



ASRC Submission

11th August 2011

Joint Select Committee on Australia's Immigration Detention Network

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

Friday, 11 August 2011

Dear Secretary,

Re : Australia's Immigration Detention Network

Thank you for the opportunity to provide a submission to this inquiry. Due to time constraints the attached submission is brief, however we stress that the brevity of this submission does not in any way reflect a lack of concern with current crisis in the detention centres and places of detention both on and off shore in Australia.

It is our belief that the continuation of the current indefinite mandatory detention policy fulfils none of its stated aims and is deleterious both to the health and well-being of the people denied their freedom and destructive to the cohesion of the Australian community.

Yours sincerely,

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Joint Select Committee on Australia's Immigration Detention Network

Background

The ASRC is Australia's largest asylum seeker aid, health and advocacy organisation. We are an independent, non-federal-government-funded agency caring for over five thousand asylum seekers. We provide over twenty direct aid and advocacy programs including legal aid, ESL classes, health service, counselling, casework, food bank, daily lunch, employment assistance and social support. Our services are operated by a team of around five hundred volunteers, as well as nine full-time and sixteen part-time paid staff. The ASRC also liaises and works with other organisations to provide services.

Summary

1. The ASRC believes that mandatory detention as a policy of general application should be abolished. This submission is focused upon this and related issues.
2. Section 1 of this submission addresses mandatory detention through the lens of the 'Key Immigration Detention Values', as pronounced in July 2008 by the then Minister for Immigration and Citizenship, Chris Evans. This section demonstrates that the Labor Government has failed to uphold the values that were supposed to distinguish it from the extremes of the Howard Government. The Government's failure arises from its refusal to acknowledge the inherent contradiction between humane, just migration policy and mandatory detention.
3. Section 2 of this submission makes the case that the only humane and cost effective policy, which upholds the stated values of the Department of Immigration and Citizenship (DIAC), and Australia's international legal obligations, is the replacement of mandatory detention with proven community-based approaches.

Section 1: The current system of mandatory detention has failed

In a 2008 speech, 'New Directions in Detention – Restoring Integrity to Australia's Immigration System', the Minister of Immigration and Citizenship outlined seven values that were to guide and drive detention policy and practice into the future.¹ These values were to mark a departure from the

low levels to which Australia had sunk during the Howard Government. The values sought to provide a 'humane and risk-based approach' to the management of people in immigration detention. We examine these seven values to demonstrate that not only has the Government failed to uphold its own principles, but that this failure is due to the retention of mandatory detention as the core of government policy.

Mandatory detention is ineffective

Values 1 and 2 of DIAC's 'new directions' policy reaffirmed mandatory detention as the core of their policy on strong border control. Together, they state that:

- 1. Mandatory detention is an essential component of strong border control.**
- 2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:**
 - a. all unauthorised arrivals, for management of health, identity and security risks to the community**
 - b. unlawful non-citizens who present unacceptable risks to the community and**
 - c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.**

If, by 'strong border control', it's to be implied that the system will ensure that no asylum seeker will dare approach our shores to ask for protection, then detention has proven to be a miserable failure. The nineteen years of people arriving by boat contradict governmental assumptions that detention is an effective deterrent. The Government is thus called upon to base policy on empirical evidence, rather than on false, albeit long-standing, assumptions regarding refugee movements.

As UNHCR's most recent study of detention has found,² no empirical evidence is available to give credence to the assumption that the threat of being detained deters irregular migration or, more specifically, discourages persons from seeking asylum. A growing body of evidence calls into

¹ Minister of Immigration and Citizenship, 'New Directions in Detention – Restoring Integrity to Australia's Immigration System,' 29 July 2008, <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>.

² Alice Edwards, 'Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention," of Refugees, Asylum Seekers, Stateless Persons and Other Migrants,' *UNHCR Legal and Protection Policy Research Series*, April 2011. See executive summary pp. III-V.

question the purpose and effectiveness of detention as a policy for deterring irregular migration, preventing absconding, or ensuring persons are available for removal.

These findings are corroborated by a joint research project conducted by the International Detention Coalition and the La Trobe Refugee Research Centre.³ As reported in this study, existing evidence and government statements suggest a policy of detention is not effective in deterring asylum seekers, refugees and irregular migrants. Instead, this report and numerous others demonstrate that:

- The principal aim of asylum seekers and refugees is to reach a place of safety.
- Asylum seekers have a very limited understanding of the migration policies of destination countries before arrival.
- Asylum seekers are often reliant on people smugglers to choose their destination.
- Those asylum seekers who are aware of detention believe it is an unavoidable part of the journey.

The factors that most impact on the choice of destination are:

- The prospect of being reunited with family or friends.
- Safety, tolerance and democracy.
- Historical links with their own country.
- Familiarity with the language.

Australia's experience of mandatory detention clearly supports these conclusions. Despite the persistence of Australia's policy of mandatory detention since 1991, asylum seekers continued to arrive during the 1990s and 2000s and continue to do so today (see Table 1).⁴ The number of asylum seekers arriving by boat only fell markedly after the comprehensive interception measures in the early to mid-2000s. Yet as international asylum seeker flows during this period demonstrate, much of the drop is not due to domestic policy but to 'push' factors: repression, discrimination, ethnic conflict, human rights abuses and civil war in countries of origin. As forced-migration expert Dr Khalid Koser has noted:

³ International Detention Coalition (IDC), 'There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,' 2011, p. 1.

⁴ Janet Phillips and Harriet Spinks, 'Boat arrivals in Australia since 1976,' *Parliamentary Library Background Note*, updated 15 July 2011.

There is wide consensus among both scholars and refugee organisations that conditions in origin countries – so-called ‘push’ factors – tend to be more important than conditions in destination countries (‘pull’ factors) in explaining the movement of refugees.⁵

Table 1: Boat arrivals in Australia since the introduction of mandatory detention

Year	Number of boat arrivals (persons)
1991	214
1992	216
1993	81
1994	953
1995	237
1996	660
1997	339
1998	200
1999	3721
2000	2939
2001	5516
2002	1
2003	53
2004	15
2005	11
2006	60
2007	148
2008	161
2009	2849 (includes crew)
2010	6879 (includes crew)
2011 (to 30 June)	1675 (includes crew)

⁵ Khalid Koser, ‘Responding to Boat Arrivals in Australia: Time for a Reality Check,’ *Lowy Institute for International Policy*, December 2010, p. 6.

Mandatory detention was introduced in 1991 to deter others from arriving. The pattern of arrivals by boat over the past nearly 20 years is proof that this policy does not and never has achieved this objective.

Mandatory detention is an unnecessarily blunt instrument to use against people at the time when they are at their most compliant. Asylum seekers arriving by boat on Australia's borders have always presented themselves to authorities in order to seek legal status and protection. During this process there is no reason why they would jeopardise the process by going into hiding.

Indeed, between 18 October 2010 and 27 July 2011 1601 individuals (823 adults, 514 accompanied children and 264 unaccompanied minors) have been have been released to community detention while awaiting the outcome of their application, and not one has disappeared.

The effect of locking people up has been destructive to the mental and physical health of asylum seekers, deleterious to the growth and development of their children, and has been the cause of five recent deaths, countless suicide attempts and terrible harm. This harm is spreading through the Australian community, manifesting itself in racist language and behaviour, fracturing the cohesion of this nation of immigrants.

Children in detention

DIAC's third value states that:

- 3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).**

Despite the Migration Act being amended in 2005 to affirm 'as a principle' that a minor should only be detained as a last-resort measure, this is clearly not happening. Children, including juvenile foreign fishers and Indonesian crew on boats, are detained in places named Alternative Places of Detention (APODS), or Residential Housing Projects (RHP), or Transit Accommodation (MITA). According to DIAC, these Alternative Places of Detention are 'markedly different to that in a regular IDC.'⁶ Yet these places of detention are fenced, gated and locked, providing no freedom of

⁶ Department of Immigration and Citizenship, 'Response to the 2010 Australian Human Rights Commission Report on Immigration Detention on Christmas Island,' 2010, p.8,

movement. They have extensive surveillance such as laser beams on fences, cameras and security staff patrolling the perimeter, as well as internal control. Guards enter the bedrooms at 11pm–12am and again at 5am–6am to check on the ‘clients’, including children, and rooms are searched as ordered. Children in many places have been denied access to school for months.

CASE STUDY 1

No child went to school from April to October 2010 in the Darwin APODS. Teenage boys as young as 13 still have no access to secondary school in either isolated or city centres. All children are escorted by guards to school in white vans. Their bags are often searched on the inwards and outwards journey.

While these places of detention may not be called IDCs, they are places where all liberty is suspended and where parents have little say in the care of, and in the food available to, their children. In some instances children have been held in actual IDC’s. Unaccompanied minors have been transferred to the Maribyrnong Immigration Detention Centre and the Northern Immigration Detention Centre as punishment. A teenage boy on Christmas Island in June 2011 was detained in Lilac compound.

CASE STUDY 2

Indonesian teenagers have been held in secret detention in Berrimah House, Darwin. This only came to light when two Afghan boys were placed there and had the right to take phone calls. This required three phone calls to Serco and DIAC staff to achieve because the Berrimah House Staff stated categorically that ‘no one is allowed to ring in or ring out of this place.’ Indonesian boys aged 14 to 17 years were held without legal representation or advice for up to 11 months.

The damage of detention on children has been well established. Most recently, the United Kingdom’s first large scale investigation into the harms caused by detaining children for immigration purposes found children were seriously physically and psychologically harmed – they found signs of

developmental regression and that children have attempted suicide. It concludes with the recommendation to end the detention of children and their families for immigration purposes.⁷

In Australia, the dire psychological effects of immigration detention on children and their families have been well established. According to Professor of Psychiatry Dr Louise Newman, clinical psychologists are still treating children and parents today from the trauma they suffered in detention a decade ago during the Howard Government.⁸ A recent examination into the damage and risk of damage for children currently in immigration detention by the *Australian and New Zealand Journal of Public Health* supports these earlier conclusions. Even in so-called 'Alternative Places of Detention', there are families suffering greatly, with evidence of 'severe psychological disturbances', emerging, which were endemic ten years ago.

Prolonged detention

DIAC's fourth value states:

- 4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.**

As yet there has been no announcement from the Government as to how the Ombudsman's Office is to deal with the avalanche of long term detention reviews which are mandated by law as being every two years. These two-yearly reviews, many of which must occur in the next two months, when hundreds, and soon to be thousands, of people join the queue of the long term detained. There are five people from the first boat in October 2009 who are still in detention among the 6,401 people (July 2011) in over 26 places of detention across Australia.

Ministerial values state that detention that is indefinite or otherwise arbitrary is not acceptable and that the length and conditions of detention, including the appropriateness of both the

⁷ Jon Burnett, et al, 'State Sponsored Cruelty: Children in Immigration Detention,' *Medical Justice*, 9 September 2010. Available from <http://www.medicaljustice.org.uk/content/view/1420/89/>.

⁸ ABC interview by Leigh Sales with Professor of Psychiatry Dr Louise Newman, 'Immigration Detention System on Verge of Collapse,' <http://www.abc.net.au/lateline/content/2010/s3011845.htm>, 14 September 2010.

accommodation and the services provided, would be subject to regular review. The opening statement of the Palmer Report was unequivocal on the importance of freedom and personal liberty

“Protection of individual liberty is at the heart of Australian democracy. When there exist powers that have the capacity to interfere with individual liberty, they should be accompanied by checks and balances sufficient to engender public confidence that those powers are being exercised with integrity.”⁹

The Ombudsman’s Office and the Human Rights Commission are the only bodies mandated to monitor detention. Both are dependent on government funds and resourcing to carry out this duty. They have not been resourced to undertake the six month checks on the continued detention of the person so this review of detention has not been undertaken. The internal monitoring by DIAC is executed in a commercial in-confidence contract with Serco, the company which runs the detention camps.

Detention was lengthened by government policy when Hazaras were subject to processing suspension for six months and Tamils for three months. The result has been that many Hazaras were not given a primary interview until nine or ten months after arrival. They then wait up to 12 months for a decision on this interview.

Mandatory detention is not a last resort

DIAC’s fifth value states:

5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.

However, this is not the case. All asylum seekers who arrive by boat are subject to mandatory detention irrespective of age, gender, physical or mental condition. Asylum seekers who arrive by air on valid visas are subject to mandatory detention if they seek asylum at the airport, or if immigration staff suspect that they might seek asylum. In this case their valid visas are cancelled and they are either placed in detention or on the next plane out of the country. There are other categories of persons subject to detention but this submission is primarily concerned with asylum seekers.

⁹ Mick Palmer, ‘Report: Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau’, July 2005. Available from <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf>

Detention as a last resort and for the shortest possible time is clearly breached as a rule. Detention is the first and only resort and is arbitrarily imposed as the following case studies demonstrate.

CASE STUDY 3

One Sunday night in May 2011, a young woman arrived with her ten-month-old baby, at Tullamarine airport from Bahrain where human rights advocates are being persecuted and killed. She had both a valid visa and passport. She was stopped at immigration and examined because Bahrain is on the watch list of possible asylum seekers. It was discovered that her husband was already in Australia, having also arrived on a valid visa and passport and then applied for a protection visa. He is living in the community on a bridging visa while awaiting a decision. This young woman's visa was then cancelled which is legal and permitted under the migration act. Immigration then attempted to put her on another flight and send her back – a turnaround. It wasn't possible that night so she was taken to detention at the Melbourne Immigration Transit Accommodation, pending removal the next day. Her husband knew of her arrival and tried desperately to see her. He was blocked so he contacted his lawyer who visited her, sought instructions and filed a protection visa application for her and fought for the husband's right to see his wife and child. Immigration then proceeded to arrange her immediate removal to Darwin.

CASE STUDY 4

A Tamil family were refused after 12 months. All this time they were held in detention. The mother had been tortured and the child witnessed this torture. They are still awaiting a decision on their review. In total, they were kept in detention for 16 months before moving into community detention.

CASE STUDY 5

Currently there are 37 people in detention who have been found to be refugees and thus cannot be returned but who have also been named a 'security risk' by ASIO. This

leaves them in indefinite, mandatory detention. So far the Government and DIAC have offered no solution.

CASE STUDY 6

A 17-year-old unaccompanied minor (UAM) has been designated a security risk without an interview by either the Australian Federal Police or ASIO.

CASE STUDY 7

Stateless people are another group who remain in detention even though the Government cannot return them to any country. There are stateless people held on the grounds that identity and security checks are not completed, when the department knows that they cannot be returned. The indefinite detention of stateless Bedoons from Kuwait and Stateless Rohingyas from Burma is seeing these people deteriorate into deep depression. There are currently 392 Stateless people held in detention who have no country to which they can be returned and who are thus in indefinite life long detention without committing any crime nor being sentenced by a judicial authority.

Mandatory detention is not fair

DIAC's sixth value states:

6. People in detention will be treated fairly and reasonably within the law.

No Australian protester, unionist or student has been subjected to the arsenal of weapons, which have been deployed by the Australian Federal Police against asylum seekers. Tear gas, pyrotechnics and bean bag pellets are now routinely deployed against people in detention in a way that would never be tolerated in the Australian community.

Mentally ill asylum seekers suffering depression or suicidal ideation are not treated nor removed from the places that exacerbate their condition. They are watched by cascading levels of surveillance from line of sight to within a metre of the person. This is not a therapeutic intervention for someone undergoing a mental health crisis.

Another illustration of the Government's violation of its own principles in regards to the fair treatment of asylum seekers comes in the form of an important policy document released in April 2009: *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma*.¹⁰ The purpose of this policy is to ensure torture and trauma victims are supported in a timely and appropriate manner. According to the document, victims of torture and trauma are to be placed in the community as a first preference, while detention should be a last resort. This policy is in direct conflict with the current practice of placing arrivals by boat in mandatory detention given the high rates of torture and trauma survival within this group. This policy is being ignored with dire health consequences for detainees, as the case below illustrates.

CASE STUDY 8

An Iranian man who was granted a visa waited in detention for ten months for his security check before being transferred to the community, in spite of repeated and urgent requests for his removal from detention. He had been extensively tortured and his body bore the scars of six years of imprisonment. He had a bullet in his buttock, smashed knees and internal bleeding. He explained that his torturers pulled out the nails on his toes, broke the fingers in his hand, beat him until his eardrums burst and inserted metal instruments into his body. His brother was executed and his parents are dead. 'I was arrested and accused of assisting my brother. I can prove all this with documents and papers.' He asked to be treated with 'dignity and decency.' He said 'I did not come here for money or because I am hungry. I have enough money. I come because of the savage regime in Iran.' He said that 'Here I have been ignored ... All I am asking is that you hospitalise me and treat me. I have seen the well-equipped hospital not ten minutes from this place ... All that is happening in here is that I am given painkillers.'

¹⁰ Department of Immigration and Citizenship (DIAC), 'Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma,' 3 April 2009. Available from <http://www.asrc.org.au/media/documents/immigration-detention-torture-and-trauma-policy.pdf>.

There is no dignity in mandatory detention

DIAC's seventh value states:

7. Conditions of detention will ensure the inherent dignity of the human person.

The treatment of asylum seekers inside Australia's detention system clearly demonstrates that the 'dignity of the human person' is far from guaranteed. The experiences of the people below provide just a small sample of the daily incidences of humiliation and disrespect that asylum seekers are forced to endure.

CASE STUDY 9

Women in Darwin waited months for spare underwear, as they had only the clothes they came off the boat with. It was only after media pressure was applied that underwear was provided. There was a Kmart within ten minutes walking distance where cheap underwear could have been purchased, but this was denied them, with Serco staff insisting that it be supplied from afar. Women had to ask male officers for sanitary pads. They were not issued with a packet but singles, or trebles if they were lucky. There is no dignity in begging for basic items of self care.

CASE STUDY 10

A young woman who was breast feeding her baby was detained in a single motel room with two officers, one male and one female, sitting at her bedside within a metre of her in a small room. This Shia Muslim woman was terrified all night because in her country, women in custody are raped. When she was visited it was found that, while she had been moved into a two room motel unit, a female guard insisted on sitting in the bedroom with at all times while the male guard sat in the room adjacent bellowing orders.

That lack of dignity in mandatory detention is also expressed in the form of the increasingly dire mental health effects on detainees. Many of Australia's leading health professionals have condemned Australia's policy of mandatory detention due to the severe physical and mental health

consequences for detainees. There have been six deaths in 2010/ 2011, five of these by suicide, in Australia's detention centres, while the Ombudsman reports that more than 1100 incidents of threatened or actual self-harm occurred across all places of detention in 2010–11.¹¹ According to Dr Louise Newman, however, 'these figures are likely to be an underestimate ... anecdotally we are looking at least across the system every night one very near miss suicide'.¹²

Section 2: Community-based alternatives are the solution

The Australian experience of community-based alternatives

After consistent and damning criticism by numerous NGOs, international human rights bodies and government-commissioned reports, the Australian government enacted legislative changes in 2005 that enabled a number of 'alternative to detention' programs to be piloted. As a result, the Community Care Pilot (later the Community Assistance Support Program) was developed to provide health and welfare support and assistance to persons in community-based arrangements according to strict eligibility criteria. Each individual is assigned a case manager who is responsible for the communication of refugee process, as well as for welfare issues. The program provides help with basic living expenses, finding suitable accommodation, essential healthcare and medical expenses, counselling, and legal aid where eligible. Between May 2006 and 30 June 2008, the pilot assisted 746 persons in various ways. In 2009–10, the program dealt with 184 cases. The program has yielded a 94% compliance rate over a three-year period.¹³

DIAC has recognised the superiority of this model. In September 2008, DIAC, in its submission to the Joint Parliamentary Committee on Migration's Inquiry into Immigration Detention, stated:

Outcomes of both the Community Care Pilot and the Trial have been very positive. The evaluation of the CCP showed that the provision of health and welfare support, together with access to independent immigration advice, assists in stabilizing the client's

¹¹ Allan Asher, 'Australia's immigration detention values: milestones or motherhood statements?', *Commonwealth Ombudsman*, 29 July 2011. Available from <http://www.ombudsman.gov.au/media-releases/show/190>

¹² *ABC World Today* interview by Alexandra Kirk with Professor of Psychiatry Dr Louise Newman 'Ombudsman Question Detention Values,' <http://www.abc.net.au/worldtoday/content/2011/s3280888.htm>, 29 July 2011.

¹³ Alice Edwards, 'Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention," of Refugees, Asylum Seekers, Stateless Persons and Other Migrants,' *UNHCR Legal and Protection Policy Research Series*, April 2011, pp. 67-69.

circumstances, and therefore allows the client to have a better understanding of their immigration status and resolution options. Subsequently, clients are often able to exercise an informed choice about realistic immigration pathways open to them.¹⁴

Well supported community-based asylum seekers are have high compliance rates

In order to ensure release into the community as an alternative to detention effective, it is important that all individuals have the right to access the means to meet their basic needs. Asylum seekers are unlikely to abscond if they believe they have been fairly treated and have been well informed and supported throughout the process. Furthermore, asylum seekers are unlikely to abscond as they have already gone to extraordinary lengths to reach the destination country and it's in their interest to comply with the refugee process. Three years after children and their families were released from detention in 2005, less than 1% had absconded, with no reported violation of conditions.¹⁵ A recent international study collating evidence from 13 community-based programs found compliance rates among asylum seekers awaiting a final outcome ranged between 80% and 99.9%.¹⁶ Other examples include:

- A pilot project in Australia achieving a 93% compliance rate.
- Hong Kong achieving 97% compliance rate with asylum seekers or torture claimants in the community.
- The United States having an 85% compliance rate for asylum seekers living independently in the community.
- Community-based programs in Canada maintaining a 96.35% compliance rate.

Based on five years of data, UNHCR's 2011 report into alternative detention arrangements concluded that, asylum seekers very rarely need to be detained or, indeed, restricted in their movements prior to a final rejection of their claim. As the table below demonstrates, compliance and cooperation rates for individuals in community-based arrangements are very high.¹⁷

¹⁴ DIAC quoted in, International Detention Coalition (IDC), 'Case Management as an Alternative to Immigration Detention: The Australian Experience,' June 2009, p. 13

¹⁵ International Detention Coalition (IDC), 'Case Management as an Alternative to Immigration Detention: The Australian Experience,' June 2009, p. 1.

¹⁶ International Detention Coalition (IDC), 'There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,' 2011, p. 17.

¹⁷ Alice Edwards, 'Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention," of Refugees, Asylum Seekers, Stateless Persons and Other Migrants,' UNHCR Legal and Protection Policy Research Series, April 2011, p. 82.

Program (asylum seekers; return cases; mixed caseload)	Compliance or cooperation rates (%)	Absconding rates (%)
Australia (mixed)	94	6
Belgium (mixed)	80	20
Friendship House, Pennsylvania, USA	99	1
Hamilton House, Canada (mostly asylum seekers)	99.9	0.01
Hong Kong (mixed)	97	3
Liverpool Key Worker Pilot, UK (asylum seekers)	95.5	4.5
Lutheran Immigration and Refugee Services (asylum seekers)	99	1
Matthew House, Canada (mostly asylum seekers)	99	1
New Orleans, USA (mixed)	96	4
Sojourn House, Canada (asylum seekers)	99.95	0.05
South Bank University, UK (asylum seekers)	90	10
Toronto Bail Program, Canada (mixed)	96.35	3.65
Vera Institute of Justice, USA (asylum seekers)	84	16

Community-based programs are cost effective

It is virtually universally accepted that community-based alternatives are more cost effective than mandatory detention. Estimates vary depending on the number of people in detention and the lengths of their stay, but the operating costs of detention centres for 1326 asylum seekers in 2003 were in the vicinity of \$2 million per week.¹⁸ The number is certain to be significantly higher now that, as of July 2011, there are 6401 people in detention.¹⁹ Offshore processing is even more expensive than detention on the mainland because of the increased cost of delivering services to

¹⁸ Joint Standing Committee on Migration, 'Second report of the inquiry into immigration detention in Australia,' May 2009, p. 116.

¹⁹ http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/submissions.htm

remote locations. A report by Oxfam and A Just Australia put the cost of the Pacific Solution, which saw asylum seekers detained on Manus Island and Nauru, at more than \$1 billion over five years, or \$500 000 per person.²⁰ The Christmas Island detention centre will cost almost \$1 billion over the next five years to 2013–14.²¹ Next year (2011–12) the Government will spend \$709 million on asylum seeker detention and related costs.²²

In comparison, as a general estimate, it is expected that the cost of processing asylum seekers while they live in the community would be equivalent to the income assistance rate currently paid through the Asylum Seeker Assistance Scheme (ASAS). The government spent \$9 million on this scheme to provide services to 2802 asylum seekers already living in the community over the entire financial year of 2009–10. While this does not include any additional health, counselling and case-management costs, the total figure is undoubtedly significantly lower than the billions spent on holding asylum seekers in detention. International comparisons support this conclusion. In the United States, a three year test of a community-based alternative cost US\$12 per day compared with US\$61 per day for detainees in the same period.²³ While community-based programs in Canada cost C\$10-12 per person per day compared with C\$179 for detention, or 18 times cheaper.²⁴

Community arrangements are far more cost effective because they do not require purpose-built detention facilities, which have to be staffed, maintained and operated, as well as have security guards 24 hours a day. This is widely recognised. An international survey by UNHCR found that ‘almost any alternative measure will prove cheaper than detention.’²⁵ An Australian parliamentary inquiry into the costs of detention presented overwhelming evidence that detention is an unnecessary burden, concluding that ‘community-based alternatives are cost-effective options to the current regime and are consistent with a robust and enforceable system.’²⁶ Even DIAC recognises this reality. Bob Correll, Deputy Secretary of DIAC, noted in 2009 that ‘where someone has been in a detention situation in the community, generally the cost of that is lower than other forms of detention, such as residential housing, transit accommodation or in a detention centre.’²⁷

²⁰ Karlis Salna, ‘Abbott unveils new Pacific Solution,’ the *Sydney Morning Herald*, 27 May 2010.

²¹ ‘Cost of Christmas Island blows out to almost \$1b,’ the *Sydney Morning Herald*, 11 May 2010.

²² John Menadue, ‘Counting the cost of immigration detention,’ *ABC Drum*, 17 May 2011.

²³ International Detention Coalition (IDC), ‘There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,’ 2011, p. 39.

²⁴ International Detention Coalition (IDC), ‘There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,’ 2011, p. 44.

²⁵ UNHCR, ‘Alternatives to Detention of Asylum Seekers and Refugees,’ April 2006, p. 48.

²⁶ Joint Standing Committee on Migration, ‘Second report of the inquiry into immigration detention in Australia,’ May 2009, p. 128.

²⁷ Joint Standing Committee on Migration, ‘Second report of the inquiry into immigration detention in Australia,’ May 2009, p. 120.

International Comparisons

Australia is an exception within the international community in its use of mandatory detention. Most countries do not use detention as the first option to manage asylum seekers, refugees and irregular migrants in the majority of cases. Some countries do not make use of immigration detention at all, including several in Latin America, such as Brazil, Peru, Uruguay and Venezuela. There is a presumption against detention in Argentina, Venezuela, Peru, Uruguay, Brazil, Austria, Germany, Denmark, the Netherlands, Slovenia and the United Kingdom. There are also alternatives to detention in law, policy or practice in New Zealand, Venezuela, Japan, Switzerland, Lithuania, Denmark, Finland, Norway, Sweden, Austria, Germany and Canada. The detention of minors is prohibited in Panama, Belgium, as is the detention of unaccompanied minors in Hungary. Many countries house asylum seekers in open accommodation centres while undertaking identity confirmation, including Sweden, Finland, Germany and Canada. Asylum seekers are screened on an individual basis to determine the necessity to detain in Canada, the United States, the United Kingdom and Hong Kong.

As the table below illustrates, there are various alternatives to Australia's mandatory detention regime in practice all across the world.²⁸

Country	Immigration Detention Policy
Argentina	Does not detain irregular migrants except in rare instances during deportation procedures. Even when used, detention is considered a tool of last resort after all avenues have been explored, is limited to 15 days and must only be warranted under the order of a court. Recognising that migration benefits the economy, Argentina has developed a system which legitimises irregular migrants into the formal migration process.
Canada	The decision to detain irregular migrants is subject to review within 48 hours of detention, then within another seven days and every 30 days thereafter. At these reviews, immigration authorities must demonstrate the grounds for detention are justified for a reason outlined in law. Detainees may request an earlier review hearing if they have new facts pertaining to the reasons for their

²⁸ International Detention Coalition (IDC), 'There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,' 2011.

	detention. Eligible detainees are provided with free legal representation. A bond may be offered – sometimes by NGO's to support those who cannot afford it – increasing the likelihood of a favourable decision and release into the community.
Hong Kong	Authorities undertake screening and assessment of irregular migrants when considering detention. After being detained for a short period, most asylum seekers are released into the community. Government-funded housing as well as food, clothing and medicines are provided. NGO's provide pro bono legal advice and support services.
New Zealand	The law permits immigration officers to provide community-based alternatives to asylum seekers. The officer has the power to restrict movement to a specified place and time and provide a guarantor to ensure compliance.
Philippines	Unauthorised asylum seekers may be issued with documentation and released into the community. Children are generally not detained or, if so, are released as a matter of course under the care of the Department of Social Welfare and Development, which provides shelter, health care and other services.
Spain	Asylum seekers and refugees can be housed in open reception centres for up to 12 months if they cannot afford private accommodation, with priority given to vulnerable individuals. After that time they are assisted to find independent housing and employment. Residents in these reception centres can come and go as they like. There are catered meals, public lounge areas, a library, shared computers and internet access and a shared laundry. Residents are given money for clothes in addition to €50 per month cash allowance for their own use. Social workers are appointed to assist them accessing education, health care and other social systems. Recreational activities such as sports, visits to the local library, exhibits and movies are supported by an activities officer. Psychological services and legal aid are available for eligible residents. Spain law allows everyone on Spanish territory to access medical care, no matter their legal status.
Sweden	Asylum seekers spend about a week in an initial processing centre for government checks. After this time, they can live independently in the community if they have their own funds, otherwise they are placed in open accommodation, usually a furnished apartment. Asylum seekers receive a minimal daily allowance and use this to buy and prepare their own meals. They

	have access to lawyers, emergency health and dental care, with children receiving the same medical care as Swedish children. If working, they contribute to the costs of their food and accommodation. Even in the case of a negative outcome, asylum seekers have two months where they are supported by case managers to leave voluntarily. Detention is only applied as a last resort if independent departure is unsuccessful, and even then, appropriate accommodation and facilities are provided where staff work to build a culture of dignity and respect with clients.
Venezuela	There is no law allowing for the detention of migrants. When implementing deportation, migrants <i>may</i> be restricted to a particular town or locality <i>for a maximum of thirty days</i> .

A workable solution

In light of the evidence presented here, the ASRC proposes that the Government move to abolish non-reviewable mandatory detention for all asylum seekers regardless of their individual circumstances. The decision to detain may be required in some circumstances for security and identity checks. However, this must be subject to judicial review to ensure the grounds for the detention can be properly and continually assessed and justified. The right to judicial review must include the right for asylum seekers to challenge any adverse security assessments. Children should not be detained under any circumstances.

Article 9 of the International Covenant on Civil and Political Rights (ICCPR) provides that ‘Anyone who is deprived of his [or her] 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 [or her] detention and order his [or her] release if the detention is not lawful.’ Similar procedural rights are found in the regional human rights instruments in Africa, the Americas, and the Council of Europe.²⁹

The ASRC proposes that hostel accommodation is provided until a residential address in the community is secured (e.g., with friends, family or through a community organisation) for people who arrive as unauthorised arrivals to seek asylum. We believe asylum seekers should have the option of staying in such hostel accommodation for the duration of the protection-visa process if

²⁹ Alice Edwards, ‘Back to Basics: The Right to Liberty and Security of Person and “Alternatives to Detention,” of Refugees, Asylum Seekers, Stateless Persons and Other Migrants,’ *UNHCR Legal and Protection Policy Research Series*, April 2011, p. 37

they so wish, or to reside in the community if they have secure accommodation options. The advantages of such a scheme would include setting newly arrived asylum seekers up with support structures to ensure they comply with visa conditions and are able to access services that they need, including legal and welfare. This would ensure that asylum seekers promptly declare their intention to lodge a protection visa and lodge their applications for protection in a timely manner.

Mandatory detention is an expensive and unnecessarily blunt instrument to impose on irregular arrivals. An early assessment and community release as a first resort would not only ensure human rights obligations are met and money is saved, but it would also send a message to the community that refugees and migrants are not to be feared but rather to be welcomed into this nation of immigrants to live in peace and cohesion. We believe that the evidence of boat arrival flows since 1992 when Mandatory was first introduced, demonstrates that it is not a deterrent. We also believe that the evidence of the transfer of 1601 asylum seekers into community detention from October 2010 – June 2011 demonstrates unequivocally that people do not need to be locked up to ensure that they are available for the processing of their claims as is often claimed. These people did not disappear and both their mental and physical health was vastly improved by their release from detention. To deprive a person of their personal liberty and freedom is a serious matter only to be undertaken for valid and serious reasons. It is time to acknowledge that denying this fundamental right to people who seek asylum in Australia, is inexcusable.

“Look now I am human- before I was animal,” Hazara man standing outside his flat, 5 days after his transfer into community detention from a detention centre.