

REFUGEE COUNCIL OF AUSTRALIA

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SUGGESTED TERMS OF REFERENCE FOR A JUDICIAL INQUIRY INTO IMMIGRATION DETENTION AND RELATED MATTERS

Background

Concern has been expressed for some time about the management of and conditions in immigration detention centres, particularly as they affect asylum seekers. Concerns have been raised by politicians, community groups and members of the public. Since November 2000, when allegations of child abuse in Woomera first appeared, the press have been covering the detention issue on an almost daily basis.

The Refugee Council of Australia has long held the position that Australia's policy of mandatory, non-reviewable detention is wrong. We agree with the many expert groups who have concluded that the policy is in breach of Australia's obligations under international law.[1] We also agree that the current policy is of great cost:

- to the individuals who have been deprived of their liberty;
- to the Australian taxpayer who has to pay for the costs of detention;[2] and
- to Australia's reputation as a country with a good human rights record.

The Council has also been deeply concerned about the many allegations that are being made about occurrences in the six immigration detention centres. It is the Council's belief that these allegations are of sufficient severity to warrant a judicial inquiry with the power to subpoena witnesses and documents and the power to provide protection to witnesses.

It is also the Council's belief that when such an inquiry is held, its terms of reference should go beyond the narrow confines of immigration detention and should look at the broader framework of Australia's response to asylum seekers.

While the terms of reference for the judicial inquiry would be drawn up by Parliament, the Council would like to propose consideration of the following.

Suggested Terms of Reference

1. Asylum Seekers in Detention

1.1. Investigate and report on the appropriateness and reasonableness of Australia's policy and practice of mandatory detention, taking into account its compliance with Australia's international obligations.

1.2. Investigate and report on the appropriateness and desirability of alternative models of detention, in order to determine whether they offer a more humane, cost-effective, reasonable, efficient alternative, consistent with Australia's international obligations, than the current mandatory detention system.

- 1.3. Investigate and report on the adequacy of access of asylum seekers to non-governmental agencies such as HREOC or the Commonwealth Ombudsman, and whether adequate or reasonable access to detention centres is provided to representatives of non-governmental agencies.
- 1.4. Investigate and report on the appropriateness and reasonableness of arrangements for the release of children and their families from detention, and whether there should be a mandatory prescribed period within which children and their families should be released from detention.
- 1.5. Investigate and report on the appropriateness and reasonableness of provisions concerning the release from detention of other prescribed categories of vulnerable persons or groups, and whether these categories are sufficient or should be expanded.
- 1.6. Investigate and report on the adequacy and appropriateness of resources allocated by the Government in respect of discharging its duty of care to detainees.
- 1.7. Investigate and report on the appropriateness, reasonableness and lawfulness of the use of force and restraint by ACM or DIMA officers in immigration detention centres, and whether policies, practices or guidelines meet with the requirements of Australia's international obligations.
- 1.8. Investigate and report on the appropriateness and reasonableness of separation detention or isolation of asylum seekers in detention, and whether the policy or practice meets with the requirements of Australia's international obligations.
- 1.9. Investigate and report on the appropriateness and statutory basis (or otherwise) of the DIMA practice of selective transfer of asylum seekers from immigration detention centres to State prison facilities or police lock-ups, and whether the policy or practice meets with the requirements of Australia's international obligations.
- 1.10. Investigate and report on the adequacy and appropriateness of DIMA being responsible for the management of immigration detention centres, and whether there is a conflict between the administration of general immigration policy and ensuring the provision of standards and conditions which meet the duty of care owed to asylum seekers in detention.
- 1.11. Investigate and report on the appropriateness and reasonableness of advice and access provided to detainees about their legal rights, including the right to apply for refugee status and the right to access legal advice, and whether there should be a positive obligation on the Department to specifically inform detainees of their legal rights.
- 1.12. Investigate and report on the appropriateness of the Department being responsible for determinations concerning the release of detainees from detention on health, psychological, and torture and trauma grounds, and the desirability and appropriateness of this being the responsibility of an independent mental health board, or other body.

2. Asylum Seekers in the Community

- 2.1. Investigate the targeting and quantum of funds being allocated to asylum seekers in the community.

3. Determination of Status

3.1. Investigate and report the adequacy and appropriateness of the administrative policy and process, and the legislative framework, in place for determining whether unauthorised arrivals have invoked Australia's protection obligations. In particular:

- (a) report on whether the current policy and practice of 'screening' unauthorised arrivals has any valid legal basis or justification and/or otherwise contravenes Australia's international obligations;
- (b) report on whether the current policy and practice has resulted and/or may result in denying asylum seekers access to the formal refugee determination process (and being refouled without sufficient consideration of their situation) in contravention of Australia's protection obligations;
- (c) report on whether, during the initial 'screening' process, unauthorised arrivals should be advised of their statutory entitlement to legal advice and/or be specifically offered access to legal advice before an assessment is made as to whether they are engaging Australia's protection obligations;
- (d) report on the adequacy and standard of interviewing at the initial 'screening' interview, and whether unauthorised arrivals should be specifically asked whether they are seeking refugee status before an assessment is made as to whether they are engaging Australia's protection obligations.

3.2. Investigate and report on the adequacy and appropriateness of the current refugee determination process, with particular reference to the Department's policies and practices for determining protection visa applications. In particular:

- (a) investigate whether primary decision-makers are adequately trained and resourced to facilitate and ensure proper assessment of claims for refugee status;
- (b) investigate whether primary decision-makers have the necessary skills, knowledge, experience and personal attributes to perform the decision-making function;
- (c) investigate the quality and consistency of primary decision-making;
- (d)

investigate other aspects of the Department's processes for determining asylum applications including, without limitation:

- the approach of individual decision-makers to issues of credibility;
 - the adequacy and appropriateness of Departmental checks on the right of a person to return to another country before a decision on refugee status is made;
 - the extent of the reliance on and quality of country information from Department of Foreign Affairs and Trade cables and/or the Departmental Country Information Service as compared to country information from other independent sources;
 - the Department's requirement that asylum seekers obtain overseas police clearances from third countries where they have resided.
- (e) investigate the use of interpreters to make assessments as to the credibility of asylum seekers;
 - (f) investigate the implications of DIMA not considering the ethnicity of interpreters provided to asylum seekers;
 - (g) investigate the screening of interpreters to assess whether adequate consideration is given to current or past political activities which are relevant to their ability to be impartial.

3. 3. Investigate and report on the adequacy and appropriateness of the exercise of discretionary powers under section 417 of the Migration Act to identify failed asylum seekers on humanitarian grounds, and whether the Ministerial Guidelines are properly addressing Australia's international human rights law obligations.

3.4. Investigate and report on the adequacy and appropriateness of the policy and practice of removal from Australia and monitoring of failed asylum seekers, particularly to countries of human rights concern, and whether Australia meets the requirements of its international obligations.

4. Temporary Protection Visa Holders (TPVs)

4.1. Investigate whether Temporary Protection Visa holders, granted refugee status, are being denied certain rights and essential services that amounts to a breach of international obligations.

4.2. Investigate and report on the policies and legislative provisions concerning the prohibition on immediate family reunion for Temporary Protection Visa holders, and whether these contravene Australia's international obligations. In particular report on whether the exclusion of Temporary Protection Visa holders from an entitlement to immediate family reunion contravenes the principle of unity of the family within the Refugees Convention, the UNHCR Guidelines on the treatment of refugees, and other human rights treaties to which Australia is a signatory.

5. Mental Health Experience of Asylum Seekers

5.1. Investigate the impact of detention on the mental health of asylum seekers and explore ways to ameliorate any negative effects.

[1] Including the United Nations Committee on Human Rights, The Human Rights and Equal Opportunity Commission, Amnesty International and the International Commission of Jurists.

[2] See "A Report on Visits to Immigration Detention Centres" - a report of the Joint Standing Committee for Foreign Affairs, Defence and Trade, June 2001, Chapter 3 for a discussion of costs.