



International Detention Coalition

Human rights for detained refugees, asylum seekers and migrants

Detention reform and alternatives in Australia Case management in the community as an alternative to detention

Executive Summary

This paper outlines the significant changes in Australia's immigration detention and enforcement policy and practice since 2005 and the emergence of case management in the community as an innovative and effective alternative to the detention of asylum seekers and migrants.

Background to Australian detention policy

In 1992 Australia introduced a policy of mandatory, non-reviewable and indefinite immigration detention until removal or approval, irrespective of individual circumstance, age or need. This legislation led to long-term detention, including cases of individuals being detained for more than seven years,¹ as well as the detention of more than 4,000 children between 2000 and 2005.²

Australia's immigration detention practice was criticized by non-government organizations and the Australian Human Rights Commission,³ including the lack of transparency in the immigration detention system; a failure of monitoring; a lack of administrative and judicial review mechanisms; the denial of a range of rights to detainees in offshore facilities; and the negative impact of detention on mental health, particularly on children and long-term detainees.⁴

A government commissioned report in 2005 found that the assumption-based culture within the Department of Immigration in raid and enforcement actions had led to the separation of children from families and the wrongful detention of 249 Australian residents.⁵ Since that time there has been litigation and growing concern in the broader community on Australia's detention policy.

Changes in Australia's detention and enforcement policy and practice

While Australia still has further to go to fully reform its immigration detention policy, there has been significant change over the past three years.

- Legislative change that children should be detained only as a last resort, with all children and their caregivers released from immigration detention centres in August 2005.
- A range of detention monitoring mechanisms introduced.⁶
- A visa class established for individuals unable to be removed.
- Offshore detention in neighbouring islands, the 'Pacific Solution', abandoned in 2007.⁷
- Introduction of community-based alternatives to detention, including a risk and case management model.

Immigration detention changes in Australia – a timeline

1992	1999	2001	2002	2005	2006	2007	2009
Mandatory detention introduced	Temporary Protection Visas introduced	- Detention numbers reach 9,000 people - Pacific Solution introduced - Christmas Island centre opened - Residential Housing Projects introduced	Alternative Places of Detention (APD) introduced	- Palmer and Comrie Reports tabled and change management process begins - Children released into Residence Determination - Case Management introduced - Removal Pending Bridging Visa introduced	Community Care Pilot (CCP) begins	- Status Resolution Trial begins - Pacific Solution abolished	Government announces expansion of pilot into national program

Introduction to case management as an alternative to detention

The Australian government introduced a set of 'Detention Values' in July 2008,⁸ recommending the use of immigration detention centres only as a last resort and for the shortest practicable time. In addition, in what amounts to the largest bureaucratic change-management process in Australia's history, the Department of Immigration has adopted a more 'client-focused' approach, seeking the use of alternatives to detention wherever possible.

In this regard, the Australian government has over the past three years introduced a number of 'alternative to detention' pilot programs⁹ that have centered around the introduction of Departmental Case Managers that work within the enforcement branch¹⁰ to provide early intervention and individual risk assessment of the need to detain on a case-by-case basis. Case management is a comprehensive and coordinated service delivery approach widely used in the human services sector as a way of achieving continuity of care for clients with varied complex needs. This model has meant the increasing use of community-based alternatives to detention in the first instance where there are no security concerns. A key feature is the importance given to preparing and supporting individuals throughout their immigration pathway. This strength-based approach is aimed at helping people understand and cope with the often limited options available, in order to assist them in making informed decisions. Independent legal advice, welfare assistance and the active involvement of community organizations in partnership with the government have also been key elements.

Overall Welfare, Cost and Immigration Outcomes

Recent outcomes of the Australian immigration system, which has moved from a punitive, 'one-size-fits-all' enforcement model to an individual case and risk management model, highlight the benefits of community-based alternatives.

On average, 94% of people within the programs complied with their reporting requirements and did not abscond. 67% of those not granted a visa to remain in the country voluntarily departed.¹¹ In addition, 3 years following the release of all families from detention centres, less than 1% had absconded, with no other reported violation of conditions.¹² Furthermore, the use of alternatives to detention has also proved a cost saving to government, at one-third the cost of traditional detention and removal practices.¹³

In May 2009, the Australian government announced that following the success of these pilots they would be expanded into a national program. Minister of Immigration, Senator Chris Evans said:

*The government's commitment in resolving the status of those in the community means there will be an increased capacity to assist people to reach a timely immigration outcome without the need for detention.*¹⁴

This community-based model has been found to be effective in meeting the interests of government, migrants and the broader community. This includes effectively managing migration outcomes in a cheaper and more humane manner. It has minimized the use of detention and of unnecessarily restrictive or intrusive alternatives. It has also achieved high levels of voluntary departures and low levels of absconding, while ensuring the rights and dignity of asylum seekers and migrants are upheld.

Grant Mitchell
Director
International Detention Coalition

For the full report 'Case Management as an Alternative to Detention – The Australian Experience' visit:
www.idcoalition.org

¹ DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129d, September 2008.

² DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129c, October 2008.

³ Formerly known as the Human Rights And Equal Opportunity Commission.

⁴ International Detention Coalition, Position on Children in Detention, 'Evidence concerning the impacts of immigration detention on children', October 2007.

⁵ <http://www.chrisevans.alp.org.au/news/1207/immigratmediarelease19-01.php>.

⁶ Including legislative change empowered to the Immigration Ombudsman to investigate and report to parliament about anyone detained for more than two years, and enhanced monitoring role of the Australian Human Rights Commission and Red Cross.

⁷ The policy of excision, whereby individuals arriving in excised territory are denied access to the mainland to seek asylum, remains.

⁸ <http://www.minister.immi.gov.au/media/media-releases/2009/ce09058.htm> These Detention Values are currently before parliament in the Immigration Detention Reform Bill 2009.

⁹ These programs include the Community Status Resolution Trial and Community Care Pilot, which was rolled into the new national Community Assistance Scheme in July, 2009.

¹⁰ Compliance Unit of the Department of Immigration and Citizenship.

¹¹ DIAC Final Activity Report October 2008: Page 11 and 12. March 2009 DIAC CCP Report: Page 2.

¹² DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129c, Q41, Oct 2008.

¹³ http://www.anh.gov.au/senate/committee/lecon_cite/estimates/ard_0809/diac/38.pdf



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Case management as an alternative to immigration detention

The Australian Experience

June 2009

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Summary

Over the past three years, the Australian government has introduced a number of 'alternative to detention' pilot programs that have had significantly positive welfare and immigration outcomes. On average, these pilot programs have yielded a 94% compliance rate¹, with 67% of those not granted a visa to remain in the country voluntarily departing². In addition, all detained children in Australia were released, together with their families, from detention facilities in late 2005, under new legislation permitting designated residence in the community allowing freedom of movement. As of September 2008, less than 1% had absconded, with no other reported violation of conditions.³

These pilot programs have centered around a community-based case management model that includes early intervention and individual assessment of the need to detain on a case-by-case basis. A key feature is the importance given to preparing, supporting and empowering individuals throughout their immigration pathway. Independent legal advice, welfare assistance and the active involvement of community organizations in partnership with the government have also been key elements.

Recent outcomes of the Australian immigration system, which has moved from a punitive, 'one-size-fits-all' enforcement model to an individual case and risk management model, highlight the benefits of community-based alternatives.

In May 2009, the Australian government announced, that following the success of these pilots, they would be expanded into a national program. Minister of Immigration, Senator Chris Evans said:

The government's commitment in resolving the status of those in the community means there will be an increased capacity to assist people to reach a timely immigration outcome without the need for detention.⁴

This paper outlines the significant changes in Australia's detention and compliance policy and practice since 2005 and the emergence of case management as an innovative and effective alternative to the detention of asylum seekers and migrants.⁵

Background to Australian detention policy

In 1992 Australia introduced a policy of mandatory, non-reviewable and indefinite immigration detention. Under the Australian Migration Act, anyone reasonably suspected of being an unlawful non-citizen was detained until removed.⁶ This legislation made no distinction for individual circumstance, age or need and led to long-term detention, including cases of individuals being detained for more than seven years,⁷ as well as the detention of thousands of children. Between 2000 and 2005, more than 4,000 children were detained.⁸

Australia's Immigration detention practice was criticized by non-government organizations, the Australian Human Rights Commission⁹ and within government commissioned reports. These reports highlighted the lack of transparency in the immigration detention system, a failure of monitoring and a lack of administrative and judicial review mechanisms. The reports also drew attention to the conditions and treatment of detainees and the use of offshore detention facilities that denied a range of rights to detainees. The negative impact of detention on mental health was widely reported, particularly on children and long-term detainees.¹⁰

1. The compliance rate includes the number of individuals who remained in contact with the authorities and did not abscond during the reporting period.

2. 'Voluntary departure' and 'voluntary return' are terms used by the Department of Immigration within the pilot and includes individuals who had a legal basis to remain in the country and who decided to voluntarily depart, as well as individuals whose cases were refused and had no legal basis to remain in the country. According to the European Council of Refugees and Exiles position on return, this latter group should be classified as 'mandatory returns'. See the Removals and Return in Australia section for more details.

3. See Outcome Section for full details. Note: Outcomes are from governmental sources, including program reports, parliamentary submissions and statements by government departments.

4. <http://www.minister.immi.gov.au/media/media-releases/2009/ce01-budget-09.htm>

5. Compliance policy includes enforcement policies and procedures related to the detection, detention and removal of unlawful non-citizens in Australia.

6. Migration Act 1958 Section 189, 196, 198.

7. DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129d, September 2008.

8. DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129c, October 2008.

9. Formerly known as the Human Rights And Equal Opportunity Commission.

10. International Detention Coalition, Position on Children in Detention, 'Evidence concerning the impacts of immigration detention on children', October 2007.

In addition, there was heavy criticism of the Department of Immigration and Citizenship's (DIAC) Compliance Unit which was authorized with the power to carry out raids, detain and remove unlawful non-citizens. The government-commissioned Palmer and Comrie Reports concluded that the Department of Immigration and Citizenship had a defensive, assumption-based culture, lacked governance and training and was not meeting government and community expectations.¹¹ Particular concern was widely noted for the 249 people who had been wrongfully detained, including Australian residents.¹² Cases of families being separated and of the best interest of the child not being considered, as well as individuals wrongfully removed from Australia, including in circumstances where health and wellbeing were affected, were also documented. These practices led to lawsuits and growing concern over the impact of Australia's detention policy on vulnerable detainees in the broader community.

11. Proust Report - Evaluation of the Palmer and Comrie Reform Agenda, November 2008. The Palmer Report and Comrie reports were independent reports undertaken to investigate the wrongful detention of Cornelia Rau and wrongful detention and removal of Vivian Solon Alvarez. The reports were commissioned by the Australian government and were tabled in parliament and the findings made public.
 12. <http://www.chrisevans.alp.org.au/news/1207/immigratmediarelease19-01.php>.

Changes in Australia's detention and compliance practice

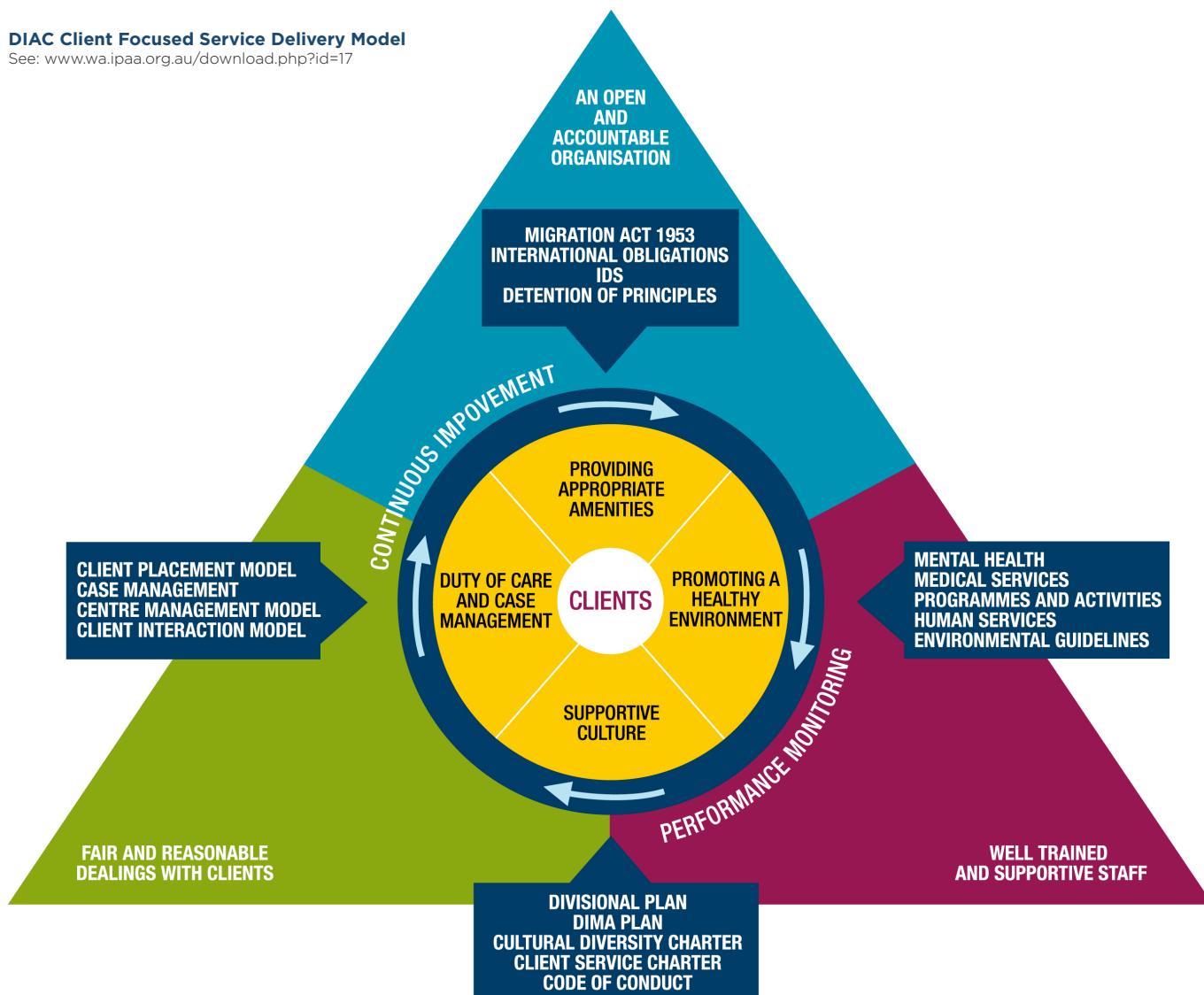
While Australia still has further to go to ensure detainee rights, conditions and systemic oversight are in line with international detention standards, there has been significant change in Australia's detention and compliance policy and practice over the past three years. This includes:

- Legislative change in 2005, which granted the Minister for Immigration the power to intervene and place individuals with complex needs or who are vulnerable into community arrangements.¹³ This legislative change led to the release of children and families into 'Community Detention' in August 2005 under the care of the Australian Red Cross.
- Legislative change also included the empowerment of the Immigration Ombudsman to investigate and report to parliament about anyone detained for more than two years.
- A 'Removal Pending Bridging Visa' was introduced for long-term detainees unable to be removed.
- The use of offshore detention on the Pacific Island of Nauru and Manus Island (the so-called 'Pacific Solution') was abandoned in 2007. The use of Christmas Island and the policy of excision, whereby individuals arriving in excised territory are denied access to the mainland to seek asylum, remains.

13. Migration Act Section 198AB 2005.

DIAC Client Focused Service Delivery Model

See: www.wa.ipaa.org.au/download.php?id=17



In July 2008 the Minister for Immigration, Chris Evans, announced further plans to introduce a risk-based model, whereby detention would only be used in cases where there were security concerns, as a last resort and for the shortest practicable time. The Minister stated, "The key determinant of the need to detain a person in an immigration detention centre will be risk to the community – a modern risk management approach".¹⁴

The findings of the Palmer and Comrie inquiries led to an extensive change management process within the Department, the largest ever undertaken in an Australian government bureaucracy. Part of the cultural change was to ensure a 'client focused approach' where assessment, decision-making and implementation could occur under three strategic objectives:

- Open and accountable culture
- Fair and reasonable dealings with clients; and
- Well trained and supported staff.

Since these developments, there have been considerable improvements made in detention conditions, health provision, oversight and release options, as well as a reduction in the number of people detained where there are no identified security concerns.¹⁵ Importantly, the Department of Immigration has also worked closely with welfare organisations, such as the Australian Red Cross, and with legal providers such as the Refugee and Immigration Legal Centre, in developing alternatives to detention.

Development of alternatives in Australia

Alternatives to detention in Australia have been developing since August 2001 when the Residential Housing Project for women and children in Woomera was introduced. Since that time, a range of alternatives has been developed.

Alternative forms of detention

The introduction of the Residential Housing Project was the first significant change in Australia's detention policy, which allowed for the detention of women and children in a residential home. This was based on the Swedish concept of asylum seeker group homes, where women and children often live freely in the community in group housing, while the father remains in detention.¹⁶ Then Minister of Immigration, Philip Ruddock, agreed to explore a proposal relating to the Swedish model, following growing concerns about the welfare of children in places of detention.

The model implemented in August 2001 differed from the Swedish model, however, with women and children remaining under guard with no freedom of movement. A number of concerns were raised with the model, including compounded isolation and the fact that guards were left to determine the need for healthcare and welfare assistance.

Since then, a number of low security facilities have been introduced, including Immigration Transit Accommodation Centres for the management of short-term cases, such as airport turn-arounds and individuals with low security concerns and specialist needs, and Immigration Residential Housing (IRH) used for identified vulnerable groups, such as individuals with health and other concerns. NGOs continue to raise concerns about the unnecessary and sometimes prolonged use of these facilities,

including access to health-care, recreation and other supports available in either the community or within the detention facilities.

In December 2002, with the number of children detained reaching more than 1,000 and with increasing numbers of complex detention cases being noted of children with illness, disability and individuals with mental and physical illness,¹⁷ the Australian government, introduced the Migration Series Instruction (MSI) 371 on Alternative Places of Detention (APD). This instruction allowed a person to be detained in a location outside a detention facility, held by a 'designated' person. Designation was often given to individuals in a 'care' role such as teachers, nurses and social workers who were required to agree to 'accompany and restrain' individuals in their care at all times. In practice this meant a detainee in a hospital, school or community housing must be in the line of sight of 'designated person' at all time. In some cases this created a conflict of interest for the worker, confusion for the client on the role of the worker, and was not practical to implement. In a report to the government, Hotham Mission stated:

*Hotham Mission and other agencies have consistently stated to the Department, based on case experience, that Alternative Places of Detention Arrangements, requiring ongoing 'line of sight' detention obligations, are not suitable for individuals with serious health issues or cases involving children.*¹⁸

Community-based alternatives¹⁹

Community Detention

Legislative changes made in 2005 under Section 197AB of the Migration Act 1958, introduced the concept of 'Residence Determination', whereby the Minister had the discretion to determine what defined a place of detention, thus allowing for freedom of movement but residence in a designated location. This arrangement allowed for children and families to be released in late 2005 under the care of the Australian Red Cross. This approach has seen continued success under its current title of 'Community Detention'. Prior to this, children whose parents were unauthorized non-citizens (i.e. without a visa) were subject to mandatory, non-reviewable detention as it was considered to be in the best interests of the child to remain with his/her family members.

Community detention has since been used for a range of individuals, including those with health issues. The Red Cross is funded by the federal government to provide community based support and health referral to individuals in this program.

In practice this model includes the Department of Immigration and Citizenship sending a referral to the Red Cross indicating the release of a detainee is imminent. A Red Cross caseworker visits the detention centre, undertakes an assessment with the individual and/or family and develops a case plan for the individual. A range of issues is considered, including health and welfare concerns,

14. <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>.

15. DIAC Immigration Detention Service Output 1.5, March 2009.

16. Grant Mitchell, Asylum Seekers in Sweden, (2001). <http://www.fabian.org.au/940.asp>.

17. DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129d, September 2008.

18. Hotham Mission- Bridging Visa E Review, May 2006.

19. 'Community-based alternatives to detention' for the purpose of this paper are the practical measures implemented by States that ensure and protect individual freedom of movement in the community, and which are only used for individuals normally subject to immigration-related detention. The UNHCR Revised Detention Guidelines (1999) provides a context to this definition, including that States must first pursue alternatives to detention, with examples given of open centres, surety, bail or reporting requirements. Alternatives must ensure individual rights, welfare and dignity are protected. <http://idc.rfbf.com.au/wp-content/uploads/2009/06/unhcr-guidelines1.pdf>

community connections and availability of housing. On release, the detainee receives ongoing assistance from the Red Cross caseworker and has freedom of movement, but is not permitted to spend the night outside of his/her designated residence.

Since its inception, only two out of a total 244 people, or less than 1%, have absconded, with no other reported violation of conditions.²⁰ No statistics on return outcomes are available for this group.

Community Detention has been a positive development in immigration detention policy, however a number of concerns remain. Individuals are still held in administrative detention, experiencing extended periods of uncertainty with associated mental health implications. The policy is also impractical with small issues such as address changes requiring Ministerial approval. Implementation of the program on Christmas Island has proved logistically challenging, given lack of resources, staff and distance from the mainland.

Release on Bond, Surety and Bridging Visa release

The Australian Migration Act allows for certain detained persons to be released on bridging visas while awaiting a substantive decision in their migration or asylum case. This includes:

- Removal Pending Bridging Visa for long-term detainees unable to be removed. This visa allows the right to work, healthcare and government benefits, but is at the non-delegable, non-compellable discretion of the Minister of Immigration.
- A number of Bridging Visa E categories, which include requirements of a bond, surety, or on own recognizance. Individuals who arrived unlawfully in the country or awaiting removal are generally not eligible. Those vulnerable groups eligible face a range of restrictions, including the denial of the right to government benefits and government funded health provision (Medicare).

Community agencies and family members have been known to incur high levels of debt to cover health care costs for those released, while others have found the bond levels too high to cover.²¹ People released on Bridging Visa E have often faced destitution in the community due to the denial of the right to work, Medicare and benefits.²²

Since 2006, there have been increasing examples of people being released from detention on Bridging Visa E but linked to community-based support, such as the Community Care Pilot, and case management services provided by the Department of Immigration. Both NGOs and a recent bi-partisan committee report have called on the government to ensure the right to income and healthcare for people released from detention and to develop this model as the most appropriate alternative to detention. The Joint Standing Committee on Migration Inquiry into Immigration Detention released its report on alternatives to detention in May 2009, which recommended the government:

- Reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements
- Utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved.²³

The Australian government announced the same month that they intended to remove the 45-day rule affecting the right to work and Medicare for asylum seekers on Bridging Visa E and expand the Community Care Pilot to a national program.²⁴

Introduction to case management as an alternative to detention

In compliance with international and human rights standards, detention must only occur as a last resort. Where a government intends to detain a person for immigration-related reasons, it should first consider and pursue alternatives.²⁵ However some forms of alternatives to detention have also been known to be unnecessarily restrictive or intrusive with some governments using measures such as onerous reporting and monitoring, or alternative forms of detention, such as electronic tagging or family detention centres.

Since the late 1990s, case management models have been explored by a number of governments and NGO's as a means of overseeing and working with asylum seekers awaiting final decisions in the community. These models are emerging as an innovative and improved alternative to the detention of asylum seekers and migrants.

Immigration detention changes in Australia – a timeline

1992	1999	2001	2002	2005	2006	2007	2009
Mandatory detention introduced	Temporary Protection Visas introduced	- Detention numbers reach 9,000 people - Pacific Solution introduced - Christmas Island centre opened - Residential Housing Projects introduced	Alternative Places of Detention (APD) introduced	- Palmer and Comrie Reports tabled and change management process begins - Children released into Residence Determination - Case Management introduced - Removal Pending Bridging Visa introduced	Community Care Pilot (CCP) begins	- Status Resolution Trial begins - Pacific Solution abolished	Government announces expansion of pilot into national program

20. DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129c, Q41, Oct 2008.

21. Hotham Mission- Bridging Visa E Review, May 2006.

22. Hotham Mission- Bridging Visa E Review, May 2006.

23. <http://www.aph.gov.au/house/committee/MIG/detention/report2.htm>.

24. <http://www.minister.immi.gov.au/media/media-releases/2009/ce01-budget-09.htm>.

25. UNHCR Revised Guidelines Relating to the Detention of Asylum Seekers (1999).

What is case management?

Case management is a comprehensive and coordinated service delivery approach widely used in the human services sector as a way of achieving continuity of care for clients with varied complex needs. It ensures that service provision is 'client' rather than 'organization' driven and involves an individualized, flexible and strengths-based model of care. Case managers are often social workers and welfare professionals, but are also people who are skilled and experienced in the particular sector where the case management approach is being used.

There are several key functions or stages of case management, which are generally used irrespective of the broader context. Firstly there is an initial assessment phase where the client's needs are determined in conjunction with those of the case manager and a detailed case plan is developed. The second stage centres on the establishment of a plan to meet those needs, and ensuring communication, education, advocacy and facilitation of appropriate service involvement. Finally, the case manager will continuously monitor the situation so any change in need can be identified and responded to accordingly. The client and case manager work in partnership throughout the entire process so outcomes for all concerned are optimized.²⁶

History of migration-related case management

While case management models have been used extensively in health and welfare settings at both government and community levels around the world, they have increasingly been used in migration-related environments.

Sweden

In 1997, as part of a government inquiry into detention and deportation policy to address growing concerns about private sector handling of the detention system, the Swedish government introduced numerous changes to create a more humane, culturally sensitive and transparent detention policy. This included the introduction of caseworkers or 'handläggare', to work with detainees, based on a similar model used in community refugee reception centres. This model includes asylum seekers living in open community hostels and meeting regularly with an assigned caseworker from a multidisciplinary background, including social and community workers and people trained to work in human services.

The Swedish case management role introduced in both community and detention contexts was premised on a rights and welfare-based framework. The caseworker is responsible for informing detainees of their legal rights and ensuring these rights are upheld, including access to legal counsel and the right to seek asylum. They are also responsible for ensuring clients' health and wellbeing through assessment, case planning and referral. Based on both risk and needs assessments the caseworker makes recommendations to the implementing authorities in relation to the most appropriate placement options, the best interests of children and the need to detain or remove. Thus, while not a decision-maker, the role is crucial in the department making informed decisions, particularly given the ongoing and consistent nature of the role.

In addition, the caseworker is responsible for ensuring the asylum seeker understands the asylum process and is aware of the development of his/her case. A strength-based approach is used

to support and empower the asylum seeker as they are prepared for all possible immigration outcomes. This includes ensuring the asylum seeker or detainee is active in the process by having internet access to research his/her case and the ability to contact NGOs for advice. This early intervention and strength-based approach assists individuals to feel they are given a fair hearing, and if refused, are empowered and supported to make his/her own departure arrangements with dignity.

The Swedish Migration Board noted higher levels of compliance with decisions following the introduction of the case management model, reducing the need to detain or undertake coercive removal measures previously used by police and security companies.²⁷ Four years after the introduction of the caseworker role, Sweden had the highest levels of returns on refused asylum seeker cases in Europe, with 76% voluntarily departing.²⁸

Case management in other countries

Governments elsewhere in Europe have also explored case management models with asylum seekers and undocumented migrants. The UK introduced the single 'case owner' framework under the New Asylum Model in 2005.²⁹ More recently, Belgium introduced the 'coach' concept in 2008.³⁰ Both models have been linked to alternative detention pilots involving refused asylum seeker or undocumented families in the community for prolonged periods, such as the 'Millbank' Alternative to Detention Project in the UK.³¹ NGOs in both countries have raised concerns however regarding these initiatives. For example, they are concerned that governments focus primarily on promoting return rather than exploring all possible immigration outcomes for the client, as occurs in Sweden.

Community groups have also introduced a number of alternative to detention models over the past ten years, using forms of casework intervention and case management, which have had considerable welfare and immigration outcomes.

In the US, the Lutheran and Immigration Refugee Service (LIRS) and Catholic Charities have utilized casework models in their work with asylum seekers and migrants. A pilot project by the Vera Institute of Justice had a 93% appearance rate for asylum seekers at required hearings.³² This project demonstrated that community connection, including with community-based organizations, coupled with appropriate assessment and screening, were a necessary component of compliance rates.

In Canada, the Faithful Companions of Jesus (FCJ) Refugee Centre provides ongoing, community-based support and assistance to asylum seekers throughout the asylum process, which has seen less than one percent of clients absconding.³³ Maintaining a trusting, supportive relationship with the asylum seeker and maintaining dignity, are key aspects of their work as illustrated below:

27. Asylum Seekers in Sweden, Grant Mitchell, 2001.

<http://www.fabian.org.au/940.asp>.

28. http://www.hreoc.gov.au/Human_Rights/children_detention/submissions/hotham.html#4.

29. <http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/briefings/Newasylummodel.pdf>.

30. <http://www.levif.be/actualite/belgique/72-56-18807/refugies- --plus-d-enfants-enfermes-l- annee-prochaine.html>.

31. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/alternative-to-detention/alternative-to-detention.pdf?view=Binary>.

32. Alternatives to Detention Programs, an International Perspective, Lutheran Immigration and Refugee Service, May 15, 2009.

33. Alternatives to Detention Programs, an International Perspective, Lutheran Immigration and Refugee Service, May 15, 2009.

26. <http://www.cmsa.org.au>.

If the time of removal from Canada for the refugee claimant comes, we will try to see that it happens with dignity.³⁴

Australia's Hotham Mission Asylum Seeker Project is the largest housing agency for asylum seekers in the country and has based its casework system on the Swedish model. In 2006 research conducted by Hotham Mission found that casework with more than 550 asylum seekers over a period of five years resulted in a 99% compliance rate, with 84% of refused asylum seekers voluntarily repatriating. Only 12.5% of clients were detained pending removal, with only one incident of absconding.³⁵ In analyzing these successful outcomes the Mission stated:

Key components of this casework model are consistent case coordination, assessment-based decision making, intervention planning and active casework to support, prepare and empower the client throughout the process. Due to the various multiple stressors and circumstances facing different asylum seeker individuals and groups, case-by-case assessment and case planning is required to effectively support and case manage asylum seekers.

Ideally, the approach is based on early intervention, that is preventative rather than reactive, particularly in terms of dealing with possible crisis issues. Providing consistent casework, preferably with an ongoing worker, is crucial when working with asylum seekers, particularly in addressing a client's lack of trust in authorities due to past experience. Furthermore, ensuring the asylum seeker completely understands the situation in which they have found themselves, (determination process, welfare situation etc), assists them in coping with the situation, taking control and in making the few decisions they are able to make.³⁶

Following the release of the Hotham Mission research, and the Palmer report, the Australian government first developed a case management model, using a number of core components found in both the Hotham Mission and Swedish case management models.

Case management as an alternative to detention in Australia

Since late 2005, alternatives to detention in Australia have increasingly used a community-based case management framework. This follows extensive NGO work in the area of developing alternative models to detention appropriate to the Australian context. This included the development of an alternative to detention policy framework by Justice for Asylum Seekers (JAS) Alliance,³⁷ the highly successful testing of a case management model by Hotham Mission Asylum Seeker Project,³⁸ and advocacy by members of the Immigration Detention Advisory group,³⁹ and groups and individuals in the community. These initiatives culminated in the findings and recommendations of the Palmer Report in 2005, which recommended the Department of Immigration:

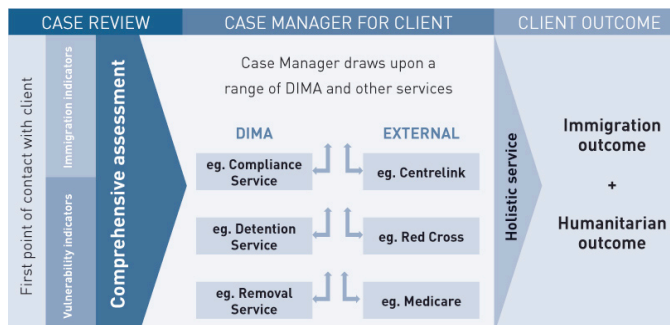
Develop and implement a case management system that ensures that every immigration detention case is assessed comprehensively, is managed to a consistent standard, is conducted in a fair and expeditious manner and is subject to rigorous continuing review. (Recommendations 7.1)⁴⁰

Prior to late 2005, there was a one-size-fits-all response to detention in Australia, with little assessment of individual circumstance or the need to detain. With the introduction of the case management system in 2006, the Department of Immigration and Citizenship (DIAC) has worked to develop a comprehensive mechanism by which individual circumstance, history, need and risk can be assessed in order to improve decision making, responsiveness to need and overall client outcomes.

The Department introduced a case management model similar to that developed and successfully implemented in Sweden in the late 1990s.⁴¹ The multi-disciplinary role is separated from decision-makers to provide ongoing assessment, support and recommendations to the Department and to the client throughout his/her immigration pathway. The role has a focus on assessing and overseeing the broader welfare needs and identifying barriers to immigration outcomes for an individual deemed as vulnerable in the migration stream. Case management aims to ensure a fair and expeditious process, with the client being informed and empowered throughout the process. The model aims to support people in whatever may happen to them, whether they are permitted to stay or are required to depart the country, and which is consistent and supportive in its message.

Case managers use similar strength-based techniques to their Swedish counterparts to explore all options with clients, and encourage their involvement in resolving their status. To achieve this, case managers undertake to work with community service and legal providers, and where possible to work with clients before a final decision.

The role assumed by DIAC also aims to improve departmental decision-making in relation to detention and removal and to ensure informed assessment of circumstance. It also seeks to act as a safeguard against wrongful detention and removal and assumption based-decision-making, such as that which occurred prior to 2005, relating to the wrongful detention and removal of Vivian Solon Alvarez, which led to the government-commissioned Comrie Report.⁴²



DIAC Case Management Model⁴³

34. <http://www.fcjrefugeecentre.org/docs/BP%20Manual%20Final.htm>.

35. Hotham Mission- Bridging Visa E Review, May 2006.

36. Hotham Mission, Asylum Seeker Project, Discussion Paper - Providing casework to asylum seekers at the final stages, May 2006.

37. <http://asp.hothammission.org.au/index.cgi?tid=22>

38. Hotham Mission- Bridging Visa E Review, May 2006.

39. IDAG was established in 2001 to provide independent advice to the Minister for Immigration on the appropriateness and adequacy of services, accommodation and amenities at the immigration detention centres: <http://www.immi.gov.au/managing-australias-borders/detention/regulations/idag-members.htm>.

40. Palmer Report, <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf>, 2005.

41. Asylum Seekers in Sweden, Grant Mitchell, 2001.

42. Proust Report - Evaluation of the Palmer and Comrie Reform Agenda, November 2008.

43. <http://www.immi.gov.au/about/charters/client-services-charter/client-service-charter1.pdf>.

Case management model

Key elements of the case management model include:

- Recruitment of staff from diverse human services backgrounds to manage complex and sensitive cases.
- Provision of a single, over-arching view of cases.
- A comprehensive assessment and development of a case plan for each client, prioritizing all cases in detention.
- A focus on the client journey towards the immigration outcome (either a visa or departure) rather than focusing solely on individual transactions or events
- Early intervention.
- Identification and elimination of barriers to case progression and highlight system inadequacies.
- An ability to question legislation, process delays and promote fair and reasonable outcomes.
- Model and facilitation of effective communication strategies.
- Break down communication barriers within the Department by promoting integrated practice rather than linear processing.⁴⁴

Case Management and Compliance Units

The Palmer and Comrie Reports found that the Department lacked leadership, training and clear lines of communication prior to 2005. An Immigration College was developed to strengthen these areas, with a particular focus on the Compliance Unit.⁴⁵ This Unit is the enforcement branch of the Department, which undertakes raid operations and makes decisions to detain and remove an individual. It is often the first point of contact for the asylum seeker or undocumented migrant.

With the introduction of a Case Management Unit, a key area of focus for its work was to improve the understanding and capacity of compliance staff to undertake appropriate risk and need assessments of clients, prior to decisions to detain and remove. This included the development of a risk management framework, based on risk and need assessment, regular case review and monitoring and the Client Placement Model (CPM)⁴⁶, with indicators including:

1. Health and wellbeing
2. Family structure
3. Availability of community support
4. Immigration pathway
5. Culture and religious sensitivities
6. Availability of detention accommodation; and,
7. Security risk assessment

Compliance staff are required to assess each individual case against these indicators. If a person is found to have any health or welfare concerns, they are referred to the Case Management Unit. In addition, all detainees or former detainees are automatically assigned a Case Manager.

At the client level, this model has included:

- An initial assessment by Compliance or Detention staff.
- Health/Welfare/Complex/Vulnerable/Detention cases being referred to Case Managers.
- Those with no identified needs or risks being referred to the Status Resolution Network. (Described below)
- A case plan being developed to determine the most appropriate client placement option, to identify individual needs and how to best achieve an immigration outcome.
- Regular meetings are held with the client, particularly at critical points, such as case decisions and change in circumstance, to explore case resolution possibilities, new information for decision-making or departure options.

Community Care Pilot (CCP)

The introduction of the Community Care Pilot (CCP) in 2006 has further developed alternatives to detention, due to its holistic model of community-based care and processing for asylum seekers and vulnerable individuals in the migration stream in Australia. The strength of the CCP is that it is a comprehensive early intervention model, based on the DIAC Case Management system overseeing and supporting complex cases through to an immigration outcome. It utilises different organizations, such as the Australian Red Cross, the Immigration Advice and Application Assistance Scheme (IAAS) and the International Organization for Migration (IOM) to provide welfare and legal advice.

The Pilot's key objectives are:

- To ensure clients' cases are managed in a timely, fair and reasonable manner while their immigration outcomes are being determined.
- Provide wellbeing support to clients with exceptional circumstances.
- To support individuals to make informed choices about their immigration outcomes and thereby achieve more timely immigration outcomes.⁴⁷

CCP Institutional Framework

Although initially developed to assist the Department manage and support early-identified complex community cases through their immigration pathways, the CCP has been increasingly used to manage long-term complex cases, including refused asylum seekers, undocumented migrants, those released from detention into the care of the pilot and individuals with health and welfare concerns.

To be accepted into the CCP, a person must be assessed as requiring DIAC Case Management due to the presence of one or more case management vulnerability indicators (particularly persons with health and welfare needs, women, unaccompanied minors and aged persons). People with exceptional circumstances considered for assistance include individuals who:

- Suffer from torture and trauma
- Have significant mental health issues
- Have serious medical conditions
- Require support in order to undertake routine daily tasks (e.g. elderly, frail, mentally ill, disabled.)

44. An overview of the change revolution in DIAC post Palmer and Comrie. DIAC PowerPoint. (No date provided)

45. A recommendation of the Palmer Report was the need for training of immigration officers at all levels to be better informed of legislation, policy and be training in working with individuals with complex need and circumstances, including in 'field operations', i.e. raids on undocumented migrants. An Immigration College was developed in July 2006 as part of a 5-year initiative. http://www.immi.gov.au/media/publications/department/_pdf/palmer-progress-a5-booklet-web.pdf.

46. DIAC Submission Joint Commission on Migration Inquiry-Immigration Detention Sub129c, Sept 2008.

47. March 2009 DIAC CCP Report: Page 1.

- Face serious family difficulties including child abuse and domestic violence
- Have experienced violence, serious relationship issues, and child behavioral concerns
- Are suicidal, and
- Destitute (provided other indicators also are present).

Referrals are received from both community agencies and from within the Department, with Case Managers undertaking an assessment and a case plan developed. Service provision for clients will depend on identified needs, which may include:

- Community assistance, including assistance with food, clothing, basic living expenses, health care, and accommodation, which is provided by the Australian Red Cross.
- Immigration advice and application assistance to vulnerable people, delivered by providers under the Immigration Advice and Application Assistance Scheme (IAAAS).
- Information and counseling services, provided by the International Organization for Migration (IOM). The IOM provides information on immigration processes and assistance to people and prepares them for their immigration outcome.

Case managers remain responsible for overseeing the case once it is referred. This includes regular meetings with the client and case conferences with client and service providers at critical incidents, such as a refusal or change of circumstance. An outcome of this interaction with both client and service provider has meant the Case manager has a more comprehensive picture of the client's circumstance and is in a better position to make recommendations to the Department. These recommendations can include providing additional information on health or circumstance to the Compliance Unit on return or detention decisions, or to the Ministerial Intervention Unit on visa considerations.⁴⁸

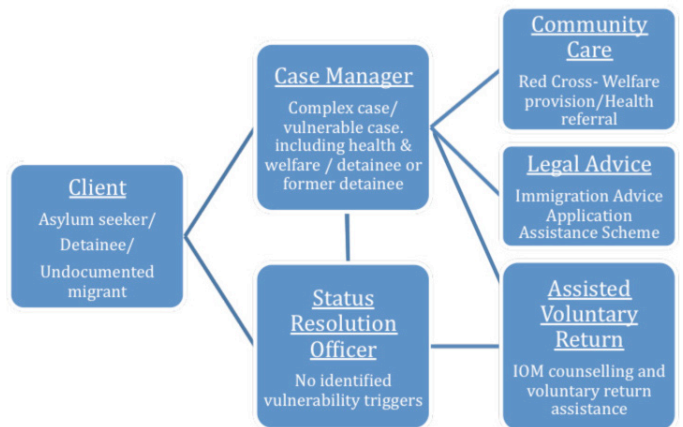
There has been a large degree of goodwill between parties to date, in the development of the pilot. Non-governmental organizations have been supportive of the development and implementation of the CCP (see Appendix 1), with a number of community groups sitting on the pilot's government-chaired reference committee. NGO recommendations for the pilot have included strengthening the role of case managers within the Department, additional resources to further expand the number of case managers and program places to enable more individuals to have access to assistance, and that families detained on Christmas Island be transferred to the mainland under CCP or community detention arrangements.

CCP Outcomes

A challenge for the pilot has been the number of long-term complex cases involved, with an average length of time in Australia being more than six years. Despite this, the Community Care Pilot (CCP) has achieved outstanding outcomes. This has included improved welfare outcomes of individuals within the pilot (see Appendix 1), and considerable immigration outcomes.

Of the 918 people assisted since March 2006, 560 people (61%) have had a final immigration outcome. Of this group, 370 people (66%) have received a temporary or permanent visa to remain⁴⁹, 114 people (20%) have voluntarily departed, 37 people (7%) absconded, 33 people (6%) were removed by the Department and 6 people (1%) died.⁵⁰ These figures show compliance rate of 93%, with 60% of those not granted a visa to remain in the country having voluntarily departed.

In May 2009, the Australian government announced it would expand the Community Care Pilot into a national program, called the Community Status Resolution Service.



Community Status Resolution Service - National program announced May 2009

Community Status Resolution Trial

To further strengthen the capacity of Compliance staff, and with insufficient numbers of Case Managers to cover complex cases, the Community Status Resolution Network was developed in 2007. This network consists of Compliance staff specially trained to undertake assessments and work with clients to help resolve their immigration status. They include using case management principles of early intervention and active and informed engagement with those clients who have no identified health and welfare concerns.

The work of this network was tested in another pilot, the Status Resolution Trial (SRT), as an extension of the Community Care Pilot. The SRT provides early intervention assistance through the immigration process, including information, advice and counseling from the IOM to individuals with no identified health or welfare concerns.

This trial involved both clients identified in the community as undocumented by the Compliance Unit, as well as individuals still in the migration process awaiting an outcome.

48. The Minister of Migration under Section 417 has the non-discretionary power to intervene and grant a visa in humanitarian circumstances. This is often the last decision-making stage for an asylum seeker.

49. During the reporting period, 66% of people within the pilot were granted visas (370 people) of which 31% were temporary (148 individuals) and 59% were permanent (217 individuals). In comparison, overall recognition rates for on-shore protection visa applicants during the reporting period 2007-8 were 45% (5350 protection visas were processed, of which 2431 were granted protection visa or ministerial interventions). A previous study at Hotham Mission had shown an overall approval rate of 48%
 Note: As the pilot is comprised of a range of individuals, including asylum seekers, undocumented migrants and vulnerable individuals within the migration stream, it is difficult to analyse in detail the differing recognition and approval rates. It was noted however that 21% of individuals (76 people) granted a visa outcome were granted a protection (refugee) visa.
 50. March 2009 DIAC CCP Report: Page 2.

Following an initial assessment and determination that there are no outstanding vulnerabilities requiring Case Management referral, SRT staff investigates the background to the case and identifies stakeholders, such as community groups, legal providers or family members. The officer engages the client, using similar mechanisms to those used by Case Managers, such as case conferences with stakeholders and the client, the exploration of immigration options, and referral to the IOM for further counseling and advice on departure and repatriation options.

SRT Outcomes

There have been positive outcomes of the trial since its inception. Of the 596 people in the Status Resolution Trial since July 2007, 426 people (72%) have exited the program. Of this group, 232 people departed voluntarily (54%), while only 22 people absconded (5%). Of the remaining cases, 59 people (14%) refused to engage with the Department, i.e. refused to discuss or engage in discussions related to their immigration status or exploring achieving an immigration outcome, 97 people (23%) are still in the immigration process, while the remaining 16 cases (4%) were inappropriate referrals.

These figures show a 95% compliance rate of people within the program, with only 5 % absconding. In addition, 74% of the 313 cases not awaiting a final immigration decision or inappropriately referred, departed voluntarily,⁵¹ with nearly 50% of these cases departing within five weeks of engagement.⁵²

Removals and Returns in Australia

The Australian Migration Act allows for the removal of an unlawful non-citizen under section 198, or a deportee under section 200 as soon as reasonably practicable. Prior to 2007, there were a range of serious concerns raised by NGOs, academics and the Australian Human Rights Commission⁵³ regarding Australia's return and removal policy. This included:

- Reports of cases of individuals in detention with protection needs being removed to places of danger and persecution, highlighting concerns in the determination and removal processes.⁵⁴
- Reports of coercive measures being used to compel 'voluntary' return of individuals in both on-shore and off-shore detention facilities.⁵⁵
- Individuals in the community found to be unlawful being routinely detained pending removal, without any assessment of actual risk to abscond or health or welfare considerations.
- Undocumented individuals or refused asylum seekers in the community wanting to depart voluntarily but unable to self-fund being removed by the Department as no community-based assisted voluntary return program existed. Refused asylum seekers living in the community were particularly affected by this policy, as in most cases the Bridging Visa E granted to asylum seekers awaiting a final decision denied the right to work and government benefits. This often led to destitution, with individuals unable to self-fund their own departure.⁵⁶

Under these removal arrangements, individuals either would be 'accompanied' in the removal process, or in limited circumstances, could board a plane themselves as an 'assisted' or 'monitored' return. A number of concerns were raised by community groups related to the inappropriate, expensive and often unnecessary practice of 'assisted removal' for refused asylum seekers in the community opting to voluntarily repatriate. These included:

- The requirement of a cancellation of their bridging visa and potentially being barred re-entry into Australia for a period of years.
- The individual being administratively detained pending removal.
- Debt to Australian Commonwealth for the cost of detention and removal.
- The individual having no control over their own travel documents, and
- In some cases, the country of origin being informed of the removal.

Safeguards against wrongful removals and refoulement

Following the wrongful detention and removal of Vivian Solon Alvarez in 2005 and the Comrie reports to parliament, a number of developments have occurred within the department relating to safeguards against wrongful removal. These include:

- Procedural changes to ensure better oversight and decision-making at the implementing officer level of the determination process. This includes the requirement of a pre-removal assessment.⁵⁷
- Risk and needs assessments undertaken prior to decisions to refuse, detain or remove clients case managed by Case Manager or Status Resolution Officers. (See Client Placement Model (CPM) indicators)
- The new 'Systems for People' computer system introduced in 2007 allowing a more comprehensive analysis of client circumstance and history.

Within the CCP, additional safeguards have included the access to legal advice, returnee assessment undertaken by IOM (see below), and in some instances, case conferencing of service providers prior to implementation of a final decision.

There has been a 72% reduction in the number of removals by the Department since 2005, with an increased focus on facilitating a voluntary return from the community where possible.⁵⁸

51. DIAC Final Activity Report October 2008: Page 11 and 12.

52. DIAC Community Care Pilot Report, Page 2, March 2009.

53. Formerly the Human Rights and Equal Opportunity Commission (HREOC)

54. David Corlett, *Following them Home*, Black Inc Books, 2005; *Deported to Danger I (2004) II (2006)*, Edmund Rice Centre.

55. David Corlett, *Following them Home*, Black Inc Books, 2005; *Deported to Danger I (2004) II (2006)*, Edmund Rice Centre.

56. Hotham Mission, *Bridging Visa E Review*, May 2006.

57. According to the Department of Immigration, pre-removal assessment involves a number of areas of the Department, often in the Removal, Compliance or Case Management Units. This process includes:

- Assessment and resolving of international obligations issues
- Travel document preparation
- Logistical Planning
- Health checks and clearance
- Preparation of post-removal arrangements, and
- Liaison with other agencies and detention providers

58. In 2004-5 there were 12,524 removals by the Department: <http://www.immi.gov.au/media/publications/compliance/managing-the-border/pdf/mtb-chapter11.pdf>. In 2007-8 there were 3,625: <http://www.immi.gov.au/about/reports/annual/2007-08/html/outcome1/output1-4-3.htm>.

There have also been a number of improvements in the refugee determination process since 2005. These include:

- Mandatory interviews at the primary stage.
- The introduction of guidelines on the assessment of credibility by the Refugee Review Tribunal following complaints that late or inconsistent disclosure from torture and trauma survivors was being used to discredit their claims.⁵⁹
- A review required by the 'protection' staff in the Department of refused asylum seekers against international obligations to the individual prior to the case being referred to the Immigration Minister⁶⁰
- An announcement by the Immigration Minister Chris Evans in May 2009 that a complimentary protection system would be established, incorporating Australia's non-refugee protection obligations into a reviewable administrative process.⁶¹

There have however been concerns raised by community groups regarding the current determination process. These include:

- A failure to provide some individuals with access to legal assistance,
- The 90-day processing benchmark introduced in 2005 for primary decisions which some argue has lowered the quality of decision-making
- That individuals processed under the excision legislation are denied access to mainland review processes.

NGOs have also highlighted the need for effective monitoring of the safety of returnees, both removals and voluntary departures, and greater consistency in quality decision-making to provide further safeguards against the risk of refoulement for individuals with protection needs.

IOM Assisted Voluntary Return (AVR)

Following the recommendations in the Palmer and Comrie Reports and the establishment of a Case Management Unit within the department, a community-based Assisted Voluntary Return (AVR) program was introduced. The AVR program aims to facilitate departure from the community while the client is lawfully on a bridging visa, without the need to detain. The AVR has also been available to individuals unlawfully in the country who have been made lawful by being granted a bridging visa pending departure arrangements.

The AVR program was established initially within the Community Care Pilot program, and was later extended in the Status Resolution Trial. The AVR program has included the role of IOM caseworkers receiving referrals from Case Managers, community groups or from self-referral and undertaking an initial assessment on identified barriers or safety, health and other concerns to effective repatriation. Caseworkers also provide the following services:

- Pre-departure assistance, including counseling and information on the migration process, and assistance with travel documents, visas and flight assistance.
- Assistance en route, including transit, reception and domestic transport assistance
- Post-arrival assistance, including repatriation assistance provided to vulnerable individuals including minors and medical cases.

The 'voluntariness' of return

The AVR program guidelines state that the 'voluntariness' of return is based on a decision freely taken by the individual, and includes:

- Freedom of choice, which is defined by the absence of any physical, psychological or material pressure.
- An Informed decision which requires having enough accurate and objective information available upon which to base the decision⁶²

While it is difficult to determine the degree to which the return outcomes noted in the reporting period adhere to these guidelines on what constitutes 'voluntary', community groups with clients in the pilot programs have not raised concerns around coercive measures relating to return outcomes.

However, given that the majority of returnees in the pilot programs have no legal basis to remain in Australia, according to the European Council of Refugees and Exiles (ECRE), this group would be more appropriately categorized as 'mandatory returns'. Mandatory return according to ECRE relates to decision to return made by a person who has no legal right to remain in country of asylum for protection reasons and who is required to leave by law. In such circumstances consent to return is obtained in preference to remaining illegally or the prospect of being forcibly removed.⁶³

Overall Welfare, Cost and Immigration Outcomes:

These 'alternative to detention' pilot programs over the past three years have had considerable welfare and immigration outcomes. On average, there has been a 94% compliance rate, with only 6% those individuals who have exited the programs absconding and 67% of those not granted a visa to remain in the country voluntarily departing.⁶⁴

Despite the complexities of cases referred to both pilots, overall there have been positive outcomes in relation to:

- Lower cost in comparison to detention
- Low levels of absconding
- Increased voluntary return outcomes for refused cases
- Improved settlement outcomes for approved cases, and
- Improved client health and welfare. (See Appendix 1)

62. <http://iom.fi/content/view/58/102/> and http://idc.rfbf.com.au/wp-content/uploads/2009/06/final_-_iom_brochure_-_20_july_2007_v2a_-_for_printing.doc

63. European Council of Refugees and Exiles Position on Return (2003)

- **'Voluntary repatriation'**: the decision to return is made by those who have a legal right to stay in host country it is a freely exercised choice in favour of the right to return and as a result of an informed choice the decision to return is made without any pressure clear legal safeguards are in place and are followed.
- **'Mandatory return'**: the decision to return is made by a person who has no legal right to remain in country of asylum for protection reasons and who is required to leave by law the consent to return is obtained in preference to remaining illegally or the prospect of being forcibly removed the consent to leave is obtained by means of incentives or sanctions.
- **'Forced return'**: a person is required to leave by law and does not consent to do so and removal is effected by force or with the use of restraints

64. The CCP and SRT outcomes are used to define overall program outcomes. Community Detention is not included as it is in terms of legislation classified as an alternative form of detention.

59. <http://www.mrt-rrt.gov.au/docs/guidelines/CredibilityGuidanceAug08.pdf>

60. This relates to the work of the 'On-shore Protection' unit and does not apply to individuals seeking asylum affected by the excision legislation who are now processed on Christmas Island and not entitled to access the mainland determination process or judicial system.

61. <http://www.minister.immi.gov.au/media/media-releases/2009/ce03-budget-09.htm>

Cost

The use of alternatives to detention has also proved a cost saving to government. In the first instance, decisions made to not detain have reduced the costs of detention, which average more than AUS\$125 per person per day, or more than \$45,000 per year (US\$31,000).⁶⁵ For individuals requiring specialist care, the cost of providing welfare, legal and voluntary return services under the Community Care Pilot has averaged less than AUS\$39 a person per day, or less than \$15,000 per year (US\$10,000).⁶⁶

The Department of Immigration, in a Senate submission on February 24, 2009 stated:

*We have been formally testing this approach through the Community Status Resolution Trial and the Community Care Pilot...This approach is more cost effective than the conventional 'locate, detain and remove' model. For example, non-common costs of an assisted voluntary return from the community under the AVR service (non-common costs of about \$1500) are about one third of those under the 'locate, detain and remove' model (approx \$5000).*⁶⁷

Key components of successful case management

Based on the outcomes of successful case management models used internationally, such as the Swedish 'handläggare' model, Hotham Mission and the Australian Case Management framework, a number of key components can be identified, including:

- Ensuring the case management model utilizes social work type principles of supporting and empowering individuals and recognizing unique needs and circumstances.
- The necessity of ensuring the case management model is aimed at an early intervention approach on the preparation of individuals for all possible immigration outcomes, whether return or integration. This therefore ensures the role of case management is not aimed solely at focusing on achieving a return outcome, but on preparing an individual for all possible scenarios.
- Ensuring the provision of translated information to all individuals on their claim, the nature of their reception, the role of the case manager and the possible immigration outcomes, either return or integration, depending on immigration decision.
- Ensuring the system covers all families with children and unaccompanied minors.
- Importance of NGOs and government departments working together on development and implementation.
- Building of trust with the individual or family as vital for the success of alternatives, which includes:

- 1) A focus on the broader psychosocial wellbeing, not just their immigration outcome;
- 2) Ensuring the individual case has been properly heard, all new information taken into account and that legal opinion is provided;

- 3) Case manager to provide a navigation and support role, not a decision-making and implementation role;
- 4) Flexibility and sensitivity is given in terms of implementation of returns; and
- 5) Welfare agency or NGO involvement in some capacity with the clients as part of the alternative model, ensuring a transparent and open approach to the implementation of the model.

From the experiences of NGOs with high compliance rates and improved welfare outcomes, the principles of building trust, maintaining dignity, information provision and community connection, have been key components. This approach differs considerably from models developed that in practice have focused primarily on return outcomes, rather than a holistic approach, exploring all possible immigration outcomes and developing a level of trust between client and case manager.

65. <http://www.minister.immi.gov.au/media/speeches/2009/ce090318.htm>.

66. DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129 f, October 15, 2008: Community Care Pilot cost: \$5.6 million for 2008/9. With a maximum of 400 people in the pilot during this period, the average daily cost is less than \$38.30, excluding case management costs.

67. http://www.apf.gov.au/senate/committee/legcon_ctte/estimates/add_0809/diac/38.pdf.

Conclusion

The loss of liberty imposed on detainees is one of the strongest penalties imposed by governments on individuals. In this, the 10th anniversary of the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, governments should, in compliance with international human rights standards, only detain in circumstances where alternatives have been assessed as insufficient and only as a last resort. Alternatives that ensure rights, dignity and wellbeing, including a range of options from supervised release, reporting requirements, posting bail or community case management should be considered and pursued before detention.⁶⁸

Many governments that do utilize alternatives have focused on often unnecessarily restrictive or intrusive options, such as onerous reporting and monitoring, or on different forms of detention, such as electronic tagging, curfews or family detention centres. Australia however, has over the past three years explored a case and risk management model with a focus on individual early intervention, need and risk assessments, case planning, and welfare assistance and independent legal advice.

This model has resulted in a significant move from a punitive enforcement culture of raid, detain and remove regardless of circumstance, risks or needs of individuals, to a more individualized risk and case management model of determining on a case by case basis the need to detain. This model has meant the increasing use of community-based alternatives to detention in the first instance where there are no security concerns.

The Australian government has piloted a number of community-based 'alternative to detention' programs, which have had considerable success in terms of welfare, immigration and cost outcomes. On average, these programs have yielded a 94% compliance rate, with only 6% of individuals who have exited the programs absconding, and 67% of those not granted a visa to remain in the country have voluntarily departed. These pilots have been so successful that in May 2009, the Australian government announced they would be expanded into a national program. (See Appendix 1)

The Australian experience, though unique in its context, highlights the benefits of community-based alternatives that include comprehensive case management, access to independent legal provision and a focus on early intervention and support and sheds light on how such models could be replicated elsewhere around the world.

This model has been found to be effective in meeting the interests of government, migrants and the broader community. This includes effectively managing migration outcomes in a cheaper and more humane manner. It has minimized the use of detention and unnecessarily restrictive or intrusive alternatives. It has also achieved high levels of voluntary departures and low levels of absconding, while ensuring the rights and dignity of asylum seekers and migrants are upheld.

June 1st, 2009

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68. UNHCR Revised Guidelines Relating to the Detention of Asylum Seekers (1999) Guideline 4.

Appendix 1: Australian government and NGO response to the pilot programs

In September 2008, the Department of Immigration and Citizenship in its submission to the Joint Parliamentary Committee on Migration's Inquiry into Immigration Detention, stated:

*Outcomes of both the Community Care Pilot and the Trial have been very positive. The evaluation of the CCP showed that the provision of health and welfare support, together with access to independent immigration advice, assists in stabilizing the client's circumstances, and therefore allows the client to have a better understanding of their immigration status and resolution options. Subsequently, clients are often able to exercise an informed choice about realistic immigration pathways open to them.*⁶⁹

In relation to the Status Resolution Trial, the Department of Immigration and Citizenship in its March 2009 Report stated:

Results of the Trial to date however demonstrate that early intervention and active client engagement can engender more timely case resolution - the average resolution period in some cases was only some six weeks from the initial point of client engagement; on average, these clients had been in Australia for approx. five years prior to this engagement.

*The lessons from the Trial also indicate that assisted voluntary return for those clients in the community will help achieve more speedy case resolution and deliver significant savings benefits when compared to traditional detention and removal activity.*⁷⁰

In March 2009, the Australian government stated:

It has been demonstrated that a case management approach, together with health and welfare support and independent immigration information and counseling is critical in resolving the cases of vulnerable individuals and families swiftly. When health and welfare issues are stabilized, clients are better able to think clearly, exercise choice and participate in resolution of their immigration status.

*Responses from stakeholders have been overwhelmingly positive. Overall, the Pilot is seen as a strong indicator of a shift in culture within the Department of Immigration and Citizenship (DIAC) from being very "punitive" to being "able to deal with clients in a more humane manner."*⁷¹

The Refugee and Immigration Legal Centre (RILC) in its submission to the Joint Standing Committee on Migration's Inquiry into Immigration Detention, stated:

*RILC has been directly involved through participation on the CCP Reference Group, and believes that the Pilot continues to clearly demonstrate the greatly improved outcomes of such an approach in relation to humane treatment of people, timely and just resolution of status, and reduced financial costs. We commend this model to the Committee for further consideration.*⁷²

Paris Aristotle, Director of the Victorian Foundation for the Survivors of Torture, and who has been instrumental in the development of alternatives to detention in Australia, stated:

A community-based alternative for supporting asylum seekers has been trialed by the Federal Government and non-government agencies for the past 18 months. It has proven to be a more effective and humane approach. It better supports the psychological wellbeing of vulnerable asylum seekers and helps them make more reasoned decisions about their options.

*This has achieved more timely outcomes of claims, greater cost effectiveness and a much higher rate of voluntary departures (when claims have failed) than was ever achieved from detention centres.*⁷³

In May 2009, the Minister of Immigration, Senator Chris Evans, announced the government was committing \$77.4 million over four years to implement key immigration compliance and detention policy improvements in community care, status resolution and assisted voluntary returns. This included expanded the existing pilots into a national program:

The measures provide integrated initiatives to actively, efficiently and effectively manage those in the community to an immigration outcome through early intervention and provision of needs-based support or assistance.

The measures will allow the Department of Immigration and Citizenship (DIAC) to tailor flexible and appropriate solutions to clients' particular circumstances by:

- actively managing clients who require some intervention to resolve their case through the formal introduction of a national Community Status Resolution Service
- providing an assisted voluntary return service to facilitate a client's departure from the community without the need to detain first, and
- providing a package of services including health and welfare support, together with immigration advice and assistance to vulnerable clients with exceptional circumstances, in order to facilitate resolution of their status.

Immigration Minister, Senator Chris Evans said:

*The government's commitment in resolving the status of those in the community means there will be an increased capacity to assist people to reach a timely immigration outcome without the need for detention.....They also reflect the government's determination to implement a humane and risk-based approach to detention. For example, appropriate health and welfare support means families, who otherwise may be detained, can instead be managed humanely in the community.*⁷⁴

69. <http://www.apf.gov.au/house/committee/mig/detention/subs/sub129.pdf>.

70. DIAC Community Care Pilot (CCP) Report, March 2009

71. Department of Immigration and Citizenship Community Care Pilot Report, March 2009, page 3.

72. Refugee and Immigration Legal Centre (RILC) in its submission to the Joint Standing Committee on Migration's Inquiry into Immigration Detention, September 2008

73. <http://www.theage.com.au/opinion/lets-give-softer-approach-for-those-seeking-asylum-a-chance-20081012-4z3l.html?page=1>

74. <http://www.minister.immi.gov.au/media/media-releases/2009/ce01-budget-09.htm>.

The Refugee Council of Australia welcomed this. Refugee Council CEO Paul Power said:

These changes built on a series of significant reforms, which began in 2005. The Community Care Pilot demonstrated that supporting vulnerable visa applicants to live in the community was a more constructive and cost-effective strategy than leaving them indefinitely in immigration detention. It also showed that many of those unable to remain in Australia could be encouraged to return home voluntarily, avoiding the trauma and expense associated with forced removals.

Not only have these changes illustrated the wisdom that more is achieved by treating people fairly, they have resulted in cost savings to the Australian taxpayer. The new Community Status Resolution and Assisted Voluntary Return services, which will cost \$77.4 million over four years, are being funded by savings which have resulted from keeping fewer people in immigration detention for extended periods.⁷⁵

Also in May 2009, the Joint Standing Committee on Migration's inquiry into immigration detention in Australia made its report on community-based alternatives to detention. The bi-partisan report included the following findings:

The evidence suggests however, that it is not necessary to keep people who meet the criteria for release in secure detention centres for long periods of time awaiting resolution of their immigration status. Co-located, open residential accommodation in the community can provide people with safe and supportive living environments while still being accessible to the Department of Immigration and Citizenship and other service providers. Community-based alternatives can also be much more cost-effective than the current high levels of physical security or on-site staffing required within an immigration detention centre.

A more supportive living environment maintains the physical and mental well being of those awaiting an immigration decision, which can therefore facilitate a smoother transition into the Australian community where there is a positive outcome or repatriation. In addition, the harsh psychological burdens inflicted by long and indefinite periods of detention, as well as restrictions on income, work and health care for community-based bridging visa holders, is known to have harmful long term effects on all those involved.

A new approach is needed: one that supports people who lawfully come to Australia; invests in case management; and actively seeks an expected immigration outcome. That is why the Committee has recommended that the Australian government:

- *Reform the bridging visa framework to comprehensively support those released into the community, with appropriate reporting or surety requirements*
- *Utilise the reformed bridging visa framework in lieu of community detention until a person's immigration status is resolved, and*

- *Review the cases of those currently on residence determinations, known as community detention, with a view to granting a reformed bridging visa until their immigration status is resolved, ensuring that there is a continuation of services and support currently available to those individuals.*

The Committee has also recommended that there should be improved transparency in immigration decision-making, improved access to legal advice, and improved access to voluntary return counseling in order to support the provision of information to the client and to help them decide what is going to be the best and most realistic outcome for themselves and their families.⁷⁶

75. Press release May 13, 2009, http://www.refugeecouncil.org.au/docs/releases/2009/090513_Federal_Budget_RCOA.pdf.

76. <http://www.aph.gov.au/house/committee/mig/detention/report2/fullreport.pdf>.