

Submission to the Australian Parliament's Joint Select Committee Inquiry on Australia's Immigration Detention Network from Labor for Refugees (Victoria), August 2011

PREAMBLE

Labor for Refugees (Victoria) presents the following submission which is a culmination of many years of discussion and research regarding Australian Labor Party and Government policies dealing with asylum seekers. Labor for Refugees (Victoria) has been in existence for around ten years, and is made up of a group of committed members of the Labor Party who were appalled by the Liberal Party's handling of the Immigration Portfolio, and now sadly admit to being very dissatisfied with the Labor Party's management of the processing of asylum seekers and decisions regarding detention centres. We are very disappointed about the ALP government's failure to understand and implement party policies in this regard¹. Labor for Refugees continually provide the Australian Labor Party, and hence government members, well-researched and realistic policies based on compassion, humanity and equality; those principles which we had always believed to be the principles upon which the Australian Labor Party is based.

Labor for Refugees (Victoria) acknowledges the work of the Joint Standing Committee on Migration, and their three recent reports

- (1) The Committee's *First Report of the inquiry into immigration detention in Australia (Criteria for release – health, identity and security checks)* – Tabled in Parliament December 2008).
- (2) The Committee's *Second Report - Immigration detention in Australia (Community-based alternatives to detention)* – Canberra, May 2009.
- (3) The Committee's *Third Report - Immigration detention in Australia (Facilities, Services and Transparency)* – Canberra, August 2009.

Labor for Refugees (Victoria) points members of this current Inquiry to the Second

¹ In particular, we wish to draw attention to the ALP's National Platform 2009, chapter 7, paragraph 165 which reads, in part: "Children . . . and where possible, their families, will not be detained in an immigration detention centre...Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time." The ALP is a democratic organisation whose policy is made by National Conference (ALP Federal Constitution, part A, paragraph 6) following consideration of "resolutions originating from the branches, affiliated unions and individual party members" (ALP Federal Constitution, part A, paragraph 7). Given these rules, no member of the Federal Parliamentary Labor Party should have supported the detention of the huge number of men, women, and children who were (and continue to be) detained in immigration detention centres for long periods of time. Such support renders them as having broken their ALP parliamentary candidate's pledge "to do my utmost to carry out the principles embodied in the Platform".

report (May 2009) of the Joint Standing Committee on *Migration on community based alternatives to detention*, which made recommendations for changes to the system of detention. The report recognised “the harsh psychological burdens inflicted by long and indefinite periods of detention.... (which are) known to have harmful long term effects on all those involved”. Labor for Refugees (Victoria) notes that regrettably, the recommendations of the Joint Standing Committee have not been implemented.

We do not attempt to duplicate now what has already been a very comprehensive examination of Immigration detention in Australia; our submission simply raises a number of fundamental recommendations which would ease the absolute distress, pain and suffering at present being experienced by those asylum seekers who have made it to Australia to apply for residency, most of them coming from intolerable home situations, and many suffering stress and anxiety about the adverse reception and incarceration in detention experienced on arrival on our shores.

We further suggest that if the recommendations of the three reports cited above had been taken seriously and implemented, especially those under the heading “Who should community release apply to?”² (pp 148-149 of Report 2 and repeated on pp 169-170 of Report 3), there would be no need for this present inquiry.

² Who should community release apply to? [extract from reports of previous inquiry]

For the benefit of readers of this report, and in accordance with the Committee’s recommendations above from the first report, release into the community would apply to the following groups of immigration clients:

- All unauthorised arrivals, for whom health, identity and security checks have been completed.
- All unauthorised arrivals, where identity has not been conclusively established within 90 days, in the absence of a demonstrated and specific risk to the community, and except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.
- All unauthorised arrivals, where a person’s security assessment is ongoing after 90 days, where there is little indication of risk to the community, as advised by the Australian Security Intelligence Organisation, and except where there is clear evidence of lack of cooperation or refusal to comply with reasonable requests.
- Section 501 detainees, subject to the ‘unacceptable risk’ assessment, taking into account whether or not the person is subject to any parole or reporting requirements; any assessments made by state and territory parole boards and correctional authorities as to the nature, severity and number of crimes committed; the likelihood of recidivism; and the immediate risk that person poses to the Australian community.
- All other immigration detainees, including visa over stayers and those subject to visa cancellation:
 - except those that pose an unacceptable risk to the community, as defined under publicly available criteria; and
 - except those who have repeatedly been non-compliant with their visa conditions, where DIAC can demonstrate that detention is necessary for the purposes of removal and that prior consideration was given to reissue of the existing visa, or a bridging visa, with or without conditions such as sureties or reporting requirements. Removal should be effected within a short period of time, such as seven days.
- Any other person in immigration detention who, notwithstanding the criteria above, remains in immigration detention at the Committee’s nominated maximum time period of 12 months, except where that person is determined to be a significant and ongoing unacceptable risk to the community.

To this end, we ask that the inquiry conduct an assessment of the extent to which the Government have implemented these recommendations of the previous inquiry in the context of the terms of reference of the present inquiry.

It is shameful that most of the practical and humanitarian recommendations arising from these inquiries have been ignored, and that there is still such a level of denial and lack of knowledge within the Parliament about the dangers and appalling conditions endured by asylum seekers in the places from which they are forced to flee. In addition, we are extremely concerned that the failures of both the Howard and Gillard governments to deal humanely with asylum seekers, and in particular boat people, is largely premised on adherence to a nationalistic border protection ideology that, without real evidence, views asylum seekers as a threat to Australian society and values.

Labor for Refugees (Victoria) sincerely hopes that these current inquiry findings will be taken seriously and that swift action will ensue, and have pleasure in providing the following submission.

1. Reforms to the Current Immigration Detention network in Australia

- 1.1. Labor for Refugees (Victoria) calls on the Australian Parliament to discard all failed Asylum Seeker/Refugee policies, and implement compassionate, humanitarian and far-reaching reforms. The most fundamental reform required is the immediate **abolition of long-term mandatory detention for people who are seeking protection as asylum seekers in Australia.**

We recommend that the existing system of mandatory detention be replaced by Asylum Seeker Reception Centres in all states, where people seeking refuge on arrival may be required to stay for a short time for preliminary health, identity and security checks. Asylum Seekers would then be released on bridging visas, with work rights, Medicare and study rights and other appropriate support into the community **in less than 30 days** to await processing of their application for permanent residency (see further below). If security checks (e.g. ASIO) or other checks are incomplete at the end of 30 days, this would not prevent detainees being released. It may be that ASIO checks can be abandoned, since they do not seem to serve any real purpose, are enormously costly, and cause untold delays in the processing system.

- 1.2 In addition, Labor for Refugees (Victoria) calls on the Australian Parliament to immediately **raise the quota for refugee entrants**, comprising onshore asylum applicants and offshore refugee resettlement, **to 20,000 per annum**, as recommended by the Refugee Council of Australia based on community and sector consultations and at the same time **establish a separate quota of 15,000 people per year** to cater specifically for **Special Humanitarian entrants and Refugee Family Reunion**.

This would sever the artificial link between onshore refugee places and the

Special Humanitarian Program and depoliticise the quotas. The SHP quota currently provides the main means for refugee family reunion. A separate quota for refugee family reunion would reaffirm the importance of family reunion as part of successful refugee resettlement in Australia.

Background and Rationale for No. 1

The following quote encapsulates most of what follows in our submission, and we ask the committee to seriously consider the views of both Adelaide Psychiatrist Jon Jureidini and Melbourne Lawyer Julian Burnside QC in their recent article “Children in immigration detention: a case of reckless mistreatment”, *Australia and New Zealand Journal of Public Health*, Vol. 35, Issue 4, 2011 which makes the statement:

The present system of indefinite mandatory detention seriously harms many of the people subjected to it .The harm is predictable and foreseeable. We are still dealing with the legacy of psychiatric harm caused during the Howard years. The system will cause similar damage, and cost Australia an immense amount financially. At the same time, it damages our national reputation and, more importantly, it scars our national conscience. (p. 306)

Labor for Refugees (Victoria) believes that the current system of mandatory detention of asylum seekers seeking refuge, commonly labelled “unauthorised boat arrivals”, is deliberately harsh and punitive, no doubt intended to deter others from arriving by similar means and as a consequence, has little regard to the health and wellbeing of people seeking to engage Australia’s protection framework.

Indefinite periods of mandatory detention in prison-like environments is known to cause psychological distress and long term harm to vulnerable individuals including children, especially those who have experienced prior trauma. **The current system therefore deliberately inflicts harm, which is unethical and unworthy of an Australian parliament.** As most of those who seek asylum are in fact found to be refugees, there are significant adverse societal as well as individual and family impacts of mental health disorders resulting from any sort of enforced detention. At a time when the Federal Government, health professionals and the wider Australian community contemplate the urgent public policy priority of addressing endemic mental health problems, few seem to acknowledge the inconsistency of supporting a mandatory detention framework which causes serious mental distress.

Experts such as Professor Louise Newman of Monash University and Professor Patrick McGorry have spoken out on many occasions about the damage being done to people held in detention, as have lawyers such as David Manne and Julian Burnside. We again quote from a recent article printed in the *Australian and New Zealand Journal of Public Health*, August 2011 which was cited in the Melbourne Age of 3 August 2011:

Psychiatrist Jon Jureidini of the Women’s and Children’s Hospital in Adelaide, writing in the Journal of Public Health, said detention had led to self-harm in children as young as 10, infants with separation anxiety, teenagers with severe depression and

parents who had lost the capacity to care for children.

Dr Jureidini said he had firsthand knowledge from treating families, including a four-year-old child, with psychological damage after being held in the department's Inverbrackie "alternative detention". He said children were being traumatised by intrusive procedures such as nightly head counts, and limited excursions or outings. Alternative detention was harmful because of the control guards asserted over family movements, Dr Jureidini said. He said he had seen "loving families destroyed by immigration detention process".

Labor for Refugees (Victoria) is also concerned that Australia's mandatory detention framework contravenes fundamental principles under domestic and international law including the International Covenant on Civil and Political Rights; the Convention Against Torture; the UN Refugee Convention, and the Convention for the Rights of the Child. In particular, mandatory detention specifically discriminates against people who arrive by boat, penalising this group in breach of article 31 of the 1951 Convention.

At the very least the current system is inhumane and degrading. Australia is undermining the world wide system of protection for people fleeing persecution and in the process, damaging our reputation as a country committed to universal human rights. The current system is excessively high cost and highly politicised. Processing of asylum claims is compromised by political considerations and arbitrary exercise of ministerial discretion; as a result it neither is independent, transparent nor subject to judicial review. The consequences of this is that asylum seekers see the system as lacking integrity and have little faith in delivering outcomes which are fair and just. This is a significant factor contributing to unrest in detention facilities. The right to protection and the dignity of asylum seekers should be of paramount importance, not a secondary consideration.

Australia's harsh and costly immigration detention system for asylum seekers is a disproportionate response to the number of people who seek asylum onshore. As of December 2010, Australia housed just 0.45% of world wide asylum claims. It needs to be recognised that poor developing countries carry the most significant burden in hosting asylum seekers and refugees. Although Australia plays a significant role in refugee resettlement, the total number of refugees and people in refugee-like situations in Australia is very small: 21, 805 in 2010, compared with countries like Germany (594,269 in 2010); the USA (264,574) and Canada (165,549).

2. The impact of length of detention and the appropriateness of facilities and services for asylum seekers

2.1 Labor for Refugees (Victoria) notes that asylum seekers are consistently being held in detention for periods in excess of 90 days, and in many instances, for indefinite periods. The negative impacts on the mental health and wellbeing of asylum seekers is well documented. This is exacerbated by detention in high security environments with prison-like conditions, in remote locations, with limited access to community services and facilities. It is obvious that existing facilities and staffing are not coping and many policies and practices need serious re-examination. Human beings are not guinea pigs, and prolonged detention of families and

individuals has become inhumane and damaging to the most vulnerable of people and must be stopped.

2.2 The current detention network should be evaluated against immigration detention principles to which the Australian Government announced on 29 July 2008 (reference <http://www.minister.immi.gov.au/media/speeches/2008/ce080729htm>). We believe that the current system does not comply with those principles and therefore now recommend that they be implemented, especially the following:

- Children and, where possible, their families, and also juvenile foreign fishers, **will not be detained in an immigration detention centre (IDC)**;
- Detention that is indefinite or otherwise arbitrary is unacceptable;
- Detention in IDCs is **only to be used as a last resort and for the shortest practicable time**;
- People in detention must be treated fairly and reasonably within the law; and
- Conditions of detention must ensure the inherent dignity of the human person.

Recommendation 9 of the first report of the Joint Standing Committee on Migration (cited above) also recommends that the Australian Government applies the immigration values announced on 29 July 2008.

2.3 Since there has been non-compliance with the 2008 immigration detention principles outlined earlier, and noting the harmful effects of long term detention, Labor for Refugees (Victoria) proposes that:

- Families with children should not be separated under any circumstances.
- No children or unaccompanied minors shall be detained in immigration detention facilities and their community residential accommodation shall be low security.
- Unaccompanied minors should be housed in community detention or with appropriate foster carers and processed for residency as a matter of urgency receiving immediate work and education rights, Medicare and legal representation.
- In view of the numerous past failures as a consequence of private sector management of immigration detention centres, the management of immigration centres should be transferred to the public sector.
- In recognition of the harmful impacts to asylum seekers and high costs of detention centres in remote area, all immigration processing facilities should be located within established communities with easy access to community and support services.
- All applications for refugee status should be processed speedily, fairly and impartially based on individual merits and will not allow considerations of populism to artificially lower the rates of acceptance or to delay processing of any particular groups of asylum seekers.
- Australia must fully comply with the non-refoulement and all other protection obligations voluntarily assumed in signing the UN Refugee Convention and other relevant international instruments and will actively engage in the work of the United Nations High Commission for Refugees (UNHCR) and other relevant international and regional agencies. To this end Australia will ensure that failed asylum seekers are not deported to countries which are at war or where internal strife is prevalent.

- Legislation should be introduced to overturn lifelong detention, following the High Court ruling that a failed asylum seeker can be kept in detention for the term of their natural life, if they cannot be returned to their country of origin.

3. The resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties
(N.B. our statements here also respond to your Committee's heading - *The effectiveness and long-term viability of outsourcing immigration detention centre contracts to private provider*)

3.1 In view of numerous past failures as a consequence of private sector management of immigration detention centres, **it is recommended** that the management of immigration centres be transferred to the public sector, to be called Immigration Department Reception Centres, refurbished and staffed in an effective manner by well-trained public sector employees who are accountable to DIAC and the Minister for Immigration.

3.2 At the very least, DIAC and Immigration Department Reception Centre employees and contractors should in addition to their minimum Cert. II Security Training, be required to attend both trauma and torture and cross-cultural awareness training (short courses on site) provided by accredited experts.

3.3 Labor for Refugees (Victoria) considers that many of the problems of the past in detention facilities stem from the negative culture prevalent in both DIAC but especially amongst staff of SERCO. Therefore **we recommend** that asylum seekers should be treated with dignity and respect, and with sensitivity, particularly since most have been subject to trauma and in many cases torture.

4. The health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network

As specified above in No. 1 above (**Reforms needed to the current Immigration Detention Network in Australia**) we believe that all asylum seekers and their families should be entitled to respectful and humane treatment, and temporary accommodation in a safe, non-threatening environment on entering Australia. Families with children must **never** be put in Detention Centres – it is as simple as that, because of the well documented evidence of the harm caused to children and young people of long periods in the detention system.

5. Impact of detention on children and families, and viable alternatives to Mandatory Detention

5.1 The corrosive impact of prolonged detention on mental health and well-being of children and families has been comprehensively documented by health professionals including the Government's Detention Health Advisory Group and refugee advocacy group, ChilOut. Labor for Refugees (Victoria) has particular concerns for unaccompanied minors, many of whom have been kept in crowded and unsuitable facilities which have exacerbated tensions, heightened anxiety and contributed to numerous incidents of self-harm. Prolonged detention in these circumstances is at odds with the Minister's role as Guardian, and is in breach of his

duty of care obligations. The condition and length of detention for unaccompanied minors is inconsistent with State child protection regimes, which use a 'best interests' framework.

Both Government and Opposition seem to have lost sight of best practice in protecting vulnerable children and young people. There is an urgent need for a Children's Commissioner to enforce national standards in the care of children, including 'non-citizens', and to ensure compliance with the international Convention on the Rights of the Child. The Australian Human Rights Commission discussion paper *An Australian Children's Commissioner* October 2010 specifically refers to 'children in detention, including immigration detention' as amongst those children most at risk in Australian society.

We also welcome the announcement of an inquiry by the Commonwealth Ombudsman into suicide and self-harm in detention facilities.

5.2 There are effective alternatives to mandatory detention that **do not compromise** Australia's security, are considerably cheaper, **more humane** and which strengthen our sense of community. Instead of being classified by how they arrived here, asylum seekers should be classified by their care needs and likely security risk. This would allow more refugees to be housed more cheaply in the community.

One excellent solution is a combination of three approaches documented by the Edmund Rice Centre:

- Speedy and early evaluation of asylum seekers is needed to work out whether anyone poses a security risk and whether there is a risk of absconding if they are placed in low-security community housing
- Case management by a social worker from an accredited welfare agency to work with individuals and families to ensure they become familiar with Australia's refugee system. This would provide much-needed counselling and support as asylum seekers move through the assessment process.
- Provision of accommodation options that house people according to appropriate to security assessment and care needs –community detention and low security hostel accommodation with intensive services.

Security levels to be determined according to need:

- Community management for those considered at low risk, or no risk to the community or unlikely to abscond. This should include women and children, families and young people
- Medium security hostel accommodation for those considered at risk or requiring intensive services
- Full detention only to be used temporarily up to a maximum of 30 days for those considered high risk.

This model reduces the cost to the taxpayer.

The costs of housing refugees depend on the level of security required:

- Community-based accommodation is the cheapest option when low levels of security are required. It is better for children, families and people with disabilities, often caused by war or torture
- Hostel accommodation is the cheapest option for medium levels of security and it

is effective for centralising services

- Full detention is only an option for those people who pose a **documented** security risk.

For full description and analysis of the economic costs see the report on the Edmund Rice Centre website: Dr Tony Ward, *Improving Outcomes and Reducing Costs of Asylum Seekers*, Milbur Consulting, 2003.

Hotham Asylum Seeker Project, *Welfare Issues and Immigration Outcomes for Asylum Seekers on Bridging Visa E* – Research and Evaluation, Hotham Mission Asylum Seeker Project, 2003.

As documented by the Detention Health Advisory Group, headed by Dr Louise Newman, there is significant health costs associated with keeping children and families in maximum security detention centres. The damaging mental health effects of detention on women, children and families who are a low security risk are well known, as indicated above. The current system does not consider the expense of future psychiatric treatment if these families are found to be genuine refugees and are released into the Australian community after prolonged periods of detention.

This alternative model of care of asylum seekers does not compromise Australia's security or the human rights of refugees and are cheaper than holding everybody in maximum security detention centres. The savings made from funding and maintaining detention centres will more than cover all the necessary support services for community detention.

Community detention can be implemented immediately without changes to Australia's border protection policy. A 'risk assessment' would be undertaken immediately, not at the end of the process as currently happens. A caseworker would then prepare people for all possible outcomes of their visa application.

- Hotham Mission's system for asylum seekers living in the community already provides caseworkers to enable individuals and families to adjust to Australia. They help find housing, deal with daily living needs, and orient them to an Australian way of life. Case workers can also identify people who have been tortured or traumatised and help them find specialist counselling services if required. This is vital for women who have been raped and for children who have seen terrible things or have special medical needs. Where people have been found not to be refugees, the caseworker helps them to accept the decision, and assists people to actively plan for their future and to farewell contacts they have in the community as they prepare to leave Australia.
- The Asylum Seeker Resource Centre ASRC in Melbourne provides legal, health counselling, food, case work, material aid as well as English classes and advocacy for people seeking asylum in Australia.

6. The impact, effectiveness and cost of mandatory detention and any alternatives, including community release

The Second report of the Joint Standing Committee on Migration states that "it is not necessary to keep people who meet the criteria for release in secure detention centres for long periods of time awaiting resolution of their immigration status. Co-

located, open residential accommodation in the community can provide people with safe and supportive living environments while still being accessible to the Department of Immigration and Citizenship and other service providers.

“Community-based alternatives can also be much more cost-effective than the current high levels of physical security or on-site staffing required within an immigration detention centre. A more supportive living environment maintains the physical and mental wellbeing of those awaiting an immigration decision, which can therefore facilitate a smoother transition into the Australian community where there is a positive outcome or repatriation.” This reinforces our comments above on community-based alternatives to immigration detention facilities, and also supports our Recommendation 1A.

7. The total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees

Information contained in the recent Australian Federal Budget (2011) documents just how much Australia’s policy of Mandatory Detention really costs. The averaged out total costs per asylum-seeker is phenomenal: \$664,285. The calculation of this cost is explained below:

Numbers

2009: 2750 asylum seekers by boat

2010: 6800 asylum seekers by boat

2011: trending towards 2800 asylum seekers by boat.

Costs

Offshore Asylum Seeker Management \$1.06 billion

Onshore Immigration Detention \$800 million

Total \$1.86 billion

Overall Acceptance Rate over the past 3 years: 85%

So for 2800 asylum seekers arriving by boat this year it costs \$664,285 per asylum seeker to discover that they are genuine refugees and legally entitled to be approved for permanent residency status. Put another way, to detect one non-entitled asylum seeker costs about \$4.4 million. This is hardly an effective cost-benefit ratio.

Despite the Coalition and Government’s concern about criminal asylum seekers there are almost NO criminals amongst those seeking asylum in Australia. In 2000, 13,000 people sought asylum in Australia. **Just 11 failed the Character Test** i.e. 0.08%. This is documented by ‘the Edmund Rice Centre’ in ‘Debunking The Myths’ Applying the above percentage to the projected 2800 boat arrivals expected in 2011, gives a grand total of 3 “criminals” (rounded up) at a cost of \$620 million per criminal.

8. The reasons for and nature of riots and disturbances in detention facilities

8.1 It is clear that riots, disturbances and suicides in detention facilities are a mark of failure of the detention regime. Most of these events stem from a sense of hopelessness and frustration which comes from indefinite internment in prison-like facilities, without resolution of asylum claims. Overcrowding and competition for access to limited resources magnifies personality conflicts between stressed

individuals. In addition, uncertainty over futures is compounded by a widespread lack of confidence in the integrity and independence of the asylum processing system: if the determination process is compromised by political considerations (arbitrary rejection on the basis of assumed country conditions and failure to fully consider claims based on individual merits), then this plays into the mix of frustration and despair. The prison-like security and enforcement procedures are toxic to many vulnerable people and contribute to deteriorating mental health.

8.2 Labor for Refugees (Victoria) is dismayed by the actions of SERCO staff and the AFP in dealing with riots and disturbances in detention facilities; the aggressive use of force and in particular, use of bean bag bullets by the AFP is utterly reprehensible. **Bean bag bullets have never been used before in Australia as part of crowd control.** This aggressive use of force would be unacceptable in other circumstances on the mainland; use of bean bag bullets further highlights how different standards are being applied in dealing with 'non-citizens', with little regard for their wellbeing and human rights. No concern is expressed by the Minister or SERCO for the impact of such extreme 'crowd control' measures on other asylum seekers held in the same detention facilities. Labor for Refugees (Victoria) believes that the hostile tactics have also compounded problems of unrest in certain detention facilities and escalated levels of violence. SERCO and the AFP have a responsibility to ensure a safe environment is provided for all detainees and to not use excessive or extreme force in controlling disturbances.

Our views outlined in 8.1 and 8.2 above also support our major recommendation 1(a).

9. The performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons

This directly relates to (8) above, and we would argue that their record is appalling as exemplified by the dehumanising and harmful impact of detention centres on asylum seekers, resulting in suicide, human misery, family separation, self-harm and leading to mental health issues. See comments within (8) above outlining negative and aggressive actions of SERCO and the AFP in 'quelling' riots.

10. Any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons

10.1 Labor for Refugees (Victoria) notes that it is as if the detention system functions in a parallel universe; it is almost wholly disconnected to the wider Australian community and to the norms and policy considerations which apply in State jurisdictions in the treatment of vulnerable individuals, and as stated above, in mainland policing. It is proposed that processing/detention centres should be subject to State policies in regard to the protection of children and the mental health and wellbeing of young people.

10.2 It is well established that the onset of long term mental health problems amongst vulnerable young people has considerable disabling impacts on an individual's life chances. Yet there seems to be little acknowledgement of the risk factors which equally apply to young people in immigration detention, and the impact

their detention will have on their capacity to settle. We recommend that access to mainstream state services, including schools, language, employment and training programs would significantly enhance the prospects of successful resettlement.

11. The expansion of the immigration detention network, including the cost and process adopted to establish new facilities

Labor for Refugees (Victoria) strenuously rejects the need for any expansion of the existing immigration detention network and supports the expansion of community release options. We urge that all reception centre processing facilities be located in established urban and rural communities in close proximity to community support services. Consideration should be given to locating any new processing facilities in areas where communities are supportive e.g. West Wimmera Shire.

12. The length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network.

Our views on this question have been covered under No. 1 above.

13. Processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network

13.1 Our very real concerns regarding the processing of protection claims and appeals are primarily

- the lack of judicial review on the merits
- lack of transparency and accountability
- questionable assumptions about the country of origin's security
- predetermined outcomes
- the sometimes confrontational and hostile manner in which people are treated when having their claims assessed
- arbitrary exercise of Ministerial discretion
- the lack of real independence in the review process

and **it is recommended** that these matters be investigated with the intention of streamlining and making the process more professional and user-friendly.

13.2 The Refugee Review Tribunal has in many cases clearly failed to provide justice and sound judgement on behalf of asylum seekers, particularly given that only one person – often a government employee – constitutes the Tribunal – **we strongly recommend** that the Tribunal be expanded to 3 persons as a minimum, with appointments made in accordance with criteria developed and acceptable to advocacy organizations, e.g. the Refugee Council of Australia. The current system of refugee determination is highly compromised and lacking in integrity.

SUMMARY OF RECOMMENDATIONS

R1 (see 1.1 above)

Labor for Refugees (Victoria) calls on the Australian Parliament to discard all failed Asylum Seeker/Refugee policies, and implement compassionate, humanitarian and far-reaching reforms. The most fundamental reform required is the immediate **abolition of long-term mandatory detention for people who are seeking protection as asylum seekers in Australia.**

We recommend that the existing system of mandatory detention be replaced by Asylum Seeker Reception Centres in all states, where people seeking refuge on arrival may be required to stay for a short time for preliminary health, identity and security checks. Asylum Seekers would then be released on bridging visas, with work rights, Medicare and study rights and other appropriate support into the community **in less than 30 days** to await processing of their application for permanent residency (see further below). If security checks (e.g. ASIO) or other checks are incomplete at the end of 30 days, this would not prevent detainees being released. It may be that ASIO checks can be abandoned, since they do not seem to serve any real purpose, are enormously costly, and cause untold delays in the processing system.

R2 (see 1.2)

In addition, Labor for Refugees (Victoria) calls on the Australian Parliament to immediately **raise the quota for refugee entrants**, comprising onshore asylum applicants and offshore refugee resettlement, **to 20,000 per annum**, as recommended by the Refugee Council of Australia based on community and sector consultations and at the same time **establish a separate quota of 15,000 people per year** to cater specifically **for Special Humanitarian entrants and Refugee Family Reunion.**

This would sever the artificial link between onshore refugee places and the Special Humanitarian Program and depoliticise the quotas. The SHP quota currently provides the main means for refugee family reunion. A separate quota for refugee family reunion would reaffirm the importance of family reunion as part of successful refugee resettlement in Australia.

R3 (see 2.2)

The current detention network should be evaluated against immigration detention principles to which the Australian Government announced on 29 July 2008 (reference <http://www.minister.immi.gov.au/media/speeches/2008/ce080729htm>). We believe that the current system does not comply with those principles and therefore now recommend that they be implemented, especially the following:

- Children and, where possible, their families, and also juvenile foreign fishers, **will not be detained in an immigration detention centre (IDC);**
- Detention that is indefinite or otherwise arbitrary is unacceptable;
- Detention in IDCs is **only to be used as a last resort and for the shortest practicable time;**
- People in detention must be treated fairly and reasonably within the law; and
- Conditions of detention must ensure the inherent dignity of the human person.

Recommendation 9 of the first report of the Joint Standing Committee on Migration

(cited above) also recommends that the Australian Government applies the immigration values announced on 29 July 2008.

R4 (see 2.3)

Since there has been non-compliance with the 2008 immigration detention principles outlined earlier, and noting the harmful effects of long term detention, Labor for Refugees (Victoria) proposes that:

- Families with children should not be separated under any circumstances.
- No children or unaccompanied minors shall be detained in immigration detention facilities and their community residential accommodation shall be low security.
- Unaccompanied minors should be housed in community detention or with appropriate foster carers and processed for residency as a matter of urgency receiving immediate work and education rights, Medicare and legal representation.
- In view of the numerous past failures as a consequence of private sector management of immigration detention centres, the management of immigration centres should be transferred to the public sector.
- In recognition of the harmful impacts to asylum seekers and high costs of detention centres in remote area, all immigration processing facilities should be located within established communities with easy access to community and support services.
- All applications for refugee status should be processed speedily, fairly and impartially based on individual merits and will not allow considerations of populism to artificially lower the rates of acceptance or to delay processing of any particular groups of asylum seekers.
- Australia must fully comply with the non-refoulement and all other protection obligations voluntarily assumed in signing the UN Refugee Convention and other relevant international instruments and will actively engage in the work of the United Nations High Commission for Refugees (UNHCR) and other relevant international and regional agencies. To this end Australia will ensure that failed asylum seekers are not deported to countries which are at war or where internal strife is prevalent.
- Legislation should be introduced to overturn lifelong detention, following the High Court ruling that a failed asylum seeker can be kept in detention for the term of their natural life, if they cannot be returned to their country of origin.

R5 (see 3.1 - 3.3)

In view of numerous past failures as a consequence of private sector management of immigration detention centres, **it is recommended** that the management of immigration centres be transferred to the public sector, to be called Immigration Department Reception Centres, refurbished and staffed in an effective manner by well-trained public sector employees who are accountable to DIAC and the Minister for Immigration.

At the very least, DIAC and Immigration Department Reception Centre employees and contractors should in addition to their minimum Cert. II Security training, be required to attend trauma and torture and cross-cultural awareness training (short courses on site) given by accredited providers.

We consider that many of the problems of the past in detention facilities stem from the negative culture prevalent in both DIAC but especially amongst staff of SERCO. Therefore **we recommend** that asylum seekers should be treated with dignity and

respect, and with sensitivity, particularly since most have been subject to trauma and in many cases torture.

R6 (see No. 4)

... we believe that all asylum seekers and their families should be entitled to respectful and humane treatment, and temporary accommodation in a safe, non-threatening environment on entering Australia. Families with children must **never** be put in Detention Centres – it is as simple as that, because of the well documented evidence of the harm caused to children and young people of long periods in the detention system.

R7 (see 10.1 and 10.2)

It is proposed that processing/detention centres should be subject to State policies in regard to the protection of children and the mental health and wellbeing of young people.

... we recommend that access to mainstream state services, including schools, language, employment and training programs would significantly enhance the prospects of successful resettlement.

R8 (see No. 11)

We urge that all reception centre processing facilities be located in established urban and rural communities in close proximity to community support services. Consideration should be given to locating any new processing facilities in areas where communities are supportive e.g. West Wimmera Shire.

R9 (see 13.1)

Our very real concerns regarding the processing of protection claims and appeals are primarily

- the lack of judicial review on the merits
- lack of transparency and accountability
- questionable assumptions about the country of origin's security
- predetermined outcomes
- the sometimes confrontational and hostile manner in which people are treated when having their claims assessed
- arbitrary exercise of Ministerial discretion
- the lack of real independence in the review process

and it is recommended that these matters be investigated with the intention of streamlining and making the process more professional and user-friendly.

R10 (see 13.2)

The Refugee Review Tribunal has in many cases clearly failed to provide justice and sound judgement on behalf of asylum seekers, particularly given that only one person – often a government employee – constitutes the Tribunal – **we strongly recommend** that the Tribunal be expanded to a minimum of 3 appropriately experienced tribunal members, with appointments made in accordance with criteria developed and acceptable to advocacy organizations, e.g. the Refugee Council of Australia. The current system of refugee determination is highly compromised and lacking in integrity.

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