



Uniting Church in Australia

**Submission to the Joint Select Committee on  
Australia's Immigration Detention Network**

August 2011

This submission was prepared on behalf of the Uniting Church in Australia by UnitingJustice Australia, a unit of the Uniting Church National Assembly with the assistance of the Justice and International Mission Unit of the Synod of Western Australian and the Hotham Mission Asylum Seeker Project, Melbourne.

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# Contents

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<b>Introduction</b>	<b>2</b>
<b>List of recommendations</b>	<b>3</b>
<b>1   Mandatory and indefinite detention</b>	<b>5</b>
1.1 Australia's human rights obligations to asylum seekers	5
1.2 Long and indefinite detention	7
1.3 The impact of detention on mental health	8
1.4 The June 2005 Migration Act amendments	11
1.5 Minor children in detention	12
1.6 Community detention of minors and vulnerable families	14
1.7 Minimum guidelines for detention of asylum seekers	14
<b>2   Options for community-based alternatives to immigration detention</b>	<b>16</b>
<b>3   Transparency and detention centre operations</b>	<b>18</b>
3.1 Excision and the Christmas Island Immigration Detention Centre	19
3.2 Offshore processing	20
<b>4   Infrastructure options</b>	<b>23</b>
<b>Appendices</b>	<b>24</b>
<b>Appendix 1</b>   Asylum Seeker and Refugee Policy, Uniting Church in Australia National Assembly	24
<b>Appendix 2</b>   Other Uniting Church National Assembly Asylum Seeker and Refugee resolutions	28

## Introduction

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The Uniting Church in Australia welcomes the opportunity to comment on aspects of the Australian immigration detention system.

The Uniting Church in Australia seeks to bear witness to our Christian faith through our program of worship, service and advocacy. In the Christian tradition of providing hospitality to strangers and expressing in word and deed God's compassion and love for all who are uprooted and dispossessed, the Uniting Church in Australia has been providing services to asylum seekers and refugees in the community and in detention for many years. The Uniting Church provides direct services to refugees and asylum seekers through its network of congregations, employees, lay people and community service agencies. Through our ministers, lay and ordained, who provide ministry to the asylum seekers in detention centres and through our work with asylum seekers and refugees settling into the community, we have first-hand knowledge of the consequences of Government policies.

In July 2002, the Uniting Church released its *Policy Paper on Asylum Seekers, Refugees, and Humanitarian Entrants* (see the appendices for this and other related resolutions of the National Assembly and Uniting Church Synods). This paper outlines principles for a just response to the needs of refugees, recognising Australia's responsibilities as a wealthy global citizen and the need to uphold the human rights and inherent dignity of all people. The Church advocates for a just response to the needs of refugees that recognises Australia's responsibilities as a wealthy global citizen, upholds the human rights and safety of all people, is culturally sensitive, and is based on just and humane treatment, including non-discriminatory practices and accountable transparent processes.

In its *Statement to the Nation* at its inauguration in 1977, the Uniting Church pledged

*to hope and work for a nation whose goals are not guided by self interest alone, but by concern for persons everywhere – the family of the One God – the God made known in Jesus of Nazareth (John 10:38) the one who gave his life for others.*<sup>1</sup>

The Uniting Church will continue to work for a compassionate, socially responsible society and government that takes seriously its national and international obligations. In this spirit, the Uniting Church offers this submission to the Joint Select Committee on Australia's Immigration Detention Network.

This submission will address the following issues, consistent with a number of the terms of reference outlined by the Joint Select Committee:

- Australia's policy of mandatory detention
- Australia's human rights obligations to asylum seekers
- The impact and effects on asylum seekers of mandatory detention
- Matters relating to the Minister's discretionary powers, especially as they relate to the release of minors from detention
- The development of guidelines for the detention of asylum seekers
- Options for alternatives to immigration detention
- Transparency and detention centre operations
- Christmas Island and offshore processing.

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<sup>1</sup> Uniting Church in Australia Inaugural Assembly (1977), *Statement to the Nation*, available: <http://nat.uca.org.au/unitingjustice/resourcearchive/assemblyresolutions/index.html>

## Recommendations

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The following recommendations should be read in the light of the Uniting Church's stated commitments to a policy which, among other things:

- seeks an end to the system of arbitrary, indefinite and mandatory detention for asylum seekers;
  - fulfils our obligations under relevant human rights treaties and instruments, especially the Universal Declaration of Human Rights, the Convention and Protocol Relating to the Status of Refugees, the Convention on the Rights of the Child and the Covenant on Civil and Political Rights;
  - does not discriminate in the treatment of asylum seekers on the basis of their movements prior to their application for protection or resettlement being made;
  - provides full access to settlement support and public services for all asylum seekers, refugees and humanitarian entrants;
  - accords asylum seekers full legal rights and protection; and
  - is accountable and transparent.<sup>2</sup>
1. The *New Directions in Detention* policy should be implemented in full in legislation and regulations.
  2. Asylum seekers should only be held in detention, in conditions that are not punitive and prison-like, for the very shortest period of time necessary to conduct security, identity and health checks.
  3. After these checks occur, asylum seekers should be released into the community while they await the outcome of their refugee claim, with full access to Medicare, casework and other support services and the right to work and undertake formal study. The Department of Immigration and Citizenship must be required to justify the continued detention of a person once these checks have been concluded.
  4. There must be a time limit on an asylum seeker's stay in detention, ideally 30 days. We also recommend the development of administrative and judicial review mechanisms to investigate instances when this limit is exceeded.
  5. Legislation should be altered to allow the Administrative Appeals Tribunal to hear appeals relating to negative ASIO security assessment for protection Visa applicants. This should be applied retrospectively for those who are currently detained with no prospect of release.
  6. Asylum seekers must have access to appropriate and high quality mental health services including specialist psychiatric care and torture and trauma services.
  7. The Minister's non-compellable powers to grant visas and to assign residential determinations should be amended to take into account the Migration Act's statement of intent, "a minor shall only be detained as a measure of last resort". The Minister should be compelled to use these powers to fulfil the intent of the Act. The Act should be amended to the effect that the Minister must consider the cases of all minor children and the Minister must be compelled to justify to the

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<sup>2</sup> These policy principles and more are described in the Policy Paper, Asylum Seekers, Refugees and Humanitarian Entrants, Uniting Church in Australia, 22 July 2002 (see Appendix 1)

Parliament a decision not to grant a residence determination or visa to any minor child whose case has not been considered.

8. An administrative process and review should replace the discretionary power of the Minister to make residential determinations and visa grants to minor children and all children and their families should be living in the community on bridging visas with entitlements while their cases are determined.
9. An independent guardian for unaccompanied minors seeking asylum must be immediately appointed.
10. The minimum conditions for detention should be codified in legislation and conform to our international human rights obligations in this area. The Uniting Church suggests that these conditions conform to the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*.
11. Once in the community, all asylum seekers must have access to the full range of services needed to support themselves and their families. The minimum standards that must be in place for all asylum seekers should include:
  - the right to work;
  - access to healthcare and the Pharmaceutical Benefits Scheme;
  - access to income support;
  - specialised casework support; and
  - the ability to undertake formal study
12. Detention facilities must be placed under the care and management of the State.
13. The excision of territories from Australia's migration zone must be repealed.
14. The facility at Christmas Island must not be used as an immigration detention centre.
15. The Government must not enter into offshore processing arrangements with Papua New Guinea and Nauru.
16. The facilities for administrative detention should be designed in an open rather than prison-like manner to ensure that the buildings and the facilities are: safe for everyone, especially young people, women and elderly people; appropriate for families and people with disabilities; culturally appropriate, especially with regards to kitchen facilities; offer suitable places for worship, prayer and meditation, and private counselling and visitation.

## 1 | Mandatory and indefinite detention

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The Uniting Church finds the situation for asylum seekers in Australia entirely unacceptable and in this submission reiterates the call it has made on successive Australian Governments to investigate and implement alternatives to mandatory and indefinite detention for those seeking asylum in Australia. The Eighth National Assembly of the Uniting Church in 2000, for instance, resolved to call on the Australian Government to end the long period of detention experienced by some refugees and asylum seekers.<sup>3</sup>

The *New Directions in Detention* policy announced in 2008 by the then Immigration Minister, the Hon. Chris Evans, signalled a major step towards a humane and decent policy that reflected Australia's commitment to uphold its obligations under the Refugee Convention. It is disturbing how far away from this policy the current Government has strayed. The effects on asylum seekers have been devastating and our international reputation as a strong advocate of human rights is tarnished. For these reasons and in light of the content in this submission, we recommend that the Government urgently review its current approach and move towards implementing the *New Directions in Detention* policy in full in legislation and regulations.

### **Recommendation 1 |**

The *New Directions in Detention* policy should be implemented in full in legislation and regulations.

### **1.1 Australia's human rights obligations to asylum seekers**

Australia's national and strategic interests are best served by acting as an exemplar in the international human rights system. Australia has an interest in promoting human rights and democracy within the region, and the fairness and integrity of its policies for refugees and asylum seekers are a key part of this goal. The lowering of Australia's refugee and asylum seeker policy standards has the potential to impede the progression of human rights standards globally.

The Uniting Church believes that the mandatory, indefinite detention of asylum seekers in prison-like conditions is in breach of Australia's international human rights commitments and obligations. Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a signatory, states that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention." Here, the term "arbitrary" includes not only actions which are unlawful but also those which are unjust or unreasonable. The jurisprudence of the Human Rights Committee has indicated that detention must be a proportionate means to achieve a legitimate aim, having regard to whether there are alternatives means available which are less restrictive of rights.<sup>4</sup> We do not believe that holding asylum seekers in immigration detention for the entire length of time needed to determine the result of their claim is appropriate when there are alternatives available.

In numerous submissions to Government over many years, including our submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia in July 2008, the Uniting Church has maintained that detention only be used as necessary to conduct appropriate identity, health and security checks and these

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<sup>3</sup> Uniting Church in Australia Assembly Resolution 00.21.03, 2000 (see Appendix 2)

<sup>4</sup> HREOC (1998) *Those who've come across the seas: Detention of unauthorised arrivals*, p.44, available: [http://hrecoc.gov.au/pdf/human\\_rights/asylum\\_seekers/h5\\_2\\_2.pdf](http://hrecoc.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf), accessed: 10 July 2008

checks should be completed as quickly as possible. After this has occurred, asylum seekers should be released from detention and into the community while their protection claims are being assessed, with full access to Medicare, casework and other support services and the right to work and undertake full-time study.

We agree with the Australian Human Rights Commission that the need to detain a person should be assessed on a case-by-case basis and a person should only be held in detention if they are determined to pose a risk that cannot be addressed in any other way.<sup>5</sup>

Detention for any period after a set limit, ideally 30 days, should automatically come under administrative and judicial review. Whilst we acknowledge that the Ombudsman plays a role in reviewing long-term detention cases, this review mechanism only applies to asylum seekers who have been in detention for two years or longer, a time limit we do not feel is acceptable. Furthermore, current legislation does not make the Minister accountable to the public or to the Parliament for any decision not to follow the Ombudsman's recommendations, making this process ineffective in ensuring the humane treatment of asylum seekers in detention.

#### **Key Immigration Detention Values – No. 4**

*“Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and services provided, would be subject to regular review.”*

The detention of all asylum seekers who arrive by boat is “arbitrary”. It is not “risk-based” as was the commitment made in *New Directions in Detention* (in a speech delivered by the Minister on 29 July 2008). It discriminates on the basis of mode of arrival, seeking to punish those who arrive by boat. This is in direct contradiction to the statement in the *New Directions in Detention* speech that “Labor rejects the notion that dehumanising and punishing unauthorised arrivals with long-term detention is an effective or civilised response. Desperate people are not deterred by the threat of harsh detention – they are often fleeing much worse circumstances”.

There should be no discrimination in the treatment of asylum seekers based on mode of arrival.

The Ombudsman's review after two years is insufficient and fails to meet the intent of this Value.

The United Nations Report of the Working Group on the Universal Periodic Review (UPR) of Australia contains 15 recommendations which relate to Australia's policy of Mandatory detention for asylum seekers.<sup>6</sup> The Australian Government's positive engagement with the UPR process is to be commended. We remain concerned, however, that while the Government responded to the recommendations about refoulement (indicating the forthcoming passage of Complementary Protection legislation) and those which raised concerns about children in detention (with the Government describing its intention to move minor and vulnerable families out of

<sup>5</sup> Australian Human Rights Commission (2010), *Immigration Detention in Darwin: Summary of observations from visits to immigration detention facilities in Darwin*, Recommendation 1, p. 29, available: [http://humanrights.gov.au/human\\_rights/immigration/idc2010\\_darwin.html](http://humanrights.gov.au/human_rights/immigration/idc2010_darwin.html)

<sup>6</sup> <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AUSession10.aspx>

immigration detention), the recommendations around the policy of mandatory detention itself was not addressed.<sup>7</sup>

**Recommendation 2 |**

Asylum seekers should only be held in detention, in conditions that are not punitive and prison-like, for the very shortest period of time necessary to conduct security, identity and health checks.

**Recommendation 3 |**

After these checks occur, asylum seekers should be released into the community while they await the outcome of their refugee claim, with full access to Medicare, casework and other support services and the right to work and undertake formal study. The Department of Immigration and Citizenship must be required to justify the continued detention of a person once these checks have been concluded.

**Recommendation 4 |**

There must be a time limit on an asylum seeker's stay in detention, ideally 30 days. We also recommend the development of administrative and judicial review mechanisms to investigate instances when this limit is exceeded.

## 1.2 Long and indefinite detention

As a member of the Refugee Council of Australia, the Uniting Church shares the Council's concerns about the length of time taken to complete ASIO security assessments and the need for greater accountability and transparency with regards to security assessments. We draw the attention of the Committee to the Council's submission to the Parliamentary Joint Committee on Intelligence and Security – Review of Administration and Expenditure no. 9 (2009-10) Australian Intelligence Agencies and the recommendations contained therein.<sup>8</sup>

The Uniting Church is particularly concerned about those people (so far, few in number) who have received positive refugee status determinations but who have failed to gain ASIO security clearance. They cannot be returned home because this would constitute refoulement but neither can they be released into the community. They face indefinite detention with no avenue of appeal. The Uniting Church supports the Refugee Council's recommendation that,

*In line with the suggestion of the Inspector General of Intelligence and Security, legislation be altered to allow the Administrative Appeals Tribunal to hear appeals relating to negative ASIO security assessment for protection Visa applicants.*

Additionally we recommend that this be applied retrospectively for those currently detained with no prospect of release.

**Recommendation 5 |**

Legislation should be altered to allow the Administrative Appeals Tribunal to hear appeals relating to negative ASIO security assessment for protection Visa applicants. This should be applied retrospectively for those who are currently detained with no prospect of release.

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<sup>7</sup> Statement by HE Mr Peter Woolcott, Human Rights Council, 17<sup>th</sup> Session, 8 June 2011, Australia's response to the 145 recommendations of the UPR Working Group Report, <http://www.geneva.mission.gov.au/gene/Statement213.html>

<sup>8</sup> [http://www.refugeecouncil.org.au/resources/submissions/1103\\_ASIO\\_sub.pdf](http://www.refugeecouncil.org.au/resources/submissions/1103_ASIO_sub.pdf)



## Key Immigration Detention Values – No. 5

*“Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.”*

It is clear that in relation to certain groups of non-citizens, that is, asylum seekers who arrive by boat (“unlawful non-citizens” as defined by the Migration Act), the Government is failing to meet its own stated values. For this group of people, detention is a matter of first, and in fact only resort, and can often be imposed for far longer than what could be reasonably understood as “the shortest practicable time”. It is of particular concern that people now remain detained even after they have received a positive refugee status determination while they await the outcome of their final security clearances.

We recommend that the Government move to implement its *New Directions in Detention* policy, that “a person will be detained only if the need is established” and that “the presumption will be that persons will remain in the community while their immigration status is resolved”.

### 1.3 The impact of detention on mental health

Concerns about the impact of prolonged detention on the mental health of asylum seekers have been raised by a significant number of mental health professionals and numerous organisations, including the United Nations High Commissioner on Human Rights<sup>9</sup>, the Australian Human Rights Commission<sup>10</sup>, the Commonwealth Ombudsman<sup>11</sup> and Amnesty International<sup>12</sup>. In addition, several clinical studies have reported on the detrimental effects of detention on asylum seekers.<sup>13</sup>

The lengthy waiting time for detainees to have their claims determined, especially in relation to final security clearances which have seen people detained long after their refugee claims have been assessed, causes significant mental anguish, adding to their often already fragile mental health. Uniting Church detention centre chaplains (who over the years have served at immigration detention centres including Woomera, Curtin, Port Hedland and Baxter) and other regular Uniting Church visitors have been consistent in expressing their concerns that prolonged detention is destructive of people’s physical and mental health. They watched over years as hope

<sup>9</sup> See, for example, *Sydney Morning Herald* (26 May 2011) ‘UN rights chief slams ‘racist’ Australia’, <http://www.smh.com.au/world/un-rights-chief-slams-racist-australia-20110526-1f4yy.html>; and ABC Radio (2005), ‘UN critical of refugee detention on Nauru’, 18 April, transcript available: <http://www.abc.net.au/worldtoday/content/2005/s1347601.htm>

<sup>10</sup> For example, HREOC (1998) *Those who’ve come across the seas: Detention of unauthorised arrivals*, available: [http://www.hreoc.gov.au/human\\_rights/immigration/seas.html](http://www.hreoc.gov.au/human_rights/immigration/seas.html); and AHRC (2011) *Immigration detention at Villawood*, [http://www.hreoc.gov.au/human\\_rights/immigration/idc2011\\_villawood.html](http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.html)

<sup>11</sup> Commonwealth Ombudsman (2001), ‘Report of an own motion investigation into the Department of Immigration and Multicultural Affairs’ immigration detention centres’, [http://www.ombudsman.gov.au/files/investigation\\_2001\\_06.pdf](http://www.ombudsman.gov.au/files/investigation_2001_06.pdf)

<sup>12</sup> Amnesty International Australia (2007), ‘Mental health problems amongst asylum seekers’, available: [http://action.amnesty.org.au/refugees/comments/mental\\_health\\_problems\\_amongst\\_asylum\\_seekers/](http://action.amnesty.org.au/refugees/comments/mental_health_problems_amongst_asylum_seekers/); and ‘Submission to the UN Committee Against Torture: Report on Detention Conditions’, 3 November 2010, <http://www.amnesty.org.au/refugees/comments/24093/>

<sup>13</sup> See, for example, Steel, Z. and D. Silove (2001), ‘The mental health implications of detaining asylum seekers’, *The Medical Journal of Australia*, Vol. 175, pp.596-599; Sultan, A. and K. O’Sullivan (2001), ‘Psychological disturbances in asylum seekers held in long term detention: a participant-observer account’, *The Medical Journal of Australia*, Vol. 175, pp.593-596; Silove, D., Z. Steel and C. Watters (2000), ‘Policies of deterrence and the mental health of asylum seekers in Western countries’, *Journal of the American Medical Association*, Vol. 284, pp.604-611; McLoughlin, P., and M. Wirth (2008), ‘Corrosive places, inhuman spaces: Mental health in Australian immigration detention’, *Health and Place* 14, pp. 254-264; and Newman, L.K., M. Dudley and Z. Steel (2008), ‘Asylum, detention, and mental health in Australia’, *Refugee Survey Quarterly*, Vol. 27, No. 3, pp. 110-127

and purpose drained from people's lives as they lived in the punitive, harsh, isolating and often violent environments of these detention centres. As their time in detention continues, asylum seekers also experience loss and grief as fellow detainees are released or forcibly removed. These stresses combine, in an often devastating way, with anxiety about progression of their cases, the wellbeing of family members left behind and the debilitating effects of the trauma that caused them to flee their homelands.<sup>14</sup>

The Uniting Church's submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in 2008 expressed relief that conditions at that time had improved since the days of Woomera and Port Hedland. Over the last few years, as has been well documented in the media and as recent reports from the Australian Human Rights Commission indicate, conditions have once again deteriorated, with rising incidents of self-harm and attempted and, tragically actual suicide.

One of the most shocking reports was published in the *Daily Telegraph* on 11 August 2011. It reported the case of one of the longest serving detainees who had spent 22 nights sleeping in a mock grave he had dug outside his compound. It is incomprehensible that he was not flown to the mainland for psychiatric care on that very first night.<sup>15</sup>

The Ombudsman has reported that in 2010-2011 there were over 1100 incidents of threatened or actual self-harm and as a result announced on 29 July 2011 that his office would undertake an investigation into suicide and self-harm in immigration detention.<sup>16</sup> The Uniting Church welcomes this investigation.

#### Key Immigration Detention Values – No. 7

*“Conditions of detention will ensure the inherent dignity of the human person.”*

The mandatory detention of asylum seekers in prison-like conditions in remote locations for extended periods of time is antithetical to this value. It is unsurprising that people whose dignity is so abused sometimes react violently, engaging in self-harming behaviour or destroying property. It is a further abuse of a person's dignity to then punish them for responding to conditions where they feel unfairly treated, inappropriately cared for and not adequately informed about the progress of their claim.

It is the system of detention itself which must be reformed while those who have suffered such anguish must be offered substantial and quality healthcare and support.

We share widespread concerns about the availability and access to mental health services across the entire detention network but especially in remote centres such as Christmas Island, Leonora, Curtin and Scherger. We believe that asylum seekers, many of whom arrive having already suffered significant trauma, are exposed to further trauma by the very nature of their detention and the conditions under which they are detained. It is incumbent upon the Government to ensure that asylum

<sup>14</sup> Sultan, A. and K. O'Sullivan (2001), 'Psychological disturbances in asylum seekers held in long term detention: a participant-observer account', *The Medical Journal of Australia*, Vol. 175, pp.593-596

<sup>15</sup> <http://www.dailytelegraph.com.au/news/sydney-nsw/christmas-island-detainee-sleeping-in-mock-grave/story-e6freuzi-1226112727918>

<sup>16</sup> <http://www.ombudsman.gov.au/media-releases/show/189>

seekers have access to the best quality mental health services, including specialist psychiatric care and torture and trauma services.

**Recommendation 6 |**

Asylum seekers must have access to appropriate and high quality mental health services including specialist psychiatric care and torture and trauma services.

It is disturbing that in the face of riots, hunger strikes and other incidents in immigration detention centres, the Government and the Department continue to focus their attention on the supposed 'character' of those involved in such incidents, in complete disregard of the cause of such responses – mandatory detention itself.

In May 2011, UnitingJustice wrote the following in its submission to the Senate Legal and Constitutional Committee's inquiry into the *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011*.

Instead of addressing the root causes of the issue of violence within Australia's immigration detention facilities, which we believe are the length of time people are held in these facilities and the effect of the detention environment on their mental wellbeing, the Federal Government is seeking to punish those who are victims of this system. The notion that anyone who commits an offence during their time in immigration detention should fail the character test does not take into account the detrimental effect of the detention environment on people held there for any significant length of time – an environment which is a direct result of Government policy.

The most recent statistics from the Department of Immigration and Citizenship show that 65.5 per cent of asylum seekers currently in detention have been so for more than six months, with 22.8 per cent having been detained for more than 12 months (as at 6 May 2011).<sup>2</sup> Numerous health professionals and refugee advocates have and continue to stress the detrimental effect a prolonged time in detention has on the wellbeing and state of mind of asylum seekers, many of whom have already experienced significant trauma in their home country. Most recently, these concerns have been raised by the Australian Human Rights Commission in its report on the Commission's visit to the Villawood detention facilities.

We are concerned that under the changes proposed in this Bill, the committing of a minor offence could prevent a refugee from being provided protection. We believe this to be a violation of the obligations and spirit of the Refugee Convention. The act of a relatively minor offence, which may include damage to property for instance, particularly when it occurs in the restrictive and oppressive environment of immigration detention, does not render a person unfit to be a part of our community.

In addition, we do not believe that the powers which presently reside with the Minister for Immigration and Citizenship under section 501 of the Migration Act are insufficient to address any character concerns which may arise during the refugee determination process.

We are of the view that the measures proposed in this Bill are a political response to misplaced public fear about asylum seekers in detention. This Bill and the Minister for Immigration's comments in the aftermath of protests at the Villawood and Christmas Island detention facilities only serve to reinforce the notion that is more important to protect Commonwealth property than to

safeguard the mental health of people who are detained by Australia without committing a crime.<sup>17</sup>

#### 1.4 The June 2005 Migration Act amendments

Despite the passage of the *Migration Amendment (Detention Arrangements) Bill 2005*, the Parliament-envisaged system of mandatory detention remains inequitable and top-heavy. Rather than prescribing transparent and accountable procedures for the award of visas, the amendments handed the Minister extraordinary powers of discretion. The amendments further concentrated power in the hands of the Minister, without setting in place stringent and transparent measures of public accountability.

The Uniting Church acknowledges the significance of Section 197AB which, for the first time, took account of the importance of considering individual characteristics and needs within the detainee population, such as age, gender, health. We believe that these changes to the Migration Act stand as a clear basis for further policy change in various areas of the Department's operation to better take account of people's individual needs and situations. Indeed the removal of minors and vulnerable families from IDCs to community detention is evidence of the positive effect of this legislation.

However, we are concerned by the operation of the two non-compellable powers granted to the Minister by the 2005 amendments. These powers include the ability to grant any kind of visa to any person "if she thinks it is in the public interest to do so", and to grant specific persons a community-based detention determination on an individual basis, again taking into account "the public interest". These decisions must then be tabled to Parliament, presumably to hold the Minister accountable to the public for decisions which bring new people into the community. However, the issue of public accountability and "the public interest" does not appear to encompass the Minister's justifying why he or she has chosen *not* to grant a visa to a particular individual.

Additionally, the notion that the Minister might make a decision based on what she or he "thinks" is in the public interest, and needs only to justify these thoughts in the event that they lead to certain outcomes, is unacceptable. Considering the imperative inscribed in the legislation, and the widespread reliance on ministerial powers of intervention we believe it is essential to hold the Minister accountable for the decisions made in relation to granting visas. This would necessarily include a review process making accountable:

- the Minister's interpretation of "the public interest",
- the process leading to a decision not to grant a visa in a particular case; and
- the Minister's reasons for not reviewing a particular case at all, especially as regards the case of a minor.

We note that, as previously discussed, the exception to this is in the case of asylum seekers who have been in detention for over two years' duration, whose cases are reviewed by the Ombudsman and the recommendations tabled in Parliament. In these cases, and these cases alone, the Ombudsman has been empowered to recommend courses of action to the Minister, which, in line with the non-compellable

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<sup>17</sup> Available from [http://www.unitingjustice.org.au/images/pdfs/issues/refugees/submissions/unitingjusticeaustralia\\_characterisation.pdf](http://www.unitingjustice.org.au/images/pdfs/issues/refugees/submissions/unitingjusticeaustralia_characterisation.pdf)

nature of the Minister's discretionary powers, she or he is under no formal obligation to undertake. The Ombudsman has the power to determine what constitutes fair and reasonable practice in the case of these long-term detainees. Presumably in these cases public scrutiny will be brought to bear upon the Minister's conception of "the public interest", should he or she choose to act other than according to the recommendations. However, the legislation provides no explicit requirement for the Minister to be accountable to either the public or to the Parliament for any decision not to follow the Ombudsman's recommendations.

### 1.5 Minor children in detention

#### Key Immigration Detention Values – No. 3

*"Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre."*

This value must be enshrined in legislation through amendments to the Migration Act that compel the Minister to use his or her power to fulfil the intention of the Act that no child be detained except as a matter of last resort.

While the concept of mandatory detention was upheld by the 2005 changes to the Act, the *form* of detention came under considerable scrutiny. The Act's statement of intent specifically noted that minor children "shall only be detained as a measure of last resort", with the proviso that such a statement is not intended to reflect on the new practice of community detention. While Subsection 5(1) of the Act makes it clear that an asylum seeker in receipt of a Ministerial residence determination is still covered by the umbrella of "immigration detention", the statement of intent seeks to differentiate community residence detention from the incarceration model currently in place.

On close examination the statement of intent regarding children is devious. While much was made of the intent for a more humane form of immigration detention proffered by the changed legislation, little attention has been drawn to the fact that the statement of intent is in practice contradicted by the obligations imposed by the Act both on individual immigration officers and on the Minister.

While the statement of intent refers to a "last resort" scenario for the detention of minor children, Section 189 of the Act maintains the mandatory detention principle as the fundamental cornerstone of the system. The Act compels immigration officials to detain all people reasonably suspected of being unlawful non-citizens, including those asylum seekers who have landed in territories excised from the migration zone. Those people detained outside of the migration zone cannot make a valid visa application, although the Minister may grant a visa if they determine it to be in the public interest to do so.<sup>18</sup> While the 2005 changes to the Act have broadened the scope and form of detention to include community determinations, these determinations may only be granted by the Minister. Indeed the Act states quite specifically that the discretionary Ministerial power may not be delegated – Section 197AF states that "The power to make, vary or revoke a residence determination may only be exercised by the Minister personally". As such, an immigration officer who reasonably suspects that any minor child is an unlawful non-citizen has an

<sup>18</sup> Coombs, M. (2004), 'Excisions from the Migration Zone – Policy and Practice', Parliamentary Library Research Note No. 42, March, Dept of Parliamentary Services

obligation to take that minor child into a custodial form of immigration detention. Detention of minor children is thus of necessity a first resort and a front line strategy, and not “a measure of last resort”.

The Minister’s powers of discretion are designed to both concentrate power for visa decisions and confine their scope. As it stands, the legislation’s clear statement of intent, “that Parliament affirms as a principle that a minor shall only be detained as a measure of last resort”, has no power to compel the Minister to grant a minor child either a visa or a community-based detention. In addition, should the Minister choose to reject a minor child’s application for a visa, the Act does not require the decision to be subject to parliamentary scrutiny. Indeed, the Minister is not compelled even to consider a minor child’s case, or to justify to Parliament why they chose not to consider such a case.

However a matter for real concern is that despite these absolute and non-compellable powers, the Minister is not empowered to carry out the intent of the Act by releasing all minor children as a group of asylum seekers from custodial detention. The Minister’s extraordinary power is limited precisely by the fact that it may not be delegated in any aspect of the decision, or make a general residence determination for minors. Subsection 197AB(2) of the Act states:

A residence determination must:

- (a) specify the person or persons covered by the determination by name, not by description of a class of persons

The Minister must individually and personally determine all cases, and the Department is not empowered to provide a community detention option for any cases that the Minister has not reviewed, regardless of the broad intent of the Act. Equally, there is no apparent measure in place to hold the Minister accountable for his decision not to grant a community detention place to a minor child.

We recommend that the Minister’s non-compellable powers to grant visas and to assign residential determinations should be amended to take into account the Migration Act’s statement of intent, “a minor shall only be detained as a measure of last resort”. The Minister should be compelled to use these powers to fulfil the intent of the Act. The Act should be amended to the effect that:

- the Minister must consider the cases of all minor children
- the Minister must be compelled to justify to the Parliament a decision not to grant a residence determination or visa to any minor child whose case has not been considered.

As it stands, concentration in the Minister’s hands of power to make residential determinations and visa grants to minor children is contrary to the intent of the Act. In order to rectify this, an administrative process and review should replace the discretionary power and all children and their families should be living in the community on bridging visas with entitlements while their cases are determined.

**Recommendation 7 |**

The Minister’s non-compellable powers to grant visas and to assign residential determinations should be amended to take into account the Migration Act’s statement of intent, “a minor shall only be detained as a measure of last resort”. The Minister should be compelled to use these powers to fulfil the intent of the Act. The Act should be amended to the effect that the Minister must consider the cases of all minor children and the Minister must be compelled to justify to the Parliament a decision not to grant

a residence determination or visa to any minor child whose case has not been considered.

**Recommendation 8 |**

An administrative process and review should replace the discretionary power of the Minister to make residential determinations and visa grants to minor children and all children and their families should be living in the community on bridging visas with entitlements while their cases are determined.

## **1.6 Community detention of minors and vulnerable families**

The Uniting Church in Australia and its community service arm, UnitingCare, are pleased that UnitingCare agencies have been able to participate in the Government's program to move families and unaccompanied minors from detention. While these efforts have eased the pressures in detention facilities and improved the lives of those released, it remains an unacceptable violation of Australia's human rights obligations for any person to be mandatorily detained when they have not committed a crime. The success of the community detention program is evidence that the mandatory and indefinite detention of asylum seekers is unnecessary. (See Section 2 below for further comment on this program.)

While this program is evidence that more humane methods of administering the detention of asylum seekers are possible, the Uniting Church maintains significant concerns that the current form of the Act leaves such approaches to the discretionary power of the Minister and recommends that the Act be amended to make it unlawful to detain minor children.

The Uniting Church also recommends the immediate appointment of an independent guardian for unaccompanied minors. We believe that the Minister's responsibility to administer the Migration Act and to implement Government policy poses an irreconcilable conflict of interest with his or her responsibilities as guardian.

**Recommendation 9 |**

An independent guardian for unaccompanied minors seeking asylum must be immediately appointed.

## **1.7 Minimum guidelines for detention of asylum seekers**

The Uniting Church strongly recommends that minimum conditions for detention be codified, and that these standards be based on the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*.<sup>19</sup> Whilst we appreciate that many improvements have taken place in recent years in terms of the operation of detention centres, these conditions will establish clearer standards than those currently stipulated in the Department's Core Operational Principles for detention and ensure Australia's practices conform to international human rights standards in this area.<sup>20</sup>

The guidelines state that the detention of asylum seekers is "inherently undesirable" and "should only be resorted to in cases of necessity." It should only occur in four instances:

1. To verify identity, in cases where identity may be undetermined or in dispute.

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<sup>19</sup> Accessed at: <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf>

<sup>20</sup> Accessed at: <http://www.immi.gov.au/managing-australias-borders/detention/about/core-principles.htm>

2. For preliminary interviews and identifying the basis of an asylum claim. It should not be used while determination of that claim is occurring.
3. When it has been established that an asylum seeker has had an intention to mislead or refuses to cooperate.
4. To protect national security and public order.

Special consideration should be given to any applicant who is deemed to be at high risk of adverse impacts from detention, which may include pregnant women, survivors of torture and trauma, and minors. For these applicants detention should be a last resort and for the minimum amount of time.

Any decision to detain an asylum seeker should be reviewable, either judicially or administratively, and must be exercised in a non-discriminatory manner. Where there are viable alternatives to detention, these must be employed first.

Detention should not be used as a punitive measure for illegal entry or presence in a country. Here, Australia's policy is in breach of the UNHCR guidelines, in that it punishes those who have entered the country without a valid visa compared to those who arrive with a valid visa. The guidelines also point out that the position of asylum seekers "differs fundamentally" from that of other immigrants, in that they may not be able to comply with the normal entry laws. They also state that this, as well as the often traumatic experiences that have caused asylum seekers to flee their homelands, should be taken into account when determining the need and suitability of detention.

**Recommendation 10 |**

The minimum conditions for detention should be codified in legislation and conform to our international human rights obligations in this area. The Uniting Church suggests that these conditions conform to the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*.

Guideline 10 states that conditions of detention must be "humane with respect shown for the inherent dignity of the person." These conditions must include, for instance, the initial screening of asylum seekers to identify victims of trauma or torture, information on and access to legal counsel, access to a complaints mechanism, the opportunity to continue education or vocational training and the opportunity to make regular contact with friends, relatives and religious, social and legal counsel and to conduct such visits in privacy.



## **2 | Options for community-based alternatives to immigration detention**

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The Uniting Church's position on the treatment of asylum seekers in the community is based on the first-hand experience of agencies such as the Hotham Mission's Asylum Seeker Project in Victoria. Hotham Mission runs a range of comprehensive services for asylum seekers, including supported accommodation, casework, financial relief, volunteer and support programs.

We believe that there is overwhelming evidence that outcomes for asylum seekers, including those who face return, are improved with community-based detention alternatives and swift, open and transparent determination procedures. Health outcomes are improved, readiness for life in the Australian community is improved, and should there be a need to be returned, people are better prepared because they feel that they have been treated humanely and fairly.

The Hotham Mission Asylum Seeker project has recently undertaken an evaluation of the Community-based Detention Program for Unaccompanied Young People Seeking Asylum. A fuller report on this evaluation is contained in their submission to this inquiry.

It is worth noting that the evaluation found that

young people feel very happy in community detention and feel “free” compared to non-community detention. Their health problems are attended to. They go to school and learn English. They learn about Australian culture and ways of doing things, and thus develop useful personal, social and task related competencies.<sup>21</sup>

It also concluded that community-based detention prepares these young people for life in Australia should a visa eventually be granted:

It gives them a chance to learn Australian culture. They go to school and learn English. They learn how to use the public transport system. They learn how to use Australian kitchen appliances for cooking and washing, and thus when, or if, they get a visa and leave the system they know how to look after themselves.

Living in the community rather than in closed detention helps people seeking asylum deal with change. This includes transitioning into the settlement system if their application is successful, but also engaging with IOM if their claim fails and they need to return.<sup>22</sup>

Whilst the Uniting Church and its agencies support the current community detention program, we believe that once initial health, security and identity checks have been performed, all asylum seekers who pose no risk should be released into the community with access to the full range of services needed to support themselves and their families.

### **Recommendation 11 |**

Once in the community, all asylum seekers must have access to the full range of services needed to support themselves and their families. The minimum standards that must be in place for all asylum seekers should

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<sup>21</sup> Hotham Mission Asylum Seeker Project, draft submission, Joint Select Committee on Australia's Immigration Detention Network, August 2011

<sup>22</sup> *ibid*

include the right to work; access to healthcare and the Pharmaceutical Benefits Scheme; access to income support; specialised casework support; and the ability to undertake formal study.

We would encourage the Government to explore the Community Assessment and Placement (CAP) Model developed by the International Detention Coalition and the LaTrobe Refugee Research centre at La Trobe University. The CAP model is based on a non-prescriptive framework arising from extensive research of mechanisms used by countries around the world “that prevent and reduce unnecessary detention”<sup>23</sup>. In its 5 step decision-making process, it is entirely consistent with the Government’s *New Directions in Detention* policy:

1. Presume detention is not necessary.
2. Screen and assess the individual case.
3. Assess the community setting.
4. Apply conditions in the community if necessary.
5. Detain only as the last resort in exceptional cases.<sup>24</sup>

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<sup>23</sup> Sampson, R., Mitchell, G. and Bowring, L. (2001) *There Are Alternatives: A handbook for preventing unnecessary immigration detention*, Melbourne: The International Detention Coalition, p. 5 available at <http://www.idcoalition.org>

<sup>24</sup> *ibid*, p. 4

### 3 | Transparency and detention centre operations

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The Uniting Church maintains that the immigration detention system must be transparent and accountable. As such, we urge that detention centres be taken out of the hands of private for-profit contractors, and placed under the care and management of the state. This is of primary importance in ensuring the wellbeing of asylum seekers and in connecting the lines of responsibility for conditions in detention centres back to the Government. We are concerned that the current and previous contractors are experienced in prison management while immigration detention centres hold people who have not been charged or convicted of any offence.

The effects of privately contracted management, including in relation to the provision of healthcare, have been evident over the years (and addressed in such reports as the Inquiry into the Cornelia Rau Matter by Mr Mick Palmer). It is of concern that the commercial-in-confidence contracts that operate under these circumstances mitigate against appropriate transparency and public scrutiny.

One example may suffice at this point to highlight the dehumanising conditions wrought by a service provider demonstrably ill equipped to provide the necessary care. In the days of early August, we have received reports from visitors to both Christmas Island and Curtin detention centres that SERCO staff are referring to detainees by their identification number only with apparently little or no attempt to learn people's names. There was no evidence of departmental officers calling people by number. This practice was widespread in the worst days of immigration detention post-Tampa – the most shocking incident we were witness to occurred at a Christmas concert at Port Hedland detention centre where children were called by their ID number to receive gifts brought in by a local community group. This practice strips people of their dignity and sense of worth. It is totally unacceptable and must be checked immediately. We note that the Australian Human Rights Commission in the 2010 report on its visit to the Christmas Island detention centre expressed concern about this and recommended that all staff and service providers refer to detainees by name and that

DIAC and Serco should ensure that staff training and performance management include a strong focus on treating all people in immigration detention with humanity and with respect for their inherent dignity.<sup>25</sup>

In its response to this recommendation, DIAC committed itself to address this matter:

The Department agrees with this recommendation and is committed to ensuring that all persons in immigration detention are treated with dignity and respect. This includes referring to all clients by name rather than identification number. Departmental Officers and Service Providers are provided with extensive pre-deployment training before they are seconded to Christmas Island and this includes an emphasis on the importance of engaging with clients in a professional, appropriate and respectful manner.<sup>26</sup>

The Uniting Church urges the Department to fulfil this commitment but it is our hope that by the time the Committee reads this submission, this practice will have ceased.

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<sup>25</sup> Australian Human Rights Commission, 2010 Immigration Detention on Christmas Island Report, p. 47, [http://www.hreoc.gov.au/human%5Frights/immigration/idc2010\\_christmas\\_island.html](http://www.hreoc.gov.au/human%5Frights/immigration/idc2010_christmas_island.html)[http://www.hreoc.gov.au/human%5Frights/immigration/idc2010\\_christmas\\_island.html](http://www.hreoc.gov.au/human%5Frights/immigration/idc2010_christmas_island.html)

<sup>26</sup> Response to the 2010 Australian Human Rights Commission Report on Immigration Detention on Christmas Island, p. 11, [http://www.hreoc.gov.au/human%5Frights/immigration/idc2010\\_christmas\\_island\\_response.html](http://www.hreoc.gov.au/human%5Frights/immigration/idc2010_christmas_island_response.html)

**Recommendation 12 |**

Detention facilities must be placed under the care and management of the State.

### **3.1 Excision and the Christmas Island Immigration Detention Centre**

The Uniting Church has a long history of calling for an end to the use of Christmas Island as an immigration detention facility and a reversal of the excision of territory from Australia's migration zone.

The Uniting Church believes that the excision of territories from our migration zone remains a symbol of a country unwilling to fulfil its obligations under the Refugee Convention and in denial about the right of people to seek asylum. We urge the Government to reverse the legislation relating to the excision.

In February 2010, the President of the Uniting Church in Australia, Reverend Alistair Macrae, visited Christmas Island with the Anglican Archbishop of Perth, the Most Reverend Roger Herft. They observed many challenges for providing adequate services and care for the over 1700 people who were detained on the Island at the time, including significant levels of anxiety amongst people who were experiencing delays in the processing of their cases and a lack of access to recreation and excursions and spiritual and pastoral care services.<sup>27</sup>

Since their visit, numbers increased and the situation on Christmas Island deteriorated<sup>28</sup>.

While we acknowledge that the departmental, SERCO and health and other support services staff are doing their best under extremely difficult conditions, the task of providing adequate care for asylum seekers residing in such a small and remote location is extremely complex. We have a particular concern for the level of training provided to SERCO staff and the appropriateness of the training for caring for vulnerable people in administrative detention, especially in the absence of qualified mental health professionals.

We are mortified to learn that the Management Support Unit (MSU) in Red Compound is now again in use at North West Point, ostensibly as a behaviour management unit<sup>29</sup>. We have always maintained that the use of such isolation compounds is simply unacceptable. We do not believe that SERCO and DIAC staff are appropriately qualified to run such a facility, and have serious concerns about the many human rights abuses which use of such a facility can give rise to. In State and Territory jurisdictions such facilities are legislated under Mental Health Acts and such Acts have strict guidelines for people being held in seclusion. People held in such areas are regularly reviewed by independent advisors and include such people as the Chief Psychiatrist or equivalent in the reviewing and oversight process. Nothing less than is appropriate for equivalent facilities in immigration detention centres.

The Australian Human Rights Commission also raised serious concerns about the use of this unit in its 2010 report:

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<sup>27</sup> The full report from the delegation's visit to Christmas Island can be found on the UnitingJustice Australia website at [http://www.unitingjustice.org.au/images/pdfs/issues/refugees/resources/christmasisland\\_reportfinal.pdf](http://www.unitingjustice.org.au/images/pdfs/issues/refugees/resources/christmasisland_reportfinal.pdf)

<sup>28</sup> see, for instance, Amnesty International Australia's recount, 'An uncertain future: inside Australia's detention facilities' (10 November 2010), available: [http://www.amnesty.org.au/refugees/comments/24020#Christmas\\_Island](http://www.amnesty.org.au/refugees/comments/24020#Christmas_Island)

<sup>29</sup> <http://www.news.com.au/national/refugees-better-off-in-cages/story-e6frfkvr-1226107991984>

The Management Support Unit (MSU) is a self-contained, high-security unit in the Red Compound at the IDC. In its 2008 and 2009 reports, the Commission raised concerns about the MSU. It looks and feels extremely harsh and punitive. The bedrooms are essentially small cells, with solid metal doors and grills on the windows. All furniture is hard and bolted to the floor. There are CCTV cameras in the bedrooms – including the toilet and bathroom areas – which cannot be turned off. There is no outdoor space where detainees have an open view of the sky, and no open space where they can freely walk or run.

During its 2009 visit the Commission welcomed the fact that the MSU had not been used, and expressed the view that it should not be. In the Commission's view it is inappropriate for accommodating asylum seekers, particularly those who may have experienced torture or trauma.<sup>30</sup>

Uniting Church staff have in the past observed the detention process on Christmas Island first-hand, and this experience informs our opposition to the Christmas Island facility. Uniting Church staff were disturbed by the isolation of the facility, and consequently the prohibitive cost for NGOs in gaining access to the centre. Airfares are extremely expensive, costing many thousands of dollars. This means that church and NGO staff, who provide a wide array of legal and advocacy services as well as casework and support to asylum seekers on the mainland, are hindered in carrying out these functions in the detention facilities on Christmas Island.

The isolation of the Christmas Island detention centre makes enabling access for asylum seekers to sufficient medical and psychological care expensive, time-consuming and traumatic for asylum seekers and their families. Providing asylum seekers the treatment necessary for their often complex medical needs requires flights to the mainland, which separates already extremely vulnerable families and is extremely costly.

Finally, the burden on the local community of Christmas Island is unacceptable. In 2007, Oxfam reported on the stresses that providing humanitarian support for detainees was having on the Christmas Island community. These stresses remain and were exacerbated by the boat tragedy in December 2010.<sup>31</sup>

**Recommendation 13 |**

The excision of territories from Australia's migration zone must be repealed.

### **3.2 Offshore processing**

The Uniting Church believes that it is Australia's responsibility to process the claims of asylum seekers who arrive on our shores. Asylum seekers who come by boat are not 'illegals'. They are exercising their right under international humanitarian law, to seek protection. We have expressed our opposition to the bilateral arrangement with Malaysia to trade 800 asylum seekers for 4000 refugees.

In a letter to all Federal Labor MPs and Senators, the President of the Uniting Church, the Rev. Alistair Macrae, and the General Secretary, the Rev. Terence Corkin wrote,

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<sup>30</sup> op.cit, p. 39

<sup>31</sup> Bem. K, N. Field, N. Maclellan, S. Meyer and T. Morris (2007), *A price too high: the cost of Australia's approach to asylum seekers*, available: <http://www.oxfam.org.au/media/files/APriceTooHigh.pdf>, accessed: 1 June 2008

Under the Convention, we have obligations to assess the claims for protection of everyone who arrives in our territory, regardless of how they arrive. This most recent policy announcement continues the various attempts (for example, the excision of territories from our migration zone and the so-called 'Pacific Solution') by successive Governments to re-define our obligations as pertaining merely to the resettlement of refugees from camps in other countries.

Australia's offshore resettlement program has been generous and successful. The Uniting Church in Australia has long been calling for an increase to the numbers of people accepted via this program. Our willingness and capacity to increase these numbers should not depend on the development of a bilateral agreement to 'swap' people.

We are also dismayed by the rhetoric of "refugee swapping" surrounding this announcement which dehumanises people who have already suffered degrading and dehumanising treatment. It is of deep concern to us that this language is so readily accepted into the public debate. The uncontested commodification of people in this way signals a grave moral crisis in Australia's public forum.

We are extremely concerned that this agreement is a political response to the continual misrepresentation of the arrival of asylum seekers by boat as 'illegals' and 'queue jumpers'. We fail to understand how the Government can regard it as acceptable for a country as wealthy and secure as Australia to punish one group of vulnerable people in order to send a message to another group of people.

We also have grave concerns about the process of transferring asylum seekers to Malaysia and the treatment they will be subject to once there.<sup>32</sup>

Our concerns regarding the limited capacity of the Malaysian Government to ensure appropriate care and protection have not been allayed by the signing and release of the agreement and the operational guidelines.<sup>33</sup>

The Uniting Church also maintains its long-standing opposition to use of facilities on Manus Island, Papua New Guinea and on 6 May 2011 the National Assembly issued a media statement which highlighted our opinion that Manus Island is an inappropriate location for asylum seekers, with no capacity for the delivery of adequate and appropriate legal advice and health and pastoral care<sup>34</sup>. People smuggling must be tackled at its source and priority must be given to long-term support for peace-making programs in countries prone to violence, abuse and persecution. The punishment of people who have already suffered and who are exercising their legal right to seek asylum in order to 'send a message' to another group of people is not only contrary to the Government's own *New Directions in Detention* policy, it is in itself a form of abuse.

The use of facilities in Nauru for offshore processing, as proposed by the Opposition, is also a matter of long-standing concern for the Uniting Church, for the same reasons as Manus Island. We do not believe that is appropriate for Australia to be

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<sup>32</sup> 9 May 2011, a copy of this letter can be made available on request

<sup>33</sup> We do, however, commend the Government for the release of these documents and its willingness to brief the refugee advocacy sector about the progress of the arrangement.

<sup>34</sup> <http://www.unitingjustice.org.au/index.php/issues/media-releases.html>

entering into arrangements with some of our most poverty stricken neighbours in order to avoid meeting our own international and moral obligations. Any additional Australian financial aid and development assistance that results from such arrangements does not mitigate against the inherent inappropriateness of offshore processing. Gaps in Australia's aid and development program must be addressed regardless of and separately to such arrangements.

**Recommendation 14 |**

The facility at Christmas Island must not be used as an immigration detention centre.

**Recommendation 15 |**

The Government must not enter into offshore processing arrangements with Papua New Guinea and Nauru.

## 4 | Infrastructure options

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The Uniting Church believes that the facilities for administrative detention arrangements should be open rather than prison-like: safe for everyone, especially young people, women and elderly people; appropriate for families and people with disabilities; culturally appropriate, especially with regards to kitchen facilities; and offer suitable places for worship, prayer and meditation, and private counselling and visitation.

The Uniting Church worked with other religious organisations, the Department of Immigration (then DIMIA) and representatives of the current detention service provider GSL throughout 2005-2006 to develop the *Religious Visitors' Protocol: A guide for religious and spiritual representatives visiting immigration detention facilities*. Concerns about appropriate spaces for worship, prayer and meditation and counselling were a high priority in the discussions through the workshop sessions. Section 3 of the Protocol directly refers to the need for facilities to include such appropriate spaces:

3.1 Wherever possible, each IDF will designate space for:

- communal worship
- prayer and meditation; and
- private rooms for individual spiritual counselling.

3.2 No one space will be set aside for a specific religion, but appropriate arrangements will be made for times of special significance or extended worship, such as Ramadan, Easter and Diwali. The spaces will be interfaith friendly with no permanent religious symbols to any particular faith.<sup>35</sup>

### **Recommendation 16 |**

The facilities for administrative detention should be designed in an open rather than prison-like manner to ensure that the buildings and the facilities are: safe for everyone, especially young people, women and elderly people; appropriate for families and people with disabilities; culturally appropriate, especially with regards to kitchen facilities; offer suitable places for worship, prayer and meditation, and private counselling and visitation.

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<sup>35</sup> *Religious Visitors' Protocol: A guide for religious and spiritual representatives visiting immigration detention facilities*, Department of Immigration and Multicultural Affairs, July 2006, pp. 11-12



## Asylum Seeker and Refugee Policy

Assembly Standing Committee, Uniting Church in Australia  
July 2002

*Adopted in resolution 02.47.01*

- (i) The human rights of all people must be upheld at all times.

All people should be treated with respect and accorded the dignity they deserve as human beings.

We must uphold the rights recognised under the *Universal Declaration of Human Rights*.

All people have a right for their cultural background to be respected.

We must uphold the rights recognised under, and fulfil our obligations under, all UN treaties that Australia has ratified, including the *Convention on the Rights of the Child* and the *Covenant on Civil and Political Rights*.

The rights of asylum seekers and refugees must be upheld at all times.

We must fulfil Australia's obligations under the Convention and Protocol Relating to the Status of Refugees.

We must strive to meet recommendations made by the United Nations High Commissioner for Refugees (UNHCR) in recognition of its mandate to lead and coordinate international action for the world-wide protection of refugees and the resolution of refugee problems.

- (ii) The Australian response toward asylum seekers and refugees should be culturally sensitive and should take into account the situations from which people have come.
- (iii) Australia's policies and legislation should reflect a commitment to the rights and safety of asylum seekers and refugees and should clearly distinguish these from issues of border protection and security, and from attempts to deal with people smuggling.
- (iv) There should be no discrimination in the treatment of asylum seekers, refugees and humanitarian entrants.

Policies, including access to visas and the formulation of visa subclasses and access to public services, social services, and settlement support, should not discriminate against people on the basis of their movements prior to their application for protection or resettlement being made.

There should be no discrimination, within Australia's offshore resettlement program, on the basis of an entrants movement to a third country or attempted entry into Australia.

There should be no discrimination, within Australia's onshore protection program, on the basis of movement to a third country or entry into Australia.

All people accepted under Australia's onshore protection program or offshore resettlement program should have full access to settlement support, public services, and social security.

- (v) We must use appropriate and sensitive language when we describe and discuss refugees and asylum seekers.

Government policies and statements must not use language that encourages fear and hatred towards refugees and asylum seekers.

- (vi) We must help those who come to Australia seeking asylum.

On arrival, asylum seekers should have access to the protections afforded to them in international law.

On arrival, asylum seekers should be able to notify the Red Cross and United Nations High Commission for Refugees that they have arrived.

Australia must provide adequate psychological, social, and medical care for all asylum seekers.

All asylum seekers should have access to sufficient and culturally sensitive translation services from the time that they arrive in Australia.

All asylum seekers should have access to government assistance to meet their basic needs from the time that they arrive in Australia.

All asylum seekers should have access to health care including trauma and torture services, Medicare and public health services from the time that they arrive in Australia.

- (vii) Asylum Seekers must have full legal rights and protection.

Once a person has told the Government that they are seeking asylum they should cease to be considered to be an illegal entrant by the Australian Government.

Refugee claimants should only be detained for short pre-determined periods of time for the sole purpose of conducting health, identity, and security checks.

An independent authority should monitor the conditions under which asylum seekers are held by the government and ensure that they are being treated justly and humanely.

Upon completion of health, identity and security checks, all asylum seekers should be issued a bridging visa valid until they are either granted a Protection Visa or, if their claim is unsuccessful, are returned.

All asylum seekers should have access to legal advice and assistance to prepare their claims.

All asylum seekers should have full rights of administrative and judicial appeal.

- (viii) We must help those who come to Australia for resettlement.

On arrival, refugees should be able to notify the Red Cross and United Nations High Commission for Refugees that they have arrived.

Australia must provide adequate psychological, social, and medical care for all refugees and humanitarian entrants.

All refugees and humanitarian entrants should have access to sufficient and culturally sensitive translation services.

All refugees and humanitarian entrants should have access to government assistance to meet their basic needs.

- (ix) Australia's policies and legislation should refer particularly to the rights and needs of child asylum seekers and refugees.

All decisions about child asylum seekers and refugees should be made with the best interests of the child as the primary consideration.

Trained independent guardians who can advocate and care for unaccompanied minors should be appointed to care for a child as soon as he or she is identified as an unaccompanied minor.

The specific rights of child asylum seekers, including the right to education, should be upheld.

- (x) Australia must take a truly global approach to refugees, asylum seekers, and displaced persons.

We must recognise our responsibilities, including our obligation to develop compassionate policies regarding the global movement of all displaced persons.

Our approach should embody the spirit of international burden sharing, in the knowledge of our nation's relative wealth and good fortune. We should not continue to place the burden of processing refugee claims onto poor and developing countries.

Australia must demonstrate its commitment to the responsibility to protect vulnerable individuals through the formulation of generous intake numbers.

Australia must maintain its commitment to offering resettlement places for refugees referred to us by UNCHR.

Australia must maintain its commitment to our onshore protection program for asylum seekers who travel to Australia.

The migration zone for the purposes of entry into Australia and access to visa application and review processes should be consistent with the definition of the migration zone under the *Migration Act 1958*.

- (xi) The immigration system should be accountable and transparent.

There should be respect for applicants' rights and dignity.

Accountability and transparency within government process in the processing of refugees and asylum seekers must be ensured.

The desire to build a trading relationship with a country should not be a factor taken into account when determinations are made on the refugee status of citizens of that nation.

- (xii) People whose refugee claims have been rejected and who are waiting to be returned should be treated justly and humanely.

People whose refugee claims have been rejected should have access to adequate psychological, social, and medical care (including trauma and torture services, Medicare and public health services), sufficient and culturally sensitive translation services, and government assistance to meet their basic needs.

**Welcome the Stranger  
in the spirit of the Year of Jubilee**

Ninth Assembly, Uniting Church in Australia  
July 2000

*The Assembly resolved:*

00.21.03

- (1) to note the important call of the gospel to welcome the stranger;
- (2) to commend and celebrate the work of those within the Uniting Church and wider community who work with refugees and asylum seekers as they commence resettlement within Australia;
- (3) to celebrate the work which has been undertaken by the NCCA National Program for Refugees and Displaced Persons over many years and for the creation in late 1998 of an ecumenical committee to support this work;
- (4) to commit the Uniting Church in Australia to ongoing support for refugee and asylum seeker resettlement in Australia;
- (5) to commit the Uniting Church in Australia to:
  - (i) promoting cultural sensitivity particularly in the language that it uses to describe those who are refugees, access to interpreters from the same cultural background and access to appropriate faith communities; and
  - (ii) awareness of racism and discrimination used to instil fear against refugees and asylum seekers;
- (6) to affirm the need for fair, humanitarian, adequately resourced and culturally appropriate government policies and procedures for the processing of refugees and asylum seekers both within Australia and overseas;
- (7) to call on the Australian government to amend its policies and practices by ensuring:
  - (i) accountability and transparency within government process in processing of refugees and asylum seekers;
  - (ii) that discrimination does not occur in the treatment of refugees and asylum seekers, and that their dignity is respected;
  - (iii) cultural sensitivity towards asylum seekers and the situations from which they come;
  - (iv) that the language used by Government does not encourage fear and hatred towards refugees and asylum seekers;
  - (v) the current limits on intake of refugees and asylum seekers within Australia are reviewed and that Government demonstrate its international responsibility to the protection of vulnerable individuals;
  - (vi) an end to the long period of detention experienced by some refugees and asylum seekers;
  - (vii) continued investigation and implementation of alternative methods to detention for those seeking asylum onshore in Australia;

- (viii) all refugees and asylum seekers have equal access to facilities, benefits, assistance, information, community networks and legal advice immediately upon arrival within Australia;
  - (ix) immediate notification to the Red Cross and United Nations of any refugees or asylum seekers arrival in Australia;
  - (x) sufficient and culturally sensitive translation services are available in all refugee centres;
  - (xi) sufficient access to medical, legal or community services for those residing in detention centres, including trauma and torture services;
- (8) to encourage the Australian government to separate its trade policy from its response to refugees and asylum seekers;
- (9) to encourage members, agencies, Congregations and councils of the Uniting Church to welcome recently arrived refugees into their communities and to provide support and advocacy as they are able;
- (10) to express its concern to the Australian government at the current practice of releasing refugees into urban and rural areas with inappropriate supports and resources, and with unsatisfactory notification of services within the placement area.

## **Refugee Warehousing**

Assembly Standing Committee, Uniting Church in Australia  
July 2005

- 05.48            *It was resolved to:*
- 05.48.02        a)        note that the *1951 Refugee Convention* and the *1967 Protocol Relating to the Status of Refugees* state that people fleeing persecution across international borders are entitled to certain protections. These include freedom from forcible return (*refoulement*), and basic employment, property and freedom of movement rights. These documents form the basis for the work of the United Nations High Commissioner for Refugees, and
- b)        that seven million refugees are currently *warehoused*, confined and segregated in camps or settlements for periods of a decade or more, and divested of their basic rights. Sometimes warehousing situations have been in place for generations.
- 05.48.03        a)        oppose the practice of *warehousing* refugees as an infraction of international refugee rights and a waste of human potential;
- b)        endorse the international campaign to end the warehousing of refugees;
- c)        support that the NCCA in its advocacy for an end to the practice of *Refugee Warehousing*;
- d)        encourage members, congregations, groups and agencies of the Uniting Church to educate and advocate against the practice of refugee warehousing.