The Secretary of the Committee,
Joint Standing Committee on Migration,
House of Representatives, PO Box 6021,
Parliament House Canberra ACT 6000
via email jscm@aph.gov.au

Inquiry into Immigration Detention in Australia

Dear Sir/Madam

I am writing to you in my capacity as President of *Labor for Refugees (Victoria)*, a group within the *Australian Labor Party* (ALP) that works towards achieving improvements to refugee and asylum seeker policy as carried out in Australia.

I refer the Committee to the February 1999 UNHCR document "UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers"[1], hereafter referred to as "guidelines".

I also refer the Committee to the April 2006 UNHCR document "Legal and protection policy research series: alternatives to detention of asylum seekers and refugees"[2], hereafter referred to as "protection".

The wealth of material contained in these documents relates very closely to the inquiry's terms of reference, and it is my hope that the Committee will utilise that material as a basis for its recommendations.

The inquiry's **first term of reference** refers to "the criteria that should be applied in determining how long a person should be held in immigration detention" whilst the inquiry's **second term of reference** refers to "the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks."

Many countries impose specific time limits on detention, and the Country Sections Appendices of "protection" outline overseas practice.

For example, Chapter 6 of Sweden's Aliens Act "allows aliens to be detained initially for up to 48 hours to check his or her status. If there are grounds to believe that deportation will occur or if there are serious doubts about the person's identity or nationality, he or she may be detained for up to fourteen days. ... Detention orders related to refusal of entry or an expulsion order must be reviewed within two months" (Page 187 of "protection").

Paragraph 29 Page 9 of "protection" notes: "... any period of detention must be open to periodic review ... in order to ensure that the initial reasons justifying detention continue to exist."

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[1] This document is available online at http://www.unhcr.org.au/pdfs/detentionguidelines.pdf
[2] This document is available online at http://www.unhcr.org/refworld/docid/4472e8b84.html

Paragraph 30 Page 9 of "protection" notes: "... an asylum seeker and/or refugee must have a right to challenge his or her detention in a court. Anything less than a court review is not satisfactory ... (and) the court must be empowered to order release."

Upon release, Section 209 of the (Australian) Migration Act 1958 allows asylum seekers to be billed for the cost of their mandatory detention. Such a practice undermines the ability of a person released from mandatory detention to resume a normal life in the general community. At its May 2008 State Conference, the Victorian Branch of the *Australian Labor Party* adopted a policy to repeal Section 209 and to waive (cancel) existing Section 209 debts.

The inquiry's **third term of reference** refers to "options to expand the transparency and visibility of immigration detention centres." In this context, I draw the attention of the Committee to Guideline 10 of "guidelines", which, in regard to conditions of detention, emphasises (in part) the importance of: "the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel." This guideline cannot be complied with in the case of detention facilities located at remote sites (such as Christmas Island). Closure of the Christmas Island detention facility would be a step towards achieving that transparency and visibility.

The inquiry's **fourth term of reference** refers to "the preferred infrastructure options for contemporary immigration detention", whilst the inquiry's **fifth term of reference** addresses options for the provision of services "across the range of current detention facilities".

The Committee should review the manner in which the private sector has carried out its service provision responsibilities in regard to immigration detention over recent years, and in the light of this review, assess whether the management of immigration detention should in future be conducted by the public sector.

The inquiry's **sixth term of reference** refers to "options for ... community based alternatives to immigration detention."

In this context, I draw the attention of the Committee to Guideline 3 of "guidelines", which states (in part): "There should be a presumption against detention. Where there are monitoring mechanisms which can be employed as viable alternatives to detention (such as reporting obligations or guarantor requirements...), these should be applied **first** unless there is evidence to suggest that such an alternative will not be effective in the individual case." Indeed, the *Australian Labor Party*'s policy, as adopted by its National Conference, notes: "detention of asylum seekers should only be used for health, identity and security checks."

Part III of "protection" (Pages 22-50) is a review of alternatives to detention, including cost, whilst the Country Sections Appendices of "protection" includes material outlining alternatives to detention applied overseas.

Sincerely,

Harvey Stern

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12 July 2008.