Commonwealth OMBUDSMAN

Submission by the Commonwealth and Immigration Ombudsman

JOINT SELECT COMMITTEE ON AUSTRALIA'S IMMIGRATION DETENTION NETWORK

Submission by Mr Allan Asher
Commonwealth and Immigration Ombudsman

September 2011

INTRODUCTION

In July 2008, the Minister for Immigration and Citizenship delivered a speech entitled *'New directions in Detention – Restoring Integrity to Australia's Immigration System'*. In this speech, he announced major Australian Government reforms to Australia's immigration detention system. Integral to these reforms, the Minister set out the Immigration Detention Values that would underpin a more compassionate and risk based approach to detention and asylum seekers.

Since then, the Ombudsman has reviewed the circumstances of people in detention in light of these immigration detention values. The Ombudsman acknowledges that the detention network and the refugee assessment processes have been put under significant strain since that time because of the large number of irregular maritime arrivals of asylum seekers. We are however, concerned that the values are not being implemented as envisaged. The Ombudsman believes that the implementation of the detention values should be strengthened and more clearly set out in operational guidelines. Ideally, these values should be enshrined in legislation, and in the least issued as a Ministerial direction.

The detention values do not appear to be applied equitably for irregular maritime arrivals in comparison with the approach taken to unlawful non-citizens onshore. Under the values, detention was to be a last resort and for the shortest duration for completion of initial health, identity and security checks. Our observation is that this is not consistently practiced and that the timeframe has extended well beyond the period initially anticipated. In contrast to the detention values, substantial numbers of irregular maritime arrivals are subject to prolonged detention in restrictive facilities as a first resort.

It is important to clarify government policy in relation to immigration detention administration. If there has been a shift in not only the way the detention values are being implemented, especially for the irregular maritime arrivals, but also in existing government policy then this needs to be clearly articulated, not just implied. A feature of good administrative practice is to clearly set out policy intent, criteria and guidelines in a way that enables accurate, consistent and transparent delivery and review of programs.

Even though mandatory detention remains a fundamental part of Australia's detention policy, it is not necessary for detention to occur in restrictive facilities. It is also not necessary for mandatory detention to continue where processes for the assessment of asylum seeker claims have been administratively prolonged. The Ombudsman suggests that the Department of Immigration and Citizenship (DIAC – hereafter the Department) consider greater use of less restrictive options for detention. In addition, more use could be made of the Minister's discretionary power to grant a visa under s 195A of the *Migration Act 1958* and to issue removal pending bridging visas.

The Ombudsman does not consider that the management of security risks in all cases requires a security clearance by the external agency and acknowledges the introduction of the Department's security triage. The Ombudsman considers that the Department should extend its capacity for risk assessment to enable it to determine the immediate risk to the Australian community posed by those people found to be refugees but having received an adverse security check from the external agency. This group, as well as people who are not found to be refugees but for whom there are constraints on removal, currently face indefinite detention.

The Government, the Department and its service providers owe a duty of care to people in immigration detention. The Ombudsman is concerned that detention facilities, services and administrative arrangements have not adequately kept pace with the demands of the changes and challenges presented by a rapid and significant increase in the detention population. Under such a situation there is a real risk that this duty of care will not be consistently upheld. The length of time a person remains in a state of uncertainty exacerbates the risks of mental illness and suicide and self-harm behaviours amongst asylum seekers across the detention network and in the community.

People detained in an immigration detention facility over the last 18 months are liable to have been exposed to, or involved in, an increasing number of suicide or self-harm behaviours. Detention in these circumstances is at odds with the detention value of ensuring the inherent dignity of the human person and lacks sensitivity to the traumatic circumstances in their home countries from which many people fled. In these circumstances, overcrowding and a shared sense of confusion and despair appear to be precursors to unrest and violent protest. This is the situation which the government sought to avoid when it introduced its reforms in 2008.

In order to maintain the duty of care to detainees there needs to be a different approach to the detention of irregular maritime arrivals. Within detention facilities, a pro-active approach is needed to create and maintain, to the fullest extent possible, a psychologically and socially healthy environment in which people are supported and empowered to continue to deal with difficult life problems. Some key factors follow.

- Initial detention of irregular maritime arrivals in a restrictive facility should be kept to a minimum. The Department should ensure that its contracts with service providers allow enough flexibility for service providers to respond to changes in detention population and facilities without compromising duty of care obligations.

- Less restrictive detention facilities close to mainstream community services would reduce problems created by detaining people in remote locations including less availability of qualified and experienced staff, difficulty of access by lawyers, advocates, and community support, and constraints on the delivery of mental health and medical services.

- More attention should be paid to regular, comprehensive and contextualised explanations of the processes and progress of a person's claims with empathic management of expectations, commencing at the time of a person's arrival. More general use of interpreters and translation of information about protection processes and detention operations may assist in reducing current levels of misunderstanding amongst detainees

- A substantial increase in non-crisis counselling and support including repatriation counselling may assist in resolving the issues of confusion and misinformation which circulates in the detention communities.

- A more integrated case management system is needed to provide quality control and assurance of the case management activities of the Department, the detention service provider Serco and the health service provider International Health and Medical Services.

- Improvements in the regular review of detention arrangements and the way that placements are made within the network are needed to ensure that the concerns of individual detainees do not fall within case management gaps.

The Ombudsman is concerned that the number of incidents in detention centres has grown with the expansion of the restrictive detention network. The way that incidents are handled is crucial to maintaining a healthy environment and reducing unrest. The Ombudsman is also concerned about the use of force in detention centres and suggests that better monitoring and governance is required to ensure consistency, competency and integrity of the reporting of incidents as well as ongoing training to build the capacity for de-escalation of situations which lead to unrest in detention centres.

In July 2011, the Ombudsman announced an own motion investigation into suicide and self-harm in Australian immigration detention facilities. The investigation will assess the extent of this problem, examine the root causes, and consider practical steps that the Department and its service providers should consider to reduce and prevent the incidence of suicide and self-harm in immigration detention. The Ombudsman has established a steering committee to provide expert advice and guidance in this investigation.

The steering committee members are:

- Prof Diego De Leo, Director, Australian Institute for Suicide Research and Prevention
- Prof Nicholas Procter, Council for Immigration Services and Status Resolution
- Prof Louise Newman, Chair, Detention Health Advisory Group
- Dr Ida Kaplan, Foundation House
- Mr Greg Kelly, First Assistant Secretary, Detention Operations, Department of Immigration and Citizenship.

Despite the observations made by the Ombudsman's office about shortcomings in the immigration detention network, we remain impressed by the effort and goodwill demonstrated by the Department and service provider staff in carrying out their duties at detention facilities across the network. They have faced very difficult circumstances and have met challenges with an energy which deserves recognition. Our office appreciates the Department's co-operation in facilitating our visits and willingness to accept feedback and resolve problems as they arise.

The Ombudsman would be happy to appear before the Committee to give evidence and provide further suggestions for improvements in Australia's immigration detention network and to the processing of asylum claims by irregular maritime arrivals.

BACKGROUND

The Office of the Commonwealth Ombudsman is established by the Ombudsman Act 1976 and exists to safeguard the community in its dealings with Australian government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Act also confers six specialist roles on the Ombudsman; the Defence Force Ombudsman, Immigration Ombudsman, Law Enforcement Ombudsman, Overseas Students Ombudsman, Postal Industry Ombudsman, and Taxation Ombudsman.

THE ROLE OF THE IMMIGRATION OMBUDSMAN

In carrying out the role of the Immigration Ombudsman we conduct a range of activities as part of our oversight and review of immigration detention. These are set out the following pages.

Reviews of the circumstances of people held in immigration detention

Amendments to the Migration Act in 2005, included a requirement for the Ombudsman to give to the Minister an assessment of the appropriateness of the arrangements of a person's detention (s 486O) when the person had been detained for a period of two years and at six monthly intervals while the person remains in detention. The Ombudsman prepares a version of the report which protects the privacy of people mentioned in the report and the Minister is required to table the de-identified report in Parliament (within 15 sitting days of receipt). The Ombudsman's review is triggered by receipt of a report from the Secretary of the Department of Immigration and Citizenship which is also prescribed under s 486N of the Migration Act.

The Ombudsman may include recommendations in reports made under s 486O. The Minister is not bound by any of the recommendations made by the Ombudsman. The Minister's response to the recommendations is also tabled in the Parliament with the Ombudsman's de-identified report.

In July 2008, as part of the Minister's introduction of new directions for immigration detention, the Ombudsman agreed to conduct six, 12 and 18 month reviews of the circumstances of immigration detainees with a focus on the implementation of the immigration detention values. These reviews are also triggered by receipt of a report from the Department. The Ombudsman does not make recommendations in the six

monthly reviews but brings to the attention of the Secretary issues of concern arising from the review.

Investigating complaints from people in detention

The Immigration Ombudsman investigates complaints made by detainees about the conditions of detention, problems arising from detention management and administrative processing of their claims. Complaints are received by email, fax, and telephone but are largely submitted through complaint clinics conducted when Ombudsman staff visit detention sites and when detainees are interviewed for the purposes of a detention review.

Inspection and monitoring of immigration detention facilities

As part of the Immigration Ombudsman role, the office conducts inspection and monitoring of immigration detention centres as well as other forms of immigration detention including residential housing centres and community detention. The purpose of this function is to monitor whether detention service standards, including access to medical and other services and activities aimed at maintaining detainees' well-being, are being met. As part of this function we provide feedback to the Department as well as to its service providers including recommendations where standards have not been met or where they need to be further developed or adjusted.

We aim to visit each centre at least twice a year while maintaining a schedule of four visits to Christmas Island. Over the last 12 months we made four visits to Christmas Island and visited the Curtin, Scherger and Darwin detention centres including the alternate places of detention in Darwin. We made five visits to Villawood and visited Perth and Maribyrnong detention centres, as well as Leonora, Inverbrackie and Adelaide Immigration Transit Accommodation.

Oversight of the non-statutory refugee status assessments for asylum seekers on Christmas Island

Since September 2008, the Ombudsman has an oversight role of the non-statutory refugee status assessment for asylum seekers on Christmas Island. This role includes monitoring of the fairness, efficiency and timeliness of the non-statutory review processes, and general oversight of the management of detainees. The Ombudsman continues to monitor the administration of the assessments with the Department's introduction of the Protection Obligations Determination and the finalisation of cases under the old Independent Merits Review process.

The office's inspection program has expanded substantially in response to the transfer of detainees from Christmas Island to detention centres that are located across the mainland including new facilities in remote locations.

Our investigation of complaints, inspections of detention facilities and review of detainees' detention circumstances enables the office to undertake an integrated approach to the review of immigration administration. The range of functions enables greater flexibility in the means by which issues are taken up by our office, including own motion investigations, informal dialogue with the Department, engagement in various department client forums, providing feedback, and sharing our views on systemic issues with the Department and its service providers.

RESPONSE TO TERMS OF REFERENCE

(A) Any reforms needed to the current Immigration Detention Network in Australia

The Ombudsman welcomed the government reform initiatives of July 2008. These reforms included the introduction of the immigration detention values. The Ombudsman considers that the values provide a sound basis for the Department to exercise its responsibilities for border control while maintaining the Government's commitment to human rights and the humane treatment of asylum seekers, whilst their claims are assessed.

The Government's immigration detention values committed the Department to the use of restrictive immigration detention as a last resort and for the shortest practicable period. While maintaining mandatory detention as an essential component of border control, the government proposed that detention would extend only for the purposes of health, identity and security checks and once the checks were successfully completed that continued detention was unwarranted. The timeframe considered reasonable for those checks was a period of 90 days.

The immigration detention values reject indefinite or otherwise arbitrary detention. Although these terms carry a substantial meaning in law, in practical terms the values sought to prevent people experiencing detention for which there was no reasonable time limit that is with the expectation that matters relating to the detention would be resolved in a reasonable period of time. The Government reversed the presumption for ongoing detention to one in which the onus would be on the Department to release a person unless it provided substantial grounds to detain or continue to detain.

The Ombudsman is concerned that these immigration detention values have not been implemented effectively. The Department's response to the influx of irregular maritime arrivals to Christmas Island has been to continue the use of restrictive detention for prolonged periods. In many ways the present circumstances are those the Government wished to avoid by introducing the reforms in 2008.

Proper application of the immigration detention values should not be inconsistent with the mandatory detention policy and legislative regime. Immigration detention, mandatory or otherwise, can be achieved by placement in the community. The Ombudsman acknowledges the Department's more recent accelerated move to transfer families and children into community detention. We are however, concerned that some have remained in detention for considerable periods and some are situated in alternative places of detention which closely resemble restrictive immigration detention centres.

The use of community detention and residential style accommodation has been mainly reserved for families and children and people with particular vulnerabilities. We believe that other groups of detainees are also vulnerable to the effects of prolonged and restrictive detention. For example, risk factors such as the development of mental illness and suicidal and self-harm behaviours apply to unaccompanied men and should be addressed.

The current problems within detention centres also impinge on the detention value that conditions of detention will ensure the inherent dignity of the human person. Many people remaining in overcrowded detention centres are exposed to violent incidents

including assaults between detainees, between officers and detainees, violent protest action, and self-inflicted violence including suicide. The higher number of detainees needing mental health and psychological support places strain on the capacity of the service providers and this inadequacy of service exacerbates the cycle of mental illness and behavioural dysfunction. Further, the effects of these conditions on people who fled violence and disruption in countries of origin and who may have been subject to torture and trauma, are not ameliorated by the provision of counselling when detention is prolonged. Detainees in these circumstances often describe a withdrawal from support systems.

The Ombudsman is now regularly reviewing cases of people arriving offshore with refugee claims, who have remained in detention for two years or more. The present processing time for a decision which goes through a review process is close to 12 months and can be more. Two groups appear to be facing indefinite detention – those who have provisionally been found to be refugees but have received an adverse security assessment and those who are not found to be refugees but are not easily returned to their home country, including those considered to be stateless.

Implementation of the immigration detention values is open to the use of a greater range of less restrictive and minimally restrictive detention arrangements. Release from detention can be achieved through greater use of visa grants including removal pending bridging visas and use of the Minister's discretionary powers to grant a visa under s 195A of the Migration Act. Where risk is uncertain, more use should be made of conditions and reporting which can be placed on visas or community detention orders to mitigate any suspected risk.

It is important to also consider the broader Australian context in which immigration detention operates. The Australian government and its service providers are administering the second largest detention system in Australia. Only NSW government runs a larger detention system. Even though immigration detention may be referred to as administrative rather than correctional detention, there may be lessons that can be drawn from other forms of detention. State and Territory governments have a much longer history of administering complex detention networks. There may be standards, practices and procedures which operate in correctional detention which may have relevance in the immigration sphere. This may assist in not only ensuring the duty of care owed to immigration detainees can be met but also assist in dealing with the significant challenges that government and its service providers have with increased numbers in immigration detention.

(B) The impact of length of detention and the appropriateness of facilities and services for asylum seekers.

The Ombudsman notes that several groups of asylum seekers who have arrived by boat, remain in detention for prolonged periods. These include those who have:

- not been found to be owed protection in an initial assessment of refugee status and await an independent review or a second independent review
- been found to be owed protection but await the outcome of security checks
- been found to be owed protection but have received adverse security checks
- been rejected in the protection assessment process but for whom a removal is constrained because of difficulties in repatriation.

In accordance with the immigration detention values, the Ombudsman considers that mandatory detention in secure and restrictive detention centres for these groups should be for the shortest duration practicable. In practice, the increased number of arrivals and people remaining in detention after an initial assessment in 2009 and 2010, saw overcrowding in Christmas Island facilities and the subsequent transfer of detainees to similarly restrictive mainland detention centres.

The Ombudsman reviews of detention circumstances of detainees at 6, 12 and 18 months and two years and over, raise serious concerns for the deterioration of the mental health and psychological outlook of detainees when detention is for prolonged periods.

Length of detention is inevitably associated with prolonged uncertainty and increasing despair and desolation. At interviews with the Ombudsman office, detainees regularly report intensification of feelings of depression and anxiety over time. These conditions are considered to be the precursors to the high level of mental illness amongst detainees. Criticisms have been made about the high level of use of psychotropic medication for the management of not only mental health conditions but a variety of psychological conditions which would be better treated with a change of environment.

Housing together unaccompanied men who experience increasing levels of despair, shame and guilt and decreasing levels of hope creates a dangerous environment which appears to result in contagious, dysfunctional means of problem solving. This is reflected in an increasing incidence of self-directed harm and protest.

The impact of increased numbers of detainees with negative refugee assessments at Christmas Island and other detention centres amplifies negative feelings amongst other detainees who are experiencing uncertainty. The Department and service providers have struggled to manage the impact of prolonged detention of detainees in these circumstances.

Facilities in remote locations also have limited access to mainstream medical and allied health services making access to specialist or urgent medical services difficult and expensive. These facilities are particularly unsuitable for people with chronic illnesses.

The variety, regularity and suitability of activities, is clearly an important factor in maintaining a healthy and constructive detention environment. The provision of activities varies across the network, activities on Christmas Island and Villawood detention centres have, for example, been restricted due to protests and escapes. In remote centres activities are restricted by the distance from local communities and difficulties in sustaining activities onsite. Many detainees remaining in detention for prolonged periods withdraw from activities and from socialising with other detainees.

Remote locations and difficult access to detention centres impedes the efficiency of the refugee status processing, particularly difficulties in arrangements for migration agents to travel to and consult with applicants. Systems to deal with this have in many cases led to apprehensions of unfairness amongst detainees who consider they are not being attended to chronologically.

The location of facilities in remote and difficult to access locations introduces additional problems to the good management of the centres. Travel to and accommodation on Christmas Island, for example, is limited and this constrains detainee access to legal advisors and advocates. The provision of interpreter services is reliant on interpreters staying on the island and this applies to other community service providers in the areas

of education and activities. The Department and service providers also require large numbers of staff to reside in remote locations which is costly and inconvenient. Shipping of supplies including food supplies is problematic. These concerns are mirrored in mainland remote locations where weather conditions may be extreme and access to centres subject to regular events such as flooding. The alternative places of detention which involve lower security, residential style accommodation, hostels, and community detention placements and in proximity to towns or cities where services and supplies are more readily and economically accessed, relieve many of these tensions. It is considered that these locations are more suitable for mandatory detention.

The Ombudsman is concerned about the increasing number of irregular maritime arrival asylum seekers who have been in restrictive detention for more than two years and are now being reviewed under s 486O of the Migration Act. This reflects processing delays which are beyond those anticipated as reasonable when the government introduced its immigration detention values in 2008. It demonstrates a failure to implement the government policy that the least restrictive form of immigration detention available should be used for those people who cannot be released into the community.

Moreover, it is noted that two groups of people appear to be subject to indefinite detention. These are people who have been found to be refugees but have received an adverse security assessment and people who are unable to be removed to country of origin due to external country constraints. The Ombudsman is increasingly concerned that no solution for people in these categories has yet been identified and that they continue to be detained in secure and restrictive accommodation.

As part of the solution, the Department should give consideration to developing, in consultation with the appropriate external agency, a more targeted and flexible assessment process that identifies the specific nature of the risk to the Australian community. Consideration should be given to alternative, less restrictive detention arrangements, including community detention, for those who do not pose a direct threat to the Australian community. In such cases appropriate safeguards and oversight could be put in place to address any security concerns that have been identified in the assessment process.

As an interim measure, the Ombudsman considers that the Department should make immediate arrangements for a person detained in these circumstances to be transferred to a less restrictive place of detention such as residential style immigration detention, unless the Department can demonstrate specific individual reasons why doing so would pose an immediate threat to the Australian community.

(C) The resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties.

The Ombudsman acknowledges that the Department, Serco, and International Health and Medical Services staff face very difficult tasks in the day to day management of detainees who are detained for prolonged periods in circumstances of deteriorating hope and ongoing uncertainty. Department staff must struggle with the problem of having no news for people who are desperately waiting for decisions over a long period of time.

All department and service provider staff should be trained in the development of skills for maintaining an empathic and constructive approach to resolving the day to day issues in detention communities. Such training and support should also assist officers in dealing with their own personal and political views in order to maintain an objective capacity to work constructively in the detention environment. Service provider staff should have a good framework for understanding the administrative nature of mandatory detention which separates it from punitive detention and provides a basis for their work in contributing to a safe and healthy community awaiting administrative outcomes. They should understand their duty of care responsibilities to detainees.

It is important that de-escalation strategies are part of the training for staff. Our office is concerned about the level of complaints which involve instances in which situations have been escalated by an officer's response and when unnecessary use of force is evident.

Both Department and Serco staff require personal, psychological and mental health support on a regular and consistent basis. Working with refugee claimant groups in detention can take a substantial emotional toll on workers including issues related to vicarious trauma. Training in resilience skills is recommended.

Remote locations can also cause difficulties for officers with families and there are challenges in recruiting experienced staff and supporting them through training and in their employment at detention facilities.

(D) The health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network.

The Department and service providers including Serco and International Health and Medical Services have a duty of care towards people in immigration detention taking into account the special dependence created by detention and the vulnerability of the person in detention. Department guidelines note that the Department will work together with its service providers to provide a holistic range of services in the discharge of a duty of care to individuals. The Department's duty of care and respect for human rights in immigration detention is predicated on the appropriate placement within the immigration detention network.

In discharging its holistic care and regard for placement the Department should consider that centres which are remote or difficult to access, and conditions of overcrowding in detention facilities place a strain on the provision of services within those facilities and create an environment which is a risk to the health and wellbeing of people detained in those facilities. In addressing such risks there is scope for improved communication and case management integration between Department caseworkers, Serco officers, and medical caseworkers to determine the appropriate detention arrangements for individuals. The Ombudsman is concerned that the Department, in the provision of its reviews of cases to the Ombudsman, now relies more on generalised policy for its assessment of the appropriateness of a person's detention arrangements than the individual circumstances.

In 2008, the Department introduced the Psychological Support Program across the detention network. The roll out of this program was completed in November 2010. The Ombudsman notes that the high incidence of suicide and self-harm incidents in the detention network indicates that the circumstances of detention are not conducive to the health and wellbeing of people involved in these incidents. The Ombudsman's own

motion investigation into suicide and self-harm in immigration detention office will examine the nature of this problem and the effectiveness of the psychological support program.

The Ombudsman is concerned about the impact of long term detention on the health, welfare and wellbeing of detainees and the continuing problems which may be associated with long term detention for vulnerable people. The Ombudsman is also concerned about the number of people who are placed in detention or remain in detention including restrictive detention facilities, when the person has been identified as a survivor of torture and trauma. Such people should not only get access to health and counselling services but should also be placed in more appropriate detention arrangements.

The Ombudsman has concerns that despite the psychological and mental health implications for refugees and asylum seekers and the impact of detention, in four of the seven immigration detention centres, there are no dedicated rooms for assisting people in the acute stage of psychological distress or at times where close observations are required. Similarly, Sydney and Brisbane Immigration Residential Housing and, with the exception of Leonora, the alternative places of detention are without dedicated rooms for detainees requiring psychological support.

Observations and advice received during our visits indicates that the lack of suitable rooms within proximity of mental health service providers makes the management of suicide and self-harm prevention much more difficult. It places pressure on mental health service providers and requires a heavy reliance on Serco officers who may or may not have the required skills to monitor and assist people on the psychological support program.

Some current arrangements for psychological support, for example the Annexure to Blaxland compound at Villawood immigration detention centre, appear unsuitable for psychological recovery. The Ombudsman also raises concerns about the practice of combining behavioural management rooms adjacent to psychological recovery rooms such as the Blaxland Annexe and the Murray Unit at Villawood and Red Compound at Christmas Island. Feedback from detainees gathered from complaints and interviews suggest that detainees become fearful of being moved to these units because the action is associated with what is perceived as punitive behavioural management. In addition, a higher security environment is not considered conducive to psychological wellbeing and recovery.

Our office is concerned about the lack of onsite medical and psychological support for people in immigration residential housing facilities where detainees remain prone to psychological stresses and intervention requires an offsite appointment or the disruption of transfer to a more restrictive area of detention. This prospect is sometimes perceived as punitive and is otherwise a deterrent to seeking treatment. Given the number of families and children housed in immigration residential facilities and alternative places of detention facilities, it would appear essential to have appropriate mental health and psychological support services available.

Given the long term problems associated with mental illness even after release from detention, the Ombudsman would also highly recommend pro-active prevention of mental illness across the detention network. From our observations this would include detention arrangements to maximise the normalcy of people's daily lives while their immigration status is resolved. When people are detained in immigration detention

centres, for initial checks or for other justified reasons, provision of non-crisis counselling as well as psychological support for crisis situations, may assist.

(E) Impact of detention on children and families, and viable alternatives.

The Ombudsman supports immigration detention value three which states that children including juvenile foreign fishers and, where possible their families, will not be detained in an immigration detention centre.

The Ombudsman is concerned that outcomes following previous detention of children in immigration detention facilities indicate that there is a risk of long term mental illness and emotional problems. The Department's policy of keeping family units together and placing families into community detention is well founded and in line with international conventions on the rights of the child.

The Ombudsman notes a recent review case which demonstrates worrying inflexibility in the Department's approach to current detention issues. In this particular case a couple with a four year old child spent several months in Sydney Immigration Residential Housing after being transferred from Christmas Island, all had been provisionally found to be owed protection. In February 2011, the mother and child were released into the community with protection visas while the father remains in detention because he received an adverse security clearance. Despite reports of emotional and psychological distress in mother and child, at the time of this submission this situation remained unresolved. The family reported living in a community setting on Christmas Island and had been assessed as suitable for community detention while waiting for the results of the security clearance. The man has now been detained for over two years.

The Ombudsman recognises that the Department has more recently transferred a significant number of families to community detention and alternate places of detention. However many families with children remain in quite restrictive detention facilities across the network. The Ombudsman notes that larger alternative places of detention are not far removed from conditions in immigration detention centres and children in these places remain prone to the effects of an environment populated by people in confinement and distress. The Ombudsman notes several families with children and unaccompanied minors amongst the group of people in restrictive detention on Christmas Island who are not being assessed for the range of alternative placement options. Across the network families are still being housed in rooms designed for limited duration and single occupancy.

The Ombudsman considers that children and families should remain together as family units unless there are exceptional circumstances to justify other arrangements, and that it is not necessary or suitable to detain children with families in restrictive compounds. The Ombudsman suggests more use of the variety of options for alternative detention with small groups of detainees close to established Australian communities where children can attend regular pre-school and school environments and enjoy as normal an amount of freedom as possible.

(F) The effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers.

The outsourcing of immigration detention centre management needs to recognise the cycle of boat arrivals and the potential for surges which result in significant changes and pressures on immigration detention infrastructure. Contracts negotiated when the detention population is low may not be suitable when numbers increase significantly and place strains on the system, detention facilities and services. The Department should consider incorporating greater flexibility in its tendering and contract development to enable it and the government to be more responsive to detention needs.

The effectiveness of outsourcing detention centre contracts is dependent on the ability of the Department to provide a suitable framework for the operation of administrative based detention and to deliver its duty of care to detainees through the service provider. Conversely, the service provider needs sufficient flexibility to respond to changes in circumstances in order to best utilise its resources to achieve the aims of the contract. Communication between the Department and service provider needs to be constructive and focussed on effective delivery of services rather than rigid application of penalties which may impede the achievement of good centre management. The tensions and increasing problems arising in detention facilities indicates that these aims are not being met consistently.

Our office considers that the case management system for detainees is fractured and not working as well as it should. The Department and their main service providers, Serco and International Health and Medical Services, each have areas of responsibility for case management. Our office observes that the unclear and at times uneasy sharing of responsibility risks gaps forming in the system's ability to resolve a range of issues relating to detainee health and welfare. It would be beneficial to establish which party is the leading case manager responsible for oversighting and ensuring the co-ordination and integration of case management activities.

While the Department states in its detention reviews that the health, welfare and detention placement of a detainee will be monitored through its case management system, this oversight does not include case management activities. The Department's case managers have a role limited to ensuring case resolution and making sure no health and wellbeing issues which might impact on resolution are left unmanaged. Serco has responsibility for the preparation of an individual management plan for each detainee which includes a log of health, welfare and other detainee concerns and behavioural issues. Serco officers are also expected to monitor the welfare of detainees on a daily basis, particularly with concern for any mental health behaviours which should be discussed with the health service provider.

This fragmented nature of case management reduces its effectiveness and is not adequate to ensure that the duty of care obligations towards detainees is met. The system would be improved by the establishment of a lead case manager and a governance structure for integrating and ensuring case management activities and the resolution of problems with quality control and assurance mechanisms.

Our office has worked to ensure that complaint processes operate in detention centres but continues to find unresolved welfare matters which require very simple remedies, delays and inadequacy in the investigation of incidents involving allegations against detention service provider officers, and a lack of concern for alleged victims in these

cases. The issues raised in complaints from detainees provide valuable information for the Department, Serco and International Health and Medical Services about the experience and perceptions of detainees regarding detention circumstances and may raise matters systemic in nature which can contribute to improvements.

(G) The impact, effectiveness and cost of mandatory detention and any alternatives, including community release.

The Ombudsman remains concerned about the number of people being processed and in restrictive detention for extended periods. Mandatory detention for the period necessary to determine health, identity and security risks, can be achieved across a variety of low and minimal security alternative detention placements as well as through community detention.

The Immigration Detention Values places limits on the use of immigration detention centres as a last resort and for the shortest practicable duration. For unlawful non-citizens detention in an immigration detention centre is used as a last resort. When a person overstays a visa or otherwise becomes unlawful, mandatory detention is dispensed with, in most cases, by the issuing of a bridging visa in the first instance. Detention only becomes necessary when an unlawful non-citizen represents a unacceptable risk to the community or has repeatedly refused to comply with visa conditions. The Department's reporting on its compliance program indicates that outcomes are usually successful and only a small proportion of the group need to be detained. This program demonstrates the application of the immigration detention values and the effectiveness of using detention as a last resort.

The practice of granting bridging visas to unlawful non-citizens who have breached the conditions of their visas, or for those who make an onshore application for protection, is not regularly applied to people who arrive by boat seeking protection in Australia. The reason for this is, in principle, because a person granted a visa would then be eligible to make an onshore application for a protection visa. Our office highlights the outcomes of administrative processes which differentiate between applications for protection made on the mainland and those made by people arriving on boat. In the current circumstances they have resulted in significant numbers of people remaining in prolonged detention onshore in circumstances not conducive to the humane and compassionate approach to detention outlined in the Government's 2008 announcement of the immigration detention values. The Ombudsman questions whether the current situation was foreseen and whether this was an intended consequence of the structure of this legislation.

Notwithstanding this, the Minister has broad discretion to release detainees on a visa under s 195A of the Migration Act and removal pending bridging visas. Conditions can be placed on such visas including the requirement for regular reporting to the Department. If people do not adhere to such conditions or are found to be a security risk to the community then the visa may be cancelled and the person could be placed in detention. More utilisation of this discretion could be made in individual cases which find people provisionally found to be refugees remain in prolonged detention.

Due to the significant number of people in long term detention, the effectiveness of mandatory detention policy has become unclear. The purpose of mandatory detention, as set out in the immigration detention values and in department policy has not been consistently applied. Detention goes beyond the initial checks for health, identity and security. Detention continues when there are unreasonable delays in completing these

checks. The Ombudsman notes that health and identity checks are not generally causing prolonged detention. Long time frames for refugee status assessments and independent reviews along with external security checks continue to have the biggest impact on extending the time in detention.

Low security alternative detention accommodation in the community, community detention, or release on a visa once initial identity, health and security checks are made, may provide protection seekers with a more appropriate environment in which to wait for the completion of the processing of their protection claims. It will not necessarily counteract prolonged delay in these processes nor the mental illness associated with prolonged uncertainty. However, it should prevent the harms which occur in prolonged detention centre environments – the malignancy of community depression and loss of hope, institutionalisation, stunted social interactions, violence, and the development and circulation of misinformation.

It may be beneficial for the committee to consider the costs of providing services and supplies to detention centres in remote locations. Substantially higher costs apply for the Department and service provider staff, family relocations, travel costs, and shipment of regular necessities. Emergency response is more difficult and costs are substantially higher.

The distance from mainstream, specialist medical and allied health services greatly increases the cost of provision of these services. The provision of specialist medical services or assessment requires air flights or long distance travel. Service providers are faced with the problems of limiting services on the basis of these additional costs.

(H) The reasons for and nature of riots and disturbances in detention facilities.

Our office has observed several factors which may contribute to detainees' anxieties and concerns which may result in certain actions they take including riots and disturbances in detention facilities. The prolongation of detention periods during which detainees are awaiting decision increases levels of uncertainty and anxiety. This is combined with a common despair and concern for the welfare of families remaining in the country of origin.

Restrictive, overcrowded detention facilities, where services and activities are put under strain and are often inadequate, adds to detainee anxiety and concern. In such an environment, the potential for riots and disturbances are heightened. The amount of information provided to detainees about the processing of their claims and decisions is often inadequate, and this appears to contribute to frustration and mistrust. Detainees remaining in detention see others from the same boat released, and others who they perceive to have the same or less meritorious claims as themselves, receive visas. These events are often construed into perceptions of inequality and confusion about the process. Detainees are also aware of the political debates about refugees arriving by boat and interviews with detainees indicate that this causes further distress.

Detainee complaints and interviews frequently include claims that the detainee is being treated punitively by the detention system. Detainees often make statements indicating that they feel demeaned and disempowered. They are often ashamed of their situation and feel that they have failed their families.

Tension builds across the detainee community especially in overcrowded facilities or centres. Detainees feeling disempowered and desperate utilise dysfunctional problem solving strategies such as voluntary starvation, threats and acts of self-harm. These strategies often become more common and at times are encouraged within the detention community.

The outbreak of disturbance results in increased restrictions within detention centres and places additional pressure on the service provider staff. The relationship between staff and detainees is also placed under pressure. It is likely that these outcomes only increase the tension and frustration amongst detainees. The outbreak of disturbance results in increased restrictions within detention centres and places additional pressure on service provider staff.

With a significantly increased number of long term detainees now in the detention system, the level of mental and psychological illness amongst detainees is high. Being surrounded by people in the same situation also experiencing mental illness and emotional despair is not conducive to recovery and threatens to worsen outcomes. Males between the ages of 20 to 40 years seem to be at greater risk of suicide and self-harm.

Drawing on our discussions with detainees, there may be a contagion effect which magnifies dysfunctional thinking in these circumstances. Inter-ethnic agitation, competition and perceived favouritism of ethnic groups or negativity towards ethnic groups by reviewers have emerged as issues in some centres. Impulsive and dysfunctional methods for problem solving and drawing attention to the perceived problem may include behaviours seen in riots and disturbance. A key preventative may be the recognition of acts of self-harm as measures of desperation and deterioration. An assumption that these acts and threats are contrived would in our view be misguided and may contribute to repeat acts by failing to provide a healthy resolution and increasing detainees' feelings of alienation. The Ombudsman is currently conducting an own motion investigation into suicide and self-harm in immigration detention.

The remedies for these problems will be multifaceted. Central to the causal issues are the length of time the detainee remains in a state of uncertainty and the impact of a negative decision (at any stage of the process) and the conditions of detention. The Ombudsman refers again to the immigration detention values and notes the premise, based on the outcomes of previous practices in immigration detention, that restrictive detention should be used only as a last resort and for the shortest practicable duration. For the reasons outlined above, immigration detention centres are unsuitable places for extended periods of mandatory detention.

(I) The performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons.

It is important that the Department's management of the performance of service providers for the management of immigration detention centre management and provision of health services not only reflects the contractual arrangements but is sufficiently flexible to cope with significant surges in the number of detainees. Strains on this management may have compounded limitations in sourcing and utilising a

broader range of alternative detention placements at an earlier stage. Contracts negotiated when the detention population is low may not be suitable when numbers in detention increase significantly which place significant pressures on the system and detention facilities.

It is important in the contracting out of services that access to relevant information and data be made available to appropriate review and advisory bodies such as the Detention Health Advisory Group and the Council for Immigration Services and Status Resolution. Under the Ombudsman Act our office can review the administrative actions of contracted service providers. Our office also believes that there is scope for significant improvements in the providers' current complaint handling services.

It is important to stress that the Department and service providers have joint responsibility for duty of care towards detainees. There is a risk that in the contracting out of services the responsibility for the welfare of detainees, the Department remains a step removed from those responsibilities. Our office would like to see more active monitoring of outcomes than a rigid focus on contractual clauses and penalties.

(J) The health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties relating to irregular maritime arrivals or other persons detained in the network.

The conditions faced by detainees detained in immigration detention centres for prolonged periods, as outlined in previous sections, and the emotional and psychological distress and trauma experienced by detainees will inevitably impact on the health, safety and wellbeing of staff employed in the running of and service delivery to detention centres and department staff, in particular staff working in detention centres. It is important that staff get appropriate regular training and support to assist them in their duties and to cope with these challenges.

(K) The level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols.

The Ombudsman has investigated complaints and matters arising from detention reviews and visits to detention centres which have raised serious concerns about the consistency, competency and integrity of incident reporting within the detention network.

Incident reports relating to allegation of assaults examined by the Ombudsman have contained inaccuracies and omission of material crucial to any investigation of the incident. Competent and consistent descriptions of circumstances and actions taken including use of force have been lacking. Witness statements from detainees are not regularly taken.

Our investigations, some of which are not finalised, have identified preliminary concerns with the processes for investigation of unreasonable use of force by Serco officers towards detainees. The issues include a lack of concern, or action to demonstrate concern, for the victim of unreasonable force and the effect that this has

on the person's welfare as well as others who have witnessed the incident. The length of time to finalise investigations, the lack of interim contact with the victim, the extent to which monitoring and interest in the matters of the investigation are taken by the Department are also factors.

Although the Department has advised our office that Serco are required to report all alleged assaults to the police for investigation, our complaints suggest that detainees are told by some Serco officers that it is the responsibility of the detainee to report a matter to the police.

A recent case revealed confusion over whether the New South Wales or Australian Federal Police were responsible for investigating general criminal matters at Villawood immigration detention centre. The Ombudsman understands that the Department is pursuing memorandum of understanding agreements with state and federal police and is concerned that this initiative has remained un-finalised for a number of years. Police reports in cases which were investigated indicated that matters were not pursued because the alleged perpetrator was pending resolution of immigration status. Our office is concerned by a number of review reports and complaints which indicate violence by detainees in Blaxland compound at the Villawood detention centre which do not appear to have been addressed.

The Ombudsman suggests that the Department review the quality and management of incident reporting across the detention network and Serco's capacity to monitor adherence to reporting guidelines. Our office is aware through its interviews with detainees that incidents of unreasonable use of force or perceived unreasonable use of force, and subsequent failure to adequately resolve those matters are issues which increase tension and unrest within the detention network. They may also be indications of a failure in the duty of care responsibilities of Serco and the Department.

Our office has also dealt with complaints in which incidents have been recorded against a detainee without the detainee's knowledge. This appears to be a general practice. An incident so recorded may be considered in detention placement assessment considerations and submissions to the Minister. This practice is not only a breach of natural justice but a failure to inform the detainee of behaviour which is considered inappropriate. A detainee should have the opportunity to dispute the facts of a reported incident or, if the incident is accepted, to demonstrate a change of behaviour.

(L) Compliance with the Government's immigration detention values within the detention network.

The Ombudsman is concerned that the detention values are not being implemented as originally envisaged. We acknowledge that since the values were announced in July 2008, the detention network and the refugee assessment processes have been put under significant strain. The significant and rapid increase in the number of people in immigration detention is largely due to irregular maritime arrivals, seeking asylum in Australia. Under this changing and challenging environment, detention facilities, services and administrative arrangements have not kept pace. This also puts pressure on the processes involved in assessing and people's claims, including merits review and security clearances.

The Department's response to this surge in irregular maritime arrivals has been to source and establish more secure and restrictive facilities. In taking this approach it has also adopted a narrower approach to the case management and placement of

detainees within the detention network. This is contrary to the immigration detention values and department guidelines. This is also reflected in the review reports the Department provides to the Ombudsman which now rely on generically applied justifications for continued detention in an immigration detention facility rather than a genuine assessment of the circumstances of the individual. The Department takes insufficient account of evidence available to it to make a more flexible assessment of individual risk and needs to determine an appropriate form of detention for those who cannot be released.

Our office acknowledges that the Department faces complex problems in developing options for certain groups of people, for example those who have been found to be refugees but have received an adverse security assessment and those who have not been found to be refugees but for whom removal to country of origin is not easily facilitated. The practice of keeping people in secure immigration centres who have been assessed as requiring protection detention either pending prolonged security clearances or negative security clearances is also contrary to the value that detention that is indefinite or otherwise arbitrary is not acceptable.

The Ombudsman does not agree that the management of security risks in all cases requires a security clearance by the external agency. The Department's introduction of a security triage for screening out people it considers do not need such a referral is a welcome improvement. Our office also considers that in certain individual circumstances and general circumstances such as the risk of indefinite detention of refugees with adverse security outcomes that it should also be possible for the Department to make an assessment about the amount of risk presented to the Australian community so that individuals can be placed in less restrictive accommodation. The Ombudsman considers that people facing long term or indefinite detention should also be considered for the granting of a visa under s 195A or a removal pending a bridging visa. In these cases conditions, to mitigate risk regular reporting regimes can be established. In the case of non-compliance with these conditions or new information about risk any such visa could be cancelled and the person returned to a detention facility.

The immigration detention values are operating in the processing of people who become unlawful non-citizens through overstaying or otherwise having a visa cancelled and people making protection claims onshore. Detention in these cases is used as a last resort and utilised for the minimum time required. These people are eligible for a bridging visa in the first instance and it is generally in situations where repeated non-compliance with the visa conditions that more restrictive detention applies.

Irregular maritime arrivals are ineligible for a department issued bridging visa. Although the Minister has the discretion to grant a visa for irregular maritime arrivals under s 195A this option has not been generally utilised. Detention in an immigration detention centre has become a first resort for this group.

Mandatory detention does not have to continue in a restrictive facility. In accordance with the immigration detention values, detention in an immigration detention centre should be a last resort and for the shortest practicable time. The Department has not generally utilised other less restrictive options for the mandatory detention period required for health, identity and security checks for the irregular arrival caseload.

Ongoing or indefinite detention in restrictive centres for the purpose of processing refugee claims seems to be in conflict with the Immigration Detention Values. The surge in arrivals placed pressures on initial processing and review processes, which has extended the completion times and has significantly prolonged the detention period in the current system.

Applying the detention values, which focus on administering humane and risk-based detention practices, is not inconsistent with the mandatory detention legislative and policy framework. Focusing on these more humane and risk-based values become even more of an imperative where there are pressures within the detention, refugee and security clearance systems caused by increased numbers. The increased pressure on these systems places detainees' health and wellbeing at much greater risk of harm. Under such circumstances the detention values need to be genuinely, comprehensively and consistently applied if such risks are to be addressed and if the overall duty of care obligations to detainees is to be achieved. The duty of care responsibilities apply to the Government, the Department and the service providers.

Whilst we recognise a recent increase in families and children placed in community detention we unfortunately continue to see children and families placed in secure or restrictive immigration detention facilities. Even though these facilities may not be defined as 'immigration detention centres' they are not consistent with the spirit and intent of the detention values relating to placement of children and families.

We are concerned that the implementation of the detention value of regular review of the detention conditions for individual detainees, including the appropriateness of both the accommodation and the services provided has not been consistently and regularly applied. People detained in immigration detention centres over the last 18 months are liable to have been exposed to an increasing number of people engaging in suicide or self-harm, an environment in which adults are suffering from increasing despair and confusion, disturbances and other incidents of violence and other risks associated with prolonged detention and overcrowding in these circumstances. This environment is at odds with the detention value of ensuring the inherent dignity of the human person and lacks sensitivity to the traumatic circumstances from which many people have fled.

Whist we believe that the detention values provide a good framework to administer an immigration detention system we do not believe they are being consistently complied with. Importantly, detention operational procedures and practices should be thoroughly reviewed to ensure that they genuinely reflect the detention values. This may require more co-operative approach between the Department, Serco and International Health and Medical Services. It may also require and a stronger governance and quality control and assurance of procedures in practice to ensure that the detention values are embedded in practice. The detention values should also be better reflected in the Department's contracting out of detention services, including in tender and contractual arrangements made with providers. Ideally the detention values should be enshrined in legislation.

(M) Any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons.

It is important that Commonwealth and State agencies cooperate to provide seamless service and consistency of standards and services across the detention network. There should not be any specific state differences in this service provision.

As a result of the High Court decision many irregular maritime arrivals are now taking the opportunity to apply for a judicial review of unsuccessful independent merits review decisions. In addition to the increased access to judicial processes of review, boat crew facing criminal charges are also being processed by the court systems. The locations and sizes of detention centres have resulted in disproportionate applications for Legal Aid assistance across the states. Due to lack of resources some state Legal

Aid offices will no longer take applications for judicial review from irregular maritime arrivals. This presents an inconsistent approach to access to legal aid based on state lines in an area of administration which falls within Commonwealth jurisdiction.

A major area of concern is getting appropriate police coverage in detention centres. Presently there is no Memorandum of Understanding between the Department, the Australian Federal Police and the State Police as to which agencies have carriage of the application of law in detention centres. This was of particular concern during the April 2011 disturbances at Villawood Immigration Detention Centre, as it was not apparent whether the maintenance of order was a state or federal police responsibility.

The Ombudsman's office is also concerned that there are gaps in the continuation of health care regimes for irregular maritime arrivals once they enter community detention. Access to health care in the community could be better facilitated if irregular maritime arrivals were provided by International Health and Medical Services with complete health care plans for the continuation of their treatments once they leave the detention facility.

(N) The management of good order and public order with respect to the immigration detention network.

The Ombudsman notes that the operation of a detention network of this size and nature is a considerable undertaking which carries significant risks. The detention network is comparable to correctional detention but, in contrast, has been established rapidly and is not subject to the legislative controls and regulations which ensure correctional standards and practices and the rights of prisoners.

Running detention facilities presents considerable challenges for maintaining good order. The significant increase in the number of people in detention in the last three years has resulted in overcrowding, inadequate servicing and the consequent risk of disturbances. This has been compounded by detainees receiving negative outcomes for their claims for asylum and delays in the review process and security clearances.

The stresses caused by these factors emphasise the importance of having well trained staff able to effectively utilise de-escalation strategies so that minor incidents do not develop into major disturbances.

A large number of adult males, many of who have been in detention for more than a year and have received a negative outcome to their application for asylum, have been located at Curtin and Scherger immigration detention centres which are at defence bases in remote locations. The location of these centres compounds the sense of isolation for detainees, with a lack of sufficient meaningful activities and excursions, creating boredom and a sense of helplessness and lack of control over their own lives. Evidence suggests that a coalescence of these factors may contribute to disruptive behaviour.

Inadequate communication from the Department about the progress of claims for asylum is another factor contributing to unrest. This can include no information about the progress of claims or requests for review, and the apparent unfairness of newer arrivals having claims for asylum approved before those who arrived earlier. The Ombudsman has received a number of complaints from detainees who have had little meaningful contact with their case manager and who do not know when they will hear of the outcome of their claim for asylum or why the matter is taking so long to resolve.

The Ombudsman is also concerned about intervention for non-critical incidents. As reflected in complaints received by this office, relatively simple matters can subsequently escalate into more serious issues simply because the matter was not resolved while it was still of a minor nature. Language or communication challenges in the detention environment reinforce the need for staff to be properly trained and supported. Greater use of interpreters would ensure more clarity for resolving issues at an early stage, an issue highlighted in our report released in February of this year.

It is common for people who have received a negative outcome to their claim for asylum to complain to the Ombudsman that they do not know what is going to happen to them. In most instances they feel that they are unable to return to their home country and are unaware of what options are available to them. This is particularly so for those who have been found to be refugees but who have received a negative security clearance and who are not eligible to be granted a visa to stay in Australia.

The Ombudsman's office is of the view that if more effort could be put into regularly, comprehensively and contextually informing detainees about the status of their claim for asylum and providing similar information and counselling people found not to be refugees, then the level of dissatisfaction with the process would be reduced and there would be less unrest within the detention network.

The use of high security facilities within immigration detention centres to isolate perceived 'trouble makers' at times of protest activity is also a concern. Anecdotal feedback to the Ombudsman's office suggests that such facilities can be used as a threat and/or for punishment, after order has been restored. Prolonged periods in such facilities, particularly Red Compound on Christmas Island, have had a demonstrated adverse effect on the mental health of some of those detained there.

Our office is concerned that the use of detention centres should be for short durations only and that the emphasis within the detention network should be strongly focussed on strategies to reduce the risk of unrest by identifying and pro-actively attending to its precursors. This focus should be on approaches that build a positive, healthy detention environment providing a more supportive environment and better communication.

The Ombudsman has recently conducted an own motion investigation into the use of force on Christmas Island and will release this report publicly when it is finalised. There are currently reports being prepared for Government on the March and April disturbances at Christmas Island and Villawood IDCs, and this submission does not intend to pre-empt the findings of those reports.

Australian communities located close to immigration detention centres have the right to expect that disturbances within centres will not adversely impact on their own safety and the amenities of their communities.

(O) The total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees.

(P) The expansion of the immigration detention network, including the cost and process adopted to establish new facilities.

The detention network has seen a considerable expansion in what is a relatively short period of time, largely in response to the surge in irregular maritime arrivals. The expansion has placed considerable strain on existing immigration detention centres where numbers have risen above the surge capacity while waiting for new immigration detention centres to come online.

The Department has utilised more readily available locations suitable for a new immigration detention centre in the existing facilities at defence bases. While it is understandable that such facilities are the first preference for new detention facilities, in most, if not all, cases these are of limited suitability for reasons of the type of accommodation, which is generally designed for very short term durations, and the location.

Such facilities, whilst commissioned and brought on line as immigration detention centres reasonably quickly are expensive to operate and maintain. The remoteness of the locations means transport, such as charter flights to move detainees between immigration detention centres and to hospitals when required; transport of food and medical equipment; relocation of staff and access by oversight agencies, legal representatives and advocates, are expensive, difficult and time consuming.

It is a concern to the Ombudsman that less costly and more accessible and serviceable alternatives, particularly community detention and other less restrictive forms of detention closer to major metropolitan centres have been under-utilised.

(Q) The length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network.

(R) Processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network.

Since 2005, the Ombudsman has reviewed the detention circumstances of people in detention for more than two years and with the government introduction of the immigration detention values in 2008, the Ombudsman has reviewed the detention circumstances of people in detention for more than six months.

Until more recently, the majority of people in detention for more than two years were onshore arrivals and included people whose visas had expired or had been found to be invalid and who had often subsequently applied for a protection visa and were awaiting review of a Refugee Review Tribunal decision; people whose visas had been cancelled under s 501 of the migration act having been convicted of an offence or offences which placed them within criteria for visa cancellation; cases where identity has not been established; situations where there are external constraints to the removal of the

person such as the inability of the Department to obtain a travel document without the person's co-operation; and a situation where there are international treaty obligations which auger against removal but the person has been assessed as being a risk to the Australian community.

The Ombudsman has raised concerns with the Minister in the two year detention review reports about a static approach to risk assessment for people whose visas have been cancelled under s 501 and who have remained in detention for several years. These people experience extended periods of immigration detention often due to long review processes and in some cases the lack of resolution of issues relating to international treaties which prevent removal. The Ombudsman is concerned that people remain in detention only for the reason that the Department contests these appeals or its international treaty obligations. The Ombudsman has recommended more use of community detention and discretionary visa grants for these people including the use of removal pending bridging visas.

During 2010, the number of irregular maritime arrivals at Christmas Island rose substantially. Our office has observed that resources have in some circumstances been directed away from assessments of unlawful non-citizens already in detention to deal with the increase in irregular maritime arrivals. We have seen cases of onshore arrivals assessed as suitable for community detention at an early stage, remaining in a secure immigration detention facility for over 18 months. The Ombudsman notes that the Minister has not delegated his discretion to place a person in community detention, whilst also observing the processes for referral and assessment of detainees against the guidelines for consideration by the Minister can be protracted.

Suspending the processing the claims of Sri Lankan and Afghani asylum seekers for several months during 2010 had a broader impact on the detention population. The number of negative refugee assessment status decisions increased and a growing number of people remained in detention centres awaiting an independent merits review. The increased numbers places further pressure on the initial assessment and review processes. Some of these issues have been resolved with the introduction of the protection obligations determination which replaced the refugee status assessment and independent merits review in March 2011.

In November 2010, a High Court decision found the independent merits review process lacking in procedural fairness. The Department consequently reviewed its procedures and offered a second independent merits review to all people remaining in detention who had been subject to a negative independent merits review decision.

At this time the Department's policy was that a security clearance was valid for 12 months. People whose security clearance was no longer valid after a second independent merits review could be referred to the external agency for a further security check. Referrals to the external agency for further security checks were also made when initial security clearances were still valid but new information may have been presented to the second independent merits review hearing. These processes substantially increased the time taken for protection claims to be finalised. The Department have introduced a security triage process which in operation reduces the number of referrals to the external agency, however, security clearances to the external agency are now not made until a positive refugee status is decided. This means that people with refugee status remain in detention until a security clearance is met.

The Ombudsman is concerned about the number of people found to be refugees who have remained in secure facilities during this process which far exceeds the time frame

anticipated for processing when the immigration detention values were introduced. This has caused overcrowding in detention centres, pressure on the Department and service providers in exercising duty of care obligations, and the occurrence of problems apparently associated with long term detention including deterioration in the wellbeing of detainees and staff, suicide and self-harming behaviours and protests and disturbances.

The Ombudsman observes the average processing time for refugee claims approaches 12 months at the same time there number of irregular maritime arrivals who have now been in detention for more than two years continues to rise. Within this group are those who have been found to be refugees but have subsequently received an adverse security clearance. At present the Department advises that people with an adverse security clearance will not be considered for referral against the community detention guidelines. Similarly, there are a group of people who remain in restrictive detention after a decision that they are not refugees, but for political and other reasons removal to country of origin is difficult.

The Ombudsman reiterates concern that these people currently face indefinite detention and that the Department does not yet have a policy about its resolution of these matters. As an interim measure, the Ombudsman suggests that the Department makes immediate arrangements for a person in these circumstances who has been detained for more than two years to be transferred to a less restrictive place of detention such as residential style immigration detention, unless the Department can demonstrate specific individual reasons why doing so would pose a threat to the Australian community.

The Ombudsman also suggests that a more durable solution to this issue be developed and implemented as a matter of urgency. As part of the solution, the Department should give consideration to developing, in consultation with the appropriate external agency, a more targeted and flexible assessment process that identifies the specific nature of the risk to the Australian community. Consideration should be given to alternative, less restrictive detention arrangements, including community detention, for those who do not pose a direct threat to the Australian community. In such cases appropriate safeguards and oversight could be put in place to address any security concerns that have been identified in the assessment process.

The Ombudsman notes cases where people who have subsequently been granted a protection visa, have remained in restrictive detention centres for several months while police investigations are proceeding. During this time the person is given no information about the nature of the investigations or the charges. A current example is the case where a person was found to be owed protection and received a security clearance but has remained in a high security compound on suspicion of inciting people to engage in protest. This person remained in the high security compound for four months before being interviewed by the Australian Federal Police. The Ombudsman is concerned about any blurring of processes between police investigations and protection visa processing noting that the circumstances for remanding a person in custody are subject to regular judicial review.

The Ombudsman notes that the impact of these outcomes and the increasing numbers has resulted in the establishment of new secure and restrictive immigration detention facilities. Given that the length of time for processing and the failure of established policy to resolve the complex circumstances of detainees, the Ombudsman strongly urges the implementation of the detention values in the spirit intended, that people

would be detained in immigration detention centres only as a last resort and for the shortest duration practicable.

(S) Any other matters relevant to the above terms of reference.

The Ombudsman refers the Senate Select Committee to the report on the Ombudsman's own motion investigation into Christmas Island immigration detention facilities, February 2011. This report is attached.

The Ombudsman would be happy to appear before the Committee to give evidence and provide further suggestions for improvements in Australia's Immigration Detention Network and to the processing of irregular maritime arrivals.