



Submission to the Joint Select Committee on Australia's Immigration Detention Network

1. INTRODUCTION

The Coalition for Asylum seekers, Refugees And Detainees [CARAD] has always opposed, and continues to oppose, the mandatory detention of asylum seekers.

CARAD welcomes the opportunity to respond to this Inquiry and will touch briefly on a number of the terms of reference.

CARAD is a Perth based non-government agency established eleven years ago to provide settlement and related services to refugees who held a Temporary Protection Visa. We have provided advocacy and services for over 5,000 refugees and asylum seekers and rely on a strong network of trained volunteers. Since 2000 CARAD volunteers have also visited Immigration Detention Centres (IDCs) to provide support, friendship and advocacy, so over that period the agency has developed a good idea of the conditions in which asylum seekers are detained. CARAD now holds a sizeable archive of documents, letters and reports related to IDC's throughout Australia as well as Nauru.

The current functions of CARAD include:

- agency of last resort for persons who have applied for protection and hold a bridging visa;
- home tuition for school-children and for parents (State Govt. funded and supported);
- a range of practical supports for people with a refugee background;
- a volunteer visiting, advocacy and referral service for asylum seekers in IDCs;
- a UNVFTV funded social worker to identify and provide support primarily for victims of torture in remote IDCs.

Besides advocacy for individuals in IDCs, CARAD has made submissions to the following relevant/related inquiries:

- 2000: Flood Inquiry
- 2001: HREOC Inquiry re children in detention
- 2003 Ministerial Discretion
- 2009: Detention Values Statement

2. TERMS OF REFERENCE: COMMENT

(d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;

As noted above, CARAD made a submission to the HREOC Inquiry in 2001. Sadly since then little, if anything, has changed. It is of note that children we knew at that time who had been damaged by detention experiences still remain vulnerable for a range of reasons. Much chronic mental illness in the refugee population must owe its genesis and ongoing social and economic costs to time in Immigration Detention Centres.

The Convention on the Rights of the Child which emphasises the test of the 'best interests of the child' should be the point of reference when children in families and unaccompanied minors claim asylum. Children should not be detained at all and during the period of assessment should be kept with their family in a community based facility in a capital city. The same should apply to unaccompanied minors.

Children and minors should only be interviewed by migration agents who have undergone special preparation to work with children.

Qualified mental health workers should be available on site for asylum seekers.

The research and publications of Professor P. McGorry and Dr Z. Steele, for instance, clearly demonstrate the harmful potential of long indefinite detention for the mental health of all individuals. From depression and anxiety individuals, perhaps having already been subject to torture, become withdrawn and/or angry and fearful and then self harming with some making suicide attempts, a few of them unfortunately being successful. McGorry has rightly labelled IDC s as 'factories for mental illnesses'.

Detention Centres are often likened to prisons, yet prisoners know the end date of their incarceration while asylum seekers who have not committed any crime have no idea when they might be released or where they will be released to. And incidentally those few who have been sentenced to a prison term comment that prison life compared favourably to that in immigration detention.

CARAD wants to make the point also that while welcoming a focus to release women and children into community based detention, the vulnerability of men must not be overlooked. They have been targeted in their country of origin and are often here without any direct family support. They have been left behind in remote IDCs and most are suffering mental illness as a direct consequence of delays in their claims processing.

Further for all these reasons and more, CARAD not only opposes mandatory detention, but the so called 'Malaysian Solution' for any asylum seekers

f) the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers;

It is the view of CARAD that outsourcing these contracts to private providers whose core business is/has been prisons and security, and whose responsibility to shareholders is profit,

is absolutely inappropriate. The outsourcing allows Government to be at arm's length from some of the long term and day-to-day-impact of detention on asylum seekers.

We note the volumes of academic analysis of how workers are required to adapt to institutions with bureaucratic cultures [e.g. prisons, mental hospitals, Government Departments] where the client is seen not as an individual, but as someone to be shaped to the needs of the institution. It is reasonable to make these assumptions in relation to the way that Commonwealth employees and contracted workers respond to both their working environs and to the needs of asylum seekers. However, those who have been prepared to work with detainees as individuals often pay a high personal price with mental illness and/or resignation—one officer recently having taken his own life after having found a young man who had committed suicide.

(I) compliance with the Government's immigration detention values within the detention network.

Asylum seekers and their advocates claim that detention is a form of punishment for vulnerable people who have done no wrong. During community consultations about the Bill to establish a framework of detention values, we made a submission that welcomed the proposals and the principles or values that underlined it including those that:

- recognise that people should be detained for the shortest time,
- state that a minor must not be detained in a detention centre unless as 'a measure of last resort', and,
- allows the fairer and more transparent arrangements for claims assessment including publicly funded independent advice, independent merits review and access to the Commonwealth Ombudsman by individuals in detention.

We said that the granting of 'temporary community access permits' for detainees for a specified period of time was a welcome relaxation of conditions that would ease the pressure that would continue to be felt. The intent seemed to be a much more humane and rights based approach to the individuals. Despite the stated intentions of the Government policy-framework of 'Detention Values', the shameful practices of the past have been re-instituted. These include

- Calling people by number and not name;
- Isolation cells and areas in which individuals who are alleged to have 'offended' are placed;
- This isolation extends to individuals who clearly have a mental illness, including self harming and suicide ideation. The isolation is done with no regard to safeguards that must be adhered to in mental health facilities where legal requirements must be adhered to;
- The cessation of Refugee Status Determination (RSD) for Tamil and Afghan people which has delayed outcomes of the RSD for more than a thousand individuals.

An increasingly large number of people have been detained for long periods [some >2 years] without feedback as to progress of their RSD. Even when recognised to be a refugee in need of protection, individuals are detained during the course of their ASIO security assessment—for many an inordinately long and anxious time that compounds any existing

mental health problems. Hundreds of children remain in detention and we point out that even in the Red Cross Community Detention project, though an improvement on remote prison-like detention, people remain detained awaiting the result of their claim.

Many asylum seekers are not detained. We point to the thousands of people who seek asylum each year, having arrived by plane with a visa and then ask for protection. During the course of their assessment for protection those applicants cause no risk to the community. Significantly less protection applicants who arrive by plane are successful compared to those who arrive by boat.

CARAD claims that there is no longer any visible or underlying commitment to the values.

(m) any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons;

CARAD remains concerned that long standing problems for asylum seekers are not resolved because of actual and perceived boundaries between jurisdictions. One of the most current issues means that the Minister for Immigration is both the guardian of children and also their 'jailer'. The obligation to consider the best interest of any child under a guardianship order cannot possibly be compatible with their detention. In our view guardianship should be a State responsibility delegated to the Commissioner for Children and as necessary to the Minister for Child Protection.

Other matters relate to health care and in particular to mental health care. The current newsletter from the Chief Psychiatrist of WA who asked for legal advice about the care of asylum seekers with a mental illness provides his advice to health professionals. The statement is reproduced in full below and should give cause for concern about the consequences of unresolved boundary matters. In CARAD's view, the position seems to be that the requirements of DIAC prevail over those of an individual with a mental illness. The jurisdictional boundaries between state and commonwealth prevent a high standard of health care.

There are a number of detention centres for asylum seekers in Western Australia including Christmas Island. At times when an asylum seeker suffers from mental illness and requires care and treatment they may be admitted to any authorised hospital

To clarify the legal issues the Chief Psychiatrist recently sought legal advice on whether asylum seekers with mental illness can be detained under the Mental Health Act 1996 (MHA); whether they should only be admitted as involuntary patients if they meet the criteria under the MHA, and whether any alternative powers of detention are available to staff in authorised hospitals.

The Department of Immigration and Citizenship (DIAC) provides guards in authorised hospitals to prevent asylum seekers, who are admitted under the MHA, from absconding. The usual practice of the authorised hospital is to admit an asylum seeker who is suffering from mental illness as an

involuntary patient into a secure ward so that a DIAC guard does not have to be present in the ward.

The Migration Act 1958 (Commonwealth) (Migration Act) governs the entry into and presence in, and deportation from, Australia of non-citizens. Under the Migration Act, it is mandatory for any non-citizen in Australia without a valid visa to be detained. This is known as “immigration detention”. These persons may only be released from immigration detention if they are granted a visa or leave Australia. The Migration Act allows the Minister to make a “residence determination” which means that a person who is in immigration detention, is to reside at a specified place which could be an authorised hospital under the MHA. Even though the MHA is a State law which is subservient to Commonwealth law, it is only invalid if it is inconsistent with a Commonwealth law.

*The Director of Immigration Detention at DIAC, notes that Western Australia does not have a memorandum of understanding with DIAC to allow clinical staff in hospitals to accompany and restrain detainees. **Therefore, it is necessary for an asylum seeker, who is admitted to an authorised hospital under the MHA, to always be “in the company of, and restrained by” a DIAC officer under the Migration Act.** [Chief Psychiatrist’s emphasis] DIAC takes a broad view of the expression “in the company of”, and takes it to mean “in the vicinity of”. As such, it is not necessary for a DIAC officer to be right next to a patient, but rather the officer could be in the next room or at the other end of a corridor, for example.*

In keeping with the provisions of the Constitution, DIAC and its officers will observe the provisions of the MHA, subject to the overriding need to maintain immigration detention under the Migration Act.

In summary, the MHA applies to an asylum seeker admitted to an authorised hospital as a patient (voluntary or involuntary) in the same way as they do to any other person in Western Australia. The provisions of the MHA would only be invalid if they were inconsistent with a Commonwealth law, such as the Migration Act.

Immigration detention (and any conditions specified in a residence determination) under the Migration Act will override any provisions relating to detention in the MHA, so that, even if a patient is admitted as a voluntary patient under the MHA, they would have to remain in immigration detention under the Migration Act.

Section 26 of the MHA states that a person should be admitted as an involuntary patient “only if” he or she meets the criteria specified in section 26(1). If the only reason for needing to restrict the movement of a person is because he or she is in immigration detention, then restraint of that person would fall solely within the provisions of the Migration Act, and it would be the responsibility of DIAC to ensure his or her detention.

The Director of Immigration Detention can be contacted to discuss any queries or concerns they have regarding specific situations that arise in relation to the detention of asylum seekers in authorised hospitals on 9415 9813 or 0403 398 850.

CARAD has received complaints from detained people about the way that individuals with suicide ideation or behaviours associated with a mental illness have been isolated at Christmas Island and at Curtin. The WA Mental Health Act [1996] provides a number of statutory safeguards for individuals who need to be secluded and a number of obligations on those caring for him/her. These obligations include the written authorisation of a medical practitioner, observations and recording in a ward register and a copy of the record available to the Mental Health Review Board [State Administrative Tribunal]. Such seclusion is to be for the shortest time possible. The legislation is to protect patients and their rights. CARAD is in the process of writing to the Chief Psychiatrist about what we consider to be neglectful isolation.

(h) the reasons for and nature of riots and disturbances in detention facilities;

(n) the management of good order and public order with respect to the immigration detention network;

It is noted that most IDC s often hold larger populations than any prison. The combination of grief, stress, disempowerment and hopelessness in a population of primarily young men is a recipe for unrest. It seems to CARAD that this unrest/protest does not come out of the blue and the responses of baton charging police, tear gas and 'bean bag' bullets is disproportionate to the behaviour.

One man we knew who attempted suicide in Perth IDC was isolated and currently CARAD has clients detained in both Curtin and Christmas Island who have reported that a period in an isolation cell is used as 'behaviour management' ranging from mental illness to protest or not obeying an 'order'. They have been stopped by guards from visiting a clinic and from obtaining medication. Others have claimed that guards search their rooms and have confiscated belongings; also that AFP and Serco guards have assaulted and beaten them and that Serco guards have been dressed in AFP uniforms at times.

One man said very eloquently: 'I escaped from my country because of this kind of behaviour and now they treat me just as bad as my authorities in my country'. These and other complaints are being followed up-by CARAD, some with the Ombudsman.

(o) (p) the total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees;

The data by line budget should be available to this committee directly from DIAC but is astronomical and cannot relate to any cost-benefit analysis for these programmes. \$800m has been allocated for the budget in the current financial year; one estimate being that between \$90,000 and \$100,000 will be spent for each detained asylum seeker. Community detention is less costly

(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;

This is of serious concern because the implications involve escalating ill health and protest as well as costs to the community. One population that will predictably remain longer than all others are those declared to be 'stateless', including Rohingya and Kurdish Faili individuals. Clearly provisions must be made for these populations.

(s) any other matters relevant to the above terms of reference

In its submission re Detention Values, CARAD noted that despite no changes being made to this designation of places of 'excision', the proposed changes that would establish the detention values would apply to any immigration detention centre in Australia, as well as immigration detention in an excised offshore place. There was at that time some confusion among non government agencies about the application at Christmas Island; however, we were assured that Christmas Island would be subject to these values.

The proposed legislation would allow the Minister to delegate to the Department the power to make residence determinations, so people could access community-based detention arrangements. This would apply in relation to people in excised offshore places, as would a proposed power to give 'Temporary Community Access Permission' to allow a detainee to leave a detention facility without an accompanying guard or other 'restraining' person. These would have been laudable and welcome reforms to detention policies and procedures that have the potential to change the culture from one of punishment and humiliation to one of dignity and respect for the individual.

The submission from Dr Pedersen provides one example of clear failure of this policy initiative when a detainee in Perth, already deemed to be a refugee, was unable to consult a private medical practitioner because of the potential cost of providing a guard.

3. CARAD OPPOSES MANDATORY DETENTION

As noted, one of CARAD's stated values is to oppose the mandatory detention of asylum seekers. CARAD also opposes the excision of various islands/waters in Australian territory, for the purpose of excluding asylum seekers, even when their lives are threatened. It can be argued that the exclusion zones amendments was a decision made in bad faith —as is the Malaysian 'solution'.

Australia remains the only Western signatory to the Refugee Convention that has a policy of indefinite mandatory detention for so-called 'irregular maritime arrivals'. Earlier this year the UNHCR pointed out that people who flee persecution do not view detention as a deterrent; this was countered by the Minister who claimed that detention is a 'management tool' allowing thorough assessment of those who arrive without a visa.

It is every person's right to ask for asylum if outside their country and if that country is unable to provide protection, the Refugee Convention obliges signatories to test that claim for protection. But in Australia asylum seekers are divided into two groups; those who arrive by boat are detained whilst those who arrive by air can live in the community during the time

their claim is determined. This is particularly absurd given the fact that people arriving by plane are less likely to be recognised as refugees compared with people who arrive by boat.

CARAD knows many individual men, women and children who suffered mental health and other problems while in detention centres since 1999 who continue to bear the scars of that experience. Detention breaches the rights of individuals and harms their mental and physical health as well as imposing unnecessary costs on Australian tax payers. There are several alternatives to mandatory detention for asylum seekers.

For instance, CARAD submits that a period not exceeding a maximum of one month in a metropolitan 'reception centre' would be a cost effective means for the Government to check identity, health and security risk. The Refugee Status Determination should then be attended to while the individual and/or family live in the community with compliance conditions similar to those imposed for bail - although no money would be demanded.

Experiences in IDC s, especially in those in remote parts of Western Australia, have in many instances compounded the torture and trauma issues for people fleeing persecution in their homelands, leading to such illnesses as depression and post traumatic stress disorders, self harming behaviours, suicide attempts and completion of such attempts. Detention is inherently harmful for people already suffering human rights deprivations, privations, humiliation and grief in their home countries.

It is CARAD's view that political polling and an uninformed electorate allow both major parties to boost their credentials for 'toughness' and deny these men, women and children their rights and entitlements as asylum seekers. By global standards very few asylum seekers arrive in Australia each year. In 2011-12, the Australian Government intends to spend more than \$800 million on immigration detention, much of it to be spent on costs associated with remote detention. This is wasteful and unnecessary expenditure. Despite the many reasons given for the length of detention, DIAC May 2011 data show that 6036 asylum seekers (97.5% of the total) were still waiting for the first stage of the process, the Refugee Status Assessment, to be completed.

Detention should **only** be used for the purpose of managing risk [see below]. The Australian Government's failure to implement a process based on risk management sees thousands of men, women and children being detained needlessly. People should be moved through the centres quickly and into the community; the advantages including a reduction of people succumbing to mental illness, in the numbers waiting for finalisation, and in costs. As most of these people will eventually be released to become Australian citizens, the healthier they are in every respect the better the outcomes for all of us.

The extraordinary nature of Australia's indefinite mandatory detention policy was highlighted at a recent UNHCR roundtable in Canberra on alternatives to detention. The roundtable included input from the US, UK and New Zealand governments, as well as international research on detention policies of governments across the world.

No other country which has signed the Refugee Convention chooses to detain asylum seekers in the way that Australia does. Policies do vary but, for the most part, they are based on ensuring that vulnerable people are released from detention as quickly as possible following a brief risk assessment. Australia can turn to many other nations for such models.

4. CONCLUSION & RECOMMENDATIONS

These take into account the first term of reference

any reforms needed to the current Immigration Detention Network in Australia

Detention is harmful, expensive and unnecessary; it should **only** be used for the purpose of managing risk. The Australian Government's failure to implement a process based on risk management sees thousands of men, women and children being detained needlessly. People should be moved through the centres quickly and into the community; the advantages including a reduction of people succumbing to mental illness, and in costs.

In any case and for all people detained the following are minimum requirements:

- more resources for the RSD must be allocated;
- high quality medical and health care staff, especially for mental health prevention and treatment programmes, should be more readily accessible more training is necessary;
- all individuals who have been recognised to need protection should be released during the time it takes to finalise their security check;
- individuals should be taught and be able to make complaints to the Ombudsman,
- an inspector of IDC s appointed with similar powers to the Inspector of Prisons in WA;
- Jurisdictional boundaries such as those related to health care and child protection/guardianship must be reviewed to ensure the person's interest [and not the DIAC or similar] is central.

There are of course many alternatives to detention, including the recent Community Detention Programme managed by the Red Cross. The International Detention Coalition-advocates a 5 step decision making process based on a primary presumption that detention is not necessary.

The advantages that the IDC outline and with which CARAD agrees include:

- Improves health and welfare
- Respects, protects and fulfils human rights
- Reduces overcrowding and long term detention
- Improves integration outcomes for approved cases
- Reduces wrongful detention and litigation
- Maintains high rates of compliance and appearance
- Increases voluntary return and independent departure rates
- Costs significantly less than detention
- Highlights good practices and mechanisms from around the world

CARAD submits that a period not exceeding a maximum of one month in a 'reception centre' [not in a remote area] would be a cost effective means for the Government to check identity, health and security risk. The Refugee Status Determination should then be attended to while the individual and/or family live in the community with compliance conditions similar to those

imposed for bail - although no money would be demanded. It is in the interests of each asylum seeker to comply with requirements and CARAD assesses the risk of non-compliance as miniscule. During the period of RSD work rights, access to Medicare services and education should be granted.

In summary, CARAD endorses the position of the Refugee Council of Australia which calls on the Australian Government to replace its policy of indefinite mandatory detention with one that uses detention purely for the purposes of managing genuine risk. RCOA and its members wish to work with the government to ensure this approach includes:

- Restricting detention of asylum seekers to a maximum of 30 days, in which time an analysis of identity, health and security risks can be undertaken.
- For those asylum seekers posing no risks, granting an appropriate bridging visa and providing adequate support to live in the community.
- Giving all detainees the opportunity to have their continued detention reviewed independently if they have not been released within 30 days.
- Presuming against the detention of children and families, working to develop a practical model that sees families undergo prompt health, security and identity checks.

This approach would enable any community concerns about potential risks to be managed appropriately while ensuring that Australian practice does not create further harm to vulnerable people attempting to flee persecution. It would also allow for people to continue to be detained if there genuinely are grounds for doing so.

Yours sincerely,

Rosemary Hudson Miller
Chairperson
Coalition for Asylum Seekers, Refugees & Detainees (CARAD)