The Parliament of the Commonwealth of Australia

Immigration detention in Australia

Community-based alternatives to detention

Second report of the inquiry into immigration detention in Australia
Joint Standing Committee on Migration

May 2009
Canberra

ISBN 978-0-642-79147-4 (Printed version)
ISBN 978-0-642-79148-1 (HTML version)

Cover design by Lisa McDonald, House of Representatives Printing and Publishing Office

Contents

DISSENTING / MINORITY REPORTS, AND ADDITIONAL COMMENTS

LIST OF TABLES

LIST OF FIGURES

Foreword

This is the second report of the Joint Standing Committee on Migration's inquiry into immigration detention in Australia.

The first report of the Committee, tabled in December 2008, made a number of recommendations that were aimed at improving accountability and ensuring that release from detention centres followed health, security and identity checks. It also recommended:

- the increased use of bridging visas to enable the release of people into the community, subject to appropriate criteria to manage risks to the community and to our immigration system, and
- that all detention charges and debt should be waived immediately.

The Committee is extremely pleased to note that the Government has already taken steps to respond to the Committee's recommendations from the first report. In particular, the introduction of the Migration Amendment (Abolishing Detention Debt) Bill 2009 into the Senate on 18 March 2009 which seeks to amend the Migration Act to remove the liability for detention and related costs for certain persons and liable third parties and extinguishes all outstanding immigration detention debt.

The Committee acknowledges that this is one of many welcome changes to Government policy on immigration detention. However, despite the changes to both policy and to administrative culture in recent times, we can and must do better.

The Committee has therefore chosen to focus this report on the conditions and material support for release into the community, including appropriate options for community-based alternatives to secure detention.

Australia has been developing alternatives to immigration detention centres since 2001, in particular through the establishment of the community detention program and the Community Care Pilot. The Committee draws on this experience, as well as the experience of different models internationally, to set out the key features of a future framework for community release.

In examining the options for community-based alternatives to detention, the Committee has drawn on the immigration detention values announced by the Minister for Immigration and Citizenship in July 2008. In particular, the report builds on the Minister's commitment that detention within an immigration detention centre is only to be used as a last resort and for the shortest practicable time.

Drawing on these values, and on the evidence received, the Committee has a made a series of recommendations with three principles in mind. That is, detention alternatives must:

- ensure a humane, appropriate and supported living environment for those awaiting resolution of their immigration status
- maintain a robust and enforceable immigration system that operates with integrity throughout arrival, assessment, resettlement or departure processes for unlawful non-citizens, and
- be cost-effective and provide value for money for the Australian taxpayer.

These principles reflect our obligations to people coming to Australia and the expectations of the international community of which we are an integral part. They also reflect the expectations of the Australian community of a humane, orderly, and well-managed immigration system that continues to enrich our society.

The Committee has acknowledged that secure detention will continue to play an important role in our immigration system. The evidence suggests however, that it is not necessary to keep people who meet the criteria for release in secure detention centres for long periods of time awaiting resolution of their immigration status. Co-located, open residential accommodation in the community can provide people with safe and supportive living environments while still being accessible to the Department of Immigration and Citizenship and other service providers. Community-based alternatives can also be much more cost-effective than the current high levels of physical security or on-site staffing required within an immigration detention centre.

A more supportive living environment maintains the physical and mental well being of those awaiting an immigration decision, which can therefore facilitate a smoother transition into the Australian community where there is a positive outcome or repatriation.

In addition, the harsh psychological burdens inflicted by long and indefinite periods of detention, as well as restrictions on income, work and health care for community-based bridging visa holders, is known to have harmful long term effects on all those involved.

A new approach is needed: one that supports people who lawfully come to Australia; invests in case management; and actively seeks an expected immigration outcome.

That is why the Committee has recommended that the Australian Government:

- reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements
- utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved, and
- review the cases of those currently on residence determinations, known as community detention, with a view to granting a reformed bridging visa until their immigration status is resolved, ensuring that there is a continuation of services and support currently available to those individuals.

The Committee has also recommended that there should be improved transparency in immigration decision-making, improved access to legal advice, and improved access to voluntary return counselling in order to support the provision of information to the client and to help them decide what is going to be the best and most realistic outcome for themselves and their families.

The Committee recognises that there are basic rights, such as access to appropriate health care, housing and income that should be afforded to all people regardless of their immigration status. The Committee has therefore recommended that the Australian Government ensure that people are provided with, where needed:

- basic income assistance that is means-tested
- access to necessary health care
- assistance in sourcing appropriate temporary accommodation and basic furnishing needs

- and community orientation information, and in addition that children, in particular, are provided with
  - ⇒ safe and appropriate accommodation with their parent(s) or guardian(s)
  - ⇒ the provision of basic necessities such as adequate food
  - ⇒ primary and secondary schooling.

Where case resolution is ongoing the Committee recommends that the Government reform the bridging visa framework to grant people permission to work.

Lastly, the Committee is concerned that a reliance on the private rental market as an alternative to immigration detention facilities is inadequate and inefficient and is recommending that that the Australian Government have access to a stock of furnished community-based immigration housing.

I would like to express my appreciation for my hard working colleagues on the Committee who are committed to ensuring that our immigration system treats all people, regardless of their status, in a humane and compassionate manner, while protecting Australia's borders and ensuring a robust and fair immigration system.

Mr Michael Danby MP
Chair

Membership of the Committee

Chair	Mr Michael Danby MP
Deputy Chair	Hon Danna Vale MP
Members	Senator Andrew Bartlett *(to 30 June 2008)*
	Senator Catryna Bilyk *(from 1 July 2008)*
	Ms Yvette D'Ath MP
	Senator Alan Eggleston *(to 4 February 2009)*
	Senator Concetta Fierravanti-Wells *(from 4 February 2009)*
	Mr Petro Georgiou MP
	Senator Sarah Hanson-Young *(from 27 August 2008)*
	Senator Anne McEwen
	Mr Don Randall MP *(to 10 November 2008)*
	Hon Dr Sharman Stone MP *(from 10 November 2008)*
	Mr Tony Zappia MP

Committee secretariat

Secretary	Dr Anna Dacre
Inquiry Secretary	Ms Anna Engwerda-Smith *(to May 2009)*
	Mr Paul Zinkel *(from May 2009)*
Senior Research Officer	Mr Steffan Tissa
Office Manager	Ms Melita Caulfield
Administrative Officer	Ms Claire Young

Terms of reference

The Joint Standing Committee on Migration is inquiring into immigration detention in Australia. The Committee will examine:

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

(5 June 2008)

List of abbreviations

AAT	Administrative Appeals Tribunal
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
ASAS	Asylum Seeker Assistance Scheme
ASRC	Asylum Seeker Resource Centre
AVR	Assisted Voluntary Return
BV	Bridging Visa
CCP	Community Care Pilot
Chilout	Children Out of Detention
CSRS	Community Status Resolution Service
DeHAG	Detention Health Advisory Group
DIAC	Department of Immigration and Citizenship
ESR	Enhanced Supervision/Reporting
EU	European Union
FASSTT	Forum of Australian Services for Survivors of Torture and Trauma
FOI	Freedom of Information

G4S	Group 4 Securitor
GPS	Global Positioning System
GSL	Global Solutions Limited
IAAAS	Immigration Advice and Application Assistance Scheme
ICE	Immigration and Customs Enforcement (United States Government Agency)
IDAG	Immigration Detention Advisory Group
IDC	Immigration Detention Centre
IHMS	International Health and Medical Services
IOM	International Organisation for Migration
IRH	Immigration Residential Housing
ISAP	Intensive Supervision Appearance Program
ITA	Immigration Transit Accommodation
MATCH	Metropolitan Association Towards Community Housing
MRT	Migration Review Tribunal
MSI	Migration Series Instructions
NASAVic	Network of Asylum Seeker Agencies Victoria
NGO	Non Government Organisation
NLA	National Legal Aid
PAM	Procedures Advice Manual
PBS	Pharmaceutical Benefits Scheme
RAILS	Refugee and Immigration Legal Service
RILC	Refugee and Immigration Legal Centre
RRT	Refugee Review Tribunal

STARTTS	NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors
THV	Temporary Humanitarian Visa
TPV	Temporary Protection Visa
UNHCR	United Nations High Commissioner for Refugees

List of recommendations

Recommendation 1

Given that the current bridging visa structure is shown to be complex and restrictive, the Committee recommends that the Australian Government reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements.

In reforming the bridging visa framework, specific consideration should be given to health, security and identity checks and risk assessments in accordance with the recommendations outlined by the Committee in its first report *Criteria for release from detention.*

Recommendation 2

The Committee recommends that the Australian Government utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved.

Recommendation 3

The Committee recommends that the Australian Government review the cases of those currently on residence determinations, known as community detention, with a view to granting a reformed bridging visa until their immigration status is resolved, ensuring that there is a continuation of services and support currently available to those individuals.

Recommendation 4

The Committee recommends that, for any case where a person held in some form of immigration detention is refused a bridging visa, the Australian Government require that:

- clear and detailed reasons in writing are provided to the person being detained, and that
- the person has a reasonable time limit, up to 21 days, in which to seek merits review of that refusal, commensurate with those that apply to visa applicants in the community.

Recommendation 5

The Committee recommends that the Australian Government provide means-tested access to independent migration counselling and migration legal advice to all people in immigration detention and to those living in the community on bridging visas.

In order to facilitate means-tested access to independent migration counselling, the Committee recommends that the Australian Government increase the scope of the Immigration Advice and Application Assistance Scheme and review the current eligibility criteria to make assistance under this scheme available to all people in immigration detention and to those living in the community on bridging visas.

Recommendation 6

The Committee recommends that the Australian Government:

- provide indicative processing times and criteria for the ministerial discretion provisions under the *Migration Act 1958* in order to avoid prolonged uncertainty for people, and
- provide reasons for ministerial decisions in order to improve transparency and discourage repeat requests for ministerial intervention.

Recommendation 7

The Committee recommends that the Australian Government establish a voluntary repatriation program, similar to that run by the International Organisation for Migration through the Community Care Pilot, which can be accessed by all people whether in detention or released on a bridging visa.

Recommendation 8

The Committee recommends that the Australian Government reform the bridging visa framework to ensure that people are provided with the following where needed:

- basic income assistance that is means-tested
- access to necessary health care
- assistance in sourcing appropriate temporary accommodation and basic furnishing needs, and provision of information about tenancy rights and responsibilities and Australian household management, where applicable, and
- community orientation information, translated into appropriate languages, providing practical and appropriate information for living in the Australian community, such as the banking system, public transport and police and emergency contact numbers.

Recommendation 9

The Committee recommends that the Australian Government commit to ensuring that children living in the Australian community, while their or their guardian's immigration status is being resolved, have access to:

- safe and appropriate accommodation with their parent(s) or guardian(s)
- the provision of basic necessities such as adequate food
- necessary health care, and
- primary and secondary schooling.

Recommendation 10

The Committee recommends that the Australian Government reform the bridging visa framework to grant all adults on bridging visas permission to work, conditional on compliance with reporting requirements and attendance at review and court hearings.

Recommendation 11

The Committee recommends that the Australian Government provide that, where permission to work on a bridging visa is granted, this permission should continue irrespective of whether a person has applied for a merits, judicial or ministerial review.

Recommendation 12

The Committee recommends that the Australian Government have access to a stock of furnished community-based immigration housing which:

- should consist of open hostel-style accommodation complexes and co-located housing units.
- should be available to people and families on bridging visas who do not have the means to independently organise for their housing needs in the community, and
- where rent should be determined on a means-tested basis.

1

Introduction

Background to this report

1.1 On 14 May 2008 the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, requested the Joint Standing Committee on Migration to inquire into and report on immigration detention in Australia.

1.2 The Committee undertook to examine:

- the criteria that should be applied in determining how long a person should be held in immigration detention
- the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks
- options to expand the transparency and visibility of immigration detention centres (IDCs)
- the preferred infrastructure options for contemporary immigration detention
- options for the provision of detention services and detention health services across the range of current detention facilities, including IDCs, Immigration Residential Housing (IRH), Immigration Transit Accommodation (ITA) and community detention, and
- options for additional community-based alternatives to immigration detention by

- ⇒ inquiring into international experience
- ⇒ considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
- ⇒ comparing the cost effectiveness of these alternatives with current options.

1.3 These wide ranging and challenging terms of reference require the Committee to examine current detention policy and values and how they are articulated in administrative practice, infrastructure, facilities and service delivery.

1.4 More broadly, they set the task of developing a blueprint for Australia's future immigration detention policy. They require the Committee to critically assess the role that detention plays in maintaining the integrity of Australia's immigration system, and the shape of a future immigration detention system that meets the needs of people with an unresolved immigration status and the Australian community. They require an assessment of how to most appropriately weigh the balance between a person's right to liberty and dignity, risk concerns and cost effectiveness for the Australian taxpayer.

1.5 With the launch of the inquiry in May 2008, the Committee sought submissions from government agencies and advisory groups, non-government organisations, such as refugee and migrant support and advocacy groups and charitable organisations. A total of 143 submissions have been received. The list of submissions is at Appendix A.

1.6 The Committee has conducted public hearings and roundtables in Canberra, Sydney, Perth, Melbourne and Brisbane, and inspected all detention centres, residential housing facilities and immigration transit facilities in Australia. A list of public hearings and visits is at Appendix B.

1.7 During the course of the inquiry the Committee has spoken to a number of former detainees and individuals currently in detention centres, as well as individuals and families in IRH, in community detention and living in the community on bridging visas. Invitations to the community detention client roundtable in Sydney were facilitated by the Department of Immigration and Citizenship (DIAC), and the bridging visa client roundtable in Melbourne was facilitated by the Australian Red Cross, Hotham Mission and the Asylum Seeker Resource Centre, for which the Committee is appreciative.

Ministerial announcements

1.8 The Committee's inquiry has taken place during a time of significant immigration policy shifts in Australia.

1.9 On 29 July 2008, the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, announced a series of values that would underpin Australia's immigration detention policy.[1] Those seven values are:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program three groups will be subject to mandatory detention:
   - all unauthorised arrivals, for management of health, identity and security risks to the community
   - unlawful non-citizens who present unacceptable risks to the community, and
   - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in IDCs is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

1 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, 29 July 2008.

1.10 The values build on reforms implemented by the previous Government. These include the commitment not to place children in IDCs; the introduction of community detention for families and other vulnerable detainees; and the increasing use of bridging visas in preference to detention.

1.11 Since the ministerial announcements, consultation has been ongoing with stakeholders and non-government organisations about how best to implement the values. The Government has said it is seeking to implement the new detention values through policy and regulation in the first instance, although legislation to address more fundamental issues is expected to be introduced in late 2009.[2]

1.12 In August 2008, the Government abolished temporary protection visas (TPVs). TPVs were introduced by the previous government to discourage people smuggling activities resulting in unauthorised boat arrivals and to discourage refugees leaving their country of first asylum. Now, all applicants for a protection visa who are found to engage Australia's protection obligations receive a permanent protection visa.[3] While the TPV regime is not considered as part of this inquiry, the experience of TPV holders living in the community whilst awaiting resolution of immigration status has informed the Committee's reflections, in later chapters, on how community-based arrangements might best function in the interests of the person, the community and the Australian migration system.

First report: *Criteria for release from detention*

1.13 To facilitate the contribution of this inquiry to the implementation of the reforms announced by the Minister, the Committee decided to report in three parts.

1.14 The first report, *Immigration detention in Australia: A new beginning – Criteria for release from detention* was tabled on 1 December 2008.[4] This report focussed on the first two of the six terms of reference, that is:

---

2 Senator the Hon C Evans, Minister for Immigration and Citizenship, *Senate Hansard*, Supplementary Budget Estimates, Legal and Constitutional Affairs Committee, 21 October 2008, p 109.

3 Department of Immigration and Citizenship, *Fact Sheet 68 - Abolition of Temporary Protection visas (TPVs) and Temporary Humanitarian visa (THVs), and the Resolution of Status (subclass 851) visa* (2009).

4 The report is available at http://www.aph.gov.au/house/committee/mig/detention/report.htm. A dissenting report was tabled by three members of the Committee and is available in the same place.

- the criteria that should be applied in determining how long a person should be held in immigration detention, and
- the criteria that should be applied in determining when a person should be released from immigration detention following health, identity and security checks.[5]

1.15 The report addressed these terms of reference in the context of the Minister's announcements and endorsed the application of a risk-based model to assess whether immigration detention was a proportionate and necessary response in each individual case.

1.16 The Committee's objective was to set open and transparent guidelines that would enable the implementation of the seven principles outlined by the Australian Government. In the first report, it outlined guidelines for the assessment of public health, compliance, criminal and national security risks. It also considered the future shape of our immigration detention system in terms of fairness, accountability, and review mechanisms for ongoing detention. Finally, it considered removal practices and the policy of charging people for the time they spend in detention.

1.17 A recurring concern about the current immigration detention system has been the indefinite nature of detention, with little scope or information about the reasons or rationale for detention. The report tackled those uncertainties through the following recommendations:

- 5 day time frames for health checks
- up to 90 days for the completion of security and identity checks, after which consideration must be given to release onto a bridging visa
- a maximum time limit of 12 months' detention for all except those who are demonstrated to be a significant and ongoing risk to the community, and
- the publication of clear guidelines regarding how the criteria of unacceptable risk and visa non-compliance are to be applied.

5 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention* (2008).

1.18 The report also recommended additional measures to increase oversight and transparency, such as:

- greater detail and scope for the three month review conducted by DIAC
- ensuring detainees and their legal representatives receive a copy of the review
- ensuring the six month Ombudsman's review is tabled in parliament and that the ministerial response to recommendations is comprehensive
- providing increased oversight of national security assessments that may affect individuals
- enshrining the new values in legislation
- establishing a maximum of 12 months in detention unless a person is determined to be a significant and ongoing risk to the Australian community, and
- providing for merits and judicial review of the grounds for detention after that person has been detained for more than 12 months. This would apply to those who remain in detention after 12 months on the basis of a 'significant and ongoing unacceptable risk' assessment.[6]

1.19 Additionally, the Committee considered that the practice of charging a person for their own detention was considered harsh and contrary to the stated value that immigration detention was not punitive. The Committee recommended that this practice should cease and that all such debts should be waived immediately.

1.20 The Committee is extremely pleased to note the introduction of the Migration Amendment (Abolishing Detention Debt) Bill 2009 into the Senate on 18 March 2009. The Bill seeks to amend the Migration Act to remove the liability for detention and related costs for certain persons and liable third parties and extinguishes all outstanding immigration detention debt. As the Minister noted, the bill is in line with the recommendation of this Committee from its first report that the practice of charging a person for their immigration detention be

6 A full list of the Committee's recommendations from its first report of the inquiry into immigration detention in Australia can be found at Appendix C.

abolished. People convicted of people smuggling or illegal foreign fishing will still be liable for their costs of detention and removal.[7]

1.21 A full list of the Committee's recommendations from this report and a summary of the government response are provided at Appendix C.

This report: *Community-based alternatives to detention*

1.22 The first report of the Committee aimed to expedite processing times and ensure release from detention centres following health, security and identity checks. The first report also recommended the increased use of bridging visas to enable the release of persons into the community following a time period and conditional on appropriate checks and clearances.

1.23 Logically the Committee has chosen to next report on the conditions and material support for this release, including appropriate options for community-based alternatives to secure detention.

1.24 This second report considers Australia's current use of alternatives to detention centres, and assesses options in international use which may have application in the Australian context.

1.25 Under the inquiry's terms of reference, the Committee is to canvass options for additional community-based alternatives to immigration detention, by:

- inquiring into international experience
- considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework, and
- comparing the cost effectiveness of these alternatives with current options.

1.26 In considering community-based alternatives to detention, the Committee also makes comment on the infrastructure required to meet the needs of those not in detention centres and awaiting the resolution of their immigration status. This provides a partial response to a further term of reference, namely:

---

7 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Detention debt regime to be scrapped', media release, 18 March 2009; Sen the Hon J Ludwig, Migration Amendment (Abolishing Detention Debt) Bill 2009, second reading speech, *Senate Hansard*, 18 March 2009, pp 1-4.

- the preferred infrastructure options for contemporary immigration detention.

1.27 As the focus of this report is on community-based alternatives, the report does not address infrastructure options for detention centres. This will be considered in the subsequent and final report.

Third report: *Transparency, infrastructure and service provision*

1.28 The Committee's third and final report for the inquiry, due to be tabled in later in 2009, will discuss the contemporary infrastructure, service and management needs of a future immigration detention and bridging visa population. This report will address the remaining terms of reference, namely:

- options to expand the transparency and visibility of IDCs
- the preferred infrastructure options for contemporary immigration detention, and
- options for the provision of detention services and detention health services across the range of current detention facilities, including IDCs, IRH, ITA and community detention.

The development of detention alternatives

1.29 Introduced in 1992, the policy of mandatory detention was envisaged as a temporary and exceptional measure for a particular group of unauthorised arrivals or 'designated' persons who arrived by boat between 19 November 1989 and 1 September 1994. The period of detention was limited to 273 days. In 1994 this time limit was removed and mandatory detention was extended to all unlawful non-citizens.[8]

1.30 Since that time, the Australian Government has invested in the construction and expansion of a network of secure detention facilities. This has included the now defunct facilities at Port Hedland in Western Australia, Baxter and Woomera in South Australia, Cocos Island, Nauru and Manus Island in Papua New Guinea. Currently in use are facilities on Christmas Island, in Sydney, Melbourne, Perth,

8 Refer to Appendix E for a timeline on immigration detention policy from 1989-2009.

Brisbane and Darwin.[9] A historical overview of legislation and major policy initiatives relating to immigration detention is provided at Appendix D.

1.31 The number of people held in detention by DIAC was at its highest between 2000 and 2002. Between 1999 and 2001, Australia was faced with an unprecedented number of asylum seekers; around 9500 arrived unlawfully by boat from the Middle East via Indonesia.[10] There has been a steady reduction in the detention population since then, although the numbers continue to fluctuate in response to external factors, such as natural disaster and conflict, the activities of people smugglers, trends in non-compliance and administrative compliance action (Appendix E).[11]

1.32 Australia's secure detention facilities currently have an operational capacity of over 1100, although as at 20 March 2009 the detainee population was 357, including 33 in community detention and 12 in alternative temporary detention in the community.[12]

1.33 Australia's experience with mandatory immigration detention has been controversial. In this decade, government policy has progressively recognised the need to develop a range of alternatives to secure detention. In part, this has been a way of reconciling a limited and geographically dispersed detention infrastructure with the necessity of detaining people elsewhere, in transit, for medical attention, or for other reasons.

1.34 Pressure for development of alternatives has also come from public concern about families and children in detention, in some cases for multiple years, and more diffusely from reports of the prevalence of depression, anxiety, self-harm, suicidal ideation and psychiatric disorders amongst immigration detainees.[13]

---

9 An immigration transit accommodation facility is also under construction in Adelaide.

10 Department of Immigration and Citizenship, 'Unauthorised arrivals by land and sea', fact sheets 74 & 74a, viewed on 1 November 2008 at web.archive.org/web/20030621215427/http://www.immi. gov.au /facts/ 74unauthorised.htm web.archive.org /web/20030621215037/ www.immi.gov.au/facts/74a_boatarrivals.htm.

11 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Unauthorised boat arrivals arrive on Christmas Island', media release, 2 October 2008.

12 Department of Immigration and Citizenship, Immigration detention statistics summary as at 20 March 2009, viewed on 31 March 2009 at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090320.pdf.

13 Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention* (2004); Chilout, submission 40, p 3; Cole E, Bail for

1.35 In some instances Australia may have been in breach of international human rights and the United Nations Human Rights Committee has found Australia's immigration detention regime to be in violation of its obligations under international law on seven separate occasions.[14] Under United Nations guidelines, the detention of asylum seekers or other immigration clients should be a measure of last resort where no other alternatives are available.[15] In the context of a mandatory detention system it has been difficult, until recently, to demonstrate that alternatives to secure immigration detention had been considered and found inappropriate.

1.36 Over recent years, the range of types of detention accommodation in Australia has expanded substantially. Currently the following types of immigration detention are available for DIAC to place unlawful non-citizens:

- IDCs (secure, institutional detention)
- alternative temporary detention in the community, which may include foster care for minors or stays in hotels, hospitals, other medical facilities or state correctional facilities (introduced in 2002)[16]
- community detention, which is supported community living arrangements for those assessed as a low flight risk and for families with children (introduced in 2005)
- IRH, which is family-style detention accommodation for lower risk detainees (introduced in 2006), or
- ITA, which is hostel-type accommodation for people anticipated to be removed or processed quickly (introduced in 2007).

1.37 In addition bridging visas can also be used as an alternative to immigration detention. A bridging visa makes a non-citizen temporarily lawful until a specified event occurs or until their immigration status is resolved. While the *Migration Act 1958* requires the detainment of an unlawful non-citizen, immigration policy is that,

immigration detainees, *A few families too many – The detention of asylum seeking families in the UK* (2003) pp 34-35; Circle of friends 42, submission 32, p 6.

14 Attorney-General's Department, submission 61, p 2; Nasu H, Rice S & Zagor M, submission 76, p 3; Refugee and Immigration Legal Centre, submission 130, p 7.

15 United Nations High Commissioner for Refugees, *Guidelines on applicable criteria and standards relating to the detention of asylum seekers (*1999), p 1.

16 Department of Immigration and Citizenship, submission 129, pp 18-26.

where it is appropriate and safe to do so, the granting of a bridging visa should be considered prior to detaining a person.[17]

1.38 Inquiry participants almost universally acknowledged these developments, together with improvements to case processing times and the introduction of case management, as being positive and significant.

1.39 As part of his announcement of the immigration detention values on 29 July 2008, the Minister for Immigration and Citizenship said under the reforms, 'Persons will be detained only if the need is established. The presumption will be that persons will remain in the community while their immigration status is resolved'.[18] In consequence, he nominated the further expansion of community housing options as a priority.[19]

1.40 In its submission, DIAC noted that this work was ongoing in line with the Government's policy directions. In the department's view, 'Potential exists within the current legislation to make greater use of community-based options, subject to considerations of risk and appropriate support services'.[20]

1.41 In this context, inquiry participants were supportive of the Committee's remit to explore alternatives to immigration detention. The Office of the United Nations High Commissioner on Refugees (UNHCR) stated in its submission that:

> Given the negative effects of detention on the psychological well-being of those detained, the Committee [should] recommend that all possible alternatives to detention are explored before any decision is made to detain, including available community care arrangements. Particular care should be provided for vulnerable asylum-seekers, including women at risk, children, unaccompanied elderly persons, survivors of torture or trauma, and/or persons with a mental or physical disability.[21]

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

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 4.

19 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.

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

21 Office of the United Nations High Commissioner for Refugees, submission 133, p 1.

1.42 The Refugee and Immigration Legal Centre (RILC) informed the Committee that:

> The fundamental tenets of the government's new detention policy dictate that formulation and introduction of comprehensive alternatives to detention be given utmost priority. Minister Evans has recently expressed concern about the 'limited and inadequate' options currently available beyond detention centres. We welcome the government's commitment to prioritise 'expansion of community housing options'. Faithful implementation of the policy is in part dependent on this occurring.[22]

1.43 Hotham Mission, one of the pioneers in support models for community-based immigration clients in Australia, applauded the change in policy, but expressed concern regarding how those released from detention into the community would fare and if appropriate services and support would be available:

> The values that the minister outlined in relation to detention policy reflect a new era in the treatment of detainees; they speak of fairness, dignity, last resorts and unacceptable conditions. We welcome these changes, however these values do not reflect the way we currently treat the majority of people in protection process in the community, including those who have been released from detention. I believe it would not be an exaggeration to say that we do not currently have the capacity to uphold these values in community care upon release from detention.[23]

Assessing the range of detention alternatives

1.44 Over the last fifteen years there has been significant criticism from refugee and human rights advocacy groups regarding detention conditions, the types of detention available and, when a person is released into the community on a bridging visa, the conditions that apply to some visas. In particular this advocacy, and evidence to this inquiry, has had a focus on protection visa applicants, or asylum

22 Refugee and Immigration Legal Centre, submission 137, p 23.

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

seekers.[24] There has also been significant public advocacy for children, and concern regarding the conditions of their placement and the placement of family units.

1.45 While asylum seekers and children now represent a minority of unlawful non-citizens in detention,[25] the Committee recognises the special vulnerabilities of these populations. The Committee also acknowledges the special needs of other detention populations such as foreign fishers, and in particular juveniles, who may not desire community placements. Some of those awaiting an immigration decision may experience isolation or ostracism in the community. For others, community connections and the ability to contribute meaningfully to Australian society or support their family whilst waiting on an immigration outcome will be paramount. In addition to protection visa applicants, these may include people with complex immigration cases, medical needs, stateless persons and other people who might otherwise be in immigration detention for a long and indefinite period of time.

1.46 There are a currently a number of alternatives to secure detention in use in Australia and many of these have developed in response to the specific needs of certain detention populations. Internationally, a number of other options are used. In assessing the application of alternatives to the Australian context, the Committee has had regard for the immigration values outlined by the Minister. The Committee has also taken into account the shift to a risk-based approach to immigration detention policy.

1.47 In developing a set of recommendations to outline appropriate alternatives to detention, the Committee has determined that there are three key considerations. This report assesses and makes recommendations on a range of community-based alternatives to detention, having given careful regard to balancing the following three considerations:

---

24 The terms *asylum seeker* and *protection visa applicant* are used interchangeably in this report.

25 Department of Immigration and Citizenship, supplementary submission 129d, p 1, provides the number of minors relative to total annual detention populations from 1989-90 to 2007-08. In 2007-08, children comprised 239 or approximately 5 per cent of the 4623 people taken into immigration detention. The number of protection visa finalisations for the same year was 347. Of protection visa applicants as a whole, the majority are not in detention. As at 10 October 2008, there were 6090 protection visa applicants living in the community on bridging visas, including those seeking merits review, judicial review or ministerial intervention related to an adverse decision on a protection visa application. Department of Immigration and Citizenship, submission 129n, p 9.

- Detention alternatives must:
  - ⇒ ensure a humane, appropriate and supported living environment for those awaiting resolution of their immigration status
  - ⇒ maintain a robust and enforceable immigration system that operates with integrity throughout arrival, assessment, resettlement or departure processes for unlawful non-citizens, and
  - ⇒ be cost-effective and provide value for money.

1.48 The recommendations of this report set out a range of policy and regulatory changes, program expansion and new accommodation options that will provide a more flexible, appropriate and cost-effective range of alternatives than are currently available, while maintaining high levels of compliance and ensuring the integrity of our immigration system.

Structure of the report

1.49 Chapter 2 of this report provides a factual overview of current Australian alternatives to secure detention, including the use of bridging visas as an alternative to detention. Alternative options from international practice are described, including reporting and monitoring options that in some countries take the place of secure detention.

1.50 Chapters 3 and 4 examine the evidence to the inquiry in light of the three considerations that the Committee must balance in assessing detention alternatives. Chapter 3 summarises the volume of evidence received regarding the conditions and accommodation options for alternatives to detention, and issues raised such as income support, access to health care, accommodation availability and support services.

1.51 Chapter 4 considers compliance in relation to alternatives to secure detention centres, and issues relating to restoring confidence in the integrity of our immigration system and ensuring robust and accountable decision processes. There are a number of policy and procedural issues which compound timing delays and so impact on transparency and expediting case resolution. This chapter also considers the financial cost of IDCs, alternative forms of detention and community-based alternatives to detention.

1.52 The final chapter sets out the Committee's framework for an appropriate future range of detention alternatives that implement the values announced by the Minister on 29 July 2008 and balance the Committee's considerations for an appropriate and supported living environment for people, a robust and enforceable immigration system, and a system which is cost-effective.

2

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 1000m^2. 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 129l, 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 129l, 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 so[32]
- a requirement to lodge a security bond, generally between $5 000 and $50 000[33]
- 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**		
	Income assistance	*Work rights*	*Health care*	*Housing assistance*	*Legal advice or application assistance*
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 Ozdowksi, 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 as 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.

3

Appropriate support and accommodation in the community

3.1 This chapter draws on the Australian experience of alternatives to secure immigration detention. While there appears no 'best practice' model in operation the evidence received by the Committee highlighted the problems and consequences of the current system, and so provides many lessons to assist in developing a further framework for community release. This refers to the practical characteristics of model design in terms of food, accommodation, basic utilities and support services. It also refers to a broader assessment of how a future framework might better support a person or family's well being and give them the best opportunity for a just outcome through Australia's immigration processes.

3.2 In particular, this chapter focuses on the first of the Committee's stated considerations for evaluating alternatives to immigration detention, that is, the extent to which alternatives ensure a humane, appropriate and supported environment for people with an unresolved immigration status.

3.3 The chapter summarises the volume of evidence received regarding the support needed for appropriate placement in community-based options. In examining this evidence, the Committee has sought to draw out the issues to be taken into account in developing a future framework for greater use of community-based detention alternatives, namely:

- ensuring financial resources to meet the provision of basic needs, if required, such as through income support or permission to work

- providing access to available, affordable and appropriate accommodation
- giving due care to personal and family wellbeing, such as mental health, social isolation and meeting the particular needs of families and children, and
- providing support services that include case management and referral services and orientation information on living in the Australian community.

Provision for basic needs

3.4 For people with an unresolved immigration status living in the community, mechanisms are required to ensure that their basic needs can be met. As mentioned earlier, in some instances people on bridging visas will have no requirement for assistance.

3.5 If bridging visas are utilised as a community-based alternative to detention, however, then a responsibility rests with the Department of Immigration and Citizenship (DIAC) to ensure that that person or family has the financial capacity to meet their basic needs. This may take the form of an allowance to provide income support, or permission to work as a condition of the bridging visa so that a person is able to financially support themselves and any dependent family members.

3.6 The next sections summarise evidence received regarding the importance of income support and permission to work.

Income support

3.7 While in a detention facility, people have their basic needs for food and accommodation met within the institutional environment and through the service providers contracted by DIAC. People in immigration detention centres, immigration residential housing and immigration transit accommodation do not receive any income support, although people in residential housing may have a nominal budget or vouchers with which to purchase groceries. Additionally, all detainees are allocated weekly 'points' with which they may

purchase small items such as cigarettes, phone cards and snacks from detention stores.[1]

3.8 For people in community detention, the Australian Red Cross rents apartments or houses and provides clients with a living allowance that is transferred automatically into a bank account for them 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.[2] Income support is paid at a rate equivalent to 89 per cent of Centrelink Special Benefit.[3] At current rates, for example, this would be equivalent to a maximum of $403.44 per fortnight for a single person with no dependents.[4]

3.9 As outlined in chapter 2, there are some means of income support for eligible people with an unresolved immigration status outside of immigration detention on bridging visas, although these are limited. The relatively rare return pending bridging visa is the only bridging visa that confers access to social security benefits provided by Centrelink.[5] People on other bridging visas, who may have been granted a bridging visa as an alternative to being taken into detention, are not eligible for income support through Centrelink.

3.10 People accepted into the Community Care Pilot may receive assistance with basic living expenses, although destitution on its own is not sufficient for eligibility for the Pilot – other indicators of

---

1 Department of Immigration and Citizenship, 'About immigration residential housing', viewed on 31 March 2009 at http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/rhcs-recreation.htm; Human Rights and Equal Opportunity Commission, *Summary of observations following the inspection of mainland immigration detention facilities 2007* (2007), p 39.

2 Human Rights and Equal Opportunity Commission, *Summary of observations following the inspection of mainland immigration detention facilities 2007* (2007), p 17; Castan Centre for Human Rights Law, submission 97, p 32; Walker V, submission 5, p 2.

3 Special Benefit is a payment made to eligible Australians who are in severe financial need due to circumstances outside their control. Special Benefit is a discretionary payment and is only paid in special circumstances, which are determined by the Secretary of the Department of Family and Community Services. Generally, it will be the same rate as Newstart Allowance or Youth Allowance. Centrelink, viewed on 19 March 2009 at http://www.centrelink.gov.au/internet/internet.nsf/payments/special_benefit.htm.

4 Centrelink, 'Newstart Allowance payment rates', viewed on 19 March 2009 at http://www.centrelink.gov.au/internet/internet.nsf/payments/newstart_rates.htm.

5 A total of four return pending bridging visas granted to detainees in 2007-08, and as at 30 June 2008 there were only 16 people in the community holding this visa. Department of Immigration and Citizenship, submission 129f, pp 27-28.

'exceptional circumstances', such as serious medical conditions, mental health issues, or torture or trauma histories must also be present.[6] People in the community awaiting the outcome of a protection visa application may receive support under the Asylum Seekers Assistance Scheme (ASAS). To be eligible, asylum seekers must be in financial hardship. The income support provided under both the Community Care Pilot and the ASAS is at the same rate as that provided to people in community detention.[7]

3.11 As noted in chapter 2, the Committee received evidence that whilst the Community Care Pilot and the Asylum Seeker Assistance Scheme were welcome programs, access and eligibility was patchy or periodic.[8] Despite recent improvements:

> …it remains the case that, under current government policy, some asylum seekers at some or all stages of the determination process, despite their lawful status within the community, are destitute by either design or the system's deficiencies; that is sometimes for a protracted period of time, but it is always for an unknown period of time.[9]

3.12 Whilst many inquiry participants nominated bridging visas as their preferred mechanism for release from detention into the community, in preference to community detention or other arrangements, there was strong criticism of restrictions attached to bridging visas, in particular, restrictions on work, income assistance and health care.[10]

3.13 The Committee received a strong body of evidence that for bridging visa holders who do not have independent financial means or friends or family in the community willing to support them, the double bind

---

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

7 Department of Immigration and Citizenship, submission 129n, p 1.

8 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 52.

9 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 53.

10 Australian Human Rights Commission, submission 99, p 23; International Detention Coalition, submission 109, p 2; NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), submission 108, p 25; Hotham Mission Asylum Seeker Project, submission 93, p 9; Office of Multicultural Interests WA, submission 106, p 19; Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 36; Asylum Seeker Resource Centre, submission 121, pp 2-3; National Legal Aid, submission 137, p 7; Ozdowski S, submission 58, p 15; Uniting Church in Australia, submission 69, pp 11-12; Detention Health Advisory Group, submission 101, p 2; submission 76 , p 6; Amnesty International Australia, submission 132, p 13; Dagiland A, submission 65, p 2; Refugee Council of Australia, submission 120, p 11; Rouse R, submission 16, p 1; Little Company of Mary Refugee Project, submission 20, p 1; Ripper W, submission 50, p 3.

of no income and no work may result in poverty, destitution and other associated disadvantages. This may particularly be the case for asylum seekers, who in comparison with other bridging visa holder groups such as tourist, business or student visa over stayers may be less likely to have financial resources or assets with which to survive pending a decision on their visa application.

3.14 Bridging visa holders in the community without any means of supporting themselves are currently relying on charities, non-government organisations and the goodwill of strangers while their immigration status is being resolved. As outlined in chapter 2, in the past this situation has extended for periods of up to several years.

3.15 It is not known exactly how many people on bridging visas are in this situation, although the Hotham Mission has estimated that there are about 500 in Melbourne.[11] The Committee heard from a range of peak bodies that their clients are presenting in poverty or destitution and that the current restrictions on bridging visas conditions means they do not always represent a viable alternative to detention.[12] Tamara Domicelj, of the Asylum Seekers Centre of New South Wales, told the Committee:

> What we see in the community at the moment is something that is entirely unmanageable. We see people in desperate circumstances, utterly debilitated by years and years of protracted destitution, often having been released from a detention environment into that ongoing limbo. They also do not know how long that is going to last. We often have people say to us: 'Arrange for us to go back inside. We can't bear it outside. We can't clothe our kids. We can't get medical attention. We're not allowed to work. We can't engage with the community. We can't study.' We hear that as well. That is not to in any sense diminish all of the issues in relation to the detention centre environment, but releasing people on a

11 Hotham Mission Asylum Seeker Project, submission 93a, p 2.

12 For example see: Hotham Mission Asylum Seeker Project, submission 93, p 14; The Uniting Church in Australia, 'The right to work for Asylum seekers', viewed on 10 February 2009 at http://victas.uca.org.au/outreach-justice/justice-and-international-mission/project-areas/refugees-asylum-seekers/petition-right-to-work.pdf;m,1216966525; Walker V, Bridge for Asylum Seekers Foundation, correspondence, 23 March 2009; University of Queensland Boilerhouse Community Engagement Centre, *Defending human rights: Community-based asylum seekers in Queensland* (2005), p 12; Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 7 May 2008, p 3.

> bridging visa E without work rights and without access to Medicare is no solution whatsoever.[13]

3.16 A few organisations are able to draw on philanthropic donations to provide basic cash or in-kind support to people in this situation. The Hotham Mission Asylum Seeker Project in Melbourne, for example, provides around 360 clients with $33 a week.[14] In Sydney, the Bridge for Asylum Seekers Foundation provides $90 per week for a single person and $70 per person for a family member; as at March 2009, it was supporting 75 asylum seekers.[15] The Asylum Seeker Resource Centre of Melbourne provides 4800 food parcels each year through its food bank for asylum seekers and 14 560 meals a year through their community meals program.[16]

3.17 The Minister for Immigration and Citizenship has stated his interest in increasing the use of community-based alternatives following health, identity and security checks.[17] However, there was concern from some submitters that the current bridging visa framework is fundamentally flawed and needs reform. For example the Refugee Council of Australia said that:

> It is important, as the Australian Government moves to expand community-based alternatives to detention, that steps are taken to ensure that people are not left destitute while their visa status is determined.[18]

3.18 The Australian Human Rights Commission expressed the view that conditions and restrictions attached to some bridging visas may significantly impact on the ability of people to exercise their basic human rights, including the right to social security and the right to an adequate standard of living.[19] Several inquiry participants also made reference to a 2005 ruling by the House of Lords in the United Kingdom which upheld a court's decision that failure to provide basic

13 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 7 May 2008, p 40.

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

15 Walker V, Bridge for Asylum Seekers Foundation, correspondence, 23 March 2009; Balmain for Refugees, submission 68, p 1.

16 Asylum Seeker Resource Centre, viewed on 19 March 2009 at http://www.asrc.org.au/about_us/facts_and_figures.html.

17 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 7.

18 Refugee Council of Australia, submission 120, p 11.

19 Human Rights and Equal Opportunity Commission, submission 99, p 23.

support to destitute asylum seekers amounted to 'inhuman' or 'degrading' treatment in violation of international law.[20]

Permission to work

3.19 People in immigration detention in Australia are unlawful non-citizens and are not permitted to work. This applies equally to those in less restrictive forms of immigration detention, such as community detention, where there may be no physical impediments to attending a place of work on a regular basis. These restrictions may also apply to voluntary work and formal courses of study.

3.20 As outlined in chapter 2, bridging visas may or may not be issued with a 'no work' condition. Work conditions attached to a bridging visa will vary according to the substantive visa applied for, as well as the applicant's immigration status and personal circumstances at time of application.[21]

3.21 Concerns about work rights, or lack thereof, for bridging visas were raised by many inquiry participants. The primary concern was that without access to income support, a restriction on work was equivalent to enforced destitution for some people. For example, Ms LI, on a bridging visa, told the Committee:

> One of my children and I do not have any work rights so for the past one and a half years I have been financially supported by the Red Cross. Before that I was living on my own and I would collect rubbish and furniture on the streets and resell that to support my children. It was not easy at all.[22]

3.22 Another issue raised regarding restrictions on work rights was the 'substantial alienation and psychological concerns' caused by not being able to work and being reliant on charities for basic needs.[23] It was also argued that the mental health issues generated by having no income and nothing to do rendered many people unable or ill-equipped to work when and if they were granted a permanent visa,

20 House of Lords, *Session 2005–06 [2005] UKHL 66A, on appeal from:[2004] EWCA Civ 540, 3 November 2005,* A Just Australia, submission 89, p 22; Nasu H, Zagor M & Rice M, submission 76, p 6; see also Saul B, 'The Rudd Government's human rights record: One year on', address to NSW Young Lawyers, Sydney, 29 October 2008, p 6.

21 Department of Immigration and Citizenship, submission 129f, p 28.

22 Ms LI, *Transcript of evidence,* 22 January 2009, p 15.

23 Gerogiannis B, Legal Aid NSW, *Transcript of evidence,* 24 October 2008, pp 24-25.; Bridge for Asylum Seekers Foundation, submission 5, p 2; Bishop I, submission 8, p 1; Balmain for Refugees, submission 68, p 21.

potentially perpetuating a future dependence on welfare.[24] The Refugee Claimants Support Centre in Brisbane argued that:

> We see that not being able to work still affects people even once they have received their permanent residency. Even though they have been in Australia's some time, sometimes years, they have no experience or work references to show potential employers. On top of this, their reliance on charity to survive and their constant need to ask and beg for money has often been a big blow to their feelings of worth, adequacy and self-esteem.[25]

3.23 The consensus of social workers and others giving evidence to the inquiry was that a large number of those people who currently did not have work rights had the will and capacity to be largely self-sustaining.[26] This view was also reiterated by individuals in evidence to the inquiry. One man, a mechanical engineer from Korea, had been in a detention centre for eight months and in community detention for three months. He expressed a desire to work:

> We are living on a very basic life; we are just surviving at the moment... I can understand we are given very basic support financially from government. It is really free money without me working. I should be appreciative. I would rather go to work and make money instead of getting free money from the government.[27]

24 Mendis S, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 29.

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

26 Mitchell G, International Detention Coalition, *Transcript of evidence,* 22 January 2009, p 9; Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 4; Nash C, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 6; Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 27.

27 Mr L, *Transcript of evidence,* 24 October 2008, pp 85-87; see also Ms LI, *Transcript of evidence,* 22 January 2009, p 19; Mr U, *Transcript of evidence,* 24 October 2008, p 82.

Figure 3.1 International approaches to work rights for asylum seekers

In **Europe**, where most asylum claims (about 75 per cent) have been lodged, few countries have provided asylum seekers with work rights at the front end of the assessment process (Sweden is one exception). Asylum seekers have had no work rights at all in some countries (France, Italy, and Ireland). In other countries they have been able to work after a period of time if no decision has been made on their claim, or after a particular stage in the determination process is reached (the Netherlands, Belgium). Following EU countries' efforts to 'harmonise' their asylum systems, the European Council issued a directive (2003/9/EC of 27 January 2003) under which asylum seekers are to be allowed to apply for permission to work if they have not received an initial decision on their asylum claim within 12 months.

In **Sweden**, if it appears that the application process will exceed four months, the asylum seeker is entitled to gain employment during the application period (to pay for food and accommodation in the Refugee Reception Centre) through use of a general identity card.

In the **UK**, a 'concession' formerly allowed asylum seekers to work after six months if 'a decision' had not been made. This was withdrawn in July 2002 in an attempt to further discourage 'bogus' asylum seekers, and to quarantine the UK's new economic migration programs from asylum inflows. Since February 2005, asylum seekers have been granted permission to work after 12 months if the Home Office determines that they were not responsible for the delay in making a decision.

In the **USA**, asylum seekers can apply for work rights after six months if their case remains unresolved. Work rights may also be granted to asylum seekers whose claims are refused, if they cannot be removed.

In **New Zealand**, asylum seekers may be granted a temporary work permit (one per family) if they have arrived with 'legal documentation', but are refused permission to work if they arrive with no or fraudulent papers and/or are on 'conditional release' from detention.

Canada grants work rights to asylum seekers throughout the refugee determination process, and for 12 months following the refusal of their claim for refugee status. It would appear however that asylum seekers may be authorised or directed to work only in specific sectors of the Canadian labour market, associated with temporary or guest worker schemes.

Source *Adapted from Parliamentary Library, 'Asylum seekers on bridging visa E' (2007), research brief no. 13 2006-07, p 15; information on Sweden from Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 42.*

3.24 During the course of the inquiry the Committee met with people on bridging visas with work rights who were working as a chef, physical education teacher, dairy farmer, fruit picker, and hotel worker, and others who were self-employed as a market stall operator and an owner of a prefabrication business. The Refugee Claimants Support Centre in Brisbane reported having highly skilled people, such as nurses, dentists and doctors, in their client group without work rights.[28]

3.25 Several witnesses made mention of a survey conducted in 2005 of bridging visa holders without work rights, which found that 71 per cent of a sample of 113 people had skills or qualifications listed on the Skilled Occupation List for the General Skilled Migration stream. Of these 45 per cent were listed on the Migration Occupations in Demand List.[29]

3.26 Even where work rights are granted, though, it can be difficult for individuals to find work due to mental or physical health reasons or because they are caring for children. Additionally, people on bridging visas may face barriers to employment common to other groups of migrants to Australia, such as recognition of overseas qualifications, a lack of local work experience, inadequate English language skills, or employment discrimination on the basis of race or religion.[30]

3.27 In addition, bridging visas might be granted on one, two or three month periods of extension, and even where work rights are granted, employers were unwilling to employ anybody who only had a valid visa for a short time.[31]

---

28 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 4.

29 Conducted by the Asylum Seeker Resource Centre for the Right to Work Campaign, 2005, information available at http://blogs.victas.uca.org.au/safetynotcharity/resources/research.htm#download.

30 Ethnic Communities Council of Victoria, *Real jobs: Employment for migrants and refugees in Australia* (2008), policy discussion paper no. 3, p 4; Kyle L et al, Brotherhood of St Lawrence, *Refugees in the labour market: Looking for cost-effective models of assistance* (2004), p ii.

31 Mendis M, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 31. See also Briskman L et al, *Human rights overboard: Seeking asylum in Australia* (2008), Scribe Publications, Melbourne, p 319.

3.28 A grant of a bridging visa on a monthly basis was considered favourable and many were only granted on a fortnightly basis.[32] Ms WD, a protection visa applicant from Ethiopia currently on a bridging visa E, told the Committee that:

> The visa that I am holding now just said that it was granted for only one month and they want to make sure that I work for three months minimum. So they are not sure whether I am living with them for one month. If they are hiring someone they want to depend on them so they said that they are not sure how they can give me the job because the visa that I am holding is just for one month.[33]

3.29 The Committee also heard that the desire to work can lead to some unacceptable work practices. The Asylum Seeker Resource Centre in Melbourne has said that people on bridging visa E, having no form of income:

> …are extremely motivated to find work of any kind, for any price. They often accept underpaid work, which may be cash-in-hand, in dangerous conditions, for long hours and with minimum training.[34]

3.30 Evidence suggests that the limited access to income support or permission to work is resulting in substantial hardship to bridging visa holders and placing unacceptable demands on non government organisations. In chapter 5 the Committee makes a series of recommendations to ensure basic material needs of bridging visa holders can be met.

Access to medical care

3.31 People in immigration detention do not have access to Medicare benefits. Health services for people in immigration detention are currently contracted to International Health and Medical Services

---

32 Psihogios-Billington M, Asylum Seeker Resource Centre, *Transcript of evidence*, 22 January 2009, p 16.

33 Ms WD, *Transcript of evidence*, 22 January 2009, p 23.

34 Asylum Seeker Resource Centre, submission to DIMA [DIAC] bridging visa review (2006), p 36. See also Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 31; see also Ethnic Communities Council of Victoria, *Real jobs: Employment for migrants and refugees in Australia* (2008), policy discussion paper no 3, p 10.

(IHMS).[35] In relation to mainland immigration detention centres, the Department provides access to a range of onsite primary health care services, including registered nurses, general practitioners and mental health professionals, as well as referrals to external services. For people in community detention, IHMS facilitates access to health care through third party providers with the Australian Red Cross continuing to provide support services to these people. People with critical health needs may be admitted to hospitals or psychiatric facilities, classified as a type of 'temporary alternative detention', and the full cost of these services is borne by the Commonwealth.

3.32 There has been a greater investment in detention health services in recent years, as evidenced by the establishment of the Detention Health Advisory Group and development of detention health standards.[36]

3.33 In considering bridging visas as a community-based alternative to immigration detention, the Committee has sought to consider the relative access to health care between the detention population and bridging visa holders in the community.

3.34 Access to health care is an important consideration given the typically complex health needs of the detention population and others at risk of becoming unlawful.[37] For example, Hotham Mission reported that 66 per cent of asylum seekers required medical attention while on a bridging visa E.[38] Amongst asylum seekers, particularly, there is a high incidence of complex psychological and mental health issues.[39] Additionally, people may be released from immigration detention onto a bridging visa specifically because DIAC has recognised that they have psychological or physical health issues that cannot be

35 Department of Immigration and Citizenship, 'Immigration health services contract finalised', media release, 27 January 2009.

36 Royal Australian College of General Practitioners, *Standards for health services in Australian immigration detention centres* (2007); Department of Immigration and Citizenship, *Detention health framework: A policy framework for health care for people in immigration detention* (2007).

37 Australian Medical Association, *Health care of asylum seekers and refugees* (2005), position paper, p 1; Harris M and Telfer B, 'The health needs of asylum seekers living in the community', *Medical journal of Australia* (2001), 175, pp 589-592; Refugee and Asylum Seeker Health Network (RASHN) Victoria, *Asylum seeker health care in Victoria* (2005), briefing paper, p 1; Office of Multicultural Interests WA, submission 106, p 16; Migrant Health Service, submission 33, p 2; Australian Psychological Society, submission 105, p 5; Royal Australasian College of Physicians, submission 54, p 5.

38 Hotham Mission Asylum Seeker Project, submission 93, p 15.

39 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 56.

adequately cared for or may be exacerbated in a detention environment.[40]

3.35 Some bridging visas holders are entitled to Medicare and the Pharmaceutical Benefits Scheme (PBS). However, Medicare access is generally tied to work rights. To be eligible for Medicare, a bridging visa holder must have lodged an application for permanent residence (excluding a parent visa application) *and* either have permission to work or have a parent, spouse or child who is an Australian citizen or permanent resident.[41]

3.36 The Committee was not provided with statistical data that could describe how many bridging visa holders in Australia would fail to meet these intersecting eligibility requirements. However, based on the sample of bridging E visa holders as at 30 January 2007, a population of around 7000, which showed that approximately 37 per cent of visa holders had work rights, this would suggest that around two thirds did not have access to Medicare.[42]

3.37 Health care services for people on bridging visas in capital cities are largely being provided by networks of health professionals willing to provide pro bono services.[43] For example, the major such clinic in Victoria, that operated by the Asylum Seeker Resource Centre since 2002, provides over 3000 medical consultations each year through the work of volunteer medical professionals.[44] A number of asylum seeker agencies and support groups draw on donations to underwrite pharmaceuticals for serious or life-threatening illnesses, as these medications are charged at the full (non-PBS) cost.[45]

3.38 A recent study published in the *Medical Journal of Australia* found that in Melbourne, restrictions on Medicare access for people with an unresolved immigration status were placing 'a considerable burden

40 See the eligibility criteria for bridging visa E (051), outlined in table 2.4. The Committee did receive criticism about the effectiveness and operation of this provision, see Coffey G and Thompson S, submission 128, p 20; Castan Centre for Human Rights Law, submission 97, p 14, Refugee and Immigration Legal Centre, submission 130, pp 5-6.

41 Medicare Australia, correspondence, 19 February 2009.

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

43 Detention Health Advisory Group, submission 101a, p 1; Correa-Velez I et al, 'Community-based asylum seekers' use of primary health care services in Melbourne', *Medical journal of Australia* (2008), vol 188, no 6, p 346; University of Queensland Boilerhouse Community Engagement Centre, *Defending human rights: Community-based asylum seekers in Queensland* (2005), p 9.

44 Asylum Seeker Resource Centre, viewed on 24 March 2009 at http://www.asrc.org.au/about_us/facts_and_figures.html.

45 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 56.

on small community-based organisations and volunteer health care professionals, who are trying to fill the gap for a marginalised population with complex care needs'.[46] This study found that most of the people seeking medical attention were on a bridging visa E, and 46 per cent had been in Australia for five years or more. Eighty-eight per cent of the visits during the study period involved a person with no Medicare access.[47] If counselling or specialist services were required, 'clinical staff at the clinics were forced to devote considerable energy to time-consuming negotiation of referrals and fee waivers for specialist services'.[48]

3.39 Regarding hospital admissions, in 2005 the Victorian government has directed its public hospitals and community health centres to provide health care free of charge to asylum seekers (although not necessarily to bridging visa holders who have not applied for protection).[49] The Australian Capital Territory has also made equivalent policy changes. This is not the case in the other Australian states and territories, however, where people on bridging visas are charged full rates for inpatient and outpatient care which can be in the region of $80 for outpatient care to $695 per day for inpatient care.[50]

3.40 Agencies working with this client group reported on the impact that no or limited access to health care had on their clients. Hotham Mission reported that over 90 per cent of clients were not eligible for Medicare, seventeen per cent claim to have been refused medical treatment since being on a bridging visa which includes those turned away after presenting to medical centres or hospitals and those unable to get appointments due to lack of funds or being without a Medicare card.[51]

---

46 Correa-Velez I et al, 'Community-based asylum seekers' use of primary health care services in Melbourne', *Medical journal of Australia* (2008), vol 188, no 6, p 346.

47 Correa-Velez I et al, 'Community-based asylum seekers' use of primary health care services in Melbourne', *Medical journal of Australia* (2008), vol 188, no 6, p 345.

48 Correa-Velez I et al, 'Community-based asylum seekers' use of primary health care services in Melbourne', *Medical journal of Australia* (2008), vol 188, no 6, p 347.

49 Victorian State Government, Department of Human Services, Hospital Circular 27/2005, 'Revised Arrangements for Public Hospital Services to Asylum Seekers', 28 December 2005, viewed on 20 January 2008 at http://www.health.vic.gov.au/hospitalcirculars/circ05/circ2705.htm.

50 Singleton G, Detention Health Advisory Group, *Transcript of evidence*, 11 September 2008, p 42; Harris M and Telfer B, 'The health needs of asylum seekers living in the community', *Medical journal of Australia* (2001), 175, pp 589-592.

51 Hotham Mission Asylum Seeker Project, submission 93, p 15.

3.41 Robyn Sampson, from the Refugee Research Health Centre at La Trobe University, provides the following account of a person's experience in detention and on a bridging visa:

> One asylum seeker became destitute after living on a bridging visa with no work rights or income support. He took a job illegally in order to avoid starvation. As a result, he was taken into immigration detention for breaching his visa conditions. While in detention, he experienced stomach pains and was treated for ulcers. With the support of a charity, he was released from detention on another bridging visa. In the community, a doctor took pity on him and treated him as a patient for free. He was soon diagnosed with oesophageal cancer, not ulcers. The cancer progressed quickly, and as the man was ineligible for health care he struggled to obtain proper treatment. In the terminal stages of the illness, he was threatened with removal as his application for protection has been refused at all levels. Clearly unfit for travel, he lived out his remaining months in Australia living off the charity of others while his illness progressed without appropriate access to treatment or palliative care.[52]

3.42 This account highlights, in particular, the inconsistency between care available in the detention environment and in the community on a bridging visa, which is all the more concerning where a person is specifically released from detention because they are deemed to have health issues that cannot be managed within a detention environment. A number of peak bodies reported similar cases during the course of the inquiry.[53]

3.43 Associate Professor Harry Minas, Chair of the Detention Health Advisory Group (DeHAG), told the Committee, 'We already have very good health services in the country. There is no reason why people who are going through a process for status resolution should not have access to those services'.[54]

---

52 Australian Policy Online, 'Asylum seekers, searching for healthier policy', 8 October 2007, viewed 10 February at http://www.apo.org.au/webboard/comment_results.chtml?filename_num=176949

53 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 7 May 2008, p 19.; Hotham Mission Asylum Seeker Project, submission 93, p 9; Thom G, Amnesty International Australia, *Transcript of evidence*, 7 May 2008, p 20.

54 Minas H, Detention Health Advisory Group, *Transcript of evidence*, 11 September 2008, p 42.

3.44 The Committee notes that the United Nations guidelines on the reception of asylum seekers state that asylum-seekers should receive free basic medical care, in case of need, both upon arrival and throughout the asylum procedure; a principle recently affirmed by the European Parliament.[55]

3.45 Peak organisations in Australia, including the Australian Human Rights Commission, the Royal Australasian College of Physicians and the Australian Medical Association, have expressed the view that a person should have access to basic medical care regardless of their immigration status and current arrangements are discriminatory.[56]

3.46 Evidence suggests that there is currently limited access to health care for people on bridging visas, where this is used as an alternative to immigration detention, and this places some people at risk of poor or acute health situations. In chapter 5, the Committee makes a series of recommendations aimed at meeting these gaps.

Accommodation

3.47 This section examines some of the challenges involved in providing appropriate accommodation for a person or family in the community, as opposed to a designated detention centre environment. In particular, it reviews the evidence submitted regarding availability, affordability and other issues associated with use of the private rental market for people with an unresolved immigration status.

Availability and affordability

3.48 In a secure detention environment, accommodation for people awaiting resolution of immigration status is constructed or adapted, maintained and equipped by the Commonwealth. In alternative temporary detention and community detention, DIAC or the

55 United Nations High Commissioner for Refugees(UNHCR), submission 133, pp 13, 14; see also *Reception of asylum seekers, including standards of treatment, in the context of individual asylum systems* (2001), 4 September, EC/GC/01/17, p 2; European Parliament, *Resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down the minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 (2008/2235(INI)).*

56 Human Rights and Equal Opportunity Commission, submission 99, p 23; Royal Australasian College of Physicians, submission 54, p 3; Australian Medical Association, *Health care of asylum seekers and refugees* (2005), position paper, p 1.

Australian Red Cross locate and provide for a hospital room, foster family home, hotel room or private rental property.

3.49 People released from immigration detention on bridging visas, or granted bridging visas as an alternative to detention, are required to make their own accommodation arrangements. There is no designated accommodation available for these people. This is because bridging visa holders are temporarily lawful non-citizens considered independently responsible for their welfare and immigration choices. It also reflects the fact that a significant proportion of bridging visa holders are expected to be making arrangements to depart Australia.

3.50 While the absence of designated housing is entirely appropriate for the majority of the bridging visa population, for the group of people of most interest to the Committee —those released from detention on bridging visas, or granted a bridging visa as an alternative to detention —this situation is putting some people at risk of insecure, temporary or inappropriate housing, or of homelessness. Issues of housing and homelessness were raised by a number of inquiry participants.[57]

3.51 People on bridging visas cannot generally access public or community housing. Even where they may be eligible, those without permission to work or access to Centrelink benefits are typically unable to fulfil independent income criteria that demonstrate they have the capacity to make regular rental payments.[58] The Committee received evidence that state and territory housing agencies are struggling to understand the complexities of legal status, entitlements and needs of this group.[59] Notwithstanding all this, access to public housing is

57 NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), submission 108, p 26; Caton S, Refugee and Immigration Legal Service (RAILS), *Transcript of evidence*, 23 January 2009, p 31; Edmund Rice Centre, submission 53, p 5; Romero Centre, submission 102, p 14; Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 8; Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 55. See also University of Queensland Boilerhouse Community Engagement Centre, *Defending human rights: Community-based asylum seekers in Queensland* (2005), p 12; Hotham Mission Asylum Seeker Project, *Welfare issues and immigration outcomes for asylum seekers on Bridging Visa E* (2003), p 26.

58 Government of Western Australia, Department of Housing and Works, viewed on 28 January 2009 at http://www.housing.wa.gov.au/404_437.asp#Eligibility%20Criteria; Housing SA, correspondence, 10 February 2009; Queensland Government, Department of Housing, correspondence, 13 February 2009; Housing New South Wales, correspondence, 17 February 2009.

59 Hotham Mission Asylum Seeker Project, submission 93, p 18.

extremely competitive, with nearly 180 000 households in Australia already on waiting lists.[60]

3.52 There is some limited housing assistance available to vulnerable people on bridging visas in the community through the Asylum Seeker Assistance Scheme and the Community Care Pilot – although this assistance is substantially less than that provided by DIAC and the Australian Red Cross under the community detention program where a private rental property is secured and furnished on behalf of the person.

3.53 People eligible for the Asylum Seeker Assistance Scheme may receive rent assistance in addition to income support. Under the Community Care Pilot, housing assistance was identified as a significant gap. There is no specific provision for assistance in sourcing or securing housing in the model, however people in need of affordable accommodation may be assisted. In exceptional circumstances, the Pilot covers the cost of short term crisis accommodation.[61]

3.54 In Sydney and Melbourne there are a small number of loaned, donated or church-owned properties available for housing people on bridging visas. Father Jim Carty, of the House of Welcome in Sydney, said that:

> Sydney is dire in terms of available housing. Currently, the House of Welcome is a very small operation. We have four houses and five units in which we accommodate about 28 people during the transitional period, which is when they are released from detention or they are on bridging visa Es without access to work…. Every day we get a phone call from a little family or a single person asking for accommodation, and we have to say no.[62]

3.55 Similar stories are reported across Australia. For example, in Melbourne, Hotham Mission is currently housing 120 people across 46 properties. These include families, single mothers, single males and single females. Many of these houses are vacant church properties or houses donated by individuals, with rent and bills paid by the donor or the Hotham Mission. Once an asylum seeker has been placed in an appropriate housing situation, a volunteer outreach worker is

60 Australian Institute of Health and Welfare, *Public rental housing 2007–08: Commonwealth State Housing Agreement national data report* (2009), p x.

61 Department of Immigration and Citizenship, submission 129n, p 1. Hotham Mission Asylum Seeker Project, submission 93a, p 7.

62 Carty J, House of Welcome, *Transcript of evidence,* 7 May 2008, pp 40-41.

allocated to visit or contact the house at least once a week and provide support and referral.[63]

3.56 In addition there is anecdotal evidence that members of the community provide accommodation in private households. Despite the generosity of the community in opening their homes, donated properties and places in emergency accommodation shelters, private rental properties are often the only option for many people.

3.57 Hotham Mission reported that in the current context of pressures on housing markets, the challenges facing bridging visa holders have been brought into sharper focus, particularly as the availability and affordability of properties is diminishing.[64]

3.58 As a result, many agencies reported that people with an unresolved immigration status were commonly homeless, in precarious housing situations or in constant movement between temporary solutions. Hotham Mission reported that 62 per cent of their clients present as homeless, with approximately 73 per cent having experienced homelessness while on a bridging visa E. Almost 17 per cent become homeless due to unstable housing or lack of appropriate accommodation on release from detention. In 70 per cent of cases, the loss of income (due to loss of work rights or ineligibility for the Asylum Seeker Assistance Scheme) is the primary cause of homelessness. The loss of housing further compromises the health and security of asylum seekers.[65]

3.59 It was the view of a number of peak agencies that the availability and accessibility of appropriate housing was one of the most critical issues facing their clients in the community.[66]

Other issues with the private rental market

3.60 Aside from the issues of availability and affordability associated with the private rental market, others raised by contributors to this inquiry

63 Hotham Mission Asylum Seeker Project, submission 93, p 17; Baptcare, viewed on 25 March 2009 at http://www.baptcare.org.au/lwp/wcm/connect/Baptist/Services/Sanctuary.

64 Hotham Mission Asylum Seeker Project, submission 93, p 19.

65 Hotham Mission Asylum Seeker Project, submission 93, p 18. Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 55. University of Queensland Boilerhouse Community Engagement Centre, *Defending human rights: Community-based asylum seekers in Queensland* (2005), p 12.

66 Hotham Mission Asylum Seeker Project, submission 93, p 17; Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 8.

and in the research literature were difficulties in securing rental contracts without proof of identity, visa status, or regular income; language, culture and discrimination barriers; and a need for sources of information and support.[67] This included information about tenancy rights and obligations and how to maintain an average Australian house, which may be different to practices in the home country of the person. These issues are common to many migrants to Australia, with the distinction that bridging visa holders do not know how long they will require housing for, and do not have access to the settlement services that support other migrants and people with refugee status.

3.61 The Committee noted that Hotham Mission in Melbourne provides housing support and oversight through monthly housing meetings, ensuring tenants are keeping the house clean and maintained, and ensuring crisis and safety procedures are in place, suitable to the property and needs of tenants.[68] This appears to be the exception, however.

3.62 Carolyn Doherty, of the Metropolitan Association Towards Community Housing (MATCH) in Brisbane, drew on her agency's experience with refugee resettlement and housing. After a short period of transitional housing, newly arrived refugees were 'we would say—'dumped out' onto the private rental market' – and they had had:

> …no opportunity to learn how to manage a tenancy in Australia. They have a lease—a contract that they do not understand and that they may not have had an interpreter for. They have absolutely no idea of how to care for a house in the Australian context. In our experience, many people have not used sewerage systems or toilets. They have not had electric ovens, and they certainly do not how to clean them or what cleaning products to use for them. They throw buckets of water into ovens to clean them. They put rocks and big pots on stove tops and end up damaging them. They put pots on laminate. These are things that they need time to understand. They need support in learning about things… A

67 Doherty C, Metropolitan Association Towards Community Housing (MATCH), *Transcript of evidence*, 23 January 2009, pp 27-28.

68 Hotham Mission Asylum Seeker Project, submission 93, p 18.

> lot of the models that have existed have not allowed that to occur.[69]

3.63 Ms Doherty reported high rates of tenancy breach and evictions amongst recently arrived refugees, which often resulted in people being put on tenancy black-lists by real estate agents, affecting their long-term ability to be housed. [70]

3.64 Affordable private rental properties may also be geographically dispersed around outer metropolitan areas, meaning that people have to spend more on public transport to meet appointments, may find it difficult to access support services, and may be more at risk of social isolation. This also creates challenges for DIAC and non-government agencies maintaining contact with and providing support to a number of people in a multitude of locations. This can increase service delivery costs for DIAC. Anecdotally it was reported to the Committee by one case worker that more time was spent travelling around the city than talking with clients.

3.65 There are also challenges when clients are located in regional areas which do not have the necessary infrastructure of non government agencies to provide assistance and support. Hotham Mission said that, due to the fact that all their properties where donated and they could not choose their location, 'The people we work with are housed all over Melbourne and that brings challenges to us in working with them'.[71]

3.66 Finally, from the perspective of DIAC and of other housing service providers in the community, assisting someone to find accommodation in the private rental market can be very resource-intensive. For example, MATCH said that their recent statistics showed that they were spending a minimum of 32 hours to get each client a housing option.[72]

3.67 The Minister for Immigration and Citizenship has acknowledged that, in the context of the community detention program, the competitiveness of the private rental market, especially in Sydney,

---

69 Doherty C, Metropolitan Association Towards Community Housing (MATCH), *Transcript of evidence*, 23 January 2009, pp 27-28.

70 Doherty C, Metropolitan Association Towards Community Housing (MATCH), *Transcript of evidence*, 23 January 2009, pp 27-28.

71 Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 36.

72 Doherty C, Metropolitan Association Towards Community Housing (MATCH), *Transcript of evidence*, 23 January 2009, p 28.

makes finding appropriate accommodation for a person on a bridging visa a challenge and is limiting the department's ability in making placement decisions in the best interests of the person.[73]

3.68 In some instances, people will be forced to remain in secure detention forms until suitable accommodation is sourced. This has a negative impact on the person and also results in higher costs for DIAC (relative costs are discussed in chapter 4).

3.69 A more cost effective responsive solution to community based accommodation is required. The Committee sets out its recommendations for new accommodation alternatives in conjunction with enhanced social support services in chapter 5.

Personal and family wellbeing

3.70 This section reviews evidence received on the impact of detention centres and detention alternatives on mental health and wellbeing. In particular, it acknowledges the continuing vulnerability of people with uncertain and unresolved immigration status in relation to anxiety, depression and other mental disorders. Finally, it makes special mention of the evidence received on the wellbeing of children and families in detention alternatives.

Mental health issues and social isolation

3.71 Many clinical mental health studies, reports and inquiries have documented the deleterious impact of indefinite immigration detention on mental health, and associated impairment of cognition and memory. Depression, anxiety, other psychiatric disorders and are prevalent in the detention population. This is a product of the detention environment and in particular prolonged detention with uncertain outcomes. It is also a product of its interaction with risk factors already present in the detention centre population, such asylum seekers with torture and trauma histories and section 501 detainees who have come from the criminal justice system.[74]

73 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.

74 NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), submission 108, p 12; Coffey G and Thompson S, submission 128, p 20; Forum of Australian Services for Survivors of Torture and Trauma (FASST),

3.72 In this regard, many inquiry participants regarded the development of community release arrangements as a significant and positive improvement in Australia's detention framework.[75] The Australian Human Rights Commission has said that the people the Commission met as part of their 2008 visits 'were much happier to be in community detention than in an immigration detention facility'. The Commission urged DIAC to make greater use of community release arrangements: 'In particular, any detainees with significant health or mental health issues, or with a background of torture or trauma, should be promptly considered for a residence determination'.[76]

3.73 This is consistent with the evidence given by the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), which told the Committee, 'We would support community detention—outside from the detention centre—because there is a better recovery opportunity' for people with experience of torture and trauma.[77]

3.74 Similarly, the Commonwealth Ombudsman reported that individuals in community detention had commented on an improvement in wellbeing since being outside of a secure detention environment, and that people spoke positively of the support provided by the Australian Red Cross and members of the community generally.[78]

---

submission 115, pp 8, 11; Australian Psychological Society, submission 105, p 7; Researchers for Asylum Seekers, submission 57, p 1; Ozdowski S, submission 58, p 10; Uniting Church in Australia, submission 69, pp 6-7; Rural Australians for Refugees Daylesford and District, submission 91, p 3; Vichie S, submission 18, p 2; Circle of Friends 42, submission 32, p 4; Walker L, submission 66, p 3; Minas H, Royal Australian College of General Practitioners (RACGP), *Standards for health services in Australian immigration detention centres* (2007), p 2. Some relevant clinical studies that have considered the impact of immigration detention on mental health are Steel Z et al, 'Impact of immigration detention and temporary protection on the mental health of refugees', *The British journal of psychiatry* (2006) vol 188, pp 58-64; Steel Z et al, 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia', *Australian and New Zealand journal of public health* (2004) vol 28, pp 23-32; Sultan A and O'Sullivan K, 'Psychological disturbances in asylum seekers held in long-term detention: a participant-observer account', *Medical journal of Australia* (2001) vol 175, pp 593 -596.

75 Royal Australasian College of Physicians, submission 54, p 4; International Detention Coalition, submission 109, p 3; Australian Psychological Society, submission 105, p 7.

76 Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2009), p 12.

77 Hol-Radicic G, Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), *Transcript of evidence,* 24 October 2008, p 37.

78 Commonwealth Ombudsman, submission 126, p 27.

3.75 Notwithstanding these achievements, people on bridging visas released into the community remain at risk of depression, anxiety and social isolation, and a future framework for community release must be sensitive to this. While no income, 'no work' conditions and lack of access to health care contributed to poor mental health amongst people on bridging visas, mental health issues also appeared to be present in those supported through the community detention program.

3.76 In part this commonality may be attributed to the fact that people in community detention and on bridging visas, like all people in immigration detention, live in a state of uncertainty about their future, not knowing what that future may hold and when they will learn the final outcome of their applications to remain in Australia. The Australian Human Rights Commission, while noting the benefits of community detention over secure detention facilities, reported that, 'Virtually all of the people the Commission met with [in community detention] expressed anxiety about the ongoing uncertainty'.[79]

3.77 Alternatively, people on return pending bridging visas and others who cannot be returned to their country of origin are living in a state of limbo in the community with the possibility of removal occurring at any time.[80]

3.78 A number of agencies and individuals identified a general high level of anxiety amongst their community-based clients, as well as a high incidence of mental health conditions such as depression, psychosis, self-harm and suicidal ideation, in part due to uncertainty about the future and their legal status in Australia.[81]

3.79 Dr Tim Lightfoot, a member of the Detention Health Advisory Group, expressed a concern that as the number of people in detention grew less and less and people got released, then the system could simply

---

79 Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2009), p 68.

80 Kenny M & Pederson A, submission 26, p 2; Prince R, submission 113, p 5.

81 Hotham Mission Asylum Seeker Project, submission 93, p 17; NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), submission 108, p 27; Clement N, Australia Red Cross, *Transcript of evidence*, 11 September 2008, p 6; Walker L, submission 66, p 6; Researchers for Asylum Seekers, submission 57, p 4; Milne F, Balmain for Refugees, *Transcript of evidence,* 24 October 2008, p 75; Mrs K, *Transcript of evidence,* 24 October 2008, p 80; Little Company of Mary Refugee Project, submission 20, p 2.

transfer the problem of mental health difficulties in detention to mental health difficulties in the community.[82]

3.80 Similarly, the Australian Red Cross, which administers and operates the community detention and community care pilot programs, said that:

> Three years in community detention has taught us that really people's status is equally important. If people have unresolved immigration status and do not know what their future is, it is really hard to address mental health issues.[83]

3.81 Another issue common to people in community detention and on bridging visas was the problem of filling their days with meaningful activities when they are not permitted to work, volunteer or undertake a formal course of study.[84]

3.82 This point was confirmed by a number of people in community detention in Sydney who described to the Committee what they did on a typical day:

> Mr U: [In a normal day I would do]… nothing.[85]
>
> Mrs K: Every day seems aimlessly with nothing. It seems hopeless all the time. There is no looking forward to the day. It is just aimlessly everyday and just do not know what to do. Watch a bit of TV, go shopping to buy some food for cooking. That is it, another day. Every day I just do not know what I am going to do. I cannot visit people. I cannot catch public transport a long distance. I am counting my money… Endless waiting for that particular day. It is just waiting and waiting.[86]
>
> Mrs L: I go to English class three times a week. We try to attend seminars which the community organises. They are things like seminars in a church or a library. My husband spends a lot of time reading *Time* magazine in the library and searching on the internet. We put in an application for voluntary work through the Royal Prince Alfred Hospital to care for elderly people.[87]

82 Lightfoot T, Detention Health Advisory Group, *Transcript of evidence*, 11 September 2008, pp 42, 45.

83 Clement N, Australian Red Cross, *Transcript of evidence*, 11 September 2008, p 2.

84 Australian Psychological Society, submission 105, p 6.

85 Mr U, *Transcript of evidence,* 24 October 2008, pp 90, 92.

86 Mrs K, *Transcript of evidence,* 24 October 2008, p 92.

87 Mrs L, *Transcript of evidence,* 24 October 2008, p 93.

3.83 These accounts are corroborated by the Australian Human Rights Commission, who reported that one of the most common concerns raised by people in community detention is that they would like to be able to spend their time doing something meaningful and constructive, particularly some form of work or study. Similar feedback has also been reported by the Commonwealth Ombudsman.[88]

3.84 Sister Lorraine Phelan, of the Mercy Refugee Service, said that:

> The guys [in the detention centre] would love to be outside but once they got outside there was nothing they could do. It was bad enough for them mentally inside but outside was even worse. They thought they were getting freedom but in fact they were not getting any freedom at all because they could not work, they could not do voluntary work and they could not study. There was nothing for them. Some of them actually said time and over again, 'We'd be better back in Villawood detention centre.'[89]

3.85 The Committee also received anecdotal evidence that people living in the community, either on bridging visas or in community detention, could be socially isolated. Single people or couples living in private rental properties in outer metropolitan suburbs, particularly, said that they knew nobody in their local area. Others felt that their detention experience and current immigration status was a stigma that prevented them from seeking interaction with others.[90]

3.86 Many community-based people with an unresolved immigration status reported recurring mental health problems, being unable to sleep and being on sleeping medication or antidepressants.[91]

3.87 Chris Nash, of the Refugee Council of Australia, said that, 'There is anecdotal evidence of some people being lonely, but equally there is

---

88 Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2009), p 69. Commonwealth Ombudsman, *Report for tabling in Parliament by the Commonwealth and Immigration Ombudsman under s 4860 of the Migration Act 1958, personal identifier: 448/08* (2008), tabled 15 October 2008.

89 Phelan L, Mercy Refugee Service, *Transcript of evidence,* 7 May 2008, p 20.

90 Mrs K, *Transcript of evidence,* 24 October 2008, p 79; Mr U, *Transcript of evidence,* 24 October 2008, pp 81-82; Mrs L, Mrs L, *Transcript of evidence,* 24 October 2008, p 84.

91 Penneck M, submission 14; The Migrant Health Centre, submission 33, pp 2-3. See also Mr U, *Transcript of evidence,* 24 October 2008, pp 80-81; Mr W, *Transcript of evidence,* 24 October 2008, p 83; Mrs L, *Transcript of evidence,* 24 October 2008, p 84; Mr QL, *Transcript of evidence,* 22 January 2009, p 17.

anecdotal evidence people finding support through the community [and] organisations in the community'.[92]

3.88 The degree of support and assistance available to a person in developing connections in the local community or through religious or ethnic communities appeared to contribute to their wellbeing.

3.89 The evidence received on the mental health and social wellbeing issues experienced by people in community detention and bridging visa holders underscores for the Committee the importance of acknowledging that any alternative to immigration detention, no matter how well designed or how intensive the support provided, must be regarded as a temporary measure.

3.90 Ultimately, both the person and immigration system are best served by expedient processing of claims and review and better provision of information and legal advice – both subjects taken up further in the following chapter.

Children and families

3.91 The development of alternatives to immigration detention centres in Australia, both within and outside of the legal definition of immigration detention, has been spurred by evidence about the impact of high security institutional detention on family life and on children's development and mental health.[93]

3.92 The *Migration Amendment (Detention Arrangements) Act 2005* held that children would no longer be held in detention unless as a 'last resort'. Instead families with children could reside at a specified place in accordance with a residence determination (grant of community detention) by the Minister. This arrangement has bipartisan political support and was reiterated by the Minister for Immigration and Citizenship in the immigration detention values announced on 29 July 2008.

3.93 Families with children are now placed in community detention, although some may be detained in immigration residential housing, immigration transit accommodation or alternative temporary

92 Nash C, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 9.

93 Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention* (2004), and submission 99, p 16; Children out of Detention (ChilOut), submission 40; Ozdowski S, submission 58, pp 10-11; Australian Psychological Society, submission 105, p 5; Royal Australasian College of Physicians, submission 54, p 2; Researchers for Asylum Seekers, submission 57, p 1.

detention immediately prior to removal; for initial processing; or whilst appropriate rental accommodation in the community is being sourced.[94]

3.94 While the Committee expresses its strong support for the commitment not to place children in detention centres, there remain serious concerns about the welfare of some children in families on bridging visas with no income support, work rights or health care entitlement.[95] These go to the direct effects of poverty on child health and nutrition as well as issues of child and family wellbeing caused by stress on normal family roles and responsibilities, family breakdown, lack of independent income and lack of daily activities such as work and education.

3.95 It is difficult to know how many children might be living in the community under these circumstances. The Committee requested this data from DIAC but the department was not able to provide it before this report was finalised. It is revealing that DIAC's information systems are able to report promptly on the number of children in forms of immigration detention but not the number living in the community in families without work rights, income support, or health care.

3.96 The Committee received some anecdotal evidence from support agencies about children and minors amongst their clientele:

- Hotham Mission in Melbourne, which has worked with more than 1000 asylum seekers since 1997, reports in its submission that around 40 per cent of their clients are family groupings. This figure includes 14 per cent single mother families, with almost 30 per cent of clients being children under the age of 15.[96] Hotham Mission told the Committee that they were currently supporting 114 children under the age of 17 whose parents had no access to an income.[97]
- The Refugee Claimants Support Centre in Brisbane reported that they were currently supporting 11 families and 22 children, adding

94 Department of Immigration and Citizenship, submission 129, p 18. The submission states that all families with children and unaccompanied minors who enter into immigration detention are referred to the Minister for possible consideration for community detention arrangements within two weeks of being detained.

95 Children out of Detention (ChilOut), submission 40, p 5.

96 Hotham Mission Asylum Seeker Project, submission 93, p 4.

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

that only some of their target client group were making it to the centre due to their limited capacity.[98]

- As at March 2009, the Bridge for Asylum Seekers Foundation in Sydney were providing assistance to 10 children who were part of families without permission to work, income support, or Medicare. Since June 2003 they have provided funding assistance to 364 people who have since had their immigration status resolved, including 90 youths and children.[99]

3.97 The difficulty of finding appropriate housing and the forced reliance on temporary, insecure or inappropriate accommodation solutions is also impacting on families and children. Refugee Claimants Support Centre said that families without somewhere to live faced particular difficulties in finding crisis accommodation. In Brisbane, there were some shelters for women and children but there are very few full family crisis accommodation places.[100]

3.98 Tamara Domicelj, of the Asylum Seekers Centre of New South Wales, described the impact of being in a family on a bridging visa without income support or work rights as:

> …utterly debilitating; there is no other way to describe it. The sheer experience of living in circumstances where the entire family is placed under inordinate pressure as a result of destitution and uncertainty is devastating to a child's development.[101]

3.99 Stephanie Mendis of Hotham Mission also talked about the negative impact of bridging visa conditions on family relationships and child development:

> One of the major impacts on children is that they have to watch their parents deteriorate mentally because they have no right to work, nowhere to go and no ability. It is a basic sense of pride and responsibility to provide for your children and they cannot even do that. They have to go from service to service begging, often with their children in tow… We have also seen a lot of depression in children from having to take

98 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 2.

99 Walker V, Bridge for Asylum Seekers Foundation, correspondence, 24 March 2009.

100 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 8; see also Gleeson M, Bric Housing, p 39.

101 Domicelj T, Asylum Seeker Centre of NSW, *Transcript of evidence,* 24 October 2008, p 56.

> over the parent role, given that their parents have deteriorated.[102]

3.100 Agencies working with families on bridging visas report problems with family violence and family breakdown.[103] The Asylum Seeker Resource Centre in Melbourne has previously reported that, 'It is evident from our work with asylum seeker women that there is a high level of undocumented and unreported incidence of domestic violence within families living on bridging visas'.[104] Two of the bridging visa holders the Committee met in Melbourne mentioned contact with Australian child protection authorities in the context of them not being able to adequately provide for their children, as well as of depression and anxiety.[105]

3.101 As noted previously, poverty has the potential to seriously impact on health outcomes for pregnant women and growing children in community placements.[106] For example, it was noted:

> We are talking about getting $33 a week from us and then traipsing around agencies [not-for-profit organisations and charities] looking for food. The food that is given is basics like rice, lentils and dry goods. So, children do not get fresh milk, they do not get fresh bread, they do not get any meat or protein.[107]

3.102 Hotham Mission reported that they had worked with newborn and toddler children with conditions normally only found in the third world, such as scurvy, rickets and malnutrition.[108]

3.103 Other issues raised were around the education of children and young adults. Children on bridging visas may attend school, but this appears to be the result of individual schools' and principals' discretion on

---

102 Mendis S, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, pp 35-36. See also Australian Psychological Society, submission 105, pp 6-7.

103 Uniting Church in Australia, submission 69, p 11; Markus A and Taylor J, 'No work, no income, no Medicare', *People and place* (2006), vol. 14, no. 1, p 49; Hotham Mission Asylum Seeker Project, *Welfare issues and immigration outcomes for asylum seekers on Bridging Visa E* (2003), p 20.

104 Asylum Seeker Resource Centre, submission to DIMA [DIAC] bridging visa review (2006), p 38.

105 Mr GS; *Transcript of evidence*, 22 January 2009, p 21; see also Ms LI, p 15.

106 Office of Multicultural Interests WA, submission 106, p 16.

107 Mendis S, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, pp 35-36.

108 Hotham Mission Asylum Seeker Project, submission 93, p 16.

enrolment, fees and other costs.[109] This is in contrast to the arrangements for children in community detention, who have access to primary and secondary schooling as well as access to English language classes, in the words of the department, 'in line with community standards'.[110]

3.104 Hotham Mission reported that their clients' children often had to take time off school to help them go and get food items from the Asylum Centre Resource Centre because the parents had no car in which to carry items home. Hotham Mission also reported having spent money on excursions, uniforms and school books because parents cannot afford these attendant costs of children going to school. [111]

3.105 Children and young adults on bridging visas also have difficulty in applying for university, because without a substantive visa they are required to enrol as an international student and pay full fees.[112] Mrs LI, living in Melbourne on a bridging visa, told the Committee:

> I have a daughter who is going to Monash next month and we do not know whether she can apply for a scholarship. She was also very suicidal and depressed when she was sitting for her exams last year, because she feels she has got no future. She wakes up at two o'clock or three o'clock in the morning, banging her head on the door, because she feels she has no future.[113]

3.106 The daughter, S, spoke to the Committee about the stresses present in her family:

> There should be more help, not just in terms of financial help also in terms of emotional support for other children like me going through the final year of school and having a mum with severe depression. Having children to look after in the house is not easy and there should be someone to help. I did not study for my year 12 exam and I really regretted it. It was not just my mum being sick but the stress and the constraints that I was under having to live practically in handcuffs—not

109 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 56.

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

111 Mendis S, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, pp 35-36.

112 Ms SI, *Transcript of evidence*, 22 January 2009, p 31; see also Ms GD, p 31.

113 Ms LI, *Transcript of evidence*, 22 January 2009, p 15.

> allowed to work, not allowed to do anything except breathe.[114]

3.107 It is wholly appropriate that children are no longer being placed in immigration detention centres, and the Committee has observed that DIAC is making great efforts to secure alternative accommodation for families in the community. The Committee is concerned, however, that these acknowledgements of the particular vulnerability of children do not extend to all minors living in the community, and makes some recommendations directed at this in chapter 5.

Support services

3.108 The final section of this chapter examines support services that are needed as part of a future framework for community release of people with an unresolved immigration status. Drawing on the experience to date with the Community Care Pilot, this section considers case management and referral services, and orientation assistance for people living in community-based detention alternatives.

3.109 A number of other support service needs —such as legal advice, migration information, and return counselling —are discussed in the following chapter in the context of a maintaining a robust and enforceable immigration system.

Case management and referral services

3.110 Many inquiry participants, including the Australian Red Cross, the Immigration Detention Advisory Group and the Refugee Council of Australia, supported the continuation and expansion of the Community Care Pilot, or at least, a program for intensive community support that drew on its key components.[115]

---

114 Ms SI, *Transcript of evidence*, 22 January 2009, pp 30-31.

115 Immigration Detention Advisory Group, submission 62, p 9; Power P, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 4; Hotham Mission Asylum Seeker Project, submission 93, p 3; NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), submission 108, p 26; International Detention Coalition, submission 109, p 2; Federation of Ethnic Communities' Councils of Australia (FECCA), submission 71, p 5; Forum of Australian Services for Survivors of Torture and Trauma (FASST), submission 115, p 20; Uniting Church in Australia, submission 69, p 15; Refugee and Immigration Legal Centre, submission 130, p 4; A Just Australia, submission89, p 23; Amnesty International Australia, submission 132, p 16.

3.111 The Australian Red Cross, which currently manages the Community Care Pilot under contract to DIAC, said that the program would form the basis of its ideal model of community release:

> Our idea would actually be release on a visa with support such as the Community Care Pilot. If you are asking for the actual model, it would not be community detention. To me, there is the graduated scale from an immigration detention facility through to Community Care Pilot. Community Care Pilot would be the ideal.[116]

3.112 Similarly, Tamara Domicelj, of the Asylum Seekers Centre of New South Wales, suggested that the Community Care Pilot should be seen 'a key mechanism for providing fair and reasonable treatment to asylum seekers in a community environment', arguing that the program 'provides a very real alternative to detention, as we have seen it'.[117]

3.113 Since May 2006 to January 2009, the Community Care Pilot has assisted 918 people.[118] The elements identified as making the pilot successful are:

- Case management: The case manager's role is to provide coordination, integration and management of services to meet the needs of a person, drawn from a range of service providers both internal and external to DIAC. This means that each person has a case manager within DIAC to provide information on their case and individually determine what care is needed. This individual assessment means that the Community Care Pilot is particularly useful for individuals with complex needs.[119]
- A focus on early intervention, through aiming to provide information and resources at the beginning of a person's case where that person has been identified as having particular vulnerabilities. This includes access to free and independent migration advice (discussed further in the next chapter). While this approach is more resource-intensive at the front end of individual cases, it seeks to avoid some of the public expenditure and staff time ultimately invested in long and complex immigration cases,

116 Clement N, Australia Red Cross, *Transcript of evidence*, 11 September 2008, p 4.

117 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 54.

118 Department of Immigration and Citizenship, submission 129n, p 6.

119 Refugee Council of Australia, submission 120, p 11.

such as in legal costs, compliance detection, forcible removals, and detention.[120]

- Health and welfare support, alleviating some of the destitution experienced by some bridging visa holders in the community, giving the person some dignity and stabilising his or her circumstances.[121]
- Options for assisted voluntary return. Until recently, if a person did not have the resources to organise their own departure from the country, they faced the prospect of being taken into detention to be forcibly removed from Australia. DIAC also advised the Committee that the process of voluntary return was a cost effective strategy for people that were willing to depart the country, but did not have the means to.[122] The assisted voluntary return component of the pilot is managed by the International Organisation for Migration (IOM).[123]
- Collaboration between DIAC and non-government agencies, including with service providers to asylum seekers and other immigration clients, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the IOM. This collaboration draws on the expertise of all of these organisations and provides a potential model for future service provision by a range of agencies.[124]

3.114 A number of issues were identified with the Community Care Pilot, in particular inadequate capacity and overly narrow eligibility criteria and lacked transparency about who was accepted. [125] Hotham Mission Asylum Seeker Project said that while they acknowledged that the Pilot was intended to be small and exploratory in nature:

---

120 Mitchell G, International Detention Coalition, *Transcript of evidence*, 22 January 2009, pp 7-8; Clement N, Australia Red Cross, *Transcript of evidence*, 7 May 2008, p 37.

121 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 53; Department of Immigration and Citizenship, submission 129, p 37.

122 Department of Immigration and Citizenship, submission 129, p 37.

123 Domicelj T, Asylum Seekers Centre of NSW, *Transcript of evidence,* 24 October 2008, p 53.

124 Refugee Council of Australia, submission 120, p 11.

125 Karapanagiotidis K, Asylum Seeker Resource Centre, *Transcript of evidence,* 24 October 2008, p 71; Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 29 and submission 93a, p 7.; Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 6; Caton S, Refugee and Immigration Legal Service (RAILS), *Transcript of evidence*, 23 January 2009, p 38; Nash C, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 13.

> There is currently a lack of acknowledgment or formal research into the numbers of asylum seekers who are eligible for CCP but cannot access it due to the small size of the program.[126]

3.115 At a public hearing the Hotham Mission said that only eight of their 123 cases had been accepted into the CCP in that year.[127] The Refugee Claimants Support Centre in Brisbane estimated that a little under half of their clients had support through the CCP.[128]

3.116 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. 'From time to time community organisations seek to refer clients who are not eligible for assistance (for example because they do not meet the criteria relating to vulnerability) or who fall outside our current priorities or capacity to provide case management support'. DIAC advised that there is no set limit to the number of places available under the CPP. Although the program had a limited budget, on current projections DIAC expected to be able to maintain support at current client levels.[129]

3.117 The Committee notes that there is expected to be an increase in the use of community-based detention alternatives which will increase the number of people seeking assistance through the program. If support levels are to be maintained then either access must be further limited or funding increased – unless a wider, more comprehensive system of support delivery is provided. The Committee addresses these needs in chapter 5.

Staying in the Australian community

3.118 Those who are taken into immigration detention for overstaying their visa, breaching the conditions of their visa or as section 501 visa cancellations have by definition spent some time in the Australian community already, and likely have that experience and personal contacts to assist them should they meet the criteria for release back

126 Hotham Mission Asylum Seeker Project, submission 93, p 7.

127 Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 29.

128 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 6.

129 Department of Immigration and Citizenship, submission 129n, p 1.

into the community. However, an important consideration for a framework of community release is that unauthorised arrivals, or those who have spent only brief periods of time in the community, may need extra support in order to be able to stay safe, look after themselves and their family, and function in an Australian community setting.

3.119 Morteza Poorvadi, an ex-immigration detainee, told the Committee his story of being released from detention into the community:

> When I got out I was 20 years old. I did not know how to walk in the street, to be honest with you. I nearly got run over by a car twice because I did not know to look to the right or left… I had to take care of my own Medicare. I had to take care of my own bank accounts. It was a struggle, when you did not know things…
>
> Detainees think they are all right but they are not. They cannot cope with the hardship that the outside world brings them. When you are in detention, you focus only on getting released. That is all you focus on. When you are released, you are in bigger trouble. You need a house, you need food, you need money from work and all these sorts of things.[130]

3.120 Sister Claudette Cusack of the Sisters of Mercy, formerly a chaplain in immigration detention centres, recommended that people released from detention needed skills and basic knowledge about living in Australia:

> As well as English tuition practical information needs to be given about Australia. I do not mean its history, sporting or otherwise. What they need is practical help for their possible future life in Australia. Information needs to be given about:
>
> - Australian currency: and the cost of living
> - Road rules including how to get a vehicle license and its importance.
> - Use of public transport e.g. How to purchase tickets, read timetables and maps.
> - Information around the rental of premises, bonds and obligations in renting.
> - Centrelink information
> - The role of police

130 Poorvadi M, *Transcript of evidence,* 7 May 2008, p 41.

> These are just some of the facts that they need to know before release. We have witnessed avoidable mistakes through ignorance of these basic rules.[131]

3.121 Within a reformed detention framework the Committee anticipates that the issue of support on release from detention may not be so critical, given the expectation that people will spend much briefer periods of time in immigration detention before being eligible for community release.

3.122 However, any community release program must include some orientation and support for the basic skills necessary for functioning in the Australian community. Even if the stay in the community is temporary awaiting departure from the country, if community-based options are to be used by DIAC in preference to detention centres, then basic orientation and transition assistance to understand Australian life needs to be provided.

3.123 The Committee also acknowledges the steps taken by DIAC to provide better support on release through the Community Care Pilot. As a component of the pilot, the Australian Red Cross now provides community transition and orientation by way of transition support. Pamela Curr, of the Asylum Seeker Resource Centre in Melbourne, said that:

> Before the Community Care Pilot people came out of detention and arrived in Melbourne from Baxter at five to six o'clock at night with nowhere to stay and $120 to survive on. After the Community Care Pilot was introduced people were met and a lot more things were put in place so that they did not land on our doorstep at nine o'clock in the morning. In the case of one person who had $120, $80 was paid to a motel in Elizabeth Street and that left $40 to survive on until immigration and all the other things had been set in place. These things came in after the Palmer inquiry and they certainly are a great improvement.[132]

3.124 Some inquiry participants called for settlement assistance and English language classes to be made available to people released from

131 Cusack C, submission 36, p 4. See also Circle of Friends 42, submission 32, p 4, Walker L, submission 66, p 6, Prince R, submission 113, p 5.

132 Curr P, Asylum Seeker Resource Centre, *Transcript of evidence*, 22 January 2009, p 29.

immigration detention on bridging visas, or for people based in the community who are currently bridging visa holders.[133]

3.125 This raises some difficult questions regarding the status of asylum seekers, or other people with unresolved immigration status, who are living in the community while they await resolution of their immigration status. A bridging visa is not provided with settlement assistance because by definition, it is not yet known whether that person will be able to remain in Australia. Nonetheless, the Committee considers that community-based detention alternatives carry with them an obligation on the Commonwealth to ensure that people have the basic skills to survive in Australian society whilst awaiting the outcome of their immigration status.

Summary

3.126 The evidence received by the Committee, particularly in relation to the Community Care Pilot, has confirmed that integrated support services for people that need them are an essential component of a framework for community release. Support services contribute towards a humane and dignified living environment for people with an unresolved immigration status and make sure they are equipped with the information necessary to make the best choices about their immigration case. A holistic model of support services, as illustrated by the Community Care Pilot, also benefits the immigration system by encouraging greater transparency, fair process and case resolution. It is to these issues of impact on the immigration system that the Committee turns to in the next chapter.

133 Human Rights and Equal Opportunity Commission, submission 108, p 18; Bridge for Asylum Seekers Foundation, submission 5, p 2; Uniting Church in Australia, submission 69, p 32; Harding A, submission 70, p 2.

4

A robust and cost-effective approach

4.1 In his speech of 29 July 2008, the Minister for Immigration and Citizenship acknowledged that much improvement was required to 'develop a modern and robust system for management of people' in any form of immigration detention. In addition to ensuring that detention was for the shortest duration possible and in the least restrictive form possible, the Minister emphasised the need to broaden alternative detention strategies. [1]

4.2 Broadening alternative detention strategies must take place in the context of the Minister's stated shift to a risk-based approach to immigration detention and as part of the broader task of establishing a system that stands up in rigor to a test of fairness and integrity, and restores public confidence in its administration.

4.3 The chapter examines the elements necessary to ensure a robust immigration system for those released on community-based alternatives to detention. This includes compliance rates, the provision of appropriate migration advice, transparency in decision-making, and facilitating voluntary return. The chapter also considers the comparative costs of detention alternatives, including deferred costs borne by non-government community organisations.

---

1 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, 29 July 2008, p 14.

A robust immigration system

4.4 In its submission to the inquiry, the Department of Immigration and Citizenship (DIAC) outlined that:

> Australians are entitled to expect that our immigration system operates as intended and that there are effective but fair processes in place to deal with people who do not abide by the conditions of their stay or who attempt to misuse these processes. [2]

4.5 Compliance and appropriate assessment of flight risk are important aspects of a robust, fair and effective immigration system. Evidence to the Committee suggests that the integrity of the system can also be facilitated by increased transparency and accountability in decision-making processes. Access to independent migration advice is important to enable people to make appropriate and informed decisions regarding their case, including the option of voluntary returns.

4.6 The next section considers these elements of achieving a robust immigration system with a flexible range of detention alternatives.

Compliance with migration processes and decisions

4.7 There are currently approximately 48 500 people unlawfully in the community liable for removal. DIAC has advised the Committee that some 96 per cent had held a student, visitor or temporary resident visa immediately before becoming an overstayer.[3]

4.8 Andrew Metcalfe, Secretary, Department of Immigration and Citizenship advised the Committee that by comparison to other countries such as the United States and the United Kingdom, Australia had not developed a problem with 'a huge number of people illegally in the community with all of the negative aspects associated with exploitation'. [4]

4.9 Mr Metcalfe further stated:

> Our global overstay rate, or non-return rate, is less than one per cent. So less than one person out of a hundred who comes

2 Department of Immigration and Citizenship, submission 129, p 5.

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

4 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 11.

> to Australia overstays, works illegally, applies for some other visa.[5]

4.10 The Committee acknowledges that there remains a place for secure immigration detention in some form, where the need can be demonstrated and as set out in the Committee's first report. In considering community-based alternatives to detention, it is important to examine the possible impact on compliance and the integrity of the immigration system.

4.11 Preventing people from absconding is cited as the basis for secure detention in the internal guidelines and regulations for immigration officers of several countries.[6] According to the United Nations High Commissioner for Refugees (UNHCR):

> One of the most commonly cited policy reasons … for detaining asylum seekers or imposing other restrictions on their freedom of movement is to prevent absconding and, correspondingly, to ensure compliance with asylum procedures. [7]

4.12 Similarly the UNHCR acknowledges that detention is justified in cases where there is a 'likelihood of absconding' or 'lack of cooperation'.[8] However, in 2003 the Justice Seeker Alliance reported that over the last decade compelling evidence existed that people released on bridging visas into the community met their reporting arrangements with the department.[9]

4.13 In the past, the policy in Australia of mandatory detention has been influenced by the perception that secure detention is necessary to prevent persons from absconding, and that a regime of mandatory and secure detention will deter unlawful arrivals.

4.14 However, evidence to the Committee on international trends suggests that secure detention is not a deterrent to unlawful arrivals, and those who arrive in Australia or some other destination country seek to

---

5 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 11.

6 Examples of these include the Border Entry operations manual of New Zealand and the internal Home Office Guidelines of the United Kingdom.

7 Field O and Edwards A, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 24.

8 Field O and Edwards A, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 24.

9 Justice for Asylum Seeker Alliance. '*Improving outcomes and reducing costs for asylum seekers*', August 2003, p 36.

apply for a lawful migration status.[10] Grant Mitchell, of the International Detention Coalition, stated that:

> … there is no evidence internationally that detention deters. We are undertaking a research project with Nottingham University on that issue at the moment. There is a political discourse that detention can deter but there is very little evidence that it does so. Countries have harshened and softened their detention policies, but the flows of people arriving and the numbers of detainees do not often correspond to those policies.

4.15 The consensus amongst evidence received by the Committee is that compliance rates will remain high as it is in the interest of the person to comply. Evidence also suggests that secure detention is not required to achieve compliance. The Refugee and Immigration Legal Centre advised:

> [Our] experience is that most people fully co-operate and comply with conditions, in part due to the commonsense view that such conduct is consistent with their desire to achieve a positive outcome. Our experience mirrors conclusions regarding international studies into this issue.[11]

4.16 In their submission, the Castan Centre for Human Rights Law cite a report by the United Nations High Commissioner for Refugees (UNHCR) in saying that detention for the purposes of preventing absconding is legitimate (although they argue that this assessment should be made under judicial supervision). However, the Centre argues that visa over stayers are more likely to abscond, whilst asylum seekers:

> …are primarily concerned with reaching a safe haven and are anxious to regularise their status. They are less likely to abscond. There is little evidence to suggest that asylum seekers abscond if they are released into the community, either in Australia or overseas.[12]

4.17 This view was supported by other peak bodies. For example, the Edmund Rice Centre (citing the UNHCR commissioned report, *Alternatives to detention of asylum seekers and refugees*) noted that

10 Ozdowski S, submission 58, pp 6-7, Uniting Church in Australia, submission 69, p 14.

11 Mitchell G, International Detention Coalition, *Transcript of evidence,* 22 January 2009, pp 6, 9.

12 Castan Centre for Human Rights Law, submission 97, p 23.

adherence to any set requirements was a common sense solution for a person awaiting an outcome.[13] It is claimed that 'asylum seekers have a clear interest in gaining legal residence' in a destination country and 'therefore of complying with the determination process.'[14]

4.18 Professor Howard Adelman, Research Professor at Griffith University said that internationally, the best compliance results came from incentives for people to comply with norms, such as encouragement to return home, or the ability to apply for another visa from their home country. 'A positive system all along seems to work better than a negative punishment and deterrence system'.[15]

4.19 Community connections are also argued to facilitate compliance. Professor Aldeman also stated that:

> One of the conclusions of research is that the more connections they make with the local population—not simply where they stay but where there is actually friendship or links that develop of a closer nature with a hosting group of people who are already citizens—the more likely it is that they will show up at hearings, not try to abscond et cetera… Generally the principle of living within a community with a network of people who give support is very helpful.[16]

4.20 The Committee notes that the number of people absconding from community-based detention facilities remained very low. Since the introduction of community-based detention in 2005, DIAC report that only two people of a population of 244 have absconded. The department also advised the Committee that of 370 people held at immigration residential housing (IRH) facilities only one person had absconded.[17]

4.21 Secretary of the Department of Immigration and Citizenship, Andrew Metcalfe, confirmed that the experience of the department was that community-based options were proving effective in terms of compliance and outcomes for individuals. He stated that:

---

13 Edmund Rice Centre, submission 53, p 5; Field O and Edwards A, United Nations High Commissioner for Refugees, *Alternatives to detention of asylum seekers and refugees* (2006), p 25.

14 Edmund Rice Centre, submission 53, p 4.

15 Adelman H, *Transcript of evidence*, 25 February 2009, p 7.

16 Adelman H, *Transcript of evidence*, 25 February 2009, pp 3-4.

17 Department of Immigration and Citizenship, submission 129h, p 6.

> [Since July 2008], the proportion of people complying with the departure requirement of their bridging visa E has remained steady at around 90 per cent. In other words, we believe that community management of immigration status is proving as effective as detention and indeed is leading to a far less risky environment for the department and a far better outcome for the individuals.
>
> … so effectively immigration compliance outcomes have remained very positive while we have moved the management of the cases outside the detention environment, so it is something that we are very positive about it. [18]

4.22 He added:

> We have been able, based on the figures relating to the community care and bridging visa arrangements, to achieve immigration resolution in the community with an outcome similar to that for people entering into detention.[19]

4.23 At a Senate Estimates hearing in October 2008, DIAC Deputy Secretary Bob Correll explained that all forms of community release were subject to a risk assessment and flight risk, or likelihood of absconding, was an important component of that assessment.[20] He added:

> We do not have a huge incidence of flight problems. We believe by a proper consideration and closer case management that we would be able to apply appropriate criteria to ensure that the individual is placed in the appropriate circumstances. The overall controls that can be applied can range from quite limited to more substantive, regular reporting arrangements if there be a need in the community.

4.24 The Committee notes that there has been a shift in recent years to less secure forms of detention, including community detention, the use of motels as alternative temporary detention and the use of bridging visas in preference to taking a person into detention. Even in secure forms of detention there are now excursions, household shopping

18 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 4.

19 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 11.

20 Correll B, Department of Immigration and Citizenship, *Senate Hansard*, Supplementary Budget Estimates, Legal and Constitutional Affairs Committee, 21 October 2008, p 102.

trips and community activities. Although guards accompany people on these outings, the level of security is minimal and this has not resulted in people absconding.

4.25 Provided risk profiling is undertaken to identify the few individuals who may be considered a flight risk, evidence was not presented to the Committee which would indicate that the greater use of open community-based alternatives to detention would compromise migration compliance. Indeed DIAC reports a reduction in risk and an improvement in outcomes for individual from community-based options.

4.26 It is the conclusion of the Committee that the greater use of community-based detention alternatives, when accompanied by appropriate individualised assessment and support processes, is a positive initiative in promoting compliance and ensuring a robust immigration process.

4.27 However, substantial evidence was also received by the Committee to suggest that compliance and the integrity of the system was compromised by a lack of transparency in decision-making, insufficient legal advice and limited access to voluntary return options.

4.28 The Committee notes that these issues are not confined to people with an unresolved immigration status living in the community. However they are issues which may impact on compliance and, in particular, on the effective and expeditious resolution of cases for people in community-based detention alternatives. These issues are discussed in the following sections.

Transparency in decision-making

4.29 Evidence provided to the Committee suggested that compliance and the integrity of the immigration system would be improved by increased transparency of decision-making, more expeditious processing times, and addressing the reasons why people remain in Australia and continue to appeal negative decisions or seek ministerial intervention.

4.30 Many inquiry participants working closely with people in detention reported that the criteria for eligibility for community detention and for bridging visas were too narrow. Compounding this was a perceived inconsistency in departmental decision-making and a lack

of transparency regarding the criteria used to place people in different forms of detention and the issue of bridging visas.

4.31 Several non-government organisations, who are familiar with the case details of a number of clients, commented that they were often confused by the decisions taken by DIAC in regard to placement in different forms of detention, and granting of bridging visas with various conditions.[21] Consistently the evidence reported a lack of transparency in DIAC decision-making which diminished the rigour of the immigration system. This lack of transparency also contributed to ongoing review applications by people who perceived that rigour and logic were absent from the decision-making process.

4.32 The Commonwealth Ombudsman suggested that the:

> … complexity and restrictions in bridging visas may be a reason for limited or inconsistent granting of bridging visas by DIAC compliance or detention officials. We have provided feedback to DIAC that greater guidance for officers making decisions will lead to improved consistency in decision making.[22]

4.33 The New South Wales Service for Treatment and Rehabilitation of Torture and Trauma Survivors also commented that decision making processes should be transparent and detainees need to understand the basis for moving them into residential housing and community detention.[23]

4.34 Clinical psychologist Guy Coffey advised the Committee that there did not appear to be transparency or rigour in decision-making processes, particularly in regard to detention decisions and the granting of bridging visas:

> The bridging visa E has never worked well. Again, I do not know why because there are provisions that say, 'If a person can't be properly treated within detention they should be released.' That has been applied over the years in a totally capricious fashion. You would see some people who you think should be out and they would come out and others who

21 Hotham Mission Asylum Seeker Project, submission 93, p 9, Mitchell G, International Detention Coalition, *Transcript of evidence,* 22 January 2009, p 2, Castan Centre for Human Rights Law, submission 97, p 14. NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), submission 108, p 27.

22 Commonwealth Ombudsman, submission 126, p 13.

23 NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), submission 108, p 16.

> are even more unwell remained in detention for years, and I just do not know why that occurred. There did not seem to be any systematic assessment of people against the criteria of that regulation.[24]

4.35 Similarly a 2008 paper by the Network of Asylum Seeker Agencies Victoria expressed concern that:

> …the use of discretion to grant work rights lacks transparency and is inconsistent with actual needs at various points in the process… We are also greatly concerned that there are no clear guidelines or assessment tools on application of discretion to grant work based on financial hardship. We thus continue to see decisions varying dramatically depending on the officer dealing with an asylum seeker at DIAC.[25]

4.36 Transparency in departmental decision-making is crucial for the integrity of the immigration framework. People with an unresolved immigration status and their legal representatives must be provided clear advice as to the reasons behind detention placement decisions, the granting of bridging visas, and any conditions or restrictions which are placed on a person. Failure to provide this transparency will inevitably lead to inconsistency, poor outcomes for people, an increase in review applications, and an even greater loss of public confidence in our immigration system.

4.37 The Committee notes that the shift to a risk-based approach to immigration detention decisions and the greater use of community-based detention alternatives requires that administrative decision processes become more accountable and transparent.

Ministerial interventions

4.38 The Committee also heard that the lack of transparency in ministerial decisions and lack of confidence in departmental administration encouraged people to make repeated applications for ministerial intervention to try to remain in Australia.

4.39 Sections 351, 417 and 501J and 48B of the Migration Act generally authorise the Minister to substitute a decision of the Migration

24 Coffey G, *Transcript of evidence*, 11 September 2008, p 84.

25 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), p 6.

Review Tribunal (MRT) the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal (AAT) with a decision that is more favourable to the applicant, where the Minister believes it is in the public interest to do so.[26] These decisions made personally by the Minister are non-compellable and non-reviewable.

4.40 Evidence suggested that the practice of submitting several requests for ministerial intervention was widespread. It was suggested by some that multiple applications were sometimes made as the decision process was not understood and it was believed that provision of one further additional piece of information may reverse an earlier decision.

4.41 Tamara Domicelj, of the Asylum Seekers Centre of New South Wales, said that:

> A ministerial decision does not actually carry any reasons, so no explanation is given to a person. The inclination to try again, if you have no idea of what has been taken into consideration, is very great where people feel that they have compelling humanitarian concerns.[27]

4.42 Ms Coleman of the Hotham Mission added that less than adequate legal advice can contribute to repeated applications:

> We often see clients who have put in one, two, three, four or five ministerial requests, sometimes because the first, second and third were not adequate. They had finally found some trusted legal advice to put in a decent request at number four.[28]

4.43 Linda Jaivin endorsed these views and also noted that mistakes had often been made by DIAC which were picked up through Freedom of Information (FOI) applications, although this process can take several months or even years.[29] She explained:

---

26 Sections 351, 471- Minister may substitute more favourable decision, section 501J Refusal or cancellation of protection visa--Minister may substitute more favourable decision, and section 48B Minister may determine that section 48A does not apply to non-citizen.

27 Domicelj T, Asylum Seekers Centre of New South Wales, *Transcript of evidence,* 7 May 2008, p 37.

28 Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 33.

29 Nicholls D, Balmain for Refugees; and Jaivin L, *Transcript of evidence,* 7 May 2008, p 37. Linda Jaivin is a writer, translator and former journalist. She has been visiting Villawood Detention Centre regularly since 2001 and has built friendships with many current and former detainees.

> One always thinks maybe they have not considered the whole case and maybe there is something wrong. With the FOIs, they often turn up something wrong. The FOIs should be done according to the department's own regulations of 30 days, but the resources have not been put into FOI in Immigration in the past so that that could happen. So they would stretch out to several months. There was an FOI that I was recently dealing with that took almost two years. This sort of thing really drags things out. When you get the FOIs, you often find—this is my experience and I am sure everybody else has had a similar experience—serious mistakes in the reporting up to the minister or something in the department's own information. You find the thing that might have caused the minister to say no. So, therefore, one tries again.[30]

4.44 The extent and exercise of the Minister's powers under the Migration Act are beyond the scope of this inquiry, although the Committee notes that they were the subject of the Senate Legal and Constitutional Affairs Committee's inquiry into the operation of the Migration Act in 2006, and most recently of a review conducted by Elizabeth Proust and commissioned by the Minister himself, Senator the Hon. Chris Evans.

4.45 The Minister told a Senate Estimates hearing in February 2008 that he had come to the view that the Migration Act granted him 'too much power', and that he was concerned about 'the lack of transparency and accountability for those ministerial decisions'. He also noted that appealing to the Minister had become institutionalised as part of the system rather than being a check on the system.[31]

4.46 The Committee notes the evidence presented regarding the reasons leading to repeated applications for ministerial intervention. This Committee considers that this practice is not beneficial to the integrity of the immigration system or to the expeditious resolution of an immigration case.

---

30 Jaivin L, *Transcript of evidence,* 7 May 2008, p 37.

31 Senator the Hon C Evans, Minister for Immigration and Citizenship, *Senate Hansard*, Additional Budget Estimates, Legal and Constitutional Affairs Committee, 19 February 2008, p 22.

Prolonged periods awaiting case resolution

4.47 In encouraging expedited processing times, the Committee notes the positive comments from submitters about the impact of the 90-day processing timeframe for protection visa applications at the primary and merits review stages.[32] It also acknowledges the trends towards expedited decision-making and case resolution, as exemplified by the Minister's review of long-term detainees, and the voluntary return and status resolution components of the Community Care Pilot.[33]

4.48 Evidence from the Community Care Pilot suggests that case resolution times can be improved with intensive support to people who are particularly vulnerable or who have complex cases. An analysis of outcomes for people in the pilot between May 2006 and July 2008 revealed that 439 individuals had disengaged from the CCP in that time, including 309 people (70 per cent) with a substantive immigration outcome. The average time in Australia for these 309 people is 6 years, however after entering the pilot the average time to achieve their immigration outcome was just 10 months.[34]

4.49 Nonetheless there remain a number of unresolved long-term detention cases and many cases of persons and families who remain on bridging visas in the community for prolonged periods awaiting resolution of their immigration status. These occurrences have substantial negative impacts on the integrity of our immigration system as well as on bridging visa holders.

4.50 If there is to be greater use of community-based detention alternatives, then expedited case resolution is important to ensure compliance and the capacity of a person to return to their country of origin following a possible negative visa decision.

4.51 Evidence suggests that the longer a visa applicant remains in Australia on a bridging visa, the more fraught their acceptance of a negative visa decision. Caz Coleman Project Director of the Hotham Mission Asylum Seeker Project advised the Committee that:

> It is not helpful for people to remain in Australia for extended periods of time only to be returned after five, six or seven

32 Domicelj T, Asylum Seekers Centre of New South Wales, *Transcript of evidence,* 7 May 2008, p 39. Under section 65A of the Migration Act, the Minister must make a decision under section 65 of the Act, in relation to a protection visa, within a period of 90 days.

33 Manne D, Refugee and Immigration Legal Centre, *Transcript of evidence*, 11 September 2008, p 18.

34 Department of Immigration and Citizenship, submission 129, p 37.

> years. It is very difficult to ask children who have been born in Australia and lived in Australia to return to a country of origin they know nothing of and do not speak the language. It would be much better for us to have a shorter processing time so that if they are refused, people can go home quickly for their benefit as well as for ours.[35]

4.52 The Committee heard evidence from a number of bridging visa holders who were in this position. Mr HG, a bridging visa E holder, told the Committee:

> We have said that we now want to stay in Australia on the basis that we have got two children who were born here and are Australian citizens. We have been living here for 14 years and therefore we are accustomed to living in Australia.[36]

4.53 This evidence indicates to the Committee that, just as detention should be for the shortest period possible, community-based alternatives should be interim arrangements only.

4.54 In summary, evidence to the Committee suggests that accountability and transparency in detention, community release, work rights and visa conditions and ministerial intervention decisions must be greatly improved in order to ensure a rigorous and enforceable immigration system. Further, the Committee encourages a continued focus on case resolution by DIAC, drawing on the model of intensive support tested in the Community Care Pilot. This will ensure that people do not spend prolonged periods in the Australian community on bridging visas or in community detention, as this is not only detrimental to the person but may impede compliance.

Migration advice and assistance

4.55 Evidence was provided which suggested that compliance was enhanced and immigration status was resolved more quickly by the provision of advice to people on credible options available to them.

4.56 The Commonwealth funded Immigration Advice and Application Assistance Scheme (IAAAS), provides free professional assistance to the most vulnerable visa applicants to help with the completion and submission of visa applications, liaison with the department, and

35 Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 33.

36 Mr HG, *Transcript of evidence,* 22 January 2009, p 24.

advice on complex immigration matters. It also provides migration advice to prospective visa applicants and sponsors. Those persons eligible for application assistance include all protection visa applicants in detention, and the most disadvantaged protection visa applicants and other visa applicants in the community. Assistance under the scheme ceases once a substantive decision has been made; that is, IAAAS is not available to persons seeking judicial review, or to those requesting ministerial intervention.[37]

4.57 There are 23 IAAAS providers around Australia, who are registered migration agents or officers of legal aid commissions.[38]

4.58 In 2007-2008 the cost of providing IAAAS services was some $2.2 million, comprising:

- $0.7 million for application assistance to 387 protection visa applicants in immigration detention
- $0.9 million for application assistance to 628 disadvantaged visa applicants in the community, and
- $0.6 million for immigration advice to 5825 disadvantaged persons in the community.[39]

4.59 Despite the IAAAS program, the Committee received a significant amount of evidence regarding the insufficiency of legal advice provided to people in immigration detention or to people at risk of becoming unlawful non-citizens in the community.[40]

4.60 The Commonwealth Ombudsman noted that the onus for seeking legal advice still rested with the individual in many instances and that

37 Department of Immigration and Citizenship, Fact sheet 63: Immigration advice and assistance scheme, viewed on 11 February at http://www.immi.gov.au/media/fact-sheets/63advice.htm.

38 Department of Immigration and Citizenship, Fact sheet 63: Immigration advice and assistance scheme, viewed on 11 February at http://www.immi.gov.au/media/fact-sheets/63advice.htm.

39 For the purpose of the IAAAS, a disadvantaged person is one who in financial hardship and disadvantaged due to a number of possible factors. These include language, cultural or gender barriers, illiteracy in the person's home country, remoteness of location in Australia, physical or psychological disability as a result of, but not limited to torture or trauma, or as a result of family violence. Department of Immigration and Citizenship, Fact sheet 63: Immigration advice and assistance scheme, viewed on 11 February at http://www.immi.gov.au/media/fact-sheets/63advice.htm.

40 In addition to the references cited below, see Little Company of Mary Refugee Project, submission 20, p 3, Law Institute of Victoria, Liberty Victoria and The Justice Project, submission 127, p 33; Refugee Council of Australia, submission 120, p 9; Uniting Church of Australia, submission 69, pp 13, 18.

advice was often not available at the early stage when it was most required. The Ombudsman said that:

> While the Migration Act provides for a person to be afforded 'all reasonable facilities' for obtaining legal advice on request, not all people have sufficient awareness of the Australian legal system at the time of entering detention to identify and request assistance in contacting an appropriate service.
>
> In many cases the best interests of an unlawful non-citizen may be served by departing Australia voluntarily and making an application off-shore. This can minimise detention as well as exclusion periods and costs, including accruing costs of detention and removal which, unless paid, would operate as a barrier to return to Australia… In other cases an on-shore application will be appropriate, but may need to be made within the two working days prescribed by s 195 of the Migration Act. An ill-advised protection visa application which is subsequently rejected can prevent the making of further applications, while time served in detention during consideration of the application may result in increased costs. In summary, actions taken in the first days following detention may have serious consequences for a person's future migration options.[41]

4.61 Tamara Domicelj of the Asylum Seekers Centre of New South Wales emphasised the importance of 'free, independent and credible migration advice at an early stage' to facilitate people making informed decisions about their cases, including return home arrangements where their protection applications had been rejected.

> If people are being provided with that advice early on, it is far more likely that those around them, whether they be community supporters or others, will be working with them to encourage them to take decisions that are in their best interest. Where that advice is there and incontrovertible that they do not have a protection future in Australia, they will see that it is in their best interests to leave.[42]

4.62 The Committee heard evidence of the damage done by unscrupulous or inept migration agents, or by 'willing and passionate community

41 Commonwealth Ombudsman, submission 126, p 14.

42 Domicelj T, Asylum Seekers Centre of New South Wales, *Transcript of evidence,* 24 October 2008, p 60.

members' who might be drafting letters on behalf of an applicant without adequate understanding of the legal issues.[43]

4.63 Bess Hopgood, of the Refugee Claimants Support Centre in Brisbane, said that not all of their clients had access to legal aid. They were unable to offer legal advice, and:

> We see people trying to raise money, trying to borrow, beg or collect money from anywhere they can to try and get an independent migration agent to work for them. We also see community members—people with no training or qualifications—helping people through the process, not doing the claim but helping them through the complex process, even if that is just filling out forms and helping them write things.[44]

4.64 Sonia Caton, Principal Solicitor of the Refugee and Immigration Legal Service, was critical of the current process in the provision of legal advice stating that in her view, the process of affording people their right to independent legal advice is neither clear nor transparent. She told the Committee of a particular case:

> They had one woman who was found in the sex industry and she was on a 457 visa and her husband had end-stage renal failure. He went home but she decided to stay to earn money to help him. In the end, the private insurance was paying for daily dialysis in China. We managed to establish all of that. Through her being brought to our offices by the GSL guards to get independent advice with a level three interpreter, she finally agreed to go home. She had no prospect even of a ministerial intervention of ever staying here. Legally her prospects to stay were nil. We assisted the department very much because she had another person ringing her from Western Australia saying, 'Just lodge a protection visa and you will get ministerial intervention,' which was incorrect. There was nothing in her circumstances which met the public interest criteria.[45]

---

43 Prince S, Balmain for Refugees, *Transcript of evidence,* 24 October 2008, p 76; Coleman C, Hotham Mission Asylum Seeker Project, *Transcript of evidence*, 11 September 2008, p 33.

44 Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 6.

45 Caton S, Refugee and Immigration Legal Service (RAILS), *Transcript of evidence*, 23 January 2009, pp 42-43.

4.65 In relating her example to the Committee, Ms Caton said that this exemplified a situation where good professional legal advice would assist a person and help them understand the full implications of a decision made by DIAC and how it would affect them as an individual:

> Our experience is that people who are taken into detention are bewildered, they do not know what their rights are and do not know what they can do or that they can even ask for an interpreter. We say, 'There are signs there,' but when you are in detention your anxiety levels are generally very high and I would not say that people are operating at their best.[46]

4.66 Chris Nash, National Policy Director of the Refugee Council of Australia, called for the expansion of the IAAAS. He explained that the benefit of good legal advice was far reaching and extended well beyond the asylum seeker:

> This is important not only for asylum seekers themselves but also for the state and the wider community because good legal advice helps to expedite the process of discerning meritorious applications.
>
> On the flip side, it also helps to prevent unfounded applications and, where appropriate, to support voluntary return. Many costs would be recouped by efficiency savings in having a more efficient procedure, in having fewer judicial reviews and in having fewer forced removals. The fifth key component of the model that the sector would like to see is for there to be return counselling to support voluntary return where people are found not to be in need of protection.[47]

4.67 In promoting genuine alternatives to immigration detention, National Legal Aid (NLA) recognised the important and immediate need for adequate legal advice to be made available to persons in detention. NLA refer to the UNHCR's report which suggests alternatives to detention are more effective if people are fully informed of their legal obligations and options:

> UNHCR's position is that the availability of legal advice and representation is one of the major factors influencing the effectiveness of alternatives to immigration detention. Its

46 Caton S, Refugee and Immigration Legal Service (RAILS), *Transcript of evidence*, 23 January 2009, pp 42-43.

47 Nash C, Refugee Council of Australia, *Transcript of evidence*, 4 February 2009, p 6.

> research also indicates that the effectiveness of alternative mechanisms will be much greater if people are fully informed of and understand their rights and obligations, the conditions of their release and the consequences of failing to appear for a hearing.
>
> It is unsurprising that international experience suggests that the availability of adequate, publicly funded legal advice plays a major part in ensuring the effectiveness of alternatives to immigration detention. Importantly, international experience also suggests that such alternatives have a high rate of compliance and are more cost-effective than immigration detention.[48]

4.68 NLA conclude that, if alternatives to detention are implemented, then a more efficient and cost-effective system would be achieved through free legal services to people with an unresolved immigration status. [49]

4.69 Similarly, the Refugee and Immigration Legal Centre suggested that legal advice and assistance streamlined application outcomes and positively contributed to compliance:

> In Australia, and internationally, evidence indicates that immigration compliance and effective status resolution are not so much dependent on mandatory detention, but that critical factors include provision of adequate material support and legal assistance.[50]

4.70 Evidence to the Committee indicates that the provision of sound legal advice to a person is a key factor in ensuring a robust migration system. By enabling people to make informed decisions and to be realistic about the expected outcomes, administrative processes are not overwhelmed by fruitless applications and compliance is increased both during the application process and following a visa decision.

4.71 The Committee notes that some assistance is currently provided through the IAAAS. However this assistance is only available to a small proportion of visa applicants. While increased funding would be required to ensure the more widespread provision of independent migration advice, these costs would likely be offset by a decrease in

48 National Legal Aid, submission 137, p 15.

49 National Legal Aid, submission 137, p 16.

50 Refugee and Immigration Legal Centre, submission 137, p 23.

the departmental administrative burden and the more speedy resolution of cases.

4.72 Recommendations concerning the provision of support services to enhance compliance and case resolution, particularly for those in community-based detention alternatives, are set out in chapter 5.

Voluntary return options

4.73 In its first report of the current inquiry into immigration detention, the Committee suggested that the Australian Government, in wider consultation with professionals and advocacy groups, improve guidelines for the process of removal of persons from Australia (see recommendation 16 in Appendix C). This recommendation focussed on greater options for voluntary removal from Australia for people in immigration detention.

4.74 The evidence in that report referred to reports of sudden forced removals, anecdotal accounts of inappropriate removal practices, and a culture of fear among people in detention of forced removals. Many of the reasons behind the need to develop a best practice removal model, cited in the earlier report, apply equally in regards to community-based bridging visa holders. There is a greater likelihood of compliance if counselling to assist with repatriation has been provided and if the expectation of migration outcomes has been appropriately managed.

4.75 While the Committee anticipates that its earlier recommendation will lead to improved procedures for enforced removals for those in detention, the options for people in the community to pursue a voluntary return are limited and still in a trial stage.

4.76 The Committee notes the introduction and promising results of the Community Status Resolution Service (CSRS) and Assisted Voluntary Return (AVR) Trial being tested by the department as part of the Community Care Pilot. Through the CSRS, the department engages with people in immigration detention that have no lawful entitlement to remain in Australia, encouraging them to voluntarily depart.

4.77 Depending on need, a person may be offered support and assistance as necessary to facilitate an immigration outcome, including referral to the International Organization for Migration (IOM) for independent immigration advice and counselling and assistance with departure arrangements. The CSRS allows people to remain lawfully

in the community on a bridging visa E while their status is being resolved so that detention is not necessary.[51]

4.78 An analysis of outcomes for people in the Community Care Pilot between May 2006 and July 2008 revealed that 435 people had been referred to IOM in that time period; of those, some 111 individuals (25 per cent) departed Australia voluntarily with IOM's assistance. The department's submission to this inquiry states that, 'Initial outcomes indicate that Assisted Voluntary Return from the community represents a cost-effective strategy for assisting those who wish to depart Australia but do not have the means to do so, compared to the conventional detention and removal arrangements'.[52]

4.79 Voluntary return options for people who are, have been, or will become unlawful non-citizens are available in a number of countries.[53] The International Organisation for Migration states that voluntary return programs are a key part of an effective immigration system, as voluntary returns are both a cost-effective and humane solution in many instances.

> Compared with forced return, the implementation of assisted voluntary return (AVR) lowers the risk for human rights violations, preserves the dignity of the returnee, and is usually less costly financially and politically for the Government than forced return. For these reasons, the inclusion of AVR is an important element in any coherent, effective migration management policy—not only regarding irregular migrants and unsuccessful asylum seekers, but for all migrants needing support to return home.[54]

4.80 The IOM also argues that the provision of accurate information based on realistic expectations is integral to the process of AVR.[55]

> Counselling should involve clear, thorough, and objective information based on facts collected in the host country and

51 Department of Immigration and Citizenship, submission 129n, p 7.

52 Department of Immigration and Citizenship, submission 129, p 37.

53 International Detention Coalition, submission 109, p 6.

54 International Organisation for Migration, *Assisting voluntary return,* viewed on 29 January 2009 at http://iom.ch/jahia/Jahia/about-migration/managing-migration/cache/offonce/pid/662;jsessionid=652036DBD4DA50DB933CD1238A26CBEA.worker0.2

55 International Organisation for Migration, *Designing a programme for assisted voluntary return,* viewed on 29 January 2009 at http://iom.ch/jahia/Jahia/about-migration/managingmigration/cache/offonce/pid/663;jsessionid=99293927CF93DB6F280 27590 E7346710.worker02.

> in the country of origin. All available options in the host and origin countries should be presented objectively to the migrants. To ensure impartial and objective counselling, this function is sometimes subcontracted to non-governmental partners. For migrants stranded in transit and migrants in an irregular situation, the counselling should, as far as possible, be handled by trained staff in the language of the migrants.[56]

4.81 Hotham Mission Asylum Seeker Project advised that non-detention-based repatriation assistance should be offered to all refused asylum seekers and provided evidence of the compliance rates from its own clients when appropriate caseworker management is provided. Over a five year period from 2001 to 2006, Hotham Mission found that of the asylum seekers it deals with in the community:

- 79 per cent voluntarily departed Australia after receiving a negative visa decision
- 12 per cent were removed by the department, and
- 3 per cent remained in detention awaiting removal.[57]

4.82 Better options for voluntary return from the community will increase the likelihood of people returning to their country of origin after a negative visa decision and deciding not to pursue spurious claims through review processes through fear of detention and enforced removal, or though inability to make return arrangements.

4.83 Recommendations for the provision of appropriate voluntary return support programs as part of the framework for community-based detention alternatives are made in Chapter 5.

Cost-effective detention alternatives

4.84 The Committee's first two considerations for assessing community-based detention alternatives go to ensuring a humane, appropriate and supportive environment for people with an unresolved immigration status, and ensuring a robust immigration system. The

---

56 International Organisation for Migration, *Designing a programme for assisted voluntary return,* viewed on 29 January 2009 at http://iom.ch/jahia/Jahia/about-migration/managing-migration/cache/offonce/pid/663;jsessionid=99293927CF93DB6F28027590E7346710.worker02.

57 Hotham Mission Asylum Seeker Project, submission 93, pp 11, 19.

third consideration of the Committee is to ensure that community-based detention alternatives represent a cost-effective approach to managing people who are awaiting case resolution or making arrangements for departure from Australia.

4.85 The Minister for Immigration and Citizenship in his speech of 29 July 2008, stated that the detention cost incurred by the Australian taxpayer was 'massive', indicating it cost around $220 million to operate Australia's immigration detention system in 2006-07.[58]

4.86 The Committee's terms of reference specifically task it with 'comparing the cost effectiveness of these [community-based detention] alternatives with current options'.

Limitations in details of costings provided to the Committee

4.87 The Committee's task of effectively comparing detention alternatives has been impeded by the lack of publicly available information on current costs of different types of detention and alternatives to detention.

4.88 In April 2009 following a number of requests DIAC provided to the Committee on a confidential basis, 2006-07 per day costs for immigration detention centres. DIAC delayed in complying with requests for updated financial data to enable the Committee to accurately assess and report on comparative costs. Requests for more information about the costs of different types of detention were also not provided to the Committee expediently.

4.89 The reason cited by DIAC for its earlier reticence was that contractual arrangements with the detention service provider were being finalised. The Department suggested that releasing detention costs for 2007-08 at this stage of the process may compromise DIAC's negotiating position.[59] The tender process was commenced in 2006, with tenders issued in May 2007.[60] It is expected to be concluded by mid-2009.[61]

---

58 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, 29 July 2008, p 13.

59 Department of Immigration and Citizenship, correspondence, 29 January 2009.

60 Department of Immigration and Citizenship, submission 129, p 34.

61 DIAC announced on 31 March 2009 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. The department has said that it will now

4.90 Given the emphasis of the Committee in this report and the previous report on transparency in immigration decision-making and administrative processes, the Committee is concerned at the lack of transparency and accountability in regards to detention costs and the fact that, presumably due to delays in the tender process, this information has not been publicly available for several years.

4.91 While the Committee is aware of the sensitivities associated with the detention services tender process it is of the view that the in confidence financial costs of detention could have been provided earlier, without jeopardising the tender process.

4.92 Additionally, the Committee makes the observation that financial and sensitive material is routinely provided in confidence to parliamentary committees, such as information associated with tender processes for major public works. Parliamentary Committees are charged with oversight of the work of executive government and this extends to scrutiny of expenditure.

4.93 The Committee will continue to negotiate with DIAC with a view to publishing costing information, as the Committee considers it important that this substantial government expenditure is on the public record.

4.94 In the absence of detailed cost data that can be analysed and outlined here, the Committee has drawn on the information provided confidentially in making its recommendations for this report. Drawing on historical and international evidence, in addition to parallels with the criminal justice system, the Committee has adopted a common-sense approach to assessing the comparative costs of detention alternatives and has made recommendations accordingly. If any of these recommendation are not accepted due to the cost of implementation, it is the expectation of this Committee that a full disclosure of costs is made at that time in order to justify the rejection of the Committee recommendation.

enter into negotiations with the preferred tenderer, with the intention of signing the contract by 30 June 2009. Department of Immigration and Citizenship, viewed on 1 April 2009 at http://www.newsroom.immi.gov.au/media_releases/692.

Estimated costs of detention centres and detention alternatives

Immigration detention centres

4.95 Immigration detention centres feature a high level of security and a high staff to detainee ratio to provide the full range of security, catering, advisory support, health and security needs, as well as the infrastructure and ongoing maintenance costs of the facilities.

4.96 Operating costs of detention centres include payments under the current contractual arrangements to the detention services provider for managing the facility.[62] According to the department, other costs include but are not limited to departmental expenses such as administrative costs, employee wages, travel and depreciation of assets.[63]

4.97 The average cost of detaining a person has risen dramatically over the last few years. In 1994-95 the average daily cost was $69, this figure rose to $105 in 1995-96 and $111 in 2004.[64]

4.98 A report published by Justice for Asylum Seekers (JAS) in 2003, estimated the costs of mandatory detention for 1326 asylum seekers as being in the vicinity of $2 million per week. The average operating costs ranged from $67- $273 per day in 2000-01 and reported to have risen to a range of $95-$533 in 2001-02.[65]

4.99 The most recent official figures on operating costs for detention centres are for 2005-06, prior to the commencement of the current tender process. At this time the annual budget for detention centre operation was over $64 million, however it should be noted that these costs were inclusive of facilities that are no longer operational such as the facility at Baxter, and contingency infrastructure at Port Hedland and Woomera. It was estimated then that the overall detention cost per day was $339, up from $243 in 2004-05.[66]

---

62 The detention services provider is currently Group 4 Securitor, but on 31 March 2009 DIAC announced that the next tender would be awarded to Serco Australia Pty Ltd.

63 Department of Immigration and Citizenship, Questions on notice (166), *Senate Hansard*, Budget Estimates, Legal and Constitutional Affairs Committee, 22 May 2006.

64 Castan Centre for Human Rights Law, submission 97, p 42.

65 Justice for Asylum Seekers, *Improving outcomes and reducing costs for asylum seekers* 2003, p 9.

66 Department of Immigration and Citizenship, Questions on notice, (51), *Senate Hansard*, Budget Estimates, Legal and Constitutional Affairs Committee, 13 February 2005. The operations cost for 2005-06 is a total of the overall operational and infrastructure costs provided by DIAC and does not include other national office costs.

4.100 Table 4.1 sets out figures provided at Senate estimates in 2005 which suggest that detention centres have high operating costs. The range of costs for each detention centre can vary dramatically based on the size of the centre, the infrastructure and services provided, security and guarding required, the particular needs of people detained and the costs of goods and services in a particular location.

Table 4.1 Historical operating costs of immigration detention centres

Immigration Detention Centre	2004–05	2005–06	Average cost per day
Villawood	$25 238 905	$13 763 131	$ 163
Maribyrnong	$ 7 497 437	$ 3 846 287	$ 314
Perth	$ 4 703 790	$ 3 456 244	$ 577
Christmas Island	$ 6 859 375	$ 2 605 339	$ 1701

Source: Adapted from Department of Immigration and Citizenship, Questions on notice, (51), Senate Hansard, Budget Estimates, Legal and Constitutional Affairs Committee, 13 February 2005.

4.101 Obviously the cost per day average is also dependent on the number of detainees. In a remote location such as Christmas Island, for example, there are high costs for maintaining detention facilities which have been empty or housing small numbers of detainees. For example, the maintenance cost for the Christmas Island detention centre, regardless of the number of detainees in the facility, is a total figure of $32 million per annum.[67]

4.102 Bob Correll, Deputy Secretary of the Department of Immigration and Citizenship, emphasised this point at Senate Estimates in May 2006:

> The actual cost per day is a calculation which represents the total expenses involved in the centre divided by the total number of detainee days. That means that if you have relatively small numbers of detainees in some centres the unit cost is at a much higher level. It is important to understand that—rather than it being a cost per day based on 100 per cent utilisation of facilities.[68]

67 Correll B, Department of Immigration and Citizenship, Budget Estimates, Senate Hansard, 28 May 2008, p 118-119.

68 Correll B, Department of Immigration and Citizenship, Senate Hansard, Budget Estimates Hearing, Legal and Constitutional Affairs Committee, 22 May 2006, p 153.

4.103 Notwithstanding the limitations of per day calculations, in the absence of other data, the Committee considers that cost per day averages of detention centres and detention alternatives provide a valuable indicative tool to assess cost effectiveness.

Immigration residential housing

4.104 IRH houses a smaller number of people than detention centres, although it remains a high security environment. People may leave the complex but only when accompanied by authorised personnel.

4.105 Similar to detention centres, those in IRH are provided access to recreational facilities, advisory support and health services. The small scale of residential housing may increase detention costs; however given that detainees in IRH are considered low flight risk and security is lower, it could be expected that this type of detention operates at a similar cost level to detention centres.

Immigration transit accommodation

4.106 Immigration transit centres are also secure detention environments although as their purpose is for more temporary accommodation there are less services and organised activities provided. This would suggest that the operational costs of immigration transit accommodation would be less than those of immigration detention centres.

Temporary alternative accommodation

4.107 Temporary alternative detention encompasses a range of options from medical care in hospitals, psychiatric and other inpatient facilities, to motel accommodation, foster care placement for children and minors, and state correctional facilities.

4.108 No information was received from DIAC on the current aggregate or unit costs of temporary alternative detention placements. In 2004, the department provided some information in response to question on notice from a Budget estimates hearing. In relation to state correctional facilities, a daily rate between $95 and $546 per detainee was paid to the state or territory. Motels when used as alternative places of detention ranged from $50 to $95 per night per detainee. In addition to the daily rate the department was responsible for the cost

of guarding, food and medical treatment if required.[69] Medical facilities had a variety of daily bed rates dependent on the treatment required during admission.[70]

Community detention

4.109 In community detention, people can come and go freely from their place of residence, and as such community detention does not incur the security costs of other forms of detention. The costs of community detention are primarily derived from higher support service delivery costs due to the dispersed nature of the community detention population, and the funding provided to the Red Cross to administer the community detention program. As with other forms of detention, health care service costs are met by DIAC.

4.110 DIAC advised that the annual budget for the community detention program has been $2 million since June 2005, a proportion of which is allocated to the Red Cross for its provision of services to people in community detention. For the financial year 2008-09, $1.043 million has been allocated for services provided by the Red Cross.[71] These costs do not include health services which are provided by the International Health and Medical Services (IHMS) as part of their detention health contract with the department.[72]

4.111 Advice received from the department indicates that the average cost of community-based detention is approximately $124 per day.[73] The cost is inclusive of services provided by the Australian Red Cross which includes financial support for living expenses essentials such as for food, clothing and utilities. The costs also cover rent assistance and where required education costs for children to attend the local public school.[74] There are a many difficulties posed by sourcing housing through the private rental market and then furnishing that housing. If the number of people on community detention was to rise significantly, then these difficulties would be compounded and the Committee anticipates that the per day cost of community detention may rise significantly.

69 Senate Legal and Constitutional Affairs Committee, Questions taken on notice, Budget Estimates Hearing, 26 May 2004, pp 7-8.

70 Senate Legal and Constitutional Affairs Committee, Questions taken on notice, Budget Estimates Hearing, 26 May 2004, pp 7-8.

71 Department of Immigration and Citizenship, submission 129f, p 36.

72 Department of Immigration and Citizenship, submission 129p, p 1.

73 Department of Immigration and Citizenship, submission 129l, p 3.

74 Department of Immigration and Citizenship, submission 129l, p 3.

4.112 The Committee notes that this expenditure does not extend to cover health services currently provided by IHMS as part of an existing detention health contract with the Department.[75]

> Under the current contract, IHMS facilitates access to health care through third party providers to people in Community Detention across Australia with the Australian Red Cross continuing to provide support services to these people. The size and utilisation of the network of providers managed by the Health Services Manager will increase as the proportion of people going into community detention increases.[76]

4.113 The Committee gained some insight into the parameters of defined costs of DIAC's immigration detention program. With some further analysis of historically significant financial data, the Committee understands that community-based detention is substantially less costly than high security immigration detention.[77] Bob Correll, Deputy Secretary, Department of Immigration and Citizenship also stated that in general, where it was appropriate for a person to be released into a community-based option, this represented a cost saving:

> We have and understand the relative costs between the forms of detention. Without specifying them, the cost for someone who has been in a community setting under the traditional arrangements that have applied to date is probably the lowest cost. I cannot comment on whether that cost would be the same as a cost structure in the future where a different type of service framework might be applicable. Where someone has been in a detention situation in the community, generally the cost of that is lower than other forms of detention, such as residential housing, transit accommodation or in a detention centre.[78]

4.114 Andrew Metcalfe, Secretary, Department of Immigration and Citizenship noted the responsibilities associated with detaining a person and the costs and risks that these imposed on the department:

---

75 Department of Immigration and Citizenship, submission 129f, p 36.

76 Department of Immigration and Citizenship, submission 129, p 32.

77 Joint Standing Committee on Migration, *Asylum border control and detention* (1994), Parliament of the Commonwealth of Australia, pp 39-45.

78 Correll B, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 11.

> …there is a different type of cost. Being in a detention environment carries significant costs and risks as far as the individual is concerned, such as the deprivation of liberty. It also places a great responsibility on the department. It is not just that it costs less for people to be in the community; there are actually fewer costs in terms of impact on individuals and, indeed, risks carried by the Commonwealth. So there are a range of reasons that you go down this path.[79]

Comparative costs of alternatives to detention

4.115 There are a number of instances where a person is granted a bridging visa pending their departure from Australia or outcome of a visa application. Often this will occur when a person has overstayed their visa, or broken the conditions of their visa, for example, by working or discontinuing study. It is DIAC policy to grant a bridging visa where appropriate in preference to taking a person into detention. As the Committee has also seen bridging visas may also be granted to people in detention, enabling a form of community release pending status resolution.

4.116 While detention carries significant costs and responsibilities for DIAC, this is not necessarily the case for a person on a bridging visa. Many people granted bridging visas will be making arrangements to depart Australia and will be wholly responsible for any costs incurred in the meantime. That said, a proportion of those on bridging visas will wait some weeks or months for the outcome of their immigration cases and during this time may have no means of support. As the focus of this report is on the use of bridging visas as a community-based alternative to detention, the discussion considers the possible costs of expanding the use of bridging visas to ensure a humane, appropriate and supported environment.

4.117 Currently the costs incurred by DIAC for those on bridging visas are program costs for the Community Care Pilot and the Asylum Seeker Assistance Scheme. As outlined in chapter 2, these schemes provide a basic living allowance to eligible people as well as rental assistance in some circumstances. Additionally the Community Care Pilot offers access to community-based health care providers through the department's contractual arrangements with IHMS; as well as

79 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 11.

migration counselling and advice. Not all of the pilot's clients are granted access to all components.[80]

4.118 As indicated earlier in the report, since its inception in May 2006 through to 31 January 2009, the Community Care Pilot has assisted 918 individuals.[81] The Australian Government has indicated it will continue to operate the pilot until 30 June 2009 at an annual cost of $5.6 million.[82] Out of this budget, DIAC makes payments on receipt of invoice for services provided under contract by the Australian Red Cross, IHMS, the IOM and registered providers in the IAAAS.[83]

4.119 DIAC advised the operating costs for the community care pilot were managed separately from client costs and limitations in service provider reporting arrangements prevented analysis to determine a definitive day by day cost.[84]

4.120 For the period 2007-08 the Asylum Seeker Assistance Scheme assisted 1867 people at a cost of $4.79 million.[85] Costs increased from 2006-07 due to an increased number of participants and an update of information technology infrastructure.[86] DIAC has advised the Committee that the 2008-09 budget allocation for the Asylum Seeker Assistance Scheme is up to $7.10 million.[87] The level of expenditure is based on demand and payments to the Australian Red Cross for services provided represent 80 per cent of the program budget.

4.121 DIAC has not provided an estimate of what it may cost the department to support a person living in the community on a bridging visa, in preference to detaining them. As a general estimate one would expect that the cost would be equivalent to the income assistance rate currently paid to people in community detention, on the Community Care Pilot or on the Asylum Seeker Assistance Scheme — that is, 89 per cent of Centrelink special benefit, which may

80 Department of Immigration and Citizenship, submission 129, p 37.

81 Department of Immigration and Citizenship, submission 129n, p 6.

82 Budget 2008-09, viewed on 30 January 2009 at http://www.budget.gov.au/2008-09/content/bp2/html/expense-18.htm.

83 Department of Immigration and Citizenship, submission 129p, p 1.

84 Department of Immigration and Citizenship, submission 129, p 37.

85 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.

86 Department of Immigration and Citizenship, *Annual report 2007-08* (2008), viewed on 11 February 2009 at http://www.immi.gov.au/about/reports/annual/2007-08/html/outcome1/administered1-7.htm.

87 Department of Immigration and Citizenship, submission 129f, p 36.

include a rental assistance component. Based on current special benefit payment rates, this would equate to a per-day cost of $32, not including any additional rental assistance component, administration and case management costs.[88] Health care and immigration counselling and advice would, of course, entail additional costs.

4.122 A number of submissions made the point that immigration detention in detention centres is costly and that a community-based system could provide better value for money for taxpayers.[89]

4.123 The Refugee Council of Australia argued that:

> Detention facilities are very expensive to operate and are far less economically efficient than the implementation of more humane approaches to managing Australia's comparatively small number of irregular migrants.[90]

4.124 An alternative approach to costing community-based alternatives is to consider the comparable experience of the criminal justice system with the range of options open to them, from high through to low security prisons, remand, and parole. Julian Burnside QC of Liberty Victoria explained that immigration detention remained a very expensive system in comparison to the bail system, a criminal justice equivalent, which was very inexpensive.[91]

4.125 Edmund Rice Centre made the following points:

> The cost to taxpayers is very large indeed, and would be very significantly less if community-based accommodation alternatives were used. In 2001, ERC made some estimates of costs, both of mandatory detention and of alternative, community-based, options:

---

88 Centrelink special benefit is currently paid at 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.

89 Refugee Advice and Casework Service, submission 25, p 3; Joint submission of The Social Justice Board of The Uniting Church in Australia, WA Synod, Social Responsibilities Commission - Anglican Province of Western Australia, Catholic Social Justice Council - Archdiocese of Perth, Council of Churches of Western Australia (WA) Inc, Religious Society of Friends, Perth Meeting, Coalition for Asylum Seekers, Refugees and Detainees (WA) Inc (CARAD), Centre For Advocacy, Support & Education (CASE) For Refugee Inc, and Edmund Rice Institute for Social Justice, Fremantle, submission 29, p 8. Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, submission 108, p 28, Castan Centre for Human Rights Law, submission 97, p 43, A Just Australia, submission 89,p 23; Forsyth E, submission 28, p 4; NetAct, submission 27, p 6

90 Refugee Council of Australia, submission 120, p 4.

91 Burnside J, Liberty Victoria, *Transcript of evidence*, 11 September 2008, pp 48-49.

- "Fact: Asylum seekers claims need to be assessed for legitimacy. Australia is the only Western country that mandatorily detains asylum seekers whilst their claims are being heard. Asylum seekers are not criminals and detention should be minimal. At a cost of $104 a day per head the policy of detention is very expensive. Community-based alternatives to mandatory detention can be found internationally and within the current Australian parole system.
- A select Committee of the New South Wales Parliament has costed alternatives to incarceration including home detention and transitional housing. The average cost of community-based programs are (per person, per day): Parole: $5.39. Probation: $3.94. Home Detention: $58.83. These options are clearly more economically efficient, and much more humane.[92]

4.126 A Just Australia also argues that a comparison with the cost of parole and community-release services by State Departments of Correctional Services demonstrates the cost effectiveness of community-release programs. For example, in 2006-07, the national average cost per day per inmate was $184.47 (and as high as $195.76 in New South Wales.) In contrast, for the same time period, the national average cost of community-based correctional services was $11.40 per day per inmate.[93]

4.127 The alternatives mentioned above tend to be more cost-effective as they do not require purpose built facilities of detention 'which have to be manned, maintained and operated with security guards for 24 hours.'[94]

4.128 The Law Institute of Victoria, Liberty Victoria and The Justice Project concluded that many significant reports have addressed the cost comparisons of detention and have consistently concluded that community-based alternatives to detention are significantly less expensive than detention in an immigration detention centre.[95]

4.129 An international survey by UNHCR found that, despite difficulties in obtaining reliable and comparable cost data from different countries, alternatives to immigration detention were almost always less

92 Edmund Rice Centre, submission 53, p 3.

93 A Just Australia, submission 89.

94 Council of Women, submission 111, p 7.

95 Law institute of Victoria, Liberty Victoria, The Justice Project, submission, p 43.

expensive for host governments than high security immigration detention facilities.[96]

4.130 The Human Rights and Public Law Committee of New South Wales Young Lawyers state that there is strong argument that community-based alternatives may be more cost-effective.[97]

> One US study found that a pilot program releasing asylum seekers into the community and monitoring them from time to time cost 55 per cent less than the cost of detaining them.[98]

4.131 It is difficult to assess costs of alternatives to detention as most countries do not report on such costs. The Castan Centre state that raw figures indicate that home detention costs about $60 a day, while a community parole method, such as bail, costs around $5 - $6 a day:

> For example, in relation to the United States Lutheran Immigration and Refugee Service's [LIRS] alternative, it was calculated that the cost of using LIRS's alternative up to an asylum seeker's hearing is about US $2626 (including the cost of detention prior to screening, and any necessary re-detention); comparatively, the cost of detention until a hearing is about US $7259. This is a difference of more than $4500 per person.
>
> Similarly, Canada's Toronto Bail Program reported that its alternative costs about $12-15 per day for staff running costs (not including costs of food and shelter etc.) as opposed to the $175 per day average cost of detention in a provincial jail in Canada.[99]

Support provided by non-government sector

4.132 The Committee heard time and time again about the challenges faced by non-government organisations in their attempts to support an increasing number of asylum seekers, including ex-detainees, by providing services ranging from sourcing accommodation and assistance with rent to counselling and health care.

4.133 Frederika Steen, of the Romero Centre in Brisbane, explained that the current infrastructure existed because of 'the goodwill and generosity

96 UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees* (2006), p 48.
97 Human Rights Committee, NSW Young Lawyers, submission 59, p 17.
98 Human Rights Committee, NSW Young Lawyers, submission 59, p 18.
99 Castan Centre for Human Rights Law, submission 97, p 43.

of the community.'[100] This was reiterated by Tamara Domicelj, of the Asylum Seekers Centre of New South Wales.[101]

4.134 A number of organisations identified that they received referrals from DIAC.[102] Kon Karapanagiotidis, of the Asylum Seeker Resource Centre, said that: 'The department of immigration sends hundreds of people to us every year'. Despite this, most received no federal government funding. The Asylum Seeker Resource Centre in Melbourne, for example, said that 94 per cent of their funding came from philanthropy and the goodwill of the community, with the remaining coming from state government funds shared with the rest of sector (the Network of Asylum Seeker Agencies).[103]

4.135 A number of submitters stated that the community sector is absorbing the most significant impact of increasing numbers of community-based asylum seekers.[104] For example, the Asylum Seeker Resource Centre in Melbourne reported that 2008 had been their busiest year in about three years, with 2150 new people coming to the centre seeking assistance.[105]

4.136 Tamara Domicelj told the Committee that, 'We are not in a position to sustain increased numbers of clients coming to our centre for support; we already are not a viable proposition'.[106] This was echoed in a submission from the Hotham Mission Asylum Seeker Project. The Mission reported that it currently spent between $10,000 and $12,000 per month covering the cost of rent or taking over the lease for those in private rental where no other housing options were available.[107] The Committee received anecdotal evidence that these organisations

100 Steen F, Romero Centre, *Transcript of evidence*, 23 January 2009, pp 13-14.

101 Domicelj T, Asylum Seekers Centre of New South Wales, *Transcript of evidence,* 24 October 2008, p 53.

102 Domicelj T, Asylum Seekers Centre of New South Wales, *Transcript of evidence,* 24 October 2008, p 57.

103 Karapanagiotidis K, Asylum Seeker Resource Centre, *Transcript of evidence,* 24 October 2008, p 71.

104 Scull S, *Defending human rights: Community-based asylum seekers in Queensland* 2004, p 62, Clapton E, Council of Churches of Western Australia, *Transcript of evidence*, 9 October 2008, p 2, Hopgood B, Refugee Claimants Support Centre, *Transcript of evidence*, 23 January 2009, p 2, Saul B, Sydney Centre for International Law, University of Sydney, 'The Rudd Government's human rights record: One year on', speech delivered to New South Wales Young Lawyers, Sydney, 29 October 2008, p 5.

105 Karapanagiotidis K, Asylum Seeker Resource Centre, *Transcript of evidence,* 24 October 2008, p 69.

106 Domicelj T, Asylum Seeker Centre of New South Wales, *Transcript of evidence,* 24 October 2008, p 5.

107 Hotham Mission Asylum Seeker Project, submission 93, p 19.

were already facing funding pressure as a result of rising rental prices and the impact of the economic downturn on donation levels.

4.137 A number of submissions argued that more financial assistance should be allocated to church groups and NGOs working in community care and accommodation options.[108]

4.138 Andrew Metcalfe, Secretary of the Department of Immigration and Citizenship, acknowledged the support provided and costs borne by non-government organisations:

> It is very well known and understood that the charitable groups and others have seen this as essentially a cost to them. That is largely focused on the issue of the so-called 45-day rule, as well as work rights, following a primary decision as people progress through a review process into judicial review and possibly the exercise of ministerial determinations. It is something that is very well understood. We discuss it regularly with stakeholders, and it is an issue that the minister is well aware of and considering.[109]

4.139 The Committee notes that this issue is under active consideration by the Minister. While there is a role for the community sector to play in supporting those released from detention, this support does not negate the role of the Government in providing appropriate housing options and a basic standard of material support.

Summary

4.140 The Committee's consideration of the cost-effectiveness of detention alternatives, as required by its terms of reference, has been impeded by DIAC's inability or unwillingness to provide the appropriate data in a timely fashion. Nonetheless, the Committee has been able to

---

108 Joint submission of The Social Justice Board of The Uniting Church in Australia, WA Synod, Social Responsibilities Commission - Anglican Province of Western Australia, Catholic Social Justice Council - Archdiocese of Perth, Council of Churches of Western Australia (WA) Inc, Religious Society of Friends, Perth Meeting, Coalition for Asylum Seekers, Refugees and Detainees (WA) Inc (CARAD), Centre For Advocacy, Support & Education (CASE) For Refugee Inc, and Edmund Rice Institute for Social Justice, Fremantle, submission 29, p 15.

109 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 19.

draw conclusions based on the limited data available to it and the evidence given to it by a range of experts.

4.141 While detention will remain a feature of the immigration landscape in Australia, community-based alternatives are cost-effective options to the current regime and are consistent with a robust and enforceable system.

4.142 Recommendations aimed at the issues raised in this report are addressed in chapter 5 as part of the Committee's framework to establish community-based alternatives to detention.

5

A coordinated framework for community-based alternatives to detention

5.1 This report is the second in a series of three reports on the inquiry into immigration detention in Australia. The purpose of this current report is to consider future options for additional community-based detention alternatives that can form part of this new beginning for immigration policy.

5.2 Accordingly, the Committee has established three considerations to inform and balance its assessment of community-based detention alternatives. These considerations are that community-based detention alternatives must:

- ensure a humane, appropriate and supportive living environment for those awaiting resolution of their immigration status
- maintain a robust and enforceable immigration system that operates with integrity throughout arrival, assessment, resettlement or departure processes for unlawful non-citizens, and
- provide cost-effectiveness and appropriate value for money.

5.3 Recognising the need to establish a holistic framework for the future that encompasses visa status, accommodation options, support services, processing and other issues, the Committee presents in this chapter its series of recommendations.

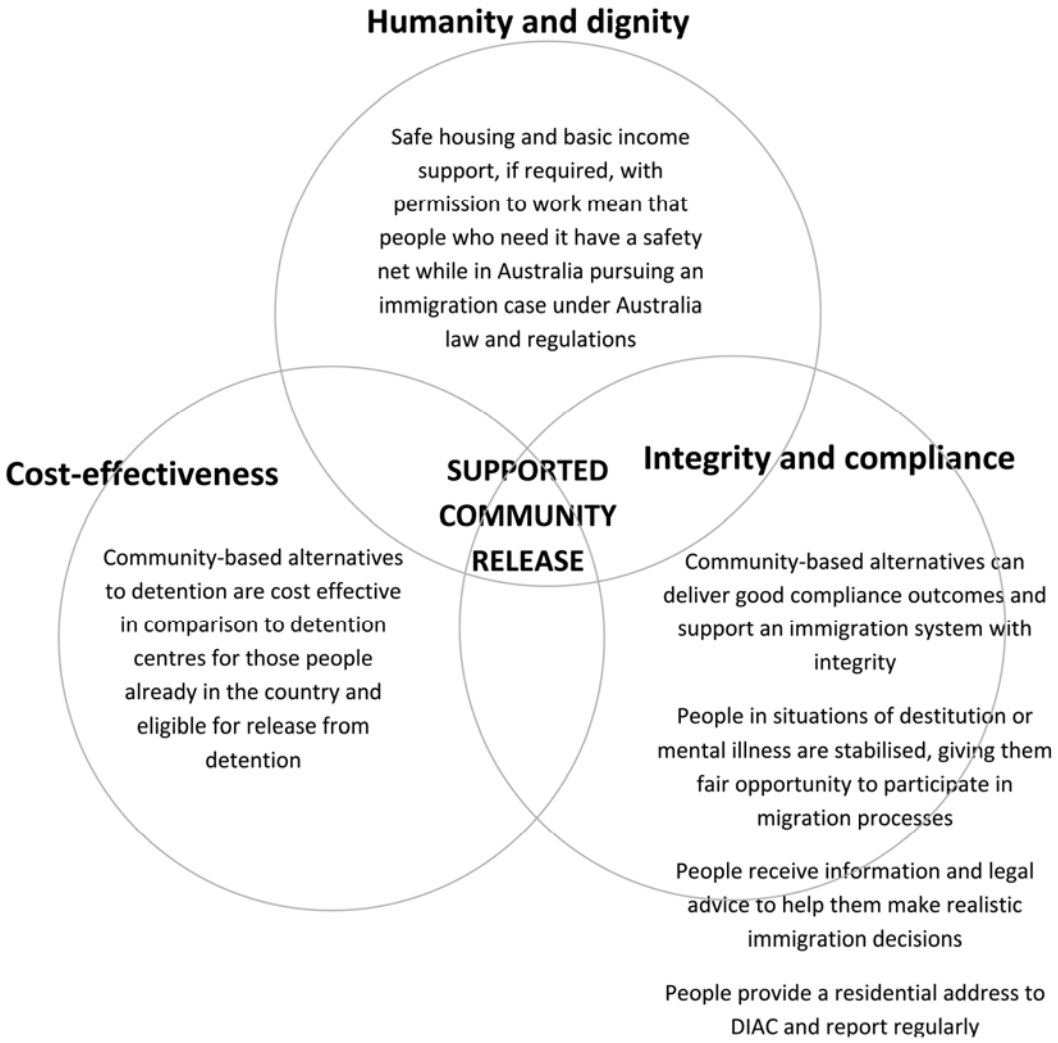
5.4 The Committee considers that there is clear evidence indicating the need for substantial change to immigration policy and the management of people awaiting case resolution. This evidence has

been documented in the first report and in the preceding chapters of this report.

5.5 Previous chapters have examined existing and international options for alternatives to immigration detention. Much of the evidence has been critical of deficiencies in current options. Drawing on this critique, the Committee has identified the core elements required to develop an improved framework for the future. Figure 5.1 shows that these core elements can be mutually reinforcing for the benefit of the individual and the Australian immigration system.

5.6 The Committee urges the Australian Government to accept the recommendations as they are presented – as an integrated framework for change that implement the immigration detention values stated by the Minister in July 2008 and balance the three considerations for community-based alternatives that have been set out by this Committee.

Figure 5.1 An integrated framework for release into the community



Bridging visas – a community-based alternative to detention

5.7 The Committee considers that the bridging visa framework represents a better community-based option for people than the use of community detention. Accordingly the Committee recommends that community detention is discontinued and those people assessed as suitable for release from detention centres are granted bridging visas until their departure or resolution of their cases.

5.8 This would be consistent with current DIAC practice of issuing bridging visas where appropriate, in preference to taking a person into detention, when unlawful non-citizens are located in the

community. It would also streamline the current approach and permit the consolidation of existing program resources for community-based bridging visa holders.

5.9 However, conditions placed on bridging visas are often restrictive and complex and not always consistent. The Committee believes that there is inadequate provision of services currently available to bridging visa holders. Evidence received by the Committee indicated that people can be granted and lose access to health care or permission to work at different stages of their immigration process. Losing access to these basic necessities can place individuals and families under significant strain. In particular, increased use of bridging visas without enhanced provision for support may result in some people being no better off, or even worse off, than in immigration detention.

5.10 The Committee acknowledges that this shift to use bridging visas as a community-based alternative to detention may necessitate reform to the existing bridging visa criteria. It is the Committee's view that a reformed bridging visa framework should include appropriate access to income, health care and housing, the specifics of which are elaborated on further in this chapter. DIAC officers will also be required to make the shift to a risk-based approach where detention is an option of last resort.

Recommendation 1

Given that the current bridging visa structure is shown to be complex and restrictive, the Committee recommends that the Australian Government reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements.

In reforming the bridging visa framework, specific consideration should be given to health, security and identity checks and risk assessments in accordance with the recommendations outlined by the Committee in its first report *Criteria for release from detention.*

Recommendation 2

The Committee recommends that the Australian Government utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved.

Recommendation 3

The Committee recommends that the Australian Government review the cases of those currently on residence determinations, known as community detention, with a view to granting a reformed bridging visa until their immigration status is resolved, ensuring that there is a continuation of services and support currently available to those individuals.

Transparency and integrity in our migration system

5.11 In line with its recommendations from the first report of the inquiry into immigration detention, the Committee concludes that there are opportunities to improve accountability and transparency in DIAC's decisions about who is eligible for release from immigration detention into the community and the conditions that will apply to that release.

5.12 It is appropriate for a person who is refused a bridging visa to be given reasons for this decision in writing. It is the view of the Committee that this makes good administrative practice. A decision in writing would also provide a person with clear and consistent information that can be translated if required, giving the individual an adequate opportunity to seek advice, legal or otherwise.

5.13 The Committee also notes that the length of time a person may have to seek review of the decision to refuse a bridging visa is in some instances as short as two days. This is not consistent with a just and transparent system of decision-making.

5.14 It is the view of the Committee that improved information to the prospective immigrant and fair opportunity for review of bridging visa decisions will result in greater clarity for people with an unresolved immigration status. It will also assist in the process of restoring public confidence in the integrity of the immigration system.

Recommendation 4

The Committee recommends that, for any case where a person held in some form of immigration detention is refused a bridging visa, the Australian Government require that:

- **clear and detailed reasons in writing are provided to the person being detained, and that**
- **the person has a reasonable time limit, up to 21 days, in which to seek merits review of that refusal, commensurate with those that apply to visa applicants in the community.**

5.15 The Committee notes the evidence that community-based options do not lead to increased rates of absconding as long as relevant assessment measures are used. Further, appropriate support and information may in fact stabilise a person or family in dire circumstances, enhancing their ability to navigate and make realistic decisions within our immigration system.

5.16 The Committee considers that access to quality, factual and competent advice is essential to the ongoing integrity of Australia's migration program. A number of contributors to the inquiry outlined the benefits of DIAC's Immigration Advice and Application Assistance Scheme (IAAAS), however as discussed in chapter 4 of this report, a significant amount of evidence drew the Committee's attention to the lack of appropriate legal advice provided to people in immigration detention or to people at risk of becoming unlawful non-citizens in the community.

5.17 It is the Committee's view that limited access to independent migration legal advice is prolonging case appeals and raising unrealistic expectations of immigration outcomes. Compliance and ongoing support costs are worsened by the failure to provide clear advice to people in detention or others in the community with unresolved immigration status.

5.18 The Committee recommends that all potential immigrants, whether in detention or in the community, have access to independent migration counselling and legal advice. Bridging visa holders may comprise people in a variety of different financial situations. Access to migration and legal counselling should therefore be means-tested.

Recommendation 5

The Committee recommends that the Australian Government provide means-tested access to independent migration counselling and migration legal advice to all people in immigration detention and to those living in the community on bridging visas.

In order to facilitate means-tested access to independent migration counselling, the Committee recommends that the Australian Government increase the scope of the Immigration Advice and Application Assistance Scheme and review the current eligibility criteria to make assistance under this scheme available to all people in immigration detention and to those living in the community on bridging visas.

5.19 The Committee encourages DIAC to expand the level of transparency and accountability in its decision-making. Greater provision of information to potential immigrants increases the prospects for informed and realistic decisions to be made by applicants.

5.20 The Committee considers that Ministerial discretion provisions may inadvertently be leading to prolonged case resolution and a lack of transparency in immigration decision-making. Repeat requests for ministerial intervention can arise because no reasons are provided to a person for ministerial decisions. The Committee recommends that reasons, time frames and criteria for decisions are provided to people who have sought ministerial intervention. The information recently published on the departmental website, outlining the process for ministerial intervention and what might be considered unique or exceptional circumstances, is a positive step in the right direction.

Recommendation 6

The Committee recommends that the Australian Government:

- **provide indicative processing times and criteria for the ministerial discretion provisions under the *Migration Act 1958* in order to avoid prolonged uncertainty for people, and**
- **provide reasons for ministerial decisions in order to improve transparency and discourage repeat requests for ministerial intervention.**

5.21 In the first report of the inquiry into immigration detention, the Committee considered evidence on repatriation and recommended that the Australian Government, in consultation with professionals and advocacy groups within the immigration detention field, improve the guidelines for the process of removals from Australia.

5.22 The Committee's recommendation recognised that greater options for voluntary removals from detention were required to facilitate the return of those individuals who were unable to establish a meritorious claim for a permanent residence in Australia.

5.23 The Committee recognises that voluntary repatriation is a key part of a robust immigration system. Enforced removals will occur but it is preferable to support people to voluntarily depart following a negative immigration outcome.

5.24 The Committee considers that an enlarged voluntary repatriation program is essential. Counselling and assistance to this group of people in making departure arrangements is required. Such a program should be accessible on a means-tested basis to all people who have or may be close to reaching the end of their immigration process, regardless of whether they are on a bridging visa or in detention.

5.25 With the greater use of community-based detention recommended by the Committee, it is important that voluntary repatriation programs are delivered in cases where a negative visa decision is likely, so that these people are better prepared to accept the decision and quickly make departure arrangements.

Recommendation 7

The Committee recommends that the Australian Government establish a voluntary repatriation program, similar to that run by the International Organisation for Migration through the Community Care Pilot, which can be accessed by all people whether in detention or released on a bridging visa.

Access to income, health care and housing

5.26 A system of community release through grant of bridging visas needs to include additional support for vulnerable people, such as through the Community Care Pilot model.

5.27 Some people being released from immigration detention, particularly those who may have previously had a substantive visa and have networks in the Australian community will not need this support.

5.28 However, there will likely be an increase in the number of people who do not have their own means of support or the capacity to easily source accommodation. The use of bridging visas as an alternative to detention also places a responsibility on the Commonwealth to ensure that people are not destitute, in urgent need of health care, or homeless in the community.

5.29 The Committee considers that the provision of income support and access to necessary health care should be available on a needs assessed basis to people awaiting case resolution. In recognition of the difficulties these people may face in securing accommodation and furnishing that accommodation to meet their basic needs, the Committee recommends that assistance is available similar to that currently provided through the Asylum Seeker Assistance Scheme and Community Care Pilot. Essential orientation information should also be provided to enable people to live safely in the Australian community, access and manage income support payments, and access health care and emergency services.

5.30 Drawing on cost data provided to the Committee in confidence, as well as international and historical evidence, the Committee concludes that providing basic income support, access to necessary health care and assistance in sourcing accommodation remains a more cost-effective option than retaining a person in secure detention.

5.31 The Committee suggests that the most effective mechanism to deliver these services may be through one amalgamated program (combining the current Community Care Pilot, Asylum Seeker Assistance Scheme and community detention programs) with expanded eligibility and resources.

5.32 The Committee also acknowledges the need for a stock of readily available immigration housing and addresses this later in the chapter.

Recommendation 8

The Committee recommends that the Australian Government reform the bridging visa framework to ensure that people are provided with the following where needed:

- **basic income assistance that is means-tested**
- **access to necessary health care**
- **assistance in sourcing appropriate temporary accommodation and basic furnishing needs, and provision of information about tenancy rights and responsibilities and Australian household management, where applicable, and**
- **community orientation information, translated into appropriate languages, providing practical and appropriate information for living in the Australian community, such as the banking system, public transport and police and emergency contact numbers.**

5.33 It is unacceptable that children are living in the community in preventable poverty, particularly given the efforts of the Australian Government in recent years to remove children and families from immigration detention centres in recognition of their particular vulnerabilities. The circumstances of children in bridging visa families without an income are incongruous with these efforts.

5.34 Therefore the Committee makes an additional recommendation to safeguard the rights and interests of children living in the community, regardless of their immigration status and notes the need to ensure that states and territories are adequately resourced to meet their obligations.

Recommendation 9

The Committee recommends that the Australian Government commit to ensuring that children living in the Australian community, while their or their guardian's immigration status is being resolved, have access to:

- **safe and appropriate accommodation with their parent(s) or guardian(s)**
- **the provision of basic necessities such as adequate food**

- **necessary health care, and**
- **primary and secondary schooling.**

Permission to work

5.35 It is the expectation of the Committee that reduced visa decision times will mean that fewer people are spending extended lengths of time on bridging visas in the community. This will address many of the issues (such as mental wellbeing and capacity to support oneself) that were raised in regards to the desire of people to undertake paid work.

5.36 Where case resolution is ongoing, or where departure arrangements cannot be made promptly, the Committee recommends that the Government reform the bridging visa framework to grant people permission to work. Given also the relatively small numbers of people involved, the Committee does not anticipate that this policy change would negatively impact on local labour markets.

5.37 Additionally, the Committee notes that a significant proportion of bridging visa holders, particularly those who have already been lawfully in the community and may be granted a more beneficial class of bridging visa, already have work rights from the date of lodgement of a visa application or the commencement of their bridging visa.

5.38 Tying work rights to compliance with reporting requirements and immigration processes will also encourage people to comply with our immigration system and identify work rights as a privilege that is conditional on the resolution of immigration status. Needless to say, reporting requirements for people who are working should be structured so as to accommodate their working hours.

5.39 Permission to work should be granted as a continuing condition of the person's bridging visa until such time as departure from Australia or the immigration case is resolved. Permission to work should continue regardless of whether a person has applied for a review of their immigration case. Revoking work rights in this manner diminishes the integrity of the immigration system and may result, as the Committee has heard, in people living in the community in destitution and increasingly desperate circumstances.

Recommendation 10

The Committee recommends that the Australian Government reform the bridging visa framework to grant all adults on bridging visas permission to work, conditional on compliance with reporting requirements and attendance at review and court hearings.

Recommendation 11

The Committee recommends that the Australian Government provide that, where permission to work on a bridging visa is granted, this permission should continue irrespective of whether a person has applied for a merits, judicial or ministerial review.

Community-based immigration housing

5.40 The Committee is concerned that a reliance on the private rental market as an alternative to immigration detention facilities is inefficient. Reliance on the private rental market may pose a barrier to releasing people from detention and so result in ongoing detention at a higher per day cost until appropriate and affordable accommodation is located. Due to the uncertain length of time a person may require accommodation, there are also difficulties regarding lease length.

5.41 The Committee is also concerned that reliance on the private rental market requires each property rented to then be furnished which incurs additional costs borne either by DIAC or by non-government organisations and charities.

5.42 The private rental market is flexible and the Committee considers it has a place in providing some special accommodation needs. However, the current reliance on private rental is not cost-effective and frequently is not able to deliver on appropriate and supported accommodation options.

5.43 The Committee considers that the provision of furnished community-based immigration housing is an essential element in the future. To provide a flexible range of housing options, the Committee recommends that the Australian Government have access to some

hostel-style open accommodation, as well as co-located self-contained accommodation suitable in particular for families.

5.44 The Committee recommends that these housing complexes are co-located, where possible, such as in a block of apartments, a row of townhouses, or a series of purpose-built accommodation units, where each person has their own private living space. This arrangement is similar to the current immigration residential housing complexes, however no security would be required in this proposed form of migration housing.

5.45 This arrangement would permit some social connections with other people in similar circumstances, whilst also ensuring some autonomy, privacy and flexibility for religious, cultural and personal preferences. Additionally, this facilitates the work of DIAC and other service providers who can make contact with a range of people at the same time and provide a regular presence (even if off-site or occasional) that residents can rely on. It would also assist in the provision of activities and orientation assistance for living in the Australian community.

Recommendation 12

The Committee recommends that the Australian Government have access to a stock of furnished community-based immigration housing which:

- **should consist of open hostel-style accommodation complexes and co-located housing units.**
- **should be available to people and families on bridging visas who do not have the means to independently organise for their housing needs in the community, and**
- **where rent should be determined on a means-tested basis.**

Additional Committee comments

Reporting and monitoring

5.46 In the series of recommendations outlined above the Committee has not pursued the options of a reformed security bond system or of electronic monitoring. While it may be valuable to keep these options open, particularly as DIAC begins to assess the compliance performance of a reformed immigration detention framework, the Committee does not see any justification for their use at this time or for major changes to the system of security bonds already in place.

5.47 With regards to electronic monitoring, the Committee notes the ethical and civil liberties issues, the expense attached to an effective system and building staff and technological capacity, and doubts about the reliability of the technology at its current stage of development.

5.48 Reporting through voice verification technologies, on the other hand, may be a positive development in the immigration field in that it could reduce the travel and effort involved in a person reporting face-to-face at a DIAC office and achieve the same objective. Any use of voice reporting technology would be subject to feasibility, cost-effectiveness and reliability. However, the Committee did not receive sufficient evidence to make a recommendation on this subject.

Hosted stays in the community

5.49 Taking into account the evidence received on the value of social connections in the community, both for compliance rates and for the person's wellbeing, the Committee considers that hosted stays in the community are a viable additional option and could be incorporated into the framework for community release proposed.

5.50 This model has in fact been employed in recent years through the temporary alternative detention classification, however the Committee considers that the requirement for a 'designated person' under that form of detention limits its effectiveness and places unreasonable responsibility on the person or family hosting another.[1]

1 See chapter 2, paragraph 2.11, for further information on temporary alternative detention.

5.51 The Committee however, acknowledges that the proposal of hosted stays in the community does have its benefits. Where people have networks in the community and would prefer to be hosted in a home rather than live in immigration housing, this could relieve some of the pressure on DIAC in managing accommodation for people in the community.

5.52 Hosted stays would not need to be facilitated or overseen by DIAC. Just as the majority of bridging visa holders make, and continue to make their own arrangements for accommodation in the community, people could draw on their own networks to arrange a stay in someone's home, or alternatively this could be facilitated by willing local community groups or non-government organisations. Under the Committee's proposed recommendations, people meeting the means-test would also receive basic income support, allowing them to pay rent or board to their hosts as appropriate. As with all bridging visas, the person would be required to provide DIAC with their residential address and meet any reporting or security bond requirements.

5.53 The Committee has not received sufficient evidence on this subject to outline any further how hosted stays in the community might work, and as such could not make a recommendation.

Ongoing role for alternative forms of detention

5.54 The Committee acknowledges that there remains a place for secure immigration detention in some form, where the need can be demonstrated and as set out in the Committee's first report.

5.55 It is also supportive of the Minister for Immigration and Citizenship's statement that detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.[2]

5.56 In recommendations 1 and 2, above, the Committee has expressed the view that the Government reform the bridging visa framework and implement a system of bridging visa release, supported where appropriate, should be used in preference to community detention.

5.57 This implies that alternative temporary detention in the community, immigration residential housing and immigration transit

2 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, 29 July 2008.

accommodation will continue to play important roles for DIAC's management of people in detention who have yet not been cleared for health, identity or security purposes, or for those awaiting immediate removal from Australia.

5.58 There was some concern amongst inquiry participants, however, that in the context of reforms to immigration detention, alternative forms *of* detention, rather than genuine alternatives *to* detention, may be used as a de facto form of community release.

5.59 In the Committee's view, these types of detention, while worthy developments, are still forms of detention and maintain the requirement either that a person be restricted to a particular space or that they be accompanied at all times. For this reason their use should be restricted to people who have not satisfied the conditions of release into the community.

5.60 For those eligible for release to community-based alternatives, the Committee considers that the framework of support outlined here represents a new beginning in Australia's immigration system. It establishes a system with integrity and cost-effectiveness while delivering a humane approach that treats all people with dignity and respect.

Michael Danby MP
May 2009

A

Appendix A: List of submissions to the inquiry

1	Blue Mountains Refugee Support Group
2	Mrs Nancy Eggins
3	Ms Pauline Lovitt
4	Ms Robin Gibson
5	Ms Virginia Walker
6	Mr Leith Maddock
7	Mrs Daphne Lascaris
8	Rev Isobel Bishop
9	North Belconnen Congregation, Uniting Church in Australia
10	Ms Diana Greentree
10a	Ms Diana Greentree — SUPPLEMENTARY
11	Mr Nick Armitage
12	Dr Juliet Flesch
13	Ms Amalina Wallace
14	Ms Marilyn Penneck
15	Mrs Jean Jordan

16 Mr Rex Rouse

17 Ms Cynthia Pilli

18 Mr and Mrs Peter and Jan McInerney

19 Labor for Refugees (Victoria)

20 Little Company of Mary Refugee Project

21 Australian Catholic Migrant and Refugee Office

22 Ms Susanne Gannon

23 Montmorency Asylum Seekers Support Group

24 Professor Mary Crock

25 Refugee Advice and Casework Service (Australia) Inc

26 Dr Anne Pedersen and Ms Mary Anne Kenny

27 NetAct

28 Professor Elliott Forsyth

29 The Social Justice Board of The Uniting Church In Australia, WA Synod Social Responsibilities Commission, Anglican Province of Western Australia Catholic Social Justice Council, Archdiocese of Perth Council of Churches of Western Australia (WA) Inc Religious Society of Friends, Perth Meeting Coalition Assisting Refugees and Detainees (WA) Inc Centre For Advocacy, Support & Education (CASE) For Refugees Inc Edmund Rice Institute for Social Justice, Fremantle

29a The Social Justice Board of The Uniting Church In Australia, WA Synod Social Responsibilities Commission, Anglican Province of Western Australia Catholic Social Justice Council, Archdiocese of Perth Council of Churches of Western Australia (WA) Inc Religious Society of Friends, Perth Meeting Coalition Assisting Refugees and Detainees (WA) Inc Centre For Advocacy, Support & Education (CASE) For Refugees Inc Edmund Rice Institute for Social Justice, Fremantle — SUPPLEMENTARY

30 Name Withheld

31 Mercy Refugee Service

32 Circle of Friends 42

33	The Migrant Health Service
34	Ecumenical Social Justice Group/Western Suburbs Inc (Brisbane)
35	Australian Catholic Social Justice Council
36	Sr Claudette Cusack
37	Ms Bette Devine
38	Ms Linda Jaivin
39	Geoffrey, Donald and Gillian Allshorn
40	Children Out of Detention (ChilOut)
41	Buddies Refugee Support Group
42	Queensland Council for Civil Liberties
43	Ms Mary de Merindol
44	ALP Goldstein Federal Electoral Assembly
45	Ms Halinka Rubin
46	Women's Electoral Lobby Australia
47	Sr Anne Higgins
48	Mr Fred Johnson
49	NSW Council for Civil Liberties
50	Mrs Willis Ripper
51	Mr Arthur Maxwell Ripper
52	Ms Michelle Dimasi
53	Edmund Rice Centre
54	The Royal Australasian College of Physicians
55	Labor For Refugees (New South Wales)
56	Human Rights Committee, NSW Young Lawyers
57	Researchers for Asylum Seekers
58	Dr Sev Ozdowski OAM
59	Ms Sue Hoffman
59a	Ms Sue Hoffman — SUPPLEMENTARY

60 Mr Paul Falzon

61 Attorney-General's Department

62 Immigration Detention Advisory Group

63 Ms Margaret Bryant

64 Ms Janet Castle

65 Mrs Amina Daligand

66 Ms Lesley Walker

67 Ms Marilyn Shepherd

67a Ms Marilyn Shepherd — SUPPLEMENTARY

68 Balmain for Refugees

69 Uniting Church in Australia

70 Ms Anna Harding

71 Federation of Ethnic Communities Councils of Australia

72 CONFIDENTIAL

73 Jesuit Refugee Service Australia

74 Dr Michelle Foster

75 Ms Doreen Roache

76 Assoc Prof Simon Rice, Dr Hitoshi Nasu &
Mr Matthew Zagor

77 Ms Jenny Denton

78 Ms Meryl McLeod

79 National Ethnic Disability Alliance

80 Mr Andrew Naylor

81 Sr Jane Keogh

82 Ms Linda Leung

83 ACT Government

84 Public Interest Advocacy Centre Ltd

85 Australian Lawyers for Human Rights

85a	Australian Lawyers for Human Rights — SUPPLEMENTARY
86	Ms Trish Highfield
87	Ms Helen Lewers
88	Dr Helen McCue
89	A Just Australia
90	Joint Advocacy Statement
91	Rural Australians for Refugees - Daylesford and District
92	Brotherhood of St Laurence
93	Hotham Mission Asylum Seeker Project
93a	Hotham Mission Asylum Seeker Project — SUPPLEMENTARY
94	Australian Federation of AIDS Organisations and HIV/AIDS Legal Centre
95	Ms Emily Ackland
96	CONFIDENTIAL
97	Castan Centre for Human Rights Law
98	Centre for Human Rights Education, Curtin University of Technology
99	Human Rights and Equal Opportunity Commission
100	Ms Kath Morton
101	Detention Health Advisory Group
101a	Detention Health Advisory Group
102	Romero Centre
103	SCALES Community Legal Centre with the assistance of students from the Murdoch University School of Law
103a	SCALES Community Legal Centre with the assistance of students from the Murdoch University School of Law – SUPPLEMENTARY CONFIDENTIAL
104	Ms Margaret O'Donnell
105	The Australian Psychological Society Ltd

106	Department of Premier and Cabinet, Western Australia and other Agencies
107	Ms Carmel Kavanagh
108	Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)
109	International Detention Coalition
110	Ms Cecilia Quinn
111	National Council of Women in Australia
112	Mr Michael Clothier
113	Ms Ruth Prince
114	Queensland Government
115	Mr Paris Aristotle AM
116	Ms Chris Rau
117	Human Rights Law Resource Centre Ltd
118	Sr Stancea Vichie
119	Australian Council of Heads of Schools of Social Work (ACHSSW)
120	Refugee Council of Australia
121	Asylum Seeker Resource Centre
121a	Asylum Seeker Resource Centre — SUPPLEMENTARY
122	Mr Habib Khan
123	Public Interest Law Clearing House
124	Get Up!
125	Law Council of Australia
126	The Commonwealth Ombudsman
126a	The Commonwealth Ombudsman — SUPPLEMENTARY
127	Law Institute of Victoria, Liberty Victoria and The Justice Project
127a	Law Institute of Victoria, Liberty Victoria and The Justice Project — SUPPLEMENTARY

128	Mr Guy Coffey and Mr Steven Thompson
129	Department of Immigration and Citizenship
129a	Department of Immigration and Citizenship — SUPPLEMENTARY
129b	Department of Immigration and Citizenship — SUPPLEMENTARY
129c	Department of Immigration and Citizenship — SUPPLEMENTARY
129d	Department of Immigration and Citizenship — SUPPLEMENTARY
129e	Department of Immigration and Citizenship — SUPPLEMENTARY
129f	Department of Immigration and Citizenship — SUPPLEMENTARY
129g	Department of Immigration and Citizenship — SUPPLEMENTARY CONFIDENTIAL
129h	Department of Immigration and Citizenship — SUPPLEMENTARY
129i	Department of Immigration and Citizenship — SUPPLEMENTARY CONFIDENTIAL
129j	Department of Immigration and Citizenship — SUPPLEMENTARY
129k	Department of Immigration and Citizenship — SUPPLEMENTARY CONFIDENTIAL
129l	Department of Immigration and Citizenship — SUPPLEMENTARY
129m	Department of Immigration and Citizenship — SUPPLEMENTARY
129n	Department of Immigration and Citizenship — SUPPLEMENTARY
129o	Department of Immigration and Citizenship — SUPPLEMENTARY
129p	Department of Immigration and Citizenship — SUPPLEMENTARY

129q CONFIDENTIAL

129r Department of Immigration and Citizenship — SUPPLEMENTARY

129s Department of Immigration and Citizenship — SUPPLEMENTARY

130 Refugee and Immigration Legal Centre Inc

131 Ms Frederika Steen

132 Amnesty International Australia

133 United Nations High Commissioner for Refugees

134 Ms Ngareta Rossell

135 CONFIDENTIAL

136 CONFIDENTIAL

137 National Legal Aid

138 Ms Mairi Petersen and Ms Natalie Gould

139 Australian Security Intelligence Organisation

139a Australian Security Intelligence Organisation SUPPLEMENTARY CONFIDENTIAL

140 CONFIDENTIAL

141 Mr Stanley Taurua

142 Mr Howard Adelman

143 A Just Australia and Refugee Council of Australia

B

Appendix B: List of public hearings and inspections

Tuesday, 22 April 2008 — Sydney

Site inspection of Villawood Immigration Detention Facility and immigration residential housing

Wednesday, 7 May 2008 — Sydney

Individuals

Ms Linda Jaivin

Mr Morteza Poorvadi

A Just Australia

Ms Kate Gauthier, National Coordinator

Amnesty International Australia

Dr Graham Thom

Asylum Seekers Centre

Ms Tamara Domicelj, Director

Australian Red Cross

Mr Noel Clement, General Manager, Domestic Operations

Ms Annie Harvey, Manager, ITRASS

Balmain for Refugees

Mrs Deborah Nicholls

House of Welcome

Father James Carty, Coordinator

Mercy Refugee Service

Sister Lorraine Phelan, On-Shore Programmes Manager, Mercy Works Inc

Monday, 7 July 2008 — Darwin

Visit to Headquarters Northern Command, Larrakeyah Barracks

Site inspection of hotel facilities

Site inspection of the Northern Immigration Detention Centre, Defence Establishment Berrimah

Tuesday, 8 July 2008 — Christmas Island

Site inspection of the Phosphate Hill immigration detention facility and adjacent construction camp

Site inspection of the Christmas Island Immigration Detention and Reception Centre, North-West Point

Wednesday, 3 September 2008 — Canberra

Immigration Detention Advisory Group

Air Marshal Ray Funnell AC (Rtd), Member

Hon John Hodges, Chair

Wednesday, 10 September 2008 — Melbourne

Site inspection of Maribyrnong Immigration Detention Centre

Site inspection of Melbourne Immigration Transit Accommodation

Visit to the Asylum Seekers Resource Centre, West Melbourne

Thursday, 11 September 2008 — Melbourne

Individuals

Mr Guy Coffey

Australian Red Cross

Mr Noel Clement, General Manager, Domestic Operations

Brotherhood of St Laurence

Ms Serena Lillywhite, Manager, Sustainable Business

Castan Centre for Human Rights Law

Dr Susan Kneebone, Deputy Director

Detention Health Advisory Group

Assoc Professor Harry Minas, Chair

Dr Tim Lightfoot, Member

Dr Gillian Singleton, Member

Hotham Mission Asylum Seeker Project

Ms Caz Coleman, Project Director

Ms Stephanie Mendis, Casework Team Leader

Law Institute of Victoria

Ms Joanne Knight, Chairperson, Refugee Law Reform Committee

Ms Jessie Taylor, Convenor - Immigration Detention Working Group, The Justice Project and Liberty Victoria

Liberty Victoria

Mr Julian Burnside QC, President

Refugee and Immigration Legal Centre Inc

Mr David Manne, Coordinator/Principal Solicitor

The Justice Project Inc

Mr Kurt Esser, Chair

Wednesday, 17 September 2008 — Canberra

Office of the Commonwealth Ombudsman

Prof John McMillan, Commonwealth Ombudsman

Mrs Helen Fleming, Senior Assistant Ombudsman

Mr George Masri, Senior Assistant Ombudsman

Dr Vivienne Thom, Deputy Ombudsman

Wednesday, 24 September 2008 — Canberra

Department of Immigration and Citizenship

Mr Dermot Casey, Ag First Assistant Secretary

Mr Bob Correll, Deputy Secretary

Ms Arja Keski-Nummi, First Assistant Secretary, Refugee Humanitarian and International Division

Mr Andrew Metcalfe, Secretary

Ms Lyn O'Connell, First Assistant Secretary

Wednesday, 8 October 2008—Perth

Site inspection of Perth Immigration Detention Centre and immigration residential housing

Meeting with Ms G, community detention client

Thursday, 9 October 2008—Perth

Individuals

Mr Stephen Khan

Dr Anne Pedersen

Centre for Human Rights Education, Curtin University of Technology

Professor Linda Briskman

Centrecare Inc

Mr Nigel Calver, Executive Manager

Mr Anthony Pietropiccolo, Director

Project SafeCom Inc

Mr Jack Smit, Executive Director / Project Coordinator

Southern Community Advocacy Legal and Educational Services Community Legal Centre

Ms Anna Copeland, Acting Director (Southern Community Advocacy Legal and Educational Services)

Ms Mary Anne Kenny, Solicitor/ Migration agent

Mrs Vanessa Moss, Solicitor/ Migration agent

The Uniting Church in Australia

Ms Rosemary Hudson Miller, Associate General Secretary, Justice and Mission

Uniting Church in Australia - Western Australia

Mr Mark Cox, Solicitor

Wednesday, 15 October 2008 — Canberra

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

United Nations High Commissioner for Refugees

Mr Richard Towle, Regional Representative

Friday, 24 October 2008 — Sydney

Individuals

Dr Sev Ozdowski OAM

A Just Australia

Ms Kate Gauthier, National Coordinator

Asylum Seeker Resource Centre

Mr Kon Karapanagiotidis, Chief Executive Officer

Ms Pamela Curr, Campaign Coordinator

Ms Maria Psihogios-Billington, Principal Solicitor

Asylum Seekers Centre

Ms Tamara Domicelj, Director

Australian Human Rights Commission

Mr Graeme Innes, Human Rights Commissioner and Disability Discrimination Commissioner

Ms Catherine Maywald, Policy Officer, Human Rights Unit

Balmain for Refugees

Ms Frances Milne

Mr Shane Prince, Counsel

Get Up!

Mr Edward Coper, Campaigns Director

Ms Anna Saulwick, Rights, Justice and Democracy Campaigner

Human Rights and Equal Opportunity Commission

Ms Susan Newell, Acting Director, Human Rights Unit

Legal Aid NSW

Ms Elizabeth Biok, Solicitor

Mr Bill Georgiannis, Solicitor

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

Ms Deborah Gould, Clinical Psychologist

Ms Gordana Hol-Radicic, Clinical Psychologist, Acting Clinical Services and Research Coordinator

Participants in roundtable of community detention clients

Ms K

Mr U

Mrs Z

Mr W

Ms L

Mr K

Miss Z

Thursday, 22 January 2009 — Melbourne

Asylum Seeker Resource Centre

Ms Pamela Curr, Campaign Coordinator

Ms Maria Psihogios-Billington, Principal Solicitor

Australian Red Cross

Ms Melissa Bencik, Caseworker

International Coalition on the Detention of Refugees, Asylum Seekers and Migrants

Mr Grant Mitchell, Director

Participants in roundtable of bridging visa clients

Ms G D

Ms W D

Mrs F G

Mr H G

Mr S H

Ms S I

Ms L I

Mr Q L

Mr P Q

Mr G S

Friday, 23 January 2009 — Brisbane

Individuals

Ms Kerrie Woodrow

Bric Housing

Mr Tofiq Al Qady, Tenant/Caretaker

Ms Margaret Gleeson, Housing Worker

Ethnic Communities Council of Queensland

Mr Andrew Bartlett, Policy and Advocacy Advisor

Metropolitan Association Towards Community Housing

Mrs Carolyn Doherty, Chief Executive Officer

Multicultural Development Association

Ms Karen Lee, Executive Manager

Refugee and Immigration Legal Service

Ms Sonia Caton, Director

Refugee Claimants Support Centre

Miss Bess Hopgood, Joint Coordinator

Romero Centre

Mr Abdul Ghaznawi, Client

Mr Hassan Ghulam, Community Wellbeing Worker

Ms Kathi McCulloch, Coordinator

Ms Frederika Steen, Information Officer

Wednesday, 4 February 2009 — Canberra

Refugee Council of Australia

Mr Chris Nash, National Policy Director

Mr Paul Power, Chief Executive Officer

Monday, 23 February 2009 — Canberra

Site inspection of the Alexander McConachie Centre

Wednesday, 25 February 2009 — Canberra

Griffith University

Professor Howard Adelman, Research Professor, Detention Research Group, Key Centre for Ethics, Law, Justice and Governance.

Wednesday, 18 March 2009 — Canberra

Department of Immigration and Citizenship

Mr Bob Correll, Deputy Secretary

Ms Lynne Gillam, Assistant Secretary, Compliance Resolution

Mr Peter Hughes, Deputy Secretary

Ms Arja Keski-Nummi, First Assistant Secretary, Refugee Humanitarian and International Division

Ms Alison Larkins, First Assistant Secretary, Compliance and Case Resolution Division

Mr Andrew Metcalfe, Secretary

Mr Peter Richards. Assistant Secretary, Compliance and Integrity Support Branch

Ms Jackie Wilson, First Assistant Secretary, Community and Detention Services Division

C

Appendix C: The Committee's first report of the inquiry into immigration detention in Australia

As outlined in the introduction, this report is the second in a series of three for this inquiry. The Committee's first report, *Immigration detention in Australia: A new beginning – Criteria for release from immigration detention*, was tabled in the Parliament on 2 December 2008. The Committee's recommendations from this report are reproduced below.

Recommendations

Criteria for release – health, identity and security checks

Recommendation 1

The Committee recommends that, as a priority, and in line with the recommendations of the Australian National Audit Office, the Department of Immigration and Citizenship develop and publish criteria setting out what constitutes a public health risk for immigration purposes.

The criteria should draw on the treatment standards and detention provisions that otherwise apply to all visa applicants and to Australian citizens and residents who pose a potential public health risk.

The criteria should be made explicit and public as one basis on which immigration detainees are either approved for release into the community or temporarily segregated from the community.

Recommendation 2

The Committee recommends that the Department of Immigration and Citizenship establish an expected time frame such as five days for the processing of health checks for unauthorised arrivals.

This expected time frame should be established in consultation with the Immigration Detention Advisory Group, the Detention Health Advisory Group, the Department of Health and Ageing, the Commonwealth Ombudsman and the Human Rights Commission.

An optimum percentage of health checks of unauthorised arrivals should be completed within this time frame. The department should include in its annual report statistics on the proportion of health checks so completed, and where health checks took longer than five days, specify the reasons for the delay.

Recommendation 3

The Committee recommends that, in line with a risk-based approach and where a person's identity is not conclusively established within 90 days, the Australian Government develop mechanisms (such as a particular class of bridging visa) to enable a conditional release from detention. Conditions could include reporting requirements to ensure ongoing availability for immigration and/or security processes.

Release from immigration detention should be granted:

- in the absence of a demonstrated and specific risk to the community, and
- except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.

Recommendation 4

The Committee recommends that, in line with a risk-based approach, and where a person's security assessment is ongoing after 90 days of detention, the Australian Government develop mechanisms (such as a particular class of bridging visa) to enable a conditional release from detention. Conditions could include stringent reporting requirements to ensure ongoing availability for immigration and/or security processes.

Release from immigration detention should be granted:

- where there is little indication of a risk to the community, as advised by the Australian Security Intelligence Organisation, and
- except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.

Recommendation 5

The Committee recommends that, where a person's security assessment is ongoing after six months of detention, the Australian Government empower the Inspector-General of Intelligence and Security to review the substance and procedure of the Australian Security Intelligence Organisation security assessment and the evidence on which it is based.

The Committee recommends that the Inspector-General provide advice to the Commonwealth Ombudsman as to whether there is a legitimate basis for the delays in security assessment. This advice should be incorporated into the evidence considered by the Ombudsman in conducting six-month reviews.

3 Criteria for release – unacceptable risk and repeated non-compliance

Recommendation 6

The Committee recommends that the Department of Immigration and Citizenship develop and publish the criteria for assessing whether a person in immigration detention poses an unacceptable risk to the community.

Recommendation 7

The Committee recommends that the Department of Immigration and Citizenship individually assess all persons in immigration detention, including those detained following a section 501 visa cancellation, for risk posed against the unacceptable risk criteria.

In the case of section 501 detainees, the Department of Immigration and Citizenship should take into account whether or not the person is subject to any parole or reporting requirements; any assessments made by state and territory parole boards and correctional authorities as to the nature, severity and number of crimes

committed; the likelihood of recidivism; and the immediate risk that person poses to the Australian community.

Recommendation 8

The Committee recommends that the Department of Immigration and Citizenship clarify and publish the criteria for assessing the need for detention due to repeated visa non-compliance. The criteria should include the need to demonstrate that detention is intended to be short-term, is necessary for the purposes of removal and that prior consideration was given to:

- reissue of the existing visa, or
- a bridging visa, with or without conditions such as sureties or reporting requirements.

Recommendation 9

The Committee recommends that the Australian Government apply the immigration detention values announced on 29 July 2008 and the risk-based approach to detention to territories excised from the migration zone.

4 Review mechanisms for ongoing detention

Recommendation 10

The Committee recommends that the Department of Immigration and Citizenship develop and publish details of the scope of the three month detention review.

The Committee also recommends that the review is provided to the person in immigration detention and any other persons they authorise to receive it, such as their legal representative or advocate.

Recommendation 11

The Committee recommends that the House of Representatives and/or the Senate resolve that the Commonwealth Ombudsman's six month detention reviews be tabled in Parliament and that the Minister for Immigration and Citizenship be required to respond within 15 sitting days.

The Minister's response should address each of the Commonwealth Ombudsman's recommendations and provide reasons why that recommendation is accepted, rejected, or no longer applicable.

Recommendation 12

The Committee recommends that, as a priority, the Australian Government introduce amendments to the Migration Act 1958 to enshrine in legislation the reforms to immigration detention policy announced by the Minister for Immigration and Citizenship.

The Committee also recommends that, as a priority, the Migration Regulations and guidelines are amended to reflect these reforms.

Recommendation 13

The Committee recommends that, provided a person is not determined to be a significant and ongoing unacceptable risk to the Australian community, the Australian Government introduce a maximum time limit of twelve months for a person to remain in immigration detention.

The Committee recommends that, for any person not determined to be a significant and ongoing unacceptable risk at the expiry of twelve months in immigration detention, a bridging visa is conferred that will enable their release into the community.

Where appropriate, release could be granted with reporting requirements or other conditions, allowing the Department of Immigration and Citizenship to work towards case resolution.

Recommendation 14

The Committee recommends that, for any person who after twelve months in detention is determined to be a significant and ongoing unacceptable risk to the Australian community, the Australian Government amend the *Migration Act 1958* to give that person the right to have the decision reviewed by an independent tribunal and subsequently have the right to judicial review.

5 Removals and detention charges

Recommendation 15

The Committee recommends that where enforced removal from Australia is imminent, the Department of Immigration and Citizenship provide prior notification of seven days to the person in detention and to the legal representative or advocate of that person.

Recommendation 16

The Committee recommends that the Australian Government consult with professionals and advocacy groups in the immigration detention field to improve guidelines for the process of removal of persons from Australia. The guidelines should give particular focus to:

- greater options for voluntary removal from immigration detention
- increased liaison with a detainee's legal representative or advocate
- counselling for the detainee to assist with repatriation
- a pre-removal risk assessment that includes factors such as mental health, protection needs and health requirements
- appropriate procedures for enforced removals that minimise trauma
- adequate training and counselling for officers involved in enforced removals
- appropriate independent oversight at the time of enforced removals, and
- criteria for the use of escorting officers for repatriation travel.

Recommendation 17

The Committee recommends that the Australian Government instigate mechanisms for monitoring and follow-up of persons who have claimed asylum and subsequently been removed from Australia.

Recommendation 18

The Committee recommends that, as a priority, the Australian Government introduce legislation to repeal the liability of immigration detention costs.

The Committee further recommends that the Minister for Finance and Deregulation make the determination to waive existing detention debts for all current and former detainees, effective immediately, and that all reasonable efforts be made to advise existing debtors of this decision.

Who should community release apply to?

For the benefit of readers of this report, and in accordance with the Committee's recommendations above from the first report, release into the community would apply to the following groups of immigration clients:

- All unauthorised arrivals, for whom health, identity and security checks have been completed.
- All unauthorised arrivals, where identity has not been conclusively established within 90 days, in the absence of a demonstrated and specific risk to the community, and except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.
- All unauthorised arrivals, where a person's security assessment is ongoing after 90 days, where there is little indication of risk to the community, as advised by the Australian Security Intelligence Organisation, and except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.
- Section 501 detainees, subject to the 'unacceptable risk' assessment, taking into account whether or not the person is subject to any parole or reporting requirements; any assessments made by state and territory parole boards and correctional authorities as to the nature, severity and number of crimes committed; the likelihood of recidivism; and the immediate risk that person poses to the Australian community.
- All other immigration detainees, including visa over stayers and those subject to visa cancellation:
  - ⇒ except those that pose an unacceptable risk to the community, as defined under publicly available criteria; and
  - ⇒ except those who have repeatedly been non-compliant with their visa conditions, where DIAC can demonstrate that detention is necessary for the purposes of removal and that prior consideration was given to reissue of the existing visa, or a bridging visa, with or without conditions such as sureties or reporting requirements. Removal should be effected within a short period of time, such as seven days.

- Any other person in immigration detention who, notwithstanding the criteria above, remains in immigration detention at the Committee's nominated maximum time period of 12 months, except where that person is determined to be a *significant* and *ongoing* unacceptable risk to the community.

Government response

At the time of writing, the Committee believed the tabling of a government response to these recommendations to be expected shortly.

In relation to recommendation 18, and as noted in the introduction to this report, the Committee is extremely pleased to note the introduction of the Migration Amendment (Abolishing Detention Debt) Bill 2009 into the Senate on 18 March 2009.

D

Appendix D: Overview of immigration detention population

1.1 This appendix provides a context to the body of the report by outlining the major characteristics of the immigration detention population and trends in recent years. It acknowledges that the current detention population is different in size and composition to that of 2000-01, when the immigration detention system was put under intense pressure by large numbers of unauthorised boat arrivals. In summary, the trends outlined are of:

- a change in the composition of the detention population, from a population with a majority of unauthorised boat arrivals to one dominated by visa overstayers and visa cancellation cases,
- a general decrease in the length of immigration detention, and
- a general decrease, or stabilisation, in the absolute numbers of people in immigration detention in Australia.

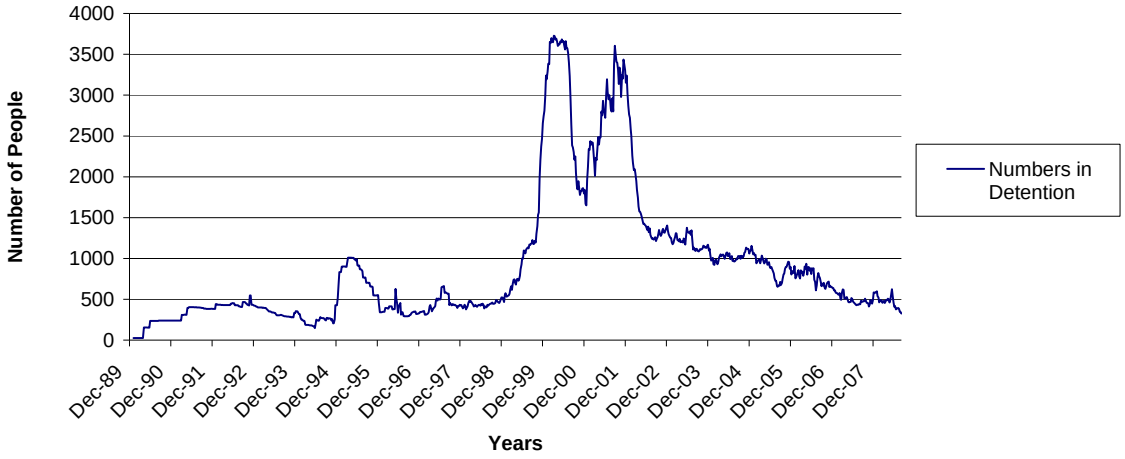
Numbers of people in immigration detention

1.2 Figure C.1 illustrates the rise and fall of numbers of people in immigration detention since 1989, when the *Migration Legislation Amendment Act 1989* was passed.

1.3 The number of people in immigration detention in Australia was at its highest between 2000 and 2002, but dropped dramatically in 2003, and had halved again by 2007. In late 2008, the Minister for Immigration and Citizenship said that the number of people in

immigration detention was at its lowest level since 1994.[1] As at 1 May 2009, there were 618 people in immigration detention.[2]

Figure D.1 Trends in immigration detention in Australia from 1989 to 2007



Source: Department of Immigration and Citizenship, submission 129d, p 2.

Immigration detention population by mode of arrival

1.4 Two groups of people are liable to be taken into immigration detention in Australia: those who arrive unlawfully without a valid visa; and those who enter Australia on a valid visa and then become unlawful, either because their visa expires or they breach the conditions of that visa, resulting in a cancellation.

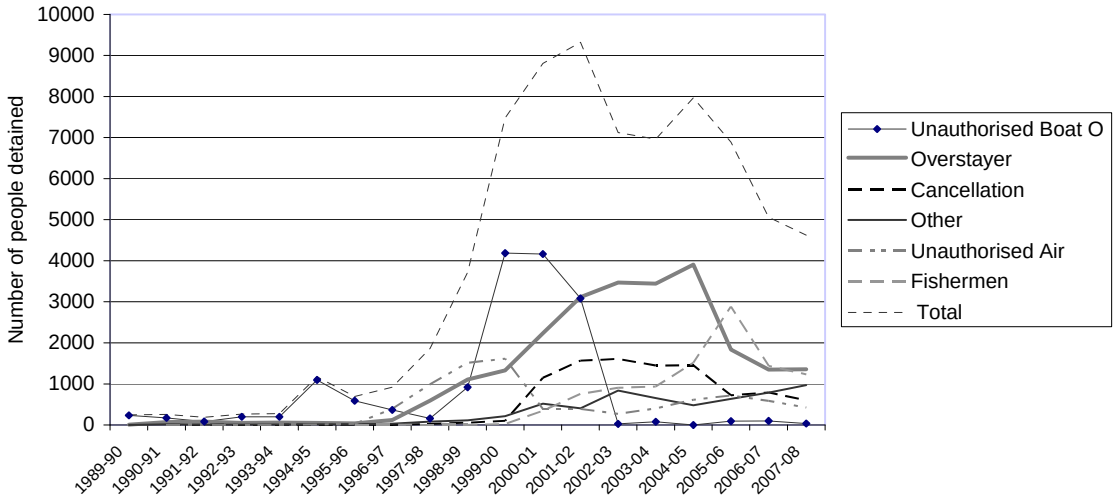
1.5 Figure C.2 maps the broad trends in the detention population by arrival type since 1989-90. Of particular note are:

- peaks in unauthorised boat arrivals in 1994-95 and 2001-02
- a peak in illegal foreign fishers in 2006, and
- a steady increase in the number of visa overstayers in detention, peaking in 2005 and now declining.

1 Senator the Hon C Evans, Minster for Immigration and Citizenship, 'Progress made in long-term immigration detention cases, media release, 24 September 2008.

2 Department of Immigration and Citizenship, *Immigration detention statistics summary as at 1 May 2009, viewed on 14 May 2009* at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090501.pdf

Figure D.2 Trends in immigration detention by arrival type and/or reason for detention

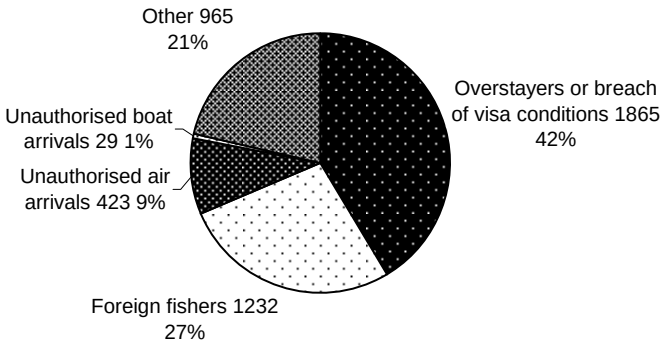


Source: Department of Immigration and Citizenship, supplementary submission 129d, p 2.

1.6 It is acknowledged that unauthorised arrivals to Australia will likely continue to fluctuate in response to external factors, such as natural disaster and conflict, and the activities of people smugglers.[3]

1.7 Figure C.3 illustrates the breakdown, by mode of arrival, of the 4514 people taken into immigration detention during 2007–08.

Figure D.3 People in immigration detention during 2007-08, by arrival type/reason for detention



Source: Department of Immigration and Citizenship, Annual report 2007-08 (2008), p 125.

3 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'Unauthorised boat arrivals arrive on Christmas Island', media release, 2 October 2008.

1.8 On 21 December 2008, in order to facilitate the processing of a number of unauthorised boat arrivals intercepted in Australian waters between September and December 2009, DIAC began using the Christmas Island immigration detention centre.[4] The centre was previously held in contingency mode. As at 1 May 2009, there were 192 people in immigration detention on the island.[5]

1.9 Of the current detention population, 128 people or approximately 20 per cent is comprised of people who have entered the country legally but have overstayed or who have breached the conditions of their visa. DIAC advises that changes in policy emphasis and improved program integrity are reducing the likelihood of detention for this group.[6]

1.10 There has also been a fall in the number of illegal foreign fishers in detention, from 2879 individuals across 2005-06 to 1232 in the last financial year (2007-08).[7] This decline is likely to due to increased cooperation between DIAC, Customs, the Australian Navy, the Department of Fisheries and the Indonesian Government in facilitating faster repatriation of these fishers to their home regions. As at 1 May 2009 there are eight illegal foreign fishers in detention and two in alternative temporary detention in the community.[8]

Source countries of people in detention

1.11 The source countries of the immigration detention population is largely determined by international developments such as natural disaster, regional or national conflicts, as well as the source countries for holders of various visa types who may then become unlawful by overstaying or breaching the conditions of their visa.

1.12 Between 1998-99 and 2001-02 people fleeing conflict in the Middle East from Afghanistan, Iraq and Iran contributed to the significant

4 Metcalfe A, Department of Immigration and Citizenship, *Transcript of evidence,* 18 February 2009, p 5.

5 Department of Immigration and Citizenship, *Immigration detention statistics summary as at 20 March 2009*, viewed on 31 March 2009 at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090320.pdf.pdf.

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

7 Department of Immigration and Citizenship, supplementary submission 129d, p 2.

8 Department of Immigration and Citizenship, *Immigration detention statistics summary as at 1 May 2009, viewed on 14 May 2009* at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090501.pdf

increase in the number of unauthorised arrivals by boat, and these nationalities were the most represented in immigration detention.[9]

1.13 Table C.1 shows that since 2002-03, however, the most common nationality amongst the detention population was Indonesian. As these figures include illegal foreign fishers, this likely reflects increased numbers and interceptions of illegal fishing vessels entering Australian waters from Indonesia's southern regions.[10]

9 Parliamentary Library, Part 1, 'Australia and Refugees, 1901–2002: Annotated Chronology Based on Official Sources: Summary', *Chronology No. 2 2002*–03, 16 June 2003.

10 Hon P Costello MP, Treasurer, Budget Speech 2006 -07, delivered 9 May 2006; Department of Immigration and Citizenship, supplementary submission 129d, p 2.

Table D.1 Nationalities of people detained 2000-01 to 2007–08 (ranked by majority)

2000-01 to 2007-08				
Year	1st rank	2nd rank	3rd rank	4th rank
1996-97	Iraq	Sri Lanka	China, Peoples Republic Of	Somalia
1997-98	Indonesia	China, Peoples Republic Of	Iraq	Sri Lanka
1998-99	Iraq	China, Peoples Republic Of	Afghanistan	Turkey
1999-00	Iraq	Afghanistan	Iran	China, Peoples Republic Of
2000-01	Afghanistan	Iraq	Iran	Indonesia
2001-02	Iraq	Afghanistan	China, Peoples Republic Of	Indonesia
2002-03	Indonesia	China, Peoples Republic Of	Papua New Guinea	Malaysia
2003-04	Indonesia	China, Peoples Republic Of	Malaysia	Korea, South
2004-05	Indonesia	China, Peoples Republic Of	Malaysia	Korea, South
2005-06	Indonesia	Malaysia	China, Peoples Republic Of	Korea, South
2006-07	Indonesia	Malaysia	China, Peoples Republic Of	Philippines
2007-08	Indonesia	Malaysia	China, Peoples Republic Of	India

Source: Department of Immigration and Citizenship, supplementary submission 129f, p 2. Data for years prior to 2002-03 has excluded those for whom no nationality is reported.

Children in immigration detention

1.14 The *Migration Amendment (Detention Arrangements) Act 2005* held that children would no longer be held in detention unless as a 'last resort'. Instead families with children could reside at a specified place in accordance with a residence determination (grant of community detention) by the Minister. Families with children are now placed in community detention, although some may be detained in immigration residential housing, immigration transit accommodation or alternative temporary detention immediately prior to removal; for initial processing; or whilst appropriate rental accommodation in the community is being sourced. Additionally, families can be currently granted a bridging visa as an alternative to detention, although as the Committee outlines in chapter 3, this may place families in difficult

circumstances where work rights or income assistance do not accompany the bridging visa.[11]

1.15 Reflecting the trends in the adult immigration detention population, the numbers of minors taken into detention was greatest in 2000-01 and 2001-02, when respectively 1344 and 1244 children were placed in immigration detention centres. In 2007-08, 239 children were taken into immigration detention.[12]

1.16 As at 1 May 2009, there were 55 children (aged under 18 years) in immigration detention. Twenty eight were being detained in the community under residence determination, 23 were in alternative temporary detention in the community and four in immigration residential housing.[13]

Length of immigration detention

1.17 The length of time individuals spend in immigration detention has been a persistent concern. For the majority of individuals, however, detention is for a period less than one month, and this percentage has been improving gradually since 2003-04 (figure C.4).

1.18 Since the introduction of mandatory reporting to the Commonwealth Ombudsman there has been a significant decline in the number of people in detention for two years or more, particularly from 367 in 2007 to 34 as at 1 May 2009.[14]

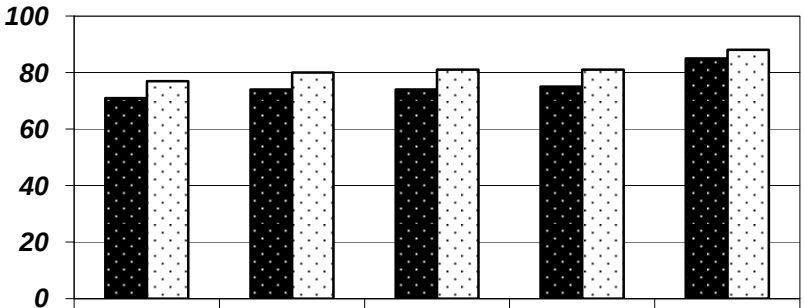
11 Department of Immigration and Citizenship, submission 129, p 18. The submission states that all families with children and unaccompanied minors who enter into immigration detention are referred to the Minister for possible consideration for community detention arrangements within two weeks of being detained.

12 Department of Immigration and Citizenship, submission 129d, p 1.

13 Department of Immigration and Citizenship, *Immigration detention statistics summary as at 1 May 2009, viewed on 14 May 2009* at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090501.pdf

14 Department of Immigration and Citizenship, *Immigration detention statistics summary as at 1 May 2009, viewed on 14 May 2009* at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20090501.pdf

Figure D.4 Percentage of detention population with a length of stay less than three months

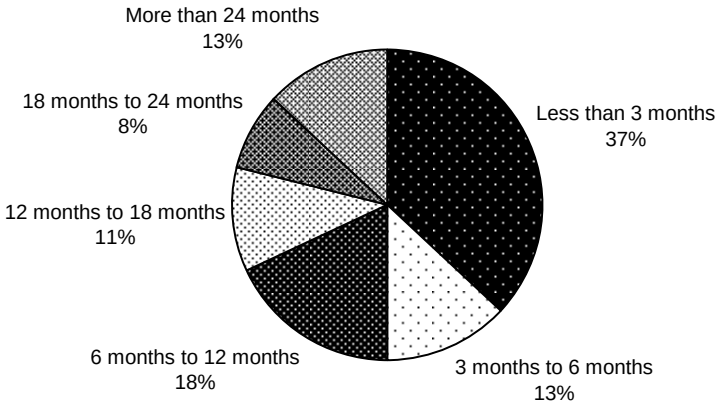


	2003-04	2004-05	2005-06	2006-07	2007-08
Less than one month	71	74	74	75	85
Less than three months	77	80	81	81	88

Source: Department of Immigration and Citizenship, correspondence, 19 November and 27 November 2008.

1.19 Figure C.5 provides a breakdown of the immigration detention population at 30 June 2008 by the period of time spent in detention.

Figure D.5 People in immigration detention by period detained at 30 June 2008



Source: Department of Immigration and Citizenship, Annual report 2007-08 (2008), p 128.

E

Appendix E: Time line for immigration detention policy 1989–2009

Legislation/event	*Policy implications*
Migration Legislation Amendment Act 1989	In the context of an increasing number of unauthorised boat arrivals from Indochina, the Act introduced significant changes to the system of processing boat people. It provided that an officer had discretion to arrest and detain a person suspected of being an 'illegal entrant', although detention was not mandatory.
Migration Amendment Act 1992	Introduced by the Keating Government with bipartisan support, the policy of mandatory detention was envisaged as a temporary and exceptional measure for a particular group of unauthorised arrivals or 'designated' persons who arrived by boat between 19 November 1989 and 1 September 1994. The period of detention was limited to 273 days. The Act also aimed to codify discretionary detention as it existed under the Migration Act so as to facilitate the processing of refugee claims, prevent de-facto migration and reduce costs of accommodation in the community.
Migration Reform Act 1992	Extended mandatory detention from a specified group to all who did not hold a valid visa. The Act established a new visa system making a simple distinction between a 'lawful' and 'unlawful' non-citizen. Under Section 13 of the Act, a migration officer had an obligation to detain any person suspected of being unlawful. The Act removed the 273 day detention limit which had applied under the *Migration Amendment Act 1992*. Overstayers could apply for a bridging visa which allowed them to stay in the community while their claims were assessed. The Act had bipartisan support.

Migration Amendment Regulations (no. 12), 20 October 1999	Introduced the Temporary Protection Visa (TPV) scheme which reduced the number of people detained. Temporary refugee status was granted for three years but without the level of access to government services provided under Permanent Protection visas.
Migration Legislation Amendment (Immigration Detainees) Act 2001	Expanded the powers of detention centres, providing that certain offences on the part of detainees are punishable under the Criminal Code, and that detainees must comply with screening and entry requirements. The amendment had qualified bipartisan support.
Migration Legislation Amendment (Judicial Review) Act 2001	Introduced a privative clause to exempt most decisions made under the Migration Act from judicial review. The amendment was not supported by the opposition.
Migration Amendment (Excision from Migration Zone) Act 2001 *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001*	The legislation amended the *Migration Act 1958* to excise the Christmas, Ashmore, Cartier and Cocos (Keeling) islands from Australia's migration zone, giving effect to the policy of offshore processing known as the 'Pacific Solution'. The new arrangements provided that unlawful arrivals were to be processed at offshore centres on Nauru and Manus Islands, and some on Christmas Island, circumventing their entitlement to Australia's migration visa and review processes. The legislation also provided for indefinite detention or, if refugee status was determined, for removal to a third country. There was bipartisan support for both Acts.
Woomera Detention Centre closed, April 2003	The Baxter immigration detention centre and the Port Augusta residential housing project in South Australia were opened to replace facilities in Woomera.
Palmer Inquiry commenced, February 2005	The Palmer Inquiry was opened to investigate the wrongful 11-month detention of Cornelia Rau, a German citizen holding Australian permanent residency, who was released from Baxter IDC into a psychiatric care facility. By May, it was revealed that 33 people had been wrongfully detained under the Migration Act, including one case of a woman forcibly deported and subsequently missing, Vivian Solon. By the end of the month over 200 cases of possible unlawful detention were referred to the Palmer inquiry.
Migration Amendment (Detention Arrangements) (MADA) Act 2005	Introduced in June 2005 with bipartisan support, the Act held that children would no longer be held in detention (IDCs) unless as a 'last resort'. Instead families with children could reside at a specified place in the community in accordance with a residence determination (grant of community detention) by the Minister. Under the legislation the Minister could specify alternative arrangements for a person's detention; impose conditions of

	detention of that person; and grant a visa to a person who is in immigration detention. Ministerial reporting on, and six monthly review by the Commonwealth Ombudsman of the cases of detainees held over two years was also mandated. The MADA Act also introduced the Removal Pending Bridging Visa (RPBV), which allowed certain long-term detainees to live in the community, subject to agreeing to return home when the government determined.
Migration and Ombudsman Legislation Amendment Act 2005 (Cth)	This Act empowered the Ombudsman to review the cases of people who had been in detention for two years or more, and set a 90-day time limit on decisions by the Minister on applications for protection visas and review by the Refugee Review Tribunal (RRT) of protection visa decisions. There was bipartisan support for the Act.
Pacific Solution policy formally concluded February 2008	In February 2008, the Pacific Solution formally concluded when the last 21 asylum seekers at Nauru were resettled on the mainland and Nauru and Manus Island centres closed. Future unauthorised arrivals would, however, continue to be processed on Christmas Island, excised from Australia's migration zone.
Risk-based detention values announced, July 2008	The Minister for Immigration and Citizenship announced seven immigration detention values on which reforms would be based, as outlined on 29 July 2008.
Abolition of the Temporary Protection Visa, August 2008	Temporary Protection Visa holders/applicants gained the right to apply for Permanent Protection Visas with immediate access to Newstart and Youth allowances, the Adult Migrant English Program (AMEP), age and disability pensions, family tax benefit, childcare benefit and the right to travel.
Introduction of the Migration Amendment (Abolishing Detention Debt) Bill 2009. March 2009	On 18 March 2009 a Bill was introduced in the Senate to abolish the detention debt regime imposed on immigration detainees. It will also waive any existing debts for current and former detainees. People convicted of people smuggling or illegal foreign fishing will still be liable for their costs of detention and removal. The liability for costs associated with the removal or deportation of unlawful non-citizens will also remain unchanged.

F

Appendix F: Bridging visa conditions and entitlements

Bridging visa	**Visa conditions**		**Visa entitlements**			
	Income assistance	*Work rights*	*Health care*	*Housing assistance*	*Legal advice or application assistance*	*Other comments*
A (subclass 010) *People who have applied for a substantive visa/or have an active appeal with a review tribunal or court*	Limited entitlement May be entitled to financial assistance through ASAS if criteria for eligibility is met	Some entitlement Generally yes, but BVA will reflect the conditions of the last substantive visa in most circumstances[1].Where a person has applied for a protection visa, work rights are granted if an application is made within 45 days of entering Australia.	Some entitlement Medicare- access is granted if an application for a permanent residence visa has been lodged (except Parent visa), and where the person has rights to work on that temporary visa, or has a parent/spouse/child who is an Australian Citizen	Limited entitlement Assistance through ASAS if person meets specific eligibility criteria.	Limited entitlement Restricted- may be able to access assistance through the IAAAS	
B (subclass 020) *Granted to a BVA or BVB holder who needs to travel overseas*	Not applicable`	Some entitlement	Some entitlement Access to Medicare if an active application for a permanent visa is being considered	Not applicable	Not applicable	
C (subclass 030) *Granted to a person who voluntarily applied for a substantive visa/ or appealed to a review tribunal or court*	Limited entitlement May be entitled to financial assistance through ASAS if criteria for eligibility is met	No entitlement initially Work rights can only be obtained with a new application and demonstrated 'compelling need to work'.	Some entitlement Medicare access with application for a permanent visa or application for protection visa lodged within 45 days of arrival and has current work right.	Limited entitlement Assistance through ASAS if person meets specific eligibility criteria	Limited entitlement Restricted- may be able to access assistance through the IAAAS. Access to legal advice through NGO's such as ASRC.	Valid for duration of application or review process

1 Certain applicants for a graduate skilled, skilled independent overseas student, designated area-sponsored overseas student, skilled Australian sponsored overseas student will have full work rights on their BVA even if the former substantive visa had work restrictions.

D (subclass 040) and (subclass 041)	No	No	Not applicable Due to temporary nature of this category	Not applicable Due to temporary nature of this category	Not applicable In rare circumstances may be able to access legal advice assistance through the IAAAS	Strict reporting conditions are placed on this visa. Issued for a maximum of 5 days.
E (subclass 050) and (subclass 051)	Limited entitlement Bridging visa holders awaiting a decision on a current on-shore Protection Visa (refugee status) application may eligible for the Asylum Seekers Assistance Scheme (ASAS) Income support to cover basic living expenses and rent (89% of Centrelink Special Benefit) Special payments in situations of extreme need.	Limited entitlement Generally no, but can apply for a new BVE with work rights. To be eligible to work a person must demonstrate a compelling need to work.[2]	Some entitlement Yes, general health care and pharmaceutical assistance. Bridging visa holders with work rights have access to Medicare, but otherwise there is no access to health care other than through pro-bono medical professionals. In some instances a Health Care Card may be granted.	Some entitlement Some people are provided accommodation as part of the Community Care Pilot. The Red Cross sources appropriate rental properties and supports clients moving into them with community transition and orientation.	Limited entitlement Immigration information and counselling through the International Organization for Migration (IOM) Legal advice is restricted- may be able to access assistance through the IAAAS.	Referrals and short-term counselling Casework support Limited access to study. May have reporting conditions. May be requested to lodge a security bond (not less than $5000/ and as high as $45 000- $50 000 for high risk immigration clients) Duration of visa will vary.

2 The term 'compelling need to work' is where (a) a person is severe financial hardship or (b) been nominated or sponsored by an employer for a substantive visa on skills grounds and appear to meet the requirements of the visa.

F (subclass 050)	No Holders of bridging visas do not meet the Social Security Act definition of an Australian resident.	No	Yes Specialised support for victims program[3]	Yes Specialised support for victims program	Yes Specialised support for victims program	A person identified as an alleged victim of sexual servitude offences will have access to intensive victim support administered by a case manager from the Office of the Status of Women. Some reintegration assistance for victims of trafficking who return to their countries of origin.
R (subclass 070)	Yes Entitled to Special benefits payment, waiting period does not apply.	Yes	Yes Eligible for Health care card, and can be listed as a dependent on a Pensioner concession card	Yes Assistance is provided through ASAS	Limited entitlement Restricted- may be able to access assistance through the IAAAS. Immigration information and counselling through the International Organization for Migration (IOM)	May be eligible for Crisis payment, Family tax benefit and child care benefit. A bridging visa R can be granted using the Minister's non delegable, non compellable public interest power, under section 195A of the Migration Act

Source *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.*

3 The Support for Victims of People Trafficking Program provides individualised case management and a range of support to victim. The person is identified as eligible by the AFP. Recipients of the BVF are not permitted to undertake paid employment, however are able to access a range of services which include secure accommodation; a living allowance; a food allowance; an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counselling; access to interpreters; and access to legal services. Viewed on 3 May 2009 at http://www.fahcsia.gov.au/sa/women/progserv/violence/Pages/ peopletrafficking.aspx#3

Additional comments by Senator Concetta Fierravanti-Wells

1.1 I joined the Joint Standing Committee on Migration on 4 February 2009 and as such have not participated in the majority of the inquiry process. Having not been present for most of the public hearings and inspections, I am not in a position to endorse the conclusions of this report.

Senator Concetta Fierravanti-Wells

Dissenting Report by Mr Petro Georgiou MP

1.1 This inquiry was charged with considering alternatives to immigration detention.

1.2 The first is that the Inquiry took a considerable amount of evidence on the accommodation of children in alternatives to detention such as immigration residential housing and immigration transit accommodation.

1.3 That evidence revealed areas of significant concern that are not sufficiently reflected in the Report.

1.4 The second issue is the lack of transparency of the proposed system of release from detention via the granting of bridging visas.

Children in Immigration Residential Housing and Immigration Transit Accommodation

1.5 In 2005 the former government reformed the immigration detention regime to allow the release of children and their families from detention. The *Migration Act 1958* was amended to stipulate at section 4AA that:

> (1) The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.
>
> (2) For the purposes of subsection (1), the reference to a minor being detained does not include a reference to a minor residing at a place in accordance with a residence determination.

1.6 In July 2005, all children and their families in immigration detention were released into the community.

1.7 Under the *Migration Act*, the only exemption to the section 4AA principle of last resort is residence determinations.

1.8 It is of great concern that the new detention values announced by the Immigration Minister in July 2008 appear to envisage the detention of children in immigration residential housing and transit accommodation.

1.9 The new detention values state that "children, including juvenile foreign fishers and, where possible, their families, will not be detained in an **immigration detention centre**" [emphasis added].

1.10 This new value only prohibits the detention of children in immigration detention centres.

1.11 In unveiling the reforms, Minister Evans said that Labor's ban on the detention of children in immigration detention centres would be facilitated by their release into either community settings or immigration residential housing.[1]

1.12 The Committee took evidence from a number of organisations concerned that children were being detained for considerable periods in alternative forms of detention including residential housing and immigration transit accommodation.

1.13 In its submission, the Australian Human Rights Commission reported that it:

> …has been aware of several cases where children and families have been detained in IRH facilities for a significant period of time. … During 2007 inspections of immigration detention facilities, HREOC spoke to a family with a small child who was detained in IRH for two months before they were given a Residence Determination. The father told us that he had been concerned about the effect of the detention on his daughter, who was distressed at being surrounded by strangers. His wife was also pregnant.[2]

1.14 The Commission's report on its 2008 visits cited further incidence of this occurring:

> During the Commission's 2008 visits to the immigration residential housing facilities, there was a family of five at the Sydney IRH with a baby and a five-year-old child. The family had

1 Labor's detention values explicitly ban the detention of children in immigration detention centres. Children in the company of family members will be accommodated in immigration residential housing (IRH) or community settings. Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australia National University, 29 July 2008.

2 Human Rights and Equal Opportunity Commission, submission 99, p 37.

> been detained for three months. The parents spoke of the five-year-old child's confusion and distress about being detained.[3]

1.15 The International Coalition on Detention of Refugees, Asylum Seekers and Migrants also raised concerns about 'long term use of immigration residential housing, including for families with children and individuals with health issues, where community-alternatives would have been more appropriate'.[4]

1.16 The Australian Human Rights Commission also expressed its 'significant concerns' about the accommodation of several children in immigration transit accommodation (ITA).[5]

1.17 It was formerly the Department of Immigration and Citizenship's (DIAC) policy that ITA's was to be used to accommodate low risk detainees for up to seven days, and was not to be used to detain children and families. But DIAC has recently informed the Commission that the policy has been amended to allow detainees to be held at ITA's for two or three weeks.[6] DIAC's response to the Commission's concerns regarding the detention of children in an ITA was that the Brisbane and Melbourne ITA's are 'suitable for families with children for short stays'.[7]

1.18 The Castan Centre for Human Rights Law described residential housing as 'less oppressive than immigration detention centres' but nonetheless 'still a method of detention':

> This is due to the excessive surveillance and restrictions within them, such as the use of cameras, security guards patrolling the site 24 hours a day; routine headcounts; body searches from children on their way and returning from school; and the requirement that detainees are not allowed to leave the grounds unless accompanied by a DIAC officer.[8]

1.19 The Australian Human Rights Commission cautions that 'The psychological effects of detention remain a significant concern for people held in immigration residential housing'.[9] The harm done to children who

---

3 Australian Human Rights Commission, 2008 Immigration Detention Report, p 82.

4 International Coalition on Detention of Refugees, Asylum Seekers and Migrants, submission 109, section 3.1.

5 Australian Human Rights Commission, 2008 Immigration Detention Report, p 63.

6 Australian Human Rights Commission, 2008 Immigration Detention Report, p 63.

7 Department of Immigration and Citizenship response to the Australian Human Rights Commission's Immigration Detention Report 2008, pp 40-41.

8 Castan Centre for Human Rights Law, submission 97, p 35.

9 Australian Human Rights Commission, 2008 Immigration Detention Report, p 59.

have been detained in Australian immigration detention is well documented and needs no further reiteration here.

1.20 In the course of this inquiry a spokesperson for the Immigration Department has confirmed that children and their families would now be detained in immigration residential housing beyond the period of initial assessment.[10]

1.21 During the hearing I put on record that I considered this 'A breach of the commitments that were entered into that children and their families would be put into unsupervised community settings'.[11]

1.22 The evidence received by the Committee that children are being detained in residential housing and transit accommodation for extended periods is disturbing. I regard any policy shift in this direction as retrograde and in potential violation of the international legal principle which is enshrined in the *Migration Act* that children may be detained only as a last resort.

Transparency of the bridging visa model

1.23 The report proposes that a reformed bridging visa framework is used in lieu of community detention to effect release from detention.

1.24 In my joint dissenting report with Senators Dr Alan Eggleston and Sarah Hanson-Young, we raised grave concerns about the lack of transparency of the administration of the new risk management system. We said that we strongly disagreed that public servants should have unfettered power to detain without independent external scrutiny to ensure the release of people whose detention is assessed as being unnecessary with respect to the specified criteria.[12]

1.25 While the Committee's recommendation to shift to a model of release by bridging visa is a move in the right direction, it fails the transparency test because the crucial decision of whether to grant a bridging visa is subject to no independent external judicial scrutiny.

---

10 Correll R, Department of Immigration and Citizenship, *Transcript of Evidence*, 24 September 2008, p 9.

11 Georgiou P, *Transcript of Evidence*, 24 September 2008, p 9.

12 Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – Criteria for release from detention* (2008), Parliament of the Commonwealth of Australia, pp 165-171.

1.26 The Report records that 'consistently, the evidence reported a lack of transparency in DIAC decision-making which diminished the rigour of the immigration system'.[13]

1.27 It also states that 'the Committee notes that the shift to a risk-based approach to immigration detention decisions and the greater use of community based detention alternatives **requires that administrative processes become more accountable and transparent**'[emphasis added].[14]

1.28 Yet the report's recommendations for improving transparency are limited.

1.29 It is unclear what form of 'review' of the decision to grant a bridging visa is being proposed in the Report (Recommendation 4) and, as was said in the previous dissent, providing "reasons" for decisions to detainees does not constitute an effective mechanism of accountability.

1.30 The granting of bridging visas is a discretionary power wielded by compliance officers and bureaucrats. It is guided by a new policy of risk management which lacks the guarantee of legislative authority.

1.31 In conclusion, I reiterate the recommendation of the last dissenting report in which a model of release secured by judicial oversight was proposed.

Conclusion

1.32 I reiterate the view of the previous dissent that independent, judicial review of detention decisions is the only secure mechanism for ensuring the laudable goal of detention as a last resort is achievable. The previous dissent recommended that:

- A person who is detained should be entitled to appeal immediately to a court for an order that he or she be released because there are ***no reasonable grounds*** to consider that their detention is justified on the criteria specified for detention;
- A person may not be detained for a period exceeding 30 days unless on an application by the Department of Immigration and Citizenship a court makes an order that it is necessary to detain the person on a specified ground and there are no effective alternatives to detention. This is consistent with the Minister's commitment that under the new

13 Paragraph 4.31 in the Committee's second report of the inquiry into immigration detention.

14 Paragraph 4.37 in the Committee's second report of the inquiry into immigration detention.

system 'The department will have to justify a decision to detain – not presume detention'.[15]

1.33 In relation to the disturbing tendency to detain children, I say simply that the detention of children as anything other than a last resort is repugnant.

1.34 I commend the dissenting report of Senator Hanson-Young for offering additional ways of improving the current detention regime.

Mr Petro Georgiou MP

15 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, 29 July 2008.

Additional comments by Senator Sarah Hanson-Young

Introduction

1.1 The aim of the Migration Committee's second report into immigration detention was to look into options for additional community alternatives to immigration detention.

1.2 While the Committee's report focuses on community detention, the Australian Greens are concerned that no other alternatives to secure forms of detention have been addressed.

1.3 We are also concerned about the lack of attention given to children in alternative detention arrangements, given the considerable about of concern that was raised during the inquiry process.

1.4 This report will therefore focus on four main areas of concern:

1. Children in detention
2. Access to legal advice
3. Judicial review
4. Support for refugee and asylum seeker service providers.

1.5 Although appropriate forms of detention, and what services are necessary for those detained will be included in the third report, including the Christmas Island detention facility, the Greens remain concerned that this report fails to appropriately deal with other alternatives to secure detention.

Children in detention

1.6 While the Greens acknowledge the Minister's directive that no children are to be held in detention centres, we remain concerned that children continue to be housed in other forms of secure detention, such as community, residential, and transit accommodation.

1.7 The principle that no minor, or their family, will only be held in a detention centre as a last resort, must be codified within the *Migration Act 1958,* and extended to include all detention facilities, to prevent the return of detaining children in remote desert camps in appalling conditions.

1.8 Given that the committee majority also failed to recommend that those deemed **not** to be a security or health risk to the community should not be detained in any form of detention, the Greens strongly recommend that the following be adopted.

Recommendation 1

No child, or family, should be detained in any form of secure detention, while their visa application is being processed and:

- **those deemed not a security or health risk to the community, should not be detained in any form of secure detention;**

The *Migration Act 1958* must be amended immediately to reflect the above recommendations.

Access to legal advice

1.9 In evidence provided to the committee, the Refugee Council of Australia advocated that a key component to implementing a model for alternatives to detention would be through expanding '*The IAAAS (Immigration Advice and Application Assistance Scheme) to ensure the provision of competent legal advice throughout the procedure*'.[1] There needs to be an expansion in access to the free IAAAS scheme to ensure the provision of competent legal advice throughout the application procedure.

1 Nash C, Refugee Council of Australia, *Transcript of evidence,* 4 February 2009, p 6.

Recommendation 2

The IAAAS system could be reformed, as suggested by A Just Australia, by expanding it as follows:

- **All applicants for protection visas attend a mandatory interview with an IAAAS agent, who will provide basic migration advice and ensure that the applicant understands their legal rights as well as the criteria for qualifying for an onshore protection visa; and**
- **IAAAS assistance is expanded to include applicants seeking ministerial intervention.**[2]

1.10 Although the 2009 Budget provided funding to ensure the Community Care Pilot is formally turned into an ongoing program, the fact that the early intervention strategy did not include funding for legal advice is disappointing. The committee's recommendations for reforming the bridging visa framework falls well short of ensuring that adequate and appropriate legal advice is provided to all individuals applying for a visa.

1.11 There needs to be a greater effort to reduce the need for ongoing detention and it is important that the Australian Government moves to expand alternatives to detention, to ensure that people are not left destitute while their visa status is determined, and reviewing the current bridging visa program is a step in the right direction.

Judicial review of decisions

1.12 As per our last dissenting report, co-sponsored with Mr Petro Georgiou, and Senator Dr Alan Eggleston, the Greens are concerned that there is no mention of the right to judicial review of detention decisions. In particular, the dissenting report raised concern over the lack of independent oversight without indicating a view as to when that should become available.

1.13 While the Greens believe the Committee's recommendation to implement a new bridging visa model is step towards the right direction, we are concerned that there is no independent external scrutiny.

1.14 In particular, the Greens reiterate the following dissenting report recommendations:

---

2 A Just Australia website, 'AJA policy for legal advice', viewed on 19 May 2005 at http://www.ajustaustralia.com/informationandresources_researchandpapers.php?act=papers&id=111.

- A person who is detained should be entitled to appeal immediately to court for an order that he or she be released because there are *no reasonable grounds* to consider that their detention is justified on the criteria specified for detention;
- A person may not be detained for a period exceeding 30 days unless on an application by the Department of Immigration and Citizenship a court makes an order that it is necessary to detain the person on a specified ground and there are no effective alternatives to detention. This is consistent with the Minister's commitment that under the new system 'The department will have to justify a decision to detain – not presume detention'.[3]

Support for refugee and asylum seeker service providers

1.15 Given the Australian Government offers minimal funding to key service providers assisting asylum seekers and refugees in Australia, we recommend that monetary support is provided, through a grants fund, as directed by the Minister, to specialised service delivery agencies who work with refugees and asylum seekers.

Recommendation 3

Any funding that is provided should be directed towards those providers that offer the following services:

- **Health**
- **Appropriate accommodation**
- **Job seeker advice**
- **Community orientation**
- **Legal advice.**

Conclusions

1.16 While the Greens support many of the Committee's recommendations, we are concerned that they do not go far enough in ensuring that the system of immigration in Australia is truly reformed.

3 Senator the Hon C Evans, Minister for Immigration and Citizenship, 'New directions in detention', speech delivered at Australian National University, 29 July 2008.

1.17 And while we acknowledge the work Immigration Minister, Senator the Hon. Chris Evans, has done in striving towards a more humane and compassionate system of immigration, there is still much more work to be done to restore Australia's commitment to refugees under our international obligations.

1.18 The Greens have a proud tradition of supporting those seeking our protection, and we encourage the Government to look closely at our recommendations, and those articulated in Mr Georgiou's dissenting report, to ensure that our system of immigration is fair and compassionate, and reflects our commitment to assisting and protecting those most in need.

Senator Sarah Hanson-Young

Minority Report by the Hon. Dr Sharman Stone MP

1.1 The Committee established three considerations to inform and balance its assessment of community based detention alternatives. These considerations are that community based detention alternatives must:

- ensure a humane, appropriate and supportive living environment for those waiting resolution of their immigration status
- maintain a robust and enforceable immigration system that operates with integrity throughout arrival, assessment, resettlement or departure processes for unlawful non citizens, and
- provide cost effective and appropriate value for money.[1]

1.2 The above informed my response to the inquiry, as well as the re-emergence of significant numbers of unauthorised arrivals since the changes to Government policy in August 2008.

1.3 The recommendations made in this report would undoubtedly be seen as a further softening of this Governments response to people smugglers and their clients.

1.4 I do not support the new "bridging framework" which is articulated in particular in recommendations 2, 3, 8 and 10. In my considered opinion the proposed new bridging visa framework does not comprehensively meet the agreed considerations and criteria, nor does it help to deter people smugglers from targeting Australia as a preferred destination.

1.5 Recommendations 2, 3 and 8 describe the majority of the committee's view that unlawful non-citizens be diverted out of detention before their security, health and identification status check is completed. These ex

1 Paragraph 5.2 in the Committee's second report of the inquiry into immigration detention.

detainees are then to be transferred into the community within a 'bridging visa framework'. The entitlements and support to accompany the bridging visas are described in Recommendation 8:

> The Committee recommends that the Australian Government reform the bridging visa framework to ensure that people are provided with the following where needed:
>
> - basic income assistance that is means tested
> - access to necessary health care
> - assistance in sourcing appropriate temporary accommodation and basic furnishing needs, and provision of information about tenancy rights and responsibilities and Australian household management , where applicable, and
> - community orientation information, translated into appropriate languages, providing practical and appropriate information for living in the Australian community, such as the banking system, public transport and police and emergency contact numbers.

1.6 Recommendation 10 refers to the proposal that these bridging visa holders also have full work rights:

> The committee recommends that the Australian Government reform the bridging visa framework to grant all adults on bridging visas permission to work, conditional on compliance with reporting requirements and attendance at review and court hearings.

1.7 As unemployment continues to climb, it cannot be assured that asylum seekers can readily step into and keep employment. As well the perception of additional competition in the work place will cause more stress to Australians in the workforce as they compete to gain or hold what work is still available in the contracting economy. Looking for work as a non-English speaking background person with no ability to indicate a long term stay in the job would be extremely difficult. Alternatively placing the person (and their family) on welfare could colour their future attitudes to the advantages of finding work and earning an independent living in a very difficult economic climate.

1.8 In fact, most detainees do not stay for an extended period of time in secure detention, and all detention centres are now upgraded in their facilities, or have been recently funded for further upgrades. The possibility of mental breakdown due to long terms in detention is therefore significantly reduced. The committee took evidence that as at 1 May 2009 47% of stays in detention were for less than one month. 72.1% of the stays were for

periods of less than three months, and processing times for those in the recent boat people surge are being shortened all the time.

1.9 We heard compelling evidence from a number who work to support detainees released part way through their processing into the community that:

> Increased use of bridging visas without a substantially enhanced provision of support may result in some people being no better off, or even worse off than in immigration detention.[2]

1.10 Given the severe reductions in staffing and funding now applying to the Department of Immigration and Citizenship (DIAC), including some 600 less staff since the 2008-09 budget, it is important that resources are not diverted away from all efforts to even more efficiently and swiftly finalise the inquiries to establish the identity, health and security status of individuals in detention.

1.11 If detainees were to spend even fewer weeks in detention before being consigned to a very long time on a bridging visa, with no resolution of their status, this would not represent an improvement on the current situation. The Department's support, oversighting and monitoring of those on bridging visas, the surety requirements and regular personal reporting required of those on the bridging visas would be resource intensive, and debilitating for those continuing in status limbo.

1.12 It should be noted that children and minors and an accompanying parent or guardian have been offered alternative community based accommodation since 2005. Recommendation 9 implies that this is not the case.

1.13 As well, it is more likely under the new framework proposal that every rejected asylum seeker claim would lead to an administrative, ministerial and judicial challenge to this decision (whatever was possible) if the detainee understood that their time (months/years) during the appeal process would be spent in the community with full work or full income support and other rights. Time wasted in dealing with vexatious claims is a cost that could otherwise be committed to settling more refugees in our country.

1.14 A better alternative for those unlawful non-citizens currently in detention as they seek a resolution to their asylum seeker status is for DIAC to commit every possible resource to resolving the individual's status, with

2 Refer to chapter 3 in the Committee's second report of the inquiry into immigration detention.

additional resources committed to do this work if required. If their claim is rejected, the individual should continue to be detained in one of the excellent transit facilities until swiftly deported. If they choose to appeal, they should remain in detention until the appeal is resolved. Where the individual's claim is successful, they would then be swiftly transitioned out of detention into the community to begin their new life, with no ambiguity about their status remaining.

1.15 Those (the majority) who are granted bridging visas for a short period due to an overstay of a tourist visa or the like are currently well served by the current efficient arrangements, and do not require an alternative framework

1.16 Whether all unlawfully arriving non-citizens should in the future be granted conditional residency status in the first instance was not within the scope of this investigation, however, given the surge in asylum seeker numbers now arriving via people smuggling, the government should consider this and other options as a deterrent to help save lives and injury during the unsafe sea voyages.

1.17 The new schema does not therefore represent value for money or cost effectiveness, nor is it more just or humane robust or enforceable. It also fails to send a message to people smugglers that Australia should not be targeted as a favoured destination.

The Hon. Dr Sharman Stone MP