



Katy Gallagher MLA

CHIEF MINISTER

MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Our ref: C2619/11

Senator Gary Humphries
Chair, Senate Standing Committee on Legal Constitutional Affairs—References Committee
Parliament House
CANBERRA ACT 2600

Gary
Dear Senator

Thank you for inviting the ACT Government to make a submission to the Senate Standing Committee on Legal Constitutional Affairs inquiry into Australia's agreement with Malaysia in relation to asylum seekers.

The ACT notes the agreement between Australia and Malaysia, and the Terms of Reference of the Committee inquiry, largely relate to matters outside the ACT Government's sphere of operations.

To assist with the Committee's inquiry, I have provided some information at **Attachment A** on the support and services offered to asylum seekers, refugees and other humanitarian entrants in the ACT, in the context of the Territory's human rights framework.

I trust this information will be useful to the Committee in its inquiries.

Yours sincerely

Katy Gallagher MLA
Chief Minister

15.9.11

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

Phone (02) 6205 0840 Fax (02) 6205 3030 Email: gallagher@act.gov.au

Context

In the ACT, asylum seekers typically come from the diplomatic missions or the international student population. 8250 people claimed asylum in Australia in 2010, amounting to 1.04% of the global total and some 30 people in the ACT.

ACT Government support

Human rights framework

The ACT Government is committed to the protection of human rights for everyone in the Territory. The ACT was the first Australian jurisdiction to enact a bill of rights, the *Human Rights Act 2004*, which commenced on 1 July 2004.

The ACT Government's vision, as stated in *The Canberra Social Plan*, is of "Canberra becoming a place where all people reach their potential, make a contribution and share the benefits of our inclusive community".¹ An integral part of achieving that vision is the development of "a community that is safe, socially inclusive and respectful of human rights."

The Human Rights Act underpins the Government's commitment to this vision and to "continuing to promote a human rights culture across the full spectrum of its policy development and program and service delivery".²

By enacting the Human Rights Act, the ACT joined countries such as New Zealand, Canada, the UK and South Africa in recognising that human rights are an essential part of a modern democracy based on the rule of law.

The Human Rights Act protects a range of civil and political rights, which are set out in part 3 of the Act. The rights included are based on those rights protected under the International Covenant on Civil and Political Rights (ICCPR).

The rights protected include the following, which are particularly relevant to asylum seekers:

- recognition and equality before the law, without discrimination of any kind (s 8);
- right to life (s 9)
- protection from torture and cruel, inhuman or degrading treatment (s 10)
- protection of the family and children (s 11)
- right to privacy and reputation (s 12)
- freedom of movement (s 13)
- freedom of thought, conscience, religion and belief (s 14);

¹ *The Canberra Plan: towards our second century*

http://www.cmd.act.gov.au/data/assets/pdf_file/0013/120217/canberra_plan_text_V5.pdf, p.34

² *ibid*, p. 19

- peaceful assembly and freedom of association (s 15)
- freedom of expression (s 16);
- right to liberty and security of person (s 18);
- human treatment when deprived of liberty (s19); and
- right to fair trial (s 21).

These rights apply to all individuals in the ACT, regardless of residency or citizenship.

Many of these rights are reflected in the *United Nations Convention relating to the Status of Refugees*, which is underpinned by the fundamental principles of non-discrimination, non-penalisation for illegal entry or stay and *non-refouler*—that a refugee will not be expelled or returned against their will to a state where they fear threats to life or freedom.

The Convention also adopted the principles of *unity of the family* and *facilitation by governments* to encourage and sustain the efforts of properly qualified organisations to enable access to suitable welfare services, especially appropriate non-governmental organisations.

Examples of provisions within the Convention that reflect rights protected in the Human Rights Act include:

- non-discrimination;
- freedom of religion
- right of association;
- access to courts; and
- freedom of movement.

The Convention also includes provisions relating to housing, education and public relief and assistance. Rights in these areas are not directly protected by the ACT's Human Rights Act; however, as set out below, the ACT has policies in place to help meet asylum seekers' needs in these areas.

The ACT Government is currently considering whether to incorporate economic, social and cultural rights into the ACT Human Rights Act, which would include rights to housing and education. These deliberations are informed by an independent research report tabled in the ACT Legislative Assembly in December 2010, the *Australian Capital Territory Economic, Social and Cultural Rights Research Project Report* (<http://acthra.anu.edu.au/index.php>).

ACT Multicultural Strategy 2010-2013

The ACT's *Multicultural Strategy 2010-2013* (the Strategy) is a key strategic document in embedding a human rights culture in the ACT. The Strategy envisions that the ACT is recognised as a leader in multicultural affairs and human rights, and affirms that the

ACT is strengthened when people of multicultural backgrounds have equal access to opportunities for social, economic and political inclusion.

Within the law, in the ACT all individuals have the right to:

- participate and contribute socially, culturally and economically;
- equitable access to quality ACT Government services and programs; and
- practice and maintain faith, language and cultural heritage.

The Strategy identifies refugees, asylum seekers and humanitarian entrants as a priority group, recognising these people often have significantly different prior life experiences from other migrants. For these reasons, the ACT Government is committed to assisting refugees, asylum seekers and humanitarian entrants access appropriate services and programs. The Strategy sets out four objectives:

- identify issues that are important to addressing the needs of refugees, asylum seekers and humanitarian entrants;
- provide resources to meet the needs of refugees and asylum seekers;
- increase participation in education, social activities and employment by refugees, asylum seekers and humanitarian entrants; and
- provide access to health and wellbeing services which meet the needs of refugees, asylum seekers and humanitarian entrants.

ACT Refugee, Asylum Seeker and Humanitarian Coordination Committee

The Refugee, Asylum Seeker and Humanitarian Coordination Committee (RASH) comprises representatives from key areas of the ACT Government and the non-government sector involved with the resettlement of asylum seekers, refugees and other humanitarian entrants in the ACT.

The purpose of RASH is to bring key stakeholders together to facilitate settlement support for asylum seekers, refugees and other humanitarian entrants in the ACT. This is characterised by:

- assisting with the identification of issues;
- facilitating the provision and exchange of information; and
- contributing to the development of policy advice to government.

The membership of RASH includes representatives from a series of non-governmental organisations, as well as Government officials in the areas of language, education and multicultural police liaison.

ACT Services Access Card

In September 2011, the ACT Minister for Multicultural Affairs, Ms Joy Burch MLA, announced a 12 month trial of a new ACT Services Access Card to facilitate improved

access by asylum seekers to what they are already entitled by way of services and programs at concessional rates.

The card will provide for smoother access to services and alleviate the need for asylum seekers to re-tell their story each time they wish to gain access to a service or program delivered by an ACT Government directorate.

Services currently available to asylum seekers in the ACT

The ACT Government treats asylum seekers as ACT residents and provides access to essential services to complement the support they receive from several local community groups. These services include access to free public healthcare services and ambulance services, concessions for transport and access to housing.

Most refugees and asylum seekers are eligible for Medicare, which entitles them to receive a range of subsidised services including free medical treatment at public hospitals and free general practitioner services from bulk-billing doctors. Asylum seekers without access to Medicare are also able to access a range of health services including free medical treatment in the ACT's public hospitals. The ACT Government also funds Companion House to provide expert medical services specifically for people who are escaping torture and trauma.

Currently, asylum seekers have access to 15 social housing properties as part of the Refugee Transitional Housing Program.

The Canberra Institute of Technology has a policy in place to assist asylum seekers to learn English. Students' fees are waived under these provisions until a decision is made on their application for a protection visa.

Community services

Migrant and Refugee Settlement Services Inc

The ACT Government has committed to provide \$207,272 over four years from 2009-10 to the Migrant and Refugee Settlement Inc (MARSS) to cover gaps in settlement services for migrants, asylum seekers, refugees and people from culturally and linguistically diverse backgrounds who are living in the ACT and not supported by settlement funding from the Commonwealth. These services focus on case work, referrals and provision of information and cultural assistance.

Multicultural Youth Services Inc

Funding of \$105,000 over four years was allocated in the 2010 ACT Budget for outreach services to the multicultural youth sector of the ACT.

The funding is intended to assist young refugees, asylum seekers and humanitarian entrants living in the ACT to gain access to appropriate services and programs. It will build on services for young people who are at risk of social isolation.

Companion House

Companion House is a government-funded community-based organisation that was established in 1989. It provides services and support to adults and children who have sought safety in Australia from persecution, torture and war related trauma. Many of its clients are people from refugee backgrounds and asylum seekers. Companion House provides services with the aim of empowering individuals and promoting recovery.

Canberra Refugee Support Inc

Canberra Refugee Support (CRS) conducts training courses, settlement and provides support to asylum seekers and refugees in Canberra. CRS is not funded by government. CRS also provides advocacy services to assist refugees navigate the migration and service systems in Australia provides ongoing contact with policy makers and their advisors to improve the level of equity and access for asylum seekers and refugees.

The Canberra Refugee Support also assists others to make connections with refugees and asylum seekers. This includes fostering activities and programs such as providing refugee scholarships and refugee mentoring programs. They provide practical support to assist with accommodation, the provision of furniture, linking into local services, access to schooling and English language training, health care, jobs and networking in the Canberra community.

Commonwealth services

A number of Commonwealth Government services for asylum seekers, refugees and humanitarian entrants also operate in the ACT.

Immigration Advice and Application Assistance Scheme

Persons eligible for assistance under the Immigration Advice and Application Assistance Scheme (IAAAS) include all protection visa applicants in detention and the most disadvantaged protection visa applicants and other visa applicants in the community.

IAAAS providers offer independent, professional immigration assistance and advice. Companion House in the ACT has been funded by the Commonwealth to provide these services to asylum seekers from 2011-2014.

Asylum seekers are not entitled to the same forms of financial support as citizens or permanent residents. To be eligible for IAAAS services you must be living in Australia and experiencing financial hardship and meet one of the following criteria:

- non-English speaking;
- cannot seek independent help because of youth or cultural difference such as gender;
- illiteracy in native language;

- physical or psychological disability, including as a result of past torture or trauma; or
- suffered physical or psychological harm resulting from domestic violence.

Asylum Seeker Assistance Scheme

The Asylum Seeker Assistance (ASA) Scheme is available only to those with a current on-shore Protection Visa (refugee status) application and awaiting a decision by the Department of Immigration and Citizenship.

The ASA Scheme:

- provides assistance to eligible asylum seekers who are in the process of having their refugee status determined; and
- offers income support to cover basic living expenses, paid at 89 per cent of the Centrelink Special Benefit. This would equal approximately \$405.84 per fortnight for a single asylum seeker – over \$260 less than the single age pension.

An asylum seeker living in the ACT community can request Asylum Seeker Assistance to help with basic food and accommodation needs if there are delays in processing the visa application or if they qualify for support on other grounds.

The benefits also include (as needed) basic health care, assistance buying medicines, torture and trauma counselling and bereavement assistance.

The ASA Scheme is funded by the Commonwealth Government and administered by the Australian Red Cross.

Community Detention

On 18 October 2010, the Hon Chris Bowen MP, Minister for Immigration and Citizenship, announced the expansion of the residence determination (community detention) program to enable significant numbers of unaccompanied minors and vulnerable family groups to be relocated from immigration detention facilities to community-based accommodation.

Community detention was introduced in June 2005 and is a form of immigration detention that enables people to live in the community but without the rights and entitlements of a person residing in the community on a visa (for example, the right to work or study).

There are approximately 8 unaccompanied minors and 36 adults in family groups currently in the ACT under this Commonwealth program.

The Department of Immigration and Citizenship negotiates service provision and funding on a bilateral basis with individual government directorates in the ACT.