



CONFERENCE OF LEADERS OF RELIGIOUS INSTITUTES IN NSW

Member of Catholic Church Religious Group
ABN 52 476 362 010

3rd June, 2008

Senator the Hon. Chris Evans
Minister for Immigration and Citizenship
P.O. Box 1322
West Perth – WA 6872

Dear Senator Evans,

I write on behalf of the Social Justice committee within the NSW Conference of Leaders of Religious Institutes. CLRI(NSW) represents approximately 3,500 Catholic religious, women and men, throughout the state, as well as many people working in organisations run by religious institutes.

We would first like to congratulate the government for abolishing Temporary Protection visas. We see this as a sign of your real commitment to correcting the institutionalised human rights abuses suffered by refugees and asylum seekers on Australian shores. On the announcement of the end of TPVs we were heartened by your words of compassion and your emphatic defence of the refugees' and asylum seekers' rights. We now ask that you support those words with action and that you do not fail to address the serious problems lurking in other areas of Australia's treatment of asylum seekers.

As watchful members of a Social Justice committee, we have been very concerned with the ways in which the Refugee Review Tribunal (RRT) fails in many areas to deliver the "fair, just" proceedings that it claims to produce. Below I will attempt to clearly outline the particular areas in which our members feel that justice is lacking in the RRT. Please remember that these are not criticisms based on speculation or on outdated research papers, but on the real and recent experiences of several of our members, who have attended RRT hearings to provide support for asylum seekers whose status was under review. We ask that you hear this cry for justice and respond with the same attitude you displayed at the abolition of TPVs.

i. Tribunal Members

Given that the RRT operates as an administrative, non-law of evidence system, the Member presiding over the hearing is often forced to make their decision purely on the basis of whether or not they believe that the applicant is being truthful about their story. The dangers of this predicament are obvious. As most asylum seekers have little or no English speaking skills, the difficulties that they experience in trying to communicate their stories are immense. This is compounded by the fact that some asylum seekers are reluctant to retell their often horrific and traumatising stories, and may only begin to reveal the details of their experience after successive tellings. Some also believe that the ruling powers of their country of origin will have access to their statements, and thus fear that their safety, or that of their family, would be threatened were they to speak out about their true experiences. These people often need a great deal of time before they can trust that

disclosing their full story will not have negative consequences for them.

Sadly, some Tribunal Members appear to be unaware of these crucial facts and become sceptical of the applicant's stories when they differ from their previous accounts. One CLRI(NSW) member witnessed a Tribunal Member bluntly accuse an applicant of lying. In this case the Member had simply made a factual error in her understanding of Internet domains (she didn't realise that someone could have a .co.uk email address even if they lived outside of Britain). No doubt you will agree that it is extremely concerning to think that genuine refugees could be denied protection based on the factual errors or ignorance of a Tribunal Member.

We feel that such circumstances could be avoided if judgements were not left to be made by only one Tribunal Member. A panel of two to three Members would increase the chance of a fair and accurate decision being made. While the RRT is structured as an administrative, not judicial, system, we feel that it would be beneficial for all members, not just "over 50%", to have had prior legal experience. Despite the fact that the RRT proceedings differ from common law trials, they are still intended to uphold the principles of the judicial system, and Members are sometimes called upon to handle evidence in a manner resembling a common law trial. In addition to these practical reasons, is it not reasonable to ask that a person who is deciding the fate of another human being be equipped with appropriate and professional training?

CLRI(NSW) members have also been witness to cases where Tribunal Members were lacking in fundamental interviewing skills, meaning that interviews followed circuitous routes that failed to effectively elicit the applicant's story. Despite the availability of the Country Research and Library Services, ignorance about the asylum seeker's country of origin has also been witnessed on the part of some Tribunal Members. In some circumstances this can be quite distressing to the applicant, as it can result in the Member being insensitive to certain fundamental differences between Australian culture and the culture of the applicant. While information published about the RRT states that Members are "selected for the high level of skills and experience they possess", we feel that Tribunal Members are, in practice, under-skilled given the high degree of power they hold and the delicate manner in which they need to exercise this power.

It is also concerning that less than 15% of Tribunal Members are employed on a full-time basis. We believe that the nature of this job demands that all Members are able to dedicate the totality of their time to reaching the most fair and just decision. In one case, a part-time Tribunal Member took nine months to come to a decision after the RRT hearing took place. This, frankly, is a despicable betrayal of the maximum 90 day threshold in which Members are to hand down results. During these months the applicant's psychologist sent numerous letters of warning to the Member about the detrimental psychological impact of this seemingly interminable waiting period, yet the process lingered on. In this time the applicant was unable to reunite with his family and could not earn a substantial income because, although he had work rights, the identification documents required by his prospective employers were held by DIAC.

You commented that under the Howard government refugees were "left in detention to rot". In the above case the flaws of the RRT system meant that, despite the fact that he was not being held in detention, the asylum seeker concerned was left to "rot" for nine months. Please act to prevent this appalling situation from occurring under the Rudd government, and under your watch. In the spirit of your defence of the human rights of asylum seekers and refugees, we urge you correct these flaws within the RRT system,

and ensure that those most in need of justice are able to receive it upon arrival in Australia.

ii. Interpreters

In most RRT cases, interpreters play an essential role in acting as a bridge between the applicant and the person deciding their fate. However, the capacities of interpreters vary and sometimes applicants are paired with interpreters who are unable to handle the concepts being communicated. While being fluent in the language that they are translating, some interpreters themselves lack the necessary skills in English to be able to rightly convey the words of the asylum seeker to the Tribunal Member. As communication of the asylum seeker's story is central to the success or failure of their application for refugee status, we believe that it is only fair that the interpreters employed by the RRT be completely fluent in both English and in the language that they are translating.

In addition to some Interpreters lacking a certain level of English skills, sometimes Interpreters are asked to translate for people who, though they speak the same language, come from an entirely different background. When the Interpreter and the applicant originally come from countries that have hostile relations with each other, or when their respective cultures have differing word usages, more doubt is cast upon the likelihood of an accurate and unbiased translation being achieved. Not only is the possible mistranslation of information a concern in the above cases, but the breaching of interpreter protocol is also worrying.

Under ideal circumstances the interpreter faces the Tribunal Member, listening to the asylum seeker, but not engaging in conversation with them. A member of CLRI(NSW) has witnessed an Interpreter discussing with the applicant what translation of their story they should give to the Tribunal Member. This not only disrupts the flow of the interview, but calls into question the accuracy of the final account given to the Member. In cases where the interview process is lengthened by circular questioning and debated translations, RRT hearings can last for over three hours without a break. These factors only increase the obstacles that may prevent the Tribunal Member from making a just and accurate decision.

Senator Evans, this may seem like a long list of seemingly insuperable problems, but we have a strong faith that your government can act decisively to address all of the abovementioned flaws in the RRT. We do not expect that this will be a simple process, but it is an essential one if you are to adhere to your commitment to uphold the human rights of asylum seekers and refugees. We look forward to the day when the injustices suffered by refugees end when they reach Australia, and we place our hope in you to deliver this day as soon as possible.

Yours sincerely,

Frances Egan

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