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Submission to the Senate Legal and Constitutional Committee Inquiry into the administration and operation of the Migration Act 1958

Introduction

The Asylum Seekers Centre Inc. (ASC) welcomes the opportunity to provide input into the inquiry being conducted by the Senate Legal and Constitutional Committee into the administration and operation of the Migration Act 1958.

Given the mandate of our Centre (see below), our submission outlines serious concerns held regarding the circumstances and treatment of certain categories of community-based asylum seekers, confining itself to issues encompassed within Term of Reference A. All commentary derives from our experience of providing direct case management and health care support to community-based asylum seekers. Where reference has been made to individual cases, identifying details have been withheld at the express wish of clients. We have distilled our comments into four key areas:

- restricted access to work rights and Medicare;
- the exercise of Ministerial discretion;
- the circumstances of release and relocation of asylum seeker detainees; and
- instances of home visits by compliance officers.

Profile of Asylum Seekers Centre

Established in 1993, ASC is an independent, not-for-profit, non-government organisation providing a welcoming environment and front-line support to community-based asylum seekers residing in NSW via services delivered through the following program areas:

- *case management*: involving assistance in securing emergency and short-term accommodation, referrals for emergency financial support and legal advice, individual advocacy, and social work support for families and individuals;
- *health care*: involving on-site primary health care and physiotherapy, assistance in meeting pharmaceutical costs, referrals for pro bono dental care, trauma counseling and other forms of priority specialist health care, and advocacy for fee-waivers on emergency hospital procedures;

*The Asylum Seekers Centre provides services and support to refugee applicants.
It is sponsored by the Good Shepherd Sisters and the Mercy Foundation and assisted by other groups and individuals.*

- *development*: involving English, computer and art classes, recreational activities and free lunches.

ASC has a small team of salaried staff (currently 4.5 full-time equivalents), supported by a network of approximately 80 volunteers who contribute to our operations in a variety of ways, including through provision of pro bono professional services, tuition, catering and both practical and emotional client support.

Given our small scale, we endeavour to work closely with a range of community sector agencies and networks, professional and specialist services and other groups and individuals to build a network of supporters for our clients, with a view to enhancing their opportunities to lead dignified lives and engage meaningfully with the broader community, pending resolution of their claims for asylum.

Profile of Asylum Seekers Centre clients

Our clients are community-based asylum seekers residing in NSW who, having fled persecution or other dangers in their countries of origin and transit, are seeking protection and a new life in Australia. Many have experienced torture or other forms of trauma associated with organised violence or exile. Many have spent periods of time in immigration detention. Some have been awaiting a final determination on their applications for humanitarian protection for many years (extending to nearly a decade). All experience disadvantage and uncertainty as they await the outcome of their claims.

Many of our clients hold a Bridging Visa E, rendering them ineligible to seek paid and in most cases voluntary employment, or undertake any formal study. Currently some who hold a Bridging Visa C face similar restrictions. Those ineligible to work also lack Medicare and Centrelink entitlements. Some are periodically eligible for the DIMIA-funded Asylum Seekers Assistance Scheme (ASAS), administered by the Red Cross, which provides limited financial assistance and access to health care under the General Health Scheme. In the main, however, our clients are utterly dependent upon charity for basic housing, health and nutritional needs.

Over our 12 years of operation ASC has assisted close to 3 000 adult and child asylum seekers residing in the community. Over the January to June 2005 period our intake statistics ranged from 11 to 27 new clients per month. We have an active current caseload of 176 individuals - 160 (or 91 percent) of whom hold bridging visas which render them work-, Centrelink- and Medicare-ineligible.

Restricted access to work rights and Medicare

Of paramount concern to ASC are the impacts of migration regulations which came into effect on 1 July 1997 and 1 July 1998, and, respectively: removed work rights and consequently Medicare eligibility for asylum seekers who lodge applications for protection over 45 days after arrival; and removed DIMIA's discretion to grant work rights on the basis of financial hardship (again removing Medicare entitlements) to those seeking exercise of Ministerial discretion on humanitarian grounds under s.417 of the Migration Act.

The impacts of the widespread, and often protracted, denial of the right to work are devastating and, in our experience, commonly include: acute poverty; homelessness; poor nutrition; deteriorating health; family breakdown; plummeting self-esteem; skills attrition; severe depression; and, in some cases, suicidal ideation. Many of our work-ineligible clients

are professionally qualified or highly skilled in their trade. All crave the opportunity to become self-reliant. Affected clients report that the mental anguish associated with their destitution is compounded by their perception that they are a drain upon the community and corresponding fears that they will exhaust the compassion and resources of supporters.

With Sydney currently facing a crisis in emergency accommodation, and most refuges and hostels prioritising access for permanent residents, homelessness amongst clients has become an increasingly dire challenge. While several church groups and charitable organisations make commendable efforts to provide short-term housing for asylum seekers, available places fall well short of demand.

Most asylum seekers who are ineligible to seek paid employment are also forbidden to engage in voluntary work. In addition to the material and psychological impacts of their lack of permission to earn, affected clients manifest acute distress as a result of their inability to not only act upon, but demonstrate, their commitment and desire to contribute to Australian society. Coupled with an ineligibility to study, clients are left in circumstances of enforced passivity - unable to engage in meaningful activity and extremely susceptible to depression and/or intensification of symptoms associated with post-traumatic stress.

Many of our clients suffer complex and/or chronic physical and psychological health problems as a direct consequence of their experiences of trauma (including torture) and protracted lack of access to preventive health care, both prior to their arrival in Australia and subsequently (particularly where they have experienced periods of immigration detention). As such, the impact of Medicare-ineligibility, combined with the lack of capacity to earn, is severe.

The ASC health care program (reliant upon a network of pro bono health practitioners and modest external funding) endeavours to provide clients with access to treatment and medication for life-threatening and other emergency conditions (including multiple sclerosis, cancer, insulin-dependent diabetes, complications in pregnancies and infant malnutrition). We are, however, hampered in our efforts by a lack of guaranteed access to the public health system, and are regularly called upon to advocate for retrospective fee-waivers on emergency hospital procedures. Securing adequate mental health supports for clients is also extremely difficult, as specialist trauma services within the state public health system are constrained in their capacity to meet existing client demand. Furthermore, the amelioration of mental health symptoms which may be substantially attributable to the disempowering circumstances outlined, generally proves extremely difficult without a clear prospect of abatement of those circumstances.

Unsurprisingly, visa restrictions which deny certain categories of asylum seekers the right to undertake paid or voluntary work, to study and to access Medicare, have assumed a punitive dimension in the minds of our clients and their supporters.

With this in mind, we assert that clients have reported to us an array of legitimate reasons for lodgment of their applications for protection over 45 days after arrival. Typical amongst these are that:

- they were not aware of asylum application procedures;
- they were in Australia on another valid visa when changed circumstances in their country of origin or habitual residence precipitated their application;
- they received inappropriate advice from migration agents or friends;
- they were unaware of the '45-day rule' and awaited improvements in their country of origin - hopeful that they would be able to return and planning to lodge a protection application as a measure of last resort;

- they were fearful of presenting themselves to authorities due to their experiences of persecution.

As such, we reject the implicit supposition that 'late' lodgment automatically renders the validity of a claim less credible.

Incidentally, we are aware of two cases where asylum seekers who had lodged their protection visa applications within the stipulated timeframe were denied work permission due to a DIMIA processing error. In both cases, the error was belatedly acknowledged and rectified, but without compensation or apology for their period of work ineligibility.

We also maintain that the act of seeking exercise of Ministerial discretion to grant protection on humanitarian grounds under s.417 of the Migration Act is legitimate and ought not to incur harsh measures. The bases for this contention are amply set out in an April 2004 paper on complementary protection developed by the Refugee Council of Australia, National Council of Churches in Australia and Amnesty International Australia. In summary, under its international obligations Australia owes protection to several categories of asylum seekers who, while not satisfying the criteria set out within the Refugee Convention, have legitimate claims for protection under the international human rights framework. Notable examples are stateless individuals and those subjected to gross human rights violations for reasons other than those encompassed by the Refugee Convention. Given that the Minister currently provides the only opportunity for asylum seekers to have the validity of such claims assessed, we consider it unremarkable (indeed, overwhelmingly, a measure of their genuine fear) that many of our clients have endured a protracted and arduous appeals process in anticipation of a fuller consideration of their claims.

In light of the above, we strongly recommend that full work rights and Medicare-eligibility be granted to all asylum seekers, irrespective of the date of lodgment of their application for a protection visa and including those seeking the exercise of Ministerial discretion on humanitarian grounds.

The exercise of Ministerial discretion

As set out above, under current determination procedures the validity of non-Refugee Convention-based protection claims can only be considered at the Ministerial level - which is generally preceded by a lengthy administrative process. In the case of many of our clients, the appeals process has lasted many years, during which they have predominantly been work and Medicare-ineligible. As a consequence, those who are ultimately determined to not meet requirements for Australia's protection are often extremely debilitated by the harsh circumstances they have endured during their extensive appeals process and, as such, are extremely ill-equipped - financially, physically and psychologically - to cope with the challenges and practicalities of departure. (We acknowledge that the recently stipulated three-month timeframes for DIMIA and RRT decisions may considerably reduce waiting periods for many asylum seekers.) While we accept the validity of rejections by the Minister where compassionate grounds for the granting of humanitarian protection do not exist, we consider that the suffering experienced by asylum seekers at this final stage of their claims would be significantly lessened were they:

- able to have their non-Refugee Convention-based protection claims assessed at an earlier stage;
- granted full entitlements pending the final outcome of their claims;
- provided reasons for a negative decision and a corresponding right to appeal in the interests of natural justice.

In light of the above, we recommend that those receiving a negative outcome from the Minister be provided reasons for that decision and that mechanisms be introduced for earlier administrative assessment of humanitarian protection claims falling outside the scope of the Refugee Convention.

Circumstances of release and relocation of immigration detainees

Many of the asylum seekers with whom we work have been released from immigration detention on a Bridging Visa E without work, Medicare or ASAS entitlements. As described above, the impact of these restrictions can be devastating, and the community sector is currently inadequately resourced to meet the critical, complex and ongoing support needs of released detainees. In most instances our clients have been released with little advance notification and often without referrals or information to assist their survival in the community. We are aware that DIMIA officers have on occasions contacted a Sydney-based community agency or supporter to advise of a detainee's imminent release from Villawood, but we understand that this is not the norm - and rarely timely. In one recent instance we assisted an asylum seeker who reported that, following over two years of detention, he was released without referrals or finances and had spent over two weeks sleeping outdoors.

As detailed in the Palmer and other reports, and extensively canvassed in the media, the immigration detention environment has tended to generate significant psychological trauma amongst both adult and child detainees - particularly where detention has been prolonged and, as is invariably the case, of unknown duration. We are extremely concerned at the lack of duty of care demonstrated by the practice of releasing detainees without ensuring the availability of even minimum supports and with visa restrictions that deny them any opportunity for self-reliance.

In contrast, the recent relocation of detained families to community settings under Residence Determinations is a welcome measure, which may ameliorate some of the trauma associated with conditions experienced within IDC environments. While the extent and efficacy of the care arrangements afforded these families yet remains to be seen, their immediate circumstances appear significantly more benign than those of families and individuals earlier relocated in alternative places of detention or released into the community on Bridging Visa Es. ASC is aware of several families who are devastated by the apparent arbitrariness which for now sees them ineligible for the standards of care mooted for families recently granted a Residence Determination.

The recent introduction of the Removal Pending Bridging Visa (RPBV) for offer to long-term detainees and a small number of previously-released asylum seekers who, while found not to be refugees, are currently unable to be safely removed, is also a welcome development to the extent that it allows access to work rights as well as Medicare and certain Centrelink benefits. Notwithstanding the improved conditions afforded, we are concerned that, given its temporary status and negation of family reunion rights, the visa does not provide a durable solution for eligible asylum seekers - notable amongst them stateless individuals.

In light of the above, we recommend that:

- ***standards of care comparable to those applying to families recently relocated under Residence Determinations be retrospectively applied to those earlier placed in Alternative Places of Detention and that future and former detainees released on a Bridging Visa E be granted full rights to work, Centrelink and Medicare and be provided specialist mental health supports as required***

- ***where safe removal to another country cannot be arranged for RPBV holders within a limited and clearly defined period, they be afforded permanent protection in Australia, with full rights to family reunion.***

Instances of home visits by compliance officers

Two asylum seeker families with whom we work, independently reported over recent months that they had been subjected to late night home visits by six compliance officers, who questioned them extensively regarding their plans to return to their countries of origin and their sources of community support, despite their not having breached the conditions of their visas. The individuals in question were extremely distressed - to the point of requiring trauma counseling (having fled situations where late night visits from authorities were associated with abductions) - yet chose not to complain to DIMIA as, having sought exercise of Ministerial discretion, they feared that this might jeopardise their claims. We are greatly concerned by the apparently intimidatory tactics employed by compliance officers in these instances, where circumstances do not appear to have warranted a visit of this kind.

We recommend cessation of home visits by compliance officers where there are no apparent breaches of visa conditions or illegality of stay, and deplore the use of intimidatory tactics of the kind described.

Once again, we thank the Committee for the opportunity to provide input into this inquiry. If you require any further information relating to the matters outlined, please contact our Coordinator, Tamara Domicelj, on tamara@asylumseekerscentre.org.au or (02) 9361 5606.

This submission has been authorised by the Asylum Seekers Centre Board.