



Little Company of Mary Refugee Project

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SUBMISSION
Joint Standing Committee on Migration
Inquiry into Immigration Detention in Australia.

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BY: *IMIG*

Little Company of Mary Refugee Project (LCMRP) is a small community project run by sisters of the Little Company of Mary, a religious order of the Catholic Church. LCMRP supports asylum seekers and refugees by visiting Villawood Immigration Detention Centre (VIDC) to offer social and practical support as may be needed and, on occasion, assists those granted visas with settlement issues.

LCMRP commenced visiting VIDC in 1995. Many changes have occurred over the years both in the nature of VIDC, its conduct and structure. For the asylum seeker population, little has changed. They all seek safety and security from war, persecution and violence. Most of those in our contact, have found the detention environment harsh, punitive and repressive. An overarching pain for all asylum seekers has been the indeterminate nature of the detention and the loss of personal freedom and independence.

Summary of Recommendations:

- That all asylum seekers be held in detention, with minimum restriction, only until identity has been established---a maximum 90-day period.
- That all asylum seekers living in the community hold a visa with work rights and access to Medicare.
- That legal reform proceeds concurrently to increase the efficiency and speed of the visa determination process.
- That in Immigration Detention Centres, urgent action be taken to segregate asylum seekers, ex-prisoners awaiting deportation and those in breach of visa conditions.

This submission will seek to make some comments about these matters based around the Committee's first, second and fourth terms of reference and will relate to asylum seekers.

Detention:

Why is indefinite mandatory detention imposed on an asylum seeker who is found to have arrived in the country either with no documents or false documents, when their counterpart who arrives with valid documents is permitted to live in the community, without immediate health or security checks, for the duration of processing of their refugee claim?

Detention and deprivation of freedom are serious infringements of one's human rights. Therefore, in dealings with asylum seekers, any period of detention should be as short as possible and should aim to be as least restrictive as possible.

Certainly, it is reasonable to detain an asylum seeker while identity is confirmed and in some cases, security checks are done. This should be achieved within a stated time frame

eg 60- 90 days. The primary visa application would be lodged during this period and urgent healthcare needs attended to. The detention would maximise freedoms ---a residential housing model could be used. Release into the community with a visa permitting work and granting Medicare should follow and remain in effect for the duration of the visa determination process.

Detention may be appropriate for visa condition violations –but for a definite period of time. That those asylum seekers already living in the community do not all hold work permits and have Medicare access is, I believe, a matter of national shame.

A system that bases asylum seekers in the community with work rights is more cost-effective than a system of detention. It is also more cost-effective to have asylum seekers supporting themselves and their families and contributing their skills to Australian society filling jobs that are available.

Detention—Separation of families

Where an asylum seeker parent is detained and separated from spouse/partner and children, every effort needs to be made to ensure the detained spouse/partner/parent is reunited with the family as soon as possible. Such separation causes extra suffering for all involved and can add to already existing mental stress in all parties. Such reunion could occur as soon as identity has been confirmed with security checks being performed after family reunion.

Indefinite Detention

Over the years, it has been our experience that indefinite mandatory detention that exceeds about 6 months has a deleterious effect on most asylum seekers. The nature and effect of the detention depends on factors such as the trauma experienced prior to departure from country of origin and the trauma of the asylum seeker journey and pre-existing mental and physical illnesses.

Of those asylum seekers known to us, who have been detained for a considerable length of time, increasing depression and anxiety, declining general health, loss of self-esteem and self-confidence, dependency, aimlessness and fear arising from the detention environment have been fairly common. Once in the community, the detention period is another trauma with which they must deal before they can settle. If release into the community is by way of Bridging visa E, (no work rights; no Medicare access; no income support) then the indeterminate nature of the wait for some permanent resolution to the refugee claim still means that the person continues to live in what one person described as “a state of suspension enclosed by walls of anxiety, fear and limited freedoms.”

Legal Reform

It is not possible to discuss detention without reference to three important factors which, I believe, contribute to increasing the length of time asylum seekers currently spend in detention:

1) Refugee Review Tribunal (RRT) composition.

2) The exclusion of so many from refugee like situations because of the relatively narrow definition of “refugee” in the 1951 Convention Relating to the Status of Refugees.

3.) The scarcity of accessible affordable legal representation beyond RRT

1.If the Refugee Review Tribunal was composed of three members, as are most of the Administrative Appeals Tribunals, there may be better outcomes which would lessen the number of appeals to the Courts, thus resulting in a decrease of the time in detention.

2. The definition of “refugee” in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees is too narrow to encompass the changed situations in our world of 2008 which force people to seek asylum.

A Complimentary Protection visa category needs to be established so that those asylum seekers whose cases lie outside the abovementioned Convention and Protocol do not have to proceed through existing legal pathways, failing at each stage, to finally reach Ministerial intervention stage where the case can be decided. (We have known asylum seekers whose cases have taken 8 and 10 years to come to final resolution, with time of waiting both in detention and community.) Such a visa would provide a much better transparent and appealable pathway away from the discretionary power now vested with the Minister as well as offering a shorter process.

3. Asylum seekers, many without English skills or any knowledge of the Australian legal system, appealing to Federal Courts or to the Minister without legal advice in the preparation of their cases do not always receive an appropriate outcome which often means “having another try”. This prolongs the time and cost for resolution of the case. Demand for pro bono legal advice exceeds availability. Improving access to government subsidized legal advice would, in many cases, reduce the time taken for case resolution and so reduce the time in detention.

VIDC Population Mix

VIDC is a holding centre not only for those seeking asylum, but also for those who are illegally in the country as they have overstayed their visas or breached visa conditions in some way as well as those awaiting deportation following completion of prison sentences.

It does not seem possible to have an environment and set of detention regulations which can or should apply equally to these three diverse population groups with three very different psycho-social and legal needs.

The attempt to integrate these three different detainee groups has not been to anyone’s benefit and has certainly increased the stress for asylum seekers and others who are often intimidated by a culture of aggressiveness which is transposed from the prison culture.

These three populations urgently need to be separated and to have rules and regulations established to ensure the particular needs of each group are better met. For the ex-prison population this means continuing rehabilitation in a disciplined environment and

beginning a programme of transition into society; for the visa violation group, the focus should be preparation for return to country of origin; for the asylum seeker, an holistic programme of personal support which recognizes the effects of the refugee experience, and offers ongoing legal advice.

To implement these changes, staffing will need to be reviewed to ensure that staff become more specialised and are appropriately trained and skilled to implement different programmes needed by detainees in each section of the detention centre. One staff will not fit all.

Thank you for the opportunity to offer these comments

Sr Francis Mansour lcm, BSW.
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