Step 1. No repelling of boats or other removal without proper review of protection needs.

> Australian personnel engaged in border patrols will be trained to ensure Australia's international and humanitarian obligations to asylum seekers are met. All personnel shall be required to ensure possible asylum seekers are given assistance in the asylum seeking process, including information on their legal rights.

Australia must not send people back to persecution or danger
Under international law, Australia is obliged to ensure that we do not return anyone to persecution – the principle of non-refoulement under the Refugee Convention. Current border protection policy allows for the Australian Navy to intercept boats suspected of carrying asylum seekers on their way to Australia and force them out of our waters, endangering lives and avoiding our international protection responsibilities. Our navy and coast guard are not required to make sure protection claims are assessed. "Our mission was clear - that is, to intercept and then to carry out whatever direction we were given subsequent to that. The status of these people was irrelevant to us ... Claims were not factors to be taken into account in terms of how we conducted that mission."[1] This results in people who are genuine refugees being removed from Australian waters or barred from entry, who may then face being forced home to persecution.

The methods used to repel boats are inhumane
Naval interdiction involves towing sometimes unseaworthy boats back to international waters and 'persuading' them not to re-enter Australian waters. In some cases, the navy fires guns to scare them away, and in some cases forcibly boards boats to subdue the captain and passengers.

Protecting borders AND Australian values
Australia needs to protect its borders, and the navy plays a key role in this. However, navy personnel joined up in order to protect Australia from danger, not break international human rights conventions. In the early part of this decade the Australian Government used the defenders of our country to repel people fleeing the Taliban in Afghanistan and Saddam Hussein's regime in Iraq. Australia was at war to topple these regimes yet treated refugees from those countries very badly. Today, Australia must protect those fleeing persecution and not repel them or unduly push our national responsibilities onto other countries.

Breaks the United Nations' Refugee Convention
Article 32: "States shall not expel a refugee lawfully in their territory save on grounds of national security or public order." Small numbers of unarmed asylum seekers do not constitute a threat to Australia's security.

Regional Cooperation with UNHCR
The Australian Government needs to work co-operatively with neighbouring countries, urging them to sign and abide by the Refugee Convention and work with UNHCR to protect asylum seekers while conflicts in home countries are resolved. To credibly advocate such human rights standards by our neighbours requires that Australia must fully abide by our own international human rights obligations. Such approaches could minimise dangerous sea journeys on poor quality boats by asylum seekers seeking effective protection. Anti-people smuggling policies need to be focused and proportional in their impact and not punish asylum seekers, as happens in the Australian Government's "Pacific Solution".

Case Study
One such case of interdiction was described by 'Ali' when his boat was interdicted by the navy and taken towards Ashmore Reef. The navy told passengers they would be taken to a refugee camp and moved the families to the navy vessel and locked Ali with the other men in the lower deck of the boat for two days while secretly returning the boat to Indonesian waters.

> "Because no one was ready to come out of the navy ship the navy people were bringing the children in our boat and beating the men and women so badly if they did not want to come out of navy ship. By observing this scene some of the navy people were weeping, one even hit his head to the wall of the boat. Then they broke the engine of the boat, took the oil and generator so we cannot go back to Australia."

Since then, Ali and the other 240 people were housed in the Lombok Afghan refugee camp in Indonesia. Some were assessed by UNHCR as being refugees, showing that Australia had failed in our obligations to them.

[1] Commander of Operation Relex, Rear Admiral Smith, Senate, Certain Maritime Incident Inquiry, para 2.68

Step 2. No excisions of territory.

Excision laws will be repealed. Asylum seekers shall be treated equally under the law, regardless of where they arrive in Australia.

What are excision laws?
These laws allow for 'removing' parts of Australia from the Migration Zone. Effectively Australia's borders have been redrawn so that asylum seekers picked up outside the Migration Zone are restricted from making a valid protection visa application. Excision tries to create the illusion that asylum seekers never landed in Australia and are therefore not the responsibility of the Australian Government. This means that while Australian remains a signatory to the UN Refugee Convention, the Government has tried to remove any possibility that its legal responsibilities will be triggered. UNHCR has criticised Australia's two different systems for refugee determination created by excision as "discriminatory" and "undesirable"[2].

Why were excision laws introduced?
This was another response to the Tampa 'crisis' in 2001 and possibly 9/11which followed. The passing of such legislation represents the Government's fear at what they perceived to be a large number of boat people trying to reach Australia's shore (small numbers compared to refugee movements in Europe and countries of first asylum such as Thailand, Pakistan, Syria and Jordan). If other countries took this approach to movements of refugees across the globe, the entire system of protection for refugees would break down.

Excision is the basis for offshore processing
Excision laws mean that asylum seekers who land in an excised place will be processed offshore, either on Christmas Island or in a third country such as Nauru. In comparison to onshore procedures, those processed offshore are not granted any assistance from a migration agent, and the remote location means they cannot access this on their own. They do not have access to full merits review by the Refugee Review Tribunal (RRT) or any judicial review. Not surprisingly, acceptance rates in offshore locations are far lower than onshore, showing that there must be refugees who have been rejected and inevitably returned to places of danger or persecution.

Excision means reforms don't apply to boat arrivals
While positive changes have recently been made within the Migration Act, the excision of vast expanses of northern Australia ensures those changes will never apply to any new arrivals generally held offshore on Christmas Island or diverted to Nauru – these people are be worse off than even before the reforms. Excision means that children can still be detained for years on Nauru as the Prime Minister has claimed the 2005 agreement to release children from detention only applies to the mainland. As of July 2007, there was one unaccompanied minor in detention on Nauru.

Working outside the law
Excision allows for government immigration officers to work outside of the law. They are still doing government work, but the legal framework regulating their actions is removed. The premise that laws protecting people from Government officers can be removed when that protection is in conflict with a desired policy outcome is a dangerous precedent to set in a democracy. Other government agencies (such as the Australian Federal Police) who work extra-territorially are still subject to the same laws and requirements as when working domestically. Offshore processing keeps the actions of immigration officers hidden from the view of the Australian public, risking that laws can be broken without political repercussions.

Breaks International Conventions
Excision breaks the Vienna Convention on the Law of Treaties, which states that treaties apply to the entire territory of the contracting state. As long as Australian law does not apply to all of Australia we have a policy that is prepared to abuse people's human rights.

Examples
People landing in excised locations do not get access to the Refugee Review Tribunal (RRT). For some countries, the RRT found that 89% of visa refusals by the Department of Immigration were wrong. Denying this level of review means many refugees will be denied the protection they need.

[2] Senate, Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, para 5.35.

Step 3. No offshore or third country detention or processing

Asylum seekers shall not be diverted from Australia to third countries such as Nauru or Papua New Guinea. People who claim asylum should be brought onshore and processed on the Australian mainland. Policies and actions that attempt to reduce refugee numbers by restricting access to legal advice and rights should not be adopted by a country that professes support for these rights.

Offshore Policy - Christmas Island
Some boat arrival asylum seekers are held on Christmas Island, a tiny Australian island near Indonesia. Most asylum seekers are processed here under excision laws, meaning they have fewer legal rights but if found to be refugees they are allowed to resettle in Australia. Social services are much more difficult to deliver in this remote location and access by bodies such as the Ombudsman is irregular due to distance.

Offshore Policy – Nauru and PNG
Australia continues to maintain 'processing facilities' outside its territory through agreements with Pacific Island nations. There are facilities being used in Nauru as well as mothballed facilities on Manus Island in Papua New Guinea. This policy is promoted as a deterrent to possible future asylum seekers as they do not have access to their legal rights. Even if they are found to be refugees, current Australian Government policy is to hold them on Nauru indefinitely until a country other than Australia can be found to resettle them.

Costs
Almost $1 billion has been spent on the Pacific Solution and Christmas Island detention and processing facilities since 2001, for less than 2000 people processed. So far it is over $500,000 per person.

Children in detention
Despite writing into the Migration Act the principle that "children shall be detained as a measure of last resort" sending asylum seekers to Nauru means children risk being effectively detained (despite day release on Nauru) for an indefinite period if resettlement options are delayed. There are also provisions on the new Christmas Island detention centre for family groups as well as a nursery.

No legal advice
Asylum seekers processed at Christmas Island and Nauru are not eligible for the government legal advice program (IAAAS.) It is also costly for pro bono lawyers to travel to Christmas Island and Nauru, and many independent NGOs, lawyers and advocates in the past have been refused visas to enter Nauru. While representatives of the Refugee Immigration Legal Centre (RILC), Melbourne, under their own private funding, were granted access to Nauru to see the eight Burmese asylum seekers uncertainties about future funding and even access may apply. Advocates insist independent legal advice should be provided to asylum seekers on Nauru.

Claims processed outside Australian law
Asylum claims are processed by Australian immigration officials but not under Australian law, with no independent scrutiny and no access to review by the Refugee Review Tribunal (RRT) or the courts. Given that the RRT found that for some countries up to 89% of Immigration Department visa refusals have been wrong, this means that many genuine refugees will face being returned to danger. It also sets a bad precedent for our democracy to allow government officials unfettered decision-making powers.

Allows for prolonged processing and detention
DIAC has developed 90 day deadlines for protection visa processing in Australia. These deadlines will not be adhered to in offshore centres, leading to prolonged detention. As of July 2007, 7 asylum seekers on Nauru had been waiting for over 8 months for their cases to be even opened by DIAC.

"Swap" arrangements with the US
Despite the assertion by the Australian Government that no asylum seekers processed on Nauru would receive protection in Australia, only 4% of refugees were sent to a third country - Australia and New Zealand in the end accepted most of them. But in 2007 there is a gradual build up of asylum seekers placed by the Australian Government in Nauru, namely asylum seekers from Sri Lanka and Myanmar. The Government has stated most forcibly that all will be settled in third countries. It has now come up with a 'swap' arrangement with the US Government. Those assessed to be refugees from Nauru would be settled in the US and Haitian and Cuban refugees would be settled in Australia. While this may result in a resettlement solution for those presently on Nauru found to be refugees, it is an odd policy. Designed to fix a short term political problem for the Australian Government, the policy will not discourage dangerous boat trips (with potential resettlement in the US an attraction.) It works against regional responsibility and solutions, and has been criticized by human rights groups as a form of "people trafficking" by governments.

Palmer Inquiry Detention reforms do not apply
While much has been made by the government of the reforms introduced for mainland detention centres to satisfy recommendations made by the Palmer and Comrie Inquiries, asylum seeker boat arrivals, currently sent to Nauru, will not benefit from these reforms. This in itself opens up huge questions as to detention standards, length and accountability and renders much of the reforms meaningless. Even if in the future most asylum seekers arriving by boat not sent to Nauru but are kept on Christmas Island, its distance from Perth where higher level medical and psychological services can be provided, raises doubts about the ability of the Christmas Island centre to overcome the grave concerns identified by the Palmer Inquiry.

Sets a Poor Precedent for Other Countries
After Australia introduced the Pacific Solution, several European countries were encouraged to follow suit, including the UK and Italy, to develop their own versions of the Pacific Solution. Pakistan, which then hosted over two million refugees, cited Australia's response to minor numbers of asylum seekers as justification for closing its borders to Afghan refugees.

In signalling a further withdrawal from the international system of protection, the continued use of The Pacific Solution policy sets a negative precedent that could encourage other developed countries to abrogate their responsibilities.
UNHCR stated: "If this were to happen, it would be an unfortunate precedent, being for the first time, to our knowledge, that a country with a fully functioning and credible asylum system, in the absence of anything approximating a mass influx, decides to transfer elsewhere the responsibility to handle claims made actually on the territory of the state."[3]

Harms Australia's International Reputation
During the Tampa stand-off and after, the impression expressed by Australia's church partners in the Pacific and internationally, was one of Australia lacking compassion and violating international law. Such perceptions could undermine Australia's efforts to promote human rights, good governance and the rule of law abroad.

Case Study 1
As of July 2007, there are 7 Rohingya minority Burmese men being held on Nauru. They have now waited over 8 months for their application papers to be even opened and an interview conducted. The Australian Government is putting pressure on them to accept a "voluntary repatriation package" of return to Malaysia on a temporary visa, even though there is a history in Malaysia of discrimination and deportation to danger of their ethnic group. The Government states that even if these men are found to be refugees by Australia in Nauru, they will never be offered resettlement in Australia – essentially stating that to achieve a policy objective, Australia is willing to detain known refugees. This is another example of the Government seeking to exploit the specific circumstances of each group sent to Nauru in order to place pressure on them to leave Australia's 'care.'

Case Study 2
A major problem with Nauru and offshore processing is the lack of scrutiny by media, advocates, legal institutions and the general public. This means that the government is free to take actions they would not be able to take onshore due to public outcry.

In the 2001-02 period when Australia was not returning anyone from mainland Australia to Afghanistan due to the ongoing war, the Government quietly returned 32 unaccompanied children from Nauru. These children were 'voluntary returns' as they had been refused refugee visas and simply wanted to be somewhere safe, or home with their families. It is hard to see how the best interests of a child can be met by returning them to an active war-zone.

There is strong evidence to show that decisions by asylum seekers to accept 'voluntary return' from Nauru were made under duress and many were prompted by mass depression following the sudden death of a young detainee. Afghans on Nauru reported that the Australian Immigration Department and the International Organisation for Migration (IOM) told them every week that Australia would never accept them as refugees and if they did not return voluntarily they would be sent by force. They were threatened with injections to aid removal and an officer admitted that poor food quality was being used as being a tactic to encourage returns.[4]
One 'voluntary' returnee said, "Finally I realised that there was no hope that the Australian Government will protect asylum seekers from the problems they have in their own country, especially in Afghanistan."[5]

[3] UNHCR media release 18th April 2006 issued by Media Relations & Public Information, Geneva.
[4] David Corlett and Robert Manne, Sending Them Home, 2004.
[5] Dave Corlett, Following Them Home, p.62.

Step 4. Detention as a last resort.

Upon arrival, health checks and a security assessment will be conducted. Children, families and other vulnerable people will be given priority to move quickly through this stage. Where there is no risk to the Australian public, asylum seekers will not be detained. Any period of detention longer than 90 days shall be reviewed by a judge or magistrate, to investigate if there is any further need to detain.

5. Humane detention and reception centres.

All detention and reception facilities will be run with an emphasis on human wellbeing and welfare agencies shall take a lead role in monitoring and advising on conditions. Oversight by the Ombudsman and Human Rights Commissioner shall be facilitated.

Mandatory detention
Despite reforms in 2005, Australia retains a system of non-reviewable mandatory detention. Under this system all those making a claim for asylum without currently holding a valid visa are detained, indefinitely, while their claims are reviewed. This policy has been justified as a means of deterring potential asylum seekers. While DIAC aims to ensure speedy processing and the Commonwealth Ombudsman's office can review cases of any asylum seeker detained for 2 years or longer, the decision to release an asylum seeker is left at the discretion of the Immigration Minister rather than ordered by an independent person, such as a judge. This contravenes international law and potentially breaches the separation of executive and judicial powers provisions of the Australian Constitution. Importantly, the uncertainty of detention has devastating impacts on asylum seekers.

Detention run for profit
Australia's detention centres are run by private contractors for profit. The so-called 'commercial-in-confidence' arrangements that underpin the system blur the lines of accountability and make transparency more difficult.

Conditions of detention
Unlike prisons, there are no minimum standards for detention centres written into law, so there are no standards to enforce on DIAC. The remote facility on Christmas Island has limited access to services, particularly mental health services. It is important that the community has access to those in detention, and that detainees have access to appropriate legal and welfare services. For more information see HREOC January 2007 report. Click here or see below[6]

Non-reviewable detention
The inquiry into detention of Australian resident Cornelia Rau found, "There is no automatic process of review sufficient to provide confidence to the Government… that the power to detain a person on reasonable suspicion of being an unlawful non-citizen … is being exercised lawfully, justifiably and with integrity". While there may be cases where some form of detention is required, it is essential that all detainees have the right to appeal their detention to an independent authority, preferably a court, and that detention only be used where there are specific grounds to justify it.

Duty of care to detained people
The Federal Court [FCA549] found that Government was failing in its duty of care to detained people to provide adequate mental health services. There have been many additional reports detailing other inadequate services. Although there have been many reforms to detention services that are effective, these are rendered meaningless as most boat arrivals are currently being sent to Nauru where these reforms do not apply

A Better Way
The release of families from detention shows that there can be alternatives to detention that do not reduce the effectiveness of national security and border protection. If asylum seekers pose no threat or absconding risk, there is no need to detain them when it costs much more than other more humane options. A more humane process would also achieve far greater success in the voluntary return of failed asylum seekers. Options such as The Better Way propose community release programs with good security features. At the time of publication Independent research commissioned in 2003 for The Better Way indicated that per person community management costs were around $60 per day medium security hostels around $110 per day and high security detention around $160 per day.

For more information on alternatives to detention see The Better Way, Justice for Asylum Seekers policy suggestions and the Refugee Council's extensive webpage on alternatives.[7]

[6] See www.humanrights.gov.au/human_rights/asylum_seekers/inspection_of_mainland_idf.html
[7] See www.bsl.org.au/pdfs/TheBetterWay.pdf, http://asp.hothammission.org.au/index.cgi?tid=22 & www.refugeecouncil.org.au/current/alternatives.html

Step 6. Community-based asylum seekers allowed to live in dignity

Asylum seekers in the community shall be able to work and provide for their own financial support as well as have access to others services.

What is a Bridging Visa E?
More asylum seekers live in the community than in detention centres while awaiting decisions at different stages of their applications for protection visas. 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 are therefore given the Bridging Visa E (BVE.)[8]

Who is on a BVE?
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.

Why is the 45 day rule unfair?
BVE holders identify a number of legitimate reasons for failure to lodge their application within 45 days of arrival including:

- Holding a valid visa which extends beyond 45 days and not knowing that they must apply for a protection visa within the 45 day deadline
- 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

45 day rule is arbitrary
Because the 45 rule is a blanket instrument, it will affect those whose protection applications are weak and will ultimately be rejected as well as those who will be 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 negative consequences of the BVE are unjustified. The consequences of the introduction of BVE include the denial of basic living necessities to individuals, families and children, many of whom are later determined to be refugees.

45 day rule creates hardship
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.

These visa conditions have in many cases resulted in the denial of basic and specialist medical services and treatment. Moreover, the conditions attached to BVEs appear to be exacerbating pre-existing medical conditions and generating new ones. This is particularly the case for mental health. 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.

Recommendations
A Just Australia, along with other organisations, recommends removing the 45 day rule and replacing it with reviewable discretionary powers to refuse work rights only if there is clear evidence the application is without merit. Any decisions to refuse work rights should be reviewed and approved by the officer's superior, and should be reviewable by the Migration Review Tribunal.

For more information see Hotham Mission's position on community care, Anne Nevin's paper Safety Not Charity and National Council of Churches webpage [9]

[8] Migration Regulations (Amendment) 1997 (Cth) No.185, Schedule 2, Regulations 10-14
[9] See http://asp.hothammission.org.au/index.cgi?tid=25, www.ajustaustralia.com/resource.php?act=attache&id=158 and www.ncca.org.au/cws/rdp/issues/asylum_seekers

Step 7. Permanent protection for all who need it.

Once refugee status is granted the protection associated with it should be permanent not temporary. Additionally, many of those who do not meet refugee criteria have humanitarian claims, or protection needs under other UN Conventions. A system of credibly assessing these needs shall be established.

Temporary Protection Visas
Positive changes have been made to the Temporary Protection Visa (TPV) regime. However, temporary protection is still being granted to refugees who have permanent needs. Much evidence points to this policy as having serious negative effects both on refugees as well as the communities in which they live in. For example the TPV denies refugees the right to be re-united with their families and denies access to some necessary settlement services.

The Labor Party has recently changed its policy to abolish TPVs, stating "when people flee persecution and they reach Australia, at that point the persecution must end." The TPV must be abolished as current policy and all proven refugees and humanitarian entrants from offshore processing facilities who are on a form of temporary visa should be granted permanent protection. See the Amnesty TPV factsheet and National Council of Churches' position papers. [10]

Removal Pending Bridging Visa
The Removal Pending Bridging Visa is for people who failed in an asylum application but cannot be returned home or to any other country and are potentially facing lifetime detention (i.e. stateless people.) This visa is at the discretion of the Minister, and the law still allows for lifetime detention without charge and without judicial review. The Ombudsman can review a person's situation after detention of 2 years or longer and make recommendations but the decision whether to release the person resides in the Immigration Minister's discretion. If a person is stateless, standard practice should be to treat the person as a refugee and grant a permanent visa.

Complementary protection
The Refugee Convention isn't the only international convention under which Australia has obligations to provide protection. We also have obligations under the Convention Against Torture, International Covenant on Civil and Political Rights and Convention on the Rights of the Child. At the moment, these obligations are only met by Ministerial Discretion, a non-reviewable and non-compellable power for the Minister to grant visas. This system has been widely criticized by lawyers, advocates, non-government organisations (NGOs) and Senate inquiries. A major problem is that to access Ministerial Discretion, a person must have been rejected for a refugee visa, meaning a person with claims under other conventions must first lodge an unmeritorious application under the Refugees Convention in order to be rejected and then apply to the minister. The Commonwealth Ombudsman found the system to have "serious and fundamental administrative weaknesses."[11] See the Christian World Service/National Council of Churches paper on a Complementary Protection model.[12]

Case study TPVs
TPVs have been directly linked to increasing the number of unauthorised arrivals and forcing people to risk their lives on dangerous boats. In October 2001, a boat headed for Australia from Indonesia sank and 353 asylum seekers drowned. Of those, 288 were women and children. The majority had husbands already in Australia who either were seeking asylum or had been found to be refugees, but only granted TPVs. The conditions applying to TPVs prevented these men being reunited with their families, left behind in danger in home countries or separated for long periods in camps in other countries(eg Indonesia) This frustrating policy caused the women to flee and often attempt to enter Australia by boat to be reunited with their families.

Case study complementary protection
In October 1998, Mr Sadiq Shek Elmi made a complaint to the United Nations Committee Against Torture, that his imminent deportation from Australia after he failed to be granted a protection visa would be in breach of the Convention Against Torture (CAT). The committee found that Australia had an obligation not to deport him.[13] Mr Elmi was then allowed to reapply for a protection visa, which was refused although the Department claimed the application was assessed with the new information arising during the CAT committee hearings. Mr Elmi then 'voluntarily' left Australia. Given that the Committee Against Torture found Mr Elmi did have protection needs, it seems somewhat disingenuous of Australia to refuse him a visa, and then claim his decision to leave rather than remain indefinitely in detention was a 'voluntary' removal.

[10] See www.amnesty.org.au/Act_now/campaigns/refugees/factsheets/temporary_protection_visas_-_fact_sheet and http://www.ncca.org.au/cws/rdp/issues/temporary_protection_visas
[11] Senate, Migration Act Inquiry, para 4.39
[12] See www.ncca.org.au/cws/rdp/issues/complementary_protection
[13] Australian Government, Communication no. CAT/C/22/D/120/1998, section 7

Step 8. Fair and reasonable application process

The process to assess protection needs shall ensure those with protection needs are not at risk of being returned to danger. All asylum seekers shall be granted complete information on the process and their legal rights. Refugee cases shall have the same rights to tribunal and court review that apply to other government decisions in Australia.

Screening
At the arrival stage people are interviewed to see if they are making a claim for asylum. However, the interviewing officers do not specifically ask if they are seeking asylum and are not required to advise the people of their rights in seeking asylum, or their right to apply for a visa or the right to legal assistance.[14] The onus is on the asylum seeker to make unambiguous statements that engage Australia's obligations under the UN Refugee Convention so they are then 'screened in' and assisted to make an application for protection.

If they are screened out, they are not given an opportunity to apply for a visa nor informed of their right to do so, and are not given any legal assistance unless they ask for a specific lawyer by name. If the asylum seekers do not apply for a visa within two working days of arriving in Australia, not having been informed that this is exactly what they have to do, they become unlawful and can be removed.[15] Clearly this is an unfair device used to ensure people are unaware of their rights under Australian law.

Legal Advice
For people who are screened into the refugee application process and are in a non-excised location (generally mainland Australia) they have access to the Immigration Advice and Application Assistance Scheme(IAAAS), where migration agents provide advice and expertise in submitting a protection claim. This scheme is currently denied to offshore asylum seekers held in the excised area, notably on Christmas Island or Nauru, making the application system unfair.

Flawed processes
Reports, investigations and inquiries have raised serious concerns with the processing of protection visa claims within the department of Immigration. They have called for reform of the refugee determination process, including flawed assessments of country information, 'expert' evidence and the use of 'credibility of applicant' guidelines which allow for the summary dismissal of applicants testimony where they have memory lapses often due to past torture or trauma. A central feature of the current system is the striking lack of understanding and/or practical application of procedural fairness by Immigration first stage assessors.

Merits review of decisions
The Refugee Review Tribunal (RRT) which provides merits review of protection visa applications, has been criticized for unfair and inconsistent decision making. There needs to be a reform of systems and training, including the training of Immigration Department (DIAC) case officers and RRT members in correct human rights assessments, the psychological effects of torture and trauma and how that can impact on the evidence presented by asylum seekers.

Judicial review of decisions
Each time a precedent has been set by a court decision that codifies the rights of asylum seekers, the government has attempted to legislate those rights away with amendments to the Migration Act, including changes to the definition of procedural fairness - even trying to remove the right to judicial review itself. This is unacceptable.

Case Study
According to the *Deported to Danger* study by the Edmund Rice Centre[16], some failed asylum seekers have been granted refugee status since being removed from Australia. In the case of Matthew (name changed) upon his return to Angola he was immediately sent to prison on the charge of leaving his country and applying for refugee status. After 3 months he bribed his way out of prison and fled to another Western country where he was granted refugee status within 6 months. Another man was removed to Syria (not his country of origin) and later arrested as an illegal immigrant. His release was negotiated by a Western country, which granted him refugee status.[17]

These cases show that Australia's refugee determination system is failing to identify refugees who are in need of protection visas.

[14] Migration Act 1958 (Cth) s193(2).
[15] Senate Inquiry, A Sanctuary Under Review, para 10.2.
[16] See Edmund Rice Centre research at www.erc.org.au
[17] Edmund Rice Centre, Deported to danger, p.5-6 &.32.

Step 9. No person shall be deported to danger and shall be assisted to return in dignity.

> We recognize that in order to maintain the integrity of an asylum-seeker assessment program, a government is sometimes required to deport people who have no protection or humanitarian claim on Australia. However, no person shall be deported where it is unsafe or unreasonable to do so. A system of return risk assessments shall be required prior to removal from Australia. Deportees shall at all times be treated with humanity and respect, and assisted with resettlement needs.

There is a significant body of evidence to show that Australia is both refouling refugees who were incorrectly determined not to be refugees, as well as sending failed asylum seekers back to situations of generalised danger such as countries experiencing war and civil unrest like Afghanistan and Iraq. This breaks our legal and moral obligations to protect them.

Deported to torture
Some Australian laws mean we can't extradite people to face foreign courts if they might face torture or inhumane treatment. But our immigration laws allow us to send back asylum seekers even if we *know* they will face torture. This is because Australia has not enacted the Convention against Torture into domestic law.

Voluntary deportations by false information
In 2003 DIMA (now named DIAC) 'voluntarily deported' Afghans detained on Nauru back to Afghanistan. The deportees were informed by DIMA that the Taliban had been ousted and that a legitimate government was in power. It should have been made clear that the Taliban was still active in many parts of Afghanistan even though President Ghazi headed a new government. Sadly there have been other similar allegations of the use of false, inadequate or selective information to persuade detainees to return home 'voluntarily'.

Inhumane methods of removal
Methods of removals/deportations are inhumane such as recorded cases of asylum seekers being deported in the middle of the night and the sedation of 'difficult' asylum seekers. In other cases, the methods used are inhumane, such as physical restraints, removing people without saying goodbye to family in Australia, or sending people to third countries with only a limited stay visa, from where they face inevitable deportation if caught.

Case studies
Deported to Danger In 2003, despite international concern for the security of Afghanistan during a war and reports from recognized human rights groups and the UNHCR condemning the practice the Australian Immigration Department 'voluntarily removed' 37 Afghanis. Further, many were Hazara, an ethnic group well documented to have been brutally persecuted in Afghanistan. In the 2004 Edmund Rice Centre paper *Deported to Danger 1* 35 out of the 40 people interviewed were living in dangerous circumstances immediately on arrival at the places to which they were deported and only five were clearly safe in the longer term.

Deportation on false paperwork
Deported to Danger research found that failed asylum seekers were being deported on false paperwork, to countries where they had visas that is some cases had expired prior to their arrival. In June 2005, a DIMIA whistleblower claimed that DIMA's compliance section had not been making proper checks on people before deporting them and that increasing numbers of people were deported to please the Federal Government.

For more information on deportations see Deported to Danger I & II. [18]

Reform proposals

Minimising the use of detention with a preference for community release and care, and adequate "case management" by trained staff of asylum seekers, where the progress of their cases and realistic options are explained to them, are likely to see greater numbers of voluntary return of unsuccessful asylum seekers without having to use force or sedation. See Dave Corlett's paper on returning failed asylum seekers.[19]

[18] www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=1
[19] See www.sisr.net/apo/asylum-corlett.pdf

Step 10. Durable solutions with an international focus

Prevention not cure
AJA believes that Australia's immigration focus should shift from a border protection framework to a more global and sustainable policy of conflict resolution and prevention. Ethical issues aside, more emphasis on conflict prevention would result in fewer asylum claims and Internally Displaced Persons (IDPs) worldwide, thus reducing pressure on asylum receiving nations.

A Responsibility to Protect
In 2005, the UN summit of world leaders and the UN Security Council adopted an unprecedented new international doctrine, the 'Responsibility to Protect', covering protection of civilians from genocide, war crimes, ethnic cleansing and crimes against humanity. Since the 1990s there has been an important shift in focus from a 'right of humanitarian intervention' to a potentially much broader 'responsibility to protect'. It is recognized that this responsibility to protect its own citizens rests first and foremost with each individual state. However, where the state is unable or unwilling to do so, the international community shares a collective responsibility to act –for example through humanitarian operations, monitoring missions, diplomatic pressure and, ultimately as a last resort, with force. In theory, this could go quite some way to redressing root causes of displacement.

See NCCA-CWS website on Responsibility to Protect.[20]

Focus on the stateless and IDPs
The estimated 25 million IDPs must be recognized as a serious gap in the international protection system, and there must be more funds and acknowledgement for those who fall through the protection gap. The other group which is severely neglected is stateless people. Although there is an international legal framework in the 1954 Convention on Statelessness and the 1961 Convention on the Reduction of Statelessness, there are still only 57 State Parties to the former and 30 to the latter. When compared to the number of parties to the Refugee Convention and its protocol (now at 146 with the recent accession of Afghanistan) it is clear that many countries such as Australia need to ratify these conventions as a matter of urgency.

First asylum countries
AJA believes that the provision of greater support to first asylum countries in line with Australia's commitment to the UN Agenda for Protection should be prioritised. This includes providing greater recognition to the role first asylum countries (i.e. countries that initially receive refugee flows) play in burden sharing and consideration of this burden in other areas of international relations such as trade and debt negotiations.

Revision of policy
Sovereignty and Ministerial Discretion.
Australia is urged to move beyond the sovereignty/discretion direction and to achieve a system that implements all forms of protection available in order to ensure that people requiring protection do not fall between the cracks to persecution, danger or death.

Maximum use of international instruments.
The UN urges states to make maximum use of instruments before resorting to discretionary practices. As such, Australia must incorporate a formal system of Complementary Protection to replace Ministerial Discretion.

Returnees
The UNHCR urges donor countries to spend a share of development aid on achieving reconciliation for refugees who voluntarily return home. The host countries are being urged to follow the "4R programme"; Repatriation (voluntary return) , Reintegration (within their home countries), Rehabilitation and Reconstruction. AJA also urges DIAC to investigate the circumstances of rejected refugees following deportation. Monitoring should be incorporated into DIAC procedures as a high priority in order to stop refoulement as evidenced by the Edmund Rice Centre's reports "Deported to Danger 1 and 2."[21]

Effective Protection
AJA urges the Australian Government to include the UNHCR' s ten benchmarks for effective protection[22] and the points raised by UNHCR' s Director of International Protection in her speech to UNHCR' s Executive Committee in October 2004 in assessing, on a case-by-case basis, whether someone could have sought and obtained effective protection in another country.

[20] See www.ncca.org.au/cws/r2p
[21] www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=1
[22] http://www.rcmvs.org/investigacion/RefugeeProt2.htm