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Hotham Mission Asylum Seeker Project

Submission to the:

Joint Standing Committee on Migration

Inquiry into immigration detention in Australia

July 2008

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Section 1: Introduction

Hotham Mission Asylum Seeker Project (ASP) welcomes this opportunity to provide our submission to the Joint Standing Committee on Migration: Inquiry into immigration detention in Australia.

This inquiry will be a critical step in ensuring the continued improvement of Australia's immigration reception processes. The devastating impacts of detention on the physical, psychological and social health of asylum seekers has been well-researched and extensively documented over the past decade and Hotham Mission ASP hopes this inquiry will reflect a genuine effort on the part of the Federal Government to redress these issues.

In this respect Hotham Mission ASP is very pleased to acknowledge the Government's recent announcements that immigration detainees will only be detained if they are assessed to present a risk to the community. We are also encouraged to note that detention will be reviewable every three months including oversight by the Commonwealth Ombudsman. While Hotham Mission ASP remains strongly opposed to the use of off-shore detention facilities on Christmas Island we believe it is a positive, albeit long overdue, step to ensure asylum seekers have access to legal representation and the right to appeal their decision.

The critical issue now for consideration by the Australian Government will be the care and management of people released from detention and it is addressing this crucial element that Hotham Mission ASP would like to provide our expertise and experience to the Committee.

Hotham Mission ASP has a high level of expertise, experience and in-depth knowledge with regard to the issues faced by asylum seekers in the community and those in detention. Through our casework with these clients we have also developed a high level of knowledge regarding the challenges and complexities of the current reception, compliance and refugee status determination systems with which our clients engage.

While Hotham Mission ASP acknowledges the broad range of issues that will be considered as part of this inquiry, this submission will address the terms of the inquiry about which we have the greatest level of expertise and knowledge. We hope that in providing the Committee with a focused and detailed submission we can make the most useful contribution to the outcomes of the inquiry.

In this respect we will be focusing on:

- the benefits and challenges of current detention-release arrangements (section 5);
- standards required for quality community-based reception and care (section 6); and
- international models of reception (section 7)

We would also like to acknowledge and support the submission made by the Uniting Church of Australia as our affiliated body, representing the views of Uniting Church agencies and Hotham Mission ASP in relation to the broader terms of this inquiry.

Section 2: Summary of Recommendations

Major discrepancies exist in Australia's reception and processing of asylum seekers, including rights, entitlements and conditions imposed. These discrepancies relate to:

- the means and place of arrival;
- when an asylum claim is lodged; and
- where the claim lies within the determination process.

Under current policy, an asylum seeker may be held for the duration of their claim in a detention facility on the Australian mainland, or held in an offshore facility. Alternatively they may be held in a community detention arrangement, or they may live in the community on a bridging visa. During this period, they may be eligible for essential government funded welfare support or they may be left destitute in the community with no right to an income or healthcare.

Based on 11 years of experience working with more than 1000 asylum seekers in the community we urge the Australian Government to implement a uniform community-based reception policy for all individuals who have sought Australia's protection and who have completed identity, health and security checks, in line with UNHCR reception and detention guidelines¹.

More specifically, with regard to this current inquiry Hotham Mission ASP would like to make the following recommendations:

Recommendation 1: Expand the **Community Care Pilot** program, ensuring entitlements cover financial hardship, allow for casework assistance and continuing until a Ministerial decision.

Recommendation 2: Ensure that people defined under regulation 2.20 as being eligible for release from detention, are provided with **entitlements to Medicare, health and welfare** assistance from the time of release until a final immigration outcome.

Recommendation 3: Ensure Compliance has **greater flexibility in granting bridging visas** to persons who are or have become unlawful for reasons outside of their control, or where circumstances present where it is clearly undesirable or inappropriate for the person to be detained and where there are minimal flight risks.

Recommendation 4: Ensure the current **Community Status Resolution Trial** is continued for destitute/vulnerable refused asylum seekers, which does not invoke the 'assisted removal' detention based model.

¹ UNHCR, 'Reception Standards for Asylum Seekers in the European Union', Geneva, July 2002; UNHCR, 'Revised Guidelines on applicable criteria and the standards relating to the detention of asylum seekers', Geneva, February 1999.

Recommendation 5: Develop **Reception Guidelines for Asylum Seekers** in the Australian community, which are clearly in line with our international obligations and based on UNHCR Reception guidelines.

Recommendation 6: Ensure a degree of self-sufficiency for asylum seekers living in the community by extending the **right to work and Medicare** to all asylum seekers, including the abolition of the 45 day rule, and ensure these entitlements remain in place throughout the protection application process including the duration of applications under s417 of the Migration Act.

Recommendation 7: In addition to ensuring eligibility for Medicare, DIAC needs to work more effectively across the **whole of government** and through the COAG National Reform Agenda to ensure that providers of health care services in all States and Territories are aware of the unique and specialised health needs of asylum seekers and implement appropriate standards of care and referral processes.

Recommendation 8: That DIAC work across the whole of government and through the COAG National Reform Agenda to **enhance the effectiveness of Commonwealth-State housing agreements** and ensure that any initiatives resulting from this address the critical housing needs of asylum seekers.

Recommendation 9: That DIAC implement a consistently and appropriately **funded case-management system** for the reception and care of all asylum seekers in the community throughout their protection application process until such a time as a final immigration outcome has been reached.

Section 3: Hotham Mission Asylum Seeker Project (ASP)

Hotham Mission Asylum Seeker Project is the only specialist asylum seeker housing agency in Australia. The project runs a range of comprehensive services for asylum seekers, including supported accommodation, casework, financial relief, volunteer and support programs. The project operates as a credible alternative to detention in providing support and advice to asylum seekers through a range of immigration outcomes.

The project has also been recognised nationally and internationally for its high standard of community care programs for asylum seekers.

Since 1997 Hotham Mission ASP has worked with more than 1000 people who are awaiting a decision on their protection visa application or humanitarian request under Section 417. A large percentage, around 40% of clients, are family groupings, including 14% single mother families, with almost 30% of clients being children under the age of 15.

Section 4: Our work and experience with immigration detention and community release

Since late 2000, Hotham Mission ASP has provided housing and casework support to 74 asylum seekers released or transferred from an Immigration Detention Facility (IDF), working

closely with the Minister's Office and the Department of Immigration and Citizenship (DIAC) at a State and Central level. These asylum seekers fall into four main categories:

- Those released for psychological or medical reasons
- Those released as an Unaccompanied Minor (UAM)
- Those detained for breaching their bridging visa requirements
- Those released by a Federal Court order

More recently, Hotham Mission has assisted the Detention and Unauthorised Arrivals Unit's work in developing residence determination arrangements for families in IDFs and has been involved in the development of a number of Palmer initiatives, including the Case Management and Community Care Pilot.

Hotham Mission Asylum Seeker Project is pleased that there have been observable positive changes implemented in relation to detention policy in recent years. Such changes include the release of children into the community, the use of residence determination for vulnerable people, the new role for the Commonwealth Ombudsman to report on conditions and lengthy detention, the system of individual case-management and the closure of centres on Nauru and Manus Island.

Over the past 11 years, the project has developed an intake, assessment and casework structure based on the unique and exceptional welfare needs of the client grouping. Through this intensive work with our clients, Hotham Mission ASP has developed specialist knowledge, expertise and an in-depth understanding of the issues faced by asylum seekers and detainees and the complex system in which their cases are managed.

Section 5: The benefits and challenges of current detention-release arrangements

5.1 Current models of community release

In the experience of Hotham Mission ASP there are many challenges associated with current detention release and community care arrangements.

There are effectively three different funded care programs for asylum seekers living in the community with three different eligibility criteria and three different frameworks for care. Alongside these programs are a number of unfunded agencies that provide care for asylum seekers with no form of assistance, income, access to Medicare or work rights.

Current Community Care options include;

1. Community Detention Program
2. Asylum Seeker Assistance Scheme (ASAS)
3. Community Care Pilot (CCP)
4. Unfunded community organisations eg Hotham Mission Asylum Seeker Project (ASP)

The ASP is very concerned about the inadequacy of current community release arrangements. The needs of asylum seekers whether on a community-based BVE, or detention releasee on a BVE under regulation 2.20, or Court Order release, may vary, but the underlying vulnerabilities exist in all categories. A wide range of serious welfare concerns arise for these groups left in the community with no right to work, healthcare or welfare-

based support. This includes the risk to homelessness, the impact on health and overall wellbeing, particularly for child asylum seekers. In many cases asylum seekers living in the community do not have access to basic entitlements. Hotham Mission research has found that denying asylum seekers on bridging visas the right to an income and healthcare makes individuals isolated and vulnerable in the community, affecting their health, wellbeing and ability to make departure arrangements.²

At present the current models of community care are not streamlined and in many cases minimum standards of care do not exist.

5.1.1 Community Detention Program

In 2005 a funded detention release program was introduced by the former government for people released into residence determination (RD). The determination of who is eligible for an RD arrangement and under what conditions is a non-compellable Ministerial discretion. RD is not limited to families, others may be eligible dependant on the discretion of the Minister. DIAC must ensure adequate provision of welfare is available and defined in the RD arrangement. The Australian Red Cross' role is to provide basic income and health care support to persons in the program as well as emotional and social support and referrals to relevant service providers such as mental health professionals. However, the detention release scheme is limited to a residence determination setting. This does not include detainees release from detention on a bridging visa into the community.

For example, asylum seekers released from detention under regulation 2.20, are issued a Bridging Visa E 0.51, which denies the right to work, Medicare, and exclusion from the Asylum Seeker Assistance Scheme. In most cases, these releases have occurred as there has been some level of community based support assured, such as healthcare and housing. The adequacy and sustainability, however, of these arrangements is significantly reduced in relation to the extent of time a person has been detained and the health or welfare issues involved.

Based on the circumstances and vulnerabilities of individuals being released from detention on bridging visas, carefully planned community care arrangements are clearly required being both the obligation and in the interest of government to ensure this, an issue that is outlined further below.

5.1.2 ASAS

The federally funded program, the Asylum Seeker Assistance Scheme (ASAS), administered by the Red Cross, was established as a safety-net for certain limited categories of asylum seekers. ASAS has been crucial in providing income support to those who would otherwise have been left destitute in the community. However, there are gaps in this program. The program does not extend to asylum seekers who have been in detention or to those at the final stages. Also, it is not funded to provide casework assistance, which is crucial, particularly for long-term detainees and asylum seekers requiring urgent social work assistance for health, housing, legal and other primary welfare concerns.

Our concerns about minimum standards of care are outlined below, however, the ASP firmly believes that the model for community care, should lie with Community Care Pilot. Whilst

² Welfare and Immigration Outcomes for Asylum Seekers on Bridging Visa E, Hotham Mission, November 2003

this pilot is still in its formation stages, it provides a model of care with various levels of support, customised to asylum seeker needs.

The basis of any specialized care for asylum seekers should be seen as service delivery based on client need. Not all asylum seekers would require income support or ongoing casework. Criteria that has been developed for the CCP could stand as a clear indicator for eligibility to income support and could be applicable to both detention releasees and community-based asylum seekers.

5.1.3 Community Care Pilot

In May 2006, the Department of Immigration and Citizenship rolled out the Community Care Pilot (CCP) to provide support in the community for individuals (including asylum seekers) facing particular vulnerabilities while they await a decision on their applications. The aims of the CCP include, but are not limited to:

- the management of individuals in a timely, fair and reasonable manner;
- ensuring that their exceptional needs are addressed and that individuals receive appropriate support in the community; and
- the provision of accurate information to individuals in order for them to make informed decisions about their immigration matters.

Components of the CCP include DIAC's Case Management Service that acts as a 'gateway' for referral of clients to services under the CCP. Assistance for referred client is provided by the Australian Red Cross as the lead agency. DIAC Case Managers also have access to brokerage funds to meet the needs of clients on a one-off basis.

In many ways the CCP has struggled to reflect the initial aims of the program, with a number of concerns raised at the 12 month review by community agencies and others. However, the collaborative development approach between DIAC and community agencies has ultimately benefited clients by providing a range of services, tailored to need and sensitive to community organisation referrals. The commitment to provision of services until an immigration outcome (although early exit provisions do exist) means the program can deliver more adequate services than ASAS. Furthermore, the potential to grow this pilot into a program and use it as the model for providing community care across the range of visa and welfare contexts for asylum seekers living in the community is significant.

If the CCP is to become the model for community care there are a number of issues that need to be addressed:

- Whilst it is acknowledged that the Pilot is intended to be small and exploratory in nature, 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. This must be explored in combination with other options (such as the grant of work rights) to determine the needs of a future program that could cover detention release and ongoing community care;
- The introduction of Case Management and individualised needs assessments by DIAC for clients of the CCP has been viewed as a highly positive step by participating community agencies. To build on this, DIAC needs to develop more substantial pathways between the CCP and other community services with which CCP clients currently engage or have

the potential to interact. Such relationships can only enhance a broader program that may eventually take into account the expertise and established networks of currently unfunded community organizations who provide valuable services to asylum seekers living in the community;

- Immigration Advice and Application Assistance Scheme (IAAAS) must be expanded as a community care option to provide asylum seekers living in the community with credible and consistent legal advice. Such advice would advance both the Department of Immigrations needs and those of the client, to resolve cases in a timely manner;
- Eligibility criteria for inclusion in the CCP needs to be broadened to encompass the range of contexts in which asylum seekers may require community care, including detention release, destitution due to lack of income and delayed return to country of origin due to illness or documentation delay;
- There must be provision for funded housing for CCP clients;
- There must be a further enhancement of the casework model of community care to ensure the establishment of clear pathways for referral and broader services provision to clients engaged with the CCP.

5.1.4 Unfunded community organisations

Across Australia there are a number of community organisations that are funded by community and philanthropic donations to support asylum seekers in the community who do not have access to any form of income, healthcare or the right to work. Hotham Mission receives up to \$700,000 from community donations and a further \$300,000 from philanthropic grants each year to undertake this work. A further \$1million is spent in-kind on donated housing and volunteer support each year.

However, despite developing a range of comprehensive services for asylum seekers, including supported accommodation, casework, financial relief, volunteer and support programs, we cannot claim to be meeting the basic needs of asylum seekers living in the community. Among other services, the ASP provides asylum seekers with \$33 per person per week to live on, an amount that costs us \$30,000 per month. Sadly, many of our clients have the skills to be self-sufficient, skills they are denied using in Australia as is outlined below. However, into the future agencies such as Hotham Mission will struggle to seek the same level of funding from the community and philanthropic trusts as community perception in relation to asylum seekers changes and community donations fall. Government moves to abolish Temporary Protection, offshore detention in Nauru and Manus Island and arbitrary indefinite detention, whilst welcomed by the community, may leave the impression that asylum seekers are now receiving adequate care in the community.

Unless standards of community care are put in place alongside detention changes, asylum seekers may find themselves being turned away by community organizations that can no longer afford to fill the gap left by government policy that denies basic entitlements to asylum seekers living in the community.

Recommendation 1: Expand the Community Care Pilot program to include detention release, ensuring entitlements cover financial hardship, allow for casework assistance and continuing until a Ministerial decision.

5.2 Critical issues for released asylum seekers

Certain categories of detention-based protection visa applicants may be eligible for a bridging visa if they meet the requirements under regulation 2.20. These categories include:

- Minors with appropriate community arrangements
- Persons over the age of 75
- People with special health requirements
- Survivors of torture and trauma
- Spouses of Australian residents

5.2.1 Denial of basic rights and entitlements

Asylum seekers released from detention under regulation 2.20, are issued a Bridging Visa E 0.51 (BVE 0.51s), which denies the right to work, Medicare, and exclusion from the Asylum Seeker Assistance Scheme. In most cases, these releases have occurred as there has been some level of community-based support assured, such as healthcare and housing.

The adequacy and sustainability, however, of these arrangements is significantly reduced in relation to the extent of time a person has been detained and the health or welfare issues involved. For example, the high level of pharmaceutical requirement and the ineligibility of those individuals for the Pharmaceutical Benefits Scheme makes it almost impossible for community based groups or individuals to provide appropriate care for these individuals.

In the past few years, DIAC have released a significant number of people on 0.51s, not into the care of welfare agencies, but into what we would argue are highly inappropriate and unsustainable arrangements. Some individuals have been granted entitlements such as income support or funded healthcare, while others have received no entitlements, creating an unfair, unclear and negligent system of release.

This, we argue has:

- left some asylum seekers vulnerable in the community;
- resulted in people released for health reasons under regulation 2.20 being ineligible for basic healthcare and not receiving appropriate treatment;
- utilised community-care plans with inexperienced, poorly resourced community members that are bound to break down; and
- put additional strain on community organisations.

This category is a very important administrative avenue for DIAC to respond quickly to complex cases found unable to be cared for in a detention facility or cases where it is inappropriate for their ongoing detention, for example, unaccompanied minors or the elderly. However, the category as it currently operates is an inappropriate means of release for these groupings. Firstly, because of the denial of entitlements, and secondly, because an individual is only eligible while they are awaiting a decision on a primary or secondary merits decision on their refugee case.

Individuals at the Minister or refused cases are not eligible for a BVE 0.51. This, in effect, creates a challenge for DIAC as few appropriate alternatives currently exist.

Hotham Mission ASP and other agencies have consistently stated to the Department, based on case experience, that Alternative Places of Detention Arrangements under the MSI 381, requiring ongoing 'line of sight' detention obligations, are not suitable for individuals with serious health issues or cases involving children. Equally, the use of Residential Housing Projects for these individuals is highly inappropriate, with the onus on guards to diagnose and determine at which point health or other services are required. This differs in a detention facility or determination context where the individual can make his or her own way to seek medical treatment.

Recommendation 2: Ensure that people defined under regulation 2.20 as being eligible for release from detention, are provided with entitlements to Medicare, health and welfare assistance from the time of release until a final immigration outcome.

5.2.2 Duty of care to bridging visa holders

While individuals on bridging visas are normally on their 'own undertaking' and often not seen as the ongoing responsibility of the government, the situation changes considerably if a person has spent time in a detention facility. For example, the basis of release from detention on a Bridging Visa (either 0.50 or 0.51) is some form of assurance of support or surety requirement, thus acknowledging that a person is not entirely on their 'own undertaking'. However, there are further arguments that 0.51 cases, particularly those with health issues, remain the responsibility of the Commonwealth. Firstly, in these cases the government has both accepted and acknowledged that some people cannot be cared for in an immigration detention facility. Our extensive work with 17 of these cases - two for physical health, 14 for mental health and one unaccompanied minor, highlights this.

Based on the circumstances and vulnerabilities of individuals being released from detention facilities on bridging visas, a basis of health and welfare assistance is clearly required being both the obligation and in the interest of government to ensure this.

5.2.3 Surety Requirements:

Asylum seekers who have breached their bridging visa and are detained may be eligible for a bridging visa 0.50, in many cases through the paying of a bond. The number of cases of people detained for losing work rights and continuing to work has been significant over the past 8 years.

Unfortunately, this has included fathers of families being detained who were simply trying to support their families at the Ministerial phase. Since 2001, Hotham Mission ASP has worked with 3 pregnant women who presented homeless to our agency after DIAC detained their husbands who continued working to support the family. The pregnant women not only had no access to housing, but no form of income or healthcare. The bond amounts requested vary dramatically, with no clear guidelines or assessment to determine actual flight risk versus surety requirements. In one of the above cases, DIAC asked a \$50,000 bond for the father's

release from detention, an impossible amount for an individual already in debt and with no source of income.

5.2.4 The need to detain and removal issues

Hotham Mission ASP has a number of concerns about the need to detain persons who present as minimal flight risks and who could be managed effectively and more humanely in the community. These concerns include:

- Section 189 of the Migration Act states that an officer is required to detain a person they know or reasonably suspect is an unlawful non-citizen. Greater flexibility is required within this power to ensure that officers can issue bridging visas in circumstances where a person has become unlawful for reasons outside of their control, where insufficient evidence of unlawful status exists, or where it is undesirable to detain, such as age or health reasons.
- Compliance discretionary decision-making continuing to be assumption-based and not based on clear guidelines with risk and needs assessment.
- Providing nothing to the client in writing as to the reasons for the decision to detain, or revoke, or not renewing a bridging visa.
- The ongoing use of detention pending removal visas for community cases where there may be minimal concerns relating to flight or security.

Hotham Mission ASP argues that Compliance officers require more options when working with people facing detention or departure from Australia. This should include more flexible bridging visa arrangements and non-detention-based repatriation assistance offered to all refused asylum seekers.

A thorough casework system will reduce the need to move to detain, by adequately assessing the risk to abscond and more effectively working with failed asylum seekers to prepare them adequately for departure from Australia. This also includes the provision of information about conditions in their country of return and services and organisations which may be able to assist them in adapting to their return.

Recommendation 3: Ensure Compliance has greater flexibility in granting bridging visas to persons who are or have become unlawful for reasons outside of their control, or where circumstances present where it is clearly undesirable or inappropriate for the person to be detained and where there are minimal flight risks.

Recommendation 4: Ensure the current Community Status Resolution Trial is continued for destitute/vulnerable refused asylum seekers, which does not invoke the 'assisted removal' detention based model.

Section 6: Standards required for quality community-based reception and care

6.1 The reception needs of asylum seekers:

The interface of factors such as poverty, mental health, poor physical health, family breakdown, lack of social support networks and homelessness is well-known and well-documented. For asylum seekers, these issues are incredibly profound and include, but are not limited to:

- little or no income support;
- ineligibility for State or Commonwealth-funded support services;
- uncertainty about the future and visa status;
- previous experiences of torture and trauma;
- impact of time spent in immigration detention;
- anxiety, depression and other mental health issues;
- physical health issues exacerbated by ineligibility for Medicare;
- difficulty in accessing transport;
- domestic violence and family breakdown; and
- food insecurity.

Asylum seekers exhibit a number of inherent vulnerabilities due to the likelihood of multiple stressors, including past trauma in home country or during flight, family separation, anxiety or fear and uncertainty about the present and future. Because of these vulnerabilities, as well as the fact that asylum seekers may be found to be refugees, certain minimum standards of care should be adhered to. UNHCR guidelines stand as a clear indicator of appropriate care response as well as conditions to be imposed upon asylum seekers. Particular concern is noted for female, minor and elderly asylum seekers, survivors of torture and those with health conditions.

In the first instance, the UNHCR Guidelines on the Detention of Asylum Seekers are quite clear that detention of asylum seekers is "inherently undesirable", and should only be used where clearly evidenced identity or security concerns are present³. Any decision to detain should be reviewable, either judicially or administratively, with conditions imposed on asylum seekers which are not punitive or arbitrary in nature. While certain restrictions may be placed on freedom of movement in relation to detention or reporting requirements, these should be based on comprehensive assessments of actual risk, and should be fair, reasonable, reviewable and time-limited.

Clear standards are outlined in terms of appropriate welfare, rights and entitlements to those remaining in detention. Other freedoms, such as freedom of information and association should not be restricted. Asylum seekers should be provided clear and concise translations of information relevant to their rights, entitlements, processing and conditions. Access to legal advice and information about NGO services available is crucial. Once asylum seekers are assessed as not having any identity, health or security concerns, they should be released under a uniform community-based reception system.

³ UNHCR Revised Guidelines on applicable criteria and the standards relating to the detention of asylum seekers', Geneva, February 1999.

6.2 Minimum Reception Standards in the Community

Certain minimum reception standards should be in place for all asylum seekers awaiting a refugee or humanitarian decision in the community for the entire duration of their claim⁴. These standards should include:

- Work rights, ensuring a degree of self-sufficiency for individuals able to work
- Access to healthcare; and
- Access to income support⁵ and casework for vulnerable asylum seekers.⁶

The provisions for minimum entitlements to work, health care and welfare support for asylum seekers are thus embedded in Australia's international obligations which are referred to in greater detail in Section 7.1 of this submission.

Recommendation 5: Develop Reception Guidelines for Asylum Seekers in the Australian community, which are clearly in line with our international obligations and based on UNHCR Reception guidelines.

6.2.1 Work rights and income support

The 45-day rule:

Since 1 July 1997, all asylum seekers who have not applied for a Protection Visa within 45 days of arrival in Australia are refused the right to work and therefore Medicare. Vulnerable persons who legitimately miss the deadline are denied work rights and Medicare for years while they await an immigration decision. Hotham Mission Asylum Seeker Project's research found that just over 39% of clients were affected by the 45-day rule, with the following reasons given for failing to lodge within the given period:

- Misinformation from well-meaning family or community members; insufficient information or inability to access legal representation
- Migration agent failed to lodge on time
- Circumstances changed in home country while in Australia
- Lack of English or understanding of the legal or immigration process in Australia
- Health issues affecting ability to lodge

Policy rationale:

Hotham Mission have been informed that the reasoning for the 45-day rule is to ensure legitimacy of applications and not giving rights to people abusing the PV process in order to work. Our concern however is that '45 days' is an arbitrary time frame that has no bearing on assessing whether a case is meritorious or not, and does not take into account the legitimate reasons people fail to lodge within this period. In fact, over 15% of 45-day rule affected asylum seekers interviewed were later found to be refugees or have humanitarian grounds to remain in Australia. Hotham Mission would argue there are other ways for the Immigration Department to address concerns about possible abuse of the right to work mechanism.

⁴ UNHCR, 'Reception Standards for Asylum Seekers in the European Union', Geneva, July 2002; UNHCR,

⁵ Income support denotes sufficient financial assistance to meet housing, food, utilities and other essentials

⁶ The various vulnerability categories are outlined in DIMA's existing Asylum Seeker Assistance Scheme Exception Criteria

Income Support:

The provision of consistently applied income support and the right to employment are critical elements in the successful reception of asylum seekers in the community.

In the current Australian context the primary sources of income for asylum seekers is income support through the Asylum Seeker Assistance Scheme (ASAS). Financial assistance may also be sourced through relatives, friends or welfare agencies, but this does not constitute regular, consistent or sufficient income.

Research undertaken by Hotham Mission ASP showed that over 90% of all interviewed asylum seekers had no right to work or ASAS at the time of research. Additionally, a number of asylum seekers claimed DIAC staff did not tell them that they could access the ASAS program, despite being eligible.

Many asylum seekers present in a chronic state of poverty and uncertain of what services are available to them and are often unable to access these services. The primary presentation needs in most cases are a direct result of loss of income and the need for emergency relief and financial support for housing, food and medical issues. 94% of clients present in urgent need of emergency relief, 62% present as homeless with no access to secure housing and no funds to source housing while 22% of clients present in need of medical attention. The impact of a lack of income is exacerbated further given that over 30% of clients have been awaiting a final outcome on their case for six years or more. Almost 30% of children under the age of 15 are with no source of income and have no services available to them.

Loss of entitlements at Ministerial Stage:

Loss of work rights, Medicare and ASAS has a devastating impact on the welfare of many vulnerable people whose cases are before the Minister. This includes children, torture cases, the elderly and individuals with conditions such as cancer, all of whom are denied all rights and entitlements. Of particular concern is the time delay for the Minister to make a decision in cases, as well as the lack of an efficient prioritisation mechanism within the Immigration Department's Ministerial Intervention Unit.

As stated earlier, Hotham Mission believes people approaching the Minister under Section 417 are asylum seekers within a lawful process to which we have reception obligations. They should not be deemed 'failed claimants' or denied entitlements on the basis of seeking humanitarian intervention.

Impact of the 90 day processing rule:

The introduction of the government's 90-day processing time for new asylum claims in the middle of 2005 directly impacted on new clients approaching Hotham Mission ASP. While the 90-day rule is advantageous to asylum seekers in detention centres, Hotham Mission is greatly concerned that asylum seekers who seek protection in the community are being quickly pushed through the system, often losing their entitlements to work or ASAS within three to six months of arrival in Australia while awaiting an outcome in the courts or at the Minister. The 90-day rule in effect nullifies the ASAS six month waiting period. This has placed a lot of pressure on the Asylum Seeker Project and left asylum seekers who are not familiar with Australia without entitlements, distraught and anxious.

Asylum Seeker Assistance Scheme issues:

The Asylum Seeker Assistance Scheme is a very important government program that has assisted many vulnerable asylum seekers. The program however is unfortunately far too limited in its capacity to assist asylum seekers to the extent needed and excludes many vulnerable asylum seekers.

Recommendation 6: Ensure a degree of self-sufficiency for asylum seekers living in the community by extending the right to work and Medicare to all asylum seekers, including the abolition of the 45 day rule, and ensure these entitlements remain in place throughout the protection application process including the duration of applications under s417 of the Migration Act.

6.2.2 Health services and Medicare

As highlighted in the previous section, serious concerns arise for the health and welfare of asylum seekers when they are not eligible for Medicare, the Pharmaceutical Benefits Scheme and when they experience difficulties accessing basic health care services.

At the time of Hotham Mission ASP research, over 90% of our clients were without eligibility for Medicare.

Hotham Mission ASP has worked with a number of cases with medical concerns including disability, cancer and chronic conditions such as diabetes, heart problems, eye conditions and chronic ongoing viral infections, as well as individuals being treated for various mental health conditions. This is of particular concern given that 66% of asylum seekers required medical attention since being placed on a Bridging Visa E. 22% of asylum seekers presented to Hotham ASP with health issues requiring treatment.

Major areas of concern include:

- The level of refused treatment for asylum seekers
- Asylum seekers not able to complete urgently required medical treatment
- Asylum seekers not seeking medical attention
- Pharmaceutical issues
- The number of pregnant women surveyed without antenatal care
- Torture and trauma survivors without appropriate care
- Mental health issues
- Public health issues

Refused treatment:

17.5 % of asylum seekers claim to have been refused medical treatment since being on a BVE. Refused treatment 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.

Three reasons given for refusal of medical treatment are:

- Not having a Medicare card
- Not having sufficient funds to pay for services
- Not having sufficient identification

Not completing required treatment:

Another issue of concern is the number of asylum seekers not completing their required treatment. This was primarily the case for asylum seekers who had begun treatment but who lost the right to work or ASAS and could not afford to pay for the ongoing cost of treatment. This included asylum seekers asked to pay outstanding bills or to advance for further treatment and also those who had become ineligible during treatment.

In other cases, individuals with HIV, cancer and terminal illnesses have had their ASAS and General Health Scheme access halted on a refusal from the RRT, putting their health and lives at risk.

Asylum seekers not seeking medical attention:

Community based asylum seekers tended not to seek medical services, despite requiring assistance. A number of community based asylum seekers presented with serious untreated health issues, such as diabetes, high blood pressure, heart conditions and asthma. Hotham Mission is aware of one male asylum seeker who was in Australia for nine years, who died following complications due to multiple untreated heart conditions.

Not seeking medical attention is due in part to isolation, lack of entitlements and financial considerations. A further reason for not seeking out treatment is that the individual does not know or understand the health services that are available to them and assumes they have no right to any medical assistance in Australia. Others had previously been refused treatment and felt hesitant or unable to seek out assistance again. It was also noted that many referrals to Hotham Mission have come from medical practitioners, hospital social workers and mental health services that have come into contact with the asylum seeker when their condition has become severe and required urgent intervention.

Pharmaceutical issues:

Another issue for asylum seekers was access to pharmaceuticals. As ineligible asylum seekers do not have a Medicare card or a Health Care card they are not entitled to the Pharmaceuticals Benefits Scheme (PBS). This means ineligible asylum seekers must pay full price for medicines. This is of particular concern for asylum seekers released from detention, who had a higher level of pharmaceutical use than other asylum seekers, but also for asylum seekers who required expensive medicine.

Pregnant Mothers:

Hotham Mission worked with 23 pregnant asylum seeker women between 2001 and 2006, who were on Bridging Visa E's with no Medicare entitlement. Seven of these women did not seek medical assistance until the third trimester of pregnancy. Of particular concern to this group were nutritional issues and access to health care. Hotham Mission has worked with newborn and toddler asylum seeker children with conditions normally only found in the third world, such as scurvy, rickets and malnutrition.

Torture and Trauma:

Around 20% of Hotham Mission's caseload comprise individuals who were survivors of torture and trauma and have received counselling at some point during the determination process. The Project has worked with a number of individuals who are awaiting a decision from the Minister. They had previously received ASAS for torture and trauma grounds but now have no benefits.

A range of concerns exist for this group related to lack of healthcare entitlements, difficulties accessing ongoing trauma counselling, as well as mental health concerns highlighted further in the following section. Attending DIAC Compliance is often a traumatic experience for asylum seekers, particularly those with previous experiences of arbitrary detention and torture. Hotham Mission has repeatedly requested that torture survivors and those with mental health concerns be able to see the same Compliance Officer, and for pre-arranged meeting times to be made where possible. This has, in certain circumstances been able to occur but is not guaranteed.

Mental health issues:

Over 20% of clients present to Hotham Mission with some form of mental health issue requiring treatment, including pharmaceuticals or counselling, while a total of 29% of clients require mental health treatment since being on a BVE. A range of mental health concerns are reported within the client group from high levels of anxiety and depression, through to psychosis, self-harm and suicidal ideation. 44% of Hotham Mission ASP clients seek treatment for mental illness by a psychiatrist, psychologist, GP or trauma counsellor. A general high level of anxiety is noted for all asylum seekers. Causes of anxiety on the whole are due to uncertainty about both their present welfare needs and their future, in terms of their legal status in Australia, fear of return, as well as multiple other issues.

Recommendation 7: In addition to ensuring eligibility for Medicare, DIAC needs to work more effectively across the whole of government and through the COAG National Reform Agenda to ensure that providers of health care services in all States and Territories are aware of the unique and specialised health needs of asylum seekers and implement appropriate standards of care and referral processes.

6.2.3 Provision of housing

One of the most critical issues facing asylum seekers in the community is the availability and accessibility of appropriate housing. This is an issue which Hotham Mission ASP and other community agencies have been dealing with for many years and we also acknowledge that the current public and private housing crisis in Australia cannot be remedied without a broad number of measures.

With this understanding, Hotham Mission views the current inquiry by the Federal Government into homelessness in Australia and the development of a national framework to tackle this long-standing issue as a highly positive step. We also view the current COAG Reform Agenda as providing an ideal opportunity to generate more effective engagement between the Commonwealth and States regarding the provision of housing to those in our community who are most in need.

Hotham Mission ASP's Housing work

Hotham Mission ASP provides housing for 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 Hotham Mission ASP. Once an asylum seeker has been placed in an appropriate housing situation, a volunteer Outreach worker is allocated to visit or contact the house at least once a week and provide support and referral.

Hotham Mission ASP is currently housing 120 people across 46 properties.

62% of our clients present as homeless, with approximately 73% having experienced homelessness while on a Bridging Visa E. Almost 17% become homeless due to unstable housing or lack of appropriate accommodation on release from detention. In 70% of cases, the loss of income (due to loss of work rights or ineligibility for ASAS) is the primary cause of homelessness.

The intense casework support provided by Hotham Mission ASP greatly reduces the level of homelessness and degree of poverty, isolation and destitution faced by many asylum seekers.

The outreach casework program operated by Hotham Mission ASP provides:

- ongoing casework; referral for legal, education and medical issues;
- regular needs and risk assessments;
- a way for clients to be linked into services and the local community, ensuring that they are coping well, have sufficient food, and are not isolated;
- assistance in building a supportive, friendly environment in the house, such as outings, meals together etc.;
- housing support and oversight; monthly housing meetings, ensuring tenants are adhering to the house guidelines (eg. keeping the house clean, lawns mowed); and
- ensuring crisis and safety procedures are in place, suitable to the property and needs of tenants.

The project has housed more than 500 asylum seekers over the past 11 years and focuses on housing asylum seekers with no other basis of support or housing option.

Despite lack of funds and staff, the housing program of Hotham Mission ASP has been remarkably successful in providing appropriate long-term supported housing to one of the most vulnerable groups in the community.

Key housing issues facing asylum seekers

Homelessness remains a major welfare issue for asylum seekers in the Australian community, particularly those denied the right to work and income support.

Housing options are limited for this group as **asylum seekers are not eligible** for Public Housing or Transitional Housing through the Supported Accommodation Assistance Program (SAAP), which is Commonwealth or joint Commonwealth/State funded. Access to State Government Transitional Housing has been difficult due to a range of issues, including conflicting understanding on the part of providers as to the eligibility criteria for those with no income, and concern about lack of exit options for this group. Further complications regarding access include housing agencies struggling to understand the complexities of legal status, entitlements and needs of this group. The entitlements of asylum seekers on bridging visas do not remain static. In fact, they change significantly at different periods, affecting housing and support needs, as well as their exit options. Because of these factors and lack of entitlements for bridging visa holders, homelessness remains a major issue for asylum seekers, which directly impacts on mental and physical health and overall wellbeing.

The ability of asylum seekers to access rental assistance through the Housing Establishment Fund (HEF) remains low at 9%, despite consistent advocacy on the issue. In most cases this

assistance is one-off and for less than 4 weeks. For those in private rental, Hotham Mission ASP covers the cost of rent or takes over the lease where no other housing options are available. This currently costs the project between \$10,000 and \$12,000 per month.

For most asylum seekers, there is constant movement in and out of homelessness, with impermanence and insecure housing remaining at over 15%. Many are required to move on a regular basis as a result of lack of income and work rights as well as lack of access to permanent sources of stable accommodation.

In the current context of generalised pressures on housing markets, the challenges facing asylum seekers have been brought into sharper focus, particularly as the availability of properties for our work is rapidly diminishing. Hotham Mission ASP provides critical support to large numbers of highly vulnerable people who would, without our support, be homeless and living with serious risks to their physical and mental health.

Recommendation 8: That DIAC work across the whole of government and through the COAG National Reform Agenda to enhance the effectiveness of Commonwealth-State housing agreements and ensure that any initiatives resulting from this address the critical housing needs of asylum seekers.

6.2.4 Case management system

Hotham Mission ASP continues to advocate for an early intervention approach be developed, whereby all asylum seekers are assigned a qualified caseworker, who provides information about the asylum process, undertake need and risk assessments, determine special care needs, and provide ongoing assistance throughout the refugee process.⁷ A critical element of this is the provision of ongoing caseworker involvement to ensure refused asylum seekers are provided the option of returning voluntarily with adequate support, and those granted residency are provided settlement assistance as required.

Hotham Mission ASP has documented the positive role appropriate casework support plays in improving welfare outcomes and preparing, supporting and empowering asylum seekers throughout the determination process. In conducting research over a 5 year period from March 2001 to March 2006 with asylum seekers living in the community, Hotham Mission ASP found that:

- 79% of refused asylum seekers voluntarily departed Australia
- 12% were removed by the Department
- 3% remained in detention awaiting removal
- Less than 1% of clients surveyed absconded⁸.

These outcomes, together with international research, clearly highlight that detention pending removal is not necessary to achieve government objectives of return of refused asylum seekers. In addition, the provision of the right to income and healthcare is arguably in the national interest by ensuring a stable, managed on-shore program is in place and is more likely to ensure asylum seekers are in a position to respond to immigration decisions appropriately. Ensuring additional supports for vulnerable asylum seekers in the community,

⁷ Casework includes the assessment, intervention and support strategies used to assist the welfare situation and to prepare, support and empower individuals awaiting a final decision on their immigration case.

⁸ Bridging Visa E Review, Hotham Mission, May 2006

such as income support and casework assistance, has been costed and found to be cheaper than current detention costs.⁹ In addition, recent research on the skills of asylum seekers denied the right to work has found that the Australian economy could potentially gain hundreds of millions of dollars if they were allowed to work while awaiting a decision, particularly in relation to the skill-shortage crisis.¹⁰

Recommendation 9: That DIAC implement a consistently and appropriately funded case-management system for the reception and care of all asylum seekers in the community throughout their protection application process until such a time as a final immigration outcome has been reached.

6.3 The absence of minimum standards in Australia

While there has been much public debate about the detention regime, the impact of the removal of the rights and entitlements of asylum seekers in the community on bridging visas is lesser known and understood. While a small number of especially vulnerable asylum seekers may be eligible for the government funded Asylum Seeker Assistance Scheme (ASAS) through the Red Cross, many are ineligible for this payment as they have had a primary decision within 6 months of lodging their claim, or have been refused at the Refugee Review Tribunal.

There are a number of serious welfare and health consequences for asylum seekers denied the right to Medicare and welfare assistance, particularly children and individuals with health issues and also those unable to or denied the right to work. Hotham Mission ASP conducted the largest research of its kind in Australia, analysing the welfare needs of 554 asylum seekers on a Bridging Visa E over a 5 year period¹¹. The research outcomes highlighted extremely high levels of abject poverty, including that:

- 90% of clients currently have no right to work, Medicare or welfare benefit
- 62% presented homeless, with 73% having experienced homelessness while on a BVE.
- 66% reported having health issues since being on a BVE, with 18% denied health services due to no Medicare or funds to pay.
- 30% of clients required treatment for mental health conditions while on a BVE.
- 27 % of clients are children under the age of 15, with 76% defined as children at risk
- 14% are single mothers, plus 23 cases in total of pregnant women with no Medicare
- 30% of clients have been in Australia for 6 years or more awaiting a decision.
- 30% had never had the right to an income or healthcare while in Australia, due to almost 40% of clients being affected by the 45 day rule, and 74% of this group are ineligible for ASAS. Over 15% of this group were later found to have a refugee or humanitarian claim.

The research found regulatory changes in 1997 have left many asylum seekers destitute in the community, dependent on charities, friends or relatives to survive. Lack of income after the Refugee Review Tribunal decision leads to high levels of nutritional and health concerns for children and pregnant mothers. High levels of anxiety and depression were also reported,

⁹ Improving Outcomes and Reducing Costs for Asylum Seekers, Justice for Asylum Seekers Alliance, August 2003

¹⁰ A Chance to Contribute - Forgone Gains to the Australian Economy of Disallowing Asylum Seekers the Right to Work
Gwilym Croucher, February 2006

¹¹ Hotham Mission Bridging Visa Review, May 2006.

with asylum seekers denied the right to volunteer and study, and children unable to socialize normally due to lack of funds for extracurricular and recreational activities. These restrictions dramatically affected asylum seeker sense of wellbeing and contributed to isolation and a negative impact on overall mental health.

Section 7: International models of reception

A comprehensive comparative survey of current international community based alternatives is beyond this submission. However, the basic reception conditions of housing, food and healthcare are highlighted. In providing this information the Hotham Mission ASP also has regard to the *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in the European Union Member States* (October 2006).

7.1 International standards

While the Hotham Mission ASP and other asylum seeker agencies have provided critical support to vulnerable asylum seekers in the community for many years, we firmly believe the delivery of even the most basic services must be the responsibility of the Australian Government. The provision of minimum entitlements to work, health care and welfare support for asylum seekers are embedded in Australia's international obligations. The International Covenant on Economic, Social and Cultural Rights highlights appropriate and suitable healthcare, housing, and income support, for all people, including asylum seekers. As signatories to the UN Convention Relating to the Status of Refugees and the Convention on the Rights of the Child, we are bound by the fundamental human rights principles contained in these instruments. In 2002, the Australian Government endorsed the United Nations High Commissioner for Refugees Executive Committee (UNHCR ExCom) conclusions which stated that:

“asylum-seekers should have access to the appropriate governmental and non-governmental entities when they require assistance so that their basic support needs, including food, clothing, accommodation, and medical care are met.”¹²

In July 2000, the United Nations High Commissioner for Refugees (UNHCR) developed *Reception Standards for Asylum Seekers in the European Union*, a document which outlines a process for the harmonisation of EU asylum laws and sets minimum standards for the care and reception of asylum seekers across all EU Member States. While it is acknowledged that eligibility for and access to accommodation for asylum seekers varies widely in practice, UNHCR has recommended that:

- *When asylum seekers are in need of accommodation, the primary responsibility lies with states to provide basic accommodation until the end of the procedure.*
- *Conditions in reception centres or in other types of collective accommodation for asylum seekers should fulfil minimum standards, including the existence of basic facilities, as well as access to infrastructures with respect to health care and education.*

¹² UNHCR ExCom conclusion on reception of asylum seekers (No. 93 (LIII) 2002).

- *Reception centres may constitute an acceptable solution for a limited period following arrival or in the case of accelerated procedures for ‘manifestly unfounded’ applications. However, asylum seekers should have access to specific accommodation arrangements or receive adequate means of support sufficient to cover basic accommodation and other costs or be allowed to find alternative forms of accommodation, if these centres do not provide privacy or affect family unity or health conditions in the longer term or if the procedure is protracted.*
- *With a view to preventing acts of racism and xenophobia against asylum seekers, a reception policy should include appropriate measures to enhance harmonious relationships with the local communities, for instance, by creating awareness of the problems of refugees and designing specifically targeted public information campaigns.*

7.2 Example 1: New Zealand

7.2.1 Detention

While the New Zealand Immigration Acts does not specifically provide for the detention of asylum seekers, since October 2001 almost all asylum seekers are detained while their claims are being processed. In practice, asylum seekers will be detained for at least five weeks to process security checks.

The Mangere Refugee Resettlement Centre houses refugees who have entered New Zealand through the official quota (or resettlement program) and asylum seekers awaiting the outcome of their protection claims. While the Centre is theoretically ‘open’ for quota refugees, there are significant restrictions to the movement of asylum seekers in and out of the Centre. The first group reside at the centre primarily as a means to ease their settlement, but for the latter group the purpose of their detention is to determine identity and assess any security concerns.

On occasion, asylum seekers may also be sent to the Papakura Police Station where their treatment is no different from those inmates on remand. An alternative location for the detention of asylum seekers is the Auckland Central Remand Prison. There have been reported instances where male asylum seekers have been separated without notice, from their wives and children (who are housed at the Mangere Centre) with the males being sent to the Auckland Prison. These places of detention are clearly unsuitable as neither the staff or facilities have the necessary systems or understanding of the needs or experiences of asylum seekers. In both locations, asylum seekers are not segregated from those on remand.

7.2.2 Community Housing

Once in the community, it is the responsibility of the asylum seeker to find their own accommodation. There is no government-funded advice or assistance in sourcing accommodation upon release into the community.

One of the only examples of not-for-profit community-based housing is provided by the Auckland Refugee Hostel which is managed by the Auckland Refugee Council Inc. Funding for the hostel is provided by charitable trusts and while there is no direct government funding, the hostel receives a rebate from Housing NZ. The hostel houses asylum seekers

and failed refugee claimants and provides a range of settlement-related services including: advocacy assistance; English classes; driving instruction; referral to legal assistance; access to computers and a library; access to food banks and other forms of material aid; and community liaison programs and social events such as sports, games, art and other therapeutic activities.

Residents at the hostel are only required to pay rent if they have obtained a work permit. The hostel is open, and the restrictions are limited to the necessity to report weekly to the local police station and to inform staff if they wish to remain away from the hostel for longer than 24 hours. The hostel is considered to be 'emergency' accommodation and residents are encouraged to stay for 6 months, with a maximum of 12 months. With the intense casework support provided to clients, the incidence of absconding has been negligible.

7.2.3 Legal Assistance

Asylum seekers in New Zealand have the right to access free legal assistance through the New Zealand Legal Aid Service. Asylum seekers who are only receiving social welfare payments will generally be eligible for legal services at the minimum contribution of \$50. Cuts in recent years to legal aid funding have had a significant impact on the ability of asylum seekers to access appropriate advice and assistance. There have also been limitations placed on the level of legal assistance provided to asylum seekers who seek to appeal the outcome of their applications.

7.2.4 Work rights and/or income support

Asylum seekers in New Zealand have no source of income or work permit until the first immigration interview, which formally decides if they have a case to seek protection in New Zealand. Some asylum seekers are eligible for emergency benefits, but there is no government provision for assistance with housing. Asylum seekers are able to apply to Work and Income New Zealand (WINZ) for income support and must obtain a letter from the Refugee Status Branch to indicate their eligibility.

7.2.5 Health care

Asylum seekers who are released into the community before being formally recognised as refugees face barriers to accessing specialist forms of health care. While they have access to public health doctors, they cannot access specialist services such as dentists, mental health professionals or optometrists. Asylum seekers require a community services card, without which accessing a GP can be difficult. When attending a public hospital, asylum seekers must also obtain a letter from the Refugee Status Branch to indicate their eligibility for free care. Public Health Screening is encouraged for those applying for refugee status and this is offered through a number of organisations.

Mental health services are available through a number of different organisations including the Auckland Refugees as Survivors Centre.

7.2.6 Education

Asylum seekers in New Zealand are not eligible for formal English language training during their first few months post-arrival. While government-sponsored refugees receive a cultural orientation program, there is no introductory program for asylum seekers.

The children and young people of families who are asylum seekers are entitled to free education in New Zealand primary and secondary schools. When enrolling children and young people in schools, asylum seekers must obtain a letter from Refugee Status Branch indicate eligibility for free education.

While detained at the Mangere Centre, asylum seekers have been permitted to attend classes at Auckland University of Technology, but this happens on an ad hoc basis and is dependent on funding from the Ministry of Education.

Sources:

Refugee Council of New Zealand
Human Rights Foundation of New Zealand
Auckland Refugee Council Inc.
New Zealand Office of Ethnic Affairs

7.3 Example 2: Canada

7.3.1 Detention

While the detention of asylum seekers in Canada is not mandatory, it has become more prevalent since September 2001. The law allows for detention under three conditions: to establish a person's identity, when the person poses a flight risk or when the person poses a danger to the public. In cases when asylum seekers are detained a review is conducted within 48 hours. Asylum seekers can also ask for their detention to be reviewed at any time.

With no mandated time limit for immigration detention many asylum seekers experience extremely long periods of detention. Even if identity requirements have been met, some asylum seekers remain in detention because they have been assessed as a flight risk and in some areas, detainees are required to post bail to be released. Stateless persons face an even greater period in detention because they cannot be deported.

The Federal Government of Canada runs immigration detention centres in Ontario, Quebec and a third in Vancouver (which is for detention of up 72 hours maximum). In other locations immigration detainees are held in correctional facilities and are not segregated from those in the criminal process. This equates to maximum security in some facilities. The devastating impacts of such detention on the mental health of asylum seekers, particularly those who have experienced imprisonment or torture in their country of origin are clear.

While there has been some improvement in conditions and willingness on the part of immigration officials to address issues, many Canadian NGOs have reported concerns about the mistreatment of children and young people in immigration detention. These concerns include the detention to children for up to nine months with minimal access to schooling, fresh air, social and play activities. Young people have also reported abuse while detained along those in the juvenile justice system.

Criticisms have also been raised in relation to the US-Canadian 'Safe Third Country Agreement' which came into force in 2004. This means that most persons who arrive at the USA - Canadian border to claim refugee status, are no longer eligible to do so. While there are some exceptions including having a spouse or immediate relative in Canada or if an asylum seeker is from a nominated country (Afghanistan, Burundi, Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda, Zimbabwe), there are concerns that this agreement could violate Canadian obligations under the Refugee Convention.

7.3.2 Housing

While asylum seekers in Canada do not have access to government-funded housing, the majority are provided with welfare payments three to eight weeks post-arrival (that includes a portion provided for shelter). Most asylum seekers rely on refuges or shelters and some limited accommodation is provided by church-based support agencies.

An example of not-for-profit housing is provided through Sojourn House which is the largest shelter in Toronto and is dedicated to providing housing and support services to recently arrived refugee claimants. Sojourn House has supported thousands of asylum seekers since opening in 1989 and is funded in part by federal and provincial government grants and donations from private corporations and philanthropic trusts. Sojourn House supports asylum seekers and also provides accommodation and support to failed refugee claimants awaiting removal.

7.3.3 Legal Assistance

While the provision of free legal services exists for asylum seekers in Canada, access to legal advice and assistance is often inconsistent as legal aid is administered at the provincial level. Even where legal aid is available, detainees often have difficulty finding a lawyer willing to take on a detention case on a legal aid certificate and travel to the detention centre or jail and this is particularly the case for those detained in more remote centres. This has a major impact on the quality of asylum applications.

7.3.4 Work rights and/or income support

The majority of asylum seekers are provided with welfare payments three to eight weeks post-arrival and most are given the right to work three to six months after their initial application. Asylum seekers who demonstrate that they have no other means of income support will generally be eligible for a permit to work.

7.3.5 Health care

While awaiting the outcome of their claim, asylum seekers have access to health care through the Interim Federal Health Program.

7.3.6 Education

Refugee claimants can apply for student authorisation which permits them to undertake study and the children of asylum seekers have the right to attend local schools.

7.4 Example 3: The Netherlands

7.4.1 Detention and Reception

Once an asylum application is lodged at an application centre, initial administrative processing can take up to four to six working days during which time the applicant remains detained in a closed centre. Following this initial period, if an initial claim is accepted, asylum seekers are accommodated at a more open reception centre run by the Central Reception Organisation for Asylum Seekers.

At these reception facilities, asylum seekers have to report regularly and are provided with food. During the first three months following their arrival, all asylum seekers are accommodated in one of the 17 reception and investigation centres where they are also offered recreational and socio-cultural activities.

At the end of this period they are moved to one of the 79 residence centres where conditions are generally better and offer greater privacy. These centres are run by the Asylum Seekers Reception Service which was specially established for this purpose and comes under the jurisdiction of the Ministry of Justice. Due to a lack of available spaces, some asylum seekers have to be temporarily accommodated in hotels and boarding houses.

Decisions on asylum applications are generally required to be made within six months of the initial application.

7.4.2 Housing

Asylum seekers are dispersed over the country. Sometimes asylum seekers are allowed to find their own accommodation, which is not forbidden as long as they report to the authorities when required. In principle, asylum seekers are allowed to leave the residence centres after six months to live with close relatives, if they have had their interview within those six months.

All asylum seekers, whether housed in reception and investigation centres or in residence centres, receive pocket money in addition to a clothing allowance each week. In centres where facilities are available for asylum seekers to cook their own meals, they receive a food allowance.

If an asylum seeker is making an appeal to an initial decision or a second asylum application based on new evidence, he or she is no longer eligible for state funded material benefits including housing.

If an asylum seeker has exhausted all legal avenues of appeal, they also lose access to accommodation and any other forms of assistance often resulting in eviction from reception centres.

7.4.3 Legal Assistance

While Dutch law provides for the access to legal counsel for asylum seekers, concerns have been raised about the accelerated determination procedures which do not afford adequate

time and opportunity for an applicant's lawyer to review all information relevant to the case and refute the assessment of immigration officials.

7.4.4 Work rights and/or income support

Asylum seekers in reception centre receive assistance with food vouchers, weekly allowances and other forms of material assistance. Asylum seekers in the Netherlands are also permitted to work.

7.4.5 Health care

Health care for asylum seekers in reception centres is the equivalent of the health care available for all other residents of the Netherlands. Asylum seekers are entitled to the same care and can go to a doctor, midwife or hospital, for example (and costs will be covered). This includes child health care, health promotion, health education, epidemiology, mental health care and infectious disease control. Referral support is also provided to bridge the (knowledge) gap between the asylum seeker and mainstream health care

The care available for asylum seekers is more or less equivalent to the care available for all other residents of the Netherlands, although the asylum seekers are not free to choose their own doctors. Referral to mental health care or a medical specialist, for example, is via the general practitioner as is the case for everybody in the Netherlands. The mental health care available to asylum seekers includes: preventive treatment, community and out-patient care and treatment, day treatment programs, in-patient care, supported housing and addiction services.

Drugs prescribed by a general practitioner or other health professional for an asylum seeker are supplied by a pharmacy and asylum seekers are not obliged to pay co-payment for any medication.

Asylum seekers under the age of 18 are entitled to the usual dental treatment as all other residents of the Netherlands, with all costs covered. Adults are only covered for the treatment of severe pain or problems with eating.

7.4.6 Education

Asylum seeker children are permitted to attend local schools. The Dutch Government is also stipulating that all new asylum seekers attend an integration course.

7.5 Example 4: Sweden

7.5.1 Detention and Reception

Asylum seekers are generally detained for a short initial period to become immigration cleared. They may then be accommodated to a more open residence centre and are permitted to move freely or seek their own accommodation while their asylum claim is being processed. All asylum seekers are issued with a LMA card which identifies them as asylum seekers which can make it easier for asylum seekers to access certain services and assistance.

7.5.2 Housing

On arrival, asylum seekers are accommodated in an 'investigation' centre for a few weeks before being admitted to a 'residence' centre. Asylum seekers in Sweden generally have access to the activities and facilities offered at the regional reception centres run by the Swedish Immigration Board without discrimination. There are approximately 20 reception centres in Sweden. Asylum seekers can also make their own housing arrangements, particularly if they have close relatives or family already residing in Sweden. The SIB is responsible for the conditions of reception for asylum seekers and it must ensure that sufficient accommodation is provided for all, including for those living outside the centres.

When accommodated in residence centres, asylum seekers usually live in furnished self-catering flats. Families are generally accommodated together. Single persons are accommodated in shared flats, normally with at least two persons per room. Asylum seekers who share the same language are usually accommodated together.

7.5.3 Legal Assistance

Professional legal assistance is provided to asylum seekers through the Swedish Refugee Advice Centre, a non-government organisation.

7.5.4 Work rights and/or income support

If an asylum seeker does not have his or her own money, they are eligible to apply for a financial allowance from the Migration Board. The allowance is structured according to the needs of asylum seekers depending on whether they are single adults, couples or family groups. The level of assistance is generally sufficient to pay for food, clothing and other daily needs. If asylum seekers are initially housed in reception centres they will be provided with food and will also receive a daily allowance. Special one-off payments can also be made to asylum seekers in particularly difficult circumstances.

If it is estimated that an asylum application will take longer than four months, the asylum seeker is permitted to work.

7.5.5 Health Care

All asylum seekers are provided with a free health assessment on arrival. A standard patient fee must be paid by asylum seekers requiring emergency medical treatment and prescription medicines. Asylum seeker children are eligible for health and medical care equivalent to that which is available for Swedish children.

7.5.6 Education

Asylum seekers of pre-school, primary/secondary and high school age are offered places at schools under the same circumstances as other children and young people in the local area. All asylum seekers are required to participate in organised activities which may include Swedish language classes for adults, schooling for children, practical work placements at local companies or workplaces and helping newly arrived countrymen to settle in.

7.6 A Summary of International Models of Asylum Reception: A Comparative Table

Services / Entitlements	New Zealand	Canada	The Netherlands	The UK
Detention / Reception	5 weeks to process security checks. Some use of correctional facilities.	Is not mandatory, but has become more prevalent. Some Government centres and some use of correction facilities.	Initial detention for 4 to 6 working day, then transfer to a reception centre.	Initial short period to become immigration cleared.
Housing	Asylum seekers need to find their own housing. Some provided by non-profit groups.	Some welfare assistance for housing. Most supplied by non-profits, refugees and other shelters.	Accommodated in reception centres or they may seek their own accommodation	Accommodated in a residence centre and can also make own housing arrangements with a relative or friend.
Legal assistance	Access through legal aid, but there are some limitations to this.	Able to access, but assistance is often inconsistently applied.	Able to access advice and assistance, but rapid process	Provided through a non-government organisation.
Work rights and/or income support	Can apply for a work permit after initial interview, some emergency benefits.	For most, welfare payments at 3 to 8 weeks and work rights at 3 to 6 months post-application	Receive assistance in reception centres and also permitted to work	May be eligible for benefits if no other source of income. Work permit after 4 months.
Health care	Access to public health system, although more difficult with specialists	Access through a federal program	Equivalent to health care for Dutch citizens.	Equivalent to health care for Swedish citizens
Education	Not eligible for funded English language tuition. Children can attend local schools. Some classes available to adults through AUT.	Child asylum seekers have the right to attend local schools and refugee claimants may receive permission to undertake study.	Asylum seeker children have the right to attend local schools.	Children and young people can attend local schools Classes for adults are arranged.

Hotham Mission Asylum Seeker Project
August 1st 2008

*Contact in relation to any matters presented in this submission;
Caz Coleman
Project Director
Hotham Mission Asylum Seeker Project*