

BALMAIN UNITING CHURCH



344 Darling Street Balmain NSW 2041
PO Box 90 Balmain NSW 2041
Tel/Fax: 9555 9193 Email: balmainuc@iprimus.com.au

BALMAIN FOR REFUGEES

Committee of Balmain Uniting Church and the Wider Community

14 September 2011

Committee Secretary
Joint Select Committee on Australia's Immigration Detention Network
PO Box 1600
Parliament House
Canberra ACT 2600

Dear Secretary

I am the Coordinator of volunteers working with Balmain for Refugees which assists failed asylum seekers to apply for judicial review in the Federal Magistrates Court or to write ministerial intervention requests as a last resort to obtain protection in Australia. Balmain for Refugees is a committee of Balmain Uniting Church and the wider community.

In the last financial year Balmain for Refugees received more than one hundred and sixty (160) new requests for assistance from asylum seekers most of whom asked for help to write ministerial intervention requests. However, since the beginning of 2011 an increasing proportion of these requests were from offshore asylum seekers transferred to Villawood Immigration Detention centre (VIDC) from Christmas Island who asked for help to apply to the Federal Magistrates Court (FMCA) for review of adverse decisions of Independent Merits Reviewers (IMRs).

Balmain for Refugees thanks the Inquiry for encouraging submissions from asylum seekers in detention and for the reassurance that submissions written in other languages will be translated. Asylum seekers want their names to be kept confidential more out of fear that Immigration will penalise them for speaking out than for any other reason.

Previous Submission to 2008 Inquiry into Immigration Detention in Australia

In July 2008 Balmain for Refugees made a submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia. The submission focussed in particular on the unfair refugee and humanitarian determination processes which were causing some asylum seekers to be kept in detention for very long periods waiting for outcomes to appeals to courts and for ministerial intervention requests. Balmain for Refugees made recommendations how to implement faster and fairer procedures which we ask the present Inquiry to take into account.

Submission to the 2011 Joint Select Committee on Immigration's Detention Network.

Rather than canvass issues other organizations will cover, Balmain for Refugees will focus on the following issues.

1. The utter desperation of offshore asylum seekers transferred to Villawood Immigration Detention Centre (VIDC) since about March 2010.
2. The treatment of asylum seekers sent to Silverwater MRRC from VIDC and from Christmas Island IDF (Immigration Detention Facility) following demonstrations and fires in both centres.
3. The fears of asylum seekers facing removal due to long delays accessing the Federal Magistrates Courts.
4. Problems Arising from SERCO's Management of Detention Centres

Acknowledgments

Stephen Blanks, Secretary of the NSW Council for Civil Liberties, who suggested Balmain for Refugees (BFR) organize the responses from asylum seekers in detention in this submission and assisted the transmission of this voluminous document by email.

The following organizations and individuals who helped distribute and collect the responses to the one page questionnaire devised by Balmain for Refugees :

- Asylum seekers in detention who speak sufficient English to assist other detainees to fill in the questionnaire.
- Judy McLellan from NSW Council for Civil Liberties and Balmain for Refugees who was visiting Sherger Immigration Detention Centre (IDC) in September 2011
- Sr Francis Mansour and other religious from the Little Company of Mary who collected the Tamil submissions in VIDC.
- Noelene Nagle and others from the Blue Mountains Refugee Support Group.
- Renee Chan, Asylum Seekers Christmas Island who will follow up the ex-VIDC asylum seekers in Maribyrnong IDC.
- The contingent of volunteers from BFR including young interns with the Council for Civil Liberties and volunteer interpreters who visit VIDC or Silverwater MRRC regularly with me.

1. The desperation and despair of offshore asylum seekers

The increasing despair of some 150 offshore asylum seekers transferred to Villawood Immigration Detention Centre (VIDC) in March 2010 has been apparent as the length of their detention increased. This was due in large part to the Minister putting on hold all appeals to the Independent Merits Review (IMR) after July 2010 pending the outcome of the High Court decision in *Plaintiff M61/2010E v Commonwealth of Australia and Ors*.

On **11 November 2010** the High Court found that the IMR review process was without any basis in law and the decisions of the IMR were invalid. There were more delays when in January 2011 the Minister started a new round of IMR interviews which now complied with the High Court requirements. However, while the first IMR decisions from the new round of IMR reviews came in late January 2011 some asylum seekers were still only receiving their decisions in August 2011.

It seems almost indecent that the Minister did not release these offshore asylum seekers into the community as soon as the HCA decision was handed down on 11 November 2011 when the IMR process was found to be invalid. Instead some asylum seekers have had delays up to a year in length making their total time in detention up to 2 years or more by now.

The deterioration in the mental and physical health of these and other long-term detainees is quite clear in the responses to the one page questionnaire Balmain for Refugees was able to distribute to asylum seekers in Sherger IDC thanks to Judy McLellan and to asylum seekers in VIDC thanks by the many visitation groups involved.

Please find attached the submissions to the inquiry from 97 detainees from Sherger Immigration Detention Centre (IDC) and 70 asylum seekers in Villawood IDC. Included are responses from 12 offshore asylum seekers from Christmas island now in Stage 1 maximum security section of VIDC following demonstrations and fires in April 2011. All bear witness to the sense of hopelessness pervading Sherger and VIDC detention centres. Their comments are no doubt reflected by long-term asylum seekers in detention throughout Australia.

(Attachment 3)

Late submissions have been invited from remaining of 12 asylum seekers from VIDC remaining in Maribyrnong IDC.

2. The treatment of asylum seekers sent to Silverwater MRRC

The treatment of asylum seekers sent to Silverwater MRRC from VIDC and from Christmas Island IDF (Immigration Detention Facility) following demonstrations and fires in both centres raises questions about the capacity of the minister to act as Guardian to asylum seekers in detention.

On 20th or 21st April 2011 23 asylum seekers from VIDC were transferred by the Minister to Silverwater Metropolitan Reception and Remand Centre (MRRC) in the wake of protests and fires in VIDC. They were not charged for 20 days. When the Minister was asked why they were kept in Silverwater prison the Minister indicated he had declared Silverwater to be a detention centre. After the twenty days in isolation 7 were charged and 16 were released without charge. Two were of the 16 were returned VIDC because they had court hearings concerning their immigration cases in Sydney. The remaining 14 were sent to Maribyrnong IDC in Victoria by bus.

The appalling conditions and suffering the 23 experienced in Silverwater MRRC is outlined by their solicitor in **Attachment 1**. Later two of the asylum seekers in Maribyrnong were charged and returned to Silverwater MRRC. The 9 men from VIDC who were charged have

been moved constantly around different state prisons and are presently spread at remand centres at Silverwater, Parklea, Nowra, Bathurst and Dubbo. Visitation to more distant prisons is almost impossible to organize.

Balmain for Refugees has also received feed-back during visits to a couple of the 13 recent offshore asylum seekers from Christmas Island transferred to Silverwater MRRC in late August 2011. They are being kept in solitary confinement without charge in the same conditions described in Attachment 1.

Balmain for Refugees does not condone damage and destruction to property by anyone but the delays caused by Ministerial error outlined in 1. have no doubt been a large contributor to the demonstrations and rooftop protests in VIDC and other detention centres and the damage which resulted.

One might ask "Who has the greater sin - desperate asylum seekers detained for more than a year or the government which detains asylum seekers in breach of its international obligations ?"

3. The fears of asylum seekers facing removal

Most offshore asylum seekers who seek assistance to apply to the Federal Magistrates Court for review of adverse IMR¹ decisions often face big delays as lawyers, courts, Immigration case managers and BFR try to cope with increasing load the huge cohort of offshore asylum seekers in VIDC and other detention centres.

BFR had to find a way to cope with the flood of requests not only from asylum seekers from Christmas Island now in VIDC but also from Curtin Detention Centre (remote WA) and Sherger IDC (Weipa QLD) who started contacting me in late March 2011. In desperation I contacted Law Societies, Bar Associations, Legal Aid, National Pro-bono Legal Resource Centre and the Public Interest Legal Clearing House requesting more lawyers. The Public Interest Legal Clearing House (PILCH) coordinated the responses and organized three training sessions for barristers in August 2011. Meantime Legal Aid did its best to find lawyers for asylum seekers but the shortage of barristers meant that many asylum seekers were out of time.

When the deadline of 35 days passes for asylum seekers to file in court Immigration Case Managers must apply pressure on their clients to return to their countries in line with Section 189 (6) of the Migration Act which requires asylum seekers in detention whose cases have been finally determined to be removed "as soon as reasonably practicable".

This pressure causes great distress for asylum seekers who do not know whether they have been allocated a lawyer or when a lawyer has been allocated to their case, whether the lawyer has or intends to file an application in the FMCA for them.

¹ Offshore asylum seekers ("boat people" first undergo a Refugee Status Assessment (RSA) and if this is negative they appeal for an Independent Merits Review (IMR)
Prior to the outcome of the High Court judgment on 11 November 2010, those receiving an adverse IMR decision had no rights to apply for review by the Federal Magistrates Court unlike onshore asylum seekers.

Balmain for Refugees is presently negotiating a solution with the Immigration Director in charge of Compliance Case Resolution in NSW. Many dilemmas are difficult to resolve and Balmain for Refugees takes the opportunity to praise the kindness of the Case Managers and cooperation of the Immigration Director and senior staff at VIDC who are very approachable and try to resolve problems within the limitations of the Act and regulations.

4. Problems Arising from SERCO's Management of Detention Centres

I will refer to two events in VIDC where SERCO officers completely mishandled tense situations to the detriment and safety of the asylum seekers involved.

4.1 Assault on Asylum Seeker in VIDC

Mr Mohammad Sorhabi has given permission for his complaint to the Ombudsman to be provided in confidence to the Committee. The allegations in that complaint speak for themselves and highlight the danger of untrained and unsuitable SERCO staff managing asylum seekers in detention. The case is now been taken over by the AHRC.

(Attachment 2)

4.2 VIDC Rooftop Protests

I have been involved in trying to assist Immigration to persuade asylum seekers in two rooftop protests in VIDC. The first was a protest on 22nd and 23rd September 2010 which I describe below. The second was on Sunday 24th of April 2011 when two men remained on a hunger strike as part of a rooftop protest after many days.

The 22/23/ September 2010 Chinese Rooftop Protest

I remained in contact with the protestors throughout the 2 days and nights of the protest speaking in turn to the protestors with the help of the Mandarin interpreters with the Telephone Interpreter Service. I also kept in touch with Immigration. I gradually learned the case histories of each protestor and quietly trying to persuade them that none of their cases appeared to be finished. I assured them that Balmain for Refugees and Immigration were willing to assist them find lawyers or write to write ministerial intervention requests once they came down from the roof.

However, I am very concerned about the unwise tactics of Immigration Officers leaving communication with the asylum seekers to Serco. The result was an ever increasing gap between the perceptions of the nine asylum seekers on the roof and the Department of Immigration about what was happening.

The asylum seekers had been on a hunger-strike protest for 2 days before going onto the roof and were in a distressed mental state following the death of the Fijian man and the apparent futility of the refugee determination process.

Their primary demand was that Immigration grant them protection visas immediately. The Minister refused to have Immigration officers talk to any of the protestors while they remained on the roof. This created an impasse where those on the roof in the believed it was

impossible to appeal to anyone with authority and it would be better if they jumped. This impossibility was confirmed in their minds by what they observed the following incidents from the roof.

Firstly, the protestors told me they witnessed the brutal tactics of Serco subduing the efforts of other detainees who tried to throw them blankets, food and water with the outcome that one of supporters on the ground was seen being put in an ambulance and taken to hospital. From that point I discerned an increasing hysteria and lack of contact with reality among the rooftop protestors and also a lack understanding of what was actually happening on the roof by the senior SERCO officers observing them. For example, the pregnant woman who had taken a quite prominent role in stating the demands of the asylum seekers, decided to climb down from the roof to negotiate with Immigration as a response to Immigration's insistence that they would only speak to asylum seekers who came down from the roof. However, as the pregnant woman started to move down the roof she told me she began to feel faint and asked the others to help her back again which they did. When I phoned Serco to ask for a visual report of what was happening (I was phoning from home) I was told Serco had witnessed the rooftop protestors preventing the woman from coming down to negotiate with Immigration.

Worse, when Mr Chen Wu, the partner of a pregnant woman who was also on the roof, instead came down to negotiate with the Immigration Department on behalf of the asylum seekers on the roof, he was immediately led away by Serco and not seen again. The protestors on the roof especially the pregnant woman asked to see that her husband was all right. This request was refused and the asylum seekers concluded Immigration had killed him. As astonishing as this conclusion might seem, it highlights the problem of Immigration not being willing to talk to the asylum seekers and the misunderstandings that arise when communication is cut.

Sunday 24th April 2011 Rooftop Protest

During the demonstrations and fires in VIDC on 20th April 2011 a large group of asylum seekers staged a rooftop protest. They were persuaded to get down off the roof after a vigil lasting between Wednesday 20th April to mid-day Saturday 23rd April 2011. However, two asylum seekers remained on the roof on Saturday night and Sunday. On Sunday afternoon I was asked by Immigration to come to VIDC and assist persuading two men to come down. The combined efforts of us all including the two men's barrister and migration agent and Richard Towle from the UNHCR were ineffectual. It was not until John Moorehouse, Deputy Secretary of DIAC arrived after driving all the way from Canberra to plead with the two men to come down that they agreed to do so. Again Immigration left Serco in charge of the negotiation. John Moorehouse's presence was the straw which broke the camel's back.

Thank you for your attention to the matters raised in this submission.

Yours sincerely

Frances Milne
Coordinator
Balmain for Refugees Ph : (02) 9810 7812