CHAPTER 5

The impact of detention

> Being an asylum seeker is an inherently stressful status for any person. They await a decision from the Australian Government that will profoundly affect the rest of their lives – it may indeed have a life or death consequence. The decision-making process is a complex and alien experience over which they have little control, may little understand and which may take a long and indeterminate time to conclude. Many are separated from family members who have been left in circumstances of danger and deprivation. The pressures of enduring prolonged uncertainty over such critical aspects of one's existence are profound.[356]

Background

5.1 The Committee received considerable evidence on the impact of detention on the mental health of detainees, notably children, as well as the resulting strain on the detention network and staff who operate and work in facilities. Evidence was taken on the complex and multifaceted causes and effects of the strain which has resulted in sporadic eruptions of violence at a number of detention facilities. The Committee paid particular attention to the special circumstances and needs of children in detention.

5.2 The Committee visited the majority of detention centres around the country during the course of its inquiry. Some of the evidence before the Committee was sensitive in nature, and the subject matter inspires passionate views. In many facilities, detainees bore the physical evidence of self harm: those who had been treated for self-inflicted wounds were clearly visible. The Committee has sought to conduct its inquiry with sensitivity towards all concerned, and has therefore chosen not to delve into specific examples.

5.3 This chapter outlines the negative effects of detention and recommends a number of measures to alleviate them.

Negative effects on detainees

5.4 A substantial and growing body of empirical evidence exists describing the adverse effects mandatory detention has on health, particularly mental health:

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356 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45,* p. 2.

> Numerous...studies, conducted in Australia and internationally, corroborate the link between restrictive immigration detention and the development of mental health problems. Various medical and mental health organisations also oppose prolonged restrictive detention, including the Australian Medical Association.[357]

5.5 The proportion of detainees affected by their detention bears careful reflection. The Committee was told that:

> One study by the Physicians for Human Rights found clinically significant symptoms of depression were present in 86% of detainees, anxiety in 77% and PTSD [post traumatic stress disorder] in 50% with approximately one quarter reporting suicidal thoughts.[358]

5.6 A submission from Suicide Prevention Australia cited extensive academic research spanning a decade. The studies were numerous and the conclusions unambiguous: detention corrodes mental health. One study estimated that:

> ...the rates of suicidal behaviour among men and women in Australian IDC are approximately 41 and 26 times the national average, respectively.[359]

5.7 Another study, completed in 2004 and cited by the Australian Psychological Society, looked at parents and children who had spent approximately two years in Australian detention centres. The study found that every individual assessed 'met diagnostic criteria for at least one current psychiatric disorder.'[360]

5.8 The overwhelming majority of submissions to this inquiry consistently highlighted these adverse effects. Media reports of instances of attempted and inflicted self harm barely scratch the surface of what has clearly become an endemic problem in Australia's detention facilities, and one that must be addressed in the interests of detainees and the staff who work with them, as well as the integrity of the country's immigration detention policy.

5.9 This section will look at the ways in which people are affected by prolonged detention.

Manifestations of mental health problems

5.10 Common symptoms of disorders among detainees are forgetfulness and confusion, frustration, anger, loss of appetite, anxiety, poor hygiene, insomnia, self harm, as well as thoughts of, and attempts at, suicide.[361] These symptoms and behaviours now appear commonplace among the long-term detainee population. According to refugee advocacy groups the symptoms and behaviours of people in held

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357 Department of Immigration and Citizenship, *Submission 32, Supplementary,* p. 62.
358 International Detention Coalition, *Submission 69,* p. 4.
359 Suicide Prevention Australia, *Submission 67,* p. 33.
360 The Australian Psychological Society, *Submission 108,* p. 7.
361 Refugee Advice and Casework Service, *Submission 28,* p. 4.

detention are in stark contrast to those of asylum seekers who are placed in the community.[362]

5.11 Frontline employees working in detention centres explained their experience of the mental deterioration that detainees undergo:

> The type of behaviour people engage in differs depending on the person. They can become more reclusive, they stop talking, they're not their usual bubbly self. But others become aggressive, and especially you get these natural born leaders who get a group of people together to support their cause and that's when you end up with 20 people on a roof. But the quiet ones are the ones you have to watch. The loud and proud ones, you always know where they are, because you can hear them. It's the others that you have to keep a close eye on, and if you haven't seen or heard from them in a few hours then you need to go and find them and check up on them. They are the ones that are likely to slash up or try to hang themselves. We don't worry as much about the loud ones.[363]

5.12 Another employee related how detainees manifest perceptible changes over time:

> It's both the physical and mental well-being of clients that's affected. And you can see it change in the space of a week. If I go off shift and come back a week later, I will see the changes. They will have put on weight, for one thing. Because they have nothing to do but cooking and eating and watching a bit of TV. They're also agitated. And over time, good relationships change. People revert into their shells, they become introverted, they stop talking. And then some people start to be admitted into mental health institutions – some of our cases have started to get more serious, as well. The longer they're here, the more they need medication. They go to the health clinic to get drugs just to get through it.[364]

5.13 An alarming number of detainees have resorted to self harming. The Committee is not able to accurately estimate the current number or frequency of self harm incidents, however it appears to be a regular occurrence. DIAC figures indicate there were 386 self harm incidents in 2010–11.[365] The Chair of the Council for Immigration Services and Status Resolution (CISSR), Mr Paris Aristotle AM, in April 2011 'named increased rates of self-harm as indicative of the crisis within the detention system and a general deterioration of mental health.'[366]

5.14 The Committee sought a professional psychiatric opinion on whether people self harm in order to expedite their release or otherwise manipulate the process. Dr

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362 Refugee Advice and Casework Service, *Submission 28,* p. 4.

363 United Voice, *Submission 55,* p. 22.

364 United Voice, *Submission 55,* p. 22.

365 DIAC, *Question on Notice 41* (received 16 August 2011), p. 2.

366 Council for Immigration Services and Status Resolution 9th General Meeting minutes, p. 3, Department of Immigration and Citizenship, *Question on Notice 72* (received 2 December 2011).

Gynther, a psychiatrist with extensive experience working with detainees, explained that a proper assessment is required to separate those who are mentally ill from those whose actions are calculated to achieve an end:

> Some of the people we see are severely damaged and are in the middle of a psychiatric condition. Their self harm seems to be related purely to their desperation and does not have a goal in mind. Others we have seen do seem to have a goal—saying that, we don't feel these people have a major psychiatric disorder—they are desperate, at the end of their rope, and they have done this maybe in the hope that it is like their last playing card—the last chip they can put down. I think it is a reasonable thing that people do. If you have nothing else, and you can see no future, it is the sort of desperate thing that someone will do. Then we have to try to deal with that on the phone too, trying to make a judgment about whether this is a manipulative thing—and a totally understandable manipulative thing—that we should deal with in one way, or else is this truly a psychiatric problem that we need to be treating with high doses of antidepressant medication? That is a really difficult assessment on the phone. That is part of the reason they should be in a place where they can be seen face-to-face because that is part of the possible presentation.[367]

5.15 Although instances of self harm driven by a desire to manipulate the process exist, Dr Gynther explained that the majority of self harm incidents were due to real mental illness.[368]

5.16 As well as incidents of self harm, there have been numerous suicide attempts and nine deaths in detention centres in the 24 months to February 2012.[369] Suicide attempts are rarely reported in the media, and DIAC was not able to provide the Committee with the exact number of suicide attempts during this period:

> The detention service provider [Serco] is required to report all self harm or threatened self harm incidents on the departmental reporting system. Detention service provider staff are not qualified to assess whether a self harm incident is actually a suicide attempt.[370]

5.17 While the Committee recognises the difficulty Serco staff may in some circumstances have in differentiating suicide attempts from other forms of self harm, the Committee considers it far from ideal that DIAC is unaware of the number of detainees trying to take their own lives.

5.18 Nonetheless, there is every reason to believe that suicide attempts occur with troubling frequency. Adult male detainees in high security detention facilities appear

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367 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 2.

368 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 3.

369 To date, coronial inquests have found the cause of death in three of the nine deaths to be suicide. Inquests for the other six deaths are ongoing. See DIAC, *Question on Notice 297,* p. 1. See also *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, New South Wales Coroner, 19 December 2011; Chapter 2.

370 DIAC, *Question on Notice 297* (received 15 March 2012), p. 1.

to be at greatest risk of suicide. They are also subject to the longest processing times.[371]

5.19 The Committee noted the professional opinions of psychiatrists with experience of caring for detainees suffering from depression. Providing psychiatric help for detainees with severe mental illness can, the Committee heard, be a Sisyphean task:

> As prolonged detention is the major precipitating stress for psychiatric admission, staff and patients see our interventions as hopeless and futile as eventually patients are always returned to Scherger [detention facility] for further detention. A return to detention is a return to an elevated risk of suicide...It is my opinion that the process of prolonged detention is abusive. The ends cannot justify the means when it involves the knowing abuse of innocent people.[372]

5.20 The Committee also heard that at times people who had attempted suicide were being placed back into detention despite advice to the contrary from psychiatrists. Ms Pamela Curr of the Asylum Seeker Resource Centre brought evidence of this to the Committee's attention:

> I have got three letters from three different psychiatrists for three men who were in Toowong Private Hospital [a psychiatric facility] and in those letters the psychiatrists in each case said that they did not recommend a return to detention because they felt that in each case the patient would suffer a relapse of symptoms. In those cases their advice was ignored. The patients were sent to the detention environment at the BITR and they were left there, as we have said, for three weeks before they were eventually sent to community detention.[373]

5.21 The Committee sought clarity on this matter from DIAC. Mr John Moorhouse, Deputy Secretary, explained that the Department considered alternative detention options when managing people who had been medically assessed as being severely mentally ill:

> That would influence our decisions in a number of different ways. If it were open to us to place a person in community detention, that would be one response we could make to it. Of course, at the present time we have the capacity to place a person in the community on bridging visas if we feel that is appropriate and the person could cope and they had the support from family and friends that might make that feasible. But, if we did not have either of those options available to us, we would look to the least challenging form of detention that is available to us, and that is what we do do. So, with people who are struggling in detention who might not be

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371 Average processing times are available in Department of Immigration and Citizenship, *Question on Notice 8* (received 16 August 2011).

372 Dr Bruce Gynther, *Submission152,* p. 2.

373 Ms Pamela Curr, Campaign Coordinator, Asylum Seeker Resource Centre*, Proof Committee Hansard,* 18 November 2011, p. 18.

> eligible for community detention or a bridging visa, for one reason or another, we would look to place them in facilities such as immigration residential housing, which is as close as possible to normal living conditions, usual community living conditions, within a detention environment.[374]

5.22 The Committee also learned that mental health staff can have a detainee moved to a psychiatric facility if they consider it to be necessary, rather than sending them back to detention. However, this decision has to be weighed not only on the basis of the patient's state, but also the resources required:

> If we want someone in a psychiatric hospital we can do that. We will transfer them to the Cairns Base Hospital, where there is a psychiatric ward. It is not a light decision. To transfer a person to Cairns Base Hospital requires utilising the RFDS [Royal Flying Doctor Service]. There is a logistical problem in doing so with only one plane in the cape. If we try to organise it and there is a heart attack case somewhere else, or a car crash up in Cape York, that plane will not be available. Or, if the plane is doing our transfer, and there is a car crash somewhere else, the car crash call will have to wait. So it is not a decision done lightly.[375]

5.23 Patients at risk of suicide are nevertheless at times returned to detention after a hospital visit. Dr Gynther submitted that DIAC had been responsive to his advice on how best to handle such situations in the past:

> At times we have made statements to the department saying that we think a person is a huge risk. I actually spoke to someone from immigration detention because a yes paper was on someone's out tray and hurried it along so that it was signed, because I felt the person was at incredibly high risk of suicide if that piece of paper was not signed. If someone remained at risk and really sick, we would keep them in hospital indefinitely if necessary, but we treat with medications and when you are away I think the stress of the place diminishes.[376]

5.24 Another psychiatrist the Committee spoke to, Dr Jon Jureidini, agreed that placement played an important part in managing mental health:

> My experience has been that people do not get to see me until things are pretty bad, and by the time I am seeing them they have been damaged by the experience of being in immigration detention. So part of the beginning of any healing process involves them being placed in a different form of detention that is not damaging to them.[377]

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374 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard,* 29 February 2012, p. 34.

375 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 2.

376 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 7.

377 Dr Jon Jureidini, *Proof Committee Hansard,* 15 November 2011, p. 33.

5.25 Dr Jureidini, however, stated that in his experience as a mental health professional he had limited ability to ensure detainees with mental health problems were appropriately placed:

> I have not been able to make it happen. There has been legal action taken which has made it happen. There has been high-level action. In the time that Jonathan Phillips was Director of Mental Health Services in South Australia, he was able to take action to get certain people placed in psychiatric hospitals when they needed to be, but at my level of intervention my experience—the kind of modal experience, if you like—is to be told, 'Yes, we'll help you with this, but actually it's not us who needs to do it; it's DIMIA' [DIAC]. You go to DIMIA and they say, 'No, you need to talk to IMHS about it.' You go back to IMHS and they send you back to DIMIA. So I have felt completely impotent in working within the system to be able to help anybody to get the mental health care they need in the vast majority of cases that I have been involved in where families or children have been in immigration detention.[378]

5.26 Speaking specifically about the impact of detention on people with children to care for, Dr Jureidini added that placement in less restrictive held detention, such as Alternative Places of Detention (APODs), was not a silver bullet for dealing with the negative effects:

> [L]ocking up somebody where it is relatively nice does not protect them from the worst effects of being locked up.[379]

How mental illness can influence assessment outcomes

5.27 Furthermore, psychologists working with detainees posited that major depressive disorders had the potential to influence refugee status determination outcomes by compromising people's ability to present a coherent, fact-based protection claim at critical times during the assessment process. As put by Mr Guy Coffey, a clinical psychologist with 14 years of experience in assessing detainees and former detainees:

> A major depressive disorder can impair attention and short term memory and introduce biases and distortions in the recollection of personal history. Anxiety disorders can reduce concentration and short term memory. Post traumatic conditions often result in an inability to accurately recollect or describe traumatic events. Suffering from a disturbed mental state, therefore, may disrupt an asylum seeker’s capacity to coherently and consistently put their claims through instructions to their lawyer and at refugee status interviews. These effects, according to the severity of the disorder, may be subtle or conspicuous. They more often compromise the asylum seeker’s ability to provide a detailed and consistent account of their experiences than render them “unfit to testify”. The mental state of the

378 Dr Jon Jureidini, *Proof Committee Hansard,* 15 November 2011, p. 33.
379 Dr Jon Jureidini, *Proof Committee Hansard,* 15 November 2011, p. 36.

> detained population has significant implications for procedural fairness in status resolution, which I believe have not been fully acknowledged.[380]

5.28 The Committee sought other professional opinions on this point. Dr Gynther explained how people with post-traumatic stress disorder could have difficulty engaging with the outside world:

> People with post-traumatic stress disorder just withdraw. They withdraw from friends and they have a loss of interest in activities. They are models of this sort of thing. If you give a rat an electric shock, it will run away. If you tie it down and give it repeated electric shocks, eventually it just lies down. The same thing happens to people.[381]

5.29 The Refugee Advice and Casework Service (RACS), a legal centre assisting asylum seekers, concluded from experience:

> From a legal perspective, the mental health effects of mandatory and prolonged detention have an alarmingly negative effect on an applicants' legal case. As mental health deteriorates, applicants are less and less able to effectively engage with the POD process, which relies on accurate and detailed recall of past (often traumatic) events, in order to be found to be credible by a decision-maker. RACS reiterates that the depression and anxiety experienced by many applicants during detention awaiting the outcome of their cases results in poor memory and concentration, anger, frustration, and indignation. These negative emotions have an enormously detrimental effect on our clients' abilities to present their claims properly. Some of RACS' clients have reached states of such serious mental illness, frequently at the appeal and review stages of their protection determination, that we have professional concerns about their ability to give instructions and to understand their situation.[382]

5.30 RACS also stated that DIAC's own analysis of cases overturned on IMR (independent merits review) between January and April 2011, which indicates that the psychological state of detainees was a contributing factor in the overturn in 25 per cent of sampled cases, was further proof of the scale of this problem.[383]

5.31 When asked whether mental health was considered when deciding protection claims, DIAC stated:

> [W]ere a person to provide such an assessment, of course it would be taken into account. All matters that a person brings to our attention are taken into account, but we would not normally commission such a report. However, there is a well-known phenomenon that a person may over time provide

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380 Mr Guy Coffey, *Submission 44,* p. 13.

381 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 4.

382 Refugee Advice and Casework Service (Australia), *Submission 28,* p. 6.

383 Refugee Advice and Casework Service (Australia), *Submission 28,* p. 7.

> more information to us, and that I think in some way accounts for the overturn rate that we see in relation to decisions upon review.[384]

5.32 DIAC First Assistant Secretary, Ms Vicki Parker, added that a person's 'mental health and mental state can be quite relevant in terms of credibility, which goes to the protection assessment.'[385]

Committee view

5.33 The Committee accepts that DIAC seeks to consider alternative placement options where available when managing detainees with severe mental illness. The Committee is of the view that it is a regrettable consequence of overcrowding in the detention system that detainees who are at risk of suicide are at times transferred straight from hospital back into high security detention facilities. The Committee urges the Department to continue to monitor detainees with severe mental illness and ensure their management is in line with medical advice.

5.34 The Committee remains concerned about the impact mental health degradation can have on an asylum seeker's ability to coherently make their claim for protection. The Committee notes that medical professionals have stated that mental illness can impair a person's ability to engage with the outside world, and is therefore concerned that people could be failing to recount important information to decision-makers without necessarily exhibiting other signs of mental illness. The Committee acknowledges that DIAC will take mental health assessments into consideration if they are provided by the detainee; however, it must also be recognised that detainees are not in a position to commission their own medical assessments.

Exacerbation of previous trauma

5.35 Detainees are often people who have feared or experienced some degree of persecution or trauma prior to leaving their countries of origin. The effects of mandatory detention should be assessed against this backdrop of pre-existing psychological vulnerability.

5.36 In 2006 DIAC funded a study conducted by the University of Wollongong which looked at health profiles of people in detention centres to 'identify an appropriate health data collection system to provide a capacity to analyse the health of people in immigration detention.' The study concluded that asylum seekers were more likely than other detainees—such as people who have overstayed or breached their visa—to suffer increased health problems.[386]

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384 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard,* 29 February 2012, p. 34.

385 Ms Vicki Parker, First Assistant Secretary, DIAC, *Proof Committee Hansard,* 29 February 2012, p. 34.

386 Department of Immigration and Citizenship, *Submission 32, Supplementary,* p. 62.

5.37 The Australian Psychological Society commissioned a comprehensive literature review in 2008, looking at the psychological vulnerability of refugees. The review identified:

- The significant psychosocial impact of the refugee experience, including experiences of pre-migration trauma, migration and resettlement.
- That people seeking asylum are at risk of mental health problems based on specific risk factors including loss and trauma both prior to and post arrival. Mental health problems may be expressed in various ways depending on cultural background, personal experience and reception factors.
- The important role that post-migration stressors may have on adjustment, including the experience of loss, restricted access to appropriate supports, and limited educational and employment opportunities.
- The heightened risk of mental health problems among refugees who are placed in detention, especially children.[387]

5.38 Dr Gynther agreed that asylum seekers were particularly vulnerable as a group due to previous trauma:

> I think that that the actual process of prolonged involuntary detention is an abusive process. The detainees that come to Scherger have come from overseas. They have often been subject to trauma and significant loss where they have come from, and then when they are detained for prolonged periods of time they are effectively re-traumatised by the process. Many of the patients have post-traumatic stress disorder, and one of the many symptoms of post-traumatic stress disorder is loss of trust in others after how you have been treated. That loss of trust is further amplified by the way we treat people—by prolonged detention. I think this actually damages the patients in the long term. It produces psychiatric illness and long-term damage for these people, whether they are eventually released into the community or returned to where they have come from. I think we are actually causing them harm. I think that morally we cannot use a process that causes people harm with the purpose of, say, preventing other people coming here. We cannot use this process as a deterrent, because the cost of this is harm to other people.[388]

5.39 As put by the Australian Psychological Society, detention is in itself traumatic, and it exacerbates the effect of other traumas:

> Detention has been found to have an independent, adverse effect on mental health by exacerbating the impacts of previous traumas, and is in itself an ongoing trauma.[389]

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387 The Australian Psychological Society, *Submission 108,* pp 5–6.
388 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 1.
389 The Australian Psychological Society, *Submission 108,* p. 3.

5.40 In contrast, research shows that asylum seekers with pre-existing trauma experience positive outcomes when they are 'afforded adequate rights and provided with appropriate legal, settlement, mental health, education and employment supports.'[390]

5.41 However, those who are re-traumatised as a result of detention have far worse outcomes once they are released into the community:

> I think by locking up people in this way where they see no future, it goes on endlessly and they do not know what will happen to them it, again, erodes that trust. I think we are basically re-traumatising people...That means that, when they are released into the community, they will have more severe symptoms of post-traumatic stress disorder, a harder time relating to other people because of their loss of trust because that is further undermined, a harder time relating to their families and a harder time being a productive member of the community.[391]

Contributing factors

5.42 A number of circumstances associated with prolonged detention contribute to poor mental health outcomes. These include deprivation of freedom, a sense of injustice and inhumanity, isolation, and growing feelings of demoralisation and hopelessness.[392] These factors conflate to slowly, persistently corrode mental health, resulting in both psychological and physical deterioration.

5.43 The Australian Human Rights Commission identified a number of factors contributing to the degradation of mental health across the detention network:

> The Commission is troubled about a number of key factors that, in combination, are placing extreme pressures on asylum seekers and refugees in detention facilities. These include the psychological impacts of being detained for long periods with no certainty about when they will be released or what will happen to them when they are; confusion about the refugee status assessment process and frustration about delays with processing; frustration and uncertainty about ASIO security assessment processes and delays; and the fact that they are informed that if they seek judicial review of their negative refugee assessment, they will remain in immigration detention for the duration of that process.[393]

5.44 Further evidence before the Committee consistently pointed to similar exacerbating features of the detention experience. These include:

- the undefined, uncertain length of detention;

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390 The Australian Psychological Society, *Submission 108,* p. 6.

391 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 4.

392 See the Australian Psychological Society, *Submission 108,* p. 7.

393 Australian Human Rights Commission, *Submission 112,* p. 28.

- the remoteness of facilities and harshness of climatic and geographic environments;
- perceptions of unjust treatment and unjustified incarceration; and
- the absence of meaningful, stimulating activity.

5.45 These circumstances, which make prolonged detention a harrowing experience, are not only individually challenging but can also produce a powerfully negative mix:

> The sense one is being incarcerated without just cause, the indefinite term of detention, the control exerted over the minutiae of one's life, the lack of privacy, the monotony and lack of worthwhile activities, the isolation and difficulty communicating, exposure to acts of violence, growing tensions with other detainees and with detention officers – all these circumstances undermine the asylum seeker's psychological well being over time.[394]

Indefinite periods of detention

5.46 From physicians, psychiatrists, human rights groups and refugee advocates, to academics, lawyers and detainees themselves, the Committee heard a consistent message from submitters and witnesses over the course of this inquiry: it is the length of time people spend in an information vacuum in detention that is the primary problem and contributor to stress. Not a single submission put forth arguments to the contrary.

5.47 The previously mentioned 2006 University of Wollongong study, published in 2010, looked at 720 health records from 2005–06 and found that people detained for longer periods had a 'significantly larger' number of health problems, both mental and physical.[395]

5.48 Research also shows that only 3 per cent of people detained for under three months developed new mental health problems, whereas that proportion rose to 44.6 per cent when people were detained for more than two years.[396]

5.49 According to the Refugee Advice and Casework Service asylum seekers routinely spend up to 18 months in detention while their applications are processed and outcomes determined.[397]

5.50 DIAC's own figures[398] as at 31 January 2012 are as follows:

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394 Mr Guy Coffey, *Submission 44,* p. 9.
395 DIAC, *Submission 32, Supplementary,* p. 62.
396 Mr Guy Coffey, *Submission 44,* p. 8.
397 Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard,* 5 October 2011, p. 1.

Figure 9

Length of Time in Detention as at 31 January 2012		
Period Detained	Total	% of Total
7 days or less	53	0.8%
8 days - 31 days	390	6.1%
32 days - 91 days	1967	30.8%
92 days - 182 days	923	14.5%
183 days - 365 days	1003	15.7%
366 days - 547 days	1124	17.6%
548 days - 730 days	750	11.7%
Greater than 730 days	173	2.7%
Total	6383	100%

Source: DIAC

5.51 In answers to questions put on notice, DIAC informed the Committee that the average processing time from arrival (for Irregular Maritime Arrivals – IMAs) to visa grant was 279 days as of 18 July 2011.[399] This figure does not, however, take into account those asylum seekers who are on a negative assessment pathway. Those in the latter category can spend considerably longer in detention, and the Committee came across many cases of people spending around or upwards of two years in detention.

5.52 Particular distress has also been observed among detainees waiting while security assessments are conducted by the Australian Security Intelligence Organisation (ASIO). These clearances are not conducted within a set timeframe, nor are detainees kept abreast of their progress. This latter point is a significant cause of anxiety.[400]

A time limit on detention

5.53 Given that the length of detention appears to be a chief factor in mental health deterioration, the Committee considered calls for a time limit to be imposed. Evidence was heard from organisations such as the Law Council of Australia:

> We are also arguing for a time limit on detention. A number of submitters have said 30 days; some people say 60 days. All we are saying is that there needs to be a time limit, because at the moment it is arguably indefinite, and that is a breach of Australia's obligations.[401]

398 DIAC, Immigration Detention Statistics Summary, 31 January 2012, p. 8, available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20120131.pdf (accessed 29 February 2012).

399 DIAC, *Question on Notice 8* (received 16 August 2011), p. 1.

400 Refugee Advice and Casework Service, *Submission 28,* p. 3.

401 Ms Rosemary Budavari, Co-Director, Criminal Law and Human Rights, Law Council of Australia, *Proof Committee Hansard,* 22 November 2011, p. 3.

5.54 This call for time limits to be placed on detention was echoed by a number of other submissions, such as the Australian Human Rights Commission,[402] the UNHCR,[403] the Australian Psychological Society,[404] Refugee Advice and Casework Service (RACS),[405] and the Refugee Council of Australia (RCA).[406] The RCA called for this limit to be set at 30 days, 'during which time an analysis of health, identity and security risks can be undertaken.'[407] RACS nominated a 90-day limit.[408]

5.55 The Committee considered the view of the President of the Australian Human Rights Commission, Ms Catherine Branson:

> We have long urged that indefinite detention be abandoned, because it is the indefinite nature of the detention as much as its length and its location that we know to be damaging to people's mental health. No doubt expert evidence would have to be taken about what is a reasonable time to do the checks that you have identified, but on the face of it 30 days seems to be reasonable. I think it is very concerning that, as I understand it, two-thirds of those people presently in detention have been there for longer than six months.[409]

5.56 Others, such as Amnesty International, expressed support for imposing time limits without nominating a specific time.[410]

5.57 Some witnesses added that detention beyond any set time limit should be subject to judicial review:

> Any attempt to detain an asylum seeker for more than 30 days should be subject to independent judicial review. This approach would ensure the potential risks to the community are managed appropriately without inflicting further harm on vulnerable people attempting to flee persecution. It would also allow for continued detention in cases where genuine risks exist.[411]

5.58 A submission from the regional representative of the United Nations Commissioner for Human Rights (UNHCR) points to the government's *New*

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402 Australian Human Rights Commission, *Submission 112,* p. 5.

403 United Nations High Commissioner for Refugees, *Submission 110,* p. 18.

404 The Australian Psychological Society, *Submission 108,* p. 3.

405 See Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard,* 5 October 2011, p. 1.

406 See Ms Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, *Proof Committee Hansard,* 5 October 2011, p. 8.

407 Ms Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, *Proof Committee Hansard,* 5 October 2011, p. 8.

408 Ms Tanya Jackson-Vaughan, Executive Director, Refugee Advice and Casework Service, *Proof Committee Hansard,* 5 October 2011, p. 1.

409 Ms Catherine Branson, President, Australian Human Rights Commission, *Proof Committee Hansard,* 5 October 2011, p. 55.

410 Dr Graham Thom, *Proof Committee Hansard,* 18 November 2011, p. 11.

411 Ms Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, *Proof Committee Hansard,* 5 October 2011, p. 8.

Directions in Detention policy and expresses concern that the key values identified do not appear to have been adhered to:

> Despite previous assurances of the Government of Australia that the New Directions in Detention policy would apply to territories excised from the migration zone, UNHCR is concerned that the Key Immigration Detention Values have not been systematically applied in territories excised from the 'migration zone' or to persons arriving in excised territories.
>
> ...
>
> While noting the discretionary nature of the power to detain in an excised offshore place under current legislation, UNHCR is disappointed that the Key Immigration Detention Values have not been explicitly and systematically applied to refugees, asylum-seekers and stateless persons throughout Australia, including those defined as Irregular Maritime Arrivals (IMAs) and subject to the regime of 'offshore processing'.[412]

Remoteness

5.59 The remoteness of detention facilities isolates detainees in a physical sense by making it difficult for service providers, doctors and lawyers to pay regular, necessary visits. This in turn contributes to prolonging detention:

> I have no doubt that the remoteness of location and the obstacles that it presents—and there are quite a number of them—in terms of advice and processing have resulted in prolonged detention of people. I think one of the really important aspects of it is that, the longer someone is detained in these remote locations, usually the less able they become to actually engage fully in the process, because of the damage that it does to people... When people become so damaged and so harmed by the detention, as we know that they do, it becomes more difficult for them to fully engage in the process of explaining their case, presenting evidence and working with their advisers.[413]

5.60 Dr Bruce Gynther told the Committee how remoteness was also affecting the quality of psychiatric care detainees were receiving:

> The remote location of the Scherger facility means it is usually not possible to have a psychiatrist or psychiatric registrar on site to assess patients. A videoconference assessment or a relayed assessment from a Medical Officer or Mental Health Nurse is far from ideal for these complex cases. Transfer of the patients from Weipa to Cairns is difficult, and at times not desirable for patient management.[414]

5.61 He added that maintaining remote detention centres which were not close to a major public hospital carried with it a considerable risk:

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412 United Nations High Commissioner for Refugees, *Submission 110,* p. 4.

413 Mr David Manne, Executive Director, Refugee and Immigration Legal Centre Inc., *Proof Committee Hansard,* 18 November 2011, p. 28.

414 Dr Bruce Gynther, *Submission 152,* p. 2.

> ...[T]he degree and quality of the psychiatric care that we can offer is really suboptimal. Even though we strive very hard and liaise with the mental health nurses that are located in Weipa and the doctors at Weipa Hospital and everyone does the best they can, in the end, for patients with really severe psychiatric conditions who are suicidal and who have major depression or post-traumatic stress disorder, I am making decisions over the phone about their management, and it is just not acceptable. These patients should have been admitted routinely. They should be close to a major hospital so they can be admitted routinely, whereas with any other psychiatric admission they would be seen within 24 hours by a training psychiatric doctor or a psychiatrist, and then decisions can be made about their treatment and their longer term management. I think that, with the way the situation is now, we are just waiting for disaster, and I think that a tragedy is very likely to occur.[415]

5.62 The Committee is aware that Dr Gynther was speaking specifically about Scherger detention centre, in Far North Queensland. However, the point applies to other remote centres.[416]

5.63 Remoteness also curbs regular human contact with visitors, be they friends, family or advocacy groups. Those who do persist despite this obstacle informed the Committee that they found it increasingly difficult to spend time with detainees due to tighter restrictions on visitors being imposed:

> In the past, on previous visits, we were allowed into the main compound to sit under a tree, and not only could we see the people who were on our list but anyone could come up and speak with us. A couple of months ago, on our visit, we actually collected some information; we distributed some forms and we sent those off to this detention inquiry, because people wanted to have a voice and some felt that they had not necessarily had their voices heard during the visit by the inquiry, because that was time limited. But, on the most recent visit, the rules suddenly seemed to change. My colleague was not allowed into the main compound. She was shepherded off to a room and only allowed to see six people on the list. Other people had requested, through other detainees, to see her. They gave another list with additional names to Serco, who refused—something about security reasons. People were very disappointed. I think there is so much anxiety and tension in detention that to stop people extending the hand of human kindness is just criminal, really.[417]

5.64 For those whose families are overseas, family contact is even more problematic. Detainees report that fear for family members who may face persecution in their countries of origin is among their greatest sources of anxiety. In situations where the detainee was the principal breadwinner, their ongoing inability to earn

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415 Dr Bruce Gynther, *Proof Committee Hansard,* 2 December 2011, p. 1.

416 The impact of remoteness on health services to detainees is discussed in detail in Chapter 4.

417 Dr Linda Briskman, Director, Centre for Human Rights Education, Curtin University, *Proof Committee Hansard,* 18 November 2011, p. 32.

money can have serious consequences for the family's livelihood. Psychologists report that abandonment of family contacts is frequently a concerning sign that a detainee has lost hope.[418]

Recommendation 18

5.65 The Committee recommends that, as a matter of policy, the Department of Immigration and Citizenship accommodate detainees in metropolitan detention facilities wherever possible, in particular children and families, and those detainees with special needs or with complex medical conditions.

Absence of meaningful activity

5.66 Generally speaking, the Committee found from its visits to detention centres that living conditions were of varying quality but provided for people's basic needs. Although detainees identified particular inadequacies in terms of the standard of food and accommodation available, these seemed to be of secondary concern.[419]

5.67 As one submitter put it:

> [Length of detention] issues are of more concern to detainees than the fact that the taps don't drip or that there is coloured play equipment in the compound. In general the physical facilities are sterile but adequate. It's the *indefinite* powerlessness, hopelessness and the lack of freedom, choice, privacy and creativity that is so cruel. There are no torture marks on their bodies but the torture by bureaucracy is real and I have witnessed its effects.[420]

5.68 And in the words of a former detainee:

> If they make all the walls or fence with gold, there is nothing different, there is nothing changed, prison is prison, still this system keeps me in detention for no reason.[421]

5.69 Serco's contractual obligations to provide programs and activities are covered in greater detail in Chapter 3. However, in this context the Committee briefly observes that recreational options available to detainees vary across the centres, according to factors such as whether facilities are purpose built, their location and the length of time the each is to be used as a detention facility.[422] Each detention site has a manager who is responsible for developing a monthly Programs and Activities Plan. The plan aims to reflect detainee needs, which Serco identifies through consultation. Plans deliver both structured and unstructured programs that:

- enhance detainee physical and psychological wellbeing;

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418 Mr Guy Coffey, *Submission 44,* p. 7.

419 The Committee received *in camera* evidence from detainees on this point.

420 Ms Fabia Claridge, *Submission 7,* pp 2–3.

421 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45,* p. 3.

422 See Serco, *Submission 42,* p. 15.

- help build positive relationships both between detainees and between detainees and staff; and
- help maintain security on site.[423]

5.70 Submitters questioned the adequacy of available recreational activities, however, arguing that most were 'ways to pass time but are not related to any objective or to the acquisition of any particular skill,' with English classes being the exception. Available activities 'occupy a small part of the day and the rest of the time is spent wiling away the hours.'[424]

5.71 The Human Rights Commission also pointed out that depression was preventing detainees from participating in what little activity was available to them to pass the time, which further increased the severity of the problem and led to possible overreliance on medication:

> During recent visits, the Commission heard from people in detention about the psychological harm that prolonged detention was causing them. People at Villawood spoke of experiencing high levels of sleeplessness, feelings of hopelessness and powerlessness, thoughts of self-harm or suicide, and feeling too depressed, anxious or distracted to take part in recreational or educational activities. The Commission was troubled by the palpable sense of frustration and incomprehension expressed by many people. This appeared to have contributed to marked levels of anxiety, despair and depression, leading to high use of sedative, hypnotic, antidepressant and antipsychotic medications and serious self-harm incidents.[425]

5.72 As a consequence of waning mental health and little opportunity to engage in purposeful activity, detainees often 'come to see recreational activities as increasingly pointless.'[426] After prolonged detention, even the most determined are defeated:

> Despite the obstacles, some asylum seekers make a concerted effort to maintain a routine by spending time privately learning English, observing prayer times, writing emails to friends and exercising regularly. After an extended period of detention, however, this tends to be the exception.[427]

5.73 This absence of meaningful activity compares negatively even with the prison experience:

> It is notable that arrangements in many prisons provide more opportunity for worthwhile activities including work of various kinds and the possibility of study through an external educational institution. Although

423 See Serco, *Submission 42,* p. 22.
424 Mr Guy Coffey, *Submission 44,* pp 4–5, p. 11.
425 Australian Human Rights Commission, *Submission 112,* p. 28.
426 Mr Guy Coffey, *Submission 44,* p. 5.
427 Mr Guy Coffey, *Submission 44,* p. 11.

> administrative and purportedly nonpunitive, in this respect conditions in immigration detention centres are inferior to that of many prisons.[428]

Powerlessness over own fate and perceptions of unfairness

5.74 People's experience of detention is also affected by how they perceive the situation they are in. Many report feeling 'criminalised', or, as one detainee put it in a submission from the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT):

> We were wondering: why are we here? Are we criminals? We killed someone? We stole something? Why do they detain us?[429]

5.75 FASSTT explained that this is a common feeling among detainees:

> Detention facilities are experienced as prisons because they treat people as presenting such risks to the community that they must be confined behind fences and subject to constant surveillance. It should also be recalled that many asylum seekers were imprisoned in their countries of origin and detention facilities represent all too vivid reminders of the persecution that they have fled. By aggravating past trauma, immigration detention may cause harm that impairs people's health and wellbeing for a significant period following their release to settle in Australia (the majority of asylum seekers) or return to their country of origin.[430]

5.76 As put by Mr Guy Coffey, a clinical psychologist:

> The legal distinction between administrative and punitive custody is not apparent to the detained asylum seeker. Detention is often viewed as unjust, and increasingly with the passage of time, as an affront to the legitimacy of their claims - that they are being punished for asking for protection.[431]

5.77 The detention experience is so regimented that people are not allowed to make ordinary decisions about their daily lives.[432] Detainees may be subject to highly intrusive treatment, including strip searches.[433] This, along with a lack of understanding of the process they are in or how it is different from criminal incarceration, leaves many detainees feeling confused, unjustly punished and ashamed:

> The fact of the deprivation of liberty becomes increasingly oppressive with time. A majority of asylum seekers, particularly after about 6-9 months of detention and after one or more negative visa application decisions, experience detention as punitive and criminalising. Commonly they implore you to explain what offence they have committed and why they are being

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428 Mr Guy Coffey, *Submission 44,* p. 11.
429 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45,* p. 3.
430 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45,* p. 3.
431 Mr Guy Coffey, *Submission 44,* p. 4.
432 The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45,* p. 3.
433 See DIAC, Detention Services Manual, Chapter 8, *Question on Notice 77* (received 6 December 2011, updated 15 March 2012).

> punished. The legal account of their predicament, that under Australian law unlawful non citizens must be detained, usually doesn't allay a growing sense that something retributive is occurring. Those in centres shared with people detained due to visa cancellation owing to serious offending point to the injustice of being categorised with them. For some asylum seekers, the extensive security related interviews, which are usually far longer than the interviews assessing refugee status, suggest to them there is a greater focus on anti-people smuggling operations, and identifying threats to public security than on assessing the need for protection. Many of those in contact with their families have increasing difficulty explaining why they are still detained and face questions from family members as to whether they have committed an offence.[434]

5.78 The Committee also received evidence suggesting that some detainees believe the assessment process for refugee status is capricious and potentially subject to political interference. Many detainees are of the view that assessment criteria are not uniform, and that certain assessors interpret the frame of reference for protection visas more harshly than others. This sense of injustice—justified or otherwise—exacerbates feelings of helplessness and anger.[435]

5.79 This belief was echoed during *in camera* hearings the Committee held with a number of detainees across the network.

5.80 Visitors to detention facilities similarly reported finding them to be highly controlled environments. Dr Linda Briskman, director of the Curtin University's Centre for Human rights, described her experience of being kept under surveillance during visits to facilities, extrapolating from that that detainees must experience far worse treatment:

> I have experienced being accompanied to the toilet by two men. Another colleague, who was there last week, had her tampon box inspected before she went to the toilet. If we are experiencing this sort of surveillance and control, we can only imagine what it is like for the asylum seekers.[436]

The after-effects of detention

5.81 Studies indicate that the harm caused by prolonged detention continues to affect people once they are in the community. People who experience negative mental health effects as a consequence of detention frequently continue to suffer a sense of powerlessness and compromised self esteem beyond the period of detention:

> [Studies] found that along with significant psychological harm caused while in detention, psychological consequences of detention continue post-release even after the gaining of permanent residency. The severe difficulties experienced by all participants in this study included a sense of insecurity

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434 Mr Guy Coffey, *Submission 44,* p. 4.

435 See for example Ms Fabia Claridge, *Submission 7,* p. 3.

436 Dr Linda Briskman, Director, Centre for Human Rights Education, Curtin University, *Proof Committee Hansard,* 18 November 2011, p. 32.

> and injustice, relationship difficulties (half the participants identified that they resorted to isolating themselves), profound changes to view of self (loss of role as protector and provider for families and a more general loss of agency) and mental health symptoms such as depression, anxiety, PTSD, low quality of life and persistent and debilitating problems with concentration and memory.[437]

5.82 This, of course, means that former detainees experience difficulty adjusting once they enter the wider society. Studies show:

> [S]everal years after being released from detention, most participants showed clinically significant levels of depression and symptoms of post traumatic stress disorder. The difficulties participants spoke of in their current lives appear to be a direct transposition of the kinds of harm experienced while detained. It is contended that the enduring nature of these adverse psychological effects can be understood in terms of changes to core belief systems affecting views of the self and relationships, and values about justice and humanity.[438]

5.83 The psychological harm caused by detention may therefore impact on the settlement process once people are granted permanent protection visas, as most asylum seekers are, and settled into the community. This, in turn, 'inevitably requires further government investment in public, health and mental health services,' while asylum seekers 'who are deported are returned with increased vulnerability.'[439]

Effects on children in detention

5.84 Submissions disclosed strong condemnation of the detention of children. The Committee did not receive any evidence supporting the detention of children, and examples of opposition to the practice are far too numerous to cite exhaustively. The views of a few organisations are listed below.

5.85 The Australian Human Rights Commission (Human Rights Commission):

> The Commission has repeatedly raised concerns about the mandatory detention of children, the number of children in immigration detention and the prolonged periods for which many children are detained...
>
> ... The Commission welcomes the movement of a significant number of families and unaccompanied minors from secure detention facilities into community detention since October 2010...
>
> ... However, the Commission is concerned that a substantial number of children, including unaccompanied minors, remain in immigration detention. At 30 June 2011, 991 children were in immigration detention in Australia, including 478 in closed immigration detention facilities. The

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437 The Australian Psychological Society, *Submission 108,* p. 7. See also Mr Guy Coffey, *Submission 44,* p. 8.

438 Study by Coffey et al, quoted by the Australian Psychological Society, *Submission 108,* p. 7.

439 The Australian Psychological Society, *Submission 108,* p. 8.

> Commission remains opposed to the mandatory detention of children because it breaches Australia's international human rights obligations and creates a high risk of serious mental harm.[440]

5.86 Suicide Prevention Australia:

> The psychological vulnerabilities of child refugee claimants held in IDC have produced much local and international concern and research. The 2002 review by Thomas and Lau investigated the mental health of child and adolescent detainees observing that posttraumatic stress symptoms are common. These are demonstrated in such symptoms as: very high anxiety, social withdrawal, regressive behaviours, flashbacks, sleep disturbance, exaggerated startle responses, poor concentration, conduct problems, aggressive behaviour, delinquency, nightmares and acting out. Holding young people in immigration detention is a negative socialisation experience, accentuating developmental risks, threatening the bonds between children and their caregivers, limits educational opportunities, traumatic psychological impact and reduces the potential to recover from pre-migration trauma (APS 2008).[441]

5.87 The Detention Health Advisory Group (DeHAG) expressed its fundamental opposition to placing children in any form of restrictive detention.[442] The Northern Territory Branch of the Australian Medical Association referred to the detention of asylum seeker children as 'a form of child abuse'.[443]

5.88 The Committee heard that children in detention are at particular risk of suffering long-term consequences. These can manifest in varied ways and to different extents depending on the circumstances of the individual. Impacts can be physical, psychological, or both, and can affect ongoing development:

> It has been well demonstrated that prolonged and indefinite immigration detention can have significant adverse impacts on the health, safety and welfare of the children subject to detention and their families. During the Inquiry, the Commission found that prolonged detention in remote facilities prevented children from enjoying their right to the highest attainable standard of health. Significant numbers of children in immigration detention experienced psychiatric illnesses, such as depression and post-traumatic stress disorder, that were either caused or exacerbated by long-term detention. The Inquiry also found evidence that the detention environment contributed to developmental delay in some young children. Further, the Inquiry was presented with numerous examples of self-harm by children in immigration detention, particularly among longer-term detainee children.[444]

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440 Australian Human Rights Commission, *Submission 112,* p. 66.

441 Suicide Prevention Australia, *Submission 67,* p. 34.

442 Detention Health Advisory Group, *Submission 41,* p. 7.

443 Northern Territory Branch of the Australian Medical Association, *Submission 142,* p. 1.

444 Australian Human Rights Commission, *Submission 112,* p. 69.

5.89 The Committee also notes that the psychological wellbeing of parents has significant bearing on how well children are able to cope in detention:

> As a rule of thumb, if you have a small child who is in a stressful and distressing environment, the strongest predictor and mediator of how they are going to do in that environment is the wellbeing of their parents. If their parents are strong and well supported, then they tend to be able to get children through adversity. So, almost universally, it has been the case with the young children whom we have seen in immigration detention over the years who are doing very badly that their parents have got to the point where they are not able to carry out the ordinary protective parenting that they were capable of carrying out when they arrived in Australia. That pattern has been repeated. We have written that up and it is published and it is quite a clear pattern that occurs. It has been the same in Inverbrackie, as it was in Woomera and Baxter [former high security detention facilities].[445]

5.90 The Committee received no evidence to contradict the view that detention was an unhealthy and damaging environment for children.

Unaccompanied minors

5.91 The most recent figures available to the Committee indicate that, as at 14 March 2012, there were 254 unaccompanied minors in immigration detention facilities, and 130 in community detention.[446]

5.92 Save the Children, the Australian branch of the world's largest independent child rights development organisation, pointed out that unaccompanied children were at particular risk:

> Children held in immigration detention centres are at high risk of serious mental harm. They may witness riots, suicide attempts and self-harming behaviour. Often parents are powerless to comfort distressed children who may experience feelings of hopelessness and depression, in the case of unaccompanied children, there are simply no guardians to reassure them.[447]

5.93 As a particularly vulnerable group, unaccompanied children are entitled to 'special protection and assistance' under the United Nations Convention on the Rights of the Child (UNCRC), which states:

> 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
> 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

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445 Dr Jon Jureidini, *Proof Committee Hansard,* 15 November 2011, pp 35–36.
446 DIAC, *Question on Notice 298* (received 22 March 2012), p. 1.
447 Save the Children Australia, *Submission 50,* p. 2.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.[448]

5.94 The Human Rights Commission, among others, raised concerns relating particularly to unaccompanied minors. The Commission was:

> ...concerned that there continues to be an inherent conflict of interest in having the Minister or his DIAC delegate act as the legal guardian of unaccompanied minors in immigration detention. The Commission has repeatedly recommended that an independent guardian should be appointed for all unaccompanied minors in immigration detention. DIAC has informed the Commission that it acknowledges the 'perceived conflict of interest' and has informed the Commission that policy work is being progressed to improve the guardianship regime.[449]

Committee view

5.95 The Committee notes community concern regarding the guardianship of unaccompanied minors, and recognises the potential for a conflict of interest to arise where the Minister is simultaneously responsible for detaining asylum seekers for the purposes of processing their claims and acting in the best interest of unaccompanied minors seeking asylum. The Committee is of the view that the legal guardianship of unaccompanied minors in immigration detention should be transferred from the Minister for Immigration as soon as practicable.

Recommendation 19

5.96 The Committee recommends that relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.

Psychological impacts on children

5.97 The Human Rights Commission has spoken to many children in detention and their families over a number of years. Many, the Commission reports, express 'confusion, frustration and distress about their situation.'[450] Other submissions echo this view. Headspace, the National Youth Health Foundation, spoke of the scale and severity of the problem:

> Some commentators have stated that the severity of mental health issues is linked to children's ongoing detention and that the impact of detention outweighs that of pre-migration experiences in the development of mental health issues. One study of 20 children found that after two years in

448 *United Nations Convention on the Rights of the Child*, article 20.
449 Australian Human Rights Commission, *Submission 112,* p. 70.
450 Australian Human Rights Commission, *Submission 112,* pp 69–70.

> detention all children were diagnosed with at least one psychiatric disorder and 80 per cent were diagnosed with multiple disorders, compared with only one child from initial assessment (time of arrival).[451]

5.98 The Committee is also deeply troubled by the fact that a number of children currently find themselves in indefinite detention.[452] This is understandably having a seriously detrimental effect on the mental health of entire families, but most alarmingly on children who are in this predicament by virtue of a parent's adverse assessment. The Committee spoke to a number of people in this situation, and believes all are negatively impacted by the circumstances they find themselves in. The following refers to a psychiatric assessment of one such child and his family:

> The second family member I am most concerned about is [ ], the three year old son. The history and brief observation of him indicate that he may be abnormally sad and anxious and could be malnourished. I am certainly concerned that his normal development has been seriously disrupted and continues to be.[453]
>
> Overall the [ ] family appear to be a normal family, with normal and caring relations between each other, who have been very adversely affected by the environments in which they have been living for the last two years, and continue to be so. Neither Mr nor Mrs [ ] have any significant personality disturbance. The attitude of both appeared to be sadness, puzzlement and helplessness, with an absence of anger or resentment. Mrs [ ] is seriously depressed at present, but her premorbid functioning, prior to the last two and a half years, was good, and there was no history of previous depressive or other psychiatric illness. Her depressive state can be appropriately understood in terms of the severe stressors she and her family have been experiencing during the last two and a half years, and the major uncertainty about what will happen to them.[454]

Human rights obligations towards children

5.99 Recent improvements notwithstanding, other submissions questioned Australia's fulfilment of its obligations towards children in detention under international human rights standards. A number were of the view that the Australian legislative regime was in breach of Article 37(b) of the United Nations *Convention on the Rights of the Child* (UNCRC),[455] which states:

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451 Headspace, *Submission 37,* p. 5.

452 DIAC advised the Committee that, as at 28 February 2012, three children were in indefinite detention due to a parent's adverse security assessment. Another child, a protection visa holder, is also in indefinite detention with parents who have adverse ASIO assessments and who have requested that the child remain with them instead of being released. See DIAC *Question on Notice 299* (received 15 March 2012), p. 1.

453 Professor Ben Saul, *Submission 130, Attachment,* p. 65.

454 *Submission 130, Attachment,* p. 65.

455 See for example Gilbert and Tobin Centre of Public Law, *Submission 21,* p. 6; Australian Human Rights Commission, *Submission 112,* p. 67; Amnesty International, *Submission 115,* p. 9.

> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.[456]

5.100 The UNCRC is not enforceable in Australian courts.

5.101 In 2005 the Howard Government amended section 4AA of the *Migration Act* 1958, affirming 'that a minor shall only be detained as a measure of last resort.'

5.102 Then in 2008 the Rudd Government's *New Directions* policy stated:

> Children, including juvenile foreign fishers, and, where possible, their families, will not be detained in an immigration detention centre.[457]

5.103 While children are not held in high security immigration detention centres, they nonetheless continue to be detained in restrictive detention facilities. As of 30 June 2011 there were 991 children held in Australia's immigration detention facilities.[458] On 31 January 2012 that number was 528,[459] while on 14 March 2012 the number of children in detention stood at 479, of whom 59 were awaiting transfer into community detention.[460]

5.104 Furthermore, a submission from the Australian Children's Commissioners and Guardians (ACCG) pointed to the absence of a uniform, national policy on child safety in Australia's immigration detention network:

> The arrangements for notification, investigation and response to suspected abuse of children vary significantly from one detention centre to the next. Other than in South Australia, there are no clear protocols in place between the Commonwealth Government and the relevant statutory child protection agencies for the reporting of child abuse and neglect.[461]

5.105 To address this, ACCG called for Memoranda of Understanding (MOUs) to be introduced between DIAC and relevant state and territory authorities.

5.106 The Human Rights Commission added workers were often unaware of procedures in place regarding children in detention and also called on every Australian jurisdiction to introduce clear protocols:

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456 *United Nations Convention on the Rights of the Child,* article 37(b).

457 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *media release,* 29 July 2008, available at http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm (accessed 22 February 2012).

458 DIAC, *Question on Notice 4* (received 10 August 2011), p. 2.

459 DIAC, Immigration Detention Statistics Summary, 31 January 2012, p. 7, available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20120131.pdf (accessed 29 February 2012).

460 DIAC, *Question on Notice 298* (received 22 March 2012), p. 1.

461 Australian Children's Commissioners and Guardians, *Submission 35,* p. 4.

> We do not think it has to be the same across the country, but we do think in every jurisdiction there should be a protocol and a proper understanding about what is the procedure to be followed with respect to child welfare...We have spoken to people in authority in detention centres who have not known what was the appropriate course to adopt if, for example, there was an allegation of child abuse or if they found a child at risk. It is very often state and territory authorities who are nearest to where the children are and therefore most suitable to step in and protect children at risk, but they need to understand what their authority is. Those within the centres need to know when to contact them and how to do that.[462]

Committee view

5.107 The Committee shares community unease regarding the wellbeing of children in detention, and is concerned by the absence of a uniform code outlining child protection obligations, including the reporting of suspected child abuse. The Committee believes strong arguments exist for the establishment of such a code.

5.108 Recognising that an MOU between DIAC and South Australia's Department for Families and Communities already exists, the Committee supports calls for MOUs to be established between DIAC and children's commissions or commissioners across the states and territories. The Committee is of the view that these MOUs should stipulate protocols for reporting, investigating and responding to suspected child abuse and should apply to the management and care of all asylum seeker or refugee children within the immigration system, including those in community detention and on bridging visas.

Recommendation 20

5.109 The Committee recommends that the Department of Immigration and Citizenship develop and implement a uniform code for child protection for all children seeking asylum across the immigration system.

Recommendation 21

5.110 The Committee further recommends that the Department of Immigration and Citizenship adopt Memoranda of Understanding with children's commissions or commissioners in all states and territories as soon as possible.

Recent improvements

5.111 At the outset of this inquiry DIAC pointed towards a growing body of evidence underpinning efforts to speed up the removal of children from held detention:

462 Ms Catherine Branson, Australian Human Rights Commissioner and President, Australian Human Rights Commission, *Proof Committee Hansard,* 5 October 2011, p. 54.

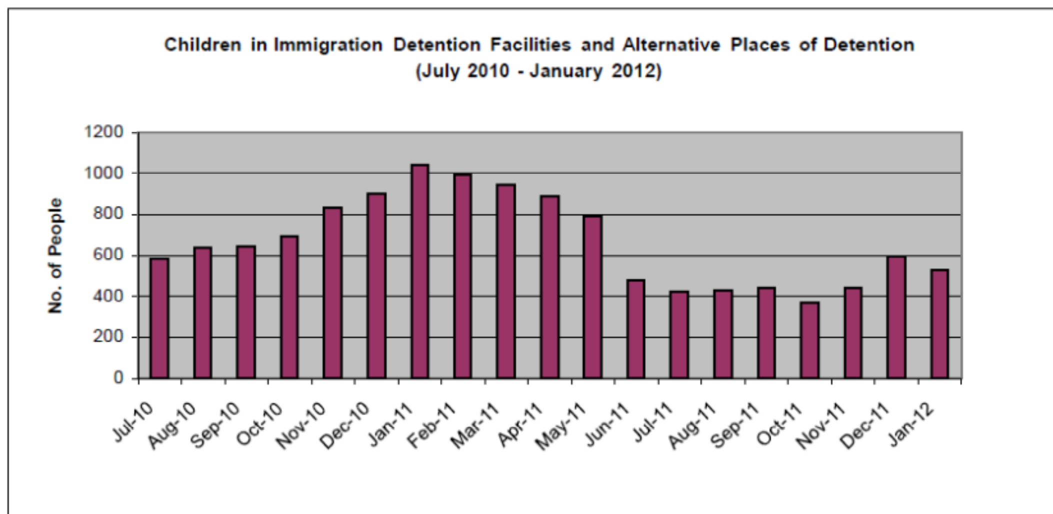
> Recent studies have highlighted that detention has an impact on children and families with many noting that detention can be associated with post-traumatic stress disorder, high levels of depression and poor mental health as well as an increase in the deterioration of mental health along with time spent in detention.
>
> CISSR and other stakeholders have recommended that, under a mandatory detention legislative framework, vulnerable individuals and families should be placed in arrangements such as community detention.[463]

5.112 DIAC informed the Committee that children were increasingly being taken out of held detention:

> Women, children and vulnerable people have been increasingly accommodated in community detention and other alternative detention arrangements. These provide an environment more suitable for the needs of these groups than immigration detention centres.[464]

5.113 The DIAC charts below[465] illustrate this movement in recent months:

Figure 6



Note: Immigration Detention Facilities in Figure 6 refer to Immigration Residential Housing and Immigration Transit Accommodation.

Source: DIAC

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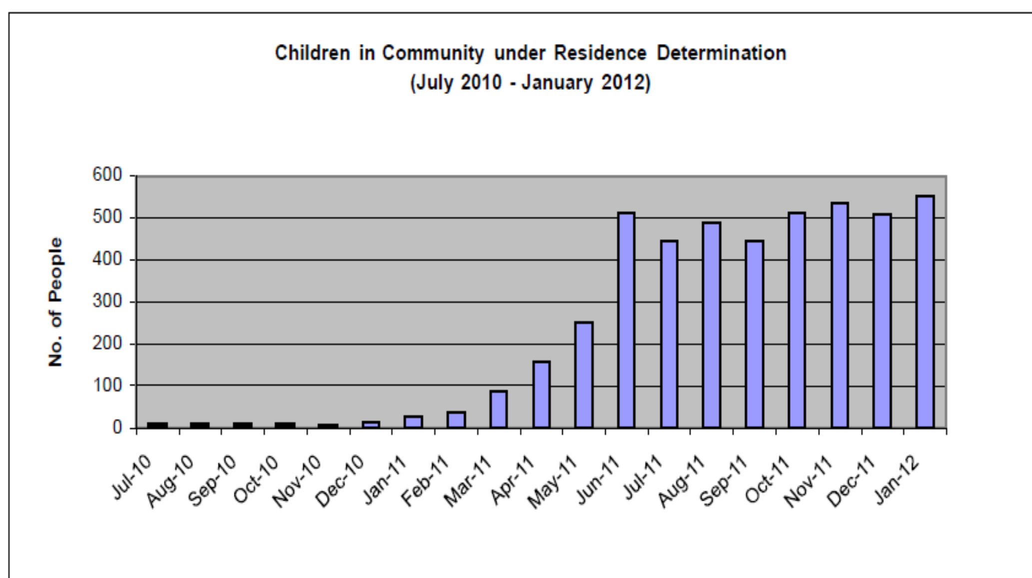
463 DIAC, *Submission 32,* pp 63–64.

464 DIAC, *Submission 32, Supplementary,* p. 5.

465 DIAC, Immigration Detention Statistics Summary, 31 January 2012, available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20120131.pdf (accessed 29 February 2012).

Figure 7



Source: DIAC

5.114 In October 2010 the number of children in community detention was only 10.[466] At its final hearing, the Committee heard that 1500 children had been approved for community detention. On 29 February 2012, Mr Andrew Metcalfe, Secretary of DIAC, reported considerable progress towards removing children from detention environments:

> All eligible unaccompanied minors who arrived in Australia prior to 30 November 2011 have been granted community detention. All accompanied children and their families who arrived in Australia prior to 31 October 2011 have been granted community detention. At the same time, over 1,400 clients have transitioned out of community detention following the grant of a protection visa.[467]

Committee view

5.115 The Committee acknowledges and commends the substantial effort that is required in moving large numbers of people, including children, out of held detention. The Committee notes DIAC's considerable efforts towards this goal.

5.116 The Committee also acknowledges that this endeavour is in keeping with the spirit of the *New Directions* policy announced in 2008, which includes the undertaking that:

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466 Mr Andrew Metcalfe, *Proof Committee Hansard,* 29 February 2012, p. 22.

467 Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship, *Proof Committee Hansard,* 29 February 2012, p. 22.

> Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.[468]

5.117 The Committee stresses, however, that since this policy was announced in 2008 many people have remained in held detention for over a year, some for over two years. The Committee finds such long periods of detention for people who have passed identity, health and character checks to be unacceptable. The Committee therefore supports calls for all reasonable steps to be taken to limit the duration of detention of asylum seekers, during which period initial health, identity and security checks can be completed, and after which either community detention or bridging visas should be granted. The Committee points to evidence from the Australian Human Rights Commission and the UNHCR indicating that detaining asylum seekers for any other purpose than assessing identity, health and security status may be contrary to Australia's obligations under international law.

5.118 The Committee is deeply concerned by the fact that children whose refugee parents are currently not being released into the community due to adverse security assessments also face indefinite detention. The Committee takes very seriously evidence provided by psychiatrists concerning the immediate and long-term psychological and developmental effects living in detention with no prospect of release can have on a young child, and finds the circumstances these children are in to be unacceptable. The Committee is aware that it is best for these children to remain with their parents, and is cognisant of the arguments concerning their refugee parents' possible release, discussed elsewhere in this report. However, despite the complex nature of this problem, the Committee firmly believes the government must take immediate, concrete steps to remedy this situation.

Recommendation 22

5.119 The Committee recommends that the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the shortest practicable time, and subject to an assessment of non-compliance and risk factors, as enunciated by the *New Directions* policy.

Recommendation 23

5.120 The Committee further recommends that asylum seekers who pass initial identity, health, character and security checks be immediately granted a bridging visa or moved to community detention while a determination of their refugee status is completed, and that all reasonable steps be taken to limit detention to a maximum of 90 days.

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468 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, transcript of New Directions policy speech, 29 July 2008, available at: http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm (accessed 23 February 2012).

Recommendation 24

5.121 The Committee recommends that the Department of Immigration and Citizenship be required to publish on a quarterly basis the reasons for the continued detention of any person detained for more than 90 days, without compromising the privacy of the individuals.

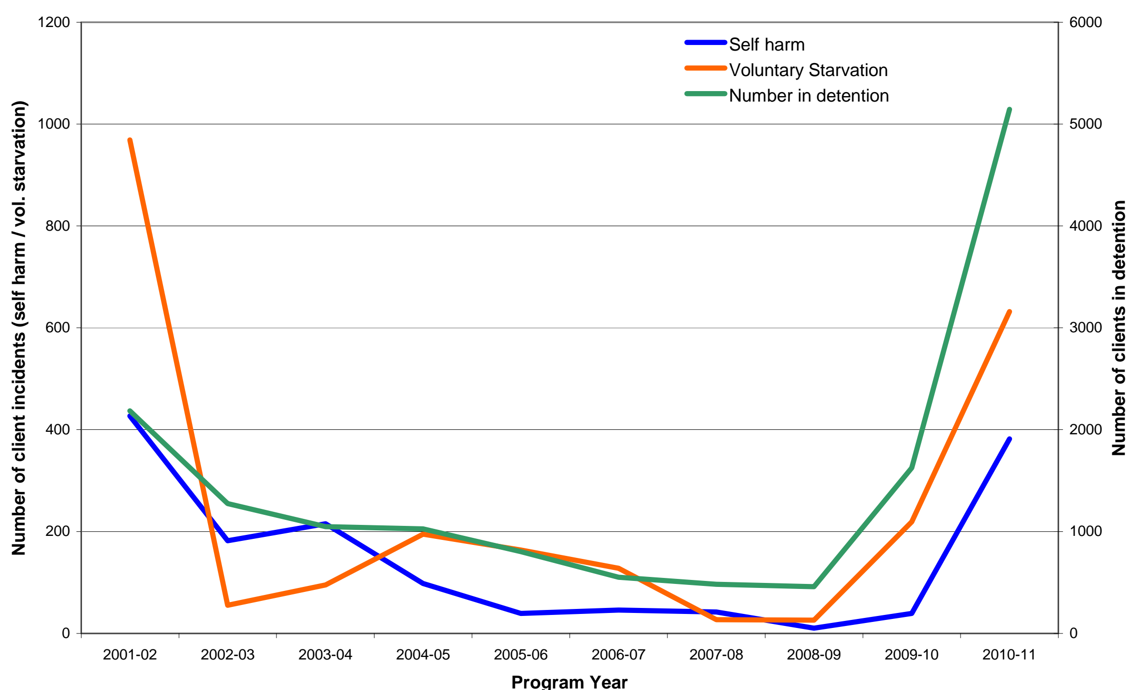
Impact of prolonged detention on the detention network

5.122 Pressure on the detention network is strongly correlated with pressure on people in detention and rising rates of distress and self harm:

> For example, the high numbers of IMAs in 2001 and 2002 correlated with the high numbers of detainees engaging in voluntary starvation and self-harm. This is similar to today's situation.[469]

5.123 As pressure on individuals increases, so do instances of riots and other disturbances. The response to and management of riot situations is covered elsewhere in this report. This section looks at the causes of disturbances.

5.124 DIAC provided a graph illustrating this correlation between serious incidents in detention and the number of detainees (2001/02–2010/11):[470]



Source: DIAC

469 DIAC, *Submission 32, Supplementary,* p. 62.
470 DIAC, Figure 13, *Submission 32, Supplementary,* p. 63.

5.125 Due to a sharp increase in arrivals, the detention network has been in surge conditions since the end of 2009.[471] This has led to overcrowding, which in turn exacerbates the pressure on detainees and the network. It can, according to the Detention Health Advisory Group (DeHAG), also 'increase the risk of adverse outcomes.'[472]

Riots, incidents and disturbances

5.126 According to DIAC records, 9157 incident reports were received from Serco between 1 October 2009 and 30 June 2011.[473] Incident classifications range from minor to critical and cover everything from minor accidents to serious accidents, violence, media presence and escape from detention.

5.127 Causes of incidents are multifaceted. Overwhelmingly, submissions to this inquiry held that violent, destructive and disruptive behaviour was one of the negative by-products of prolonged detention and a detention system which is failing to process cases in a timely and transparent fashion. A submission from the New South Wales Council for Civil Liberties (NSWCCL) pointed to the perceived injustice of mandatory detention, in some cases magnified by conditions of detention, which acts to motivate sporadic eruptions of disruptive conduct by detainees. People's 'normal inhibitions against violent, destructive and otherwise wrongful behaviour' are broken down by prolonged mandatory detention.[474]

5.128 An example provided by Australian Lawyers for Human Rights illustrated how emotions can boil over:

> An ALHR member is visiting an asylum seeker currently detained at the NIDC [Northern Immigration Detention Centre] who was accepted as a refugee in May 2010 but is still awaiting a security clearance. The prolonged nature of this process has caused considerable distress and anxiety to this man. In June 2011, he embarked on a five day hunger strike on the roof of NIDC. There are many other cases similar to this at NIDC.[475]

5.129 The Australian Psychological Society explained that both inward and outward aggression were predictable responses in certain situations, such as detention:

> Social psychologists have documented that extreme behaviour is a common outcome in situations where people lack personal control, social connection and hope. Long-term detention can be a dehumanising experience for detainees, and it is recommended that elevated rates of aggression directed outwards and inwards as self-harm be understood as predictable responses to this context and not as manipulative or attention seeking behaviour.[476]

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471 DIAC, *Question on Notice 92* (received 29 February 2012), p. 1.
472 The Detention Health Advisory Group, *Submission 41* (received 16 August 2011), p. 3.
473 DIAC, *Question on Notice 21* (received 16 August 2011), 2011, p. 1.
474 NSW Council for Civil Liberties (NSWCCL), *Submission 140,* pp 1–2.
475 Australian Lawyers for Human Rights, *Submission 129,* p. 9.
476 Australian Psychological Society, *Submission 108,* p. 4.

5.130 Looking at the occurrence of disturbances within immigration detention facilities, the Australian Human Rights Commission referred to the link between mounting distress and frustration and outward acts of violence and property destruction:

> The Commission does not condone acts of violence or property destruction in immigration detention facilities. It is important to recognise, however, the context which preceded these disturbances. The Commission believes that the issues relating to the processing of claims for asylum described above have contributed to the recent unrest in immigration detention facilities. Many people had been held in detention for a year or more, with no end in sight, and without the ability to challenge their ongoing detention in a court. Many were acutely frustrated by the time being taken to process their refugee claims, serious delays with security assessments and a lack of regular updates on progress with cases. Some were feeling pressured to return to countries where they believed they faced persecution or danger. The significant uncertainty, frustrations and tensions experienced by people in detention may have contributed to the unrest that has been seen in immigration detention facilities in recent months.[477]

5.131 DIAC, Serco and Australian Federal Police (AFP) critical incident management and response plans and implementation are outlined in Chapter 8.

Committee view

5.132 The Committee holds that individuals are responsible for maintaining proper conduct. However, apportioning responsibility for individual and group behaviour can become problematic when conditions beyond the individual's control are not conducive to optimal mental health and appropriate cognitive functioning. The Committee does not excuse criminal behaviour where and if it exists. However, the Committee cautions that maintaining a system in which desperate people are kept confined without charge for prolonged periods is almost guaranteed to result in further disturbances and possibly even violent outbursts of pent-up emotion. The Committee believes that focusing on minimising the time people who have passed identity, health and character checks spend in detention will help not only them, but also those managing the detention network.

Impact on staff

5.133 Frontline workers are employed across the detention network from a variety of occupational backgrounds. Their roles vary, but include providing security, support and welfare, as well as cleaning services and food preparation. They spend many hours in the detention environment, and this can have a negative effect on them as well as the detainees themselves. As put by United Voice, a union with coverage of employees engaged in frontline operation of detention facilities:

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477 The Australian Human Rights Commission, *Submission 112,* p. 32.

> In many ways, the experiences and conditions of workers within the immigration detention network mirror those experienced by asylum seekers. Employees are faced with a work environment which is often unsafe. They experience impediments such as a lack of training and understaffing which prevent them from performing their jobs to the best of their abilities...Moreover, immigration detention network employees are subject to public scrutiny and vilification for the work they do from both sides of the political spectrum. Despite being on the front-line of the Government's immigration detention system, they receive limited support from both their employer Serco Australia Pty Ltd (Serco) - contracted to run the centres - and the Department of Immigration and Citizenship (DIAC). At the same time, workers are severely restricted in their ability to speak publicly about their experiences within the immigration detention network, due to the strict confidentiality agreement entered into between the Federal Government and Serco. Serco in turn imposes confidentiality restrictions on its employees. United Voice believes that this lack of transparency is detrimental to the overall well-being of both workers and asylum seekers within the immigration detention network.[478]

5.134 A submission from the Castan Centre for Human Rights Law, Monash University, cited the example of a staff member who managed the Woomera facility (no longer used for detention) for 18 months:

> 'I was suicidal. I couldn't go out of the house. I couldn't get off the couch. I was basically a vegetable.'[479]

5.135 The submission added that many of the concerns from Woomera were now present in detention facilities across the country, with troubling consequences:

> It has been reported that overstaffing, inadequate staff training and minimal counselling have contributed to trauma among contractors employed by Serco. One former guard employed at Christmas Island reported that binge drinking is common among staff and that some reported for work in an intoxicated state in order to manage the stress entailed in performing their duties.[480]

5.136 In this vein, the Australian Psychological Society described how the mental health of workers in detention centres can be compromised:

> Psychologists have long been concerned for the health, safety and wellbeing of those working in these detention centres, as they can eventually be overwhelmed by despair, and with various methods become disengaged from the clients in order to protect their own mental health. This can be a particular concern in remote locations, where workers are without their families, alcohol is cheap and there are few leisure alternatives and

478 United Voice, *Submission 55,* p. 3.
479 The Castan Centre for Human Rights, Monash University, *Submission 96,* p. 7.
480 The Castan Centre for Human Rights, Monash University, *Submission 96,* p. 7.

> few support systems, staff can be easily relaxed in a way in which their own mental health needs can become compromised.[481]

5.137 A statement from a detention centre employee, quoted in a submission from the Community and Public Sector Union (CPSU), raised the question of adequate training for staff to be able to cope with the environment they work in:

> "I currently work in a detention centre that houses families with babies and young children and unaccompanied minors… I am exposed to clients on a daily basis. Some of this exposure is pleasant and some not. I also am exposed to some of the specific incidents that occur at a detention centre on a day to day basis including details of self harm incidents. Although I have worked in the public service for many years I have not been exposed to such raw and direct personal interaction which I have no skill sets to deal with."[482]

5.138 The question of adequate training for Serco employees is covered in Chapter 3 of this report. However, the Committee is cognisant of the effect inadequate skills can have on a person's ability to cope with a stressful working environment.

5.139 Detention centre staff also report feeling judged negatively by the community, or indirectly held responsible because they implement policies they play no part in deciding:

> [D]etention centre workers feel unjustly associated with the public negativity surrounding the system of immigration detention itself. They feel scrutinised within public debate as perpetrators of detention, while the care and consideration that they put into helping detainees is not acknowledged.[483]

5.140 Serco informed the committee that its staff have access to an independently provided employee counselling service. The service operates a confidential Employee Assistance Program (EAP) which provides:

- telephone based professional counselling and support services
- face to face off-site professional counselling and onward referral if required for all Serco employees and their immediate families at no cost;
- advice on work-related issues affecting psychological aspects of occupational health and safety issues; and
- critical incident support at the workplace when required.[484]

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481 The Australian Psychological Society, *Submission 108,* pp 17–18.
482 Quoted by Community and Public Sector Union, *Submission 62,* p. 9.
483 United Voice, *Submission 55,* p. 12.
484 Serco, *Submission 42,* p. 32.

5.141 As discussed in Chapter 2, Comcare also conducted a work health and safety investigation of seven detention facilities in 2011. The investigation was initiated due to concerns about the health and safety of workers, contractors and detainees:

> The concerns included the impact of work pressure and the risk of harm and mental stress. We were aware of early reports on similar issues from the Commonwealth Immigration Ombudsman and the Australian Human Rights Commission. The investigation was conducted during a period of extraordinary demand on IDFs and challenging pressures on safety and systems. Acknowledging that system, the investigation found that overcrowding consistently presented as the most prevalent concern of staff and detainees.[485]

5.142 Following the investigation and report, in November 2011 Comcare told the Committee that DIAC was implementing its action plan, which will improve standards in risk management, staff rations, training for employees, critical incident and detainee diversity management. Comcare advised they were monitoring the implementation of this action plan.[486]

5.143 At a public hearing on 22 November 2011 the Committee requested that a copy of this plan be provided by Comcare. The plan was not provided at the time of writing, 28 March 2012, despite repeated approaches to Comcare.

Committee view

5.144 The Committee is aware that officers working in detention facilities are far more exposed to the human cost of detention than policymakers. Few can be immune to the impact of working in an environment where many people at any given time are anxious, angry or depressed, where watching people resort to self harming has become a routine fact of life. As put by DIAC Deputy Secretary John Moorhouse:

> Detaining people is a confronting task. It is not an easy thing to do. If anyone thinks that locking other people up is easy, they have never had to do it. It is not easy; it is a challenging thing for us in the department and it is a challenging thing for the people who work with us...[I]t has been challenging for us as we have had to step up and build up the network. I am privileged to work with a very large group of professional and capable people, but I do not have enough people with the sort of experience and expertise that I would like. I have some great people but never enough of them, and it is exactly the same for the people who are right in the front line, the Serco staff.[487]

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485 Mr Steve Kibble, Deputy Chief Executive Officer, Comcare, *Proof Committee Hansard,* 22 November 2011, p. 41.

486 Mr Steve Kibble, Deputy Chief Executive Officer, Comcare, *Proof Committee Hansard,* 22 November 2011, p. 41.

487 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 35.

5.145 The Committee therefore supports DeHAG's call for staff to be given 'ready access to debriefing and psychological support including on site counsellors as required.'[488]

488 The Detention Health Advisory Group, *Submission 41,* p. 6.