



**WRITTEN SUBMISSIONS AND VIEWS OF  
AUSTRALIAN LAWYERS FOR HUMAN RIGHTS TO THE  
JOINT SELECT COMMITTEE ON AUSTRALIA'S  
IMMIGRATION DETENTION NETWORK**

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## ABOUT ALHR

1. ALHR is a voluntary human rights organisation established in 1993. It comprises a network of Australian lawyers active in the practice and promotion of international human rights law standards in Australia.
2. ALHR has over 2,000 members and has active National, State and Territory committees.
3. ALHR is a member of the Australian Forum of Human Rights Organisations and bi-annually attends the Commonwealth Attorney General's Non-Governmental Organisations (**NGOs**) Forum of Human Rights and Department of Foreign Affairs and Trade Human Rights NGO Consultations. ALHR also attends the annual United Nations (**UN**) High Commissioner for Refugees NGO dialogue.
4. ALHR regularly informally briefs and discusses human rights issues with Australian Parliamentary Service Staff, policy advisors, the media and the general public.

## INTRODUCTION

5. This document comprises the written submissions of Australian Lawyers for Human Rights (**ALHR**) to the Joint Select Committee on Australia's Immigration Detention Network.
6. ALHR has a long-standing opposition to the policy of mandatory, non-reviewable detention of unlawful non-citizens, the excision of parts of Australia from the migration zone and the establishment of immigration detention centres in regions of Australia that are remote from those communities and organizations which could best provide support and assistance to both government and detainees. We consider the policy and its implementation to be inhumane, impractical, in breach of our international obligations, incompatible with basic values of human dignity, and a serious blemish on Australia's international reputation.
7. Mandatory detention is a failure in its own terms. To the extent that it aims to deter individuals from coming to Australia, it has clearly and unambiguously failed.<sup>1</sup> The introduction of mandatory detention has had no discernible impact on numbers of arrivals (by whatever means) since its introduction almost two decades ago. As Alice Edwards of UNHCR notes in her April 2011 report on *Alternatives to Detention*, 'there is no empirical evidence that the prospect of being detained deters irregular migration, or discourages persons from seeking asylum.'<sup>2</sup>

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<sup>1</sup> See analysis in John Menadue, Arja Keski-Nummi and Kate Gauthier, *A New Approach. Breaking the Stalemate on Refugees and Asylum Seekers* (Centre for Policy Development) (August 2011) 31-33; See also Alice Edwards, UNHCR Research on Legal and Protection Policy Research Series, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* (April 2011) 2011. Available at: <http://www.unhcr.org/4dc949c49.html>

<sup>2</sup> UNCHR (2011) *ibid* at 85.

8. From an international and constitutional law perspective, a policy of deterrence is highly problematic. International human rights law, reflected in UNHCR Executive Committee Conclusions and Guidelines, does not include deterrence as one of the limited grounds under which the right to liberty of person can be limited.<sup>3</sup> Further, because it is considered a form of punishment, legislation which relies upon deterrence as a principal purpose for detaining those who have committed no offence runs a risk of being unconstitutional. This issue was not tested in those cases which considered the constitutionality of detention in 2004.<sup>4</sup> Indeed, as noted by Griffith SC, counsel for the prosecutor in *Re Woolley*, the government shied away from making any express reference to deterrence as a purpose before the court, presumably because it would be open to attack for relying on an improper purpose.<sup>5</sup> Walker SC, counsel for the Human Rights and Equal Opportunity Commission, noted that the government submissions 'steer well clear, superstitiously one might think, of deterrence'.<sup>6</sup>
9. Nonetheless, it is evident that deterrence was a core rationale behind the policy of mandatory detention. When introducing the Migration Amendment Bill into Parliament in May 1992, Minister Hand asserted:<sup>7</sup>

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.

In 1994, then Minister for Immigration, Senator Bolkus, stated:

We in the government and Opposition believe the detention policy is an important part of our armoury in terms of ensuring that those who want to come to Australia think very seriously about whether they are refugees before they come here.<sup>8</sup>

10. Minister Chris Evans, in announcing his *Key Values* in 2008, recognized this purpose when he expressly rejected harsh detention as a deterrent:

Labor rejects the notion that dehumanising and punishing unauthorised arrivals with long-term detention is an effective or civilised response. Desperate people are not deterred by the threat of harsh detention – they are often fleeing much worse circumstances. The

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<sup>3</sup> Drawing upon international human rights law precedents, UNHCR in Executive Committee Conclusion No. 44 (ExCom 44) recognised four exceptions where detention may be justified; Guideline 3 of the *UNHCR Guidelines for the Detention of Asylum Seekers* notes that detention should not be used for any other purpose other than those listed in ExCom 44, noting that using immigration detention as a form of deterrence 'is contrary to the norms of refugee law'. Detention as deterrence also breaches article 31 of the Refugee Convention, the non-penalization clause. See GS Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection' in E Feller et al (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (2003).

<sup>4</sup> The exception is Justice McHugh in *Re Woolley and Anor, Ex Parte Applicants M276/2003* (2004) 255 CLR 1, 26 [61], who noted that deterrence that was a principal reason for detention, imposed with a punitive intent, would be unconstitutional; and Callinan J in *Al-Kateb v Godwin* (2004) 219 CLR 562, 659 [291] who considered that even if deterrence were the only purpose, the legislation would still be constitutional. These, however, are only dicta.

<sup>5</sup> See Transcript, Applicants M276/2003, Ex parte - *Re Woolley & Anor* [2004] HCATrans 2 (3 February 2004) <http://www.austlii.edu.au/au/other/HCATrans/2004/2.html>. As Griffith SC notes, deterrence nonetheless remains an 'unstated premise'.

<sup>6</sup> Ibid. The High Court decisions were ultimately made on the basis of a purpose of excluding non-citizens from the Australian community while awaiting the release into the community on a visa, removal or deportation.

<sup>7</sup> The Hon Gerry Hand, MP. House of Representatives, *Hansard* 5 May 1992, Pg 2371

<sup>8</sup> Quoted in HREOC *Those Who've Come Across the Seas* (1998) 42.

Howard government's punitive policies did much damage to those individuals detained and brought great shame on Australia.

11. Despite this express disavowal and attempts to ameliorate its human impact, the 'threat' of detention remains at the core of the policy of mandatory detention today. Public policy discussion takes this purpose as a given, as many of the submissions to this and previous inquiries indicate.<sup>9</sup> It is, moreover, manifest in the evidence given by Secretary of the Department of Immigration, Andrew Metcalfe, on 16 August 2011, who asked this Committee to consider: 'Is immigration detention a deterrent?'<sup>10</sup> We similarly urge the committee to consider the question of deterrence – both its legitimacy and effectiveness.
12. Furthermore, mandatory detention is a failure both in financial and practical terms, resulting in an almost permanent state of crisis in detention centres in terms of services, management, control and human resources. In its final investigation report into the work health and safety of federal workers, contractors and detainees at seven Immigration Centres, released following Freedom of Information on 10 August 2011, Comcare concluded that 'there are a number of non-compliances evident nationally across all facilities which mean that DIAC is failing to comply with its duties under the Occupational Health and Safety Act 1991... and associated regulations.'<sup>11</sup> Amongst the specific conclusions, Comcare found:
  - 'overcrowding consistently presented itself as the most prevalent health and safety concern to staff and detainees across IDFs'
  - 'of particular concern was the lack of effective risk assessment of DIAC's systems of work'
  - DIAC failed to meet its legislated work health and safety obligations in five areas of significant risk: risk management, staffing ratios, training for DIAC staff and contractors, critical incident management, and managing the diversity of detainees
13. As the Comcare report indicates, the detrimental mental health consequences of indefinite detention are not only being borne by detainees, but also by detention centre staff. Similar allegations have been voiced publicly by some Serco officials.<sup>12</sup>
14. With respect to the mental health of detainees, ALHR takes note of the comprehensive literature review conducted by the Australian Psychological Society (APS), reported to this committee, as well as the many reports of the Australian Human Rights Commission and Commonwealth Immigration Ombudsman.<sup>13</sup> The APS study

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<sup>9</sup> See, for instance, the discussion about deterrence in Submission 61 of the Australian Strategic Policy Institute.

<sup>10</sup> Statement to the Joint Select Committee on 16 August 2011, Andrew Metcalfe, Secretary for the Department, p7.

<sup>11</sup> Comcare, *Investigation conducted under the Occupational Health and Safety Act 1991: Immigration Detention Facilities* (21 July 2011)

[http://www.comcare.gov.au/about\\_us/freedom\\_of\\_information/disclosure\\_log/foi\\_requested\\_documents/report\\_from\\_investigation\\_EVE00138754](http://www.comcare.gov.au/about_us/freedom_of_information/disclosure_log/foi_requested_documents/report_from_investigation_EVE00138754). See also the Commonwealth and Immigration Ombudsman's February 2011 report on Christmas Island ([http://www.ombudsman.gov.au/files/christmas\\_island\\_immigration\\_detention\\_facilities\\_report.pdf](http://www.ombudsman.gov.au/files/christmas_island_immigration_detention_facilities_report.pdf)) and the Australian Human Rights Commission May 2011 report on Villawood ([http://www.hreoc.gov.au/human\\_rights/immigration/idc2011\\_villawood.html](http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.html)).

<sup>12</sup> See the report on ABC Lateline, 'Guard blows whistle on detention centre conditions' (5 May 2011) at <http://www.abc.net.au/lateline/content/2011/s3209164.htm> for allegations of lack of training and support provided to Serco guards, regular binge drinking, and shredding of documents.

<sup>13</sup> See references in following section.

concludes that 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;<sup>14</sup> that the evidence links longer periods of detention with poorer mental health outcomes;<sup>15</sup> that detention has been found to be particularly harmful for children;<sup>16</sup> and that the system of mandatory detention of asylum seekers, particularly in remote, offshore locations inevitably compromises the ethical delivery of psychological services.<sup>17</sup>

15. Concerns about the physical and mental health of detainees have been expressed repeatedly over recent years by the Australian Human Rights Commission, based on site visits to detention centres. In its 2008 report on immigration detention, the Commission identified the 'infrastructure and environment' as well as the 'security-driven atmosphere' as some of the 'cross-cutting concerns' in the sector:<sup>18</sup>

[T]he Commission has significant concerns about the infrastructure and environment at the remaining mainland immigration detention centres. Put simply, most of the centres feel like prisons. High wire fences, lack of open green space, walled-in courtyards, ageing buildings, pervasive security features, cramped conditions and lack of privacy combine to create an oppressive atmosphere. ... One of the Commission's major concerns is the security-driven atmosphere at the immigration detention centres. This is created by the use of physical measures such as high wire fencing and razor wire, and surveillance measures such as closed circuit television.

16. These concerns have been reiterated in subsequent reports, including the recent report on Villawood Detention Centre.<sup>19</sup> In this context, we note and fully support the Commission's call for the establishment of an *independent body with the mandate, expertise and resources to monitor the provision of physical and mental health services in immigration detention*.<sup>20</sup>

## **ALHR Submissions**

17. The legal problems inherent in the current detention model have been well-covered in ALHR submissions to other inquiries. The basis of our concerns will be reiterated briefly in this submission, followed by a set of recent case studies reported to or by ALHR members in the Darwin region. These case studies highlight some of the endemic problems generated by Australia's system of mandatory indefinite detention, year after year.

### Mandatory Detention: General Legal Observations

18. ALHR notes the many international and domestic inquiries held into Australia's current detention regime, including the Views of UN treaty bodies on individual

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<sup>14</sup> The Australian Psychological Society Ltd, Submission to the Joint Committee on Australia's Immigration Detention Network, Recommendation 1.

<sup>15</sup> Ibid, recommendation 2.

<sup>16</sup> Ibid, recommendation 5.

<sup>17</sup> Ibid, conclusion at 20.

<sup>18</sup> AHRC, *2008 Immigration Detention Report* at 23.

<sup>19</sup> See, for instance, AHRC, *2011 Immigration detention at Villawood (2011)*.

<sup>20</sup> Ibid at 18

communications,<sup>21</sup> the Concluding Observations of the UN Human Rights Committee,<sup>22</sup> the 2002 report of the UN Working Group on Arbitrary Detention,<sup>23</sup> the many inquiries by the Australian Human Rights Commission (including its most recent report on conditions in Villawood IDC),<sup>24</sup> reports on long-term detention cases by the Commonwealth Immigration Ombudsman, the recommendations of the Comrie and Palmer inquiries, as well as the studies of independent experts in the fields of law, psychology and children's rights. The overwhelming consensus – domestically and internationally – is that the current regime:

- results in the unreasonable, unjustified and thus arbitrary detention of asylum-seekers in breach of Article 9 of the International Covenant on Civil and Political Rights (ICCPR);
- results in instances of cruel, inhuman or degrading treatment in breach of the non-derogable rights contained in Article 6 of the ICCPR and Articles 2, 11, and 16 of the Convention against Torture<sup>25</sup>;
- results in breaches of Article 37(a) – (d) of Convention on the Rights of the Child (CRC)
- unlawfully imposes penalties on refugees on the basis of illegal entry or presence, in direct contravention of Article 31 of the 1951 Convention relating to the Status of Refugees (the Convention);
- discriminates against a particular category of refugees, potentially in breach of Article 3 of the Convention and, more broadly and directly, discriminates against refugees and asylum-seekers in breach of Article 26 of the ICCPR by imposing disproportionate restrictions on their liberty, access to justice and other fundamental rights;
- results in breaches of Australia's positive obligations under the International Covenant on Economic, Social and Cultural Rights, including 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (Article 12), as well as the Covenant's non-discrimination clause;
- is inconsistent with UNHCR's authoritative views, based upon international jurisprudence, on the legitimate grounds under which asylum-seekers can be detained, reflected in the UNHCR Executive Committee Conclusion No 44 and the UNHCR's 1999 Revised Guidelines on Detention;<sup>26</sup> and

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<sup>21</sup> See, for instance, *A v Australia*, Human Rights Committee Communication 560/1993, UN Doc CCPR/C/D/560/1993 (1997); *C v Australia*, Human Rights Committee Communication 900/1999, UN Doc CCPR/C/76/D/900/1999 (2002).

<sup>22</sup> Human Rights Committee, Concluding Observations of the Human Rights Committee: Australia UN Doc A/55/40, paras 526-527.

<sup>23</sup> Commission on Human Rights, 'Civil and Political Rights including the Question of Torture and Detention', 59th sess, Annex: Report of the Working Group on Arbitrary Detention on its visit to Australia (24 May-6 June 2002), [19], UN Doc E/CN.4/2003/8/Add.2 (2002).

<sup>24</sup> See, *inter alia*, *A last resort? National Inquiry into Children in Immigration Detention* (2004); *Those who've come across the seas: Detention of unauthorised arrivals* (1998); *2010 Immigration detention on Christmas Island* (2010); *2011 Immigration detention at Villawood* (2011). The Commission's consistent position over the years has been to call for an end to mandatory detention because it leads to breaches of Australia's human rights obligations, including obligations to refrain from subjecting anyone to arbitrary detention.

<sup>25</sup> See Concluding Observations of the Committee Against Torture: Australia, UN Doc CAT/C/AUS/CO/1 (15 May 2008), at <http://www.hrlrc.org.au/files/CX9F5DW2WB/Australia%20CAT%20COBs.pdf>

<sup>26</sup> UNHCR, ExCom Conclusion No. 44 (XXXVII) – 1986 on Detention of Refugees and Asylum-Seekers; UNHCR, *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers* (26 February 1999).

- is inhumane and unworthy of a country that espouses respect for equality and human dignity.

19. At the broader level of policy, the mandatory detention regime undermines Australia's international reputation, perpetuating an historical image of a country that is racist and xenophobic. This, in turn, undermines Australia's credibility in promoting universal respect for human rights in its bilateral and multilateral diplomatic relationships, as well as Australia's standing in the region. One need only consider the regional and international media coverage afforded to the remarks of Navi Pillay, UN High Commissioner for Human Rights, that there was a 'strong undercurrent of racism' in Australia.<sup>27</sup>

20. ALHR recognizes that some positive changes have been introduced into the detention regime under successive governments, first, as a result of the Comrie and Palmer inquiries and public concerns about the number of children in detention, then, as a result of Labor's welcome attempts to introduce a more humane detention model consistent with certain core values. As a result, there are now greater opportunities to be released into residential and community detention; recognition that the requirement in s189 *Migration Act* to detain a person where there is reasonable suspicion that they are unlawful is an ongoing duty that requires review; and a principle that children will only be detained as a last resort.<sup>28</sup> However, these attempts to 'humanize' the regime have primarily been made at the level of policy. Recent events have made clear that the problem lies in the maintenance of mandatory detention itself.

#### **Addressing terms of reference:**

##### **(a) Reforms needed to the current Immigration Detention Network in Australia;**

21. ALHR made submissions to the recent Senate inquiry into the *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010*. It supported the main aim of the legislation: to ensure that detention is only used as a last resort, to end indefinite and long-term detention, and to introduce a system of judicial review of detention beyond 30 days. We note that these outcomes are consistent with various alternative detention models, such as the community placement approach recently proposed by the International Detention Coalition (IDC),<sup>29</sup> and the community-based alternatives promoted by the Australian Human Rights Commission (AHRC).<sup>30</sup> The IDC model would introduce the following mechanisms:

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<sup>27</sup> See, for instance, *Al Jazeera* ('Australian asylum policy has 'racial element', 25 May 2011) *The Independent* ('UN Claims Canberra has Racist Policies', 26 May 2011), *The Daily Mail* ('Racist' Australia compared to Apartheid South Africa by UN Human Rights commissioner', 25 May 2011), *Indian Express* ('UN official likens 'racist' Australia to 'apartheid' South Africa', 26 May 2011), *China Daily* ('UN rights chief raps Australia on refugees, racism', 25 May 2011).

<sup>28</sup> The description in the recent judgment in *M70 of 2011 and M106 of 2011 v The Minister* [2011] HCA 32 of the cursory process by which detention as a last resort is determined (see paragraph 34 of reasons, per French CJ) gives no great confidence that even commendable initiatives are given more than lip service: the officer processed a group of detainees and stated: "If you are a child, I am satisfied that in all the circumstances, your detention is a measure of last resort ...":

<sup>29</sup> See, for instance, the recommendations of the AHRC, *ibid*; and *The IDC Handbook* (2011) at <http://idcoalition.org/cap/>.

<sup>30</sup> See, for instance, AHRC, *2008 Immigration Detention Report*, ch 12, and their recommendation that 'the eligibility criteria for referral for a Residence Determination should be broadened. In addition to the current criteria, any person

- a *presumption against detention*;
- a requirement for *individual and regular screening and assessment* of detainees and those at risk of detention to *identify needs, strengths, risks and vulnerabilities* in each case, consistent with our international obligations and security concerns
- identification of the *availability of community support*
- where appropriate, *reporting conditions and supervision* for those released from detention, consistent with UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.<sup>31</sup>
- *judicial oversight* of a regime where detention is used as a last resort.

22. The indeterminate duration of detention has been repeatedly identified as a problem in inquiries, including in the important 2006 inquiry of the Senate Legal and Constitutional Affairs Committee.<sup>32</sup> It represents an almost insurmountable impediment to the realization of other rights, creating conditions that facilitate depression, frustration, anger and a sense of helplessness. For the vast majority of those being held in long-term indefinite detention, the duration cannot be justified in international human rights law on the grounds of risk or identification of the basis of a claim. According to the UN Human Rights Committee, the immigration detention 'should not continue beyond the period for which the State can provide appropriate justification'.<sup>33</sup> For prolonged detention, considerations of proportionality play require a State party to demonstrate that 'other, less intrusive, measures could not have achieved the same end of compliance with the State party's immigration policies by resorting to, for example, the imposition of reporting obligations, sureties or other conditions which would take into account ... particular circumstances'.<sup>34</sup> The Working Group on Arbitrary Detention has further insisted that the maximum duration of detention be set by law.<sup>35</sup>

23. While ALHR welcomed the reforms which introduced oversight by the Ombudsman for those being detained in detention for more than two years, this is ultimately an inadequate and ineffective mechanisms for addressing the fundamental problems generated by indeterminate detention. Consistent with the recommendations of the UN treaty and charter bodies which have examined this issue, we therefore recommend that administrative detention be specifically limited to a period of 30 days, with judicial oversight and approval of detention beyond that period.

24. It is notable that cost analyses of alternatives to detention invariably demonstrate the significant savings that can be made by a change of policy. ALHR brings to the Committee's attention the research conducted by UNHCR in its recent April 2011

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who has been in an immigration detention facility for three months or more should be able to apply for, or be referred for, a Residence Determination.'

<sup>31</sup> See UNHCR's Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (1999) available at: <http://www.unhcr.org/refworld/pdfid/3c2b3f84.pdf>

<sup>32</sup> See, for instance, the chapter on mandatory detention in *Senate Legal and Constitutional Affairs Committee, Inquiry into the administration and operation of the Migration Act 1958* (March 2006), especially [5.49]-[5.59] [http://www.apf.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2004-07/migration/report/index.htm](http://www.apf.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07/migration/report/index.htm)

<sup>33</sup> *A v Australia*, UN Human Rights Committee Communication 560/1993, UN Doc CCPR/C/D/560/1993 (1997) [8.2]

<sup>34</sup> *D and E v Australia*, Human Rights Committee Communication 1050/2002, UN Doc CCPR/C/87/D/1050/2002 (2006) [7.2]. The same formulation is used in *Bakhtiyari v Australia*, UNHRC Communication 1069/2002, UN Doc. CCPR/C/79/D/1069, 2002 (29 October 2003) [9.3].

<sup>35</sup> See Deliberation No. 5 of the Working Group on Arbitrary Detention (UN Commission on Human rights, 28 December 1999)

report under 'lessons learned and cost-benefit analysis'.<sup>36</sup> Based on available government statistics, UNHCR estimate that community detention per person is \$225 per day cheaper, and that savings per person per day for alternatives to detention range from \$117 to \$333 per day.

25. As noted, the ALHR is opposed to mandatory indefinite detention as a policy mechanism. It doesn't work, either as a mechanism for processing claims or as a deterrent measure – itself, an illegitimate objective when it results in harm or punishment of those seeking asylum. Tweaking various components does not address its fundamental flaws. The results are as predictable as they are tragic: indefinite and long-term detention for thousands of refugees, instances of self-harm, overcrowding, the overstretching of resources that could be better utilized elsewhere, chronic lack of expertise, inadequate provision of basic services, exacerbation of trauma and sense of isolation, and a system, once again, in crisis.
26. Alternative detention models have been put to successive governments over several years. UN Committees have continually called upon the government to consider alternatives as a means of avoiding arbitrary detention. ALHR urges the Committee to take note of these models, and recommends that Parliament consider safer, more effective and more humane approaches to the processing of asylum-seekers who arrive on our shores.
27. Finally, ALHR submits that immigration detention should be subject to independent monitoring, including independent investigations and inspections, in line with the requirements of Optional Protocol to the Convention Against Torture (to which we are not yet a party, but we note that the Attorneys-General, at the most recent SCAG meeting, committed to agree to a timetable for ratification of the Optional Protocol).

#### **Terms of reference (b) – (k), and (q)**

28. The psychological harm that mandatory detention causes has been well-documented by those with expertise in relevant disciplines.<sup>37</sup> The following case studies highlight the human costs which the current regime imposes. They also throw light on resource, support and training problems, the impact on the health, safety and wellbeing of asylum seekers, the impact on families, the problems with the reporting of incidents, some reasons for riots and disturbances, and the length of time spent in detention awaiting processing. The studies are based on the direct experiences of ALHR members or reports made by community visitors to ALHR members. The studies represent only two of Australia's detention centres, the Northern Immigration Detention Centre (NIDC) and the Darwin Airport Lodge (DAL). However, they reflect similar concerns raised over the past 10 years in relation to the conditions and human impact of immigration detention in Australia.

#### ***Case example – length of time detainees are waiting for processing***

29. An ALHR member is visiting an asylum seeker currently detained at the NIDC who was accepted as a refugee in May 2010 but is still awaiting a security clearance. The

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<sup>36</sup> See UNHCR, *Back to Basics*, above n 2, 82-87.

<sup>37</sup> See the comprehensive bibliography appended to the submission of the Australian Psychological Society, above n 9.

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.

### ***Case example – transfers of detainees***

30. An ALHR member has provided an example of unexplained transfers of detainees between detention centres causing significant distress to the detainees involved. In this instance, an asylum seeker was transferred from MITA to NIDC soon after a negative decision on his claim for protection. The detainee had lodged an application for Independent Merits Review (IMR) through his IAAS service provider but was unable to properly follow up on this due to his transfer. He lost contact with his IAAS service provider and seemed to be unaware of the status of his claim for protection. The move from MITA to NIDC had a negative effect on the detainee's mental health as he became distressed at being moved away from friends he had in the detention centre and in the community. He claimed to have established a good relationship with the guards at MITA, only to be treated poorly by those at NIDC. These events led to his attempting suicide about one month after being transferred to NIDC.

### ***Case example – protests are merely an attempt to express fear and frustration***

31. A community visitor reported to an ALHR member that he recently met with a man who had been transferred from North 1 to South 1 in NIDC because he had been protesting on the roof. He tried to explain to the DASSAN visitor that, after being detained for so long and feeling so frustrated and helpless, he went up on the roof as a form of protest and maybe to express his boredom. He said he did not think of himself as a hell raiser or a bad person.

### ***Case examples – violence against women in detention***

32. It was reported to an ALHR member by an unaccompanied female detainee that, after she refused the advances of a male detainee, he assaulted her. The male detainee was not transferred because he had a wife and family with him. The female detainee did not want to be transferred because of the connections and friendships she had made with other detainees. The female detainee was therefore forced to remain in close vicinity in the same immigration detention facility as this male for a number of months following the incident. She reported that she hid in her room for most of the day and night in order to avoid confronting him. She would not report the matter to police for fear of the repercussions on her visa claim.

33. Another female detainee reported being the victim of domestic violence whilst in immigration detention with her husband. The incident was reported to police and she attempted to separate from her husband. As a result, this female detainee was ostracised by other detainees from her own community and now lacks the support networks that she previously had in the detention centre. As far as the ALHR member is aware, this woman has not yet been released into community detention.

34. There are number of women in detention who have been victims of persecution in their home countries and then victims of domestic violence in detention. Some of these women have been released into community detention, whilst others continue to

linguish without the protection and support structures needed to help them start healing after repeated trauma.

## **Conclusion**

35. This submission has highlighted the legal and practical problems with the current detention program, and its impact on the mental and physical health of both detainees and those working in the detention centres. Ultimately, the problem lies with the mandatory nature of detention itself: it is a system which cannot work. Attempts to 'humanise' detention are bound to fail<sup>38</sup> when placed within a system where detention is codified as the default position, where it is essentially unreviewable, and where no time limits to the duration of detention are established.<sup>39</sup> In this sense, it is logically and pragmatically incoherent to speak of a 'humane' mandatory detention scheme.
36. Successive governments have been unable to countenance an abandonment of the current policy and its replacement by one of the many sensible alternatives available in the public policy domain. As hunger strikes, riots and self-harm once again become routine, we call on the Parliament to recommend an end to the failed experiment of mandatory detention. There are reasonable, cost-effective and humane alternatives available to mandatory and indefinite detention that would meet the legitimate purposes of alleviating risks to the Australian community and identifying the basis of a protection claim, whilst treating non-citizens in a way that considers their individual circumstances and respects human dignity, consistent with Australia's human rights law obligations.

### **Stephen Keim**

**National President, Australian Lawyers for Human Rights**

### **Matthew Zagor**

**Member of National Committee, Australian Lawyers for Human Rights**

### **Adrienne Walters,**

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<sup>38</sup> As the Australian Human Rights Commission noted in its recent report on Villawood, '[t]he Commission seriously questions the extent to which [the Principles] are being implemented in practice, given the high number of people detained at Villawood IDC and other detention facilities around Australia and the long periods many of them have been in detention. The Commission is particularly concerned that these principles are not being implemented in the case of asylum seekers who arrive by boat and people whose visas are cancelled under section 501 of the Migration Act 1958 (Cth)'. See *Immigration detention at Villawood: Summary of observations from visit to immigration detention facilities at Villawood* (2011) 6.

<sup>39</sup> As Refugee Council of Australia chief executive Paul Power told *The Australian* in November 2010, "What we're hearing from detainees and people who are regularly visiting them is their concerns all relate to how long they're being detained." See Paul Maley, 'Centres in Crisis', *The Australian* (18 November 2010), <http://www.theaustralian.com.au/national-affairs/centres-in-crisis/story-fn59niix-1225955980239>