Labor For Refugees (New South Wales)

18 July 2008

The Secretary
Joint Standing Committee on Migration
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

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Dear Madam or Sir,

Re: Inquiry into immigration detention in Australia

Thank you for the opportunity to make a submission to the Inquiry into immigration detention in Australia.

The authors of this submission are Linda Scott and Mairi Peterson on behalf of Labor for Refugees (New South Wales). Labor for Refugees is an unincorporated association of persons in the labor movement with branches or members in each State and internal self-governing Territory. This submission is from Labor for Refugees (NSW), an organisation representing the rank and file of the Australian Labor Party in New South Wales.

Both authors are both interested in appearing before the Inquiry.

Kind regards,

Linda Scott and Shane Prince
Co-convenors

Submission to the Inquiry into immigration detention in Australia

Labor for Refugees (New South Wales)

1. The criteria that should be applied in determining how long a person should be held in immigration detention.

Labor for Refugees believes that Detention Centres should be closed altogether in their present form.

However, if the Government decides to detain asylum seekers at all, they should operate facilities in such a way that asylum seekers are kept for an initial period of 30 days for the purpose of identification, security and health checks only. This is a more compassionate and cost effective way of processing asylum seekers. As soon as these checks are completed, they must be released into the community.

Only where identification cannot be verified or if there are reasonable grounds of a threat to national security, health or safety, should two possible extensions of 30 days be allowed. Therefore, the maximum allowable period of detention must not exceed 90 days. These conditions should also apply to the detention centre on Christmas Island. The Government should reverse Christmas Island's excision from Australia's migration zone and retain responsibility for those incarcerated on Christmas Island.

The circumstances under which people are deemed to be cleared by immigration should also be altered. Currently, under some circumstances people are deemed not to be immigration cleared. This is most often (not always) when people are detained at the airport before passing through Customs. The irony is that if a person passes through Customs on a false passport they are deemed immigration cleared and thus eligible to live in the community whilst their application is processed. In contrast, those not deemed to be immigration cleared are not eligible to be released from detention unless given a Protection Visa or removed from the country.

An example of this is a man who is presently in Villawood. He faces many years in detention whilst he pursues his Protection claim unless this situation is changed. This situation would be easily remedied by doing health and security checks and deeming him immigration cleared, allowing him to leave detention for the period of the processing of his application.

2. The criteria that should be applied in determining when a person should be released from immigration detention following health and security checks.

The criteria for release should give priority to children, the elderly and those requiring medical or trauma attention. All other people who pass the medical

and security checks should be released into the community, and those who can work, be entitled to do so.

3. Options to expand the transparency and visibility of immigration detention centres.

We believe one way of making immigration detention centres more transparent is by putting them back in the hands of the public service. This should make the operation of detention centres more accountable, and open to the well established scrutiny measures available for Government Departments.

The following procedures will also make access to information more readily available, thus contributing to transparency of detention centres:

(a): Detainees should have easy access to an interpreter and should have all rules, regulations and procedures and processes written in their own language. Procedures regarding processes for applying for Protection Visas, appearing at the MRT, RRT or the various Courts should be available to detainees in their own language in writing.

(b): Detainees should have access to their own medical records – often when they obtain them through FOI the records have deletions, are altered or sections are completely missing. For example, one individual had been seeing the psychologist on a weekly basis for more than 6 months but when he applied, via FOI, for his medical records, no records of this appeared.

4. The preferred infrastructure options for contemporary immigration detention.

There must be a greater emphasis on 'duty of care' with access to legal, interpreter and medical services. There must also be culturally appropriate food available.

5. Options for the provision of detention services and detention health services across the range of current detention facilities, including Immigration Detention Centres, Immigration Residential Housing, Immigration Transit Accommodation and Community Detention.

Provision of Detention Services

(a) There should be access to Medicare and the right to work, as this would allow individuals to manage their own health issues

(b) There should be more humane treatment of people on arrival and when they are in detention

(c) There should be greater flexibility in the consideration of a person's individual circumstances when deciding on their status

(d) Reducing the time every individual spends in detention, including maximum time limits, would make considerable savings and allowing people to live in the community

(e) All Detention Officers (whether GSL officers as at present, another private company or preferably, the public sector) should receive proper training – at present the training consists of about 6 – 8 weeks training, with no training in specific health issues and no training in disciplinary measures

(f) The officers managing the Centres should have less power. At present the GSL Officers make recommendations in the placement of detainees in either Stages 1,2 or 3 and then DIAC accepts those recommendations, without investigating or considering the detainee's psychological or physical health or the suitability of the placement in terms of social contacts, etc.

Two examples of this – A young man in Stage 2 at Villawood was recently transferred to Stage 3 on the grounds that he had a cigarette lighter in his room. This man is suffering severe depression and has been suffering for more than a year. He is heavily medicated with anti-depressant drugs. He obtained the lighter from Property in the Centre, and has no friends or acquaintances in Stage 3. His depression is now much worse and when an inquiry was made as to the circumstances of his transfer the message was that DIAC had not looked at his health situation at all.

The second example is of another man in Stage 2 at Villawood. He is a severe epileptic and has quite severe seizures very frequently. On several occasions he has been transferred to Stage 1 immediately after a seizure (once after allegedly hitting an officer whilst having a seizure) and placed in a locked cell for several hours.

Provision of Detention Health Services

(a): For those people in detention for up to 90 days - there should be resident medical services – registered nurses, full time psychologists, visiting GPs at least 3 times per week with hospital emergency services being used at other times if necessary.

(b): Outside specialist services to be used, especially when attending specialist appointments, detainees should be accompanied by an interpreter.

(c) Greater emphasis should be placed on 'duty of care' than at present.

Whilst written into the contracts of GSL and into DIAC policies special 'duty of care' policies are clearly set out, in reality the issue of 'duty of care' is not adhered to at Villawood IDC. GSL officers physically ill treat people, do not take proper care of detainees when they are sick, and the medical staff do not explain illnesses or the prescriptions prescribed.

The following are some examples of the lack of 'duty of care'.

One former detainee who had psychotic episodes asked to be sent to Stage 1 because he thought his friends (fellow countrymen) were out to kill him. When the whole of Villawood was moved to Holdsworthy because of an asbestos issue, that man was put in the same room as his friends – the very people he asked to be separated from. He then had a complete breakdown, defaecated all over the room and locked himself in. The GSL officers ignored him and he was only taken to hospital when his friends and his outside friends argued for him to be cared for in hospital.

Another man who suffers from epilepsy and has frequent severe seizures, was handcuffed during one of his seizures and sat upon before being sent off to hospital.

A man taken to a specialist without an interpreter thought he had 9 brain tumours when in fact he had 2 benign tumours. The same man, after he had the brain surgery, complained of chest pains and was told by Villawood medical staff 'that he had to walk to prevent blood clots" when in fact he actually had blood clots and had to be rushed back to hospital. He was only rushed back to hospital after his friends made urgent requests to the GSL officers.

Two men who were in Stage 2 were in bed one night in their room and were set upon by a gang of detainees. They already had taken their sleeping tablets, the gang rushed into their room, rolled the 2 men in their blankets and assaulted them with cigarette lighters. The GSL staff were alerted by other detainees but refused to call the police as they said it was Federal territory and the State police could not be involved. Later, the 2 men found out quite by accident that someone had written a report on the incident but the 2 men have never seen that report and no action was ever taken against the gang, either by the GSL officers or by DIAC.

(d) Villawood GSL does not provide culturally appropriate food nor proper eating utensils or crockery. Everything is throw-a-way plastic – not appropriate either for the detainee's personal dignity nor the environment

(e) At Villawood GSL officers have little regard for detainee's privacy. They enter rooms without invitation and are often very rude and aggressive and behave in a very confrontational manner.

(6) options for additional community-based alternatives to immigration detention by

a) inquiring into international experience;

b) considering the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework;

c) comparing the cost effectiveness of these alternatives with current options.

We have no further comment on these issues. We do wish to comment on detention debt, however.

Detention debt imposed on those asylum seekers released into the community must cease because:

- The policy is intentionally punitive, unjust and inhumane.
- Waiver or writing off debts is subject to Ministerial and departmental discretion. Only ten applications to waive (cancel) debts were approved last financial year; 3571 were written off (not removed) and could be later reinstated.
- The size of some debts cause enormous stress, anxiety and financial hardship to many individuals who are now living lawfully in the Australian community, as well as for many who have left Australia (*Ombudsman's Report April 2008*). Most are people who have limited income earning capacity. Some debts are in excess of $200,000.
- The costs of detention are arbitrary and are determined by DIAC.
- Debts 'written off' do not extinguish the debt; recovery may be pursued at a later date. Only debts specifically 'waived' are permanently extinguished. A detainee must apply for a debt to be waived or written off.
- The Ombudsman has reported that former detainees are not notified by DIAC of the differences between a debt being waived or written off; consequently many do not apply for a waiver and are unaware that a debt written off is still recorded against their name.
- An outstanding debt remains on departmental records for anyone who seeks to re-enter Australia and can result in a person being refused entry to Australia in future years.
- Those who owe a debt are also placed on the international Movement Alert List (MAL) alongside criminals and terrorists which places many at risk when travelling. Under DIAC policy, the MAL alert is not altered, even if a debt is written off or arrangements made for part payment.
- The Ombudsman states "*the decision to raise a detention debt is not reviewable on merit by an administrative tribunal. There are therefore few options open to a person who has accrued a detention debt*". It is an entirely arbitrary exercise of power, by the department or Minister.
- A detention debt can adversely affect a change in visa status unless the debt is repaid.

All of the examples given in this submission can be given in full to the Inquiry if required as long as strict confidentiality is respected.