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Submission to the

The Joint Standing Committee on Migration
regarding the

INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA

August 2008

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The global defender of human rights

1. Executive Summary

Law and policy on administrative migration detention and the treatment of asylum seekers must protect human rights. Amnesty International Australia welcomes a number of positive indications in the Minister for Immigration & Citizenship's recent statement concerning changes to Government policy on detention. These changes to detention policy bring Australia closer to meeting our international human rights obligations. We recommend the expeditious amendment of the Migration Act to ensure these principles are protected by legislation. Legislative change is required to provide the necessary level of protection.

Amnesty International Australia is concerned that the policy retains mandatory detention as a fundamental principle. The Minister has stated detention will only be used as a last resort and only for the shortest possible time. Once health, security and identity checking has been completed, detention will only be used in cases where individuals have been determined to present unacceptable risks to the community. Amnesty International Australia is concerned that there is no statutory limit on the overall period of detention. It also appears that detention for some could still be indefinite. We are particularly concerned that indefinite detention of stateless, failed asylum-seekers, remains possible under the recent changes to the policy.

Amnesty International Australia opposes the retention of excised areas from Australia's migration zone. The regime of excision and retention of the processing system denies access to judicial review for refugee claims from unauthorised arrivals on Christmas Island. There is some provision for extra safeguards, including publicly funded advice for applicants, stronger administrative processing and assessment procedures, and external review. However, the lack of judicial review of Departmental decisions regarding refugee claims and the retention of the excision regime which is explicitly intended to deter asylum seekers are not consistent with Australia's obligations under international law.

Migration detention policy must pay special attention to the conditions of detention. It is critical that places of detention are open to unannounced inspection by independent bodies. Detainees must have access to appropriate health services, training of staff, post-release services, and adequate income through work or income support. This is also the case for applicants in the community whose cases have not been determined. The adoption of a complementary protection policy is also important to protect vulnerable individuals who have not been recognised as refugees.

2. About Amnesty International

Amnesty International is a worldwide movement of more than 2.2 million people across 140 countries working to promote the observance of all human rights enshrined in the *Universal Declaration of Human Rights* and other international standards. Amnesty International Australia undertakes research and action focused on preventing grave abuses of human rights, including rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination.

Protecting the rights of refugees is an essential component of Amnesty International's global work. We aim to contribute to the worldwide observance of human rights as set out in the Universal Declaration of Human Rights, the United Nations (UN) Convention of the Status of Refugees and other internationally recognised standards. Amnesty International works to prevent human rights violations that cause refugees to flee their homes. At the same time, we oppose the forcible return of any individual to a country where he or she face serious human rights violations.

3. Background

Amnesty International has consistently taken the view that Australia's mandatory detention law and policy is both arbitrary and unlawful as a matter of international law. In 1998 Amnesty International released its report *A Continuing Shame* which highlighted why mandatory detention is in breach of Australia's international obligations and the measures needed to address these breaches.

Amnesty International Australia advocates a human rights-based framework for considering immigration detention policy honouring its obligations under major human rights treaties. From the established

international law in this area, it is possible to develop the following set of principles to guide administrative migration detention policy:

- Immigration detention should not be mandatory. The need for detention should be individually assessed and used as a last resort where there is a proven need to undertake health, character, identity or security assessments.
- Immigration detention should not be used to discourage asylum seekers, as this contravenes obligations under the Convention on Refugees.¹
- Immigration detention should never be used for an indefinite duration. The psychological impact of indefinite detention is irrefutable breaching international principles of humane treatment of persons in detention and the prohibition of cruel, inhumane or degrading treatment.
- Immigration detention should be applied in accordance with clear legal criteria and subject to judicial review, while also being transparent and accountable.
- Immigration detention should be governed by standards that protect human rights and dignity, including those set out in the UN Minimum Standards for the Treatment of Prisoners, and the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment.

4. Recent reform of migration detention policy

On 29 July the Minister for Immigration & Citizenship articulated changes to policy on migration detention that the Government would undertake to honour its election commitments in this area.²

Amnesty International Australia supports aspects of the Minister's announcement, namely that:

- detention will be used as a last resort, and for the shortest possible time;
- that children and their families will not be detained in Immigration Detention Centres (IDC);
- that indefinite or arbitrary detention is not acceptable and that the length and conditions of detention will be subject to regular review;
- people in detention will be treated fairly and reasonably within the law; and that
- conditions of detention will ensure the inherent dignity of the human person.

Amnesty International Australia also welcomes the Minister's announcement that asylum seekers processed on Christmas Island would have "publicly funded advice and assistance, access to independent review of unfavourable decisions and external scrutiny by the Immigration Ombudsman".

We look forward to the aspects of the Minister's announcement to protect the rights of asylum seekers and other migrants being reflected in appropriate legislative reform.

There are aspects of the Government's detention policy and Minister Evan's announcement that Amnesty International Australia has serious concerns regarding. Amnesty International Australia recommends the following improvements to the Government's detention policy:

- Those affected by administrative decisions should have the capacity to test those decisions in the courts.
- Where detention is proven to be necessary, absolute limits on the length of detention are required to ensure that asylum-seekers are not indefinitely detained
- The standards and processes for assessing whether a detained individual would present a risk to the community on release need to be transparent. There needs to be reasonable, statutory time

¹ *Australia, Update to briefing for the Committee against Torture*, Amnesty International, 16 April 2008, www.amnestyusa.org/document.php?id=ENGASA120012008&lang=e [accessed at 21 July 2008]

² Speech entitled "New Directions in Detention, Restoring Integrity to Australia's Immigration System" given at ANU, 29 July, see www.minister.immi.gov.au/media/speeches/2008/ce080729.htm at (5/08/08)

limits for processing that take into account evidence concerning length of detention and health of asylum seekers.

- Those who arrive without authorisation in an excised zone (designed to cover areas where asylum seekers may arrive by boat), should have access to the same legal protections under the Migration Act that their on-shore counterparts have. In particular, they should be able to challenge decisions concerning their status in the Australian courts.
- Excised territories from Australia's migration zone should be reincorporated into Australia's migration zone. Asylum-seekers should not be deterred from seeking asylum in Australia. Removing asylum seekers to a remote location such as Christmas Island gives effect to a policy of deterrence. This is inconsistent with Australia's international obligations to refugees.

4.1 Need to change legal framework

Section 189 Migration Act provides: "if an officer knows or reasonably suspects that a person in the migration zone is an unlawful non-citizen, the officer must detain the person," whilst s.196(1) of the Migration Act provides that a person detained as an unlawful non-citizen can only be released in order to be deported or granted a visa.³

Firstly, any policy reform must be met with corresponding changes to Australia's *Migration Act 1958* (Migration Act), to remove provisions that currently allow for the indefinite detention of all undocumented arrivals. Secondly the reforms must also be underpinned by significant operational processes that guarantee an open and transparent assessment of who poses a "risk to the community", with those rejected being given reasons for their rejection, which can then be formally challenged if appropriate (the fact that detainees have no way to challenge their detention in court remains problematic).⁴

Specific timeframes for initial checks (which would appear from the Minister's speech to be three months) should also be formalised. While Senator Evans' actions reflect a positive and pro-active approach to prompt resolution of cases, Amnesty International Australia remains concerned with the current immigration detention policies specifically relating to the excision of certain offshore territories and the impact this has on those who are picked up on these territories. The fact that they will be detained in such a remote location as Christmas Island and processed under a system that does not afford the same rights as asylum seekers on the mainland, still falls short of meeting Australia's international obligations.

5. Criteria to determine how long a person should be held in immigration detention

5.1 General principles that apply to restrictions on freedom of movement

Amnesty International Australia opposes Australia's current mandatory detention policy, and believes it is inconsistent with Australia's international human rights obligations. Specifically, mandatory detention, other than for the time reasonably necessary to undertake health, security and identity checking, violates the right to liberty. A definite period should be prescribed for this purpose, with the obligation on authorities to show good cause if this period is to be exceeded.

All detention should be transparent and accountable – in accordance with a clear legal regime as well as subject to judicial review. Regular judicial review would provide a useful safeguard against unduly protected or indefinite detention. When there are reasonable security grounds for keeping an individual in

³ Commonwealth Ombudsman report on referred immigration cases – Detention process issues, June 2007,

[www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports_2007_07/\\$FILE/report_2007_07.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports_2007_07/$FILE/report_2007_07.pdf) [accessed at 15 June 2008]

⁴ World Refugee Survey 2008 – Australia, U.S. Committee for Refugees and Immigrants, 19 June 2008, [www.unhcr.org/cgi-](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=485f50c1)

[bin/texis/vtx/refworld/rwmain?docid=485f50c1](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=485f50c1) [accessed at 26 June 2008]

detention, the level of security should be appropriate, and access to judicial review of the decision should be maintained.⁵

5.2 Breach of international law

Australia's current mandatory non-reviewable detention places it in breach of Article 9 of the 1966 *Covenant of Civil and Political Rights* (ICCPR), to which Australia is a party. This Covenant prohibits arbitrary detention and provides that a detained person must be able to take proceedings before a court that can determine the lawfulness of detention, as well as order release where detention is unlawful. Australia is also in breach of Articles 3 and 9 of the *Universal Declaration of Human Rights*, which entails a right to liberty and freedom from arbitrary detention. Amnesty International Australia also believes Australia's detention policy compromises the ability of refugees to seek and enjoy asylum in Australia and is in breach of Article 31(1) of the *Refugee Convention*. According to Article 31, when refugees come from a country of persecution, they should be exempt from being punished on account of their illegal entry. Detention should only be resorted to in cases of necessity, and should never be automatic or unduly prolonged.⁶

5.3 Limited circumstances when detention may be used

Detention should only take place after a full consideration of all possible alternatives, and only when there is evidence showing that none of the alternatives would be effective in the individual case.⁷ According to the UNHCR Guidelines, there are limited circumstances where detention may be used. These situations include verifying the detainee's identity, determining the elements on which the claim for refugee status is based, determining if there is an intention to mislead authorities, or if there is a need to protect national security and/or public order.⁸ Thus, detention should only take place after individual assessment in limited circumstances consistent with international human rights standards.⁹

5.4 Release of detainees

Detention of individuals must have reasonable maximum limits set. After this period is over, assuming an individual does not pose a risk to the community, the individual should be automatically released.¹⁰ There also needs to be a formal independent review process to assess on a case-by-case basis the necessity and proportionality of detention of all asylum-seekers and rejected asylum-seekers. This review process would show whether it is reasonable to continue detention and whether it is proportionate to the objectives to be achieved. Further, it is crucial to look at the individual circumstances of each case while determining the outcome.¹¹

5 For a comprehensive overview of human rights standards we refer the Committee to Amnesty International's research guide, *Migration-Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees*, see www.amnesty.org/en/library/info/POL33/005/2007

6 *Commonwealth Ombudsman report on referred immigration cases – Detention process issues*, June 2007, [www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports_2007_07/\\$FILE/report_2007_07.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports_2007_07/$FILE/report_2007_07.pdf) [accessed at 15 June 2008]

7 *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Office for the United Nations High Commissioner for Refugees, February 1999, www.unhcr.org.au/pdfs/detentionguidelines.pdf [accessed at 14 July 2008]

8 *Ibid.*

9 *Ibid.*

10 *Australia: The Impact of Indefinite Detention: The Case to Change Australia's Mandatory Detention Regime*, Amnesty International, 30 June 2005, www.amnesty.org/en/library/info/ASA12/001/2005 [accessed at 26 June 2008]

11 *Ibid.*

6. Criteria to determine when a person should be released from immigration detention following health and security checks

The health care needs of each new immigration detainee must be assessed by qualified medical personnel as soon as possible after admission.¹² After any health and security checks, all asylum seekers should be released unless a court order is obtained for their detention.¹³ Since health and security checks are necessary, all detainees should be informed as to why and which tests are being done, and be provided with comprehensive results of the tests.¹⁴ Detainees should also be provided with full medical records when they are released into the community and given guidance in regard to accessing the proper kind of medical personnel in the community.¹⁵

Criteria should be consistent with the regime above. When reasonable checking¹⁶ has been completed, and there are no reasonable security grounds for detention, or when a court rules that continuous detention is not justified, then the most appropriate form of release should occur. Detention should only be used as a last resort and for the shortest time possible. It is clear that detention, especially for an indefinite amount of time, has an adverse impact on detainees.

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

7.1 Optional Protocol on the Convention Against Torture

Amnesty International Australia welcomes the Attorney-General's recent announcements outlining the work the Australian Government is undertaking to become a party to the Optional Protocol to the United Nations Convention Against Torture. The Protocol establishes a Sub-Committee for the Prevention of Torture that has the authority to visit places of detention, including prisons and immigration detention centres, to assess the conditions of that detention as a way to reduce the incidence of torture or cruel, inhumane or degrading treatment or punishment.

Opening up immigration detention centres to international scrutiny by providing access to the Sub-Committee will assist in ensuring detainees are treated humanely and by internationally accepted standards. Scrutiny by the Sub-Committee will expand transparency regarding treatment in immigration detention centres and complement the role of agencies such as the Commonwealth Ombudsman in ensuring humane treatment of detainees.

7.2 Excised territories

Amnesty International Australia is opposed to the dual regime with excised off-shore territories. The government should end the use of "excised" offshore locations for visa processing purposes in order to allow all asylum-seekers an equal opportunity to apply for a visa.²⁹ Furthermore, the location of detention centres should be in close proximity to urban centres in order for asylum-seekers to receive services such as torture and trauma counselling and legal advice. Transparency and accountability in general is aided by open and accessible places of detention with judicial review.

¹² *Immigration Detention Guidelines*, Human Rights and Equal Opportunity Commission, March 2000, www.hreoc.gov.au/pdf/human_rights/asylum_seekers/idc_guidelines.pdf [accessed at 28 June 2008]

¹³ *The Queensland Independent Education Union Equity Committee*, 9 January 2003, www.hreoc.gov.au/human_rights/children_detention/submissions/queensland.html [accessed at 1 July 2008]

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ With regards to what is reasonable, Amnesty International maintains that the decision to detain should always be based on a detailed and individualized assessment, including personal history of, and the risk of absconding presented by, the individual concerned. Such assessment should consider the necessity and appropriateness of detention, including whether it is proportionate to the objective to be achieved. (see: Amnesty International, "Migration-Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees", November 2007, AI Index: POL 33/005/2007, p7)

Amnesty International Australia welcomes the recent announcement of policy changes to strengthen processing for anybody taken to Christmas Island. However, we believe that those detained on Christmas Island should have the same rights and access to judicial review as those detained on the mainland. We therefore recommend that the Migration Act be reformed to place all excised offshore territories back into Australia's migration zone. In addition all detention facilities on Christmas Island should be closed and that all individuals who arrive on any Australian territory be brought to Australia's mainland and are able to then access the same procedures as all other asylum seekers.

7.3 Visits to Immigration Detention Centres

The Department of Immigration and Citizenship has been increasingly open and transparent, particularly for those wishing to visit individuals in detention. Small measures such as allowing individuals in detention to own mobile phones and access the internet have played an important part in increasing the transparency within the centres.

During 2006-07, immigration detention centres and other places of detention were visited by several outside organisations. Both the Commonwealth Ombudsman's Office and the Human Rights and Equal Opportunity Commission visited immigration detention centres and provided reports and feedback to the Department. Previously detainees were only guaranteed a review by the Ombudsman after being detained for two-years. Amnesty International Australia welcomes the Minister's recent announcement that the Ombudsman will be able to review cases every six months.

Members of the Immigration Detention Advisory Group (IDAG) have also visited immigration detention centres throughout 2006-07.¹⁷ Amnesty International Australia welcomed the initiative for members of IDAG to Chair the Community Consultative Group (CCG) meetings at the detention centres. Having a CCG for each IDC is important in ensuring greater transparency for each centre. By ensuring that the establishment of a CCG and the facilitating of its meetings has been included as a contractual requirement for the private company that runs the centres has also been a significant initiative, ensuring greater transparency and visibility of the IDCs.

7.4 Awareness of complaint procedures in Immigration Detention Centres

The Department has implemented a targeted strategy to ensure that people in immigration detention understand they can complain or provide feedback about any aspect of their detention. A HREOC poster detailing the process for providing feedback has been provided to all places of detention.¹⁸ The posters also set out how a detainee can make a complaint about possible human rights abuses occurring inside detention centres.¹⁹ Although the posters are currently in communal areas of the detention centres, Amnesty International Australia recommends that the Department ensure that the posters are available in a language the detainees can understand.²⁰ It is essential for detainees to be familiar with their rights, and to make complaints regarding the conditions of, and treatment within immigration detention.

7.5 Preferred infrastructure for contemporary immigration detention

Closure of Stage 1 in Villawood

According to HREOC's observations, Villawood has a large number of long-term detainees with ever-worsening health problems. As Stage 1 Villawood is the largest and most secure facility, detainees who are perceived as difficult to manage are placed in Stage 1. Thus, the overall atmosphere of the detention

¹⁷ Department of Immigration and Citizenship Annual Report 2006-07, www.immi.gov.au/about/reports/annual/2006-07/html/outcome1/output1_3_5.htm [accessed at 22 June 2008]

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

centre is tense, and there is a strong appearance of a prison. The HREOC inspectors were shocked by the run-down appearance of Stage 1, including bleak visitors' facilities and dormitories which are dark and depressing.²¹ HREOC Commissioner, Graeme Innes, stated, "The conditions in Stage 1 of the Villawood immigration centre – where many long-term detainees are held – remain a disgrace."²²

Amnesty International Australia is aware that DIAC has plans to refurbish Stage 1 dormitories, central facilities and outdoor areas and more importantly, there is currently funding in Forward Estimates for the redevelopment of VIDC, including a new higher care, higher security facility to replace Stage 1. Amnesty International Australia is also aware that DIAC has plans to refurbish the Management Support Unit in Stage 3.

While Amnesty International Australia welcomes plans to improve (and ultimately redevelop) Stage 1, we remain concerned that the physical conditions of the high security compounds within IDCs meet international standards, to ensure they do not undermine the physical and mental health of those detained. As such, we recommend that any changes to the Villawood IDC avoid the previous emphasis on security that are so severe, particularly in Stage 1 and the Management Unit, that they undoubtedly impacted negatively on the psychological and physical health of detainees.

7.6 Strict Time Limit for Detention

A detainee's health and well-being can be better protected by his or her release to the community, rather than indefinite mandatory detention. For example, a 62-year-old detainee recently died in Villawood hospital. The Department of Immigration was aware of the detainee's medical needs, however, he died of a heart attack after spending three months in detention.²³ Release into the community would protect people better than the current mandatory detention arrangements – in which the Minister for Immigration has sole discretion to release people and the process can be long and frustrating for the detainee.²⁴

Amnesty International maintains that there should be a maximum duration for detention provided by law which should be reasonable in length. Once this period has expired the individual concerned should automatically be released.²⁵

7.7 Community Housing

Community-based arrangements should be used to house suitable asylum-seekers during the time it takes to investigate a refugee claim. The process to ensure a person is a refugee can take many months or years, and there are many other options which are not only cheaper and more humane than detention, but which also strengthens Australia's sense of community.²⁶

A favourable infrastructure would have different levels of security which would relate to the asylum-seekers degree of risk. For example, community management would be optimal for those considered low or no risk to the community or unlikely to abscond; whereas a medium security hostel accommodation would be for those considered medium risk of absconding or requiring intensive services.²⁷ Current

²¹ HREOC *Observations on Mainland Immigration Detention Facilities 2007*, December 2007, p28

²² *Immigration detention centres: improvements, but still more work to do*, Human Rights and Equal Opportunity Commission, 9 January 2008, www.humanrights.gov.au/about/media/media_releases/2008/1_08.html

²³ *Calls to 'scrap and replace' Villawood*, Amnesty International Australia, 16 January 2008, http://action.amnesty.org.au/refugees/comments/calls_to_scrap_and_replace_villawood/ [accessed at 21 July 2008]

²⁴ *Australia, Update to briefing for the Committee against Torture*, Amnesty International, 16 April 2008, www.amnestyusa.org/document.php?id=ENGASA120012008&lang=e [accessed at 21 July 2008]

²⁵ Amnesty International, "Migration-Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees", November 2007, AI Index: POL 33/005/2007, p7

²⁶ *The Better Way, Refugees, Detention and Australians*, Justice for Asylum Seekers, June 2002, www.bs1.org.au/pdfs/TheBetterWay.pdf [accessed at 22 July 2008]

²⁷ Ibid.

examples of medium security accommodation in Australia include the Sydney and Perth Immigration Residential Housing centres. While these centres are certainly a significant improvement with regards to other IDCs, concerns remain about the mental health impact of long term detention in these centres. As such it is still important to ensure detention in these centres is only for the shortest period possible. Community housing or migrant hostel-style accommodation remains the preferable option and costs much less than other forms of detention, resulting in significant savings.²⁸ However, options other than detention would make asylum-seekers feel safer and allow them access to support. In sum, Amnesty International supports the recent announcement by the Minister that a policy with a more humane and flexible regime should be adopted.

7.8 Handbook on Immigration Detention

In cases where immigration detention is required each immigration detention officer should provide the *Handbook on Immigration Detention* to every detainee, within a reasonable period from the date of detention. This advises detainees of all services available to them. These services include:

- The right to communicate in confidence with the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission;
- The right to communicate with diplomatic or consular representatives of the State of origin or nationality;
- Detainee's rights and responsibilities in detention;
- Detention centre's rules and procedures (including disciplinary procedures) and how to make complaints about the conditions of immigration detention to the GSL, DIAC, HREOC or the Commonwealth Ombudsman.

The handbook should be translated in the detainee's language, or if the person cannot read, then it must be communicated clearly and orally.²⁹ The handbook should also clearly outline how detainees can access legal advice and provide a list of those legal centres currently receiving funding under Australia's Immigration Advice and Application Assistance Scheme (IAAAS).³⁰

7.9 Procedural Safeguards

If detained, all detainees should be entitled to the following minimum procedural guarantees:

- Prompt and full communication of any order of detention, reasons for the order, and their rights in connection with the order (in a language and in terms which they understand);
- Information on the right to legal counsel, and where possible free legal assistance;
- Decisions regarding detention are subjected to an automatic review before a judicial or administrative body independent of the detaining authorities;
- Regular periodic reviews of the necessity for the continuation of detention;
- The ability to challenge the necessity of the deprivation of liberty at the review hearing, and to rebut any findings made; and,
- The ability to contact and be contacted by the local UNHCR office, refugee service agencies or other agencies and an advocate.³¹

²⁸ *Asylum Seekers*, Australian Policy Online, 14 January 2004, www.apo.org.au/webboard/comment_results.html?filename_num=12660 [accessed at 22 July 2008]

²⁹ *Immigration Detention Guidelines*, Human Rights and Equal Opportunity Commission, March 2000

³⁰ A list of IAAAS providers can already be found on DIAC's website (www.immi.gov.au/media/fact-sheets/63advice_providers.htm) and could easily be included in the handbook provided to detainees.

³¹ *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, February 1999

7.11 Options for the provision of detention services and detention health services across the range of current detention facilities

Amnesty International Australia supports the Immigration Detention Guidelines proposed by the by the Human Rights and Equal Opportunity Commission in 2000, which include:³²

- Treatment of asylum seekers should be as favorable, and in no way less favorable than that of untried or convicted prisoners;
- Australia's immigration practices should be in conformity with international law;
- Every detainee should be treated with respect and dignity, with particular attention paid to the needs of people under the age of 18;
- Service providers should seek to minimise the difference between life in detention and life in the community.
- Immigration authorities shall avoid practicing discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
- Detainees have the right to be heard in any judicial and administrative proceedings affecting them;

8. Provision of Detention Services

8.1 Recreational activities and facilities in detention centres

HREOC's 2007 report into conditions in immigration detention commended DIAC for the improvements made to recreational activities in detention centres.³³ Amnesty International Australia is pleased that detainees have access to entertainment and sporting activities such as soccer, video games, DVDs and internet access. It is important that DIAC and Global Solutions Limited (GSL, the detention services provider) continue to provide these activities for those in detention. The internet in particular is a crucial and effective means for detainees to interact with the outside world.

Detainees need access to activities that give them a sense of purpose, that allow them to learn and grow. However, while activities currently provided offer a limited release from the boredom of detention life, there is a lack of meaningful activities and educational opportunities. More relevant and meaningful activities could include opportunities to refine living or communication skills.

Amnesty International Australia is also concerned at the lack of educational opportunities provided to detainees. The corrective services system may offer some guidance to addressing this deficiency. Inmates in NSW prisons have access to fully accredited vocational education training in areas including music, art, horticulture and small business management.³⁴ These courses are administered by the Adult Education and Vocational Training Institute within the Department of Corrective Services. Amnesty International Australia encourages a similar system in detention facilities.

Amnesty International Australia is also concerned at the reported reduction in excursions for detainees in IDCs since July 2007. HREOC reported new procedures introduced at this time have made excursions more difficult have and have caused the marked decrease in the number of excursions.³⁵ Amnesty International Australia strongly recommends DIAC and GSL move quickly to remedy the current lack of excursions.

³² HREOC Immigration Detention Guidelines (2000) www.hreoc.gov.au/pdf/human_rights/asylum_seekers/idc_guidelines.pdf [accessed 1/07/08]

³³ HREOC Observations on Mainland Immigration Detention Facilities 2007, December 2007, p28

³⁴ NSW Department of Corrective Services website www.dcs.nsw.gov.au/offender_management/offender_services_and_programs/AEVTI.asp [accessed 2/07/08]

³⁵ HREOC Observations on Mainland Immigration Detention Facilities 2007, December 2007, p29

8.2 Recreation activities and services in Immigration Residential Housing

Amnesty International Australia believes immigration residential housing (IRH) is preferable to continued detention in IDCs. HREOC found that the IRH presented a softer and more private detention environment and detainees in IRH have freedoms and responsibilities beyond those available in IDCs.³⁶ Amnesty International Australia supports HREOC's recommendation that IRH facilities be used to their full capacity.

Amnesty International Australia further calls for the expeditious roll out of internet facilities in all IRH.

8.3 Activities and Services in Community Detention – the right to work

Amnesty International Australia remains concerned that people on residence determinations cannot undertake any paid work. Access to paid employment is fundamental to human dignity, aids integration into the community, promotes health, and contributes to adequate living standards. Prisoners in Western Australia who satisfy certain criteria are allowed into the community to participate in community work, paid employment, vocational training or charity work.³⁷ Amnesty International Australia believes administrative detainees such as asylum seekers should enjoy the right to work, particularly when those under penal detention are able to exercise this right.

8.4 Provision of detention health services

The provision of adequate health services, in particular mental health services, is of vital importance to the well-being of detainees in any form of immigration detention. Amnesty International Australia is concerned the adverse effects of detention on the mental health of detainees is yet to be properly addressed.

Mental health

The Australian Medical Association has noted that "prolonged, indeterminate detention of asylum seekers in immigration detention facilities violates basic human rights and contributes adversely to health, particularly mental health."³⁸ Their position is supported by the findings of Zachary Steele and Derrick Silove's 2006 study of asylum seekers' mental health.³⁹ This study found that not only did prolonged detention adversely affect the mental health of detainees for the time they were in detention, but that such effects "persist for a prolonged period after detention."⁴⁰

Pauline McLoughlin (a psychiatrist experienced in treating detainees) has suggested the boredom, uncertainty, lack of control and other factors that define life in detention "imprison asylum seekers within a profoundly distressing state of estrangement and loss of control."⁴¹ While detainees are a part of this environment, any treatment they receive is directed more towards medicating the symptoms rather than treating underlying causes. Similarly, HREOC has suggested:

The main way to treat a mental health concern is to remove the primary cause of the problem. In the case of immigration detainees, detention and uncertainty are amongst the main causes and they cannot usually be addressed by the mental health professionals.⁴²

36 Ibid. p14

37WA Department of Corrective Services website www.correctiveservices.wa.gov.au/W/workreleaseorder.aspx?uid=2445-6869-4526-1620 [accessed 2/07/08]

38 Australian Medical Association Position Statement *Health Care of Asylum Seekers and Refugees* (2005)

39 Silove, D Steele, Z Brooks, R Momartin, S Alzuhairi, B & Susljik, I 'Impact of immigration detention and temporary protection on the mental health of refugees' *British Journal of Psychiatry* (2006)

40 Ibid.

41 McLoughlin, P.J. (2006) Serve, subvert or emancipate? Promoting mental health in immigration detention. *Australian e-Journal for the Advancement of Mental Health* 5(2) www.auseinet.com/journal/vol5iss2/mcloughlin.pdf

42 HREOC *Observations on Mainland Immigration Detention Facilities 2007*, December 2007

Amnesty International Australia believes mandatory detention poses an unacceptable risk to internationally recognised human rights standards, including the right to the highest attainable standard of physical and mental health.

Amnesty International maintains:

- Those detained should have access to appropriate health care and psychological counseling where appropriate.
- There should be a prohibition provided by law on the detention of vulnerable people who have sought asylum, including: torture survivors, pregnant women, those with serious medical conditions, the mentally ill and the elderly.⁴³

Physical health services

HREOC suggests the level of physical health care in detention centres is not of a reasonable standard and there is some delay in getting access to specialist medical help.⁴⁴ The Committee Against Torture recommends that asylum-seekers should have the right to appoint a fully independent medical practitioner, preferably of the detainee's choice.⁴⁵

CASE STUDY 1

Michael arrived in Australia in 1997 after fleeing from Chinese authorities who had arrested and tortured him for alleged participation in an underground Christian church. Following many peaceful years living and practicing his faith within the Australian community, he was taken to the Maribyrnong detention centre in 2004 pending the outcome of his appeal process for a protection visa.

Three years later still detained, though now in Villawood, Michael faced the horrifying prospect that after 10 years in Australia he would be forced to return to China. Once there, he claimed he would face a trial for murder, which he assures all is a case of mistaken identity and constructed against him because of his faith.

The terror of being forcibly returned led Michael to swallow a razorblade in an attempt to take his own life rather than be returned to his former country. After emergency surgery to remove the blade from his esophageus Michael was placed on suicide watch in an isolated cell with nothing more than a blanket and smock. When his solicitor tried to have the Villawood staff provide him with an extra blanket against the cold which was keeping him from sleeping, they said it "was being organised". When asked if the heat could be turned on in his cell staff reported that the unit was broken. It took nearly 20 hours for a blanket to be given to a man being housed in a "care" facility.

Seeking spiritual comfort, Michael asked to be attended to by a Priest. No one was allowed to enter his room to provide support, despite multiple requests. Unfortunately even after his recovery more than a year later, he still resides in Villawood detention centre pending further appeals and cries for asylum.

The provision of mental health services in IRH, ITA and community detention is more satisfactory than in IDCs as mental health professionals are able to work with clients in a situation of less stress and anxiety. The Red Cross has provided mental health care to asylum seekers during residence determinations.⁴⁶

43 Amnesty International, "Migration-Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees", November 2007, AI Index: POL 33/005/2007, p7, p8

44 Ibid.

45 *Concluding observations of the Committee against Torture, Australia*, Committee against Torture, 15 May 2008, www.hrfrc.org.au/files/CX9F5DW2WB/Australia%20CAT%20COBs.pdf [accessed at 21 July 2008]

46 Ibid.

Access to Medicare

Amnesty International Australia is concerned at some asylum seekers' lack of access to Medicare. Those asylum seekers waiting for a decision from the Minister and those on a Bridging Visa E are not entitled to any government assistance or Medicare.⁴⁷ This situation means people released on a Bridging Visa E are unable to access basic health services when living in the community. The reduced use of detention signaled by recent policy changes must be accompanied by appropriate measures to ensure vulnerable individuals are able to access all basic services on release.

9. Options for additional community based alternatives to immigration detention

9.1 The international experience

Many States process many more asylum seekers per capita than Australia. Processes in place in the European Union (EU), particularly Sweden provide strong examples to inform the development of community based alternatives to immigration detention..

Ophelia Field and Alice Edwards' "Alternatives to Detention of Asylum Seekers and Refugees"⁴⁸, highlights twelve alternatives to detention, including alternatives for children and other vulnerable groups. These alternatives include:

- a) Release with an obligation to register one's place of residence with the relevant authorities and to notify them or to obtain their permission prior to changing that address;
- b) Release upon surrender of one's passport and/or other documents;
- c) Registration, with or without identity cards (sometimes electronic) or other documents;
- d) Release with the provision of a designated case worker, legal referral, and an intensive support framework (possibly combined with some of the following, more enforcement-oriented measures);
- e) Supervised release of separated children⁴⁹ to local social services;
- f) Supervised release to
 - i. an individual,
 - ii. family member/s, or
 - iii. non-governmental, religious, or community organization, with varying degrees of supervision agreed under contract with the authorities;
- g) Release on bail or bond, or after payment of a surety (often an element in release under (f))
- h) Measures having the effect of restricting an asylum-seeker's freedom of movement (that is, de facto restrictions) – for example, by the logistics of receiving basic needs assistance or by the terms of a work permit;
- i) Reporting requirements of varying frequencies, in person and/or by telephone or in writing, to
 - i. the police,
 - ii. immigration authorities, or
 - ii. a contracted agency (often an element combined with (f))
- j) Designated residence to

⁴⁷ *Welfare issues and immigration outcomes for asylum seekers on Bridging Visa E* www.refugeecouncil.org.au/docs/curren/asp_research_jan04.pdf
[Accessed 14/07/08]

⁴⁸ Field O. "Alternatives to Detention of Asylum Seekers and Refugee, Legal and Protection Policy Research Series, UNHCR, Division of International Protection Services, POLAS/2006/03 April 2006

⁴⁹ 'Separated children' are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary caregiver/s. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict, or disturbances in their own country. This term distinguishes these children from 'unaccompanied minors' because often a separated child arrives in the company of an adult but that adult may not necessarily be suitable guardian or be able to assume responsibility for their care.

- i. State-sponsored accommodation,
 - ii. contracted private accommodation, or
 - iii. open or semi-open centres of refugee camps;
- k) Designated residence to an administrative district or municipality (often in conjunction with (i) and (j)), or exclusion from specified locations;
- l) Electronic monitoring involving 'tagging' and home curfew or satellite tracking.⁵⁰

Amnesty International Australia recommends the findings of this report to the Committee. We note in particular its view on "unconditional release" as a normative starting point, with departures from that justified only by the presence of certain specified indicators.

9.2 Practice in the European Union

New legislation adopted on June 18, 2008 by the EU, establishes a minimum common standards for the detention and expulsion of asylum seekers whose claims have been rejected.⁵¹ It lays down a period of voluntary departure of between seven and thirty days, during which time the rejected applicant will be assisted to return to their country of origin. If the relevant administrative or judicial body deems the applicant to be at risk of absconding after the expiry of this period, the applicant can be held in detention for up to six months, with an option to extend detention to a maximum of 18 months.⁵² The new legislation also includes a five year re-entry ban for those asylum seekers who do not leave in the voluntary period.

Amnesty International has expressed a number of concerns relating to the new EU Directive, including the excessive one and a half year detention period as well as the EU-wide re-entry ban for those forcibly returned. It also lacks sufficient guarantees for unaccompanied minors.

Amnesty International has stated:

The added value of this EU-Directive is therefore hard to see. At the same time, it risks promoting prolonged detention practices in EU Member States and impacting negatively on access to the territory. Amnesty International urges Member States currently applying higher standards not to use this directive as a pretext to lowering them.⁵³

All countries in the EU have adopted this legislation, with the exception of the United Kingdom and Ireland.⁵⁴ The legislation establishes a minimum common standard for dealing with asylum seekers. However, countries that maintain a higher standard are not obliged to lower it in line with the new legislation, although countries whose asylum processing practices are currently lower than the standard will have to improve to meet it.⁵⁵ This legislation only applies once the decision has been made to deport an applicant, so initial processing procedures will not be affected.

The practise of detention in the EU varies, but the majority of member countries EU have a prescribed maximum amount of time that an asylum seeker can be held in detention.

In the Republic of Ireland, detention of an asylum applicant is reserved for cases where the applicant is deemed a threat to national security or public order, where they have provided misleading information

50 Field O. "Alternatives to Detention of Asylum Seekers and Refugee, Legal and Protection Policy Research Series, UNHCR, Division of International Protection Services, POLAS/2006/03 April 2006, p22-p23

51 www.europarl.europa.eu/news/expert/infopress_page/018-31787-168-06-25-902-20080616IPR31785-16-06-2008-2008-true/default_en.htm
[Accessed 14/07/08]

52 Ibid.

53 Amnesty International, "EU Return Directive Affects Dignity and Security of Irregular Migrants", 4 July, see <http://www.amnesty.org/en/news-and-updates/EU-return-directive-affects-dignity-security-irregular-migrants-20080704>

54 Ibid.

55 Ibid.

about their identity, or where the applicant is in possession of false identity documents.⁵⁶ The maximum duration of this detention is 21 days, as prescribed in that country's refugee legislation.

In Luxembourg, those who arrive without valid documents may be detained for a maximum period of three months.⁵⁷ In Norway asylum seekers are detained pending removal or in order to establish their identity. Asylum seekers in Norway will only be detained beyond 12 weeks in exceptional circumstances.⁵⁸

Amnesty International Australia therefore recommends that Australia should reflect the position of those, best practice, EU states that have a clearly defined, reasonable, maximum time period for keeping an individual in detention.

9.3 Practice in Sweden

Sweden's current asylum policy represents an improvement on the Australian system.⁵⁹ There are several components of the Swedish process which could be adopted to improve overall Australian practice.⁶⁰ A significant number of Sweden's asylum applicants have traditionally arrived without valid travel documents, so the situation is comparable in that respect to the Australian experience.

Detention in Sweden is employed only "where supervision is deemed inadequate."⁶¹ There is a preference for detainees to be supervised in the community. This poses a reduced cost to the taxpayer, when compared to the costs of detention. As noted above, Amnesty International believes "unconditional release" should be the normative starting point when looking at alternatives to detention, however release with some form of supervision in to community housing can be seen as a preferable starting point as an alternative to a policy of indefinite, mandatory detention.⁶²

Asylum applicants in Sweden are initially taken to a reception centre, where they have access to accommodation, medical treatment and officers of the Swedish Migration Board.⁶³ At this stage, applicants will be subject to detention according to the three categories established in Sweden's *Aliens Act*.⁶⁴ These are identification detention, investigation detention and those instances where an individual is to be deported shortly or if they are considered at risk of absconding.

Identification detention, which allows time for officials to determine the identity of the applicant, is for two weeks duration. This may be extended to two months in special circumstances.⁶⁵

Investigation detention describes the detention of an applicant while their assessment for suitability of release into the community is carried out. This involves assessment of national security risks and other elements of the applicant's character. Detainees in this category can be held for two months, with a maximum of four in special circumstances.⁶⁶

The third category of detainees, those who are facing deportation, are held for a maximum of two months, while travel documents are being prepared. This may be longer if there are issues with the government of

56 Refugee Council of Australia 'Alternatives to Detention' unhcr.org/protect/PROTECTION/4474140a2.pdf [accessed 26/07/08]

57 Ibid.

58 Ibid.

59 Mitchell, G *Asylum Seekers in Sweden* <http://asp.hothammission.org.au/index.cgi?tid=2> [Accessed 26/06/08]

60 Amnesty International Australia is not representing Swedish detention practices as a "perfect" model and it should be noted that AI Sweden has documented previous concerns with elements of detention practice in Sweden. Rather, AI Australia is using Sweden as an example of where alternatives to mandatory, indefinite detention have been put into practice and how these alternatives represent improvements on Australia's current approach.

61 Mitchell, G *Asylum Seekers in Sweden* <http://asp.hothammission.org.au/index.cgi?tid=2> [Accessed 26/06/08]

62 See comments at "6.7 Community Housing" above.

63 Mitchell, G *Asylum Seekers in Sweden* <http://asp.hothammission.org.au/index.cgi?tid=2> [Accessed 26/06/08].

64 Ibid.

65 Ibid.

66 Ibid.

destination, but in such a case an applicant must be released into the community when the prescribed two month period has expired.⁶⁷

If an applicant's claim is denied, and subsequent appeals are exhausted, the Swedish system allows applicants who are not a risk of absconding to determine their own time and place of departure from Sweden. While they must remain in contact with immigration officials until their departure they are able to stay in the community until that time. Only in cases where the person is considered a high risk of absconding will further detention be employed.⁶⁸

The most important feature of the Swedish detention regime is that asylum seekers are at all times aware of their rights and the maximum possible duration of their detention.⁶⁹ Asylum seekers in Sweden are thereby relieved from the psychological trauma caused by indeterminate detention. Their mental state may be further improved by being able to reside in the community whilst their claims are being processed.

9.4 Lessons from the European experience

Australia can take many lessons from the European experience with community detention. Amnesty International Australia has always held that detention of asylum seekers should be a last resort for government. The success of the Swedish program is testament to the fact that the processing of asylum claims, for those who arrive undocumented, can be effectively managed without detaining them in severe, high security, detention facilities.

Australia has already begun to take steps towards an approach, like Sweden, that incorporates "community detention"⁷⁰ and case management support, particularly, though not exclusively, through the Community Care Pilot (CCP).⁷¹ Amnesty International welcomes these initiatives and recommends they be further extended by; first, expanding the use of "community detention"⁷² and simplify the process to enable people to be quickly granted "residence determination" (the determination that enables them to be released into community detention); second, turn the CCP from a "pilot" into a fully funded program, that can then also be used to support vulnerable individuals released into the community.

9.5 Complementary protection

Regardless of the final model that Australia adopts for the processing of asylum claims and the accommodation of asylum seekers, Amnesty International Australia believes that the system in Australia must incorporate a complementary protection system. Amnesty International Australia is pleased to note that the Minister for Immigration, Senator Evans, is favourably disposed to the notion of complementary protection in future immigration policy.⁷³

Complementary protection recognises that people may have valid protection claims under international instruments other than the Refugee Convention. For example, applicants may have a right to asylum based on articles of the International Covenant on Civil and Political Rights and the Convention Against Torture.

67 Ibid.

68 Ibid.

69 This is achieved through a dedicated "case manager", employed to liaise directly with individuals seeking asylum.

70 This program is currently being run in partnership with the Australian Red Cross. See, www.redcross.org.au/ourservices_aroundtheworld_tracingrefugeeservices_commdeten.htm

71 See: www.immi.gov.au/about/department/perf-progress/dima-improvements/fact_sheets/Quality_case_management_and_community_care_pilot.pdf

72 As HREOC has noted, currently residence determinations in Australia are "primarily used to remove children and families from the inappropriate detention environment." See, HREOC Observations on Mainland Immigration Detention Facilities 2007, December 2007, p.14

73 Senate Standing Committee on Legal and Constitutional Affairs Hansard. 32

A UNHCR working paper has examined the ways countries such as Canada and the United Kingdom apply complementary protection.⁷⁴ The Canadian system includes a class of 'protected persons' which includes Convention refugees, as well as people with claims relating to fear of torture or other cruel and unusual treatment.⁷⁵

In the UK, any claim for asylum is treated in the alternative as a claim for humanitarian protection.⁷⁶ Both of these systems represent an improvement on Australia's current system of dealing with non-Convention claims.

Amnesty International Australia, and other organisation including the Refugee Council of Australia (RCOA), have called for the recognition of people whose protection needs are not covered by the Refugee Convention. The current system of ministerial discretion under s417 of the *Migration Act* is unfair in that people who are entitled to non-Convention protection have to wait until the end of the process for their claim to be heard.⁷⁷ Further, Amnesty International Australia is concerned that Australia is at risk of breaching its broader *non-refoulement* obligations by only having a non-compellable, non-reviewable discretion to cover Australia's obligations under the United Nations Convention Against Torture and other treaties.⁷⁸ The RCOA recognises two ways in which states can afford protection to people not covered by the Refugee Convention. One is by expanding the definition of refugee to cover those whose claims are currently classed as humanitarian, while the other is complementary protection.⁷⁹

There is currently no process in place to assess applicants with non-convention claims. Amnesty International Australia, the National Council of Churches and the RCOA have proposed a model, which would have the decision to grant complementary protection being made by DIAC in the first instance. Claims would be assessed on their merits, with appeal rights working identically to the current system.⁸⁰ This system would offer procedural and financial benefit to all parties concerned. If legitimate non-Convention claims are properly assessed at first instance, then these claims would be taken out of the caseload of the Refugee Review Tribunal (RRT). As it stands, many non-Convention claims are pursued through the courts, costing all parties in time and legal fees.

A system of complementary protection would be of financial, administrative and humanitarian benefit. The costs of excessive litigation and applications would be removed, the administrative processes of the RRT would be streamlined, and Australia's international reputation as a humane and compassionate country would be enhanced.

10. Conclusion

Amnesty International Australia welcomes the recent announcement of changes to Australian's detention policy, the commitments made by the Minister of Immigration to improve the current conditions of detention facilities are also welcome. The facilities should be humane, and respect should be shown for the inherent dignity of the person. Conditions of detention should be determined by applicable norms and principles of international law.⁸¹

Amnesty International Australia believes, however, that the new commitments given by Minister must be underpinned by legislative reform of the *Migration Act* if they are to provide adequate protection of rights. Appropriate operational standards must be quickly put in place to ensure both the transparency and timeliness of security, health and identity checks. For example, Detention Review Managers could provide

74 Jane McAdam, 'Complementary Protection and Beyond: How States Deal with Human Rights Protection'. UNHCR Working Paper 118.

75 Ibid.

76 Ibid.

77 Refugee Council of Australia 'Complementary Protection- The Way Ahead' (2004)

78 Amnesty International Australia's concerns with Ministerial discretion have been set out more broadly in our submission to the Select Committee on Ministerial Discretion in Migration Matters (2003), see www.aph.gov.au/Senate/committee/minmig_ctte/submissions/sublist.htm

79 Refugee Council of Australia 'Complementary Protection- The Way Ahead' (2004)

80 Ibid.

81 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999

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quality assurance reviews of detention decisions for clients who are already detained. Further, Compliance Field Interview forms which require actual evidence of decisions to detain are also necessary.

The United Nations Committee Against Torture has recommended that detention be used only as a last resort and only for a reasonable time, and that non-custodial measures and alternatives to detention should be made available.⁸² The transparency afforded by a merits or judicial review makes it a more reliable process to ensure that detention is no longer than is reasonably necessary and does not become indefinite or arbitrary in character than administrative review.

The policy changes announced retain mandatory detention as a fundamental principle. Amnesty International Australia recommends a clear end to mandatory detention. There must be legislative provisions which limit detention to cases where detention is absolutely necessary, and then for short and defined periods.

Further, while it is now clearer as to how Christmas Island will be used to process people, Amnesty International Australia remains concerned that detaining people for long periods of time in such a remote location may cause unnecessary hardship, and impact on both their physical and mental health.⁸³ Maintaining the excised areas from the migration zone exposes the government to continued international criticism. Amnesty International Australia is also concerned that the continued excision of a number of islands from the migration zone and the continued use of Christmas Island as a place of detention undermines the extent of changes signalled by the recent policy changes announced. The retention of these migration policies maintains a two-tiered approach to those who seek asylum in Australia. Accordingly, Amnesty International Australia recommends that the current policy of excision of certain offshore territories be ended and all detention centres on Christmas Island be closed.

Any system of processing asylum seekers needs to assess claims for complementary protection at the first instance. This will ensure people with legitimate, non-Convention claims are still able to obtain protection in a timely manner. Complementary protection would avoid people with non-Convention claims undergoing the entire RSD process before having these claims assessed at the Ministerial Intervention level. Amnesty International Australia urges the Australian government to honour and fulfil its international law obligations to those in need of protection but who are outside the scope of the Refugee Convention, in a timely and humane fashion.

Australia must end its policy of mandatory detention, including using it as a punitive measure to deter the arrival of asylum seekers. All asylum seekers must be processed onshore in a fair and satisfactory asylum procedure which is non-discriminatory in purpose and effect. All detention facilities should be fully transparent with adequate standards of review from third parties, along with an adoption of cost-effective rights-based alternative models similar to those commonly practiced in Europe.

⁸² *Concluding observations of the Committee against Torture, Australia*, Committee against Torture, 15 May 2008, www.hrtc.org.au/files/CX9F5DW2WB/Australia%20CAT%20COBs.pdf [accessed at 21 July 2008]

⁸³ *Ibid.*