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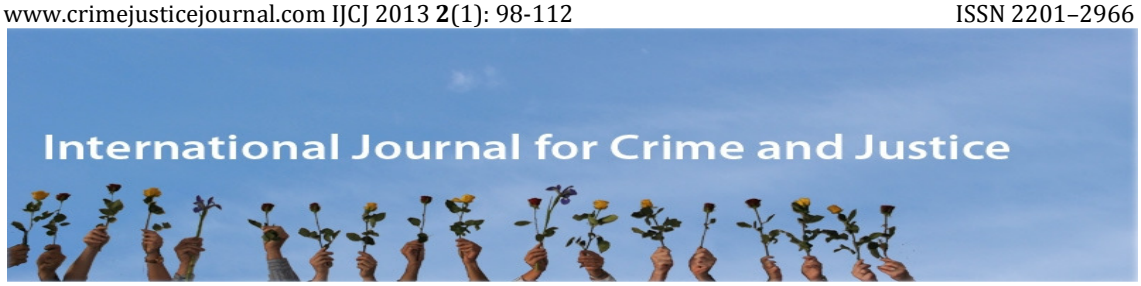

A Demography and Taxonomy of Long-term Immigration Detention in Australia

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Abstract

The practice of long-term immigration detention is a relatively recent aspect of Australian Government policy. There has been much debate about the wisdom of such policy, raising concerns regarding the health of detainees, the dereliction of human rights, and the legal robustness of such practice. Despite considerable interest, little detail is available describing who is being held and the reasons for their long-term detention. This paper addresses this noticeable gap through a systematic analysis of the Commonwealth Ombudsman's Immigration Reports over the period 2005 through 2009. From such reporting it has been possible to produce a demographic profile of people held in Australian detention and to develop a taxonomy of the reasons contributing to the ongoing containment.

Keywords

Immigration, long term detention, criminalisation.

Introduction

Laws providing for the mandatory detention of those who enter Australia through unauthorised routes or whose presence within the population does not meet immigration requirements were initially enacted 1992. Since that time, a range of often controversial legislative and regulatory measures have been introduced to prevent and discourage unauthorised arrival. In 2003 the *Migration Act 1958* was amended, excising the islands adjacent to mainland Australia for the purposes of migration. Amendments also introduced compulsory offshore processing arrangements that came to be euphemistically known as the 'Pacific Solution'. The adoption of the *Migration Legislation Amendment (Immigration Detainees) Act 2001* extended the government's powers to administer detention centres, and the *Migration Amendment (Duration of Detention) Act 2003* prevented the courts from issuing orders for the release of individuals from such detention.

In 2005, controversy over the unlawful detention of Cornelia Row (a German citizen and Australian permanent resident) (Palmer 2005), the rejection of the recommendations of the Australian Human Rights and Equal Opportunity Commission (AHREOC) Report (2004) on the

detention of children, continuing media coverage of the dire circumstances around those held in long-term detention, and strong advocacy by Liberal back benchers promoted the Howard Government to 'soften' the policy for children held in mandatory detention and to introduce a discretionary Ministerial power to release long-term detainees into the community (Phillips and Spinks 2013). This did not, however, alter the policy of mandatory detention itself. The *Migration Amendment (Detention Arrangements) Act 2005*, Section 4860, created a new requirement that the Commonwealth Ombudsman provide the Minister with an assessment of the appropriateness of the arrangements for any person who had been held in detention for two or more years. Under this provision, reports are required on a six-monthly basis following receipt of advice from the Minister providing details of those held in long-term detention.

The availability of the six-monthly reports enabled a systematic examination of 419 cases of detention exceeding 24 months recorded by the Commonwealth Ombudsman over the period of July 2005 and July 2009.[1] These cases were described in five hundred reports that included some repeat reporting on individuals whose cases remained unresolved. In some cases, reports contained solely updated information relevant to individuals who had remained in detention since the previous reporting period. Reporting also provided documentation about individuals who had been released from detention prior to the reporting. The nature and scope of information included in the Ombudsman's reports is variable. Generally, reporting focuses on key issues relevant to ongoing detention, actions taken and recommendations for resolution of the situation. Sources informing the Ombudsman include assessments made by the Ombudsman's staff, medical reporting, reporting by other professionals having contact with the detainee, and detainee self-reporting. The information able to be drawn from a these reports was analysed to provide an overview of the demographic characteristics of the group as a whole and of the factors contributing to their ongoing detainment.

While much has been written about mandatory detention and the effects of immigration detention, few critiques focus specifically on long-term detention and fewer have engaged in any systematic empirical analysis of this process. We argue that, to fully understand why – despite strong and compelling criticism against it – long-term detention of some people has become a viable option, first it is necessary to ask who is being detained and, secondly, what the reasons are for their long-term detention. This paper addresses these questions through an analysis of the Ombudsman's reports on circumstances of those held in detention for periods greater than two years.

We begin by providing an overview of our demography and taxonomy of long-term detention and conclude with a discussion of our findings in relation to the broader governance of the Australian population. We highlight some disturbing parallels between those held in long-term immigration detention and those currently populating our prisons. This is not to suggest that those detained in immigration detention centres are criminogenic (Garland 2001) but rather that current policy is potentially part of a process of criminalisation. We argue that the discursive construction of asylum seekers as dangerous and criminal, so often apparent in public debate that relies on terms like 'illegals' (Pickering 2001; Pickering and Lambert 2002; Weber 2005), contributes to procedural criminalisation where asylum seekers are treated as if they are criminals; and this is likely in the future to contribute to the literal criminalisation of this group (King 2004). As social theorist W I Thomas suggested, situations defined as real are real in their consequences (Thomas and Thomas 1928: 571-572).

Selected characteristics of long-term detainee population

Length of detention

The survey of 500 reports released by the Ombudsman involved 419 individuals. Over half of the population studied were detained for three years or longer, of which nearly nine percent

were in detention for five years or longer. Table 1 sets out the periods over which individuals were held in detention as of July 2009, the last reporting period included in this review.

Table 1: Period of Detention (years)

Period	*Number*	*Percentage*
<3 years	183	43.7
3-4 years	103	24.6
4-5 years	97	23.2
>5 years	36	8.5
Total	419	100

Country of origin and minority status

The reports identified 53 countries of origin for the long-term detainee population. Over half (55 percent) came from four countries; the Peoples Republic of China (123), Iran (48), Vietnam (34) and Afghanistan (24). Detainees from Tonga (19), India (16), Sri Lanka (16), Bangladesh (12), and the Democratic People's Republic of Korea (11) accounted for an additional 17 percent of all long-term detainees in the study population. Less than ten detainees came from each of the other forty four countries. Thirty-four detainees originated from 28 countries in which the number detained was less than three.

Over one third, (36 percent or 152; n=419) of the long-term detainee population claimed membership to a persecuted minority. Minority groups based on ethnicity and religious beliefs were most frequently cited. This included, for example, Hazara Afghanis, Iranian minority groups such as Christians and ethnic Arabs, Falun Gong practitioners and Christians from the People's Republic of China. Almost half of the individuals detained for two years or longer made a claim for protection from persecution.

Age and gender

The gender profile of long-term detainees was characterised by a predominance of unaccompanied adult men. For persons over the age of 18 at the time of detention, women made up only 11 percent of longer term detainees compared with 89 percent adult males. Although the age range of long-term detainees spanned from birth to 73 at the time of detention, the mean age for adult detainees was 35 and the median age category was 30-39. Of those individuals held in long-term detention, approximately 11 percent were less than 15 years of age at the time and a further five percent were between 15 and 19 years of age. This is nearly double the number of longer term detainees who were 50 years and over.

Table 2: Age and gender of detainees by country of origin

Country of Origin	*Gender*		*Age of detainees*							
	Male	*Female*	*<15*	*15-19*	*20-29*	*30-39*	*40-49*	*50-59*	*>60*	*Unknown*
Afghanistan	24			12	10	1	1			
Bangladesh	12				7	4	1			
DPK Korea	6	5	2			3	3	1		2
India	16				5	6	3	2		
Iran	47	1	1	1	23	19	3	1		
PRC	98	25	8	1	14	39	41	17	2	1
Sri Lanka	16			2	9					
Tonga	10	9								
Vietnam	25	9	6	4	4	12	6	2		
Other<10	72	10	29	1	33	43	9	11	1	3
Other	31	3	1		10	11	6	5		1
Total	357	62	47	21	115	142	79	39	3	7
% of Total	85	15	11	5	27	34	19	9	1	2

Status prior to detention and length of detention

Those held in long-term detention and who attempted or made an unauthorised entry accounted for only 44 percent of the detainee population. In contrast, more than half (56 percent or 234 individuals; n=149) initially entered Australia on a visa and either overstayed or otherwise breached visa conditions. The first report of the inquiry into immigration detention in Australia by the Parliamentary Joint Standing Committee on Migration (2008), similarly found that, since 2003, legal entrants with visa breaches or revocations made up more than half the population in long-term detention. In this study, all those from Fiji, Nepal, New Zealand, Taiwan and the United Kingdom entered Australia with valid visas, and individuals from the Peoples Republic of China accounted for over half of all over-stayers held in long-term detention. It is noteworthy that the Department of Immigration and Citizenship (DIAC) 2007-2008 Annual Report indicates that less than one percent of temporary visa recipients over-stayed their visa, while nearly 42 percent of those placed in detention had overstayed or otherwise breached visa conditions.

Applications for asylum and outcomes

Just over 90 percent (379; n=419) of long-term detainees claimed asylum at some stage. Of those seeking asylum and held in long-term detention (n=379), more than one third (131 or approximately 34 percent) arrived without a visa at the border. An additional 35 percent (134) had been granted a temporary visa and then claimed asylum once in the community. Individuals in this category were detained when, having failed to gain asylum, they became unauthorised or 'illegal', or when they were found to be working without a permit to do so. Individuals in both circumstances were initially exercising rights described in the *1951 Convention and 1967 Protocol Relating to the Status of Refugees* (UNHCR 1951); however, they fell afoul of Australian immigration law either as a consequence of circumventing visa processes at the border or by breaching visa conditions in the community. The remaining 30 percent of asylum seekers (114; n=379) applied for protection following detention as unauthorised non-citizens.

Analysis of the outcomes for long-term detainees applying for asylum over the period of study revealed that almost two thirds were ultimately granted a protection visa. Table 3 documents asylum application outcomes for 419 long-term detainees. Sixty-four percent (270) were granted permanent protection visas and a further 13 percent of detainees were granted visas which enabled them to remain legally in Australia on a temporary or permanent basis as of July 2009.

Table 3: Outcome of applications for asylum

Outcome	*Number*	*Percentage*
Bridging visa	23	5.4
Removed	54	12.8
Permanent protection visa	270	64.4
Other permanent visa	54	12.8
Temporary protection visa	3	0.7
Detained	12	2.8
Deceased	2	0.4
Absconded	1	0.2

The number of successful applications for protection and other permanent visas was relatively high. For example, 23 of 24 Afghani applicants were granted permanent visas as were 47 of 48 Iranians, 90 of 123 detainees from the People's Republic of China, and 23 of 34 applicants from Vietnam. Applicants from these countries account for a significant proportion of long-term detainees; this suggests that the relationship between long periods of detention and high rates of permanent visa outcomes warrants further consideration. Successful applications for asylum

were also made by applicants from Palestine (6/6), Taiwan (7/8), DPR Korea (10/11), Indonesia (7/9), Sri Lanka (12/16), and Fiji (5/6). Applicants from India were less successful.

Criminal conviction and detention

Those seeking asylum or who have breached their visa conditions are not the only groups held in long-term immigration detention. Section 501 of the *Commonwealth Migration Act 1958* provides for the cancellation of a non-citizen's visa if they do not satisfy the character test as determined by the Minister or the Minister's delegate. Sections 201 through 203 provide for visa revocation and deportation of resident non-citizens who have been convicted of a crime or who are assessed as being a security risk. The consequences of visa cancellation include being placed in immigration detention (immediately on release from prison), being removed from Australia and being prohibited from returning; this may result in a permanent separation from family. The Commonwealth Ombudsman in a *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia* (AHREOC 2008) found that it was not unusual for such detainees to spend more time in immigration detention than in prison.

In his 2006 report '*DIMA Administration of S501 of the Migration Act 1958 as it Applies to Long-term Residents'* the Commonwealth Ombudsman noted that the use of s501/s201 with regard to people already in the Australian community was never discussed in Parliament (McMillan 2006). The relevant parliamentary 'second reading' speech and Explanatory Memorandum document that the s501 powers were only considered in terms of their application to people applying for entry (McMillan 2006: 33). Further, the Ombudsman argued that the detention and removal of long-term residents is quite different from the original intent of the Act. For example, of 25 people in immigration detention as of May 2008 and whose visas had been cancelled under section 501, 24 had lived in Australia for more than 11 years. Another 17 had lived in Australia for more than 20 years and majority had been 15 years of age or younger at the time of arrival. Report 009/05 illustrates such a case. It describes the circumstances of a 42-year-old father of four children who are Australian citizens. He arrived in 1967 as a four-year-old and held a permanent resident's visa when he was convicted of criminal offences and his visa revoked. In reporting on this case, the Ombudsman found that, given the father's 38-year residency in Australia, a complete lack of connection with his country of birth (Lebanon), and his ties within the local community, his removal would cause significant hardship to him and his family. The connections that these types of detainees have in the Australian community provide the basis for litigation with the objective of remaining in Australia.

The taxonomy of long-term detention in Australia

DIAC (and its predecessor, the Department of Immigration and Indigenous Affairs) has the power to detain individuals without reference to a magistrate or appeal for a court order. If a person is suspected of being an unauthorised non-citizen, the *Migration Act 1958 Section 198* requires immigration officers to detain that person and remove them from Australia as soon as possible. Individuals are detained while their immigration status is assessed, resolved or for the period prior to removal. The Ombudsman's *Immigration Reports* reflect the complexity of reasons that may impact on these processes and prolong the period of detention.

The first part of our analysis was concerned with the demographic characteristics of the entire group. In 168 of the 419 cases, the Ombudsman's Reports became available *after* the detainee had been released into the community or removed from Australia and, as a result, were tabled as abridged reports without certain details. While a number of the abridged reports regarding cases of released detainees do include some consideration of the reason for prolonged detention, these details are not consistently reported; as a result, these 168 reports have been excluded from the taxonomic analysis. Table 4 provides a snapshot of the factors that impacted on processing and finalising the status of those held in detention. The nature of the impact of these factors is discussed in greater detail below.

Table 4: Reasons for long-term detention 001/06-500/09

Factors impacting on immigration processing	*Excluding abridged reports (n=251)*	
	*Number**	*Prevalence (%)*
Documentation issues:		
Identification Issues	64	25
No or difficulties in obtaining travel documentation	112	45
Security concerns	64	25
Family issues in relation to rights of children	69	27
Health issues	155	62
Procedural issues:		
Detainee action	95	38
Departmental and administrative delays	83	33

* Given that many individuals and families experience multiple barriers to processing and finalisation of applications, the numbers in the table above exceed the total number of individuals making up the (non-abridged) sample.

Documentation issues

Lack of documentation is an issue that has been highlighted as a problem for immigration detainees in media reporting, by social and political commentators and by successive governments. Lack of identity and travel documents were frequently cited as factors impacting on processing and thus contributing to time in detention. One quarter (64) of the group (excluding the abridged reports: thus n=251) experienced identity-related problems and delays. Individuals who were unable to be positively identified through the National Identity Verification Authority (NIVA) could not be returned to their home country (which is often a basis of dispute) or effectively assessed for refugee status. Compounding this situation are the reasonable security concerns involved in releasing unidentified people into the Australian community. However, in some cases, Department officials had incorrectly assessed identity claims. For example, the Commonwealth Ombudsman identified a number of cases of detention of up to five years where the Department refused to accept refugee claims of Afghani citizenship, claims that were subsequently verified by the Afghani Government (see Reports 088/06, 089/06, 095/06, 101/06 or 132/07). Such incorrect assessments were ascribed to avoidable factors such as interpretation issues, failure to find a village on a map, and ignoring available supporting documentation.

Whilst being a member of a persecuted minority constitutes a valid basis for a claim for protection, reports suggested that confirmation of such membership has been relatively difficult to achieve in some cases. Examination of Ombudsman Report 008/05 illustrates this dilemma. It detailed the circumstances of man detained in March 2001 who claimed to be an Afghan of Hazara ethnicity. This was not accepted for over four years, during which he remained in detention. Despite a language analysis that strongly supported his claims, his initial protection visa application was rejected. In September 2005, the Afghan Embassy confirmed the individual's original claim, leading to the granting of protection through a Global Special Humanitarian Visa. Report 13/05 documents other Afghanis who have experienced similar treatment. Because a detainee's claim to minority group membership is often unconfirmed and may be difficult to verify, this status has been challenged by both the immigration officials and the Refugee Review Tribunal (RRT).

Lack of travel documents from the detainee's country of citizenship was a significant complicating factor in 45 percent (112; n=251) of cases reviewed. Although the United Nations High Commissioner for Refugees (UNHCR) 2012 report *Revised Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*

maintains that lack of travel documents should not be a justification for indefinite detention, the lack of such documentation can make deportation or removal difficult, if not impossible. This can be further complicated when detainees fail to cooperate with Departmental efforts to procure such documentation, particularly as some countries will not issue a travel document without an direct request from the individual for whom it is intended. Ombudsman's Report 091/06, for example, details a case in which the Indian Government declined to issue travel documentation for this reason. In a 2008 *Submission to the Inquiry into Immigration Detention* (AHREOC 2008), the Commonwealth Ombudsman observed that many long-term detainees failed to cooperate in making needed requests for travel documentation as a consequence of a fear of being returned to their country of origin. Although such fears may not result in protection in line with refugee conventions and Australian law, individuals may obstruct such processes when alternative legal options have been exhausted (AHREOC 2008: 7). It is also important to acknowledge that, in many cases, refugees are unable to travel through formal channels or obtain relevant travel documentation from a government which is persecuting them without exacerbating the dangers to themselves or their family.

Security issues

All applicants for protection are subject to security checks which are carried out by the Australian Security and Intelligence Organisation (ASIO). Security checks are required for all entrants, authorised or not, who have criminal convictions against them or who are applying for protection. Reports associated with 25 percent of individuals within the sample of non-abridged cases (64; n=251) noted security concerns. Of this group 46 (or over 70 percent) had been authorised entrants. Of the total sample of 419 individuals, security concerns were identified for 91 or over 20 percent of such cases.

For those individuals for whom security concerns were noted in the non-abridged reports (n=64), 62 percent (40) had spent three or more years in detention. A similar proportion of all cases with security concerns (57; n=91) had been in detention for three or more years. Only two of all the cases reviewed in which security concerns were mentioned (n=91) involved a female. About two thirds of the non-abridged cases (42; n=64) involved men 20-39 years of age; and 68 percent of all cases reviewed which involved security concerns, (62; n=91) were in this same age bracket.

It is undeniable that there is a governmental obligation to ensure that those seeking protection in this country do not present a risk to the Australian community. Nevertheless, there have been cases in which applicants have been granted refugee status and been retained in detention waiting for the security report to be finalised (*Immigration Detention on Christmas Island;* AHRC 2010). In recent years, ASIO, as the responsible body for security checks, has experienced an increased demand for security checks commensurate with the number held in detention (Australian National Audit Office 2012) and, as the Australian Human Rights Commissioner (AHRC 2011a, 2011b) observed, the time taken in processing these has had a deleterious impact by effectively extending the period for which individuals have been detained.

Family issues and the rights of children

The rights of children present a complex legal problem as a consequence of legislated protections and constitutional provisions. This has ramifications for children of asylum seekers and unaccompanied children seeking asylum as well as children born in Australia whose parents are seeking protection. Although there has been recognition of the need to minimise the containment of children in immigration detention facilities (whether onshore or offshore), since 2002, ten percent of the population held in long-term immigration detention were under the age of 15. When those between the ages of 15 -17 (up to the age of majority) are included, the percentage increases.

Complications arise when the rights of children and the maintenance of family integrity need to be considered in the adjudication of an application by parents who are unauthorised non-citizens. In 27 percent (69) of cases of long-term detention (n=251), an impediment to removal was a consideration of the proposed deportees' children's or siblings' rights. If, for example, the child holds Australian citizenship, questions arise with respect to whether the child should be removed with their parents or whether the child has adequate support if one parent is permitted to remain in Australia. This raises the question of whether Australia is contravening the *United Nations Convention on the Rights of the Child* (1990) by obstructing Australian children access to parents as a consequence of deportation. Not only have these considerations appeared to have given the Department reason to pause in removing non-citizen parents, they have also motivated detainees to appeal the decision to remove them. Collectively these factors have contributed to delays and longer periods of detention.

Health issues

There is considerable evidence of the negative impact of immigration detention on individual mental health and wellbeing (Green and Edgar 2010; Silove et al. 2001, 2007) and the impact of health on detention status. This view was supported by Ombudsman Reports which indicated that 60 percent of documented cases involved mental ill health and 26 percent physical ill health problems; 22 percent of individuals experienced both mental and physical health problems. Complications linked to the mental and physical health status of a detainee impacted on the length of time in detention. (For an extended discussion see Bull et al. 2012.)

Health concerns worked to diminish the capacity of the individual to participate in the assessment process and legal processes associated with the adjudication of their status. Examples of how individual capacities have been diminished by declining mental illness were demonstrated in Report 14/05 which detailed an individual who, according to psychological expert assessment, continued to hide his true identity from Australian officials as a result of 'a mental illness that is preventing him from appropriately making decisions'. Similarly, Report 62/06 cited professional opinion that the subject has 'a reduced capacity to make well-informed decisions, such as issues relating to medical concerns and legal representation [sic]'. Report 27/06 described a 'delusional' individual whose psychiatric assessment suggests that a 'tutor' may be required to guide him through court processes to avoid unnecessary difficulty or protraction. In the second report on this individual (98/06), professional opinion was more direct, asserting that the individual was 'incapable of managing his affairs in respect of his federal court proceeding'. Whilst more extreme cases of mental illness were described in the Ombudsman's reports, these cases exemplify the impact of declining mental illness on detainees' abilities to engage with migration processes and the consequences for Departmental decision making regarding individuals' visa status.

Procedural issues

The processes associated with adjudicating an application for refugee status involve a number of agencies as well as different investigations. These may include not only the traditional health and security checks but also prolonged investigations intended to validate applicant claims. The efficiency of such processes is a function of a number of variables and this may include actions taken by the detainees themselves. Detainee action was found to contribute to the length of detention in 38 percent (95; n=251) of non-abridged cases; this included administrative delays associated with repeated visa applications, ministerial review or court applications by detainees. In addition to the consequences of non-appeal factors (such as the availability and experience of Tribunal members) that may impact on the processing of claims for protection, processing of appeals through the Refugee Review Tribunal (RRT) or the Migration Review Tribunal (MRT) can impact on the period in which an individual remains in detention. If an application for protection is refused, the applicant can appeal to the RRT, which has overturned approximately ten percent of decisions (MRT&RRT 2008). An appeal can also be made to the

Minister who can exercise discretion in granting an application on humanitarian grounds. In some circumstances, an appeal can be made for judicial review. If such a review finds in favour of the applicant, the case is referred back to the RRT, but this does not mean an application will necessarily be granted. The MRT&RRT (2009) Annual Report for 2008-2009 affirmed more than three quarters (79 percent) or 2,462 cases were heard of the 3,086 lodged; and 468 or approximate one fifth (19 percent) were set aside or remitted. This is consistent with the proportion reported upon for the previous two financial years (MRT&RTT Annual Report, 2008). The MRT set aside the decision in over half (58 percent) of the 4,788 cases heard and affirmed over one third (41 percent) or 2,005 cases. The MRT&RRT 2008-2009 Annual Report noted that the set aside rate for applicants to the RRT who were represented was 32 percent compared to eight percent for unrepresented applicants. The figures were 50 percent and 40 percent, respectively, for applicants to the MRT. There were variations by gender, where the set aside rate for female applicants was greater than that for males. In the case of the RRT, the set aside rate for females was 26 percent compared to 16 percent for males. This was similarly reflected in the MRT outcomes being 52 percent for females and 47 percent for males.

The MRT&RRT Annual Reports 2007-2008 and 2008-2009 suggested that, in some cases, delays may occur as a consequence of the Tribunal, the applicant or the court requiring additional information. Although 73 percent of cases were decided within the standard of 90 days by 2008-09, 36 percent of RRT cases and four percent of MRT cases were referred for review. The 2008-2009 Annual Report indicated that 17 percent (99; n=561) of RRT cases and 32 percent (51; n=164) of MRT cases heard were remitted for reconsideration by the Tribunals. (In comparison, fuller reporting from 2007-2008 showed that decisions were set aside in 14 percent of RRT and 37 percent of MRT appeal cases). Each step, then, of these processes made a significant contribution to the time spent in detention.

Administrative and departmental delays

Departmental delays were cited among the factors relevant to long-term detention in one third (83; n=251) of cases described in the full reports. Reports detailed situations in which a failure to act on the part of the Department extended the period of detention. The Auditor-General's Audit Report (Barrett 2004) on the *Management of the Processing of Asylum Seekers* confirmed that there were a number of procedural arrangements which directly impacted on the timing of the assessment process for applications for protection visas. This included not only delays in translating changes in policies into practice but also deficiencies in the information sources and record keeping arrangements. While recognising the difficult environment in which Departmental officers worked, the Auditor General found that such factors prolonged the length of detention for some individuals (Barrett 2004: 13-14).

Discussion

This examination of the population held in long-term immigration detention reveals a fundamental disconnect between the widely promoted impression that the majority of detainees are 'unauthorised non-citizens' entering 'illegally'. The Ombudsman's reports demonstrate that more than half of the detainees initially entered Australia with a visa. Of those in long-term detention, the majority are unaccompanied adult men with women accounting for only 11 percent of detainees. The mean age for adult detainees was 35 years and the median age 30-39 years. This profile, as shown in Table 5, bears a striking similarity to those held within the criminal justice detention system which, at the time of the 2010 prison census, was 92 percent male with a mean age of 34 and a median age of 33 years.

Table 5: Comparison of long-term immigration detainees and criminal justice populations

Gender	*Immigration detainees*	*Prisoners*
Male	89%	92%
Female	11%	8%
Age (years)	***Immigration detainees***	***Prisoners***
<20	17%	3.1%
20-29	25%	34.4%
30-39	31%	32.5%
40-49	17%	18.7%
50-59	8%	7.3%

The similarities between detainees and prisoner populations in Australia extend beyond age and gender. The *2010 Health of Prisoner Census* confirmed that those in criminal detention experience many of the same health problems as those in immigration detention (Australian Institute of Health and Welfare 2011). One third of prisoners had mental health problems and a further 36 percent were found to have high to very high levels of psychological distress and two percent had a history of self-harm. Over one quarter of prisoners were found to have chronic physical health problems. This essentially mimics the almost two thirds of immigration detainees with diagnosed mental health conditions and one third having both physical and mental health problems.

In this picture then, there appears to be striking similarities between those held in what the Australian Government classifies as 'administrative detention' and those held in the criminal justice custodial system. The commonality between the environments in which these two populations are being detained makes some similarities unsurprising (Bull et al. 2012). It does, however, raise a number of related issues that warrant discussion.

Examination of the reasons underpinning the enduring containment of those held in immigration detention exposes discursive and non-discursive governmental practices that work to construct and promote a perception of population that warrants criminalisation. Terminology such as 'unauthorised entrants', 'queue jumpers' or 'illegals' is used to describe those who, for whatever reason, failed to observe and adhere to Australian law governing migration. This failure in self-regulation provides justification for government action to exclude through automatic indefinite detention in the absence of any court order or consideration of individual circumstances (King 2004; Pickering 2001; Weber 2002). This approach is given additional weight by an emphasis on the need to protect national borders against all potential threats (Bauman 2000; Rose 2000). Accordingly, the notion that those seeking asylum present a dilemma or even a crisis has been constructed by Government, a problem to which it is able to respond.

Applying the tools and machinery at the disposal of government, it has been possible to bring together an argument of being 'tough on crime' – that is, the notion of illegality inherent in the term 'unauthorised' and of protecting the community, playing on popular fears of implied threats. This then sits neatly with the proposition that Government is able to exercise control through the two-sided coin of embedding people into either a circuit of inclusion or circuit of exclusion (Rose 2000). Importantly, exclusion is both a robust control mechanism and a vehicle of segregation. The detention centre is a well-recognised tool for exclusion based upon, and justified as, a means of administrative confinement in the same way as the prison excludes convicted law breakers. However, unlike those incarcerated for what they have done, those in administration detention are excluded because of who they are.

This focus on 'who' rather than 'what' is effected through the common perception that all those in detention (and by implication long-term immigration detention) entered Australia by unauthorised means, even though, as demonstrated in this research, more than half of cases reviewed arrived on a valid tourist, student or work visa. This is compounded by demands for proof of identity or right to mobility (travel papers) from those who have arrived through alternative routes. The inability to produce a dossier of acceptable 'proof' becomes a 'crime', an act of disobedience and therefore barrier to passing from exclusion to inclusion. The lack of documents effectively negates acknowledgement of any potential claims to protection. Contextually this is consistent with the dominant and dominating regulatory environment in which the ability to produce a personal dossier has become a requirement to access income support, to open a bank account, to obtain a passport citizenship or simply to rent a property, and the failure to do so renders the applicant ineligible (Rose 2000).

Nikolas Rose (2000: 327-335) describes such practices in terms of the securitisation of identity. This involves securing the obligatory access points for the exercise of active citizenship. This strategy relies on the ongoing obligation to repeatedly evidence one's citizenship credentials as one routinely links oneself to practices of inclusion (work, study, consumption and so on). Exclusion stands in opposition to inclusion and the circuits that maintain it. Those individuals, defined as incorrigibles who fail to access the inclusive circuits of civil society through socially sanctioned means, are managed as 'anti-citizens' (Rose 2000: 330) through measures that seek to neutralise any dangers they pose. Those who refuse to become responsible, to govern themselves ethically (according to the rules – for example, those governing immigration), have also refused the offer to become members of our moral community. On this basis, for this group, harsh measures are justified.

Whilst the UNHCR asserts that the lack of formal travel documentation is insufficient justification for long-term detention, the Australian Government has ignored this position, using the requirement for legal documentation as a precondition to verification of a claimant's right to protection. Individuals are then able to be excluded from the very process required for a determination and are made objects for indefinite interment. By adopting this strategy, the Government not only embeds the individual into a circuit of exclusion, but also, as noted by Rose (2000), reformulates the proposition to one of security, of individual pathologies, and of an ethical or moral nature which can then be employed to generate popular support for increasingly harsh and restrictive practices

In the securitisation of identity, there is a link between processes adopted in the management of immigration detention and other forms of total institutions (prisons, asylums) in which admission procedures – such as recording individual histories, finger printing, recording of personal possessions and the like – all form part of programming in which the individual is 'shaped and coded into an object that can be fed into the administrative machinery' (Goffman 1991:26). This then becomes the first step in the creation of an individual dossier that can be used variously for or against the individual, for inclusion or exclusion. Once caught by this process, the detainee becomes virtually powerless in influencing the bureaucratic machinery that will determine his/her fate. Adoption of this managerial discourse is then justified on the basis of administrative expediency and efficiency (Garland 2001). From this perspective, the detention process needs to be understood as a type of warehousing in which individuals are held for the purposes of investigation rather than treatment or assistance (Khosravi 2009).

For those held in long-term immigration detention, like those subject to criminal detention, there is an underlying justification of exclusion as a necessary tool for managing risk to the community which is consistent with more universal strategies for responding to problem populations. This extends beyond the limited notion of risk of criminality in the localised sense, to the broader threat to community and national harmony. This has been achieved not only by the ascription of criminality but also by emphasis on the importance of protecting national

borders and defending national security. In Australia this emphasis on an implicit threat exploits a history of popular fears associated with various racial and cultural groups that, over the years, have provided various justifications for a range of exclusionary practices (Finnane 2009). Such fears are intensified by the discourse of criminalisation, in which those lacking documents are portrayed not only as unwelcome but also as dangerous. Securitization then leads to the representation of the detainee non-citizen, as Rose's (2000) 'anti-citizen', as a serious potential threat to a harmonious population, national identity and community well-being (Garland 2001). According to Bauman (2000: 214), '[i]n the ever more insecure and uncertain world the withdrawal into the safe haven of territoriality is an intense temptation so the defence of the territory – 'safe home' becomes the passkey to all doors which one feels must be locked up and sealed to stave off the triple threat to spiritual and material comfort'.

Extending examination beyond who is being detained to consider the reasons why some individuals are held for long periods of time in immigration detention provides little evidence of the strength of such threat. Analysis revealed a picture in which those subjected to long-term immigration detention are typically less likely to be found to pose an actual threat to the safety or well-being of the community, but rather are more likely to remain in detention as a result of the bureaucratic processes and the impact (in terms of health consequences) of detention itself. Moreover, as time has progressed, the vast majority of those who have entered without a visa have been granted permanent residence and protection. This is to say that, despite the rigorous exclusionary processes associated with immigration detention, the vast majority of individuals seeking protection were found to be genuine refugees, and are eventually counted as members of the Australian population

The experience of long-term detention is, nevertheless, likely to have enduring effects. The restrictions and regulations applied to immigration detainees impact on more than the loss of freedom of movement. Their circumstances bear strong similarities to what Goffman described as a total institution 'symbolised by the barrier to social intercourse with the outside that is often built into the physical environment: locked doors, high walls, barbed wire, cliffs and water, open terrain and so forth' (1997: 97). Total institutions are linked to cultural change, not some kind of acculturation or assimilation – or the adoption of accepted norms and practices of behaviour – but rather the removal of certain behavioural opportunities. It is more a process of deculturation, an untraining that renders the inmates incapable of effectively managing certain features of daily life on the outside if and when they get back to it. Most often what inmates retain of this type of institutional experience is its stigmatising and life limiting effects. According to Goffman (1997), total institutions disrupt or destroy actions that have the role in civil society of confirming to actors that they possess self-determination, autonomy and freedom of action; styles of subjectivity essential to participation in Rose's (2000) circuits of inclusion. Taking into account the similarities between immigration detention and imprisonment (Bull et al. 2012), long-term immigration detainees are arguably at risk of institutionalisation akin to that identified in longer term criminal detainee groups. The risk then, is not these individuals *per se*, but that the discursive criminalisation of asylum seekers and long-term detainees will extend the procedural criminalisation, described above, to literal criminalisation when they are eventually released.

Conclusions

This analysis has provided valuable empirical detail regarding who has been detained, and why some people have been detained for lengthy periods of time. The results challenge some popular perceptions about immigration detention. A critical finding is that asylum seekers detained at the border form only part of the long-term population held in immigration detention, with those entering through regular routes of migration accounting for more than half of those held in such facilities. Irrespective of the nature of entry, the substantial majority of

long-term detainees have lodged an application for protection, with high rates of success in being granted permanent residency.

A range of factors contributed to prolonging detention for the group that we studied. These included lack of identity or travel documentation; security concerns; family issues particular relating to the conflicting rights of non-citizen parents and Australian born children; health issues; and administrative and procedural issues link to appeals and applications lodged by detainees and action or inaction of various government agencies and departments. Amongst these, concerns about identity were key. The failure of many to deliver a dossier providing credentials of citizenship (passports, bank account details, travel documents and so on) essential for authorised entry works to exclude them from Australian society. This exclusion is literal for long-term detainees who are sent to Immigration Detention Centres resembling prisons located in remote locations. Our analysis, here and elsewhere, highlights parallels between detention centres and prisons, between the conditions of containment (Bull et al. 2012), and, in this article, the demographic characteristic of their populations.

The language and focus of much public discourse in relation to long-term detainees promotes a perception that this connection and criminalisation is warranted: that those held in long-term detention pose a threat to the Australian population. According to our analysis, however, those subjected to long-term immigration detention are typically less likely to be found to pose an actual threat to the safety or well-being of the community but rather are more likely to remain in detention as a result of the bureaucratic processes and the impact (in terms of health consequences) of detention itself. Moreover, as time has progressed, the vast majority were released and granted permanent residence and protection.

This generally positive outcome in terms of the granting of permanent residency calls into question whether the process of detention, and in particular long-term detention, has achieved core aims of effective and efficient processing, and the protection of the community from avoidable risk. These concerns are especially significant as, even after release from long-term detention, many of those who have been subjected to it are likely to experience long lasting negative effects.

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[1] These reports, and the data upon which this paper is based, are publicly available. It is acknowledged that, in some cases, supplementary information as to the final visa outcomes was provided by the Department of Immigration and Citizenship (DIAC) when such outcomes were not known at the time of reporting.

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