Submission to the Senate Legal and Constitutional Affairs Committee

Inquiry into the *Migration Amendment (Immigration Detention Reform) Bill 2009*

July 2009

Contact

Rev. Elenie Poulos
National Director
UnitingJustice Australia
Uniting Church in Australia, National Assembly

PO Box A2266
Sydney South NSW 1235
Phone: 02 8267 4239
Email: unitingjustice@nat.uca.org.au

Caz Coleman
Project Director
Hotham Mission Asylum Seeker Project

2/579 Queensberry St
North Melbourne VIC 3051
Phone: 03 9326 8343
Email: asp@hothammission.org.au

Contents

1 | Introduction

UnitingJustice Australia, the justice and advocacy unit of the Uniting Church in Australia National Assembly, and the Hotham Mission Asylum Seeker Project (ASP), a UnitingCare agency in Melbourne, welcome this opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee regarding the *Migration Amendment (Immigration Detention Reform) Bill 2009*.

The Uniting Church in Australia seeks to bear witness to our Christian faith through our program of worship, service and advocacy. In the Christian tradition of providing hospitality to strangers and expressing in word and deed God's compassion and love for all who are uprooted and dispossessed, the Uniting Church in Australia has been providing services to asylum seekers and refugees in the community and in detention for many years. The Uniting Church provides direct services to refugees and asylum seekers through its network of congregations, employees, lay people and community service agencies. Hotham Mission's Asylum Seeker Project is one of the most active and respected of these agencies. Through the Church's ministers, lay and ordained, who provide ministry to the asylum seekers in detention centres and through our work with asylum seekers and refugees settling into the community, we have first-hand knowledge of the consequences of government policies.

In July 2002, the Uniting Church released its *Policy Paper on Asylum Seekers, Refugees, and Humanitarian Entrants*.[1] This paper outlines principles for a just response to the needs of refugees that recognises Australia's responsibilities as a wealthy global citizen, upholds the human rights and safety of all people, is culturally sensitive, and is based on just and humane treatment, including non-discriminatory practices and accountable transparent processes.

The Uniting Church will continue to work for a compassionate, socially responsible society and government that takes seriously its national and international obligations. In this spirit, the Uniting Church offers this submission to the Senate Legal and Constitutional Affairs Committee Inquiry into *Migration Amendment (Immigration Detention Reform) Bill 2009*.

[1] Uniting Church in Australia National Assembly, *Policy Paper: Asylum seekers, refugees and humanitarian entrants*, July 2002, available: http://www.unitingjustice.org.au/images/pdfs/issues/refugees/assembly-resolutions/9_asylumseekerandrefugee2002.pdf

2 | Recommendations

1. The *New Directions in Detention* policy should be implemented in full in legislation and regulations.

2. Where a history of security and identity has been established, an assessment of whether a person presents an unacceptable risk to the Australian community should be conducted swiftly and with the aim of expediting release from detention into the community.

3. The Australian Government should abandon its stated policy of mandatory detention.

4. Asylum seekers should only be required to comply with same health screening requirements as other temporary entrants from the same country of origin. More extensive health checks for permanent entrants can be conducted once a person has been released.

5. The minimum conditions for detention should be codified in legislation, and be based on the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*

6. Minimum conditions for detention and standards of care should be delivered and monitored independently of DIAC and contracted security services.

7. Immigration detention in Australia should conform to the standards in place in the mainstream detention system, including a genuine external review with enforceable remedies. There should be legislated time limits for the carrying out of health, security and identity checks, and judicial review mechanisms for instances where these limits are exceeded.

8. No child should be detained, and we believe that the alternative places of detention are akin to detainment. We would support the implementation of recommendations from the Australian Human Rights Commission's *2008 Immigration detention report*, which included amending Australian's immigration detention laws to comply with the *Convention on the Rights of the Child*, prompt independent review of the need to detain children initially and of continuing detention, and for an independent guardian to be appointed for unaccompanied children.

9. The Community Care Pilot should be expanded into a full program and extended to include people on detention release, ensuring that entitlements cover financial hardship, allow for casework assistance, and continue until the final stage of Ministerial decision.

10. People defined under regulation 2.20 as being eligible for release from detention should be provided with entitlements to Medicare, health and welfare assistance from the time of release until a final immigration outcome.

11. The proposal for Temporary Community Access Permissions should be specified to include appointments or meetings that protect the confidentiality of detainees where it pertains to their medical or legal status. If an unacceptable risk to the community does apply, appointments that involve sensitive legal or medical information should be accompanied by appropriate security but within the confines of the appointment itself, a detainee has the right to confidentiality with the professional being consulted.

12. The Australian Government should reverse the legislation relating to the excision of Christmas Island. The *New Values in Detention* policy should apply to Christmas Island, not only to mainland detention facilities.

3 | *New Directions in Detention*

We commend the Australian Government on its *New Directions in Detention* policy as a sign of the changing approach to the use of immigration detention in Australia. We believe this legislation, which implements several components of this policy, should be passed.

Whilst we offer our recommendations on several aspects of the Bill, we also acknowledge that the Department of Immigration and Citizenship is currently developing accompanying regulatory reform to give effect to aspects of the *New Directions in Detention Policy* (as indicated in the first reading of the Bill in Parliament). We hope that these regulatory changes will add to proposed changes to the *Migration Amendment (Immigration Detention Reform) Bill 2009* in helping to create and maintain immigration policy which upholds the human rights of all people engaged with the immigration system in a transparent and accountable way.

While we welcome the implementation of several aspects of the *New Directions in Detention* policy in this legislation, there remain significant gaps where the policy has not been entrenched in law. These gaps include the parameters for the duration of detention and the stipulation of what is required to sufficiently meet health and identity checks. It is a common experience for asylum seekers to have difficulty in providing a concrete proof of identity, a situation which can result from the person's persecution in the past and subsequent need for protection. If policies have insufficient parameters and inappropriate regulations in this context, asylum seekers may experience unnecessary and unfair delays in the identity check process and release from detention.

Legislative implementation is not only required as a matter of international law (in, for example, article 2 of the International Covenant on Civil and Political Rights), but also will be crucial for ensuring that the spirit of the policy statement is realised in practice. We urge the Government to therefore implement the *New Directions in Detention* policy in full into legislation and regulations.

CASE STUDY: the practical application of Subsection 189(1) and delays in release from detention due to identity and security checks

In 2008 a client with whom Hotham Mission ASP works (client M) was detained after a refusal at the Ministerial stage and non-compliance by the client in engaging with IOM and other measures to prepare to return to his home country.

Client M had previously lived in the community for eight years through the process of primary, review and Ministerial requests in relation to his immigration status. After more than eight months in detention and a subsequent Protection application, client M received a decision from the RRT recommending remittance back to DIAC for the grant of a Protection Visa. However, client M could not be released from detention due to pending identity and security checks despite serious health concerns and a history of torture. Client M was, however, recommended to Hotham Mission ASP as a detainee eligible for community excursions with the accompaniment of a designated person. Such a measure suggests that DIAC had determined that client M is not a flight risk or significant risk to the Australian community, yet DIAC continues to delay his release into the community.

After spending eight years in the community it is difficult to understand why client M's identity status would have changed by virtue of being in detention. A long history of client M's identity and security status is evident at each stage of the protection application process. Client M has community support and is awaiting a positive visa outcome. The delay in releasing client M in this situation contradicts the *New Directions in Detention* spirit which states: 'that the Parliament affirms as a principle that a non-citizen must only be detained in a detention centre established under this Act as a last resort and if a non-citizen is to be so detained the non-citizen must be detained for the shortest practicable time'. We recommend that where a history of security and identity has been established, an assessment of whether a person presents an unacceptable risk to the Australian community should be conducted swiftly and with the aim of expediting release from detention into the community.

4 | Mandatory detention

Detention should occur, for the shortest possible time, only when necessary. We urge the Australian Government to abandon its stated policy of mandatory detention. We do not believe that mandatory detention is sound and responsible public policy. There is no evidence to show that the current mandatory detention system minimises risk to the community, avoids high rates of non-compliance or deters other immigration offences.[2]

The Uniting Church in Australia has over a number of years called on the Australian Government to investigate and implement alternatives to detention for those seeking asylum in Australia. The Eighth National Assembly of the Uniting Church in 2000, for instance, resolved to call on the Australian Government to end the long period of detention experienced by some refugees and asylum seekers.

[2] A Just Australia and Refugee Council of Australia, 'Joint Standing Committee Inquiry into Immigration Detention *Report #1 Immigration detention in Australia: A new beginning* – Response from A Just Australia and the Refugee Council of Australia, available: http://www.ajustaustralia.com/resource.php?act=attache&id=360

In our submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia, the Uniting Church recommended that detention be only be used as necessary to conduct appropriate identity, health and security checks and these checks should be completed as quickly as possible. After this has occurred, asylum seekers should be released from detention and into the community reception arrangements while their protection claims are being assessed. Asylum seekers should only be required to comply with same health screening requirements as other temporary entrants from the same country of origin. More extensive health checks for permanent entrants can be conducted once a person has been released.

We therefore welcome the insertion of a statement of principle in Part 1 of the *Migration Act 1958* affirming the principle that a non-citizen must only be detained in a detention centre as a measure of last resort; and if a non-citizen is to be so detained, must be detained for the shortest practicable time. We also support the clarification of what constitutes an 'unacceptable risk to the community'.

We would, however, seek clarification on how the principle of detention as a last resort is to be implemented with integrity, considering that there are groups of non-citizens specified for whom detention is the 'first' and only resort.

5 | Minimum Standards of Detention

We are concerned about the quality of care for detainees in particular for those in detention exceeding six months. We are concerned that the minimum standards for detention are not transparent, often resulting in the community sector needing to fill the gap of case management and care.

Case study

In the case of client M (see case study above), the DIAC appointed case manager has visited client M less than once per month over the past eight months. In contrast the ASP has visited client M once per week in response to his isolation and concern about his mental and physical health. During this time ASP built a relationship with client M in which he eventually felt safe enough to talk about his health and legal needs thereby enabling ASP to advocate on his behalf. Over this time the ASP witnessed a steady decline in his mental and physical health and became extremely concerned for his welfare.

Recently, the DIAC appointed case manager rang Hotham Mission ASP to enquire as to the welfare of client M. The ASP reminded DIAC that the ASP is an unfunded organisation that should not have the responsibility of monitoring the health and welfare of client M. We are concerned that without appropriate standards of care in detention centres, community organisations are placed in the difficult position of conveying sensitive case information to and on behalf of DIAC. We understand that the relationship between case managers and clients in detention is inherently fraught. There are, however, examples in the community that demonstrate the benefits of community organisations working alongside DIAC to provide adequate levels of care for clients. These include ASAS and CCP where clients view their case managers as independent from DIAC and are better able to hear difficult messages and disclose sensitive information.

We recommend that the standards of care be delivered and monitored independently of DIAC and contracted security services.

We also strongly recommend that minimum conditions for detention be codified in legislation, and that these standards be based on the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*.[3] Whilst we appreciate that many improvements have taken place in recent years in terms of the operation of detention centres, these conditions will establish clearer standards than those currently stipulated in the Department's Core Operational Principles for detention and ensure Australia's practices conform to international human rights standards in this area.

6 | Independent review

We remain concerned about the length of time a person can remain in detention before an independent review is conducted examining their circumstances. In order to create a system of immigration detention that meets the *New Directions in Detention* policy, an independent and prompt system of checks and balances is needed to ensure the system is transparent and accountable to the Minister and Parliament.

Whilst we acknowledge that the six month review is a significant improvement on the previous arrangements of review by the Ombudsman after detention for two years or longer, we believe that the current period of six months before the Commonwealth Ombudsman conducts a review is far too long for someone to be potentially detained inappropriately having only had their case reviewed after three months by an official from DIAC.

Immigration detention continues to sit outside the mainstream legal system in Australia, not being subject to enforceable remedies for review, which is the case for all other forms of detention in Australia. Individuals in immigration detention have no effective remedy if their detention is unwarranted. Decisions on the detention of these individuals are still left to the Department of Immigration and Citizenship and the Minister for Immigration.

Immigration detention in Australia should conform to the standards in place in the mainstream detention system, including a genuine external review with enforceable remedies. There should be legislated time limits for the carrying out of health, security and identity checks, and judicial review mechanisms for instances where these limits are exceeded.

[3] Accessed at: http://www.unhcr.org.au/pdfs/detentionguidelines.pdf

7 | Children in detention

Whilst we acknowledge the positive changes that have occurred since the placement of children in detention centres during the Howard Government, children are still able to be held low and medium security detention facilities, such as immigration transit accommodation, immigration residential housing and the Christmas Island construction camp. These alternate places of detention still place in children in detention-like conditions, which pose severe risks to the mental health of children who may have already suffered considerable trauma.

In its submission to the National Human Rights Consultation, the Asylum Seeker Resource Centre argued that although children are currently not being held in immigration detention centres, the alternative 'places of detention' mimic detention centres in the following ways:

- they have fences and guards;
- the children are detained with their parents or alone; and
- they have no freedom of movement beyond these fences unless accompanied by guards.

The ASRC also raised numerous concerns about violations of the United Nations' *Convention on the Rights of the Child* in Australia's immigration detention laws, including the interviewing of unaccompanied children on Christmas Island and other places of detention alone or accompanied by an adult from DIAC, and not an independent support person.

No child should be detained, and we believe that the alternative places of detention are akin to detainment. We reject the approval of immigration transit accommodation and immigration residential housing as alternative places for detention. We would support the implementation of recommendations from the Australian Human Rights Commission's *2008 Immigration detention report*, which included amending Australian's immigration detention laws to comply with the *Convention on the Rights of the Child*, prompt independent review of the need to detain children initially and of continuing detention, and for an independent guardian to be appointed for unaccompanied children. We do not think that the use of Ministerial Discretion powers is appropriate, and believe that instead an independent review mechanism is needed.

8 | Absence of support arrangements after release

We are supportive of arrangements to release detainees where there is no 'unacceptable risk to the community', but we remain deeply concerned about the inadequate provisions for caring for asylum seekers in the community. We are grateful for and supportive of the changes being made to the Bridging Visa regime, in order that asylum seekers in the community on Bridging Visa E are able to seek work and obtain social security benefits. The needs of asylum seekers whether on a community-based BVE, or detention release on a BVE under regulation 2.20, or Court Order release, may vary, but the underlying vulnerabilities exist in all categories. A wide range of serious

welfare concerns arise for these groups left in the community with no right to work, healthcare or welfare-based support. This includes the risk of homelessness and the potential negative impact on health and overall wellbeing, particularly for child asylum seekers. In many cases, asylum seekers living in the community have not had access to basic entitlements. Hotham Mission research has found that denying asylum seekers on bridging visas the right to an income and healthcare makes individuals isolated and vulnerable in the community, affecting their health, wellbeing and ability to make departure arrangements.[4]

There are effectively three different funded care programs for asylum seekers living in the community with three different eligibility criteria and three different frameworks for care. Alongside these programs are a number of unfunded agencies that provide care for asylum seekers with no form of assistance, income, access to Medicare or work rights. At present the current models of community care are not streamlined and in many cases minimum standards of care do not exist.

Current Community Care options include

- Community Detention Program
- Asylum Seeker Assistance Scheme (ASAS)
- Community Care Pilot (CCP)
- Unfunded community organisations eg Hotham Mission Asylum Seeker Project (ASP)

Community Detention Program

In 2005 a funded detention release program was introduced for people released into residence determination (RD). The determination of eligibility for an RD arrangement and under what conditions is a non-compellable power at the Minister's discretion. DIAC is responsible for ensuring that the adequate provision of welfare is defined and available in the RD arrangement. The role of the Australian Red Cross is to provide basic income and health care support to persons in the program as well as emotional and social support and referrals to relevant service providers such as mental health professionals. However, the detention release scheme is limited to a residence determination setting and therefore does not include detainees released from detention on a bridging visa into the community.

For example, asylum seekers released from detention under regulation 2.20, are issued a Bridging Visa E 0.51, which denies the right to work, Medicare, and access to the Asylum Seeker Assistance Scheme. In most cases, these releases have been approved on the assurance of some level of community-based support, such as healthcare and housing. The adequacy and sustainability of these arrangements depends on the length of time a person has been detained and the seriousness and complexity of the health and/or welfare issues being faced by an asylum seeker.

Carefully planned community care arrangements, based on the circumstances and vulnerabilities of individuals being released from detention on bridging visas, are clearly required. This issue is addressed in more detail later in this submission.

[4] Welfare and Immigration Outcomes for Asylum Seekers on Bridging Visa E, Hotham Mission, November 2003

Asylum Seeker Assistance Scheme (ASAS)

The federally funded program, the Asylum Seeker Assistance Scheme (ASAS), administered by the Red Cross**,** was established as a safety-net for certain limited categories of asylum seekers. ASAS has been crucial in providing income support to those who would otherwise have been left destitute in the community. However, there are gaps in this program. The program does not extend to asylum seekers who have been in detention or to those at the final stages. Also, it is not funded to provide casework assistance, which is crucial, particularly for long-term detainees and asylum seekers requiring urgent social work assistance for health, housing, legal and other primary welfare concerns.

Our concerns about minimum standards of care are outlined below, however, ASP and UnitingJustice firmly believe that the model for community care, should be the Community Care Program (CCP). The CCP provides a model of care with various levels of support, customised to asylum seeker needs.

The basis of any specialised care for asylum seekers should be seen as service delivery based on client need. Not all asylum seekers would require income support or ongoing casework. Criteria that has been developed for the CCP could stand as a clear indicator for eligibility to income support and could be applicable to both detention releasees and community-based asylum seekers.

Community Care Pilot

In May 2006,the Department of Immigration and Citizenship rolled out the Community Care Pilot (CCP) to provide support in the community for individuals (including asylum seekers) facing particular vulnerabilities while they await a decision on their applications. In 2009 the pilot was expanded to a national program. The aims of the CCP include, but are not limited to:

- the management of individuals in a timely, fair and reasonable manner;
- ensuring that their exceptional needs are addressed and that individuals receives appropriate support in the community; and
- the provision of accurate information to individuals in order for them to make informed decisions about their immigration matters.

Components of the CCP include DIAC's Case Management Service that acts as a 'gateway' for referral of clients to services under the CCP. Assistance for referred clients is provided by the Australian Red Cross as the lead agency. DIAC Case Managers also have access to brokerage funds to meet the needs of clients on a one-off basis.

In many ways the CCP has struggled to reflect the initial aims of the program, with a number of concerns raised at the 12 month review by community agencies and others. However, the collaborative development approach between DIAC and community agencies has ultimately benefited clients by providing a range of services, tailored to need and sensitive to community organisation referrals. The commitment to provision of services until an immigration outcome is determined (although early exit provisions do

exist) means the program can deliver more adequate services than ASAS. Furthermore, the potential to grow this pilot into a program and use it as the model for providing community care across the range of visa and welfare contexts for asylum seekers living in the community is significant.

If the CCP is to become the model for community care as we believe it should there are a number of issues that need to be addressed:

- Whilst the CCP has been expanded to a national program, there is currently a lack of acknowledgment or formal research into the numbers of asylum seekers who are eligible for CCP but cannot access it due to the small size of the program. This must be explored in combination with other options (such as the provision of employment support to accompany permission to work) to determine the needs of a future program that could cover detention release and ongoing community care;

- The introduction of Case Management and individualised needs assessments by DIAC for clients of the CCP has been viewed as a highly positive step by participating community agencies. To build on this, DIAC needs to develop more substantial pathways between the CCP and other community services with which CCP clients currently engage or have the potential to interact. Such relationships can only enhance a broader program that may eventually take into account the expertise and established networks of currently unfunded community organisations who provide valuable services to asylum seekers living in the community;

- *Immigration Advice and Application Assistance Scheme* (IAAAS) must be expanded as a community care option to provide asylum seekers living in the community with credible and consistent legal advice. Such advice would advance both the needs of the Department of Immigrations and those of the client, to resolve cases in a timely manner. Eligibility criteria for inclusion in the CCP need to be broadened to encompass the range of contexts in which asylum seekers may require community care, including detention release, destitution due to lack of income and delayed return to country of origin due to illness or documentation delay;

- There must be provision for funded housing for CCP clients;

- There must be a further enhancement of the casework model of community care to ensure the establishment of clear pathways for referral and broader services provision to clients engaged with the CCP.

Unfunded community organisations

Across Australia there are a number of community organisations that are funded by community and philanthropic donations to support asylum seekers in the community who do not have access to any form of income, healthcare or the right to work. Hotham Mission receives up to $700,000 from community donations and a further $300,000 from philanthropic grants each year to undertake this work. A further $1million is spent in-kind on donated housing and volunteer support each year.

However, despite developing a range of comprehensive services for asylum seekers, including supported accommodation, casework, financial relief, volunteer and support programs, we cannot claim to be meeting the basic needs of asylum seekers living in the community. Among other services, the ASP provides asylum seekers with $33 per person per week to live on, an amount that costs us $30,000 per month. Sadly, many of our clients have the skills to be self-sufficient, skills they are denied using in Australia as is outlined below. However, into the future agencies such as Hotham Mission will struggle to seek the same level of funding from the community and philanthropic trusts as community perception in relation to asylum seekers changes and community donations fall. Government moves to abolish Temporary Protection, offshore detention in Nauru and Manus Island and arbitrary indefinite detention, whilst most welcome, may leave the impression that asylum seekers are now receiving adequate care in the community.

Unless standards of community care are put in place alongside detention changes, asylum seekers may find themselves being turned away by community organisations that can no longer afford to fill the gap left by government policy that denies basic entitlements to asylum seekers living in the community.

We therefore recommend that the Community Care Pilot be expanded into a full program and extend it to cover people on detention release, ensuring that entitlements cover financial hardship, allow for casework assistance, and continue until the final stage of Ministerial decision.

9 | Bridging Visa E 0.51 holders

Asylum seekers released from detention under regulation 2.20, are issued a Bridging Visa E 0.51 (BVE 0.51s), which denies the right to work, Medicare, and exclusion from the Asylum Seeker Assistance Scheme.[5] In most cases, these releases have been approved on the assurance of some level of community-based support for such needs as healthcare and housing.

The adequacy and sustainability, however, of these arrangements is significantly reduced in relation to the extent of time a person has been detained and the health or welfare issues involved. For example, the high level of pharmaceutical requirement and the ineligibility of those individuals for the Pharmaceutical Benefits Scheme makes it almost impossible for community based groups or individuals to provide appropriate care for these individuals.

In the past few years, DIAC have released a significant number of people on 0.51s, not into the care of welfare agencies, but into what we would argue are highly inappropriate and unsustainable arrangements. Some individuals have been granted entitlements such as income support or funded healthcare, while others have received no entitlements, creating an unfair, unclear and negligent system of release.

[5] As far as we can ascertain BE 0.51 is not captured by the recent changes to the regulations relating to the removal of the 45-day rule.

This, we argue has:

- left some asylum seekers vulnerable in the community;
- resulted in people released for health reasons under regulation 2.20 being ineligible for basic healthcare and not receiving appropriate treatment;
- utilised community-care plans with inexperienced, poorly resourced community members that are bound to break down; and
- placed additional strain on community organisations.

This category is a very important administrative avenue for DIAC, allowing them to respond quickly to complex cases where it is clear that individuals cannot be properly cared for in a detention facility or in cases where ongoing detention is otherwise inappropriate, for example, unaccompanied minors or the elderly. However, the category as it currently operates is entirely inappropriate for people with such high needs because it denies them all entitlements to care and support services. It also only applies for those individuals awaiting a decision on a primary or secondary merits decision on their refugee case. Individuals whose cases are being considered by the Minister, or refused cases, are not eligible for a BVE 0.51. Under these circumstances, DIAC struggles to find a solution because few appropriate alternatives currently exist.

Hotham Mission ASP and other agencies have consistently made representations to the Department, based on case experience, that Alternative Places of Detention Arrangements under the MSI 381, requiring ongoing 'line of sight' detention obligations, are not suitable for individuals with serious health issues or cases involving children. Equally, the use of Residential Housing Projects for these individuals is highly inappropriate, with the onus on guards to diagnose and determine at which point health or other services are required. This differs in a detention facility or determination context where the individual can make his or her own way to seek medical treatment.

We therefore recommend that people defined under regulation 2.20 as being eligible for release from detention are provided with entitlements to Medicare, health and welfare assistance from the time of release until a final immigration outcome.

10 | Temporary Community Access Permissions

We welcome the provisions of the Bill introducing Temporary Community Access Permissions (TACP). The difficulties in organising and accompanying people in detention on excursions have been well-noted within the asylum seeker advocacy sector. A lessening of the currently overly burdensome requirements for the approval of excursions will bring significant benefits to those in detention.

We have been particularly concerned about asylum seekers attending medical appointments. Hotham Mission ASP is currently supporting a client detained in the Broadmeadows MITA who was accompanied to a medical appointment by a GSL security guard. This lead to the client not disclosing his full medical complaints in fear that this information could impact on his conditions in detention and his immigration status. We recommend that the TACP proposal be specified to include appointments or meetings that protect the confidentiality of detainees where it pertains to their medical or

legal status. Or if an unacceptable risk to the community does apply, that appointments that involve sensitive legal or medical information be accompanied by appropriate security but that within the confines of the appointment itself, a detainee has the right to confidentiality with the professional being consulted.

11 | Christmas Island

The Uniting Church remains concerned about the detention facilities on Christmas Island and the continued excision of territories from Australia's migration zone. We believe that the excision of territories from our migration zone remains a symbol of a country that was unwilling to fulfil its obligations under the Refugee Convention and in denial about the right of people to seek asylum. We urge the Government to reverse the legislation relating to the excision. The *New Values in Detention* policy should apply to Christmas Island, not only to mainland detention facilities. This is a critical issue given that most asylum seekers are currently being held on Christmas Island.

Uniting Church staff have in the past observed the detention process on Christmas Island first-hand, and this experience informs our opposition to the Christmas Island facility. Uniting Church staff, along with other representatives from asylum seeker advocacy organisations, have been disturbed by the isolation of the facility, and consequently the prohibitive cost for NGOs in gaining access to the centre. It is therefore our concern that church and NGO staff, who provide a wide array of pastoral, legal and advocacy services as well as casework and support to asylum seekers on the mainland, are hindered in carrying out these functions for asylum seekers placed in the detention facilities on Christmas Island. In addition, the important and proven role that such organisations play in ensuring transparency and accountability within detention environments is lost.

The isolation of the Christmas Island detention centre also makes the provision of adequate medical and psychological care expensive, time-consuming and traumatic for asylum seekers . Providing asylum seekers the treatment necessary for their often complex medical needs can require flights to the mainland, separating already extremely vulnerable families.

12 | Conclusion

We support the changes to the *Migration Act 1958* contained in the *Migration Amendment (Immigration Detention Reform) Bill 2009*. Whilst we remain concerned about the detention of children in low and medium security detention facilities, the lack of prompt independent review of the decision to detain, the inadequate support arrangements for asylum seekers once they have been released into the community, and the use of detention facilities on Christmas Island, we believe that the measures in the *Migration Amendment (Immigration Detention Reform) Bill 2009*, intended to implement several components of the *New Directions in Detention* policy, are a positive step forward in the treatment of asylum seekers in Australia. We urge the Committee to support this legislation and its passage through Parliament.