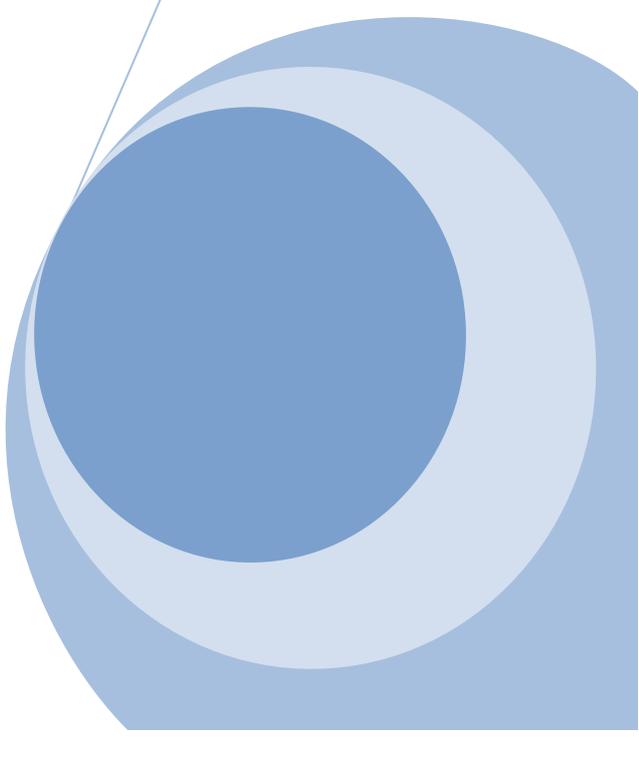


Traumatising our Future Denizens:

Australia's Legal and Policy Framework of
Mandatory Indefinite Immigration Detention

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Traumatizing our Future Denizens: Australia's Legal and Policy Framework of Mandatory Indefinite Immigration Detention

The '*Tampa*' affair of August 2001 was a significant historical catalyst for today's legal and policy framework under which asylum seekers are dealt with in Australia.¹ The Norwegian ship, *M.V. Tampa*, at the request of Australian authorities, rescued 433 asylum seekers from a vessel in distress. The original intentions of the ship's captain, Arne Rinnan, were to continue on its course to Singapore. However, the intended course was altered after pressure from the rescued asylum seekers who demanded to be taken to Australia,² with some even threatening suicide.³ Captain Rinnan was then denied entry clearance to Australian waters. As the situation aboard got out of hand, he declared a state of emergency and decided to continue toward Christmas Island.⁴ Those rescued sought to claim asylum in Australia. The Howard Government was adamant that none of the 433 asylum seekers on board the *Tampa* would ever be permitted onto Australian soil. The government represented to the public that the asylum seekers were a threat to Australian sovereignty that needed to be met; SAS commandos were ordered to board and control the situation.⁵ Eventually the asylum seekers were taken by the Australian Navy to the small island nation of Nauru.⁶ The infamous 'Pacific Solution' deterrence policy was born, in total diverting 1637 asylum seekers for

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- 1 Michael White. 2001. *M.V. Tampa and Christmas Island Incident*. [ONLINE] Available at [http://www.ila.org.au/pdfs/ex_The%20M.V.%20Tampa%20and%20the%20Christmas%20Island%20Incident%20\(Updated\).PDF.Pages](http://www.ila.org.au/pdfs/ex_The%20M.V.%20Tampa%20and%20the%20Christmas%20Island%20Incident%20(Updated).PDF.Pages) 1-2 [Accessed 21 August 12].
 - 2 Michael White. 2001. *M.V. Tampa and Christmas Island Incident*. [ONLINE] Available at [http://www.ila.org.au/pdfs/ex_The%20M.V.%20Tampa%20and%20the%20Christmas%20Island%20Incident%20\(Updated\).PDF.Pages](http://www.ila.org.au/pdfs/ex_The%20M.V.%20Tampa%20and%20the%20Christmas%20Island%20Incident%20(Updated).PDF.Pages) 1-2 [Accessed 21 August 12].
 - 3 Fairall, P, 2001. Asylum-Seekers and People-Smuggling. *James Cook University Law Review*, [Online]. 2/8, 18-25. Available at: <http://www.austlii.edu.au/au/journals/JCULRev/2001/2.html> [Accessed 21 August 2012].
 - 4 Michael White. 2001. *M.V. Tampa and Christmas Island Incident*. [ONLINE] Available at [http://www.ila.org.au/pdfs/ex_The%20M.V.%20Tampa%20and%20the%20Christmas%20Island%20Incident%20\(Updated\).PDF.Pages](http://www.ila.org.au/pdfs/ex_The%20M.V.%20Tampa%20and%20the%20Christmas%20Island%20Incident%20(Updated).PDF.Pages) 1-2 [Accessed 21 August 12].
 - 5 Asylum Seeker Resource Centre. 2011. Asylum seekers and refugees. [ONLINE] Available at <http://www.asrc.org.au/media/documents/myths-facts-solutions-info-apr-2011.pdf> Page 19 [Accessed 06 October 12].
 - 6 Herald Sun. 2012. *Tampa II: the pain continues...* [ONLINE] Available at <http://www.heraldsun.com.au/opinion/tampa-ii-the-pain-continues/story-e6frfhqf-1226452114093> [Accessed 21 August 12].

processing to detention facilities in Nauru and Papua New Guinea (PNG) over five years.^{7,8} This was despite the fact that there were already detention facilities in Australia in 2001. The Pacific Solution was abandoned in 2007 after a change of government. Nevertheless, the current system in place in Australia still retains a policy of mandatory and indefinite detention for all who are not citizens and do not have visas.⁹

In order to effectively explicate the issues raised in this essay the definition of both an 'asylum seeker' and a 'refugee' is critically important. For the sake of brevity, an 'asylum seeker' is a person who has claimed to need protection (that is, claimed that they are a refugee) but has not yet had their application processed. A 'refugee' is a person who has been assessed and determined by either a state or the United Nations High Commission for Refugees (UNHCR) as requiring protection under the 1951 Refugee Convention.¹⁰

This paper will explore the consequences of Australia's legal and policy framework of mandatory immigration detention on the well-being of asylum seekers. I will contend that these potential consequences must inform Australia's policy.

It will be argued that although immigration detention may be justifiable on a case-by-case basis,¹¹ a blanket policy of indefinite immigration detention results in immense and needless moral, psychological, and financial costs for all stakeholders involved. This is due to the fact that asylum seekers who are eventually granted protection visas are required to assimilate into the Australian community.

Finally, this essay will argue that claims considering offshore processing or mandatory

7 UNHCR. 2008. *UNHCR welcomes close of Australia's Pacific Solution*. [ONLINE] Available at <http://www.unhcr.org/47ac3f9c14.html> [Accessed 22 August 12].

8 Parliamentary Library, Parliament of Australia. 2011. *Seeking asylum: Australia's humanitarian program*. [ONLINE] Available at: <http://www.aph.gov.au/binaries/library/pubs/bn/sp/seekingasylum.pdf> Page 17 [Accessed 22 August 12].

9 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 8 [Accessed 21 August 12].

10 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p3.

11 Subject to both a judicial and merits review.

detention as a 'deterrent' to future possible asylum seekers are not supported by any evidence.

Overview of Our Mandatory Detention Regime

Australia's mandatory immigration detention system commenced in 1992 and applies to all who have an expired or cancelled visa, or arrive without a visa. Indefinite immigration detention of non-citizens is legal (*Migration Act 1958* (Cth) ss 189, 196) until the relevant individuals are removed from Australia or granted a visa. Detention is currently *not* subject to any duration limitations and many asylum seekers have been subject to protracted periods of incarceration. In 2010-11 there was a 43.7% final grant rate for a permanent visa with respect to irregular non-maritime arrivals.¹² Furthermore, there was a final permanent protection visa grant rate of 89.6% for irregular maritime arrivals.¹³ Thus it is clear that a significant percentage of all asylum seekers and an overwhelming majority of irregular maritime arrivals become future denizens of Australia.

As of June 30 2012, some 1197 people in detention have been detained for over 12 months, with 453 of them being detained for more than 24 months (16.4% and 6.2% of the total detained, respectively).¹⁴

An ASIO¹⁵ security assessment is not a requirement for the granting of a visa. However, it is government policy that security assessments regarding asylum seekers are done after they have been determined genuine refugees.¹⁶ Refugees who have had adverse ASIO determinations made

12 Asylum Trends/Department of Immigration and Citizenship. 2011. Asylum Trends. [ONLINE] Available at: http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2010-11.pdf Page 20 [Accessed 31 July 12].

13 Asylum Trends/Department of Immigration and Citizenship. 2011. Asylum Trends. [ONLINE] Available at: http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2010-11.pdf Page 34 [Accessed 31 July 12].

14 Asylum Trends/Department of Immigration and Citizenship. 2011. Asylum Trends. [ONLINE] Available at: http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2010-11.pdf Page 8 [Accessed 22 August 12].

15 The Australian Security and Intelligence Organisation.

16 Australian Security Intelligence Organisation. 2011. *ASIO Report to Parliament*. [ONLINE] Available at <http://www.asio.gov.au/img/files/Report-to-Parliament-2010-11.pdf> Pages 24-5 [Accessed 23 August 12].

against them cannot be legally admitted into the community, nor can they be legally deported. For as long as this detention continues for one of the purposes outlined in the *Migration Act 1958* (Cth) refugees can be legally detained for the rest of their lives.¹⁷

However, there has recently been significant improvement: the average period of detention for asylum seekers has fallen from 277 days in November of 2011, to 93 days as of July 2012.¹⁸ Over the past 2 years the Australian Government has worked toward a system of community detention in lieu of immigration detention centres for many detainees.¹⁹ As of June 30 2012, there are 1437 (or 19.8%) detainees who are in 'residence determination' or community placements.²⁰ Detainees who have been the subject of an adverse security assessment cannot be considered for community determinations.

Adverse Security Assessments

Asylum seekers who are the subject of adverse security assessments (ASA) cannot gain access to the reasons for their assessment.²¹ In contrast, if ASIO makes an ASA against an Australian citizen,²² that person is entitled to a notice of the assessment against them, as well as the assessment itself. This requirement is not extended to asylum seekers or refugees with respect to

17 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 8-9 [Accessed 31 July 12].

18 Asylum Trends/Department of Immigration and Citizenship. 2011. Asylum Trends. [ONLINE] Available at: <http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-trends-aus-annual-2010-11.pdf> Page 8 [Accessed 22 August 12].

19 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 24 [Accessed 31 July 12].

20 Asylum Trends/Department of Immigration and Citizenship. 2011. Asylum Trends. [ONLINE] Available at: <http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-trends-aus-annual-2010-11.pdf> Page 6 [Accessed 22 August 12].

21 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 23 [Accessed 31 July 12].

22 or a permanent or special category visa holder.

actions (or proposed actions) to be taken under the *Migration Act 1958* (Cth).²³ Consequently, asylum seekers in these circumstances are *not* given the reasons for their ASA. This denies them both the reasons for which they are being detained as well as any information that would be essential to any challenge to an ASA (and thus the detention). The provision of this information to refugees who are the subject of an ASA would assist in rectifying or mitigating any possible errors in assessment.²⁴ However, merely supplying the reasons is insufficient. Even if they were in possession of the requisite information and exposed a critical error there is little or no ability to have an assessment reviewed. This is for two reasons: firstly, judicial review of detention is obstructed under section 183 of the *Migration Act* (Cth) which provides that a court cannot order the release of a designated person. Secondly, a merits review is available only to Australian citizens.²⁵ By definition refugees do not fit into this category and do not have access to a merits review.²⁶

These facts are particularly concerning once the gravity of an ASA is grasped: the indefinite deprivation of a person's liberty. It is clear that the overall framework surrounding security assessments by ASIO has led to significant adverse consequences for detainees.^{27,28}

This situation stands in direct contrast to the position of Australian citizens and permanent or

23 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 25 [Accessed 31 July 12].

24 For example: one man the Human Right Commission interviewed thought that his adverse security determination was due to a mix up with respect to his name. Our current system provides no formal process for this concern to even be addressed. - Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at:

http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 26 [Accessed 10 October 12].

25 And holders of either permanent or special category visas.

26 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 25 [Accessed 31 July 12].

27 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 25 [Accessed 31 July 12].

28 Parliament of Australia. 2011. *Joint Select Committee on Australia's Immigration Detention Network*. [ONLINE] Available

at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctt/e/immigration_detention/report/c05.htm#c05f3 [Accessed 6 October 12].

special visa holders. Citizens receive information enabling them to be reasonably informed about an ASA and the reasons for it. They have the ability to procure an individual merits review by the security division of the Administrative Appeals Tribunal (AAT). There is no evidence showing how extending the implementation of our current policy with respect to refugees would compromise Australia's national security to any further extent.²⁹ Rather, the evidence shows there is inadequate procedural fairness in this area of government practice.

It is my view that in order to effectively discharge procedural fairness our policy must include the reasons for an adverse assessment being made available where it is consistent with security concerns, due to the social, fiscal, and medical costs involved. This should be done in conjunction with provisions that will enable a merits review as well as a judicial review. This will ensure a fair opportunity to have ASAs challenged.³⁰ Finally, those refugees who after judicial and merits reviews are still detained should be provided with a formalised and conditional pathway into the community.

As the Australian Human Rights Commission (AHRC) and the New Zealand Court of Appeal recognise, not all risks to national security call for identical treatment.³¹ A further case-by-case risk assessment should be made for each person who is the subject of an ASA. This is to determine whether being put in community residence is commensurate with the specific risk they are alleged to pose.³²

It is important to note that concerns for the well-being and rights of those who have little to

29 Solidarity Online. 2012. ASIO assessments: 'Refugees are being held in detention for the rest of their lives'. [ONLINE] Available at: <http://www.solidarity.net.au/44/asio-assessments-%E2%80%98refugees-are-being-held-in-detention-for-the-rest-of-their-lives%E2%80%99/> [Accessed 06 October 12].

30 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 26 [Accessed 31 July 12].

31 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 28 [Accessed 31 July 12].

32 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 25 [Accessed 31 July 12].

no prospect of being released from detention facilities is a part of a broader concern. The great majority of detainees are (eventually) released into the community and granted protection visas. Therefore, the consequences of prolonged detention must inform our policy and practise.

Moreover, purpose-built detention facilities are the most expensive manner in which to manage asylum seekers at the processing stage.³³

Social Integration and Medical Implications for Future Citizens

The negative implications for asylum seekers in prolonged detention are well established. The Joint Select Committee on Australia's Immigration Detention Network (JSCAID) has acknowledged mandatory detention has a detrimental impact on the mental health of detainees.³⁴ 'Protracted Asylum Seeker Syndrome' is a recently diagnosed psychological condition which shares symptoms with depression and post-traumatic stress disorder (PTSD).³⁵ These include dissociative and psychotic symptoms including irritability and fluctuating mood.³⁶ Symptoms among those detained also include forgetfulness, frustration, confusion, anger, insomnia, anxiety, poor hygiene, self-harm, as well as suicidal tendencies. These behaviours are now commonplace among the long-term detainee population.³⁷

33 Asylum Seeker Resource Centre. 2011. Asylum seekers and refugees . [ONLINE] Available at: <http://www.asrc.org.au/media/documents/myths-facts-solutions-info-apr-2011.pdf> Page 21 [Accessed 06 October 12].

34 Parliament of Australia. 2011. *Joint Select Committee on Australia's Immigration Detention Network*. [ONLINE] Available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/report/c05.htm#c05f3 [Accessed 31 July 12].

35 The Conversation. 2012. Long waits for refugee status lead to new mental health syndrome. [ONLINE] Available at: <http://theconversation.edu.au/long-waits-for-refugee-status-lead-to-new-mental-health-syndrome-7165> [Accessed 31 July 12].

36 The Conversation. 2012. Long waits for refugee status lead to new mental health syndrome. [ONLINE] Available at: <http://theconversation.edu.au/long-waits-for-refugee-status-lead-to-new-mental-health-syndrome-7165> [Accessed 31 July 12].

37 Parliament of Australia. 2011. *Joint Select Committee on Australia's Immigration Detention Network*. [ONLINE] Available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/report/c05.htm#c05f3 [Accessed 31 July 12].

According to the Diagnostic and Statistical Manual of Mental Disorders the essential feature of post-traumatic stress disorder is the exposure to an extreme and direct personal experience that involves death, serious injuries or serious threats to physical integrity.³⁸ Symptoms which are characteristic of PTSD include a persistent re-experiencing of the experienced event, as well as persistent avoidance of the stimuli associated with the trauma, and a numbing of general responsiveness. This disorder is often long lasting and severe, especially when the stressing circumstances were of human design such as torture, rape or war.³⁹ The trauma can be re-experienced in several ways, such as intrusive and recurring memories and dreams. These are almost always associated with intense psychological distress and can present with dissociative states that can last from minutes to hours.⁴⁰ The duration of symptoms varies, however they usually present within three months of the relevant traumatic experience (although a delay of years can occur before symptoms manifest). Approximately half of all individuals suffering from PTSD make complete recoveries within three months of the trauma. However, many have persevering symptoms for years, with symptoms waxing and waning.⁴¹ Symptoms often re-occur years into the future in response to reminders of the relevant trauma.

The link between asylum seekers and anxiety disorders is well established. It is obvious that individuals who are locked up for prolonged periods of time, with no certainty as to their futures, without criminal charges laid, experience fluctuating and acute anxiety.

A general anxiety disorder is characterised by at least six months of excessive and persistent anxiety or worry about real life circumstances. This symptomatic worrying is in conjunction with at least three other symptoms including restlessness, irritability, disturbed sleep, weight gain and panic

38 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 463.

39 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 464.

40 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 464.

41 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 464.

attacks.⁴² The person finds it very difficult to control the worry and prevent it from interfering with their daily routine, due to the intensity of the condition. Many individuals who are diagnosed with anxiety disorder are afflicted for the rest of their lives.⁴³

The essential feature of a depressive disorder is one that includes more than one depressive episode.⁴⁴ A depressive episode is one that includes the loss of interest and/or pleasure in almost all activities. An episode's symptoms must be present for the majority of the day, every day, for at least two consecutive weeks. Furthermore, to satisfy the criteria for diagnosis, the relevant individual must also exhibit at least four additional symptoms which include (but are not limited to) loss of appetite or sleep, a sense of worthlessness, difficulty thinking, concentrating or making decisions, recurrent thoughts of death, suicidal thoughts, plans or attempts.⁴⁵ A sense of worthlessness and guilt often leads to the interpretation of trivial events as evidence of personal failure. This is usually coupled with a highly exaggerated sense of responsibility for adverse events.⁴⁶ This combination of symptoms leads to an impaired ability to think or make decisions and can often include or be coupled with a morbid preoccupation with, or an idealisation of, suicide. A depressive episode is accompanied by significant distress or impairment with respect to occupational, social or other essential areas of functioning.⁴⁷

The JSCAID has recognised that a significant and alarming proportion of detainees are affected by symptoms of mental or physical illness. The impact of immigration detention on health can be exemplified by considering that the prevalence of depression in the Australian community

42 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 472.

43 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 474.

44 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 372.

45 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 350.

46 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 350.

47 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 349.

varied between 10%-25% for women and 5%-12% for men.⁴⁸ Whereas the JSCAID accepted and outlined a study by the Physicians for Human Rights that found symptoms of depression were present in 86% of detainees, anxiety in 77% and PTSD in 50% (25% were found to have suicidal thoughts).⁴⁹ The rates of suicidal behaviour amongst the detainees are 26 and 41 times the national average for women and men respectively.⁵⁰

These findings are commensurate with the observations of the AHRC with respect to the plight of the detainees in mandatory detention.⁵¹ In particular, the commission pointed out that it was not the conditions of the detention that were at issue. Rather, it was the prolonged detention and the feelings of uncertainty and helplessness, being separated from family or friends with no information with respect to when they might be released.⁵² It is such circumstances that contribute to the prevalence and severity of PTSD, anxiety and depression. Unsurprisingly, the negative effects on well-being significantly correlate with the length of time in detention.⁵³

Our Long and Short Term Costs of Traumatized Denizens

It is in both the short and long-term fiscal interest of the Australian government and

48 DSM-IV: Diagnostic and Statistical Manual of Mental Disorders. (4th Rev ed.)(1990). Washington, DC: American Psychiatric Press page 372.

49 Parliament of Australia. 2011. Submission 69 to the *Joint Select Committee on Australia's Immigration Detention Network*. page 4 [ONLINE] Available at

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm [Accessed 10 October 12].

50 Parliament of Australia. 2011. Submission 67 to *Joint Select Committee on Australia's Immigration Detention Network*. [ONLINE] page 33 Available

at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm [Accessed 10 October 12].

51 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 26 [Accessed 13 October 12].

52 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 26 [Accessed 13 October 12].

53 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 7 [Accessed 14/10/12].

community to minimise the length of time asylum seekers spend in detention. This is for two reasons: firstly, detention facilities are considerably more expensive to maintain and manage than community alternatives (this applies to both offshore and onshore detention facilities). Secondly, an overwhelming majority of asylum seekers eventually settle in Australia. They become members of our community.

The financial costs of offshore processing during the Pacific Solution (on Nauru and PNG) were exorbitant. A report by Oxfam outlines how the Australian government spent at least 1 *billion* dollars to process 1700 asylum seekers on the Nauru and PNG facilities between 2001 and 2006.⁵⁴ That is more than half a million dollars *per person*. The Oxfam report included a wide range of factors in this definition of costs including interception by the Australian Navy, infrastructure, operation and maintenance costs. \$396 million was spent to construct the Christmas Island detention centre and at least \$253 million for the operation and management of Nauru and PNG. These figures include around the clock staffing and security as well as food and domestic services.⁵⁵

From a narrower definition, the direct fiscal running costs of detention have been estimated at \$2,895 per detainee per day on Christmas Island.⁵⁶ Other estimates have placed offshore detention costs on Christmas Island at \$1,830 per detainee per day.⁵⁷ These figures stand in stark contrast to the direct fiscal costs of onshore detention facilities and community alternatives.

The Department of Immigration and Citizenship (DIAC) has also given estimates regarding the costs of detention on the Australian mainland. One estimate made was \$238 per day to detain

54 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p4.

55 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p4.

56 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p32.

57 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 4 [Accessed 14/10/12].

someone at the Villawood immigration detention centre in Sydney in 2006.⁵⁸ Subsequent estimates by the department placed the costs per detainee per day onshore at \$190 per day.⁵⁹ It is no cause for alarm that the estimates of running costs vary from year to year or among estimates. Large purpose-built facilities will invariably have significant staffing and operating costs regardless of how many people are being detained at the time, with offshore facilities being even more expensive because of the increased costs associated with remote locations.⁶⁰ For example: a year with higher numbers of detainees will have lower costs per detainee per day than a year with fewer people detained.⁶¹

Despite the differences in estimates for both offshore and onshore processing facilities, it is clear is that any comparison between the two reveals the immense cost and inefficiency of maintaining offshore facilities. At the daily rates mentioned, if a three-month detention period were to be assumed, it would have cost \$35 million to process the 1700 asylum seekers onshore, rather than \$1 billion.⁶² Such facts should inform Australia's policy with respect to immigration detention. Due to such excessive costs, if asylum seekers must be detained for processing, it ought to be on the Australian mainland.

The above estimates, though much cheaper than offshore processing, are still much more expensive than community residence alternatives. For my purposes here a 'community alternative' to detention is a policy framework that allows for asylum seekers or refugees to reside in the community with freedom of movement while they are being processed.

58 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib*, August, p32.

59 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 4 [Accessed 14/10/12].

60 Asylum Seeker Resource Centre. 2011. *Asylum seekers and refugees*. [ONLINE] Available at <http://www.asrc.org.au/media/documents/myths-facts-solutions-info-apr-2011.pdf> Page 21 [Accessed 06 October 12].

61 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 5 [Accessed 14/10/12].

62 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib*, August, p32.

The Community Assistance Support Program operated on \$38 per person per day, and had a 93% compliance rate.⁶³ Another estimate of community support alternatives to detention was \$60 per day per person.⁶⁴ This marked difference between detention facilities and community-based alternatives is for several reasons. Community alternatives do not require the construction of purpose-built detention facilities or complexes which are much more expensive to construct and maintain. Residential housing alternatives leave many domestic tasks to asylum seekers, cutting down on staffing costs, as well as providing asylum seekers with something to do. Moreover, this allows them control of their environment, enhancing their sense of purpose.⁶⁵

On the evidence available it appears safe to assume that on any conceivable estimate, at a cost of \$60 per day, the processing of the 1700 asylum seekers that were on Nauru would have been nowhere near the billion dollar cost of offshore processing to the Australian taxpayer. Moreover it is clear that community alternatives are up to five times more cost effective than processing in an onshore detention centre. Thus it appears Australia's blanket policy of indefinite immigration detention results in an immense financial cost to the Australian taxpayer.

An overwhelming majority of asylum seekers eventually settle in Australia and become a part of our community. Asylum seekers already have a high chance of being afflicted with PTSD, anxiety or depression due to escaping from persecution or war in their home countries. Instances of PTSD, depression and anxiety are all significantly high among detainees. If an asylum seeker was not already traumatised on arrival, it is clear from the evidence that there is an increased probability that they will develop (or exacerbate) a debilitating mental condition due to prolonged detention.

The negative impacts of detention on asylum seekers have been tacitly recognised by the

63 International Detention Coalition and La Trobe Refugee Research Centre. 2011. *There are Alternatives: A handbook for preventing unnecessary immigration detention*, box 12. [ONLINE] Available at <http://idcoalition.org/cap/handbook/> [Accessed 6 July 2012].

64 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 3 [Accessed 14/10/12].

65 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 3 [Accessed 14/10/12].

Australian government. In 2005, the Red Cross was asked to provide six weeks of mental health support and housing assistance.⁶⁶

Despite the popular perception that it was somehow keeping asylum seekers out of Australia, over 70% of those processed under the Pacific Solution were granted asylum in Australia. Historically, more than 80% of asylum seekers successfully resettle in the Australian community.⁶⁷ Thus, the negative impacts of detention lead to further costs to the Australian taxpayer and community in the longer term. The lingering effects of detention clearly have implications for Australia's future healthcare system costs.

One study by the 'Yarra Institute for Religion and Social Policy' (2011) found that the use of medical services by released asylum seekers was more frequent the longer they had been in detention.⁶⁸ There is a correlation between time detained and usage of medical services.⁶⁹ Of those detained for more than two years 25% had further and more severe mental health conditions diagnosed. Less than 1% of those detained for under three months were diagnosed with new mental health conditions post-detention.⁷⁰ The study found that, even when controlling for factors such as the low prevalence of obesity and typically low alcohol consumption in countries where asylum seekers are usually from, the documented negative effects lead to increased average lifetime healthcare costs per detainee when compared to an average member of the Australian community.

66 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) A price too high: the cost of Australia's approach to asylum seekers Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p3.

67 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 1 [Accessed 14/10/12]; See also Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) A price too high: the cost of Australia's approach to asylum seekers Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p15 for similar appraisal.

68 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 8 [Accessed 14/10/12].

69 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 8 [Accessed 14/10/12].

70 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 9 [Accessed 14/10/12].

The report showed that, on plausible assumptions, this average increase could be \$25,000 per person.⁷¹ The implementation of our policy both creates and compounds symptoms of PTSD, anxiety, and depression that can last for years or even decades.

In addition to the financial costs there are also the incalculable personal costs to our future denizens - that is living with mental illness and trauma. This culminates in further problems for the broader Australian community: PTSD, depression and anxiety result in it being more difficult for refugees to integrate into Australian life and into the Australian society.

The evidence shows that community alternatives both allow for, and lead to, asylum seekers having a readier transition into Australian life. Not only are the financial costs of community detention significantly lower than detention facilities, but so are the psychological costs.⁷² Community arrangements lead to fewer mental and physical health issues for asylum seekers. Importantly, there are high rates of compliance and low rates of absconding. In one study, a community placement scheme had a 93% compliance rate.⁷³ Furthermore, the community-based detention system supported by the Red Cross had a less than 1% non-compliance rate. Asylum seekers have a vested interest in cooperating in order to maximise their chances at approval for a protection visa.⁷⁴ Thus, the value of detention centres depreciates in contrast to the success of these schemes.

Community arrangements have been adopted around the world and Australia has also taken significant steps toward community placements for asylum seekers. In 2010 the *Migration Act 1958 (Cth)* was amended to include section 197AB that gives the Minister for Immigration and

71 Yarra Institute for Religion and Social Policy. 2011. *Long-term health costs of extended mandatory detention of asylum seekers*. [ONLINE] Available at: <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf> Page 21 [Accessed 14/10/12].

72 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 13 [Accessed 13 October 12].

73 International Detention Coalition and La Trobe Refugee Research Centre. 2011. *There are Alternatives: A handbook for preventing unnecessary immigration detention*, box 12. [ONLINE] Available at <http://idcoalition.org/cap/handbook/> [Accessed 19 October 2012].

74 Refugee Council of Australia. 2012. *Mandatory detention of unlawful asylum seekers is an essential security measure* [ONLINE] Available at <http://www.refugeecouncil.org.au/f/myth-long.php> [Accessed 10 October 12].

Citizenship the discretionary power to make a 'residence determination' with respect to an individual in detention. This allows such a person to live in a specified residence in the community. Such people are then said to be in community placement or community detention.⁷⁵ At the time, the government also announced the 'New Directions Policy' under which detention would only be used as a last resort and for the shortest practicable time. Persons will be allowed to be in the community unless they pose a risk.⁷⁶ However, this policy was not enshrined in legislation and remains at the discretion of the minister. Over two years later, despite the *prima facie* encouraging statement of policy, a majority of asylum seekers in Australia remain in detention facilities. There is now a further initiative for more offshore processing that is supported by both major political parties in Australia.⁷⁷

The evidence shows that implementation of the mandatory indefinite detention policy framework results in damaged and traumatised individuals less able to become functioning members of society. In a multicultural nation, such issues create social problems, as tolerance and engagement in a community will undoubtedly become more difficult where new permanent residents are traumatised. This is in addition to detention facilities being more costly to the Australian government to construct, operate and maintain as compared to community alternatives. These facts should shape and direct the future of Australia's policy toward community residence arrangements. Thus a policy of assessing the need to detain asylum seekers on a case-by-case basis should be implemented. An individual should only be detained if they pose an unacceptable risk to the Australian community or national security.

The current residence determination system is discretionary. This means that a change of

75 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 14 [Accessed 13 October12].

76 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 14 [Accessed 13 October12].

77 Australian Human Rights Commission. 2012. *Community arrangements for asylum seekers, refugees and stateless persons*. [ONLINE] Available at: http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf Page 14 [Accessed 13 October12].

government or a change of the identity of the Minister of Immigration and Citizenship could result in fewer residence determinations. A statutory scheme would assist in removing irrelevant personal or political considerations from interfering with whether or not individuals are detained. This scheme should include formal criteria for an independent committee or panel to apply on a case by case basis. This committee should have the power to impose conditions on the residence determination necessary to mitigate any perceived risk. Any conditions on an asylum seeker's freedom should also be subject to both a judicial and merits review to ensure that procedural fairness is accorded.

The evidence demonstrates community alternatives for asylum seekers would, in most cases, constitute best practise with respect to the interests of all stakeholders involved (i.e., asylum seekers, taxpayers, as well as the community in which asylum seekers eventually re-settle).

Deterrence

The claim that mandatory detention provides a 'deterrent' to refugees and people smugglers is one which is supported by both major political parties in Australia.⁷⁸ Such a claim is not supported by evidence and thus should not inform Australia's policy or practise. Individuals who are fleeing persecution are not necessarily able to bring their passports or documentation with them. This is especially significant when the process of acquiring such documents entails approaching the very government from which they are fleeing⁷⁹, or if they need to leave quickly. Frequently asylum seekers with documentation are forced to destroy their papers on the journey. Alternatively, they

78 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p32.

79 Refugee Council of Australia. 2012. *Myths about refugees and asylum seeker*. [ONLINE] Available at <http://www.refugeecouncil.org.au/f/myth-long.php> [Accessed 22 August 12].

travel with false documentation in hope of deceiving the authorities persecuting them.⁸⁰ The inability to provide identifying papers does not support the contention that individuals seeking asylum are a threat.

It is not illegal to seek asylum. Asylum seekers who come to Australia have taken extraordinary and dangerous measures to secure their own freedom and safety. This fact is acknowledged by article 31 of the Refugee Convention of 1951, of which Australia is a signatory. It recognises their good cause for any unauthorised entry. Moreover, this is also evident by the fact that there is no law in Australia that criminalises the act of coming to Australia without prior authorisation to seek asylum.⁸¹ Thus any talk of 'deterrence' stems from a misconception about either what an asylum seeker is, or what they have done. The background conditions which have driven people to risk their lives are not considered as the principal motivator.

The Howard Government claimed that the fall in irregular maritime arrivals was a testament to the success of the Pacific Solution. That is, a scheme of mandatory immigration detention and offshore processing succeeded in deterring possible asylum seekers that resulted in fewer boats and less applications.⁸² This assertion is not supported by UNHCR figures that show that while Australia experienced a marked decrease in boat arrivals (2001-2006) the global refugee population had reduced by 33%. A dramatic fall in asylum seeker applications was experienced worldwide, regardless of policy conditions. The United States of America, and Europe, experienced a decrease (over the same 5 year period) of 47% and 54% respectively. In 2006, the United Kingdom had its lowest amount of asylum applications since 1989; Norway since 1997; and New Zealand since

80 Asylum Seeker Resource Centre. 2011. Asylum seekers and refugees. [ONLINE] Available at: <http://www.asrc.org.au/media/documents/myths-facts-solutions-info-apr-2011.pdf> Page 6 [Accessed 06 October 12].

81 Asylum Seeker Resource Centre. 2011. Asylum seekers and refugees. [ONLINE] Available at: <http://www.asrc.org.au/media/documents/myths-facts-solutions-info-apr-2011.pdf> Page 3 [Accessed 06 October 12].

82 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) A price too high: the cost of Australia's approach to asylum seekers Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p13.

1988.⁸³ The UNHCR has stated that such changes were a consequence of improved conditions in the home countries of refugees and asylum seekers (as opposed to changes in the policies of recipient countries).⁸⁴

Asylum seekers are a global governance issue and should be conceptualised from an international perspective. The evidence demonstrates that it is only in virtue of the crudely narcissistic picture of history tacitly adopted in the 'deterrence' rhetoric that the decrease in boat arrivals can be attributed to the 'success' of the Pacific Solution. The Australian government should take note of the significant body of research that outlines the negative externalities of immigration detention. As yet there is no evidence to support the so-called positive effects of their policy.⁸⁵ Until such evidence is forthcoming, the Australian Government should end its blanket system of indefinite mandatory immigration detention. In light of the evidence, no policy which is so expensive and detrimental to the denizens of Australia should be based on unsubstantiated assertions. Consequently, we should adopt the statutory community residence determination schema advocated for in this essay.

83 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p13.

84 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p13.

85 Kazimierz Bem, Nina Field, Nic Maclellan, Sarah Meyer, Tony Morris (2007) *A price too high: the cost of Australia's approach to asylum seekers* Melbourne: A Just Australia, Oxfam Australia and Oxfam Novib, August, p6.

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