

Submission No. 92  
Date Received [Signature]



Brotherhood of St Laurence  
Working for an Australia free of poverty  
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31 July 2008

Committee Secretary  
Joint Standing Committee on Migration  
Department of House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600

RECEIVED  
01 AUG 2008  
BY: MIG

Dear Committee Secretary,

Thank you for the opportunity to participate into the Joint Standing Committee on Migration inquiry into immigration detention in Australia.

I commend the Prime Minister and Senator Evans for the recent announcement of a major shift in immigration detention policy to a more humanitarian system, with detention as a last resort and for the shortest practicable time.

These developments, in addition to the closure of processing centres on Nauru and Manus Island, an end to the policy of temporary protection and the new role for the Commonwealth Ombudsmen to report on conditions and lengthy detention, will make a significant contribution to the protection of the human rights of people in immigration detention. Nonetheless, aspects of a harsh immigration detention regime remain, particularly with regard to prolonged detention and deprivation of liberty.

Australian law currently requires the indefinite detention of asylum seekers who arrive without the necessary documentation. This legal framework violates Australia's international human rights obligations.

This inquiry has the capacity to, and should, recommend a comprehensive review of immigration detention law, policy and practice in Australia. The inquiry is timely in that it coincides with the 60<sup>th</sup> anniversary year of the Universal Declaration of Human Rights (UNDHR), to be marked on the 10 December 2008. This inquiry has the potential to contribute to a package of initiatives for Australia's observance and recognition of Dr HV Evatt, Australia's Minister for External Affairs in the Chifley Labor government, who presided over the adoption of the UDHR.

The submission draws on the extensive experience of the Brotherhood of St Laurence in refugee and asylum seeker research, policy and advocacy. In particular, it identifies our experience in raising the first case in Australia using the OECD Guidelines for Multinational Enterprises with regard to the operation of GSL (Australia) Pty Ltd. This case attracted significant national and international recognition.

This submission supports the submissions of our partner organisations, namely:

- the Human Rights Council of Australia
- A Just Australia
- Refugee Council of Australia

I look forward to the outcome of this important inquiry and would be delighted to assist further if required. Please do not hesitate to contact the Brotherhood of St Laurence concerning our submission.

Yours faithfully

Tony Nicholson  
Executive Director



*Immigration detention*  
Submission to the Parliament of Australia  
Joint Standing Committee on Migration

Brotherhood of St Laurence  
July 2008

## **Introduction**

The Brotherhood of St Laurence (BSL) is a Melbourne-based community organisation that has been working to reduce poverty in Australia since the 1930s. Our vision is ‘an Australia free of poverty’. Our work includes direct service provision to people in need, the development of social enterprises to address inequality, research to better understand the causes and effects of poverty in Australia, and the development of policy solutions at both national and local levels.

The BSL is actively involved in the provision of services, research and advocacy to support refugees and newly arrived Australians. This work is undertaken largely through the Ecumenical Migration Centre and the Research and Policy Centre.

The Ecumenical Migration Centre (EMC), established in 1962, is one of the oldest agencies of its kind in Australia. EMC works statewide and across ethnic, faith and language boundaries for the full participation of migrants and refugees and the development of Australia as a multicultural society. In 1999, the Centre became part of the Brotherhood of St Laurence to ensure that migrants and refugees are included within the Brotherhood’s work for an Australia free of poverty.

The EMC has in the past co-convened the Justice for Asylum Seekers alliance, a statewide advocacy coalition of more than 20 agencies comprising community, faith, human rights, welfare and ethnic community groups and individuals. This alliance developed a fully costed alternative to mandatory detention (See Appendix 3).

## **Submission context**

This submission by the BSL is relevant to four of the terms of reference:

1. The criteria that should be applied in determining how long a person should be held in immigration detention
2. The criteria that should be applied in determining when a person should be released
3. Options to expand the transparency and visibility of immigration detention centers; and
4. Options for the provision of detention services and detention health services across the range of current detention facilities

The submission is based on the BSL’s direct experience with GSL (Australia) Pty Ltd, the company contracted to manage and operate Australia’s immigration detention centres. It should be read in conjunction with the three appendices:

- ANCP Letter to the Parties, April 2006
- ANCP Final Statement GSL Australia, April 2006
- Alternative Approaches to Asylum Seekers: Reception and Transition Processing System

This submission supports the submissions made by the:

- Human Rights Council of Australia
- A Just Australia
- Refugee Council of Australia.

This submission acknowledges and commends the Government’s ‘New Directions in Detention, Restoring Integrity to Australia’s Immigration System’ announcements, and the recognition that indefinite and long-term detention is not acceptable.

## **Background**

In June 2005, the Brotherhood of St Laurence, in partnership with four other NGOs—Rights & Accountability in Development (UK), the Human Rights Council of Australia, Children Out of Detention (ChilOut), and the International Commission of Jurists (Switzerland)—lodged an international complaint to the OECD National Contact Points in the UK and Australia. The National Contact Point is a government appointee responsible for the promotion and implementation of the OECD Guidelines for Multinational Enterprises.

The complaint was made against GSL (Australia) Pty Ltd for human rights violations in Australian immigration detention centres. The OECD Guidelines 'specific instance' complaint mechanism was used to raise concern about alleged breaches of the Guidelines' Human Rights and Consumer Interest provisions.

The submission to the Australian National Contact Point alleged that GSL Australia:

- in detaining children (particularly where there is no legal limit on the length of the detention) was complicit in violations of the 1989 Convention on the Rights of the Child
- was acquiescing in the mandatory detention of asylum seekers and was therefore complicit in subjecting detainees to a regime of indefinite and arbitrary detention in contravention of Article 9 of the 1996 International Covenant on Civil and Political Rights and Article 9 of the 1948 Universal Declaration of Human Rights. Furthermore, this regime is allegedly punitive in nature and is thus in contravention of Article 31 of the 1951 Convention relating to the Status of Refugees
- did not adequately respect the human rights of those detained in its operation of Australian immigration detention facilities; and
- was misstating its operations in a way that was 'deceptive, misleading, fraudulent, or unfair' by claiming to be 'committed to promoting best practice in human rights in its policies, procedures and practices'.

Further documentation on this case is available on the BSL website <[ww.bsl.org.au](http://www.bsl.org.au)>.

## **Selected GSL case details**

In accordance with the procedures for handling specific instances, the National Contact Point (NCP) undertook 'fact finding' in response to the lodged complaint and met with all parties and their nominated panel of experts. The NCP then facilitated mediation between the parties.

The NCP determined that it would be appropriate to accept as a specific instance those matters raised by the complainants that could be directly related to the conduct of GSL Australia and within their control. This included arrangements in respect of :

- children and the general detainee population
- staff training
- implementation and monitoring of operational procedures
- information provision to detainees
- psychiatric and mental health services
- utilisation of the Management Support Units and Red One Compound.

The NCP determined that it would be inappropriate to accept those aspects of the complainants' submission that sought to address the Australian Government's mandatory detention policy. The complainants disputed this determination, reiterating that the OECD guidelines state that the right

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of governments to 'prescribe conditions under which multinational enterprises operate within their jurisdictions' is subject to international law.

## **Outcomes of the GSL case**

The case was concluded in April 2006 through mediation. The mediation was undertaken in a constructive manner that demonstrated considerable goodwill, commonsense and respect by all parties. The direct participation of the late Peter Olszak, Managing Director of GSL, was instrumental in achieving the 34 agreed outcomes to provide a basis for GSL to improve administration of immigration detention services.

The case concluded with agreed outcomes with respect to:

- operating within a human rights framework
- public private partnership contract negotiations, human rights standards and international conventions with respect to detention and deportation
- training and developing an organisational culture that values a human rights framework for service delivery and operation
- monitoring, compliance and transparency of procedures and operations
- adequacy of information provision and access to interpreters
- Management Support Unit, Red One Compound and use of isolation facilities
- removal and deportation
- infrastructure conditions and services to detainees.

A full list of agreed outcomes is part of Appendix 2.

It should be noted that agreement could not be reached on a number of issues. Further, the complainants maintained that the practice of outsourcing the operation and day-to-day management of immigration detention centres through public private partnerships significantly obscured the division of responsibility for upholding human rights standards and international law with regards to detention.

The complainants maintained that when the detention of individuals, often for long periods of time, is contracted out by the state for whatever reasons, then the OECD Guidelines for Multinational Enterprises require that the company should have an awareness and understanding of the human rights standards that the international community has adopted, and that bind the states that contract out the function of detention.

In particular, they should at least be aware of the meaning of concepts such as arbitrary detention and unlawful detention, of detainees' rights of recourse, detainees and the minimum standards of treatment of detainees, and how their own activities relate to these issues.

It follows from this, that the company concerned needs to have suitable processes for assessing the compatibility of its policies and operations with international human rights standards, for determining itself when infringements might occur and when these have occurred for addressing them and offering redress to individuals for these infringements.

## **Conclusion and recommendations**

As noted in the Official Committee Hansard of the Joint Standing Committee on Migration, Villawood Immigration Detention Centre (Private Briefing), 7 May 2008, there have been some significant improvements in detention centre operations and practices of most GSL staff.

GSL management has actively engaged with improving conditions in recent years and engaging collaboratively with stakeholders. However, significant concerns remain, not least the fundamental inappropriateness of indefinite detention of those who pose no health or security risk.

Many of the concerns noted in the Private Briefing were raised during the GSL case, and undertakings made to improve operations and day-to-day management through systemic change (for example, the treatment of detainees, provision of appropriate health services, the use of isolation and observation facilities and deportation procedures).

### **The Brotherhood of St Laurence recommends**

- That the Joint Standing Committee on Migration review of immigration detention in Australia makes comprehensive change to the current laws, policy and practice of immigration detention in Australia.
- That the Immigration Act is amended to end mandatory detention of asylum seekers.
- That the Joint Standing Committee on Migration reviews the 34 'Agreed Outcomes' of the OECD Guidelines for Multinational Enterprises GSL case as a 'checklist' of stated undertakings against current operational practices.
- That the Joint Standing Committee on Migration reviews all contractual arrangements between the Australian Government and private operators of immigration detention centres to ensure compliance with human rights standards and international law.

### **Appendices (following pages)**

1. ANCP Letter to the Parties, April 2006
2. ANCP Final Statement GSL Australia, April 2006
3. Alternative Approaches to Asylum Seekers: Reception and Transition Processing System

### **For further information regarding this submission, please contact**

Serena Lillywhite  
Manager, Sustainable Business

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**Australian Government**

**The Treasury**

6 April, 2006

Ms S Lillywhite  
For 'The Complainants'  
C/- Manager  
Ethical Business  
Brotherhood of St Laurence  
67 Brunswick Street  
FITZROY VICTORIA 3065

Mr P Olszak  
Managing Director  
GSL (Australia) Pty Ltd  
PO Box 8004  
ST KILDA ROAD VIC 8004

*Serena Peter*  
Dear Ms Lillywhite and Mr Olszak

Enclosed is a copy of my final statement on the GSL Australia Specific Instance.

I wish to record my appreciation for the contribution you have made personally and through your associates to the successful conclusion of this specific instance.

As agreed, I am forwarding a copy of the final statement to the First Assistant Secretary of the Detention Services Division, Department of Immigration and Multicultural Affairs, the Commonwealth Ombudsman, the Chair of the Immigration Detention and Advisory Group and Commissioner Innes of the Human Rights and Equal Opportunity Commission. I will also provide a copy of the final statement to the OECD Investment Committee.

The statement will be placed on the ANCP website ([www.ancp.gov.au](http://www.ancp.gov.au)) shortly.

As indicated in my letter of 23 March, I look forward to receiving any suggestions that you may have to improve the specific instance process.

Yours sincerely

*Gerry Antioch*

Gerry Antioch  
Australian National Contact Point  
OECD Guidelines for Multinational Enterprises  
C/- Executive Member  
Foreign Investment Review Board

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## **Introduction**

1. In June 2005, the Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises ("the Guidelines": [Attachment A](#)) received a submission from several Australian and overseas non-government organisations ("the complainants")<sup>1</sup> alleging that a UK-controlled multinational, Global Solutions Limited, in providing immigration detention services to the Australian Government through its Australian incorporated wholly-owned subsidiary GSL (Australia) Pty Ltd ("GSL Australia")<sup>2</sup>, had breached the Human Rights and Consumer Interests provisions<sup>3</sup> of the Guidelines.
2. The submission alleged that GSL Australia:
  - in detaining children was complicit in violations of the 1989 Convention on the Rights of the Child particularly where there is no legal limit on the length of the detention;
  - was acquiescing in the mandatory detention of asylum seekers and was therefore complicit in subjecting detainees to a regime of indefinite and arbitrary detention in contravention of Article 9 of the 1996 International Covenant on Civil and Political Rights and Article 9 of the 1948 Universal Declaration of Human Rights. Furthermore, this regime is allegedly punitive in nature and is thus in contravention of Article 31 of the 1951 Convention relating to the Status of Refugees;
  - did not adequately respect the human rights of those detained in its operation of Australian immigration detention facilities; and
  - was misstating its operations in a way that was 'deceptive, misleading, fraudulent, or unfair' by claiming to be 'committed to promoting best practice in human rights in its policies, procedures and practices'.

## **ANCP Processes**

3. In accordance with the ANCP's published procedures for handling specific instances, the ANCP commenced an initial assessment as to whether the issues raised warranted further consideration as a specific instance under the Guidelines. The ANCP's fact finding included meeting separately with representatives of the complainants and GSL Australia on 4 July 2005 in Melbourne, and a follow-up meeting with the complainants and their nominated

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<sup>1</sup> The complainants are the Brotherhood of St Laurence, Children Out of Detention (ChilOut), the Human Rights Council of Australia, the International Commission of Jurists (ICJ – Switzerland) and Rights & Accountability in Development (RAID – UK).

<sup>2</sup> Although GSL Australia operates some State Government prisons and prisoner transportation services, the complaint concerned its activities as the provider of immigration detention services to the Australian Government.

<sup>3</sup> See § 2 of Chapter II and § 4 of Chapter VII respectively ('The OECD Guidelines for Multinational Enterprises – Revision 2000', OECD, Paris, 2000).

experts on 11 July 2005 in Sydney. Following the Sydney meeting, the complainants lodged a supplementary submission that focussed on GSL Australia's operations. The issues raised in both submissions were complex and sensitive.

4. On 1 August 2005, the ANCP determined that it would be appropriate to accept as a specific instance those matters raised by the complainants that could be shown to relate directly to the conduct of GSL Australia and were within its control. Those matters included arrangements in respect of children and the general detainee population, staff training, implementation and monitoring of operational procedures, information provision to detainees, psychiatric and mental health services, and the utilisation of the Management Support Units and Red One Compound. The ANCP proposed that the specific instance should not focus on isolated cases or where the risk of re-occurrence in the future has been or is being addressed through other means<sup>4</sup>. The ANCP reasoned that this would allow the parties to concentrate on those GSL Australia activities that have the greatest likelihood of being resolved through mediation.
5. The ANCP also determined that it would be inappropriate to accept those parts of the complainants' submission that sought to address the Australian Government's mandatory detention policy because the Guidelines do not provide an appropriate avenue to review a host government's domestic policy settings. The complainants disputed this determination, reiterating that the Guidelines state that the right of governments to 'prescribe conditions under which multinational enterprises operate within their jurisdictions is subject to international law'. The ANCP also ruled out portions of the supplementary submission that related to the activities of a previous detention centre operator.
6. On 10 August 2005 and 19 August 2005, the complainants and GSL Australia respectively agreed to participate in the specific instance. To facilitate a shared understanding of the issues under consideration, on 24 August 2005, the ANCP proposed an approach to progress the specific instance and circulated a 'Preliminary list of issues within GSL Australia's control' to the parties.
7. On 21 October 2005, the ANCP circulated an updated list of issues within GSL Australia's control in conjunction with the parties' respective views. This was followed by an exchange of information to enable the parties to be able to understand the procedures and practices associated with managing immigration

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<sup>4</sup> In the lead up to the complaint and during the specific instance, there were a number of official inquiries (that is, parallel processes) related to immigration administration and GSL Australia's administration of immigration detention facilities in Australia. Prominent examples include the Palmer and Hamburger inquiries commissioned by the Australian Government and an own-motion study by the Australian National Audit Office. The Commonwealth Ombudsman was also asked by the Government to review particular immigration cases including the Vivian Alvarez (Solon) case, other immigration detention cases identified where the persons detained had been released from detention with their files marked 'not unlawful' and the cases of detainees who have been in detention for two years or more. Consequent changes to the administration of immigration detention policy (say, in relation to families and children) and procedures have had a bearing on the issues considered by this specific instance.

## ANCP statement: GSL Australia specific instance

detention facilities and to appreciate the concerns and sensitivities of the complaint<sup>5</sup>.

8. The ANCP convened a face-to-face mediation session on 28 February 2006, in Canberra. GSL Australia was represented at the mediation session by its Managing Director, Mr Peter Olszak and its Public Affairs Director, Mr Tim Hall. The complainants were represented by the Manager of Ethical Business at the Brotherhood of St Laurence, Ms Serena Lillywhite, the Executive Director of the Human Rights Council of Australia, Mr Patrick Earle and a member of the International Commission of Jurists, Dr Elizabeth Evatt. The ANCP was assisted by Ms Angela McGrath, Mr Andrew Callaway and Ms Debra Chesters.

### **Outcomes of the Specific Instance**

9. The mediation session was conducted in a spirit that promoted the wellbeing of the detainee population whose care is currently entrusted to GSL Australia. A significant outcome was the value both parties gained in engaging openly on the human rights aspects of GSL Australia's operations. The discussion was frank and robust and enabled consideration of potential solutions.
10. GSL Australia committed to upholding the human rights of those in its care. GSL Australia's Managing Director, Mr Olszak, summed up the company's position by pledging to always consider the question of 'Is it right?' within the framework of human rights and embedding this approach within the company's policy and procedures, including training of its officers. The complainants acknowledged the difficult and changing environment of immigration detention services and offered practical suggestions to assist GSL Australia in utilising human rights experts to interpret human rights standards and in training staff. The mediation session's agreed outcomes are at Attachment B.

### **Summary**

The ANCP congratulates GSL Australia and the complainants for engaging constructively in a manner that will contribute to resolving many of the issues considered in this specific instance. Throughout this process, the parties engaged with goodwill and commonsense. The agreed outcomes provide a basis for GSL Australia to continue to improve its administration of immigration detention services.

This is the first specific instance lodged with the ANCP since the Guidelines were revised in 2000. The ANCP intends to evaluate its processes for handling specific instances in the light of any suggestions that the parties may wish to offer.

Gerry Antioch  
Australian National Contact Point  
6 April 2006

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<sup>5</sup> Among the key pieces of information exchanged were operational procedures applicable to the issues raised and references to the findings of parallel processes and international standards.

**The OECD Guidelines for Multinational Enterprises (the Guidelines)**

The Organisation for Economic Co-operation and Development (OECD) published guidelines for responsible business conduct in 1976 and a revised version was issued in 2000. The Guidelines establish voluntary principles for the activities of multinational enterprises and cover issues including information disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. They represent standards of behaviour supplemental to the laws of the countries where the multinational enterprises are based or their activities undertaken.

Thirty nine Governments (30 OECD members and 9 non-members) have agreed to the OECD Guidelines as part of a broader balanced package of rights and commitments called the 'OECD Declaration on International Investment'.

Adhering countries have a National Contact Point whose role is to promote and ensure the effective implementation of the OECD Guidelines, including providing good offices for the handling of specific instances. The ANCP maintains a website at <http://www.ausncp.gov.au>.

Attachment B to the ANCP statement: GSL Australia specific instance



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Level 4, 441 St Kilda Road  
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6 April 2006

Mr Gerry Antioch  
Australian National Contact Point  
General Manager  
Foreign Investment and Trade Policy Division  
The Treasury  
Langton Crescent  
Canberra ACT 2600

Dear Gerry,

Please find attached the 'agreed outcomes' from the mediation session between GSL (Australia) Pty Ltd and the complainants. This document is an accurate record of the agreed outcomes and undertakings made by GSL, and provides a basis for GSL Australia to demonstrate its commitment to operating within a human rights framework.

The undersigned parties endorse this document, agree to it being included in your final statement and being circulated as previously indicated.

Both parties wish to thank the office of the ANCP for the process to date, and in particular the mediation. This has created new opportunities for GSL to engage with the non government sector and for enhanced understanding between the parties. Further, it has identified processes for the future to assist in the ongoing engagement between GSL and the community.

Yours sincerely

Peter Olszak  
Managing Director  
GSL (Australia) Pty Ltd

Serena Lillywhite  
Manager Ethical Business  
Brotherhood of St Laurence  
For the complainants

*OECD Guidelines for  
Multinational Enterprises*

Specific instance involving GSL (Australia)  
Pty Ltd and the complainants

Agreed outcomes of mediation meeting

April 2006

## **INTRODUCTION**

This document is a record of the agreed outcomes reached between GSL (Australia) Pty Ltd (“GSL”) and the complainants during the mediation meeting held on Tuesday 28 February, 2006, at the Department of Treasury, Canberra. Present at the mediation were:

Mr. Gerry Antioch – Australian National Contact Point (ANCP)

Ms. Angela McGrath – office of the ANCP

Ms. Debra Chesters – office of the ANCP

Mr. Andrew Callaway – office of the ANCP

M. Peter Olszak – Managing Director, GSL

Mr. Tim Hall – Director, Public Affairs, GSL

Dr. Elizabeth Evatt – International Commission of Jurists

Mr. Patrick Earle – Human Rights Council of Australia

Ms. Serena Lillywhite – Brotherhood of St Laurence

Additional recommendations were tabled by the complainants during the meeting.

An opening statement and relevant documents relating to human rights standards adopted by the United Nations General Assembly were also tabled.

The discussion was open and frank, and based on a shared commitment by all to promote adherence to universally recognised standards of human rights. It was acknowledged that there had been many positive changes since the complaint was lodged, not least that children were no longer being detained in detention centres. In this time there have been a number of reports such as the Palmer Report, and court cases that have highlighted many of the issues at the heart of the complaint.

The protracted tender and negotiation period for the contract, and the constantly changing nature of the demands being placed on the detention services provider, and its own learning from the experience highlighted for the complainants the considerable scope for the company in deciding what services it will offer and how. For all involved there seemed to be a shared understanding at the conclusion of the meeting of the value of international human rights standards in determining the companies own decision making processes.

The meeting took place between 10.00 am and 2.45 pm. Discussion of some issues of concern will require further time and consideration. There was willingness from all involved to canvass the range of issues involved in the original complaint – from the contractual issues through to operating protocols and the changing patterns of immigration detention. It was agreed that an atmosphere of direct dialogue between the complainants (and others concerned) and the company on these issues was engendered by the meeting and should be fostered to address continuing concerns. This provides scope for GSL to engage more closely with the complainants, or other appropriate external groups, in the future to ensure outcomes reached are implemented and a culture of transparency and accountability fostered.

At the conclusion of the meeting it was agreed by all parties that there would be value in the NCP forwarding a copy of his statement to the Department of Immigration and Multicultural Affairs, the Commonwealth Ombudsman, IDAG and HREOC.

### **General agreement**

1. GSL acknowledged the value of using a human rights framework as the appropriate standard to guide operations and assist the company ‘do the right thing’ in all aspects of operation and service delivery.

## Attachment B to the ANCP statement: GSL Australia specific instance

2. GSL acknowledged that as a corporation it had its own responsibilities and should be accountable for these responsibilities. How it understood and implemented its responsibilities was a key factor in its corporate reputation, which is central to its business success.
3. GSL agreed to ensure the contract renegotiation, and the final contract with DIMA (should GSL successfully tender) make reference to human rights standards and appropriate international conventions as the appropriate framework for a service delivery model in all areas of detention and deportation.
4. GSL agreed to ensure that the contract renegotiation process with DIMA (should GSL successfully tender) include the experiences and learning's that GSL has had with regards to the management of detention centres and their use of isolation facilities, and concerns raised regarding compliance with human rights standards.
5. GSL agreed that some of the issues discussed at the meeting needed further consideration and the input of external advice. GSL expressed the willingness to have a more ongoing dialogue on the issues discussed with those with relevant expertise and knowledge.

### **Training**

6. GSL acknowledged the value of deepening the knowledge of understanding of human rights standards of all GSL staff, from senior management down given the nature of the industry that GSL was involved in.
7. GSL agreed to enhance the training curriculum it provides to its staff through the inclusion of appropriate human rights materials and references.
8. GSL agreed to liaise with DIMA to ensure that training delivered via the DIMA Training Initiative recognises the increasingly diverse detainee population, includes human rights standards, and utilises a human rights framework in training.
9. GSL agreed to make their training curriculum, manuals and materials available to external human rights trainers for review and comment.
10. GSL agreed to seek input from human rights experts to deliver human rights training as appropriate (the complainants offered to recommend appropriate trainers).
11. GSL agreed that staff with particular duties in relation to detainees may have a need for more specialised and in-depth human rights trainings.
12. GSL acknowledged that human rights training delivered to all GSL staff would assist in 'embedding' a corporate culture that values a human rights framework in service delivery and operations.
13. GSL agreed to develop systems to monitor and evaluate the effectiveness of its training in meeting desired organisational and individual behavioural and attitudinal changes.

### **Monitoring the implementation of GSL procedures**

14. GSL agreed to seek external advice to determine if the operations of the GSL Compliance and Audit Unit adequately encompass a human rights framework for monitoring and auditing purposes.



## Attachment B to the ANCP statement: GSL Australia specific instance

15. GSL indicated it was willing to make its own ‘random audits’ available for external scrutiny.
16. GSL indicated it was changing its complaints monitoring system so that it could monitor the number and nature of complaints and responses to complaints more effectively and would be establishing targets for reduction in complaints.
17. GSL agreed to review the terms of reference and composition of its Community Advisory Committee to enhance external engagement (the complainants offered to suggest additional community representatives).
18. GSL agreed to expand their planned / forthcoming ‘client survey’ to include input and feedback from community visitors to the detention centres (the complainants offered to provide names of key community visitors).
19. GSL agreed that the existing ‘infringement mechanisms’ for identifying, reporting and responding to infringements needs to be made clearer to all GSL staff. International human rights standards were the agreed framework for the management and disciplining of staff alleged to have engaged in the ill-treatment of detainees.

### **Adequacy of information provision and access to interpreters**

20. GSL undertook to improve the ‘induction handbook’ for detainees, and to ensure it is available in the appropriate languages.
21. GSL undertook to evaluate detainees ‘understanding’ of the induction handbook to ensure the content, expectations and detainees rights and responsibilities were understood.
22. GSL agreed to give consideration to alternative mechanisms to deliver the induction handbook to address literacy issues. Audio presentation was one idea suggested.
23. GSL undertook to consider expansion of the current complaints system to encompass a way to register and respond to the concerns of visitors to the detention centre. GSL would consider ways to convey its commitment that there would be no negative repercussions, such as visiting limitations, placed on visitors who register complaints. A “hotline” was suggested.

### **Management Support Unit and Red One Compound**

24. It should be noted that GSL and the complainants were unable to reach agreement about the use of isolation facilities for punitive purposes. GSL reiterated its position that isolation facilities are never used for punitive purposes. The complainants reiterated that feedback from reputable and regular visitors to the centres suggested that facilities were being used for such purposes. It was acknowledged that the use of Red One Compound in particular had been and continues to be a source of particular concern in relation to the human rights of detainees. Agreement was reached on the need for a further review of the GSL protocols governing the use and operations of these facilities.
25. GSL agreed to accept advice from external stakeholders as to how the existing protocols can be improved and streamlined. For example, it was recommended by the complainants that the MSU Transfer and accommodation Guidelines be amended to ensure that women and minors are never placed in the MSU. It was agreed that the

## Attachment B to the ANCP statement: GSL Australia specific instance

definition of “good order of the institution” would be reviewed against relevant human rights standards.

26. GSL agreed to give consideration to identifying and disclosing the nature of the ‘structured programs’ that are available to detainees in MSU and Red One.
27. GSL agreed to refer to relevant international human rights standards in drafting protocols for the management and disciplining of staff alleged to have engaged in ill-treatment of detainees.
28. GSL agreed to consider the desirability of reviewing (against relevant human rights standards) the timeframes for the transfer, detention and assessment of detainees in MSU. In particular, endorsement of transfer (recommended change from 48 to 24 hours), final determination (recommended within 24 not 72 hours) and emergency mental health assessments and checks (recommended within 12 not 24 hours).

### **Removal and deportation**

29. It was agreed that removal and deportations in particular raised sensitive and important human rights issues that need to be considered on a case-by-case basis. GSL agreed to consult with DIMA to ensure an appropriate human rights framework is used in developing guidelines and processes for removals and deportations, particularly as they relate to the use of GSL staff as escorts.
30. GSL agreed to ensure that all GSL removal and deportation escorts have received appropriate training and understand the international protocols and human rights standards.
31. GSL undertook to provide a report to DIMA as a matter of course on all deportations and removals in which its officers are involved, and to the extent reasonably possible, in compliance with removal / deportation protocols, and also an assessment of the arrival situation and well being of the person being removed.

### **General conditions and services to detainees**

32. GSL undertook to give consideration to establishing a ‘visitors scheme’ that is more open and could provide feedback and advice to GSL in enhance their risk management process and improve conditions for detainees (the complainants suggested the Victorian Community Visitors Scheme operated by the Office of the Public Advocate as a possible model).
33. GSL indicated a major announcement would be forthcoming with regard to the provision of food in detention centres. Both GSL and the complainants agreed this is a significant issue of detainee dissatisfaction. It was acknowledged that in part this was an issue of infrastructure operated by GSL, but provided by DIMA.
34. GSL undertook to ensure all detainees have regular access to phones and phone cards to enable communication, support and advocacy.



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

**Appendix 3**

# Alternative approaches to asylum seekers:

**Reception and Transitional Processing System**

**JUNE 2002**

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

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

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

# Executive summary

## **A.**

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

## **B.**

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

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

## **C.**

Key RTP Features:

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

## **D.**

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

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

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

#### **E.**

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

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

#### **F.**

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

#### **G.**

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

#### **H.**

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

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

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





**I.**

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

**J.**

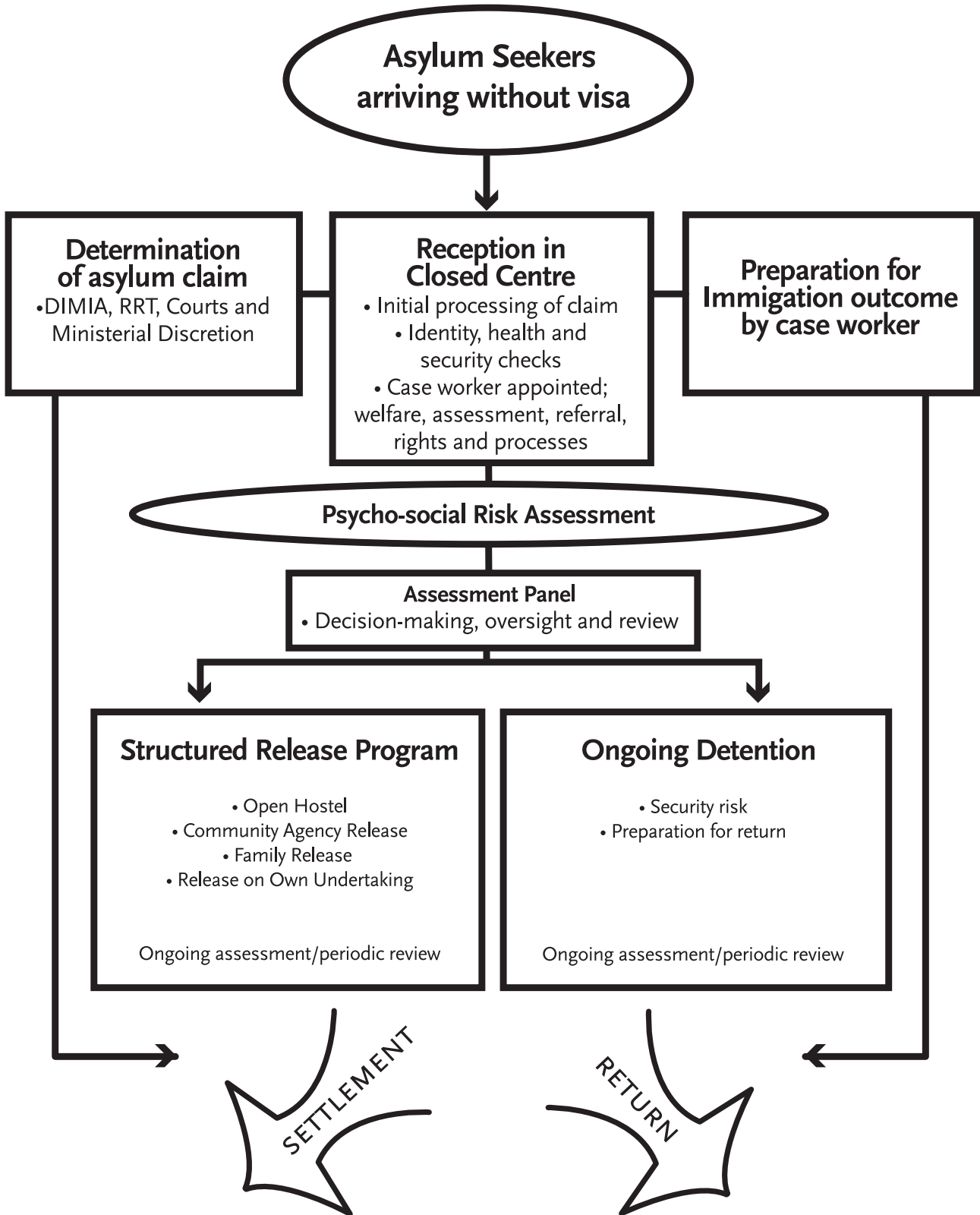
Compliance: Currently, there are two types of compliance – implicit and explicit for asylum seekers allowed by the Government to live in the community. Implicit compliance includes the reliance of the asylum seekers on welfare agencies for their survival and involves, for example, asylum seekers reporting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

**K.**

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

# Reception and Transitional Processing System

JUSTICE FOR ASYLUM SEEKERS (JAS) ALLIANCE, 2002



# Introduction

## **JAS Detention Reform Working Group**

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

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

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

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

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

# Background

## What are the core problems to be addressed?

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

### 1. Children in Detention

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

### 2. Prolonged Detention

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

### 3. Poor Mental Health

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

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

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

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

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

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

4. Ibid, p.iv.

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

### **The UNHCR Guidelines on Detention of Asylum Seekers**

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

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

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

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

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

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

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

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

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

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

# Costs and Asylum seekers not in detention

## How DIMIA currently manages Asylum seekers in the community

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

## Cost of Detention

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

# The Reception and Transitional Processing System

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

## Examples – People in the RTP System

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

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

12. Various systems abound, including:

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



**Where detention is useful**

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

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

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

**Where detention isn’t useful**

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

**Processing Stages**

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

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

Let us examine these categories more closely.

**1. Initial Detention and Reception**

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

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

**RTP Example 1 – Reception in Closed Centre**

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

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

## 2. On-going detention

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

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

### RTP Example 2 – On-going Detention

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

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

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



### 3. Structured Release Program

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

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

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

#### Open Hostel:

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

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

#### RTP Example 3 – Open Hostel

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

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

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

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

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

### **Community Agency Release:**

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

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

### **RTP Example 4 – Community Agency Release**

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

### **Family Release:**

The elements of this bridging visa are as follows:

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

### **RTP Example 5 – Family Release**

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

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

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



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

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

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

### **Release on Own Undertaking:**

The elements of this bridging visa are as follows:

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

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

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

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

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

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

### **RTP Example 6 – Release on own Undertaking**

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

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

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

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

**RTP SYSTEM - RESPONSIBILITY AND PROCESSING**

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

# Management and support structure – roles and responsibilities

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

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

## **1. DIMIA**

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

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

## **2. Security**

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

## **3. Case Management**

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

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

- In the RTP system, the case manager is a contracted service provider responsible for the detainees' wellbeing in regard to management of relations with DIMIA, Security Providers, Compliance and various support services. The case manager assigns caseworkers to work with all asylum seekers. A suggested ratio is 1:30. The caseworkers' role is to: Inform asylum seekers of rights, compliance requirements and processes;
- make individual needs assessments;
- provide referrals to specialists; and
- prepares and informs people for all immigration outcomes.

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

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

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

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

#### **4. Representative Assessment Panel**

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

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

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

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

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



## **5. Community and Welfare Agencies/Volunteers**

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

# Release issues

This section considers how best to manage:

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

## 1. Absconding

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

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

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

Personal:

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

Systemic:

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

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

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

- 1) High: people convicted of a serious criminal offence or suspected as posing a risk to national security
- 2) Medium: people with communicable diseases or considered a serious risk to abscond
- 3) Minimal: All not falling into categories 1 and 2.<sup>20</sup>

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

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



# Psycho-Social Risk Assessment

JUSTICE FOR ASYLUM SEEKERS (JAS) ALLIANCE, 2002

## Absconding

### On-shore Protection/Compliance

- ‘Significant Risk’ Assessment:
- Incentives/Discentives Categories
- Individual Circumstances/Needs
- Conduct/History
- Community Supervision: Assessment/Requirements
- Case worker recommendation

## Health/Psychological

### Refugee Health Team

- Health assessment

### Mental Health Review Tribunal

- Psychological assessment

## Security

### ASIO – Security

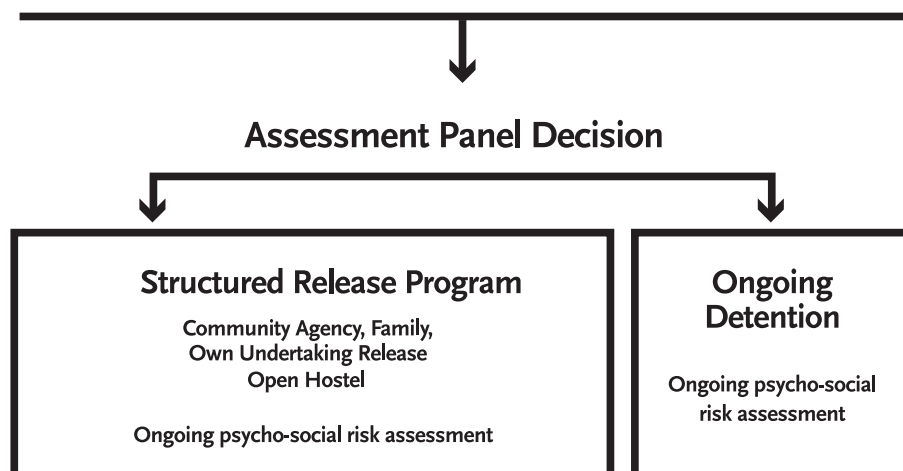
### Federal Police – Criminal

### On-shore Protection – Identity

## Absconding risk

## Health/Self harm risk

## Community risk



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

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

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

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

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

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

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

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

## **2. Work Rights and Income Support**

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

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

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

## **3. Health Issues**

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

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

## **4. Housing**

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

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



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

# Outcomes under a reformed system

## **Current system**

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

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

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

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

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

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

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

## **Children**

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

## Outcomes under a reformed system

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

## Settlement

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

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

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

### Example – Settlement

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

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

## Return

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

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

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

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

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

### **Example – Voluntary Repatriation**

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

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

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

### **Example – Long term detainee**

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

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

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



# Conclusion

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

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

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

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

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

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

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

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

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

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

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

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