ABN 83 916 539 886

R.I.S.E's submission to the inquiry into Australia's Immigration Detention Network, management, resourcing, potential expansion, possible alternative solutions, the Government's detention values, and the effect of detention on detainees.

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About R.I.S.E and the R.I.S.E Advocacy Team

R.I.S.E is a not-for-profit incorporated organisation founded and overseen by refugees, asylum seekers and ex-detainees, with members representing over 30 migrant communities.

The R.I.S.E **Advocacy team** seeks to generate positive political and social change in relation to the attitudes and policies that impact refugees. We achieve this by advocating for refugee rights, putting forward suggestions for refugee policy reform and encouraging balanced and accurate media coverage of refugee issues.

The R.I.S.E L**egal Advocacy team**, in partnership with various legal service providers, provides ongoing confidential legal assistance for refugees. We also seek to educate refugee communities as to their rights and responsibilities under Australian law.

The R.I.S.E **Governmental Advocacy team** advocates for sensible, effective refugee policies and initiatives, by engaging the various federal, state and local governmental agencies. We lobby these agencies opposing unjust inhumane policies, whilst maintaining effective and constructive engagement to enhance refugee service standards and address deficiencies.

The R.I.S.E **Media Advocacy** team seeks to increase balanced and accurate media coverage of refugee and asylum migration in Australia by issuing media releases and developing good local links with journalists.

The R.I.S.E Community Education team seeks to educate the public and raise awareness about the various issues facing refugees. In doing so, we seek to address negative myths about refugees and the underlying cultural and racial tension within Australian society.
R.I.S.E also conducts independent in-depth research and publishes findings that are relevant to the various issues facing refugees. In doing so we strive to articulate and promote the refugee voice into wider political, academic and social frameworks.

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Introduction:

This submission deals specifically with Australia's Immigration Detention Network, management, resourcing, potential expansion, possible alternative solutions, the Government's detention values, and the effect of detention on asylum seekers and refugees.

R.I.S.E is concerned at the disproportionate use of Australia's costly Immigration detention network for mandatory, indefinite and arbitrary detention of asylum seekers and refugees in offshore and onshore Immigration detention facilities as a punitive measure to stop a relatively small number of people seeking asylum by boat to Australia a signatory to the UN refugee convention.

The current practice of indefinite Warehousing of asylum seekers and refugees is inhumane and also goes against a range of international human rights treaties[1] the Australian Government has voluntarily become a party to. We are concerned about the bipartisan support by Parliament for legislation that goes against our international obligations and a reluctance to move towards a more humane asylum seeker and refugee policy in Australia. The shift by the Gillard Government, back to John Howard's "Pacific Solution" is of particular concern.

R.I.S.E is concerned that most of the Key Detention Values stated in the Government's New Directions in Detention policy[2] in 2008 apart from the existing policy of mandatory detention (which goes against international human rights laws) has still not been put into practice. We are also concerned that there is no effective legislative framework to back these policies up.

R.I.S.E is of the view that conditions and incidents that occur in Detention cannot be considered without accepting expert opinion and extensive documentation that demonstrates that Australia's indefinite and arbitrary immigration detention system has produced "factories of mental illness" [3] in this country.

R.I.S.E is concerned about the punitive actions carried out arbitrarily against asylum seekers and refugees when riots and protests occur within the detention system with very little done to pre-emptively diffuse tensions in an environment that is known to cause permanent damage to the mental health of asylum seekers and refugees.

R.I.S.E is concerned by the further expansion of costly, non-transparent and inefficient offshore and remote detention facilities, with the immigration detention network operating at

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[1]http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html
[2]http://www.immi.gov.au/media/fact-sheets/82detention.htm
[3]http://www.adelaidenow.com.au/news/south-australia/aussie-of-the-year-professor-patrick-mcgorry-attacks-refugee-policy/story-e6frea83-1225823398588

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well below the standards outlined in the Government's Key Detention Values as well as International Human rights laws and standards of detention.

Refugees and asylum seekers are fleeing due to a well-founded fear of persecution in their countries and are looking to Australia as a signatory to the UN refugee convention for a safe and stable future. The fair and efficient processing of their visa applications is impeded by the current practices within the Immigration Detention network. R.I.S.E is concerned that the inefficient and expanding immigration detention network favours profit making private detention service providers and politically ambitious government leaders at the expense of a small number of vulnerable asylum seekers and refugees, with little benefit to the Australian public at large.

The efficient delivery of quality settlement services is affected by the inefficient, non-transparent and inhumane detention system. For example, R.I.S.E has members inside and outside detention, contacting us about irreplaceable documents important to access vital services in the community that were taken off them by mostly unidentified officials who came in contact with them during their detention in Australia.

The legality of Mandatory and indefinite Immigration Detention in Australia:
In October 2009, a group of detained Sri Lankan refugees in Malaysia with UNHCR cards were approached by Sri Lankan embassy officials and forced to sign repatriation agreements and assaulted for refusing to do so. Malaysian activists released statements[4] demanding that repatriation be stopped and all refugees in the detention centre with UNHCR cards be released into the care of UNHCR. The demands were met. One of these refugees arrived by boat in December 2009 and was placed in Australian Immigration detention due to the mandatory detention policy. The total time of detention in Australia at the time of writing this submission: 1 year and 8 months. His first refugee application was rejected by the DIAC assessor; his second refugee application accepted in September 2010, and now he waits for his security clearance in Villawood Immigration Detention Centre (IDC). The question he posed to R.I.S.E was, if I was able to be released from detention in Malaysia as a UN mandated refugee, why cannot I be released in Australia, a signatory to the UN refugee convention?

This intractable situation for a significant number of asylum seekers and refugees in Australia is caused by the almost two decades old policy and legislation that makes mandatory and indefinite detention for administrative purposes legal in this country. [5]

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[4]http://suaram.net/news/237
[5]http://www.aph.gov.au/library/intguide/SP/asylum_seekers.htm,,
http://www.immi.gov.au/media/fact-sheets/82detention.htm

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The UN Refugee Convention and Protocol allows for the administrative detention of asylum-seekers who have arrived in a signatory country unlawfully where such detention is deemed 'necessary'. However, it is important to note that in the UN's guidelines on legitimate reasons for detention, the UNHCR explicitly states that it considers the use of detention as a means of deterring other asylum-seekers illegitimate.[6]

R.I.S.E is concerned at the continued use of mandatory, indefinite and arbitrary detention of asylum seekers and refugees in offshore and onshore facilities s a punitive measure to stop a relatively small number of people seeking asylum by boat to Australia a signatory to the UN refugee convention.

Before 1992, asylum seekers were held in detention under the Migration act 1958 on a discretionary basis. Mandatory detention for all "unlawful citizens" (everyone-including asylum seekers-without a valid visa) was introduced by then Labor Minister for Immigration, Gerry Hand, through parliament, under the Migration Amendment Act 1992 (Cth) with the stipulation that no court was to "order the release from custody of a designated person" and included a 273 day limit; this move was made just after refugee lawyers applied for the release of Cambodian asylum seekers detained for more than 2 years in Australia and in reaction to an influx of boats with asylum seekers from China, Vietnam and Cambodia [7]. The Immigration Minister stated during this time that it was *"crucial that all persons who come to Australia without prior authorisation not be released into the community. Their release would undermine the Government's strategy for determining their refugee claims or entry claims. Indeed, I believe it is vital to Australia that this be prevented as far as possible. The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community."*[8]

In 1994 a further amendment to the migration act was made by the government and the 273 day limit on detention was removed resulting in mandatory detention being indefinite.[9]

Under this act, an "unlawful citizen" must be detained and removed as soon as possible from Australia or until they are granted a visa. Since then, successive governments, with bipartisan

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[6]http://sydney.edu.au/law/anjel/documents/ZJapanR/ZJapanR23/ZJapanR23_13_Flahive.pdf pg 142

[7]http://sydney.edu.au/law/anjel/documents/ZJapanR/ZJapanR23/ZJapanR23_13_Flahive.pdf (pg 27)

[8]http://www.abc.net.au/7.30/content/2005/s1392134.htm

[9] http://www.hreoc.gov.au/human_rights/children_detention_report/report/chap06.htm

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support from parliament have maintained this policy and introduced even greater powers to hold asylum seekers and refugees in detention. [10]

In 2008, Immigration minister from the Labor party, Chris Evans introduced the "*New Directions in Detention"* policy. [11] The *Key Immigration detention values* are stated in this policy with a commitment that detention is only used as a last resort, and for the shortest practicable period and includes the rejection of indefinite or otherwise arbitrary detention, even though mandatory detention is still considered a key value. It also states that children along with their families will not be placed in an IDC.

R.I.S.E is concerned that some of the key Immigration detention values are not part of legislation and not even part of current practice as evidence by the following statistics on IDCs in 15 April 2011[12]

1. There were 6872 people in immigration detention. More than 4200 of those people had been detained for longer than six months, and 1222 people had been detained for longer than 12 months.
2. There were 1048 children in immigration detention. Since the Australian Government's announcement in October 2010 that it would move unaccompanied minors and vulnerable family groups out of immigration detention facilities, the number of children in detention has increased by more than 300.

Furthermore, "non-citizens" who seek asylum are currently still placed in detention as a matter of routine, with no preliminary mechanism in place to assess whether the immigration detention of each person is necessary, reasonable or proportionate making the detention arbitrary. Hence, the Key immigration detention value that states "**mandatory detention is an essential component of strong border control"** contradicts "**detention that is indefinite or otherwise arbitrary is not acceptable".**

To quote the Australian Human Rights commission:

"Australia continues to have one of the strictest immigration detention regimes in the world – it is mandatory, it is not time limited, and people are not able to challenge the need for their detention in a court. The Commission has for many years called for an end to this system

[10]http://sydney.edu.au/law/anjel/documents/ZJapanR/ZJapanR23/ZJapanR23_13_Flahive.pdf (pg 27)
[11]http://www.immi.gov.au/media/fact-sheets/82detention.htm
[12]http://www.hrlc.org.au/content/topics/refugees-and-asylum-seekers/asylumseekers-and-mandatory-detention-ngo-statement-to-un-human-rights-council/

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because it leads to breaches of Australia's human rights obligations, including the obligation not to subject anyone to arbitrary detention."[13]

Off shore processing of boat arrivals and Australia's border protection policy

In August 2001, a boat of 438 asylum seekers was rescued in international waters by a Norwegian ship called Tampa and the asylum seekers asked for the boat to be taken to Christmas Island so they could seek asylum on Australian shores. The Liberal government to stop this from happening, attempted to introduce an emergency "Border protection" bill[14] through parliament, which allowed the Australian government to remove ships from Australian territorial waters including those with asylum seekers in contravention of the UN refugee convention. The bill was passed through the House of Representatives but rejected by the senate in parliament. Asylum seekers arriving by boat were now presented to the public by the government politicians as a "border security" issue. Two days after the September 11 attacks, the then minister of defence, Peter Rieth stated that unauthorised arrival of boats on Australian territory "can be a pipeline for terrorists to come in and use your country as a staging post for terrorist activities".[15] This statement conveniently ignored the fact that many of the asylum seekers coming by boat were Hazara people who were being persecuted by the Taliban in Afghanistan.

On 26th September 2001, a series of bills were passed in parliament related to border protection and asylum seekers. [16]These included the following legislative changes:

- measures to strengthen the deterrence of unauthorised arrivals. These include a new tiered visa regime for refugees engaged in 'secondary movement', or movement from a country in which they have or can access protection, but who choose to travel to Australia nevertheless for reasons which are not 'Refugees Convention related'. They also include minimum prison terms for people convicted of people smuggling;
- the exclusion of certain territories from Australia's migration zone, including Christmas Island, Ashmore and Cartier Islands, and the Cocos (Keeling) Islands. This means that unauthorised arrivals to these territories cannot apply for a visa, except by ministerial discretion;
- the possible detention and removal from those territories of unauthorised arrivals to 'declared countries' where they have access to refugee assessment processes modelled on those of the United Nations Commissioner for Refugees (UNHCR);

[13] http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html
[14] http://www.aph.gov.au/library/pubs/bd/2001-02/02bd041.htm
[15] http://www.apo.org.au/commentary/reporting-australias-asylum-seeker-crisis
[16] http://www.aph.gov.au/senate/committee/maritime_incident_ctte/report/c01.htm section 1.22-1.23

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- a clarification of the circumstances in which Australia owes a person protection under the Refugees Convention, including addressing key concepts in the definition of a refugee;
- a limit to the grounds for judicial review;
- prohibition of class actions in migration litigation; and
- the possibility that adverse inferences may be drawn when visa applicants fail to provide supporting information, including documentation, without reasonable explanation.

The legislation introduced in 2001, was the start of offshore processing and detention of boat arrivals. "The pacific solution" with asylum seekers sent to countries such as Nauru and Papua New Guinea was introduced by the liberal government.

In 2007 the Labor Prime Minister Kevin Rudd, abolished the "Pacific solution" and a year later, immigration Minister Chris Evan's introduced the "New directions in detention" policy.

However, many of the key pieces of legislation that allows the discriminatory policy of offshore processing and mandatory detention of boat arrivals on Australian islands excised from the migration zone still remain. A non-citizen who enters the excised migration zone is only allowed to make a valid visa application if the Minister for Immigration makes a personal intervention into the case. The decision made by the minister is non-compellable and non-reviewable. The applicants only have access to a non-transparent Independent Merits review by a private contractor (instead of the Refugee Review Tribunal available to onshore applicants) and the guidelines used in the refugee assessment process is non-statutory.

In November 2010, the High Court of Australia in Plaintiff M61/2010E v Commonwealth of Australia held that all offshore entrants should have access to onshore courts, to appeal against adverse refugee status assessments. This decision was based on the fact that the detention which interferes with the right to liberty of the asylum seekers could not be determined solely through a non-statutory refugee assessment process without scrutiny of the courts.[17].

This has created a new shift in policy related to asylum seekers arriving by boat and many are now turning to the courts for reviews of the non-statutory decisions regarding their applications for refugee status. There is now a need for more funding to migration services providers to allow proper access to this part of the process.

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[17]*http://www.nationaltimes.com.au/opinion/politics/detention-system-hinges-on-high-courts-decision-on-boat-people-20101110-17nmo.htm, http://www.smh.com.au/national/court-casts-doubts-over-legality-of-offshore-processing-of-asylum-seekers-20101111-17o9g.html*

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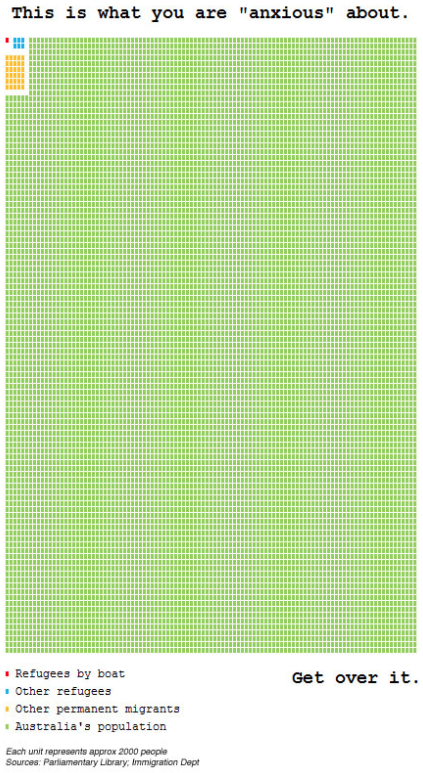
However, with this important shift of policy, comes a backward step, with the Gillard government turning to the "Pacific solution", as well as the Malaysian solution with statements from the Labor government claiming that they are using it to "break the people smuggling model" [18]. R.I.S.E is concerned at the government's punitive approach towards the arrival of boats with vulnerable asylum seekers and refugees. Many of the new arrivals are being held in isolation in the Bravo compound in Christmas Island while they await a decision by the high court as to the legality of their removal to Malaysia. [19].

Disproportionate targeting and continued inequity in treatment of boat arrivals through the immigration detention system:

- The following infographic produced by Rober Corr[20], with each unit representing 2000 people demonstrates the miniscule number of boat arrivals in Australia:



[18]http://www.abc.net.au/insiders/content/2011/s3298357.htm
[19]http://castancentre.wordpress.com/2011/08/09/injunction-against-the-governments-malaysian-arrangement/
[20]http://www.crikey.com.au/2010/07/06/boat-people-this-is-what-you-are-anxious-about/

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- Currently there are more than 50 000 illegal immigrants in the community who have arrived by plane and have overstayed their visas[21], while a total of 25 380 asylum seekers arrived by boat arrivals over 34 years (1 January 1976-20 September 2010). [22]Less than 50% of Asylum seekers arrived by boat (Irregular Maritime Arrivals) as shown in the table[23] below.

	2008–09	2009–10	2010–11 (first quarter)
Irregular Maritime Arrivals (IMA)	16 per cent	47 per cent	44 per cent
Non-IMA	84 per cent	53 per cent	56 per cent

Source: DIAC advice provided to the Parliamentary Library, 20 December 2010

R.I.S.E is therefore concerned about the Australian government's disproportionate targeting of asylum seekers and refugees arriving by boat through the detention system as evidenced by the following:

- figures released by the Department of Immigration and Citizenship (DIAC) in April 2011, indicated that of 6872 people held in immigration detention centres more than 90% are asylum seekers and refugees who have arrived by boat.
- All boat arrivals are intercepted and taken to Christmas Island detention centre to be processed as "offshore humanitarian applicants" according to ministerial discretion.
- A majority of boat arrivals are held in offshore and remote desert locations such as Christmas Island, Curtin, Leonora and Scherger. None of the mainland plane arrivals are currently held in these camps.
- Within all immigration detention centres in Australia, only asylum seekers and refugees who arrived by boat are not allowed access to mobile phones.
- Many boat arrivals who have been transferred to mainland detention centres have also been told that they are not allowed outings available to other detainees (e.g. visits to places of worship and tours) because they arrived by boat.
- Freezing the visa processing of all Afghan and Sri Lankan boat arrivals in 2010 and the transfer of all afghan asylum seekers who arrived during the visa freeze to Curtin IDC in the remote Western Australian desert.
- Actions by the Rudd and Gillard Labor government that go back to the days of the "pacific solution" which include funding countries that have not signed the UN

[21]http://www.immi.gov.au/media/fact-sheets/86overstayers-and-other-unlawful-non-citizens.htm
[22]http://www.asrc.org.au/media/documents/myths-facts-solutions-summary-sheet.pdf
[23]http://www.aph.gov.au/library/pubs/bn/sp/AsylumFacts.pdf pg 6

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convention such as Indonesia to intercept and detain asylum seekers in boats heading towards Australia or plans to deport asylum seekers who arrive on Christmas island and process them in countries such as Malaysia, Papua New Guinea, Nauru.

Indefinite and offshore detention is detrimental to the mental health of asylum seekers and refugees

There is clear evidence that that lengthy and indefinite detention is detrimental to the mental health of asylum seekers and refugees who have also suffered from torture and Trauma[24]. Detention limits access to legal services, interpreters, communication facilities, physical and mental health services and social and cultural and religious support networks. Offshore detention adds to these woes, with greater difficulty getting these services to the remote and inaccessible places detainees are being held in.

Detention causes unfair and lengthy processing of protection visas:

- Detainees are dependent on shared computer facilities in the detention centre. For example many computers do not have word installed on them. Computers are important for conducting research necessary for their refugee claims and sending and receiving emails related to their cases.
- Scanning and faxing of documents has to be done by SERCO.
- Detainee has to wait for the lawyer, migration agent, advocates etc. to come to visit him/her.
- Detainee has to wait for DIAC case manager to visit detention centre. For example, this year, one of our members in Maribyrnong detention centre did not see a DIAC case manager for 3 months.
- Deteriorating mental and physical conditions due to detention and restricted access to services outside the detention centre makes it difficult for the asylum seeker to attend to their refugee case.
- The longer the refugee case takes to be accepted, the longer the time in detention, leading to a further deterioration the asylum seeker's mental health.
- Lack of transparency and restricted access makes it difficult to monitor the process.

Offshore and remote detention creates greater delays and problems in processing of protection visas:

Currently, the largest numbers of detained asylum seekers and refugees are in remote deserts of Australia. They all arrived by boat. Tents were constructed in Christmas island IDC because the numbers of asylum seekers and refugees swelled. Tents are now being

[24]http://www.hreoc.gov.au/about/media/speeches/speeches_president/2011/20110623_foundation.html

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constructed in Curtin IDC and Scherger IDC due to the transfer of most of the Christmas Island detainees to these detention centres.

All asylum seekers who arrived by boat are first detained on Christmas Island. Border protection officials are the first point of contact for asylum seekers who arrive on Christmas Island. Many have travelled for more than 20 days on small, crowded wooden boats, through rough seas, hungry and thirsty and disoriented. An entry interview is conducted soon after this, most often without a migration agent or advocate and the content of this interview is used by the assessor of the refugee case.

Flights to Christmas Island IDC are infrequent, while a return air ticket to Christmas Island IDC from the eastern states cost close to $2000. There is a shortage of accommodation due to the large number of government and SERCO operational staff staying on Christmas Island to carry out activities related to visa processing, and administration of detention services. For this reason, there are limited visits to the island by refugee advocates and NGOs who are usually not as well funded. Migration service providers also limit their visits due to this reason. Due to the remoteness of Christmas Island, there is a high turnover of staff, with frequent changes of DIAC case mangers taking care of each detainee's case. The same would apply to other service providers-for example psychologists providing torture and trauma counselling as well as other health service providers.

Most detainees from remote detention centres around Australia contact R.I.S.E via phone and email. Detainees call our emergency line using phone cards that they purchase from their "50 point" (equivalent to $50) allowance per week. This allowance also has to cover phone cards to call their family overseas as well as other sundry items such as stationery, shampoo, soap etc. Unlike a monetary allowance, detainees cannot save points and carry them over to the next week. Calling back detainees in remote detention centres is quite difficult due to the crowded conditions. Queues of people waiting to use phones in overcrowded facilities makes it difficult to talk for long.

The following issues that affect the asylum claim process are therefore typical for many detainees who have been detained in all remote locations:

- Entry Interview in Christmas Island conducted after a long and arduous journey by boat, without lawyer or advocate being present is considered in refugee case assessment.
- Deteriorating mental and physical health due to lack of access to proper heath care, poor conditions and lack of social and cultural support in remote detention make it difficult to attend to refugee case.
- R.I.S.E is aware of both men and women who have experienced sexual abuse when tortured, who have not revealed this fact in their refugee case interviews. Trained torture and trauma psychologists are required to assist with these cases with

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sensitivity. Expert evidence from the psychologist is crucial for such cases. Asylum seekers in remote detention centres have less access to these facilities.

- Over crowded facilities and limited access to communication facilities. Eg. In Curtin IDC there are only about 20 computers that don't work well shared between approximately 1300 refugees (a significant number of them Afghan asylum seekers affected by the 2010 visa freeze) and asylum seekers making it difficult to conduct research for cases, communicate with lawyers, and send and receive documents etc.
- High turnover of DIAC case managers.
- The longer the refugee case takes to be accepted, the longer the time in detention, leading to a further deterioration of his mental health.

R.I.S.E is in contact with an asylum seeker (husband and father of two sons-2 years and 4 years old) who is now in Curtin IDC, arrived by boat on Christmas Island in March 2010 and has been in detention for more than 1 year and 5 months. While in detention he has slept in a tent (due to overcrowding) for 9 months in an isolation area with minimal facilities called Bravo compound in Christmas Island IDC before being transferred to Curtin IDC. He contacted R.I.S.E when his first application for refugee status was rejected while he was in the Bravo compound last year, and ceased contact after a week. He has experienced incidents of torture and trauma in his country of origin that has seriously affected his physical and mental health. His second application for refugee status has also been rejected by the IMR Judge. His mental and physical health continues to deteriorate making it difficult for him to attend to his refugee claim. The remoteness of Curtin makes it difficult for advocates or community support workers to visit him.

The Australian government also funds countries such as Indonesia to intercept boats of asylum seekers heading towards Australia and detain them in their country.[25] R.I.S.E is concerned by the appalling conditions faced by those detained in these Australian funded detention centres. The Oceanic Viking asylum seekers were detained in Tanjung Penang detention centre for about 2 months while the Merak asylum seekers were detained for 6 months after they were forced off the boat that was taken back to Indonesia at the behest of then Prime Minister Kevin Rudd.

Health Services:

R.I.S.E would like to re-iterate the concerns of indefinite detention on the mental and physical health of asylum seekers and refuges. Improvement of the health services in the detention

[25]http://www.law.monash.edu.au/castancentre/news/behind-australian-doors-report.pdf

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centre cannot be considered in isolation from the well documented fact that indefinite and lengthy detention has detrimental effects on the mental health of the detainees.[26]

A number of bodies, including the Australian Human rights commission, the Joint Standing Committee on Migration and the Detention Health Advisory Group have stated the need to set up a more comprehensive independent detention health monitoring system as recommended by the 2005 Palmer report.[27] R.I.S.E is concerned that a nurse employed by IHMS in Darwin IDC lost her job because she was unwilling to disregard professional standards of mental health and condone DIAC's policy of mandatory detention.[28]

R.I.S.E is also concerned that the largest immigration detention facilities are located in remote and offshore locations with poor access to medical services and consist of only asylum seekers and refugees. The opening of the notorious Curtin IDC against the advice of experts distinguished in the mental health field[29], by the Rudd government in 2010 demonstrates government's determination to push a political agenda of targeting asylum seekers and refugees arriving by boat against reasoned argument regarding or concerns for humane solutions for asylum seekers and refugees.

We have observed many cases of neglect, with detainees in remote locations being told they cannot be transferred to detention centres in the major Australian cities for medical treatment because there is "no room" in mainland detention centres. In August 2010, an Afghan asylum seeker from Curtin IDC (more than 2400km from Perth) died after a heart attack because of lack of proper hospital facilities close by.[30]

All detention centres are staffed by Medical personnel provided by IHMS (International Health Medical Service) a private health service provider. Specialised health services are required for Refugees and asylum seekers who have experienced torture and trauma before arriving in Australia. Detainees in mainland detention centres, in Australia's capital city have easier access to psychiatric services as well as more services specialising in the provision of culturally appropriate mental health services for victims of torture and trauma.

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[26]http://www.hreoc.gov.au/about/media/speeches/speeches_president/2011/20110623_foundation.html

[27]http://www.hreoc.gov.au/human_rights/immigration/idc2010_christmas_island.html#fnB248, Section 19

[28]http://www.smh.com.au/national/mental-health-nurse-sacked-for-criticism-20110818-1j0aj.html

[29]http://www.smh.com.au/national/hope-turns-to-dust-in-the-middle-of-nowhere-20100502-u1ja.html

[30]http://refugeeaction.org.au/2010/08/23/remote-detention-kills-detainee-regfugee-group-calls-for-full-inquiry/

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Detainees taken for appointments outside the detention centre are usually escorted by at least two SERCO security staff. SERCO security staff is also assigned to guard detainees who are admitted to hospital. For example, we are aware of an asylum seeker who was wheeled out of the operating theatre after a major operation in Royal Perth Hospital and found 2 SERCO security guards in his room. A blind refugee from Maribrynong detention centre was recently driven to an eye clinic with 2 SERCO guards. While in a waiting room the SERCO guards complained to the medical staff that there were too many exit points and asked for the refugee to be moved to an area with less exit points.

The presence of security staff with the detained asylum seeker or refugee in hospital in addition to violating doctor/patient confidentiality in many cases, also results in medical staff being less inclined to communicate in a transparent manner with the patient. Medical records/reports are handed over by the external health service provider directly to SERCO rather than the detainee who then has to make a formal request to the detention medical services for copies of the report.

Because the detainee is dependent on SERCO staff to be taken for appointments outside the detention centres, many important appointments that are difficult to get because of the long waiting list in the public hospital system have been missed. We are aware of a case that occured this year in Maribyrnong detention centre where SERCO staff have taken the detainee to the medical appointment an hour late without notifying the health provider.

Handling of incidents in Immigration detention Centres

With increasing numbers of detainees in detention centres being held for longer periods of time, we are seeing increasing number of incidents of suicide, self-harm as well as riots and fires in less than a year. Under the section in this submission titled ***"The expansion of the Detention industry and increased Government spending"*** there is evidence that there has been a lack of training of SERCO staff to deal with such incidents.

Suicides in Villawood IDC:

Many detainees were detained in Villawood IDC during the time that three suicides occurred here in a space of just three months. R.I.S.E is concerned that in addition to suffering from the uncertainty of being held indefinitely in detention, many refugees and asylum seekers who have already experienced torture and trauma in the country they fled from are being detained in an environment where they will witness violent incidents such as suicide and self-harm.

When asylum seeker Josefa Rauluni plunged to his death on September 20, 2010 from the roof of Villawood IDC[31] there was no debriefing or counselling sessions provided soon after many detainees witnessed this incident.

[31] http://www.abc.net.au/unleashed/30144.html

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The case of Asylum seeker C illustrates the callous approach of the Villawood detention centre staff towards those who witnessed some of these tragic events. C still finds it difficult to come to terms with the fact that a 50 year old Iraqi asylum seeker[32] chose to hang himself in C's bathroom in November 2010. C discovered his body. After this incident SERCO locked his room for 10 days and ordered C to sleep elsewhere. No room was provided for him during this period and he slept in his friends' rooms. After his room was opened by SERCO to allow him to access his things, C pleaded to be moved to another room. SERCO refused and he was forced to sleep in the same room and use the same bathroom in which he witnessed the suicide for more than 4 months. For the last few months he has been hearing voices which he hoped would go away. He is in another detention centre undergoing psychiatric treatment. Repeated requests to release him into the community have been denied. He has been in indefinite detention for 20 months.

Riots and Protests in Detention centres:

R.I.S.E is concerned about the punitive actions carried out arbitrarily against asylum seekers and refugees when riots and protests occur within the detention system with very little done to pre-emptively diffuse tensions in an environment that is known to cause permanent damage to the mental health of asylum seekers and refugees.

For example:

i/ Christmas Island Riot-November 2009
In January 2010, 11 refugees from Christmas Island were charged with a riot that featured prominently in the news in November 2009[33]. All 11 were questioned by police about two months after the incident without the presence of a lawyer. The men were then charged and transferred to Christmas Island jail, and within 24 hours taken to the magistrate's court and released after the payment of bail. They were then transferred back to Christmas Island IDC and incarcerated in the red compound, a high security observation area, where cameras were present in the toilet. Some had been told that their security clearance was complete but because of criminal charges, they were informed that they would not be released from detention, despite the fact that they had not yet been proven guilty. By November 2010, all 11 refugees had been acquitted. They were held in detention until their court cases were over. If they had been a resident in the community, they would have been released from jail after paying the bail and only incarcerated if they had been proven to be guilty.

[32]http://www.smh.com.au/national/iraqi-asylum-seeker-had-asked-to-go-home-before-killing-himself-20101116-17vzn.html
[33]http://www.abc.net.au/news/2009-11-23/inquiry-launched-into-christmas-island-riot/1152712

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ii/ Protests and fires in Villawood detention Centre 2010-2011

- A detainee was placed in Stage 1 (observation area) in Villawood IDC after the protests that occurred in November 2010, after the suicide of the Iraqi detainee. He was informed that he was being placed there while an investigation into the protests was being carried out. During this time in Stage 1 he witnessed the 3rd suicide in Villawood IDC. He was suddenly sent back to Stage 3 with no explanation as to why he was moved back and what the result of the "investigation" was. He has witnessed all three suicides in Villawood IDC.

- After the Villawood protests in 2011, 22 asylum seekers and refugees were taken from Villawood IDC by police and detained in Silverwater correctional facilities without charges. Detention without charges was justified by using the migration act where "immigration detention"[34] includes State and commonwealth prisons. Twenty days later 14 of the asylum seekers and refugees were released without charges and transported while handcuffed by plane to Maribyrnong detention centre. One them had been in hospital during the time of the protests and fires and was taken to Silverwater with the others just after being discharged from hospital.

People with Special needs

Victims of torture and trauma quite often have physical and mental scars that can cause permanent disability. A significant proportion of of people fleeing by boat and arriving in Australia come from the war torn areas such as Afghanistan, Sri Lanka and Iraq and have sustained serious physical injuries as well as mental trauma due to the conflict. R.I.S.E has been in contact with a number of detainees, men, women and children, held in detention for more than a year, with shrapnel injuries, amputated legs and arms and impaired eyesight.

Two Amputees in Villawood Detention centre (since writing this one has been released into community detention):

- accepted as refugees
- legs amputated due to injuries sustained in the War zone
- prosthetic legs that have been replaced in Australia fit poorly causing friction between the stump and the leg and excruciating pain.
- have experienced falls and are in pain as a result of injuries from their falls.
- standing for lengthy periods of time when for example queuing for food in overcrowded facilities is difficult since the pressure is on one leg and the prosthetic leg doesn't fit well.

[34]http://thecourierpigeon.com.au/villawood-rioters-held-in-maximum-security-at-silverwater/851514/, http://www.australianreview.net/journal/v4/n1/dunn.pdf, pg. 17

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- Bathing facilities: shared with about 3-5 other detainees. Minimal assistance has been provided to help amputees or others with poor balance to bath/shower safely. The shower cubical base is also a bath tub. However, it is quite often dirty with footprints from muddy footwear etc. so the amputee has to first attempt to clean the tub before filling it with water. They have not been provided with any special seating; due to this some chose to shower while balancing on one leg without any place to hold onto, except slippery tiled walls. The prosthetic leg can only be placed outside the cubical to keep it from getting wet and it is difficult after bathing to step over the one foot ledge with one leg (i.e. more accurately hop) and get the prosthetic leg, wipe it dry, and put it back on while still balancing on one leg. Not surprisingly there have been falls.
- When the Stage 3 section in Villawood IDC burst into flame in April 2011 the two men were in the building at that time and hurried to safety in the visitors area and were not allowed to go back to their room for weeks. They both had a bag of special "socks" (supplied by the company that fitted the leg in Perth) which are used to cover the stump area that is in contact with the prosthetic leg and is changed daily. It took SERCO more than 4 weeks to give them a supply of "socks". While they were waiting they had to wash and wear the same sock every day. Because the prosthetic leg is plastic, sweat builds up without getting absorbed and there is a stench and other detainees who share rooms with them have commented on it occasionally.
- One of the amputees was accused by SERCO of attempting the physically impossible feat of escaping from the IDC and was transferred to the observation area in Stage 1 for a short time. He is now in community detention.
- The amputee still remaining in Villawood detention centre has been detained for more than 2 years. His prosthetic leg broke when he was in Christmas Island and it took SERCO 6 months to transfer him to the mainland for a replacement leg.

Similar concerns have been expressed by amputees in all mainland and remote detention centres.

Blind refugee in Maribyrnong Detention centre:

L was transferred from Christmas Island to Maribyrnong detention centre after 5 months. He was not provided with any special aids or assistance in Christmas Island or Maribyrnong. Fellow detainees helped him wash clothes, move around the detention centre etc.

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Children with post traumatic stress disorder:

Three children released into Brisbane community detention with their parents, refused to go to school because of the feeling of panic, anxiety and fear when planes or helicopters flew overhead due to experiences in the war zone. These children were held in Christmas Island for about 6 months, moved to Darwin Airport lodge for 4 months, Inverbrackie and finally released into Brisbane Community detention centre. Parents reported they received insufficient trauma counselling while being held in all these detention centres. They have gradually adjusted to their environment and the entire family is receiving torture and trauma counselling.

Diabetes and Heart patients:

Food requirements of people with chronic illnesses such as diabetes and heart disease are not being met in remote places like Christmas Island. For example we are aware of a refugee with diabetes and heart disease in Christmas Island this year, who was only given full fat milk, despite repeated requests by the IHMS doctor for him to have access to low fat milk. Access to fruit and vegetables is also limited in this detention centre.

The Disability Discrimination Act 1992 prohibits discrimination on the ground of a person's disability in many areas of public life. These include employment, education, access to premises and access to goods, services and facilities. Unfortunately ***the Migration act makes the indefinite and arbitrary detention of disabled people in conditions that discriminate against them legal.***

Women in Detention:

The initial encounter of women who arrive is dominated by the various male dominated "border security" agencies. The detention system run by SERCO is also skewed towards an authoritarian male dominated environment.

Recently Chilout[35] reported that women in detention were only given sanitary napkins when they started menstruating. They were only limited to 6 at a time and queue up to ask for more from SERCO officers. This can be a humiliating experience when there are mostly male officers during the night shift. R.I.S.E was also provided similar information in 2010 from a different source in Darwin's ASTI motel.

[35] http://www.chilout.org/index.php?news&nid=22

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Many women who are seeking refuge in Australia have experienced sexual abuse and rape in the hands of armed groups and men in positions of power and authority. Many are unaccompanied widows with children. R.I.S.E is particularly concerned about the remoteness of the Leonora detention camp (6 hours drive from Perth) that holds families, single women and unaccompanied minors and the reduced access to counselling appropriate services for victims of torture and trauma.

Children in Detention

The holding of more than hundreds of children in detention goes against one of the governments key immigration detention values that state: ***Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC)***[36]. It also goes against the *Convention on the Rights of the Child* which states that the detention of a child should be a measure of last resort, and that if detained, it should only be for the shortest appropriate period of time.[37]

Some of the detained children are unaccompanied minors. A number of minors have been released from Melbourne's Immigration Transit accommodation this month. Families are still held in detention facilities such as Inverbrackie, Leonora and Villawood detention centre.

A widow with two children is still detained Inverbrackie. She has shrapnel pieces in her head and tends to get disoriented and confused. Her DIAC case manager has informed her that she will not be released into community detention until she gets her security clearance. Her 14 year old daughter's distress was observed by the school psychologist who notified DIAC. Apart from a visit to the family by the psychologist and DIAC officer asking if things are ok at home, no action has been taken to speed up the release of this family into community detention.

Effect of Australian detention system on women and children remaining in Source countries

R.I.S.E would also like to emphasise the fact that many single adults in detention were the sole breadwinners for their families in their home country. Lengthy periods of detention of refugees and asylum seekers also affect families who are quite often living in conflict areas with poor access to basic services, security and support. The rights of the child living in another country, and affected by the prolonged detention of a parent in Australia should also be considered. For example Article 6 of the Convention for the Rights of the child states that:

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[36]***http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm***
[37]http://www.hreoc.gov.au/about/media/media_releases/2010/103_10.html

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1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Recreational, Cultural and Educational services in Detention

A number of refugees have been detained indefinitely for close to or more than 2 years. However, over the two years, in various detention centres, activities that have been organised by SERCO tend to be recreational or cultural. Education is restricted to mainly English classes or basic computer classes run mainly by part-time volunteer teachers that change quite frequently with no structured educational programs put in place. With mental health deteriorating due to the length and indefiniteness of detention, many find it difficult to persist with classes which in themselves are variable in quality.

ASIO Security clearance process and adverse security assessment for refugees:

Offshore detention facilities where most refugees and asylum seekers are being held, contribute greatly to lack of transparency, accountability and decreased efficiency of the security clearance process; this would therefore, increase the probability of mistakes in assessments, as well as lengthening of the security clearance process, the visa process and hence the length of detention.

More than 40 refugees (including a couple with 3 children) have now been given adverse security clearances and do not have a right to review this finding or find out why this assessment has been made. All are incarcerated indefinitely in mainland and remote IDCs. The family has been in detention for more than 18 months. There are five refugees who have been incarcerated for more than 2 years. Many of the refugees are victims of torture and trauma including a man with an amputated leg who has been detained for 2 years and 2 months. Almost all are Tamils from Sri Lanka and one a Rohingya from Burma-both groups are victims of persecution and genocide, and not involved in external, global conflicts.

R.I.S.E is concerned about the arbitrariness of the detention with all cases being treated the same way, with no proper assessment of risks the individual would pose to the community. We ask that DIAC carries out an assessment of risk to the community in accordance with key immigration detention values outlined in the governments' detention policy and start releasing these people into the community detention system as soon as possible.

It is essential that all agencies working within the Immigration detention network including ASIO are transparent and accountable to ensure that there is consistency and integrity in the administrative processes of the network. R.I.S.E respectfully requests ASIO and other related agencies to (a) conduct the assessments within a timely manner or communicate why

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assessments take so long and (b) disclose what non-statutory criteria are used in making the assessments.

For more information, please refer to R.I.S.E's submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in relation to the review of administration and expenditure no. 9 (2009 – 2010) – Australian Intelligence Agencies.[38]

Possession of Asylum seekers' documents by Border security agencies

R.I.S.E is greatly concerned about the continued holding of important documents by border security agencies, belonging to asylum seekers, despite numerous requests by the owners of these documents and by us that they be returned. Many important documents are taken from asylum seekers. These include, but are not limited to, birth certificates, drivers" licences and university/school certificates. No receipts are given to the asylum seekers making it difficult for them to locate where these items are being held.

These documents are critical for refugee cases and for those refugees who have been granted protection visas, they are critical for employment and training purposes. Many refugees have been delayed in finding work and applying for courses for this reason. Most states in Australia allow people to drive with their overseas licence for six months after being granted a protection visa. Some of R.I.S.E's refugee members have not been able to drive their licence documentation has not been returned to them; some of them were professional drivers in other countries but cannot obtain a full licence when they pass the test here since they do not have proof of previous driving experience – again, because relevant documents have not been returned.

We are also aware of a refugee, currently indefinitely detained due to an adverse security assessment, who worked for an international humanitarian organisation in his country but no longer has any proof of this fact because the relevant certificates and reference letters have not been returned to him.

These documents are irreplaceable because refugees are not in a position to source them in the countries from which they fled persecution and fear. R.I.S.E requests that as a matter of urgency that the relevant agencies work together to implement a more efficient, transparent and secure system to keep track of documents belonging to asylum seekers and return them to their owners as required.

[38] http://riserefugee.org/wp-content/uploads/2011/03/PJCIS-RISE-SUBMISSION.pdf

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The expansion of the Detention industry and increased Government spending

Looking at the DIAC budget papers, the cost of detention next year is estimated to be $709 million (http://www.townsvillebulletin.com.au/article/2011/05/11/230041_news.html). The government is also making plans to expand offshore processing programs in Manus Island, Papua New Guinea and budgeted for programs related to the Malaysia deal. A number of these operations would involve paying private companies to run services.

In 2010, SERCO's profit rose by more than 100% from $130 million to $369 million in just one year. The company won the detention centre contract in 2009 two years later it's gross profit rose by over 600% from $16.5 million to $124 million. [39]

R.I.S.E is concerned that the inefficient and expanding immigration detention network favours profit making private detention service providers and politically ambitious government leaders at the expense of a small number of vulnerable asylum seekers and refugees, with little benefit to the Australian public at large.

Similar trends of increased expansion of detention facilities with increased privatisation of these facilities have been observed in countries like the US[40]. Observations have also been made that the system becomes less transparent when placed in the hand of private contractors.

There are concerns[41] that operations by SERCO in Christmas Island for example are also non-transparent making it easier for the spending of taxpayer funded money to be unaccounted for.

The US Justice Department reported that there were 49% more staff assaults and 65% more prisoner assaults in private facilities (the Justice Department published an astonishing report... there were 49% more staff assaults and 65% more prisoner assaults in private facilities), Similar observations have been made in Australian detention centres run by SERCO[42]

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[39] http://www.dailytelegraph.com.au/news/asylum-seekers-are-gold-for-jailer/story-e6freuy9-1226082364642

[40] http://www.pbs.org/now/shows/419/prisons-profits.html, http://www.detentionwatchnetwork.org/privateprisons

[41] http://newmatilda.com/2011/05/24/department-admits-no-one-watching-serco, http://www.abc.net.au/news/2011-06-02/government-accused-of-hushing-up-detention-breaches/2742306?section=justin

[42] http://alertforce.com.au/ohs-training/union-concerned-about-occupational-health-and-safety/

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There are reports that private prison companies in the US have significant expenditure on lobbying government to expand the detention and prison system.[43] It is a timely warning for Australians as successive governments continue to increase expenditure by expanding the detention system[44] at the cost of human rights and the rights of refugees and asylum seekers.

Community Detention-a viable alternative

According to UNHCR in 2005/06, it was found that potential savings per person per day in Australia ranged from $333 to $117, depending on assumptions about the particular form of mandatory detention (e.g. remote facility) by changing to community detention[45]. R.I.S.E suggests the closing down of expensive and inefficient offshore detention and remote processing centres would significantly reduce expenses and more funds would be available for the expansion of the community detention program.

The current community detention system is administered by Red Cross, which unlike SERCO is an experienced and established humanitarian organisation. R.I.S.E welcomes the release of more asylum seekers and refugees in the community in the last few months. We are however, concerned that there are still a number children as well as refugees and asylum seekers with severe physical and mental problems (e.g. people with prosthetic limbs) detained in secured detention centres.[46]

According to one of the Government's key immigration values that is also allied to international standards of detention: "detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time". Therefore R.I.S.E asks that the government speed up the process of release into the community of long-term detainees (including refugees who have had their security clearances rejected.) in particular. All asylum seekers and refugees in detention centres across Australia have not been risk assessed individually before being placed in detention. Hence they are being detained arbitrarily which again goes against the government's key immigration values as well as international human rights laws.

[43] http://www.detentionwatchnetwork.org/privateprisons
[44] http://cpd.org.au/2011/05/john-menadue-trampling-on-human-rights-is-expensive/
[45] http://cpd.org.au/2011/05/john-menadue-trampling-on-human-rights-is-expensive/
[46] http://cpd.org.au/2011/05/john-menadue-trampling-on-human-rights-is-expensive/

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A Summary of our Recommendations:

- Changes to Laws and policies on detention of asylum seekers and refugees should be made to:
    - Abolish Mandatory detention and have a *preliminary assessment* mechanism that ensures that immigration detention of each person is necessary, reasonable or proportionate.
    - Ensure detainees have a right to regular, periodic judicial review of their detention.
    - Have time limits on immigration detention
    - Ensure all detainees have access to legal assistance, interpreters, communication facilities, education, health support, social, cultural and religious support networks.
- Introduce legislative changes and abolish laws that go against international human rights laws in preference to non-statutory government policy such as "Key detention Values" which evidently has not been translated into practice. For instance the proposed complementary protection Bill [47]would help prevent governments from making the politically expedient choice of sending asylum seekers to countries with no complementary protection laws, such as Malaysia.
- The government should remove Mandatory detention as a key value because it results in arbitrary detention. A preliminary transparent and accountable assessment should be made on a case by case basis to check if it is necessary to place that person in detention and reviewed periodically (preferably in the court). All other aspects of the key immigration detention values outlined are admirable and are consistent with international human rights laws.
- Stop violating the UN refugee convention by disproportionately targeting asylum seekers arriving by boat by detaining them on shore or offshore or reintroducing the Pacific solution and treating them different to asylum seekers who arrive by plane.
- Implement an independent and comprehensive Detention Health monitoring system as recommended by the Palmer report in 2005 as well as the Detention Health Advisory group.
- Stop expanding costly offshore processing and remote detention facilities and start closing down existing remote and offshore facilities, including the notorious Curtin Detention centre. This would reduce costs and improve access to vital services and

[47]http://www.comlaw.gov.au/Details/C2011B00022

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support for a vulnerable group of people. It would also improve the efficiency of the visa processing system and make it more fair and transparent.

- Costs saved from closing down offshore and remote detention centres should be redirected to funding for migration and legal advisory services for asylum seekers and refugees so that they have better access to the court system.
- Reduce privatisation and profit driven operation of detention services.
- Release as soon as possible, all asylum seekers and refugees in detention into the community with priority given to those who are at risk and more vulnerable (eg. children and victims of torture and trauma) as well as those who have been detained for a long period of time.
- Refugees who have been given negative security assessments should be risk assessed individually and released into community detention accordingly.
- Lastly, we urge that government policy and legislation be implemented in close consultation with independent refugee advocates, independent monitoring agencies, various community groups including, most importantly the refugee community itself, at both the national and international level for a more sustainable, durable, just and humane approach to the asylum seeker and refugee issue.

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