

## **Refugee Action Network Newcastle (RANN): Submission to the Joint Select Committee on Australia's Immigration Detention Network, 2011.**

### **Overview**

Thank you for the opportunity to submit to the Inquiry. RANN consists of citizens from various walks of life who are concerned with Australia's unfair and unjust treatment of asylum seekers. We advocate on their behalf in our community as well as to the government, and provide them with moral and practical support.

This Inquiry has been convened in response to the recent protests by asylum seekers at Christmas Island and Villawood. We respond as citizens rather than as experts. Our knowledge of immigration detention issues derives from asylum seekers, other advocacy groups, numerous reports released over the past decade, as well as the Department of Immigration and Citizenship (DIAC).

The 18 Terms of Reference in the letter of invitation received by RANN are listed alphabetically in Appendix 1. RANN's response does not follow the order of items in the invitation it received. It begins with the initial cause for the Inquiry (item h), and proceeds in what we hope is a readily understandable sequence to its conclusion with consideration of immigration policy (item a).

The Terms of Reference are discussed in four sections:

1. reasons for disturbances in detention facilities
2. the management of public order with respect to immigration detention
3. the response and reporting of incidents in the network
4. policy

At the same time that this Inquiry is taking place, both major parties are vocal in pursuing the outsourcing of detention and responsibility for it onto other nations. Similarly both parties recommended passing the Migration Amendment (Strengthening the Character Test and other Provisions) Bill 2011, despite not being able to provide any credible rebuttal to the numerous objections raised to it by respected organisations.

In such a climate, it is likely that facts and reasoned arguments will fall on deaf ears, just like the numerous recommendations urging an end to mandatory detention because of the harm it causes as well as its expensive, unsustainable nature. However, RANN believes that clear argument and rebuttal are needed.

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**1. Reasons for Disturbances in Detention Facilities**

***(h) the reasons for and nature of riots and disturbances in detention facilities***

People – particularly those in an extremely vulnerable position - are not driven to drastic protests without a reason.

Both major parties as well as the mass media referred to the events at Villawood and Christmas Island as a “riot” and “disturbance”. That is a point of view that is descriptive and misleading. They were protests.

In April 2010, a year before the protests that led to the current Inquiry, nine Tamil asylum seekers staged a hunger strike against the threat of being deported to Sri Lanka. They wrote to then Minister for Immigration, Chris Evans: “This is a peaceful protest. This is a protest for our rights. We never participated in any violence. We are making these requests to save our lives”. They displayed a banner that read: “Refugees Deserve a Fair Go: Stop Using Us for Your Political Gain”. But nothing changed.

A year later what the asylum seekers were trying to say was that they were fed up with the length of time they had been detained, its indefinite nature, as well as the arbitrary nature of detention and its processes. They felt they had either not been listened to, or else lied to, by DIAC.

The response from DIAC and its agencies has been to try and silence these protests. That is always the response from DIAC. It was evident by the way officers acting under DIAC orders attempted to prevent Hazara asylum seekers in Darwin from contacting reporters at the sit-down protest in September 2010.

This note was torn up and put into a bottle and then thrown to the media:



**Figure 1: Note thrown to the media by protesting asylum seeker**

The note said

*"I escaped ... country ... 2000 to Australia for protection but I was deported back after being detained for three years.*

*Now I have risked my life again in search of protection ...my race and religion ... Help me please.*

*I came here for protection not detention.*

*Many were killed in Howard Pacific Solution when (they) were sent back from Nauru. Even foreign forces are helpless and not safe in Afghanistan. Have mercy please Australian people.*

*We are ... saying ... is safe ... for you ... it's safe.*

*The Nato ... Australia is doing there.*

*Our roads are been blocked by Taliban, we cannot pray ..."*



**Figure 2 Asylum seeker banner asking for help**

This was a sign they displayed. They were desperately asking people outside the detention network for help.

The plea in the April Villawood riots was the same, asking to be treated as humans who needed help, not as criminals:



**Figure 3 Villawood asylum seeker sign" We are not criminals"**

“Riots” are only one form of protest. There are other forms of disturbance:



**Figure 4 Woomera protestor, lips sewn together**



**Figure 5 Villawood protestors on hunger strike**

The ultimate form of “disturbance” is the ultimate form of desperation, when protest turns to deadly self-harm.

When he announced the “seven values” policy, Minister Evans said “Desperate people take desperate measure”. Asylum seekers evidently agree:



Figure 6 asylum seekers sign "we are here because of the torture we faced"

1. **RANN recommends that the government end its practice of using terms such as "riots" and "criminal behaviour" that implies protests are criminal, and that the reasons for such protests be obtained first-hand from participants, be credibly investigated and the response to them be assessed according to the relevant international humanitarian conventions to which Australia is a signatory.**

### ***(r) processes for assessment***

Given that people have arrived because they are desperate, it is not surprising that their anxieties are heightened by assessment processes that are **intended to prolong and render uncertain** the whole experience of detention, in order to act as a deterrent to would-be asylum seekers.

There are so many reports urging the Government to end the excision of offshore places, to end mandatory detention, and to make the whole process of assessment transparent and fair.

It would be a waste of RANN's time to go over this ground. As Ian Rintoul from the Refugee Action Coalition said in January, after the Government insisted on challenging the High Court decision that offshore asylum seekers should have the same rights as onshore asylum seekers:

"The government had an opportunity to positively respond to the High Court decision on offshore processing, but it hasn't. Instead of ending discrimination against offshore asylum seekers, it has acted to compound it."

In some ways, the assessment processes constitute the entire iceberg of the immigration detention network. Asylum seekers may founder from collisions with the tip, but the massive and implacable body of government policy underneath is a far graver problem, with implications that threaten the nature of social solidarity as well as the role of international law.

Even if asylum seeker advocacy organizations manage to wrestle some improvement (or stay of unfairness) in one part of this complex system, it can all be undone by another system that is not mentioned in the brief. That is the role of ASIO.

All we know is that ASIO can take its time, and it is not answerable to any body other than Senate hearings dominated by the two major parties.

To be given refugee status, and then to wait seemingly forever and then receive a rejection letter without any reason being given, would be enough to drive anyone mad.

Surely all Inquiry members have experienced anger and rage at traffic delays? Imagine how you would feel if your whole life, your future, and that of your family, was at stake - and if you so much as raised your voice to protest, you are told you would only make things worse.

**2. RANN recommends that once screening and treatment for communicable diseases has taken place, that all asylum seekers be placed in the community, and additional status and security assessments be conducted in the community.**

***(f) the effectiveness and long-term viability of outsourcing***

Outsourcing is more than a matter of economics, or providing services. It is the key requirement for a de facto policy of 'handballing responsibility'. Under the former Howard Coalition government, immigration detention services were outsourced to GSL (Australia) Pty Ltd. GSL subcontracted medical services to International Medical Health Services (IHMS).

Numerous reports exposed the handballing of responsibility under this arrangement. Curtin, Woomera and Baxter detention centres were shut down in an aura of shame (but in desperation, the Federal Labor government re-opened Curtin in June 2009).

The present government is well aware of the problems attributable to outsourcing. That was why it made promises during the Howard era of returning services to government control. It did not fail to carry out this promise because of contractual obligations (as it claimed). It did so, because it suited its desire to be able to elude responsibility for adverse treatment.

With the Indonesian solution, and now with the Malaysia solution, outsourcing has taken on a new, **regional**, dimension. Now it is no longer companies which are required to abide by Australian law, but countries which do not abide either by Australian law, or the international conventions to which Australia is a signatory.

So outsourcing is certainly "effective" as a means to avoid responsibility, whilst giving every appearance of being responsible.

But if we consider "effective" in terms of say, providing decent health care, then the few indications RANN has are not reassuring.

IHMS is a multinational corporation that despite its debacle at Woomera, Baxter and Curtin, retains the contract to provide medical services. But it is impossible to find out just who they are, or what resources they have - at least for RANN members. If it were a genuine health organization, it would be quite open to public scrutiny.

Here are two instances of how effective and viable the care provided by IHMS is:

1) The death of a man at Curtin shortly after it was re-opened was not due to his transfer to a remote location with inadequate medical services. It was arguably due to medical negligence on the part of IHMS. It is extremely likely they knew of his serious heart condition and that he was unfit to be transferred to a remote location with little in the way of medical services. But 'handballing' grants immunity from discovery, and hence a culture of impunity arises. After his collapse, the man was taken to Derby hospital, 40 kilometres away. That night, he was transferred to Sir Charles Gairdner Hospital in Perth, more than 2000km south of Derby. He died the next day.

2) The case of an asylum seeker whose prosthetic leg broke while he was on Christmas Island, but he had get by for about three months until he was transferred to Perth to fit a new leg. These are mere parentheses on many many other instances. Poor care cannot just be blamed on distance and the difficulty of recruiting staff. It happens in mainland centres such as Villawood.

How much easier, and how much better the outcomes would be, and how much less it would cost, if these vulnerable people were housed in the community where they could access mainstream services. How much those services could benefit from the money being wasted on shadowy multinationals.

And the effectiveness of Serco? RANN sent several loads of old primary school books to Darwin, Leonora and Villawood detention centres last year. At the time we thought we were wasting time and resources, as the government made public assurances that detainees were going to school and receiving adequate services. But we found out that the school on Christmas Island donated something like 1000 books. That children in Leonora were only allowed to the library under guard, one or two at a time, every two weeks. That kids in Darwin had nothing. So what are we paying private contractors for?

Whilst RANN welcomes the inclusion of this topic in the Terms of Reference, it is disingenuous on the part of the government, which is already aware of the problems regarding outsourcing. It was so aware of it that it promised before it was elected in 2007 to return all aspects of immigration detention services to the government.

### **3. RANN recommends that the Government replace services provided by Serco and IHMS with the Australian Protective Service and Federal/State health authorities respectively.**

#### ***(o) The total costs of managing the network***

The direct costs are spiking upwards in a direct and ironic contrast to the world's economy. But it is the associated costs - ASIO's in particular - and the indirect costs of other opportunities to use the money that are impossible to quantify. They would be considerably more than the few billions thrown away to maintain the spin of "border security".

It is extraordinary to think the government is directly spending over two billion dollars over the next few years on what amounts to a handful of asylum seekers. Past statistics indicate that something like 98% of asylum seekers are bona fide. It is only recently - and in line with the government's policy of rejecting asylum seekers through visa freezes etc. - that rejection rates have begun to rise. The government has discovered that not only are there lies and dammed statistics, but that policy direction can help to create the statistics that it needs.

It would be of interest to know the range of pretexts used to increase rejection rates. The nonsense about Sri Lanka and Afghanistan being safe to return to, probably constitutes the major part.

In fact RANN visited an Iraqi asylum seeker in Perth who was rejected a few days later because “it was now safe for him to return to Sri Lanka”.

How do you work out the cost of that pretext - both to the person concerned and to the Australian taxpayer?

How do you work out the cost of that pretext, once the shock jocks and the media have taken it up and it has taken root in social attitudes?

At a time when the world is facing the enormous challenge of climate change, how do you work out the cost of distracting the public through policies and techniques that demonise the innocent and vulnerable?

Both major parties are aware of the immense and unnecessary cost of mandatory detention, including its offshore component. Over two billion dollars will be squandered over the next four years in what the ALP Victorian State Conference in June 2010 described as not an asylum seeker policy, but “a hysterical fear campaign”.

Look at the range of alternatives to mandatory detention described in Appendix 2. This Appendix also refers to a pilot program that showed community based alternatives cost AUS\$38 per day compared with AUS\$125 for detention.

- 4. RANN recommends the Inquiry calculate the amount and consider possible uses of savings achievable by ending mandatory detention, and present this to Parliament.**

## **2. The management of public order with respect to immigration detention**

### ***(n) the management of good order***

This is more a matter of spin and the management of public perception, than actual order in detention facilities. RANN reiterates that it is the failure to maintain good order, evidenced by the increasing frequency of protests resulting in both serious damage to property and serious self-harm, that the present Inquiry has been convened.

How can we talk about “good order” when Serco guards on Christmas Island are supplanted by AFP shooting and using tear gas to corral asylum seekers?

Is building a “cattle run” at Christmas Island’s Phosphate Hill detention compound “good order”, with police training in riot gear to “do what was necessary” to “get people to board the plane and disembark the plane at the other end [Malaysia]”, as Prime Minister Gillard said?

What is “good” about the order maintained through false promises, lockdowns, tasers and bean-bag bullets?

What is good about calling what amounts to a high security prison - such as Stage One at Villawood or Red One compound - a “behavioural management unit”?

The whole of the immigration detention network marks a resurgence of the toxic culture of impunity and cruelty that marked Woomera and Baxter.

There is no management of good order. There is only the imposition of a form of order meant to intimidate and discourage asylum seekers: there are so many anecdotal reports of officers and guards saying “if you don’t do x or y, we’ll send you back where you came from”. These anecdotes are credible, because they reflect government policy.

If anything, we are permitting the growth of a corrupt order.

Take the trial of Hadi Ahmadi (granted UNHCR refugee status in both Malaysia and Indonesia), accused of people smuggling. The key prosecution witness, Waleed Sultani, was brought to Australia and paid \$250,000 by the Australian Federal Police in return for information on “people-smuggling”. Despite his claim to refugee status being rejected by the UNHCR, Sultani, who was involved in people smuggling, was given indemnity by the AFP and granted citizenship to Australia.

***(d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network***

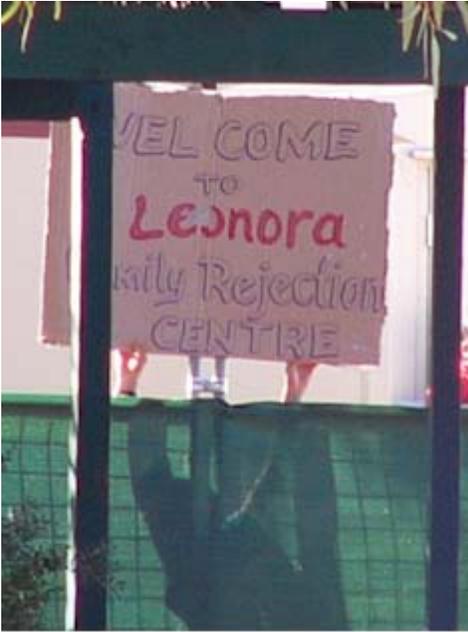
Does it really need to be spelt out yet again, that detention centres are factories that produce mental illness?

RANN recommends that rather than waste time going over all this again, that the Inquiry recommends the passing of the Migration Amendment (Detention of Minors) Bill 2010 proposed by Senator Hanson-Young.

It should not take an Inquiry to consider one of the lowest points in Australia’s history, the treatment of the nine year old Iranian refugee, Seena, orphaned in the Christmas Island boat crash.

It should not take an Inquiry to force the government to honour its promise of releasing all children from detention.

It should not take an Inquiry to shred the pretence that “alternative places of detention”, such as Leonora, are *really* alternatives:



**Figure 7 Sign: Welcome to Leonora Family Rejection Centre**

Leonora, surrounded by barbed wire, staffed by guards who interfere in child-parent relations, is manifestly NOT an alternative to detention in any sense. Even less so is Construction Camp on Christmas Island. Professor Linda Briskman described it as “ghetto-like, squalid collection of demountable buildings... akin to the conditions of a third world refugee camp. Calling this facility an alternative place of detention masks the fact that it is a detention environment where people do not have freedom of movement and where children are denied access to playthings and the taken-for-granted joys of childhood”.

She attributed it to “increasingly tough policies [that] represent political opportunism at its worst”.

Conditions for children and teenagers in the Darwin detention centres are just as bad. RANN believes it is the Airport Motel which houses teenagers in what appear to be shipping containers mounted on top of each other, encased in cages. There is a tiny swimming pool that apparently is off limits except for the rare occasions that a life guard is available. The children did not attend school for many months - what their schooling status is at present RANN does not know. The children were not allowed out for months.

Despite the government’s seven values, and its promises that children would not be kept in detention, and its claim that it had largely achieved this objective, the Inquiry needs to consider why the Darwin Asylum Seeker Support and Advocacy Network (DASSAN) released a statement last week stating that:

As at August 3, figures provided by the Department of Immigration and Citizenship indicated that there are currently 180 children being detained in Darwin.

This is a significant increase on the approximately 100 children who were being detained on June 30, when immigration minister, Chris Bowen, announced that the government had met its target to remove the majority of children from detention by the end of June.

DASSAN member, Carl O'Connor, said today that the increase in the number of children in detention in Darwin raises serious concerns about the minister's commitment to remove all children from detention.

"Members of DASSAN who visit children and families in detention report meeting sad and withdrawn children", said O'Connor. "These children have their daily life governed by security guards who have had no training in working with children, or in dealing with survivors of trauma.

"During the month of July, significant numbers of Darwin based asylum seekers attempted suicide, self-harmed, and went on hunger strike whilst in detention.

"The Commonwealth Ombudsman is so concerned about the state of detention centres that he last week launched an inquiry into these kinds of incidents. These are not places where children should be living."

The President of the Australian Medical Association (NT), Dr Paul Bauert, has previously expressed concern about the practice of detaining children in immigration detention, stating that "we know that at least 95% of these kids we see will eventually end up being Australian citizens and we are damaging them."

**5. RANN recommends that a fact-finding mission regarding the conditions that children in detention have endured over the last decade be compiled as an historical document, to record the inhumanity of Australia's asylum seeker policies for future generations.**

***(b) the impact of length of detention and the appropriateness of facilities and services for asylum seekers***

RANN cites an email from an asylum seeker, S\_:

Now I'm back to Darwin Detention centre from Christmas Island. I'm ok now but so much mental pain because they suddenly sent back to Christmas Island and 27 days spent there after bring back to Darwin. I don't understand what is going on there. Here also doctors advised me to care of my health and appointed hospital. I have been in detention 17th months now so I'm tired of mental pain and health...

This particular man suffers from diabetes with peripheral neuropathy as well as deteriorating eyesight, has a serious heart condition and is very depressed. His wife in Sri Lanka has serious health problems, and their three children feel vulnerable because of the soldiers in the town of Vavunya - one of the last refuges of Tamil citizens as they were gradually pushed into the area now known as "the killing fields".

To reiterate what has been said above, how much easier, and how much better the outcomes would be, and how much less it would cost, if this vulnerable man could be housed in the community where he could access not only mainstream services, but appropriate trauma counselling.

The ABC reported Australian Human Rights Commission President, Catherine Branson QC, saying after visiting Villawood in May 2011 that: "You get the sense, walking in, of disturbed people, depressed people, agitated people. There is not a sense of normality around you."

Ms Branson blames long periods of detention, with more than half of the nearly 7,000 detainees across the country held for six months and 1,300 waiting up to 18 months for asylum applications to be processed.

She says inmates, already close to breaking point, are being put under immense psychological pressure and are being told they could just choose to go home. She says she has heard reports of detainees being warned against considering appealing against any adverse decision.

A first hand account from an asylum seeker on Christmas Island indicates the inadequacy of facilities and services:

i am R\_ from phosphate hill IDC,

\*1\*.this camp is worst than Northwest point camp, i already inform our camp condition

\*2\*.we don't have any medical staff or nurses and councilors also

\*3 \*i don't know how many clients take sleeping tablets

\*4\*.if we want to meet the doctor we should make an appointment early but even we put many request they don't consider it,many clients waiting for the treatment

\*5\*.we must meet the dentist urgently, i am also affected by the toothache for long time but they don't give any responsible

\*6\*we need energy food,when we came here our camp was looked after well by the G4S, then Serco is looking after us now we can't get energy food

\*7\*when the Ombudsman visited here they allowed us to go to oval and swimming but then they don't allow there

please sir don't give up us we believe you

-thank you-

R\_

It is not so much the inadequacy of services that this email reveals, but the duplicity by Serco re the Ombudsman's visit, and the sense of desperation by R\_.

- 6. RANN recommends advocacy groups be immediately given unrestricted access to immigration detention centres, and that an independent ongoing monitoring of services and facilities be instituted in accord with Australian government departments with expertise in the range of services and facilities required.**

***(e) impact of detention on children and families, and viable alternatives***

In Leonora the few refugee advocates who managed to visit said:

“children wetting the bed, children starting to self-harm, children having nightmares because of the conditions that these families are being held in”.

"Mothers cannot cook for their children, prison guards are watching their children all the time, intervening in the parental relationships with their children”.

They had gifts to give the children, but they were not allowed to. They had to leave them on the ground at the gate.

Leonora is surrounded by a high barbed-wire fence. The children can only go out under escort.

The Department says: “Leonora is a low-security facility appropriate for accommodating children and families ... We ensure appropriate care for all people in detention, which includes looking after their needs including accommodation, food and health”.

In May this year, ABC Darwin reported:

The head of the Australian Medical Association (AMA) in the Northern Territory says children under 10 years old are trying to harm themselves in Darwin's immigration detention centre. We're having some terrible cases that we're needing to treat in Darwin of children as young as four and five being part of hunger strikes. We're having children under the age of 10 self-harming, attempted suicides."

... former Australian Human Rights Commissioner, Sev Ozdowski, spoke out against children in detention, saying conditions are just as bad today as they were under the Howard government.

RANN urges members of the Inquiry to re-read material from the HEROC Inquiry into Children in Immigration Detention, 2002.

## **7. RANN recommends children and their families and/or guardians be immediately released into the community**

### ***(g) the impact, effectiveness and cost of mandatory detention and any alternatives, including community release***

In concluding this section, RANN refers to the inquiry held in May 2009, “ Immigration detention in Australia: Community-based alternatives to detention”. (Second report of the inquiry into immigration detention in Australia. Joint Standing Committee on Migration May 2009 Canberra). It found (similar to Appendix 2) that community-based alternatives to detention are cost effective in comparison to detention centres for those people already in the country and eligible for release from detention.

It describes community-based open hostel accommodation or collective housing in New Zealand, Sweden, Denmark, Finland, Germany, Switzerland, Spain, Bulgaria and other European countries. These places have a range of security levels, from those in which people are entirely free to come and go (notwithstanding reporting requirements) to those that are semi-open, such as having an evening curfew or some restrictions on movement.

Another option it describes is hosted residence in the community. In Sweden this is with family members, friends or approved carers. In Canada it is through government organizations, foster carers or community groups.

What was the point of the May 2009 Inquiry?

8. **RANN recommends the Inquiry determine and publicly report on the status of recommendations made in the May 2009 report, "Immigration detention in Australia: Community-based alternatives to detention".**

### **3. The response to and reporting of incidents in the network**

***(k) the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols***

Relevant information- about the realities of what goes on in detention centres, either leaks out or else is scooped by the media. The government and Serco do not release information. They downplay incidents.

During the October 2010 Senate Estimates hearing, Senator Hanson-Young asked if there would be a ministerial statement re any breaches of contract in the performance of service providers, Serco and IHMS. The answer was "no". She remarked that unless she already knew something that she should be asking questions about, then that thing would remain unknown.

Just last week, the media reported that dozens of extra police had been sent to Christmas Island to prepare for the inevitable protests when the first boatload of asylum seekers to be sent to Malaysia were told of that. But the government was merely saying they had extra counselors on hand.

Refugee Action Coalition spokesman, Ian Rintoul, received a phone call from one of the asylum seekers saying "We are in a bad way; we need help. We are starting a hunger strike". Minister Bowen's response was to say that "Just because someone misses a meal or two does not mean they are on voluntary starvation".

It is a culture of denial and impunity, that starts from the Minister down.

RANN member, Niko Leka, spent a great deal of effort trying to find out just how DIAC could be compelled to put its very own policy on torture and trauma into practice. It is unlikely that Inquiry members would know such a policy exists, since DIAC does not refer to it on its website. It was obtained through the good sense of one co-operative officer. It states:

“The purpose of this policy is to describe arrangements to ensure that people in immigration detention who have experienced torture and trauma:  
are connected as soon as possible with appropriate services to assist them with any aspect of their experience of torture and trauma, in such a way that they can avail themselves of these services as freely as possible”

Does the treatment of S\_, referred to above, accord with this policy?

Or consider this note, received from a refugee advocate last year:

The following are some examples where DIAC is not following its own policies:

\* Family being held in detention at Asti Motel Immigration Detention facilities. Two of their three children were killed in May 2009 by Sri Lankan government's aerial bombardment and the sole surviving child and parents witnessed this. Further, the parents have horrific physical injuries themselves. But, they are being held in detention and are not able to move out in the community. The kids have not been to school for four months since moving to Darwin from Christmas Island.

\* Family being held in detention at Asti Motel Immigration Detention facilities. Man has horrific shrapnel injury with several scars as well as X-Rays taken in Christmas Island confirming there is still shrapnel in his body. He is also a diabetic, but has not been given any special diet and not being given the opportunity to exercise which was the recommendation by the doctor. His two kids have not been to school for four months since moving to Darwin from Christmas Island.

\* Family being held at Leonora Immigration Detention centre. This is a very remote location being over 850 kms away from the nearest Tamil community members. The husband/father died due to Sri Lankan government's aerial bombardment witnessed by his wife and two daughters. The mother has shrapnel in her arm confirmed by X-Ray reports. They are being held in detention in a remote location for over five months.

\* Several men held in detention in Christmas Island then at Villawood for over 10 months who have scars from torture and have now been rejected by DIAC.

It is against a backdrop of such horrific incidents, and the loss of hope as a result of being held cruelly and indefinitely, that Senator Hanson-Young told a recent public meeting in Newcastle organized by RANN that:

“The rate of suicides, attempted suicide and self-harm in Immigration Detention Centres (IDCs) is skyrocketing. An ambulance driver on Christmas island told me she's called to attempted suicides almost daily”.

As a senator she can talk to anyone in IDCs. “When I visit”, she said, “the most chilling thing is seeing grown men wandering up in a daze and breaking down on my shoulder. We have no

limits on how far we push people. We push them to braking point and beyond, it's a system that ruins people".

Neither the responses, nor the reporting of them, are what anyone could possibly call adequate - unless 'adequate' is yet another Orwellian term ... rather like the manner in which Serco denies refugee advocates permission to visit, because it is protecting asylum seekers.

**9. RANN recommends that the Australian National Audit Office investigate the accuracy of incident reports by DIAC as well as its subcontractors, as well as describe the responses to incidents as soon as practicable**

***(c) the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties***

In a culture that serves the government's aim to deter asylum seekers, whatever good-intentioned support and training staff may be given in understanding the culture and hopes of asylum seekers, would evaporate in the workplace. That is because detention centres are coercive, and those staff who refuse to accept the status quo would leave.

The ABC reported in May this year that:

Current and former employees of contractor Serco fear soaring asylum seeker self-harm rates, combined with staff who are stretched beyond their capacities, could soon prove fatal at the immigration detention centres.

The ABC investigative unit has obtained confidential documents dated April 27, April 29, May 6 and May 11, 2011, detailing 50 incidents including suicidal intent among asylum seekers, attempted hangings, self-harm with intent, homicidal thoughts and self-mutilation.

"Serco had protocols to follow in respect to suicide watch and keeping them [unstable detainees] in separate areas but that wasn't occurring at all," the former Serco employee said.

"They [Serco] certainly didn't have enough people trained to do a specified job like monitoring people who were on suicide watch - they just weren't qualified to do that.

"There was a whole recording system too where these things had to be logged, and they just weren't being recorded.

**10. RANN recommends that the relevant Unions and education providers be invited to obtain anonymous or confidential views from staff as well as provide expert opinions on these matters for presentation to the Inquiry**

***(j) the health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties***

## ***relating to irregular maritime arrivals or other persons detained in the network***

The facts of conditions are kept hidden, and the official statistics are concocted. ABCs Lateline said the Federal Opposition obtained a Comcare report under Freedom of Information laws that reveals the immigration network system places asylum seekers and guards in danger because:

- There is no risk management process, despite the highly volatile environment.
- There is no plan to alter staffing levels to deal with dramatic fluctuations in detainee numbers.
- Staff are not trained to the point where they are confident and competent in their jobs.
- There is no effective written plan to deal with critical incidents like riots and suicide attempts.
- And no steps are taken to manage detainees' religious and cultural needs. Detainees are roomed together even when there's a history of extreme violence between their ethnic groups in their home countries.

It says the system is unable to respond to serious threats to life, that the 'riots' were foreseeable, and backs up claims made by guards that proper training is not provided.

Thus Serco staff are thrown into situations of extreme risk with little idea of how to respond. "Serco staff provided information about the level of serious assaults on staff, witnessing the deaths of detainees and the distress of having to deal with it. Staff also advised of feeling inadequately trained and the lack of instruction and supervision/support during times of critical incidents," the report said.

Lateline recently obtained a log of incidents in the Christmas Island detention centre detailing up to 12 incidents of self-harm or attempted suicide per day. The Comcare report suggests the number could be higher, as could other dangerous events, saying: "there is (a) level of under-reporting of notifiable incidents in accordance with s68 of the OHS Act."

Comcare told Lateline it has identified a number of potential breaches by the Immigration Department of the Occupational Health and Safety Act, with the possibility of a \$250,000 fine.

The report also details attempts by the Immigration Department to hamper investigations into its safety performance.

Mr Logan rejects any suggestion there was a lack of cooperation by the department.

"We would reject any suggestion that we did not cooperate with Comcare. I think there may have been some miscommunication on a couple of occasions," Mr Logan said.

Greens Senator Sarah Hanson-Young says the report is damning.

"They don't have access it seems in this report [to] a clear plan for dealing with self-harm and suicide, the report is very damning of a lack of management and management plans for incidents, and so they are left to their own devices," she said.

"This report is quite damning [in] that there is a culture of non-disclosure, a culture of secrecy, total lack of transparency and what we see is we don't know how many cases of self-harm there are, how many incidents that have had to be escalated to different levels."

**11. RANN recommends Occupational Health and Safety authorities in concert with relevant Unions seek confidential or anonymous anecdotes from staff at Immigration Detention Centres and collate these for consideration by the Inquiry**

***(i) the performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons***

One would assume that the Immigration Minister would be given some latitude to temper the application of the Immigration Act with clemency. One would expect that the Ministerial Intervention Unit (MIU) would assist in this.

But it is not the case.

ABC News reported recently that:

Fijian asylum seeker, Josefa Rauluni, made numerous appeals against his deportation to the Immigration Minister and the Migration Review Tribunal before killing himself in September 2010.

... Coroner Mary Jerram heard Mr Rauluni sent numerous faxes to the ministerial intervention unit.

"If you want to send me to Fiji, then send my dead body," the court heard the faxes said.

On the day of his death Mr Rauluni was allegedly told if he did not come down from a balcony then centre staff were authorised to use force to take him to the airport.

The role of the MIU seems designed to prevent the Minister from being accessed. In 2004 Marion Le said that entities such as the Ministerial Intervention Unit (MIU) are the real executive power of government. She described how following an FOI request she discovered the MIU actively prevented then Minister for Immigration, Phillip Ruddock, from being aware of appeals made for ministerial intervention.

The MIU's task is in fact to screen out appeals to the Minister. In response to a request from the Refugee Action Coalition (RAC) for information on how the MIU operated, a senior adviser explained that unless an appeal presented "significantly" new evidence, it would not be forwarded. However, if an appeal did contain significant new evidence, sending it directly to the Minister would be inefficient. It would be more sensible to have the appeal processed through usual channels first.

The reliance on new information by the MIU sidesteps the humanitarian element in an appeal. The point of an appeal is often to reconsider what has not been adequately considered through standard processes. Reliance on “new” information is irrelevant: it is the significance of the information and the accompanying argumentation that is the key.

According to RAC, the MIUs decisions are not open to review, not even to the High Court.

If this is so, RANN wonders in relation to the recent findings of the High Court challenge by M61 and M69 that they were denied procedural fairness (because their claims for asylum were processed through offshore criteria rather than those that would apply if they were onshore), whether similar claims regarding the denial of procedural fairness could be raised regarding the MIU.

- 12. RANN recommends that the role of the Ministerial Intervention Unit as well as the role of the Minister be assessed with respect to fairness and the right to challenge findings**

## **4. Policy**

### ***(I) compliance with the Government’s immigration detention values within the detention network***

The “seven values” form subheadings for comments in response to this question:

- 1. Mandatory detention is an essential component of strong border control.**

RANN disagrees with this assumption. A far greater risk to Australia is posed by the entry of dangerous and prohibited items through airports, as well as trading vessels. RANN asks members of the Inquiry to consider if, rather than spending 2.5 billion dollars to keep a handful of people locked up indefinitely who have repeatedly been found to be overwhelmingly not criminals, if that 2.5 billion was directed instead towards customs inspections and quarantine services, then wouldn’t that be a far more relevant form of “strong border control”?

- 2. To support the integrity of Australia’s immigration program, three groups will be subject to mandatory detention:**
- a. all unauthorised arrivals, for management of health, identity and security risks to the community
  - b. unlawful non-citizens who present unacceptable risks to the community and
  - c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

Regrettably, this is an area in which non-compliance would have been better. It is absurd when the number of people who arrive by boat are tiny, compared to the 50,000-odd visa overstayers each year.

**3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).**

It is an absolute disgrace that despite Australia being a signatory to the Convention on the Rights of the Child that so many children continue to be locked up, and for so long.

The treatment of juvenile fishers is particularly disgraceful. Some 70 poor Indonesian fishermen are in jail, despite their claims that they are less than 18 years old. They are imprisoned on the basis of a single wrist x-ray. Evidence of the age from families and villages is sought if somebody argues they are minors only after they are in prison. The process is then subject to the torturous slowness and complexities of that system, and the court can –and often does- simply resort to regulations permitting the result of the wrist x-ray to determine age. The wrist x-ray technique has been widely discredited in other countries.

RANN recommends that the Inquiry seek expert evidence and opinion from Mr Gerry Georgatos, who is currently advocating for a 16 year old boy held in Hakea prison, WA. Mr Georgatos is also aware of the details of some 30 other similar age disputes. Mr Georgatos' contact details are available on request.

**4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.**

These will no doubt be regarded as fanciful. But how is indefinite or “otherwise arbitrary” detention defined? What are the criteria specifying the length and conditions of detention, the appropriateness of accommodation and services?

Are they what the Australian public would generally agree on, or do they need to be spelt out?

Consider how these values were announced in the first place:

“At my first meeting with Department officials as Minister for Immigration, I asked who was detained at the immigration detention centre on Nauru and at what stage were their claims for asylum.

I was told there were eight Burmese and 81 Sri Lankans there. Virtually all of this group had already been assessed as refugees but had been left languishing on Nauru.

When I asked why the eight Burmese had not been settled in Australia in accordance with international law there was an embarrassed silence.

Eventually the answer emerged. The Howard government had ordered they stay put. They had been left rotting on Nauru because the Howard government wanted to maintain the myth that third-country settlement was possible.

Sadly, Australia's treatment of asylum seekers had sunk this low.

The treatment of asylum seekers has been controversial in Australian political debate for many years. The length and conditions of their detention has been a particular focus of criticism.

The Rudd Labor Government was elected on a platform that included a commitment to reform and a more humane treatment of those seeking our protection.”

The very fact that this Inquiry is being held is testimony to the fact that refugees are still being “left languishing”.

That is because this government has a similar view to the Howard government. It peddles the myth that “third-country resettlement” is a way of honouring its obligations under the conventions to which Australia is a signatory. It also peddles the other myths of the Howard government: of invading hordes of boat-people, of queue-jumpers, of asylum seekers who are really terrorists, or that they are only aspiring to a better lifestyle.

**5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.**

This is essentially a restatement of the preceding value, and neither “last” nor “shortest” is defined. If it was respected, there would not be a need for detention facilities.

**6. People in detention will be treated fairly and reasonably within the law.**

It is a shameful irony that this government continues the practice of its predecessor, and struggles to find all sorts of ways to ensure that treatment within the law is both unfair and unreasonable.

Does the government think it was respecting this value when it challenged and circumvented the High Court finding that offshore processing was unfair?

Is it respecting this value by insisting that its Malaysia solution is fair or reasonable?

**7. Conditions of detention will ensure the inherent dignity of the human person.**

When an asylum seeker with a broken prosthetic leg has to take the leg off, jump over a coaming to use the shower, a shower where there are no handholds to stabilise him, then conditions of detention do not ensure the inherent dignity of the person. This is the current condition within Villawood.

Here is some information regarding conditions on Christmas Island, February 2010:

“from Alba camp Phostphate Hill, Christmas island,

i have to inform about our problem

\*they gave a room for 3 persons, but that room is only 12"10' size so

it isn't enough to stay there

\*room don't have toilet,cupboard,table,and water

\*they don't allow to oval ,church swimming and

- \*our camp surrounded electrical fence
- \*they don't allow to church also if they allow us we can pray for our family”

In announcing an inquiry into challenges facing the detention system, the Ombudsman asked if the seven values are “milestones to a fairer society, or 'motherhood' statements”. Given that the values were announced three years ago, and the government continues to flout them, it seems clear the answer is that they were not even “motherhood” statements, they were just spin. To implement the values requires changes to the law.

13. **RANN recommends that the Inquiry seek a report from Customs comparing the nature of threat and cost of detection of illegal imports against the cost of detecting asylum seekers arriving by boat.**
14. **RANN recommends that people accused of people smuggling are accorded a case manager, and where indicated, age determination processes involve a social worker contacting family and associates in the country of origin. Regulations permitting wrist x-rays to determine age should be abolished.**
15. **RANN recommends objective criteria defining “indefinite or otherwise arbitrary” are drawn up and made enforceable. Detention longer than a basic health assessment for communicable disease should form part of the definition of “indefinite or otherwise arbitrary”.**
16. **RANN recommends that once screening and treatment for communicable disease is completed, asylum seekers be placed in the community, and all other necessary assessments take place in that setting.**
17. **RANN recommends that the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 be passed.**

***(q) the length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network***

RANN does not have descriptive statistics for the length of time spent in detention; however it is aware that the length of time is inordinate in most cases. For instance, consider the following (full details may be made confidentially available on request after liaising with the individuals described):

- 41 years old diabetic with amputated leg, accepted as a refugee. Escaped after experiencing the last stages of war in the Vanni. Has had many falls while in detention. Time in detention: 1 year and two months.

- 40 year old man, accepted as a refugee. Gunshot injury (shot by Indonesian Navy), just completed treatment in a capital city then flown back to remote detention. Time in detention: 1 year and five months.
- 38 years old diabetic, acute heart condition, major depression. Accepted as a refugee. Treatment in major city incomplete, flown back to remote detention without warning, transferred to several locales with little explanation. Time in detention: 1 year and five months.

Not one of them could explain why they are being held. They all have multiple serious health problems that should be comprehensively addressed in a location where services are readily available. Instead, we have this cumbersome approach whereby they are flown to a capital city, receive some treatment for one specific aspect, and then returned before the treatment and recovery is complete.

Even attending treatment is problematic. One of them reported he often missed appointments because the Serco guards either refused to take him, claiming there weren't enough staff, or else refused to wait.

The impact on the detention network is obviously a lot of expense in the provision of health care, with often little to show for it, because the network is not organised for the purpose of providing health care.

The major reason – or rather, pretext - for detention appears to be gaining security clearance from the Australian Intelligence Community, most frequently ASIO.

ASIO has had an enormous increase in its budget, in part due to pressure to speed up its security clearance process. There appears to be no change in its speed. ASIO processes are not transparent; therefore its “findings” cannot be verified. If the government really was concerned about the security threat posed by refugees, then it would insist that ASIO not only dramatically speed up its assessment processes, but also make the whole process questionable and verifiable by all concerned. As it stands, no member of the Australian public can have any confidence at all in these so-called “security checks”.

RANN concludes there are no “reasons” for what the Inquiry itself implicitly acknowledged is overly prolonged detention. Rather, it is due to the political game-playing by successive Australian governments.

- 18. RANN recommends that the costs of security assessment and accommodation costs of continuing detention while they take place be presented to the Parliament as evidence for ending mandatory detention and “security checks”**

***(p) the expansion of the immigration detention network, including the cost and process adopted to establish new facilities***

The expansion of the immigration detention network is inconsistent with the espoused seven values. If those values were honoured, the majority of asylum seekers received over the past few years would all have been productive members of our community by now.

The expansion of the network to remote centres entails an enormous capital and operating cost on facilities that are, without exception, run down and require adaptation for this purpose. This includes accommodation for staff, as well as services and infrastructure enhancement for small isolated communities.

It is likely that many of these costs will not be ascribed directly to the expansion of the immigration detention network, nor paid for solely out of DIMIA's budget.

As indicated above, the process of establishing these facilities does not include genuine consultation with the communities involved.

Refugee numbers rise and fall according to push factors in their countries of origin. How much will these facilities cost when there are insufficient numbers of refugees to justify their existence?

RANN notes the DIMIA map of detention facilities excludes those Australia pays for overseas. Does Australia continue to pay for facilities opened up under the now-abandoned Pacific solution, such as Manus Island and Nauru?

How much does Australia pay for facilities and services in other countries - in particular Indonesia and Malaysia? What degree of oversight is there regarding these funds? What guarantees does the Australian taxpayer have that they are spent in a way which upholds the rights of refugees, rather than foster the growth of corruption?

- 19. RANN recommends that the cost of establishing as well as running and maintaining facilities both within Australia and those funded in other countries, be made publicly available on a monthly basis.**

***m) any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons***

The Christmas Island IDC puts an unsustainable load on the existing local economy and services. There are more people in detention than ordinary residents, and their physical and mental health is a lot poorer. The presence of the Detention Centre inhibits Christmas Islanders from developing their economy in alternative, and more sustainable ways.

Although placing IDCs in remote locations may stimulate some aspects of the local economy, when both the direct cost of transporting people, goods and services and the associated indirect costs are considered, as well as the benefits foregone because of money spent in those areas, remote detention is NOT economically beneficial to the Australian economy as a whole. It is even less so when it is factored in that a large amount of the money spent on the network goes to overseas multinationals - namely Serco and International Medical Health Services (IMHS).

The establishment of both Inverbrackie and Leonora was contentious and appeared to override the wishes of many locals, dividing their communities. It contributes to a growing perception that successive Australian governments are increasingly ‘top-down’.

***s) any other matters relevant to the above terms of reference***

The Immigration Detention Network necessarily involves other organisations than DIAC and its subcontractors.

As the submission observers, health care arrangements for asylum seekers are unsatisfactory, and if indications of Serco staff are any guide, then it is likely that many of the health care staff would feel uneasy regarding their role in a system that is designed to make its clients feel unwelcome. The recently formed Refugee Health Network of Australia possesses considerable expertise that would be of benefit to the Inquiry. Apparently it can be contacted at [secretary@refugeehealthaustralia.org](mailto:secretary@refugeehealthaustralia.org)

**20. RANN recommends that the Inquiry consult with the Refugee Health Network of Australia for a fuller picture of health care issues and resources.**

***a) any reforms needed to the current Immigration Detention Network in Australia***

What is needed is not a reform to the current Network, but an alternative to detention.

The Network is based on the idea of mandatory detention, which has become increasingly tied to remote detention in harsh environments, as a form of deterrence. Mandatory detention does not work at deterring asylum seekers, because desperate people take desperate measures. It violates our obligations under the UNHCR Refugee Convention, as well as other international instruments such as the rights of the child and prevention of torture etc. It causes immense amounts of harm, particularly with the length of detention. It is unsustainable, as the number of asylum seekers, including ‘climate refugees’, is bound to increase. It locks people out of our economy who strongly desire to be productive, to care for their families and themselves.

When the then Minister for Immigration, Chris Bowen, announced the ‘seven values’ he said: “desperate people are not deterred by the threat of harsh detention – they are often fleeing much worse circumstances. The Howard government’s punitive policies did much damage to those individuals detained and brought great shame on Australia.”

But deterrence is the purpose of the Malaysian solution, just as it is the purpose of remote detention, and of mandatory detention.

Rather than being concerned with Australia’s humanitarian obligations, the bipartisan approach to asylum seekers seeks to make political capital out of them.

Perhaps the government could begin by implementing the recommendations from the Australian Human Rights Commission visit to Christmas Island, 2010. Briefly, they include:

- stop using Christmas Island for immigration detention. If people must be held in immigration detention facilities, they should be located in metropolitan areas.
- repeal the provisions of the Migration Act relating to excised offshore places
- avoid the prolonged detention of asylum seekers by only holding them while their health, identity and security checks are checked, and then releasing them into the community if they don't present a specific risk.
- ensure that security clearances are conducted as quickly as possible
- ensure that determination on the mainland be an immediate priority for vulnerable groups
- implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention to comply with the Convention on the Rights of the Child.

**21. RANN recommends both major parties commit to ending their bipartisan policies of hysteria and fear-mongering regarding asylum seekers, and recommit to upholding the UNHCR Convention and Protocol Relating to the Status of Refugees**

There are 21 recommendations in total. RANN fears that they will not be implemented whilst both major parties continue with their current policies.

## 5. List of recommendations by RANN

1. that the government end its practice of using terms such as “riots” and “criminal behaviour” that implies protests are criminal, and that the reasons for such protests be obtained first-hand from participants, be credibly investigated and the response to them be assessed according to the relevant international humanitarian conventions to which Australia is a signatory.
2. that once screening and treatment for communicable diseases has taken place, that all asylum seekers be placed in the community, and additional status and security assessments be conducted in the community.
3. that the Government replace services provided by Serco and IHMS with the Australian Protective Service and Federal/State health authorities respectively.
4. the Inquiry calculate the amount and consider possible uses of savings achievable by ending mandatory detention, and present this to Parliament.
5. that a fact-finding mission regarding the conditions that children in detention have endured over the last decade be compiled as an historical document, to record the inhumanity of Australia’s asylum seeker policies for future generations.
6. that advocacy groups be immediately given unrestricted access to immigration detention centres, and that an independent ongoing monitoring of services and facilities be instituted in accord with Australian government departments with expertise in the range of services and facilities required.
7. that children and their families and/or guardians be immediately released into the community.
8. that the Inquiry determine and publicly report on the status of recommendations made in the May 2009 report, “Immigration detention in Australia: Community-based alternatives to detention”.
9. that the Australian National Audit Office investigate the accuracy of incident reports by DIAC as well as its subcontractors, as well as describe the responses to incidents as soon as practicable.
10. that the relevant Unions and education providers be invited to obtain anonymous or confidential views from staff, as well as provide expert opinions on these matters for presentation to the Inquiry.
11. that Occupational Health and Safety authorities in concert with relevant Unions seek confidential or anonymous anecdotes from staff at Immigration Detention Centres and collate these for consideration by the Inquiry.
12. that the role of the Ministerial Intervention Unit as well as the role of the Minister be assessed with respect to fairness and the right to challenge findings.
13. that the Inquiry seek a report from Customs comparing the nature of threat and cost of detection of illegal imports against the cost of detecting asylum seekers arriving by boat.

14. that people accused of people smuggling are accorded a case manager, and where indicated, age determination processes involve a social worker contacting family and associates in the country of origin. Regulations permitting wrist x-rays to determine age should be abolished.
15. that objective criteria defining “indefinite or otherwise arbitrary” are drawn up and made enforceable. Detention longer than a basic health assessment for communicable disease should form part of the definition of “indefinite or otherwise arbitrary”.
16. that once screening and treatment for communicable disease is completed, asylum seekers be placed in the community, and all other necessary assessments take place in that setting.
17. that the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 be passed.
18. that the costs of security assessment and accommodation costs of continuing detention while they take place be presented to the Parliament as evidence for ending mandatory detention and “security checks”.
19. that the cost of establishing as well as running and maintaining facilities both within Australia and those funded in other countries, be made publicly available on a monthly basis.
20. that the Inquiry consult with the Refugee Health Network of Australia (RHNA) for a fuller picture of health care issues and resources.
21. that both major parties commit to ending their bipartisan policies of hysteria and fear-mongering regarding asylum seekers, and recommit to upholding the UNHCR Convention and Protocol Relating to the Status of Refugees.

## 6. Appendix 1: Terms of Reference

For clarity, alphabetical order has been applied to 'The terms of Reference' as listed in the invitation. RANN understands the Joint Select Committee on Australia's Immigration Detention Network will inquire into:

- a) any reforms needed to the current Immigration Detention Network in Australia;
- b) the impact of length of detention and the appropriateness of facilities and services for asylum seekers;
- c) the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties;
- d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;
- e) impact of detention on children and families, and viable alternatives;
- f) the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers;
- g) the impact, effectiveness and cost of mandatory detention and any alternatives, including community release;
- h) the reasons for and nature of riots and disturbances in detention facilities;
- i) the performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons;
- j) the health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties relating to irregular maritime arrivals or other persons detained in the network;
- k) the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols;
- l) compliance with the Government's immigration detention values within the detention network;
- m) any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons;
- n) the management of good order and public order with respect to the immigration detention network;

- o) the total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees;
- p) the expansion of the immigration detention network, including the cost and process adopted to establish new facilities;
- q) the length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network;
- r) processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network; and
- s) any other matters relevant to the above terms of reference.

## 7. Appendix 2: Alternatives to Mandatory Detention

Text sourced from International Detention Coalition (2011), 'There Are Alternatives: A handbook for preventing unnecessary immigration detention' Asylum Seeker Resource Centre. Accessed from: <http://idcoalition.org/cap/> [www.asrc.org.au](http://www.asrc.org.au)

### Australia is exceptional in utilising mandatory detention

**Most countries do not use detention** as the first option to manage asylum seekers, refugees and irregular migrants in the majority of cases.

Some countries **do not make use of immigration detention at all**, including several in Latin America such as Brazil, Peru, Uruguay and Venezuela.

There is a **presumption against detention** in Argentina, Venezuela, Peru, Uruguay, Brazil, Austria, Germany, Denmark, the Netherlands, Slovenia and the United Kingdom.

There are **alternatives to detention** in law, policy or practice in New Zealand, Venezuela, Japan, Switzerland, Lithuania, Denmark, Finland, Norway, Sweden, Austria, Germany and Canada.

The **detention of minors is prohibited** in Panama, Belgium and unaccompanied minors in Hungary.

Many countries house asylum seekers in **open accommodation centres** while undertaking identity confirmation, including Sweden, Finland, Germany and Canada.

Asylum seekers **are screened on an individual basis** to determine the necessity to detain in Canada, the USA, the United Kingdom and Hong Kong.

### Isn't detention necessary for identity and security checks?

Identity and security checks are vital for managing and regulating the entry and exit of people into a country. In certain cases, detention for a short period may be justified to undertake these assessments.

However, the inability to provide documentation establishing identity should not lead to prolonged detention, which may render detention arbitrary, and therefore illegal.

Many countries house asylum seekers in open accommodation centres while undertaking identity confirmation, including Sweden, Finland, Germany and Canada.

As with identity checks, individuals who are co-operating with efforts to undertake a security check should not be forced to endure prolonged detention. Many countries require that detention be subject to periodic judicial review to ensure the grounds for detention are legitimate.

### Won't asylum seekers abscond if released from detention?

Asylum seekers are unlikely to abscond if they believe they have been through a fairly treated process and have been well informed and supported throughout the process. A recent study collating evidence from 13 community based programs found compliance rates among asylum seekers awaiting a final outcome ranged between 80% and 99.9%.

Other examples include:

- A pilot project in Australia achieved a 93% compliance rate.
- Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community.

- In the United States, there is a 85% compliance rate for asylum seekers living independently in the community.
- Community based programs in Canada maintain a 96.35% compliance rate.

### **Won't supporting asylum seekers in the community will be expensive?**

Community based programs in Canada cost CA\$10-12 per person per day compared with CA\$179 for detention.

A pilot program in Australia demonstrated that, between 2006 and 2009, community based alternatives cost AUS\$38 per day compared with AUS\$125 for detention.

In the United States, a three year test of a community based alternatives cost US\$12 per day compared with US\$61 for detainees in the same period.

### **Alternatives to Mandatory Detention**

In Canada, the decision to detain irregular migrants is subject to review within 48 hours of detention, then within another seven days and every 30 days thereafter. At these reviews, immigration authorities must demonstrate the grounds for detention are justified for a reason outlined in law. Detainees may request an earlier review hearing if they have new facts pertaining to the reasons for their detention. Eligible detainees are provided with free legal representation. A bond may be offered - sometimes by NGO's to support those who cannot afford it – which increases the likelihood of a favourable decision to be released into the community.

In the Philippines, unauthorised asylum seekers may be issued with documentation and released into the community. Children are generally not detained, or if so, are released as a matter of course under the care of the Department of Social Welfare and Development which provide shelter, health care and other services.

In Hong Kong authorities undertake screening and assessment of irregular migrants when considering detention. After being detained for a short period, most asylum seekers are released into the community. Government funded housing as well as direct provision of food, clothing and medicines are provided. NGO's provide pro bono legal advice and support services.

In Spain, asylum seekers and refugees can be housed in open reception centres for up to 12 months if they cannot afford private accommodation, with priority given to vulnerable individuals. After that time they are assisted to find independent housing and employment. Residents in these reception centres can come and go as they like. There are catered meals, public lounge areas, library, shared computers and internet access and a shared laundry. Residents are given money for clothes in addition to EUR\$50 per month cash allowance for their own use. Social workers are appointed to assist them in accessing education, health care and other social systems. Recreational activities such as sports, visits to the local library, exhibits and movies are supported by an activities officer. Psychological services and legal aid are available for eligible residents. Spanish law allows everyone on Spanish territory to access medical care, no matter their legal status.

In Venezuela, there is no law allowing for the detention of migrants. When implementing deportation, migrants may be restricted to a particular town or locality for a maximum of thirty days.

In New Zealand, the law permits immigration officers to provide community based alternatives to asylum seekers. The officer has the power to restrict movement to a specified place and time and provide a guarantor to ensure compliance.

Argentina does not detain irregular migrants except in rare instances during deportation procedures. Even when used, detention is considered a tool of last resort after all avenues have been explored, is limited to 15 days and must only be warranted under the order of a court. Recognising that migration benefits the economy, Argentina has developed a system which legitimises irregular migrants into the formal migration process.

In Sweden, asylum seekers spend about a week in an initial processing centre for government checks. After this time, they can live independently in the community if they have their own funds, otherwise they are placed in open accommodation, usually a furnished apartment. Asylum seekers receive a minimal daily allowance and use this to buy and prepare their own meals. They have access to lawyers, emergency health and dental care, with children receiving the same medical care as Swedish children. If working, they contribute to the costs of their food and accommodation. Even in the case of a negative outcome, asylum seekers have two months where they are supported by case managers to leave voluntarily. Detention is only applied as a last resort if independent departure is unsuccessful, and even then, appropriate accommodation and facilities are provided where staff work to build a culture of dignity and respect with clients.