



31 October 2011

H16
RB; rp

The Honourable Julia Gillard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Onshore processing of asylum seekers

The Law Society of South Australia welcomes the announcements made on 13 October 2011 that the Government would not be pursuing the 'Malaysia solution' to initiate third country processing of asylum seekers, and would begin using measures already at its disposal to manage asylum seekers in the community through the use of bridging visas.

The Society urges the Government to discontinue any attempts to reinstate the Malaysia swap deal in the future, and instead to concentrate its efforts on creating a fairer and more humane system to assess asylum seekers.

The Society refers the Government to its key immigration detention values, which state that '*detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.*' It is suggested that this value has been given a lesser priority than it perhaps should have in the past, and the announcement of 13 October is welcomed to the extent that it indicated a shift in current policy.

The Government is urged however to enshrine this value in legislation, in order to prevent the policy shifts which have previously taken place. We remind the Government of its international treaty obligations, and recommend that it process asylum seekers' claims as quickly as possible, and to use detention only for initial health and identity checks.

To this end, the Government is urged to abolish the tiered system by which asylum seekers are assessed differently depending on their mode of arrival to Australia. It is the experience of members of the Society that those asylum seekers who are granted bridging visas, work rights and access to ASAS payments or the CAS program do not experience the same deterioration in mental health as those who are left in detention centres for anywhere up to 24 months. There also does not appear to be any rioting or disorder displayed by these persons.

All asylum seekers should be given access to the same process of establishing their claims, including by review to the Refugee Review Tribunal. The current discrepancies in refusal rates between onshore and 'offshore' asylum seekers' status determination processes demonstrates that there is clearly something flawed in the current system (with 74% of IMR processes overturning initial decisions). If all asylum seekers were given access to the same processes (and the same quality of representation), it is surmised there would be greater consistency in determining which were genuine refugees.

The Society also calls on the Government to focus its attention, and the attention of the public to statistics published by the UNHCR last week¹. In particular, the fact that Australia has experienced a one-fifth decrease in asylum seekers in the first half of this year from the previous year, despite the fact that Europe and the US have experienced increases of 16% and 25% respectively. The fact that Australia received only 4955 of the total 198,303 applications for asylum lodged in the first half of this year demonstrates firstly that we are not being inundated with arrivals of asylum seekers, and secondly that we are only experiencing a mere 2% of the people currently fleeing their countries of origin across the world. Australians should be made aware of this fact so they can assess for themselves whether these statistics warrant the level of panic afforded this issue by the media.

In summary, the Society welcomes any moves to release asylum seekers from detention, and hopes the government will maintain this policy in the interests of fulfilling its international obligations. We urge the Government to abolish the two-tiered system of RSD processes and to enshrine in legislation the value that detention should be used as a last resort only.

Yours faithfully



Ralph Bönig
PRESIDENT

¹ UN High Commissioner for Refugees, *Asylum Levels and Trends in Industrialized Countries: Statistical overview of asylum applications lodged in Europe and selected non-European countries*, 18 October 2011, available at: <http://www.unhcr.org/refworld/docid/4e9d6ac72.html>.