Submission to the Expert Panel on Asylum Seekers

Air Chief Marshal Angus Houston AC AFC (Ret'd),
Mr Paris Aristotle AM and
Professor Michael L'Estrange AO

Brotherhood of St Laurence

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Brotherhood of St Laurence
67 Brunswick Street
Fitzroy Vic. 3065

ABN 24 603 467 024

www.bsl.org.au

For further information or to discuss this submission, please contact:

(Ms) Hutch Hussein
Senior Manager, Refugees Immigration and Multiculturalism
Brotherhood of St Laurence
Email: hutchhussein@bsl.org.au
Ph: (03) 8412 8718

1 Executive summary

The Brotherhood of St Laurence (BSL)[1] recommends the following essentials to a solution:

a) Accessible and timely processing of asylum claims through a strong and coordinated regional framework
    - In accordance with the *Refugees Convention and Protocol*
    - Whether in Australia or in transit countries in the region
b) Guaranteed resettlement to a refugee receiving country that is time-bound, requiring a significant increase in refugee settlement places in Australia and elsewhere to avoid refugees left languishing for years in the region
c) Ability to live/ earn/ not be detained during processing
    - Whether in Australia or in transit countries in the region
    - in line with UNHCR Guidelines
d) Strong enough functioning of the above three points a) - c) so it is not a "pull" to get on a boat as the only solution (this is compared with deterrence solutions that punish refugees)
e) Multi-dimensional solutions that that go beyond essential border management l or counter-smuggling and represent a genuine regional cooperation and re-settlement framework.

2 Context and pressing issues

The last few weeks have seen increased deaths at sea of people seeking asylum and an ensuing political stalemate.

- People coming by boat are drowning at sea trying to claim asylum in Australia – they are mainly Hazaras fleeing Afghanistan with some Tamils fleeing Sri Lanka. Similar to other asylum seeker boat arrivals, within which 90% have been found to be genuine refugees.
- The region is not able to effectively protect refugees, despite hosting significant numbers. A June 2012 "Global Trends 2011" report from the UN High Commissioner for Refugees shows 2011 to have been a record year for forced displacement across borders, with more people becoming refugees than at any time since 2000. In all, 4.3 million people were newly displaced, with a full 800,000 of these fleeing their countries and becoming refugees. Viewed on a 10-year basis, the report shows several worrying trends: One is that a person who becomes a refugee is likely to remain as one for many years – often stuck in a camp or living precariously in an urban location. Of the 10.4 million refugees under UNHCR's mandate, almost three quarters (7.1 million) have been in exile for at least five years awaiting a solution.
- People turn to dangerous boat trips via people smugglers to Australia because there are few countries that have signed the *Refugees Convention and Protocol*[2] who offer better conditions and rights than their home country. Within the Asia-Pacific region, only Australia, New Zealand and Japan (since 2010) offer to permanently settle refugees.
- Even those recognised as refugees by the United Nations High Commission for Refugees (UNHCR), find themselves trapped in unsafe and in very poor circumstances, often forced to survive illegally and seen as "illegal", and often continue to suffer human rights abuses. Access to education, work and housing is an ongoing issue.
- The length of time for recognised refugees to be offered a resettlement place can be years and people are left with little hope of ever being resettled. As well as massive resettlement backlogs, the quality of processing of claims differs between UNHCR in the region compared with Australia.

[1] See Annexure 1 for overview of BSL and its work with refugees.

[2] Countries that are signatories in the *South East Asian region* are limited to Cambodia, East Timor, and Philippines. In the *East Asia and Pacific region* signatories are America Samoa (USA), Australia, China, Fiji, French Polynesia (France), Japan, Macau (China), Nauru, New Caledonia (France), New Zealand, Northern Mariana Islands (USA), PNG, Samoa, South Korea, Solomon Islands and Tuvalu.

3 Response to Terms of Reference

How best to prevent asylum seekers risking their lives by travelling to Australia by boat

Source, transit and destination country aspects of irregular migration

Recommendations: What is essential in a solution?

BSL's recommendations are similar to those proposed by the Refugee Council of Australia:

1. Accessible and timely processing of asylum claims
    - In accordance with the *Refugees Convention and Protocol*
    - Whether in Australia or in transit countries in the region
2. Ability to live/ earn/ not be detained during processing
    - Whether in Australia or in transit countries in the region
    - in line with UNHCR Guidelines
3. **Guaranteed resettlement** to a refugee receiving country that is time-bound so not languishing for years in the region, or in detention

4. Strong enough functioning of the above three points a) - c) so not a "pull" to get on a boat as the only solution (this is compared with deterrence solutions that punish refugees)

5. Multi-dimensional solutions that don't just target border control or counter-smuggling and represent a genuine regional cooperation framework

Recommendations: Ways to reach the essentials of a solution

- Genuine regional (Asia-Pacific) partnerships, so a solid action plan for the region can be made. This will take time, and must recognise the resource differences of countries such as Australia.
    - The *Bali Process* is progressing but a long way from being operational.[3]
- Dramatically increase number of UNHCR officers processing claims for timely attention. This requires a focused and increased resource allocation.
- Countries of first asylum (whether signatory or not) allow asylum seekers to work and not be detained or returned to their country of origin during the refugee determination process[4]. This will require legal changes in different countries.
    - Accommodation support provided through an NGO - i.e. Red Cross, IOM if UNHCR not able to coordinate. Resourcing needed particularly from more prosperous countries for living support for asylum seekers.
- Significant breakthroughs needed in **time bound resettlement**[5] acceptances from countries including but not limited to Australia. This would mean that recognised refugees waiting in transit countries would be given a time frame (say 2-3 years) as the outer limit for their resettlement to a refugee resettlement country.

[3] See summary of Dr Savitri Taylor, La Trobe University at http://www.frlan.org/content/refugee-protection-asia-pacific

[4] Some countries have at least signed the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and/or the *International Covenant on Civil and Political Rights*, which gives rise to obligations including *non-refoulement*.

[5] UNHCR lists the main resettlement countries as USA, Australia, Canada, Sweden, Norway, New Zealand, Finland, Denmark, Netherlands and UK. The only Asian resettlement country is Japan, which only began taking refugees for resettlement in 2010.

- Australia to support higher quality processes and consistency in fairer decision-making on refugee visas.
- Establish effective regional processing centres[6] in transit countries in the South East Asian region (such as Malaysia and Indonesia) as a new meaning to 'offshore processing' which decreases the incentive to get on a boat because it would include a promise of resettlement to those found to be refugees within a specific time. Australia would need to increase refugee places so that the waiting time does not blow out and become untenable with people resorting to boat journeys in desperation.

The difference to the current system of UNHCR officers processing cases in the region is that they are under-staffed, process cases slowly and most significantly cannot provide resettlement timeframes because of the unwillingness of countries to receive refugees[7]. This approach would ensure refugees enter Australia in a more safe and orderly manner, and is likely to impact on their welcome to Australia by the broader community and set them in good stead for the start of their settlement experience. Apart from former PM Malcolm Fraser's stronger leadership on this matter, this practice partly explains the much more positive welcome the Indo-Chinese experienced under a similar Fraser Government initiative in the 70s, where 97% refugees were flown over from a Philippines or Indonesian-based processing centre (regarded as "authorised") and only 2059 (3%, regarded as "unauthorised") arrived by boat.

Relevant international obligations

BSL strongly encourages the Australian Government to uphold its **moral and legal** obligations under the *Refugees Convention and Protocol* and under other international conventions such as the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, the *International Covenant on Civil and Political Rights (ICCPR)*, the *Convention on the Rights of the Child (CRC)* and the *Safety of Life at Sea Convention*. BSL notes that aspects of Australia's immigration detention policy and non-refoulement obligations have received international criticism including from the UN Human Rights Committee[8] and the UN Committee on the Rights of the Child[9]. BSL is particularly concerned on a regional level that countries of first asylum (whether signatory to the *Refugees Convention* or not) allow asylum seekers to work and not be detained or returned to their country of origin during the refugee determination process. This will require legal change in different countries.

Further commentary on international obligations is not within the expertise of BSL, however the expert panel is requested to consider the following sources.

Dr Savitri Taylor[10], Associate Professor at La Trobe University in Law has prepared a number of scholarly papers[11] on Australia and regional forced migration issues which are very relevant to the Expert Panel's Terms of Reference. She has also prepared a useful comparison table online[12]

[6] See idea of Julian Burnside AO QC on a new way of seeing offshore processing at http://www.abc.net.au/unleashed/4104532.html on 2 July 2012

[7] In 2011 less than 1% of the world's refugees benefited from resettlement in a third country, UNHCR Global Trends 2011, http://www.unhcr.org/4fd6f87f9.html

[8] http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-AUS-CO5-CRP1.doc

[9] http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf.

[10] http://www.latrobe.edu.au/law/about/staff/profile?uname=staylor

[11] Dr Savitri Taylor's scholarly papers can be accessed at: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=865259

[12] See summary of Dr Savitri Taylor, La Trobe University at http://www.frlan.org/content/refugee-protection-asia-pacific

demonstrating that while many countries in the Asia Pacific are not signatories to the *Refugees Convention and Protocol*, there are relevant non-refoulement obligations imposed under *CAT* and *ICCPR*.

The Asylum Seeker Resource Centre has raised in their submission to the Expert Panel the issue of the United Nations *Safety of Life at Sea Convention* in relation to forced return of Indonesian boats. The BSL requests that the Panel investigates the application of this Convention against recommendations to the Prime Minister.

The Law Council of Australia has provided extensive submissions[13] in relation to Australia's legal treatment of asylum seekers and BSL understands that they are addressing this term of reference in their response to the Expert Panel and will be well placed to provide authoritative advice on Australia's international obligations.

Short, medium and long term approaches to assist in the development of an effective and sustainable approach to asylum seekers

Recommendations: Short term

Within Australian control and the immigration system

- Increase places in Australia's humanitarian program to 25,000 places at a minimum.
- Decouple the link between refugees settled from offshore, and refugee arrivals onshore where offshore resettlement places keep going down – pre 1996, the humanitarian refugee program (currently at 13,750) was solely for those selected by the Australian Government with UNHCR processing. In the last financial year, only 850 places remained for sponsored humanitarian entrants. This will enable refugees settling in Australia to meaningfully apply and bring out family members to safety. At the moment the wait for places is untenable. It also fosters racism and causes rivalry between established migrants and asylum seekers, as the former see asylum seekers taking places from their sponsored and/or refugee camp awaiting relatives.
- Extend family migration visas to include siblings. Australians from refugee backgrounds may then sponsor these family members as migrants, and thus reduce the number of applicants to the Sponsored Humanitarian Program. The cap on the number of family migration visas over the last few years would need to be reviewed and lifted because it currently ensures lengthy waits for places.
- Change the Australian visitor visa 'risk factors' for cohorts denied visas because they may engage Australia's protection obligations, not because they are a significant security threat[14]. This would mean those with means to fly would come here on tourist visas then apply for asylum, rather than pay a people smuggler, go via boat, then end up in expensive immigration detention. It is recommended that it be trialed with the sponsored family visitor visa for those who an Australian family member or Australian Government official would be willing to sponsor them. This would be an effective approach to break the people smuggler's model.
- Amend the *Migration Act 1958* to end mandatory, automatic and indiscriminate detention of irregular boat arrivals and replace the detention system with supported community options, similar to the supports provided around the recent community detention program. Individuals, families and children who have experienced long periods of detention often require intense amounts of support upon post-release (often through the support of DIAC funded programs,

[13] http://www.lawcouncil.asn.au/programs/criminal-law-human-rights/human-rights/detention.cfm

[14] Idea drawn from Prof. Sharon Pickering, Monash University at http://theconversation.edu.au/six-issues-missing-from-the-asylum-seeker-debate-7947 on 28 June 2012

the health system or other government funded services such as the education system). This places a further burden on these government-funded services. DIAC recently introduced a Complex Case Support (CCS) program to cater for such needs. Whilst welcome, in 2010-2011 the expenditure nationally was $4.8m – it is questionable whether such large funds would have been required prior to such large numbers of refugees being held in detention. A large majority of CCS clients bear the brunt of the effects of long-term detention. The intensive support required as a result of the detention experience means that it does not make financial or social sense. Lengthy detention is counterproductive to the aims of DIAC funded programs and the support services provided upon release into the community, which promote 'good settlement' and integration.

Recommendations: Medium to Long term

As mentioned in the above section "Recommendations: Ways to reach the essentials of a solution" medium to long term recommendations include:

- Genuine regional (Asia-Pacific) partnerships so a solid action plan for the region can be made. This will take time, and must recognise the resource differences of countries such as Australia.
  - The *Bali Process* is progressing but a long way from being operational.[15]
- Dramatically increase number of UNHCR officers processing claims for timely attention. This requires a focused and increased resource allocation.
- Countries of first asylum (whether signatory or not) allow asylum seekers to work and not be detained or returned to their country of origin during the refugee determination process[16]. This will require legal change in different countries.
  - Accommodation support provided through an NGO - i.e. Red Cross, IOM if UNHCR not able to coordinate. Resourcing needed particularly from more prosperous countries for living support for asylum seekers.
- Significant breakthroughs needed in **time bound resettlement**[17] acceptances from countries including but not limited to Australia. This would mean that recognised refugees waiting in transit countries would be given a time frame (say 2-3 years) as the outer limit for their resettlement to a refugee resettlement country.
- Australia to support higher quality processes and consistency in fairer decision-making on refugee visas.
- Establish effective regional processing centres[18] in transit countries in the South East Asian region (such as Malaysia and Indonesia) as a new meaning to 'offshore processing' which decreases the incentive to get on a boat because it would include a promise of resettlement to those found to be refugees within a specific time. Australia would need to increase refugee places so that the waiting time does not blow out and become untenable with people resorting to boat journeys in desperation.

  The difference to the current system of UNHCR officers processing cases in the region is that they are under-staffed, process cases slowly and most significantly cannot provide resettlement

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[18] See idea of Julian Burnside AO QC on a new way of seeing offshore processing at http://www.abc.net.au/unleashed/4104532.html on 2 July 2012

timeframes because of the unwillingness of countries to receive refugees[19].This approach would ensure refugees enter Australia in a more safe and orderly manner, and is likely to impact on their welcome to Australia by the broader community and set them in good stead for the start of their settlement experience. Apart from former PM Malcolm Fraser's stronger leadership on this matter, this practice partly explains the much more positive welcome the Indo-Chinese experienced under a similar Fraser Government initiative in the 70s, where 97% refugees were flown over from a Philippines or Indonesian-based processing centre (regarded as "authorised") and only 2059 (3%, regarded as "unauthorised") arrived by boat.

Impact of these recommendations on successful refugee settlement

Whilst it is beyond the parameters of this expert panel's terms of reference to consider the impact of these recommendations on both the settlement service system and social welfare provision more generally, the Brotherhood of St Laurence believes that any large scale increase of refugee places will require a timely review of how best to advance and maximise settlement support for refugee arrivals, especially in employment assistance and volunteer community networks of support. Consideration ought be given to the following:

1. Expanded funding for initial intensive settlement services to cater for expanded cohorts;
2. Exploring the future role of the voluntary community sector – both religious institutions and volunteer community services organisations e.g. the BSL has partnered with an Anglican parish to establish an African-Australian Community Centre; and has a strategic partnership with the Rotary Club of Melbourne built on a common commitment to community service;
3. Testing new ways of fast-tracking asylum seekers and refugees into supported work-placement and employment programs e.g. building on the Brotherhood's proposed pilot of employment assistance for those on bridging visas with work rights to ensure their economic and societal integration is fast-tracked;
4. Developing community leadership capacity to support settlement related needs and encourage self-advocacy, as BSL is doing with its new African Australian Community Centre and in the Victorian State Government's funded Refugee Action Program (RAP) in partnership with Spectrum MRC.

Regional approaches and the Bali Process

When considering key features of a Regional Protection Framework, there are a number of matters that should be considered carefully. The Law Council of Australia has provided a list of questions for consideration of key features of any proposed framework in their 2010 submission to the Department of Immigration on *Biometrics and Offshore Processing of Asylum Seekers*[20] as follows. We endorse them as the basis of a well-considered regional framework:

Question	**Sub-Questions**
1. Who will process asylum seekers claims?	a) Will the UNHCR be involved?

[19] In 2011 less than 1% of the world's refugees benefited from resettlement in a third country, UNHCR Global Trends 2011, http://www.unhcr.org/4fd6f87f9.html

[20] http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=98A35E05-F849-8F3E-2C6B-3BA1CCC50082&siteName=lca

Question	Sub-Questions
	b) Will the Australian Department of Immigration and Citizenship (DIAC) be involved?
	c) Will the Immigration Departments (or equivalent) of countries participating in the regional program be involved?
2. What criteria will be used to process asylum seekers' claims?	a) What involvement or role will the UNHCR have in developing and applying these criteria?
	b) Will the criteria for a subclass 866 protection visa be used?
	c) Will the criteria for off-shore protection visas be used?
	d) Will the criteria of protection visas granted by other countries participating in the regional program be used?
	e) Will the same criteria apply to asylum seekers, irrespective of which partner country processes the claims and/or accepts the asylum seeker for settlement?
	f) Will health and medical criteria be applied? If so, what will those criteria be?
	g) Will decisions be subject to merits and judicial review?
3) Where will asylum seekers be processed and settled?	a) Will asylum seekers be detained? Will there be a maximum period of detention? How will conditions of detention be monitored? Will they have adequate access to services, including mental health services and education for children
	b) Will asylum seekers have access to legal assistance to make their claims?
	c) Where will asylum seekers be resettled?
	d) How will removal be managed and who will be responsible if an applicant is found not be a refugee?

The legislative requirements for implementation

See above section on "Recommendations: Short term - within Australian control and the immigration system" for relevant areas of the *Migration Act* and *Regulations* for amendment.

Annexure 1: Profile of the Brotherhood of St Laurence and the Ecumenical Migration Centre

The Brotherhood of St Laurence (BSL) is an independent non-government welfare organisation with strong community links that has been working to reduce poverty in Australia since the 1930s. Based in Melbourne, but with a national profile on matters of disadvantage, the BSL continues to influence in achieving its vision of an Australia free of poverty. The BSL's service activity, research capability, policy development and principles of advocacy are geared to influence social policy and support social change in ways that genuinely achieve the full social and economic inclusion of all in the broader community. It is this perspective that the BSL brings to the work it does with refugees, immigration and multiculturalism.

The Brotherhood takes an integrated view of individual, family, community and work life. Its broad portfolio of work falls across four life transitions: children and families in the early years, youth moving through school to work, adults in and out of work and older people facing the challenges of retirement and ageing. Integrated across these life transitions is the BSL's expertise in Refugees, Immigration and Multiculturalism (RIM) and in Financial Inclusion.

The Brotherhood's specialist refugee settlement centre, the Ecumenical Migration Centre (EMC),has since 1963 been at the forefront of work with recently arrived emerging communities as well as longer-settled disadvantaged groups to ensure their full social and economic participation in Australian society.

In 1999, the EMC was integrated into the BSL to reflect the belief that refugees, settlement and the principles of multiculturalism should be part of mainstream thinking, welfare and social policy responses. This union sought to bring together EMC's history of specialisation in the areas of refugees and humanitarian entrants and the BSL's 80 years' experience in service delivery, research capacity and social policy thinking. The benefits of this union are twofold: the BSL has incorporated settlement issues within its life transitions framework to ensure that social justice, equity and recognition concerns for recent humanitarian entrants are integrated with the broader mainstream effort while simultaneously strengthening the EMC's capacity to contribute to a deeper understanding of exclusion and disadvantage experienced by migrants and refugees through 'forced migration'.

The organisation has made a key contribution to the current community detention model when, the EMC, in its role as co-convenor of the Justice for Asylum Seekers (JAS) Coalition, ensured the Brotherhood's considerable social welfare and policy experience shaped the service model for vulnerable asylum seekers, *The Better Way*, as an alternative to mandatory detention.