# NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)



# Submission to Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia

STARTTS

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## Background to the NSW Service for the Treatment and Rehabilitation of Torture & Trauma Survivors (STARTTS)

The NSW Service for the Treatment and Rehabilitation of Torture & Trauma Survivors (STARTTS) is a state-wide NSW Health service, established in 1988, that responds to the needs of torture and trauma survivors who have migrated to Australia, most under the Australian Government's Refugee & Humanitarian Program. We also assist on-shore refugees who have arrived in Australia as asylum seekers. STARTTS seeks to address the impact of torture and trauma on the individual, family and community through health assessment and referral, information provision, counselling, psychotherapy and other clinical interventions, community development, advocacy and training of other service providers. Funding is provided primarily by the NSW Department of Health, the Federal Department of Health & Ageing and the Department of Immigration & Citizenship, the latter for assessment and short to medium term counselling intervention under the Integrated Humanitarian Settlement Strategy (IHSS). More information on STARTTS' services and programs can be found at http://www.startts.org.au/.

STARTTS' comment to this Inquiry is based primarily on its work with asylum seekers after they have been granted a visa, typically a Temporary Protection Visa and released from detention. It is also based on our experience providing written reports on the mental health of detainees at the request of the detention mental health service provider. Our comments also draw on reports and research studies on the mental health of detained asylum seekers, existing policy and standards for immigration detention, and findings of relevant inquiries and other research, for example, by non-government organisations (NGOs) on alternatives to detention and costs of detention.

### Inquiry Terms of Reference

The Terms of Reference of this Inquiry are as follows:

- the criteria that should be applied in determining how long a person should be held in immigration detention
- the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks
- options to expand the transparency and visibility of immigration detention centres
- the preferred infrastructure options for contemporary immigration detention
- options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres (IDCs), Immigration Residential Housing, Immigration Transit Accommodation (ITA) and community detention
- options for additional community-based alternatives to immigration detention by: a) inquiring into international experience; b) considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework; c) comparing the cost effectiveness of these alternatives with current options.

**Executive Summary**

This submission focuses on the adverse impacts of the immigration detention system on the mental health of asylum seekers, particularly torture and trauma survivors, and on this basis argues that there is an urgent need for alternatives to detention for these groups. We argue that asylum seekers should be allowed to live in the community while their claim for a protection visa is being assessed, preferably through the grant of a bridging visa with full rights, or failing this much more widespread use of community detention. The reforms we advocate, similar to those recently announced by Minister Evans as the government's future policy direction in the immigration detention area, are also motivated by a desire that Australia comply with its obligations under various important human rights conventions like the *International Covenant on Civil and Political Rights*, the *Convention Relating to the Status of Refugees* and the *Convention against Torture*. We strongly advocate that asylum seekers who have experienced torture and significant refugee trauma should not be held in an Immigration Detention Centre.

While we see speedy visa processing and release of asylum seekers into the community with appropriate support as they key changes necessary to reform the system, we also consider the rights and needs of those who may be subject to ongoing detention under the changes announced by the Minister in July. On this basis we argue that if detention is to occur for health, identity and security checks it should be for a minimal period, that there is a need for a timely process of independent administrative and judicial review of ongoing detention and ongoing reforms and improvements to the detention environment and detention services. One particular issue we highlight in this context is the need to address bullying, harassment and assault of detainees by other detainees, and improved Suicide and Self Harm (SASH) protocols. However in identifying past and current problem areas, we acknowledge that since the release of the Palmer and Comrie reports that DIAC has made important reforms to the provision of services to detainees, including improving access to health care, established advisory structures like the Detention Health Advisory Group (DeHAG), and introduced reforms such as community detention.

Having said this, implementation of the reforms recently announced by Minister Evans through changes to policy, regulations and amendments to the Migration Act will be necessary to ensure that significant structural changes are made to the underlying problems associated with our immigration detention system. Our submission concludes with a discussion of the need for improvements to existing support for asylum seekers in the community through existing programs and initiatives, particularly as release into the community is to be the preferred option under the new system. We also briefly consider the cost effectiveness of various responses to asylum seekers, concluding that release into the community appears to be the most cost effective option for the majority of detainees and that funds thus saved would be better directed to addressing any shortfall in meeting the needs of asylum seekers in the community for services and support.

**Approach to Inquiry and Terms of Reference**

The responses that we provide throughout this document are primarily concerned with the circumstances of detainees who are asylum seekers who have come to Australia seeking recognition as refugees, particularly those who are torture and trauma survivors. In addition our response is motivated by our concern that Australia fulfils its obligations under the various international human rights instruments to which we are a signatory, since STARTTS' believes it important to promote respect for human rights, particularly the *Refugee Convention* and Protocol and *Convention against Torture*, in the interests of clients of our service and other refugees.

STARTTS, along with our counterpart Friends of STARTTS, through the submission to the 2004 Human Rights and Equal Opportunity Commission (HREOC) Inquiry into Children in Immigration Detention, is on the public record as expressing its opposition to the government policy of mandatory non-reviewable detention of asylum seekers who arrive in Australia without a valid visa. We argued that ending this policy was important on human rights and mental health grounds. While the TOR for this inquiry do not directly address this fundamental question we feel that a brief consideration of this matter is necessary to contextualise and provide coherence to our response.

STARTTS maintains our opposition to the policy of mandatory, indefinite, non-reviewable detention of asylum seekers. We concur with the Human Rights & Equal Opportunity Commission's recommendation that Australia's mandatory detention laws should be repealed. HREOC argues that while "detention *may* be acceptable for a *short period* in order to conduct security, identity and health checks, current mandatory detention laws *require* detention for *more than these purposes*, for *unlimited periods of time* and *in the absence of independent review of the need to detain*" (HREOC: 2007: 6). HREOC indicated as early as 1998 that mandatory non-reviewable detention means that Australia is in breach of its human rights obligations under the *1966 International Covenant on Civil and Political Rights* [1]. Amnesty International contends that current mandatory detention arrangements means that the Australian Government is also in breach of the *1951 Convention Relating to the Status of Refugees*[2]. Prior to the 2005 changes that resulted in the release of children

[1] *The HREOC notes that the ICCPR includes a number of rights that are relevant to the situation of unauthorised arrivals in detention, "notably the freedom from torture and from cruel, inhuman or degrading treatment (article 7), the freedom from arbitrary detention (article 9) and the right to be treated with humanity while in detention (article 10)" (HREOC: 1998: 37). HREOC found that the mandatory detention regime breaches article 9.1 of the ICCPR, concluding this regime is arbitrary in the ICCPR sense and is not exceptional or "a proportionate means to achieve a legitimate aim", neither is it for a "minimal period" (Op cit: 52). According to HREOC, Australia is also in breach of ICCPR 9.4, which requires a court to be empowered to take individual circumstances into account and have the capacity to order release from detention on these grounds.*

[2] *Article 31 (1) of the Refugee Convention prohibits the imposition of penalties on refugees on account of their illegal entry or presence in the territory of a state party and 31 (2) limits the ways in which restrictions of movement may be imposed on refugees. The reasons Australia is considered to be in breach of the latter are similar to the reasons HREOC believes we are in breach of the ICCPR, discussed on previous page. Any action which would*

from detention, HREOC found that Australia was also in breach of its obligations under the *1989 International Convention on the Rights of the Child*[3] by holding children in detention, particularly under conditions that were harmful. In our view it is unacceptable that Australia should be in breach of important international human rights conventions of this kind, particularly when, as will be argued in this submission, reasonable and acceptable alternatives to the current system are available.

Given our views on the current mandatory detention regime, we warmly welcome the broad direction of the changes to Australia's immigration detention system announced by Minister Evans on 29 July 08 in his address, *New Directions in Detention, Restoring Integrity to Australia's Immigration System.* The Minister has indicated that "Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention…would be subject to regular review;" and "Detention in Immigration Detention Centres is only to be used as a last resort and for the shortest possible time". The Minister has indicated that under these reforms "persons will be detained only if the need is established", the onus will be on DIAC to justify a decision to detain and "the presumption will be that persons will remain in the community while their immigration status is resolved". These are very important reforms, that if properly implemented, should address many of the injustices associated with the detention of asylum seekers discussed in this submission.

STARTTS is concerned that the government is continuing to publicly promote border control and detention policies as a deterrent measure, when our international obligations require us not to use detention in a punitive way or as a deterrent to asylum seekers. While we recognise the need to establish the identity of unauthorised arrivals, and conduct health and security checks, we are concerned that these checks occur in a speedy fashion, and that people should only be held for these purposes, as per UNHCR Guidelines, for a minimal period. It should be recognised that refugees are often forced to flee quickly without documentation that would establish their identity, or on false papers and they should not be penalised for this. In addition we understand that security checks involving ASIO can take long periods, and can involve repeated, lengthy and often what clients perceive as intimidating interviews[4]. Unless there are serious, legitimate security concerns in regard to an individual, which should be able to be scrutinised by a detainee's legal representative, we do not believe that an asylum seeker should be held in detention over extended periods.

Other groups to be subject to continuing mandatory detention are "unlawful non-citizens who present unacceptable risks to the community" and "people who repeatedly refuse to comply with their visa conditions". We believe that it is very important to clearly identify in guidelines or legislation what is considered to be an

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*cause a refugee to abandon an asylum claim and return to a place where he/ she would be at risk would amount to constructive refoulement and also be in breach of the Convention (Amnesty International: 2005: 11* ***http://www.amnesty.org/en/library/asset/ASA12/001/2005/en/dom-ASA120012005en.html ).***

[3] See pages 36-54: HREOC: 1998

[4] *Our concerns about the interviewing practices used by ASIO with asylum seekers have been raised with the Refugee Council of Australia to take up with the Inspector General for Intelligence and Security. They include subjecting asylum seekers, some of whom are torture and trauma survivors, to very long interviews (numbers of hours), repeated interviews and the refusal to allow the interviewee to be accompanied by a support person.*

unacceptable risk, rather than decisions of this nature being at the discretion of DIAC. In addition, if the government expects compliance with visa conditions, the onus is on it to ensure that they are reasonable, and that asylum seekers in the community have the right to work, for example, while their application is processed. In addition, the Minister's address and media release state that unauthorised boat arrivals at excised places will continue to be processed on Christmas Island. We are concerned about the continued excising of areas from Australia's migration zone as a deterrent to asylum seekers, and do not regard Christmas Island as an appropriate location for ongoing accommodation of asylum seekers, as it is an isolated area, where detainees lack community support, access to services and poor access to legal representatives.

**Recommendations**

**1. STARTTS believes that Australia should bring its detention laws into line with Australia's international obligations under relevant international human rights legislation and standards (such as *UNHCR Revised Guidelines on Applicable Criteria & Standards relating to the Detention of Asylum Seekers: 1999*).**

**2. If unauthorised arrivals are to be held for identity, health and security checks, this must be for a minimal period only. Review of the cases of people subject to ongoing detention by DIAC alone is unacceptable. In addition to review by the Commonwealth Ombudsman, these cases should be subject to independent judicial and administrative review.**

**3. Survivors of torture and trauma should not continue to be accommodated on Christmas Island, but after initial processing, accommodated in the community on mainland Australia while their claim is processed, in order to obtain appropriate support and services, including torture and trauma counselling.**

**Immigration detention and the mental health of asylum seekers**

As many of our arguments in this submission are based on the adverse mental health impacts of detainment on asylum seekers, and we feel it is a relevant area for this Committee to consider, we would now like to move on to providing a summation of some of these issues before more directly addressing this Inquiry's TOR.

In their 2007 review article, Silove et al provide a summation of the evidence arising from existing sources of information on the mental health of detained asylum seekers, namely Australian commissions of inquiry (COI) into detention centres, observations made by health professionals working in Australian centres, and several systematic studies of detained asylum seekers. They also refer to the international literature on this subject. We have supplemented this information with direct reference to these and other sources and a summation of the observations of STARTTS' counsellors who have worked with asylum seekers.

In summary, the literature on the mental health of asylum seekers indicates that a high proportion suffer from mental ill-health, and that while many may have impaired mental health due to previous trauma, detention appears to significantly worsen mental health problems. Characteristic of the refugee population, a significant proportion of asylum seekers in detention have experienced pre-migration trauma such as torture, imprisonment, murder of a family member or friend or sexual assault.

Mental health appears to deteriorate the longer asylum seekers remain in detention and recent research suggests that the effects can be long term, persisting a number of years after asylum seekers are released.

### Observations from Commissions of Inquiry

The prevalence of evident poor mental health among inmates was noted in the majority of Commissions of Inquiry (COI) reviewed by Silove et al, which cited "self-harm, suicide attempts or ideation, depression and traumatic stress" (Silove et al: 2007: 366) as common among detainees. Depression was the most widely observed mental health problem. In the COI, deterioration of the psychological condition of inmates was observed to be closely associated with prolonged detention. The COI also noted the large number of incidents of self-harm among detainees: for example in 2001, there were 688 major incidents across all detention centres (Ibid). A further detrimental impact noted was the impact of detention on capacity of adults to parent, resulting in part from depression. The COI also noted the adverse impacts of detention on children, including emotional disturbances in young children.

### Observations of mental health workers including clinical reports

The second type of material drawn on by Silove et al were the observations of health and mental health professionals who have worked with detainees, including their clinical reports. The authors refer to a file audit of clinical assessments undertaken with Cambodian detainees by the Victorian Foundation for Survivors of Torture (VFST) in 1993/ 4, which revealed that 62% met diagnostic criteria for Post-Traumatic Stress Disorder (PTSD) and all manifested clinically significant symptoms of depression. The group were long term detainees, held for between 32 and 55 months. Detainees "reported a wide range of psychological problems, including depression, anxiety, anger, boredom, frustration, lack of control over their lives and isolation from social and cultural support". The report arising from the audit concluded that "prolonged detention exerted a negative effect on asylum seekers, and detainees' psychological state appeared to deteriorate the longer they were confined". A second VFST study in 1995-6 of East Timorese asylum seekers in a remote detention centre and some living in the community found that there had been significant exposure to trauma in their home country, including sexual assault, torture, physical assault and witnessing murder. All detained asylum seekers had symptoms of PTSD, 94% had symptoms of depression and 45% expressed suicidal ideations (cited in Silove et al: 2007: 379).

Similar symptoms were present in a group of Tamil asylum seekers in a 1996-8 survey by Thompson et al, who found that they had significantly worse physical and mental health than Tamils living in the community. The study concluded that detention seemed instrumental in generating and maintaining elevated levels of distress. Similarly a study of inmates at Villawood confined for over 9 months in 2001, undertaken by a detained medical practitioner in collaboration with a psychologist working in the centre, also revealed high levels of mental ill-health, since 85% of this group had chronic depressive symptoms and 65% expressed pronounced suicidal ideations. Prolonged detention was associated with progressive deterioration, with around half of the sample (n=33), showing "gross impairment in concentration, pervasive fear and mistrust, repeated instances of self-harm, and in

some cases, psychosis" (Silove et al: 2007: 380). Again, a high proportion had been exposed to pre-migration trauma including torture.

**Published clinical studies**

While the authors indicate that it has been difficult for Australian researchers to conduct systematic studies with detainees due to lack of access to detainees, a number of published clinical studies have nevertheless been conducted in Australia and overseas. These studies revealed similar clinical symptoms to those observed by mental health professionals, discussed above. For example a 2004 study by Steel et al, which reported on the mental health of detainees held in a remote centre for 2-3 yrs, resulted in every adult being diagnosed with a major depressive episode, the majority with PTSD, most expressing suicidal ideation and a third having harmed themselves while in detention. However prior to being detained only half reported PTSD, few had co-morbid depression and none had self-harmed or experienced suicidal ideation.

Two more recent studies were based on larger sample sizes and explored the potential long term or carry over effects of detention on mental health once an asylum seeker is released. The 2006 study with Mandaean refugees from Iran and Iraq was undertaken on average 3 yrs after release, and of the study group that had been detained, 57 were held for up to 6 months and 93 for 6 months or longer. This group were then granted Temporary Protection Visas and released from detention. The results showed that "past immigration detention and ongoing temporary protection each contributed independently to risk of ongoing PTSD, depression and mental health related disability". Those held longer had significantly higher rates of PTSD and depression, around double, compared with those held less than 6 months, with persisting disturbing thoughts of detention. This severe mental disturbance persisted for an average of 3 years after release. Both detention and TPV status were identified as predictors of poorer mental health, even when factors like pre-migration trauma were taken into account (Steel et al: 2006: http://bjp.rcpsych.org/cgi/content/full/188/1/58 accessed 24/06/08).

A further recently published study was undertaken by STARTTS and the Psychiatry, Research & Teaching Unit, UNSW, with 116 Afghan and Iranian refugees attending our Early Intervention Program in Sydney. This group comprised 49 people who had been detained and were on temporary protection visas and another group who had not been detained and had permanent protection visas. While the two groups had experienced similar levels of past trauma and persecution, the TPV holders, all of whom had also been detained for an average of 13 months, had higher scores on all mental health indices, including depression, anxiety and PTSD. Past detention stresses emerged as independent predictors of poor mental health, including PTSD (Monmartin et al: 2006).

The adverse mental health consequences of detention have also emerged in international studies of both children and adults. For example a study of 70 US asylum seekers during detention and upon release found that 77% of the detained group had clinically significant symptoms of anxiety, 86% of depression and 50% of PTSD: all symptoms were significantly correlated with length of detention. They also found that this group had high levels of pre-migration trauma (74% had been tortured, 59% reported the murder of a family member or friend and 26% reported sexual

assault). As might be expected the mental health of those released from detention improved, while the mental state of those who had remained in detention declined further (Keller et al: 2003).

### Observations of STARTTS' counsellors

The experiences of STARTTS' staff providing clinical reports for existing detainees and providing counselling to ex-detainees reinforce many of the findings of the studies discussed above. These accounts are not only valuable for this reason, but also because they provide an insight into asylum seekers' responses to detention, their perception of its impact and its meaning to them. A theme common to all STARTTS' staff whose experiences working with asylum seekers were explored for the purposes of this submission, was that asylum seekers believed that in coming to Australia they had reached a safe country that values democratic freedoms and are profoundly shocked to find themselves detained in a prison-like environment, with apparently few rights and little redress. Asylum seekers are not prepared for the experience of detention: they expect people in Australia to listen to their story and to believe their asylum claim. They perceive that in being deprived of their liberty they are being equated with criminals, and indefinite detention is perceived as a form of punishment and as a deterrent to seeking asylum.

For some asylum seekers, detention shatters their belief in the fairness of society and leads to ongoing alienation. In some cases this has led to ex-detainees being drawn into a criminal sub-culture and/ or developing a drug addiction. One of STARTTS' counsellors described detention as a profound shock that reactivates previous trauma: detainees commonly reflect that although they may have experienced significant trauma before arriving in Australia, detention was the event that resulted in their inability to cope and produced their mental health symptoms.

STARTTS' counsellors indicate that it is typical for asylum seekers who are currently detained, or who have been in an IDC, to present with symptoms of excessive anxiety, depression and PTSD such as flashbacks and nightmares. One counsellor indicated that he had seen a number of detained asylum seekers in 2007, and these he described as clinically anxious, placing them at the more anxious end of the spectrum of clients seen working at STARTTS over the previous14 years. He noted that these people are already distressed due to trauma and in some cases torture. Suicidal ideation and suicide attempts while in detention are not uncommon. Another counsellor who worked primarily over 2000-03 with asylum seekers around 1 month after release from detention on Temporary Protection Visas, observed that asylum seekers in detention were retraumatised by the detention experience, particularly those who had been previously imprisoned in their country of origin. She observed that clients who were detained longer typically experienced worse mental health symptoms. In the observation of STARTTS' staff, deteriorating mental health is associated with continued uncertainty about the future, ongoing fear that they may be sent home, and inactivity within the centre: the fact that there is little constructive to do. However the impact of detention was said to vary on the basis of factors such as the detention environment, any previous trauma, the nature of their journey to Australia, pre-existing problems and age.

Our counsellors indicate that these clients also experience loss and grief as a consequence of difficulty maintaining contact with family in countries of origin, and social isolation as a consequence of their confinement. In addition, detained asylum seekers experience humiliation and loss of identity as a result of practices such as being called by numbers not names, and intrusive practices like night searches with torches, checking that detainees are present. We are unsure if the night searches and the use of numbers rather than names continues, as we understand that these had been previously raised by HREOC as practices with adverse impacts on detainees that should be discontinued. Lack of safety in the detention environment as a consequence of assault by other detainees and alleged assault by detention centre officers was reported quite frequently by STARTTS' counsellors. Detention thus becomes a very fearful experience for some clients. Counsellors also reported that detention centre staff do not always have positive or respectful attitudes towards asylum seekers, but appear to regard them as criminals.

Counsellors have indicated that it is very hard to work with asylum seekers with poor mental health while they are still in detention, as the detention environment militates against recovery. For example, according to Judith Herman, the author of a pivotal text about trauma and recovery, the first stage of recovery from trauma is to establish a sense of safety and trust, and this is impossible to achieve in detention. The second stage of recovery is exploration of the traumatic experience and the third stage is social reconnection (Herman: 1992). Again this therapeutic approach can not be effectively applied to people who remain in detention. The lack of certainty as to their future arising from the indefinite nature of detention is also particularly damaging, mirroring and continuing the uncertainty of the refugee experience Without a date of release, it is very hard for asylum seekers to maintain hope for the future.

STARTTS' counsellors confirmed the long term effects that detention has on some refugees *(See Case Study 3, Appendix 1*). For some clients who were seen 2-3 years after they had been detained, trauma had a significant impact on their functionality. Some, even well educated professionals, experienced ongoing memory and concentration problems that made learning English difficult. Anecdotally, the longer people were in detention, the worse their ongoing symptoms were. Counsellors with STARTTS' Personal Support Program[5] note that problems associated with detention continue to persist for a number of years following release. Detention is perceived by clients as the experience that has held them back, damaged their confidence and cost them a significant period of time that could have been spent more productively, such as learning English or helping their family overseas. Counsellors in this Program note that many clients who are ex-detainees continue to experience low self-esteem, mood disorders, depression and anxiety.

[5] STARTTS' Personal Support Program (PSP) is Department of Education, Employment and Workplace Relations (DEEWR) funded and works with refugees with multiple barriers to employment to address these barriers. PSP has worked with many ex-detainees granted Temporary Protection Visas referred by Centrelink after release from detention.

**Recommendations**

**1. We welcome the Minister's recent announcement that unless they are considered a risk to the community, asylum seekers will now be allowed to live in the community while their claim is processed. In fact we support the overall articulation of the new system of immigration values announced, particularly use of detention centres as a last resort and for the shortest practicable time. This is the approach we had intended to recommend to address the adverse mental health impacts of detention on asylum seekers documented above.**

**2. Despite the Minister's announcement, we wish to emphasise the importance that asylum seekers who have experienced torture not be detained in an IDC or in IRH, but be allowed to live in the community while their claim is assessed.**

**3. While we understand that the Minister has indicated that detention is to be used as a last resort and for the shortest possible period, we believe that adequate and timely review, monitoring and evaluation of the length of time people are held in detention under the reformed system is essential to determine if these reforms have in fact been effective.**

**TOR 1 & 2- Criteria for determining length of time in detention & criteria for release from detention following health and security checks**

**Detention in exceptional circumstances only and for minimal period**

In our view this question would make more sense if it were reframed to ask what the criteria should be for holding people in immigration detention, as we think the system should be changed so that detaining asylum seekers is the exception rather than the rule. From the Minister's recent announcement of changes to the immigration detention system, we are very pleased to learn that he shares this view. It is our view, as explained below under the TOR dealing with alternatives to detention, that a new class of bridging visa should be introduced for asylum seekers that enables them to be placed quickly into the community, and not subject to detention. However if detention is to occur for some individuals, we believe that it should be for a minimal period, potentially 3 months at most, as we have observed that the physical and mental health of detained asylum seekers can deteriorate severely after this point. If people are to be held in detention for longer than 3 months, additional resources should be allocated to attempt to maintain the physical and mental health of detainees. Clinical studies have observed worsening mental health for those detained 6 months or longer (Steel et al: 2006). We would like to emphasise that it is the indefinite nature of detention that is one of the most damaging aspects of the current system for asylum seekers' mental health, and that this practice must not be allowed to continue.

**Recommendation:**

1. **The immigration detention system should be reorientated to ensure that detention occurs in exceptional circumstances only.**

**Release of detainees on health grounds**

A significant proportion of asylum seekers who have been detained are later recognised as refugees by the Australian government and granted a protection visa. For example DIAC indicates that around 80% of the relatively large number of asylum seekers arriving to Australia by boat from 1999-2001 were granted refugee status and released (**http://www.immi.gov.au/media/letters/letters05/le05044.htm**). Amnesty International reports that nine out of 10 unauthorised arrivals seeking asylum in the year July 02 – June 03 were found to be refugees. They cite figures from the 2004 HREOC report of the inquiry into children in immigration detention, that of the 2184 children who were detained between 1999- 2003, 92% were recognised as refugees (Amnesty International: 2005: 7).

It is important to recognise that many refugees have experienced significant trauma before arriving in Australia, including torture, which may have negative impacts on their mental health. It is estimated that world-wide, up to 35% of refugees have been physically or psychologically tortured (Baker R: 1992). STARTTS has found at the stage of initial health needs identification, 29% of those assessed suffered from Post Traumatic Stress Disorder as a consequence of their torture and trauma experiences. As a consequence of these experiences, refugees who are torture and trauma survivors typically experience a range of health problems. Physical health difficulties occur due to factors such as physical torture, malnutrition, lack of capacity to maintain oral health, while mental health symptoms associated with torture and the refugee experience are also common. These include depression, anxiety, sleep disorders (particularly nightmares), intrusive thoughts and flashbacks, memory and concentration problems, feelings of guilt (survivor's guilt), loss of self esteem, social isolation, suicidal attempts, difficulties in social functioning and marital and family disruption (Allodi, et al., 1985; RCT, 1985; Bendfeldt & Zachrison, 1985; Goldfeld, et al., 1988; Codepu,1989; Lira, & Weinstein 1984; Gonsalves,1990; Fischman, 1990; Barudy, 1989, cited in Jorge A & Coello M:1994).

As discussed above, our preferred option is for a new class of bridging visa to be created that enables unauthorised asylum seeker arrivals to be placed in the community with appropriate support after initial processing, and to avoid detention for all but a very brief initial period. We would like to emphasise that it is very important that asylum seekers who have experienced refugee trauma, particularly torture, be quickly identified through an effective health assessment soon after they arrive in Australia, and be immediately released into the community either through grant of a bridging visa or release into community detention. Asylum seekers who are torture and trauma survivors should not be held in an IDC environment. The available literature on the mental health of detained asylum seekers and the experience of STARTTS' counsellors strongly indicates that torture and trauma survivors have not been picked up early enough in the detention environment, but have been held for extensive period in restrictive environments, with adverse mental health consequences. For example a STARTTS counsellor is aware of a torture survivor being held in an IDC for 26 months, where his torture and trauma memories were triggered by experiences such as hearing people screaming at night. Our staff have also indicated that being in a prison-like environment with security staff dressed in uniforms, can trigger such memories.

Another counsellor reported that for detained members of the Hazara community, the practice of being repeatedly interviewed by DIAC officers and other government officials in an untrusting way evoked strong memories of previous interrogation and imprisonment[6]. As discussed above, detention itself also has a profoundly negative impact on the mental health of asylum seekers, often exacerbating previous trauma. It is primarily for this reason that we believe that asylum seekers who have experienced significant pre-migration trauma such as torture, particularly those with existing mental health problems, should not be held in detention but must be provided with other viable options which allow them to live in a more normal, non-restrictive environment where they can receive appropriate support.

It is also important that those with physical or mental health reasons not to remain in detention should be released into the community as soon as possible. These would be people who an appropriately qualified health practitioner determines can not be able to be effectively treated in detention and/ or detention may in fact worsen their condition. Criteria for placement in the community should thus be based on an assessment by an appropriate health professional, who is able to provide advice on a course of action that is in the best interests of the person's physical and/ or mental health. We are also of the view that criteria for release on health grounds should be based on guidelines, developed in consultation with appropriate health professionals. We are aware that guidelines are currently being developed by DIAC as a basis for the Ministerial decision to release under residence determination. While we understand that under the new arrangements announced by the Minister, most asylum seekers are to be quickly released into the community, we believe that the arrangements we propose above should apply to asylum seekers who may be held in detention for a longer period.

We understand that a physical and mental health assessment is undertaken with all detainees soon after arrival. Prior to the Minister's announcement we had intended to argue that this health assessment should be the basis for any immediate release on health grounds, and should re-occur on a regular basis (every 90 days) to allow changes in health to be picked up. Given that the Minister has now indicated that most asylum seekers will have their claim processed in the community, this argument is now redundant, apart from its relevance to the minority of asylum seekers who continue to be detained. For this group, who may include people awaiting security clearance or who have difficulty establishing their identity, we believe that regular health assessments should continue, and be taken into consideration in determining whether a person should be released from detention. We understand that there is a second health assessment 3 months after arrival in detention, but are unclear if these assessments then recur regularly every 3 months and include both physical and mental health. Re-assessment should also be able to be triggered by request from the detainee, or by concerns expressed by detention centre staff or other people who have contact with the detainee. It is important that this assessment be of high quality, and identify any vulnerability or physical or mental disorder, diagnosable or suspected. This could trigger a further comprehensive assessment, and if it is determined that the person is likely to deteriorate in detention, consideration should be given to release into the community with appropriate referrals and support.

[6] *For example one of our counsellors reported that officials expressed doubt about whether clients who were members of the Afghani Hazara community were in fact members of this community. Their voices were recorded and sent to Sweden for a sound analysis in order to attempt to substantiate their claims.*

**Recommendations**

**1. As stated above, we believe that detention should occur in exceptional circumstances only and that a new class of bridging visa should be developed so that future asylum seekers are immediately placed in the community with access to full support.**

**2. Asylum seekers who are unauthorised arrivals, and are being held for identity, health and security checks under the changes announced by the Minister, should be speedily assessed to determine if they have experienced significant pre-migration trauma, particularly torture. If the assessment indicates that this is the case they should be immediately placed in the community, either on a bridging visa or in community detention.**

**Bullying, harassment, assault and access to illegal drugs within the IDC**

Prior to the Minister's announcement, we had also intended to argue that there were a range of other valid reasons why people should be released from detention. For example we are aware that detainees may be subject to bullying, harassment and assault while in detention, primarily by other detainees *(See Case Study 2, Appendix 1*). Given the Minister's commitment that asylum seekers are now to be speedily released from detention, our comments in this regard now only apply to the brief period for which unauthorised arrivals are to be held for health, identity and security checks, and the continuing detention of other groups of 'unlawful non-citizens' identified by the Minister. In order to ensure a safe environment for these people, it is important that the detention health service providers and detention centre operator attempt to identify individuals who may be vulnerable to bullying and harassment within the detention centre environment, and attempt to prevent problems before they occur. We recommend that detention centre staff and health service providers receive training in how to respond to bullying, harassment and assault within the detention environment and that preventive programs be put in place for detainees.

STARTTS is aware of a number of cases of asylum seekers, some of whom have been recognised as refugees, being assaulted by other detainees, and that this has happened to at least one client on two occasions. This leads to the related issue, considered below, that it is inappropriate to accommodate asylum seekers with other detainees who may have committed serious crimes and are awaiting deportation. DIAC and GSL have a duty of care to detainees and if they are unable to provide a safe environment, other arrangements should be made such as community detention. Another duty of care issue is what we understand through clients to be the availability of illegal dugs, mainly amphetamines, in detention. Some of our clients have developed drug addictions or relapsed while in detention, as it is alleged that drugs are freely available. Removal from the IDC environment could be recommended to reduce access to drugs and aid recovery from addiction, where this is appropriate.

**Recommendations**

**1. The practice of accommodating asylum seekers with detainees who have committed crimes, particularly crimes of violence, and are awaiting deportation, should cease.**

**2. Detainees who are at risk in and IDC or IRH due to bullying, harassment and assault should be granted a bridging or removal pending visa, or transferred into community detention.**

**3. DIAC should ensure that GSL provides staff with adequate training in dealing with and preventing bullying, harassment and assault of detainees and also provides preventive programs to detainees.**

**Children in detention and Split families**

In 2005 the Migration Act was changed to place children and their families in community detention. It is important that this continues to occur and that the whole family be placed in community detention. Through our participation in asylum seeker networks, we are aware of allegations that families continue to be split, and that the parent who is not the primary carer may continue to be held in a detention facility when the rest of the family are released into the community. We believe that this is likely to have adverse impacts on families and children and that this practice should cease.

In addition, placing families with children into community detention or release into the community on a bridging visa, should be regarded as a preferred option to holding people in Immigration Residential Housing. IRH retains some of the negative features of the IDC, such as the presence of detention centre officers and restrictions on freedom, as for example, these officers accompany families when they leave the IRH. We would ask the Minister to reconsider the appropriateness of this form of housing for families.

**TOR 3- Options to expand transparency and visibility of IDCs**

- The Human Rights and Equal Opportunity Commission and the Commonwealth Ombudsman should have an ongoing role in monitoring the operation of IDCs and other forms of detention, including receiving and investigating complaints by detainees. They should continue to have oversight over companies contracted to provide detention services and operate detention centres by the Australian government.

- We understand that under the changes recently announced by the Minister, ongoing detention is to be reviewed every three months by DIAC and that the Commonwealth Ombudsman will also scrutinise any cases of ongoing detention. However we are concerned that review after 3 months is not sufficiently speedy and that it should occur sooner. The Minister has proposed that the Ombudsman scrutinise cases where people are subject to detention for 6 months, rather than the current 2 years. In addition to this proposal, which we support, we strongly advocate for the need for regular independent judicial scrutiny of any cases of ongoing detention, given that the courts have the authority to order release from detention, while the Ombudsman does not. This is a principle recommended in the UNHCR's 1999 Guidelines.

- The contract that DIAC has with the detention centre operator and the detention health service providers should enable it to monitor and evaluate the standard of

care and service provision in the immigration detention system. Evaluation of health service standards should be undertaken on a regular basis by an appropriately qualified independent agency and should use the *RACGP Standards for Health Services in Australian Immigration Detention Centres* as a benchmark.

- Detainees need to be provided with clear information upon arrival at the IDC about why they have been detained, how their application for a protection visa is processed, what is likely to occur and how long this could be expected to take. Unauthorised arrivals should be clearly informed that subject to health, identity and security checks, they can expect to be quickly released into the community. People subject to ongoing detention should be informed of the range of detention options available and their right to request residence determination. They should also be provided with information on the range of services available to them in detention, including health services, and how to obtain these. The type of information a detainee should be provided with is spelt out in further detail in the *Immigration Detention Guidelines* published by HREOC in 2000.

  GSL have developed a Detainee Information Booklet, the most current version dated 2005, which we understand is made available to detainees in English and a range of languages. It provides some basic information about services available, rules and behavioural expectations and how to make a complaint. It is important that detainees continue to be provided with information of this nature, but that this information is also provided verbally, using an interpreter where necessary, taking account of the fact the literacy levels of some detainees may be low, including in their own language.

  The Booklet currently provides very limited information about counselling services, simply indicating that they are available by contacting a Detention Services Officer, but does not indicate who provides these services, that they are confidential or why someone would seek counselling. As counselling is not a familiar practice in all cultures, some further words of explanation are required. This section needs to be updated urgently in liaison with the detention mental health service provider. It is also important that information is provided to those released into the community under the reforms announced by the Minister about how to obtain counselling and other health services, and that people are connected to service providers such as the Red Cross and STARTTS.

- Detainees and asylum seekers released into the community also need to be provided with a Case Officer in DIAC whom they can contact to obtain an update on the progress of their protection visa application. A reasonable flow of information from DIAC is very important to reassure the client that their case is being considered and is progressing towards a resolution.

- Decision making processes by the detention centre operator should be transparent; for example detainees need to understand the basis on which they are moved from Stage 1, to Stage 2 and 3 at Villawood, the basis for moving them into residential housing and community detention. The basis for other decisions must also be apparent, for example decisions to suspend excursions, and placement in isolation. If reasons are not made clear detainees may interpret decisions which place additional restrictions on them as a form of punishment.

- Ongoing communication of staff and management of the detention centre operator with asylum seeker service providers and advocates through appropriate existing networks is recommended. In addition we understand that GSL holds monthly detainee consultative forums as a way of providing information to detainees about services, facilities, activities and programs: detainees have the opportunity to raise matters of concern at these meeting. There is also a Community Reference Committee with community and detainee representatives set up to discuss the provision of detention services. These are both positive initiatives which should continue.

- Consideration should be given as to whether returning detention centres to operation by the public sector would aid in achieving improved transparency and accountability.

**TOR 4- Infrastructure options for contemporary immigration detention**

**Design and lay out to maximise safety & privacy**

Design and lay out of the detention centre should encourage inmate safety, for example placement of toilets, so that they can be used safely at night without fear of assault by other detainees. We are aware that safety is a major issue for asylum seekers in detention, and are concerned about the practice of accommodating potentially traumatised asylum seekers with other inmates who have had their visas revoked and are awaiting deportation because they have committed serious crimes, including crimes of violence. It should be recognised that asylum seekers arriving without a valid visa have not committed a crime and that it is therefore inappropriate to hold them in a prison-like environment. Efforts need to be made to alter the IDC environment, to the extent that this is possible, so that it is less institutional and prison-like, for example through the removal of razor wire and avoidance of dormitory style accommodation.

Consideration to design of the detention centre environment in a way that maximises detainee privacy, and at the same time addresses safety issues, is important. Lack of privacy is an issue that STARTTS' counsellors have identified impacts on detainees' mental health. In addition, detainees have identified that in some detention centres, restrictions have existed in regard to access to living quarters during the day, which has meant they have been unable to rest when tired. Any unreasonable restrictions on access to living quarters should be removed.

We understand that overcrowding has been an issue in the IDC environment in the past. It is important that IDCs are able to cope with surges in detainee populations without compromising basic accommodation standards for detainees. For example we understand from one of our counsellors, who is an ex-detainee, that conditions in Curtin Detention Centre in 1999 -2000 were very poor, with the majority of detainees accommodated in tents for a period of 2.5 months, sleeping on a mattress on the tent floor, with 4 persons per tent. Conditions were extremely hot and humid. For 4 months detainees had no telephone, had no internet access at any time, and were effectively cut off from the outside world. Very little health care was available, mainly provided by a nurse, and no psychological assessments occurred. This

standard of accommodation and treatment would be considered unacceptable in the Australian criminal justice system and is certainly unacceptable for asylum seekers who have not committed a criminal offence.

**Activities & facilities for recreation, education, communication etc**

There is a need for access to meaningful activities in all stages of detention, including educational activities, such as access to TAFE courses and English classes. We strongly support the HREOC recommendation that DIAC "cease the policy that prohibits detainees from enrolling in courses that lead to a qualification" (HREOCL 2007: 8). We are also of the view that if more use is to be made of bridging visas to facilitate release into the community under the changes announced by the Minister, people living in the community should also be entitled to enrol in educational courses leading to a qualification, including English classes.

Within the IDC environment, there is also a need for access to physical activities such as a gym and recreational activities such as DVDs and games, access to computers and the internet, and to books. Our counsellors indicate that detainees have also requested the capacity to socialise in a non-regimented environment. Through our participation in asylum seeker support networks and interagencies, we are aware that access to quiet space for meetings with visitors and for quiet time, including for religious observance, is also required, as the IDC environment can be very noisy. Our counsellors have indicated that some detainees of a Muslim background are fearful of practicing their religion while in detention as they fear that this might have an adverse impact on their protection visa application. Detainees need to be assured that Australia respects religious diversity and that they have the right to practice their religion and that discrimination on this basis is against the law in Australia.

**TOR 5- Options for provision of detention services and detention health services**

**Need for provision of quality health care**

Counsellors of our service report that health service provision to clients within detention has not always been optimal, although we understand that there may have been recent improvements in this area. Counsellors know of cases of asylum seekers being told to drink water for toothache or being given paracetamol only when ill, and of a client with a potentially serious gastro-intestinal complaint treated only with Imodium, with no checks performed. Detention health service providers should ensure that detainees have speedy access to a medical practitioner where required and that referral to specialists and for appropriate checks occurs. Where there is a risk of TB, a chest x-ray should be performed.

We believe that the current model of provision of health services in detention, whereby DIAC has a direct contractual arrangement with providers of physical and mental health care, rather than their being employed directly by the detention centre operator, is the appropriate arrangement. This is more likely to encourage independence, quality of care and detainee confidence in the service provider and gives DIAC more control over standards of care.

A process is needed to ensure that *RACGP Standards for Health Services in Australian Immigration Detention Centres,* and documents such as DIAC's *Detention Health Framework* and HREOC's *Immigration Detention Standards* are implemented. There should be contractual obligations on detention health service providers to implement these frameworks, if these do not already exist. There should also be provision of external independent evaluation of the standard of health care, to determine, for example whether the above Standards are being complied with, occurring at regular intervals by an appropriate body.

We support DIAC's establishment of the Detention Health Advisory Group, (DeHAG), in which STARTTS is involved as a Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) representative. We regard DeHAG as a useful and important forum, and believe that its term, which is due to expire in the near future, should be renewed

**Regular health checks and follow up**

The health of people in all types of detention, ranging from the IDC, to IRH and community detention should be monitored and reviewed regularly. We understand that a physical and psychological assessment of all detainees occurs soon after they enter detention and that a second mental health assessment occurs after 3 months. If this does not already occur, we believe that continuing mental and physical health assessments should be performed every 3 months while the detainee remains in detention. Our counsellors advise that people may be fearful to disclose health problems initially, particularly in the intimidating IDC environment and that ongoing health checks are important to detect problems. There should also be a process for independent review of an assessment by a health provider external to the detention health provider.

Detention centre and IRH staff need to be aware of the physical and mental health issues of asylum seekers from refugee like situations, and have the capacity to respond appropriately to signs of ill-health. Staff need to be aware that anger and poor behaviour may be symptomatic of an underlying mental health problem as may loss of appetite and problems sleeping. Staff should also be aware that the detention environment, particularly prolonged detention, may have an adverse impact on physical and mental health. Our Clinical Services Coordinator has observed that both physical and mental health tend to deteriorate after asylum seekers have been detained for around 3 months.

Adequate follow up should occur after a physical and psychological assessment, which may include referral to a specialist, such as a psychiatrist, through the public health system. Referral to external mental health facilities and services and external physical health specialists should occur speedily once a recommendation has been made by a detention health service provider. It is important that the specialist is culturally competent and aware of refugee torture and trauma issues. It is preferable for there to be consistency in regard to the psychiatrist who sees asylum seekers with severe mental health issues. We are also aware of cases of asylum seekers from Villawood IDC being sent to Brisbane for treatment for mental illness in inpatient hospital units. In making decisions about treatment options, what is in the best

interests of the detainee in terms of rehabilitation and recovery should be taken into account: for example being sent interstate may break down access to local support.

Under the changes announced by the Minister, we understand that most asylum seekers would live in the community while their claim for refugee status is assessed. Under the new system, it will be important for asylum seekers in the community, particularly those identified through an initial health assessment as having physical or mental health issues, to receive appropriate care and follow-up. Case Managers, potentially through programs like the Community Care Pilot, and service providers such as Red Cross, will need to coordinate care for vulnerable asylum seekers in the community. We understand that the NSW Health Minister has recently decided that asylum seekers will have access to the public health system in NSW, and that a similar step was taken sometime ago in Victoria. This is a welcome development, however access to Medicare would be preferable.

**Suicide and self-harm**

We understand that SASH (Suicide and Self-Harm) protocols which are in place in immigration detention centres are currently under review. STARTTS' staff have identified that these protocols are inadequate and potentially harmful to clients for reasons such as the isolation of people who are 'at risk'. This is anti-therapeutic and may be interpreted as punitive by the detainee. It is important that all possible means are used to support a detainee who is at risk of suicide and self harm, for example by placing them under watch by health professionals, not detention centre guards and not holding the person under complete segregation. Segregation at night, and allowing some interaction with others during the day, has been suggested by STARTTS' Clinical Services Coordinator. We are aware that HREOC has recommended that detainees from Villawood Stages 1 & 2, should not be sent to Stage 1 SASH observation rooms, but wherever possible SASH observations should take place in the detainees immediate environment, close to medical staff, (HREOC: 2007).

In addition STARTTS' staff are aware of cases of repeated return of detainees who have attempted suicide to the detention environment following hospitalization, and submit that alternative arrangements need to be developed to care for these people outside of the detention environment which is exacerbating their condition *(See Case Study 1, Appendix 1)*. We hope that under the new immigration detention system announced by the Minister, that this practice will cease. However it is vital that people who are released because of mental health problems be provided with ongoing care and follow-up in the community, including hospitalisation where required.

**Recommendations**

**1. Detention SASH Protocols should be revised with a view to ensuring watch of at risk people by health professionals not detention centre staff, and not holding the person under complete segregation. Efforts need to be made to avoid isolating at risk people.**

**2. Detainees whose mental health is being adversely affected by the detention centre environment and who have attempted suicide, should not be returned to the detention environment. Where necessary hospitalisation in an in-patient psychiatric unit progressing to care in the community should be arranged**.

## Health Promotion

The *Detention Health Policy Framework* published by DIAC in 2007, acknowledges the need for health promotion for detainees. In STARTTS' view it is important that a practical strategy be developed to maintain people in good health in detention, particularly where people are held for longer than 3 months. The Strategy should focus on keeping people motivated, physical health promotion through exercise, mental health promotion through relaxation, anxiety management and understanding and managing anger, maintaining good relationships and benefits of engaging in educational activities. Some psycho-education on symptoms and problems arising from trauma and confinement is also suggested.

## Recommendation

**1. That a health promotion program designed to promote the physical and mental health of detainees be developed along the lines set out above. It should be provided by appropriately qualified health professionals.**

## Detainee Centre staff: professional background and training

The quality, training and professional backgrounds of staff employed by the detention centre operator, at present GSL, is an important issue. We understand that staff primarily have security or custodial backgrounds. We are concerned that a number of our clients have alleged that some staff have demonstrated a disrespectful and uncaring attitude towards them and in some instances have physically assaulted them. In addition one of our counsellors who is an ex-detainee, and was held in the Curtin Detention Centre in 1999-2000, witnessed verbal abuse of detainees including swearing and racist abuse on the part of detention centre staff. Attention should be paid to the staff recruitment and selection process, to weed out those people likely to mistreat detainees and training in a range of areas, as discussed below, is required.

While recruitment of staff with a security background may be suitable for working with detainees with criminal backgrounds, it is not suitable for working with asylum seekers, particularly those who may have received harsh treatment by police and the military in their country of origin. Employment of people with health and welfare backgrounds, who have a professional background in or can be provided with training in working with refugees (including torture and trauma issues), cultural awareness and mental health issues would be preferable. The Palmer report recommended that "detention officers should receive training in observing, recognising and reporting behaviour and signs that may be symptomatic of mental illness" (Rec 6.7 Palmer: 2005: 32). In addition, HREOC in its Immigration Detention Guidelines, clearly sets out what the standards should be in terms of the selection and training of staff working in detention centres.

STARTTS has previously provided some training to detention centre staff around understanding impacts of torture and trauma. We would be open to discussing further provision of such training. It is also possible that we could provide relevant training in working with torture and trauma survivors to detention health service providers, particularly providers of mental health services.

**Involvement of detainees in operation of the detention centre**

We believe that it is important that adequate consultative and participatory structures exist within the detention environment so that detainees are consulted and involved in a meaningful way in making decisions about aspects of centre operation. However we are aware of cases of detainees being utilised as interpreters when they are not qualified to act as interpreters, and being paid nominal amounts for services such as this and teaching English. Payment was not in dollars, but in points, which could only be redeemed within the detention centre. This was reported to have occurred in Curtin Detention Centre in 1999/ 2000, and we are unaware if this practice continues or if it is widespread. While detainees may wish to contribute and assist each other, and this should be encouraged, people who are employed to provide services as important as interpreting should be suitably qualified and appropriately remunerated.

**Food**

The quality and cultural appropriateness of food provided in the detention environment is a significant issue for detainees. Due to their confinement and a lack of other activities, food becomes a strong focus. While we acknowledge that it is difficult to provide culturally appropriate food for a culturally diverse detainee population, efforts should be made to vary the menu to reflect the cultural makeup of the detainee population. Food taboos need to be respected. Some detainees would welcome the opportunity to cook their own food regularly. We understand that Villawood IDC has tried to respond to this preference by providing cooking classes, and we would encourage this to continue.

**Excursions**

Access to excursions is an important outlet for many detainees. As a result of our participation in asylum seeker networks we are aware that excursions are sometimes suspended at Villawood following escape attempts. We are unsure what the rationale is for this, but believe this practice should be reviewed, as it is in effect punishing the majority for the behaviour of a few individuals.

**TOR 6: Options for community based alternatives to immigration detention**

**Models proposed by UNHCR and NGO refugee sector**

**UNHCR Guidelines**

The United Nations High Commissioner for Refugees (UNHCR), in its *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, states that the detention of asylum seekers is "inherently undesirable", " as a general principle asylum seekers should not be detained" (Guideline 2) and " there should be a presumption against detention" http://www.unhcr.org.au/pdfs/detentionguidelines.pdf . Consistent with Article 31 of the Refugee Convention, refugees coming directly from a country of persecution (including through another country where safety could not be assured) are not to be punished for their illegal entry or presence, and detention shall only be resorted to in cases of necessity. Detention should occur only where there are exceptional grounds, and it is recommended that these be prescribed by law.

The Guidelines state that detention of asylum seekers may only be resorted to: to verify identity where it may be undetermined or in dispute; to conduct an initial interview to determine the elements on which a claim to refugee status is based; in cases where asylum seekers have destroyed travel/ identity documents or used fraudulent documents in order to mislead authorities where they intend to claim asylum; or to protect national security or public order where there is evidence of criminal affiliations that may pose a risk. The Guidelines indicate that detention should only occur in these cases where it is reasonable and proportional and should be imposed for a minimal period. UNHCR also indicates that there should be procedural safeguards such as to have the decision to detain "subjected to automatic review before a judicial or administrative body independent of the detaining authorities….followed by regular periodic reviews of the necessity for the continuation of detention".

The UNHCR recommends alternatives to detention until the asylum seeker's claim for refugee status is determined. Alternatives which may be considered include:

- Reporting requirements- periodic reporting on the asylum seeker's own recognisance, that of a family member, NGO or community group. The asylum seeker would be required to report to authorities periodically, appear at hearings and comply with status determination procedures;
- Provision of guarantor/ surety- a guarantor would be responsible for ensuring asylum seeker's attendance at official appointments etc. Failure to do so would result in the guarantor forfeiting a sum of money;
- Open Centres- collective accommodation centres where asylum seekers would be allowed to leave and return during specified times. To avoid creating a detention like environment, freedom of movement should not be substantially curtailed, nor should the asylum seeker be confined in a narrowly bounded location.

The Minister's recent announcement of reforms to the detention system should place Australia substantially in line with UNHCR recommendations set out above, as acknowledged in the UNHCR press release on these reforms. We note however, that the recommendation of automatic review before an independent judicial review, is not a component of the announced reforms, and believe that it should be.

**Justice for Asylum Seekers 2002 Proposal**

Justice for Asylum Seekers' report, *Alternative approaches to asylum seekers: Reception and Transitional Processing System*, builds on these UNHCR principles to propose an alternative to the current mandatory detention regime. They agree that detention should only be used for the above reasons, to which they add high risk of absconding where a claim is unsuccessful and the conduct of an initial health check. However any ongoing detention of people deemed to be a security or flight risk must be subject to set periods of judicial or administrative review. They propose that all other detainees are released into community and that vulnerable people including single women and the psychologically vulnerable are released into community care with government support and compliance requirements. It is recommended that this occur through the issuing of bridging visas with appropriate conditions attached. The options for release that have been put forward include release into a government open

hostel, release into the care of a community agency, family release or release on own undertaking.

The first option is identified as suitable for people who are not a high security risk but who may require further investigation or regular supervision. It is described as 'Safe Haven' style accommodation as was used with the Kosovars and East Timorese, which is a low security environment where people have freedom of movement and access to the wider community. There is an option to develop and issue an Open Detention Bridging Visa for the latter. The second option involves release on a bridging visa on certain conditions, for example that the holder must live at a designated address nominated by a recognised community agency. Family release involves release on a bridging visa specifying that the holder must reside at a designated address with a close family member for example, and also potentially would involve the family member paying a bond to DIAC. Release on own undertaking involves issuing of a bridging visa specifying that the holder reside at a designated address, report to DIAC etc. This report also recommends the creation of a case worker system whereby an independent service provider such as Red Cross provides information, referral and welfare support to people claiming asylum from the time of arrival to settlement.

### Amnesty International 2005 Proposal

In its 2005 report, *The Impact of Indefinite detention: the case to change Australia's mandatory detention regime*, Amnesty International closely follows the principles espoused in the UNHCR Guidelines when it recommends that the Australian government "establish a formal independent review process to assess on a case by case basis the necessity and proportionality of detention of all asylum seekers and rejected asylum seekers" under current detention. They indicate that "detention should only take place in exceptional circumstances consistent with international human rights standards "and for a limited statutory period of time" and that detained asylum seekers should have regular, automatic access to courts empowered to review the necessity of detention and order release. In all other circumstances and after this statutory minimal period, Amnesty also suggests that asylum seekers be released on bridging visas with the right to work and access health care. Amnesty also recommends that a new class of bridging visa be established for any future arrivals that allow asylum seekers to remain in the community with full rights. In addition Amnesty recommends the introduction of a complementary protection model for people with protection needs who do not fall under the Refugee Convention, and a solution for stateless people whom no other country will accept through a grant of complementary protection in Australia.

### Conclusion

Having considered the range of alternative approaches discussed above, we believe the preferable approach is the Amnesty International proposal of creating a new class of bridging visa for any future asylum seeker arrivals (that is arrivals that indicate they are seeking protection and wish to apply for a protection visa), that allows them to live in the community with full rights (to work, access Medicare) and access to income support and other assistance while their claim is processed. This is the approach that we recommend the Government adopt, in implementing its announced

reforms that will allow asylum seekers to live in the community. In terms of some the range of proposals set out above, we would be concerned if the use of bonds or surety were to result in people remaining in detention if they lacked financial means to provide these.

In implementing its reforms, the Government will also need to develop a system for releasing asylum seekers currently in detention, and those who will enter detention before these reforms are able to be implemented. We suggest that the same treatment be given to existing asylum seekers in detention as that proposed for asylum seeker arrivals under the new system. That is, release on a bridging visa with full work rights and access to Medicare. If a decision is made not to make greater use of bridging visas for the purposes discussed above, we believe that much greater use should be made of community detention, as discussed below, and that all asylum seekers should be released into community detention unless there are exceptional reasons why somebody should be detained.

**Recommendations**

**1. A new class of bridging visa should be created for any future asylum seeker arrivals that allows asylum seekers arriving without a valid visa to live in the community with full rights while their claim for asylum is being determined. Asylum seekers already in detention should also be released on this basis.**

**2. If a decision is made not to take up Recommendation 1, much greater use should be made of community detention for the entire asylum seeker population.**

**Need for adequate support for asylum seekers in the community**

Expanding the availability of bridging visas and releasing people from detention on this basis is preferable to holding asylum seekers in indefinite detention. However asylum seekers require adequate entitlements when they are released into the community, in regard to access to income support, housing, medical and welfare services. Provision of adequate support for asylum seekers in the community acquires much greater importance now that the Minister has indicated this is to be the preferred option for this group. Removal of the 45 day rule, which makes asylum seekers on Bridging Visa E ineligible for Medicare and work rights if they apply for a protection visa more than 45 days after arriving in Australia is an important step in reforming the rights and support available to asylum seekers in the community. It is also the case that the current system of support for asylum seekers through the various programs discussed below appears to be unnecessarily complex, due to factors such as restrictions on eligibility criteria related to type of visa and the stage people have reached in their protection visa application process. We believe that the system should be simplified and unreasonable eligibility restrictions should be removed.

We understand that asylum seekers on bridging visas, those released into community detention awaiting determination of an application for a protection visa and other vulnerable people in the immigration system may be eligible for financial assistance under a range of DIAC funded programs such as the Asylum Seekers Assistance Scheme (ASAS), the Community Detention Program and/ or the Community Care

Pilot administered by the Red Cross. However we are concerned that Bridging Visa E holders are not always eligible for the ASAS. For example to be eligible for ASAS an asylum seeker must be in financial hardship and have lodged a PV application for more than 6 months and eligibility ceases once the Refugee Review Tribunal has made a decision on an appeal. Eligibility thus does not extend to a request to the Minister to grant a visa following an RRT refusal. Exemptions to the 6 month waiting period are only available in certain cases, for example if the person is an unaccompanied minor or over 65 years, (Australian Immigration Fact sheet 62 **http://www.immi.gov.au/media/fact-sheets/62assistance.htm)** Under each of these Programs, financial assistance is set at 89% of Special Benefit (for eg $450 a fortnight for a single person). We believe that this is inadequate, and should be raised to at least the equivalent of Special Benefit and include access to Commonwealth Rent Assistance.

The provision of adequate housing to asylum seekers on bridging visas is also an important issue that needs to be more effectively addressed, particularly if more asylum seekers are to be released into the community under the Minister's reforms. Currently Bridging Visa holders are ineligible for Commonwealth Rent Assistance, Rentstart through the NSW Department of Housing or public housing. It is our understanding that asylum seekers in this situation who lack work rights and are ineligible for the ASAS rely primarily on church and charities for housing provision and that they are at significant risk of homelessness (Beer and Foley: 2003). While some financial assistance to meet housing costs to assist entry to the private market, or to offer temporary accommodation to people who are homeless is available through the Community Care Pilot, people continue to suffer financial hardship as one of their main housing options is the private rental market where they pay full housing costs. It is a similar situation for people on bridging visas who receive assistance through ASAS.

The Community Care Pilot, which provides for the assignment of a DIAC Case Manager, development of a case management plan and provision of a range of support and assistance to vulnerable people in the immigration system is a positive initiative that should be continued. In fact, under the recent changes announced to the immigration system, there will probably be a need to significantly expand this program to provide adequate care to vulnerable asylum seekers living in the community.

**Recommendation**

**1**. **The goal of government policy for asylum seekers in the community awaiting a protection visa outcome should be to ensure that all asylum seekers have access to adequate support and assistance with regard to income support, access to housing, welfare, health and other support services. Complex eligibility criteria and restrictions on access related to timing of protection visa application, and stage an asylum seeker is at in their visa application/ review process should be removed.**

**2. Given the Minister's recent announcement of changes to the immigration system that will see most asylum seekers living in the community while their**

**claim is processed, additional funding will need to be provided to the range of programs outlined above to assist asylum seekers in the community.**

### Expanding availability of community detention

If wider use of bridging visas to release people into the community is not supported, STARTTS would like to see the model of community detention used much more widely. While we believe it is important for an asylum seeker's visa application to be resolved as soon as possible, community detention is a preferred option to an IDC or IRH, as it allows greater privacy, safety, freedom and independence and enables people to live as discrete households in a similar way to other people in the community. However it comes with some restrictions such as no work rights, no access to Medicare, restrictions on travel and restrictions on visitors without DIAC permission (HREOC: 2007). We also believe it is important that people be able to use their time in community detention as constructively as possible, for example by engaging in further education and training. It appears, however, that community detention is under-utilised as an option for asylum seekers, as it is used primarily for children and families. DIAC's *Immigration Detention Statistics Summary*, for June 13 2008, indicate that of the 418 people currently in detention in Australia, only 39 (27 adults & 12 children) were in community detention. Of the 419, the vast majority were held in the prison-like environment of the IDC (325 people).

2005 changes to the Migration Act following the HREOC Inquiry into Children in Immigration Detention provided the Minister "with a non-compellable, non-delegable public interest power to specify alternative detention arrangements for a person's detention and conditions that apply to that person". A person's eligibility and placement on the program is thus determined by the Minister. DIAC's website indicates that guidelines for referral to the Minister for placement in community detention are currently being finalised. HREOC's discussion of these draft guidelines indicates that the criteria for referral to community detention are overly restrictive, since they restrict eligibility for consideration to minor children and their families, unaccompanied minors, adults with special needs, people with a torture and trauma background and adults with "unique and exceptional circumstances" (HREOC: 2007: 19). These guidelines should be revised and eligibility criteria broadened to include anyone who would benefit from community detention, particularly for mental health reasons. If more use is to be made of community detention under the changes announced by Minister Evans, review of this legislation and these guidelines would be a necessity. Furthermore, if this is to be a more accessible option, it does not make sense for referral to occur only by the Minister, but should occur as part of a standard process undertaken by DIAC.

However we remain concerned about the mental health of people in community detention and also about that of people on bridging visas in the community. Asylum seekers awaiting a protection visa outcome do not have any certainty about their future, are not able to be reunited with family members overseas, and are thus not able to really commence a process of settlement in Australia. Until this occurs STARTTS' counsellors have indicated that poor mental health is likely to continue, as asylum seekers are not able to put their refugee trauma behind them and achieve genuine recovery. Asylum seekers in this situation live with the ongoing fear that they may be

returned to an unsafe situation and they may remain separated from family members. We would thus wish to emphasise that the process of assessing an asylum seeker's claim should occur in a speedy, but thorough way.

**Complementary Protection**

In some cases the refugee application process is drawn out because an asylum seeker with a genuine need for protection, may not be strictly eligible for protection under the Refugee Convention. We believe that Australia should introduce a system of complementary protection, as has a number of other western countries, to enable people who should be eligible for protection under other international human rights conventions such as the *1985 Convention Against Torture* and the *1979 Convention for the Elimination of all Forms of Discrimination Against Women*, to have an application for complementary protection considered at the primary visa application stage. This would avoid the need to appeal any adverse decision to the Refugee Review Tribunal, and then to request a visa through the Immigration Minister as their final option. Without such a system Australia is a risk of breaching the Refugee Convention through *refoulement*, or returning asylum seekers to countries where they will be unsafe.

**Recommendation**

**1. In order to better meet its international human rights obligations and expedite applications for asylum by people in refugee like situations, Australia should introduce a system of complementary protection at the primary visa application stage.**

**Costs of detention**

There is considerable evidence that maintaining people in an institutional environment such as an IDC is by far the more expensive option compared with community detention or release into the community on a bridging visa. Figures provided to a federal parliamentary budget estimates hearing on 22 May 2006, indicate that the costs to keep people in on-shore detention centre facilities ranged from a minimum of $238 per detainee per day in Villawood to $580 a day in Darwin. (http://wopared.aph.gov.au/Senate/committee/legcon_ctte/estimates/bud_0607/dimia/qon_238.pdf). Cost figures provided in December 2002 by DIMIA to HREOC were broadly consistent with the average IDC rates provided above, indicating that it was $2 million per week to keep 1,326 individuals in Australian IDCs, which equates to $215 per person per day, (Justice for asylum seekers: 2003: 9).

The 2003 Justice for Asylum Seekers' report, undertaken by a consulting firm specialising in economic and costing analysis for government (Milbur Consulting), found that management of asylum seekers in the community was more cost effective for those requiring a low level of security. For example costs in the community comprising case management, accommodation and food, assistance services and security were estimated at $60 per detainee per day. Similarly DIAC indicates that the cost of the Asylum Seeker Assistance Scheme in 2004-05 was $3.4 million and that this program assisted 1,276 clients. Costs were thus $2,664.5 per person per year if assistance extended over a 12 month period or $51.24 per person day

(http://www.immi.gov.au/media/fact-sheets/62assistance.htm). While there may be other expenses associated with maintaining asylum seekers in the community, this program represents the major expense as it includes both case management provided by Red Cross and financial support at 89% of Special Benefit for accommodation, food and other expenses. Such figures reinforce the finding of the 2003 Justice for Asylum Seekers report that provision of community care for low risk individuals is the most cost effective option for this group. The considerable savings thus made could be channelled into any addressing any shortfalls in the provision of services for asylum seekers in the community.

**Appendix 1 STARTTS Case Studies dealing with the mental health of detained asylum seekers**

**Case Study 1. Suicidal asylum seeker returned to detention**

*A female asylum seeker from Iran, who arrived in Australia with one child, was detained for four and a half years from around 2000. During our contact with the client, she indicated that she had been imprisoned and tortured by the Iranian Government. She was reluctant to speak about her experiences in detention in Australia as she feared this might have negative repercussions for her application for permanent protection, as she wanted to bring her other children to Australia. Her STARTTS' counsellor noted that while she had some previous trauma, her condition was greatly exacerbated by her detention experience. She suffered major depression, anxiety, sleep problems, low self-esteem, loss and grief. She received a psychiatric assessment and was on medication for her mental health condition. Despite her mental health condition she continued to be held in detention, where she attempted suicide three times and was hospitalised after each attempt. However she was returned to detention each time, despite being at continuing risk of suicide. She was eventually released on a bridging visa, which entitled her to very limited support.*

**Case Study 2. Asylum seeker with mental health problem detained for extended period and assaulted by other detainees**

*The asylum seeker was a young Indian student close to completing his degree, and had been living in Australia on a student visa. He was in a relationship with an Australian girl and had a lot of support in the Australian community, including from her family. However he had a major depressive episode when he found out that his parents and sister were killed in a riot in India. He was picked up by DIAC for overstaying his student visa and detained in Villawood Detention Centre. At some stage, we are unsure when, he applied for a protection visa and was rejected at the primary stage, after which time the case went before the Refugee Review Tribunal. We are unsure of the outcome but assume he was unsuccessful, as he continued to be detained.*

*He was first seen by a STARTTS counsellor to provide a psychological report towards the end of 2006, after he had been held in detention for 19 months, mainly in Villawood Stage 2. During his detainment he was transferred from Villawood Stage 2 to the more restrictive Stage One environment, after being assaulted by a Stage 2 inmate. The counsellor assessed the asylum seeker as being 'at risk' in the detention environment, as he had symptoms of g symptoms of depression and anxiety, and indicated that he would benefit from a CBT type intervention and a less institutional environment. However it appears that he was not released from detention at this time. He was seen again by the same counsellor in August 2007, after he had again been assaulted by other detainees (tied up and beaten) in Stage 2.*

*The STARTTS counsellor was at this time requested to assess if there was any change in his condition. At this time his condition had deteriorated, and he was experiencing panic attacks. After the second assault he was moved to Sydney Immigration Residential Housing. However it appears that the young man's psychiatric condition continued to deteriorate, as the counsellor was again contacted about this client in*

*early 2008. At this time she learnt that he has been placed in a psychiatric unit interstate.*

*From the information available it appears that the client did not receive the mental health care he needed as early as required, and it is also clear than an IDC was not an appropriate environment for him, either in terms of his health or safety.*

**Case Study 3- Refugee with persisting mental health problems compounded by detention**

*The client is an Arabic-speaking woman in her late thirties, who fled a Middle-Eastern country with her husband and four young children in 2000. Eventually they found passage to Australia from Indonesia, and upon their arrival were detained at Woomera for 10 months.*

*The client found the conditions of detention and disempowerment in the centre unbearable, and reached such a state of desperation there that she finally tried to hang herself. She also experienced frightening episodes of dissociation that resulted in her hospitalization. She suffered from severe depression, and witnessed horrific scenes of despair and self-mutilation by other detainees. Her second child was severely traumatized after witnessing a detainee setting fire to himself, and has been seen individually by a STARTTS counsellor to address her own trauma, since the family's release.*

*The client was painfully humiliated by the way in which the detainees were treated with contempt and disregarded by the detention centre staff, who called the detainees by number and not by name. She found this unbearable, and still finds it hard to talk about. Some of her most painful memories are related to the disempowerment and dehumanisation she experienced and witnessed as a detainee.*

*On their release, the family were granted a 5 year TPV Visa, and lived in a state of uncertainty until June 2005 when they were granted permanent protection The client found the uncertainty of the years of waiting for permanency unbearably stressful, with no guarantee that permanency would follow and suffered markedly from the sadness of separation from her family in her country of origin.*

*The client has been severally diagnosed with Post-Traumatic Stress Disorder: depression, sleep difficulties, including nightmares, concentration and memory difficulties, heightened anxiety and hypervigilance in certain situations, including choking sensations, and panic symptoms in crowds, and flashbacks to the events in the detention centre. In the years since she has been attending weekly sessions with her STARTTS' counsellor, the client has barely shifted in her entrenched depression. She has been twice referred to the Mental Health Team for expressed suicidal ideation, and for crisis intervention to attempt to deal with her depressive state.*

*The client is also often sleepless and continually anxious since her time in detention. In the course of the past two years it has become apparent that the effects of the detention centre have been compounded by the unbearable waiting time for permanent protection and then for Australian citizenship. However the detention experience has emerged as a very significant factor in her ongoing mental health problems.*

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