



Immigration Amendment Bill Transport and Industrial Relations Select Committee

The Salvation Army (New Zealand, Fiji and Tonga) Submission

1. Background to this submission

The Salvation Army has been present in Aotearoa New Zealand since 1883. Geographically spread throughout Aotearoa New Zealand, The Salvation Army, through its wide-ranging community ministries and local corps (churches), embraces and welcomes all people, cultures and backgrounds. Indeed The Salvation Army rejoices in the richness of cultural diversity which is present within Aotearoa New Zealand today. This country is founded upon, and has been developed by its early arrivals and subsequent decades of settlers who now call Aotearoa New Zealand home.

The demographics of this country are primarily one of migration without which this nation would not have developed into the land we know and are proud to call home. It is from this backdrop and understanding of the multiple peoples of this land, coupled with the knowledge of its own migratory origins as an early settler that The Salvation Army wishes to respectfully make comment to the proposed Immigration Amendment Bill.

This submission has been approved by Commissioner Donald Bell, the Territorial Commander of The Salvation Army (New Zealand, Fiji & Tonga Territory).

We would like to publicly present an oral submission on these matters detailed in this submission if there is an opportunity to do so.

2. An overview of The Salvation Army's perspective

Whilst supporting the Minister for Immigration's comments regarding Aotearoa New Zealand's sovereign right to determine who is able to gain permanent residency (whilst needing to take into account international obligations), the continuing need for border integrity, and sharing his concerns regarding the plight of asylum seekers who have met untimely deaths onboard unseaworthy boats in several incidents in the Pacific as they have desperately sought safety, we suggest this Bill will not achieve its intended outcomes. Moreover, in

enacting these proposed changes Aotearoa New Zealand may well be in breach of its international obligations.

What's more, emotive comments such as 'mass arrival' and the 'ulterior motives' for gaining entry into Aotearoa New Zealand other than for 'genuine reasons'¹ could potentially incite fear and apprehension into the general public, and result in discrimination of refugees already resident within Aotearoa New Zealand and divisive views and understandings, as has happened in Australia.

3. The Universal Declaration of Human Rights

Article 14 of the Universal Declaration of Human Rights states that, 'everyone has the right to seek asylum in another country, if they are being persecuted in their own country.' Both the 1951 Refugee Convention and the 1967 Protocol, which relate to the Status of Refugees (of which New Zealand is a signatory) outline the rights of asylum seekers.

The Salvation Army is a passionate believer in the right of individual people to a life within community with others which is free from fear of persecution and discrimination. Furthermore The Salvation Army upholds the intent of Article 14 which states that, 'everyone has a right to seek asylum in another country, if they are being persecuted in their own country.' Thus the proposed changes to the 2009 Immigration Act poses some questions and serious concerns in that regard.

4. Specific responses to clauses within the bill

The Salvation Army wishes to focus comment in particular on the following two amendments, namely:

- Part 1, section 5, meaning of mass arrival
- Part 1, section 317a, application for mass arrival warrant.

4.1 Part 1, section 5, meaning of mass arrival

The majority of the world's estimated 14.1 million refugees live in developing countries, with women and children making up 80 % of the refugee figures.² Refugee and asylum seekers are afforded through human rights law the same protections as any other global citizen. Economic, cultural and social rights are not simply the rights of citizens and nationals of a host

¹ Hon Nathan Guy, Minister for Immigration, Immigration Amendment Bill first reading, May 3, 2012

² US Committee on Refugees, *World Refugee Survey 2000* (Washington DC, 2000).

country, but rather encompass all people including those who have fled from the fear of persecution.

According to Article 1, a refugee is someone who, 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular group, or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country...'³

According to Amnesty International, refugees and asylum seekers are therefore to be accorded the same protections as any legal resident, including the freedom from being harmed and the freedom of thought and movement. Regardless of mode of travel and arrival, asylum seekers are not illegal migrants and should not be treated as such. They have a legal status with the same human rights as anyone else, while their permanent status is being determined.

Furthermore refugees and asylum seekers are not a homogenous group. Purely by reason that they have arrived together by the same mode of transport is not in itself justification for individual people/family groups to be viewed or treated as if they are exactly the same. Whilst travelling from the same country their individual circumstances, family background and experiences might well be very different. A 'one size fits all' approach could be detrimental to people seeking appropriate help related to their individual needs.

Given that Aotearoa New Zealand in 2009 processed only 340 asylum claims, even in the unlikely event of unexpectedly increasing it seems improbable the numbers would surge to any great degree beyond our coping capacity. Given Aotearoa New Zealand's fine example of humanitarian aid to the Tampa boat people who have been successfully integrated into community life, the Salvation Army believes Aotearoa New Zealand is well placed to process in a caring humanitarian way individual claims for refuge by people and family groups arriving together via an irregular route.

4.2 Part 1, section 317a, application for mass arrival warrant

The Salvation Army supports comments made by Professor Max Abbott, director of AUT University's Centre for Migrant and Refugee Research, namely, 'While there is a need for New Zealand to have secure borders and be able to deal with the unlikely arrival of a large group of asylum seekers en masse,

³ Article 1, the 1951 Convention Relating to the Status of Refugees.

proposals for mandatory detention for an initial six month period under a 'group warrant' are inappropriate.'⁴

The Australian Medical Association (AMA) makes the detrimental impact of mandatory detention for asylum seekers very clear in its positional statement. Despite improvements in the provision of health care to immigration detainees, the policy of mandatory detention and the remote location of most detainees mean that the health status of detainees continues to decline:

'The AMA is clearly focused on the health aspects of the asylum seeker debate, which also touch on human rights, ethics, and the right thing to do. These are damaged people desperately seeking a new life in this country. They are often fleeing diabolical situations in their home country. They are well acquainted with fear and danger and desperation. Some of them have been through torture, some have physical health problems, and many will have experienced mental health pressures.' The risk of mental health issues becomes higher the longer they are in detention centres. 'Children are particularly vulnerable and the detention environment places enormous stress on them. Children often witness behavioural and psychological distress in adults, including their parents. They see violence and self-harm and they experience separation from family members. 'Unaccompanied children should never be placed in detention centres.'⁵

The Salvation Army is concerned over the well documented research and findings into the harmful health and psychological impact that mandatory detention has on people already traumatised through experiences in their country of origin, who then find they are in enforced isolation for an indeterminate period of time, not knowing what the outcome may be. Mandatory detention of any person is something usually reserved for those who have committed a serious offence, yet international law states that it is not illegal to land on a foreign shore and seek refuge. Yet by implication Aotearoa New Zealand is stating that it is.

⁴ <http://www.aut.ac.nz/community/aut-in-the-community/centre-for-refugee-education/news#overreaction>

⁵ The AMA Position Statement on the Health Care of Asylum Seekers and Refugees (2011) is on the AMA website at <http://ama.com.au/asylum-seekers>

5. Conclusion

The Salvation Army is concerned with the overall intent of the amendments which appear to be excessively focussed on deterring people smugglers, making Aotearoa New Zealand an unattractive destination and the worse case scenario of how to mandatorily detain en masse a group of up to 500 people arriving by boat. Malloch and Stanley, in their article,⁶ highlight the use of negative words which conjure up visions of 'risk', 'danger' and 'criminality', and express concern that whilst attempts are made to help those who are in desperate need, such work is overshadowed by unhelpful depictions which stigmatise and criminalise. Such negativity lends itself to heighten public fears and prejudices, and continues to lend weight to myths surrounding people smuggling.

One such myth is all pervasive, that boat people are 'queue jumpers'. There are numerous articles written debunking this myth and yet it continues to appear in media and public debate. In one article⁷ it was categorically stated that there is no orderly queue for asylum seekers to join, as a very small proportion of those seeking refuge and are registered, come via the Office of the United Nations High Commissioner for Refugees route. Taking a country like Malaysia as a case in point, which has over 80,000 refugees and asylum seekers, if there was a queue then to reach the front would take 158 years.

Another myth relates to people smuggling being a business model that needs to be smashed. The Asylum Seeker Resource Centre comments, 'people smuggling is not a "business model" that needs to be squashed, but rather vulnerable people who need protection from persecution. Whilst there is a legitimate need to address the behaviour of people smugglers who exploit vulnerable people, a real solution would focus upon providing adequate alternative pathways for asylum seekers to escape their conditions of persecution and destitution. Until such options exist people will always get on boats because they have nothing to lose when likely death awaits them back home'.⁸

The Salvation Army supports the call by the Refugee Council of New Zealand for a facilitated multi-party broad accord on how a potential future boat arrival could be properly managed, balancing both border protection and humanitarian obligations.

⁶ Malloch, Margaret, & Stanley, Elizabeth. *The detention of asylum seekers in the UK Representing risk, managing the dangerous. University of Stirling, UK and Victoria University of Wellington, New Zealand. 2005*

⁷ Edmund Rice Centre, '10 essential facts about asylum seekers', June 2011

⁸ <http://www.asrc.org.au/media/documents/people-smuggling-mythbuster.pdf>

Aotearoa New Zealand has the opportunity to learn from other countries regarding what has failed to work and the harm that has already been done to vulnerable people, and, whilst taking into account its international obligations, to work with all parties and civil society as a whole to devise a plan of action which will ensure the human rights and dignities of all people seeking our help, whether they arrive by regular or irregular route.

For further information or comment, please contact:

Major Campbell Roberts
National Director, Social Policy and Parliamentary Unit
The Salvation Army, New Zealand, Fiji & Tonga Territory
09 261 0885 | 027 450 6944 | campbell_roberts@nzf.salvationarmy.org