

Joint Submission of the Centre for Human
Rights Education, Curtin University and
Asylum Seekers Christmas Island

Joint Submission

Joint Select Committee on
Australia's Immigration
Detention Network

Contact

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OVERVIEW

This is a joint submission by the Centre for Human Rights (CHRE) at Curtin University and Asylum Seekers Christmas Island (ASCI). Both organisations appreciate the opportunity to air concerns about the current immigration detention network.

By way of introduction, the CHRE is a centre of research, scholarship and teaching in human rights with a specific focus on asylum seeker rights. The Centre is multi-disciplinary and while we incorporate legal frameworks in our work, we are not lawyers and rely more on sociology, politics and social work in our framing of human rights. Staff of the Centre have published extensively in the field of asylum seeker rights with a focus on immigration detention. The Chair of the Centre, Professor Linda Briskman, convened the People’s Inquiry into Detention (resulting in the 2008 co-authored award winning publication *Human Rights Overboard: Seeking asylum in Australia*). This Inquiry documented 400 verbal testimonies and submissions from people concerned about immigration detention, including former detainees. Professor Briskman was also a Chief Investigator on a Monash University Australian Research Council project *Caring for Asylum Seekers in Australia: Bioethics and human rights*. Lecturer Lucy Fiske worked with asylum seekers in both the community and in detention for approximately six years and has continued work with TPV holders and detainees in a voluntary capacity. She is undertaking extensive research into protest in Australia’s immigration centres. Lecturer Caroline Fleay has been involved in refugee activism and advocacy since 2000, and conducts research into Australian government responses to asylum seekers and refugees. All are regular media commentators.

All three CHRE staff are well grounded in knowledge of asylum seeker detention. Since our submission to the 2008 Joint Standing Committee on Migration’s Inquiry into Immigration Detention in Australia, we have made regular visits to detention facilities, particularly Christmas Island and Curtin.

ASCI was established in November 2009 and provides support to people in immigration detention. Support is offered in the following ways:

- Visiting and advocating for people in immigration detention: ASCI has been visiting detention centres both on Christmas Island and the mainland on a regular basis since it was first established.
- The Letter-writing Project: ASCI coordinates a Letter Writing program that spans a number of detention centres, where mainland Australians support detainees through the writing friendship letters.
- The donations project: ASCI coordinates donations from the community to Christmas Island such as books, dictionaries, ESL materials, and toys for children.

ASCI has been vocal on the impact of the system of detention on people’s mental health and the incitement for people to resort to protest or violence. The Director Michelle Dimasi is completing doctoral studies investigating Australia’s asylum seeker policy and the Christmas Island community response. She has lived for extended periods on the Island and has visited, supported and advocated for those in Christmas Island

detention. In 2010 she was in Afghanistan conducting research on the situation of the ethnic group Hazaras, many of who have sought Australia’s protection. She is a regular media commentator. Lisa Hartley has a PhD in psychology. She advocates for people in the Perth detention centre and is on the management board of the Coalition for Asylum Seekers, Refugees and Detainees (CARAD). She oversees the ASCI Letter Writing Project. Renee Chan is Sydney based and directs ASCI’s operations and activities that span the detention network. She has been supporting and advocating for refugees since 2009. She spent a month on Christmas Island in 2010 assisting recreational programs for detainees at North West Point and Construction Camp. She now advocates for asylum seekers in Villawood and Maribyrnong Detention centres as well as those awaiting trial in Silverwater Metropolitan Remand and Reception Centre. She has a Bachelor’s degree in International Politics and Development.

In 2008 the CHRE wrote a submission to the Joint Standing Committee and Linda Briskman appeared before the committee during its Perth hearings. At that time, following the announcement of the Key Detention Values Centre staff were optimistic about positive changes that appeared imminent and believed that there would be a restoration of Australian’s reputation as a human rights nation through the re-instatement of rights to asylum seekers. In 2008 we were heartened that some of the worst excesses of detention were over such as the ‘Pacific Solution’ and the TPV. Even though we argued in our submission that more substantial changes were needed, we did not expect policies and practices to reach the state of inhumanity that is now apparent. Even some of the practices that appeared to be coming to an end in 2008 have re-emerged including calling detainees by number, long-term detention and the minimal application of community detention options. The ongoing detention of children has been a major concern. Moreover, new provisions that have emerged since 2008 have been a backward policy step, including the suspension of Afghan and Sri Lankan claims for a period of time, the proliferation of detention centres in remote sites and the unconscionable ‘Malaysian Solution’, which has now been followed by an agreement with Manus Island.

CHRE and ASCI work together to bring attention to the plight of detained asylum seekers and to offer support to those detained under the government’s mandatory detention policy. Both organisations are committed to the ending of mandatory detention as a cruel, unnecessary and politically driven policy. The removal of a person’s liberty is one of the strongest sanctions a state can exercise on people within its borders. It is only in the rarest of circumstances that asylum seekers should be detained, for compelling security reasons. The comments we provide are framed by this position. The two organisations work closely together, particularly on Christmas Island detention research and advocacy. In 2010 a joint report from both organisations, *Beyond Reach*, was submitted to the Department of Immigration and Citizenship (DIAC). This report documented major concerns about Christmas Island detention. Apart from a perfunctory acknowledgment from the Department, it is apparent that the authorities did not treat the report seriously. Despite the difficulties in influencing change, both CHRE and ASCI see their roles as unofficial human rights monitors in relation to asylum seeker detention.

This submission follows the terms of reference of the Inquiry. Our comments and recommendations reflect our particular expertise and experience as human rights monitors of Australia’s immigration detention facilities and processes, particularly at the Curtin, Villawood, Christmas Island and Perth detention facilities. The Committee may wish to note the extensive attention we give here to protests in detention. We have done so in an effort to counter the negative perceptions and misunderstandings of such protests in the public domain. It is also to address the federal government’s chosen policy responses to such protests that reflect a criminalized discourse and further undermines the rights of asylum seekers.

RECOMMENDATIONS

The current immigration detention system is in crisis. We are all regular visitors to Australia’s detention facilities and we have all borne witness to the growing sense of despair within them. As highlighted by the recent Australian Human Rights Commission report (2011), negative impacts of detention are escalating. These include suicide attempts, serious self-harm incidents including hunger and water strikes, lip-sewing, riots, protests, fires, break-outs and the use of force against people in detention by the Australian Federal Police.

ASCI and CHRE believe that mandatory immigration detention must be abolished without delay. Until this measure is adopted, however, we urge that the following recommendations be implemented:

Recommendation 1: *Repeal all parts of the Migration Act that refer to excised offshore places.*

Recommendation 2: *Offer community-based alternatives to mandatory detention to all detainees.*

Recommendation 3: *Provide adequate support, training and access to mental health services for detention centre staff and contractors.*

Recommendation 4: *In accordance with the Key Immigration Detention Values, ensure the protection of the inherent dignity of the human person by legislating minimum standards for conditions and treatment of persons in immigration detention*

Recommendation 5: *Enforce a set of standard minimum rules for the treatment of persons in immigration detention that specify the rare instances where it may be appropriate to use instruments of restraint.*

Recommendation 6: *Make cross-cultural competence a fundamental part of Serco staff performance appraisal. Implementation would include the provision of cross cultural training; and the development of cultural competence management frameworks and guidelines (see Commonwealth of Australia 2006)*

Recommendation 7: *Develop a framework for identifying criteria for assessing the cultural competence requirements of job specifications at all levels for use in recruitment, professional development, performance and appraisal and career development as a requirement for both Serco and DIAC staff members (see Commonwealth of Australia 2006).*

Recommendation 8: *Ensure that key personnel in DIAC, Serco and the Australian Federal Police (AFP) undergo specialist training in riot prevention and de-escalation.*

Recommendation 9: *Extend the terms of reference of the current investigation into the March 2011 riot to include examining the actions of the AFP.*

Recommendation 10: *Develop clear guidelines for managing detainee protest at earlier stages within a framework that seeks to maximise accommodation of reasonable detainee concerns.*

Recommendation 11: Completely overhaul the case management system and the form filling. Responding to detainee requests and complaints should be made a key indicator against which performance is measured and reported.

Recommendation 12: Develop a collaborative risk management strategy between DIAC and Serco to identify, communicate and address issues that traverse both spheres of responsibility.

Recommendation 13: Shift the focus of staff training from incident prevention to equipping staff to recognise, report and address detainee concerns.

Recommendation 14: Develop opportunities for communication between the two service providers at more than just the management level.

Recommendation 15: Conduct a review of country information relied upon by DIAC case officers for RSA decisions. Ensure such country information reflects recent reports regarding Afghanistan by acknowledged experts such as William Maley.

Recommendation 16: Return to the 90-day timeframe for the processing and finalisation of RSA decisions.

Recommendation 17: Establish a time frame of a maximum 6 weeks within which an Independent Merits Review (IMR) must be conducted after a negative RSA decision.

Recommendation 18: Establish a timeframe of a maximum 8 weeks from time of interview within which Independent Merit Reviewers must submit their final decisions to asylum seekers.

Recommendation 19: Ensure that access to judicial review is wholly incorporated into the offshore processing structure, including:

- provision and accessibility of information for asylum seekers regarding their rights to and the process of applying for judicial review of their review outcomes;
- provision of services to assist asylum seekers to obtain a lawyer;
- provision of funds to finance lawyers for their work in the judicial review process;
- briefing and training of DIAC officers and case managers on the judicial review process.

Recommendation 20 Conduct an independent inquiry into the system of assessment and review of refugee claims, including RSA and IMR decisions.

RESPONDING TO THE TERMS OF REFERENCE

(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;

(D) THE HEALTH, SAFETY AND WELLBEING OF ASYLUM SEEKERS, INCLUDING SPECIFICALLY CHILDREN, DETAINED WITHIN THE DETENTION NETWORK;

THE IMPACT OF LENGTH OF DETENTION:

The length of detention that is endured by many of the men, women and children detained in immigration facilities, and the arbitrary nature of this detention, is inhumane. It breaches a range of international human rights conventions ratified by Australia including the UN Convention on the Rights of the Child, the UN Convention Against Torture, the UN Covenant on Civil and Political Rights and, of course, the UN Refugee Convention. For example, the most important issue evident from Professor Linda Briskman and Dr Caroline Fleay’s visits to the Curtin Immigration Detention Centre (Curtin IDC) is the length of time many men are waiting for decisions on their refugee claims. As stated by some of the men who continue to be detained at Curtin at the time of writing this submission:

It is so hard to be in detention for such a long time and having to cope with so much uncertainty. It is so hard when we don’t know what the future holds. Some of us have been in detention for more than sixteen months and we still do not know what the future holds. The stress and tension that the people here feel increases day by day.

A man in Villawood Detention Centre described the length of time to Ms Chan as being *‘like torture. I saw in a documentary a form of torture where once a day, everyday, a prisoner would have his captors hold a gun to his head and pull the trigger. The daily fear of not knowing whether he was going to live or die made him wish in the end for the bullet that would kill him quickly. That is what detention is like.’*

Many people have waited months for their first decisions, in part reflecting the suspension of claims processing of Afghan and Sri Lankans in 2010. For those whose first decisions were rejected, they must then wait additional months for an IMR interview. There are men in Curtin who have been waiting more than seven months for their IMR interview. After an IMR interview, wait times for decisions have ranged from one week to

eight months. As some of the men in Curtin have stated, ‘at least there should be a timeframe’ provided and adhered to for these processes.

Compounding the distress of undefined waiting periods is the environment of detention itself, which is constantly in a state of flux. Over the course of their incarceration, it will not be uncommon for detainees to have spent time in more than two detention facilities, have had more than half a dozen different case managers, and had their cases handled by any number of lawyers at the various stages of their claims processing. It is not uncommon for a detainee to not know the name or contact details of their case manager because the rate of change is high and so frequent. Similarly, detainees themselves are being moved not only between centres, but also between compounds within a centre, and between dormitories within a compound. The way in which these transfers take place and the constancy of people moving in and out of an environment means that a detainee can never establish themselves in one space, with one group of people, nor can they feel any sense of ownership or accumulate any property that would not eventually be lost when they are transferred without notice to another facility. The lack of permanence means that detainees are constantly unsettled; the flux and uncertainty of their day to day routine over such a long period of time takes a severe toll on their well being.

Research examining the mental health of refugee claimants in immigration detention has clearly demonstrated its deleterious effects. Studies show that detention is a profoundly negative socialisation experience that exacerbates the impacts of other traumas and this increases the longer period of detention is (e.g., Browning, 2007; Dudley, 2003, Steel, Frommer, & Silove, 2004; Steel et al., 2004). In our experience, detainees’ decision to self-harm or engage in suicidal behaviours is often a reactive response to a number of serious institutional issues within detention that are compounding their desperation, of which the stress of lengthy and indefinite detention constitutes a significant factor.

Serving unknown time in the detention centre is the worst waiting that we have faced in our lives - we rather to know our destiny then counting the minutes and hours that would never stop. It is a story of waiting for the unknown side. We are the dead people who left alone suffering without crime. Perhaps our crime is that seeking for the freedom and trying to leave our desperate life in our home countries is what put us behind the walls... We still have goals to promote our self and we have dreams, but our dreams now are very humble, a dream to breathe the freedom, a dream of walking freely without being watched by camera or being observed every second (man from Perth IDC – Dr Hartley).

Visits to any of Australia’s immigration detention facilities highlight the keen sense of the despair experienced by many of the men, women and children detained. This is evident upon visiting the Curtin IDC. Some Serco staff are clearly not equipped to deal with people in despair as some have commented during visits to Curtin that most of the men were ‘doing ok’; discussions with many of the men confirm that this is not the case. Just

the fact that so many men are now on anti-depressant medication certainly indicates their level of distress. In addition, some men have been transferred to mental health facilities in Perth. During a recent visit to Curtin IDC, we were aware of several suicide attempts in that one-week period alone.

The indefinite nature of their detention is the root cause of this despair – this is the number one issue for the men and the only means possible to address this is to end the mandatory detention policy. Detainees have expressed the source of this despair as ‘not knowing if it could be today, it could be tomorrow, it could be next year,’ until they knew something of what was going to happen to them.

The Human Rights and Equal Opportunity Commission (2007) concluded:

The main way to treat a mental-health concern is to remove the primary cause of the problem. In the case of immigration detainees, detention and uncertainty are amongst the main causes and the mental-health professionals cannot usually address them.

Despite the obvious logic of the above statement, and the largely undisputed notion that long and indefinite detention leads to rising incidents of self harm, suicide and unrest, simply attempting to address the mental health symptoms with more service provision – be it mental health, better facilities, activities or other forms of distraction - does not eliminate the fundamental institutional and systematic flaws causing these issues to arise. Long term and indefinite detention is incapacitating for detainees, not simply because it is a deprivation of liberty, but because the environment of detention is ultimately humiliating and disempowering. A detainee in Maribyrnong Detention Centre explained to Ms Chan, ‘you are on the outside. You can go where you like, do something for your future, choose what you eat, choose when you sleep. I am in here. I cannot even take a cup of tea without asking first for permission from the officer.’ He went on to describe the humiliation he felt during an escort to attend a medical appointment outside the detention centre. ‘I was one person, but they sent with me four officers. Four! I am not a criminal. I haven’t done anything wrong. They treat me as if I have killed someone.’

Holding children and young people in detention is particularly harmful and is documented in the Human Rights Equal Opportunity Commission inquiry into Children in Immigration Detention (2004). Evidence also suggests that the levels of mental health care required by these young people cannot be delivered effectively in a detention setting. For example, Ms Dimasi visited a number of unaccompanied minors (UAMs) at the MITA who were originally detained on Christmas Island, where she first met them. After spending several months detained at the MITA the boys had gone from being happy, active and carefree teens to broken and mentally disturbed young men. One Afghan boy explained that the MITA was ‘a prison’ and that he had been ‘forgotten’. Ms Dimasi witnessed him exhibiting severe signs of trauma, depression, and anxiety to the point where he was struggling to hold a cup of tea as his hand was shaking. It was evident that he was not receiving appropriate psychological care. It was only when Ms Dimasi contacted DIAC that the boy’s visits to a Foundation House psychologist and placement in community detention was expedited.

Given that research continues to show there are credible alternatives to mandatory detention as a response to the arrival of asylum seekers, there is no reason for continuing the policy. For example, a recent report by the UN High Commissioner for Refugees (2011) highlights that allowing people to live in the community until their refugee claims have been finalised is more humane, a lot cheaper, and very few people do not comply with release conditions.

INADEQUATE FACILITIES AND SERVICES PROVIDED IN IMMIGRATION DETENTION:

CENTRE CAPACITY AND FACILITIES

CURTIN

Curtin IDC is currently accommodating 1,400 men – 200 in excess of the centre’s capacity. The extra men flown in from Christmas Island have been housed in dormitories holding between 20-40 men. These dormitories are in buildings that were previously used for recreation purposes. Creating dormitories to house so many men in the one room is exacerbating the anxiety of all the men detained there.

Recreation facilities such as televisions have been relocated to tents, known as ‘marquees’. Removing these facilities to marquees serves to downgrade these amenities and further reinforces to the men in the Curtin IDC that their needs are not important. The library provided is very small and inadequate. There are few books in appropriate languages and very few English-Farsi dictionaries. Hundreds of the men have requested to refugee advocates that they be given access to English-Farsi picture dictionaries. Requests have been made by advocates to Serco to provide more dictionaries in the library – which Serco agreed to do - but none have yet been made available. Some activities are organised by Serco for the men, for example, English lessons. However, as so many of the men are now suffering from depression and other mental illnesses, it is very difficult for many to participate in such classes. In addition, given that overall there is little for the men to do each day, their anxiety and despair is magnified.

Many days in the Kimberley region, where the Curtin IDC is situated, are hot and dusty. This means that it is very uncomfortable for the men to leave their rooms in the daytime. At certain times of the year the mosquitoes in the Kimberley are also voracious, making it even more difficult and uncomfortable for the men to leave their rooms.

Few of the men have had access to any outings. Only a relatively small number of men have been allowed to visit Derby, despite many men having been detained at Curtin IDC for over one year. Such opportunities for all of the men should be provided.

In addition, given the extreme remoteness of Curtin IDC – it is situated 2,300 km from Perth – the men detained at Curtin receive very few visitors. This means that their access to members of the community who can provide important emotional and social support is severely limited, further exacerbating the feeling of isolation and sense of despair for many of the men.

VILLAWOOD

The accommodation in all three stages of Villawood IDC continues to be an issue of concern, most of which have been documented in the Australian Human Rights Commission's report on Immigration Detention at Villawood (2011). While aware that the redevelopment of centre facilities has begun, having been approved in November 2009, early works have only just commenced. It seems likely that any new facilities or upgrades to accommodation will not be available for a significant period of time. In the interim, the substantial impact on the immediate health and well-being of the detainees arising from the inadequacy of the facilities make reiteration of the issues necessary. In February 2011, temperatures in Sydney rose to 30 degrees in the city and 35 degrees in the Western Suburbs. The accommodation in Fowler and Hughes compounds are not air conditioned; air conditioning only exists in the shared recreation areas such as the computer room, as well as the visitors centres. During this period, detainees had very few options to find relief from the heat. Several reported frequent nose-bleeds, head-aches, and the majority were unable to sleep at all due to the extreme discomfort.

Some construction and repair has taken place after the Villawood riots but one building in Fowler compound remains blocked off, and its residents moved to a facility adjacent to Hughes compound called Banksia. These men were not able to retrieve any of their belongings for some time, to the point where they were requesting clothing, socks and underwear from advocates. It is unclear why Serco did not supply them with the necessary items. We do note that the problems with the grass soccer field in Fowler compound have finally been addressed, with the grounds leveled and astro-turf laid. Prior to this, the field was extremely unsafe, being very uneven. There were several very serious injuries sustained on the field during recreational activities, including broken arms requiring surgery and numerous twisted ankles. The clients had submitted numerous complaints over many months.

Recreational activities have again been made available on a more regular basis, although the majority of detainees, having been in Villawood for more than one year, have little interest in participating in classes or organised games. Coordinated sports matches remain popular. Toward the end of 2010, due to the deteriorating mood subsequent to the suicide of a detainee in Fowler compound, effort was being made to 'encourage' detainees to become involved in activities. This involved halving the detainees' weekly allowance, and advising that the second half could be earned through participation in organised activity, with each activity earning them '\$2.' While detainees found their own way of maneuvering around this system (by attending the first or last five minutes of an activity solely to sign the attendance sheet), they resented the forced and coercive way that their involvement was elicited. While the sentiment was understood to be generally for their well-being, it was again another example of their own disempowerment by being unable to choose when and how they would participate in organized activity.

MARIBYRNONG

The facilities and services at the Maribyrnong Centre are marginally better than some other centres, due in part to its accessible location in urban Melbourne, and its smaller capacity, accommodating less than 100 men at any one time. However the men have expressed their distress that the facility is completely closed; there is no unrestricted outdoor space that can be accessed. They are given the opportunity to go outside at a set time each day for a couple of hours. This obviously has psychological and physiological impacts on their health and well-being. There is a great deal of depression and malaise, and a compounded sense of restriction. The visitor’s area is also completely contained indoors. Detainees recount ‘*I never get to see the sky.*’

CHRISTMAS ISLAND

Geographically, Christmas Island is extremely remote with Perth being 2630 kilometres away. The remoteness of Christmas Island has implications for both detainees and service care providers. The three facilities – North West Point (NWP); Construction Camp and Bravo are all inappropriate for accommodating people who have suffered torture and trauma. For example, most detainees at NWP have expressed concerns and struggle to comprehend why they are being held in a maximum-security prison for ‘not doing anything wrong’ as pointed out by one asylum seeker. The architecture of NWP is very intimidating to detainees. Lilac compound located on the outside perimeter of NWP is in poor condition, consists of nothing more than a group of dongas isolated from the rest of the centre and should not be used after the March riots, given the extent of the damage to buildings and facilities that have not yet been repaired. In June 2011, Ms Dimasi was told by Lilac detainees held in separation that Lilac’s buildings were still damaged from the riots, that there were ‘keep out’ signs on some buildings and that they could see the fire damage in neighboring Aqua compound. Ms Dimasi was also prohibited from entering Lilac with one Serco staff member telling her that it is ‘rough and woolly here’ and that it would be easier if Serco drove detainees to Bravo for visits.

While Construction Camp and Bravo detention centres may be less intimidating and offensive, they are not without problems. At the time of writing, Construction Camp was no longer being utilised, a decision which we welcome. We hope this camp is never used to incarcerate children again. Construction Camp is not a place for children as it lacks facilities such as play areas especially when the monsoonal season take place; it was specifically built to temporarily accommodate construction workers and not to house children and families for extended periods of time.

Bravo is extremely run down, lacks recreation areas, the grass is dead and the outdoor area is very uneven which has led to injuries such as broken limbs occurring while detainees play sport. We express grave concern that Bravo is now accommodating children who may be expelled to Malaysia. We question how DIAC can use the facility as a detention centre for several years to accommodate single men and suddenly claim the facility to be an ‘alternative place of detention’ when clearly it is not. While the children have been held in Bravo, activities have been minimal and there are no TVs. Meanwhile no phone or Internet access has been provided with these detainees being held incommunicado. While we strongly oppose the Malaysia Solution announcement, we also argue that the current conditions that children and adults are being subjected to in

Bravo are exacerbating the trauma that they have experienced in their homelands and during the boat journey.

Since the March 2011 riots on Christmas Island, NWP has decreased the number of detainees from around 1800 to 600. While this change has overcome overcrowding problems, it has failed to deal with other underlying problems such as long-term detention and the isolation detainees experience on a remote island. Detainees on Christmas Island rarely receive visitors and support groups. Support networks are crucial in assisting people who have suffered trauma and torture. While detainees may go on the odd excursion, detainees expressed their concerns over the constant feelings of being locked away, with one detainee telling Ms Dimasi, ‘it’s been one year since I have even seen a child’. The militarisation of North West Point is very concerning. Detainees relayed to Ms Dimasi in June 2011 that they found the constant presence of AFP intimidating and said that AFP has treated them like ‘animals’. While Ms Dimasi was at NWP she witnessed a group of AFP kitted up in riot gear with shields marching away one detainee. Using fear and intimidation tactics at NWP is only exacerbating the problems that long-term detainees are currently suffering.

COMMUNICATION AND ACCESS

CURTIN

Both the Internet and phone access available to the men in the Curtin IDC is grossly inadequate. There are 18 computers for 1400 men at Curtin. In order to try to access a computer, the men must start queuing at around 5am in the morning in order to try to book one of the computers for one hour that day. The Internet access that has been organised for Curtin is also slow and sporadic. All of this makes it very difficult for the men to make email contact with family and friends, or to find information through the Internet that may be relevant for their refugee claims. DIAC communicated in May that more computers were in fact coming to Curtin but, to date, they have not arrived. Telephones are available for the men to access if they have purchased phone cards. Most of the telephones are located in outside areas, however, that means that during the many hot days in this region it is very uncomfortable to make calls. The men are not allowed mobiles and it is also impossible for an outside caller to telephone and ask to speak to one of the men, further limiting avenues of communication between the men and their family and friends. In addition, communication between migration agents/lawyers and their clients is difficult to organise. Several lawyers have informed Professor Briskman and Dr Fleay that it can take up to two weeks for Serco to organise meetings between detainees and their legal representatives.

SCHERGER

The communication services at Scherger are extremely concerning. The primary form of communication with the outside world is the brief period in the evenings where the men have access to the Internet, and they communicate with friends via instant messenger. Ms Chan has been advised that they have not been able to receive calls, except from legal agents. They themselves cannot call out.

The remoteness of Scherger means that as with Curtin, detainees are solely reliant on Serco personnel to assist them with communication with migration agents and lawyers, in particular the sending and receiving of papers and documentation related to their case. While some advocates and lawyers have made visits to the centre, after failed IMR decisions many detainees have been unable to obtain assistance with lodging applications for both legal aid and consequently their application to go to the Federal Magistrates Court. It has been communicated to Ms Chan that there are a significant number of detainees who are extremely desperate as they have no way of obtaining a lawyer without outside assistance, and the few representatives who have been able to visit cannot handle the total number of cases requiring help. While advising that advocates can assist with the lodging of applications remotely, it has been reported by detainees and ex-detainees that Serco staff have been refusing to fax or copy IMR outcomes for the purpose of obtaining legal assistance to apply for judicial review.

Whether or not this is true, or whether there has been some form of gross misunderstanding, some detainees have found it necessary to smuggle their original documents in and out of the centre because they believe that no one is there to assist them, and they face the prospect of forfeiting their right to access the courts. Requests to migration agents to forward documentation to family and friends have apparently been ignored, and case managers have been unwilling to help citing that ‘its not my job.’ Whether or not there are legitimate causes for this severe failure in service provision is unknown, but further investigation into just who and what services are being made available to detainees is warranted. This is particularly so in regard to their applications for judicial review, and to the claims being made by detainees that they are being denied the ability to seek help for themselves. Understandably, this is fuelling high levels of stress and desperation, and intense resentment and distrust.

PERTH

Although Perth is one of the more accessible detention centres, recent changes to the visiting policy have meant that any visits that occur at both Perth IDC and at Jandakot (where some asylum seekers are detained in what DIAC have called an ‘alternative place of detention’), have to be in the presence of a Serco staff member in a meeting room. This has meant the minimal privacy that detainees once had, has been completely undermined. The change in policy has had a marked affected on the wellbeing of those being visited. One detainee, who has a history of suicidal ideation, has expressed a concern to Dr Hartley about Serco listening and watching his every move. The visits he once received from members of the public provided a small respite from his life in the detention centre. Now, it has turned into another interaction that he avoids. Many of the men who Dr Hartley has spoken with have expressed similar sentiment.

HEALTH AND MENTAL HEALTH SERVICES

Medical and psychological support services provided at the detention centres are inadequate. Many asylum seekers are on medication for anxiety and depression and are sometimes unaware of the exact reason for their medication.

CURTIN

At Curtin IDC a long line of men waiting for their medication at the end of each day can be observed. Some of these asylum seekers are clearly seriously mentally ill and it is not evident that their conditions are treated seriously. The fact that there has been one suicide in Curtin as well as many attempts reported, and many other acts of self-harm, should alert authorities to the seriousness of the situation. During visits to Curtin IDC, Professor Briskman and Dr Fleay have met a number of seriously disturbed asylum seekers and grave concerns have been held that they are at risk of suicide. Although these concerns have been passed on to appropriate authorities, Professor Briskman and Dr Fleay are not confident that they have been addressed as to date we are aware that at least one of these asylum seekers is still in detention.

There are also inadequate medical services for the men in the Curtin IDC. If a request to see a doctor is made, the men must wait for at least one week before they can talk to a doctor. If there was to be an emergency medical situation, it is unclear to how this would be effectively managed

VILLAWOOD

In Villawood, medical services are woefully inadequate. Daily routines also revolve around visits to ‘Medical’ to receive their regular doses of various medication. Oftentimes detainees are not told exactly what it is that they are taking. When prompted, many detainees were unable to tell the name of what had been prescribed; only that the tablets were ‘for sleeping’ or ‘for headache.’

While our concerns about the adequacy of services at Villawood again mirror observations from the Australian Human Rights Commission’s report (2011), a specific mention regarding response to emergency situations is necessary. With the increase in self-harm and suicide attempts, there have been occasions where it was necessary for emergency services to be called. Due to delays resulting from the need for state emergency services to obtain specific permission from the Department of Immigration to access federal property, emergency services response times have been extremely delayed, or more often than not, not summoned at all. Following the suicide of Mr Akabi in November 2010, it took 45 minutes for emergency services to arrive (Sydney Morning Herald, November 16, 2010). He was pronounced dead at Liverpool Hospital. Detainees have reported that Serco staff have generally been reluctant to call emergency services in a medical emergency, and there have been several incidences where fellow detainees have had to implore staff to take action, seek help from a higher level of management, or if not, summon emergency services themselves.

The most common response to incidents of self-harm or attempted suicide is removal of the detainee to the high security facility Blaxland where they are kept under surveillance. There they are kept separate to other clients by being locked in a facility called the Annex (please see a description of this facility in the Australian

Human Rights Commission’s 2011 report at page 16.) More serious cases are sent to Murray Compound. The AHRC 2011 report describes the Murray Unit as

a small fenced-in compound used to separate individuals from the general detainee population...The Commission’s most significant concerns relate to the downstairs section of the Murray Unit which is extremely punitive. The bedrooms are essentially prison cells. People in these rooms are monitored on CCTV, so they have no privacy. People should not be accommodated in these rooms for any longer than is absolutely necessary...For people placed in these rooms for management of psychological or psychiatric disorders, it should only be until they can be psychiatrically assessed and a psychiatric management plan can be implemented, including admission to hospital where appropriate (2011, pg. 16).

More often than not this simply compounds the client’s distress. The interchangeable use of these facilities to hold detainees at risk of self-harm, and detainees restrained for violence or other disturbances, assist to blur the distinction between supposedly executing a duty of care and distributing punishment.

CHRISTMAS ISLAND

When Ms Dimasi visited Christmas Island detainees in June 2011, at least five detainees had stitched their lips while others were on hunger strikes. Detainees asked Ms Dimasi, ‘*why is your government torturing us in here, we are we being treated this way?*’ Most men that Ms Dimasi met displayed acute and chronic signs of stress, anxiety and trauma. She also learnt that some detainees have been taken in the middle of the night to the medical centre to interpret for those detainees that had self-harmed and attempted suicide. DIAC and IHMS should not be relying on detainees to interpret, especially in such circumstances. One detainee had relayed that after interpreting he had gone back to his room covered in blood and was traumatised by the experience and has suffered flashbacks.

We are extremely concerned about the use of Red Block as a ‘behavioural management’ compound. The decision to change the name to ‘Care Compound’ only distracts from the obvious issue that detainees are suffering mental illness largely because of their incarceration. In August 2011, one detainee told Ms Dimasi that he had self admitted himself to Red Block because ‘my mind is not working and I do not know what I am doing anymore’. He said that while he was kept in there he was only allowed 15 minutes of fresh air outside over 24 hours and that people ‘had gone crazy in there, making animal noises, yelling and screaming all through the night’. Ms Dimasi recently learnt that some detainees who no longer felt safe at NWP because they had reported concerns about other detainees to Serco and DIAC, had little choice but to admit themselves to Red Compound for protection.

While a recent Ombudsman report has identified that mental health staffing has increased, there is significant unmet demand for services (Commonwealth Ombudsman, 2011). For example, we are aware of people who

have to wait weeks between alerting Serco personnel of their mental health concerns (e.g. thoughts of self-harm and suicide) and actually receiving mental health intervention. Similarly, we are aware of individuals having been told they are being transferred to Perth IDC to receive better psychological care and have had to wait many days before receiving this care. In one particular incident, the individual’s negative mental state was intensified by the waiting and uncertainty, and lack of agency and control over their access to this service.

These examples point to a number of problems in the system including a lack of resources and adequate mental health training. Most important, however, they point to potential negligence on Serco’s part. Serco, as a contractor of DIAC, has a duty of care to act upon the mental health concerns of the detainees. We are aware of many occasions where this has not been followed through adequately. Access to mental health services needs to be significantly improved. However, it should be strongly noted that even with increased service access, the system of mandatory detention, particularly in remote and offshore locations, inevitably undermines effective mental health delivery, and other modes of processing asylum seekers – such as allowing asylum seekers to live in the community – are far more preferable.

Recommendation 1: *Repeal all parts of the Migration Act that refer to excised offshore places.*

Recommendation 2: *Offer community-based alternatives to mandatory detention to all detainees.*

Recommendation 3: *Provide adequate support, training and access to mental health services for detention centre staff and contractors.*

(C) THE RESOURCES, SUPPORT AND TRAINING FOR EMPLOYEES OF COMMONWEALTH AGENCIES AND/OR THEIR AGENTS OR CONTRACTORS IN PERFORMING THEIR DUTIES;

(F) THE EFFECTIVENESS AND LONG-TERM VIABILITY OF OUTSOURCING IMMIGRATION DETENTION CENTRE CONTRACTS TO PRIVATE PROVIDERS;

(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;

SERCO

PERSONNEL ATTITUDES, CONDUCT AND SERVICE DELIVERY

Numerous concerns about the privatisation of detention facilities have been consistently raised since the outsourcing of detention management commenced, including transparency, lines of accountability, service provision and training. Most significantly, responsibility for the two primary forms of service provision – care in detention and processing of claims – are being dealt with as separate issues when in fact the one very much informs the other. The limited opportunities and lines of communication between the two groups of service

providers, and the fact that this only occurs at management level, means that risk, potential risk and incidents are only being recognised or communicated once they have occurred. Better communication and risk management strategies could have mitigated the issue entirely.

Further to these general concerns, there are pertinent issues related to contracting of companies such as Serco. The organisational culture of its public service arm has been built around the management of prisons and correctional facilities. As such, their management structures, policies and practices and the attitude of their personnel towards detainees in the execution of their service delivery replicate in many ways the punitive environment of a prison. Given that the Minister has affirmed that the functions of Immigration detention centres are administrative, not punitive, there are a number of questionable and disturbing practices being used by Serco in everyday management of the centres, including the repeated use of physical restraints on detainees during transfers between centres.

When a detainee is to be transferred from one detention centre to another, it is common practice that the asylum seeker will be given less than 12 hours notice, usually after close of business the evening before. This prevents them from calling their case manager, lawyer or community representative to intervene. Most commonly, the detainee will be removed at 5 or 6 o’clock in the morning for transfer. On more than one occasion, detainees have reported that they were physically restrained – handcuffed – particularly if Serco staff thought they would likely resist the transfer. This disempowering and ultimately humiliating practice causes a great deal of fear and unsettlement amongst the detainees. The reason for a transfer is commonly not explained to them; it could be a simple logistical necessity to make room for detainees being brought from Christmas Island, or any number of other reasons that Serco or DIAC deem necessary. While there may or may not be legitimate reasons for transferring detainees between facilities, the manner in which these transfers are being executed almost certainly incites resistance, resentment and fear.

Additionally, such uncertainty causes a great deal of anxiety – it is possible for someone in detention to suddenly disappear and find themselves in a facility in another state, away from any friends or support networks they may have established. The same practice is used to transfer detainees between compounds within a centre, and by the AFP particularly subsequent to a disturbance or riot. Detainees have recounted that for a time after the Villawood riots, many people were afraid to go to the bathroom alone, as Serco personnel have previously used the opportunity to grab detainees as they emerged from the bathroom, knowing that they would be alone. One man was transferred from Fowler to Blaxland compound wearing only a towel having been taken whilst emerging from the shower.

The consistent practice of referring to detainees by numbers rather than name is troubling. When Ms Dimasi visited NWP in June 2011, she noticed that in the post-riot climate detainees were being called by numbers most of the time. In conversations with both DIAC and Serco staff members, they referred to detainees by their numbers. Even in the Interview 1 area when Ms Dimasi was shown by Serco lists of detainees who were scheduled for upcoming interviews and appointments, not once were detainees listed by name but always by number.

There are allegations of abuse of detainees by Serco staff, both verbal and physical. This cannot be said to be a widespread phenomenon, rather the behaviour of a select few whose actions and attitudes towards detainees are given opportunity by the environment of detention and the overarching culture of Serco management and service provision. It is unlikely that many of these incidents are reported. Incidents usually occur when a detainee is perceived to be wilful or non-compliant. Understandably, an asylum seeker may become defensive when met with hostility from a Serco staff member, particularly if they feel the hostility is unjust or unwarranted. Some of these incidents have been filed as complaints to the Australian Human Rights Commission or to the Ombudsman, however, with little evidence from either side, little action can be taken. One man from Villawood whose state of mental health classified him as particularly vulnerable, alleges that following an incident where he broke his own nose out of distress, he was forcibly removed to Murray Unit. At 2 am, he decided to watch TV as he could not sleep. A Serco guard came to him and told him he needed to be locked up but he refused. He claims the guard grabbed him and threw him against the wall, and two other Serco guards came and held him around the neck until his tongue protruded and he fell to the floor. Another incident following the Villawood riots involved a man who was one of the last people to come down from the roof. He too has been identified as a vulnerable man suffering particular mental disorders. Upon his removal to the high security compound of Blaxland, it is alleged that despite other Fowler detainees being lodged in Dorm 2, this man was temporarily put into Dorm 1. The detainees in this dorm were mostly non-citizens who had criminal records. He claims that Serco staff had left him alone in this dorm with the other clients, informing them that ‘this guy is the reason your family couldn’t come to visit you over the Easter long weekend.’ The man was subsequently beaten by other detainees and then moved to Murray Unit. He required substantial medical treatment but was not taken to hospital. Most recently, a failed asylum seeker being escorted to the airport for deportation was allegedly assaulted by Serco personal in an attempt to forcibly put him on the plane. He suffered injuries to his face and body after being punched and kicked while handcuffed. Following the failed attempt to deport him, he was held in isolation in Murray Unit where he alleges he was further threatened by Serco guards. Complaints were made to the police and he received medical treatment at Bankstown Hospital, but no action was taken. More detail can be read on the media statement issued 18th August 2011 by the Refugee Action Coalition (<http://refugeeaction.org.au/2011/08/18/beaten-detainee-faces-deportation/>).

Recommendation 4: *In accordance with the Key Immigration Detention Values, ensure the protection of the inherent dignity of the human person by legislating minimum standards for conditions and treatment of persons in immigration detention*

Recommendation 5: *Enforce a set of standard minimum rules for the treatment of persons in immigration detention that specify the rare instances where it may be appropriate to use instruments of restraint.*

CULTURAL AWARENESS AND SENSITIVITY

Cultural awareness and sensitivity is crucial in the detention environment. Given that detainees have often escaped persecution based on race and religion, it is imperative that appropriate training be provided for Serco, DIAC and AFP personnel in this area. DIAC itself has published reports on the importance of cultural competence in the Australian public sector (Commonwealth of Australia 2006). Anecdotally, some of the Serco staff with whom detainees form the greatest bonds are those who, if they do not share similar cultural or religious beliefs and practices, at least recognise and appreciate the importance of cultural and religious practice to their identities. Just as cultural understanding can help to diffuse tension, oversight and insensitivity to nuanced religious and ethnic tensions can also culminate in avoidable incidents and unnecessary stress.

These incidents can be small, though cumulatively significant. One example includes a Serco staff member who, while escorting two detainees at a court hearing, was responsible for providing them with a culturally appropriate lunch. One had chosen to observe Ramadan and was fasting while the other was not. With all good intentions the Serco staff member had taken pains to ensure the meat was halal and put the two men in a room together so they could be supervised. He then proceeded to become very agitated with the detainee when he refused to eat. What the staff member did not understand was that he had unintentionally caused a degree of discomfort between the two detainees, as the differences in their observance of Ramadan is a source of awkward social complexity.

More troubling, Comcare noted in their recent report that tension amongst detainees was being heightened by Serco's lack of consideration for existing friction between different ethnic and cultural groups. An example of this is the practice of *'rooming detainees together with no regard to their religious beliefs or the long history of extreme conflict between their countries.'* (2011, p12)

While accommodations are made for religious observance, such as prayer rooms and the relaxation of certain restrictions during Ramadan for the sharing of meals in the evenings, other issues such as culturally appropriate clothing for women on Christmas Island has been an issue. There have been occasions where long sleeve and covered garments have not been available for women on Christmas Island. During the time of shortage, they were issued with T-Shirts that left their arms exposed and caused a great deal of distress. In addition, although swimming lessons at the community centre were made available for them, the unavailability of covered swimwear made some of them reluctant to participate.

Similarly, a troubling example in Construction Camp that exemplifies a lack of consideration of cultural differences and, more poignantly, a breach of duty of care has been observed. Due to overcrowding and with an increased number of unacompanied minors (UAM) all the UAM's had been housed in a makeshift dorm in the recreation room, regardless of known tensions between the individuals and ethnic groups. There were known historical tensions between certain ethnic groups and personal tensions had been building with a stream of verbal and minor violent incidents between the UAM's. These tensions were apparent and

unfortunately these were never reported or dealt with accordingly. This lack of any precautionary measures, eventually lead to tensions coming to a head with a large violent incident. The lack of steps taken to address the situation in the weeks leading up to this incident highlights a lack of cultural sensitivity/understanding and a break down in staff's duty of care of UAM's. There were many opportunities to address this growing problems in the weeks leading up to the incident in question, however, a lack of training in handling situations and understanding of the cultural differences between ethnic groups allowed this incident to boil over.

While these oversights were perhaps unintentional and, to a degree, able to be rectified with better understanding, there are of course more grave incidents of culturally inappropriate attitudes displayed by Serco staff. Professor Briskman and Ms Dimasi on Christmas Island witnessed an example of insensitive behaviour in March 2011 when they arrived at the Construction Camp facility to deliver posters donated by the Perth Hazara community for the Unaccompanied Minors (UAMs). The posters were of the deceased Hazara hero, Baba Mazari, to be used in a celebration to take place on 12th March. The Serco staff member refused to take the posters and, in front of the UAMs, said the reason was that ‘they could be pictures of terrorists’.

Recommendation 6: *Make cross-cultural competence a fundamental part of Serco staff performance appraisal. Implementation would include the provision of cross cultural training; and the development of cultural competence management frameworks and guidelines (see Commonwealth of Australia 2006)*

Recommendation 7: *Develop a framework for identifying criteria for assessing the cultural competence requirements of job specifications at all levels for use in recruitment, professional development, performance and appraisal and career development as a requirement for both Serco and DIAC staff members (see Commonwealth of Australia 2006).*

ADEQUACY OF TRAINING FOR WORKING WITH SUFFERERS OF TORTURE AND TRAUMA

One of the major current concerns is that there are clear ethical and professional issues in Serco personnel not being properly trained to deal with people who have significant mental health needs. One of the key issues in relation to outsourcing immigration detention centre contracts to private providers is the lack of accountability inherent in having at least two layers of responsibility, and this leads to clear communication breakdowns. As numbers of men, women and children detained have increased over the past few years, it is evident there has been inadequate screening of employee suitability. Although some Serco staff are responsive and flexible to the needs of those detained, others have been observed in some of the detention centres to be clearly exercising the power that their position gives them over the lives of others.

What is of particular concern is the clear lack of understanding and expertise on how to handle traumatised asylum seekers. Professor Briskman and Dr Fleay are aware of situations where asylum seekers have attempted suicide and other detainees have had to provide assistance because the Serco employees have either been unable or unaware of how to manage the situation or have acted completely inappropriately.

This, of course, serves to further traumatise those detainees who have been required to assist. In addition, Dr Hartley has heard Serco staff at Perth IDC referring to people on suicide watch as ‘the crazies’ to other staff members. This type of behaviour is unprofessional and demonstrates the personnel’s lack of sensitivity and knowledge of how to act appropriately around situation of mental health. While we acknowledge that not all staff act inappropriately, we believe there is a developing culture of such unprofessionalism and disrespect for asylum seekers.

In addition to the inability of Serco staff to deal with emergency medical situations, with the increasing amount of self-harm and suicide occurring in detention, staff are simply not equipped to deal with the extremely distressing situations that they are now finding themselves needing to attend to. This includes responding to suicide attempts (see <http://www.smh.com.au/nsw/second-death-at-villawood-sparks-hunger-strike-20101116-17ung.html>) and dealing with detainees who threaten to self-harm. Earlier this year in 2011, a detainee barricaded himself in his room and held a piece of glass to his neck threatening to kill himself. Thirty staff were engaged in a standoff that lasted several hours. Other detainees report that if and when they indicate to staff that they intend to hunger strike or self-harm, they are threatened with removal to the Annex in Blaxland compound.

The frequency of attempted suicide and self-harm on Christmas Island is increasing at an alarming rate. One staff member who worked at NWP told Ms Dimasi that a senior Serco staff member told new staff that Christmas Island is the ‘best place to get experience as there are attempted suicides daily’. On Christmas Island, where attempted suicide and self-harm rates served as the impetus for the Ombudsman’s inquiry into mental health in detention, Serco has found it necessary to issue staff with knives with the specific purpose of cutting down detainees who have attempted to hang themselves (please see <http://au.news.yahoo.com/thewest/a/-/newshome/9699651>).

Although there are mental health policies and procedures regarding detainees, not everyone with detainee contact employed by Serco has undergone mental health training.

...those with administrative rather than client-contact roles were sent to training. Those with least understanding of issues of mental health, but who had the potential to have the most impact on client day-to-day functioning, were often given truncated courses in the policies, leaving them lacking in understanding of core concepts, or without the capacity to use the policies to the clients' advantage (Gordon, 2011, p.13).

This lack of training around mental health and policies and procedures not only profoundly affects detainees, but also those working with the detainees who are exposed to self-harm and suicidal behaviours. The worker’s despair is heightened for those working in the remote centres, such as Christmas Island and Curtin, where they are without their families, with few support systems and other ways of disengaging out of work time. It is not uncommon for staff on Christmas Island for extended periods to turn to alcohol in order to deal

with the intense stress. The magnitude of the trauma they themselves face culminated in the recent suicide of an Curtin Serco employee following an incident where he was required to cut down a nineteen year old asylum seeker who had attempted suicide (see <http://www.smh.com.au/national/living-hell-hole-still-taking-a-toll-20110712-1hbr4.html>).

The most troubling incident that illustrates not only an insensitivity towards detainees, a disregard for the vulnerability of sufferers of torture and trauma and the problematic focus by service providers on managing the symptoms rather than addressing the issues of detainee violence and self-harm, was the conduct of Serco staff training in preparation for ‘incidents’ in detention. This training involved a simulated confrontation between staff and a highly distressed asylum seeker, a role played by an interpreter. This exercise, which involved the re-enactment of an Afghan asylum seeker displaying symptoms of extreme distress following a rejected claims outcome, was done in full view of detainees, some of whom openly wept. Five days after this, a young Hazara male committed suicide at the centre (see <http://www.theage.com.au/national/asylum-seekers-traumatised-by-exercises-20110506-1eca6.html?skin=text-only>).

The impact of staff attitudes towards detainees cannot be understated. As the one group of people who have the most contact with detainees on a regular basis, Serco personnel are best placed to have the greatest influence on a detainee’s experience of immigration detention. Many detainees in fact forge close friendships with individual staff members with whom they have regular contact, and anecdotally, the impact that a caring, nurturing and respectful staff member can have on a detainee, particularly during times of stress, can be in fact profound. As the recent Comcare report (2011) noted, initiatives that increased detainee morale and reduced conflict revolved around amendments to service provision encouraging healthy and consistent routine, cultural and racial understanding and an environment of dignity, respect and ownership of space and property. These changes were hinged on the staff’s ‘humanitarian’ attitude toward detainees. ‘A senior Serco officer described the new [Christmas Island] approach to detainees by stating that ‘80% of a Serco officer’s work is social work, the other 20% is to make sure they don’t climb the fence’ (2011, pg. 11 at 79).

As the only other group of people who bear witness to the environment and culture of detention, and who have the greatest opportunity for insight into the needs, health and well-being of detainees, it is in our opinion unfathomable that more emphasis is not placed on giving staff a skill set capable of dealing with individual detainee needs and concerns, and in the event issues arise that require address, to have structures for recognising and reporting these. The staff at Villawood detention centre were well aware of the volatile level of tension that ultimately led to the riots. That an incident was imminent would have been immediately obvious to staff members regularly in the compounds, however no channels exist for staff to assist detainees to communicate their frustrations either to DIAC or to management, nor are they equipped with the skills or knowledge to diffuse rather than aggravate their distress. The issues that cause people to become distressed and violent could at least be mitigated by their daily care providers if they had the skills to recognise and address them, and the opportunities to communicate them to relevant bodies that would take heed. Communication breakdown is inevitable when responsibility for the two primary forms of service provision –

care in detention and processing of claims – are separated and lines of communication between the two groups of service providers are not established at all levels.

Recommendation 3: *Provide adequate support, training and access to mental health services for detention centre staff and contractors.*

Recommendation 12: *Develop a collaborative risk management strategy between DIAC and Serco to identify, communicate and address issues that traverse both spheres of responsibility.*

Recommendation 13: *Shift the focus of staff training from incident prevention to equipping staff to recognise, report and address detainee concerns.*

Recommendation 14: *Develop opportunities for communication between the two service providers at more than just the management level.*

(H) THE REASONS FOR AND NATURE OF RIOTS AND DISTURBANCES IN DETENTION FACILITIES;

It is no coincidence that riots occur in a system that lacks accountability. We do not have riots in our detention centres because we have a riotous group of refugees; we have them because we run appalling systems (Harding 2001).

The Australian government (in particular DIAC, federal government Ministers, the AFP) and Serco’s response to major disturbances (riots) is erroneously based on populist lay theories of riots and serves to inflame rather than avert or de-escalate high risk situations. Australia’s system of mandatory detention can be seen as almost laboratory incubators of riots and, given the high risk of riots in this environment, it is incumbent upon the government and its agencies to inform itself of ‘best practice’ management and policing strategies to reduce the incidence and intensity of such events.

The Australian government was advised by the Australian National Audit Office (ANAO) in 1998 that a ‘major disturbance’ was the ‘chief security risk’ in immigration detention and warned DIAC that the boredom in detention centres was a major factor heightening the risk:

... the boredom and monotony of life in the [Immigration Reception Processing Centre] IRPC has the potential to be the catalyst for problems amongst or with residents. Residents are considered to have far too much unproductive time in which to ponder, speculate and react to rumours as to their fate (ANAO 1998, 47).

The ANAO recommended that the Department introduce and expand work, education and recreation programs in detention in order to reduce the risk of a major disturbance. It further noted that ‘the more

control detainees had over their daily activities and benefits, the better their behaviour’ and recommended that ‘use of this strategy in the IRPC could aid compliance and security at the IRPC’ (ANAO 1998, 46).

There is little evidence that DIAC has heeded this advice in the 13 years since it was issued. Consequently, riots in detention centres are once again an issue.

WHY DO RIOTS HAPPEN?

Populist lay theories of riot explain the phenomenon through reductionist ‘mob psychology’; a group of disaffected people feeling highly charged emotions, causing them to become highly suggestible. The group is infiltrated by malicious or criminal individuals determined to create chaos and destruction for their own selfish gain (Waddington 2007, 38). The riot is seen to be sparked by a trivial incident and is an entirely illegitimate and disproportionate reaction evidencing the herd-like nature of the participants and the pathological immorality or criminality of the leaders. Media reporting of riots generally follows a framework of ‘moral panic’ and participants are portrayed as irrational hooligans and criminals hostile to society (Scruton et al 2001, 115). Negotiation and discussion with destructive and irrational delinquents holds no promise, strong-arm policing and a determined and uncompromising reassertion of state control is the only credible response.

This view of the riot has a long history, but has been resoundingly rejected by sociologists, anthropologists and criminologists since at least the 1960s as too simplistic to adequately explain a complex social phenomenon (Randall 2006; Waddington 2007; Horowitz 2001; Carrabine 2005).

Riots happen, not where there is a concentration of anti-social individuals, but where particular social conditions are met. These social conditions are as follows:

General pre-conditions

- Deeply held grievances,
- No access to redress,
- Generalised hostile belief,
- Close proximity and communication, and
- Breakdown in state/authority – community relations

Immediate preconditions:

- Precipitating incident,
- Communication and exceptional norm building, and
- Mobilisation and escalation

This model holds true whether the riot is in immigration detention, a prison, an alienated inner urban community or a deeply divided developing nation (Randall 2006; Waddington 2007; Horowitz 2001; Carrabine 2005).

DEEPLY HELD GRIEVANCES

Australian researchers Sultan and O’Sullivan (2001) documented common psychological reactions of asylum seekers to their detention after their first rejection and corresponding fear of over deportation. They argue that many asylum seekers’ take ‘non-compliant’ action against their detention. The nature of this action is argued to vary: from engaging in hunger strikes and other non-violent demonstrations; to advocating (e.g., attempting to raise public awareness about the realities of detention); to engaging in confrontations, riots, detainee-guard conflict, self-harm and other inter-detainee violence. Current and former immigration detainees have told of persistent problems in detention. These can be broken into ‘chronic’ and ‘acute’ problems.

Acute:

- Arbitrary and excessive use of force and isolation detention by guards
- Indiscriminate policing of detainees

Chronic:

- Paucity of information
- Length of time
- Overcrowding
- Bad food
- Little control over aspects of daily life
- Few meaningful activities
- Too much unstructured and unproductive time
- Isolation from broader community
- Dehumanising practises (such as being called by number)
- Musters
- Lack of privacy

Detainees are given little information about the status of their asylum application or how long they can expect to remain in detention. This causes immense stress. Furthermore, while in detention they have little to do other than worry about their case and the welfare of family overseas.

The issue of slow processing and poor information flows was identified as a major issue in several previous inquiries and reports including the 2004 HREOC Report *A Last Resort*, the 2001 Joint Standing Committee on Migration *Not the Hilton. Immigration Detention Centres: Inspection Report*, and the 2008 People’s Inquiry into Detention *Human Rights Overboard*. DIAC introduced its case management model in an attempt to address this concern, but the model has not resulted in improved information flows.

DIAC denies that either Serco or DIAC personnel address detainees by their detention identification numbers, but a number of authors of this submission have witnessed the practice on multiple occasions and in several

different detention centres. It appears to be widespread practice. Similarly, some Serco staff refer to detainees in derogatory ways, such as calling those on suicide watch as ‘the crazies’. We believe that there is a culture between DIAC and Serco staff that supports a profound dislike of detainees and perhaps even disgust.

In his article, Reza Faraz attempts to explain further reasons for detainee distress:

some of these men have been in detention for extremely long periods, waiting months for assessment results or dates of review while new arrivals have been getting their visa applications approved within two or three months. The Immigration department is provoking detainees with its seeming disregard for procedural order and fairness. The apparently arbitrary and unpredictable manner in which application outcomes are being determined and the inconsistent determination times and waiting periods between groups of detainees is fuelling existing internal tensions. The opaque nature of the assessment and review processes and the unwillingness of the department to respond to repeated requests for explanations and information is fostering high levels of frustration and helplessness.

Repeated requests to the Ombudsman, Australian Human Rights Commission or other overseeing bodies to intervene have for the most part done very little. On top of all this, frequent pressure by their immigration case managers to give up their waiting and sign papers to voluntarily return confirms their belief that the Department is less concerned with determining the merits of their case but creating an environment so intolerable they have few choices but to go home to be killed, harm or kill themselves, or continue to be subjected to waiting with no projected end (Faraz, 2011 of <http://www.abc.net.au/unleashed/2813250.html>).

The above is a very brief outline of the daily environment in detention in which detainees must live. On occasion there are acute or critical incidents. Ms Fiske interviewed people who had been detained between 1999 and 2005 in every mainland detention centre. The interviews revealed a persistent pattern of arbitrary and excessive use of force by guards (then ACM). The following are some quotes from those interviews:

They were so cruel what they were doing to us. They were taking us by force like middle of night when we were sleeping. For example you see 40 or 50 people they come to your room, 40 guards, fully armed. They come to your room in the middle of the night at 3.00 or 4.00 in the morning, they take you by force. They put you in isolation room and when you are in isolation room you just feeling so frustrated, like you go crazy in there. It’s just because you see four walls around you. It drives you mad you know... (Baxter)

There were some people who were psychopathic, the way they acting, they enjoy that sort of torture. The day they beat a guy because he was asking for a sleeping tablet. I couldn’t believe that the guy I knew would cry that loud under a punch. It wasn’t a punch, but the way they putting him on the floor and squeezing his hand and he was crying so loud. I was thinking ‘God, what is this guy thinking? Is he enjoying that level of torture? I mean, that level of crying noise? (Woomera)

We just saw some, a very hard line treatment and it was typical every day, every morning, every night. (Curtin)

Ms Chan has been visiting people currently detained and has discussed the recent riots with detainees. A similar pattern of concerns (particularly of ‘extracting’ suspected ringleaders without a proper investigation, consequently resulting in removal of people who were not involved) is emerging. Detainees report that AFP rely on Serco’s ‘recommendations.’ The use of punitive action to make an example of a certain few in order to deter others has been used before in detention, both on Christmas Island and in Villawood, and in both circumstances this has had the opposite intended effect. Following both incidents, a group of clients were selected by AFP under the advice of Serco to be publically and forcibly removed and locked down in a separate compound without access to facilities for several days if not weeks. In the case of Villawood, a number were locked down in a dorm of the high security facility of the centre, and 22 were arrested and kept in solitary confinement in Silverwater jail. The arbitrary and indiscriminate way that people were selected for punishment, which according to the detainees included a significant number of people who were not involved in the activities for which they were being detained, not only raised their ire but also confirmed their initial distrust of the authorities. In the case of Christmas Island, this resulted in a threat to mass harm; in Villawood this has created an even deeper resentment that has the potential to reignite unrest. In some form of acknowledgment of this, the suspected ‘ringleaders’ from the most recent disturbance of Christmas Island have not been kept in Red Block but moved to Silverwater Jail on the mainland.

The first major riot in an Australian detention centre in August 2000 was triggered by ACM taking people wrongly suspected of participating in an earlier protest to an isolation unit. Fellow detainees attempted to negotiate with centre managers for the release of two people who were wrongly isolated. When this was refused a further protest ensued which ultimately escalated to a riot. Intransigent and over-strong policing was a significant factor in the escalation. (For further information on this see Allan Clifton’s testimony to the 2004 HREOC Inquiry at http://www.hreoc.gov.au/human_rights/children_detention/submissions/clifton.html). Early reports of the March riot on Christmas Island show a disturbingly similar pattern of events: an earlier nonviolent protest (escape) followed by ‘extraction’ of suspected leaders and removal to Red Unit, attempted negotiations for the release of those not involved, refusal and further protest, over-strong and indiscriminate policing leading to an escalation of events and ultimately, a riot. (For more on this see a detainees view available at: <http://www.abc.net.au/unleashed/2717968.html>).

NO ACCESS TO REDRESS

In each case of riot that ASCI and CHRE has examined, there have been multiple earlier attempts to resolve grievances through the proper channels. Detainees are expected to lodge a form to request basic items or services or to make a complaint. These forms are themselves quite difficult as they are in English and are very much a culturally specific and bureaucratic way of addressing issues, but more importantly – the system doesn’t work. People detained ten years ago complained repeatedly that they filled in literally hundreds of forms and the typical responses were ‘All they answer ‘No’, ‘We don’t know’ or ignore it. It didn’t do anything.’ On a visit to Christmas Island in 2010, detainees made exactly the same complaint to Professor Briskman and Ms Fiske. We met one woman who had lodged 5 written requests to see a doctor and had yet to receive a response. Each time she raised this verbally with a Serco or DIAC worker she was advised to lodge a request form.

When established mechanisms fail, smaller scale protest actions (such as marching around the compound chanting, staging sit-ins outside administration buildings, writing letters to outside sources, lodging formal complaints with AHRC and the Commonwealth Ombudsman and more) have been launched. Some of these have resulted in meetings between detainees and DIAC or other officials (the Ombudsman, Immigration Detention Advisory Group and the Australian Human Rights Commission), but detainees report that these meetings have resulted in promises being made and assurances given with few or no actual changes following.

‘After a week some people from the Ombudsman came to listen to detainees’ complaints. They came and sat down with clients’ representatives, and promised that they would pass on detainees’ concerns to the Department of Immigration. However, after a couple of months no one noticed even a slight change in Immigration’s way of processing the cases. Instead of implementing a change, they started to promise detainees that everything would be better in March, and that there would be a lot of noticeable changes, such as a speed up in the processing time for cases, and many other promises.

When March came, however, not only had nothing special happened, but also many people started to get rejected for a second time. For the first 10 days of March many rejections were handed out. This caused even more anger and frustration for detainees, because of the false promises from Immigration, and vows that were never fully met. (Anonymous, 2011 at <http://www.abc.net.au/unleashed/2717968.html>)

This results in a loss of trust in the ‘proper’ channels for dealing with issues. When official channels for resolving grievances are seen to be ineffective, alienation from the existing social order grows and proposals by members of the in group to launch other methods outside of the system such as protest, strikes or riot begin to gain traction.

Recommendation 11: *Completely overhaul the case management system and the form filling. Responding to detainee requests and complaints should be made a key indicator against which performance is measured and reported.*

GENERALISED HOSTILE BELIEF. CLOSE PROXIMITY AND COMMUNICATION. BREAKDOWN IN STATE/AUTHORITY – COMMUNITY RELATIONS

For brevity, the final three pre-conditions have been collapsed. Further information can be provided upon request.

The combination of deeply held grievances, intransigent management, overly strong policing of smaller protests and the failure of established systems for dealing with detainee concerns causes progressive breakdown in detainee-authority relationships. Feelings of antagonism, hostility, fear and distrust grow (among both detainees and officials) resulting in a highly polarised and conflictual environment in which people begin to see themselves as being on opposing ‘sides’. When detainees witness disciplinary action against a fellow detainee, they are unlikely to see this as a just action and are likely to interpret it as an offense against them as a group. It is imperative that disciplinary actions are seen to follow procedural fairness and principles of natural justice.

Detainees are, by necessity, living in close proximity to one another, which provides an ideal environment for rapid communication, which may include facts, partial or distorted facts, and rumours. In the lead up to the August 2000 riot in Woomera detainees believed that people held in isolation detention were being tortured by guards and this belief had a profound effect on developing the heightened sense of fear, threat and hostility which is necessary for a riot to develop.

The escalation to a riot involves a series of actions and reactions that serve to reinforce generalised negative and homogenising beliefs about the other group and the threat that they pose. These reinforced beliefs also shape the actions and reactions of each group. Criminologists specialising in the policing of riots advise that recognition of this pattern, of maintaining evidence-based police action targeted only at specific individuals, and maintaining communication with leaders is essential (Waddington 2007). There is little evidence of this in the lead up to riots in Australian immigration detention centres by relevant agencies.

Unfortunately there is little information available in the public realm about the actions of Serco, DIAC or AFP regarding the lead up to the recent riots or the actual riot itself. It is concerning to read of the use of teargas and beanbag bullets and this use of force needs to be independently examined. The similarity of events in 2000 and 2011 raises concerns about what institutional learning has taken place within DIAC and the AFP.¹

¹ Further insight into the causes of riots in both Christmas Island and Villawood detention centres can be read in ASCI’s Submission to the Inquiry into the Migration Amendment (Strengthening the Character Test and

Recommendation 8: *Ensure that key personnel in DIAC, Serco and AFP undergo specialist training in riot prevention and de-escalation.*

Recommendation 9: *Extend the terms of reference of the current investigation into the March 2011 riot to include examining the actions of the AFP.*

Recommendation 10: *Develop clear guidelines for managing detainee protest at earlier stages within a framework that seeks to maximise accommodation of reasonable detainee concerns.*

IMMEDIATE PRE-CONDITIONS

In this volatile environment, a particular event will occur which can act as a ‘trigger’ for the generalised hostility and apprehension to erupt into violence. The trigger event itself may be relatively minor if considered in isolation, but the event will be emblematic of many similar injustices and needs to be understood as one event in a long chain of events.

A former detainee spoke about the first Woomera riot and how people being taken, in the minds of the detainees, unjustly to isolation following a nonviolent protest provoked the detainees to retaliate to the next Centre Emergency Response Team (CERT) operation. He told of people feeling ‘frustrated and frustrated’ and how CERT Operations ‘just put on your anxiety and then you lose it.’ A detainee witness to riots in Christmas Island detention centre told a similar story of a nonviolent protest by detainees, followed by Serco deciding a ‘show of force’ was needed and organising what the detainee termed a ‘snatch and grab’ operation to remove twenty suspected ringleaders from the main compound.

This not only did not help to calm the situation down, but created more anger and frustration among other detainees ... Not surprisingly, other detainees responded to the arbitrary arrests, and broke into the high security Red Compound in an attempt to free the 20 people who had been taken away in handcuffs. It was then that the police used tear gas and fired beanbag rounds.
(Anonymous 2011)

The detainee explained that police and Serco actions ‘enraged the crowd, and some lost their control and started to cause property damage by setting some tents and canteens on fire and smashing CCTV cameras.’

Within this heightened state of threat and passion, someone must propose retaliation for a riot to develop. The proposal may be verbal or through a ‘spontaneous’ hurling of an object at a building or representative of authority. Dynamic leaders may emerge at this point – who lead the action. These leaders may be long-term

community leaders or simply the most persuasive speakers or actors present (Hundley cited in Waddington 2007, 42). Most theorists agree that the state’s response at this point is crucial in determining whether the disturbance escalates to violence or is dispersed. Hundley, Speigel, Waddington and Lea and Young all concur that police need to be careful not to confirm the crowd’s view of them as seeing the group as an amorphous whole (Waddington 2007, Lea and Young 1982). If police ‘manhandle everyone in sight’ the situation is likely to become inflamed, police need to be careful to discern which individuals within the group are engaged in violence and make arrests selectively and with the minimum use of force (Speigel cited in Waddington 2007, 46). Hundley recommend that police contact leaders within the community and ‘furnish them with meaningful concessions to put to their constituents’ (cited in Waddington 2007, 43). Indiscriminate arrests, excessive use of force and refusal to enter into negotiations are all likely to have escalatory effects (Wilkinson 2009). Similarly, public statements by politicians and other leaders that vilify the protesters and close off opportunities for political re-engagement will do little to avert violence or bring it to an early end.

Following the most recent spate of riots on Christmas Island, detainees once again report the extreme use of force used by AFP during the removal of people suspected to be ‘ring-leaders’.

They dragged those involved onto the ground and started beating them up with batons. I could hear them begging AFP guards not to beat them. We were all terrified and shaking with fear. The whole scene reminded us of the way we were similarly assaulted by police in Iran (Anonymous, 2011).

An ex-detainee, Reza Faraz, recently wrote an opinion piece regarding DIAC, Serco and the AFP’s heavy handed responses, and its punitive policies of deterrence that continue to fuel detainee resentment.

We have seen that condemning and charging rioters has not only been unable to stop detainees from being violent but has not been able to stem the frequency of such riots happening. They have made the detention centres a battlefield where detainees get assaulted and humiliated. Is this really a workable and sustainable solution? Does the government think that treating detainees this way is going to make the underlying issues go away? (Faraz, 2011, see <http://www.abc.net.au/unleashed/2813250.html>)

Given that Australian immigration detention centres structurally produce all the pre-conditions for riots, it is incumbent upon private security companies, the Australian government, DIAC and AFP to familiarise themselves with sociological explanations of riots and their development and use this expertise to manage detention centres and engage with detainees in ways which are more likely to avert riots. Successive Australian governments have seemingly been unable to extricate themselves from populist lay theories of riot and have released media statements that reinforce the view that detainees riot because they are inherently riotous people. This paradigm serves to both reinforce the perceived need for detention (as ‘these people’ are

dangerous) and prevents governments from recognising legitimacy in detainees’ concerns and negotiating accordingly, as recommended to it by the ANAO in 1998. The populist driven electoral cycle has taken precedence over knowledge-based policy decision making to the detriment of all involved.

(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;

The reporting of incidents of self-harm and suicide attempts are inadequate and inconsistent. For example, we have experienced situations where self-harming behaviours have been alerted to us, and Serco staff have clearly not known the correct procedure of what to do in that incident.

We are also aware of the issue of Serco staff on Christmas Island feeling pressured to not report incidents of self-harm and suicide attempts because they are seen to be breaches of contractual obligations with the government, resulting in significant monetary fines. This demonstrates the serious conflicts of interest that arise when the provision of care is contracted to a for-profit organisation such as Serco (see <http://www.theage.com.au/national/christmas-island-selfharm-on-rise-20110522-1eyyq.html>).

Similarly, as documented above, we are aware of incidents of requests to see mental health specialists that have either gone unheard or taken a long time to address. If detainees are meant to be receiving comparable health services to the Australian community, as DIAC would suggest, then there is a clear need to improve access to health and mental health services.

Recommendation 3: *Provide adequate support, training and access to mental health services for detention centre staff and contractors.*

Recommendation 11: *Completely overhaul the case management system and the form filling. Responding to detainee requests and complaints should be made a key indicator against which performance is measured and reported.*

(R) PROCESSES FOR ASSESSMENT OF PROTECTION CLAIMS MADE BY IRREGULAR MARITIME ARRIVALS AND OTHER PERSONS AND THE IMPACT ON THE DETENTION NETWORK;

Detainee resentment of the process of assessment is fundamental to understanding their frustration. The primary causes of this resentment are:

SERVICE PROVISION AND PROVIDERS

- Varying capability and competency of migration agents
- Inaccessibility or unavailability of case managers
- Lack of information being provided about the status of their cases

- Attitudes of case managers and reviewers
- Perceived bias of particular merits reviewers
- Complete lack of service and support for asylum seekers to obtain lawyers and access the courts (resulting in further delays)

PROCESS

- Time taken to hand down decisions, issue review dates
- Arbitrary and extensive delays of processing outside of their control
- Apparent inconsistencies in assessment outcomes
- Poor or unreliable interpreting services during interviews
- Alleged use of outdated or incorrect country information
- Perception of procedural unfairness

SERVICE PROVISION AND PROVIDERS

There are clear inconsistencies in the assessment process. Of the IAAAS providers, there are firms that are well known to be very attentive to their clients and their cases, and there are some whose reputation is otherwise. Whether or not this can be corroborated with case success rates is not known, but anecdotally, this is the case. Some migration agents are experienced and clearly prepare thorough submissions on behalf of their clients, while others do not. The same observation can be made about DIAC case managers. As previously discussed, high turnover rates and unmanageable caseloads would certainly contribute to the inconsistent provision of support for detainees. As mentioned elsewhere in this submission, it is imperative that service providers with greatest contact with detainees act to mitigate unnecessary distress.

We acknowledge that DIAC case managers face the often contradictory task of being their client’s representative to the Department, in highlighting their client’s concerns and ensuring the their needs are met, while at the same time being agents of the Department in implementing departmental policy, and handing down rejections, all the while being given little information or authority to deal with the ethical contradictions that arise between these opposing responsibilities.

However the tendency for case managers to simply leave their clients in the dark, fail to take or return their calls, and visit only when some serious incident occurs in detention or some paperwork needs to be signed, causes the detainees an excessive amount of frustration. Their case managers are their only means of access to DIAC and the claims process. Failure to at least demonstrate that they are doing their best to represent their interests means that detainees must try to find other ways of making their concerns known. Detainees have expressed to Ms Chan *‘it is like they want me to harm myself. The ones who have cut themselves, they get their visas. I don’t want to do these things. But sometimes I think if I don’t, I will be waiting forever.’* Other detainees have expressed on more than one occasion that upon enquiring about the status of their

application, they have been told to ‘either wait, or sign and go home.’ Statements like these from the people charged with representing their interests consolidate their distrust of DIAC.

An example of DIAC administrative problems is highlighted in an incident with a man on Christmas Island, which forced him to stay an extra 6 months longer in detention, when another person’s file and photo was attached to his name. Even after a series of interviews, DIAC staff had not realised that this photo or file did not match the person sitting in front of them. This problem caused this man significant anxiety and distress, throughout the process and the length of detention. After already waiting five months to be processed, he had to wait a further six months for the correct documents to be processed, unduly making this man stay in detention for 11 months.

Most recently, it seems that case managers have been given the directive to put pressure on their clients to sign forms for voluntary return. For detainees who have received a negative IMR outcome and are in the process of applying for judicial review, those without confirmation of their court application are being visited on a fortnightly if not weekly basis by their case managers who advise them to sign papers for voluntary return or risk waiting in detention and facing forcible return in the future. In his July article in the Drum, Reza Faraz states that it ‘*confirms their belief that the Department is less concerned with determining the merits of their case but creating an environment so intolerable they have few choices but to go home to be killed, harm or kill themselves, or continue to be subjected to waiting with no projected end*’ (<http://www.abc.net.au/unleashed/2813250.html>).

For those who fail their IMR there is not automatic availability of legal representation and they must rely on pro-bono lawyers where available. These asylum seekers are told very little about the process by DIAC and are thus largely unaware of the process they must follow to find a lawyer. For example, numerous men at Curtin IDC during Dr Fleay’s recent visit asked for information about the process. In addition, two men in Curtin were recently told that their IMR decisions were negative and they are unlikely to have been given the support and direction necessary to understand and navigate their way through the judicial review process. That this is the case appears clear given that the two men were on hunger strike for thirteen days after hearing of their IMR rejection out of despair. Even though steps are being taken in relation to rectifying these process issues, the lack of understanding of this process, and communication of this information to detainees themselves, are heightening their distress. Process related issues regarding access to judicial review are numerous and pressing and we refer to the Public Interest Law Clearing House (PILCH) submission to the inquiry for further details of these concerns.

Recommendation 19: *Ensure that access to judicial review is wholly incorporated into the offshore processing structure, including:*

- *provision and accessibility of information for asylum seekers regarding their rights to and the process of applying for judicial review of their review outcomes;*
- *provision of services to assist asylum seekers to obtain a lawyer;*

- provision of funds to finance lawyers for their work in the judicial review process;
- briefing and training of DIAC officers and case managers on the judicial review process.

PROCESS

ORDER AND TIME

There does not appear to be an identifiable order followed for the scheduling of IMR interviews. Thus asylum seekers waiting for their IMR have little idea when it might be likely that their interview will be scheduled. Recently, unrest and resentment has been building amongst detainees at the perception of apparent procedural unfairness, and the arbitrary nature of delivering visas. Clients who arrived between December 2009 and the early months of 2010 have found their cases have been moving extremely slowly, with many suffering delays with the freeze on Afghan and Sri Lankan processing. This was followed by the suspension of processing in anticipation of the outcome of the M61 and M62 High Court challenges. The opportunity for Federal Court review of IMR rejections became available in March 2011 and for those asylum seekers able to access this review, this means further months in detention as they wait for their court decision and, if positive, another IMR. These cases are only beginning to enter the Federal Court. Client despair is rising as they know that even after waiting months for a lawyer, then a court date, even if they have successful outcome, they stand to wait many more months for another date for an IMR and even longer for an outcome. For some, it has been their experience that it takes approximately 3-4 months for a review date to be issued and anywhere between 4-10 months for an outcome to be delivered. Meanwhile, they report that later boat arrivals have been receiving visas within 2-3 months of assessment. Whether or not there is some bureaucratic reason for this occurring, anger and despair is heightening, and in the case of Christmas Island, has already resulted in unrest (see <http://www.abc.net.au/unleashed/2813250.html>). A man in Villawood described to Ms Chan his bewilderment at the random, unpredictable nature of visa acceptances, *'its like the department puts everyone's cases on the table and turns on the fan.'* Another claimed that he knew of a man with exactly the same case as he from a later boat who had just received his visa. He himself was appealing his third rejection in the Federal Magistrates Court. Many other detainees and ex-detainees report very similar incidences in Maribyrnong, Scherger, Christmas Island, Curtin and Villawood.

The length of time waiting for ASIO security clearances is also far too long and the process followed unknown. For example, some of the men at the Curtin IDC with favourable refugee claim decisions have waited seven months for security clearances. Given that there is no progress on the status of this assessment provided during the waiting period, this exacerbates the high levels of anxiety, depression and tension with the detention centre. There are a rising number of detainees who face the prospect of indefinite detention, having been determined to be a refugee but failed their security clearance, and with no information or on what basis as to how or why that outcome has been determined. They have no avenue of appeal nor can they challenge the determination against them.

Recommendation 16: *Return to the 90-day timeframe for the processing and finalisation of RSA decisions.*

Recommendation 17: *Establish a time frame of a maximum 6 weeks within which an IMR must be conducted after a negative RSA decision.*

Recommendation 18: *Establish a timeframe of a maximum 8 weeks from time of interview within which Independent Merit Reviewers must submit their final decisions to asylum seekers.*

OUTCOMES & FAIRNESS

There are also disturbing inconsistencies between DIAC officials and IMR reviewers in their findings on refugee claims. We find it extremely concerning that while there are avenues for review of decisions, there is no oversight of the decision making process, nor the decision makers. The majority of asylum seekers who receive visas attain them at some point during the review process. Anecdotally, at what point this happens appears to depend on which reviewer a detainee receives for his IMR. While it is assumed that the reviewer considers each case according to its factual merit, the opportunity for reviewers to make ultimately subjective decisions based on either the facts of the case, or the credibility of the interviewee based on his performance at the interview on the day, is reflected in the patterns of outcomes and the bases for which rejections or acceptances are being dealt. The basis for our concern comes directly from the detainees. It is well known amongst them which reviewer is most likely to accept and which reviewer will most certainly reject, depending on which country the applicant is from. For example, there is one particular reviewer that Afghan Hazaras fear being assigned, because he has allegedly, in the course of the interview, communicated that Afghanistan is safe for Hazara. Detainees feel that it is almost impossible for a reviewer to consider with any fairness the facts of their case given his prejudice. Accordingly, all Afghan Hazara he reviewed at the beginning of this year were rejected on essentially similar grounds. Whether or not his prejudice is grounded in fact or knowledge, another reviewer with different sympathies may accept an application whose case appears to be very similar. It is for this reason that detainees feel that the decision making process appears to be arbitrary, as there is no consistency between reviewers. While understanding that some form of regulation or framework for ensuring the consistency of review outcome would undermine the ‘independence’ of the merits review, one question that begs asking is why the majority of people being found to be refugees are consistently being failed at the initial Refugee Status Assessment stage. Ensuring that decision-making at this level is consistent, and more vigorous and thorough would prevent the need for extensive systems of review at all.

It is only now, with cases going before the Federal Magistrates Court, that patterns of review outcomes coming to light can potentially be documented.

Recommendation 15: *Conduct a review of country information relied upon by DIAC case officers for RSA decisions. Ensure such country information reflects recent reports regarding Afghanistan by acknowledged experts such as William Maley.*

Recommendation 20 *Conduct an independent inquiry into the system of assessment and review of refugee claims, including RSA and IMR decisions.*

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