

Overview of alternatives to immigration detention centres

- 2.1 This chapter provides a descriptive overview of alternatives to immigration detention centres, ranging from those currently in use in Australia to different models that feature in the international experience. The Committee's consideration of issues raised in relation to ensuring that detention alternatives provide a humane, appropriate and supportive living environment is addressed in the following chapter.
- 2.2 Currently under the *Migration Act 1958*, detention of an unlawful non-citizen is mandatory.¹ Without legislative change, the only alternative to detention is to provide a lawful status for the non-citizen through granting a substantive Australian visa or by granting a bridging visa, which provides a temporary lawful immigration status.
- 2.3 Given these legislative limitations, the Committee has chosen to examine community-based alternatives in terms of alternatives to the use of secure detention centres. This examination takes into account alternative mechanisms, such as the use of bridging visas, as well as detention accommodation alternatives which are community-based.

1 The *Migration Act 1958* sets out a universal visa regime that requires all persons who are not Australian citizens to hold a visa in order to enter and remain in Australia. Section 189(1) of the Act provides that if an officer knows or reasonably suspects that a person in the migration zone is an unlawful non-citizen – that is, a person who is not Australian and has no valid visa – the officer must detain the person.

2.4 The chapter outlines:

- the support and accommodation arrangements for those not in detention centres but detained in some alternative form of detention in Australia including:
 - ⇒ temporary alternative detention for minors and others requiring specialised care
 - ⇒ immigration residential housing (IRH) units
 - ⇒ immigration transit accommodation (ITA), and
 - ⇒ community detention using private rental properties
- the support and accommodation arrangements for those on a bridging visa while awaiting removal from Australia or resolution of immigration status
- options employed internationally, such as open hostel accommodation and hosting by community members
- the use of bail, bonds or sureties in the Australian bridging visa system and as part of detention release arrangements internationally, and
- monitoring and reporting requirements, including their current role in Australia's community detention program and bridging visa regime, and alternative models in place internationally such as electronic surveillance.

Alternative forms of detention in Australia

2.5 This section outlines alternatives to immigration detention centres such as:

- temporary alternative detention in the community (for example placement in foster care, motels, hospitals or state correctional facilities)
- ITA
- immigration residential housing, and
- community detention.

2.6 These placement or accommodation options remain forms of detention under the Migration Act. They provide a range of security

levels, with varying degrees of independence and support services for people.

- 2.7 The majority of detainee days are spent in immigration detention centres. From July 2005 to June 2008, 506 187 detainee days were spent in immigration detention centres, as opposed to 68 446 in community detention, 16 286 in residential housing and 648 in immigration transit accommodation.²
- 2.8 Different detention alternatives are being used for short or longer term placement of people, however. Table 2.1 shows the average number of days spent by people in alternative detention facilities in 2007-2008.

Table 2.1 Total numbers of people held in alternative detention facilities for 2007-08

| Detention facility | Less than 7 days | Between 8 and 30 days | Between 31 and 90 days | Between 91 and 365 days | More than 365 days |
|---|------------------|-----------------------|------------------------|-------------------------|--------------------|
| Temporary alternative detention facilities* | 2068 | 368 | 67 | 40 | 5 |
| Immigration Detention Centre/ Immigration Reception and Processing Centre | 811 | 1378 | 466 | 279 | 194 |
| Immigration Transit Accommodation | 154 | 9 | 1 | 1 | 0 |
| Immigration Residential Housing | 40 | 28 | 32 | 42 | 9 |
| Community detention | 1 | 3 | 8 | 21 | 50 |

Source: Department of Immigration and Citizenship, submission 129d, p 6.

*Alternative detention facilities in this context refers to temporary detention in the community such as motels, hotels, private apartments, hospitals, psychiatric facilities and foster care. A person may have more than one type of placement during an episode of detention.

Temporary alternative detention in the community

- 2.9 Subsection 5(1) of the *Migration Act 1958* provides for establishment of places of temporary alternative detention in the community. This concept was first introduced in December 2002. DIAC applies this provision as a temporary solution to meet a critical need, such as for

2 Department of Immigration and Citizenship, submission 129h, p 4. The low figure for immigration transit accommodation reflects in part that this type of accommodation was only available from November 2007.

medical treatment, pending a grant of community detention, or where no other immigration detention facilities are available.

- 2.10 Temporary alternative placements in the community can include:
- motels, hotels and private apartments
 - hospitals, psychiatric facilities and other places where medical treatment is provided
 - home-based care using private accommodation owned or leased by relatives or people with established close relationships with the person in detention
 - correctional facilities, and
 - foster care for unaccompanied minors.³
- 2.11 A person is usually released into the care of a designated person, such as a friend, police officer, school teacher, doctor or a detention service provider officer.
- 2.12 Over 80 per cent of those in temporary alternative detention spent less than seven days in these facilities. The majority of those spending longer periods in temporary alternative detention are unaccompanied minors who are in special placements.
- 2.13 As at 20 March 2009, there were 13 individuals in alternative temporary detention in the community, all adults.⁴

Immigration transit accommodation

- 2.14 ITA is set up to offer semi-independent living in a hostel-style environment to people expected to achieve an immigration outcome quickly.
- 2.15 The aim of this type of facility is to provide short stay accommodation for people who represent a low security risk, a low flight risk and have no known health concerns that cannot be managed at the accommodation. There are facilities in Brisbane and Melbourne and a third is under construction in Adelaide.

3 Department of Immigration and Citizenship, submission 129, p 25.

4 Department of Immigration and Citizenship, *Immigration detention statistics summary as at 13 March 2009*, viewed on 6 April 2009 at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090320.pdf.

- 2.16 The facility in Brisbane accommodates 30 beds in double rooms in three separate 10 bed units. Some rooms are inter-leading pairs providing flexibility to accommodate immediate and extended family if required. Each unit has its own living space, with lounge, dining, television, kitchenette and laundry facilities, allowing for discrete cultural separation. One of the units on site has been purposely designed to cater for persons with disability with undercover access from the central facilities building.⁵
- 2.17 The Melbourne ITA is a double brick two storey refurbished building of approximately 1000m². The facility has 16 bedrooms, either single or double occupancy. It is similar to the facility in Brisbane and has shared recreational, lounge and dining spaces. The facility was designed to provide accommodation for up to 30 people. An annex suitable for accommodating a special care group is also available.⁶
- 2.18 Both facilities are set in landscaped surrounds that provide the opportunity for sporting activities and quiet areas for reading or other passive activities.⁷
- 2.19 The ITAs also house an administration block which includes communal dining facilities, telephone and internet facilities, as well as a multi-use outdoor court for sporting activities such as basketball.⁸
- 2.20 ITAs are fully catered with all meals provided and snacks as required. Designated service providers are contracted to provide programs and activities for people being held at the facility which include onsite recreational facilities. Due to the short-stay nature of ITA, educational services, such as English language classes, are not provided.⁹
- 2.21 As table 2.1 shows, the vast majority of people passing through the ITAs are in immigration detention for less than seven days.

5 Guymer Bailey Architects, *Design brief for Brisbane Immigration Transit Accommodation* viewed on 17 February 2009 at http://www.guymerbailey.com.au/projects/3F_bris_immig.php?id1=03_prisons_justice

6 Department of Immigration and Citizenship, Briefing papers to Committee for Melbourne detention facilities site inspection, 10 September 2008.

7 Department of Immigration and Citizenship, Briefing papers to Committee for Melbourne detention facilities site inspection on 10 September 2008.

8 Department of Immigration and Citizenship, submission 129, p 30.

9 Department of Immigration and Citizenship, submission 129, p 30.

Immigration residential housing

- 2.22 IRH facilities are purpose-built housing complexes located in a residential-style setting either in the community or on detention centre grounds.
- 2.23 IRH provides a greater degree of privacy and allows people a more self-sufficient lifestyle, such as through cooking their own meals. Residents can leave the housing complex to do grocery and household shopping, may visit local recreational facilities and attend community-based educational and development programs, but only when accompanied by an officer or other appropriately authorised person. Health and medical services are delivered through community-based health services.¹⁰
- 2.24 Those placed in IRH are primarily families with children, those awaiting grant of community detention or sourcing of an appropriate rental property, and other persons determined to be low risk.¹¹
- 2.25 There are currently two functional IRH sites. The Sydney complex, opened in 2006, is on the grounds of the Villawood detention centre.¹² It comprises four single-storey duplex houses and has a capacity of 34 people. The Perth facility, which became operational in 2007, is a two house unit located at the end of a suburban street with a capacity of 12 people.
- 2.26 Eighty five per cent of those in IRH were there for less than three months. Just less than half (44 per cent) of those in IRH spent between 8 days and one month in these facilities.
- 2.27 IRH remains a secure and closed environment with restricted outside access and a security presence at reception.

Community detention

- 2.28 Community detention, introduced in June 2005, allows detainees to live unsupervised in the community with reporting requirements and with the support of non-government organisations such as the Australian Red Cross, which currently holds the primary contract for the delivery of community detention services. People in community detention remain lawful non-citizens and so are not entitled to work

10 Department of Immigration and Citizenship, submission 129, p 30.

11 Department of Immigration and Citizenship, submission 129, p 20.

12 Department of Immigration and Citizenship, submission 129, p 21.

rights or Medicare, that may be granted to citizens or those on a permanent visa. Table 2.2 shows the number of people that have been placed in community detention since 2005.

Table 2.2 Number of people in community detention in Australia

| Financial year | 2005-06 | 2006-07 | 2007-08 |
|---------------------|---------|---------|---------|
| Community detention | 76 | 143 | 108 |

Source Department of Immigration and Citizenship, submission 129I, p 3.

- 2.29 For the period 1 July 2007 to 30 June 2008, there were, on average, 48 people in community detention at any time.¹³
- 2.30 Under s.197AB of the Migration Act, the Minister may make a 'residence determination' (grant of community detention) to the effect that one or more specified people are to reside at a specified place, instead of being detained in an immigration detention centre. The power to make, vary or revoke a residence determination may only be exercised by the Minister personally (s.197AF).
- 2.31 People under these arrangements may move about the community without being accompanied or restrained, but must reside at a specified address subject to reporting and other conditions set to meet their individual circumstances. For example, the Committee understands that if a person in community detention wishes to have a friend to stay overnight, or overnight outside their designated residential address, they must notify DIAC.¹⁴
- 2.32 The Department funds the Australian Red Cross to source and pay for housing, allow payment of a person's bills and other living expenses, provide case officer support and arrange appropriate medical care. Detainees are prohibited from engaging in paid work.¹⁵
- 2.33 The Australian Red Cross rents apartments or houses for detainees. Properties are rented for people in community detention as the need arises which can result in delays while accommodation is sourced. This also means that rental accommodation options and costs are controlled by market availability at the time. Properties are generally rented unfurnished; the Red Cross and non-government organisations assist in providing basic furnishing and linen requirements.

13 Department of Immigration and Citizenship, submission 129I, p 3.

14 Commonwealth Ombudsman, submission 126, p 27.

15 Department of Immigration and Citizenship, submission 129, p 20; Castan Centre for Human Rights Law, submission 97, p 32.

- 2.34 The Red Cross also provides people with a living allowance that is transferred automatically into a bank account for a detainee to access as needed. The living allowance is used by detainees to pay for living expenses such as food and electricity, although it may be insufficient to purchase more substantial items such as household goods, furniture, and televisions, or to pay for a telephone.¹⁶ Detainees do not have access to Medicare, but their medical expenses are covered through medical providers contracted to DIAC.¹⁷
- 2.35 Children and unaccompanied minors in community detention are able to attend primary and secondary schooling and can access English language classes. The Committee is also advised that informal arrangements are made for community-based education for adults and this is supported and encouraged by the Department.
- 2.36 Sixty per cent of those in community detention spent more than one year in these arrangements. With the exception of minors placed in a fostering arrangement through temporary alternative detention, community detention is the only genuine community-based alternative currently available.

Alternatives to detention in Australia – Bridging visas

- 2.37 This chapter generally considers detention alternatives. The previous section examined alternative forms *of* detention. This next section examines alternatives *to* detention. As flagged by the Minister for Immigration and Citizenship and contributors to this inquiry, the definition of immigration detention under the Migration Act is a contested issue.¹⁸ Within the terms of current legislation, however, and the fact that mandatory detention must apply to all unlawful non-citizens, the only current alternative to detention is to provide a

16 Castan Centre for Human Rights Law, submission 97, p 32; Walker V, submission 5, p 2.

17 Department of Immigration and Citizenship, submission 129, p 20; Castan Centre for Human Rights Law, submission 97, p 32.

18 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, Canberra, 29 July 2008, p 5; Senator the Hon C Evans, Minister for Immigration and Citizenship, *Senate Hansard*, Supplementary Budget Estimates, Legal and Constitutional Affairs Committee, 21 October 2008, p 113; Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence*, 18 March 2009, p 10; Power P, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 6; Steen F, Romero Centre, *Transcript of evidence*, 23 January 2009, p 13.

person with temporary lawful status. This is achieved through a substantive visa or through a bridging visa.

- 2.38 A bridging visa is a temporary visa granted to people who are in the process of applying for a substantive visa or making arrangements to leave Australia. While on a bridging visa, a person may remain in the community for a specified time or until a specified event occurs.¹⁹
- 2.39 In 2007-08, a total of 318 703 bridging visas were granted.²⁰ However, because the majority of bridging visas are issued for a short period, the number of people holding a bridging visa current at any one time is substantially lower, and is estimated to be around 56 000 people.²¹
- 2.40 The majority of those on bridging visas are working through immigration processes, whether at the stage of primary application, merits review, judicial review or ministerial intervention. As those processes are progressed, cases will be resolved either by visa grant, voluntary departure, or the person becoming liable for removal.
- 2.41 Most people on bridging visas will have entered Australia on a valid visa, such as a tourist, student or temporary visitor visa, and initiated an immigration case while on that visa. Such people are unlikely to have any contact with the immigration detention system while awaiting the resolution of their status, unless they become unlawful, such as through expiry of a bridging visa or failing to abide by the conditions of a bridging visa, leading to a visa cancellation.
- 2.42 It is immigration policy that, where it is appropriate and safe to do so, the granting of a bridging visa should be considered prior to taking a person into detention.²² In the last three years, the percentage of unlawful non-citizens taken into detention after they have been located has halved to 15 per cent.²³
- 2.43 While bridging visas are currently more commonly issued for those already living in the community while their immigration status is being resolved, it is also possible for bridging visas to be granted to a person in immigration detention, allowing them release into the

19 A bridging visa may cease when a substantive visa is granted; or, for example, 28 days after withdrawal of a visa application, notification of a visa decision or notification of a merits review or judicial appeal outcome.

20 Department of Immigration and Citizenship, *Population flows: Immigration aspects, 2007-08 edition* (2009), p 62.

21 Department of Immigration and Citizenship, submission 129f, p 8.

22 Department of Immigration and Citizenship, submission 129f, p 9.

23 Department of Immigration and Citizenship, *Annual report 2007-08* (2008), p 8; acknowledged as an improvement in Commonwealth Ombudsman, submission 126, p 4.

community.²⁴ However the use of bridging visas as a mechanism to enable release from detention pending case resolution has declined significantly over the same period.²⁵

- 2.44 Table 2.3 shows that the number of persons released from immigration detention through the granting of a bridging visa has declined from 12 per cent to 6 per cent over the last three years. In 2007-08, only 280 persons were released from immigration detention through the granting of a bridging visa. For the same period, the percentage of substantive visas granted has risen to 6 per cent.

Table 2.3 Release from immigration detention on a visa

| | 2005-06 | 2006-07 | 2007-08 |
|--------------------------|---------|---------|---------|
| Bridging visa granted | 823 | 390 | 280 |
| Substantive visa granted | 244 | 260 | 279 |

Source: Department of Immigration and Citizenship, supplementary submission 129o, p 1.

- 2.45 There are five main types of bridging visas – A, B, C, D and E – and with a further two classes – F and R – that are issued less frequently.²⁶ The majority of bridging visas issued are bridging visa A (79.6 per cent in 2007-08) and E (12.7 per cent).²⁷
- 2.46 Bridging visas A, B, C and D cannot be granted to an unlawful non-citizen in immigration detention, because for these visas a non-citizen must be immigration cleared.²⁸ The classes of bridging visa generally available to people in immigration detention are bridging visa E (subclasses 050 and 051) and bridging visa R (removal pending bridging visa). Together with the bridging visa F, which is granted to people of interest to the police in relation to people trafficking or

24 Department of Immigration and Citizenship, submission 129d, p 9.

25 DIAC ascribes this to a three percent increase in removals between 2005-06 and 2006-07 (maintained in 2007-08); a two percent increase in the number of substantive visas granted between 2005-06 and 2007-08; and an overall reduction in the number of people being detained rather than being issued with a bridging visa at the time of their location by the department. The Committee also heard evidence that bridging visa mechanisms for the release of vulnerable people from immigration detention were not functioning effectively. At 30 June 2008 there were only two individuals holding a bridging visa E (051), a visa intended for unauthorised arrivals with special needs. Department of Immigration and Citizenship, submission 129o, p 1; & submission 129f, pp 5, 8. See also table 2.3.

26 Department of Immigration and Citizenship, viewed on 21 January 2009 at <http://www.immi.gov.au/allforms/bridging.htm>

27 Department of Immigration and Citizenship, *Population flows: Immigration aspects, 2007-08 edition* (2009), p 62.

28 Department of Immigration and Citizenship, submission 129f, p 31; submission 129d, p 9.

sexual servitude, these classes are the least beneficial of the bridging visas.²⁹ The criteria for these visa classes, together with the number of people holding them, are outlined in table 2.4.

29 Kamand S et al, *The immigration kit* (2008), 8th ed, Federation Press, p 174. Under Migration Regulation 2.21, the order of classes from most beneficial to least beneficial is listed as B, A, C, D, R, E, and F.

Table 2.4 Bridging visa categories available to people in immigration detention

| Category | Criteria | Number on this visa |
|--|--|---------------------|
| Bridging visa E subclass 050 | Available to certain unlawful non-citizens in three general circumstances. They are: - to provide lawful status to an unlawful non-citizen arranging to depart Australia; or - to provide a lawful status to a non-citizen who is pursuing a claim of one kind or another to remain in Australia; or - to provide lawful status to an unlawful non-citizen in criminal detention, including a person in remand or a person serving a custodial sentence, so that immigration detention is unnecessary for the duration of the criminal detention. | 5923 |
| Bridging visa E subclass 051 | Available to unauthorised arrivals applying for a protection visa who have either been refused immigration clearance or who have bypassed immigration clearance and come to notice within 45 days of entering Australia and satisfy at least one of the following criteria: - are less than 18 years of age or more than 75 years of age - have a special need based on health or torture or trauma, in respect of which a medical specialist appointed by immigration has certified that the non-citizen cannot be properly cared for in a detention environment - are the spouse of an Australian citizen, permanent resident or eligible New Zealand citizen. Applicants must meet health criteria. | 2 |
| Bridging visa R Removal Pending (RPBV) | Enables the release, pending removal, of people in immigration detention who have been cooperating with efforts to remove them from Australia, but whose removal is not reasonably practicable at that time. This visa can only be applied for on written invitation of the Minister. Applicants must pass the character test and be assessed by ASIO as not being a risk to security. | 16 |

Sources: Department of Immigration and Citizenship, supplementary submission 129f, pp 27-28; supplementary submission 129d, p 9; Migration Regulations 2.20A; Kamand S et al, Immigration Advice and Rights Centre, *The immigration kit (2008)*, 8th ed, The Federation Press, p 177. The numbers provided are as at 30 June 2008. Certain persons in immigration detention may also be eligible for a Bridging visa F, available to a person who is of interest to the police in relation to offences involving people trafficking or sex slavery. While people in detention can be eligible for Bridging visa E (general), most of the people holding this visa will not, in fact have come from immigration detention, as this visa is usually granted as an alternative to detaining someone who is making arrangements to depart the country or pursuing visa applications or appeal processes.

2.47 Data on the stages of immigration processing that bridging visa holders are at, or the types of visas applied for, is not comprehensive. As at 6 April 2006, by way of example, there were 7091 people in Australia holding a bridging visa E.

- Around 3600 people, or 51 per cent, had applied for a protection visa but had been refused at the primary or merits review stage,

and were now challenging these decisions through judicial review or a request for ministerial intervention.

- Around 300 people, or 4 per cent, had applied for a protection visa and were awaiting a decision at the primary or merits review stage.
- Around 3100, or 44 per cent, were people who had overstayed a visa and were making arrangements to depart Australia.³⁰

2.48 In 2006-07, the most common countries of nationality of bridging visa holders (across all classes) were the People's Republic of China, India, the United Kingdom, the Republic of Korea and Malaysia.³¹

Conditions and restrictions

2.49 Bridging visas may be granted with conditions attached such as:

- a requirement to live at a specified address and notify DIAC of a change in address
- a requirement to pay the costs of detention or make arrangements to do so³²
- a requirement to lodge a security bond, generally between \$5 000 and \$50 000³³
- a no work condition, or a restriction on working hours
- a no study condition, or restrictions on study, or
- restrictions on overseas travel.

Permission to work

2.50 Whether or not a bridging visa holder has the right to work will depend on the class of visa held and that person's circumstances.³⁴ Under the regulations, work is defined as an activity that would

30 Department of Immigration and Multicultural Affairs, 'Bridging visas and bridging visa Es', *People and place* (2006), vol. 14, no. 2, p 40.

31 Department of Immigration and Citizenship, *Population flows: Immigration aspects, 2007-08 edition* (2009), p 65.

32 In its first report, tabled 1 December 2008, the Committee recommended that the Commonwealth cease the practice of charging immigration detainees for their time in detention. In response the Migration Amendment (Abolishing Detention Debt) Bill 2009 was introduced to the Senate on 18 March 2009.

33 Medicare Australia, correspondence, 20 February 2009; Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 197; Phelan L, Mercy Refugee Service, *Transcript of evidence*, 7 May 2008, p 20.

34 Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 177.

normally attract remuneration in Australia. This means that a person is prohibited from engaging in paid as well as in-kind or voluntary work.³⁵

2.51 There are a number of situations in which a bridging visa holder is not permitted to work:

- Work rights will generally expire if a person pursues their case beyond the merits review stage. Bridging visa Es will have a 'no work' condition attached where a person is applying for judicial review or ministerial intervention on a decision relating to a substantive Australian visa.³⁶
- A protection visa applicant will not be permitted to work when he or she fails to lodge an application for refugee protection within 45 days of arrival in Australia – the '45-day rule'.³⁷ On 2005 figures, this affects about 35 per cent of asylum seekers who apply after 45 days have elapsed.³⁸

2.52 In other situations a person can apply for a new bridging visa with work rights. These are granted at DIAC's discretion where the applicant can demonstrate a 'compelling need to work'. This is defined as being nominated or sponsored by an employer (for certain classes of visa) or where a person is in financial hardship. An applicant is in financial hardship if the cost of their reasonable living expenses is more than their ability to pay.³⁹

2.53 Comprehensive data on the number of bridging visa holders with and without permission to work is not available.⁴⁰ A sample of bridging E visa holders as at 30 January 2007, a population of around 7000, showed that approximately 37 per cent of visa holders had work rights as opposed to 63 per cent who did not.⁴¹ DIAC stated in its

35 Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 177.

36 The exception is when, in the case of a ministerial intervention, the Minister is 'personally considering exercising his powers'. When the request is being actively considered rather than awaiting consideration work rights may be granted where a person can demonstrate a compelling need to work. Department of Immigration and Citizenship, submission 129f, p 30; Parliamentary Library, Millbank A, 'Asylum seekers on bridging visa E' (2007), research brief no. 13, p 9.

37 Department of Immigration and Citizenship, submission 129f, p 32.

38 Senator the Hon. A Vanstone, Minister for Immigration and Citizenship, *Senate Hansard*, Questions on notice, no. 391, 14 June 2005.

39 Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 178. A 'compelling need to work' is defined in *Migration Regulations 1994*, regulation 1.08.

40 Department of Immigration and Citizenship, submission 129, p 35.

41 Department of Immigration and Citizenship, submission 129, p 35.

submission that the majority of bridging E visa holders without work rights had no substantive visa application on hand, but were engaged in litigation or were seeking ministerial intervention.⁴² At 30 June 2008, 990 initial protection visa applicants were awaiting a first instance decision from the department. Of these, 274 (28 per cent) had a bridging visa in effect with no work rights.⁴³

- 2.54 There were 280 people released from detention on bridging visas in 2007-08. It is not known how many were released with permission to work. In response to an information request from this Committee, DIAC said that:

Departmental systems are unable to easily provide statistical reports which identify the number of people released from detention on bridging visas who were granted work rights.... To do so would have significant time and resource implications for the Department.⁴⁴

- 2.55 Tamara Domicelj, of the Asylum Seekers Centre of New South Wales, said that of her clients, the 'vast majority' did not have work rights, with the key reasons being that people had lodged their protection visa application more than 45 days after arrival in Australia or they were seeking ministerial intervention in their matter and the minister was not yet considering it.⁴⁵ The Centre has an active caseload of 400 asylum seekers, including children, from 46 countries, the majority of which are on bridging visas with no permission to work or income support.⁴⁶ Bess Hopgood of the Refugee Claimants Support Centre in Brisbane said that about two-thirds of her clients did not have work rights.⁴⁷

- 2.56 People can be granted and lose permission to work at different stages of their immigration process. For example, Ms WD, a holder of a bridging visa E, told the Committee that:

I had them from the time I came into the country in February and I worked for four months. After that I had to apply for

42 Department of Immigration and Citizenship, submission 129, p 35.

43 DIAC Annual report 2007-08, p 88.

44 Department of Immigration and Citizenship, submission 129o, p 2.

45 Domicelj T, Asylum Seekers Centre of New South Wales, *Transcript of evidence*, 24 October 2008, p 55.

46 Domicelj T, Asylum Seeker Centre of New South Wales, *Transcript of evidence*, 24 October 2008, p 52.

47 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 3.

the ministerial request and my work rights and Medicare were taken. For the last seven months I have not been working.⁴⁸

- 2.57 Research conducted by Hotham Mission Asylum Seeker Project with 500 asylum seekers over a period of five years found that almost 60 per cent had held work rights at some stage of their process.⁴⁹
- 2.58 The impact of these issues on individuals is further explored in chapter 3.

Health care and income support

- 2.59 Bridging visa R (removal pending) holders are entitled to Medicare. Alternatively, some other bridging visa holders who are applicants for permanent residence can get Medicare cards while their application is processed. Under the *Health Insurance Act 1973*, in order to get access to Medicare, the person must have work rights or be the spouse, parent or child of an Australian citizen or permanent resident.⁵⁰
- 2.60 There is no data available on the number of bridging visa holders that currently have access to Medicare, however the Committee assumes that the proportion is approximately commensurate with the proportion of bridging visa holders with work rights. Additionally a number of bridging visa holders will have access to health care through the services provided by International Health Medical Services as part of the Community Care Pilot (CCP).
- 2.61 Bridging visa R (removal pending) holders are also entitled to some Centrelink payments but there is no entitlement for other bridging visa holders.
- 2.62 As discussed above, the bridging visa regime is one that is complex and takes multiple factors into consideration in conferring conditions and entitlements. Table 2.5 attempts to provide an overview of bridging visa categories. A detailed version of this table can be found in Appendix F. The impact of these issues on individuals is further explored in chapter 3.

48 WD, *Transcript of evidence*, 22 January 2009, p 17.

49 The *Let us work* campaign, a working group of the Network of Asylum Seeker Agencies Victoria (NASAVic), *Granting work rights to bridging visa holders in the protection application process: Briefing paper for the Federal Minister for Immigration and Citizenship* (2008), pp 4-5.

50 *Health Insurance Act 1973*, s.3 (iv); Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 180.

Table 2.5 Bridging visa categories and related visa conditions and entitlements

| Bridging visa | Visa conditions | | Visa entitlements | | |
|---|--------------------------|---------------------|--------------------------|---------------------------|---|
| | <i>Income assistance</i> | <i>Work rights</i> | <i>Health care</i> | <i>Housing assistance</i> | <i>Legal advice or application assistance</i> |
| A (subclass 010) | Limited entitlement | Some entitlement | Some entitlement | Limited entitlement | Limited entitlement |
| B (subclass 020) | Not applicable | Some entitlement | Some entitlement | Not applicable | Not applicable |
| C (subclass 030) | Limited entitlement | No entitlement | Some entitlement | Limited entitlement | Limited entitlement |
| D (subclass 040) and (subclass 041) | No | Not applicable | Not applicable | Not applicable | Limited entitlement |
| E (subclass 050) and (subclass 051-protection) | Limited entitlement | Limited entitlement | Some entitlement | Yes | Limited entitlement |
| F (subclass 050) | No | No | Yes- specialised program | Yes- specialised program | Yes- specialised program |
| R (subclass 070) | Yes | Yes | Yes | Limited entitlement | Limited entitlement |

Sources: Department of Immigration and Citizenship, supplementary submission 129f, pp 27-28; supplementary submission 129d, p 9; Migration Regulations 2.20A; Kamand S et al, Immigration Advice and Rights Centre, The immigration kit (2008), 8th ed, The Federation Press, pp 172-201. Parliamentary Library, Millbank A, 'Asylum seekers on bridging visa E' (2007), research brief no. 13; Asylum Seekers Resource Centre, 'Guide to all visas', November 2005.

As noted previously, people in detention can be eligible for Bridging visa E (general), however, most of the people holding this visa will not, in fact have come from immigration detention, as this visa is usually granted as an alternative to detaining someone who is making arrangements to depart the country or pursuing visa applications or appeal processes

Duration of bridging visas

- 2.63 The bridging visa is intended as an interim measure until a person's immigration status has been resolved. Those granted bridging visas in order that they can make arrangements to depart Australia, may spend only days on the visa, while others pursuing a substantive visa claim may spend months or even years in the community.
- 2.64 DIAC advised that between 1 July 2008 to 31 December 2008, the average length of time a person spent on a bridging visa E before departure from Australia was 79 days. (Average lengths of time for bridging visa F or R could not be sourced by the given time.) This average represents people who may resolve their status relatively quickly, principally because they have overstayed their visa unintentionally and will depart within a short period of coming to notice.
- 2.65 However, there are other groups, for example those who are involved in judicial review or ministerial intervention processes, who have been on bridging visa E for significantly longer periods. Approximately 40 per cent of the bridging visa E population has been in Australia for more than two years since the grant of their first bridging visa E; around 20 per cent have been in Australia for more than five years.⁵¹
- 2.66 Anecdotal evidence received by the Committee from non-government service providers, together with a small number of research studies, verifies that a proportion of bridging visa holders can spend a substantial period of time in the community on that visa.⁵² For example:
- Hotham Mission in Melbourne reported that over 30 per cent of clients have been awaiting a final outcome on their case for six years or more.⁵³ One hundred and ninety of its current clients have

51 Department of Immigration and Citizenship, submission 129n, p 8.

52 The participants in these studies are clients of support centres and community organisations. Given that people are often most in need of assistance at the final stages of their case whilst pursuing judicial review or ministerial intervention, the clientele of such organisations may well reflect a distribution of the client group who have spent the longest periods of time on bridging visas. They do, however, demonstrate that some people spend multiple years living in the community on bridging visas.

53 Hotham Mission Asylum Seeker Project, submission 93, p 14.

been in Australia for five years or more with no form of income, no access to health care and no permission to work.⁵⁴

- Former Human Rights Commissioner, Dr Sev Ozdowski, told of a case in which a man had spent 10 years in Australia; one in immigration detention and some nine years on a bridging visa without permission to work.⁵⁵
- In a 2005 Queensland study of 21 bridging visa holders, clients of the Refugee Claimants Support Centre, 4 had applied for a protection visa between 1 and 3 years ago, and 13 had applied more than 3 years ago.⁵⁶
- The Refugee Claimants Support Centre in Brisbane reported that, 'We know that asylum seekers [on bridging visas] can wait sometimes four, five or six years. We have one past client who waited 10 years for a decision from the department'.⁵⁷ In general, however, 'anywhere from a few months to nine or 10 months would be the majority [of our clients]'. A 'best-case scenario' for resolution of immigration status would be three months.⁵⁸

2.67 The anecdotal evidence received by the Committee reflects a particular subset of the bridging visa caseload, that of asylum seekers. The Committee does not have evidence articulating whether asylum seekers are likely to spend longer in the community than other groups on bridging visas, however, asylum seekers are involved in a substantive visa application rather than a departure or fast turnaround, and typically there is greater complexity of asylum applications and attendant reviews and appeals.

Bridging visa services and support programs

2.68 Those in alternative forms of detention, such as community detention or IRH, have either an allowance to meet expenses or have all food and utilities provided for in the facility. For those on community

54 Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 26.

55 Ozdowski S, *Transcript of evidence*, 24 October 2008, p 33.

56 University of Queensland Boilerhouse Community Engagement Centre, *Defending human rights: Community-based asylum seekers in Queensland* (2005), p 23.

57 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 3. The witness has clarified that this does not refer to a primary decision on an application.

58 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 7.

detention, private rental accommodation is sourced for the person. Similarly access to health care, mental health and a case worker are all provided for in alternative forms of detention.

- 2.69 However income assistance, health care and case worker support for those on bridging visas (as an alternative to detention) occurs in a more ad hoc fashion. As outlined earlier, income support through Centrelink, access to Medicare and work rights may be granted to some classes of bridging visas in some circumstances. Those on bridging visas must also source their own housing accommodation (housing issues are explored more fully in the following section under 'accommodation in the private market', and in chapter 3).
- 2.70 Some support for people living in the community on bridging visas is available to eligible individuals through the Asylum Seeker Assistance Scheme (ASAS) and the CCP, which are detailed further below.

The Community Care Pilot

- 2.71 The CCP was developed to provide support and address the needs of people in exceptional circumstances awaiting determination of their immigration status. These may include people who are particularly vulnerable or those who are unable to access other supports or assistance in the community. People are referred directly by DIAC Case Management to the lead delivery agency, the Australian Red Cross, which does not have a role in approving or rejecting access.
- 2.72 The pilot started in May 2006 in Victoria and New South Wales, and was extended to Queensland in July 2007. It has a number of components:
- Community assistance, including assistance with food, clothing, basic living expenses, health care, and accommodation, which is provided by the Australian Red Cross. Rental assistance is limited to payment of bond and initial few weeks' rent
 - Information and counselling services, provided by the International Organization for Migration (IOM). The IOM provides information on immigration processes and assistance to people and prepares them for their immigration outcome
 - Immigration advice and application assistance to vulnerable people, delivered by providers under the Immigration Advice and Application Assistance Scheme (IAAAS), and

- Brokerage funds, administered by DIAC's Case Managers, allows for the one-off needs of people to be met.⁵⁹
- 2.73 To be accepted into the CCP, the person must be assessed as requiring DIAC case management due to the presence of one or more case management vulnerability indicators (particularly health and welfare, women, unaccompanied minors and aged persons). People with exceptional circumstances considered for assistance include individuals who are:
- suffering from torture and trauma
 - have significant mental health issues
 - have serious medical conditions
 - requiring support in order to undertake routine daily tasks (e.g. elderly, frail, mentally ill, disabled)
 - facing serious family difficulties including child abuse, domestic violence, serious relationship issues, and child behavioural problems
 - suicidal, and
 - destitute (provided other indicators also are present).⁶⁰
- 2.74 As at 30 June 2008, the pilot had assisted 746 people since its inception in May 2006. Of these, 504 (68 per cent) received community assistance and 398 (53 per cent) received immigration information and counselling services. A total of 291 (39 per cent) were assisted in the resolution of their immigration status through the pilot. Since 2006, the most common nationalities in the pilot have been Chinese, Sri Lankan, Fijian, Indonesian, Indian and Lebanese.⁶¹
- 2.75 While the assistance provided through the CCP is commendable, the Committee received evidence that many more people were in need of these services in the Australian community. Hotham Mission, the Refugee Claimants Support Centre, the Asylum Seekers Centre of New South Wales and the Asylum Seeker Resource Centre all reported difficulties in referring people whom they believed to be

59 Department of Immigration and Citizenship, submission 129, p 36.

60 Department of Immigration and Citizenship, submission 129n, p 2.

61 Department of Immigration and Citizenship, submission 129n, p 5. The data refers to the period May 2006 to January 2009.

vulnerable and destitute, with a majority of their clients not receiving any assistance through the CCP.⁶²

- 2.76 In response to these claims, DIAC advised the Committee that the CCP continues to accept referrals for the 2008-09 year in the three states in which it operates (New South Wales, Queensland and Victoria). As at 9 February 2009, 172 referrals had been accepted for the financial year. DIAC advised that there is no set limit to the number of places available under the pilot. Referral levels have fluctuated over the life of the program.⁶³

The Asylum Seeker Assistance Scheme

- 2.77 There are currently 6090 protection applicants living in the Australian community on bridging visas, including 4200 (69 per cent) people who are seeking judicial review or ministerial intervention on a protection visa decision.⁶⁴ This compares to a total bridging visa population of around 56 000.⁶⁵
- 2.78 People on bridging visas who are applying for a protection visa (asylum seekers) may be eligible for the ASAS. While the scheme provides a living allowance and basic health care, it is not as comprehensive a program as the CCP, and does not offer intensive case management, access to immigration counselling and advice, and assisted voluntary return services.⁶⁶ The ASAS provides limited income support and also assists with costs of some assessments necessary for visa purposes. It is administered by the Australian Red Cross under contract to DIAC.
- 2.79 Recipients must meet financial criteria and are continuously means tested. They must also be at certain stages of their visa processing, and/or meet exemption criteria. To be eligible for the scheme, asylum seekers must be in financial hardship and:
- not be in detention
 - must hold a bridging or other visa

62 Hotham Mission Asylum Seeker Project, submission 93, p 7; Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 6; Karapanagiotidis K, Asylum Seeker Resource Centre, *Transcript of evidence*, 24 October 2008, p 71.

63 Department of Immigration and Citizenship, submission 129n, p 4.

64 Department of Immigration and Citizenship, submission 129n, p 9.

65 Department of Immigration and Citizenship, submission 129f, p 8.

66 Department of Immigration and Citizenship, submission 129n, p 2.

- not be eligible for either Commonwealth or overseas government income support, and
 - not be a spouse, de facto or sponsored fiancé(e) of a permanent resident
 - have been waiting on a primary decision on a valid protection visa application for more than six months
- 2.80 Exemptions to the above criteria may be available to some applicants including:
- unaccompanied minors, elderly persons or families with children under 18 years, and
 - persons unable to work as a result of a disability, illness or the effects of torture and/or trauma.
- 2.81 In fact, 95 per cent of current recipients have been waiting less than six months for a primary decision, but are eligible under these exemptions.⁶⁷
- 2.82 The assistance provided will depend on the circumstances of the person but it may include:
- income support (paid at a rate of 89 per cent of Centrelink Special Benefit)⁶⁸
 - funded basic health care through a network of providers coordinated by the Australian Red Cross
 - pharmaceutical subsidies equivalent to the Pharmaceutical Benefits Scheme (PBS)
 - torture and trauma counselling, and some other minor services.
- 2.83 Asylum Seeker Assistance payments cease upon grant of a protection visa or 28 days after notification that protection visa applications have been refused by the Department. Some unsuccessful protection visa applicants who seek review at the Refugee Review Tribunal (RRT) may be eligible for the scheme if they meet the exemption criteria. Payments cease when the RRT makes a decision on the application

67 Department of Immigration and Citizenship, submission 129f, p 23.

68 Currently equivalent to a maximum of \$449.30 per fortnight for a single person with no dependent children. Centrelink, viewed on 25 February 2009 at http://www.centrelink.gov.au/internet/internet.nsf/payments/newstart_rates.htm.

and no support is available people seeking judicial review or ministerial intervention.⁶⁹

- 2.84 According to DIAC, approximately half of protection visa applicants receive some Asylum Seeker Assistance at some stage of their immigration case. In 2007-08, the Scheme assisted 1867 people, suggesting that at any one time, the program is assisting around 30 per cent of asylum seekers in the community on bridging visas. There is no information on whether the remaining protection visa applicants did not require or were not assessed as requiring assistance; whether they did not meet criteria; or whether the scheme was not funded to provide assistance to greater numbers of people. However, given the statistics quoted above (para 2.75), it appears that almost all community-based asylum seekers not receiving Asylum Seeker Assistance were not eligible because their cases were at the judicial review or ministerial intervention stages.
- 2.85 Additionally, a number of people may have been receiving support through the CCP rather than ASAS. DIAC have advised that while it is not unusual for some members of the same family to be assisted with pilot services while other family members receive just Asylum Seeker Assistance, checks are conducted to make sure that people are not receiving both payments.⁷⁰

Housing options for bridging visa holders

- 2.86 There is no designated housing or accommodation option available to bridging visa holders. This means that accommodation is sourced at one's own undertaking, expense and responsibility. For those bridging visa holders making arrangements to depart Australia, or with family members, friends, and jobs in the community, securing accommodation may not be a significant issue.
- 2.87 However, for a proportion of bridging visa holders it may take some months for their cases to be resolved, particularly where review and ministerial intervention are sought. In these instances, bridging visa holders will be reliant on the private rental market and so will be subject to the pressures of housing supply and affordability, and the demand for short-term and crisis accommodation. Some bridging

69 Department of Immigration and Citizenship, *Fact sheet 62: Assistance for asylum seekers in Australia* (2008), viewed on 10 February 2009 at <http://www.immi.gov.au/media/fact-sheets/62assistance.htm>.

70 Department of Immigration and Citizenship, submission 129n, p 2.

visas are also issued with a requirement that a person provide a residential address to DIAC, and notify DIAC of any change of address.

- 2.88 Securing appropriate and affordable accommodation at the required time can pose enormous difficulties for bridging visa holders, particularly for families. Finding accommodation may also be particularly difficult for vulnerable people without financial resources, including those released from immigration detention and those whose bridging visa conditions do not permit them to work or to access income support.
- 2.89 Currently, apart from non-government volunteer assistance, only those eligible for the CCP or the ASAS receive support in securing rental accommodation, and even then the assistance available is limited.
- 2.90 These issues are discussed in greater detail in the following chapter under the Committee's consideration of the provision of a humane, appropriate and supportive living environment for people.

Alternative accommodation options

- 2.91 There is a range of alternative accommodation options utilised internationally, including hostel and collective accommodation and hosted stays in the community.

Hostel and collective accommodation

- 2.92 Hostels and collective accommodation centres were the standard form of migrant accommodation in Australia during the post-war decades. Historically migrant hostels, also known as migrant reception or training centres or migrant workers' hostels, were established after World War II to accommodate displaced persons and assisted migrants. Migrants and their dependants were permitted to remain in the hostels from three to 12 months, and were given training to assist with resettlement.⁷¹ Villawood Immigration Detention Centre is built on the site of a former migrant hostel.

⁷¹ National Archives of Australia, Fact sheet 170 – Migrant hostels in New South Wales, 1946–78 (undated), viewed on 10 February 2009 at <http://www.naa.gov.au/about-us/publications/fact-sheets/fs170.aspx>; Power P, *Transcript of evidence*, 4 February 2009, p 8; see also Hammerton A and Thomson A, *Ten pound Poms: Australia's invisible migrants*

- 2.93 Former Human Rights Commissioner, Dr Sev Ozdowski, commented that he had spent six months at Villawood when he arrived in Sydney from Poland and Germany in 1975. Dr Ozdowski said that in a hostel or open accommodation arrangement such as that he experienced:
- You go in when you want; you go out when you want. Where you find English language classes or where you find friends or when you decide to work and find work, you still have some security and stability – more mental stability – but you can engage with broader society. It does not isolate you whatsoever.⁷²
- 2.94 At this time migrant hostels were intended for people who had been granted the right to live in Australia, and/or been accepted as refugees. However, at times these hostels also accommodated some unauthorised arrivals or people without documents. People who had arrived in this way were housed in unfenced areas, but were not permitted to leave the hostel and had to report daily.⁷³
- 2.95 This type of community-based open hostel accommodation or collective housing is not now used in Australia for people with an unresolved immigration status. This is in contrast to other countries, in particular continental and Scandinavian Europe, where hostel and collective accommodation in the form of co-located apartments is the model for people in community-based immigration arrangements.
- 2.96 Examples of open or semi-open hostel and collective immigration accommodation complexes are found in New Zealand, Sweden, Denmark, Finland, Germany, Switzerland, Spain, Bulgaria and other European countries. Such accommodation is often designed exclusively for people seeking asylum, reflecting the high numbers of asylum applications received by these countries, and is intended to house them for the full duration of their asylum procedure.⁷⁴
- 2.97 In Sweden, asylum seeker accommodation is in the form of several groups of furnished self-catering apartments or ‘group homes’

(2005), Manchester University Press, pp 167-179; Migration Heritage NSW, viewed on 6 April 2009 at <http://www.migrationheritage.nsw.gov.au/exhibition/objectsthroughtime/flag/>.

72 Ozdowski S, *Transcript of evidence*, 24 October 2008, p 35.

73 Parliamentary Library, ‘The detention of boat people’ (2001), Current issues brief 08 2000-2001, Millbank A, p 4.

74 Mitchell G, *Asylum seekers in Sweden: An integrated approach to reception, detention, determination, integration and return* (2001), Appendix A, International Detention Coalition, submission 109, p 11; Parliamentary Library, ‘The detention of boat people’ (2007), Current issues brief no. 8 2000-01, Millbank A, p 2.

- situated near a central office reception, which includes child care and recreation facilities, and to which asylum seekers must report.⁷⁵
- 2.98 In New Zealand, people released from detention on conditions may reside at the Takanini Hostel, which includes seven self-sufficient housing blocks that can accommodate up to six persons in each.⁷⁶
- 2.99 Collective accommodation may range in size from that such as in New Zealand to large centres accommodating hundreds of people. In a number of countries, such as Sweden, Denmark, Norway, Austria, South Africa and the United Kingdom, collective accommodation may be located in rural areas, partly in response to housing supply pressures in the major cities.⁷⁷
- 2.100 Accommodation centres may have a range of security levels, from those in which people are entirely free to come and go (notwithstanding reporting requirements) to those that are semi-open, such as having an evening curfew or some restrictions on movement. For example:
- In Bulgaria, residents must request permission for absences of more than 24 hours. In Poland, permission is required for absences of more than 48 hours, with a maximum absence of 72 hours permitted.⁷⁸
 - In Denmark, residents of accommodation centres have no restrictions on freedom of movement but must be present once a fortnight to collect financial assistance.
 - In Sweden, residents have no restrictions on movement but must present themselves to authorities every month.⁷⁹
- 2.101 In a small number of countries, such as New Zealand, Finland and Lithuania, collective accommodation houses people in immigration detention as well as people granted some type of community release, so that different security restrictions and freedom of movement

75 Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 42; Mitchell G, *Asylum seekers in Sweden: An integrated approach to reception, detention, determination, integration and return* (2001), Appendix A, International Detention Coalition, submission 109, p 18.

76 New Zealand High Commission, correspondence, 26 February 2009.

77 Field O, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 31.

78 Field O, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 31.

79 Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 42.

applies to different residents.⁸⁰ At the Mangere Accommodation Centre in New Zealand, a facility that jointly houses quota refugees (non-detainees) and asylum seekers (detainees), detainees must request permission to leave the centre (a maximum of four hours leave per day) and cannot stay away overnight.⁸¹

- 2.102 While accommodation centres are in most cases owned and operated by public sector agencies, in some cases they are managed by auxiliary organisations, such as the Red Cross in Denmark and Greece; or private firms, such as in the United Kingdom.

Hosted stays in the community

- 2.103 In some countries, there are options for hosted residence in the community, either with family members, friends or approved carers. In Sweden, for example, after an initial period in the Carlslund Refugee Reception Centre, asylum seekers may choose to live with family or close friends in Sweden, should they have those links. This option is taken up by over half of all applicants.⁸²
- 2.104 In Canada, people with an unresolved immigration status (in particular, families, teenagers or children) are hosted in the community by non-government organisations, foster carers or community groups. Professor Howard Adelman, based in Toronto, told the Committee that the government did not fund these groups for the first three months but could do so after that if the asylum claim was not resolved. People had access to health care almost immediately and were also permitted to work which he stated, 'eases the burden for everybody'.⁸³
- 2.105 Sister Claudette Cusack, a Catholic chaplain, suggested in her submission that:

As soon as health and security checks have been completed, asylum seekers should be released into the care of, either family support groups, or individuals while their application for refugee status is being processed. Some kind of security

80 Field O, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), pp 32-33.

81 Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 43; New Zealand High Commission, correspondence, 26 February 2009.

82 A Just Australia, submission 89, p 20.

83 Adelman H, *Transcript of evidence*, 25 February 2009, p 6.

monitoring and/or reporting regime could be set up for them during this time.⁸⁴

- 2.106 Sonia Caton, Director and Principal Solicitor, Refugee and Immigration Legal Service also suggested the need to investigate in Australia options for 'homestay' or hosted accommodation in the community.⁸⁵

Financial sureties and reporting conditions

- 2.107 As an alternative to detention, conditional release may be granted through some form of financial surety given and /or through additional reporting and monitoring requirements.
- 2.108 This next section describes the use of bail, bond and surety programs in Australia and elsewhere. The following sections set out reporting and monitoring requirements which are used either in conjunction with or as an alternative to detention in Australia and elsewhere.
- 2.109 Bail or security bonds are financial deposits placed with the authorities in order to guarantee a person's compliance with immigration processes (such as attending interviews or hearings, meeting reporting requirements, abiding by the conditions of a visa, or presenting for removal where necessary).
- 2.110 A surety is when a person vouches for another person's compliance. No amount is paid upfront, but the guarantor is liable for a sum if the person absconds or fails to otherwise comply.⁸⁶
- 2.111 Bails, bonds and sureties can be used as a condition for release from immigration detention to encourage compliance with immigration processes.

Use in security bonds in Australia

- 2.112 A person cannot currently be released from immigration detention in Australia in return for payment of a security bond. However, people in detention granted release via a bridging visa may be asked to pay a

84 Cusack C, submission 36, p 2.

85 Caton S, Refugee and Immigration Legal Service (RAILS), *Transcript of evidence*, 23 January 2009, p 31.

86 Field O and Edwards A, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 25.

security bond as part of a range of conditions they need to meet. The amount requested is at DIAC's discretion and is generally between \$5000 and \$50 000.⁸⁷ A security bond is generally provided in the form of a bank guarantee.

- 2.113 Factors considered by compliance officers when assessing whether a bond is required include whether the applicant has previously breached Australian migration law, including breach of conditions on a visa; any escapes from detention; conduct during any period of detention; any refusals to assist in obtaining travel documentation; and the applicant's ties to the Australian community.⁸⁸

Use of bail and bond programs internationally

- 2.114 Canada, the United Kingdom and the United States are amongst countries with bail, bond or surety systems for release from immigration detention.
- 2.115 DIAC's submission states the following about Canada's approach to immigration detention:

Canada is generally keen not to detain people, and take many steps to allow people to leave immigration detention, such as compliance guarantees.⁸⁹

- 2.116 In some instances a conditional release can be made, providing the person in detention agrees to specific conditions. Some inquiry participants referred to the Toronto bail program which works with the Canadian immigration department to assist in securing conditions for release. UNHCR describes the Toronto bail program as follows:

An independent adjudicator mediates between the immigration department and the asylum seeker to establish what conditions of release should be set, the State-funded Toronto bail program works to maximise the accessibility of bail by offering to supervise those who have no family or other eligible guarantors/sureties able to offer bonds. So long as the asylum seeker's identity has been established, and if they have met a number of other criteria, the Program may

87 Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 197; Phelan L, Mercy Refugee Service, *Transcript of evidence*, 7 May 2008, p 20.

88 Kamand S et al, *The immigration kit* (2008), 8th ed, The Federation Press, p 197.

89 Department of Immigration and Citizenship, submission 129, p 38.

request release of a detainee, without bond, into its supervision.

This supervision is conducted primarily by means of regular reporting requirements and unannounced visits to the asylum seeker's residence. The bail program has had an extremely high rate of success with its client base composed primarily of asylum seekers and persons found not to be in need of international protection, who would otherwise be regarded by the Canadian authorities as representing a high flight risk.⁹⁰

- 2.117 The Law Institute of Victoria, Liberty Victoria and The Justice Project were supportive of the program stating:

The Bail Program has an extremely high rate of success with both asylum seekers and others who are not in need of international protection but who would otherwise be considered a high flight risk. Homeless shelters in Toronto offer their address for asylum seekers who have nowhere to live. The shelters offer support, including legal counsel, and operate a curfew but no other supervision. The compliance rate is extremely high, with two shelters reporting more than 99 per cent compliance.⁹¹

- 2.118 The group made the following recommendation for situations where asylum seekers are unable to afford a bond:

Non-governmental agencies [could] provide volunteer sponsors/sureties and a fixed place of accommodation which asylum seekers can offer at bail hearings, similar to the Toronto Bail Program.⁹²

- 2.119 A Just Australia also indicated support for the Toronto bail program. Similarly Professor Howard Adelman, the head of a research project into international detention and removal practice, considered it feasible to introduce a third party bail risk management program based on the Toronto Bail Program.⁹³

90 Field O, 'Alternatives to detention of asylum seekers and refugees.' *Legal and protection policy research series*, UNHCR, April 2006, p 26.

91 Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 40.

92 Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 41.

93 Citizenship and Immigration Canada, *Enforcement (ENF) 20 operational manual - Detention* (2007), p 15.

Reporting conditions in Australia

- 2.120 Reporting requirements may be used as an alternative to immigration detention to ensure that authorities have information about a person's whereabouts while their immigration case is being resolved. People report to designated authorities on a regular basis (whether police, immigration authorities or a contracted agency), either in person, by telephone or in writing. Reporting requirements are often used in conjunction with bail or bond requirements.⁹⁴
- 2.121 Reporting requirements are a common feature of Australia's bridging visa framework and community detention program, although they do not currently function as an alternative to detention per se.

Use of reporting and electronic monitoring internationally

- 2.122 In Canada, the USA, Japan and Thailand asylum seekers have the obligation to report regularly to the police or immigration authorities. In some countries, for example the United Kingdom, the provision of state support is linked to reporting requirements.
- 2.123 In its submission to the Committee, DIAC stated that:
- The United States of America has 'the Alternatives to Detention Program' which develops and implements programs to enhance the supervision of aliens released from custody. There are two programs currently used, the Enhanced Supervision/Reporting Program and the Intense Supervision Appearance Program. These programs closely supervise illegal aliens that can be released into the community to ensure their attendance at immigration Court hearings and compliance with court orders.⁹⁵
- 2.124 The Intensive Supervision Appearance Program (ISAP) involves regular reporting, home visits (sometimes at prearranged times, sometimes not), close scrutiny of a participants' whereabouts and the progress of their cases. Failure to comply with these requirements would lead to removal from the program and re-placement in a detention centre. In the case of participants that opted to depart voluntarily, staff provided assistance with planning departure and

94 Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, pp 38-39.

95 Department of Immigration and Citizenship, submission 129, p 38.

monitored the participants' progress in making the necessary arrangements to return to their countries of origin.⁹⁶

- 2.125 The ISAP has resulted in significant adherence to conditional release from detention:

As of November, 2008, the maximum number of ISAP participants is 6000 and the program currently has 5200 aliens actively participating in this program as a condition of release from custody. Since inception, the ISAP has served over 10 000 participants and at this time the program reports a 99 per cent total appearance rate at immigration hearings and a 95 per cent appearance rate at final removal hearings.⁹⁷

- 2.126 The Enhanced Supervision/Reporting (ESR) Program had fewer obligations. Participants were required to attend an orientation session, verify their address and make a commitment to comply with the requirements of the law. As part of the service, participants were reminded by telephone and letter of their court dates and their legal obligations. 'Any further involvement with the program was strictly voluntary, and there were no sanctions for discontinuing participation.'⁹⁸

- 2.127 The ESR program also incorporates the option of electronic monitoring with 5400 participants monitored via electronic means only. There are currently more than 6500 participants in the ESR full service. Compliance rates are reported as very high.⁹⁹

- 2.128 For example, the United Kingdom reports high levels of compliance from persons in detention considered to be 'high risk absconders':

In the UK, existing alternatives to immigration detention include temporary admission, bail, reporting requirements, electronic tagging and residence restrictions. A study into the risk of detainees absconding, found that 90 per cent of

96 Root O, *The Appearance Assistance Program: an alternative to detention for non-citizens in U.S immigration removal proceedings* viewed on 30 January 2009 at http://www.vera.org/publication_pdf/aap_speech.pdf.

97 Alternatives to detention fact sheet, November 2008, US Immigration and Customs Enforcement, viewed on 31 January 2009 at <http://www.ice.gov/pi/news/factsheets/080115alternativestodetention.htm>.

98 Root O, *The Appearance Assistance Program: an alternative to detention for non-citizens in U.S immigration removal proceedings* viewed on 30 January 2009 at http://www.vera.org/publication_pdf/aap_speech.pdf.

99 Alternatives to detention fact sheet, November 2008, US Immigration and Customs Enforcement, viewed on 31 January 2009 at <http://www.ice.gov/pi/news/factsheets/080115alternativestodetention.htm>

released detainees (i.e. who had originally been considered high risk absconders by the Home Office) complied with terms of bail and therefore, according to the researchers, were unnecessarily detained. In a recent UNHCR report on alternatives to detention, it was noted that proper evaluation is required to determine whether other reception arrangements, such as dispersal, reporting requirements, accommodation centres and biometric identity cards, will be effective enough at monitoring asylum seeker's whereabouts to allow for a reduction in the use of immigration detention facilities.¹⁰⁰

- 2.129 An alternative form of reporting, in use in the criminal justice field and immigration systems in other jurisdictions, is voice recognition technology. A person might be required to call, for example, from their home telephone on a particular day or at a particular time in lieu of attending in person at a police station or immigration office. Alternatively the person must be at a particular location at an agreed time to answer automated calls. The technology compares a participant's supervised voice enrolment with sample verifications received from agreed locations.¹⁰¹
- 2.130 Group 4 Securitor, the current detention services provider in Australia and a provider of justice and immigration detention services internationally, claims that its voice recognition technology accurately identifies participants 97.6 per cent of the time.¹⁰²
- 2.131 Voice verification technologies are currently in use internationally in the criminal justice field and private security services. In the United Kingdom they are being used in the immigration field.
- 2.132 Voice recognition technology is not currently used in the immigration reporting system in Australia, although Centrelink recently announced that in 2009 they will deploy a biometric voice

100 'Thematic Briefing prepared for the Independent Asylum Commission', Information Centre about Asylum and Refugees, (2007) viewed on 4 February 2009 at http://www.icar.org.uk/bob_html/04_iac_briefings/Detention_of_asylum_seekers_in_the_UK_June_2007.pdf.

101 Group 4 Securitor, 'What electronic monitoring technologies are available?', viewed on 18 March 2009 at http://www.g4s.com/us/us-g4s_electronic_monitoring_international/usa-newpage-10.htm.

102 Group 4 Securitor (G4S), *G4S Patrol Suite*, promotional brochure. On 31 March 2009 DIAC announced that Serco Australia Pty Ltd had been selected as the preferred tenderer for the new contract for the provision of immigration detention services at detention centres around Australia.

authentication system to identify and manage clients. Users must have their identity verified through biometric voice authentication technology before accessing personal accounts. This will replace the client number and password system that Centrelink currently uses for client access to their accounts.¹⁰³

Electronic monitoring

2.133 Internationally, electronic monitoring is used by law enforcement and immigration authorities to monitor or restrict movement. It was initially developed as an alternative to secure detention in the criminal justice field in response to issues of limited prison capacity and the expense associated with secure places of detention. Electronic monitoring or tagging uses an electromagnetic device which is attached to a person's wrist or ankle. There are two types of electronic monitoring: radio frequency and global positioning system (GPS) tracking.

- Radio frequency tags emit a radio frequency enabling authorities to track location by vicinity to a pre defined location, such as a home telephone or specially installed unit.¹⁰⁴ In the United States, radio frequency monitoring may be used to confine people in immigration detention to house arrest, while it can also be used to enforce a form of curfew, where absences from the monitoring unit between certain hours are reported.
- GPS functions have been adapted from the technology's use in telecommunications, military operations, search and rescue, police surveillance and private-sector vehicle tracking.¹⁰⁵ Alternatively, GPS devices can be used to track a person's location anywhere by satellite. With current enhancements in technology and global positioning systems, electronic monitoring can be used to track a person's position at any given time.¹⁰⁶

103 Bingemann M, 'Centrelink to use voice ID', *The Australian*, 27 January 2009.

104 Field O and Edwards A, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 37.

105 Black M and Smith R, Australian Institute of Criminology, Electronic monitoring in the criminal justice system, *Trends and issues in crime and criminal justice* (2003) No. 254, pp 2. Australian Institute of Criminology, viewed on 2 April 2009 at <http://www.aic.gov.au/publications/tandi2/tandi254.pdf>

106 Black M and Smith R, Australian Institute of Criminology, Electronic monitoring in the criminal justice system, *Trends and issues in crime and criminal justice* (2003) No. 254, pp 2. Australian Institute of Criminology, viewed on 2 April 2009 at <http://www.aic.gov.au/publications/tandi2/tandi254.pdf>

- 2.134 Miniature tracking devices to be implanted beneath the skin are also currently being developed and tested.¹⁰⁷
- 2.135 Electronic monitoring pilot programs have occurred in many European countries since the late 1990s including the United Kingdom, Belgium, France, Germany, the Netherlands, Sweden, Spain, Italy and Portugal.¹⁰⁸
- 2.136 Professor Howard Adelman informed the Committee that electronic monitoring is used most extensively in Great Britain, which also has the longest period of experience with this method of tracking irregular migrants. The UK Immigration Service began electronic monitoring starting in 1989 for asylum seekers, over stayers and illegal workers. Use of the mechanism does not require the detainee's consent, although prior to 2005, 'tagging' was used with consent as a matter of policy rather than as a legislated requirement under the 2004 Immigration and Asylum Act.
- 2.137 In the United States the technology has been used for criminal offenders since 1983.¹⁰⁹ In 2006, it was estimated that the daily average caseload of electronically monitored criminal offenders was 70 000 - 100 000 but could be as high as 150 000.¹¹⁰
- 2.138 Electronic monitoring was introduced as an alternative to immigration detention in the United States in 2003, and since then it has been used to monitor more than 9100 non-citizens. Currently there is an average of 2700 people on any given day on electronic monitoring programs, relative to an immigration detention population of 32 000.¹¹¹ Candidates for this program are determined on a case-by-case basis and the devices are used only in non-violent,

107 Black M and Smith R, Australian Institute of Criminology, *Electronic monitoring in the criminal justice system*, 'Trends and issues in crime and criminal justice' (2003) No. 254, pp 2. Australian Institute of Criminology, viewed on 2 April 2009 at <http://www.aic.gov.au/publications/tandi2/tandi254.pdf>

108 Department of Immigration and Citizenship, *Electronic monitoring of persons in community detention arrangements* (2009), research notes, p 14.

109 Black M and Smith R, Australian Institute of Criminology, *Electronic monitoring in the criminal justice system*, 'Trends and issues in crime and criminal justice' (2003) No. 254, pp 1. Australian Institute of Criminology, viewed on 2 April 2009 at <http://www.aic.gov.au/publications/tandi2/tandi254.pdf>

110 Field O and Edwards A, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 36.

111 Roberts M, 'Immigrants face detention, few rights', Associated Press, 15 March 2009.

low-risk cases.¹¹² Electronic monitoring aims to improve non-citizen compliance with conditions of release, including attendance at immigration hearings and compliance with final court orders, while helping the agency use detention space more efficiently.¹¹³

- 2.139 Electronic monitoring is also used in Canada, although chiefly for a small number of cases in which there are security concerns with the person.¹¹⁴
- 2.140 Professor Howard Adelman told the Committee that Ireland also had provision for electronic monitoring of people in immigration detention, but that it was rarely used, with the preference being for monitoring by community and NGO groups.¹¹⁵
- 2.141 Professor Adelman said that:
- As with all alternatives to detention, they generally work as long as the individual has a chance of landing. Otherwise, [electronic monitoring] has a degree of negative results when those electronically tagged are informed that any chance of remaining is over; they have no incentive to cooperate and they can find a way to get rid of the tag.
- 2.142 Electronic monitoring has been reasonably successful in providing an alternative to secure detention in some countries, and it does allow criminal offenders or immigration clients to live in the community, maintain relationships with their families and to work, if they have permission to do so. However, electronic monitoring has been controversial, with claims that it impedes civil liberties and its use in the immigration field attaches a criminal stigma to potentially vulnerable people.¹¹⁶
- 2.143 In Australia, electronic monitoring has not been used in the immigration context, although it has been trialled by some states and

112 United States Immigration and Customs Enforcement (ICE), 'ICE tests new electronic monitoring program', media release, 3 August 2003, viewed on 17 March 2009 at <http://www.ice.gov/pi/news/newsreleases/articles/tether080803.htm>.

113 United States Immigration and Customs Enforcement (ICE), 'Fact sheet: Alternatives to detention' (2008), viewed on 12 March 2009 at <http://www.ice.gov/pi/news/factsheets/080115alternativestodetention.htm>.

114 Adelman H, *Transcript of evidence*, 25 February 2009, p 10.

115 Adelman H, *Transcript of evidence*, 25 February 2009, p 4.

116 Black M and Smith R, Australian Institute of Criminology, Electronic monitoring in the criminal justice system, *Trends and issues in crime and criminal justice* (2003) No. 254, pp 3-4. Australian Institute of Criminology, viewed on 2 April 2009 at <http://www.aic.gov.au/publications/tandi2/tandi254.pdf>.

territories in the criminal justice field.¹¹⁷ A GPS tracking trial several years ago by the Victorian Department of Justice found that it did not perform reliably enough to meet expectations.¹¹⁸ The Committee visited the new low to high security prison in the Australian Capital Territory, the Alexander Maconachie Centre. It observed that people held there would wear tamper proof radio frequency anklets to enable prison operators to monitor their whereabouts and enforce no-association rules between cohorts of prisoners or individuals.¹¹⁹

Summary

- 2.144 This chapter has surveyed alternatives to secure immigration detention that have the common aim of reducing reliance on physical security and detention infrastructure while ensuring that authorities are aware of a person's whereabouts and the client is available for immigration processes. Across the alternatives currently in use in Australia and internationally, these include independent living in the community, hostel or collective accommodation, bridging visas with conditions (issued in other countries as 'residence permits'), hosted stays in the community, as well as financial sureties and reporting conditions, including the use of electronic monitoring.
- 2.145 In the next chapter the Committee reviews evidence received regarding the conditions of support and accommodation needed to deliver on a humane and supportive living environment for people with an unresolved immigration status.

117 Black M and Smith R, Australian Institute of Criminology, *Electronic monitoring in the criminal justice system, Trends and issues in crime and criminal justice* (2003) No. 254, pp 3. Australian Institute of Criminology, viewed on 2 April 2009 at <http://www.aic.gov.au/publications/tandi2/tandi254.pdf>.

118 Department of Immigration and Citizenship, *Electronic monitoring of persons in community detention arrangements* (2009), research notes, p 10.

119 The visit took place on 25 February 2009 and at the time there were as yet no prisoners in the facility.