



Criminal Law Section

In your reply please quote

Our Ref:

Your Ref:

31 October 2011

Committee Secretary
Joint Select Committee on Australia's
Immigration Detention Network
PO Box 6100
Parliament House
Canberra ACT 2600
Immigration.detention@aph.gov.au

Dear Committee Secretary

RE: Inquiry into Australia's Immigration Detention Network

We make this submission following the appearance of Northern Territory Legal Aid ('NTLAC') representatives before the Committee on 26 September 2011. This submission is intended to supplement the evidence provided to the Committee and provide answers to questions which were taken on notice when NTLAC appeared before the Committee.

Any clients referred to have provided permission to detail their experiences to the Committee for the purposes of this Inquiry.

Our Services

The Northern Territory Legal Aid Commission (NTLAC) aims to ensure that the protection or assertion of the legal rights and interests of people in the Northern Territory ('NT') are not prejudiced by reason of their inability to:

- ◆ obtain access to independent legal advice;
- ◆ afford the financial cost of appropriate legal representation;
- ◆ obtain access to the Federal or Territory legal systems; or
- ◆ obtain adequate information about access to the law and legal system.

NTLAC provides advice and assistance to persons in a range of matters, including:

- Family law
- Domestic violence
- Child in need of care

- Criminal law; and
- Civil law.

NTLAC is a Territory wide legal service provider with offices across the NT and fits within a matrix of legal and related service providers across the NT.

NTLAC Services relating to persons in immigration detention

All of the services outlined above are available to persons in immigration detention. For example in 2011, NTLAC has provided criminal law and domestic violence law advice and representation to persons in detention in Darwin. Since April 2011 assistance in relation to judicial review of refugee status decisions is the area of law in which substantially the greatest amount of legal assistance has been provided by NTLAC.

Since the High Court decisions in *M61* and *M69*, offshore asylum seekers who had received a negative Independent Merits Review ('IMR') decision (recommending to the Minister that the client was not a person to whom Australia owed protection obligations) required advice on whether that decision was reviewable by the Federal Magistrates Court ('FMC'). If there is a legal avenue to seek judicial review of the decision, NTLAC will ordinarily grant aid to the person to fund their representation through that process.

There is no active assistance by DIAC to refer asylum seekers with negative IMRs to obtain advice on judicial review. Clients have 35 days from date of letter advising of the decision to lodge application in the FMC for judicial review. There is no formal referral process and clients become aware of our service through many varied means. The time pressures and lack of facilitation of referrals place additional stress on clients and service providers.

Between April and September 2011 NTLAC funded legal advice to 63 persons and 47 court applications. NTLAC is using existing funding to try and meet the need and has received no additional funding for this area of work.

NTLAC primarily assists persons in detention in the NT, being Northern Immigration Detention Centre, Darwin Airport Lodge and the Asti Motel prior to its closure. Our clients may commence proceedings in the NT and be moved by DIAC during the course of the provision of legal advice and legal proceedings. Clients have been moved to Christmas Island WA, Villawood NSW, Marybyrnong Vic, as well as to community detention in Mildura, Canberra and Adelaide. People may also be moved from other detention facilities in Australia and, on arrival in the NT, seek the assistance of NTLAC. Clients are usually moved without notice to their legal representative or the Court. As there are a number of services nationally attempting to provide legal assistance to people in detention, the ongoing movement of people throughout the Immigration Detention Network poses challenges to the provision of legal service and the administration of legal proceedings.

Access

There are only a few interview rooms in the NIDC and access to clients for legal purposes is poor and worsening. DIAC and other appointments are prioritised over legal services. A telephone is required as most often legal services use a telephone interpreter.

NTLAC is often advised that its lawyers are not able to see clients for two to three days. In addition, restrictions are often placed on the number of clients that lawyers can see. It is often urgent that NTLAC lawyers see clients as statute imposed time limitations require NTLAC to obtain advice, assess merit and file documents in court within tight 35 day time limits.

Interpreters are not readily available. Interpreters in Darwin are mostly used by DIAC. NTLAC usually rely on interpreters available by telephone, but that system is fraught with practical difficulty. In person interpreters are preferable however, as they are generally being used by DIAC, a perception of bias arises.

Facilities

The nature and environment of detention facilities in the NT is highly inappropriate for those who have suffered torture and trauma.

NTLAC favours the option of community detention. We submit that this environment will significantly improve our clients' mental health, and from a legal perspective their ability to actively engage in their court case. There are no current community detention facilities available in Darwin. If our clients are released into community detention they are moved interstate. They can still appear in court for their hearing via video link.

DIAC operates a national detention network which moves people for 'operational requirements'. This amounts to the unannounced movement of people between facilities. In itself this is an unsettling and traumatic situation. There is a perception that this is done for punitive reasons to break established bonds between asylum seekers, support agencies and representatives.

Mental Health and Wellbeing

NTLAC has had two clients who have made significant and serious attempts at suicide. Despite having legal representation at the time, neither the DIAC nor Serco reported the self harm and/or suicide attempts to their NTLAC lawyer. The incidents were discovered by the NTLAC lawyer some weeks later when she attended the detention centre to discuss their legal matter.

The inadequacy of response to serious and significant self harm and attempted suicide must be addressed as a matter of urgency.

We have written directly to DIAC raising serious concerns we have in relation to clients who have attempted suicide. We submit that these clients, although previously suffering

trauma, are exposed to further trauma by the fact and circumstances of their detention which significantly and unnecessarily exacerbates their psychological illness.

We are aware that unaccompanied minors are held in immigration detention in the NT. It is concerning in itself that there are unaccompanied minors in detention, however the guardianship arrangements in place under the current legislation are unclear and do not lend themselves to facilitating minors' access to service providers. Several weeks ago, NTLAC received a request for legal assistance and lodged a request to visit minors in detention. We have been advised by DIAC that the minors are already represented. We have not been informed who their representatives are. We have requested that DIAC pass on our request to the representatives of the unaccompanied minors. We are yet to receive any further information about the identities of the representatives of the minors or the need for legal representation. We have met with the NT Children's Commissioner to discuss our concerns at the lack of transparency in relation to the arrangements for unaccompanied minors. The NT Children's Commissioner has advised us that he does not have jurisdiction in relation to these children unless there is a complaint about an NT agency.

Length of legal process

The recent ability to seek review of an IMR or IPAO decision by the FMC has extended the refugee status review process, thereby extending the time spent in detention. In Darwin the first judicial review application was filed on 21 April 2011 and heard by the Court on 22 June 2011. This matter is awaiting a decision. The application was made by a person who arrived in Australia by boat in February 2010 and remains in detention today.

Humanitarian alternatives, such as community detention, should be urgently explored for stateless people such as Faili Kurds, where DIAC knows they cannot be returned to Iran. These people are facing indefinite detention which is inhumane.

The length of time taken for security clearances for positive asylum seekers is also inhumane. NTLAC has a client who has been waiting over 10 months for security clearances, despite having been found to be a refugee.

Quality of access and assistance provided at initial application stage

The original application for asylum is prepared by an IAAAS provider. We have concerns, based on the quality of some of the applications, that the preparation of claims at the initiating stage is rushed. This impacts on the applicants' likelihood of success. This may not be the fault of the representative of the claimant, but may be dictated by time, space and access given to IAAAS providers.

Asylum seekers are often disillusioned by their experience in having their claim processed. There are low levels of faith in the procedures and applicants have concerns about bias. It is very hard for NTLAC representatives to gain their trust to represent them in the judicial review process.

Recommendations

NTLAC recommends that mandatory detention be abolished. The system is unworkable and causing irreversible damage to many asylum seekers, successful or not, creating lifelong mental health injuries and decreased job prospects as they are unlikely to fully function in society without welfare and health assistance.

As one of our clients has said to us:

' I fled Afghanistan because I had been imprisoned and tortured, I came Australia and I am in prison and tortured every day'.

Questions on Notice

We provide answers to the following questions which were taken on notice when NTLAC appeared before the inquiry on 26 September:

1. P 38. The disbursement and in-house cost of judicial review work from 1 January 2011 to date is \$285,421.06
2. P 39. We are unable to advise what the cost of 'additional work', for example criminal law and domestic violence matters arising from people in immigration detention. NTLAC does record data on the number of clients in detention but does not distinguish between clients in immigration detention and other forms of custody.
3. P 39. We are unable to determine the percentage of current cases which relate to people in immigration detention. Again, the NTLAC does not maintain these statistics specifically.
4. P 40. Based on current trends, we anticipate that NTLAC will be able to represent people in immigration detention, without impacting on other services that it provides, until September 2012.

Yours sincerely,

SUZAN COX QC
Director