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## NetAct

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# SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION

## INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA

### *IDENTIFICATION*

**NetAct** (contraction of Networking/Action) is a broad coalition of Catholic social justice, education and welfare agencies and interested individuals drawn together by a common desire to develop networks for constructive, collective social action. The group's position on such issues is grounded in the social teaching of the Catholic Church, derived from the Christian Gospel, and in the Universal Declaration of Human Rights (1948).

Australia's policy with regard to refugees and asylum seekers has long been a matter of concern to NetAct members. In preparation for the Federal Elections in 2004 and 2007 the group produced and circulated information kits to promote discussion in several policy areas, including Asylum Seekers and Refugees. The present Inquiry is a welcome opportunity to continue our advocacy for people who come to Australia seeking protection.

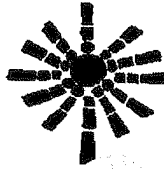
### *RELEVANT EXPERIENCE BEHIND THIS SUBMISSION*

1999 - 2008: weekly contact with people detained at Villawood.

2001- 2008: at the House of Welcome in Carramar, contact with Refugees holding Temporary Protection Visas; Asylum Seekers with Bridging Visa E, Habeas Corpus Orders, Temporary Humanitarian Visas.

2004: Research with the Edmund Rice Centre team who produced *Deported to Danger*, reporting what has happened to some of the people refused protection by Australia. The report included disturbing accounts of individuals' experience in Immigration Detention.

2005: Submission to the Senate Committee's *Inquiry into the Administration and Operation of the Migration Act 1958*; witness at a public hearing.



## OUTLINE

The Submission is organised under the following headings:

1. The International Context of Immigration Detention
2. The Inquiry's Terms of Reference
3. The Chosen Term of Reference
4. The NetAct Proposal
5. Conclusion
6. Recommendation
7. Addenda

### 1. THE INTERNATIONAL CONTEXT OF IMMIGRATION DETENTION

a) As a member of the United Nations Organisation and signatory to several international treaties/conventions/covenants, Australia is committed to recognise and safeguard fundamental human rights, some of which have particular relevance to the situation of refugees and asylum seekers. However, during the period 1996-2007 Australia's policy and practice in their regard appears to have been dictated not by their fundamental human rights but by domestic political agenda. Immigration Detention Centres have been an integral part of the infrastructure implementing that policy. Failures in these Centres to respect the dignity and human rights of children and adults alike have drawn well documented criticism and protest from members of the medical and legal professions, advocates, researchers, writers, film-makers.

b) NetAct takes the view that both policy and practice are in need of radical change if Australia is to honour its obligations as an international citizen. As the Refugee Week Statement of Catholic Religious of Australia put it: *The challenge facing us now is to move beyond repealing the worst features of our immigration laws and policies, to boldly transforming the whole system to address the contemporary context and to fully respect the dignity and rights of people on the move.* The end of the Pacific Solution and the abolition of the Temporary Protection Visa are welcome signs that the new Government has begun to face that challenge.

### 2. THE INQUIRY'S TERMS OF REFERENCE

- a) The Committee's terms of reference indicate that this inquiry is concerned with 'the current immigration detention framework'. The January 2007 report of the Human Rights and Equal Opportunity Commission, *Observations on Mainland Immigration Detention Facilities 2006*, supports the need for root-and-branch reform indicated in numerous reports and submissions already tendered to the previous Government.
- b) This submission will take the opportunity to respond to only one term of reference, suggesting not improvements to the present system but an alternative, assuming that in the spirit of the inquiry such an approach would be acceptable.**



### **3. THE CHOSEN TERM OF REFERENCE: THE PREFERRED INFRASTRUCTURE OPTIONS FOR CONTEMPORARY IMMIGRATION DETENTION**

#### **a) Relevant human rights principles**

##### **Universal Declaration of Human Rights 1948**

**Article 14 (1):** *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

**Article 9 :** *No one shall be subjected to arbitrary arrest, detention or exile*

##### **Convention Relating to the Status of Refugees 1951**

**Article 31** declares that Contracting States shall not impose penalties on refugees 'on account of their illegal entry or presence'.

People seeking asylum are claiming to be refugees and seeking refugee status. Policy and practice respecting the spirit of these Articles would recognise that their need for protection gives them right of entry and equality before the law. The presumption that all asylum seekers are illegal and must be detained on arrival is not in accord with these international principles. In practice the human cost of mandatory detention here has been incalculable, its financial cost to the nation excessive and wasteful. In accord with these principles Australia has an obligation to meet the basic human needs of people seeking our protection while their identity is being established, their claims for asylum assessed, their refugee status decided.

#### **b) The present situation**

Villawood has been named as the principal onshore centre for immigration detention if the present framework were to continue. At present at least three distinct groups of people are detained there: people seeking asylum, people whose visas have expired, people who have served time in prison. Some form of detention may be considered appropriate for the third group; but there are more humane, more efficient, less costly ways of meeting the needs and rights of people in the other two groups without risks to security.

Some attempts have been made to improve the lot of detained people, such as residential housing detention within the Villawood IDC and community detention outside the IDC. While these options have been beneficial to some individuals and families they both assume that detention is mandatory. NetAct does not accept that assumption.

### **4. THE NetAct PROPOSAL: AN ALTERNATIVE INFRASTRUCTURE FOR PEOPLE SEEKING ASYLUM**

#### **Assumptions :**

- \* that the future will bring people to Australia seeking asylum
- \* that in accord with stated Labor intentions such people would remain in the proposed Reception Centre only while their claims for protection were being assessed and their status decided, 90 days being the suggested period.



\* that infrastructure includes:

- \* physical infrastructure: living quarters, communal areas
- \* social infrastructure: health, education, resettlement services
- \* management infrastructure: DIAC, Centre staff

**THE ALTERNATIVE:**

***CONVERT THE VILLAWOOD FACILITY TO MAKE IT A RECEPTION CENTRE AS IT ONCE WAS.***

***WHEN VISITING REFUGEES FROM VIET NAM IN THE LATE 70s, EARLY 80s, ONE DID NOT FIND THEM LOCKED IN BEHIND SECURITY FENCES.***

**a) Rationale**

The existing premises are available and could be transformed to provide more appropriate and comfortable accommodation. The cost involved would be a price worth paying as a means to avoiding some of the trauma associated with the prison-like environment of detention. Cost benefits could also accrue from locating both accommodation and required services on one site.

**b) Physical Infrastructure**

- \* **No fences or locked gates.**
- \* **Housing** which provides privacy for both family groups and single adults.
- \* **Communal areas** which provide spaces for a variety of activities.
- \* **Designated spaces** providing privacy for interviews, medical care, chaplaincy services.
- \* **Recreational facilities.**

**c) Social infrastructure.**

**i) Education**

- \* Inform people on arrival of their legal rights, Australia's obligations under international law, the process by which their claims for protection will be conducted.
- \* Provide qualified interpreters able to facilitate this communication.
- \* Provide on-going English language classes suited to varying needs.
- \* Assist people to understand and access Australian civil institutions.  
*Cf the experience of asylum seekers left in ignorance of their rights, of the process of assessment, of the progress of their cases.*  
*Cf refugees with TPVs denied access to AMES English classes, denied access to TAFE until pressure brought to bear.*  
*Cf current English classes at Villawood frustrating for detainees because the pace is not suited to their needs*

**ii) Health**

- \* Medical Centre staffed to provide routine health checks, diagnosis of physical and mental illness, standard GP services and referrals, on site treatment for minor ailments.
- \* Asylum seekers needing hospital care to have the same access to a public hospital as citizens.



*Cf the bad record of health care in Detention*  
*Cf HREOC : Observations on Mainland Detention Facilities 2006:*  
*'The fundamental reasons for mental health problems in immigration detention are the same as they have always been:*

- \* the fact of detention itself*
- \* the long periods of detention*
- \* uncertainty regarding the future*
- \* past torture and trauma.'*

**iii) Resettlement services**

- \* For those whose claims are successful, facilitate access to housing, schooling, on-going adult education, employment.  
*Cf the services offered to refugees pre 1999*  
*Cf both refugees and asylum seekers dependent on non-government agencies for resettlement assistance*
- \* For those whose claims are unsuccessful, avoid the inhumane, often cruel treatment associated with deportation under the detention regime.  
*Cf Deported to Danger, 2004. Pages 46 ff*

**d) Management infrastructure**

- \* Management of Detention Centres has been in the hands of commercial companies experienced in operating prisons for profit. This raises questions about responsibility, accountability, cost and vested interest.  
*Cf 4 Corners programme on Woomera, June 2003*  
*Cf Senate Committee Report, March 2006: Administration and operation of the Migration Act 1958 - Chapters I, 5, 6, 7.*  
*Cf ABC Radio National-Background Briefing: 20 June 2004 - The Detention Industry*  
*Cf the Palmer Report*
- \* The Minister and DIAC are ultimately responsible to ensure that the rights of people seeking asylum are respected and safeguarded in both policy and its implementation at every level.  
In the proposed Reception Centre this responsibility would be managed by public servants directly accountable to the Minister and his Department. The services provided there would be in the hands of staff conversant with the human rights of the residents and equipped with relevant professional skills.

**5. CONCLUSION**

***'When people escaping persecution land in Australia, persecution should cease'***  
***Tony Burke, Labor MP, when Shadow Minister for Immigration***

We submit that there is abundant evidence available to the Government that during



the last decade the mandatory detention system has been in itself a form of persecution. The Government now has both an opportunity and a responsibility to discard a system which has failed to honour Australia's obligations to people seeking our protection and wrought havoc in the lives of many innocent people, children among them.

## **6. RECOMMENDATION**

**We therefore recommend that the Government explore the option of a Reception Centre at Villawood for people seeking asylum, as a genuine alternative to the present Detention Facility.**

## **7. ADDENDA**

### **A note on two groups not included in this Submission**

This Submission has addressed the situation of asylum seekers only. However, we believe detention of people whose valid visas have expired is both unnecessary and wasteful of public money. The situation of people now detained in Stage 1 at Villawood is a different matter and more difficult to resolve. We are aware of a report which recommends that in its present form it should be closed.

### **A note on Christmas Island**

NetAct is opposed to the excision of Australian Islands from the immigration zone. This legislation denies people the right to seek asylum in Australia, by means of a legal fiction which prevents them from landing on 'Australian soil'. The excision also ignores Australia's obligation, in terms of the relevant international agreements, to receive people seeking asylum into this country and assess their claims for protection.

**Clearly, the Christmas Island facility is a most unfortunate legacy from the previous Government. What to do about it is a dilemma with many horns. However, if concern for human rights can prevail amongst us, it will not be used to accommodate people needing Australia's protection.**

### **A note on cost effectiveness**

The Pacific Solution has already cost the nation \$1 billion, perhaps more. The Senate was told in 2002 that mainland mandatory detention cost \$2 million per week. In 2004 a Senate Estimates hearing was told that the average cost of keeping one person in detention was \$160 per day. NetAct has not attempted an estimate of the cost of a Reception Centre; but given the huge costs already incurred and the continuing cost of Detention, the costing of any alternative to detention would be an exercise worthy of the Government's serious consideration.