

Seeking Safety, Not Charity:

**A report in support of work-rights for asylum-seekers
living in the community on Bridging Visa E**

**Prepared for the Network of Asylum Seeker Agencies Victoria (NASA-Vic)
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March 2005

Abbreviations used in this paper

ACFE	Adult Community and Further Education
ARCV	Australian Red Cross Victoria
ASAS	Asylum Seeker Assistance Scheme
ASP	Asylum Seeker Project
ASRC	Asylum Seeker Resource Centre
BVE	Bridging Visa E
CAT	International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CROC	International Convention on the Rights of the Child
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
ESL	English as a Second Language
FLN	Fitzroy Learning Network
HEF	Housing Establishment Fund
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NASA-Vic	Network of Asylum Seeker Agencies Victoria
RASHN	Refugee and Asylum Seeker Health Network
RILC	Refugee and Immigration Legal Centre
RRT	Refugee Review Tribunal
SAAP	Supported Accommodation Assistance Program
TPV	Temporary Protection Visa
UNHCR	United Nations High Commission for Refugees
UNOH	Urban Neighbours of Hope
VCOSS	Victorian Council of Social Service
VFST	Victorian Foundation for Survivors of Torture

Contents

1. INTRODUCTION AND OVERVIEW	4
1.1 <i>Background to the paper</i>	4
1.2 <i>Introduction and Summary</i>	5
1.3 <i>Methodology and Limitations</i>	6
2. BRIDGING VISA E: ENTITLEMENTS, RATIONALE AND LEGAL OBLIGATIONS.....	8
2.1 <i>What is a BVE and how is it applied?</i>	8
2.2 <i>The rationale behind BVE</i>	11
2.3 <i>Australia's obligations toward asylum seekers living in the community</i>	13
Major points:	16
3. WELFARE ISSUES OF ASYLUM SEEKERS ON BRIDGING VISA E:	17
3.1 <i>Numbers and general characteristics of asylum seekers on BVE</i>	17
3.2 <i>Housing and homelessness</i>	18
Major points:	22
3.3 <i>Health</i>	22
Major points:	27
3.4 <i>Income and debt</i>	27
Major points:	31
3.5 <i>Especially vulnerable groups</i>	32
Major points:	33
3.6 <i>Legal Assistance</i>	34
Major points:	34
4. SERVICE PROVIDERS FOR ASYLUM SEEKERS ON BRIDGING VISA E: CAPACITIES AND LIMITATIONS.....	35
4.1 <i>Outline of existing service providers for asylum seekers on BVE</i>	35
4.2 <i>Capacities and Limitations of existing agencies</i>	40
Major points:	42
5. CONCLUSIONS AND RECOMMENDATIONS.....	43
5.1 <i>Summary and Conclusions:</i>	43
5.2 <i>Recommendations</i>	46
 <i>References</i>	 48

1. INTRODUCTION AND OVERVIEW

1.1 Background to the paper

This report is a project of The Network of Asylum Seeker Agencies Victoria (NASA-Vic).¹ Formed in late 2002, NASA-Vic is an unincorporated alliance of agencies which aims to promote and protect the human rights of all asylum seekers through joint advocacy and lobbying, sharing information and resources and working toward policy change. The main client group supported by NASA-Vic agencies are asylum seekers living in the community on Bridging Visa E (BVE). The member agencies of NASA-Vic each provide a range of services to this group including housing assistance, legal advice, health care and medical referral, material aid, emergency relief, recreational activities, counselling and general support and advocacy. NASA-Vic is convened by the Refugee Council of Australia, a national peak advocacy organisation. Its member agencies are:

- Asylum Seeker Assistance Project
- Asylum Seeker Resource Centre (ASRC)
- Asylum Seeker Welcome Centre
- Brigidine Asylum Seeker Project
- Dandenong Asylum Seeker Centre
- Fitzroy Learning Network
- Hotham Mission Asylum Seeker Project (ASP)
- National Council of Churches in Australia
- Red Cross Asylum Seeker Assistance Scheme (observers)
- Refugee and Asylum Seeker Health Network (RASHN) Victoria
- Victorian Foundation for the Survivors of Torture
- Wombat Housing and Support Services

The motivation for this paper was the lack of documentation of the health and welfare needs of asylum seekers living in the community on BVE. While Hotham Mission ASP had conducted research into this group and identified major areas of concern amongst BVE holders presenting to their service,² there was no comprehensive research which drew on the experience of the variety of service providers working with BVE asylum seekers in Victoria. Additionally it was felt that much of the data in relation to the experience of BVE holders was in anecdotal form and that it was necessary to document and collate such information into a more accessible format.

The paper is intended to be a working document for use by NASA-Vic agencies as a publicity and lobbying tool, as an aid in the preparation of funding submissions, and for other purposes as required.

¹ Many thanks to Ignacio Correa-Velez for invaluable comments, suggestions and editing assistance. Thanks also to Grant Mitchell, Colin Briton, Jacki Whitwell, Eve Stagoll, Jane Stratton and others associated with NASA-Vic for assistance with the preparation of this report, and to all those who contributed their time and experience in interviews.

² Asylum Seeker Project - Hotham Mission, *Welfare Issues and Immigration Outcomes for Asylum Seekers on Bridging Visa E*. November 2003. Henceforth referred to as "Hotham Mission Research".

1.2 Introduction and Summary

There are currently between 8,000-10,000 asylum seekers living in the Australian community awaiting decisions at different stages of their applications for protection visas and appeals procedures.³ Many of these asylum seekers are BVE holders and as such are denied work-rights, income support, and access to Medicare services. Some 750-900 such asylum seekers are estimated to be living in Victoria. This group includes children, elderly persons and single parents without any form of independent income. Many of these asylum seekers are living in conditions of abject poverty. Some have been released from detention on the basis of special needs relating to mental and physical health; many have special needs as a result of the experience of torture and trauma. There is currently no Government provision made to assist with these needs, to provide general or specialist health care, to facilitate a dignified transition into the Australian community, or to encourage a degree of self-reliance. As a result of their visa conditions, BVE holders are dependent upon charity organisations and face ongoing and spiralling difficulties with homelessness, cumulative debt, family breakdown and the exacerbation of existing health problems.

This situation persists despite Australia's obligations under international law. Conventions and recommendations to which Australia is a party oblige it to provide basic living necessities and adequate health care to asylum seekers living in its territory and recommend that the provision of work-rights is in the best interests of both asylum-seekers and host states. These conventions oblige Australia to provide adequate care for children asylum seekers in particular. Currently, under the BVE regime, these obligations are not being met.

This paper has four main aims which correspond to the four subsequent sections:

- to explain the BVE regime including the conditions attached to the visa, how it is applied, its rationale and its relationship to Australia's legal obligations.
- to document the effects of the BVE regime on asylum seekers living in the community in terms of health, housing and homelessness, income and debt, and especially vulnerable groups.
- to profile organisations operating in Victoria to provide services to asylum seekers living in the community on BVE and comment on the sustainability of those services.
- to make recommendations for the revision of the BVE regime.

The paper comes to the following conclusions:

- Asylum seekers incur unacceptable hardships as a direct consequence of the conditions attached to BVE.
- The BVE regime prevents Australia from fulfilling its obligations towards asylum seekers under International Law.
- Currently unmet health and welfare needs of BVE holders are likely to produce significant costs which will be borne by the Australian community in the future.
- Consequently, there is a need for revision of the BVE regime as well as a case-work approach to care for asylum seekers living in the community. Existing service providers are capable of providing such a service but under-resourced to do so.
- More humane alternatives which do not undermine the Government's border protection framework are possible and desirable.

The paper therefore recommends that the BVE regime be amended to allow for the provision of work-rights, adequate health care, income support and ongoing casework to asylum seekers

³ This report uses the term asylum seeker to refer to persons applying for protection visas at any stage in the determination or appeals process. For example, a person whose application has been rejected at the primary stage, but who has embarked upon an appeal to the Refugee Review Tribunal or through the courts is still considered an asylum seeker. A person is not a 'failed asylum seeker' while avenues of appeal are still being pursued.

living in the community. The final section outlines these conclusions and recommendations in greater detail.

1.3 Methodology and Limitations

The paper includes qualitative and quantitative data obtained by collating existing data gathered by relevant service providers and researchers and by informal interviews with service providers conducted specifically for the purposes of this paper.

Hotham Mission Asylum Seeker Project (ASP) conducted research in 2003 concerning 203 individual asylum seekers on BVE who accessed their services between February 2001 and February 2003. Asylum seekers completed questionnaires in 111 cases (where a case represents a family unit) and were interviewed to generate individual case studies which indicate the diversity of individuals' experiences.⁴ This data is the best available source on the welfare conditions of asylum seekers who are BVE holders in Victoria and has been used extensively in this report.

Informal interviews were conducted with staff from a range of specialist and mainstream agencies providing services to asylum seekers on BVE. These staff raised issues of concern, relevant case examples and anecdotal indications of trends relating to the welfare needs of asylum seekers that they have encountered in their diverse roles. Case studies are a particularly useful way of demonstrating the complexity of individuals' circumstances across longer periods of time which cannot necessarily be captured by snap-shot statistics. Hence the report includes a number of case examples. Names have been changed or omitted and the cases indicate the scenarios described at the time of interview. Quantitative data collated by these agencies have also been used. The following agencies have participated:

Asylum Seeker Assistance Project - Springvale
 Asylum Seeker Centre – Dandenong
 Asylum Seeker Resource Centre
 Asylum Seeker Specialist Clinic
 Australian Red Cross Victoria
 Brigidine Asylum Seeker Project
 Hanover Welfare Services
 Hotham Mission Asylum Seeker Project
 North Richmond Community Health Centre
 Refugee and Asylum Seeker Health Network (RASHN) Victoria
 Refugee and Immigration Legal Centre
 Victorian Foundation for Survivors of Torture
 Wombat Housing

Much of the information that service providers related was anecdotal. Where quantitative data do exist they vary in time scale, detail, category of information and purpose from agency to agency. As such, it was not possible to obtain a thorough and consistent indication of figures across the sector and across a consistent period of time.

In addition, there may be some degree of crossover in data where BVE holders access more than one service. Nevertheless, agencies attempt to mitigate this by working in close communication with each other in relation to clients and attempting to avoid repetition of services. In particular, the main providers of financial assistance to BVE holders and the main sources of data on housing (Hotham Mission ASP and The Red Cross) maintain communication such that cross-over between them in terms of provision of data is minimal.

⁴ Hotham Mission Research, p.14.

Finally, accurate data concerning the number and location of community-based asylum seekers in Australia is not available. Previous research has failed to obtain reliable data.⁵ For instance, Telfer has produced perhaps the best potential source of population data on asylum seekers living in the community. However, her repeated requests to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) for data were unsuccessful. After her interview with the Commonwealth Minister for Immigration, Telfer concluded that, “the minister gave no indication that de-identified demographic or other data on community based asylum seekers would be made available to researchers or service providers with legitimate data needs”.⁶ In view of this serious limitation, the figures presented in this report are best estimates based on the available data.

⁵ Telfer, B. *Hostility and hospitality: A qualitative analysis of three key perspectives on barriers to and opportunities for community based asylum seekers accessing health services in Australia, 2001-2003*. Master Thesis. School of Public Health and Community Medicine, University of New South Wales, Sydney, 2003; Wa Mungai, N. *Issues facing asylum seekers without income support*. Master Thesis. School of Social Science and Planning, RMIT, Melbourne, 2002.

⁶ Telfer, B. *Hostility and hospitality*, pp. 25, 60.

2. BRIDGING VISA E: ENTITLEMENTS, RATIONALE AND LEGAL OBLIGATIONS

2.1 What is BVE and how is it applied?

A BVE is a type of bridging visa granted to some asylum seekers by DIMIA which allows them to reside lawfully within the community until there is final determination of their application for a protection visa. BVE is granted to a range of people in different circumstances however this report is concerned only with its application in the case of asylum seekers. Changes to the regulations affecting the conditions attached to BVE were introduced in 1997.⁷ These changes denied work rights to most BVE holders. This provision also denied BVE holders from access to Medicare, since such access is dependent upon a valid visa with work rights in force.⁸

There are approximately 8,000 to 10,000 asylum seekers living in the Australian community at present.⁹ The majority of this group have never been in detention, arrived in Australia with valid visas (e.g. visitor or student visas), were immigration cleared and lodged a protection visa application subsequently. They are free to live in the community on a bridging visa while awaiting a decision on their protection claim. A smaller number of asylum seekers reside in the community following a period spent in detention. There are more asylum seekers living in the Australian community than in detention centres.¹⁰ Their entitlements depend on which type of bridging visa they hold.¹¹

Under certain conditions asylum seekers living in the community who are unable to work are entitled to receive the Asylum Seeker Assistance Scheme (ASAS) which is funded by DIMIA and administered by the Australian Red Cross. ASAS consists of a fortnightly payment of up to 89% of Centrelink 'special benefit' payments (that is, between \$155 and \$380 per fortnight depending on age and family structure). It also includes a General Health Scheme which provides access to GP and Specialist care, without charge, from an ASAS approved service provider list. Currently, to be eligible for ASAS:

Asylum seekers must be in financial hardship and: have lodged a valid PV [Protection Visa] application for more than six months; not be in detention and must hold a bridging or other visa; not have been released from detention on an undertaking of support; not be eligible for either Commonwealth or overseas government income support; and not be a spouse, de facto or sponsored fiancé(e) of a permanent resident.¹²

Some asylum seekers may be exempt from the above criteria: unaccompanied minors or elderly persons (over 65 years); parents with children under 18 years of age; women with high risk pregnancies; and persons who are unable to work as a result of disability, illness or previous

⁷ Migration Regulations (Amendment) 1997 (Cth) No.185, Schedule 2, Regulations 10-14, and No. 109, Schedule 2, Regulations 33-37. <http://scaleplus.law.gov.au/html/ess/0/1997/0/109.htm>; <http://scaleplus.law.gov.au/html/ess/0/1997/0/185.htm>

⁸ DIMIA, *Fact Sheet 62: Assistance for asylum seekers in Australia*, <http://www.immi.gov.au/facts/62assistance.htm> Updated 11.4.04. Accessed 6.12.04.

⁹ Amnesty International Australia, *Community-based asylum seekers in Australia*, http://www.amnesty.org.au/whats_happening/refugees/resources/fact_sheets/community_based_asylum_seekers Accessed 6.12.04.

¹⁰ Harris, MF and Telfer, BL: "The health needs of asylum seekers living in the community", *Medical Journal of Australia*, 2001; 175. pp.589-592.

¹¹ Different bridging visa categories and entitlements are outlined by DIMIA in Form 1024i: "Bridging Visas". Available at: www.immi.gov.au/allforms/pdf/1024i.pdf Accessed 6.12.04.

¹² DIMIA, *Fact sheet 62*.

history of torture/trauma. ASAS may be extended to Refugee Review Tribunal (RRT) applicants who are unable to meet their most basic needs and who have no adequate support.

There have also been cases where income support has been provided to asylum seekers technically ineligible for ASAS who are experiencing unique and exceptional welfare circumstances. DIMIA has used its discretionary powers to continue to pay certain asylum seekers 'special payments' while their cases are at the post-RRT stage. These discretionary powers have ensured that the needs of particularly vulnerable cases, such as people with severe mental health issues, or sick or disabled children can be met. This provision recognises that existing problems will be aggravated by further financial stressors.

Established as a safety net for certain limited categories of asylum seekers, ASAS has been crucial in providing income support for people who would otherwise have been left destitute in the community. However there are serious gaps in this program. Specifically, and as this paper demonstrates, there are currently **asylum seekers who live within the community as BVE holders without work rights or access to Medicare who are ineligible for ASAS and who are therefore without any independent means of financial support.** Asylum seekers can find themselves in this situation in a number of different ways:

a) Release from detention:

Under the *Migration Act*, 1958 (Cth), certain individuals may be released from detention before their claims for protection are processed. Under regulation 2.20, these individuals may be:

- released on the basis of a special need relating to mental or physical health or relating to previous experience of torture or trauma; or
- released as an unaccompanied minor or as a person over 75 years of age;
- spouses of Australian residents.

Under the above conditions asylum seekers are granted a BVE and released into the community but do not have access to ASAS. Their release is conditional on satisfying the Minister for Immigration that there are adequate arrangements in place for support of the person in the community. In many cases, the proposed arrangements are put forward by family or friends of the detainee. In some cases, where there are no such family or friends, NASA-Vic agencies and other organisations have put forward a support plan. The extent of support provided and the capacity to provide support is not specified under the release arrangements which are subject to the Minister's discretion. In these circumstances, for example,

An unaccompanied child released into the community as the holder of a Bridging Visa E will have to rely exclusively on private persons or non-government agencies for all of their needs, despite the fact that the Minister for Immigration is their legal guardian. Similarly, an asylum seeker who is granted a Bridging Visa E on the basis of their mental illness will have no access to government funded health services once released into the community.¹³

It is worth noting that asylum seekers released under these provisions are some of the most mentally and physically vulnerable cases. They include people (including children) whose experience of detention has caused extreme psychological deterioration, who may be dependent on medication and whose medical and social care needs are very high.

¹³ Stagoll, Eve "A Homeless sanctuary: Australia's treatment of refugees and asylum seekers", unpublished paper, p.2.

In addition to asylum seekers released from detention on a BVE, some are released after making a habeas corpus or other interlocutory application.¹⁴ These asylum seekers face similar conditions, being denied access to Medicare and work rights, but, in addition, they are also denied the right to a visa. In fact, their status in the community is unclear: an unlawful non-citizen not in detention under court order. They often have no form of identification or documentation with them, making access to any services difficult. This group, like BVE holders released from detention, face transitional difficulties in adjustment to life outside an Immigration Detention Centre, and are also likely to have high existing mental and physical health needs.

b) The 45 day rule:

Since 1 July 1997, all asylum seekers who have not applied for a Protection Visa within 45 days of arrival in Australia are denied the right to work and therefore access to Medicare.¹⁵ Therefore, persons who are immigration cleared and have been residing in the community for more than 45 days when they lodge their application for a protection visa will be granted a bridging visa without work rights. If a preliminary decision on their application for protection has not been reached after six months, and if there is no access to family support, they may be eligible for ASAS. However if the asylum seeker is detained at any stage then they are ineligible for ASAS at any stage subsequent to their release.

BVE holders identify a number of legitimate reasons for failure to lodge their application within 45 days of arrival including:

- misinformation from well-meaning family or community members;
- insufficient information or inability to access representation;
- migration agents who fail to lodge the application on time;
- circumstances changing in their home country while in Australia (primarily those on student visas);
- lack of English or understanding of legal or immigration procedures.¹⁶

c) Appealing decisions:

Asylum seekers who are eligible for ASAS will have their payments stopped if they seek review of their decision at the Refugee Review Tribunal (RRT), with some exceptions in circumstances of extreme hardship. If asylum seekers appeal their application decision beyond the RRT, they are automatically denied work rights and thus access to Medicare. Appeals to the Federal and High Court may take a considerable period of time, from six months to a number of years, during which time there is no provision for income. This category may include prior holders of Temporary Protection Visas (TPV) (that is, acknowledged refugees) who are appealing a negative decision of an application for a permanent protection visa.

d) Appealing to the Minister for Immigration:

As of 1 July 1998 individuals seeking ministerial discretion on humanitarian grounds under section 417 of the Migration Act are automatically denied work rights and thus access to Medicare. Appeals to the Minister may take a considerable period of time, sometimes a number of years, during which time there is no provision for income. This category may include prior

¹⁴ Habeas corpus is a prerogative writ that literally means “bring the body before the court”. It can be used to challenge the lawfulness of a person’s detention.

¹⁵ DIMIA, *Fact Sheet* 62.

¹⁶ *Hotham Mission Research*, pp. 19-20.

holders of TPV who are appealing to the Minister following a negative decision of an application for a permanent protection visa.

2.2 The rationale behind BVE

A series of policy and legislative changes aimed at deterring unauthorised entry of asylum seekers into Australia have been introduced in recent years.¹⁷ The restrictions on work-rights, income and Medicare access attached to BVE were introduced as a deterrent to people considered non-genuine asylum seekers/refugees seeking generous welfare provision in Australia.¹⁸ In addition, it has been suggested that the BVE regime is also intended to discourage appeals to negative protection decisions, particularly in the judicial phase, as well as appeals direct to the Minister.¹⁹ In effect, it is suggested, the hardships incurred as a result of the BVE are designed to encourage asylum seekers to 'give up and go home'. There are four points to make disputing these rationales:

(a) *Australia's border protection and the BVE as a deterrent to unauthorised entry of asylum seekers:*

The prevention of the unauthorised arrival of asylum seekers is a major thrust of the Government's border protection policies. The following table indicates, the numbers of people arriving unauthorised in Australia between 1996 and 2004.

Unauthorised arrivals in Australia: 1996/97-2003/04²⁰

Year	Plane arrivals	Boat arrivals	Total arrivals
1996-97	1350	365	1715
1997-98	1550	157	1707
1998-99	2106	921	3026
1999-2000	1695	4175	5870
2000-01	1508	4137	5649
2001-02	1193	1212	2405
2002-03	937	0	937
2003-04	1241	53	1294

¹⁷ For a summary, see: Mathew, Penelope "Australian refugee protection in the wake of the Tampa" *The American Journal of International Law*, July 2002, pp.661-676.

¹⁸ Commonwealth, *Parliamentary Debates, Consideration of Estimates*, Senate Legal and Constitutional Legislation Committee, 11 June 1997, L&C 376-81 (evidence of Mark Sullivan, Deputy Secretary, DIMIA); Commonwealth, *Parliamentary Debates*, House of Representatives, 19 June 1997, 5857-8 (Philip Ruddock, Minister for Immigration and Multicultural Affairs); Minister for Immigration and Multicultural Affairs, Commonwealth of Australia, *Limited Changes to Asylum Seeker Assistance Scheme*, Press Release, No 75/99, (11 May 1999).

¹⁹ Interview with service provider, 3.12.04. The Howard Government draws an association between appeals processes and motivating factors for asylum seekers entering Australia, as evidenced by the following statement from the Prime Minister: "Our first responsibility is to prevent people coming here illegally and because of the policy of returning boats we have deterred people from coming. The length of time it takes to process will be increased under Labor because their platform amendments propose a much wider avenue of appeal and legal and judicial process than we allow and that will prolong the process and, I think, add an extra layer of appeal and attraction to people coming to Australia." *Transcript of the Prime Minister, The Hon. John Howard MP, Doorstop Interview*, Kiribilli House, 24 Jan, 2004.

<http://www.pm.gov.au/news/interviews/Interview652.html> Accessed 11.4.04.

²⁰ Sources: DIMIA, *Fact sheet 74: Unauthorised arrivals by air and sea*, <http://www.immi.gov.au/facts/74unauthorised.htm> Updated 8.10.04, accessed 6.12.04;

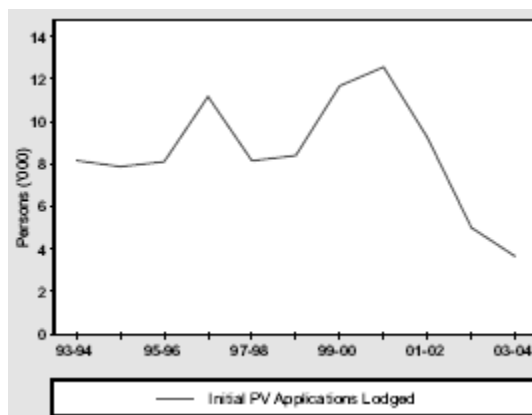
Mary Crock and Ben Saul, *Future Seekers: Refugees and the Law in Australia*, Sydney: The Federation Press, 2002. p.24. DIMIA, *Annual Report 2002-2003*, Canberra: Commonwealth of Australia, 2003, p.57.

The data indicates that immediately following the introduction of regulatory changes affecting the BVE in 1997/98, the numbers of unauthorised arrivals increased and have only decreased in recent years. The lack of correlation between the timing of changes to the BVE and the decrease in numbers of unauthorised arrivals brings into question the idea that the BVE plays any role in deterring unauthorised arrivals. Historical changes in numbers of unauthorised arrivals are more likely to be the result of situations in asylum seekers' states of origin, personal factors motivating their choice of host state, and/or various other aspects of the Australian Government's border protection policies. Given this lack of correlation and clear evidence, changes in the conditions attached to the BVE could be implemented without changing the deterrence emphasis in the Australian Government's policy framework.

(b) *The BVE as a deterrent to spurious asylum claims:*

Just as the data in (a) does not provide clear evidence of a link between BVE and numbers of unauthorised arrivals, available data does not provide clear evidence of a link between the regulatory changes affecting BVE and the effective deterrence of spurious onshore asylum claims. The following figure shows how the number of initial Protection Visa applications increased after the introduction of the BVE legislation (1997/98) and have only declined since 2002.

Initial Applications for Protection Visas²¹



Any changes in the numbers of claims found to be non-genuine could be the result of any number of factors beyond the Government's control, rather than the BVE regime. Changes in the conditions attached to the BVE could therefore be implemented without affecting the numbers of spurious asylum claims made.

(c) *Consequences of the BVE for persons with genuine protection claims:*

There is no way of knowing in advance of processing their claims, which asylum seekers have genuine protection claims. As a blanket instrument intended to prevent spurious claims, the BVE will affect those whose protection applications are rejected as well as those who are found to have genuine protection needs. Given that there is no clear link between the BVE and the deterrence of unauthorised entries and no clear link between the BVE and the deterrence of spurious asylum claims, the adverse consequences of the BVE are unjustified. The consequences of the introduction of BVE include the denial of basic living necessities to

²¹ Source: DIMIA, *Population Flows: Immigration Aspects 2003-2004*. January 2005, p. 34.

individuals, families and children, some of whom are subsequently determined to be refugees. Other affected asylum seekers, while not meeting the criteria of the refugee convention, may nevertheless have substantial reasons for seeking protection. These reasons, for example gross violations of human rights that do not meet the criteria of the Refugee Convention, are in some cases acknowledged by the Minister for Immigration under his/her discretion to grant protection on humanitarian grounds (section 417 of the Migration Act).

In the longer term, the hardship and cumulative health and welfare issues associated with the BVE (documented in subsequent sections of this paper) ultimately frustrates and prolongs refugees' and others' recovery from trauma and other health concerns and transitions into the Australian community, once given protection visas. This delay has personal, social and economic costs born by both the refugee and the community (these costs are also examined in subsequent sections of this paper). Even if a clear link between the BVE and the deterrence of unauthorised entries or spurious asylum claims could be demonstrated, these costs remain unjustified.

(d) *The BVE and the integrity of the refugee determination procedure:*

Appeals are an accepted and necessary element of procedural fairness. Asylum seekers decision to appeal protection decisions or to appeal directly to the Minister is their right under law. Where asylum seekers are granted a BVE without work rights or access to Medicare as a result of engaging upon an appeals process, the consequent hardship they experience is unjustified. Furthermore, this hardship hampers their capacity to participate in due legal process and undermines the integrity of the determination procedure.

2.3 Australia's obligations toward asylum seekers living in the community

Australia is a party to a number of international treaties which are relevant to the provision of welfare to refugees and asylum seekers.²² These bodies of law, along with others relating to Australia's treatment of refugees, are not external impositions upon the sovereignty of Australia. Rather, the Australian Parliament has provided for the incorporation into Australian law of measures to implement Australia's international obligations which were voluntarily entered into.

Australia is obliged to ensure that people seeking protection have an adequate means of survival while they await a decision on their case. In 2002, the UNHCR Executive Committee, of which Australia was a member, passed a Conclusion on International Protection recommending the following:

Reception arrangements [for asylum seekers] can be mutually beneficial where they are premised on the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with the requisite opportunities.²³

²² *The International Convention Relating to the Status of Refugees*, 189 UNTS 150, entered into force 22 April, 1954, and *The International Protocol Relating to the Status of Refugees*, 606 UNTS 267, entered into force 4 October 1967 (together: Refugee Convention); *The International Convention on civil and Political Rights*, 999 UNTS 171, entered into force 23 March 1976 (ICCPR); *The International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc A/39/51 (1984), entered into force 26 June 1987 (CAT); *The International Convention on the Rights of the Child*, UN Doc A/44/49 (1989), entered into force 2 September 1990 (CROC).

²³ UNHCR EXCOM, "Reception of Asylum Seekers in the Context of Individual Asylum Seekers," Conclusion No.93 (LIII) (8 October 2002), para. (b)(vii).

The recommendation holds that the capacity for self-reliance amongst asylum seekers is desirable, as is the provision by the host state of the opportunities required for self-reliance. The recommendation suggests therefore that work-rights, which would allow for the generation of income independent of state financial assistance, would be beneficial both for the asylum seeker and for the host-state. The recommendation concludes that “asylum-seekers should have access to the appropriate governmental and non-governmental entities when they require assistance so that their basic support needs, including food, clothing, accommodation, and medical care, can be met.”²⁴ Thus in the absence of work-rights and/or the incapacity for independent income generation the Committee recommends that the host-state ensure that asylum seekers are assisted to meet their basic needs.

The International Convention on the Rights of the Child (CROC), to which Australia is also a signatory, is clear on special provisions being made for asylum seeker children:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.²⁵

More specifically, CROC binds signatory states to the following:

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.... States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures... to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care ...[and] to ensure appropriate pre-natal and post-natal health care for mothers;²⁶

More generally in relation to its border protection policies, Australia has been sharply and extensively criticised in moral and legal terms. Respected international human rights organizations and legal scholars have argued in relation to The Pacific Solution (the interdiction of asylum seekers by military means and their detention and status determination in Pacific states) mandatory detention, the TPV regime and abuses of human rights as the consequences of these measures, that Australia has breached the following International conventions: The Refugee Convention, ICCPR, CAT and CROC.²⁷

²⁴ UNHCR EXCOM, “Reception of Asylum Seekers in the Context of Individual Asylum Seekers,” Conclusion No.93 (LIII) (8 October 2002), para. (b)(ii).

²⁵ CROC, Art. 22(1).

²⁶ CROC, Art. 24.

²⁷ See for example: HREOC, *A Last Resort? National Inquiry into Children in Immigration Detention*, Sydney: Commonwealth of Australia, 2004; HREOC, *Those Who've Come Across the Seas: Detention of Unauthorised Arrivals*, Sydney, Commonwealth of Australia, 1998; *Amnesty International, Offending Human Dignity: the Pacific Solution*, AI Index 12/009/2002, 2002; Crock, Mary and Saul, Ben, *Future Seekers*; Fonteyne, Jean-Pierre “‘Illegal Refugees’ or Illegal Policy?” in Maley, William et.al. (eds.) *Refugees and the Myth of the Borderless World*, Canberra: Department of International Relations, RSPAS, Australian National University, 2002; Harris, Susan “Another Salvo across the Bow: Migration Legislation Amendment Bill (No 2) 2000 (Cth),” *University of New South Wales Law Journal*, 23 (3), 2000; Human Rights Watch, “‘By Invitation Only’: Australian Asylum Policy” <http://hrw.org/reports/2002/australia/> 2002, accessed 5.6.03. Mathew, Penelope “Australian Refugee Protection in the Wake of the Tampa”.

While the treatment of asylum seekers in the community has received less specific attention, some of the legal criticisms made of Australia's asylum and refugee policies remain relevant in this case. In relation to this group there are a number of possible breaches of Australia's obligations under international law:

- The right to have an asylum application heard is enshrined in international law, regardless of whether a person has valid documentation on arrival or not. The imposition of penalties on account of unauthorised entry is prohibited by the Refugee Convention, provided asylum seekers make their protection claims apparent without delay and have good reasons for their particular mode of entry.²⁸ In Australia, unauthorised on-shore applicants for asylum are initially only eligible for grant of a three-year TPV, although they may be eligible for a permanent protection visa after the expiry of the TPV. Some such persons may be permanently barred from grant of a permanent protection visa and many only be eligible for successive TPVs. The conditions attached to a TPV deny them family reunion and access to resettlement services.²⁹ This has been criticised as a punitive and therefore illegal policy in the terms outlined above.³⁰ A similar case could be made for those BVE holders, many of whom are subsequently found to be refugees, whose visa category and ineligibility for ASAS is assigned because of their unauthorised entry into Australia (where this is the reason for their detention, and their time in detention is the reason for their ineligibility).
- The Refugee Convention obligates states to ensure non-discrimination against refugees in its territory with respect to a number of basic human rights. Specifically in relation to housing, article 21 provides refugees staying within a state's territory should not receive treatment less favourable than that provided for other aliens in the same circumstances. The sliding scale of entitlements depending on visa categories for asylum seekers, many of whom are subsequently found to be refugees, may well constitute a breach of this obligation.³¹
- Under the *International Covenant on Economic, Social and Cultural Rights* (CESCR) Australia is obliged to ensure that rights to an adequate standard of living including the right to work, the right to adequate health care and the right to social security are upheld without discrimination.³² Failure to uphold these rights in relation to asylum seekers, whether by direct discrimination or omission to act, may well constitute a breach of Australia's obligations under this convention. In addition, the United Nations Committee on Economic, Social and Cultural Rights has specified that changes to policy and legislation which results directly in a decline in living and housing conditions beyond minimum standards would constitute a breach of the Covenant.³³ This report demonstrates that the deterioration of living and housing conditions well beyond minimum standards amongst asylum seekers in the community can be directly

²⁸ Refugee Convention, Art. 31.

²⁹ For the specific hardships associated with the TPV regime see: Marston, Greg, "Temporary Protection, Permanent Uncertainty: The Experience of Refugees Living on Temporary Protection Visas," Melbourne: Centre for Applied Social Research, RMIT University, 2003; Mansouri, F and Bagdas, M: "Politics of Social Exclusion: Refugees on Temporary Protection Visa in Victoria". Geelong: Deakin University, 2002.

³⁰ Mathew, Penelope, "Australian Refugee Protection in the Wake of the Tampa", pp.673-4.

³¹ Staggoll, Eve, "A Homeless Sanctuary," p.4.

³² *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, entered into force 3 January 1976 (CESCR), Art. 6(1), 9, 12.

³³ Committee on Economic, Social and Cultural Rights, *General Comment No4: The Right to Adequate Housing*, UN Doc E/1992/23 [11].

attributed to the regulation changes to the BVE in 1997/98. The conditions attached to this visa therefore suggest a breach of the Covenant.³⁴

Finally, the recent Senate Select Committee on Ministerial Discretion in Migration Matters stated:

The Committee recommends that all applicants for the exercise of ministerial discretion should be eligible for visas that attract work rights, up to the time of outcome of their first application. Children who are seeking asylum should have access to social security and health care throughout the processing of any applications for ministerial discretion and all asylum seekers should have access to health care at least until the outcome of a first application for ministerial discretion.³⁵

Major points:

- BVE holders are denied work rights, government funded income support and access to Medicare.
- Asylum seekers are often allocated a BVE as a result of circumstances beyond their control or as a result of embarking upon an appeals process which is their right under law.
- Any link between the BVE regime and the deterrence of unauthorised entry into Australia by asylum seekers or between the BVE regime and the deterrence of spurious asylum claims is not upheld by available data. The rationale behind the BVE regime is therefore flawed. The adverse consequences of the BVE regime are therefore unjustifiable and undermine the integrity of the refugee determination procedure.
- Australia is obliged under International Law to provide appropriate standards of health and welfare to asylum seekers, particularly children. As a result of conditions attached to the BVE, Australia may well be in breach of international legal conventions and recommendations stipulating its obligations toward asylum seekers living in its territory.
- A recent Senate Select Committee has recommended the extension of access to work rights and Medicare for asylum seekers.

³⁴ For a more detailed discussion of Australia's obligations under CESCR, see Taylor, Savitri "Do On-shore asylum seekers have economic and social rights? Dealing with the moral contradiction of liberal democracy" *Melbourne Journal of International Law*, 2000 1(1) pp. 84-91.

³⁵ *Report of the Senate Select Committee on Ministerial Discretion in Migration Matters*, Commonwealth of Australia, March 2004. Recommendation 10, Paragraph 5.44.

3. WELFARE ISSUES OF ASYLUM SEEKERS ON BRIDGING VISA E:

This section of the report documents the results of research into the welfare issues affecting asylum seekers on BVE under the following categories:

- numbers and general characteristics,
- housing and homelessness
- health
- income and debt
- especially vulnerable groups
- legal representation.

3.1 Numbers and general characteristics

As stated earlier, it is difficult to obtain accurate data on the number of community based asylum seekers on BVE. According to Amnesty International, there are currently between 8,000 and 10,000 asylum seekers living in the community in Australia.³⁶ Telfer reported that in mid 2000, “there were at least 10,706 community based asylum seekers in Australia, not including asylum seekers at any stage of judicial review, or seeking Ministerial Discretion”.³⁷ Asylum seekers on judicial review and those seeking Ministerial Discretion are granted BVE. In a recent Senate committee hearing, a DIMIA official stated that, “...we issue about 33,000 bridging visas a year, or at least last year [2003] we did. About 22,000 of those are bridging visa A [...] About 8,000 more of those are bridging visa E, so the scale of issue in respect of bridging visa E is about 8,000 a year”.³⁸ It is not clear, however, how many of these BVE holders are asylum seekers. A proportion of visa overstayers detected in the community –who have not made claim for protection– are also granted BVE.

It is estimated that between 34 and 40% of community based asylum seekers have no work rights or access to Medicare.³⁹ Without knowing the exact number of asylum seekers on BVE, it is hard to estimate their distribution across the Australian states and territories. According to the Victorian Foundation for Survivors of Torture (VFST), at 30 September 2003 there were about 2,200 community based asylum seekers in Victoria, and each year about 350-450 people living in the State apply for protection visas.⁴⁰ **Considering the above estimates, about 750-900 community based asylum seekers in Victoria can be estimated to be BVE holders.**

A general picture of BVE asylum seekers in the Victorian community is reflected by the figures of two key agencies. At February 2004, Hotham Mission ASP had a total of 212 clients with a BVE, while they assisted a total of 247 such clients in 2003. At February 2004 the Red Cross were supporting an additional 69 BVE asylum seekers who were not receiving any financial assistance. Combining these figures, a total of 316 asylum seekers who were ineligible for ASAS were accessing services at February 2004. It is possible that other BVE asylum seekers are living in the Victorian community and have not made contact with relevant agencies.

BVE holders come from many countries: Sri Lanka, Palestine, Iran, Albania, India, Pakistan, Afghanistan, Egypt, Ethiopia, Turkey, China, Russia, Serbia, Croatia, Angola, Eritrea, Iraq, Kenya

³⁶ Amnesty International Australia, *Community-based asylum seekers in Australia*.

³⁷ Telfer, B. *Hostility and Hospitality*, p. 26.

³⁸ Official Committee Hansard Senate: “Legal and Constitutional Legislation Committee Estimates”, Commonwealth of Australia, Canberra. 17 February 2004.

³⁹ Telfer, B. *Hostility and Hospitality*, pp.26-27.

⁴⁰ Victorian Foundation for Survivors of Torture: “Towards a health strategy for refugee and asylum seekers in Victoria”. Report prepared for the Victorian Department of Human Services, July 2004. p. 99.

and Somalia. They range in age and family circumstances. The following statistics were gathered from BVE holders accessing services in Victoria:

Asylum Seekers on BVE: General characteristics (n=203)⁴¹

Ages	%	Gender	%	Family Circumstances	%	Time spent in Australia	%
0-15 years	21.7	Male	61	Single	54.1	Under 1 year	3.6
16-25 yrs	19.2	Female	39	Family with both parents	18.0	1-3 years	39.6
25-65 yrs	58.6			Single mothers	14.4	4-5 years	26.1
65 yrs and over	0.5			Single fathers	0.9	6 years plus	28.8
				Couples	9.0	Not answered /do not know	1.9
				Unaccompanied minors	2.7		
				Siblings	0.9		

3.2 Housing and homelessness

Homelessness and Insecure housing:

According to welfare agencies providing services to community based asylum seekers in Victoria, housing is one of the most important needs in this population.⁴² The following data give some idea of the dimensions of this problem.

Housing Issues for BVE asylum seekers (n=203)⁴³

Housing status upon presentation to service provider	% of BVE holders
At risk of homelessness	44.2
Housed	31.5
Homeless	24.3
Total:	100.0
Total homeless/at risk of homelessness	68.5

Housing History	% of BVE holders
Private rental	27.0
Shared/friends/family	29.7
Detention	15.3
Transitional Housing	7.2
Religious facility/mosque	1.8
On street	0.9
Refuge/aged care	1.8
Caravan	0.9
Insecure/moving between 2 or more of above	15.4

Cause of Homelessness	% of BVE holders
Loss of income/ASAS/Work-rights	59.2
Previously detained	23.7
Combination of loss of income and family breakdown	9.2
Family breakdown	2.6
Constant homelessness	1.3
Other reasons	4.0

⁴¹ Sources: Hotham Mission Research, pp.16-17;

⁴² Wa Mungai, N. "Issues facing asylum seekers without income support," p. 161.

⁴³ Source: Hotham Mission Research, p26;

Type of Housing since presenting to service provider	% of BVE holders
ASP/ ASP supported	32.4
Shared / friends/family	17.1
Private Rental	16.2
THM/Youth Housing	11.7
Church paid	6.3
Seeking accommodation/currently homeless	4.5
Refuge	0.9
Insecure/movement between two or more of above	10.9

Housing Status of BVE asylum seekers seen by Red Cross in February 2004 (n=79)⁴⁴

Housing status	% of BVE client group
At risk of homelessness	17.7
Forced into inappropriate living arrangements	20.3
Have accessed Housing Establishment Fund (HEF) Rental assistance.	5.1
Total at risk/inappropriate housing	38.0

The above figures reveal disturbingly high levels of homelessness, risk of homelessness and insecurity of housing amongst BVE holders. Sixty eight percent of asylum seekers on BVE were in this category upon presentation to Hotham Mission ASP and nearly 40% of those seen by the Red Cross. Of the former group, almost 70% attributed the cause of their housing problems to loss of income. For many there was a constant movement in and out of homelessness, with impermanence and insecure housing remaining at over 15%. Recent research conducted by Victorian mainstream housing service providers has identified asylum seekers with restricted entitlements (BVE holders) as highly vulnerable to homelessness.⁴⁵ Pathways into housing crisis included the loss of work rights and income support, family breakdown, social isolation, health issues, and language barriers – i.e. issues associated with entitlement restrictions and “the accumulation of personal issues in the context of a limited safety net.”⁴⁶

Where housing is obtained in outer metropolitan areas for reasons of affordability, proximity to family/community and proximity to DIMIA offices may be compromised and transport to service providers, largely located in the inner-city area, is in many cases prohibitively expensive. BVE holders are ineligible for concession fares on public transport.

Case example

Carlos is a 49 year old man from East Timor who has a past history of alcoholism and homelessness during his 9 years as an asylum seeker in Australia. He is isolated with no family support. After an initial period of sleeping out in the street for 3 months, Carlos lived with various members of the East Timorese community, frequently moving from one place to another. In the last couple of years, with the assistance of workers from his community both his housing and drinking had stabilised. Carlos became extremely anxious and agitated when he learnt that his income through ASAS would cease when he received a decision from the RRT. The feelings of insecurity generated by this situation and his fear of not being able to pay board and becoming homeless again resulted in Carlos' drinking spiralling out of control to the point that community workers became extremely concerned for his welfare. Although Carlos has now had his ASAS payments reinstated under a DIMIA Special Provision for people who are particularly vulnerable, his drinking remains a significant problem.

⁴⁴ Source: ARCV in-house data.

⁴⁵ Kelly, Eve, *A New Country – But No Place to Call Home: The experience of refugees and asylum seekers in housing crisis and strategies for improved housing outcomes*, Melbourne: Hanover Welfare Services, 2004. p.xiv.

⁴⁶ Kelly, Eve, *A New Country – But No Place to Call Home*, p.xv.

Case example

Sana is a woman from Iraq with six children aged between two and nineteen. She presented to Hotham Mission ASP with no income and nowhere to live. The family had been in detention, together with Sana's husband, for nearly 2 years before Sana and her children were released into the community for psychological reasons. The family has health issues which need to be addressed. Sana's husband was placed in gaol in Perth, where the family were staying initially, but as he was possibly being moved to Maribrynong Detention Centre, the family moved to Melbourne. The family has no work rights and are ineligible for ASAS. They are currently staying with a friend who has a family of four. All 11 people are living in one flat in cramped conditions. Their friend is now putting pressure on them to leave and there is a possibility that the current situation will break down before other accommodation is found. Given the size of the family, they have many support needs which depend firstly on finding them a place to live.

Access to mainstream housing assistance:

Asylum seekers are ineligible for public housing or transitional housing through the Supported Accommodation Assistance Program (SAAP) which is government funded. While asylum seekers living in the community are not ineligible for other mainstream housing services, research has revealed systematic obstacles to housing access for this group. BVE holders' access to rental assistance through the Housing Establishment Fund (HEF) remains low (less than 10%) despite constant advocacy by support organizations on this issue. In most cases the assistance was one-off and for less than four weeks.⁴⁷

Short term and transitional housing is difficult for asylum seekers to obtain and remains low at 11.7%.⁴⁸ This type of housing generally requires a source of income to indicate an exit option for residents after a designated period of time. Without work rights or other financial benefits, asylum seekers cannot independently guarantee this income. In some cases short-term housing providers have accepted a commitment from asylum seeker agencies to assist in both housing establishment and transitional support into longer-term housing. This agreement will generally constitute the exit plan and is vital to ensure housing providers remain confident that the client will be supported and assisted to find accommodation within the required time frame. This responsibility resting on overstretched specialist agencies is generally unsustainable.

One mainstream housing service interviewed reported assisting asylum seekers by allocating funds to a specific asylum seeker project and by negotiating rent-waivers on two transitional housing properties. The service also paid for the utilities on these properties which housed nine asylum seekers at the Ministerial stage of determination. Specific monies designated for services to asylum seekers are beyond the funding parameters of this agency. Where provision is made in its other programs (housing for women, youth, singles, families, ex-prisoners) for persons without income, the agency tries to allocate housing places to asylum seekers who also fit the program criteria. This housing support for asylum seekers therefore draws from already over-stretched housing programs.

Recent research strongly suggests that mainstream services are not only difficult to access but also inappropriate for asylum seekers:

Specifically, there was concern that [mainstream] housing assistance service providers had limited knowledge of visa conditions and their relationship to housing circumstances. Other areas of limited knowledge included: cultural, torture and trauma and language associated needs. Low knowledge of client backgrounds and needs contributed to exclusion from housing assistance services. [...] refugees and asylum seekers were uneasy about accessing some housing assistance

⁴⁷ *Hotham Mission Research*, p.26.

⁴⁸ *Hotham Mission Research*, p.26.

services, and service providers were anxious about accepting this group into the service. Poor understanding of the client group was evident in eligibility criteria and assessment methods for some housing assistance services, which were judgmental of visa conditions and restricted access for specific visa categories.⁴⁹

Some mainstream providers assumed that housing for asylum seekers was beyond their brief and fell to specialist agencies. In some cases asylum seekers faced a series of circular referrals. The specific needs of asylum seekers were often unable to be accommodated by mainstream services which generally do not provide supported accommodation. For example, a lack of accommodation exists for large families of 8-12 persons.⁵⁰ More generally, the research concluded that an urgent need exists “for emergency [housing] relief targeted to refugee and asylum seeker clients.”⁵¹

Specialist asylum seeker housing agencies:

Specialist asylum seeker agencies providing housing assistance identified the varied needs of asylum seekers for short term, medium term and long term housing depending on their visa status and eligibility. These agencies have taken over tenancy agreements for some clients where no other housing option has been found. Church properties have also been provided for

Case examples

A young woman from the Horn of Africa who lodged her protection visa application in 2000 spent most of her time since then with no income and chronically homeless, moving between friends until the welcome was overstayed, then moving on. Her days were spent trying to access food banks and looking for housing. She said she was often treated like a servant and felt scared much of the time. She faced high levels of anxiety, depression and health issues. At one point she was hospitalised for malnutrition before Hotham Mission ASP was contacted and found housing for her.

Sophina, mother of Chanty (2 years old) and Andrew (11 years old), arrived in Australia from Cambodia with her husband in 1996 following an extensive history of grief, trauma and loss. Sophina has separated from her husband, has no ongoing contact with him and receives no financial support from him. She has no other family support in Australia and no income apart from emergency relief from Hotham Mission ASP. She struggles to access food through foodbanks with a young child and no transport. With minimal income Sophina has been unable to obtain suitable housing. The ASP assists her with rent however the family's housing situation remains highly problematic. They live at the back of a suburban property in an old bungalow that is largely defenceless against the cold Winter weather. It is cramped, cold and damp, with mould covering the ceiling and walls, and with an accompanying overpowering wet smell. There is no source of heat in the bungalow, and due to the oppressive smell Sophina is often forced to leave the windows open. She has only sporadic access to hot water due to a broken hot water service and Sophina's fear of having this fixed due to expenses involved. The situation impacts heavily on the health of the family, all of whom suffer from illnesses such as colds on a regular basis. The family has only a very limited social support network, with little or no contact with the Cambodian community. What limited support the family does receive is based in their local area, making Sophina hesitant to move to more appropriate accommodation if this will entail a change of locality. Furthermore, Sophina's son Andrew attends school in the local area and she is anxious that he remains at this school in order to provide some stability in light of his many past experiences of trauma and loss.

⁴⁹ Kelly, Eve “Improving Housing Assistance for Refugees and Asylum Seekers” Paper presented at VCOSS Congress, 2004, p.4 (point 1.7).

⁵⁰ Kelly, Eve “Improving Housing Assistance for Refugees and Asylum Seekers” Paper presented at VCOSS Congress, 2004, p.3 (point 1.7).

⁵¹ Kelly, Eve, *A New Country – But No Place to Call Home*, p.xvi.

asylum seekers in some cases. Specialist agencies note that all housing provision requires an initial supported establishment phase (including initial negotiation with the housing provider, signing of leases, organizing utilities, material aid, transport and initial orientation). Newly arrived asylum seekers and detention releasees require more intensive support in this period.

Ongoing housing support needs vary according to the asylum seekers' details and the housing provided. The most intensive ongoing housing support needs are for single adult house sharing arrangements, particularly single male housing, as well as detention release families. Some of these ongoing housing support requirements include:

- ongoing casework; referral issues such as legal, education and medical;
- regular needs and risk assessments;
- ensuring clients are linked into services and the local community, are coping well, have sufficient food, and are not isolated;
- assisting in building a supportive, friendly environment in the house, such as outings, meals together etc;
- housing support and oversight: maintenance issues, monthly housing meetings, ensuring tenants are adhering to the house guidelines;
- ensuring appropriate duty of care including crisis and safety procedures are in place, suitable to the property and needs of tenants.

While specialist agencies, in particular Hotham Mission ASP, have identified these needs and are in a position to provide them, they require adequate funding to continue their work in a sustainable long-term manner.

Major points:

- Visa conditions directly prevent eligibility and access to mainstream housing services and result in homelessness, risk of homelessness and insecure housing.
- Existing housing service providers have been forced to pick up demand for housing from asylum seekers without adequate resourcing, training or expertise. Mainstream and specialist services are under-resourced to cope with the need for housing for asylum seekers.
- Asylum seekers' needs are specific and warrant targeted housing provision and ongoing support services. Specialist agencies are skilled and capable in this area.

3.3 Health

Access to health services and treatment:

BVE holders are not entitled to Medicare benefits. Sixty one percent of those asylum seekers surveyed by Hotham Mission needed to seek medical attention while on a BVE with the most common issues being high blood pressure, depression, dietary health issues and high levels of anxiety and stress. More than 24% of this group had been refused medical treatment either because they did not have a Medicare card, did not have sufficient funds to pay for services or did not have sufficient identification.⁵²

⁵² *Hotham Mission Research*, p.21.

The Red Cross documented the health needs of BVE holders without access to Medicare who accessed their services for a six month period in 2001.⁵³ This data provides an additional snapshot into the needs of asylum seekers who, for the most part, were not accessing the services of Hotham Mission simultaneously. From a sample number of 42 cases of need, only eleven (26%) were able to access appropriate services without difficulty. Twenty four cases (57%) were unable to access services and seven had difficulty accessing services. Seven asylum seekers (17%) were unable to access specialists. This included one case where a person experiencing problems with their hand arising from torture was unable to locate a specialist willing to diagnose the problem without payment of fees. Another case saw a person with a urinary tract infection and liver problems go undiagnosed and untreated for two years. Three asylum seekers were only able to access hospitalization with great difficulty involving long advocacy processes, threats of legal action and reluctance to keep patients in for observation and treatment. These cases related to emergency surgery, psychiatric illness and a suicide attempt. Difficulty accessing obstetric-care was experienced in a further three cases including birthing services, pelvic ultra-sound and hospitalization for pregnancy-related difficulties. Case-workers reported that occasionally, a woman in the late stages of pregnancy would present to the Red Cross without having had any pre-natal care. Asylum seekers were unable to access dental treatment in two cases. One six year old child was denied access to a hospital outpatient clinic for treatment of chronic asthma. A total of 20 cases (48%) were reported where asylum seekers on BVE were either unable to access or had difficulty accessing other areas of need including physiotherapy, torture and trauma counselling, pathology, radiology, ongoing medication and nursing home care.

Case Examples

A single mother, Elsa, and her 2 young children from the Horn of Africa arrived in Australia three years ago, were detained and subsequently released for psychological reasons. Released on BVE, the family did not have work rights or access to Medicare. This was a source of extreme anxiety for Elsa, as her youngest son (2 years old) was prone to viral infections. One Sunday night her son was extremely unwell with a high fever. She presented to the local medical centre but was turned away because she did not have a Medicare card. Elsa also suffered serious gynaecological issues due to female genital mutilation in her home country. Despite a referral from a GP, she was refused an appointment with a gynaecologist as she did not have a Medicare card. Another specialist willing to see her was later found.

Kim came to Australia from South Asia in 1997 with his wife and 2 year old son. He worked for 5 years in the hospitality industry while his protection visa application was being processed. When the RRT refused his claim for refugee status, he lost both his work rights and Medicare access while awaiting a decision from the Minister. Soon after this, his son became ill and was taken to hospital immediately. At one stage the doctors believed that the son was suffering from cancer, but he was later diagnosed with a deadly but treatable virus. He slowly recovered but required constant check-ups and appropriate medications. After his son was discharged, Kim stopped at the chemist to pick up the medications. The pharmacist asked for the highest price as the family was not eligible for the Pharmaceutical Benefit Scheme, had no Medicare or Health Care Card. Kim pleaded with the Pharmacist, offering all that he had: \$16.40. The pharmacist refused and only part of the prescription was purchased at that time. Kim was sick with worry for his son's well-being and was not able to purchase all of the medication that his son needed.

In response to these unmet health needs, the Bula Bula clinic, operating within the Asylum Seeker Resource Centre, was founded in May 2002. It is currently staffed by one funded coordinator, and, on a voluntary weekly or fortnightly basis by 4 General Practitioners, 2 nurses, 3 physiotherapists, 2 paediatricians, 1 psychiatrist, 1 physician and 1 masseur. Access to specialists and acute health care services beyond the capacities of Bula Bula clinic is usually done through informal arrangements and is therefore highly dependent on case-worker advocacy, referral and negotiation of fees. Red Cross case-workers reported that in most cases health clinics or hospitals will eventually see clients, especially children with urgent health needs.

⁵³ ARCV, In-house data, 2001.

However this has involved case-workers arranging appointments, writing support letters, negotiating fee-waivers and spending literally hours on the phone. Bula Bula clinic saw 342 asylum seekers between May 2002 and May 2004, 91% of whom were without access to Medicare and 9% of whom had a documented nutritional disease.⁵⁴ For these patients the clinic made 470 in-house referrals for physiotherapy, counselling, psychiatry and paediatrics. In addition the clinic staff negotiated 401 referrals to other service providers who agreed to see patients without charge.

The Specialist Clinic for Medicare-Ineligible Asylum Seekers, a voluntary service provided by Dr Tim Lightfoot, has since 2002 made itself available for pro-bono provision of specialist treatment to asylum seekers. Many of the referrals from Bula Bula are to this clinic. This clinic provides services to approximately 100 new asylum seeker clients per year. The Refugee and Asylum Seeker Health Network (RASHN) Victoria, a network of individuals and agencies who donate their time and energies on a pro bono basis, under the guidance of a part-time project coordinator, with the aim of improving the service response to the health and welfare needs of refugees and asylum seekers living in the Victorian community, has been working since 2002 with these and other agencies to coordinate health referral processes.

These coordinated developments in health service provision notwithstanding, Bula Bula clinic also reported that it holds a large folder of unpaid bills for fee-for-service health services that asylum seekers have accessed independently but are unable to pay for. In some cases asylum seekers had been threatened with legal proceedings for un-paid bills. Such threats significantly add to the anxiety of asylum seekers living under conditions of extreme insecurity. In such cases, clinic staff will attempt to negotiate fee-waivers individually with specialist providers. This is a tedious, repetitive and greatly time-consuming process that adds pressures to all services concerned.

Asylum seekers on BVE are ineligible for the Pharmaceutical Benefits Scheme and must pay commercial prices for medications. Bula Bula health clinic also provides some medication prescribed by its doctors and specialists, where it can be obtained via donation of samples. In addition, the clinic funds accounts at pharmacies at a cost of almost \$30 000 per year.⁵⁵

A large proportion of asylum-seekers surveyed by Hotham Mission were unable to complete required medical treatment, primarily because they were unable to pay for the continuing cost of services and medications. Treatment was stopped where asylum seekers were unable to pay outstanding bills, unable to pay in advance or had become ineligible for Medicare during treatment.⁵⁶

Case Examples

A woman from Eastern Europe suffered from cancer and received treatment while eligible for ASAS. While she still required a further 6 months treatment she became ineligible for ASAS and was no longer able to gain appointments without a Medicare card or the capacity for payment.

A woman from South America was hospitalised after a mild heart attack. After being presented with a large bill to pay on her second day in hospital, she discharged herself, assuming she could no longer stay at the hospital without the means to pay.

⁵⁴ ASRC, In-house data.

⁵⁵ ASRC, In-house data.

⁵⁶ *Hotham Mission Research*, p.27.

The obstacles to accessing treatment and medication exacerbate the end-cost both to the asylum seeker and the community. Service providers providing initial consultations and referrals noted a common pattern where delays in accessing treatment resulted in deterioration of conditions which might have been avoided through early intervention. These conditions then required more thorough-going and expensive medical attention.⁵⁷

Asylum seekers also faced financial and geographical concerns about getting to an appointment, in the event that one was possible. Without income or access to transport concessions, the cost of transportation, particularly from outer suburbs can be prohibitively expensive.

In many cases asylum seekers on BVE will not attempt to seek medical attention under the assumption that they are not entitled to it and without knowledge of pro-bono service providers. Thus while the number of asylum seekers unable to access services is troubling, perhaps more startling is the fact that the remaining number were able to access some form of medical treatment. This is all the more surprising since this access, not covered by Medicare, relies on the generosity and goodwill of already over-stretched health professionals and specialist service providers, and occurs without systematic access to a comprehensive education and referral structure and familiarity with the health system.

Effects of visa conditions on psycho-social health:

The effects of detention on psycho-social health are now well documented.⁵⁸ Hotham Mission's research also indicated that BVE holders released from detention were more than three times as likely to seek medical attention than those who had never been in detention, had a comparatively high use of medical services and a high dependence on medication. This was especially the case for mental health services. The amount of case-work and support required by Hotham Mission was also three times as high for detention releasees as for asylum seekers who had never been in detention.⁵⁹ In general, BVE holders who have been in detention are of particular concern – denied access to medical attention when their need is greater than most.

Hotham Mission's research documented high levels of anxiety amongst BVE holders. The following extract reveals the relationship between visa conditions and the general mental health of asylum seekers:

A general high level of anxiety was noted for all asylum seekers interviewed. Causes of anxiety on the whole were due to uncertainty about both their present welfare needs and their future, in terms of their legal status in Australia, fear of return, as well as multiple other issues. While men were anxious about not having work rights, women were more likely to be anxious at not having Medicare and the impact of this on their children. Single mothers were particularly anxious about the difficulty of accessing medical services for their children, particularly out of working hours, due to isolation, lack of transport and funds.

Asylum seekers highlighted the impact of not having the right to work, volunteer, study or the funds to recreate on their general mental health. As noted by Amnesty International, asylum seekers with no outlet for productive and physical activity are more susceptible to depression, high

⁵⁷ Interview with service provider, 2.3.04.

⁵⁸ See for example: HREOC, *A Last Resort?*; Sultan, A. and O'Sullivan, K. "Psychological disturbances in asylum seekers held in long term detention: a participant-observer account" *Medical Journal of Australia*, 2001, 175. Smith, M. "Desperately Seeking Asylum: The plight of asylum seekers in Australia, *New Doctor*, Summer 2000-1; and Drozdek, B. et.al. "Chronic PTSD and medical services utilization by asylum seekers" *Journal of Refugee Studies*, 16(2), 2003.

⁵⁹ *Hotham Mission Research*, p.22.

levels of anxiety and the effects of Post Traumatic Stress Disorder. This may include sleeplessness, increased suicidal thoughts and disorientation....

Workers in turn noted the general lack of counselling services available for ineligible asylum seekers. This was exacerbated by no funding for mental health services specifically for this group, as well as long waiting lists and catchment area restrictions, affecting asylum seekers with unstable housing.⁶⁰

Dr Tim Lightfoot, the physician offering pro bono services to BVE asylum seekers through the Specialist Clinic for Medicare-Ineligible Asylum Seekers, confirmed the prevalence of psycho-social health issues. In addition to the need for expanded screening, and the treatment of diseases such as diabetes, hypertension, blood pressure, cholesterol, and heart disease, he highlighted the frequency of complex somatic symptoms manifesting as a result of asylum seekers' psycho-social situation and experience of psychological distress, including depression, headaches, migraines, abdominal pain, irritable bowel and muscle spasms.⁶¹ While Dr Lightfoot has stressed that these symptoms could not be generalized to all asylum seekers on BVE and represented only a small sample, they nevertheless indicate examples of the cumulative nature of BVE holders' health concerns.

Case examples

The Tabas family are Kurds from Turkey seeking asylum in Australia. Bacel and Sevil have two children aged nine and three. Hotham Mission ASP has been working with the family since they became ineligible for ASAS in October 2002, providing them with enough money to pay their rent and a little extra. Bacel, Sevil and their oldest daughter, Reena all suffer issues relating to torture and trauma and are receiving counselling. Both parents have expressed suicidal ideations. They are struggling with the very little money that ASP can provide them with for rent, food and transport.

Sara from the Middle East had been prescribed more than ten different prescriptions for various health issues during her time in detention, including sleeping tablets and anti-depressants. Not being provided with sufficient medical records for this period, she stopped a number of these medications quickly after release, which had adverse effects on her health such as dizziness and heart palpitations. She was generally unaware of exactly what medications she had taken in detention and what their purpose or correct dosage was. In response, Sara sought out medical attention frequently, as was the case while she was in detention.

Many of these issues are common to the experience of temporary protection visa holders, arising as a result of time spent in detention, insecure legal status, the threat of deportation, lack of income, social isolation, family breakdown and other personal issues arising from the visa conditions. The mental health issues associated with temporary protection are now well documented.⁶² In 1998, research into the psychological health of asylum seekers in Australia had already indicated that events in Australia including the denial of the right to work, could further impact on pre-existing conditions such as anxiety, depression and post-traumatic stress disorder.⁶³ It is of grave concern that six years later BVE holders are not only denied medical treatment for existing conditions, but that those conditions have in some cases deteriorated as a consequence of the conditions attached to BVE. Those asylum seekers affected by serious health problems, and who are subsequently found to be refugees, are likely to require ongoing medical treatment, the cost of which will be born socially and financially by the wider Victorian and Australian community.

⁶⁰ *Hotham Mission Research*, p.24.

⁶¹ Interview with service provider, 28.4.04.

⁶² For a summary of research see: Marston, Greg "Temporary Protection, Permanent Uncertainty" pp.60-65.

⁶³ Silove, D. and Steel, Z. *The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia*, Psychiatry Research and Teaching Unit, University of New South Wales, Sydney. Cited in Marston, Greg "Temporary Protection, Permanent Uncertainty" p.61.

In summary, as Kardamanidis⁶⁴ found, the 'no work – no Medicare' policy for community based asylum seekers on BVE results in two categories of costs. First, those tangible costs that are associated with the direct provision of health services and resources to asylum seekers as a result of their prohibition to work and the lack of access to Medicare. Second, the increased physical, psychological and social suffering of the asylum seekers, named intangible costs, that result from this policy. Intangible costs also include the erosion of professional standards among health care practitioners as a result of this policy, and the costs to Australian society in terms of social exclusion, inequality, and a diminishing sense of community. Interestingly, Kardamanidis estimated that if BVE holders living in New South Wales (1,700 approximately) became eligible for Medicare the total annual cost of health care services (tangible costs) would be about \$3 million, or 0.017% of the total annual recurrent health expenditure in NSW in 2000-2001. Kardamanidis concluded that the saving of this amount of money could not justify the denial of health care to asylum seekers; nor could it justify the intangible costs brought about by this denial.⁶⁵

Major points:

- BVE conditions result in many cases in the denial of primary and specialist health services and treatment.
- BVE conditions appear to be exacerbating pre-existing medical conditions and generating new ones. This is particularly the case in terms of mental health.
- Medical conditions suffered by BVE holders could potentially generate high and otherwise avoidable costs which will be born by the wider community.
- The advocacy of specialist agencies providing support for asylum seekers is crucial to providing medical services and referrals to BVE holders as long as they are ineligible for Medicare. Consequently, these agencies are being forced into a misallocation of resources in time-consuming negotiation of fee-waivers.

3.4 Income and debt

Income:

Asylum seekers who are BVE holders are denied work rights and are ineligible to access Commonwealth ASAS payments. Many current BVE holders have previously had work rights, including 60% of those surveyed by Hotham Mission.⁶⁶ These asylum seekers may have lost work rights when they lodged an appeal against their protection decision at the RRT or the courts, or appealed to the Minister for discretionary intervention. As mentioned in section 2.1 asylum seekers' decision to appeal protection decisions is their right under law.

⁶⁴ Kardamanidis, K: "Tangible and intangible costs of the 'no work – no Medicare' policy for community based asylum seekers in New South Wales Australia". Master of Public Health Special Project, School of Public Health, University of Sydney. August 2004.

⁶⁵ Kardamanidis, K: "Tangible and intangible costs of the 'no work – no Medicare' policy" p.16.

⁶⁶ *Hotham Mission Research*, p.19. This figure included 40% that lodged their PV application within 45 days and 20% former student visa holders who had a restricted right to work. Of those previously having work rights, 82% had been employed (or 52% of the total number of asylum seekers interviewed).

Forty percent of the total surveyed had never had any work rights and 48% had never been able to find work. The 45 day rule directly contributed to a loss of potential income for 60% of all asylum seekers interviewed by Hotham Mission.⁶⁷ As mentioned in section 2.1, there are a number of legitimate reasons why asylum seekers' applications may be delayed for 45 days or more after their arrival in Australia, yet this delay results in the denial of income and work rights.

Asylum seekers without work rights or income support who accessed the services of ASRC's health clinic between May 2002 – May 2004, identified the following primary means of financial support:

Primary sources of support for asylum seekers on BVE⁶⁸

Source of support	Asylum seekers accessing support (n=221)
Hotham Mission ASP	35
Brigidine Community	7
Other Churches	40
ARCV	27
Relatives in Melbourne	35
Relatives overseas	5
Own savings	28
Australian friends	25
Husband or wife in Australia	11
Services for homeless	8

Effects of lack of income:

Lack of income determines that many asylum seekers on BVE are living under conditions of abject poverty. As a consequence they face immediate concerns relating to homelessness, health, nutrition, isolation and depression.⁶⁹ The primary presentation needs of asylum seekers accessing Hotham Mission were the result of a direct result of loss of income and the need for emergency relief and financial support for housing and medical issues. The impact of a lack of income is exacerbated given that 55% of asylum seekers interviewed have been awaiting a decision for four years or more. Of 79 BVE asylum seekers who presented to the Red Cross in February 2004, 14 (18%) were without any source of household income and 48 (61%) had a household income which was inadequate to meet basic needs. Twenty two (28%) were unable to pay for utilities.

Case-workers spoke at length of the isolation and emotional trauma experienced by asylum seekers when they are unable to work; in particular, the erosion of a sense of identity and independence, feelings of shame at having to beg and accept hand-outs for their survival, and the inability to integrate socially and economically into Australian society. They spoke of the profound distress of men and parents who were unable to support their families and children. Caseworkers believed that the denial of work-rights was a major contributor to family breakdown. Many asylum seekers felt responsibilities not only towards family members in Australia but also towards families overseas and many found it impossible to explain the reality of their lives in Australia to family members overseas.⁷⁰ Many asylum seekers presented to Hotham Mission in a chronic state of poverty, uncertain of what services were available to them and often unable to access

⁶⁷ *Hotham Mission Research*, p.19.

⁶⁸ ASRC In-house data.

⁶⁹ Wa Mungai, N. "Issues facing asylum seekers without income support," p. 205.

⁷⁰ Interview with service provider, 20.4.04. Barson, Petrina and Beckwith, Joan "Effects of Policy on the Health and Wellbeing of Asylum Seekers" Paper presented at Conference: *The Health and Well-being of Refugees and Asylum Seekers*, University of Melbourne, 15 November, 2004.

those services. Others claimed to have been turned away from mainstream welfare agencies, many of these services assuming they must be accessing Centrelink payments or have family in Australia to support them. Most asylum seekers had no family in Australia while others presented after a family breakdown had occurred.

Case example

Hussein arrived in Australia in 2000 from Turkey, applied for protection and was issued with work-rights. He worked in his profession, as a painter and supported himself until recently when he discovered he had cancer. He was no longer able to work, due to his medical condition but was eligible for ASAS payments. Hussein received a negative decision from the RRT in July 2003. He therefore lost his work-rights, access to Medicare and ASAS eligibility. At this time he was recovering from surgery for his cancer. Hussein is still very sick post surgery and has many added pressures and anxieties due to his vulnerable status. His medication amounts to \$120 per week and access to free medication remains unassured. With no income, Hussein cannot maintain the private rental he occupied while he was working or receiving ASAS payments. But due to his support network in his local area, it is inappropriate for him to move to an area with alternative accommodation. Hussein has recently refused to accept financial assistance from Hotham Mission. This decision was prompted by Hussein's strong pride and sense of shame around his current situation and has resulted in the risk of his health deteriorating. He remains headstrong in regard to wanting to work and is waiting to hear back from his lawyer to see if his work-rights will be re-instated. Doctors have strongly advised Hussein against work as this could seriously impact on his fragile physical condition. Hussein is too sick to return to Turkey in his present state.

The data raise a particular concern for the numbers of children who are living in families where there is no income support, other than that provided by Hotham Mission ASP. ASP provides a Basic Living Allowance (BLA) Program which is the only ongoing non-government funded financial assistance program specifically for asylum seekers on BVE. Though crucial for the support of this group, at a maximum of \$30 per week, it rarely covers even basic items.

Case examples

An 18 year old Somali woman arrived in Australia by herself at the age of 16 and applied for protection. She lived on the street initially and did not become aware of the ASAS program until some time later. When she turned 18 she became ineligible for ASAS as she was no longer a minor. She has no other source of income.

A family which has recently received a negative decision from the RRT has lost work-rights and access to Medicare. They are attempting to support their 14 year old son and 10 month old daughter without income, relying on the minimal assistance available from support agencies. The family's daughter is on formula which costs \$18 for 4-5 days. They are struggling to continue to buy formula as well as necessities for themselves.

Asylum seekers are dependent on welfare agencies to supplement this allowance. Particular concerns are raised for single mother families, which total more than 14% of the group surveyed by Hotham Mission, who are often unable to access food banks and local welfare agencies. This is often due to transport and isolation issues and the inability to carry food items together with small children. Many mothers stated that they have at times been unable to access sufficient food, medicine and clothing for their children, including staples like bread and milk. This is particularly so on weekends or holidays when food banks are closed or when the small allowance they have runs out.

Twenty percent of asylum seekers surveyed by Hotham Mission were required to report to DIMIA Compliance. Twenty three percent of this group had to report two or three times a week, 60%

once a week and the remainder once a fortnight or month. Without access to income or concession rates, the cost of travel tickets for this purpose is of major concern. Hotham Mission currently spends in excess of \$15 000 per year on travel tickets for this group.⁷¹

For asylum seekers who choose to depart Australia, before or after a decision has been reached on their refugee status, their lack of income affects their options for doing so. Hotham Mission documented the case of two asylum seekers released from detention on BVE who wanted to return home voluntarily but did not have work rights to pay for the travel or the issuance of a new passport. They were advised by DIMIA that they would have to return to detention from where their fares could be paid by the department. The asylum seekers did not wish to do so, fearing prolonged detention pending removal. In this case the provision of work rights or income support at the final stages of determination would enable asylum seekers to better plan and prepare for either return or resettlement.⁷²

Case example

An Iranian couple without work rights recently had their case for protection rejected. They have the chance to be reunited with their son who has just received refugee status in Canada and can sponsor them. They cannot, however, remain in Australia while final administrative procedures are carried out in Canada. They are able to go to Turkey and wait, but DIMIA will not pay their fares unless they are in detention, in which case they would return the couple to Iran, where they feel unsafe and may not be able to leave subsequently.

Debt:

Asylum seekers without income face further financial pressures. Forty four percent of those interviewed by Hotham Mission had incurred debts relating to a range of issues including the cost of their own detention. Without income these debts had the potential to accumulate and asylum seekers faced further fines and penalties for non-payment.

Sources of debt amongst BVE asylum seekers (n=203)⁷³

Source of debt	% of BVE asylum seekers
Detention	10.8
Legal	7.2
Bank / Credit card	5.4
Other/ friends	5.4
Bills	5.4
Housing/Rent	3.6
Transport fine	3.6
Detention Release Bond	1.8
Medical	0.9
Total	44.1

⁷¹ Hotham Mission Research, p.20.

⁷² Hotham Mission Research, pp.29-30.

⁷³ Hotham Mission Research, p.19.

Major points:

- BVE conditions leave asylum seekers with no source of income and many are living under conditions of abject poverty as a result.
- BVE asylum seekers face a range of issues related to lack of income and denial of work rights including family breakdown, homelessness, ill health, isolation, depression and cumulative debt.
- That children and single parents are in this situation is of particular concern.
- Without income the cost of transportation to access existing services can be prohibitive.

3.5 Especially vulnerable groups

Women experiencing domestic violence:

This paper has already suggested that the BVE and its denial of work rights contribute to family breakdown. The BVE presents additional obstacles for women and children who are in the midst of family crisis.

Many women are included in the application made by their spouse for protection. Should those women subsequently experience violence within that relationship, the BVE regime acts as a major obstacle to those women's capacity to exit the relationship. Consider for example a husband and wife whose application for protection is lodged on the basis of the husband's claim. Should the woman experience domestic violence while their claim is being processed and wish to leave her partner for her own safety, she faces the option of lodging a separate protection claim. If she has been in Australia for longer than 45 days (remembering that the processing of claims may take between three months and five years) her independent application would be subject to the 45 day rule, meaning that while her application was processed her visa status would be altered to BVE, denying her work rights and Medicare. Should the woman have children in her care, she would be unable to provide financially and medically for them. If her application is refused she is likely to be deported to her home-country where she may face not only any existing persecution but also further discrimination for leaving her husband. Under these conditions it is difficult to imagine the woman seriously considering the option of a separate protection application, in which case she would be effectively forced to remain in a violent relationship. Cases such as these have been highlighted by providers of legal services and migration advice.

Others of particular concern:

Children: A number of children in single and two parent families have developmental and health needs such as asthma and nutritional issues. Beyond health and welfare concerns, children on BVE faced difficulties in participating in the school system as a result of the lack of entitlements. A number of children included in Hotham Mission's research stated their school did not understand the situation for asylum seekers on Bridging Visas, particularly those without income. These students indicated that at various points they have had no school or physical education uniform, difficulty accessing school books and attending excursions, sporting or extra-curricular activities. Transport to school was costly and difficult for most students. Many did not tell their friends they were asylum seekers and did not invite friends home, particularly if housing was unstable.⁷⁴

Case example

Asif is a 13 year old boy from the Middle East. He stated that he was ashamed to tell his teacher or his friends that he was an asylum seeker and that his family had no money. He was constantly being held after school for detention for being late and for not attending sports. But Asif did not have any sneakers or a travel ticket to get to school. Instead he had to walk almost two hours to get there. He said he went without food many days as he had no money for lunch and nothing to take from home. On the days he slept in and raced to school, he would spend so much time walking and then being kept behind that he often wouldn't eat all day until his evening meal. Asif's family was forced to move three times during his four month stay at High School.

⁷⁴ *Hotham Mission Research*, pp.18, 27-28.

Single parents: Fourteen percent of Hotham Mission's clients over the last two years have been single parent families. Included in this group are women who have experienced domestic violence, death of a spouse, marriage breakdown and forced family separation. This group finds it particularly difficult to access services, food and material aid through food banks and welfare agencies. A range of issues emerge for this group around housing, health, transport, isolation, basic services and nutrition.⁷⁵

Pregnant women: over a two year period Hotham Mission worked with 15 pregnant asylum seekers on BVE with no Medicare entitlement.

Case examples

Clara is a single mother from Senegal with an 18 month old daughter, Lilly. Clara has no family in Australia and is now at the Ministerial 417 stage appealing on humanitarian grounds. Clara is vulnerable and isolated, relying on support from friends for housing and food, and finding it difficult to access services as Lilly restricts her mobility. Clara has no access to Medicare and has been turned away from a medical centre she tried to attend when Lilly was sick, because she did not have the means to pay.

Xu-mei is a mother of three children who arrived in 2001 from South Asia. Without income for the first few months, Xu-mei used her remaining funds before becoming eligible for ASAS. Since her RRT rejection more than one year ago and with her case being appealed in the Federal Court, Xu-mei lost her entitlement to income support. Without income she could not afford to pay for food or rent, forcing her and her three children into homelessness and severe poverty. Hotham Mission ASP have assisted the family since that time with housing and limited financial assistance. The family has had to move three times to different crisis and church properties.

Nelly is a single mother from Lebanon with three children. She came to Australia 2 years ago to be with her husband. Due to domestic violence, they are now separated. Nelly has no contact with her husband and does not receive any financial support from him. She had a baby who was sick for a long time and who passed away recently. She is now applying to stay in Australia because she fears her own family will kill her if she returns to Lebanon since her husband is not of the same religious group as her family. She also fears that the shame of leaving him could also threaten her safety should she return. At present, she is struggling through these traumatic experiences and trying to look after her small children with no income and no access to Medicare.

Others of concern include those with serious medical and mental health issues including disability, cancer, chronic conditions such as diabetes, heart problems, eye conditions and ongoing viral infections; those with issues relating to the experience of torture and trauma; and the elderly. Clearly the problems associated with a lack of income and access to Medicare which is of serious concern for all BVE holders are exacerbated in all of the above cases.

Major points:

- BVE conditions create additional hardship for more vulnerable groups including children, single parents, pregnant women, those with serious medical conditions, survivors of torture and trauma and the elderly.
- BVE conditions create a major disincentive for women experiencing domestic violence to exit violent relationships.

⁷⁵ *Hotham Mission Research*, p.20.

3.6 Legal Assistance

In order to pursue their right to lodge a protection claim, and their right to pursue avenues of appeal, it is important that asylum seekers obtain competent legal advice and representation.

Of the BVE holders interviewed by Hotham Mission almost 12% had no legal representation on presentation and 4.5% were currently without legal representation. Legal issues remained a great concern to most asylum seekers interviewed. Sixteen percent claimed to have been badly represented by their Migration Agent for one of the following reasons:

- failure to lodge protection claim within 45 days;
- provision of inaccurate information about immigration procedures;
- failure to include all information provided by the asylum seeker in the application;
- increased charges over and above initial quote.

Most asylum seekers were afraid to file a formal complaint as they felt uncertain of their rights in Australia and were unsure of the impact this might have on their refugee claim.⁷⁶ In many cases the grant of a BVE as the result of the 45 day rule was the consequence of circumstances beyond the affected asylum seeker's control. In other cases appeals against negative decisions (during the course of which, income, work-rights and Medicare access are denied) were sought on account of poorly provided legal assistance in the first instance, again beyond the control of affected asylum seekers.

Case examples

Ismael, a single male asylum seeker from the Middle East approached a Migration Agent within 2 weeks of arrival in Australia. The agent failed to lodge his protection application within 45 days, leaving Ismael without work-rights, income support or access to Medicare for 4 years while his protection claim was in process. Ismael faced constant homelessness and presented to Hotham Mission ASP in a terrible state of health and nutrition.

Katarina, a single mother from Eastern Europe waited 4 years for a final decision before being approved by the Minister under section 417. Although having no family in Australia, with work-rights for the first 3 years, she was able to support herself and her child and pay for the services of a Migration Agent. The agent had initially quoted a maximum fee of \$3-4000. When her submission to the Minister was lodged, Katarina lost her work-rights and was unable to support herself or her child and approached ASP at this time. The Agent had allegedly told Katarina that she would be able to get her work rights back and then charged her \$7000 to lodge the Ministerial application.

Major points:

- The grant of a BVE as a result of the 45 day rule is in many cases the result of poor legal assistance beyond the control of the affected asylum seeker.
- Poor legal assistance in the first instance, which is beyond the control of the affected asylum seeker, results, in some cases, in the need for appeal, during which time asylum seekers are denied work-rights and access to Medicare.

⁷⁶ *Hotham Mission Research*, p.25.

4. SERVICE PROVIDERS FOR ASYLUM SEEKERS ON BRDIGING VISA E: CAPACITIES AND LIMITATIONS

4.1 Outline of existing service providers for asylum seekers on BVE

A wide variety of community agencies in Victoria are involved with meeting the legal, health, welfare and social needs of asylum seekers living in the community and advocating on their behalf. Some of the work carried out by these agencies has been referred to in previous sections of this report. This section details those agencies which are directly involved with the provision of services to BVE asylum seekers. These agencies are listed below, together with a brief outline of their primary work focus, their staffing levels and their funding. This information is also summarised in table form.

The two major service providers are Hotham Mission and the Asylum Seeker Resource Centre:

Hotham Mission Asylum Seeker Project (ASP):

The ASP was established in 1997 and works specifically with asylum seekers who have no right to work, no form of income and no entitlements to Medicare. The project provides supported housing, case-work, provides monthly cash relief and, where possible, some financial support for emergencies. The agency works with over 250 asylum seekers in 34 properties across Melbourne. It has five equivalent paid full-time staff and an extensive volunteer network of 100. It is funded almost entirely by philanthropic funds and community donations.

Asylum Seeker Resource Centre (ASRC):

The ASRC was established in 2001. It provides case-work, a medical clinic (see section 3.3 for further details on the Bula Bula Clinic), a food bank, ESL classes, job-skilling education, recreation and social programs, counselling, legal assistance and advocacy for asylum seekers. In so far as possible ASRC attempts to prioritise services for asylum seekers without alternative means of support or eligibility for other services. Since 2001, the agency has assisted over 2000 asylum seekers including BVE holders. ASRC has one full time and eight part-time staff and over 350 volunteers. It is a registered charity funded exclusively by philanthropic funds and community donations.

A number of other agencies operate on a smaller scale or work with asylum seekers as one part of their overall client-group:

Australian Red Cross Victoria (ARCV):

In addition to administering the DIMIA funded Asylum Seeker Assistance Scheme (ASAS), the Red Cross maintains contact with and provides some services to asylum seekers who are ineligible for the payment. This includes the distribution of emergency relief money and case-work. While most ineligible asylum seekers are referred to Hotham Mission, particular groups (such as East Timorese) have continued to be case managed by the Red Cross. This has been negotiated between the different agencies and allows for consistency of contact and support. The Red Cross has funded this support by community donations, a state government grant via VCOSS, donations from the Dandenong Magistrate's court and an ARCV allocation.

Asylum Seeker Assistance Project Springvale:

This project has been a focus group of Urban Neighbours of Hope (a missionary community working with urban poor in the Springvale area - UNOH) since 2001. It operates a food-bank and an op-shop, provides material aid and supported housing for five asylum seekers on BVE in Melbourne's south-east. In partnership with UNOH, it provides further shared

accommodation in Springvale. It is voluntarily staffed and provides services funded by community donations. UNOH provides office space and meets administrative costs.

Asylum Seeker Welcome Centre:

Based in Brunswick, this agency offers casework, migration advice, information, referral and linkages for asylum seekers living in the community and TPV holders. The agency also provides social contacts, recreational and educational activities. It has two full-time staff (one paid position and one attached to the Sisters of Mercy) and a number of volunteers. The centre has been operating since 2001 and is funded by religious foundations and donation. Isolated funding for particular projects has been sought from local councils.

Brigidine Asylum Seeker Project:

Operating since September 2001, the Brigidine project offers support to asylum seekers in detention and in the community. Staff make visits to detention centres, provide housing in two owned properties and rental assistance and payment of utilities in other properties, provide food aid and regular social support. The asylum seekers they assist in the community are primarily BVE holders without income or access to Medicare, as well as a smaller number of TPV holders without work. The project is currently assisting two families including four children, as well as 25 individual asylum seekers in the community. Other work includes advocacy and public education on refugee and asylum seeker issues. The project is staffed by three Brigidine Sisters who have additional work commitments beyond the asylum seeker project. It is funded by church and individual donations.

Dandenong Asylum Seeker Project:

This project is a one-man agency, operating since 1998 on a voluntary basis. The Project is committed to providing services to asylum seekers, primarily BVE holders without other means of support, in the geographical location of most need. The project has relocated at different times to accommodate this aim. As such it provides a much needed service to asylum seekers who are unable to access the larger inner-city agencies. The project operates a drop-in centre and provides material aid (food, metro travel tickets, phonecards, vouchers). Its premises are provided by the Uniting Church.

Fitzroy Learning Network (FLN):

Operating since 1998, FLN provides community services according to need, including ESL tuition for new arrivals to the community, senior citizens' programs and after-school programs. The network has adapted to the increased need for services amongst asylum seekers living in the community, providing social support, ESL tuition, computer classes, advocacy and referral for accommodation and medical services. The network has 11 staff and 150-200 volunteers. It is funded by state and local governments, philanthropic trusts, donations and its own fund-raising activities.

Refugee and Asylum Seeker Health Network (RASHN):

RASHN aims to build the capacity of the entire health system to address, in a holistic manner, the health and welfare needs of refugees and in particular, Medicare-ineligible asylum seekers who live in the Victorian community. A network of over 100 individual and agency members represent a range of non-government organizations, community health agencies, tertiary health facilities and academic institutions. RASHN is not itself a service provider, but facilitates coordination between health services and contributes to increased service responsiveness. It acts as a repository of information in regard to services available, unmet health and welfare needs, emerging health and welfare concerns in the refugee/asylum seeker communities in Victoria. It advocates to government and relevant services for health promoting policies for this group.

Refugee and Immigration Legal Centre (RILC):

RILC has been operating since 1998 following the merger of existing legal services for disadvantaged asylum seekers, refugees and migrants founded in 1988-9. The centre is a

leading provider of pro bono casework and advice for asylum seekers, refugees and migrants and runs active and substantial community education and law reform programmes. It currently assists around 3,000 people annually. It employs 7 full time and 3 part time staff with a team of over 60 volunteers. The centre is funded through the provision of professional legal education to migration agents (and prospective migration agents) and philanthropic donations (over 70%) and Commonwealth funding.

Specialist Clinic for Medicare-Ineligible Asylum Seekers:

This is a one-man voluntary service operating one day per fortnight, providing a free specialist medical service for asylum seekers living in the community without access to Medicare. The clinic is housed by the North Yarra Community Health Centre, Fitzroy branch. The costs of medicines, pathology and so on are met by the Sisters of Charity. The clinic assists about 100 asylum seekers per year.

Victorian Foundation for the Survivors of Torture (Foundation House):

Established in 1987, Foundation House provides support for people in Victoria who have been tortured or traumatised in their countries of origin, in other countries, or while fleeing those countries. Their services include counselling, advocacy, family support, group work, psycho-education, information sessions and complementary therapies.

Some mainstream services have developed special programmes or services for asylum seekers:

Hanover Welfare Services:

Established in 1962, Hanover provides housing services across the southern metropolitan and inner north areas of Melbourne. Hanover runs a crisis service, a transitional housing management service, and programs for women, families and young adults, as well as a brokerage fund for emergency assistance. Asylum seekers are able to access these services but constitute a small fraction of the overall client group. Asylum seekers have been accessing the crisis services increasingly over the last 8 years. Hanover has 150 staff, of whom some 120 are full-time. It is funded primarily by state and commonwealth government funding with a smaller fraction from donations, trust-funds and the organisation's own fund-raising.

North Richmond Community Health Centre:

This is a standard community health centre which, in addition to its regular services, provides pro-bono health services for asylum seekers without access to Medicare. The Centre currently assists approximately 50 asylum seekers.

Wombat Housing and Support Services:

Wombat provides support, housing and material aid services for people including asylum seekers who are homeless or at risk of homelessness in the west of Melbourne. They offer transitional and long-term housing. They currently support nine asylum seekers in two houses as part of a specific asylum seeker project operating for the last three years, along with seven other asylum seekers incorporated into gender, age and other specific housing programs. All of the asylum seekers supported in this way are at the ministerial stage of determination and have no means of income or access to Medicare.

Existing service providers in Victoria for asylum seekers on BVE

Agency	General Description	Staff working with BVE holders	Services for asylum seekers on BVE	Funding sources
Asylum Seeker Assistance Project Springvale	Housing, material aid and support service for asylum seekers in the Springvale area.	Voluntarily staffed	Supported accommodation, food-bank, material aid, social support.	Community donations; office space and administrative costs met by UNOH
Asylum Seeker Resource Centre (ASRC)	Support and referral centre for asylum seekers living in the community	1 full time + 8 part-time staff + over 350 volunteers	Case-work, health clinic, food-bank, ESL training, job-skill training, recreation and social programs, counselling, legal assistance, advocacy.	Public donations and philanthropic support, small State Government grant.
Asylum Seeker Welcome Centre	Support and referral centre for asylum seekers and TPV holders living in the community	1 full-time paid + 1 full-time (Sisters-of-Mercy) + volunteers.	Case-work, social and recreational programs, educational activities, migration agents.	Religious Foundations, Donations, smaller grants from Local Council; auspiced : Broadmeadows Uniting Care.
Australian Red Cross Victoria	Humanitarian agency providing range of welfare and support services throughout the Australian community	4 full-time case-workers on ASAS program	Case-work, emergency relief payments.	Commonwealth Government fund ASAS scheme; public donations; State Government grant via VCOSS; Dandenong Magistrate's Court donation; ARCV allocation.
Brigidine Asylum Seeker Project	Housing, material aid and support service for asylum seekers in the community and in detention.	Staffed by 3 Brigidine Sisters with other work responsibilities outside ASP	Supported accommodation, rental assistance, material aid, social support, advocacy and community education	Church and individual donations
Dandenong Asylum Seeker Project	Support and drop-in centre for asylum seekers in most geographically isolated areas of Melbourne	Staffed by one volunteer	Drop-in centre, material aid including food, metcards, phone cards, vouchers.	No monetary income. Premises provided by church donation.
Fitzroy Learning Network	Neighbourhood House providing community services according to need. Primary focus is ESL tuition.	3 full time + 8 part-time staff including 1x 0.8 refugee support worker	Social support, advocacy, ESL and computer classes, referral for accommodation, medical services etc.	Local and state government funding under (ACFE) program, philanthropic trusts, donations, fund-raising.
Hanover Welfare Services	Housing support service including crisis and transitional housing, with specific programs for families, women, young adults.	30 part-time + 120 full-time staff for agency, none devoted exclusively to asylum seekers.	No specific services for asylum seekers but able to access existing programs where general criteria are met (eg. Women, families etc)	90% State and Commonwealth Government funded under SAAP program. 10% donations, trust-funds and fund-raising.
Hotham Mission Asylum Seeker Project (ASP)	Housing agency for asylum seekers living in the community	5 full time staff + 100 volunteers	Supported accommodation and rental assistance, case-work, emergency relief money, advocacy.	Public donations and philanthropic support, small State Government grant.

/Continued

Agency	General Description	Staff working with BVE holders	Services for asylum seekers on BVE	Funding sources
North Richmond Community Health Centre	Community Health Centre	No staff devoted specifically to asylum seekers.	Free health services	State Government: Department of Human Services
Refugee and Immigration Legal Service (RILC)	Refugee/Migration-specific pro-bono legal centre	7 full-time + 3 part-time staff + over 60 volunteers.	Pro-bono legal case-work and advice	Over 70% of funding derived from provision of professional legal education courses for Migration Agents and philanthropic donations. The remainder from Commonwealth Government funding.
Specialist Clinic for Medicare-Ineligible Asylum Seekers	Specialist medical clinic for asylum seekers without access to Medicare.	Staffed by one volunteer	Free specialist medical clinic	No income. Premises provided by North Yarra community Health Centre; other costs met by Sisters of Charity.
Wombat Housing and Support Services	Transitional and long-term housing agency for homeless and those at risk of homelessness in West Melbourne	20 staff for entire agency; 1 x 0.2 devoted to asylum seeker project.	Supported accommodation	State Government: Department of human services
Victorian Foundation for Survivors of Torture (Foundation House)	Support service for survivors of torture and trauma; advice and assistance to other agencies working with torture and trauma survivors	20 full time + 42 part-time staff	counselling, advocacy, family support, group-work, psycho-education, information sessions, complementary therapies.	Commonwealth and State Governments, philanthropic organisations.

4.2 Capacities and Limitations of existing agencies

Capacity to meet the specific needs of asylum seekers:

The range of agencies working with BVE holders have a high level of familiarity with the specific legal, medical, social and welfare needs of asylum seekers living in the community. Together, they have developed significant expertise in meeting those needs. As indicated in Section 3 of this report, the provision of housing, medical attention and referral, negotiation of payment for services, social opportunities, income support and legal referral has been made possible through the work and advocacy of NASA-Vic and other agencies. A high degree of communication amongst agencies ensures a coordinated response and minimal reproduction of services. The level of care is remarkable given the lack of resources and funding for this group.

In particular, the case-work approach taken and recommended by the larger agencies (Hotham Mission ASP and ASRC) has demonstrated a successful model for comprehensively supporting asylum seekers living in the community. Aside from assisting with the short, medium and long term welfare needs of BVE holders, the case work model of Hotham Mission ASP has demonstrated a successful capacity to assist with immigration compliance amongst asylum seekers. Case-workers play a vital role in preparing, supporting and empowering asylum seekers in the final stages of determination. In the case of negative determinations, Hotham Mission's figures indicate a high level of voluntary repatriation amongst the asylum seekers they assist. "It is ...the experience of ASP, that in the majority of cases forced removal or detention is neither desirable nor necessary. With case-worker support asylum seekers are prepared, supported and empowered throughout the process and are more likely to comply with decisions and more able to either cope with return or settle successfully."⁷⁷ In the latter case successful integration and productive membership of the community is clearly facilitated by this case-work model. Research on this issue has outlined the positive role appropriate welfare and casework support plays in preparing, supporting and empowering asylum seekers throughout the determination process, and its impact on higher levels of voluntary repatriation and lower levels of absconding.⁷⁸ Consequently, case management has been recommended, not only for asylum seekers currently living in the community, but as part of a feasible and more desirable alternative model to detention.⁷⁹

Case examples

The Iranian parents of a teenage son had waited for 2 years in the community for a decision on their protection visa application. After the family were rejected by the RRT, they had many discussions with a support outreach worker about their future. Slowly the discussions explored the possibility of refusal by the Minister at the 417 stage, after which the family decided to pursue third country options. Having lost their work rights and eligibility for ASAS, the family had few options. They did however, have valid passports. When the family was later rejected by the Minister, Hotham Mission ASP raised enough funds for the family to leave the country together and assisted with some preliminary supports in the country of arrival. A letter was received shortly afterwards indicating their safe arrival.

⁷⁷ Hotham Mission research, p.31.

⁷⁸ Justice for Asylum Seekers, *Alternatives Approaches to Asylum Seekers: Reception and Transitional Processing System*, June 2002, pp.29-30; and Mitchell, Grant "Asylum Seekers in Sweden" *Protocol*, August 2001.

⁷⁹ Justice for Asylum Seekers, *Alternatives Approaches to Asylum Seekers*, p.5.

Harnessing of community support:

As indicated above, agencies providing services to BVE asylum seekers are supported by an extensive community network both in financial terms and by way of volunteer work commitments. Over 350 regular volunteers assist with the work of the major agencies alone while some of the smaller agencies are staffed entirely voluntarily. Financial assistance is provided by a variety of philanthropic organizations along with a significant number of smaller donations from individuals in the community. In 2003, for example, Hotham Mission received donations from over 1000 members of the general public, over 20 philanthropic organisations, over 150 congregations from all major denominations, and over 50 schools, businesses and organisations.⁸⁰ This level of community support indicates a widespread concern for the plight of asylum seekers living in the community as well as a commitment to assisting their transition and addressing their welfare needs.

In addition, the work of NASA-Vic agencies has been recognized by the Human Rights and Equal Opportunity Commission. In 2003 ASRC received the Commission's Human Rights award in recognition of its work with asylum seekers.

Costs and under-resourcing:

The costs involved with the provision of services for BVE holders are difficult to estimate. Hotham Mission ASP is the only agency devoted almost exclusively to asylum seekers living in the community. In 2003 this project's had a budget of \$651 400 of which \$457 000 was spent directly on rent, utilities and emergency relief payments to asylum seekers. In addition to BVE holders, other agencies also work with TPV holders, while others have a general community service profile. Since many of the agencies concerned therefore conduct work with BVE holders over and above their primary work focus, and since the staffing and resourcing for this work in many cases draws on budgets for other projects, it is impossible to provide meaningful data indicating the costs incurred in relation to services for BVE holders.

Moreover, many of these services rely on volunteer labour which cannot be accounted for in monetary terms. Indeed it may be inappropriate to do so since many volunteers take pride and pleasure in their work in ways unrelated to financial compensation. While volunteers, by definition, provide a service willingly, their goodwill must not be taken as a replacement for adequate resourcing of the sector. On the contrary, the goodwill of volunteers indicates a generous community response to the unmet welfare needs of asylum seekers and the inability of agencies to fund paid positions to undertake service provision.

While the release of asylum seekers from detention into the community is desirable, it is imperative that supporting agencies are appropriately resourced in order to meet the welfare needs of clients without other adequate means of support. These agencies already face severe funding crises with much of their income being generated in an ad-hoc basis, from one-off grant monies and donations. Any increase in the numbers of asylum seekers in the community and/or any reduction of funding to these agencies will exacerbate this situation and reduce the overall welfare assistance available. Continuity of service provision and the capacity to plan for the long-term in more effective and efficient ways can only be achieved with a commitment to substantial funding to meet the welfare needs of asylum seekers.

⁸⁰ Asylum Seeker Project – Hotham Mission, *End of Year Report*, February 2004, p.29.

Major points:

- Existing agencies have a demonstrated capacity to meet the specific needs of asylum seekers living in the community.
- Agencies assisting BVE asylum seekers reflect and draw upon a high degree of community support for their work.
- Agencies assisting BVE asylum seekers are currently under-funded and under-resourced.
- A substantial commitment to the long-term funding of agencies assisting asylum seekers living in the community is required to provide sustained and appropriate services.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary and Conclusions:

1. Asylum seekers incur unacceptable hardships as a direct consequence of the conditions attached to BVE.

BVE holders are denied work rights, government funded income support and access to Medicare. These visa conditions result in unacceptable hardship for asylum seekers who, in many cases, have already suffered torture and trauma and have serious existing medical conditions. As a result of the BVE regime, many asylum seekers are living under conditions of abject poverty. Lack of income and denial of work rights contributes to a series of health and welfare crises including family breakdown, isolation, depression and cumulative debt. This report has demonstrated the ways in which visa conditions have prevented eligibility and access to mainstream housing services causing homelessness, risk of homelessness and insecure housing. It has also demonstrated that these visa conditions have in many cases resulted in the denial of basic and specialist medical services and treatment. Moreover the conditions attached to BVE appear to be exacerbating pre-existing medical conditions and generating new ones. This is particularly the case in terms of mental health. That the cost of transportation to access existing services for asylum seekers can be prohibitive when there is no income source available is a particularly frustrating aspect of the conditions under which BVE holders are currently living.

It is of particularly grave concern that the conditions attached to BVE create unacceptable hardships for extremely vulnerable groups including children, single parents, pregnant women, those with serious medical conditions, survivors of torture and trauma and the elderly. In addition BVE conditions create a major disincentive for women experiencing domestic violence to exit violent relationships.

2. Australia's obligations towards asylum seekers under International Law are not being met.

Australia is obligated under International legal conventions and recommendations (CROC, ICCPR, Refugee Convention, ICESCR) to provide for the basic support needs of asylum seekers living in the community, including accommodation, medical care, food, and clothing. It is also explicitly obligated to provide for the provision of health care services to children and pre-natal and post-natal health care for mothers. At present and under the BVE regime, these needs are not being met.

BVE is granted to asylum seekers as a result of particular circumstances and courses of events often beyond their control (unauthorised entry to Australia, the 45 day rule). This method of application, which results in the hardships suffered under the conditions attached to the BVE, can be considered punitive and discriminatory. As such, the BVE regime may well constitute a breach of Australia's international legal obligations. The deterioration of living and housing conditions experienced as a result of regulatory changes to the BVE regime may constitute a further breach of Australia's international legal obligations.

Where asylum seekers are granted a BVE without work-rights and access to Medicare as a result of engaging upon an appeals process which is their right under law, the consequent hardship they experience hampers the capacity of asylum seekers to participate in the legal process and undermines the integrity of the determination procedure.

3. Currently unmet health and welfare needs of BVE holders are likely to produce significant costs which will be met by the Australian community in the future.

In a recent report the Australian Human Rights Commission has documented the severe physical and mental health problems suffered by children in detention and the costs incurred by the Australian community as a result.⁸¹ As Human Rights Commissioner Dr Sev Ozdowski comments: "We locked them up, we traumatized them, and now we are going to have to pay the price in mental health services."⁸²

The same pattern is clearly evident amongst asylum seekers living in the community on BVE where the lack of entitlements is directly contributing to mental and physical health deterioration and numerous additional welfare crises. Medical conditions associated with the lack of entitlements for BVE holders could potentially generate high and otherwise avoidable costs, eventually born by the wider community. In many cases, mental and other health problems incurred during a period of detention are going untreated upon release into the community, doubly compounding the suffering of asylum seekers and exacerbating the costs incurred when conditions deteriorate further. Ozdowski and others have drawn our attention to the injustice and false economy of this situation in relation to detainees and TPV holders.⁸³ These precedents warrant careful efforts to avoid further social and economic costs associated with the unmet welfare needs of asylum seekers living in the community.

Australia's continued denial of income, work-rights and essential services to asylum seekers has further indirect costs. Over the last decade Australia has shown a poor human rights record in relation to asylum seekers and refugees and has been criticised accordingly. The conditions of abject poverty, and the lack of access to medical services which children and adults on BVE experience can only add to Australia's declining reputation in this regard. All Australians should be conscious of the wide ranging effects of this decline in humanitarian status for Australia's position of respect, authority and influence in international forums.

4. There is a need for a case-work approach to care for asylum seekers living in the community. Existing service providers are capable of providing such a service but under-resourced to do so.

The health and welfare needs of asylum-seekers living in the community are specific and warrant targeted and ongoing support services. Mainstream service providers have been expected to pick up demand for housing and other services from asylum seekers without resourcing, training or expertise adequate for the above tasks. Agencies specializing in assisting BVE asylum seekers have been established over the last few years in response to this identified area of welfare need. These agencies have demonstrated a capacity to meet the specific needs of asylum seekers living in the community and have developed significant expertise in this area, including the provision of an individual case-work approach, based on a professional human services response to the unique issues facing asylum seekers. Such a case-work approach is entirely appropriate and necessary for this group, especially for detention releasees and for those with high health and welfare needs.

Asylum Seeker agencies are however currently under-funded and under-resourced. These agencies are in addition being forced into a misallocation of resources in time-consuming negotiation of fee-waivers for specialist services. Their funding is reliant on community donations

⁸¹ HREOC, *A Last Resort?*

⁸² National Press Club, Canberra, Press Release: "Dr Sev Ozdowski, OAM: Australian Human Rights Inside and Outside the Wire" 3.8.04. <http://www.npc.org.au/pdf/Sev%20Ozdowski%20250804.pdf> Accessed 4.8.04.

⁸³ See references above in notes 27 and 56.

and makes continuity of service provision and long-term planning difficult. They are currently dependent on volunteer labour. As such their provision of services is unsustainable.

5. Alternatives which do not undermine the Government's border protection framework are possible.

The regulatory changes affecting BVE were introduced as part of a range of measures to deter asylum seekers from making on-shore and spurious applications for protection. Any clear link between the BVE regime and the deterrence of unauthorised entry into Australia by asylum seekers or between the BVE regime and the deterrence of spurious asylum claims is not upheld by available data. The rationale behind the BVE regime is therefore flawed. On these grounds alone, the BVE regime should be seriously questioned since the visa cannot be demonstrated to play a significant part in the Government's border protection framework. Moreover, the adverse consequences of the BVE regime, including the denial of basic living necessities to asylum seekers, their families and children, the cumulative effects on their health and welfare, the long-term costs incurred by the Australian community, and the prolonged suffering of people found to have genuine protection claims, cannot be justified.

Changes to the BVE regime which would alleviate the hardships associated with it can be made without altering the Government's border protection framework. These changes do not require legislative amendment, and may not require regulatory amendment. The framework for such changes already exists within (1) DIMIA's provisions for extreme cases of hardship and (2) in precedents where its discretionary powers have been used for particular cases.

- (1) Currently, there are two health-care options for asylum seekers. Firstly, Medicare is accessible to those with a valid tax-file number and work rights, and secondly, the General Health Scheme exists for asylum seekers eligible for ASAS payments but ineligible for Medicare. Either of these two health-care options could be extended to ensure that all asylum seekers in the community have appropriate health-care.
- (2) There have been previous cases where income support has been provided to asylum seekers ineligible for ASAS payments who are experiencing unique and exceptional welfare circumstances. DIMIA has used their discretionary powers to continue to pay certain asylum seekers 'special payments' post RRT review. If this discretion exists, no laws or regulations have to be altered to extend this payment to asylum seekers post-RRT or post-detention. In addition, the administrative infrastructure for this scheme already exists with the Red Cross.

Furthermore, the Senate Select Committee on Ministerial Discretion in Migration Matters has recommended the extension of work rights to asylum seekers living in the community who are awaiting Ministerial decisions.

Finally, as stated in point 4 above, existing agencies have demonstrated a capacity and willingness to successfully facilitate the transition of asylum seekers into the Australian community. Given adequate funding these agencies provide the basis for a more humane, responsible and ultimately cost-efficient provision of necessary services to asylum seekers. The potential exists, therefore, for a model which fulfils Australia's human rights obligations toward asylum seekers without undermining community concerns about border protection.

5.2 Recommendations

1. **The provision of adequate health care, work rights and income support to asylum- seekers living in the community.**
2. **The provision of casework for asylum seekers living in the community.**

Certain minimum standards should be in place for all asylum seekers awaiting a refugee or humanitarian decision in the Australian community. These standards should include the right to work and the right to adequate health-care. In practice this implies:

- regulatory changes to attach work-rights to the BVE granted to asylum seekers and the extension of these rights to the final stages of determination under section 417 of the migration act;
- removal of the 45 day rule.

After these changes, work-rights would be in place for asylum seekers from lodgement of an application to the final outcome, throughout any periods of appeal through the RRT, the courts, or direct to the Minister. Medicare access would follow as a consequence of work-rights and a valid tax-file number. Alternatively, and for those for whom work-rights are not practical, the General Health Scheme, which currently exists for asylum seekers eligible for ASAS payments, should be extended.

At the State level, governments have also the potential, and the resources in terms of state, local and government-funded community-based organisations, to reduce the negative impact that Federal government measures have on the health and wellbeing of asylum seekers living in the community. For instance, the provision of adequate health care by the Victorian government has been highlighted as a key strategy for developing a safety net and improving the conditions of community-based asylum seekers.⁸⁴ Providing access to key state government services such as public hospitals (pharmacies, inpatient and outpatient care), Community Health Services, interpreter services, public dental health clinics and optometry services, and the development of “an alternative to the Health Care Card so that asylum seekers with little or no income can establish their eligibility for concessions provided by the state”⁸⁵ have been proposed by a NASA-Vic member organisation as significant measures that can contribute to meet the needs of asylum seekers on BVE.

Certain groups of asylum seekers require additional income and casework support. Three distinct groups of asylum seekers stand out as having differing needs in this regard:

- asylum seekers released from detention on BVE under regulation 2.20;
- asylum seekers released from detention by Court Order on Habeas Corpus or Interlocutory grounds;
- community-based asylum seekers with unique and exceptional welfare needs.

The needs of asylum seekers, whether a community-based BVE holder or a BVE holder released from detention under regulation 2.20 or Court Order, may vary, but the underlying vulnerabilities exist in all cases. Therefore, casework provision and an ASAS equivalent payment should be upheld as a minimum standard to vulnerable asylum seekers when released from detention, as well as to vulnerable community-based asylum seekers. The basis of any specialized care for asylum seekers should be seen as a service delivery based on client need. Not all asylum seekers would require income support or ongoing casework. The existing DIMIA approved ASAS Exemption Criteria stand as a clear indicator for eligibility to income support and could be applicable to all asylum seekers. Assessment under these criteria could be extended to include the three categories of asylum seekers raised above, and for the period from lodging a protection visa application through to the final Section 417 decision.

⁸⁴ Victorian Foundation for Survivors of Torture: *Towards a health strategy*.

⁸⁵ Victorian Foundation for Survivors of Torture: *Towards a health strategy*, p. 100.

Thus, modelled on the existing ASAS program, the following are seen as minimum requirements for the specialist welfare care of asylum seekers:

- criteria for programs based around similar or existing exemption criteria;
- ASAS equivalent payments
- ongoing casework.

Effective casework would ensure specialized welfare care and support for asylum seekers. In practice, this would include psycho-social assessment, housing establishment, assisting access to medical and dental services, advocacy, counselling, referral, and overseeing the overall welfare of the asylum seeker. In addition, casework would play a pivotal role in preparing, supporting and empowering asylum seekers throughout the determination process. While not responsible for implementing immigration decisions or providing legal advice, the caseworker would play a key role in case coordination, including liaising with lawyers and DIMIA/Minister's office.

Three stages of casework are proposed for detention releasees:

- pre-release work: proper welfare and psychosocial assessment, including the provision of essential relevant information about the case, with consent, to ensure a continuation of duty of care; this information would include medical and psychological reports and assessments, medications received, educational and detention history and future needs. Also: case planning and intensive work coordinating the involvement of different organisations, workers and volunteers.
- release work: introduction to the community and orientation;
- ongoing casework.

Ongoing casework capacity should be based on the following:

- Detention releasees: full-time caseload = 12-15 cases;
- Eligible community-based asylum seekers: full time caseload = 20-25 cases.

The administrative and service infrastructure for these recommendations already exists. Providing these minimum standards of entitlement and care is not therefore a difficult or time-consuming undertaking. It would however maintain a uniform approach for all community-based asylum seekers. The tight perimeters of the exemption criteria mean that only those with welfare issues of concern would be eligible for income support. This would exclude the bulk of BVE holders who would be able to support themselves with work-rights, thus keeping the program manageable and not dramatically affecting DIMIA's budget.

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The International Protocol Relating to the Status of Refugees, 606 UNTS 267, entered into force 4 October 1967.

UNHCR EXCOM, "Reception of Asylum Seekers in the Context of Individual Asylum Seekers," Conclusion No.93 (LIII) (8 October 2002).