



Refugee Council of Australia

September 28, 2010

Hon. Chris Bowen MP
Minister for Immigration and Citizenship
Parliament House
Canberra ACT 2600

Dear Mr Bowen,

As the national umbrella body for agencies working with refugees and asylum seekers, the Refugee Council of Australia (RCOA) has appreciated the fair and measured manner in which you have responded, since your recent appointment as Minister for Immigration and Citizenship, to the ongoing debate about asylum seekers and immigration detention. We look forward to a constructive dialogue with you on these matters, as well as on other matters of Australian refugee policy.

Given the pressing nature of the questions you are facing in managing immigration detention issues, we felt we should give priority to raising our concerns about the management of asylum seekers in detention and about the need for an urgent review of the policy of indefinite mandatory detention for asylum seekers who enter Australia without a temporary visa. With the divisive and destructive pre-election debate now over, we believe that you are well placed, as a Minister new to the portfolio, to rethink the current approach, particularly in light of the record number of people now in immigration detention.

We note with sadness the recent death of Josefa Rauluni and the protests and self harm which have occurred this month at Villawood and Darwin immigration centres. Many individuals and organisations have been fearing that such events would occur, given the past experiences of people being detained in large numbers for prolonged periods.

We cannot see that it is necessary to detain all asylum seekers arriving by boat for the entire time that it takes to conduct their refugee status assessment. The Government can, we believe, find an approach which is fairer to vulnerable asylum seekers, is much more cost-effective and appropriately manages risk.

In fact, in reviewing the criteria for detaining asylum seekers, you need look no further than the risk-based policy outlined by your predecessor, Senator Chris Evans, in July 2008. The Government's *New Directions in Detention* policy, widely welcomed as a positive new beginning for immigration detention policy in Australia, provides an effective framework to review detention arrangements for asylum seekers being managed under the excision policy.

Problems with detention: deficient in necessity, humanity and efficiency

Detaining asylum seekers indefinitely – particularly in remote and off-shore locations – has a significantly damaging psychological impact on already vulnerable people. Extensive research into the detrimental effects of long-term detention on people's mental, physical and psychological health has been published and was cited by Senator Evans as evidence for the adoption of a reformed detention system. The uncertainty and instability of indefinite detention is seen not only in the harm to the people detained but also in the difficulty of managing mental health needs.

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The Refugee Council of Australia represents
non-government organisations and
individuals working with and for refugees
in Australia and around the world

The detention of asylum seekers indefinitely contravenes a number of international human rights treaties to which Australia is signatory, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention Against Torture, and also ignores the United Nations High Commissioner for Refugees' guidelines in relation to the purpose, length, review, release and rights of immigration detainees.

The financial cost of housing asylum seekers in offshore and remote locations and transporting the necessary people and goods to these locations is extraordinarily high. Shortcomings in infrastructure and the limited nature of access to adequate health services, legal assistance and independent oversight have a negative impact on vulnerable detainees and put a tremendous strain on Government resources.

The Government's challenges in finding additional accommodation to detain asylum seekers and of managing the psychological impacts of detention would be significantly diminished if the *New Directions in Detention* policy was applied to asylum seekers arriving by boat without a visa.

Implementing and extending the *New Directions in Detention* policy

The *New Directions in Detention* policy notes that people who pass health, compliance and security checks do not need to be detained and allows for them to be moved into the community. Currently, this policy is being used only for asylum seekers who arrive by plane with a temporary visa. RCOA encourages you to implement this modern risk management approach fully and extend this policy to all asylum seekers.

The *New Directions in Detention* policy, commended by the Joint Standing Committee on Migration, is founded on the belief that "detention policy should reflect the values of Australia's democracy" (Senator Evans, 29 July 2008). These values – of honouring our international treaty obligations, of giving greater voice to our commitment to the rule of law and of acknowledging the centrality of the humane treatment of the individual – were all highlighted as integral to Labor's reforms to detention.

The implementation of this risk-based system that your Government has already adopted will alleviate the pressure to find more detention accommodation, will ensure that Australia complies with its international obligations and will deliver a more efficient, cost-effective system for government. A system which allows asylum seekers, after necessary checks are completed, to live independently while their long-term status is resolved, would be much more just and a vast improvement on current arrangements, both for individuals and for Government.

In announcing the *New Directions in Detention* policy, Senator Evans said that Labor's objection to the Howard Government's mandatory detention policy was not with the initial detention phase "but the continued and indefinite detention that occurred while lengthy immigration processes and appeals were completed". Unfortunately, the very aspects of the Howard Government's detention system that Labor found to be the harshest remain a part of the current Government's system.

RCOA is not calling for a change in policy. Rather, we recommend that the Government implement fully into law the policy framework that it so compellingly argued for just two years ago. To enshrine the reforms into legislation and to include all asylum seekers (including boat arrivals) will ensure a just, rigorously-followed system and also prevent any future erosion of this humanitarian approach.

The *New Directions in Detention* policy directs decision-makers to justify why a person should be detained rather than released to live independently in the community. By putting this policy framework into practice, the Government would only detain people who pose a demonstrable risk to the community. The detrimental impact of prolonged and indefinite detention of vulnerable asylum seekers would be minimised with the implementation of this risk-based approach. Codifying this framework into law would be in line with similar developments around the world.

International examples of a risk-based approach to detention

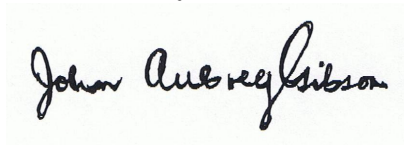
The Government's decision in 2008 to move to a risk assessment model of only detaining for identity and security purposes and then releasing people into the community is the approach being used to varying degrees in a number of countries, including the United States, Sweden, South Africa and New Zealand.

The United States has made major reforms to its immigration detention system, utilising a risk assessment tool that identifies mental health and other vulnerabilities that informs the decision to detain or release. Most asylum seekers in the USA have been released into the community. The USA has also instituted a "credible fear" policy that mandates that asylum seekers who have undergone identity and security checks and have a credible fear of persecution or torture should automatically be considered for release into the community.

Sweden has identified a model to ensure that low-risk asylum seekers are screened into the community with confidence. After initial health and security clearances, asylum seekers are released into the community while their applications are processed. South Africa, which received more than 220,000 new asylum applications last year, has legislated detention only as a last resort, with clear legal provisions for defining when detention would be necessary. South Africa has also developed a variety of models to deal with peak movements into the country. Last year, New Zealand revised its detention-related legislation. As of November this year, legal advice will be made available to asylum seekers who wish to challenge their detention in court.

The challenges in immigration detention require some fresh thinking and new perspectives and, as noted earlier, we believe that you are well placed to provide the leadership required. We would, of course, welcome the opportunity to discuss this matter further with you and your staff.

Yours faithfully,



John Gibson
President



Paul Power
Chief Executive Officer