term complex cases, including a number of cases released from detention into the care of the pilot. Despite the complexities of cases referred, there have been overall positive outcomes in relation to improved:

- Client health and welfare
- Improved settlement outcomes for approved cases
- Low levels of absconding
- Increased voluntary return outcomes for refused cases, and
- Lower cost than detention.

3.1 Concerns regarding use of current alternatives

While the IDC welcomes any move to use alternatives to detention, there are a range of concerns about current practice in Australia, including:

- Concern has been raised about the long-term use of IRHs, including for families with children and individuals with health issues, where community-alternatives would have been more appropriate. These arrangements raise a number of concerns around isolation and access for this group to health-care, recreation and other supports available in either community care or detention facilities.
- While a number of new alternatives to detention have developed since 2005, the Department continues to use old forms of alternatives to detention for prolonged periods, defined by the Migration Series Instructions 371 drafted in 2002. This includes people being detained in motel rooms with GSL guards outside, or being transferred into the care of a 'designated' person under Alternative Places of Detention.
- In addition, community groups and family members have found the requirements under MSI 371 to be both a 'designated' person who is in effect detaining the individual, as well as providing a care-giving role, to be onerous and difficult to implement, particularly for individuals with mental health concerns.
- The prolonged separation of family units with one parent detained in immigration detention. The separated parent's ability to undertake their basic parental role and responsibilities for the upbringing and development of their child is limited as a result of the separation, and it is well documented that interrupted bonding between a child and parent can have significant negative and long-term health and wellbeing impacts on the child, and on the child-parent relationship. Additionally, the difficulties for the

partner remaining in the community as the primary carer for the child, are increased, as their capacity to best meet the needs of the child is limited as a consequence of the detention of the other parent.

- Concern continues that detainees have been released on Bridging Visa Es that deny the right to a Medicare and workrights. Individuals are on their own undertaking, or dependent on an assurance of support from a family member or friend. Invariably these arrangements have not been sustainable or adequately assessed as appropriate.
- While Community Detention (CD), otherwise known as Residence Determination, has been a positive alternative to detention policy, a number of concerns remain: 1) Individuals are still in detention experiencing extended periods of uncertainty with connected mental health implications, and for those with no visa options removal is the only option, no voluntary return options. 2) No flexibility to change residence address as one address is signed off by the Minister under the current process. This is particularly challenging for individuals transitioning from hospital facilities or from interstate.

3.2 Recommendations

(a) APDs and IDFs

- 14) Alternative Places of Detention and Immigration Residential Centres should be used as a last resort.
- 15) The development of alternative detention facilities such as residential housing projects and ITACs, have been an important transition from the previous practice of detaining all unauthorized arrivals and visa overstayers in IDCs. However, with the implementation of a case management model, a risk assessment procedure and structured release options like the CD and CCP, the use of medium and low security facilities is unnecessary. If individuals are low level risk, they should be released into the community.
- 16) If ITACS are to remain, they could potentially become open centres, as occurs in Europe and New Zealand.
- 17) The continued use of APD is a concern, particularly guards holding detainees in motel rooms. This practice should cease and the MSI 371 be revised to take into account residence determination and community care pilot developments.

(b) Detention Release Options

- 1) Community Detention, while a better option, should be used only where other community-based options are not possible.
- 2) If there are no health, character or public interest concerns, then Bridging Visa release options with Community Care Pilot-type support should be made available as the priority option.
- 3) Individuals released from detention should be granted the right to work, in order to self-sustain where possible, and which has the connected right to Medicare as a taxpayer.

(c) The needs of children and families

- 18) Whilst recognising the complexity and constraints of individual cases, IDC seeks that DIAC makes all considerations for reunification of the family unit in the best interests of the child.
- 19) IDC recommends that these cases are identified from the outset, and detention of one parent only occurs as a last resort. In the instances that this does occur, options for community detention or other placement options should be expedited to limit the impact on the children and whole family unit affected.
- 20) In terms of Christmas Island, we propose that families, unaccompanied minors and individuals with health issues to be transferred to the mainland under Community Detention arrangements.

4. Conclusion

The Immigration Detention Coalition welcomes the parliamentary inquiry into immigration detention in Australia. This submission has aimed to contribute to dialogue on a number of core areas to detention policy in Australia, such as length, criteria, rights, conditions and alternatives to detention. The accompanying two appendixes provided further information on the issues raised.

The 'Immigration Detention Values' statement recently released by the Government provides an important starting point to the implementation of a fair and humane detention policy in Australia. The IDC believes however that this statement needs to be followed by a clearly defined legislative and policy framework, aimed at developing mechanisms to review, oversee and transition detainees from detention, based on Australia's international obligations and UNHCR guidelines. In addition we believe it is vital that the Government and DIAC continue to dialogue with UNHCR, NGOs and welfare groups on any proposed changes.

Grant Mitchell
August 5th, 2008

Grant Mitchell, the Coordinator of the International Detention Coalition and author of this report, has been working extensively on detention issues in Sweden and Australia over the past 10 years, including work at the Swedish Immigration Department, Hotham Mission and the Australian Red Cross, and also as part of the Justice for Asylum Seeker Alliance and on the Board of the Refugee Council of Australia. This work has included service delivery to detainees, research, policy development and working closely with the Department of Immigration and Citizenship. In 2002 he received the Human Rights Award for Community Work (HREOC) for the work done by Hotham Mission in developing alternatives to detention.

Appendix 1

Asylum Seekers in Sweden

An integrated approach to reception, detention, determination, integration and return

Sweden received almost 16,000 asylum seekers in 2000, which per capita is roughly double the intake of Australia. Considering that up to 80% of asylum seekers arrive in Sweden with fake passports or with no documentation at all, the potential for problems and public concern is substantial.

Yet despite these large numbers Sweden has been successful in building a functioning reception process that allows for a just and humane treatment of asylum seekers while they await a decision, addresses national security concerns and effectively removes failed refugee-claimants. Sweden has also been successful in quickly integrating resettled refugees into society.

This has been achieved by implementing a comprehensive and well-planned reception, detention, return and integration system that is fundamentally based on clear government guidelines and stipulations on both enforcement of policy and of how asylum seekers are to be treated. As with most Swedish public policy formation, migration policy has been built on consultation between NGOs, academics, departments and government in order to allow for an adequate legal and social framework and implemented as a part of foreign affairs, security, trade and foreign aid policy. This paper aims to look at the policy and practice of Swedish Refugee Policy - *flyktingpolitik* - and aspects of Swedish Law behind these policies.

A background to immigration and refugee reception in Sweden

As late as the 1930s Sweden was primarily a country of emigration, with over 1 million people moving abroad since the mid-nineteenth century for economic, religious or political reasons. It was not until after World War 2 that the level of immigration increased, initially with the resettlement of Jewish refugees and until the early 1970s with labour migration primarily from Southern Europe and Finland.

Since the late 70s the majority of immigrants granted residence in Sweden have been of refugee or humanitarian background. Almost 11% of the population is foreign born, with the largest groups being from Finland, Iran, and the former Yugoslavia.¹³ The number of asylum seekers arriving in Sweden grew from 3,000 in 1980 to 30,000 in 1989, with large numbers of Chilean, Iranian and Africans being granted refugee status.¹⁴

¹³ Country Reports on Human Rights Practices –2000, Released by the US Bureau of Democracy, Human Rights, and Labor, February 2001

¹⁴ Rystad, Lund Press, 1992

During the war in the Former Yugoslavia in the early 1990s up to 80,000 Bosnian refugees were arriving per year seeking asylum in Sweden. While numbers have certainly decreased since that time a significant number of asylum seekers from Iraq and the Former Yugoslavia continue to arrive in the region.

Sweden does not have a skilled migration program, nor does it have an extensive family migration program, though they allow for reunification of spouses, children and in certain cases parents. Sweden does take a small number of 'quota' refugees, based on UNHCR suggestions. This figure, between 600 and 1,800 places is the responsibility of the National Integration Board¹⁵. Sweden however does not have a set intake for refugee resettlement, as occurs in Australia. Instead they have opted for a flexible approach to both the numbers and the type of assistance that Sweden can provide, such as allocating funding at the disposal of the UNHCR. This was noted most clearly in their approach to both the Bosnian and Kosovar crises. Sweden received over 160, 000 Bosnian refugees in a relatively short space of time, with many needing to stay in gymnasiums, motels and with Swedish families. Sweden initially allowed for a temporary residence status for Bosnian refugees, but later granted them permanent residency.

Yet despite these relatively large numbers, there has been little public outcry and an overall positive portrayal of asylum seekers in the media. This general community support has been seen as a combination of the reality of there being a "war in Europe" and a continuation of the social consciousness for which Sweden was known in 1950s and 60s. While Sweden has had a great deal of empathy for those with genuine protection needs, there have been difficulties in implementing an adequate multicultural policy -*integrationspolitik*- and in addressing issues affecting long-term immigrants, such as discrimination in employment and housing.¹⁶

Since the early 1990s there has been an increase in neo-nazi and right wing movements against immigration both in Sweden and throughout Europe. A number of academics have cited an increase in racially motivated violence, including a number of murders, after the Swedish government placed harsh restrictions on refugee policy and spoke out on the issue in 1989. Since that time the government has been careful not to incite anger towards asylum seekers, particularly as a large number of the immigrant population have a refugee or humanitarian background.

The Treaty of Amsterdam, which came into effect May 1999, means that issues related to EU member states will be subject to a greater number of common rules on visa, asylum and immigration matters. Under Swedish leadership of the EU in the beginning of 2001, the Swedish government made concerted attempts to address the issue of xenophobia in Europe, which was noted in the Stockholm International Forum on the Holocaust in January. The Swedish government has also attempted to dissuade the EU from further restricting its refugee policies to the detriment of a humane approach, at the International Conference on the Reception and Integration of Resettled Refugees in April in Norrköping.¹⁷

Refugee Reception

¹⁵ Migrationsverket's website: www.migrationsverket.se- 'Quota refugees'.

¹⁶ Grant Mitchell, "Obstacles to Swedish Immigrant Policy", Stockholm University, 1998

¹⁷ Regeringenkansliet's website: www.regeringen.se -Speeches - and the Integration Board's website: www.integrationsverket.se- Conferences and Seminars

The majority of asylum seekers in Sweden live freely in the wider community. A person has been immigration cleared and sought asylum is taken initially to the Carlslund Refugee Reception Centre. There they are signed into the centre and given a Caseworker -*handläggare* - whose job it is to explain the refugee determination process and their rights and entitlements while awaiting a decision. The caseworkers also ensure their asylum application is processed correctly and that interpreters and legal representation are sought if needed.

The Carlslund Refugee Reception Centre is in close proximity to the Arlanda International Airport on the outskirts of Stockholm. Within the Centre is a refugee medical centre, accommodation, a group home for unaccompanied minors, the Carlslund Detention Centre, as well as offices for the Migration Board.

All asylum seekers spend at least 2 weeks in Carlslund Reception Centre in order to complete the initial application and to assess any health or support needs. After that time an asylum seeker will be moved to one of Sweden's regional refugee centres while they await a decision. If the applicant has family or close friends in Sweden they can choose to live with them, which over half of all applicants do.

While Sweden does have a universal identifier or person card - *personkort* - this is not issued to asylum seekers, they instead receive a general identity card - *LMA*. Although it can be more difficult, it is possible to live, work, study and access services without either the LMA or person card. For example international students and EU citizens do not generally need these. If it is assessed that an asylum seeker's application will take more than four months to determine, as most do, then the applicant is entitled to work. All asylum seekers are offered free housing, but must provide for themselves if they have enough money. Emergency medical and dental procedures and prescriptions are provided at around AUD\$10. All asylum seeker children receive the same medical coverage as Swedish children.

Regional refugee centres are essentially a number of flats and apartments in small communities close to a central office reception, which includes childcare and recreation facilities. Asylum seekers must visit the reception office at least monthly for their allowance, news on their application and need and risk assessment. Caseworkers are assigned to each asylum seeker by the Migration Board to make these assessments and to refer clients for medical care, counselling and other services. Caseworkers are also required to provide 'motivational counselling', preparing the asylum seeker for all possible immigration outcomes and to assess the risk of absconding on a negative decision. Asylum Seekers in urban areas need to visit their caseworker at the local Migration Board office. All asylum seekers awaiting a decision are encouraged to participate in some form of organized activity such as english or swedish lessons if they are not working.

The Swedish Refugee Determination Process.

People seeking asylum in Sweden need to approach either the Police or the Migration Board and submit an asylum application - *Conferral of Refugee Status* - which is completed at the Carlslund Reception Centre. If more information is required then they may be required to stay longer in Carlslund, or they may complete a verbal interview. Case Officers at the Migration Board's Asylum Unit make the decision as to whether a person has protection needs and requires residency in Sweden.

Under Swedish law, persons who are found not to be "convention" refugees under the 1951 Refugees Convention may also qualify for asylum under a category known

as 'persons in need of protection' -*skyddsbehövande*. This includes those that have left their native country and have good reason to fear capital punishment, torture; need protection due to war or an environmental disaster in their native country or fear persecution due to their gender or homosexuality. This group is often labelled 'defacto refugees', however people with other strong humanitarian grounds may also be granted permission to stay in Sweden, such as extreme illness or other compelling reasons.

From the initial application the Asylum Unit assesses if an applicant falls into either of these categories. If they do they will be generally be granted a permanent residence permit (PUT). Once granted a visa, the only difference between a convention refugee and a defacto refugee or humanitarian entrant is that non-convention entrants are required to pay back the approximately AUS\$4000 loan for resettlement needs. Under certain circumstances a person may be granted a temporary, fixed-term permit, such as during the war in Kosovar when 3,700 people from the region were granted permission to remain in Sweden for 11 months under a Humanitarian Evacuation Programme.¹⁸

At this point the Asylum Unit may discover that a person has arrived with false documents. Following consultations with their Caseworker, a decision is made as to whether this person will be detained or if they will be required to report to the authorities one to three times per week. The Case Officer also needs to take into account the Dublin Convention whereby asylum seekers passing through another EU country on their way to Sweden may need to be sent back to the first country of asylum.

If the Asylum Unit find that the applicant does not have compelling protection needs, they may appeal within 21 days to an independent tribunal, the Aliens Appeals Board - *Utlänningsnämnden*. The majority of asylum seekers do appeal to the AAB, with a waiting period of up to 2 years. The AAB is made up of 2 tribunal members interviewing and making a decision on the case. In almost all cases legal representation is present. In certain circumstances an asylum seeker can make a second appeal to the AAB if they have new information about their case.¹⁹

There are few legal options for asylum seekers not in detention, with discretion being accorded to individuals in decision-making positions. In extreme cases the Migration Board and AAB can hand a decision over to the Swedish government. This is rare and usually in highly political cases or if there has been considerable public pressure.

Sweden's two step refugee determination process is thus built on a thorough refugee screening process by the Migration Board and the Alien Appeal Board's autonomous multi-member tribunal and the incorporation of a humanitarian element in the initial application.²⁰

Return, Deportation and Voluntary Repatriation

After a final rejection by the AAB, an asylum seeker is expected to prepare to leave Sweden. The role of the caseworker by this point has been to preempt a

¹⁸ UNHCR Asyl Nord No.11, 18 June 1999 and Migrationsverket's website: Who can get asylum?

¹⁹ Utlänningsnämnden's website: www.un.se -Flyktingförklaring och Resedokument

²⁰ Migrationsverket's website: Who can get asylum?

negative decision and prepare the refugee claimant for possible return through "motivational counselling". This includes exploring all possible immigration outcomes and how to cope with a negative decision and having to return to their homeland.

During motivational counselling applicants are given three options on a negative decision: voluntary repatriation, escort by caseworkers or being handed over to the police. The Migration Board provide certain incentives for those who voluntarily repatriate, such as some funds to help for resettlement, plus the cost of domestic travel within their country. Return travel is generally arranged by the caseworker and paid for by the Migration Board.

Failed refugee claimants who at this point are assessed by caseworkers to be at risk of absconding are detained until return is possible. In some cases travel arrangements have been made prior to informing and detaining the applicant, in order to ensure the length of time in detention is minimal. Only on rare occasions, and usually because a family member has previously absconded, will a parent be detained with the remaining family placed in a "group home" outside of the detention centre. Most people however are not detained and are given the option to arrange where and when they would like to travel. Their caseworker will often drive them to the airport to ensure they take the flight.

People that have already absconded, committed a criminal act or where it is believed that coercive measures may need to be employed are handed over to the police. They are held in immigration detention but all deportation arrangements are the responsibility of the Polices' Aliens Unit - *Utlänningsrotel*. Under Swedish law Police are not allowed to administer drugs during expulsions. They are however allowed to shackle a deportee. In most cases deportees tend to comply during a police escort out of the country, which usually entails plain clothed policemen sitting in the back of a plane with the deportee. In cases where the person may be at risk of violent behaviour, or where the pilot refuses to fly with the person on board for safety reasons, a plane may be chartered and restraints used.²¹

Failed asylum seekers being escorted out of the country by caseworkers is usually not due to risk factors but for technical or medical reasons. It is often easier for asylum seekers with no travel documents but with proof of their homeland to be escorted to the border in order to negotiate entrance with border control. This is often the case with asylum seekers from South Asia, where it can take up to one year for passports to be issued.

Also the Schengen Agreement, which has removed border control and transit areas for member countries, means that asylum seekers whose flight stops within the region will often need to be escorted to ensure both that they can enter the country without a valid visa and also that they can continue on their outgoing flight. Caseworkers will often try to make arrangements for travel directly out of Schengen, such as through Moscow or they will notify the airport that an unescorted deportee will be arriving so they can ensure they take the outbound flight, in which case the deportee is handed over to the captain.

Implementing the Dublin convention has also proved difficult and expensive. Special agreements between Sweden and Germany have been introduced to help

²¹ Telephone interview with Anna Wessel, Head of Voluntary Repatriation and Return, Migrationsverket (7/8/01)

return Iraqi nationals that have continued to Sweden to seek asylum because of their family reunion laws. However the most difficult aspect of repatriation is arranging for travel documents for those who arrived without legitimate documents. The Swedish Foreign Affairs Department has spent considerable time arranging repatriation agreements with countries like India, where it previously had been difficult to organise passports or adequate travel documents.

Some people who arrive without adequate documentation are turned around and deported within 72 hours of arrival after an on-arrival screening process. NGO's in Sweden have been critical of their lack of access to legal counsel. The Swedish Government has recently experimented with pilot programs at selected border crossings to provide expeditious legal assistance. Most of these are cases of persons who passed through or have asylum determinations pending in other EU countries.²²

Sweden enforces up to 80% of deportation and return notices on failed asylum claims and overstayers. Between January to July 2001, 2,475 people returned voluntarily with assistance of the Migration Board and 588 people were handed to the police.²³

Anna Wessel, who is in charge of the Migration Board's Voluntary Repatriation and Return Unit said that Sweden has a goal of "enforcing policy with the dignity of the applicant maintained". Ms Wessel says Sweden rarely has to resort to coercion when removing failed asylum seekers because of the effectiveness of the caseworker system. "Before the Migration Board took over responsibility for detention it was not unusual that you needed to use a lot of coercive measures to enforce a negative decision, to enforce an expulsion order, but these days that is extremely rare" she says. ²⁴

Swedish Detention Law - *Aliens Act*

According to Swedish Immigration Law all asylum seekers who arrive in Sweden without documentation are detained until their identification has been investigated, taking usually from 2 weeks to 2 months. However the government has also stipulated that detention in Sweden shall only be employed if supervision is deemed inadequate. In practice this means that asylum seekers may be signed into the detention centre and subsequently released into the reception centre after an initial assessment. This is often the case for families, single women and unaccompanied youths.

There are three categories of detainees. Firstly ID or identification detention, allowing for aliens to be detained if their identity is unclear. This category can be held in detention for 2 weeks while their identification is being ascertained. This can be extended to a maximum of 2 months.²⁵

The second category is investigation detention, where the right of the detainee to be released into the community is being investigated. This is generally when there are questionable aspects to the alien's identity and further investigation is needed, particularly if there is a possibility of national security being at risk if they are

²² Country Reports on Human Rights Practices –2000, Released by the US Bureau of Democracy, Human Rights, and Labor, February 2001

²³ Swedish Migration Board Statistics, August 2001

²⁴ ABC's PM Interview with the Anna Wessel of the Swedish Migration Department, December 9, 2000.

²⁵ All the above detention categories and requirements are listed in: Rikslagen (State Law) 1996:1379

released. This category can be held in detention for 2 months and extended to a maximum of 4 months. It can happen that a detainee will move from an ID to an Investigation category, meaning they can be held in detention up to 6 months. Identity investigations are undertaken by the Migration Board's Asylum Bureau with aid from the Foreign Affairs Department and the Police.

The third category is when the alien is in all probability to be deported shortly or that they will go into hiding if released. This is also for a maximum of 2 months, usually for the duration of the preparation of travel documents. In 1999 an Indian national was held in detention for almost 8 months as he arrived without documentation and was held on each of the categories and was to be deported. Since the Indian government was unwilling to provide travel documents for the client he was finally released into the Swedish community awaiting travel documents, as he could no longer be held in detention under Swedish law.

It is important to note that all detainees are aware of their rights in detention and the length of time they can be held in detention. All detainees have a right under Swedish law to appeal their being held in detention. They can appeal each category that they are held on, firstly to the Local Court and then to the Alien Appeals Board. Asylum Seekers are kept in detention only for the period of time it takes to ascertain their identities, not for the duration of their asylum procedure. The average stay in a Swedish detention centre is 47 days. Once released they are placed in the Carlslund Refugee Reception Centre.

The authority which decides if a person will be detained depends on where their case is at the time. Deciding authorities are the Police, the Alien Appeals Board and the Migration Board. The Government can overrule any detention decisions. The deciding authority needs to be informed of any decisions pertaining to the client or if they are to be transported. The Migration Board also has the right to negotiate with another deciding authority as to whether the person shall remain detained or not. In cases of detention longer than four or five months the Migration Board will often interview the client and assess the feasibility of releasing them under compliance. This information obtained will be used in negotiations with the deciding authorities, which in some cases can be taken to the local court.

In cases where the supervisor deems a detainee a possible threat to other detainees or staff or in cases of violence, the police will be called and the detainee will be placed in a holding cell or prison. While solitary confinement was never used at the Carlslund detention centre, it is allowed under Swedish law in extreme cases of violence. It is also required by law that a doctor examines anybody placed in solitary confinement as soon as possible.²⁶ In most cases however the police are called and they deal with the matter. A detainee may also be held in a holding cell if the detention centre is full. The deciding authority needs to make that decision and it can only be until a room is available at one of the four detention centres.

Under Swedish law, no child under 18 years shall be held in detention for more than 3 days. In extreme circumstances this can be extended to 6 days.²⁷ The period January 1999 to January 2000 there were approximately 20 children held in the Carlslund detention centre, most of whom were released after 2 days, none were held in the detention more than 4 days.

²⁶ Rikslagen 22: 1997:432

²⁷ An amendment was made in 1996 changing the rules for children in detention from 16 to 18 years. Immigration and Refugee Policy, Ministry of Foreign Affairs, 1997, page 29

If an unaccompanied minor arrives in Sweden they are taken directly to a supervised group home run by the Migration Board and Child Social Services. If a family arrives without documentation or if the family is about to be deported, in many cases they are released into family accommodation at the Carlslund Refugee Reception Centre under compliance, reporting twice weekly to the Department.

However in cases where the threat to national security is unknown, where their identity cannot be ascertained or where authorities are unwilling for their release, one parent is held in detention, while the other parent and children are released into group homes outside of the detention centre, with the possibility to visit remaining parent during the day. The family is first signed into the detention centre and informed of their rights, including the right to appeal and the detention procedure in relation to children and the family. The Migration Board assures the parents that their case will be of utmost priority and that they will be regularly informed of the state of their case. It is important that the family is reassured that they will have visitation rights and regular telephone access.

Asylum Seekers living in group homes are free to move around the community, however there is normally some supervision to ensure access to information, legal advice, counselling, recreation and services. All who live in the homes are involved in food preparation. There are also regular group meetings with consensus deciding all issues. Telephone translators are available whenever required.

Detention History

Prior to 1997 the Swedish Federal Police were primarily responsible for all detention and a number of immigration issues in Sweden. The Police managed the centres, but hired private security contractors to ensure the daily operation of the centre. There was much media attention prior to that time given to the hard nature of the detention centres, the number of suicide attempts and hunger strikes. Human rights watchdogs criticised the lack of knowledge and experience of contractors in their work with asylum seekers and also the lack of transparency in management of the centres. The Police were criticised for incidents of forced and occasional violent deportations.²⁸

Problems related to detention centres in Sweden were discussed both within the department and by government and media, with press coverage of breakout attempts, hunger strikes and protests. One hostage incident in particular which received coverage was of detainees about to be deported, who held a guard captive with a knife before escaping.

Due to governmental concern over the running of the centres an inquiry into detention and deportation procedures was conducted in 1996. The Swedish government wanted to investigate the relinquishment of authority to the Migration Board and the possible role of humanitarian NGOs. Researchers and experts from various disciplines were asked to contribute to the inquiry.²⁹ A considerable amount of money was invested by the Swedish government at that time into external research in immigration and refugee policy.

²⁸ Polisen kommer oanmäld (The police come unannounced), Jean-Luc Martin, UR Artikel 14 nr 4/97
²⁹ Immigration and Refugee Policy, Ministry of Foreign Affairs, 1997, page 30-31

Following the recommendations of the inquiry, on October 1st, 1997 the Swedish Parliament's new policy on detention came into effect, handing all authority of running the detention centres over to the Migration Board, who's role it was to create a more civil, culturally sensitive and open detention policy. The Government made clear however that the aim was still one of enforcement of policy and that detention centres were a necessity in order to verify aliens' identities before releasing them into society and in order to realise deportations effectively. It was noted that a detainee's civil-rights should not be limited more than necessary and their treatment should reflect that they are not criminals. They were to be guaranteed contact with the outside world, transparency in management, freedom of information and any further restrictions on their movements, such as searches for dangerous objects, could be appealed to the local administrative board.³⁰

During the change from the Police to the Migration Board, NGOs were asked to contribute to discussions of the new procedures of the detention centres and to have an active presence at the detention centres with a number of Forums being organised. FARR - the Refugee Group and Asylum Committee's National Council - was active in its involvement in policy restructuring.

Swedish Detention Practices

There are 4 detention centres in Sweden with Carlslund detention centre being the largest, holding a maximum of 50 detainees at one time but totalling in hundreds per year with its high turnover of detainees and its close proximity to Arlanda International Airport on the outskirts of Stockholm. There are no barbed wire fences surrounding the detention centre. It is a building similar to those around it; a refugee reception centre, a group home, a medical centre. It is however fitted with special locks and alarms, with the detainees only being given access to the inner part of the building.

In the centre of the building is a small yard used for soccer and volleyball. Detainees share their rooms and have their own keys to their room. Each room consists of a number of beds, a chest of drawers, a window and a tape player and radio. Rooms for women and families also included a bathroom. The communal areas of the building include a games room, mess hall, computer and TV rooms, bathrooms, laundry and library. The kitchen is generally locked up but access is given to clients wanting to use the kitchen. All knives are locked up to reduce the incidence of suicide attempts. In the basement are interview rooms, the nurses room and a gym, which can only be used under supervision. The reception area is open to both clients and visitors, but the offices are in another inaccessible area. There are 2 visitors rooms and a waiting room, with visitors welcome from 9am until 4pm, normally at a maximum of one hour per visit, however longer for visiting children or if the person is to be deported.

Security measures include no cigarette lighters or metal objects being allowed and the use of a metal detector after every visit. Only disposable razors are allowed. In some cases a body search is used, in which case a consent form needs to be filled in. Periodically room searches are undertaken. All staff have both an alarm and a walkie talkie on them at all times. Since the Migration Board took over the running of the centres the aim has been towards a more transparent management of the

³⁰ ABC radio interview with Anna Wessel, former head of SIV detention (PM- 19/12/00)

detention centre, with NGOs and their representatives being given access and input. There is a very open policy regarding the media, with detainees deciding themselves if they want to speak to the media.

The Migration Board chose to implement a system of caseworkers, who though mindful of security, are not guards. They are social workers, counsellors and people with experience working in closed institutions, bringing sensitivity and experience to their work with the asylum seekers. A detainee will have the same caseworker for the duration of their stay in detention, whose primary role is to inform detainees of their legal rights and ensure these rights are upheld, to inform them of the state of their asylum case and appeal possibilities, as well as to prepare the detainee for all possible immigration outcomes. Other duties included ensuring they have access to a lawyer, that family members are informed that they are being held in detention, the granting of financial support if permitted in their case, initial mediation between lawyer and client and preparing their asylum application. Specific departmental training is given in conflict prevention and motivational counselling. There are weekly meetings where detainees can present any grievances they have and make suggestions.

There tends to be a multidisciplinary approach to casework, with a great deal of scope allowed for dealing with the needs of clients properly. Caseworkers work in shift covering 24 hours a day and have regular access to clients. The department attempts to ensure the client is coping well while in detention. Thus much of the work of caseworkers is to placate distressed and anxious detainees using a number of alternatives:

- Allowing clients to call family in their home country for a limited time
- Arranging visits by the Red Cross or other organisations
- Arranging for a psychologist or a trauma counsellor to see the client
- Allowing extended visitation times for families and friends
- Ensuring that there are adequate recreational activities available for the client
- In extreme cases where the client is not coping well or is sick and with the supervisor's permission, two caseworkers will take the client for a trip or a walk outside of the detention centre.

Detainees are made to be made to feel active in their case, by having access to media and internet to research their case and to be able to contact NGOs for advice. By doing all of the above detainees feel they are given a fair hearing, are empowered and tend to comply with decisions, removing the need for the coercive measures previously used by police and the security company.

Also as the detention centre holds both men and women, staff are trained in gender based issues, such as that a male caseworker may not conduct a body search of a female detainee. Cultural considerations included never tolerating discrimination or racist remarks between clients, as it is against the law in Sweden. If a client is racist towards another client they are spoken to by their caseworker and given a warning. If it happens again they can be charged and in most cases are transferred to another detention centre. This has been a common practice between centres, that if someone is not fitting in well at one centre they may be transferred.

In cases of extreme depression where staff are concerned the client may attempt suicide or where they have stated that they will, clients are either taken directly to the psychiatric emergency ward or caseworkers are stationed in the client's room in shifts throughout the night. A mental health professional will speak with

them during the day and often they will be prescribed anti-depressants. The use of anti-depressants is somewhat common in the detention centre. At the end of the shift there was a debriefing, giving staff an opportunity to go through the events of the day. In the case of an incident occurring, usually a suicide attempt, the staff on duty were given counselling and called a number of times in the next few days to see how they were coping.

Lessons from the Swedish approach to asylum seekers

While there are many differences in Australian and Swedish experience and history of refugees and asylum seekers there are still many lessons that can be learned. The problems facing Sweden's detention centres prior to 1997 bear a marked resemblance to those currently facing Australia.

Many of these problems, including riots, mass hunger strikes and worker safety have been addressed due to comprehensive changes by the Swedish government following an inquiry in 1997. The changes included:

- The removal of private contractors and the police from the detention centres
- Dividing detention into 3 categories: initial health, security and health checks; investigation; and for realising return for individuals at high risk of absconding.
- Implementing a caseworker system aimed at need and risk assessment and preparing detainees for all immigration outcomes
- Increasing transparency in management and operation, with centres to be run more like closed institutions than prisons.
- Ensuring all staff are trained to work with asylum seekers and show appropriate cultural and gender sensitivity and respect to all detainees.
- Increasing access for NGOs, clergy, researchers, counsellors and the media.
- Allowing for freedom of information, such as access to internet, NGOs and the option to speak to the media
- Ensuring legal counsel and the right to appeal is available
- Ensuring no children are held in detention for extended periods and removing families as soon as possible.

Sweden's integrated approach to detention and reception has been aided by the implementation of the caseworker system which has helped bureaucratic decision-makers to make informed decisions as to whether detention or reception is required and has ensured that clients are prepared for either return or settlement. The system of release into the community after initial checks has brought about a significant reduction of taxpayer's money and public outcry and has not lead to large numbers of asylum seekers absconding.

If an asylum seeker living in the community is assessed at being a high risk to abscond just prior to receiving a final decision they will be placed in detention. The caseworker system has also encouraged failed refugee claimants in Sweden to comply and return after a final decision in a number of ways:

- By providing 'motivational counselling', including coping with a decision and preparation to return
- Providing three options to asylum seekers: voluntary repatriation; escort by caseworkers; or escort by police.
- Providing incentives for those who chose to voluntarily repatriate, including allowing time to find a third country of resettlement, paying for return flights, including domestic travel and allowing for some funds for resettlement.

The Swedish refugee determination process has also been successful in reducing the appeal time and the need for asylum seekers to access the courts. This has been achieved by:

- The incorporation of a humanitarian and 'other protection needs' category at the initial decision-making stage.
- Allowing for an independent multi-member tribunal to review the initial decision on both 'convention' and other grounds.
- Ensuring all asylum seekers are represented by legal counsel all both stages of the refugee determination process.

Probably the most important lesson to be learned from the Swedish experience is that a healthy migration policy is not based on deterrence or on restrictive policies or visas but allows for an expeditious refugee determination process and effectively realises settlement or return. It is a system based on treating asylum seekers humanely and with a uniformity of rights and entitlements irrespective of the means of arrival, allowing for the best possible outcome for both those seeking asylum and for the wider community.

Conclusion

Swedish Refugee and Migration Policy has been through a number of changes in the past 20 years, most recently being the division of immigration and settlement policies into two different departments - *Migration Board and Integration Board*. Simultaneously certain immigration responsibilities have been handed over to the Migration Board from the Federal Police, including detention practices. Since 1996 the Swedish government has implemented a number of changes to create a refugee policy that provides a legal and social framework for a humane and integrated approach to reception, detention, determination, integration and return.

Certain minimum standards in detention and return procedures have been established which are undeniably rooted in the state's consciousness of fundamental universal rights for all within the nation-state. Swedish law states that all who are held in detention shall be treated humanely with their dignity respected.³¹ People smuggling and the risk of asylum seekers absconding, while taken seriously, are not overemphasised, nor is detention used as a deterrent. Detention however is used in the initial period to determine the identity of those that have sought asylum without identification, for investigation and to realise return. This however must be done with sensitivity and with civil-rights not being infringed upon beyond freedom of movement.

This is not to say that Sweden is a "soft touch" country in regard to detention or deportation issues. Enforcement of policy is a serious concern for the Government and the Migration Board, with Sweden having the highest level of returns on negative decisions in Europe, at over 80%. Major incidents of violence, riots and mass hunger strikes have not occurred since the Migration Board took over detention centres in 1997 and introduced changes to policy and practice. The incidence of suicide attempts has also decreased and there has been little animosity between staff and detainees. There has proven to be a high level of compliance with decisions with very few asylum seekers absconding under supervision. A system of release into the community, after initial health and

³¹ Rikslagen 18: 1997:432

security checks, has brought significant reduction in the use of tax payers' money and in public outcry. Sweden now has the lowest levels of illegal immigrants living in the community in Europe, with research showing that resettled refugees integrate quickly into the community with no increase in levels of welfare dependency or crime.³²

An integrated, humane approach to refugee policy leads to less animosity and fewer problems in detention centres and a safer working environment. It helps to effectively enforce expulsion orders and more importantly helps those granted refugee status and residency to integrate more quickly into society. The link between immigration and settlement is taken seriously in Sweden, with the way individuals are treated during the immigration process directly related to how they adjust and settle into the new country.

The key to the success of Sweden's integrated approach is its streamlined refugee determination process and its caseworker system, which oversees an asylum seekers journey throughout both reception and detention and onwards to either return or settlement. It is a system based on informing and empowering the asylum seeker and a clear understanding that the asylum seeker experience cannot be bureaucratically controlled and planned but demands flexibility and compassion.
33

Grant Mitchell, August, 2001

32 Österberg, T: Economic Perspectives on immigrants and Intergenerational Transmissions, Handelshögskolan, Göteborgsuniversitet, 2000

33 Much of the research for this paper was based on first-hand experience at the Carlsund detention centre.



**Justice for Asylum Seekers (JAS) Alliance
Detention Reform Working Group**

Alternative approaches to asylum seekers:

Reception and Transitional Processing System

JUNE 2002

Justice for Asylum Seekers (JAS) is an alliance of over twenty five Victorian based community organisations founded in Melbourne in 1999 to address negative perceptions of refugees claiming asylum. Within the JAS alliance are the major churches – Catholic, Uniting , Anglican and Churches of Christ and Baptist representing congregations numbering in the hundreds of thousands, plus large membership organisations such as Amnesty International and Oxfam Community Aid Abroad and well known welfare agencies such as the Brotherhood of St Lawrence and St Vincent De Paul Society. Many JAS agencies are members of Australians for a Just Refugee Program (AFJRP) and share the goal of AFJRP to achieving just treatment of people claiming asylum in Australia. JAS supports the work of the Refugee Council of Australia.

Afghan Support Group, Amnesty International (Victoria), Anglican Church, Asylum Seeker Project of Hotham Mission, Austcare, Australian Iraqi Association, Baptist Union, Catholic Commission for Justice Development and Peace Melbourne, Caritas Australia, Churches of Christ, Council of Vietnamese Supporting Organisations in Australia, Ethnic Communities Council of Victoria, Ecumenical Migration Centre of the Brotherhood of St Lawrence, Indo Chinese Refugee Association, Jesuit Refugee Service, Liberty Victoria, Melbourne Catholic Migrant and Refugee Office, National Council of Churches in Australia (Victoria), National League for Democracy (Burma – Liberated Area), Oxfam Community Aid Abroad, Refugee Council of Australia, Refugee Immigration and Legal Centre, Springvale Community Aid And Advice Bureau, St Vincent De Paul Society (Vic).

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Contents

Executive Summary

1. Introduction
2. Background
3. Costs and Asylum Seekers not in detention
4. The Reception and Transitional Processing System
5. Management and support structure
6. Release issues
7. Outcomes under a reformed system
8. Conclusion

Diagrams

RTP System Diagram

Structured Release Program

RTP System Matrix Roles and Stages

Psycho-Social Risk Assessment Diagram

Acronyms**ASAS – Asylum Seeker Assistance Scheme****ASIO – Australian Security Intelligence Organisation****DIMIA – Department of Immigration, Multicultural and Indigenous Affairs****HREOC – Human Rights and Equal Opportunity Commission****ICCPR – International Covenant on Civil and Political Rights****ICO – Immigration Case Officer****IDC – Immigration Detention Centre****IHS – Identity, Health and Security Checks****IOM – International Organisation for Migration****JAS – Justice for Asylum Seekers Alliance****PV – Permanent Visa****RCOA – Refugee Council of Australia****RRT – Refugee Review Tribunal****RTP – Reception and Transitional Processing System****TPV – Temporary Protection Visa****UNHCR – United Nations High Commissioner for Refugees**

Executive summary

A.

Justice for Asylum Seekers (JAS) is an alliance of over twenty five national churches and community organisations founded in Melbourne in 1999 to address negative perceptions of refugees claiming asylum. JAS is concerned with achieving just treatment of people claiming asylum in Australia while acknowledging the need for border management and sound migration processes.

B.

Some of the main problems in the current immigration detention system that the Reception and Transitional Processing (RTP) system addresses are:

- High Rates of Self-harm in detention centres
- Hunger strikes, riots and other incidents
- Psychological damage to children
- Vulnerable groups such as families, single and pregnant women, the disabled and the traumatised being harmed by detention
- People being held in detention for periods longer than a year
- How to increase voluntary repatriation when one's claim is unsuccessful

C.

Key RTP Features:

1. Detention should only be used for a limited time, in most cases for Identity, Health and Security (IHS) checks upon arrival; prior to a person being returned to their country of origin or another country, or if a claim is unsuccessful and if supervision in the community is inadequate to the high risk of the person absconding.
2. Introduction of a monitored release regime based on a revised risk assessment – made into community hostels/cluster accommodation.
3. Those deemed high security risk to remain in detention, but with set periods of judicial or administrative review.
4. Ensuring children and their primary carers are released from detention as soon as possible.
5. Reception of all unaccompanied minors, families, single women, vulnerable people into community care with Government support and compliance requirements.
6. Reception of all people assessed to be psychologically vulnerable into community care by specialised services with Government support and compliance requirements.
7. Creation of a case worker system whereby an independent service provider (e.g. Australian Red Cross) provides information, referral and welfare support to services to people claiming asylum, from the time of their arrival to the point of repatriation or settlement in the community.
8. Creation of a Representative Assessment Panel to oversee conditions of detention and community release. The Panel would make decisions on risk assessments, security compliance and periodically review length of detention. The Panel would act as an independent body ensuring transparency and accountability of service providers entrusted with the humane manner of treating people.
9. The introduction of a specialist service provider such as International Organisation of Migration to manage return of persons whose claim has been unsuccessful.
10. The creation of a special visa class for long term detainees who can't be returned to their country of origin, which would allow them to live in the community until such time as they can be returned.

D.

The RTP System ensures a more humane and functioning return system, which includes:

1. Ensuring from the outset that the asylum seeker is aware of the immigration process, has access to legal counsel and is thus more likely to feel like they have had a fair and expeditious hearing.
2. The caseworker role in exploring and preparing clients for all possible immigration outcomes.

3. By providing 'motivational counselling', including coping with a negative decision, preparation to return and empowering clients to make decisions.
4. On a final decision and following a risk assessment, the panel decides as to whether the asylum seeker needs to be detained.
5. Providing incentives for those who choose to voluntarily repatriate, including allowing time to find a third country of resettlement, paying for return flights, including domestic travel and allowing for some funds for resettlement.
6. Allowing for Red Cross, IOM or family members to meet them on arrival and if appropriate follow-up post-return to ensure the safety of those returned and to safeguard future determination decisions.

E.

The RTP System will contribute to a number of positive outcomes:

- More effective and humane returns
- Improving a person's ability for settlement upon release
- Reducing costs to the taxpayer of prolonged detention
- Reducing incidents and problems and improving worker safety within the detention environment
- Reducing the risk of long-term mental health problems due to prolonged detention
- Releasing children and those at risk from the detention environment
- Reassuring decision-makers and the wider community by means of an accountable and effective processing system
- Allowing for a humane and balanced approach to asylum seekers during the determination process
- Increasing community understanding and involvement with support for asylum seekers

F.

Australia's Existing Alternative to Detention: Each year thousands of people claim asylum and are permitted to live in the community by the Australian Government. They arrive with a valid visa and then claim asylum and the Government does not detain them. They go through exactly the same claim process as those who arrive without a visa and are held in detention.

G.

Cost of Detention: An indicative break-down of 1999-2000 costs to the public of detaining people shows that it costs much more than the Government's existing programs for processing and monitoring asylum seekers in the community. In 2000 – 2001, the cost for detention was approximately \$104 million, increasing to \$120 per day in 2002. It cost approximately \$150 million in 2001-2 to detain 3500 people in mainland detention centres.

H.

Cost of DIMIA's Programs for Asylum Seekers in the Community: Many asylum claimants living in the community are eligible, for a period of time, for the Government funded Asylum Seeker Assistance Scheme (ASAS) which is managed by the Australian Red Cross. In 2000-2001, there were 2,691 people claiming asylum who received ASAS payments. ASAS averages 89 per cent of the Centrelink special benefit.

- A single male over 21 is paid approximately \$400 per fortnight on the scheme, while a couple without dependants is paid approximately \$600. Administration costs for the scheme run at an average of 12 per cent. It cost the public purse \$11,185,000 in 2001. The Government's existing processing system for asylum seekers in the community is much cheaper than mandatory detention.

1. Information provided by the Office of the Minister for Immigration and Multicultural Affairs in response to a question on notice by Natasha Stott-Despoja on September 1, 1997 – Question 803. (Submission to the Senate Legal and Constitutional References Committee – HREOC 1998)



I.

Absconding: DIMIA evidence shows that the fear of absconding is exaggerated. No unauthorised asylum seeker released on a bridging visa in Australia from 1996-1998 failed to meet their reporting obligations to DIMIA.¹ The RTP system has a risk assessment system which minimises absconding.

J.

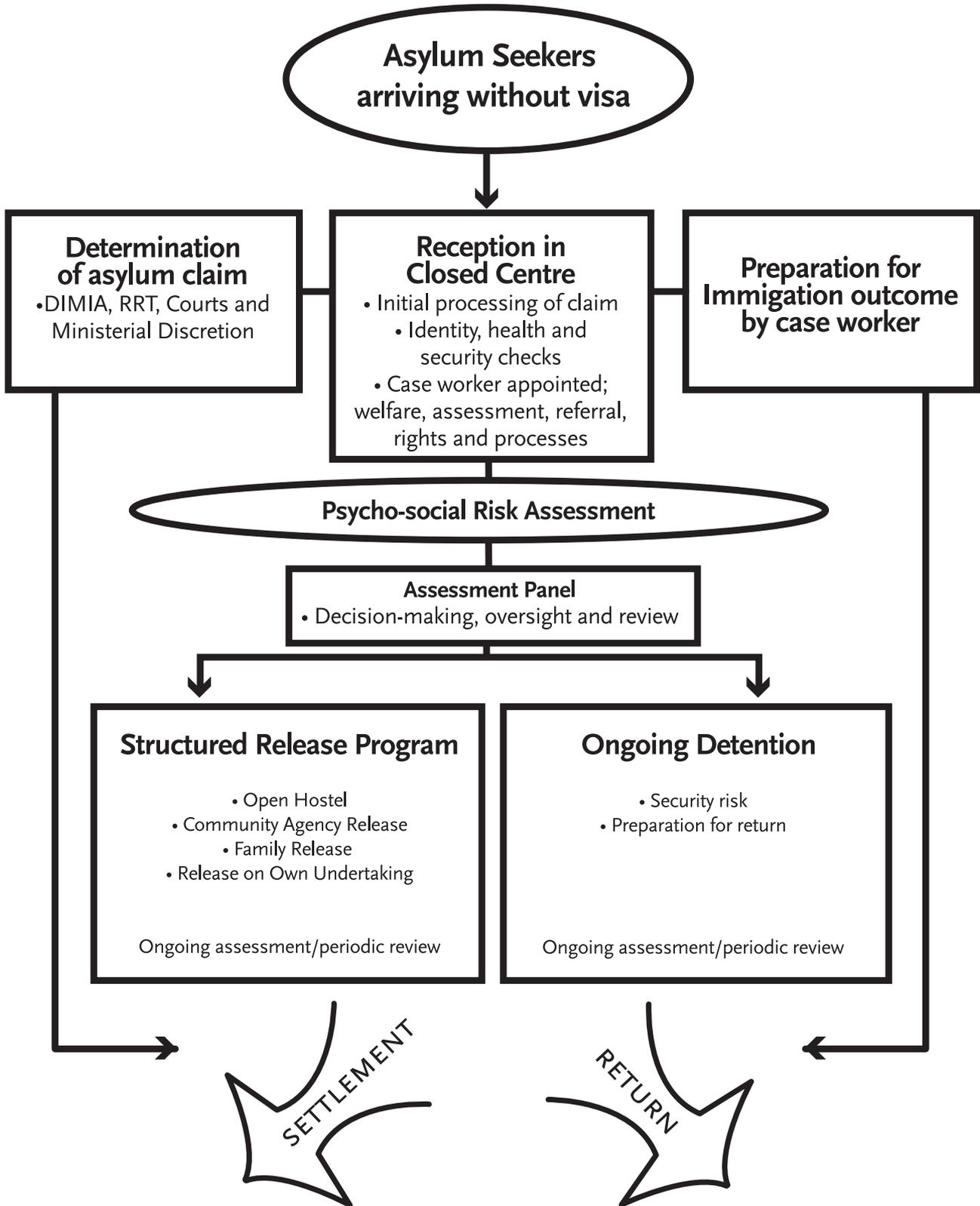
Compliance: Currently, there are two types of compliance – implicit and explicit for asylum seekers allowed by the Government to live in the community. Implicit compliance includes the reliance of the asylum seekers on welfare agencies for their survival and involves, for example, asylum seekers reporting to the Australian Red Cross to receive payment of ASAS allowance as well as referrals. Explicit compliance is standard reporting requirements to DIMIA Compliance offices. The Australian criminal parole systems in each state provide a wealth of reporting models for asylum seekers in the community.

K.

The RTP System improves DIMIA's existing compliance system through the use of risk assessment systems, rational consideration of rates of absconding in Australia and overseas; enhancing the role of DIMIA's Compliance unit, employing case management by welfare agency and an independent case assessment panel. The involvement of caseworkers and other community agencies in this system ensures visibility and accessibility and contributes to the asylum seekers meeting their compliance requirements with DIMIA. This is in addition to any explicit reporting requirements DIMIA might make.

Reception and Transitional Processing System

JUSTICE FOR ASYLUM SEEKERS (JAS) ALLIANCE, 2002



Introduction

JAS Detention Reform Working Group

Justice for Asylum Seekers (JAS) is an alliance of over twenty-five community organisations founded in Melbourne in 1999 to address negative perceptions of refugees claiming asylum. Within the JAS alliance are the churches – Catholic, Uniting Church, Anglican and Churches of Christ and Baptist representing congregations numbering in the hundreds of thousands, plus large membership organisations such as Amnesty International, National Council of Churches Australia and Oxfam Community Aid Abroad and well known welfare agencies such as the Brotherhood of St Laurence and St Vincent De Paul Society. JAS is concerned with achieving just treatment of people claiming asylum in Australia. Many JAS members are members of Australians for Just Refugee Programs and JAS shares the same overall goal as AFJRP for just treatment of asylum seekers.

JAS believes that the Government should manage security of our borders. The Australian Government upholds as a matter of principle its right to determine who may enter, the circumstances of such entry and the conditions of removal. The current detention system was established to support this principle, and on the rationale that detention provides appropriate access for the purposes of processing refugee applications and ensuring successful claimants will be removed. JAS does not question the legitimacy of this principle, but does have concerns about the financial, human and social costs of detention as it stands, as well questioning the necessity of detaining all people indefinitely despite differing needs and risks. While the problem of people smuggling is real and deserves concentrated resources and efforts to address it, the punishment of asylum seekers with mandatory detention as a 'deterrent' to people smugglers is a clear case of the means being disproportionate to achieving the end.

JAS is informed in its position by the fact that the Government has a parallel system of processing claims for people seeking asylum who arrived in Australia lawfully which permits them to live in the community and detention is only used as a last resort pending removal if a claim is unsuccessful. Could not many of the Government's current concerns about detainees absconding if they were released, be resolved if the two systems were brought into alignment and DIMIA simply applied current or enhanced compliance measures to detainees so that they might be released, as it does now for asylum seekers in the community?

In the past, Australia has processed people coming as refugees in ways which respected human rights. The Vietnamese refugees who arrived by boat in the 1970s and 1980s were treated hospitably and not interned despite similar alarm in some parts of the community as now. The handling of the Kosovars in 'safe havens' in various parts of Australia is a more recent humane experience. Similarly Australia has a great deal of experience with managing people in the criminal system and allowing them to live in the community on parole conditions. Other countries use alternative models and approaches such as a mixture of detention and community release. Australia can learn from these, and reform its system accordingly.

This paper addresses systemic problems occurring within the current immigration detention system and explores improvements. The paper examines the Reception and Transitional Processing (RTP) System as an improved approach to managing asylum seekers. It provides a background to the problems to be addressed and standards to be recognised in Australia's immigration system and outlines the processing stages and the various management compliance systems required within detention and in the community.

Background

What are the core problems to be addressed?

A number of serious problems have arisen in Australia's current system of detention of people.

1. Children in Detention

- The current detention system does not discriminate between people – one size fits all – regardless of the vulnerability of the people – in this case children and young people who are exposed to significant psychological harm in a detention environment. 1147 minors were held in detention in Australia in 2000. Some have been detained for over a year. Similarly there are families which are being held in detention which is not the best environment for the well being of the family unit. There are a number of international guidelines which can assist Australia developing policies in regards to children under 18 including:
 - UNHCR Revised Guidelines on Applicable Criteria relating to the Detention of Asylum Seekers – which recommends that children should not be detained.
 - UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum – which recommends that children who are unaccompanied should not be detained.²

2. Prolonged Detention

- When prolonged detention occurs, conditions fast become unacceptable. Provisions for education, health, welfare, recreation, religious and cultural observances, which might be acceptable in the short term, become inadequate and unacceptable in the long term.³ In Australia in 1999-2000, more than 2,500 people seeking asylum were held more than six months in mandatory detention. Some have been held over two years.
- Currently there is no mechanism for administrative or judicial review of the length of period of detention. The length of period of detention cannot be challenged in the High Court as there is no law governing the length of time a person can be detained. The policy of mandatory detention leads to prolonged detention in many cases. It would be better if Australia treated 'unauthorised arrivals' under Article 9 of the International Covenant on Civil and Political Rights (Australia signed 1975), which permits detention only where necessary and which requires that the individual be able to challenge the lawfulness of his or her detention in the courts or by administrative means.⁴
- UNHCR Guidelines relating to Detention of People seeking asylum state that detention of people seeking asylum is 'inherently undesirable', and detention of people seeking asylum who come 'directly in an irregular manner, such as unlawful non-citizens should apply only pending determination of their status and only be imposed... for a minimal period'.

3. Poor Mental Health

- Because people are held in detention for long periods of time with a high degree of uncertainty about their fate, mental problems are widespread and an endemic detention culture of depression and self-harm has developed in all detention centres. In just eight months for instance, between March 1st and October 31st, 2001, there were 264 reports of people self-harming in Australian immigration detention centres.⁵
- In addition, a detention culture has emerged where protests such as hunger strikes and rioting are common.
- In 1998, HREOC found that 'appropriate mental health care services are not readily available to detainees' and that 'in general there is an inadequate recognition of the common experience of detainees of traumatic events and even torture.'

2. The United Nations Standard Minimum rules for the Administration of Juvenile Justice (The Beijing Rules) recommends "alternatives to institutionalisation to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young." See Also:

- The Convention on the Rights of the Child – recommends states abide by the best interests of the child and use detention as a measure of last resort; (signed by Hawke government, 1991)

- The International Covenant on Civil and Political Rights – refrain from arbitrarily detaining children (signed by Fraser Government, 1975)

- Convention Relating to the Status of Refugees – refrain from punishing children with detention by virtue of the illegal nature of their arrival (signed by Menzies Government, 1954).

3. Human Rights and Equal Opportunity Commission, 'Those Who Come Across the Seas: Detention of Unauthorised Arrivals', Cwth of Australia 1998, p.iv

4. Ibid, p.iv.

5. Information provided by DIMIA under FOI, 24/4/02.



The UNHCR Guidelines on Detention of Asylum Seekers

What guidance does international best practice provide for Australia? In August 2000, the UN Economic and Social Council's Sub-commission on the promotion and protection of human rights, encouraged states to 'adopt alternatives to detention' of asylum seekers.⁶ The UN's views were informed by UNHCR's 1999 document, Guidelines on Applicable Criteria and Standards relating to Detention of Asylum Seekers. The UNHCR Guidelines argue that the detention of asylum seekers is 'inherently undesirable.' This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical and psychological need.

Under Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum seekers are often forced to arrive at or enter a territory illegally. The Guidelines argue that the circumstances of asylum seekers differ fundamentally from that of ordinary immigrants in that they are not able to comply with legal formalities for entry. This fact, coupled with the fact that many asylum seekers have suffered trauma, 'should be taken into account in deterring any restriction on freedom of movement based on illegal entry or presence.'

The UNHCR guidelines reinforce Article 9 of the ICCPR, arguing that detention 'must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances.'

The Guidelines argue that detention should only be resorted to in case of necessity, and therefore the detention of asylum seekers who come 'directly' in an irregular manner (such as unlawful non-citizens) should not be 'automatic nor should it be unduly prolonged'. The Guidelines suggest that this should apply to asylum seekers pending determination of their status.

The Guidelines argue that there should be a 'presumption against detention' particularly where alternatives are possible:

- monitoring mechanisms – such as reporting obligations; or
- guarantor requirements.

The guidelines recommend that detention should only take place after a full consideration of all possible alternatives. In assessing whether detention of asylum seekers is necessary, the Guidelines state that account should be taken of whether it is reasonable to do so and whether is 'proportional to the objectives to be achieved'. It should only be imposed in a non-discriminatory manner for a minimal period.

The Guidelines are clear that detention should only be resorted to in three instances:

1. For preliminary interviews and identifying the basis of an asylum claim. It is not to be used or extended while determination of the claim is occurring.
2. When it has been established that an asylum seeker has had an intention to mislead or refuses to cooperate. Travelling with fraudulent documents or without documents are not sufficient grounds in themselves, particularly when it may not be possible to obtain genuine documents in their country of origin.
3. To protect national security and public order in cases where there is evidence that the asylum seeker has criminal connections or record.

6. UN Economic and Social Council, 'Detention of Asylum Seekers, Sub-Commission on Human Rights Resolution 2000/1', E/CN.4/SUB.2/RES/2000/21, 18 August 2000.

Costs and Asylum seekers not in detention

How DIMIA currently manages Asylum seekers in the community

Each year thousands of people claim asylum and are permitted to live in the community by the Australian Government. They arrive with a valid visa and then claim asylum and the Government does not detain them. They go through exactly the same claim process as those who arrive without a visa and are held in detention.

Cost of Detention

An indicative breakdown of 1999-2000 costs to the public of detaining people shows that it costs much more than the Government's existing programs for processing and monitoring asylum seekers in the community.⁷ In 2000 – 2001, the cost for detention was approximately \$104 million, increasing to \$120 per day in 2002. It cost approximately \$150 million in 2001-2 to detain 3500 people in mainland detention centres.

DETENTION CENTRE COSTS 1999-2000		
Detention Centres	\$ Cost per year	Cost per person per day
Villawood	\$9,141,760	\$80.52
Maribyrnong	\$4,605,915	\$168.66
Perth	\$2,850,248	\$109.13
Port Hedland	\$18,531,842	\$69.11
Curtin	\$28,205,096	\$108.41
Woomera	\$31,929,333	\$128.33
Central Office direct costs	\$1,386,507	
TOTAL	\$96,650,701	

Cost of DIMIA's Programs for Asylum Seekers in the Community

The Australian government supports asylum seekers in the community. A single male over 21 is paid approximately \$400 per fortnight on the scheme, while a couple without dependants are paid approximately \$600. Administration costs for the scheme run at an average of 12 per cent. It cost the public purse \$11,185,000 in 2001, up from \$9,950,000 in 1999-2000.

Many asylum claimants living in the community are eligible, for a period of time, for the Government funded Asylum Seeker Assistance Scheme (ASAS) which is managed by the Australian Red Cross. In 2000-2001, there were 2,691 people claiming asylum that received ASAS payments. ASAS averages 89 per cent of the Centrelink special benefit. People eligible for this payment are usually in the primary stage of having their claim processed, although some in hardship may continue to receive it when appealing to the Refugee Review Tribunal. The Government's community processing is much cheaper than mandatory detention.⁸

The Scheme is administered by DIMIA through contractual arrangements with the Australian Red Cross. In 2000-2001, the scheme assisted 2,691 clients at a cost of \$11.185 million.⁹ ASAS provides a casework service and limited financial assistance to asylum seekers in the community. Casework services offer:

- i. crisis intervention and needs assessment
- ii. counseling
- iii. administration of limited financial assistance, health care and pharmaceutical program

7. Hansard Senate Legal and Constitutional Affairs Committee Questions on notice, No.44, 20 February, 2001

8. DIMA Fact Sheet 42, Assistance for Asylum Seekers in Australia.

9. DIMA Fact Sheet 42, Assistance for Asylum Seekers in Australia.



- iv. referral to other agencies (legal, medical, specialist counseling, social, education, material-aid, housing)
- v. advocacy
- vi. group work
- vii. administration of limited emergency relief funds.¹⁰

Ongoing assistance is subject to continuing needs assessment by Red Cross ASAS case workers. Payment rates are calculated at roughly 89% of Special Benefit provided through Centrelink.

Asylum seekers who meet certain exemption criteria may qualify for ASAS payments within the six-month waiting period.¹¹ Assistance is also available for health and character check costs associated with the Protection Visa application process.

Asylum seekers cease to be eligible for ASAS payments when the Department of Immigration and Multicultural Affairs has decided their Protection Visa application. ASAS payments are not available to those seeking a review of their case through the Refugee Review Tribunal, with the exception of those who meet the exemption criteria referred to above. ASAS payments are not available, without exception, to those who have appealed to the Federal Court for judicial review or directly to the Minister for Immigration and Multicultural Affairs.

10. Australian Red Cross, Victorian ASAS Unit, 'Asylum Seekers and the Asylum Seeker Assistance Scheme,' Info-sheet, February 2001.

11. Exemption categories include: parents caring for children under 18 years of age, unaccompanied children under 18 years of age, persons over 65 years of age, persons who are unable to work due to health and/or mental health problems (including torture and trauma), full-time carers and women with high-risk pregnancies.

The Reception and Transitional Processing System

The Reception and Transitional Processing System has its roots in local and international approaches to asylum seekers such as can be seen in UK, America, Sweden and New Zealand as well as current practice by DIMIA for managing asylum seekers in the community and released from detention, and alternatives put forward by the Human Rights and Equal Opportunity Commission, the Refugee Council of Australia and other organisations.¹² The current Immigration Detention System is a one stop shop in that everybody who arrives without a visa is detained and they are not released until some form of visa is granted or they are unsuccessful and are either returned or remain incarcerated. This sits at odds with DIMIA's current processing of people who arrive on a visa and then claim asylum and are allowed to live in the community until they are either granted leave to stay or returned. Part of the aim of the RTP system is to bring the treatment of the two groups of asylum seekers into alignment by means of risk assessment of those who arrive without visa to determine whether they pose a security risk or not and to process them in similar conditions as people who arrive with visas.

Examples – People in the RTP System

This section contains five imaginary examples of individuals or families in different circumstances who are received and processed in the RTP system – some are successful in their claim and some not, and are prepared for repatriation or return to a third country.

1. Shabnam and his wife, Gity and young son, Hussein are from a minority group in Iran. One day after his brother was taken by the police, Shabnam became afraid for his life and fled with his family. He escaped through the mountains into Turkey where he found some people who said they could take him to safety. After flying and waiting in Indonesia, they boarded a boat bound for Australia. Hussein is constantly frightened and clings to his father.
2. Also on the same boat was Indika, a Sri Lankan man who saw his father and cousin shot and killed. His mother hid him for some days and gave him all the family's money which he gave to a man who said he could take him to a safe country.
3. Akbar is a 26 year old Palestinian who has been on the move for the past 8 months.
4. Since being on the boat, Akbar has been also looking after Mohmed, a 14 year old unaccompanied boy from Afghanistan. Mohmed does not talk about what led him to be here by himself, except to say that he is from the minority Hazara group.
5. Huddling together on the boat are Fatima and her 2 children. The youngest, Amira, is 5 years old. Fatima fled Iraq 7 months ago, taking money from all her relatives and hiding with her children in Turkey until she could make the journey to find her husband. She was exhausted and scared of the journey before her. Everyone looked with pity to the children, who seemed lost in their unfamiliar environment.

12. Various systems abound, including:

a) Alternative Detention Model (RCOA/HREOC, Detention Reform Co-ordinating Committee -1996), b) UNHCR Revised Guidelines on Detention of Asylum Seekers (UNHCR- 1999), c) Asylum Seekers in Sweden (Grant Mitchell, Hotham Mission - 2001), d) Submission to the Senate Legal and Constitutional References Committee into Australia's refugee and humanitarian program (HREOC-1998), e) The Charter of Minimum Requirements for Legislation Relating to the Detention of Asylum Seekers (Endorsed by various peak organisations-1994), f) A Humane Alternative (Peter Mares, The Age - 2001) g) Policy Proposal for adjustments to Australia's Asylum Seeking Process (Conference of Leaders of Religious Institutes, NSW -2001), h) Reception of Asylum Seekers (Global Consultation on International Protection – 2001), i) Immigration Detention Suggested Remedies (RILC - 2001), j) Reforming Australia's Asylum Seeker Policy (Polmin – 2001), k) Joint Standing Committee on Migration (Not the Hilton - 2000) , l) Key Recommendations on Refugee Children (ECRE –1996), m) Asylum Seekers – Alternatives to Detention (Amnesty – 2001).



Where detention is useful

In general the RTP system proposes that asylum seekers might be held in ‘initial’ or ‘on-going detention’ for a number of reasons concurrently with their asylum claims being processed and decided. Those reasons or categories of detention of asylum seekers are when they are:

- a) undergoing a Psycho-Social Risk Assessment (including initial health, security and health checks);
- b) under security investigation; and
- c) for preparing for the return of individuals with a high security risk or who pose a high risk of absconding.

Of course, realistic time limits should be placed on each category of detention. The time limits used in other countries can inform Australian practice.¹³ For example, Norway has a 12-week maximum period of detention, Italy – 20-30 days maximum period, Switzerland – between 2 and 9 months maximum depending on individual risk and circumstances.

Where detention isn’t useful

- Prolonged detention which is non-reviewable by courts or administrative bodies.
- Children and their primary carers should be released from detention as soon as possible.
- Vulnerable groups such as families, single and pregnant women, the disabled and the traumatised being harmed by detention

Processing Stages

Under the RTP System, depending on individual assessment and circumstances, asylum seekers may move through a series of processing stages. [See Diagram RTP ‘Responsibility and Processing’]. These processing stages are:

- 1) Initial Detention and Reception
- 2) On-going Detention
- 3) Structured Release Program.

Let us examine these categories more closely.

1. Initial Detention and Reception

This involves closed detention for all unauthorised on-shore arrivals for the period they are awaiting health, identity and security checks and undergoing a Psycho-Social Risk Assessment. This includes:

- Health checks for all asylum seekers both in detention and in the community conducted in the first week of arrival.
- If no identification or documentation is available a sworn affidavit may be adequate as is practice in other countries.
- Certain individuals like unaccompanied minors and pregnant single women should receive immediate security clearance.
- An assessment of the risk to abscond.

RTP Example 1 – Reception in Closed Centre

On arrival in Australian territory, all of the people claiming asylum are taken to reception centres: the Iranians Shabnam, his wife Gity and young son, Hussein; Indika, from Sri Lanka; Akbar the 26 year old Palestinian; Mohmed, the 14 year old unaccompanied boy from Afghanistan; and Fatima and her 2 children. There they each spoke to a case worker who spent time briefing them on their situation, explaining the determination process and why they could not go straight into the community. The case worker said they must undergo identity, health and security checks after which they may either remain in a closed centre or be released into the community under various programs.

13. US Lawyers Committee for Human Rights, Draft Preliminary review of States’ procedure and Practices relating to Detention of Asylum Seekers, September 2001.

2. On-going detention

Closed detention is legitimate for those assessed as a security risk, and on a final decision to realise return for those at risk of absconding. The role of the caseworker is pivotal here in preparing clients for all possible immigration outcomes, risk analysis and in reducing anxiety and incidents. (see page 21). A number of improvements are recommended for the effective and humane management of the closed centre processing stages:

- i. Dividing detention into three areas of holding for: initial health, security and health checks; investigation; and for preparing for return of individuals at high risk of absconding.
- ii. Implementing a case worker system aimed at providing information, referral and preparing detainees for all immigration outcomes.
- iii. Increasing transparency in management and operation, with external scrutiny by a statutory standing body for ensuring accountability in detention centres i.e. it should have ongoing monitoring and investigative powers and be charged with improving standards, ensuring community access as well as investigating complaints.
- iv. Adopting guidelines which allow centres to be run more like closed institutions of care such as hospitals rather than prisons.
- v. Removing the security and running of the centres from the exclusive management of prison companies and involve the public sector and other non custodial service providers e.g. hospital providers.
- vi. Ensuring all staff are trained to work with asylum seekers and show appropriate cultural and gender sensitivity and respect to all detainees including training from specialist refugee agencies .
- vii. Ensuring all asylum seekers are treated with dignity and respect.
- viii. Moving centres to be near or within major population centres to allow detainees interaction with the wider community.
- ix. Increasing access to centres and detainees for NGOs, clergy, researchers, counsellors, the media and community in general.
- x. Ensuring detainees have access to their case data under Freedom of Information, plus access to internet, NGOs and the option to speak to the media.
- xi. Ensuring legal counsel and the right to appeal is available.
- xii. Ensuring no children are held in detention for extended periods and removing families as soon as possible.

RTP Example 2 – On-going Detention

After spending one month in the closed centre the Assessment Panel made a decision that Indika could move into a Open Hostel with certain compliance conditions while awaiting a decision on his refugee claim. Within 8 months of being in the Hostel both his primary and review decision had been refused. Indika put in a request to the Minister for intervention on humanitarian grounds. Throughout this time Indika had been seeing his caseworker once a week where they had been discussing the possibility of him having to return to Sri Lanka. He had been quite opposed to this and seemed sure the Minister would intervene.

Upon hearing of the Minister's refusal to intervene, the Assessment Panel decided that there might be a 'significant risk' that he may abscond and Indika was returned to the closed centre. On-shore Protection had already made inquiries about return options for Indika so as to reduce the amount of time he would remain in the centre.

Indika was at first anxious at being put back in detention, but he knows he is constantly kept informed and feels he has been treated fairly throughout the process. He knows that detention is reviewable and that he can make complaints to the Assessment Board if there are any problems.

3. Structured Release Program

Under the RTP system it is proposed that certain categories of people will make the transition from closed detention into the community under varying levels of compliance and monitoring, with different forms of accommodation and support services depending on availability and need. [See page 21]. Those people moved from closed reception include:

- Identity, Health and Security (IHS) cleared.
- Psycho-Social Risk Assessment cleared.
- Families, unaccompanied youths and females.
- Those at risk psychologically or medically .

It is proposed that this Structured Release Program would be through the means of bridging visas (as is already available to many thousands of asylum seekers in the community) and could be in the form of either: living in a Government Open Hostel, release into the care of a Community Agency, Family Release, or Release on Own Undertaking.¹⁴

Open Hostel:

This involves a monitored release regime for people seeking asylum who are not deemed a high security risk but who may require further investigation or regular supervision. They would be accommodated and monitored in a low security environment coupled with an adequate level of compliance. Some viable examples of such lower security systems include:

- ‘Safe Haven’ style accommodation in hostels with freedom of movement and access to the wider community. Such accommodation, monitoring and compliance was used recently by DIMIA for the Kosovars and East Timorese, and enjoyed high levels of compliance, strong community support and participation and was considered highly successful.
- Australia has a wealth of experience in monitoring and compliance systems in the States criminal justice systems. Additionally DIMIA has a sophisticated compliance regime for the thousands of asylum seekers it currently allows to live in the community. The 2000-1 NSW Parliamentary Inquiry into Prison populations explored some of the alternatives available in Australia for non-custodial sentences. An important contribution is the parole model¹⁵ - ‘Parole and Home Detention/Transitional Housing’ suggested by the Conference of Leaders of Religious Institutes (NSW).¹⁵

RTP Example 3 – Open Hostel

Akbar was found not to be a refugee. It was also found at that time that his country of origin refused to take him back. He was very shocked and upset at this decision. Akbar became anxious that he would remain indefinitely in detention.

Akbar did however clear all health, security and identity checks and was compliant while in the closed centre. A risk assessment was completed after some time and the Assessment Panel made a decision that Akbar could move into an Open Hostel. Akbar leaves the hostel every day to go to English classes and works in the afternoon at a friend’s shop. He must be back to Hostel by 7pm and once a week he must meet the case worker who has been exploring with him the possibility that he may need to go back if a repatriation agreement is made. He is nervous and anxious about this but he knows he must comply with all decisions made on his case. Once he almost missed the curfew but managed to call the Compliance Officer to let him know. He doesn’t want to be put back in a closed centre.

14. Alternative Detention Model, RCOA/HREOC, 1996.

15. Policy Proposal for adjustments to Australia’s Asylum Seeking Process, Conference of Leaders of Religious Institutes (NSW) 13th June 2001.

- International experience is also useful such as the UK's curfew system.
- Finally there are possibilities with creation of new visa class with reporting requirements such as the Refugee Council's (RCOA) proposed Open Detention Bridging Visa (Stage 2, E1).¹⁶

Community Agency Release:

The Refugee Council of Australia and HREOC outlined in the Alternative Detention Model various forms of community release based around DIMIA's issuing of a bridging visa:¹⁷

- i. The holder must reside at a designated address nominated by a recognised community organisation. Any change of address must be notified to DIMIA within 48 hours.
- ii. The holder must report at regular intervals to DIMIA, to be specified by the case officer. If called upon to do so, the holder shall within 24 hours present to an officer of DIMIA.
- iii. The holder will be required to sign an undertaking in writing that he or she shall comply with the conditions of the visa and, in the event that a condition of this visa is breached, may be returned to detention.
- iv. Eligibility for Permission to Work will be available in the terms contained in Bridging Visa E.
- v. Eligibility for Asylum Seekers' Assistance Scheme shall be in the terms currently available to other asylum seekers.

RTP Example 4 – Community Agency Release

The unaccompanied minor, Mohmed, was asked many questions in the first week he was in the centre. His caseworker said it was because they wanted to quickly release him into the community. His identity, health and security checks came the next week and his caseworker introduced him to a man who runs a house in the community for unaccompanied minors like himself. Because Mohmed has no friends or relatives in Australia he will be able to stay there until a decision is made and attend the local school. He was also introduced to a man who runs a Hazara support group. Mohmed will have a new caseworker through a State Government unaccompanied minor program when he moves whom he must visit every 2 weeks

Family Release:

The elements of this bridging visa are as follows:

- (i) The holder must reside at a designated address with a nominated close family member. Any change of address must be notified to DIMIA within 48 hours.
- (ii) The holder must report at regular intervals to DIMIA, to be specified by the case officer.
- (iii) The holder or the nominated close family member may be required to pay a bond to DIMIA or sign an undertaking with DIMIA.
- (iv) If called upon to do so, the holder shall within 24 hours present to an officer of DIMIA.
- (v) The holder will be required to sign an undertaking in writing that he or she shall comply with the conditions of the

RTP Example 5 – Family Release

Fatima and her two children were quickly identity, health and security cleared. Fatima told her caseworker that she thought her husband might be in Australia. After making checks it was discovered the husband was living in Brisbane on a Temporary Protection Visa. The caseworker ensured arrangements were made for Fatima and the children to be able to live with him. After 4 years apart the family was reunited. The family continues to meet with their caseworker for living assistance, ongoing assessment and to find out about their case.

16. Alternative Detention Model, RCOA/HREOC, 1996.

17. Alternative Detention Model, RCOA/HREOC, 1996.



visa and, in the event that a condition of this visa is breached, may be returned to detention.

(vi) Eligibility for Permission to Work will be available in the terms contained in Bridging Visa E.

(vii) Eligibility for Asylum Seekers' Assistance Scheme shall be in the terms currently available to other asylum seekers.

Release on Own Undertaking:

The elements of this bridging visa are as follows:

(i) The holder must reside at a designated address. Any change of address must be notified to DIMIA within 48 hours.

(ii) The holder must report at regular intervals to DIMIA, to be specified by the case officer.

(iii) If called upon to do so, the holder shall within 24 hours present to an officer of DIMIA.

(iv) The holder will be required to sign an undertaking in writing that he or she shall comply with the conditions of the visa and, in the event that a condition of this visa is breached, may be returned to detention.

(v) Eligibility for Permission to Work will be available in the terms contained in Bridging Visa E.

(vi) Eligibility for Asylum Seekers' Assistance Scheme shall be in the terms currently available to other asylum seekers.

RTP Example 6 – Release on own Undertaking

After a week in the closed centre Shabnam noticed his son, Hussein, was very withdrawn and refusing food. His caseworker had been informed by DIMIA's On-Shore Protection that the IHS checks might be delayed due to difficulty in getting enough information. A recommendation was given to the Assessment Panel that the family be released into the monitored Open Hostel while awaiting the final assessment. The recommendation was approved and the caseworker arranged for their transferal that week. Hussein would go with his father to see a trauma counsellor once a week.

Soon after, the family met their case worker who informed them that the risk assessment had been completed and a decision had been made by the Assessment Panel for their release into the community. Their case worker made arrangements for the family to move into transitional housing and connected them with a support volunteer to help them get established and orientated them in the local area.

Hussein slowly improved and began attending the local school. Gity attends sewing classes at the local drop-in centre for asylum seekers and Shabnam has been studying English at the local neighbourhood centre and hopes to find a job soon.

The father must report 3 times per week to Compliance and once a week to his caseworker. The family know they need to comply with the final immigration decision or they may be returned to the open hostel.

RTP SYSTEM - RESPONSIBILITY AND PROCESSING

PROCESSING STAGES	PEOPLE SEEKING ASYLUM	CASE MANAGEMENT	PANEL	DIMIA	IDC SERVICE PROVIDER
<p>1) Initial Detention and Reception</p> <ul style="list-style-type: none"> • closed centre 	<p>All unauthorised arrivals</p> <p>Checks:</p> <ul style="list-style-type: none"> • identity • health • security • Psycho-social risk assessment 	<p>Client Services (Contracted service provider) Case worker/Casework Coordinator:</p> <ul style="list-style-type: none"> • client assignment/30-50 per case worker • informing of rights and processes • referral to additional management <p>Additional management:</p> <ul style="list-style-type: none"> • health - Refugee Health Team; including: nurse, GP, dental, Crisis Assessment Team, psychiatric team, counselling, recreation / education / volunteers 	<p>Representative Assessment Panel; Overseeing:</p> <ul style="list-style-type: none"> • implementation of I.D.C. regulations and centre services • mediating decision-making on compliance and casework assessment • arbitrating client behaviour and security • review of client categories and disciplinary procedures • monitoring internal conditions; complaints and grievances 	<p>Centre contract management</p> <ul style="list-style-type: none"> • On-shore Protection/Compliance – risk assessment • initial application processing • Immigration Case Officer (ICO) assigned for asylum claims and IHS checks • compliance officer assigned for high risk cases 	<p>Centre Services (Contracted service provider)</p> <ul style="list-style-type: none"> • security monitoring • access/visitation • general service supervision; • provision of facilities and • services: mess; recreational areas, accommodation, cleaning-hygiene, food, clothing, toiletries etc
<p>2) On-going detention</p> <ul style="list-style-type: none"> • closed centre 	<p>For certain categories:</p> <ul style="list-style-type: none"> • high security risk • absconding risk prior to return 	<p>Case worker:</p> <ul style="list-style-type: none"> • informing of decisions • preparation for all immigration outcomes, including motivational counselling • risk prevention and management • referral to additional management 	<p>As above</p> <ul style="list-style-type: none"> • monitor return processes • Periodic review 	<ul style="list-style-type: none"> • centre contract management and regulation • ICO - organising return • ongoing psycho-social assessment 	<ul style="list-style-type: none"> • increased security • access • provision of centre services
<p>3) Open Hostel</p> <ul style="list-style-type: none"> • intermediate regime; • day release/pass; • monitored 	<p>For certain categories:</p> <ul style="list-style-type: none"> • further investigation • long-term detainees 	<p>Case worker:</p> <ul style="list-style-type: none"> • informing of decisions • administering living assistance • ongoing assessment • risk prevention and conflict resolution • referral to additional management 	<p>As above</p> <ul style="list-style-type: none"> • monitoring community release conditions • Periodic review 	<ul style="list-style-type: none"> • Compliance Officer - overseeing • security and client case management • ICO - may be assessing claim • ongoing psycho-social assessment 	<ul style="list-style-type: none"> • monitoring curfew and supervision requirements.
<p>4) Structured Release Program</p> <ul style="list-style-type: none"> • Community Agency Release , Family Release, or Release on Own Undertaking 	<p>For certain categories:</p> <ul style="list-style-type: none"> • families • unaccompanied minors • exemption criteria • I, H, S and Psycho-social Risk Assessment cleared single adults 	<p>Case worker:</p> <ul style="list-style-type: none"> • Needs assessment • informing of decisions • preparation for all immigration outcomes, • administering living assistance scheme • arranging volunteer support and referral • informing Assessment Panel 	<p>As above</p> <ul style="list-style-type: none"> • monitoring community release conditions • Periodic review 	<ul style="list-style-type: none"> • tender management • compliance officer issuing • bridging visas • ICO - may be assessing claim • ongoing psycho-social assessment 	

Management and support structure – roles and responsibilities

Under the RTP System asylum seekers are managed and supported within the various processing stages by 5 main parties, each with specific roles and responsibilities:

- 1) DIMIA/Government Departments
- 2) Security
- 3) Case Management Provider
- 4) Representative Assessment Panel.
- 5) Community and Welfare Agencies/Volunteers

1. DIMIA

The Role of DIMIA includes centre contract management; On-shore Protection/Compliance coordination of Psychosocial Risk Assessments, including IHS clearance; issuing bridging visas; initial and final determination; immigration case officer/compliance officer roles; relationship between security, case management and community-based service providers.

Other agencies and departments with which it liaises include ASIO, Federal Police and State-based health, protection and education services.

2. Security

The role of the contracted or Government reception centre provider includes being a service provider operating under publicly accountable standards; security, monitoring; daily running of centres; reporting to DIMIA, the proposed Assessment Panel on individual cases, and a statutory watchdog.

3. Case Management

Case management has an excellent track record in other countries in reducing incidents of self-harm, rioting, hunger strikes and other incidents. In the RTP system the role of a caseworker is to oversee the asylum seeker from arrival to decision: settlement or return. The caseworker plays a pivotal role in bridging the gap in individual case management between security and DIMIA, and between detention and community-based asylum seekers. Case management was a key recommendation of the 1998 HREOC report:

A case manager should be appointed to each detainee with responsibility for overall management of detainee's dealing with the Department, including seeking prompt resolution of requests, inquiries and complaints.¹⁸

■ In the RTP system, the case manager is a contracted service provider responsible for the detainees' wellbeing in regard to management of relations with DIMIA, Security Providers, Compliance and various support services. The case manager assigns caseworkers to work with all asylum seekers. A suggested ratio is 1:30. The caseworkers' role is to: Inform asylum seekers of rights, compliance requirements and processes;

- make individual needs assessments;
- provide referrals to specialists; and
- prepares and informs people for all immigration outcomes.

18. HREOC, (HREOC 1998-Those Who've Come Across The Seas, Recommendation 15.4. HREOC, (HREOC 1998-Those Who've Come Across The Seas, Recommendation 15.4.

The case workers' role varies according to the processing stage the asylum seeker is in. JAS envisages that a national organisation such as the Australian Red Cross which already works within the detention centres providing tracing services as well as running case management for several thousand asylum seekers in the community under the ASAS program, would be well placed to provide this expanded role. An additional benefit of having a national provider in and out of detention would be to allow a consistent approach to individuals in the claim system providing them with information, referral and support services depending upon which stage they were at and where they were residing. From the outset, the provision of information by the case manager to the asylum seeker about the claim process, and an individual's progress and likely outcomes, will allow individuals a degree of control in making decisions about their future and over their lives. This has been shown to achieve more effective and humane returns and also to reduce anxiety while in detention and to assist with the transition to living in the community.¹⁹ The prompt referral to services such as mental health assessment will also lessen the likelihood of psychological damage being caused by detention. Other outcomes of this case management will be to:

- assist bureaucratic decision-makers to make informed decisions as to whether a person is required to remain in detention or whether they are able to be released into the community;
- track asylum seekers and follow people through the stages of detention into the community;
- ensure continuity of care and ongoing social and welfare support; and
- improve outcomes on return and settlement, as well as addressing difficult issues and incidents commonly occurring in immigration detention centres.

Furthermore in regards to community release, the caseworker's role is vital in referral, ongoing assessment and coordination, with implicit compliance requirement in administering living assistance on a monthly basis. (See Diagram 'Structured Release Program' which sets out possible roles and responsibilities for asylum seekers living in the community under a reformed system).

4. Representative Assessment Panel

A problem in the current detention regime is the lack of any administrative or judicial body overseeing the need, terms and conditions of ongoing detention. The introduction of an independent body to assist with such determination would provide a sound mechanism for review and accountability. The RTP system proposes that a representative panel comprising representatives from the DIMIA/Government, health, judiciary and community, will oversee and monitor client and internal and community release conditions and complaints. The independently chosen panel will meet regularly to make decisions based on risk assessments and security and administrative issues. The workload demands flexibility and prompt response, with a possible magistrate's level of judicial overview for urgent matters. The panel should ideally have the power to commission reports. Independent watchdogs, such as HREOC and the Ombudsman, will continue their external observation of the centres. The role of the Assessment Panel includes:

- Decision-making on compliance and risk assessment;
- Reviewing client categories and working between DIMIA, security, case worker and asylum seeker;
- Ensuring accountability, responsibility and overseeing duty of care requirements, such as health care, case management and security;
- Ensuring adequate training of staff and appropriateness of services in issues of cross-culture, gender, child protection, religion and trauma.

The determination process also impacts on all interaction and work with asylum seekers. The Case Manager and the Assessment Panel would therefore also be required to ensure adequate legal representation is in place and to assist the flow of information between the asylum seeker and:

- DIMIA Onshore Protection/Minister's Office
- Refugee Review Tribunal
- Federal/High Courts
- Migration Agents/Lawyers/Barristers.

19. See JAS discussion paper 'Summary of the Swedish Model'



5. Community and Welfare Agencies/Volunteers

The role of these agencies includes housing, support, orientation, material aid, and recreation. A number of large welfare agencies have already indicated their willingness to work with asylum seekers, shown recently in a January 2002 offer from fourteen agencies to provide support for unaccompanied minors, children and their carers and the psychologically vulnerable, if released from detention. The volunteer's role would begin in open hostel through to the other release options, possibly as a combination of the old DIMIA initiated Community Resettlement Support Scheme and community initiatives such as the Melbourne based Hotham Mission 'LinkUp' volunteer program outlined in the JAS Discussion Paper 'Hotham Mission as a model of community release'.

Release issues

This section considers how best to manage:

- Absconding/Compliance
- Livelihood in the community; and
- Conditions of release.

1. Absconding

The RTP System has considered the issue of absconding from a number of angles; the use of risk assessment systems, evidence of the rates of absconding in Australia and overseas and the role of compliance, case management and the assessment panel.

The involvement of caseworkers and other community agencies in this system ensures visibility and accessibility and contributes to the asylum seekers meeting their compliance requirements with DIMIA. However the responsibility of DIMIA needs to be highlighted, particularly the explicit Immigration Compliance role in supervision requirements and return to detention and On-shore Protection in ongoing risk assessment and organising return travel.

One observer who has worked in the New Zealand Immigration System argues that ‘a well tuned risk assessment procedure applied on a case by case basis, and in tandem with a graduated comprehensive range of detention alternatives will achieve very high compliance rates without imposing severe restrictions on the movements of asylum seekers.’ A number of personal and systemic categories that explore the incentives/disincentives to abscond form the basis to a risk assessment. These include:

Personal:

- i. Perceived strength of claim - applicant
- ii. Sex/age/family ties
- iii. Community/relatives
- iv. Desire to obtain durable solution.

Systemic:

- v. Desire to access and maintain social services - benefits, work rights etc.
- vi. Legal representation
- vii. Stage of claim
- viii. Perceived strength of claim – decision maker
- ix. The presence of established community release programs
- x. Legality of entry
- xi. Overarching philosophy of the system.

Assessments will take into account recommendations on identity and security matters from ASIO and DIMIA On-shore Protection and Compliance, as well as the risk assessment on the ‘significant chance’ of asylum seekers absconding. This will include factors such as family/contacts in Australia, behaviour while in detention, and individual circumstances, such as age and health conditions. This is framed in the Psycho-social Risk Assessment on the following page.

Individual assessments and recommendations are handed over to the Assessment Panel for a final decision, review of a client’s category and decisions on release or return to detention. The level of risk determines decisions:

- 1) High: people convicted of a serious criminal offence or suspected as posing a risk to national security
- 2) Medium: people with communicable diseases or considered a serious risk to abscond
- 3) Minimal: All not falling into categories 1 and 2.²⁰

In making decisions on various forms of release, a small margin of absconding needs to be taken into account which should not in itself pose unreasonable concerns to authorities or the community given that health and security checks have taken place. However more importantly, evidence shows that the fear of absconding is exaggerated. No unauthorised asylum seeker released on a bridging visa in Australia from 1996–1998 failed to

20. Kerr, Duncan, ‘A better approach to asylum seekers’, 31, January 2002, pages 8-10. Unpublished.

Psycho-Social Risk Assessment

JUSTICE FOR ASYLUM SEEKERS (JAS) ALLIANCE, 2002

Absconding

- On-shore Protection/Compliance**
 – ‘Significant Risk’ Assessment:
 • Incentives/Discentives Categories
 • Individual Circumstances/Needs
 • Conduct/History
 • Community Supervision:
 Assessment/Requirements
 • Case worker recommendation

Health/Psychological

- Refugee Health Team**
 – Health assessment
Mental Health Review Tribunal
 – Psychological assessment

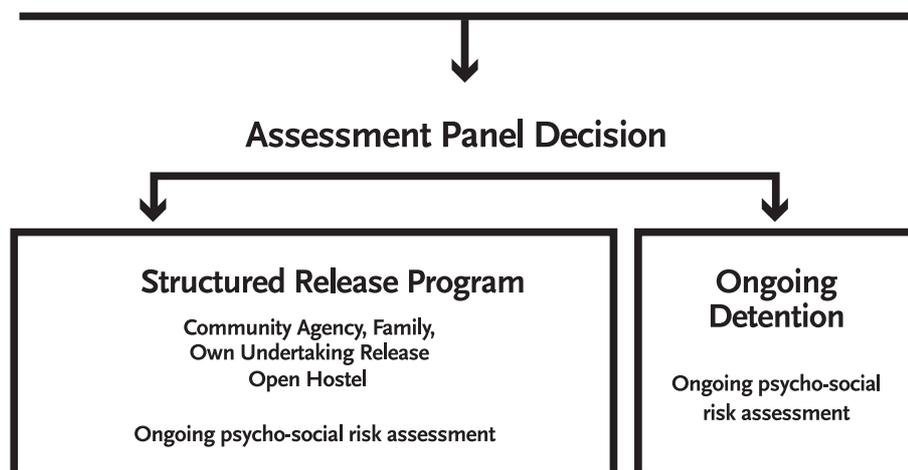
Security

- ASIO** – Security
Federal Police – Criminal
On-shore Protection – Identity

Absconding risk

Health/Self harm risk

Community risk



meet their reporting obligations to DIMIA.²¹ Similarly, an INS experiment in the US of 640 detainees released into the community had a 95% compliance rate on release.²² In Sweden, there has proven to be a high level of compliance and voluntary repatriation in negative decisions with very few asylum seekers absconding under supervision. A system of release into the community, after initial health and security checks, has brought significant reduction in the use of taxpayers' money and in public outcry. Sweden now has the lowest levels of illegal immigrants living in the community in Europe, with research showing that resettled refugees integrate quickly into the community with no increase in levels of welfare dependency or crime.²³

Why might this be the case? The experience of the Hotham Asylum Seeker Project in Melbourne is informative, their Coordinator, Grant Mitchell explaining:

“The work at Hotham Mission shows on a micro-level how community/church based agencies are able to provide comprehensive and ongoing support for asylum seekers in the community while providing some reassurance for decision-makers. ...We have also had extremely high figures in our clients complying with decisions and registering with Immigration Compliance, much of this being built on the trust we have placed in our clients...

21. Information provided by the Office of the Minister for Immigration and Multicultural Affairs in response to a question on notice by Natasha Stott-Despoja on September 1, 1997 – Question 803. (Submission to the Senate Legal and Constitutional References Committee – HREOC 1998)

22. AC Helton, 'Reforming Alien Detention Policy in the US', 1992.

23. Österberg, T: Economic Perspectives on immigrants and Intergenerational Transmissions, Handelshögskolan, Göteborgsuniversitet, 2000.

We have worked like caseworkers in empowering our clients to make the few decisions they can and advocating for them between service providers and DIMIA. We have found that ensuring asylum seekers have adequate legal representation and are aware of the immigration process means they are more likely to feel like they have had a fair hearing. Also providing further support, such as following-up on return or organising for Red Cross to meet them greatly assists the asylum seeker to make the difficult journey home and allows for third country options to be explored on a final negative decision. Of course, this has proved easier for clients we have worked with and supported from the initial stages, an argument for consistent and ongoing case management of asylum seekers both in detention and in the community.”

Compliance issues constitute the *raison d’être* of proposed pre-release risk assessment procedures. These in turn proceed from the rationale that individuals posing a high risk of absconding can be identified with considerable confidence, even in the early stages of the asylum process. Such asylum seekers would be precluded from community release. It is envisaged that such high-risk individuals would account for only a small proportion of unauthorised asylum seekers so assessed. The remainder would be determined eligible for release into the community, albeit under varying degrees of constraint.

2. Work Rights and Income Support

Allowing work rights would alleviate the financial burden of assisting a large number of asylum seekers with no income. This would also ensure all asylum seekers have access to Medicare. The expansion of income support to cover individuals often unable to work such as single mothers and unaccompanied youths in school would significantly help to reduce acute homelessness and poverty of these groups. Such income support already exists in Australia.

According to the structured release program, asylum seekers are eligible for different entitlements according to their processing stage. Examples of this include reduced ASAS entitlements to people in open hostel, family and community group release and full ASAS entitlements for those released on their own undertaking. The structure of this support may vary or combine a number of systems, such as: Living allowance, ASAS, Entitlement Card, Voucher System, Centrelink and Work Rights.

Paying a regular allowance becomes a way of securing compliance, and can be a means of monitoring and assessing asylum seekers in the community.

3. Health Issues

ASAS recipients who do not have access to Medicare can receive assistance with health care costs and can also be referred to counselling services. A bridging visa may have work rights attached depending on individual circumstances. To gain access to Medicare, asylum seekers must have an unfinalised application for a permanent residence visa (ie, either for migration or asylum) and hold a valid visa with work rights in force.

Those not entitled to ASAS, work rights or Medicare, however, are in a precarious situation. While free health services and networks are in place around the country to assist this group, they often lack uniformity and resources. Full access to Medicare and mainstream health services, as well as specialised Refugee Health Teams is essential. This includes initial independent, trauma sensitive health assessments.

4. Housing

There are various housing options for asylum seekers released into the community, such as: Cluster housing, open hostels, community/church housing/ transitional housing. There are benefits of centralising health, education and recreational services in single locations near major population centres. A recent example are open hostels where asylum seekers from Kosovo resided in 1999.

While Commonwealth funding is obviously required to establish housing for large numbers of asylum seekers, housing options already exist around the country for asylum seekers such as unaccompanied minors, single mothers and people at high risk psychologically. Hotham Mission, for example, currently houses over 60 asylum seekers in church housing, while 14 large welfare agencies, such as Uniting Care and St Vincent De Paul, recently pledged to make available properties for asylum seekers released from detention.



RESPONSIBILITIES AND ROLES ON RELEASE UNDER THE RTP SYSTEM				
Responsibility	GOVERNMENT	CASE WORKER	SUPPORT SERVICES	COMMUNITY/VOLUNTEER
Services on release	1) On-shore Protection/ Compliance Risk Assessment 2) DIMIA issuing bridging visa 3) Ongoing assessment subject to Assessment Panel decision	1) Preparing client for release 2) Updating Immigration Case Officer and Compliance	Support services notified	Orientation upon arrival
Housing	Federal and State funding to churches and community housing services.	Needs assessment and referral: 1) community and church housing 2) hostels 3) relative/friends 4) private rental	1) Church and community housing providers for families and unaccompanied minors 2) Open hostel and cluster housing for single adults	Ongoing support in searching and setting-up home.
Health	Federal and State funded access to health care: Refugee Health Team (RHT) or mainstream services	Needs assessment and referral.	RHT – Nurse/doctor/ dental/CAT/ psych team and counselling and referral to specialists	
Living assistance	Federal funding for living allowance.	Issues Living Assistance (ASAS) disbursement on a monthly basis - implicit compliance requirement	Community and church agencies: Management and co-ordination of volunteers	Support with budgeting and material aid.
Work	Right to work. DIMIA issuing work rights	Referral to job search agencies	Job search agencies	
Education/ language	1) State funding for education of all minors; Asylum Youth Education Co-ordinator in each State Education Department 2) Federal funding to AMES for volunteer co-ordinator in each State.	Referral to schools in liaison with Asylum Youth Education Co-ordinator in State Education Department.	Language education AMES has volunteer co-ordinators for asylum seeker tuition.	Language tuition.
Information, Referral and Legal	DIMIA Information about service providers in appropriate languages and information for volunteers on relevant services	1) Advice and information 2) Needs assessment and referral to volunteers and agencies 3) Referral to IAAAS legal	Church/community service providers; ethnic community; other services eg. neighbourhood houses; libraries; community legal services and migration agents	Assistance and support.
Recreation	DIMIA funding for volunteer co-ordinators in each State and Territory	Referral to Volunteer Coordinators	Recreation Programs through Community organizations based on volunteer support	Volunteer support.

Outcomes under a reformed system

Current system

Under the current system of detention, there are only five categories for release through the provision of a Temporary Protection or Humanitarian Visa, or review of immigration detention and issuance of a bridging visa. The categories are:

- i. Minors with adequate community care.
- ii. Special Needs: medical/psychological, torture grounds.
- iii. Persons over 75.
- iv. Spouse is an Australian citizen.
- v. No primary decision within 6 months.

Also Immigration Cleared 'detainees' who have breached visa requirements may approach the Migration Review Tribunal, Federal Court or DIMIA's Compliance Section who may release them on a bond.

The eligibility grounds for bridging visas for unauthorised arrivals have not been exercised to any great extent. There have been a number of cases of people released for psychological reasons, often after their situation has become acutely critical. Others who have been released from detention tend to be people who have breached a visa requirement and have had knowledge of the system, contacts, reasonable English and an ability to raise money for a bond. There are however currently a number of unaccompanied minors in detention and arguably many more detainees could fulfill the exemption grounds for a bridging visa. Experience has shown that to be able to successfully assist with a release a number of factors are required:

- Discretion for all agencies involved
- Building a trusting relationship with DIMIA
- Negotiations with DIMIA's Compliance Section
- Community Release Support (Housing, living assistance, medical support etc)
- Clear Care Options
- Collaboration of childcare services, lawyers, barristers, mental health professionals, housing and asylum seeker support agencies, detention centre chaplains and ethnic communities.

Asylum Seekers released from detention under these exemption criteria are generally released on a Bridging Visa E, which denies the right to work, Medicare and any government benefit. The agency or individual that undertakes the provision of support must agree to provide all housing, medical and living assistance. The provision of medical and living assistance should be funded by the Government.

Any move by established welfare agencies to take on the responsibility of community support for asylum seekers requires lobbying to allow for the right to work, the right to Medicare and the right to adequate living assistance for all asylum seekers living in the community.

Children

There is an obstacle facing the release of children from detention under the current system as it is generally decided that it is in the child's best interest to remain with their parents in detention thus increasing the harm that can come to a child from the detention environment. It seems possible however that if one set of parents claiming asylum are allowed to care for their children in the community, it should be possible to permit the same for those currently held in detention. For unaccompanied minors challenges have included uncertainty as to the procedures and protocols, lack of adequate community care plans, difficulties for community groups and state child protection agencies to work together and issues around guardianship and delegation of that guardianship on release. Furthermore, due to the lack of rights and entitlements of asylum seekers in the community there has been some hesitancy for authorities to allow the release of children from detention, as they are essentially released with no provision for Medicare or income support.

Outcomes under a reformed system

The Reception and Transitional Processing System aims to address difficulties and inconsistencies in current detention and community approaches to asylum seekers and to provide the best outcome for both the wider community and the asylum seeker.

Settlement

Settlement is greatly improved under the RTP System in allowing for most asylum seekers to live in the community. As found in Sweden, there is a relationship between the immigration process and the ability to integrate efficiently. In other words, how one is treated throughout the immigration process determines to a large extent the ease with which one settles. This has been highlighted recently in a number of reports on the impact of detention on long-term mental health, particularly in children.²⁴ This obviously has huge implications for the wider community in ensuring social cohesion, and for those granted refugee status, in ensuring adequate protection and support is in place.

To ensure the best possible outcome for settlement for the asylum seeker and the wider community, the following are recommended:

- Abolish the Temporary Protection Visa categories under the recent Consequential Provisions Legislation
- Allow for full settlement services from Migrant Resource Centres and access to English language tuition, public housing and other services.

Example – Settlement

Eight months after arriving in Australia Fatima was found to be a refugee. Now that she and her husband were on permanent protection visas they felt safe in Australia and ready to look to the future. It helped that she had been living in the wider community since arrival and could get assistance from the local migrant resource centre. She could now concentrate on her English studies.

Her children's nightmares about the boat trip seemed less frequent. She could not imagine how they would be if they had spent the last 8 months in detention. Fatima is seeing a trauma counsellor but feels she won't need to see her much longer.

Return

The RTP System also promotes and ensures humane and effective return processes. As shown in Sweden, people are more likely to comply on final decisions if prepared and empowered throughout the determination process. (See JAS Discussion Paper 'Summary of the Swedish Model')

The various ways the RTP System ensures a more humane and functioning return system, include:

- Ensuring from the outset that the asylum seeker is aware of the immigration process, has access to legal counsel and is thus more likely to feel like they have had a fair and expeditious hearing.
- The case worker role in exploring and preparing clients for all possible immigration outcomes.
- By providing 'motivational counselling', including coping with a negative decision, preparation to return and empowering clients to make decisions.
- Following a risk assessment, the panel will make a decision on a final decision as to whether the asylum seeker needs to be detained. (It is in this context in Sweden that one parent may be detained while the other parent and children are held in the community outside the detention centre. Travel arrangements are often made prior to being placed in detention to minimise the time held).
- Providing incentives for those who choose to voluntarily repatriate, including allowing time to find a third country of resettlement, paying for return flights, including domestic travel and allowing for some funds for resettlement.

24. Silove, D and Steel, Z; 'The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia', University of NSW, 1998.

- Allowing for Red Cross, IOM or family members to meet them on arrival and if appropriate follow-up post-return to ensure the safety of those returned and to safeguard future determination decisions.

Example – Voluntary Repatriation

Indika's caseworker had been exploring with him the possibility of return. It took some time for Indika to realise that there was no possibility for him to remain in Australia. He really didn't want to go home but realised he had no other option and that he would only make the matter worse if he didn't comply with the decision. He has told his case worker that he would rather go back to Sri Lanka voluntarily, as he was afraid forcible return would only draw more attention to himself.

Indika was given some financial assistance to help him resettle in another part of the country. He also was given the details of an NGO who he could contact if he wanted additional support or to inform of his situation on return.

Furthermore it is suggested that a special visa category be established for long-term detainees, particularly failed refugee claimants, where no repatriation agreements are in place. This would allow the asylum seeker to live in the community while awaiting expulsion orders. Community or monitored release would only be issued after individual assessment and with adequate supervision and compliance requirements. Closed detention may be required at the final stage/s if the asylum seeker is deemed likely to abscond.

Example – Long term detainee

Akbar spent 1 year in the Open Hostel, studying in the morning and working in the afternoon. He longed to be able to move into a flat with his friends who had been granted refugee status. He was also worried about being placed in the closed centre or being deported, although he had never broken his supervision requirements and kept in touch with his case worker.

One day his case worker said that DIMIA had not been able to find a country to return him to and that he would be granted a special visa allowing him to live in the community while awaiting a repatriation agreement. He now hopes DIMIA will find him to be truly stateless and grant him a humanitarian visa.

Other positive outcomes from the RTP System include fewer incidents in detention centres, reducing the risk of long-term mental health issues, increased worker safety in detention centres and more importantly allowing for a more humane treatment of asylum seekers during the determination process, while providing some reassurance to both decision-makers and the wider community.

Conclusion

The Reception and Transitional Processing System aims to oversee the transition from a detention to a reception regime, based on a comprehensive risk assessment, case worker support, assessment panel oversight and implemented according to specific process stages.

JAS is convinced of both the need and the ability for Australia to move towards a balanced detention/reception system. We believe the RTP System includes a number of elements that enable both a humane and flexible response to asylum seekers, while providing reassurance for decision-makers and the wider community.

There is no evidence that detention deters asylum seekers. In fact 10 years of mandatory detention in Australia have not stemmed the flow of asylum seekers, who are still forced to flee due to extreme circumstances in their countries of origin. JAS thus rejects the notion that detention achieves deterrence, and that detention should be the norm. Instead we believe detention should be used only for a limited time, in most cases for:

- Identity, Health and Security (IHS) checks upon arrival
- If the person is a high risk to abscond and supervision in the community is deemed inadequate.

Furthermore we believe the risk to abscond for most asylum seekers is exaggerated. Evidence from Sweden, USA, Hotham Mission and Australia's various parole models, show this is to be the case. With ongoing case management, individual risk assessment and a structured release program, we believe most asylum seekers can be released into the community with supervision and compliance requirements.

Issues of national security and border protection are concerns for all Australians. However, placed in the context of initial closed detention and adequate health and security checks, these issues should not be a hindrance to the release of those not found to be a security risk. This is particularly highlighted with cases such as unaccompanied minors and single mothers and children.

Changes to the current system of detention are long overdue. A number of recent examples exist which highlight the gap that exists between security and DIMIA and the need for a caseworker system. This includes the recent case of a Vietnamese man in Villawood wrongly deported and the Woomera hunger strike of January 2002 which highlighted the lack of trust between DIMIA, ACM and the detainees.²⁵ In effect the Minister's Immigration Detention Advisory Group provided a de facto case management role, providing information and consultation with people about their options. However it is neither desirable nor sustainable for IDAG to fulfil this function on anything more than a limited and ad hoc basis. The establishment of a national case management service coupled with an independent review mechanism for asylum seekers in and out of detention, would dramatically improve the current system and contribute to a number of positive outcomes:

- More effective and humane returns
- Improving a person's ability for settlement upon release
- Reducing costs to the taxpayer of prolonged detention
- Reducing incidents and problems and improving worker safety within the detention environment
- Reducing the risk of long-term mental health problems due to prolonged detention
- Releasing children and those at risk from the detention environment
- Reassuring decision-makers and the wider community by means of an accountable and effective processing system
- Allowing for a humane and balanced approach to asylum seekers during the determination process.
- Positive outcomes for a system such as this are already highlighted by the work being done at Hotham Mission.

A primary challenge is the need to bridge the enormous differences between current detention and community practices. Any realistic attempt to discuss alternative detention models in Australia must address this gap and attempt to find linkages between detention and community. This includes not only practical issues

25. 'The case of the wrong refugee', The Australia, Vanessa Walker, December 4, 2001

such as housing and health options in the community, but also larger issues of community education and understanding.

The transition from a detention-based regime to a reception-based regime will be a process that requires critical evaluation, realistic alternatives and analysis of service provisions, costing, administrative and procedural responsibilities and an ability for community and Commonwealth to work together. The Reception and Transitional Processing (RTP) System provides a realistic, detailed and soon to be costed reform of the immigration detention system which resolves many of the serious problems that currently exist. It enables the Australian government to process people with integrity and confidence, moving vulnerable people, particularly children, families and the traumatised, into the community where they can be supported and easily monitored.