



Brotherhood
of St Laurence

Working for an Australia free of poverty

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Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

8th August 2005

Dear Secretary,

Re: Inquiry into the administration and operation of the Migration Act 1958

The Brotherhood of St Laurence wishes to make a contribution to the Senate Legal and Constitutional Committee's Inquiry into the administration and operation of the Migration Act 1958, based on our service experience and research knowledge.

I) The administration and operation of the Migration Act 1958, its operations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications.

(a) Alternatives to high security detention

The Brotherhood of St Laurence, with its Ecumenical Migration Centre (EMC), has been actively working for just refugee policies through its policy development and documentation, including its publications, *Migration Action* and *Brotherhood Comment*. For the past three years, the EMC has co-convened the statewide alliance Justice for Asylum Seekers (JAS), an alliance of 30 church, welfare and community organisations, founded in 1999.

Justice for Asylum Seekers has proposed an alternative to mandatory detention, the *Reception and Transitional Processing (RTP) System*, which balances people's care needs with the need for border management and sound migration processes. The RTP system has been recognised by HREOC as providing a comprehensive model for the management of both adults and children.¹ It unifies the management of asylum seekers and features different levels of accommodation options, early assessment, case management by social workers and some level of income support or work rights.²

¹ HREOC (2004), *Inquiry into Children in Immigration Detention Report*, www.humanrights.gov.au/human-rights/children_detention_report: Section 17.4.3, Recommendation 2(b)(b).

² Justice for Asylum Seekers (2003), *The Better Way: Refugees, Detention and Australians*: <http://www.bsl.org.au/main.asp?PageId=15>

The RTP system does not compromise the Government's security concerns and has been independently costed by a public sector economist (*Improving Outcomes and Reducing Costs for Asylum Seekers*, JAS, 2002) and widely disseminated to Members of Parliament and to DIMIA. A strong understanding of cost efficiencies and other issues relating to economies of scale for care systems underpins the costing research. The RTP system has been shown to offer an 18% savings on the current system of mandatory and indefinite detention³.

As a step towards the RTP system, the Brotherhood of St Laurence has convened a consortium of state and national social welfare agencies since 2002. The role of this group has been to combine social welfare expertise with our knowledge of the Reception and Transitional Processing (RTP) System for asylum seekers, to develop a detailed consortium approach to a care system that ensures the most efficient and effective delivery of detention alternatives, including the current community detention arrangements.

Victorian welfare agencies are currently implementing a national project, funded by DIMIA and led by the Australian Red Cross, to develop a national policy framework for the release of people into community care. The project is developing the operational guidelines and referral protocols for working with person/s under a Residence Determination (formerly Alternative Places of Detention). All national social welfare agencies and refugee support groups accepting detainee releases are working on this initiative to ensure the new Residence Determination arrangements avoid the unhelpful and risky ad hoc arrangements previously used by DIMIA.

In light of the recent legislative changes under the *Migration Amendment (Detention Arrangements) Bill 2005*, the Brotherhood of St Laurence believes that a systematic response must be implemented to address the care needs of children and families released from detention centres into community detention arrangements (Residence Determination).

We believe the welfare "consortium" approach to a care system offers significant advantages, including:

- utilising the existing service system rather than creating a parallel system based on an ad hoc and inconsistent approach
- coordination by a reputable national agency, the Australian Red Cross, which will increase efficiency (for example, by using databases to identify housing options, coordinating material aid to avoid duplication) and effective deployment of volunteers in a supported system
- well-developed protocols already used daily by welfare agencies for client information sharing, assessing vulnerable populations and protecting privacy
- easier monitoring and evaluation, because our system is based on existing service delivery rather than a less established and less structured approach
- employing a case management approach, which allows for ongoing needs assessment (physical and psychological well-being); supports people at the different stages of the refugee determination process; and assists people to accept negative outcomes. This differs from casework, which is focused primarily on the delivery of services.

The Brotherhood of St Laurence recommends that:

1. *The Australian Government implement an alternative system of managing asylum seekers, based on the Reception and Transitional Processing (RTP) System developed by the Brotherhood of St Laurence and other welfare agencies.*
2. *The (existing) release of children and families into Residence Determination (community detention arrangements) be extended to other asylum seekers (singles and couples) remaining in detention centres, who pose no risk to the community.*

³ Dr Tony Ward (2003), *Improving Outcomes and Reducing Costs for Asylum Seekers*, Milbur Consulting, 2003: For a full description and analysis of the economic costs see this report on the BSL website www.bsl.org.au

(b) Processing and assessment of visa applications

The Brotherhood of St Laurence's service provision and development experience has drawn attention to a number of significant issues associated with the processing of onshore asylum seekers. This experience includes:

- working with community leadership and a small grant from the Victorian State Government to develop systems to ensure some support for those refugees released from immigration detention on a Temporary Protection Visa
- with funding from the Victorian State Government in 2004–05, mapping the ongoing needs of those released from detention on Temporary Protection Visas and developing a Statewide Action Plan outlining the services still required by this disadvantaged group
- since 2004, providing casework advice to the sole voluntary social worker who has been supporting the asylum seekers in detention on Christmas Island, and in July 2005, coordinating support for those refugees from Christmas Island released into Victoria on Temporary Protection Visas.

Of great concern is the length of time it has taken to re-assess and process the refugee claims of people on Temporary Protection Visas (TPV). The visa is generally issued for a period of 30 months. For many TPV holders, it has taken more than five years to have their Further Protection Visa application processed following reassessment of their refugee claim. In Victoria, out of an estimated 2780 people who have been on a TPV, 390 refugees are still awaiting the outcome of their Further Protection application (as at June 2005).⁴

To cite a specific example, after two years in detention, and five years on a TPV, an Iranian client was advised of DIMIA's decision to grant him a Permanent Protection Visa, pending police clearance. He can only begin the process of sponsoring his wife and child to join him in Australia once this is completed. He has now been waiting for eight months for a police clearance. He has been separated from his family by Australian Government policy for close to eight years.

The length of time taken in the processing of visas has caused enormous injustices for young refugees. Refugees who arrived in Australia as unattached minors believed that after 30 months they could sponsor their parents under the split family provisions of the Special Humanitarian Program. However, as many had to wait more than four years before being given Permanent Protection Visas, they are now older than 18 years, the age limit for sponsoring their parents under the Split Family provisions.

The Brotherhood of St Laurence recommends that:

1. *Temporary Protection Visas be abolished and replaced with Permanent Protection Visas which provide full access to services and family reunion rights.*
2. *Unaccompanied minors who have turned 18 years of age while on a TPV be given special consideration to allow for their reunification with parents.*

⁴ These figures include:

- Those waiting for a primary interview at DIMIA
- Those waiting for the outcome of their primary interview at DIMIA
- Those waiting to go to the Refugee Review Tribunal (RRT)
- Those waiting for the decision from the Refugee Review Tribunal
- Those granted a Permanent Visa pending Health and Character checks
- Refugees waiting for a decision at the Federal Court
- Those who have been rejected at the Federal Court and are currently on a Return Pending Visa

II) The adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention

The following information compiled from detainees and their advocates relates to issues arising from the detention experiences of those released from the Woomera Detention Centre five years ago as well as recently from the detention facility on Christmas Island. This shows that systemic failures in duty of care have not been satisfactorily addressed over five years.

Mental health care issues include:

- failure to provide adequate psychiatric, counselling, and health services – the practice of outsourcing is inadequate, poorly managed and communicated, and compromises scrutiny and evaluation of care and responsibility. It is not unusual for detainees to wait a week to see a suitable health professional.
- failure to provide a safe and secure environment for vulnerable groups in detention, demonstrated by children and others frequently witnessing self-harm and violence. There is little provision of secure accommodation for single women detainees.
- failure to provide adequate and appropriate translating and interpreting services.
- inadequate training of staff to enable them to provide appropriate care to children, women, detainees with a disability, detainees with particular cultural needs and sensitivities and detainees with mental health issues. For example, it is unacceptable to rely on poorly trained staff to decide which detainees will be placed on ‘suicide watch’.
- lack of cultural sensitivity among staff regarding the conditions under which women are detained.
- lack of protection for young adults and women who are detained with adult men, many with acute psychiatric issues.
- inappropriate management by staff including hourly watches over detainees (both day and night), insisting detainees sleep with the light on and waking people in the middle of the night to check on them.
- inability to implement preventative mental health strategies such as suitable leisure and visiting facilities. For example, there is a reported lack of information available to visitors about visiting times, numbers of visitors and the process of arranging a visit.
- lack of adequate lighting for evening study and reading.

The BSL recommends that:

- 1. Ongoing open and transparent monitoring of detention centre policies and practices be conducted in accordance with the spirit of the Palmer Inquiry Report recommendations.*
- 2. The RTP system be introduced as an alternative to address the mental health issues which are exacerbated by the current system of mandatory and indefinite detention of asylum seekers.*
- 3. DIMIA’s outsourcing of the management of Australian detention centres not be used as a mechanism for avoiding responsibility and accountability for the conditions and practices in Australian immigration detention centres.*
- 4. Immigration detention policies and practices operate in accordance with international standards of best practice.*

The Brotherhood of St Laurence welcomes the opportunity to contribute to this important review of the administration and operation of the Migration Act 1958.

We would be happy to discuss further the ideas set out in this submission and would be pleased to assist the Committee by facilitating discussions in camera with refugees who have experienced Australia's detention system should this be desired.

Yours sincerely,

Tony Nicholson
Executive Director
Brotherhood of St Laurence