Submission on the Immigration Amendment Bill 2012

To the Transport and Industrial Relations Select Committee

June 2012
Refugee Services welcomes the opportunity to comment on aspects of the new legislation and policy changes currently proposed within the Immigration Amendment Bill 2012.

Refugee Services opposes the passage of the Bill in its present form and will expand on its issues of greatest concern later in this document

ABOUT REFUGEE SERVICES

Refugee Services is a not-for-profit agency committed to the successful settlement and integration of former refugees settling in New Zealand. The agency has been operating since 1976 and provides a range of practical support services to assist refugees with the many challenges of adjusting to life in a new culture and society.

Since its inception, the society’s constitution has also required the agency to monitor and provide comment on evolving refugee law and national and international policy and practice affecting refugee protection and successful settlement.

Although the agency now works predominantly with refugees arriving under the annual Refugee Quota Programme, it should be noted that it was also the first New Zealand NGO to provide support services for asylum seekers. The agency (then known as ICCI) provided emergency accommodation hostels and case-preparation services for many hundreds of asylum seekers from the mid 1980s until 1996, when lack of funding forced it to cease its work in this area.

Throughout the past 30 years, Refugee Services has maintained strong and positive links with UNHCR. It has been a passionate advocate for dialogue between all parties involved in refugee response. The agency has played an active role within the annual tripartite consultation process (ATCR), serving as Global NGO Focal Point for ATCR 2007.

Refugee Services was also among the founding members of the International Detention Coalition (IDC) launched in 2006.

Throughout its history, the agency has been witness to the trauma, anxiety and family-dysfunction that often results from long-term separation of refugee families. Refugee Services remains a strong advocate of refugee family reunion and recognises it as an essential ingredient in achieving successful settlement and integration.

This historical background is provided to establish and validate the agency’s bona fides to comment on these matters.

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1 Inter-Church Commission on Immigration and Refugee Resettlement
THE PURPOSE OF THE BILL

Refugee Services acknowledges the right of any state to take measures to safeguard its borders from persons seeking to enter the country illegally or those who may pose a risk to the safety and security of the nation.

The primary stated-intention of the Bill is to “make New Zealand as unattractive as possible to people smugglers and the people to whom they sell their services.” The General Policy Statement then suggests that the Bill is also aimed at the “effective and efficient management” of mass arrivals. However, Refugee Services notes, with deep concern, that the emphasis is geared towards deterrence through mandatory detention, other sanctions and policy changes. These include the deferred granting of permanent residence and inequitable and discriminatory family reunion policies.

Refugee Services acknowledges and deplores the continuing escalation of international people-smuggling activities, but notes that many of those using their services have subsequently been found to be genuine refugees. Not only have such people been the victims of persecution in their country of origin but their desperation to escape has then seen them exploited and exposed to further danger by people-smugglers, who often represent the only possible avenue of escape to seek the protection of a potential country of asylum.

It is noted that the Universal Declaration of Human Rights (Article 14) affirms the right for all people to seek asylum from persecution in another country and the Convention & Protocol on the Status of Refugees (Article 31) expressly prohibits the mandatory detention of those seeking asylum on the grounds that they have arrived illegally or do not possess the normally-required documentation.

Present legislation already provides powers to detain ‘irregular’ arrivals in instances where identity and security concerns need to be satisfied.

Refugee Services does not question the Government’s right to detain and, subsequently remove, any person whose claim to refugee status is found to be manifestly unfounded or who fails to establish a legitimate claim to refugee status under the terms of the Convention.

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2 Immigration Amendment Bill, Explanatory Note, General Policy Statement

3 See Appendices A & B
NEW ZEALAND’S RESPONSE TO REFUGEES

New Zealand currently enjoys a well-deserved international reputation for the standard of its treatment of refugees and asylum seekers.

New Zealand is one of a relatively small number of countries offering resettlement opportunities to some of the world’s most vulnerable refugees, by way of an annual refugee quota. The United Nations High Commissioner for Refugees has frequently cited New Zealand’s refugee resettlement programme as a model of international good practice.

New Zealand’s Refugee Status Determination processes have also been held up as examples of international best practice. The quality of decision making has been considered second-to-none and decisions of the Refugee Status Appeals Authority have done much to help establish and build international jurisprudence in the area of refugee law and interpretation of the Convention and Protocol.

Some of the changes now proposed in the Immigration Amendment Bill 2012, appear to be in breach of our obligations under international conventions and other legal instruments to which New Zealand is a signatory.

Some of the proposed policy changes will undoubtedly impede the settlement and integration of successful asylum applicants, which is contrary to the Government’s stated settlement objectives.

It is the view of this agency that proposed changes will lead to significant additional demands on health, mental health and other social support services.

Refugee Services believes that, if enacted in its present form, the Immigration Amendment Bill 2012 has the potential to jeopardise and/or seriously damage New Zealand’s international reputation with regard to its treatment of refugees.

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4 The Annual Quota level is established annually by Cabinet. The current quota of 750 has remained unchanged since 1997.
ISSUES OF PRINCIPAL CONCERN

THE USE OF MANDATORY DETENTION AS A DETERRENT

There is strong evidence to suggest that the use of detention as a mechanism of deterrence is both costly and ineffective. This has been clearly demonstrated by the experiences of Australia, where the harsh mandatory detention policies and the so-called ‘Pacific Solution’ employed to manage and/or deter illegal ‘boat arrivals’ have seen Australia’s international image severely tarnished and public opinions polarised in ways that have done little to enhance or promote social harmony and community stability.

The introduction of the Pacific Solution (which operated between 2001 and 2008) was widely criticised by human rights organisations and refugee advocates as unjustifiably expensive; contravening international refugee law; and psychologically damaging for the 1637 persons detained on Nauru and Manus islands. In the final analysis, the vast majority of those detained were determined to have a genuine claim to refugee status and were subsequently resettled in Australia, New Zealand or other countries.

Refugee Services does not support the concept of mandatory detention for those seeking asylum. Such policies have shown themselves to be ineffective as a deterrent, damaging to detainees, extremely expensive to operate and politically and socially divisive.

It is acknowledged that the “mass arrival” of several hundred people would pose challenges for the Refugee Status Branch and other related Government and community service providers. Refugee Services urges the Government to more carefully explore the alternatives to mandatory detention outlined in the IDC publication “There are Alternatives”. 5

The aforementioned publication is perhaps the most comprehensive and helpful piece of comparative research ever conducted into international detention policies. It is worthy of note that New Zealand is cited as an example of a country which presently applies a presumption that detention is not necessary, and already employs effective policies of conditional release.

5 See: “There are Alternatives” – A handbook for preventing unnecessary immigration detention; International Detention Coalition 2011, ISBN PDF Version : 978-0-9871129-1-0
THE COSTS OF MANDATORY DETENTION

The Regulatory Impact Statement for the proposed Bill notes that “all but a few” of New Zealand’s current annual asylum claimants (approximately 350 persons) “remain in the community while their claims are being determined.” The Impact Statement estimates that the cost of processing a mass arrival of 500 claimants under the present system would cost in the region of $34 million.

By comparison, the Australian Government has recently confirmed that it has seen a blow out in the costs of mandatory detention. In 2011-2012 it will now spend $709 million in asylum seeker detention and related costs. This is up $147 million on the previous year and amounts to about $90,000 for every asylum seeker that comes to Australia.

John Menadue, founding Chair of Australia’s Centre for Policy Development, suggests that, “The abolition of mandatory detention of asylum seekers, which means mainly boat people, could save between $150 and $425 million per annum”.

The Australian annual figure of $90,000 per capita bears a strikingly close resemblance to the current annual cost of NZ$92,000 to keep someone in a detention facility in New Zealand.6

It is difficult, therefore, to understand why the per capita cost of mandatory detention and processing in New Zealand should differ so greatly from the costs of providing similar services in Australia. Especially, given that mandatory detention facilities and systems have been established there for many years already. Should the true per capita cost in New Zealand prove to be comparable to those across the Tasman, the costs of the mandatory detention of 500 people could be in excess of $45 million per annum. Given the present processing capacity, it is likely that many cases would take far longer than one year to reach a final determination of status.

Refugee Services is concerned that the projected costs of mandatory detention may have significantly under-estimated the eventual true costs.

DELAY OF PERMANENT RESIDENCE

The suggested introduction of a policy delaying the granting of Permanent Residence for a period of 3 years is considered unnecessary, unhelpful and discriminatory. It may well contravene article 31 of the Refugee Convention and article 23 of the ICCPR.

The additional protracted period of uncertainty will see an inevitable increase in anxiety-related illnesses and will prevent those affected from putting down roots and beginning to gain a sense of belonging, which is essential to the

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6 Source: The Howard League
achievement of settlement and integration goals for refugees established by the Department of Labour.

Additionally, access to health services, education, state housing and employment are currently restricted to clients with Permanent Residence. Assuming that it is not the intention of Government to deny these rights to those who have successfully sought and been granted refugee status, changes in legislation and policy will need to be adopted and extensively communicated throughout the public and community services sector dealing with refugee clients.

Perhaps most importantly, we would emphasise that such a policy is considered discriminatory. It will set up a different set of rights and privileges for refugees who enter the country under the Refugee Quota Programme – and the asylum seekers who successfully claim refugee status on arrival in New Zealand. However, the Convention recognises no difference in status between a refugee whose status is accorded sur place, and one whose status is determined through a signatory’s on-shore determination process. Each person has equal recognition under the Convention and each should be accorded equal rights and freedoms by the country of resettlement or asylum.

Refugee Services notes that the suggested policy appears to closely parallel the failed Australian Temporary Protection Visa (TPV) programme. The TPV was introduced in Australia in 1999 and finally abolished in 2008. Of the 11,000 people issued with TPVs between 1999 and 2007, approximately 90% were eventually granted permanent residence.

Refugee Services cannot support this aspect of the Bill. It is considered to be discriminatory and may well be in breach of international instruments to which New Zealand is a signatory. If adopted, it will only serve to impede the successful settlement and integration of successful asylum claimants.

**LIMITED ACCESS TO FAMILY REUNION**

The Bill indicates that successful on-shore asylum claimants, deemed to be part of a “mass arrival”, will not enjoy the same access to family reunion provisions as their counterparts who are admitted under the annual Refugee Quota Programme. This policy is clearly discriminatory and appears to breach obligations under the Convention and Protocol on the Status of Refugees; the International Covenant on Civil and Political Rights and, potentially, the Convention on the Rights of the Child.

There is a wealth of research demonstrating that family reunion is critical to successful resettlement in a new country. Over the past 10 years, UNHCR

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7 “Family Separation -The Policies, Procedures, and Consequences for Refugee Background Families” - Web ref: (Brook Wilmsen); [http://rsq.oxfordjournals.org/content/30/1/44.full](http://rsq.oxfordjournals.org/content/30/1/44.full)

has worked assiduously with resettlement countries to encourage them to adopt a broader definition and understanding of the term “family” within their selection processes. The UNHCR definition (now embraced by New Zealand) encompasses non-nuclear family members that have an established and demonstrable dependency on the family unit.

“A nuclear family is generally accepted as consisting of husband and wife, their minor or dependent, unmarried children and minor siblings. Beyond this, the concept of dependency is central to the factual identification of family members. Dependency infers that a relationship or a bond exists between family members, whether this is social, emotional or economic. The relationship or bond between the persons in question will normally be one which is strong, continuous and of reasonable duration.”

The Bill defines a “mass arrival” as any group of more than 10 individuals who arrive in New Zealand on board the same craft. It is therefore worthy of note that, in many cultures, there may be more than 10 members within a single dependent family unit. There is a need for policies to more explicitly define the characteristics of a “mass arrival group”.

The proposed policy threatens progress that has been made by UNHCR with regards to the interpretation of “refugee family”. The policy also appears to be discriminatory, since it establishes differing rights for two groups of refugees (Quota & Convention), both of whom enjoy the same rights under international law, defined in international instruments to which New Zealand is a signatory.

Refugee Services cannot support this aspect of the Bill. It will potentially impede the settlement and integration of successful asylum claimants and their families. We believe it to be discriminatory and suggest that it may be in breach of international instruments to which New Zealand is a signatory.

SOME CONCLUDING THOUGHTS

THE MOTIVATORS FOR MIGRATION

Described at its simplest level, migration has always been a product of the “haves” and the “have-nots.”, whether we are speaking of refugees or economic migrants.

- Refugees flee because they do not have effective protection from persecution or a guarantee of security in their home countries.
- Economic migrants move because they perceive themselves to be socially or economically disadvantaged in their homeland and have the courage to aspire to a better future in another country.

Each seeks a country that they believe can better provide for their protection and/or economic or emotional needs.

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8 Refer: UNHCR Handbook on Resettlement (Chapter 4, 6.6)
Countries that are signatories to the Universal Declaration of Human Rights and/or the Refugee Convention and Protocol, have accepted specific obligations and responsibilities in respect of asylum seekers who meet the Convention criteria and are accorded refugee status.

For Australia, Canada (and to a lesser extent New Zealand), the issue of irregular boat-arrivals has become a matter of growing concern. There has been a steady increase in the smuggling of ‘boat people’ whose motivation for illegal entry is economic. However, the situation is complicated by the fact that many vessels are carrying “mixed flow” cargos. The term “mixed flow” is applied to boats containing a mixture of economic migrants and genuine refugees.

Understandably, refugees’ and ‘economic migrants’ are often attracted to the same countries. Refugees are drawn to these countries because they are known to uphold human rights and are seen as having fair and developed refugee determination systems. Illegally-arriving ‘economic migrants’ see them as offering the best chance of future economic prosperity.

With respect to the irregular arrival of ‘economic migrants’, it should be noted that many of these people have borrowed heavily from family members or money lenders in order to pay the extortionate fees charged by migrant smugglers. Their unsuccessful attempt to gain entry into the ‘promised land’ is in itself a serious punishment since they will often face financial ruin and the continuing consequences of indebtedness upon their return.

The Government of New Zealand has a right to return illegally-arriving ‘economic migrants’ to their country of origin or departure. However, it should be remembered these people are generally not criminals. They are people seeking ‘a better future’ through the only means available to them. They should, therefore, be treated with dignity and respect throughout the process of their status determination, necessary detention and subsequent return.

Conversely, migrant and refugee smugglers care little or nothing about the safety or protection of those whose life-savings (or borrowings) help to line their deepening pockets. They are a voracious new breed of profiteer, preying on the desperation of a growing clientele.

It is the view of Refugee Services that, stemming the increasing flow of ‘boat people’ is more likely to be achieved through:

- Faster refugee status determination procedures (provided the streamlining of any new process does not compromise its quality and fairness).
- The imposition of much harsher penalties for those convicted of migrant smuggling . . . rather than the mandatory detention of those who are forced to seek their services.
APPENDIX A

CONVENTION & PROTOCOL ON THE STATUS OF REFUGEES

Article 31

Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions, other than those which are necessary, and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.
EXCOM CONCLUSION 44

Detention of Refugees and Asylum-Seekers

The Executive Committee,

Recalling Article 31 of the 1951 Convention relating to the Status of Refugees.

Recalling further its Conclusion No. 22 (XXXII) on the treatment of asylum-seekers in situations of large-scale influx, as well as Conclusion No. 7 (XXVIII), paragraph (e), on the question of custody or detention in relation to the expulsion of refugees lawfully in a country, and Conclusion No. 8 (XXVIII), paragraph (e), on the determination of refugee status.

Noting that the term “refugee” in the present Conclusions has the same meaning as that in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, and is without prejudice to wider definitions applicable in different regions.

(a) Noted with deep concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation;

(b) Expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;

(c) Recognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention;
(d) Stressed the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum-seekers, and that of other aliens;

(e) Recommended that detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review;

(f) Stressed that conditions of detention of refugees and asylum seekers must be humane. In particular, refugees and asylum-seekers shall, whenever possible, not be accommodated with persons detained as common criminals, and shall not be located in areas where their physical safety is endangered;

(g) Recommended that refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the absence of such office, available national refugee assistance agencies;

(h) Reaffirmed that refugees and asylum-seekers have duties to the country in which they find themselves, which require in particular that they conform to its laws and regulations as well as to measures taken for the maintenance of public order;

(i) Reaffirmed the fundamental importance of the observance of the principle of non-refoulement and in this context recalled the relevance of Conclusion No. 6 (XXVIII).