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SUBMISSION TO INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA

Jesuit Refugee Service commends the Australian Government and the Joint Standing Committee on Migration for holding this inquiry into Immigration Detention in Australia.

As part of its Australian activities, Jesuit Refugee Service (JRS) is a regular visitor to Villawood Immigration Detention Centre, with an emphasis on Stage 1 where we host one of two regular weekly religious services there. We have been doing this for the past 7 years.

JRS also offers pastoral visits on request or referral to detainees with protection and related claims in Stages 2 and 3 as well as in Immigration Residential Housing. On occasions, this has led to an ongoing relationship post-detention with assistance offered to people in need of accommodation, material aid and help in integrating into the community. Our other activities in Australia include providing Asylum Seekers with housing, social welfare and financial support when they are released from Detention or they cannot work as a result of conditions placed on their Bridging Visa.

This submission is primarily based on my personal observations of Villawood Detention Centre and my interaction with detainees over the last four years. Comments refer to those with Protection or related claims.¹

There are four major issues, which I wish to bring to the committee members' attention:

1. Immigration Detention of its nature gives rise to prison-like conditions

GSL, in its *Code of Conduct for Volunteers Visiting Detention Facilities*, states that:

Immigration Detention is for administrative not correctional purposes.
Detention Centres are not prisons and they are not run like prisons. Within the

¹ Included are all claims and appeals related to asylum, including s417 and 501j claims.

facilities detainees are able to go about their daily lives with as few restrictions as possible. However they are secure facilities...²

However, the act of incarceration, which constitutes a denial of the right to freedom of movement, results in a number of psychological and sociological patterns of behaviour more characteristic of prisons. These behaviours are often blamed upon the detainees' pre-existing mental state and the frustrations associated with his/her case. While not denying these factors, incarceration itself, particularly of unknown duration, significantly and negatively influences detainees' psychological and emotional state.

No matter how well intentioned or skilled the providers of detention services are, they inevitably oversee a prison-like environment, and tend to adopt a management style where security of the facility outweighs any other objectives. This leads to detainees developing a heavily institutionalised mentality with associated patterns of behaviour. To hear a man go on about the denial of seven dollars from his monthly incentive allowance over what he perceived to be an injustice perpetrated by one of the guards is to realise that this detainee lives in an environment which engenders obsessive and distorted thought patterns by confirming and reinforcing feelings of powerlessness and at the same time discouraging human agency and creativity. *This is not a criticism of GSL* but is rather a natural outcome of denial of liberty and freedom of movement. One notes that populations experiencing long stays - "warehousing" - in refugee camps exhibit comparable patterns of behaviour.³

I am certain this leads, in some cases, to deficiencies in decision-making surrounding the detainees' cases. One man I visited was facing deportation under a section 501j order. He refused all offers of assistance and advice of which I was aware, preferring to write a highly emotive, naïvely conceived letter to the Minister, in the mistaken belief that s/he "would understand". The letter contained no new material or evidence concerning his case but rather constituted a highly emotive appeal. From information he had provided me, I believed he had significant humanitarian considerations that could have formed the basis for a more cogent case to be put to the proper processes.

My assertion is that the living situation at Villawood Stage 1 may have contributed to less realistic assessment and decision-making concerning his options. I say this without prejudice to the outcome of his case. This man was deported to a country where he had not lived for at least 15 years and with which he had no ongoing personal contact.

Much of my pastoral counselling consists of attempting to help these detainees retain or develop a realistic reading of their situation and to try to separate as far as possible their pre-occupations with aspects of their detention from the more substantive issues surrounding their cases.

I extend a similar analysis to some incidents of violent behaviour. On explanations given to me concerning such incidents, I conclude that they are more expressions of feelings of hopelessness caused by an accumulation of factors exacerbated by the exigencies of incarceration. This excludes incidents calculated to elicit attention from the authorities.

² Code of Conduct for Volunteers Visiting Detention Facilities: Document No VW-03-09_028/10/04

³ Abebe, Feyissa with Rebecca Horn, "There is more than one way of dying: An Ethiopian Perspective on the Effects of Long-term stays in Refugee Camps" in David Hollenbach, ed., *Refugee Rights: Ethics, Advice and Africa*, Washington DC, Georgetown Press, 2008, 13-26, esp. 17-18.

A related issue, also cited as a matter of concern in the Human Rights and Equal Opportunity Commission's (HREOC) *Summary of Observations following the inspection of Mainland Immigration Detention Facilities 2007*, is the procedure for people at risk of suicide and self-harm to be transferred to an intense management regime in Stage 1.⁴ Detainees undoubtedly see this as a punitive measure. Part of this management procedure seems to be to limit visits from outsiders.⁵ On one occasion I was asked to see a detainee in my capacity as religious visitor and was initially denied access on the grounds that the person was under a suicide / self-harm (SASH) management regime. On registering my objection to this at the highest levels of authority, I was permitted to see the detainee. However, I feel that this is an extension of the manner in which security is allowed to overshadow other human rights considerations.

It is highly ironic to me that people who have hugely varied requirements and preferences concerning food and who are often highly skilled in preparing it, are prevented from cooking their own meals because of the Occupational Health and Safety Standards necessary for such a large institution. Again, a culture of passivity and complaint is engendered. I contrast this with the enjoyment detainees assigned to Immigration Residential Housing at Villawood display at being able to obtain and prepare their own food.

All detainees whom I have spoken to post-detention talk of a significant period and process of adjustment on release. This is similar to prisoners undergoing a period of "de-institutionalisation", in which significant relationships and living arrangements need often to be renegotiated and living skills re-learned.

These comments apply particularly to detainees in Stage I, many of whose detention succeeds a time in gaol. It is at this point that there must be some better kind of preparation made for life post-incarceration, whether it be in Australia or in the country to which they are to be deported.

2. Detention for health identity and security checks and some pre deportation only.

One can accept that identity, health and security checks for foreign nationals of unknown status require temporary incarceration, but I fail to see a persuasive rationale for ongoing incarceration. If there must be a heightened security regime, I look to the experience of some European countries and Tamil Nadu, India where detainees are required to attend the detention centre at a given time at night but are free to go during the day in order to earn money and to conduct their own affairs. This seems to me to be a far more preferable option. I believe that this would decrease the costs of detention and hence less security staff would need to be put on during the day. Detention centres could then run a series of useful activities such as English teaching and cultural programmes and could enable detainees to participate in educational opportunities within the general community like TAFE etc. This seems to me to have far greater benefits.

⁴ Human Rights and Equal Opportunity Commission, *Summary of Observations following the inspection of Mainland Immigration Detention Facilities 2007*, December 2007, 26.

⁵ Both GSL management and DIAC assured me that this is not procedure unless there is risk of injury to the visitor. However it seems to have been the practice at least before I raised it with GSL management. These comments also do not apply to visits to Special Management Unit where I have always been granted appropriate access.

I argue the case against protracted detention on grounds related to detainees', psychological and spiritual health and their ability to make informed choices concerning their cases. Protracted administrative detention also goes against the application of the rule of law, one of the foundations of the Australian legal system.⁶ Australia retains mandatory detention for certain classes of asylum seeker for purposes greater than the conduct of health, security and identity checks for unlimited periods of time and in the absence of independent review of the need to detain. Detainees' treatment as prisoners both misrepresents their legal status and ill equips them for life post detention.

3. The physical infrastructure of parts of Villawood IDC is outmoded, run down and in urgent need of renewal. The clear exception to this is Immigration Residential Housing which is the preferred model.

Villawood Stage 1 has an aged, outmoded and run down physical infrastructure. I am aware that the potential for the destruction of property is high within this Stage and attempts have been made by GSL to improve the physical environment. However, the dining and recreational areas remain sub-standard and heavily institutionalised. HREOC's *Summary of Observations* gives an accurate assessment of the physical infrastructure there:

[Stage 1] has the strong appearance of a prison. It is run down, especially the dormitories, and the atmosphere is harsh and inhospitable. HREOC staff were shocked by the dilapidated infrastructure of Villawood Stage 1 compared to other facilities...⁷

Stages 2 and 3 are more modern but still engender a prison-like environment with the potential effects cited above. Immigration Residential Housing offers a much more suitable model for detention and allows people their own cooking facilities and is in general much more appropriate to detainees' needs.

4. The need for effective management and timely processing of claims

A significant factor affecting detainees' psychological health is simply the length and open-ended nature of their incarceration. The progression of their case is most often the most significant factor affecting length of incarceration and thus their psychological and emotional state.

I can recount many instances of processes breaking down in the handling of cases, which lead to far more frustration than with any given detention regime. These difficulties are not necessarily to be sheeted home to GSL or even DIAC. For example, one detainee faxed his case papers to the lawyer assigned to him through the IAAAS Scheme, only to be told the fax never reached the lawyer. Indeed, the lawyer asserted that the fax was not sent. The detainee was able to access the fax records from the appropriate machine. Such an incident points to shortcomings in a system that is charged with determining this person's future and erodes his/her trust in the system.

However it is once again exacerbated by the simple fact the detainee cannot go to the lawyer's office easily but is stuck inside a detention regime feeling powerless.

⁶ David Manne, "A Human Rights Approach to Immigration Law" Human Rights Law Resource Centre Bulletin No. 24, April 2008, 1-3, 1.

⁷ Human Rights and Equal Opportunity Commission, *Summary of Observations following the inspection of Mainland Immigration Detention Facilities 2007*, December 2007, 43-44.

5. Summary

- a. Administrative Detention should only be for health, identity and security checks and for some pre-deportation or security-risk scenarios. There is no need for ongoing incarceration beyond this for those expediting protection or related claims.
- b. Any administrative detention must have as its objectives:
 1. Aid to the timely processing of claims.
 2. Preparation for integration of the detainee into the community of reception post-detention without prejudice to the case outcome.This is to treat the person as a protection claimant rather than a detainee.
- c. Improvements to the physical infrastructure of Stage 1 Villawood IDC are urgently needed, as suggested by HREOC and others.
- d. Incarceration serves only to engender prison-like attitudes among staff and detainees alike, with attendant psychological and spiritual harm and a reduction in detainees' abilities for rational decision-making. Suggested Improvements include allowing detainees to obtain food and cook for themselves. The Immigration Residential Housing provided at Villawood is the preferred model of housing that could act as a vehicle for this. Other options in terms of immigration detention should also be considered, for example night time detention only (allowing detainees opportunities to earn their own money, pursue study and conduct their own affairs) and the provision of useful activities such as English teaching (as is the case now).

Again, Jesuit Refugee Service Australia commends the Australian Government and Joint Standing Committee on Migration for holding this inquiry and looks forward to the resulting recommendations and reform.

David Holdcroft

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Jesuit Refugee Service Australia

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