



# Released but not yet free

## Refugees and Asylum Seekers in the Community after Long-Term Detention

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## EXECUTIVE SUMMARY

*Please let the people come out of detention. They are like me, escaping their home country because of war, bad situation. They come here to seek asylum.*

*(Sayed who was in detention for 20 months before being released on a Bridging Visa E)*

Australia has a legal and policy framework that allows for the mandatory and indefinite immigration detention of asylum seekers arriving to Australia's shores by boat. However, in the past two years the Australian Government has moved increasing numbers of people into the community through either the Community Detention program (CD) or through being issued a Bridging Visa E (BVE). Both of these measures allow for asylum seekers and those recognised as refugees while in detention, to live in the community while the processing of their claims is completed.

While previous research has highlighted the damaging effect of long-term detention, the experiences of asylum seekers and refugees released from long-term detention into the community while their protection claims are finalised have so far received little attention, and not been the subject of formal research to date.

This report details the findings of a pilot research project exploring the experiences of eleven men who had been released after long-term immigration detention in Australia into community-based arrangements while their refugee protection claims were finalised. All of these men were asylum seekers who had arrived to Australia by boat in 2010 and were in immigration detention for prolonged periods of time (15 – 25 months). Some had been recognised as refugees by the Australian Government, and the others continued to wait for their protection claims to be finalised.<sup>1</sup>

The findings of the report highlight factors that have had a major impact on the experiences of asylum seekers and refugees living in the community after long-term detention, and the implications these have for practice and policy.<sup>2</sup>

## KEY FINDINGS

- All of the men interviewed spoke of the profound mental distress that long-term detention had caused them. All continued to experience at least some of the negative impacts of detention for months following their release. The care and concern that some of the men received from their service provider case workers greatly assisted with their transition to life in the community after long-term detention. For others, however, the support they received upon their release from detention was inadequate in relation to this ongoing distress.

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<sup>1</sup> Throughout this report, the term 'refugee' is used to refer to individuals whose refugee status has been recognised in Australia. The term 'asylum seeker' is used to refer to individuals whose refugee status is still being determined.

<sup>2</sup> The focus of this report is on the policies that have had an impact on the experiences of asylum seekers who arrived by boat to Australia in 2010. It should be noted that these policies have altered for asylum seekers who have arrived by boat since 13 August 2012. Some of these asylum seekers have been issued BVEs with fewer entitlements than those who were interviewed for this research. See Addendum (page 32) for further details.



- For one man interviewed, the impacts of long-term detention were compounded by news from the Department of Immigration and Citizenship (DIAC) that his protection claim had been finalised and a negative decision issued. He had been told he should voluntarily return to his country of origin or face being returned to detention and involuntarily removed, which profoundly exacerbated his mental distress.
- Upon their release from detention, the biggest challenges for the men interviewed was either being denied the right to work (for those in CD) or finding paid employment (for those on BVEs). Barriers included lack of formal assistance to find employment, lack of English proficiency, the temporary status of BVEs, and the lack of prospective employer understanding of this visa.
- For those in CD and on BVEs who were unable to gain employment, a significant challenge was accessing meaningful activities due to limited financial support and lack of opportunities to access appropriate English language classes and other education.
- Some of the men interviewed reported considerable challenges accessing appropriate healthcare, while others received the support they needed from case workers, advocates or friends in order to access the healthcare services they required.
- The men interviewed did not highlight significant barriers to accessing housing. However, most of the men who had secured relatively stable housing themselves had done so with the support of informal social networks. This highlights the importance of such networks and raises serious concerns about the ability of those released from detention to access housing if they do not have such networks.
- Other concerns raised by the men interviewed included that a sense of belonging in Australia was linked to possessing permanent identity documents. Some expressed the absolute importance of having the opportunity to organise for their families to join them in Australia. For those not yet granted refugee status or a security clearance, there was also the considerable stress in waiting for the outcomes of these decisions.
- Other men known to the authors released into the community after long-term detention were not interviewed for this research given that their mental state was not sufficiently strong to gain informed consent. The minimal level of support that some of these men receive from DIAC and service providers is of great concern, particularly for those whose protection claims have been finalised and a negative decision received.

## RECOMMENDATIONS

### Impacts of Long-Term Detention

1. The detention of asylum seekers beyond 30 days must be a last resort and children and families should not be detained at all. Legislation enshrining this is required in order that the release of asylum seekers into the community be systematic and not discretionary.
2. Allow all asylum seekers arriving by boat to Australia to have their refugee claims considered in Australia, in order to prevent asylum seekers enduring long-term detention-like conditions in offshore locations such as Nauru and Manus Island.
3. Improve the coordination of services upon the release of asylum seekers and refugees into the community to ensure that the particular needs of those who have been in long-term detention are met.

### Impact of Pressure to Voluntarily Repatriate after Long-term Detention

4. Allow asylum seekers whose applications were decided before 24 March 2012 be allowed to have their cases reviewed again by DIAC and/or the Refugee Review Tribunal, taking into account the provisions contained in the *Migration Act 1958* (Cth) s 36(2)(aa). Access to government-funded migration advice and assistance must be provided.
5. Individuals who have been in long-term detention and are suffering from mental health problems should not be returned to their country of origin if they are not able to access adequate care and support in those countries. Such individuals should be provided with an appropriate pathway to be able to remain permanently in Australia.
6. Only use Removal Pending Bridging Visas (RPBVs) as a last resort and not in cases where individuals are particularly vulnerable, including those suffering with mental health problems.

### Access to an Economic Livelihood

7. Grant BVEs to all asylum seekers and refugees released from detention to ensure that all released into the community have the right to work. For those unable to cope with finding and maintaining employment, ongoing assistance through the Asylum Seekers Assistance Scheme (ASAS) or the Community Assistance Support (CAS) (General) should be provided.
8. Grant access to the English as a Second Language (ESL) classes currently available under the Humanitarian Settlement Services (HSS) to asylum seekers and refugees released from detention into community-based arrangements.
9. Allocate Federal and State Government funding for specialist employment services for asylum seekers and refugees in community-based arrangements.
10. Allocate Federal and State Government funding for traineeship and work experience programs for asylum seekers and refugees in community-based arrangements.



### **Access to Meaningful Activities**

11. Consistent with Victoria and the ACT, other States and Territories should offer asylum seekers and refugees living in community-based arrangements access to concession cards and fares for public transport.
12. For those unable to work, provide funding to ensure all asylum seekers and refugees in community-based arrangements have access to meaningful activities.
13. Provide Federal and State Government funded pathways into Vocational Education for asylum seekers and refugees in community-based arrangements, which includes subsidised TAFE places.
14. Ensure all asylum seekers and refugees in community-based arrangements are provided with formal identity cards that can be recognised by authorities.

### **Access to Healthcare**

15. Ensure complex case workers are available to support those released from long-term detention.
16. Conduct mental health screening prior to release from detention and make referrals to appropriate service providers as part of the release process. Case workers should monitor the ongoing mental health of those released and ensure appropriate psychological care is provided, particularly for those who have been in long-term detention.
17. Issue all asylum seekers and refugees in community-based arrangements a BVE which will enable all to access Medicare.

### **Access to Housing**

18. Increase the period that housing is offered through CAS (Transitional) from six weeks to three months. For those particularly vulnerable, such as those who are unable to find employment, a housing safety net beyond this period should also be provided.

### **Other Ongoing Concerns**

19. Process refugee claims, including the assessment of security clearances by the Australian Security Intelligence Organisation (ASIO), in a timely and efficient manner. Negative decisions issued by DIAC, merit reviewers and ASIO should be subject to judicial review.
20. Ensure CAS and ASAS support, and access to Immigration Advice and Application Assistance Scheme (IAAAS), is available for asylum seekers seeking judicial review, reflecting their right to challenge the legality of negative review decisions in the Federal Court.



## INTRODUCTION

*I never believed I was going to get out of detention...I was totally hopeless, I just totally lost my hope of getting free.*

*(Mohammad who was in detention for 19.5 months before being released on a BVE)*

This report details the findings of a pilot research project exploring the experiences of eleven men who had been released after long-term immigration detention in Australia into community-based arrangements while their refugee protection claims were finalised. All of the men were asylum seekers who had arrived to Australia by boat in 2010. Some had been recognised as refugees by the Australian Government, and the others continued to wait for their protection claims to be finalised.

Australia has a legal and policy framework that allows for the mandatory and indefinite immigration detention of asylum seekers arriving to Australia by boat. Mandatory detention is enshrined in the *Migration Act 1958* (Cth) and requires all asylum seekers arriving without a valid visa to be detained until their protection claims are finalised. Over the last two years, however, the Australian Government has moved increasing numbers of asylum seekers and refugees, particularly those in prolonged detention, into the community through either the CD program or issuing a BVE. Both of these measures allow for asylum seekers, and those recognised as refugees while in detention, to live in the community while the processing of their protection claims is finalised.

## COMMUNITY-BASED ARRANGEMENTS FOR ASYLUM SEEKERS ARRIVING BY BOAT

On 18 October 2010, the Australian Government announced that the majority of children and their families would be moved into community-based accommodation by June 2011.<sup>3</sup> It was further announced on 25 November 2011 that following initial health, security and identity checks, other selected asylum seekers in detention would be placed into the community while their protection claims were finalised.<sup>4</sup> This was to be achieved through extending the CD program to vulnerable men in addition to children and families, and through issuing BVEs. While prior to these policy changes the Minister for Immigration could have exercised his discretion to

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<sup>3</sup> Minister for Immigration and Citizenship and Prime Minister, *Government to move children and vulnerable families into community-based accommodation* (Media Release, 18 October 2010), Available: <http://www.minister.immi.gov.au/media/cb/2010/cb155484.htm> (accessed 6 June 2012). A bare majority of families and children were released by this deadline and it took further months for other families and children to be released from detention facilities. See ABC Radio PM (2011) *Minister Reports on Children in Detention*, 29 June, Available: [www.abc.net.au/pm/content/2011/s3256762.htm](http://www.abc.net.au/pm/content/2011/s3256762.htm) (accessed 9 August 2012). Some families and children continue to be detained for lengthy periods of time. As at the end of October 2012 there were 797 children in forms of immigration detention, although DIAC claims that the majority have been there 'for less than two months'. DIAC (2012) *Immigration Detention Statistics Summary 31 October 2012*, Available: <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20121031.pdf> (accessed 14 December 2012).

<sup>4</sup> Chris Bowen (2011) *Bridging visas to be issued for boat arrivals*, Minister for Immigration and Citizenship Media Release, 25 November, Available: <http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm> (accessed 5 August 2012).



allow asylum seekers arriving by boat considered vulnerable to be released from detention while their refugee claims were finalised, there were very few occasions when this happened. This was in contrast to the routine issue of bridging visas to asylum seekers who arrive by air.<sup>5</sup>

The expansion of the CD program and the issuing of BVEs were welcome announcements given the increasing reports of despair and mental health concerns in Australia's immigration detention centres throughout 2010 and 2011. By October 2011 there were 2,100 asylum seekers who had been detained for more than one year, 764 for more than eighteen months and 86 for more than two years. At this time there were 4,223 people in immigration detention, including 642 women and children.<sup>6</sup>

The primary reasons asylum seekers had endured long periods of detention by the end of 2011 include the mandatory detention policy, and lengthy delays generated by the Australian Government's decision in April 2010 to suspend the processing of refugee claims for Sri Lankans and Afghans for three and six months consecutively.<sup>7</sup> Processing resumed at the end of these time periods, however, the backlog of claims that the suspension had generated lengthened the time that many asylum seekers spent in detention by months. There were also reports of inconsistencies in the protection claims processing, adding further time spent in detention for those whose negative claims decisions were subject to review.<sup>8</sup>

Since the announcements of the expanded community-based alternatives to detention for asylum seekers arriving by boat, thousands have been released from immigration detention centres.<sup>9</sup> Between 25 November 2011 and 1 November 2012, the number of asylum seekers and refugees who had arrived by boat and released from detention on BVEs was 7,405.<sup>10</sup> As at the end of September 2012, there were 1,688 individuals living in CD.<sup>11</sup>

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<sup>5</sup> Asylum seekers who arrive by plane in Australia on a valid temporary visa, such as a student, work or tourist visa, known as 'community-based' asylum seekers, are permitted to live in the community while their applications for protection visas are processed.

<sup>6</sup> DIAC (2011) *Immigration Detention Statistics Summary 31 October 2011*, Available:

[www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/](http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/) (accessed 7 August 2012).

<sup>7</sup> Chris Evans (2010) *Suspension on Processing of all New Applications from Asylum-seekers from Sri Lanka and Afghanistan*, 9 April 2010, Available: [www.minister.immi.gov.au/media/speeches/2010/ce100409.htm](http://www.minister.immi.gov.au/media/speeches/2010/ce100409.htm) (accessed 5 May 2011).

<sup>8</sup> For further information, see Australian Human Rights Commission (AHRC) (2011) *Immigration Detention at Curtin: Observations from Visit to Curtin Immigration Detention Centre and Key Concerns Across the Detention Network 2011*, Available: [http://www.hreoc.gov.au/human\\_rights/immigration/idc2011\\_curtin.html](http://www.hreoc.gov.au/human_rights/immigration/idc2011_curtin.html) (accessed 6 December 2012); C. Fleay and L. Briskman (2011) *The Hidden Men: A Report to the Minister for Immigration and Citizenship on Visits to the Curtin Immigration Detention Centre*. <http://blogs.curtin.edu.au/human-rights-education/2011/11/22/report-the-hidden-men/> (accessed 4 August 2012).

<sup>9</sup> Despite the policy shift towards community-based arrangements for many asylum seekers and refugees who have arrived by boat, however, there are a number of categories of people who have been consistently denied access to BVEs and CD by the Minister for Immigration. These include refugees who have failed security assessments conducted by ASIO; individuals who are of interest to or have been charged by the Australian Federal Police; and stateless persons who have not been found to be refugees. Their ongoing detention without access to community-based arrangements is of great concern. For further information, see HRC (2012) *Community Arrangements for Asylum Seekers, Refugees and Stateless Persons: Observations from Visits Conducted by the Australian Human Rights Commission from December 2011 to May 2012*, pp 22-32, Available: [http://www.hreoc.gov.au/human\\_rights/immigration/2012community-arrangements/community\\_based\\_arrangements.pdf](http://www.hreoc.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf) (accessed 1 November 2012).

<sup>10</sup> R. Morton (2012). *Most refugees not in detention*, *The Australian*, 5 November. Available: <http://www.theaustralian.com.au/national-affairs/immigration/most-refugees-not-in-detention/story-fn9hm1gu-1226510186758> (accessed 20 November 2012).

<sup>11</sup> DIAC (2012) *Immigration Detention Statistics Summary 30 September 2012*, Available: <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20120930.pdf> (accessed 7 November 2012).



This research focuses on the experiences of men who had been in long-term detention and were issued a BVE or released into CD while their refugee protection claims were being finalised.

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## BRIDGING VISA E

Asylum seekers and refugees in detention may be issued a BVE. For those who arrived by boat to Australia prior to 13 August 2012,<sup>12</sup> this allows them to remain lawfully in Australia while their claim for refugee status is processed and their immigration status is resolved. Once released from detention, these BVE holders are entitled to the following:

- Right to work.
- Right to choose where to live within Australia. However, there is a requirement to report to DIAC on a regular basis, and inform DIAC of their address.
- Right to access advice on preparing their protection application and assistance with review through the Immigration Advice and Application Assistance Scheme (IAAAS).
- Right to access Medicare.

While some transitional funding is provided by DIAC, asylum seekers and refugees with BVEs are given work rights and are encouraged to support themselves financially. The support provided by the transitional funding is:

- *Community Assistance Support (CAS) (Transitional)*. Once released from detention, all BVE holders are eligible to receive six weeks of transitional support funded by DIAC under CAS (Transitional). Support provided is based on individual needs and may include: being met at the airport; emergency accommodation;<sup>13</sup> information to help find longer term accommodation; orientation to the community; organisation of healthcare appointments; assistance to open a bank account; advice on how to find a job; financial assistance (equivalent to 89 per cent of Centrelink Special Benefit); rent assistance (equivalent to 89 per cent of Centrelink Rent Assistance); and financial assistance to contribute to meeting the cost of health related expenses.<sup>14</sup>

After the six-week transition period, BVE holders who are assessed as requiring additional assistance may receive further support. According to DIAC, decisions made on what further support is provided to an asylum seeker or refugee is based on the individual's immigration status, capacity to live independently, support available to them from social networks within the Australian community, and their specific needs and vulnerabilities. Further support options include:

- *CAS (General)*. This support is available to asylum seekers and refugees who are considered to have complex needs and unable to work. It may include the organisation of access to health and welfare services, provision of financial assistance, and assistance

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<sup>12</sup> Asylum seekers who arrived by boat from 13 August 2012 are subject to restricted BVE entitlements. See Addendum on page 32 for further details.

<sup>13</sup> This includes boarding houses, motels, converted hostels or through the Australian Homestay Network.

<sup>14</sup> Australian Red Cross, *Fact Sheet Migration Support Programs: Transitional Community Assistance Support*, August 2012, Available: [http://www.redcross.org.au/files/20120816\\_CAST\\_FACTSHEET.pdf](http://www.redcross.org.au/files/20120816_CAST_FACTSHEET.pdf) (accessed 4 October 2012).



with securing short-term accommodation. Additional case management is also provided.<sup>15</sup>

- *Asylum Seeker Assistance Scheme (ASAS)*. This support is available to asylum seekers and refugees who have more moderate support needs. It provides financial assistance that is capped at 89 per cent of the Centrelink Special Benefit. Recipients of ASAS may also receive additional financial assistance to cover the cost of health care.<sup>16</sup>
- *Humanitarian Settlement Services (HSS)*. Some BVE holders who have been assessed as being 'Article 1A-Met' (a DIAC decision designating that they have been found to be a refugee but are yet to receive an outcome of their security assessment) are now being provided with support under the HSS program.<sup>17</sup>

While DIAC-funded, the services of CAS (Transitional), CAS (General) and ASAS are provided nationally by the Australian Red Cross, with some subcontracted services delivered by AMES in Victoria, Settlement Services International in NSW, Access Community Services and Multicultural Development Association in Queensland and the Migrant Resource Centre of South Australia. HSS is provided by contracted HSS providers in each state and territory.

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## COMMUNITY DETENTION

Asylum seekers and refugees assessed as the most vulnerable in the immigration detention network can be released into the CD program.<sup>18</sup> This includes children (unaccompanied minors); families with children; people with severe mental or physical health issues; and survivors of torture and trauma. Those in CD are subject to certain conditions, including the requirement to reside at an address outside of a detention centre that has been designated by the Minister for Immigration. There is also a requirement to regularly report to DIAC or a relevant service provider.

According to DIAC, the support and services provided to those in CD include:

- Accommodation (rent-free) with furniture and household goods (owned by DIAC).
- 24 hour care for unaccompanied minors.
- Access to support from a DIAC case manager.
- Assistance to access healthcare, including mental health care and pharmaceuticals, through the contracted immigration detention health provider, International Health and Medical Services (IHMS).
- Education for school-age children.
- No right to work but access to meaningful activities.

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<sup>15</sup> To be regarded as vulnerable for the purposes of CAS (General) a person must meet at least one of the following criteria: have a diagnosed mental health condition; have a significant disability or serious health issue; be an elderly person; be a minor at risk of harm, including an unaccompanied minor; suffer the effects of torture and trauma; suffer domestic abuse or violence; or suffer impaired mental or physical ability. DIAC, *Fact Sheet 64 – Community Assistance Support Program*, November 2011, Available: <http://www.immi.gov.au/media/fact-sheets/64community-assistance.htm> (accessed 18 September 2012).

<sup>16</sup> Australian Red Cross (2012) *Asylum Seeker Assistance Scheme Fact Sheet*. Available, [http://www.redcross.org.au/files/20120203\\_ASAS\\_Fact\\_Sheet\\_.pdf](http://www.redcross.org.au/files/20120203_ASAS_Fact_Sheet_.pdf) (accessed 10 December 2012).

<sup>17</sup> Individuals granted PVs can access dedicated services for the first six to twelve months of their settlement. See DIAC, *Humanitarian Settlement Services (HSS)*, Available: <http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-programs/hss.htm> (accessed 31 October 2012).

<sup>18</sup> As at December 2012, it is unclear what support and entitlements under the CD program will be provided to vulnerable asylum seekers who have arrived by boat since 13 August 2012.

- Right to access advice on preparing their protection application and assistance with review through IAAAS (although this support is not available post merits review).<sup>19</sup>
- Income support provided by DIAC, and distributed by contracted non-government organisations (with the Australian Red Cross as the leading agency), equivalent to 70 per cent of the Centrelink Special Benefit.<sup>20</sup>

A range of contracted agencies provide CD support and services, including the Australian Red Cross, Hotham Mission Asylum Seeker Project, Mercy Community Services, the Salvation Army, Multicultural Development Association, MacKillop Family Services and Marist Youth Care.

## RESEARCH DESIGN AND METHODOLOGY

The experiences of asylum seekers and refugees released from long-term detention into the community while their protection claims are finalised have received little attention, and not been the subject of formal research to date.<sup>21</sup>

Eleven men living in community-based arrangements on either a BVE or in CD after having endured long-term detention were interviewed for this research. The semi-structured, in-depth interviews were conducted by the authors of this report and interpreters were used when required. Each of the men was asked questions relating to their experiences living in community-based arrangements with regards to employment, housing, health, their formal and informal support networks, their sense of belonging and identity, and any other issues they identified as important.<sup>22</sup>

The interviews were conducted in June and July 2012. Two interviews were conducted in Brisbane, three in Sydney, two in Perth, three by telephone to men in Adelaide, and one by telephone with a man in Canberra.

All of the men interviewed had spent the majority of their time in detention at the Curtin Immigration Detention Centre (Curtin IDC) in remote north-western Australia. They were held in immigration detention for periods of between 15 and 25 months.

Eight of the men interviewed had come from Afghanistan, two from Sri Lanka and one from Iran. Some of the men wished to be identified by their first names while others agreed to be given pseudonyms in the report.

<sup>19</sup> DIAC, *Fact Sheet 83a – Community Detention*, May 2012, Available: <http://www.immi.gov.au/media/fact-sheets/83acomunity-detention.htm> (accessed 18 October 2012).

<sup>20</sup> Senate Legal and Constitutional Affairs Legislation Committee, *Immigration and Citizenship Portfolio, Estimates 2012-13*, 22 May 2012, p. 9, Available: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees/estimate/6cfc5aee-8ec8-4674-8eb8-d1b15efa6cd5/0000%22> (accessed 18 September 2012).

<sup>21</sup> The AHRC (2012) report is the only published discussion on the issue to date.

<sup>22</sup> These questions were based on the United Nations High Commissioner for Refugees (UNHCR) recommended basic reception standards for asylum seekers. These standards include the right to formal documentation legitimising their status in the community; the right to an adequate standard of living; and the right to assistance to access what is necessary not only for survival but also for a life of dignity, such as appropriate accommodation, health care, education, and employment or financial support. UNHCR (2000) *Reception Standards for Asylum Seekers in the European Union*, Available: <http://www.unhcr.org/refworld/pdfid/3ae6b3440.pdf> (accessed 9 August 2012).



Of the eleven men interviewed, seven were or had lived in the community after being issued a BVE, and one had been released from detention into CD and subsequently issued a BVE after two months. The other three men were or had been living in the CD program.

Eight out of the eleven interviewed had received positive decisions on their protection claims. Two had received positive decisions on their refugee status while in detention and six had received positive decisions after their release into the community. Five of the men who had received a positive decision on their refugee status had since been given a positive security clearance and issued a PV. Three of the men interviewed were still waiting for a decision on their refugee status (see Appendix B).<sup>23</sup>

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<sup>23</sup> One of these men received a positive decision on his refugee status two weeks after being interviewed.

## KEY FINDINGS

Community-based arrangements for asylum seekers and refugees waiting for their claims to be finalised are a welcome measure to limit the time spent in detention. However, there are shortcomings to current policy and practices. These are particularly in relation to the release of asylum seekers and refugees who have spent long periods in detention and are suffering the mental health consequences of such indefinite detention.

### IMPACTS OF LONG-TERM DETENTION

All eleven men interviewed had been detained in immigration detention for long periods of time – between 15 and 25 months – with most of this time spent in Curtin IDC. All of the men described the negative impacts of being in detention and that these impacts continued for months after their release into the community. While the resilience of all of the men should be highlighted, as well as the overall initial positive impact of their release, the experience of long-term detention has had an enduring psychological impact that affected most of the men's ability to live a dignified life upon their release in the community.

Ten of the eleven men outlined that their long-term detention had resulted in feelings of despair and mental health problems. The other man, Kaly,<sup>24</sup> described the experience of long-term detention as changing him from a very sociable person to someone very withdrawn.

Hussain described his experience of long-term detention as being filled with despairing moments. By the time of his release from detention in January 2012, he had been held in three immigration detention centres throughout Australia for 21 months. In addition, Hussain had endured detention on Nauru from 2001-2002 after attempting to seek asylum in Australia in 2001. In 2002, he agreed to return to Afghanistan after being told by the Australian authorities he would not be recognised as a refugee and it was safe for him to return home. It was not, and after trying to find safe haven in neighbouring countries for seven years, he returned to Australia in 2010. After two lengthy periods of immigration detention imposed by Australia over the past decade, Hussain has now been recognised as a refugee. He received this news ten days after he was released from detention in January 2012. Hussain said that being released from detention and receiving the news of his refugee status was an experience of utter relief. However, his ability to cope with living in the community had been clearly hindered by the deterioration of his mental and physical health during his most recent long-term detention. In recognition of this, he was placed into the CD program.

Most of the other men interviewed spoke of similarly despairing experiences of detention. Three of the men described their reluctant acceptance of anti-depressant medication both during their time in detention and for some time after release. Six of the men interviewed said they had seen a counselor or psychologist either while in detention and/or in the first few months after their release. Three also reported that they had self-harmed while in detention. Two others described the trauma of witnessing the suicide attempts or self-harming of others in detention.

Sakhi<sup>25</sup> spoke of having taken anti-depressant medication while in detention and for four months after his release. A refugee from Afghanistan, he had been in three detention centres for a total

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<sup>24</sup> Not his real name

<sup>25</sup> Not his real name.



of 21.5 months and was feeling very depressed in the final months leading to his release in February 2012. Despite the need for a great deal of support upon his release he received little attention in the first month of living in the community. He spoke of his initial release as being traumatic.

*All that time I was scared, I was thinking there was someone behind me, leading me, stopping me...don't do this or do this, you are not allowed to do this, you are not allowed to do that.*

*(Sakhi - 21.5 months in detention, 4 months on BVE)*

Along with several others released from detention on the same day, Sakhi was not met at the airport by anyone upon the arrival of his flight to Brisbane. He said they waited at the airport for 1.5 hours with increasing anxiety until their Australian Red Cross case worker arrived to take them to a motel. Over the following three days he stated that they received no further contact from their Australian Red Cross case worker, and this induced a profound feeling of being abandoned and alone.

*The first two weeks I was so depressed...I was thinking it would be better to go back to detention centre because there I know people, but here there was no one around me, no one helping me, it was really bad. The first three nights they [Red Cross] left me in motel and I had no money, no phone, no food, nothing, I didn't know what to do...When they [Red Cross] came after three days, they paid me \$150 and they said go buy for yourself mobile phone, SIM card. There was a shopping centre but I didn't know how to use traffic lights, I didn't know how to use the button to see the green man and then cross. The first day was very, very hard.*

*(Sakhi - 21.5 months in detention, 4 months on BVE)*

The other ten men interviewed reported that being released from detention was an initial experience of immense relief. Many spoke of their elation upon being released into the community and the "freedom" they experienced. During his 20 month stay in detention, Reza<sup>26</sup> suffered immense psychological distress. In the last few months of his detention he had begun engaging in self-harm behaviours and expressed suicidal ideation. He recalled his initial feelings of being released from the confines of detention on a BVE as liberating.

*It was like I was free. Serco was not there looking at me...I had my arms up in the air and could feel the wind.*

*(Reza - 20 months in detention, 6 months on BVE, 1 month on PV)*

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<sup>26</sup> Not his real name.

However, all of the ten men reported that this elation was soon followed by boredom and anxiety upon the realisation of the challenges they faced living in the community.

*I never believed I was going out of this detention...I was totally hopeless, I just totally lost my hope of getting free. The first week is really, really good and happiness for everybody, everybody walks a lot, doesn't want to stay home, all wandering around, see the scene, buildings, cities, cars, everyone...but slowly, slowly, slowly boring and by the end you end up in the home, not getting out.*

*(Mohammad - 19.5 months in detention, 3 months on BVE, 1.5 months on PV)*

Most of the men commented that the relative freedom afforded by their community-based arrangement was affected by memories of their detention experience.

*The first few weeks...I had the feeling still I was in detention, and when I was going out I was feeling that the Serco guard, Serco security is just behind me. That feeling was almost for two months. When I was going to toilet I was just asking I was just turning behind, getting permission, can I go to toilet or when I was going to buy coffee or something it was just in my mind you know, I have to ask, get permission you know. I was telling myself, I am by myself, I can do it.*

*(Dawood Jan - 18 months in detention, 2 months in CD, 5.5 months on BVE)*

Some of the men felt that detention had damaged their confidence in interacting with members in the wider community. Kaly described detention as a dehumanising experience that had a lasting effect on the way he viewed himself and others. Once a very social and confident person, he explained how his prolonged detention made him tentative in social situations.

*[Detention] feels like the zoo. And we're on the inside. We were always looked at [by the Serco officers] through the wired fence. Some waved, some didn't. So many people think we are some kind of animals using the headcounts... I didn't really feel any difference between animals and people. I still feel the same here living in Australian community.*

*(Kaly - 16 months in detention, 9 months on BVE)*

The experiences of the men for this research confirm the concerns highlighted in earlier reports that document the despair and mental health problems evident among asylum seekers detained for long periods of time at Curtin IDC.<sup>27</sup> Their experiences also provide further evidence in

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<sup>27</sup> See AHRC (2011) and C. Fleay and L. Briskman (2011).





support of findings of the growing amount of research that highlights the harmful effects of long-term immigration detention.<sup>28</sup>

The community-based arrangements discussed here have allowed many asylum seekers and refugees to be released from detention while their claims are finalised. Given the impacts of long-term detention, this is a welcome measure. It is a much more humane policy than keeping people in detention for the duration of the processing of their refugee protection claims. However, decisions made about who is granted access to community-based arrangements, and the time spent in detention, remain at the discretion of the Minister for Immigration.

## RECOMMENDATIONS

1. The detention of asylum seekers beyond 30 days must be a last resort and children and families should not be detained at all. Legislation enshrining this is required in order that the release of asylum seekers into the community be systematic and not discretionary.
2. Allow all asylum seekers arriving by boat to Australia to have their refugee claims considered in Australia, in order to prevent asylum seekers enduring long-term detention-like conditions in offshore locations such as Nauru and Manus Island.
3. Improve the coordination of services upon the release of asylum seekers and refugees into the community to ensure that the particular needs of those who have been in long-term detention are met.

## IMPACT OF PRESSURE TO VOLUNTARILY REPATRIATE AFTER LONG-TERM DETENTION

The impact of long-term detention upon the mental health of asylum seekers is also evident in terms of an ability to cope with a refusal of their protection visa claim or a refusal of their appeal.

One of the men interviewed, Raza,<sup>29</sup> had received a negative decision from the Federal Magistrates Court in relation to his appeal of a refusal by the Independent Merits Review. After the decision by the Federal Magistrates Court, he was told by DIAC that he needed to voluntarily return to Afghanistan or face the possibility of being returned to detention and be removed involuntarily. Raza had been in detention for 21 months and although he acknowledged that being in detention was a difficult time, the pressure he felt after being told by DIAC to return to Afghanistan, coupled with concerns about his uncertain future, were the major sources of stress at the time of interview. He also spoke about his growing concern for the welfare of his family living in Iran.

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<sup>28</sup> For recent reports, see G.J. Coffey, I. Kaplan, R.C. Sampson and M. Montagna Tucci (2010) "The Meaning and Mental Health Consequences of Long-term Immigration Detention for People Seeking Asylum", *Social Science and Medicine*, 70, 2070-207; D. Silove, J. Phillips and Z. Steel (2010) "Asylum-seekers and Psychiatric Injury", *Precedent*, 99, 19.

<sup>29</sup> Not his real name.



*I was happy [to be out of detention] because I was in detention for so long. I was crazy. But this happiness did not last long as I was rejected from court and I began worrying about my future.*

*(Raza - 21 months in detention, 5 months on BVE)*

While the integrity of Australia's refugee protection claims determination process requires that those who ultimately fail in their claims for protection return to their country of nationality, there are a number of concerning factors that must be considered in relation to the cases of people who have been in long-term detention.

One of the factors that must be considered relates to mental health. All of the men interviewed for this report endured lengthy periods in detention. Most of them have suffered considerable mental health problems that emerged or, where pre-existing, deteriorated during their detention. For Raza, who has been told he must return to his own country, his mental health has deteriorated further. In contrast to prolonged indefinite detention, community-based processing is more likely to support well-being, improving one's ability to contribute fully to society if residency is secured. Alternatives to detention have also been associated with higher rates of voluntary returns for refused cases.<sup>30</sup>

Any removal from Australia, voluntary or involuntary, should be in accordance with Australia's human rights obligations and should avoid any acts that infringe upon the dignity of those returned. Australia has a duty to consider *non-refoulement* obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). These obligations formally became part of Australia's protection regime after the passage of the complementary protection amendments to the *Migration Act 1958* (Cth) on 24 March 2012. All of those who were interviewed had their claims assessed prior to the introduction of this amendment. While it is accepted that DIAC has carried out its own assessment of obligations pursuant to the International Treaty Obligation Assessment (ITOA), these assessments have not necessarily taken into account the mental health status of those who have been detained for long periods of time. Those whose mental health is in an extremely poor state may not have access to adequate mental health services in their country of origin and are therefore at risk of further serious deterioration upon return.<sup>31</sup>

In addition to *non-refoulement* obligations under the ICCPR and CAT, there are moral and legal arguments for not returning such individuals to their country of origin. While it may be difficult to determine the extent to which mental health issues are linked to pre-existing trauma or the detention experience itself, as outlined in the previous section there has been much research that suggests long-term detention causes or exacerbates mental health problems. If an

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<sup>30</sup> O. Field and A. Edwards (2006) "Alternatives to Detention of Asylum Seekers and Refugees" UNHCR Legal and Protection Policy Research Series, <http://www.unhcr.org/refworld/pdfid/4472e8b84.pdf> (accessed 7 November 2012); International Detention Coalition (2011) "There are alternatives: A handbook for preventing unnecessary immigration detention", <http://idcoalition.org/cap/> (accessed 7 November 2012).

<sup>31</sup> There have been cases decided by the European Court of Human Rights where lack of access to adequate medical services in the claimant's country of origin where the claimant's health was at serious risk upon return could amount to "inhuman treatment" in breach of article 3 of the European Convention on Human Rights. See *D v United Kingdom* [1997] ECHR 25; *Ahmed v Austria* [1996] ECHR 413.



individual's mental health has deteriorated due to their detention experience, they should be treated and rehabilitated in Australia and not returned to a country where they may not be able to access adequate care and, therefore, not be able to work or care for themselves.

We are aware that in some cases in the past where individuals could not be removed due to mental health problems, they were granted RPBVs to remain in Australia.<sup>32</sup> However, in our view the granting of an RPBV is problematic as it does not provide the individual with the stability they require in order to recover. This is particularly the case for those who have family members overseas who they would not be able to sponsor while on a RPBV.

#### RECOMMENDATIONS

4. Allow asylum seekers whose applications were decided before 24 March 2012 to have their cases reviewed again by DIAC and/or the Refugee Review Tribunal, taking into account the provisions contained in the *Migration Act 1958 (Cth) s 36(2)(aa)*. Access to government-funded migration advice and assistance must be provided.
5. Do not return individuals who have been in long-term detention and who are suffering from mental health problems to their country of origin if they are not able to access adequate care and support in those countries. Such individuals should be provided with an appropriate pathway to be able to remain permanently in Australia.
6. Only use RPBVs as a last resort and not in cases where individuals are particularly vulnerable, including those suffering with mental health problems.

#### ACCESS TO AN ECONOMIC LIVELIHOOD

The biggest challenges after release from detention for most of the men interviewed was either being denied the right to work (for those in CD) or finding paid employment (for those on BVEs). The right to work or financial support is also one of the UNHCR's recommended basic reception standards for asylum seekers.<sup>33</sup>

All three men in CD at the time of their interview said they wanted the right to seek paid employment. All described their experience of being in CD as a time of loneliness, boredom and waiting.

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<sup>32</sup> See cases outlined in M. Bull, E. Schindeler, D. Berman and J. Ransley (2012) "Sickness in the System of Long-term Immigration Detention", *Journal of Refugee Studies*, doi: 10.1093/jrs/fes017.

<sup>33</sup> UNHCR (2000).



*If they allow, I am confident I can find a job...I just have to stay at home, it's like a large detention.*

*(Kumaran<sup>34</sup> - 25 months in detention, 3 months in CD)*

Dawood Jan, who was in CD for two months before being granted a BVE, described the marked difference in his mental health once he began working. For example, both during his time in detention and the first few months of his release, he suffered from nightmares. Once he began to work, the nightmares subsided.

*No, not now, because I am working a lot and after work I am going to gym, I am too tired. But when I am in CD I had lots of nightmares, when I was not allowed to work and I didn't have any job.*

*(Dawood Jan - 18 months in detention, 2 months in CD, 5.5 months on BVE)*

## RECOMMENDATION

- 7. Grant BVEs to all asylum seekers and refugees released from detention to ensure that all released into the community have the right to work. For those unable to cope with finding and maintaining employment, ongoing assistance through the ASAS or the CAS (General) should be provided.**

Four out of the eight men interviewed on BVEs had found full time paid employment, and one had found part time work. The remaining three men on BVEs continued to search for employment.

The barriers mentioned by men on BVEs mirror the findings of the AHRC report (2012) and research on the experiences of community-based asylum seekers,<sup>35</sup> including:

- Little, if any, formal support provided to find employment
- Misunderstanding on the part of employers about the nature of BVEs
- The temporary status of BVEs
- No provision of a formal Australian identity card
- Insufficient English language skills

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<sup>34</sup> Not his real name.

<sup>35</sup> See Asylum Seeker Resource Centre (2010). *Destitute and uncertain: The reality of seeking asylum in Australia*, October 2010, Available: <http://www.asrc.org.au/media/documents/asrc-welfare-paper.pdf> (accessed 30 September 2012); A Just Australia (2009), *Community based asylum seekers in Australia – The NGO Sector Position*, Available: [http://www.ajustaustralia.com/whats happening\\_newsletter.php?act=newsletters&id=9](http://www.ajustaustralia.com/whats happening_newsletter.php?act=newsletters&id=9) (accessed 30 September 2012).



Trying to seek employment in the face of such barriers was disempowering for many of the men. While all of the men interviewed were proactive in trying to find employment, none had secured employment via formal support services such as their case worker.

*On bridging visa, the worst thing is they [Red Cross] are not helping us to find job.*

*(Dawood Jan - 18 months in detention, 2 months in CD, 5.5 months on BVE)*

While some of the men said their case workers had suggested they would provide assistance, very little was forthcoming.

*I think the Red Cross can't help find a job you know, they say to me all the time, I find good job for me, they said to me, they can find a good job for me... they're telling but they're not doing anything.*

*(Sakhi - 21.5 months in detention, 4 months on BVE)*

Most of the men identified the temporary status of being on a BVE as a significant barrier to finding work.

*Many jobs I applied for they needed a permanent resident.*

*(Sayed - 20 months in detention, 4 months on BVE, 2 months on PV)*

Mohammad described the temporary status of BVEs as making him feel like being a 'person without any future'. He spoke of feeling stuck – having the right to work but unable to gain employment because he did not have “legitimate” identity documents.

*Even in meat factory they are not employing the people who has BV because what they are saying that this visa is not valid, we don't know how long you are going to stay, you are not staying, you haven't been a proper Australian. The biggest problem is job.*

*(Mohammad - 19.5 months in detention, 3 months on BVE, 1.5 months on PV)*

Insufficient English was also seen as a barrier to finding work. Reza described his lack of English as being the major obstacle for him. Being illiterate in English, he could not look for work through conventional methods, including newspapers and the internet, and as such he had to rely on friends and word of mouth. Reza recounted an occasion when he secured a meeting with a manager of a factory but described his lack of English as why he was not awarded the job.

*Finding a job has been the hardest thing for me. To find a job you need to speak good English and you need to know people. If you don't have English forget it.*

*(Reza - 20 months in detention, 6 months on BVE, 1 month on PV)*

One of the other men interviewed on a BVE had sourced and secured employment by himself, at least in part because of his high level of English. This highlights the importance of having access to appropriate English language classes while on BVEs. It is also important for asylum seekers in CD who may be later given a BVE or PV.

## RECOMMENDATION

- 8. Grant access to the ESL classes currently available under HSS to asylum seekers and refugees released from detention into community-based arrangements.**

Informal social networks had been paramount in helping the other men to secure employment. Four of the five men on BVEs who had employment (mainly in unskilled work such as fruit picking and factory work) had secured it through their informal support network, such as friends, a community group, or refugee advocates. Reza described how instrumental his friends were for securing work.

*Red Cross couldn't find me a job. My friends helped me.*

*(Reza - 20 months in detention, 6 months on BVE, 1 month on PV)*

Kaly described the importance of his contacts with asylum seeker advocates that he had met while in detention.

*Pretty much all the jobs I have now are because I was connected to the advocates... It would have been really hard for me if I didn't have all these friends.*

*Kaly - 16 months in detention, 9 months on BVE)*

Paid employment can contribute significantly to restoring feelings of self-worth that are diminished by long-term detention. This includes having the capacity to send money back to their families who often live in poor and precarious or dangerous conditions in their own or neighbouring countries. It also helps to enable asylum seekers to become financially independent of the government. However, as reflected in the views of the men interviewed on BVEs, the right to paid employment must be accompanied by appropriate assistance to gain employment.

## RECOMMENDATIONS

9. Allocate Federal and State Government funding for specialist employment services for asylum seekers and refugees in community-based arrangements.
10. Allocate Federal and State Government funding for traineeship and work experience programs for asylum seekers and refugees in community-based arrangements.

## ACCESS TO MEANINGFUL ACTIVITIES

Engagement in meaningful activities is an important factor for creating a life with dignity in the community while waiting for the protection claims process to be finalised.<sup>36</sup> For five of the men interviewed on BVEs, meaningful activities took the form of paid employment. However, for those who were unable to find and sustain employment, or for those in CD, access to other meaningful activities was particularly important. Six of the men were not engaged in such activities and expressed feelings ranging from boredom to despair.

The lack of financial resources needed to engage in meaningful activities was one of the barriers cited by some of the men interviewed. The men in CD particularly mentioned that their fortnightly financial support (70 per cent of the Centrelink Special Benefit) was inadequate to be able to engage in meaningful activities. This was especially so given the high cost of public transport and that, at the time of the interviews, individuals on CD and BVEs in most states were not entitled to subsidised public transport fares.<sup>37</sup> For some in the CD program, the fortnightly amount received was reduced by the contracted service provider to cover water and electricity charges. Kumaran, living in Sydney, found the fortnightly financial support he received was not enough to access meaningful activities.

*When I first got out of detention I felt excited because suddenly I am in the outside world...Now all we get is around \$290 per fortnight. \$290 is not really enough in Sydney because transport costs a lot of money...\$100 a fortnight...and all the time I can't stay at home because I have to go out...only four walls at home...because I can't stay at home forever, I have to go out, I have to meet my friends so a lot of money goes on transport.*

*(Kumaran - 25 months in detention, 3 months in CD)*

<sup>36</sup> UNHCR (2000).

<sup>37</sup> Since 2010 (following lobbying by the Asylum Seeker Resource Centre) asylum seekers in Victoria receiving aid from the Asylum Seeker Resource Centre, Hotham Mission, or Australian Red Cross have been able to access Victorian Public Transport concession cards and fares. See Asylum Seeker Resource Centre, *Safety Net for All Asylum Seekers*, Available: <http://www.asrc.org.au/campaigns/safety-net-all-asylum-seekers> (accessed 4 October 2012). Similarly, the ACT Government recently introduced Australia's first asylum seeker services access card. The card gives access to services such as public transport at concession rates, English language classes, and public housing. See Office of Multicultural Affairs (2012) *ACT Services Access Card for Asylum Seekers*, Available: [http://www.dhcs.act.gov.au/multicultural/access\\_card](http://www.dhcs.act.gov.au/multicultural/access_card) (accessed November 22, 2012).

## RECOMMENDATION

11. Consistent with Victoria and the ACT, other States and Territories should offer asylum seekers and refugees living in community-based arrangements access to concession cards and fares for public transport.

Mahmoud,<sup>38</sup> who was based in CD in Canberra, described the importance of going to the gym for his mental health. He had suffered from anxiety while in detention and used his gym work as an important emotional release. However, his membership to a local gym was only possible because an advocate had donated the membership to him, again highlighting the importance of informal networks.

*I go to the gym – it keeps me alive while I wait. Waiting. Waiting...but I can only go because a friend pays for me to go.*

*(Mahmoud - 15 months in detention, 9 months in CD)*

## RECOMMENDATION

12. For those unable to work, provide funding to ensure all asylum seekers and refugees in community-based arrangements have access to meaningful activities.

Other kinds of education, as well as English language classes, were suggested by three of the men as activities they would like to pursue. Hussain and Kumaran, both in CD in Sydney, remarked that some English classes were available to them but that the level of instruction and duration of the classes were limited. At the time of the interviews there was no Australia-wide policy allowing access to English classes for those in community-based arrangements.<sup>39</sup>

## RECOMMENDATION

13. Provide Federal and State Government funded pathways into Vocational Education for asylum seekers and refugees in community-based arrangements, which includes subsidised TAFE places.

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<sup>38</sup> Not his real name.

<sup>39</sup> In Victoria, however, there are up to 300 subsidised TAFE places for eligible asylum seekers. Asylum Seeker Resource Centre, *Safety Net for All Asylum Seekers*, Available at <http://www.asrc.org.au/campaigns/safety-net-all-asylum-seekers> (accessed 4 October 2012).



A final barrier for people in CD to access meaningful activities was the lack of identity documentation. Kumaran described how his lack of legal status in mainstream society was a constant source of distress.

*...I am not allowed to study, I'm not allowed to study English, I don't get an ID card. If I get into problems on the road or anything...if a policeman comes and ask me for an ID card, I don't have an ID card...they gave me a big letter with a photo but they say that this letter cannot be used as ID card...I only have IHMS card and bankcard which doesn't have my photograph on it and it doesn't have my address on it...I feel scared because I stayed in detention for 25 months and...I need to get a proper ID card so I have something proper in Australia, this is like being illegal in Australia...*

*(Kumaran - 25 months in detention, 3 months in CD)*

## RECOMMENDATION

14. Ensure all asylum seekers and refugees in community-based arrangements are provided with formal identity cards that can be recognised by authorities.

## ACCESS TO HEALTHCARE

The right to access appropriate healthcare is another important factor in order to live a life of dignity in community-based arrangements.<sup>40</sup> Some of the men interviewed experienced considerable challenges accessing appropriate healthcare, while others received the support they needed from case workers, advocates or friends.

Asylum seekers and refugees living in the community on BVEs have access to different healthcare services to those in CD. BVE holders can access healthcare services through the Medicare system. This allows BVE holders to organise their own healthcare, although the costs involved may inhibit their access to all services needed. In particular, for some of the men interviewed, the cost of accessing specialists and mental health professionals has been prohibitive. For those on BVEs requiring specialist medical attention that they cannot afford, it is up to the discretion of the case worker and DIAC case manager to approve the extra funding that such access requires.

Consistent with other areas of the men's experiences, those confident enough to advocate for their right to health care, or those who had support from refugee advocates or friends, reported that they did not have problems accessing appropriate health care. In relation to accessing psychological support once granted a BVE, Dawood Jan explained how he got DIAC approval for extra appointments with a psychologist.

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<sup>40</sup> UNHCR (2000).

*I went to Immigration, they said we can't help you anymore with psychologist, and again I went to my DIAC case manager and I complained...because when I was telling the Red Cross and the Red Cross (were saying) no we can't do anything, you're eligible for only eight sessions, that's it, and that's what we are getting from DIAC. And I said ok I'll talk to DIAC then. Then when I talked to DIAC he got me, I can't remember, four more sessions...Still left two of those....I just keep them for my bad days as this is the last time I'm going to get them...The thing is they didn't help me for finding job and my case worker he knew that every day I'm working hard to find a job...that's why I think he was good with me...*

*(Dawood Jan - 18 months in detention, 2 months in CD, 5.5 months on BVE)*

Two of the men interviewed, Hussain and Ali, described positive experiences with their case workers, particularly in relation to accessing healthcare.

*Salvation Army – they are helpful...If someone sick, they come over and bring to medical centre....If don't know about situation, they take them to where they need to go. They show shopping centre. Case worker does all the helping...Just call them or text if need anything, and they reply. Extra time is given after hours if needed.*

*(Hussain - 21 months in detention, 4 months in CD, 1 month on PV)*

*Red Cross case worker really really good. Really really had the sympathy for me. Always in that heat in the summer, always take me to the medical, case worker used to walk with me, leading me, he had sympathy with me, he was a really good person, I'm so happy, my case worker did a lot for me*

*(Ali – 20 months in detention, 2.5 months on BVE, 2 months on PV)*

However, others interviewed reported receiving inconsistent messages from case workers about their healthcare rights. Reza, who experienced suicidal ideation and had self-harmed while in detention, described a situation where he was told by his Australian Red Cross case worker that he was not able to access a psychologist.

*I told my case worker I wanted to see a psychologist. I saw one when I was in Curtin and at Perth. I was very depressed. But my case worker said I couldn't go to a psychologist.*

*(Reza - 20 months in detention, 6 months on BVE, 1 month on PV)*

Sakhi, who had been feeling very depressed in the final months of his detention and was on anti-depressant medication, described his frustration at his request for psychological care being initially denied. It was finally approved by his case worker three months later.

*The first day I talked to my case worker I said I need a psychologist, a counsellor, he said to me we don't have the money for that, but after three months, two weeks ago, I go to psychologist. Why are they giving me now, at that time I needed it?*

*(Sakhi - 21.5 months in detention, 4 months on BVE)*

Raza required psychological support upon being told by DIAC that he should voluntarily repatriate back to Afghanistan. As he was in paid employment, however, he no longer had the support of his Australian Red Cross case worker, and he did not know how to access the healthcare and support he needed. Once again, the importance of informal networks was evident – the authors of this report were able to facilitate his access to appropriate support.

#### RECOMMENDATIONS

15. **Ensure complex case workers are available to support those released from long-term detention.**
16. **Conduct mental health screening prior to release from detention and make referrals to appropriate service providers as part of the release process. Case workers should monitor the ongoing mental health of those released and ensure appropriate psychological care is provided, particularly for those who have been in long-term detention.**

Asylum seekers in CD can access health services through the private provider IHMS. As with asylum seekers on BVEs, however, in some cases access to appropriate care was inconsistent and delayed.

Upon his release into the CD program, Hussain needed medical attention for an ongoing kidney problem that was apparent in detention but not adequately addressed. His caseworker organised an appointment with a General Practitioner in order to get a referral to an appropriate medical specialist. Given that the CD healthcare system requires IHMS approval of all referrals, there was a period of some weeks before IHMS announced that the referral was not to an “approved” specialist, and Hussain had to wait for another visit to a General Practitioner for a further referral. After several weeks of waiting, Hussain organised the visit himself and obtained another referral. It was several more weeks before the case worker received the IHMS decision that the referral was finally approved and the next available appointment with the specialist was made for four months later.

#### RECOMMENDATION

17. **Issue all asylum seekers and refugees in community-based arrangements a BVE which will enable all to access Medicare.**

## ACCESS TO HOUSING

Access to appropriate housing is also necessary for a life of dignity while waiting in the community for the outcome of refugee claims.<sup>41</sup> While in general the men interviewed did not highlight significant barriers to accessing housing, once again the importance of informal social support networks was emphasised. While those in CD are provided housing by DIAC, those on BVEs are typically only offered housing for a six-week period through CAS (Transitional).

Most of the men interviewed had moved between houses a number of times since living in the community. It was not uncommon for men to have shared rooms with others and to have lived in houses with in excess of six individuals. Although most of the men did not express significant concern about this, Hussain spoke of the increased pressure it placed on his mental health by having to share with eleven other men upon his release into the CD program.

*We have been in detention centre a long time, they put us in big house [once released], very noisy, someone wants to relax, it's a big problem. Should be a few people put in same house. In my house, we were eleven, but one bathroom, in the morning everyone in the queue.*

*(Hussain - 21 months in detention, 4 months in CD, 1 month on PV)*

For most of the men on BVEs, informal social networks (friends and refugee advocates) had been instrumental in helping them secure relatively stable housing. While this highlights the strength of these men's social support networks, it raises serious concerns about the ability of other BVE holders to access housing if they do not have such networks. This concern is compounded by the lack of availability and affordability of housing in many parts of Australia, particularly the major cities.<sup>42</sup>

## RECOMMENDATION

- 18. Increase the period that housing is offered through CAS (Transitional) from six weeks to three months. For those particularly vulnerable, such as those who are unable to find employment, a housing safety net beyond this period should also be provided.**

## OTHER ONGOING CONCERNS

A number of other concerns were also raised by some of the men interviewed in relation to moving from long-term detention into community-based arrangements. Two of these concerns

<sup>41</sup> UNHCR (2000).

<sup>42</sup> According to an International Housing Affordability survey conducted in 2011 in Australia, Canada, China, Ireland, New Zealand, UK and USA, six of Australia's capital cities were ranked in the top 20 most unaffordable cities. Demographia (2011). *8th Annual Demographia International Housing Affordability Survey: 2012 Ratings for Metropolitan Market*, Available: <http://www.demographia.com/dhi.pdf> (accessed 23 October, 2011).

were expressed as the experience of belonging that followed from being recognised as a refugee, or the lack of belonging given the continued wait for their protection claims to be finalised. Concerns were also raised about family reunion.

All of the men were asked if they felt they belonged or were “at home” in Australia. Some of the men on BVEs who had been recognised as refugees said they felt they belonged because they had been given a protection visa and permanent residence.

*This is the first time in all my life [that I have a home]. I am Australian...Australian people gave me the documents of Australia. I am Australian. This is my first home and the best home.*

*(Sayed - 20 months in detention, 4 months on BVE, 2 months on PV)*

For others, the instability of their status was a barrier to belonging and reinforced their sense of social exclusion from mainstream Australia.

*I want to think that I belong to Australia but still my life is uncertain because I still haven't got my refugee status yet. If I get my refugee status I will feel like I belong in Australia...If they send me back home then my life will be in danger, here also I am finding it hard to get my refugee status so there is nothing to be sure yet.*

*(Kumaran - 25 months in detention, 3 months in CD).*

Kaly explained that the length of time his Australian Security Intelligence Organisation (ASIO) security assessment was taking to complete was a source of significant and growing distress. He acknowledged that it would be understandable if Australia did not want to accept asylum seekers who were deemed to ‘have connections with the rebels’. But he expressed concerns over the transparency of the security decision-making process, including the sources of information obtained to determine people’s cases.

*...lately I hear stories of people who get adverse security, like people who have been in the community and then they get put back into detention. So lately I have been really thinking about it... I don't want to go back into detention.*

*(Kaly - 16 months in detention, 9 months on BVE)*

Concern for family reunion was also highlighted as a significant source of distress for some of the men. Sakhi could not answer the question about feeling “at home” in Australia, despite having been granted refugee status, citing his concerns for his family.

*My family is not here...I can't give the answer I feel home or not.*

*(Sakhi - 21.5 months in detention, 4 months on BVE)*

Reza also described how his family had been an important source of motivation for him during the years he had been seeking asylum, including the many months he had been in detention. However, he felt that living on a BVE meant he could not start his life as family reunion rights are only afforded to those awarded protection visas.

*I need my family safe. I am happy I am safe but my family are not. When they are here with me, I will be Australian 100 per cent.*

*(Reza - 20 months in detention, 6 months on BVE, 1 month on PV)*

These concerns reinforce the importance of protection claims processes that are efficient and consistent in order that final decisions on refugee status and security clearance are not delayed.

#### RECOMMENDATION

19. **Process refugee claims, including the assessment of security clearances by ASIO, in a timely, efficient and consistent manner. Negative decisions issued by DIAC, merit reviewers and ASIO should be subject to judicial review.**

#### THE EXPERIENCES OF OTHERS RELEASED FROM LONG-TERM DETENTION

Aside from the eleven men interviewed for this research project, there are other asylum seekers and refugees known to the authors who have been released from long-term detention on BVEs or into CD. None of these other men were interviewed for this research as their mental state was not sufficiently strong to gain informed consent. But given that they continue to experience profound mental health problems that either manifest or deteriorated while they were in long-term detention, we feel compelled to mention some of their experiences.

Some of these men receive psychological support from healthcare workers that has been organised by their case workers. Others do not, either because they do not trust these services given their negative experiences of support provided while in detention, or because their case worker has failed to organise it or advocate on their behalf to DIAC for the need for it. For those men on BVEs, their mental health problems severely impede their ability to find employment and live a dignified life in the community.

There are other men known to the authors living in community-based arrangements after long-term detention who have recently been told to voluntarily return to their country of origin. As outlined on pages 16-18, the experiences of this group of asylum seekers are very concerning. In addition to being told they must voluntarily return to their own country, or face detention and

forcible removal, those who have not been able to find or maintain employment are no longer eligible to receive CAS (General) or ASAS support.

This is consistent with the DIAC announcement in July 2012 that asylum seekers who had failed to receive a positive decision on their refugee status upon review, and who had not yet been able to secure employment, would no longer receive CAS (General) or ASAS support after the following fortnight. Any further support they would receive would be at the discretion of their Australian Red Cross case officer or equivalent, and DIAC.<sup>43</sup> Neither are they entitled to receive legal support from the IAAAS, despite asylum seekers having the right to the judicial review of their negative refugee determinations.

These men are struggling to live in the community, largely relying on the goodwill of their friends and community groups. They also face the fear that should their Federal Court appeal fail, they will potentially be returned to detention and forcibly removed to their own country. Their experiences are consistent with the findings of reports on community-based asylum seekers that conclude that the automatic withdrawal of ASAS support post review can force asylum seekers into poverty, destitution and homelessness, and lead to ongoing dependence on charity.<sup>44</sup>

#### RECOMMENDATION

20. Ensure CAS and ASAS support, and access to IAAAS, is available for asylum seekers seeking judicial review, reflecting their right to challenge the legality of negative review decisions in the Federal Court.

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<sup>43</sup> Email communication from DIAC July 2012.

<sup>44</sup> See Asylum Seeker Resource Centre (2010) and A Just Australia (2009).



## CONCLUSION

This report offers a detailed picture of the experiences of men who had been in long-term immigration detention and are now living in community-based arrangements. Such arrangements are a welcome measure to limit the time spent in detention. However, there are shortcomings to current policy and practices.

The experiences of the men interviewed reinforce the findings of earlier reports and research that highlight the harmful effects of long-term immigration detention. Mandatory detention that allows for the long-term and indefinite detention of asylum seekers and refugees must be brought to an end. Legislation enshrining this is required in order that the release of asylum seekers into the community be systematic and not discretionary.

Community-based arrangements for asylum seekers seeking protection in Australia need to include the provision of appropriate support and services. The findings of this report highlight the particular importance of work rights for asylum seekers and refugees living in the community. However, the findings also highlight that the right to work must be accompanied by appropriate assistance to gain employment. For those unable to work, having access to meaningful activities is important, including English classes. In addition, as identified by the UNHCR,<sup>45</sup> the men interviewed for this report reinforced the need for asylum seekers and refugees in the community to be provided with formal documentation, and assistance to secure appropriate housing and healthcare.

Further research is now needed into the experiences of asylum seekers and refugees in the community in order to build on the findings of this report. Such research is needed to further elevate the voices of asylum seekers and refugees in policy debates. Future policy must be guided by the voices of asylum seekers and refugees themselves.

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<sup>45</sup> UNHCR (2000).





## ADDENDUM

On 21 November 2012, the Minister for Immigration and Citizenship announced that asylum seekers who had arrived by boat from 13 August 2012 would receive a BVE with limited entitlements if they were released into the Australian community after immigration detention. Asylum seekers receiving these BVEs would have no right to work and limited financial support through the ASAS. There are reports that the financial support provided to those in the CD Program will also be reduced for this cohort.

In addition, the Minister announced asylum seekers arriving by boat will have the 'no advantage' principle applied to their cases onshore. This means that asylum seekers who arrive by boat from 13 August 2012 will be forced to wait for an indefinite period before being granted a protection visa – even after being recognised as refugees. Refugees will also be denied access to family reunion until they are granted a permanent visa. Finally, they face the prospect that they may be transferred to an offshore site of processing at a later date.<sup>46</sup>

The limited entitlements afforded under this policy are extremely concerning for a range of reasons. The indefinite amount of time that these asylum seekers will have to wait before their protection claims are finalised, the uncertainty of their resettlement prospects and whether they will be allowed to remain in Australia are very likely to have serious mental health implications. Being denied access to family reunion throughout this period of great uncertainty will exacerbate this distress.

This policy change also greatly limits the capacity of asylum seekers in community-based arrangements to access an economic livelihood and meaningful activities. For BVE holders, the denial of the right to work contravenes a number of international human rights instruments including Article 23 of the Universal Declaration of Human Rights and articles 17, 18 and 19 of the United Nations Convention Relating to the Status of Refugees (Refugee Convention). Through the denial of such a right, Article 6 of the International Covenant on Economic, Social and Cultural Rights is also disregarded. In addition, the denial of work rights and the provision of limited financial support do not comply with the UNHCR's recommended basic reception standards for asylum seekers. These standards include the right to an adequate standard of living, and the right to assistance to access what is necessary not only for survival but also for a life of dignity, such as appropriate accommodation, health care, education, and employment or financial support.<sup>47</sup>

It is unlikely that the limited financial support allotted under this policy will be enough to meet basic survival needs such as housing and food. This means that asylum seekers on BVEs are likely to be forced into poverty, destitution, homelessness and an ongoing dependence on the community sector. It will also severely limit their access to other important reception conditions such as meaningful activities. Finally, a denial of work rights may result in illegal work in exploitative and dangerous conditions.<sup>48</sup>

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<sup>46</sup> Minister for Immigration and Citizenship Chris Bowen MP (2012), "No advantage onshore boat arrivals", 21 November. Available: <http://www.minister.immi.gov.au/media/cb/2012/cb191883.htm> (accessed 14 December 2012).

<sup>47</sup> UNHCR (2000).

<sup>48</sup> University of Michigan Law School (2010). *The Michigan Guidelines on the Right to Work*. Available at: <http://www.unhcr.org/refworld/docid/4bbaf1242.html> (accessed 14 December 2012)



## APPENDIX A – LIST OF ABBREVIATIONS

ASAS	Asylum Seekers Assistance Scheme
ASIO	Australian Security Intelligence Organisation
BVE	Bridging Visa E
CAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAS	Community Assistance Support
CD	Community Detention
DIAC	Department of Immigration and Citizenship
ESL	English as a Second Language
HSS	Humanitarian Settlement Services
IAAAS	Immigration Advice and Application Assistance Scheme
ICCPR	United Nations International Covenant on Civil and Political Rights
IDC	Immigration Detention Centre
ITOA	International Treaty Obligation Assessment
PV	Protection Visa
RPBV	Removal Pending Bridging Visa



## APPENDIX B – DETAILS OF PARTICIPANTS

Name of participant	Country of Origin	Status	Residency	Months in Detention	Months in Community-Based Arrangement	Months with PV
<b>Ali</b>	Afghanistan	Refugee	Adelaide	20	2.5 (BVE)	2
<b>Dawood Jan</b>	Afghanistan	Refugee	Brisbane	18	2 (CD) and 5.5 (BVE)	-
<b>Hussain</b>	Afghanistan	Refugee	Sydney	21	5 (CD)	1
<b>Kaly</b>	Sri Lanka	Refugee	Perth	16	9 (BVE)	-
<b>Kumaran</b>	Sri Lanka	Asylum Seeker	Sydney	25	3 (CD)	-
<b>Mahmoud</b>	Iran	Asylum Seeker	Canberra	15	9 (CD)	
<b>Mohammad</b>	Afghanistan	Refugee	Adelaide	19.5	3 (BVE)	1.5
<b>Reza</b>	Afghanistan	Refugee	Adelaide	20	6 (BVE)	1
<b>Raza</b>	Afghanistan	Asylum Seeker	Perth	21	5 (BVE)	-
<b>Sakhi</b>	Afghanistan	Refugee	Brisbane	21.5	4 (BVE)	-
<b>Sayed</b>	Afghanistan	Refugee	Sydney	20	4 (BVE)	2