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## **Submission on Immigration Amendment Bill Transport and Industrial Relations Select Committee June 2012**

### **About ChangeMakers**

ChangeMakers is a rights-based, non government organisation that represents over 14 refugee-background communities in the greater Wellington region. Our vision is:

***New Zealanders from refugee backgrounds participating fully in New Zealand life***

We work towards this vision through community development, research, and advocacy.

### **Background**

Over the last 20 years, Aotearoa New Zealand has had an annual resettlement quota of 750 refugees, plus or minus 10 percent. In addition to accepting refugees through the resettlement quota, Aotearoa New Zealand also accepts a small number of refugees who arrive in the country as asylum seekers; up to 300 additional people under the Refugee Family Support Category; and an unknown number of people through general immigration policy.<sup>1</sup>

While Aotearoa New Zealand's contribution to accept Quota and Convention refugees is commendable, our efforts are minimal compared to the total number of refugees and asylum seekers. In 2007, according to the UNHCR, there were 31.7 million persons of concern (refugees, asylum seekers, and internally displaced persons)<sup>2</sup>. This number increased to 43.3 million by 2009.<sup>3</sup>

In 2012, Rick Towle, UNHCR Regional Representative for Australia, New Zealand and the Pacific, speaking at the National Refugee Resettlement Forum, stated that there were approximately 180,000 refugees who were in need of immediate protection. He estimated that fewer than 80,000 of these people will be accepted for resettlement.

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<sup>1</sup> Quazi, A. (2009). *Quota refugees in New Zealand: Approvals and movements (1999 – 2008)*. Department of Labour: Wellington.

<sup>2</sup> UNHCR (2008). *Global Trends*. Available at: <http://www.unhcr.org/statistics/STATISTICS/4852366f2.pdf>

<sup>3</sup> UNHCR (2010). *Global Trends*. Available at: <http://www.unhcr.org/4c11f0be9.html>

## **Introduction**

ChangeMakers welcomes the opportunity to make a submission on the proposed changes to the Immigration Act. We understand the government's concern regarding people smuggling, and agree that a proactive response to manage the possible arrival of a large number of people on an unscheduled craft is needed.

We are, however, not in favour of the Immigration Amendment Bill and proposed policy changes for a number of reasons. In our view the Bill and proposed policy changes:

1. undermine Aotearoa New Zealand's excellent international reputation and the role we have played in welcoming and resettling Quota and Convention refugees over the last 20 years
2. are in direct conflict with Aotearoa New Zealand's Bill of Rights, and United Nations agreements we are party to, including the Refugee Convention (1951) and Protocol (1967), the Universal Declaration of Human Rights (1948), and the International Covenant on Civil and Political Rights (1966)
3. are discriminatory
4. will not act as a deterrent to potential arrivals
5. set a dangerous precedent of granting temporary asylum status and create a second class of people who are legitimate refugees
6. are likely to result in significant mental health and wellbeing problems for arrivals, many of whom will be recognised as legitimate asylum seekers
7. use an arbitrary 'more than ten people' to define a 'mass arrival' when a far greater number could be processed under current policies, procedures, and processes
8. are likely to result in a hardening of attitudes among other New Zealanders towards refugees in general and people who have a right to claim asylum

**To address these issues we recommend that:**

1. The Bill is withdrawn and a sector-wide forum is held to discuss this issue and to establish a Working Group tasked with identifying solutions that manage humanitarian and border protection obligations.<sup>4</sup>
  - 1.1. The Working Group develops draft policy changes that identify effective and administratively workable solutions to address the issue of a large group of people arriving in an unscheduled craft.
  - 1.2. The Working Group's recommendations are made public and feedback on the recommendations is invited from across the sector.
  - 1.3. A final report with agreed policy changes is presented to the Minister of Immigration for approval.

**If the Bill proceeds we recommend that the Bill is amended to:**

1. Change the definition determining a 'mass arrival' from a group of more than 10 people to a group of more than 49 people. As an attendee at a recent meeting on the issue stated: 'More than ten people is not a mass arrival, it's a family'.
2. Ensure that the Bill's related policy changes do not proceed. It is our understanding from the Minister's media statement that two policy changes are proposed if the Bill is passed. Firstly, those granted asylum would have restrictions placed on their ability to sponsor family members to join them in Aotearoa New Zealand. Secondly, asylum seekers' refugee status will be reassessed three years after approval. These proposed changes set a dangerous precedent and are discriminatory.
3. Include policy provisions to ensure that family members are not separated when asylum applications are being processed.
4. Replace mandatory detention with placement at the Mangere Refugee Resettlement Centre where they would have the same rights of movement and access to support

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<sup>4</sup> This forum and the Working Group should include representation from across the sector including people from refugee backgrounds (Quota and Convention representatives), representatives from government and non government agencies, the Human Rights Commission, Family Commission, and Community Law Centres.

services as quota refugees. Where the numbers of arrivals are too great to house at Mangere, we recommend community placement for asylum seekers. Evidence from overseas clearly indicates that risk of asylum seekers absconding while awaiting the outcome of their asylum application is extremely low.<sup>5</sup>

5. Ensure that the maximum time for an asylum seeker's application to be processed is limited to six months. Under the current Bill, extensions on the initial period of six months can be granted by a District Court judge.
6. Remove the Bill's amendments that limit the requirements of the Immigration and Protection Tribunal to provide an oral hearing for asylum seekers (Clause 9).

## Specific considerations

### 1. The Bill, if passed, will not act as a deterrent to potential asylum seekers

According to the Minister of Immigration's media statement, the Bill has been introduced to deter a mass arrival of potentially illegal migrants to New Zealand.<sup>6</sup> As the Select Committee will be aware, this approach reflects measures taken by countries such as Australia and Canada aimed at deterring people seeking asylum from arriving at their borders.

The evidence is clear; harsh measures do not act as a deterrent. From the 1990s to mid 2000s Australia introduced a number of policies aimed at deterring asylum seekers arriving by boat. Despite this, in 2000 and 2001, 94 boats carrying 8,455 people arrived.<sup>7</sup> This is the greatest number of boats and people arriving in Australia in any two year period between 1976 and 2008. Similarly, Edwards (2011) found that despite increasingly tough detention policies being introduced in many Western countries over the past 20 years, the number of irregular arrivals did not reduce.<sup>8</sup>

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<sup>5</sup> International Detention Coalition (2011). *There are alternatives. A handbook for preventing unnecessary immigration detention*. La Trobe University, Melbourne Australia.

<sup>6</sup> Guy, N. (2012). *New measures to deter people smugglers announced*. Available at: <http://www.nathanguy.co.nz/index.php?/archives/709-New-measures-to-deter-people-smugglers-announced.html>

<sup>7</sup> Parliament of Australia (2011). *Boat arrivals in Australia since 1976*. Available at: [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/BoatArrivals](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals)

<sup>8</sup> Edwards, A (2011). *Back to Basics: The right to liberty and security of person and 'alternatives to detention asylum seekers and stateless persons, and other migrants*. UNHCR Legal and Protection Policy Research Series. Geneva: UNHRC

What is also clear is the Australian public remains unconvinced that harsh measures actually work. In 2009 a Newspoll survey found that only 36% of respondents thought that tougher policies would make any difference in stopping the flow of unauthorised boat arrivals.<sup>9</sup>

Research indicates that asylum seekers choose destinations where they:

- will be reunited with family or friends
- believe they will be safe, and live in a tolerant and democratic society
- can already speak the language
- have historical links between their country and the destination country<sup>10</sup>

Further, most asylum seekers have no or very limited understanding of the migration policies of destination countries before they arrive.<sup>11</sup> A key Australian study found that asylum seekers who were aware of the prospect of detention before arrival believed it was an unavoidable part of the journey, and that those who had been detained did not pass a message of deterrence on to friends and family due to their relief from escaping persecution and reaching safety.<sup>12</sup>

## 2. The Bill threatens New Zealand's international reputation

Aotearoa New Zealand is a signatory to a number of international agreements including the:

- Universal Declaration of Human Rights (UDHR, 1948)
- International Covenant on Civil and Political Rights (ICCPR, 1966)
- Refugee Convention (1951) and Protocol (1967)

and has a reputation of being a positive and constructive global player. This Bill, if passed, will threaten this reputation. Most countries do not use detention as a first option and a number rarely resort to detention, if at all.<sup>13</sup> Further, international human rights law and

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<sup>9</sup> Maley, p & Taylor, L (2009). *Boatpeople regime has divided the nation*. Available at: <http://www.theaustralian.com.au/news/boatpeople-regime-has-nation-divided/story-e6frg6n6-1225700370158>

<sup>10</sup> Robinson, V & Segrott, J (2002). *Understanding the decision making of asylum seekers*. London: Home Office. Available at [http://www.irr.org.uk/pdf/understand\\_asylum\\_decision.pdf](http://www.irr.org.uk/pdf/understand_asylum_decision.pdf)

<sup>11</sup> Robinson, V. & Segrott, J (2002). *Understanding the decision-making of asylum seekers*. Available at: [http://www.irr.org.uk/pdf/understand\\_asylum\\_decision.pdf](http://www.irr.org.uk/pdf/understand_asylum_decision.pdf)

<sup>12</sup> Richardson, R. (2010). Sending a message? Refugees and Australia's deterrence campaign *Media International Australia*(135), 7-18

<sup>13</sup> International Detention Coalition (2011). *There are alternatives. A handbook for preventing unnecessary immigration detention*. La Trobe University, Melbourne Australia.

standards are very clear: detention of people seeking asylum should only be used as a last resort and detention should be avoided entirely for vulnerable groups.

In essence the Bill is designed to reduce the number of people who claim asylum in Aotearoa New Zealand. The right to claim asylum is a fundamental right. Article 14 of the Universal Declaration of Human Rights states that:

*'Everyone has the right to seek and to enjoy in other countries asylum from persecution.'*

Aotearoa New Zealand needs to ensure that we are protecting the rights of people to claim asylum. The UN Guideline on Detention of Asylum Seekers states that detention of asylum seekers as part of a policy to deter future asylum seekers is contrary to the principles of international protection.

*'The detention of asylum-seekers is, in the view of UNHCR inherently undesirable.'*(p.1)<sup>14</sup>

Further, as a party to the 1951 Refugee Convention, Aotearoa New Zealand must ensure that people who meet the United Nations definition of a refugee are granted asylum and not impose penalties on an asylum seeker (Article 31). Mandatory detention, removing the right to an oral hearing, and the proposed policy changes penalise people who have a right to seek asylum.

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<sup>14</sup> UNHCR (1999). *UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*. Available at: <http://www.unhcr.org/refworld/pdfid/3c2b3f844.pdf>

### **3. The Bill and its associated policy changes are discriminatory**

The Bill if passed would be discriminatory for a number of reasons. Firstly, it proposes that those who arrive in a group of more than ten are treated differently on arrival than others seeking asylum who arrive in a smaller group or as individuals. Secondly, it removes the requirement for the Immigration and Protection Tribunal to provide an oral hearing (Clause 9). Thirdly, proposed policy changes accompanying the Bill would result in the temporary recognition of refugee status and limit the opportunity of successful asylum seekers to sponsor their family to New Zealand. Both individually and in their totality, the effect of these changes is to create a second class of people who are genuine refugees.

ChangeMakers' work with refugee-background communities reinforces the importance of family reunification and the positive impact this has on resettlement. In our joint 2009 publication on family reunification we highlight the fact that of 31 families who were clients of Refugee as Survivors (RAS) mental health services, over 90% were discharged from RAS after they were reunited with their families in Aotearoa New Zealand.<sup>15</sup> Restricting the right of successful asylum seekers to be reunited with their family is discriminatory, punitive, and likely to have a significant negative impact on the ability of these people to resettle. Further, the delay of three years in granting permanent residence for people who are genuine refugees simply because of their mode of arrival and the number of people who accompanied them is inherently inequitable and discriminatory.

### **4. The majority of 'boat people' are refugees**

The Minister of Immigration Nathan Guy stated that the legislation is not about 'punishing people with a genuine claim for refugee status.'<sup>16</sup> Despite this assertion, evidence from Australia is clear: over 90% of asylum seekers who arrive via boat are ultimately recognised as genuine refugees and released into the community. In the unlikely event that New Zealand does become a destination for large groups of people arriving on unscheduled craft, the majority of these people are likely to be recognised as refugees and as such this legislation if passed will 'punish them'.

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<sup>15</sup> ChangeMakers Refugee Forum, Refugee Family Reunification Trust, Wellington Community Law Centre & Wellington Refugees as Survivors (2009). *Refugee Family Reunification in Wellington*.

<sup>16</sup> Guy, N. (2012). *New measures to deter people smugglers announced*. Available at: <http://www.nathanquy.co.nz/index.php?archives/709-New-measures-to-deter-people-smugglers-announced.html>

## **5. Mandatory detention is likely to reduce health and wellbeing**

Detaining people for up to six months in an initial warrant and then for additional periods will have negative impacts on the health and wellbeing of asylum seekers. Mandatory detention that worsens health and wellbeing will increase the challenge of resettling into a new country. Research in Australia found that prolonged detention has adverse mental health and psychosocial impacts on adults, families, and children and that mental health effects may be prolonged, extending well beyond the point of release into the community.<sup>17</sup> Similarly, another study found clinically significant systems of depression were present in 86% of detainees, anxiety in 77%, and post traumatic stress disorder in 50% with approximately 25% reporting suicidal thoughts.<sup>18</sup>

## **6. Arbitrary definition of a 'mass arrival'**

It is our understanding that the Bill is based upon modelling the impact of a boat carrying 500 people arriving on New Zealand shores. However, the Bill defines a mass arrival as a group of more than ten people. There is a significant difference between more than 10 people and 500 people. As noted above, many families are made up of more than ten people.

The Bill, if progressed, needs to be amended to define a mass arrival as a group of more than 49 people. While this is equally as arbitrary as defining mass arrival as more than 10, 49 or fewer people can be processed using current procedures and processes; there is no need for change from a practical and/or administration perspective. As part of our five annual intakes of UNHCR quota refugees the Mangere Refugee Resettlement Centre manages over 100 people per intake.

## **7. The Bill and proposed policy changes may harden public attitudes towards people who have a right to claim asylum**

The best evidence of this comes from Australia where the debate about 'boat people' has polarised that country. There is potential for this to occur here with the Minister of

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<sup>17</sup> Silove, D., Austin P. & Steel, Z (2007) *No Refuge from Terror: The Impact of Detention on the Mental Health of Trauma-affected Refugees Seeking Asylum in Australia.* Transcultural Psychiatry 44 (3): 359-394.

<sup>18</sup> Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture (2003). *From persecution to prison: the health consequences of detention for asylum seeker.* Boston and New York:PHR and the Bellevue/NYU Program for Survivors of Torture.

Immigration using unfortunate terms such as ‘dangerous and illegal mass arrivals’, ‘illegal migrants’ and ‘queue jumpers’.<sup>19</sup>

As previously noted, under the UDHR that Aotearoa New Zealand has adopted, everyone has the right to claim asylum. Further, there is no queue. Applying for protection onshore is a standard and correct procedure when seeking protection under the 1951 Refugee Convention. Unfortunately the facts surrounding asylum seekers have been lost in the hysteria that often accompanies public debate on ‘boat people’ in Australia. We need to avoid such ill-informed debate in Aotearoa New Zealand.

## **Conclusion**

ChangeMakers strongly urges the Select Committee to recommend that this Bill does not proceed.

The Bill is discriminatory, removes the rights of people arriving in Aotearoa New Zealand to claim asylum and not be arbitrarily detained, and undermines our international reputation. The proposed policy changes that accompany the Bill, if passed, would create a second class of people whose right to participate fully in New Zealand life would be constrained. The Bill and the potential policy changes are likely to ignite ill-informed debate and could lead to the creation of a less welcoming environment for people who have a right to asylum and to rebuild their lives in Aotearoa New Zealand.

ChangeMakers recommends that a cross-sector forum is held to encourage dialogue on this issue and to form a cross-sector Working Group to develop policy changes that balance humanitarian and border protection obligations.

If however, the Select Committee recommends that the Bill does move to another Reading we recommend a number of changes to the Bill. These include defining a mass arrival as more than 49 people, removing Clause 9 of the Bill related to oral hearings, replacing mandatory detention with placement at the Mangere Refugee Resettlement Centre, and the processing of asylum applications to be limited to a maximum of six months.

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<sup>19</sup> Guy, N. (2012). *New measures to deter people smugglers announced*. Available at: <http://www.nathanquy.co.nz/index.php?archives/709-New-measures-to-deter-people-smugglers-announced.html>

Additionally amendments need to be drafted to ensure that families are not separated while asylum applications are being processed, and to protect the full and equal rights of those who are recognised as refugees so that they are granted permanent residence and have full access to family reunification under general immigration policy, the annual refugee quota, and Refugee Family Support Categories.

Thank-you for your consideration.

I would welcome the opportunity to present to the Select Committee.

A handwritten signature in black ink, appearing to be 'Tim O'Donovan', with a horizontal line extending to the right.

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