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Submission to Joint Standing Committee on Migration
Inquiry into immigration detention in Australia

Australian Council of Heads of Schools of Social Work (ACHSSW)

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Background

In 2005, the Australian Council of Heads of Schools of Social Work (ACHSSW) convened the People's Inquiry into Detention. This initiative followed the establishment by the federal government of the Palmer inquiry and the refusal by the Howard government to broaden the terms of that inquiry, despite the calls by refugee advocates and immigration detainees.

The People's Inquiry brought together a wide-range of individuals and groups, which shared the deep concern of the ACHSSW on the laws, policies and practices of immigration detention. The Inquiry process was organic, transparent and inclusive. The Inquiry is remarkable, not just because so many people felt able to come forward and place on the public record the stories they had carried with them, but also because so many people from all over Australia and all walks of life volunteered to help. With very little funding we held ten public hearings across Australia and received written submissions. Close to 200 people provided verbal testimonies at the hearings (one-third had been in immigration detention) and a similar number of submissions were received.

In November 2006, our first report, *We've boundless plains to share*, was released and the second report has now been published by Scribe, as *Human Rights Overboard*, which is being submitted to the Joint Standing Committee. The book is themed in four key ways: The journey into detention, processing of refugee claims, detention and life after detention.

As the details are provided in *Human Rights Overboard*, this report provides some examples of testimony that contained in the report, and the recommendations arising from the report. We note your terms of reference and a number of these are covered in our report including length of detention, release from detention, transparency and visibility, community-based alternatives and costs. We note that the new detention reforms incorporate a number of principles. We urge you to take into consideration the principles and recommendations that we propose particularly to ensure that future asylum

seeker policy is just. These are to remove racism from, restore human rights to and reinstate accountability for immigration policy.

The People's Inquiry is an indictment of the system of mandatory detention and the laws, policies and practices that enshrined it. The system as it now stands needs to be totally demolished and a new one put in place that upholds the human rights of those seeking asylum and allows Australia to hold its head high in the international human rights arena. Reading through the findings of the Inquiry in *Human Rights Overboard* will provide a basis for future directions that are framed by evidence of the impact of the raft of policies and practices that destroyed the lives of many and diminished Australia's human rights reputation.

People's Inquiry into Detention Terms of Reference

This is an open inquiry into the practices and procedures related to the observance of the human rights of those detained in immigration detention facilities, whatever their ethnic background. It is a transparent process in which people can tell their stories and give evidence of their experiences of detention. In particular, we will investigate and assess:

- The question of the accountability of immigration detention policy and practices to government and community;
- The impact of detention on the wellbeing and mental health of detainees;
- The adequacy of and accountability of services provided for detainees;
- Issues relating to privatisation of the operations of detention;
- The question of whether duties of care have been breached and the process of redress and potential civil liability of those involved;
- The behavioural management policies, procedures and techniques used with detainees;
- Deportation methods and outcomes;
- Decision making practices of the Department of Immigration and private detention operators in relation to detainees;
- The financial costs of detention;
- The efficacy of alternative models of processing asylum-seekers; and
- Any other matters at the discretion of the convenor.

People's Inquiry into Detention examples

The People's Inquiry into Detention heard heart-breaking evidence about the deaths of over 360 asylum seekers, including 148 children, during boat journeys to Australia in 2000 and 2001. One man told the Inquiry his mother drowned after their boat sank during interception by the Royal Australian Navy:

The boats came and took as many people as they could and I was asking them what happened to my family. They kept assuring me they were on the other boat. Then I realised that there was a young woman who had died. My wife and I didn't know anything about our other children and she was crying continuously and asking the officers to find some information about them.

They managed to bring the husband of the woman who had died. He told us that your mother has unfortunately passed away, but your children are in the other boat. I was devastated. I screamed, I cried, I was very, very sad but I couldn't do anything. As soon as we get into the big boat my wife was running towards our children. She started hugging them and crying with them. I asked the authority to show me my mother's body and they just show the body from a distance.

The Inquiry also heard that for asylum seekers who survived the dangerous journey, the relief and joy of sighting Australian land was short-lived. Those who were allowed to make claims for refugee status were placed in immigration detention centres, mostly situated hundreds of kilometres from Australian capital cities or on far-flung Pacific Islands. In making claims for refugee status, they faced obstruction and suspicion from the Immigration Department and struggled to deal with an assessment process the People's Inquiry heard is seriously flawed, subject to political influence and often takes years to recognise claims. Migration Agent Marion Le told the Inquiry about helping unaccompanied children on Nauru:

We were there very late one night and seven young people came in. I looked and I thought, My God, how old are you? One said, I think I'm 14. This is 2004, they had been there over three years, and he thought he was 14. On at least one of the files was written a note from a DIMIA woman officer. "I have been asked to change this child's age to make him over 18 and because I am asked I am doing it, but I do not agree." I am guilty of not making a statement about that publicly because I wanted to ensure all of the people on Nauru got off. If I had gone out and talked about the abuses of process we were seeing they wouldn't have come here. I would have been stopped going to Nauru.

Essentially privatised prisons, the People's Inquiry also heard from numerous sources of shocking conditions inside detention centres. It was told of people being forced to steal food to feed their children, of assaults on both adults and children, of physical and mental health care so inadequate that many former detainees now have serious, permanent disabilities. The Inquiry also learned that between 1998 and 2008, 19 people died in these miserable surroundings and that the agencies meant to hold government to account on such matters were essentially powerless to affect change. This lack of accountability created a culture of violence and self-harm within detention. Protests were routinely met with armed force. The Inquiry was told of people eating glass and gravel and pouring boiling water on themselves, and presented with images of self-harm too graphic to publish. A boy who spent three years in detention said:

The worst thing, I will never forget it, was people cutting themselves. It was horrible. I remember one time a person was harming himself up a tree and his children was crying under the tree. His wife was crying and yelling under the tree. His blood was dropping from the tree.

The Inquiry also heard alarming stories of people being chemically and physically restrained in deportation attempts before being recognised as refugees, and of nine people who died in other countries after their refugee applications in Australia were rejected.

Once released from detention, many refugees told the Inquiry their experiences had irrevocably changed them. Many were unable to forget the violent images they had been exposed to in detention and suffered ongoing mental health problems. Others told how the uncertainty of their temporary visa status compounded their anxiety. Still others told of relationship breakdowns with wives and children overseas. A refugee supporter told the People's Inquiry:

My friend was almost five years in detention, extremely depressed. Now his wife has divorced him and he will probably never see his little six year old daughter again. A Sister who met him on his release said he was extremely distressed. He just went into his church and cried and cried.

Despite the devastation Howard Government policy inflicted on asylum seekers, the Inquiry also heard moving stories of ordinary people who rejected its harsh approach and connected with asylum seekers as human beings through each stage of their journey. The *HMAS Adelaide's* Laura Whittle jumped without a life jacket from a height equivalent to a four storey building when she saw asylum seekers in difficulty in the water below. Hundreds of lawyers and migration agents offered their services free of charge to assist asylum seekers through the refugee determination process. Ordinary people visited and protested outside detention centres forming strong friendships with and advocating for those inside. Others started organisations which have raised millions of dollars to assist people released from detention with few government entitlements.

A fresh start

The evidence presented to the People's Inquiry stands as a clear condemnation of government policies which damaged and, in some cases, destroyed the men, women and children who fled brutal regimes and asked for help. It condemns those politicians who, in the face of overwhelming evidence of the destruction such policies were causing, not only failed to change them, but continued to defend them.

The evidence provided to the People's Inquiry offers the Rudd Labor government a unique opportunity to draw inspiration from the thousands of ordinary Australians and the few brave politicians (from several political parties) who stood against these policies and to close a chapter on a shameful era of Australian history.

It can choose to offer a fresh start, based on compassion and decency, to thousands of people whose resilience and courage enabled them to survive both the dangers they faced in their own countries and their disgraceful treatment in Australia. It can grant the wish that many former detainees expressed to the People's Inquiry, that the practices that brutalised so many people are not repeated. One said:

I'm asking the government to treat the people who came legal or illegal to Australia as a human being, not like an animal or to keep them in detention centres for all that time. That's all I hope for these people because I faced that and I don't want it to be the same for another person. We've been an example and that's it. We want just to finish it.

The People's Inquiry into Detention recommends that three fundamental changes are needed to address the human rights issues arising from the evidence presented to it. These are to remove racism from, restore human rights to and reinstate accountability for immigration policy.

Removing Racism

The People's Inquiry into Detention has heard extensive evidence that many elements of migration policy disproportionately penalise people who are not Australian citizens in a way that is completely inconsistent with the way Australians would expect to be treated in similar circumstances.

In particular, the policy of mandatory detention deprives people of their liberty for an indefinite period. Deprivation of liberty is one of the most serious sanctions a state can issue against a human being and is ordinarily proscribed except where authorised by a court. The people imprisoned in Australia's detention centres have committed no crime and have not been charged with any offence.

Detained asylum-seekers are incarcerated because they crossed a national border without documentation in order to seek asylum. The right to seek asylum is named in the Universal Declaration of Human Rights and guaranteed under the Refugee Convention, both documents which Australia supports. Australians fleeing natural disasters from other states or suburbs could equally pose threats to an area's health or security, yet any attempt to indefinitely detain people crossing these internal borders would rightly be met with outrage.

The People's Inquiry therefore recommends that asylum-seekers should be treated with compassion and decency while their claims for refugee status are assessed. They should be held in open reception centres for a maximum of 48 hours for health and security checks upon arrival, after which they should be transferred to community housing and provided with health and welfare services. If the government believes individuals pose a threat to the community, the onus should be on it to prove this before a court. In these very exceptional cases, where a court agrees, immigration detention should be strictly monitored and continue to be judicially reviewed.

The People's Inquiry further recommends that other aspects of immigration policy be amended to address concerns raised during the People's Inquiry about their racist nature. During the past two decades, successive governments have introduced legislation specifically aimed at restricting the legal appeal rights of non-Australian citizens: they are routinely denied legal aid; their detention is not judicially reviewable; they have no legally enforceable right to a minimum standard of care while in detention; and some are

made to pay for their incarceration. People who have been granted permission to stay in Australia permanently can suffer the double punishment of having this revoked if they subsequently serve a jail sentence. This treatment should not be tolerated just because the people it affects are not Australians.

The People's Inquiry into Detention recommends the Rudd Labor government:

- Abolishes mandatory detention;
- Immediately releases all immigration detainees under residence determination provisions, ensuring they receive comprehensive health and welfare assessments and services unless they have been judicially determined to be a security risk;
- Legislates to restore full access to judicial review of migration decisions, including access to legal aid;
- Legislates to ensure any immigration detention longer than 48 hours is judicially reviewed;
- Legislates to guarantee minimum standards in detention and a legal right to enforce them;
- Abolishes the practice of charging people for their detention;
- Legislates to remove the ability for Australian permanent visa holders to have their visas cancelled on character grounds.

Restoring Human Rights

The Universal Declaration of Human Rights states that all people have the right to seek and enjoy asylum from persecution; that no-one should be subjected to arbitrary detention, cruel, inhuman or degrading treatment or interference in their family unit; and that all people have the right to work.¹ By endorsing this and as a signatory to human rights conventions, Australia holds itself out as a compassionate and decent member of the international community. National leaders often invoke the 'Australian ethos' of mateship, helping those in need and 'a fair go'. However, the People's Inquiry heard that the reality of Australian immigration policy was often diametrically opposed to these concepts.

The People's Inquiry into Detention recommends the Rudd Labor government:

- Incorporates Human Rights Conventions to which Australia is a signatory into Australian domestic law;
- Repeals legislation which allows excisions of Australian territory from the 'migration zone' and escorts asylum-seekers intercepted at sea or in Australian territory to the Australian mainland for processing;
- Closes all isolation facilities in detention centres;
- Provides all people recognised as refugees with expedited family reunion, including all children who came to Australia as unaccompanied minors;

¹ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, available at <http://www.un.org/Overview/rights.html>, accessed 5/2/2008

- Provides work rights, Medicare, income support, eligibility for concession cards and settlement assistance to all asylum-seekers;
- Provides fully funded legal advice to all asylum-seekers and immigration detainees;
- Offers non-detention-based repatriation assistance to failed asylum-seekers;
- Conducts pre-removal assessments of failed asylum-seekers and provides complementary protection where there are safety, humanitarian or welfare concerns;
- Grants Australian citizenship to asylum-seekers found to be stateless.

Reinstating Accountability

Despite the Howard government claiming immigration as one of the most highly scrutinised portfolios, the People's Inquiry heard that a number of factors allowed the Immigration Department to develop a culture which resulted in the gross abuses detailed in this report.

The public demonisation of asylum-seekers and their supporters by ministers and senior officials encouraged their mistreatment by more junior officers. The remote locations in which asylum-seekers were detained made it difficult for lawyers, human rights groups and supporters to offer effective assistance. The privatisation of detention centres and the imposition of fines for failing to meet standards created a conflict of interest for both the private operators and the department to accurately report on conditions in detention. Finally, the preparation undertaken by the department in advance of visits to detention centres by media, religious leaders and others, and the inability of human rights watchdogs such as the Human Rights and Equal Opportunity Commission (HREOC) and the Commonwealth ombudsman to enforce their recommendations, rendered the scrutiny ineffective.

The People's Inquiry into Detention recommends the Rudd Labor government:

- Establishes a Royal Commission into the four aspects of immigration policy covered by this report: journeys into detention, the refugee assessment process, life in detention, and life for people after release from detention – in particular the role played by Australian government ministers and organisations including the Department of Immigration, the Royal Australian Navy and the Australian Federal Police;
- Holds a coronial investigation into the deaths of asylum-seekers, immigration detainees and those refused asylum in Australia;
- Closes the Christmas Island detention centre;
- Restores government control of detention centres;
- Abolishes the ministerial intervention powers under the Migration Act and replaces them with reviewable administrative decisions;
- Allows media, human rights groups, religious leaders and politicians to make unannounced visits to detention centres;

- Resources an independent authority to effectively investigate immigration detainee complaints and make binding recommendations for their resolution.

Righting the wrongs

Only by the full implementation of all these recommendations will men, women and children be protected from further abuse. The Australian Council of Heads of Schools of Social Work, in conjunction with the Centre for Human Rights Education (Curtin University) and Child Abuse Research Australia (Monash University) will closely monitor these areas.

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