National Council of Churches in Australia

Submission to the Inquiry into the administration and operation of the *Migration Act* 1958

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National Program on Refugees and Displaced People

Christian World Service / National Council of Churches in Australia

The National Council of Churches in Australia (NCCA) welcomes the opportunity to submit its views to the Senate Legal and Constitutional References Committee *Inquiry into the Administration and Operation of the Migration Act (1958)*, as it enables our member Churches to contribute the expertise they have gained from involvement in refugee and asylum issues since 1948.

Summary of Recommendations

Complementary Protection

1. The NCCA recommends the Australian Government introduce a complementary onshore protection program, wherein applicants can apply at the first instance to DIMIA on complementary protection grounds and then have access to the Refugee Review Tribunal (RRT) and judicial merits reviews (see attached Complementary Protection Model).

Detention

2. The NCCA recommends that the Australian Government builds on, and goes beyond the changes advocated or already achieved by the *Migration Amendment (Detention Arrangements) Act* 2005 and the Palmer inquiry to provide more fundamental alternatives for asylum seekers, incorporating at the minimum:

   a. The adoption of a community release scheme, open to all asylum seekers (unless there are strong, justifiable reasons to continue detention), based on adequate case management and with proper entitlements, namely work rights, Medicare and supplementary income support, if required;

   b. Guidelines setting out grounds for detention and provision that decisions about detention be subject to independent, enforceable (perhaps judicial) review;

   c. Abandoning the holding of asylum seekers in remote centres in Australia or in the Pacific. This necessitates the closure of Baxter, not proceeding with the use and proposed extension of the Christmas Island centre and ending the Pacific Solution;

   d. Adoption of case management for detainees and legislating for minimum standards for detention centres;

   e. Greater care and concern around decision-making and the process of return of rejected asylum seekers to their home countries and monitoring of returned asylum seekers; and

   f. Adoption of a more integrated, whole-of-government approach with greater program and policy co-ordination across government portfolios and with non-government organisations' contribution in this process. Such an approach is relevant to formulating creative policies both in Australia and internationally to

achieve effective protection for refugees, asylum seekers, others of concern to the UNHCR and internally displaced people.

Pacific Solution

3. The NCCA recommends abolishing the Pacific Solution and that any future measures to counter people smuggling are targeted, humane and proportional to the problem.

Temporary Protection Visa (TPV) holders

4. The NCCA recommends that the Government grant permanent residency to all refugees presently holding Temporary Protection Visas and in the future award immediate permanent residency status to those asylum seekers determined to be refugees.

Asylum Seekers in the Community

5. The NCCA recommends that asylum seekers in the community be granted the right to work, Medicare and, if necessary, government income support while they apply for protection in Australia. Also, the NCCA recommends that a case worker model of support be introduced for asylum seekers, both in the community and in detention.

6. The NCCA recommends the easing of exemptions on the continuation of the Asylum Seekers Assistance Scheme (ASAS) benefits after a Refugee Review Tribunal (RRT) decision, especially for single mothers who cannot work and therefore have no means of support.

Background

The National Council of Churches in Australia (NCCA) welcomes the opportunity to submit its views to the Senate Legal and Constitutional References Committee, as it enables the NCCA to contribute the knowledge it has gained from its involvement in refugee and asylum issues since 1948.

The NCCA is comprised of 15 major Christian churches working together to strengthen relationships and understanding of each other and to fulfil common witness, mission and service. Through the NCCA, member churches come together to break down the structures that create and perpetuate poverty, oppression, injustice and division.

The National Program on Refugees and Displaced People operates under the Christian World Service Commission of the NCCA. It is concerned with policy relating to refugees,

asylum, settlement, access and equity. It is also involved in awareness raising, education, community development and advocacy. This work is done in partnership with the State Councils of Churches, which each have a refugee program that maintains close links to the community and involves member churches in providing services to refugees and asylum seekers.

The NCCA also works in partnership with National Councils of Churches around the world, regional councils, such as the Christian Conference of Asia, and the World Council of Churches' Global Ecumenical Network for Uprooted People, which brings together regional working groups on uprooted people.

It is within the context of these relations and concerns that the NCCA makes the following submission to the Legal and Constitutional References Committee Inquiry into the administration and operation of the Migration Act (1958), an Inquiry referred to the Committee on 21 June 2005 for report by 8 November 2005 under the following terms of reference:

Terms of Reference

A. the administration and operation of the *Migration Act 1958*, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;

B. the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;

C. the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;

D. the outsourcing of management and service provision at immigration detention centres; and

E. any related matters.

Introduction

The NCCA wishes to thank both the Government and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) for its sustained commitment to improving refugee resettlement over recent years. Significant efforts have been made to improve

program management and ensure that Australia's settlement services are of the highest possible standards. Although this submission necessarily focuses on the administration and operation of the *Migration Act* 1958 with regard to Australia's onshore program, these efforts are appreciated and duly noted.

This submission is not intended to reflect all of the NCCA's concerns regarding refugee and asylum issues, but rather key areas of concern to the NCCA. The submission first looks at the administration and operation of the *Migration Act* with respect to the Minister's Discretionary powers and then covers issues related to detention, "The Pacific Solution", temporary protection visa (TPV) holders, children and families in detention and asylum seekers in the community.

Ministerial Discretion

The NCCA has long been concerned with the absence of an effective system for dealing with those who do not fit the Convention definition of a refugee, but to whom Australia none-the-less owes protection obligations. In 2003, after lengthy consultations, the NCCA, the Refugee Council of Australia and Amnesty International Australia developed an alternative model to the current system of dealing with such claims through the exercise of the Minister's discretionary powers.

The Complementary Protection Model ('the Model'), which is attached, was jointly drafted by the three agencies and has since been widely endorsed by peak bodies and refugee organisations. Thirteen of the NCCA's 15 member churches have endorsed the model.

Although this section makes reference to the Model, it focuses more broadly on the inadequacies of the current system.

Australia's International Human Rights Obligations

International Covenant on Civil and Political Rights (ICCPR):

Under the ICCPR, when considering the potential deportation or removal of a person, Australia is obliged to consider whether there is a real risk that the following rights, at a minimum, will be violated:

- the right to life (article 6 of the ICCPR);
- the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7 of the ICCPR);
- the right not to be arbitrarily detained (article 9(1) of the ICCPR); and

- the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 10(1) of the ICCPR).

Australia's responsibility for such potential breaches of the ICCPR follows in part from the primary obligation of each State party, pursuant to article 2 of the ICCPR: to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant.

Australia's obligations under that provision are owed to all those within its territory and subject to its jurisdiction.

The UN Human Rights Committee (UNHRC) has stated, as a general principle:

> *If a State party deports a person within its territory and subject to its jurisdiction in such circumstances that as a result, there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, that State party itself may be in violation of the covenant*. [1]

It would contravene Australia's obligations under the ICCPR to deliver a person by compulsion into the hands of another state or third party which might inflict harm proscribed by the ICCPR, or which may expel that person to a third state which might inflict such harm. That is so regardless of whether that person falls within the definition of a refugee in the Refugees' Convention.

Convention on the Rights of the Child (CRC):

Like the ICCPR, the CRC:

- recognises the child's inherent right to life (article 6);
- protects children from torture and other cruel, inhuman and degrading treatment and punishment (article 37(a));
- proscribes arbitrary detention (article 37(b));

[1] *T.T. v Australia* (706/96) at paragraph 8.1 (also referred to as *G.T. v Australia)*. This was a complaint brought by Mrs G.T. on behalf of her husband T. See similar comments made in *Kindler v Canada* (470/91). See also General Comment 20 of the UNHRC where it was said 'In the view of the Committee, State parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon their return to another country by way of their extradition, expulsion or refoulement.' This General Comment has been interpreted as 'prohibit[ing] refoulement with regard to all article 7 treatment' (S Joseph et al, *The International Covenant on Civil and Political Rights* (2000) OUP at p162).

- provides that children deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 37(c)); and

- provides Australia is obliged to undertake all appropriate legislative, administrative and other measures to implement those rights and the other rights guaranteed by the CRC (article 4).

Australia will breach the CRC if it places a child in a situation such that a breach of the above rights, at a minimum, are likely to take place. Again, that is so regardless of whether the child in question meets the definition of a 'refugee' in the Refugees' Convention.

Convention Against Torture (CAT)

Article 3 of CAT provides '*No State Party shall expel, return ('refoule') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*'.[2]

The right of such a person to resist expulsion is not made dependent upon him or her satisfying the Refugees' Convention definition of 'refugee'.

The Minister's Powers[3]

The Minister's existing discretionary powers were inserted into the *Migration Act* during the 1989 'codification reforms' to provide an outlet to deal with difficult cases that did not fit statutory visa criteria. Under Section 417 of the Act, the minister may substitute a more favourable decision than the one handed down by a tribunal 'if the Minister thinks it is in the public interest to do so'. Section 417 powers, however, may only be exercised following a decision of the Refugee Review Tribunal which considers only protection visa cases. The Migration Series Instruction 225 outlines the broad criteria in regards to the Minister's power. The Minister's discretionary powers are non-compellable, non-reviewable and non-delegable within domestic law.

Before 1989, the *Migration Act* gave the Minister very broad discretionary powers in applying immigration law. In December 1989, however, the law was radically changed. The new regime contained a very complex Act and a regulatory regime which it

[2] While the requirement for 'substantial grounds' means that the risk of torture must go beyond mere theory or suspicion, it does not need to meet the test of being highly probable: CAT Committee General Comment 1, paragraph 1.

[3] This section draws on information from: *International Protection and Refugee Law: Contemporary Issues Relating to the Australian Refugee Determination System*, Speech to AILA Conference, June 2004, by David Bitel, Managing Partner, Parish Patience Immigration – Sydney, Australia

attempted to encapsulate in the Regulations made pursuant to the Act. The intention was to remove the Minister's discretionary powers so that there would be certainty and consistency in the administration of the law.

The changes were introduced to address the increase in immigration litigation in the late 1980s. This resulted from three main factors:

1. the introduction of Freedom of Information legislation in Australia in the mid-80s enabled people to find out and get access to their Departmental files, and also required the Immigration and all other Government Departments to make public their policies, which previously had been kept secret;

2. The introduction or codification of the administrative law remedies of judicial review under the Administrative Decisions (Judicial Review) Act in the early 80s. This Act provided for a simplified process of seeking access to judicial review; and

3. The High Court decided in the case of *Kioa v* West (1985) 159 CLR 550 that aliens were entitled to the principles of natural justice and hence could use the court system to protect and enforce their rights.

In consequence, in the late 1980s, there was a proliferation of applications for judicial review, largely over Section 6A(1)(e) in the old *Migration Act* (Section 6A provided five grounds by which people could apply onshore for permanent residence - partner, parent, refugee, work-sponsored and "strong compassionate or strong humanitarian" grounds). Federal Court judges, who considered it their duty to interpret and explain the law and thereby to protect people's human rights, issued explanations of various terms in their judgments, but this was seen as meddling in the affairs of the Executive and usurping the Executive and the Parliament's powers and led to attacks on the judiciary by the Minister for Immigration and other Parliamentary members.

The 1989 legislative changes were attempted to overcome this struggle. However, one of the biggest problems emanates from this change. While all the old rules were meant to be covered in this new regime, there was one significant omission. *No regulatory regime was introduced to replace the Section 6A(1)(e) ground for the grant of on-shore, strong humanitarian or compassionate stay in Australia, independent of the refugee system.* Rather, that power was vested in the Minister, who was given a non-compellable, non-delegable and non-appealable power to enable people to stay.

The law further provided that to access that Ministerial discretionary power, one had to go through the convoluted system of making an application for a visa, be refused, lodge an appeal to one of the three Tribunals set up to deal with immigration appeals, be

refused by that Tribunal and only then could one appeal to the Minister. An applicant could thus not appeal directly to the Minister.

The result was that a large number of people who in the past may well have been prime candidates for the grant of residence under the strong compassionate or humanitarian grounds now could only get to the Minister by pursuing a refugee application. Subsequently, all applicants seeking the exercise of the Minister's humanitarian or compassionate discretion were channeled through the refugee status determination system.

Key Problems with Ministerial Discretion

The precondition of a less-favourable decision of the Refugee Review Tribunal (RRT)

From the NCCA's perspective, the main difficulty with s417 lies in the fact that the power cannot be exercised unless there was an earlier and less-favourable decision of the RRT. The restriction is intended to limit the number of cases going to the Minister and the opportunity available to applicants to prolong the visa determination process.

However, the problems resulting from this pre-condition are numerous, namely because a person with valid grounds for complementary protection (which covers Australia's obligations under the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention on the Rights of the Child* (CRC), the *Convention Against Torture* (CAT), the *Convention relating to the Status of Stateless Persons* 1954 and the *Convention on the Reduction of Statelessness* – see attached Model on Complementary Protection) must first make a somewhat erroneous application as a refugee under the 1951 *Refugee Convention* definition and then be rejected by the Department and the RRT before being eligible to submit an application to the Minister to be considered under the relevant criteria.

Implications for Asylum Seekers in the Community

Currently, those who arrive in Australia and clear immigration and then make an application for asylum while living in the community must first apply as a refugee to DIMIA and appeal to the RRT and receive negative decisions from both before they can appeal to the Minister on complementary protection grounds. This means that applicants have to wait months, or even years, before their claims are considered against relevant criteria.

During this time, they are only eligible for income support payments through the Red Cross-administered Asylum Seeker Assistance Scheme (ASAS) and they are not permitted to work, which leaves them with no Medicare coverage and totally dependent on charities for all their needs. When they do lodge an appeal to the RRT, as those with complementary protection claims must do in order to get to access to Ministerial discretion, they are denied

income support, work rights and have no Medicare cover. Similarly, when they make an application under the Minister's discretionary powers, they are denied income support, work rights and have no Medicare cover, even though this is a first instance decision on their complementary protection claims.

There is no reason in principle why a person applying under ICCPR/CRC/CAT grounds should be entitled to a lesser form of support (income support, work rights and Medicare coverage) than an asylum seeker applying under the Refugee Convention. Each invokes Australia's obligations under the various treaties and Australia's non-refoulement obligations under the ICCPR, CRC and CAT are no less important than those under the Refugees' Convention. The potential harm resulting from a flawed decision is equally severe, if not fatal.

Under the proposed model, asylum seekers making an application to DIMIA for a protection visa would automatically be screened to see whether they have grounds for a complementary protection visa. This would save valuable DIMIA and RRT status determination resources and save making ASAS payments to those with grounds for complementary protection obliged to apply for refugee status at DIMIA and RRT for the reasons outlined above. Faster status determination would further deter claims made by some applicants in the community to prolong their stay in Australia. ASAS income support and work rights would be available for those with grounds for complementary protection while their claims are being considered.

Implications for Asylum Seekers in Detention: Arbitrary Detention

Currently, as mentioned, protection visa applicants with grounds for complementary protection must apply as a refugee to DIMIA and appeal to the RRT and receive negative decisions from both before they can appeal to the Minister on complementary protection grounds. In the case of protection visa applicants in detention, this effectively prolongs the detention as they must first be considered under irrelevant criteria by DIMIA and the RRT before being able appeal under relevant criteria to the Minister.

While average processing times for primary applications to DIMIA have fallen, this still does not excuse the fact that there is not reason – other than deterring applications to the Minister – for this form of arbitrary detention.

Putting aside, for the moment, the fact that in the NCCA's view, the mandatory, indefinite and non-reviewable nature of Australia's detention system for unauthorised non-citizens is 'arbitrary' within the meaning of article 9(1) of the ICCPR and article 37(b) of the CRC,[4] the position of ICCPR/CRC/CAT asylum seekers should be considered a special case. Under the current scheme, ICCPR/CRC/CAT asylum seekers may be detained for an extended

[4] See *A v Australia* (560/93) at para 9.2 and *C v Australia* (No 900/1999) at para 8.2.

period while they work their way through a process which has no direct application to them. It is difficult to see how their detention during that period can be said to be necessary or proportional as required by article 9(1) of the ICCPR and article 37(b) of the CRC.

Being forced to first apply under such erroneous criteria not only leads to prolonged arbitrary detention, but, whether intentional or not, it also places significant pressure on an asylum seeker to sign 'voluntarily return' agreements or accept a 'voluntary repatriation package'. Indeed, the lack of a 'first instance' decision on complementary protection grounds and the implication of prolonged detention could amount to duress in accepting a voluntary repatriation package.

Under the proposed model, asylum seekers making an application to DIMIA for a protection visa would automatically be screened to see whether they have grounds for a complementary protection visa. This would save valuable DIMIA and RRT refugee status determination resources, substantially reduce the cost of detention per protection visa applicant and significantly reduce the debilitating effects of long-term detention on the mental health of applicants and their family members. Faster status determination would further deter claims made by some applicants trying to prolong their stay in Australia.

Implications for those who do not Appeal within 28 Days

There are numerous circumstances where a person who, through mistake, administrative error, poor migration advice or service or unforseen circumstances, has not lodged an appeal to the RRT within the rigid 28-day appeals deadline. Despite the fact that Australia may have protection obligations toward these people, they lose the opportunity to lodge an application to the Minister.

Another problem, arising from the interpretation placed upon s417 by MSI 225, is that the power cannot be used where a decision of the RRT "*is quashed or set aside by a Court and the matter is remitted to the decision maker to be decided again … as there is no longer a review decision for [the minister] to substitute*".[5] The only option is to pursue proceedings before being able to apply to the Minister.

Similarly, a person whose circumstances might deserve consideration on "public interest" grounds will first have to commence proceedings in the tribunal in order to access the Minister's safety net discretion.

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[5] See para 3.2

Inadequate provisions to protect against flawed decision-making

While MSI-255 makes specific reference to Australia's obligations not to refoule under the ICCPR and the CAT[6] and states that 'unique or exceptional circumstances' requiring the exercise of the Minister's discretion may arise out of Australia's obligations under the CAT, the CRC and the ICCPR,[7] the Minister is still under no obligation to either consider an application or exercise her or his powers. Even if we assume that the Minister will exercise the discretion in favour of an applicant in every case where there is a risk of refoulement, the current scheme does not make appropriate provision for the possibility of flaws in the application and decision making process.

The potential for a flaw in the decision-making process is also increased by the method in which applications are processed. Although s417 confers power on the Minister, it is DIMIA that evaluates applications under MSI 225 and provides recommendations and supporting explanations to the Minister for Immigration (in the case of detention or policy-related cases) and the Minister for Citizenship (in the case of asylum seekers in the community). If the officer decides that the case does not meet the guidelines, all that is required is "*a short summary of the case in a schedule format*" to bring it to the Minister's attention.[8] If the officer decides that the case does meet the guidelines, the officer prepares a submission highlighting the strengths or weaknesses of the case. If the officer decides that there is no link between a person's situation and the scope of s417, the matter does not even make it to the "short summary" stage.

In the refugee status determination process a number of avenues for review exist, including appeal to the RRT, the Federal Court (on the basis of an error in law rather than the merits of the case) and, finally, the Ministerial 'safety net'. None of these review avenues exist for applicants with complementary protection grounds despite the fact that a flawed decision can have equally devastating consequences.

This should not necessarily be taken as a criticism of DIMIA or a particular Minister, but rather recognition of the significant degree of error inevitable in administrative decisions. Such a flaw may result from decision makers:

- not having all relevant material before them;
- misinterpreting or misapplying the law;
- making an error as to the factual material before them; or

[6] See paras 4.2.2 and 4.2.4 (first dot point) of MSI 225.
[7] See paras 4.2.2, 4.2.3 and 4.2.4.
[8] See para 6.5

- not giving an applicant an opportunity to respond to adverse material which is significant to the decision.

The significant number of refugee convention applicants receiving negative DIMIA primary decisions that are later overturned by the RRT or the Federal Court is testament to the importance of this review process in the refugee status determination process. Indeed, these review mechanisms explicitly recognise that decision makers and those assisting them are not perfect. By providing a combination of judicial and merits review for Refugees' Convention applicants (with the s 417 discretion as a safety net), Parliament has reduced the risk that any such errors will put Australia in breach of its non-refoulement obligations under the Refugees' Convention.

In contrast, ICCPR/CRC/CAT asylum seekers must hope that: DIMIA staff do not err in considering and processing a request that the Minister exercise her or his discretion; all relevant material is presented to and correctly construed by the Minister; the Minister has due regard to their attempts to invoke Australia's non-refoulement obligations and the Minister correctly construes those obligations. Such Ministerial decision-making may involve difficult questions of international law.

There is also no free legal assistance provided by the government for s417 requests. All s417 applications are determined by written evidence only. There are no opportunities for hearings or interviews. If there is an error in decision-making, the applicant has no way to correct them, as there is no right of review.

Nor is there adequate protection in the way of scrutiny of such decisions. The sole accountability mechanism in cases where the Minister's discretionary power is used to grant a visa is a requirement that the Minister table statements in parliament on a six-monthly basis.[9] However, since 1998, the Minister's statements to Parliament have not properly outlined the reason for not substituting an RRT decision with a more favourable one. Instead, they have merely been pro forma responses stating little more than the fact that the Minister has chosen not to exercise her power as it was not in the public interest. They do not outline whether the decision was based on humanitarian considerations, non-refoulement obligations under the ICCPR, CRC or CAT or obligations under the statelessness conventions. More importantly, the Minister is not required to table reasons for refusing or not considering cases so these decisions cannot even be scrutinised.

There is no reason in principle why a less rigorous approach should be taken in relation to ICCPR/CRC/CAT asylum seekers as compared to people seeking to invoke Australia's obligations under the Refugees' Convention. Australia's non-refoulement obligations under

the ICCPR, CRC and CAT are no less important than those under the Refugees' Convention. The potential harm flowing from a flawed decision is equally severe. A flaw in the decision making process may be literally fatal.

In the report of the Senate Select Committee's Inquiry into Ministerial Discretion in Migration Matters, the Committee found that the lack of transparency and accountability of the minister's decision making process was a serious deficiency and needed urgent attention. It stated that Section 417 tabling statements no longer provided reasons for the minister's decisions and the pro-forma words used are not sufficient for parliamentary accountability. It stated that, under the Howard Government, the statements had outlined only in the broadest terms cases where the minister has intervened. The Committee found that *"the tabling statements failed to provide, as required by legislation, the minister's reasons for considering his or her actions to be in the public interest. Meaningful transparency and accountability in the ministerial intervention process stops at the door to the minister's office"*.[10]

The Committee made several recommendations to address the lack of accountability. It recommended that the minister's tabling statements under sections 417 meet the legislative requirement that the minister provide reasons why a decision to intervene is in the public interest. It recommended that tabling statements give an indication of how the case was brought to the minister's attention - by an approach from the visa applicant, by a representative on behalf of the visa applicant, on the suggestion of the RRT, at the initiative of a DIMIA officer or in some other way. However, none of these recommendations have been properly implemented.

That said, the NCCA believes that even if these recommendations were implemented, they would not address the current deficiencies in the system. As such, it recommends the implementation of the Complementary Protection Model (see attachment 1).

Australia's obligation to provide 'effective remedies' for breaches of international human rights obligations

The exclusive reliance upon the s 417 discretion for ICCPR/CRC/CAT asylum seekers not only increases the risk of breaching Australia's non-refoulement obligations, it also places Australia in breach of the continuing obligation to ensure that there are appropriate systems in place to provide 'effective remedies' for breaches of human rights instruments. Article 2(3) of

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[9] According to the legislation, these statements must set out the minister's reasons for thinking intervention is in the public interest. While the statements made under section 351 go some way to providing case specific reasons for ministerial intervention, those made under section 417 since 1998 provide no case specific reasons beyond reference to the 'public interest'.

[10] Page XIV, Report of the Senate Select Committee on Ministerial Discretion in Migration Matters, March 2004.

the ICCPR, for example, states that each State Party to the present Covenant undertakes to ensure that:

a. any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b. any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and

c. the competent authorities shall enforce such remedies when granted.[11]

Article 2(3) obliges states to develop effective remedies to prevent future (as well as existing) breaches of rights and freedoms guaranteed by the ICCPR.[12] Regarding the issue of effective remedies, the United Nation's Human Rights Committee has also stated that *"… if the alleged offence is particularly serious, as in the case of violations of basic human rights, in particular the right to life, purely administrative and disciplinary remedies cannot be considered adequate and effective".*[13]

Given that we are talking about breaches of the most fundamental of human rights, including the right to life, arbitrary detention, imprisonment and torture, the Minister's non-reviewable, non-compellable discretionary powers are a wholly inadequate form of administrative remedy. Any flaw in the decision-making process may result in death, imprisonment or torture.

Last, but not least, the Committee should note that Australia has adopted the Agenda for Protection[14], which recommends that states adopt a system of complementary protection. This year, when the UNHCR Executive Committee meets in Geneva, it will likely adopt a resolution on complementary protection, and Australia will be under the spotlight.

[11] The CRC contains no parallel provision. However, the CRC does require that 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.' (article 4). The Committee on the Rights of the Child has indicated that the 'remedies available in the case of violations of the rights recognised by the Convention' is a matter it will consider when assessing compliance with that article. CAT more specifically focuses upon the effectiveness of such measures, providing: 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'.

[12] *Herrara Rubio v Colombia* No 161/1983. See also M Nowak *UN Covenant on Civil and Political Rights: CCPR Commentary* (1993), NP Engel p62, cf *CF v Canada* No 113/1981.

[13] See *Vicente v Colombia* 612/1995.

[14] See www.unhcr.ch for the Agenda for Protection.

Recommendation:

1. **The NCCA recommends the Australian Government introduce a complementary onshore protection program, wherein applicants can apply at the first instance to DIMIA on complementary protection grounds and then have access to RRT and judicial merits reviews (see attached Complementary Protection Model).**

Detention and the Palmer Report

The NCCA has long-standing policies advocating wide-ranging and deep policy and legislative reform to Australia's policies towards asylum seekers and refugees as reflected in the administration and operation of the Migration Act 1958. The NCCA is concerned for both asylum seekers in detention (in Australia and in the Pacific) and asylum seekers in the Australian community.

Many of the fundamental concerns and suggested changes were reflected earlier this year in the changes proposed by the group of Federal Coalition backbenchers, led by the Hon. Petro Georgiou.

Significantly, the World Council of Churches' Central Committee in its 2005 memorandum and recommendations on "Practising Hospitality in an Era of New Forms of Migration" named Australian Government policy on detention practices and the Pacific Solution as major causes for concern. Such international unease reinforces the NCCA's conviction of the need for major policy changes. Especially see the section "Security approach to migration" in this WCC document, which is provided as part of this submission.

The NCCA advocates the following areas of reform:

- While their applications for protection visas are being assessed, all detained asylum seekers should be released into the community unless it is necessary to detain someone because, for example, there is a real risk they will abscond;

- Replace the mandatory detention of all unauthorised asylum seekers with a targeted detention system under which we detain people if necessary on specified grounds such as a threat to national security, public health and safety, or likelihood of the applicant absconding. The necessity for detention should be subject to review and decision by an independent authority;

- Allow the refugees who are on temporary protection visas to remain permanently and resume our traditional policy of granting permanent residency to those whom we determine are refugees;

- Appoint an independent person or panel to review the cases of long-term immigration detainees and determine whether it is necessary to detain them; and

- Establish guidelines setting out grounds for detention and provide that decisions about detention be subject to independent, enforceable (perhaps judicial) review.

This year the *Migration Amendment (Detention Arrangements) Act* 2005 and the "Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau" by Mr Mick Palmer AO APM have provided welcome avenues for much needed and important improvements to the existing immigration detention regime and DIMIA itself. However, the NCCA argues that neither go far enough in providing for the needed fundamental changes long advocated by the NCCA and many other organisations.

The NCCA supports the urgent introduction of a community release scheme so that all asylum seekers, not just families with children, can be removed from the toxic environment of detention centres into the community, based on adequate case management and with proper entitlements (work rights, Medicare and supplementary government income support, if required). Such well-researched, economical and practical alternatives exist. This will be argued by other submissions to this inquiry, such as the Justice for Asylum Seekers (JAS) "The Better Way" model and the Uniting Church's Hotham Mission Asylum Seeker Project "case management" experience.

Examples of relevant NCCA policy statements, available on request, include:

1. "UN Report shows need for a new Debate over Detention says National Church Group", Media Release 19-12-02;

2. "Churches Call for New Refugee Approach" Media Release August 2003;

3. "Churches Challenge All Political Parties to Support New Initiative on Refugee Policy" , 1-7-03 re "Make the Right Choice" call by A Just Australia;

4. "Arbitrary Detention the Problem says National Church Group" Media Release 6-6-02 relating to visit of the Head of the UN Working Group on Arbitrary Detention;

5. Asylum Seeker and Refugee Children in Australia: NCCA Statement of Concern;

6. Alternative Detention Policy , originally developed by the NCCA, the RCOA and other NGOs, has been developed. The latest version, *The Better Way*, has been endorsed by the NCCA; and

7. NCCA Policy Document 2001, noting sections on " A Humane Alternative to Mandatory Detention" (pages 7 to 9), "Children in Detention" (Pages 10 to 13) and "Asylum Seekers in the Community (non-detained)", pages 19 to 20.

In this approach there is a need to reject the holding of asylum seekers in remote detention centres, both in Australia and in the Pacific, where adequate health and other services and contact with relevant ethnic communities and support groups cannot be provided easily. This requires the closure of the Baxter detention centre, a decision to abandon construction of the Christmas Island detention centre, finding humane outcomes for the remaining people held on Nauru and an end to the "Pacific Solution" of supporting the diversion of any future asylum seekers to Pacific centres for processing of applications and the reversal of excision of islands from Australia's migration zone. The document, "The Pacific Solution: NCCA Statement of Concern" is very relevant. "Australia's Pacific Solution" is dealt with in depth later in this submission.

Also, decisions about the necessity for detention should be in the hands of an independent review authority, with powers to enforce its decisions rather than just make recommendations to the Minister. Under the changes introduced by the *Migration Amendment (Detention Arrangements) Act* 2005, notably the role of the Commonwealth Ombudsman and the Immigration Departmental Committee, and the Palmer Inquiry's recommendations to create various advisory and monitoring bodies, the ultimate decision-making power still rests with the Minister for Immigration. Previous recommendations by independent advisory or investigative bodies, such as the Human Rights and Equal Opportunity Commission (HREOC) and the United Nations Special Representative on Arbitrary Detention, were ignored by the then Minister for Immigration. An independent body with the power to enforce its decisions about the need to detain or otherwise act in the best interests of the well-being of detainees is needed.

Linked to this is the need for legislated minimum standards for detention centres as proposed by HREOC. Also, Finding 11 of the Palmer Inquiry notes the lack of effective case management . Case management should be adopted for detainees but extended to those asylum seekers released into the community or who have always been in the community.

Examples of relevant NCCA policy statements include:

1. "Churches call for support for new detention Bill", Media Release 25-5-05; and

2. "Churches Back Calls for Release of Abused Detainee Children" , Media Release 13-5-04 in response to the release of HREOC's " A last Resort? National Inquiry into Children in Immigration Detention".

The length of detention should be kept as short as possible for every detained asylum seeker. A community release scheme, the introduction of Complementary Protection legislation to benefit those with humanitarian needs but not fitting the strict "refugee" definition, and the *Migration Amendment (Detention Arrangements) Act* 2005 setting of three-month time-limits on processing of asylum seekers applications at both the DIMIA primary and Refugee Review Tribunal (RRT) stages would help achieve this goal. Unfortunately, the Palmer Inquiry only recommended changes to try to make the existing detention centres work better rather than proposing workable alternatives to the profoundly flawed detention regime.

Examples of relevant NCCA policy statements include:

1. Complementary Protection Model, developed by the NCCA, RCOA and Amnesty International Australia and now widely endorsed; and

2. "Minister creates Removal Pending Visa - church advocates disappointed", Media Release 23-3-05.

The NCCA also proposes the abolition of Temporary Protection Visas (TPVs) and instead supports the granting of permanent residency to all those presently holding TPVs. This is dealt with in more depth later in this submission.

Examples of relevant NCCA policy statements include:

1. "TPV Changes are not enough" Media Release 14-7-04;

2. "Churches Challenge All Political Parties to Support New Initiative on Refugee Policy", Media Release 1-7-03; and

3. NCCA 2001 Policy Statement March 2001, section "Extend IHSS and Family Reunion Rights to TPV holders", pages 17 to 19.

The NCCA advocates the need for greater care and concern around decision-making and the process of return of rejected asylum seekers to their home countries and monitoring of returned asylum seekers.

Examples of NCCA concern include:

1. NCCA's Christian World Service sponsorship of Dave Corlett's Australian Research Council (ARC) project, "Fearing going home: Australia's return of rejected asylum seekers, temporary refugees and others from refugee-like situations); and

2. The Complementary Protection Model

A balanced and consistent approach in all these areas cannot be achieved without developing a more integrated whole of government approach with greater program and policy coordination across key government portfolios. Non-government organisations should also come together and contribute to this process.

Recommendation:

2. The NCCA recommends that the Australian Government builds on, and goes beyond the changes advocated or already achieved by the Migration Amendment (Detention Arrangements) Act 2005 and the Palmer inquiry to provide more fundamental alternatives for asylum seekers, incorporating at the minimum:

- **a. The adoption of a community release scheme, open to all asylum seekers (unless there are strong, justifiable reasons to continue detention), based on adequate case management and with proper entitlements, namely work rights, Medicare and supplementary income support, if required;**

- **b. Guidelines setting out grounds for detention and provision that decisions about detention be subject to independent, enforceable (perhaps judicial) review;**

- **c. Abandoning the holding of asylum seekers in remote centres in Australia or in the Pacific. This necessitates the closure of Baxter, not proceeding with the use and proposed extension of the Christmas Island centre and ending the Pacific Solution;**

- **d. Adoption of case management for detainees and legislating for minimum standards for detention centres;**

- **e. Greater care and concern around decision-making and the process of return of rejected asylum seekers to their home countries and monitoring of returned asylum seekers; and**

- ***f.* Adoption of a more integrated, whole-of-government approach with greater program and policy co-ordination across government portfolios and with**

non-government organisations' contribution in this process. Such an approach is relevant to formulating creative policies both in Australia and internationally to achieve effective protection for refugees, asylum seekers, others of concern to the UNHCR and internally displaced people.

Australia's Pacific Solution

The NCCA was deeply saddened by the events that transpired after the arrival of the M.V. Tampa in September 2001. While the so called 'Pacific solution' appeared to offer an answer to the problem of 'unauthorised arrivals, it has been shown to be an unsustainable and an undesirable way to deal with uprooted people. In the NCCA's *Statement on the Pacific Solution*, its Submission to the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into *Australia's Relationship with PNG and other Pacific Island Countries* and its submission to the *Inquiry into A Certain Maritime Incident,* the NCCA expressed concern that the Pacific solution:

1. went against the spirit of the 1951 refugee convention;
2. set a poor precedent for other countries;
3. harmed Australia's international reputation;
4. caused distortions;
5. had serious practical drawbacks;
6. distorted Pacific approaches to refugees;
7. created strong Pacific opposition;
8. lacked transparency; and
9. disproportionately allocated resources.

Spirit of the 1951 Refugee Convention

While the NCCA recognised the generosity of successive Australian Governments in maintaining an offshore program, its primary responsibility under the 1951 Refugee Convention and its 1967 Protocol has always been to refugees arriving onshore. In the NCCA's view, turning back asylum seekers at the border was contrary to the spirit of the 1951 Refugee Convention.

At the time, our church partners in the Pacific felt that deploying the Royal Australian Navy to intercept boat people and forcibly transfer them to detention centres in the Pacific for the duration of the refugee status determination process lacked proportion, both as a response to a comparatively minor influx of asylum seekers, and as a measure to combat people smuggling and secondary movement.

Under international law, it has always been clear that any domestic law redefining migration zones cannot override the obligations Australia has entered into under the 1951 Refugee Convention. Article 27 of the Vienna Convention on the Law of Treaties plainly states that *"a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty"*.[15] In excising sovereign Australian territory, the Commonwealth Government also failed to properly consider the undertaking it made when signing the International Covenant on Civil and Political Rights *"to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant."* (Article 2).

Precedent for Other Countries

The NCCA believes the Pacific solution signalled a further withdrawal from the Refugee Convention and set a negative precedent that encouraged other developed countries to abrogate their responsibilities. The response of the UK in particular in proposing a system of transit processing centres and refugee protection zones is a case in point. More recently, Italy has followed Australia's example in intercepting asylum seekers at sea and transferring them to Libya. It also set a poor precedent for developing countries such as Iran and Pakistan that bore the brunt of mass influxes in the millions from Afghanistan. In justifying closing its borders in 2001, Pakistan actually cited Australia's reaction to the Tampa asylum seekers as justification and reason for its actions.

The use of aid as a lever to extract concessions from smaller aid dependent countries also left much to be desired, particularly when it involved forcibly relocating asylum seekers. At the time, the NCCA questioned what would happen if other countries were to follow Australia's lead in making aid conditional upon taking asylum seekers turned away from their borders. Libya's acceptance of asylum seekers from Italy, mentioned above, in return for greater recognition and support from Europe has been a case in point.

Australia's International Reputation

Far from creating the impression that Australia is trying, in a cooperative manner, to find solutions to alleviate the circumstances that drive people to flight, the Pacific solution created the impression that Australia was seeking to dump our 'problems' on small less-developed

[15] Refugee and Immigration Legal Centre, *Submission Concerning Article 31 of the Refugee Convention – "non-Penalisation, Detention and Protection"*, November 2001.

and/or dependent nations. This made Australia look like an unwelcoming country instead of a tolerant, compassionate, multicultural society. It has also no doubt had the effect of discouraging skilled migrants. This was a core concern of business groups, as Australia has been in competition with developed nations for such migrants and it is Australia's image that is one of our major attractions.

Since the Tampa stand-off, the impression expressed by our church partners in the Pacific and internationally is one of Australia lacking compassion and violating international law. As noted earlier, the World Council of Churches' Central Committee in its 2005 memorandum and recommendations on "Practising Hospitality in an Era of New Forms of Migration" named Australian Government policy on detention practices and the Pacific Solution as major causes for concern. Especially see the section "Security approach to migration" in this WCC memorandum.

Such a perception no doubt undermines Australia's efforts to promote human rights, good governance and the rule of law abroad.

Distortions

The NCCA was also concerned over the impact that large offers of conditional development aid had on the domestic politics of PNG and Nauru, particularly on the freedom of the media. According to "The Age", the governments of PNG and Nauru were quick to stifle debate over the deal. In Nauru. Dr. Kieran Keke, one of two doctors at Nauru's main hospital, and David Adeang, Presidential Counsel, were suspended without pay on orders of President Rene Harris after they took a stand on the asylum seeker deal.[16] In PNG, Prime Minister Mekera Morauta sacked Foreign Minister John Pundari for his opposition to Australia's plans. It also appeared as though the Government's decision to lift sanctions against Fiji just 5 hours before Australia's Federal Election was announced on 5 October 2001, was premature, and designed to facilitate negotiations for Fiji to become another Pacific camp for asylum seekers.[17]

In prematurely lifting the sanctions, the Government also broke ranks with New Zealand and the Commonwealth Ministerial Action Group. This undermined Australia's credibility. On the one hand, Australia was seen to be acting without adequate consultation, and on the other, it was recommending strengthening the multilateral institutions it failed to consult with.

Despite Australia's encouragement of Pacific Island nations to assume financial responsibility, the deal also offered a way for Nauru's Government to avoid balancing its books.

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[16] Paradise Lost? Nauruans Begin to Question the Deal, Clare Miller, the Age, 19 October 2001.
[17] *Fiji Sanctions Lifted Early for Boat People Deal: ALP*, The Age, 19 Oct 2001.

Practical Drawbacks

The most serious problem was that the legislation failed to articulate adequate guarantees of safety in defining what constituted a 'safe country'. This was particularly worrying given that Australia was sending asylum seekers to Nauru, which was not a signatory to the 1951 Refugee Convention and was therefore under no legal obligation not to return or expel refugees. Although PNG has signed the Refugee Convention, it had done so with significant reservations.[18]

There were a number of other drawbacks as well. First, asylum claims were being processed by Australian immigration officials, but not under Australian law, which among other things meant that claimants had no right to appeal. Access to legal advice was also of concern, as neither PNG nor Nauru had the capacity to offer adequate legal assistance. Second, security and other contracts were given to private corporations, creating concerns over transparency and accountability, particularly given the remote location of the detention centres, which made it difficult for NGOs and Churches to monitor detention conditions and processing standards, particularly given the difficulty in getting a visa to travel to Nauru and access the centres. Third, there was genuine concern that if resettlement places could not be found or unsuccessful applicants could not be returned home, then they would face indefinite detention. This effectively resulted in the prolonged detention of many who were found to be refugees and in the long term, Australia ended up taking most of the refugees anyway.

Distorted Pacific Approaches to Refugees

The policy also set a poor precedent for the region in the treatment of asylum seekers. Through exporting its problem and casting the burden on aid dependent countries, Australia distorted the policy and practise of countries like Nauru and PNG. Left to their own devices, PNG and Nauru may have chosen approaches more in keeping with UN Conventions.

Created Strong Pacific Opposition

Outside government circles in the Pacific, Australia's plans were clearly unpopular, with vocal opposition from our main partners, the Pacific Conference of Churches and the Pacific Desk of the World Council of Churches, along with the NGO Coalition on Human Rights, Nauru's main opposition party and others. The comment of Hilda Lini, Director of the Pacific Concerns Resource Centre, summed up this feeling: *"The Pacific has always been a dumping ground for everything industrialised countries reject, whether its weapons, whether its military bases, (nuclear) testing, or in this case dumping of human beings from other regions"*. On balance, it

[18] Oxfam-CAA, op cit, February 2002.

was clear that these financial inducements had heightened feelings of neo-colonialism, and the sense that Australia had impinged upon the sovereignty of Pacific Island nations.

Lacked Transparency

Another major concern was the Government's secrecy over the cost of the policy and lack of detailed information communicated regarding decisions being taken and the implementation of the policy.

Disproportionately Allocated Resources

Official Government figures estimated the cost of setting up and running the detention centres in the Pacific at $96 million in 2001-02. Later reports, however, stated that the Cabinet had been told it would cost up to $500 million.[19] As such, the NCCA believed the resources being employed to administer the Pacific solution lacked proportion in comparison to the resources it had allocated to supporting countries of first asylum. In 2001, for example, Australia's total allocation to the countries surrounding Afghanistan, Australia's largest source country for asylum seekers, was just Aust. $21.3 million.

Recommendation:

3. **The NCCA recommends abolishing the Pacific Solution and that any future measures to counter people smuggling are targeted, humane and proportional to the problem.**

Children and Families in Detention

The NCCA has been deeply concerned for many years on the policy of holding children in detention. Hence the NCCA welcomes the provisions of the Migration Amendment (Detention Arrangements) Act 2005 which reflects Australia's obligations under the Convention on the Rights of the Child to ensure that children are only detained as a matter of last resort. It makes provision for children, with both of their parents, to live in the community while an assessment is made of their claims for refugee status or any other migration outcome. It is vital that the government make adequate allowance for such asylum seeker families, now in the community, to support themselves with dignity through the provision of work rights, Medicare and, if necessary, access to other government income support.

[19] The estimate, approved by Cabinet in September when Nauru first agreed to house and process asylum seekers, was based on a joint submission from Immigration Minister Philip Ruddock, the Foreign Minister, Alexander Downer, and the then defence minister, Peter Reith.

Temporary Protection Visa (TPV) holders

Regarding TPV Children and Asylum Seekers Children living in the Community, the NCCA has been deeply concerned that:

1. TPVs perpetuate the uncertainty faced by refugee families and that this uncertainty has an enormous impact on the well-being of children;

2. TPV refugee families are being denied the settlement services extended to other refugee families, thus creating a second class of refugee;

3. Refugees with TPVs (785) are denied the right to reunite with their children overseas for 3 years, thus prolonging their displacement and anguish;

4. Laws prevent those found to be refugees and then released from detention with TPVs (785) from obtaining a permanent residence and family reunion if they spent more than 7 days in a country declared 'safe' by the Immigration Minister and did not apply for a Permanent Protection Visa (PPV) by 27 Sept. 2001. Of the 6,535 refugees released on TPVs, 2,785 had not applied for PPVs by the cut-off date. The NCCA is also concerned that some women and children will now be forced to come by boat at great risk. Worse still, some may be intercepted and sent to the Pacific, making family reunion even harder; and

5. The two new TPV subclasses introduced in September 2001 effectively punish asylum seekers later determined to be refugees for leaving countries like Iran and Pakistan in search of protection. The 'offshore entry' TPV 447 prevents refugees arriving by boat in places removed from Australia's 'migration zone' from obtaining a PPV if they spent more than 7 days in a 'safe' country. Even if sent to the Pacific, they can only apply for a 3-year TPV, and must apply again every 3 years. They are also denied family reunion, so those separated from their spouse or children will have to choose between protection in Australia and seeing their children again, for if they leave they cannot return. The 'secondary movement' TPV 451 denies those assessed as refugees in 'transit' countries like Indonesia from obtaining PPVs and family reunion if they spent more than 7 days in a safe country. They can only apply for a 5½ year TPV and a PPV after 54 months.

Recommendation:

5. **The NCCA recommends that the Government grant permanent residency to all refugees presently holding Temporary Protection Visas and in the future award**

immediate permanent residency status to those asylum seekers determined to be refugees.

Asylum Seekers in the Community

The NCCA is concerned at the plight of many asylum seekers in the community. It is believed close to 9,000 people are seeking protection in Australia. The vast majority arrive here with visas, clearing Australian immigration. Many are denied the right to work and support their families, which has devastating impacts, such as homelessness, poor health, isolation, family breakdown and depression. Not being able to work denies them Medicare and they do not receive any other government income support. They are forced to beg for food and shelter. This puts extra strain on welfare agencies, charities and church groups.

Lack of work rights results for three main reasons:

1. if a person does not lodge an application for protection within 45 days of arrival, he or she is automatically denied work rights.

2. Those who appeal to the Minister for Immigration on humanitarian grounds are stripped of their right to work.

3. If a person is released from a detention centre on a Bridging Visa E they are not allowed to work in Australia.

On the 45 day rule, the NCCA in 2001 stated its belief that it is unfair to deny asylum seekers the right to work if they do not apply for asylum within 45 days of arriving in Australia and that the 45-day rule constitutes discrimination under Article 34 of the 1951 Refugee Convention as it is based solely on the time of application.

A better approach is to allow people seeking asylum the right to work. This requires reversal of the 1997 regulation changes which denied the right to work, Medicare and income support.

This situation is in addition to government services to asylum seekers in the community already being scarce. Limited assistance with meeting costs for food, accommodation and limited health care is provided through the Asylum Seeker Assistance Scheme (ASAS), while DIMIA considers their applications for refugee status. ASAS payments can be made to those who meet financial hardship criteria and who have been waiting for a decision on their Protection Vis application for six months or more. Asylum seekers who meet certain exemption criteria may qualify for ASAS payments within the six month waiting period.

In 2001 the NCCA urged the easing of exemptions on the continuation of ASAS benefits after a Refugee Review Tribunal (RRT) decision, especially for single mothers who cannot work and therefore have no means of support.

Case worker model of support

Agencies working closely with asylum seekers advocate a better approach of government funding to help agencies implement a case worker model This can be linked to needed reform of Australia's policy of mandatory, indefinite and non-judicially reviewable detention, allowing asylum seekers who clear initial health, identity and security checks to live with dignity in the community while their applications for refugee status are decided. The experience of the Asylum Seeker Project, co-ordinated from the Hotham Uniting Church, Melbourne is that case-worker supported asylum seekers are prepared, supported and empowered throughout the determination process and are more likely to comply with decisions and are more able to cope either with return or settle successfully.

Recommendations:

5. **The NCCA recommends that asylum seekers in the community be granted: the right to work, Medicare and, if necessary, government income support while they apply for protection in Australia. Also, the NCCA recommends that a case worker model of support be introduced for asylum seekers, both in the community and in detention.**

6. The NCCA recommends the easing of exemptions on the continuation of the Asylum Seekers Assistance Scheme (ASAS) benefits after a Refugee Review Tribunal (RRT) decision, especially for single mothers who cannot work and therefore have no means of support.

On behalf of the NCCA, we thank you for the opportunity to comment on the administration and operation of the Migration Act (1958). We are happy to provide any further information on request.

Yours Sincerely,

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