



Refugee Action Collective (Vic)

REFUGEE ACTION COLLECTIVE (VIC) NEWSLETTER, APRIL 2008

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Australia’s Mandatory Detention Regime: another ‘stain on the nation’s soul’¹

RAC (Vic) congratulates the Labor Government and Senator Chris Evans, Minister for Immigration and Citizenship, for shutting down the Nauru and Manus Island Detention Centres. But justice for refugees and a new beginning for Australia requires further urgent action. We call on the Government to:

- **End Mandatory Detention**

The Human Rights and Equal Opportunity Commission has called once again for an end to mandatory detention.²

We know the human cost of mandatory detention. Suicide, self-harm, psychological damage and physical deterioration are the inevitable results.

¹ This was a phrase used by Prime Minister Kevin Rudd in his Apology to the Stolen Generations. As RAC NSW points out, ‘the policies of Mandatory Detention and Offshore Processing are another, albeit more recent, ‘stain on the nation’s soul.’ (Letter to the Minister, 11 April 2008)

² ‘Recommendations. (1) Australia’s mandatory detention laws should be repealed.’ HREOC, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*

As Senator Andrew Bartlett pointed out recently, ‘people in immigration detention have not been charged, let alone convicted, with any offence. It is so-called administrative detention which leads to people being jailed [in many cases] for a year or more.’³

Sixty-one people currently in immigration detention have been imprisoned for longer than two years.

Mandatory detention is an affront to the rule of law, to basic principles of justice, to human rights and human dignity. It demeans us all and we must end it now.

- **Provide Permanent Protection Not TPV’s**

The Temporary Protection Visa (TPV) scheme denies permanent protection visas to asylum seekers even after their refugee status has been recognised. It imposes a qualifying period of 30 months (and longer in some cases) before a person’s application for permanent protection is considered. During that time if the person leaves Australia they will not be allowed to return. They are unable to apply to have their family join them, and if circumstances change in the country they originally fled, they may be forced to return once their TPV expires. The visas are punitive and cruel, and refugees on TPVs experience ongoing trauma associated with the uncertainty of their position.⁴ They are prevented from beginning the healing and recovery process, and unable to settle into their new life and to feel part of a new community.

Under the *Migration Act* the Immigration Minister has a discretionary power to waive the qualifying period for permanent protection, but it is unacceptable that a person’s right to a sense of security depends on the whim of the Minister. The right to permanent protection must be legally protected and the provisions providing for TPVs repealed.

Labor made an election commitment to end the TPV system and grant permanent protection to refugees on TPV’s: it must do so immediately.

- **Accord Work Rights and Basic Benefits to People on Bridging Visas**

In 2006 an internal review of the Bridging Visa system concluded the Immigration Minister should be able to approve work rights and Medicare access to holders of

³ Hansard, ‘Response to Ombudsman’s Statements made under section 4860 of the *Migration Act 1958*’, 13 February 2008.

⁴ A comparison of refugees granted permanent protection visas and those granted temporary protection visas found: ‘The two groups had experienced similar levels of past trauma and persecution. Nevertheless, holders of temporary protection visas (TPVs) returned higher scores on three psychiatric symptom measures ($P < 0.001$). Multivariate analyses showed that TPV status was the strongest predictor of anxiety, depression and particularly PTSD. Further analyses suggested that, for TPV holders, experience of past stresses in detention in Australia and ongoing living difficulties after release contributed to adverse psychiatric outcomes.’ Shakeh Momartin, Zachary Steel, et.al., ‘A comparison of the mental health of refugees with temporary versus permanent protection visas’, *Medical Journal of Australia* 2006; 185 (7): 357-361.

bridging visas on a case by case basis.⁵ The Howard Government never released that report.

A Senate inquiry chaired by the Labor Party also concluded:

A policy which renders a person destitute is morally indefensible and an abrogation of responsibility by the Commonwealth.

Senator Evans agrees the system, under which ‘about 34% of protection visa applicants in the community [currently] hold a bridging visa without work rights...and are reliant on charity’ is indefensible,⁶ but he has not committed to scrapping it and providing work rights and access to benefits to every person who holds a bridging visa.

Labor must make and institute that commitment immediately.

- **Access to Judicial Review of Immigration Decisions**

During its ten years in power, the Howard Government progressively curtailed the right of asylum seekers to challenge the circumstances of their detention and decisions concerning their refugee status. This was in breach of Article 9 of the *International Covenant on Civil and Political Rights*, which accords everyone a right to liberty and security of person, and states that no one shall be subjected to arbitrary arrest or detention.⁷ The denial of judicial review of migration decisions is an affront to basic principles of natural justice.⁸

The Government must guarantee access to judicial review of migration decisions.

- **No Off-Shore Detention – Close the Christmas Island Detention Centre, Return all Australian Territory to Australia’s Migration Zone, Let the Boats Land**

Mandatory detention is indefensible on mainland Australia—it is even worse when it occurs off-shore, and on islands which have been excised from Australia’s migration zone.⁹ This prevents refugee applications being considered in accordance with Australian law. It allows people to be incarcerated far from the public gaze, and makes access to

⁵ Punitive visas which deny holders a right to work or to access government benefits include ‘Bridging Visas E’—granted to individuals who apply for refugee protection more than 45 days after their arrival in Australia on some other form of visa.

⁶ Hansard, ‘Questions without notice’, Response by Senator Chris Evans to question from Senator Nettle, 18 March 2008.

⁷ See, for example, the decisions of the UN Human Rights Committee in *A v Australia*, CCPR/C/59/D/560/1993 (Apr 1997) and *C v Australia*, CCPR/C/76/D/900/1999 (Oct 2002).

⁸ Among other legislation restricting access to the courts, the Howard Government introduced legislation preventing representative (class) actions in migration matters—despite the fact these actions allow contentious issues to be dealt with effectively, without overburdening the courts. It then justified further restrictions on access to judicial review on the basis migration matters were clogging the courts.

⁹ Around 4,600 islands have been removed from Australia’s migration zone, in addition to Christmas and Cocos Islands and Ashmore and Cartier reefs. (‘Govt denies backflip on island excision’, *Sydney Morning Herald*, 21 February 2008.

lawyers, health and other professionals almost impossible. We know what appalling abuses occur when people are deprived of their liberty by executive fiat, particularly when external scrutiny is practically impossible. The cost of building the Christmas Island Detention Centre is now approaching \$500 million. The operating cost of detaining people off-shore as part of the Howard Government's 'Pacific Solution' was estimated to be about \$2,500 *per week, per person*.¹⁰ The deprivation of liberty and abuse of human rights which occurs as a result of mandatory detention is unacceptable on any grounds. Forcing Australian taxpayers to collude in such abuse, and to bear the enormous financial as well as human cost, cannot be justified. Nor can the practice of repelling asylum seekers ever be justified. The deaths—among others—of the men, women, and children who drowned aboard the *Siev X* are a stain on the national soul which cannot be erased.

Every person has a right to seek asylum from persecution. Australia claims to recognise that right: it must do so in practice.

- **End All Deportations to Danger and Provide Permanent Protection to Stateless and other Vulnerable People**

Peter Qasim is stateless. He escaped from Kashmir without any identity documents and India has refused to allow him to return. Peter spent six years and ten months in detention in Australia before being released on a Removal Pending Bridging Visa. Like other people released from detention on these awful visas, he continues to live in limbo with the threat of deportation hanging over him.

Meanwhile, a number of long-term detainees have received letters from the Department of Immigration suggesting they may soon be deported.¹¹ Forced removals from Australia are generally shrouded in secrecy but research reveals gravely consistent themes. These include the use of force and intravenously administered chemical restraints; the danger and in some cases death which awaits people in the countries to which they are deported; and the involvement of Australian officials in corruption, bribery, and collusion with regimes which flagrantly abuse human rights.¹²

Individuals should never be removed from Australia to situations in which their basic rights may be abused. Stateless and other vulnerable people must be provided with permanent protection.

Emma Larking

¹⁰ This was an estimate provided by Immigration Minister Chris Evans to a Senate estimates hearing in February 2008. Quoted in the *Sydney Morning Herald*, 'Offshore detention centres cost \$290m', 22 February 2008.

¹¹ RAC (NSW), Letter to the Minister, 11 April 2008

¹² Leavey, Carmel, et.al., 'Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers', Australia: Edmund Rice Centre for Justice & Community Education in cooperation with School of Education, Australian Catholic University, September 2004; Corlett, David, *Following Them Home: The Fate of the Returned Asylum Seekers* (Australia: Black Inc., 2005)

Suffer, then pay: footing the bill for the cost of mandatory detention

“I want to build up my life even now so how can I do, how can I buy a house. How can I do the things with so much debt behind me? It is killing me,” “Sam” a 45 year old Sri Lankan said in an ABC radio interview.

At \$300 a month, it will take Sam 67 years to pay off the \$271,000 the Australian Government has charged him for locking him up for 4.5 years in Curtin, Port Hedland and Baxter, before deporting him. Now back in Australia as a skilled migrant, but weighed down by debt, his life is still not his own.

Many refugees jailed under the mandatory detention policy may think that they have had the costs of their detention waived, but they have not. In the financial year ending June 07, only 10 immigration detention debts, totaling about \$600,000 were waived. Another 3,571, totally approximately \$29 million were “written off.”¹³

DIAC writes off debts that it deems uneconomical to pursue; however, written off debt may be reinstated at any time. Last financial year, more debt was reinstated than waived: \$1.25 million versus \$600,000. Having a “written off” debt can effect visa applications, and may delay family reunions.

Commonwealth Ombudsman, John McMillan notes that the “size of some debts cause stress, anxiety, and financial hardship to many individuals who are now living lawfully in the Australian community.”

Many individuals already suffer long-term psychological consequences from their experiences in detention, including depression and anxiety. To add a burden of debt to this already heavy price is obscene.

There is a debt owed here, but it is from the Australian Government to all those harmed by the punitive policy of mandatory detention. Asylum-seekers commit no crime when they exercise their right to seek asylum. It is time all debts were waived, mandatory detention ended, and those who have been caught up in this policy given the support and resources to rebuild their damaged lives.

Karen Jones

3. RAC WORLD REFUGEE WEEK EVENT

ARE WE THERE YET? WHERE WE ARE UP TO IN THE STRUGGLE FOR REFUGEE RIGHTS.

¹³ Quotes and figures are taken from, the Commonwealth Ombudsman report, “Administration of Detention Debt Waiver and Write-Off”, April 2, 2008. Available at: http://www.comb.gov.au/commonwealth/publish.nsf/Content/mediarelease_2008_02

FORUM: BMW EDGE FEDERATION SQUARE
TUESDAY JUNE 17, 6:00PM

Brought to you by the Refugee Action Collective (Vic) and Multicultural Arts Victoria. Featuring performances, speakers, and a chance to have your questions addressed, it will be a fun and informative evening.

For more information, visit: <http://www.rac-vic.org/>

4. GET INVOLVED

There has been some progress from the new Rudd Government, but there is still a fight ahead to bring true justice for refugees in Australia. **WE NEED YOUR HELP!**

Donate time or money to the cause:

DEPOSIT money directly into the RAC account, Commonwealth Bank BSB: 063 262, Account 1025 2396 or send cheques to:

PO Box 578

Carlton South, Vic 3053

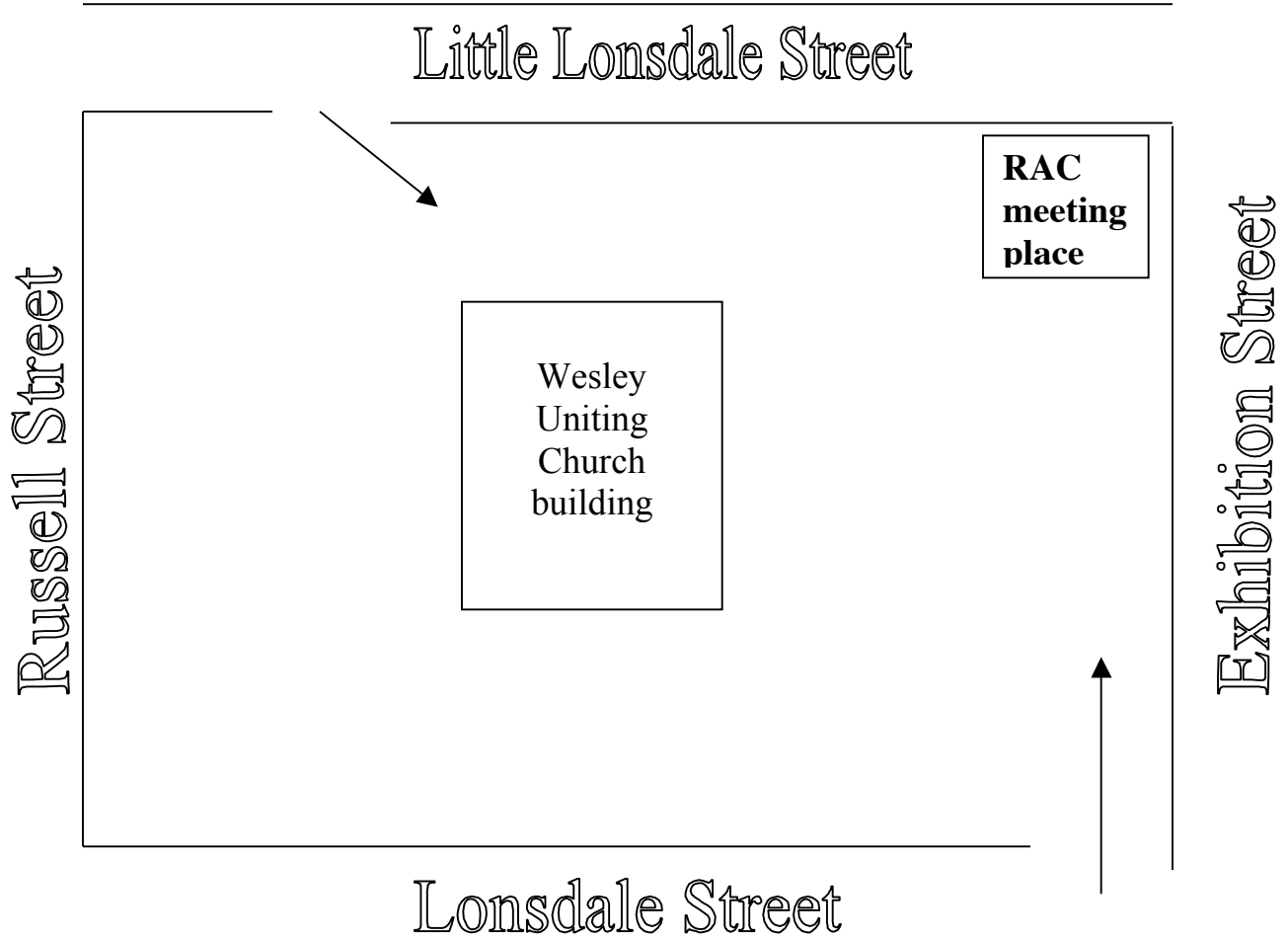
Come to a meeting:

RAC meets the first and third Tuesdays of every month at 6:30 pm.

We meet at Wesley Uniting Church, 148 Lonsdale St (between Russell and Exhibition Sts)

There are several buildings on the block. The RAC meeting place is at the back of the block, on the north-east corner – see map below. There is car parking on site – at cost of \$6

For more information, or to sign up for emails about RAC events, visit: <http://www.rac-vic.org/>



Thanks again for your continued support.