

of health and welfare assistance (such as public housing, unemployment, sickness allowances, public health care services and concessions on transport and medicines) to certain migrants.

- Certain asylum seekers are prevented from applying for permanent residence, and instead they are given access only to short term (three year) visas.

These and other changes have been introduced to restore public confidence in the immigration program and to address the public's perception that migrants abuse access to welfare.<sup>9</sup>

The changes, however, are perceived by some to contribute to migrant poverty and neglect and to encourage discrimination and exploitation. This is seen to have possibly wider implications, including a rise in social tension and compromised work conditions and entitlements generally:

"The consequences for ... Australian workers are also dire. Fierce competition for too few jobs enables employers to use migrants as battering rams against the wages, working conditions and organisation of workers: 'If you won't work for less pay, in dangerous conditions

and without union coverage, there's plenty of others who would be glad to'."<sup>10</sup>

Further, such problems may be exacerbated by what some business groups themselves see as the Government's failure to take into account employer demand for skilled people with particular training and experience: "Inadequate attention is paid to selecting migration applicants with skills in short supply."<sup>11</sup>

Proposed further changes to migration policy include:

- strengthening and streamlining detection, assessment and deportation procedures;
- imposing significant control over the making of immigration decisions; and
- further limiting the opportunities for review of immigration decisions.

It is argued that improvements in efficiency, certainty and consistency are, perhaps, at the expense of flexibility and fairness: "The losers in this contest are not only the visa applicants seeking to enter or stay, but our own systems of accountability and justice."<sup>12</sup>

According to Stratton, "the policy appears to be responding to

conservative forces that are concerned with business considerations and nationalism. The policy is cutting a wedge between the people we want and their families. It sends potentially the wrong message that we are a heartless, callous society".<sup>13</sup>

From a philosophical perspective, therefore, detractors argue that the immigration policy has the potential to affect fundamentally Australian society including its systems and culture.

Perhaps we may never achieve an immigration policy that is free from controversy.

NOTES

1. See, for example, L Macdonald 'Howard's White Australia Policy', *Green Left Weekly*, 24 September 1997: 6-17; and N Zirngast 'Ruddock revives White Australia policy', *Green Left Weekly*, no 386, 24 November 1999: 28.
2. See, for example, K Cronin 'Controlling immigration: Australian legislation & practice', *REFORM (75)* Spring 1999: 6-9.
3. See, for example, A Myers 'Profits before people: Beazley outlines population policy', *Green Left Weekly*, 29 September 1999: 3, 13
4. See, for example, G Maslen "High Skills Shattered", *The Bulletin*, 26 May 1998, 68.
5. R Skeffington 'New push by business to lift immigration', *Business Review Weekly*, 1 December 1997, 22
6. In a recent interview with the author.
7. N Zirngast, footnote 1.
8. L Macdonald (p 6), footnote 1.
9. See, for example: footnote 1.
10. A Myers, footnote 3.
11. G Maslen, footnote 4.
12. See footnote 3.
13. See footnote 6.

# there is no such thing as an illegal refugee

by Georgina Costello, Mallesons Stephen Jacques\*

"There is no such thing as an illegal refugee...People are either trying to escape persecution or not"<sup>2</sup>

On 8 June 2000, hundreds of asylum seekers escaped from the Woomera Detention Centre in South Australia's north and staged a peaceful demonstration, protesting their detention and demanding asylum. This event focused media attention on the issue of the treatment of refugees in Australia. The resulting debate has been characterised by myths and

misinformation, often reinforced by politicians and journalists.

This article aims to outline the law relating to refugees and to equip you with knowledge of the Australia's obligations towards refugees. I hope this will dispel a number of misconceptions and stereotypes which surround the issue and enable you to see through the inaccurate labels and claims currently being splashed across the pages of Australia's newspapers.

## who is a refugee?

Terms "illegal immigrant" and "illegal refugee" are currently being used to describe refugees. These terms are inaccurate and objectionable because they represent refugees as criminals and fail to recognise that refugees have the right to seek asylum in Australia under international law. The fact that they arrive without a valid visa does not remove this right. The *Refugee Convention* outlines Australia's obligations towards

refugees. Australia has ratified this Convention and is therefore bound by international law to comply with its provisions.

"Refugee" is defined in Article 1 of the Convention as someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of their nationality and unable (or unwilling due to that fear) to avail themselves of the protection of that country.<sup>2</sup>

Article 14 of the *Universal Declaration of Human Rights* gives every person the right to seek asylum in another country.

Article 33.1 of the Convention says that no Contracting State shall expel or return a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

These covenants make it clear that the Australian Government must allow refugees entry into Australia, albeit on a restricted basis, while their application for refugee status is assessed. Ironically, while refugees are labelled "illegal immigrants", in fact it is illegal at international law to turn these refugees away once they arrive on our shores.

The Refugee Convention requires Australia to permit non-citizens in its territory to lodge an application for asylum. The asylum seeker's claim must be assessed. If the application is turned down and any allowable appeals are declined, the refugee may then be made to leave.

## treatment of refugees in australia

"It is...a wonder to me that whereas serial killers, drug dealers and other criminals have access to grass-covered areas and play all kinds of games in their different jails in Australia, I have not been able to step

onto a grass-covered area for almost one year..."<sup>3</sup>

Currently, asylum seekers who arrive in Australia without a valid visa are held in detention centres. Some are held in detention for several months or even years.

According to the United Nations Human Rights Committee, detention of asylum seekers is only allowed in certain narrow circumstances, namely:

- (a) to verify identity;
- (b) to determine the elements on which the claim for refugee status or asylum is based;
- (c) in cases where asylum seekers have attempted to mislead the authorities of the State in which they intent to claim asylum; or
- (d) to protect national security and public order.<sup>4</sup>

There are also limits under international law on the duration of detention. Article 9 of the *International Covenant on Civil and Political Rights* states that "No one shall be subject to arbitrary arrest or detention". After examining the detention of asylum seekers, the UN working group on Arbitrary Detention<sup>5</sup> determined that Article 9 would be contravened unless asylum seekers were afforded certain guarantees. One such guarantee is that a "maximum period should be set by law and the custody may in no case be unlimited or of excessive length."

It is clear that detention of asylum seekers should be minimised in order to comply with international legal obligations. The fact that many asylum seekers have suffered traumatic experiences of persecution lends moral weight to the international law that the detention of refugees should be minimised.

### NOTES

Georgina is a member of the Amnesty International Refugee Team [ai.refugee.alert-subscribe@topica.com](mailto:ai.refugee.alert-subscribe@topica.com)

\* The author thanks Kirsten Hagon for assistance with this article.

1. Justice Einfeld, quoted in "Anne Frank: The Danger of Forgetting" *The Age* 15 May 2000
2. The definition also includes those who, not having a nationality and being outside the country of their former habitual residence, is unable or owing to such fear, is unwilling to return to it.
3. Detained asylum seeker at Villawood Immigration Detention Centre, 12 February,

2000 cited in 'Pre-readings on Detention of Asylum Seekers for 'Misunderstanding Asylum Seekers' A Symposium on Truth, Myth and Justice in Australia.

4. UNHCR's *Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers* (1999) Guideline 3.
5. UN Working Group on Arbitrary Detention *Situation regarding Immigrants and Asylum-Seekers* CN 4/2000/4, 28 December 1999.

## President's Luncheon

**Young Lawyers section special:  
Emma Rosenberg  
– A Web for Women**

Snail 'n Bottle  
16 August 2000  
12.30pm  
Cost: \$33.00 pp

Emma Rosenberg is Director Business Development and Chief Operating Officer of theLounge.com.au, an Australian-operated internet company developed for women by women. The idea is to offer a site that is thoughtful but easy to read, smart, funny, accessible and interesting. It covers beauty, health, homework, motherhood and shopping. And each purchase through the theLounge puts money into breast cancer education and research and the Sudden Infant Death Syndrome (SIDS) research. Emma joined theLounge from Pratt Industries, where she worked in the Legal and Commercial Department. Previously she was an associate in the Investment Banking group at Merrill Lynch, based in the Corporate Finance Group in Melbourne. She has many years' experience as a solicitor and was a Senior Associate at Blake Dawson Waldron, specialising in corporate law and mergers and acquisitions. As a former practitioner who has marched into the world of e-commerce, her address is certain to be stimulating and members are advised to book early.