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New South Wales Young Lawyers
Human Rights Committee
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Parliament of Australia
Joint Standing Committee
Inquiry into immigration detention in Australia

18 July 2008

Authors:

Laura Brown, Megan Caristo, Mila Cerecina, Doreen Chen,
Yin Leng Chiew, Seranie Gamble, Laura Mutton, Jessica Naimo,
Carolina Riveros Soto, Iresha Sriwardana.

Contact: Mila Cerecina

Chair, NSW Young Lawyers Human Rights Committee

NSW

YOUNG LAWYERS

A Fresh Perspective

Human Rights and Public Law Committees

NSW Young Lawyers

Level 6, 170 Phillip Street

Sydney NSW 2000

BY EMAIL: jscm@aph.gov.au

18 July 2008

Dear Committee Secretariat

Inquiry into immigration detention in Australia

NSW Young Lawyers is grateful for the opportunity to make a submission to the *Inquiry into immigration detention in Australia*.

NSW Young Lawyers is made up of law students and legal practitioners who are in their first 5 years of practice or under the age of 36. The Human Rights Committee is concerned with a range of human rights issues in both Australia and abroad and aims to raise awareness and provide education to the legal profession and wider community on these issues. The Public Law Committee is concerned with public and administrative law and aims to raise awareness of the importance of public law for the protection of public rights.

If you have any questions in relation to the matters raised in this submission, please contact Mila Cerecina, Chair of the Human Rights Committee

Yours faithfully,

Mila Cerecina
Chair, Human Rights Committee
NSW Young Lawyers

Level 6, 170 Phillip Street
Sydney NSW 2000
DX 362 Sydney
Phone (02) 9926 0270 Fax (02) 9926 0282
Website: www.younglawyers.com.au

A Division of THE LAW SOCIETY OF NEW SOUTH WALES ACN 000 030 699/ABN 98 696 264 393



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Summary of Recommendations

1. The criteria that should be applied in determining how long a person should be held in immigration detention

- The detention of asylum seekers should only be resorted to, if necessary and in accordance with the UNHCR:
 - to verify identity;
 - to determine the elements of the claim to asylum or refugee status;
 - to deal with asylum seekers who have destroyed documentation or have misled authorities; or
 - to protect national security or public order.
- Any detention of asylum seekers should be kept to a minimum. The *Migration Act 1958* (Cth) should be amended to provide that once identity, health checks and criminal background checks are carried out on the person seeking asylum, a bridging visa be issued to that person while the Department makes its final decision on their visa application. The Act should be amended to provide a maximum nine week period to conduct these checks. If the Department is unable to conduct such checks within the nine weeks, the person seeking asylum should be issued with a bridging visa unless there are well founded reasons to believe the person seeking asylum is a threat to national security or public order, in which case that person should be immediately deported rather than detained any further.

2. The criteria that should be applied in determining when a person should be released from immigration detention following health and security checks

- The Human Rights Committee of NSW Young Lawyers, with the endorsement of the Public Law Committee of NSW Young Lawyers (**NSWYL**) firmly submits that administrative immigration detention should be processed more expediently than is currently the case.
- In cases where there are particular and appreciable concerns relating to a person's character or security risks, then consideration of an appropriate community detention structure may be required and should be assessed by qualified case managers provided by the Department.

- The system of dealing with unlawful non citizens needs to be one founded upon a law based approach and based upon legally enforceable principle/s that clearly state periods of detention and processing times for applications.
- The impact of prolonged and indeterminate detention of persons held in immigration centres at this time should also be considered.

3. Options to expand the transparency and visibility of immigration detention centres

- Immigration detention centres can be made more transparent and visible through the upgrading of existing facilities and for any new immigration detention centres to be constructed in more central, urban areas.
- Increased access by media and other community groups to detention centres is advisable, and has been regularly recommended by HREOC, as another way to raise community awareness and keep the focus on the treatment of detainees.

4. The preferred infrastructure options for contemporary immigration detention

- NSWYL urges the Joint Standing Committee on Migration to explore alternatives to mandatory immigration detention. Preferable alternatives include immigration residential housing and community detention and are discussed in other parts of this submission.
- NSWYL submits that a combination of structural and organisational actions be implemented in accordance with HREOC reports and recommendations.

5. 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

- Detention centres need to be furnished with appropriate air conditioning and not be subject to overcrowding. Systems must be implemented to ensure detention centres remain clean and that food be assessed for its nutritional value to children.
- Staff must be appropriately trained in the special health needs of detainees so that they can assess the severity of a detainee's complaint. It is similarly vital that interpreters are accessible either through the telephone interpreting service or the employment of more interpreters at detention facilities.
- Better information can be made available to detainees about the status of their request for specialist medical services is required.

- A higher number of psychologists and child psychologists should be employed as staff at detention centres so that the mental health needs of detainees, including children, can be met.
- The system of routine mental health assessments must be extended to all current detention facilities.
- Qualified English teachers should be employed to conduct English classes for all detainees. Detainees ought to be provided with the opportunity to further their education. Further, appropriate recreational activities should be enabled for detainees, such as sporting matches and adequately resourced libraries.

6. Options for additional community-based alternatives to immigration

- It is desirable to broaden the options available within the current immigration detention framework by allowing those asylum seekers in Australia who satisfy the requisite identity, health and security checks to be released into the community to await the outcome of their cases.
- A cost-benefit analysis of community-based alternatives to immigration detention should be undertaken. This analysis should take into account not only quantitative but also qualitative assessment criteria, including, for example, the relative humanity of the different alternatives.

Introduction

The Human Rights Committee, with the endorsement of the Public Law Committee of NSW Young Lawyers (NSWYL) is deeply concerned about the law and policy framework underpinning the immigration detention regime in Australia. The procedures and conditions of the present detention model are not only inefficient in terms of cost and delay, but more importantly, display a deplorable lack of respect for the dignity and basic human rights of asylum seekers. Widespread reports of serious mental deterioration and social impairment among detainees as a result of detention stretching into the months and years have failed to inspire political momentum for change.

Australia's immigration detention policy has become an archaic and simplistic solution to immigration processing challenges. It is all the more surprising that the regime hails not as a vestige of an unenlightened past uninfluenced by modern human rights standards, but was introduced only in 1991. This is a blight on Australia's standing and reputation as a democratic nation. There is no shortage of cost-effective, humane and successful alternatives that can be implemented to bring the Australian scheme into of line with international standards.

NSWYL commends the Joint Standing Committee's inquiry into present immigration detention systems and hopes that this is an indication that the Australian Government acknowledges that the current regime falls short of Australian and international community expectations.

1. The criteria that should be applied in determining how long a person should be held in immigration detention

Current Position

1.1 Under UNHCR's EXCOM Conclusion No. 44 (XXXVII) the detention of asylum seekers may only be resorted to, if necessary:

- (a) to verify identity;
- (b) to determine the elements on which the claim to refugee status or asylum is based;
- (c) to deal with asylum seekers who have destroyed their travel and/or identification documents to mislead the authorities of the state in which they intend to claim asylum; or
- (d) to protect national security or public order.

- 1.2 Section 189 of the *Migration Act 1958* (Cth) (**the Act**) requires the detention of a person known or "reasonably suspected" of being an unlawful non-citizen. There is no fixed time or definite time when detention must come to an end. As a result, there is no prescribed maximum period an unlawful non-citizen can be detained.
- 1.3 Section 196, Duration of detention, of the Act simply provides that an unlawful non-citizen detained under section 189 must be kept in immigration until he or she is:
- (a) removed from Australia under sections 198 or 199;
 - (b) deported under section 200; or
 - (c) granted a visa.
- 1.4 As noted by Justice McHugh at [89] in *Re Woolley and Another; Ex parte applicants M276/2003 (by their next friend GS)* (2004) 225 CLR 1 (**Re Woolley**) although the date when the detention of any detainee will end cannot be predicted, the Act does specify conditions upon which such detention must end. There may be circumstances where a seemingly indefinite period of detention will arise (i.e. the attempted deportation of unlawful non-citizens to countries which refuse to accept the unlawful non-citizen). However, it has been held that the period of detention is limited to that which removal under section 198 is "reasonably practicable" (see Justice Gummow at [134] in *Re Woolley*).
- 1.5 One of the primary determinants of the period of detention is the period of time that it takes to process visas. While some asylum claims are processed within weeks, others can take years. There are various reasons as to why the processing of visas can be delayed. These include:
- (a) the time it takes to lodge a claim;
 - (b) the time it takes for the primary processing and merits review at the Refugee Review Tribunal; and
 - (c) the Appeal process through the Court system.
- 1.6 This delay is then compounded by periods of time taken to conduct identity, health and security checks, as well as delays arising from any administrative or judicial review sought by the applicant.
- 1.7 The apparent uncertainty as to detention periods, combined in many cases with the undue length of detention periods, has been documented to cause critical and debilitating problems for detainees. These include, among others:

- Impaired capacity for social integration;
 - Increased levels of anxiety and depression;
 - Behavioural disturbances due to a lack of mental and physical stimulation.
- 1.8 Together these may be classed as effects amounting to a severe deterioration in the mental health of detainees.
- 1.9 While the detention of asylum seekers should be a last resort for use only on exceptional grounds, should a person be detained the period of detention should be minimal. NSWYL submits that the mental impacts of prolonged detention can to some extent be alleviated by restraining the amount of time detainees can be held in detention, by way of setting a statutory maximum. By introducing an element of certainty, detainees will be in a better position to retain mental stability as they will be able to exercise an element of control, future planning and self-determination during the process.
- 1.10 The Act should be amended to provide that once identity, health and security checks have been conducted on the person seeking asylum, a bridging visa is issued to that person until the Department of Immigration and Citizenship (**Department**) has made a final determination on the visa application of that person.
- 1.11 Further, the Act should be amended so that the Department is given a maximum time period of nine weeks to conduct identity, health and security checks. The nine weeks reflects the maximum length of time it would have taken to conduct such checks had the applicant made his or her application offshore. If the Department is unable to conduct such checks within the nine weeks, the person seeking asylum should be issued with a bridging visa unless there are reasons to believe the person seeking asylum is a threat to national security or public order, in which case that person should be immediately deported rather than detained any further.
- 2. The criteria that should be applied in determining when a person should be released from immigration detention following health and security checks**
- 2.1 NSWYL considers that it is inhumane and contrary to international human rights law jurisprudence to indefinitely detain individuals within detention centres for longer than the period that is required to undertake both health and security checks.
- 2.2 NSWYL believes that it is essential to conduct identity, health and security checks for those persons that enter Australia who are 'reasonably suspected' of being an unlawful non-citizens. The importance of determining the status of new arrivals is particularly important for those persons who may not have appropriate identification

documentation or may not have any identification records at all. In such cases, it is imperative to conduct identity and security checks before assessing immigration status.

- 2.3 The importance of conducting and establishing the identity of the person concerned was highlighted in the case of Cornelia Rau in 2005. The subsequent *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* by Mick Palmer in July 2005 stressed the importance of proper and effective identification procedures.
- 2.4 Nevertheless, it is the firm position of NSWYL that holding an individual beyond the time required to conduct identification, health and security checks and detain them in a mandatory and unspecified period is wholly unnecessary and unreasonable. NSWYL recommends that administrative immigration detention should be strictly limited and subject to proportionate aims, such as initial checks.
- 2.5 In cases where there are particular and appreciable concerns related to a person's character or security risks, then consideration to an appropriate community detention structure may be required and should be assessed by appropriate case managers provided by the Department.
- 2.6 Whilst NSWYL acknowledges that the Department has a case management system in place to ensure people are held in immigration detention centres for the shortest practicable time, in reality people are being detained for unjustifiably extended periods of time, periods that far surpass time required for identification, health and security checks. This is supported by the figures below:

Length of time in detention as at 4 July 2008		
Period Detained	Total	% of Total
7 days or less	26	7%
1 week - 1 month	55	14%
1 month - 3 months	54	14%
3 months - 6 months	53	14%
6 Months - 12 months	71	18%
12 months - 18 months	47	12%
18 months - 2 years	32	8%
Greater than 2 years	52	13%
Total	390	100%

¹ Immigration Detention Statistics Summary, *Detention and Offshore Services Division, DIAC, As at 4 July 2008*, p.4 <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20080704.pdf>

Of the persons detained in immigration detention as at 4 July 2008, only 7% of persons were detained for 7 days or less and 14% of persons were detained from 1 week to 1 month. NSWYL firmly submits that administrative immigration detention should be processed far more expediently than is currently the case.

2.7 Furthermore, NSWYL recommends that the current system of dealing with unlawful non citizens needs to be one that is founded upon a law based approach. That is, one that is based upon a legally enforceable principles that clearly state periods of detention and processing times for applications.

2.8 Moreover, NSWYL is concerned with the impact of prolonged and indeterminate detention of persons held in immigration centres at this time. NSWYL also encourages the Joint Standing Committee on Immigration to closely consider the recent report of the Committee Against Torture,² which recently reviewed Australia's compliance with its relevant international obligations. Particularly, the Committee expressed concern over the inadequate mental health care for detained persons within detention centres who are held indefinitely.

3. Options to expand the transparency and visibility of immigration detention centres

3.1 NSWYL commends the Government for recognising the importance of increasing the transparency and visibility of immigration detention centres.

3.2 Immigration detention centres can be made more transparent and visible through the upgrading of existing facilities and for any new immigration detention centres to be constructed in more central, urban areas. The present system of corralling asylum seekers in remote locations has the effect of literally and metaphorically displacing asylum seekers from the national consciousness.

3.3 Increased access by media and other community groups to detention centres is advisable, and has been regularly recommended by HREOC, as another way to raise community awareness and keep the focus on the treatment of detainees.

3.4 The annual HREOC inspection of each detention centre, which generates a report that is submitted to government with recommendations, represents a valuable oversight mechanism. HREOC is a relatively independent body and can provide a necessary critique of the procedures and conditions in these centres. However, the 2007 report notes that certain HREOC recommendations arising from its report, including urgent ones, have not been followed by the Australian Government.

² 40th session, CAT/C/AUS/CO/1, 15 May 2008, Geneva, Switzerland

- 3.5 One way of resolving this lack of implementation may be to introduce a requirement that the Department must formally respond to the HREOC report, answering each recommendation with what the Department intends to do in response. Both the HREOC report and the Department response could be tabled in Parliament, to provide a public method of making the Department accountable for the centres and their reform.
- 3.6 The Asylum Immigration Welcome Centre in the UK³ recommended that private companies responsible for running their detention centres create and publish a report each year on their centre. Under the present arrangement in Australia, HREOC produces a report, then the Department and GSL (the company responsible for running the centres) responds. NSWYL feels it would be a more effective procedure if GSL were responsible for a public report. This would enable a greater degree of scrutiny, rather than the present arrangement whereby GSL merely responds in a haphazard fashion to the issues raised by HREOC.
- 3.7 The Department currently provides a weekly statistic report on detainees.⁴ However, it appears that earlier editions are not retained for public viewing on the Department website, and there is no online library of past reports to provide a basis for comparison. The reports of previous weeks should also be made available to the public, thereby increasing the provision of publicly available information and levels of accountability
- 3.8 The Asylum Immigration Welcome Centre in the UK also provides a list of statistics that should be gathered on detainees, and some of these (not currently being done in this format) could be a useful guide for Australia:
- (a) monthly numbers of people in immigration detention (broken down by nationality; whether or not asylum claim has been made; whether or not the person concerned has a previous criminal conviction (and if so, for what category of criminal offence);
 - (b) average numbers of transfers per detainee between detention centres;
 - (c) numbers of applications for voluntary return;
 - (d) departures as a result of deportation orders;
 - (e) departures as a result of administrative removal;
 - (f) numbers of detainees placed on suicide watch; and

³ http://www.asylum-welcome.org/index.php?option=com_content&task=view&id=40&Itemid=56

⁴ <http://www.dia.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20080627.pdf>

- (g) numbers of incidents of self-harm in detention centres.

4. The preferred infrastructure options for contemporary immigration detention

- 4.1 There are currently nine operational immigration detention facilities throughout Australia, five of which are mandatory immigration detention centres, two are transitory immigration detention centres and two are residential housing accommodation.⁵
- 4.2 NSWYL remains concerned about the demonstrated mental health ramifications resulting from persons being held in immigration detention.
- 4.3 As a preferred approach, the Committee urges the Joint Standing Committee on Migration to explore alternatives to mandatory immigration detention. Preferable alternatives include immigration residential housing and community detention and are discussed in other parts of this submission.
- 4.4 In respect of infrastructure, NSWYL echoes the concerns of HREOC following recent inspections of immigration detention facilities conducted by HREOC in October 2007.⁶

Structural Infrastructure objectives

- 4.5 In brief, NSWYL submits that:

- (1) The Department increase the use of immigration residential housing and community detention facilities in appropriate locations taking account of the ethnicity of asylum seekers, their medical, social and cultural needs.
- (2) Villawood immigration detention centre remains the most "prison-like"⁷ of all the centres and as a priority, the Committee requests that the Department demolish the centre and replace it with more amenable facilities, ideally immigration residential housing or community detention.
- (3) The Department implement the following actions in all existing centres as noted by HREOC⁸:
 - i. Remove all structural fixtures that create a prison-like appearance including the reduction of any obvious security presence.

Provide:

- ii. high standard facilities for the disabled;

⁵ Department of Immigration and Citizenship Website – Managing Australia's Borders – Location of Operational Facilities – July 2008 .

⁶ Summary of Observations following the inspection of Mainland Immigration Detention Facilities 2007 – Human Rights and equal Opportunity Commission .

⁷ Ibid at p2.

⁸ Ibid.

- 4.7 NSWYL submits that the Department implement the following organizational infrastructure actions in all facilities:

Provide:

- i. a youth officer and counsellor 7 days a week;
- ii. art and music classes;
- iii. regular opportunities for detainees to go on external excursions including shopping, visits to appropriate religious and cultural facilities, visits to cultural centres in towns and cities;
- iv. regular opportunities for detainees to participate in the choice, purchase and preparation of food;
- v. opportunities for detainees to utilise their qualifications including externally; and
- vi. opportunities for asylum seekers to study for a chosen qualification including external study.

5. 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

Physical Health Care

- 5.1 It is of fundamental importance that detainees are provided with adequate physical and mental health care while in detention. Detainees have a right to the *"highest attainable standard of physical and mental health"* under international covenants to which Australia is a signatory.⁹ Furthermore, NSWYL submits that untreated health conditions can have devastating long-term effects, both physically and financially.
- 5.2 NSWYL is concerned by reports that detainees feel that their illnesses are not being responded to appropriately and that detainees are unable to communicate their concerns to medical professionals because interpreters are unavailable.¹⁰ It is imperative that detainee staff are appropriately trained in the special health needs of detainees so that they can assess the severity of a detainee's complaint. It is similarly vital that interpreters are accessible either through the telephone interpreting service or the employment of more interpreters at detention facilities.

⁹ See Article 12.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides *"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"* and Article 24.1 of the Convention on the Rights of the Child which provides *"States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."*

¹⁰ See HREOC, *A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001*, December 2001, Part 3.8

- iii. adequate amenity and privacy for families by providing private space within facilities for families, including baby changing areas and play areas for young children;
- iv. privacy to all detainees (particularly women) in living, washing and sleeping areas (particularly detainees in long term, large scale facilities);
- v. communal cooking facilities so detainees can participate in cooking and take an active role in preparing menu's and food preparation;
- vi. comprehensive, fully staffed libraries with access to computers and internet facilities and computer and internet training. Libraries should hold materials in various languages as required;
- vii. Internal and external communal areas which are bright, uplifting, maximise natural light and incorporate artwork on walls and colourful décor;
- viii. landscaped garden areas with pleasant outlooks including areas which can be tended and cultivated by detainees if desired;
- ix. separate entertainment and education areas including English classes to be regularly available;
- x. safe, high quality indoor and outdoor recreation areas such as soccer fields, tennis courts and BBQ areas to alleviate boredom for detainees. Out door facilities should be designed to be appropriate in the given climate and provide adequate shade, shelter and turf as required;
- xi. adequate clothes washing facilities;
- xii. designated areas for the quiet and uninterrupted practice of religious practices. Male and females should be provided with separate areas. Religious texts and materials should be provided as required;
- xiii. private areas for detainees meeting visitors; and
- xiv. comprehensive medical facilities so detainees' medical issues can be treated in confidence and privacy. Detainees should also be given full access to external medical assistance when required and should be able to do so in a non-threatening environment and be accompanied by family members or a chosen friend or helper.

Organisational Infrastructure objectives:

- 4.6 NSWYL further submits that placement in facilities should be determined by reference to the proximity of relatives or cultural and community connections. In particular, immigration residential housing should be increased and utilised in a culturally sensitive manner.

- 5.3 NSWYL notes that the extreme climate of remote detention centres has been found to cause great discomfort to detainees, particularly children, most notably in centres where there is insufficient cooling and heating.¹¹ NSWYL also notes that investigative reports have found that detention centres have been overcrowded at times, that there are insufficient systems in place to ensure the cleanliness of accommodation blocks and toilets and that the food provided does not meet the nutritional needs of children.¹² These conditions can lead to problems such as gastro-enteritis, hepatitis A, malnutrition and respiratory diseases, such as pneumonia.
- 5.4 NSWYL therefore urges the Joint Standing Committee on Migration to recommend that detention centres be provided with appropriate air conditioning and not be subject to overcrowding, that systems be implemented to ensure detention centres remain clean and that food be assessed for its nutritional value to children.
- 5.5 NSWYL acknowledges that there has been an improvement in the approval process for specialist medical services for detainees since the introduction of Detention Health.¹³ However, NSWYL is concerned by reports that some detainees are still experiencing delays in obtaining approvals or are uncertain of why a delay in accessing specialist medical services has occurred.¹⁴ The uncertainty that this creates for detainees is likely to exacerbate the distress that detainees are already enduring as a result of their traumatic experiences prior to arriving in Australia and their current detention. NSWYL therefore submits that a system should be implemented whereby detainees are kept informed of the status of their request for specialist medical services.

Mental Health Care

- 5.6 It is imperative that detainees are provided with adequate mental health services, given the conclusion by the Commonwealth Ombudsman following its 2001 inquiry into detention centres that *"long-term detention is a source of frustration, despondency and depression often resulting in drastic action being taken by the detainees."*¹⁵ Several investigative reports into detention centres since have found that the number of mental health staff in detention centres is inadequately low¹⁶ and that the high turnover of mental health staff is having an adverse effect on the continuity of

¹¹ See HREOC, *A last resort? Report of the National Inquiry into Children in Immigration Detention*, 2004, p 510.

¹² See HREOC, *A last resort? Report of the National Inquiry into Children in Immigration Detention*, 2004, p 51.

¹³ See HREOC, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*, December 2007, p 27.

¹⁴ See HREOC, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*, December 2007, p 27.

¹⁵ Commonwealth Ombudsman, *Report of an own motion investigation into the Department of Immigration and Multicultural Affairs' Immigration Detention Centres*, 2001, p 20.

¹⁶ See HREOC, *A last resort? Report of the National Inquiry into Children in Immigration Detention*, 2004, p 415 and HREOC, *A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001*, December 2001, Part 3.9.

treatment plans for individual detainees.¹⁷ It has similarly been documented that specialist services for children, such as torture and trauma services designed specifically for children, are not being provided in detention centres.¹⁸ NSWYL therefore implores the Joint Standing Committee on Migration to recommend that a higher number of psychologists and child psychologists be employed as staff at detention centres so that the mental health needs of detainees, including children, can be met.

- 5.7 NSWYL recognises that a number of improvements have been made to the provision of mental health services in detention centres in recent years. In particular, NSWYL acknowledges that the system of routine mental health assessments that has improved the ability of mental health workers to identify and treat mental illness in some detention centres.¹⁹ However, NSWYL believes that mental health workers are limited in the assistance they are able to provide. This is because mental health workers are unable to remove the primary cause of the health problem, which is the uncertainty and distress that accompanies detention.²⁰ The only way to properly address this problem is to repeal Australia's mandatory detention laws. In the alternative, NSWYL proposes that the system of routine mental health assessments be extended to all current detention facilities (it is NSWYL's understanding that routine mental health assessments are not available to detainees at the Northern Immigration Detention Centre and the Brisbane Immigration Transit Accommodation).²¹

Education and Recreation

- 5.8 It is important that detention centres provide adequate and appropriate facilities to address the educational and recreational needs of detainees. Education and recreation can play pivotal roles in alleviating the distress of detainees and improving the ability of detainees to gain employment and communicate with others when they are released into the Australian community. It is for these reasons that NSWYL is concerned by reports that educational activities and recreational activities are limited in detention facilities and reports that some detention centres do not have any qualified English teachers on staff.²² NSWYL therefore repeats its previous request in urging the Joint Standing Committee on Migration to recommend that qualified English

¹⁷ See HREOC *A last resort? Report of the National Inquiry into Children in Immigration Detention*, 2004, p 416.

¹⁸ See HREOC, *A last resort? Report of the National Inquiry into Children in Immigration Detention*, 2004, p 431.

¹⁹ See HREOC, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*, December 2007, p 24 and HREOC, *A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001*, December 2001, Part 3.9.

²⁰ See HREOC, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*, December 2007, p 24 and See HREOC, *A last resort? Report of the National Inquiry into Children in Immigration Detention*, 2004, p 423.

²¹ See HREOC, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*, December 2007, p 24.

²² See HREOC, *A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001*, December 2001, Part 3.5.

teachers teach English classes to all detainees, that detainees be provided with the opportunity to further their education and that detainees be provided with appropriate recreational activities, such as sporting matches and adequately resourced libraries.

- 6. 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, and c) comparing the cost effectiveness of these alternatives with current options.**
- 6.1 There exist several community-based alternatives to the suite of options available under the existing Australian immigration detention framework. Indeed, before looking to experiences abroad, NSWYL notes that prior to 1991, all asylum seekers in Australia who were awaiting the outcome of their cases were lodged in hostels, with only limited restrictions on their freedom of movement.²³
- 6.2 International experiences offer a further array of community-based alternatives to immigration detention, with the well-known Swedish model being chief among these. In Sweden, following a short, initial detention period for the purposes of undertaking health and criminal record screening, asylum seekers are able to live in the community, including with friends or relatives or at a Migration Board reception centre. Asylum seekers in Sweden also enjoy a range of rights, including receiving a daily allowance where they have no money, being able to work where a decision on their case is expected to take longer than 4 months, and, in the case of children, enjoying the same medical and dental benefits as Swedish children.²⁴
- 6.3 Similar programs of community release exist throughout the world, including in Canada, where asylum seekers are only detained if it is considered that the asylum seeker may not appear at his or her proceedings or may be a danger to the public. The majority of asylum seekers in Canada are expediently released into the community to await the outcome of their case and during this period, are able to work, access health services, among other things, and enjoy all the rights of the *Canadian Charter of Rights and Freedoms*.²⁵
- 6.4 NSWYL respectfully suggests that the Joint Standing Committee on Migration consider broadening the options available within the current immigration detention framework by allowing those asylum seekers in Australia who satisfy the requisite

²³ Jupp, J (2002). *From White Australia to Woomera: The Story of Australian Immigration*, Cambridge University Press, Cambridge, p. 193.

²⁴ Amnesty International Australia (2007). *Australia's unfair shores: questions and answers*, http://action.amnesty.org.au/images/uploads/ref/Questions_and_answers.pdf (accessed 13 July 2008), pp. 3-4.

²⁵ Crock, M, Saul, B and Dastyari, A (2006), *Future Seekers II: Refugees and Irregular Migration in Australia*, The Federation Press, Sydney, pp. 224-225.

identity, health and security checks to be released into the community to await the outcome of their cases.

- 6.5 NSWYL notes that past governments have expressed concern that such community-alternatives to mandatory immigration detention are untenable as they will give rise to a significant risk that large numbers of asylum seekers will abscond once they are availed of the opportunity to do so. In response to this view, NSWYL relies on several studies which have found that such a risk is minimal. UK studies have found that less than 4% of failed asylum seekers abscond, while in both the UK and US, the vast majority of asylum seekers living in the community did meet requirements to attend court.²⁶
- 6.6 There is a strong argument that community-based alternatives such as those noted above may in fact be more cost-effective than the current program of immigration detention. Indeed, one US study found that a pilot program releasing asylum seekers into the community and monitoring them from time to time cost "55% less than the cost of detaining them".²⁷ Within Australia, a previous study estimated that in the 2000-2001 financial year, it cost \$11 million to process approximately 2,700 claims through the community-based system which handles the asylum claims of those with valid visitor visas. In contrast, it would have cost more to detain the same number of people for only five weeks.²⁸ Added to this would be the long term costs and strains on Australia's health and social welfare infrastructure that is occasioned by subjecting future Australian citizens to extended periods of confinement.
- 6.7 NSWYL urges the Joint Standing Committee on Migration to undertake a thorough cost-benefit analysis of community-based alternatives to immigration detention. Furthermore, NSWYL respectfully suggests that when undertaking such an analysis, the Joint Standing Committee on Migration take into account not only quantitative but also qualitative assessment criteria, including, for example, the relative humanity of the different alternatives. NSWYL submits that the humanity of community-based systems far surpasses the present detention regime.

²⁶ Crock, Saul and Dastyari, *op. cit.*, p. 182.

²⁷ Vera Institute of Justice, cited in Crock, Saul and Dastyari, *op. cit.*, pp. 182-183.

²⁸ P Mares (2002), *Borderline: Australia's response to refugees and asylum seekers in the wake of the Tampa*, UNSW Press, Sydney, 2nd edn, p. 256.

Conclusion

The regime of immigration detention of asylum seekers in Australia is a manifestation of narrow, utilitarian policy making, which fails to aspire towards human decency. The asylum seeker processing scheme needs to take account of the profile of its "clients" - vulnerable, displaced people, seeking to escape their home countries and be welcomed into an environment without persecution, degradation and despair, to which every human being has a right. A processing system which subjects these people to conditions which introduce unacceptable mental stressors of unacceptable duration has no place in a liberal democratic nation like Australia.

The immigration detention regime is no longer a solution, it is now a problem. Nevertheless, the resolution of this urgent Australian challenge is readily achievable. Alternative methods do not require major innovation and are backed by proven success not only from our own past but also from the experiences of other nations. The time to act is now.