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.

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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

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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:

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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:

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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.

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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]

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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

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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]

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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]

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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:

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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:

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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

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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.