

## **NOT IN MY BACKYARD? HUMAN RIGHTS & MIGRATION ISSUES IN TOWNSVILLE**

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**Abstract:**

The paper uses the microcosm of Townsville to explore systemic human rights issues for newly arrived migrants and recently settled refugees. The issues including family violence, access to Commonwealth programs, migrant worker arrangements and refugee family reunion. It puts each of the issues in a human rights context and makes some suggestions for reform.

**Keywords:**

Community Legal Centres, Family Violence, Domestic Violence, Human Rights, Migration,  
Transnational Migrant Workers, Refugees, Split Family Reunion

## Background

Townsville is a microcosm that reflects human rights issues affecting newly arrived migrants and recently settled refugees. The paper is not suggesting that the issues are more prevalent in Townsville, but uses Townsville as an example of how the issues impact on individuals and families. The issues discussed include:

- Domestic violence provisions in migration law;
- Trans Tasman arrangements for Commonwealth programs;
- Transnational migrant workers;
- Refugee family reunion;

The paper concludes by setting out how the impact of some of the issues might be ameliorated by reference to international human rights norms.

## Townsville

Townsville is a city on the northeastern coast of Australia, in the state of Queensland. It lies adjacent to the central section of the Great Barrier Reef Marine Park and is in the dry tropics region. At the 2006 Census, Townsville and Thuringowa had the following overseas born population:<sup>1</sup>

**Table 1. OVERSEAS BORN POPULATION AS PERCENTAGE OF TOTAL POPULATION**

Country of Birth	Townsville (102,020)	Thuringowa (62,935)	Queensland (4,091,546)	National (20,701,488)
Oceania and Antarctica (excluding Australia)	3.3	2.9	5.0	2.7
North-West Europe	5.4	4.6	7.0	7.3
Southern and Eastern Europe	1.0	0.6	1.5	3.9
North Africa and the Middle East	0.2	0.0	0.3	1.4
South-East Asia	1.2	0.9	1.7	3.0
North-East Asia	0.4	0.2	1.3	2.1
Southern and Central Asia	0.5	0.1	0.5	1.4
Americas	1.0	0.4	0.9	1.0
Sub-Saharan Africa	0.9	0.5	1.0	1.0
<b>Total born overseas</b>	<b>13.9</b>	<b>10.2</b>	<b>19.2</b>	<b>23.8</b>

<sup>1</sup> Australian Bureau of Statistics, National Regional Profile: Townsville (C) Local Government Area; Australian Bureau of Statistics, National Regional Profile: Thuringowa (C) Local Government Area.

In 2006 the number of overseas-born Australians reached five million, representing almost a quarter (24%) of the total population.<sup>2</sup> Townsville/Thuringowa was therefore somewhere near median population by country of birth. The Queensland figures were only equaled or exceeded in respect of Southern and Central Asia and Americas. The national figures were only equaled or exceeded in respect of those born in Oceania and the Americas. Language spoken at home other than English, was relatively low in Townsville (5.9%) and Thuringowa (3.5%) when compared with the national figure (16.8%).

### **Townsville Community Legal Service Inc**

Townsville Community Legal Service is a non-profit, community based legal centre located in Townsville. It has been providing services to the local community since 1991. As far back as 1990, members of the local community imagined that people from culturally and linguistically diverse backgrounds would benefit from the establishment of a community legal centre.<sup>3</sup> Presently in Australia, a number of community legal centres (CLCs) provide immigration assistance<sup>4</sup> and immigration legal assistance.<sup>5</sup> Additionally, there are specialist CLCs that work with migrants and refugees:

- Immigration Advice and Rights Centre (NSW) (IARC);
- Refugee Advice and Casework Service (NSW) (RACS);
- Refugee and Immigration Legal Service (QLD) (RAILS);
- Refugee Advocacy Service of South Australia (RASSA);
- Asylum Seeker Resource Centre (VIC);
- Refugee and Immigration Legal Centre (VIC) (RILC);
- CASE for Refugees (WA).

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<sup>2</sup> Australian Bureau of Statistics, 1301.0 - Year Book Australia, 2008, Country of Birth.

<sup>3</sup> Community Legal Centre Working Party, Townsville Welfare Council, A Community Legal Service for the Townsville Region – A Discussion paper for the development of a Townsville Regional Community Legal Centre, August 1990. For information on community legal centres in Queensland see [www.qails.org.au](http://www.qails.org.au). For more information on community legal centres nationally see [www.naclc.org.au](http://www.naclc.org.au).

<sup>4</sup> 'Immigration assistance' is defined by section 276 of the *Migration Act 1958*.

<sup>5</sup> 'Immigration legal assistance' is defined by section 277 of the *Migration Act 1958*.

Clients of TCLS come from 118 distinct countries of birth<sup>6</sup> and thereby represent an incredible array of cultural diversity. Of the 1,96 countries in the world, TCLS clients come from just over sixty percent. How have we managed to see people from so many diverse countries? There are a number of factors at play.

Firstly, TCLS offers a community based, free legal service that seeks to be accessible to the community. Accessibility is one of TCLS' constitutional objects and is at the heart of the operation. Secondly, TCLS offers a non-commercial, free registered migration agency,<sup>7</sup> perhaps the only one of its kind outside the southeast corner of Queensland.<sup>8</sup> The services offered by TCLS include daytime casework/representation and after hours pro bono advice by commercial registered migration agents. This inevitably brings TCLS into contact with clients born outside Australia. Thirdly, TCLS targets those in the community who are at a disadvantage or who might face barriers to accessing legal assistance. This is also entrenched in TCLS' constitutional objectives. There seems no doubt that newly arrived migrants or recently settled refugees and people from culturally and linguistically diverse backgrounds can fall into this broad collective. Fourthly, being based in the community encourages referrals from networks within the community including those that service or assist migrants or refugees or those from a particular ethnic or cultural group. Fifthly, TCLS works in areas of law that are relevant to clients born outside Australia. The areas of work include migration, welfare rights, consumer protection, employment, anti-discrimination, financial counseling and access to essential services. These areas all resonate with or are relevant to this client group.

## **The Issues**

### ***Domestic Violence Provisions in Migration Law***

The right to freedom from violence is a fundamental human right. It is reflected in the

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<sup>6</sup> Data taken from Community Legal Service Information System (CLSIS) database.

<sup>7</sup> TCLS does not provide services under the Immigration Advice and Application Assistance Scheme (IAAAS) and receives no funds from the Department of Immigration and Citizenship.

<sup>8</sup> It should be noted though that the Refugee and Immigration Legal Service (RAILS), a community legal centre in Brisbane, undertakes a substantial caseload from across the state with scant resources.

*Universal Declaration of Human Rights* (the UDHR) in the right to life, liberty and security of person.<sup>9</sup> It is also reflected throughout the *International Convention on Civil and Political Rights* (the ICCPR).<sup>10</sup> In respect of the rights of women, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the *Declaration on the Elimination of Violence against Women*<sup>11</sup> and other resolutions of the United Nations point to freedom from violence as a fundamental right.<sup>12</sup> How does this relate to issues of migration? Australia's migration program enables people (generally those who are in Australia on Provisional Partner visas) to apply to remain in Australia if a partner relationship breaks down due to family violence.

The Family migration program allows for Australian sponsorship of spouses. In 2007-2008 the program was planned at 40,500 places with 39,931 places filled.<sup>13</sup> This was divided into 32,740 Spouse visas, 650 Interdependent visas and 6,541 Fiancé visas.<sup>14</sup> The family violence provisions were introduced into the *Migration Regulations* in response to community concerns that some partners might feel compelled to remain in abusive relationships rather than end the relationship and be required to leave Australia.<sup>15</sup> There are checks and balances in the system. Legislation introduced in July 2005 allows the department to refer doubtful claims of family violence to an independent expert with extensive expertise in family violence matters to ensure that only genuine claimants access the provisions.<sup>16</sup> Additionally, on 15 October 2007, the migration regulations were amended to reflect amendments to the *Family Law Act 1975*. These amendments included updating the term and definition of "domestic violence" to "family violence".

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<sup>9</sup> Universal Declaration of Human Rights, article 3.

<sup>10</sup> International Convention on Civil and Political Rights, articles 6, 7, 9 and 10.

<sup>11</sup> General Assembly resolution 48/104 of 20 December 1993.

<sup>12</sup> See for example Resolutions adopted by the general Assembly including 61/143 of 19 December 2006, 62/133 of 18 December 2007 and 63/155 of 30 January 2009.

<sup>13</sup> Department of Immigration and Citizenship, Report on Migration Program 20078-08, 14.

<sup>14</sup> Ibid.

<sup>15</sup> Department of Immigration and Citizenship, Annual Report 2007-2008, <http://www.immi.gov.au/about/reports/annual/2007-08/html/outcome1/output1-1-2.htm#table08>. See also DIAC, Fact Sheet 38 – Family Violence Provisions.

<sup>16</sup> Ibid.

The Department of Immigration and Citizenship's Annual Report 2007-2008 reported on the family violence provisions:

*Departmental reports indicate that 502 applications with claims against the Family Violence Provisions were made during 2007–08. At 30 June 2008, there were 74 referrals to Centrelink by departmental officers, a rate of less than 15 per cent of the total number of applications with family violence claims. Of the 61 referrals finalised by Centrelink up to 30 June 2008, there were 40 findings of family violence having taken place and 21 of no family violence. A further 49 referrals to Centrelink were made by the Migration Review Tribunal. Of those finalised, there were 19 findings of family violence having taken place and 26 findings of no family violence.<sup>17</sup>*

This does not of course reflect the true extent of those who experience family violence as a part of their experience as a sponsored spouse. There is considerable research to suggest that migrant women do not report family violence or have difficulties obtaining support in respect of violence because of a number of factors:

- The isolation women feel from family and community and from their country of origin;
- Issues around language proficiency;
- Anxieties about their immigration status;
- Violent partners who threatened to thwart the process through which they could obtain permanent residency if they tried to leave.<sup>18</sup>

Central themes from research on the topic were summarised by the Australian Centre for the Study of Sexual Assault:

*A resounding theme across the stories of migrant women reported by Eastaer (1996) and Thompson (1999) in Australia is the sense of deep isolation they feel at having so few options that they can rely on or trust for support. To take action under conditions of overwhelming isolation may be unimaginable for a woman who will be sanctioned for speaking publicly of her husband's treatment; or where the service she attends is unlikely to have the capacity to enable her to speak of her experience in her own language; or for a woman whose previous experience of police and other authority figures has left her frightened and distrustful.<sup>19</sup>*

Whilst it may not stand out in terms of cultural diversity, Townsville does stand out in family

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<sup>17</sup> Ibid.

<sup>18</sup> Australian Centre for the Study of Sexual Assault, Just "keeping the peace": A reluctance to respond to male partner sexual violence, ACSSA Issues No. 1 March 2004, 18.

<sup>19</sup> Ibid, 18.

violence statistics. For the 2007-2008 year, the Townsville Magistrates Courts was one of six (6) centres that received over 1,000 applications for orders under the *Domestic and Family Violence Protection Act 1989* (Qld) with 1,015 lodgments.<sup>20</sup> Some of these applications involve migrant and refugee women. This is the anecdotal experience of TCLS and community workers.

There are some substantial gaps in the regulations. Applicants on prospective spouse visas (often called fiancé visas) who have separated because of violence prior to marriage do not have access to the family violence provisions, even where there is an Australian citizen child of the relationship. In cases where the family violence provisions do not apply, applicants must find their way through the migration review and appeals system, ultimately leaving their fate in the hands of the Minister who has the final discretion to grant a permanent visa where the applicant has received an unfavourable decision.<sup>21</sup> This can be a veritable game of snakes and ladders where the review tribunal's decision lacks the requisite "unfavourable" character to enliven the Minister's discretion.

The Migration Regulations also place limitations on "serial sponsorship". Serial sponsorship is akin to human trafficking in that there is "the possibility that people who repeatedly sponsor different foreign partners (typically Australian males sponsoring foreign females) may be using the visa system to bring people into Australia for the purpose of exploitation".<sup>22</sup> Trafficking and slavery are both subject of numerous international conventions.<sup>23</sup> Serial sponsorship has been subject of academic and feminist discourse for at least two (2)

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<sup>20</sup> Magistrates Court of Queensland, Annual Report 2008, 77.

<sup>21</sup> See Section 351 of the *Migration Act 1958*.

<sup>22</sup> Human Trafficking Working Group – The University of Queensland, Trafficking In Persons And Sham Marriages In Australia, May 2, 2009

<sup>23</sup> Slavery Convention (Geneva, 25 September 1926) Protocol amending the Slavery Convention (1953), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children... Adopted and opened for signature ratification and accession, by General Assembly resolution 55/25 (not in force), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), United Nations Convention on Transnational Organized Crime and its protocols on trafficking in persons and migrant smuggling.

decades.<sup>24</sup> The concerns within the community lead to the ALRC reporting that migrant workers were “fed up with seeing non-English speaking background women married to Australian professional batterers”.<sup>25</sup> In the current laws, Regulation 1.20J requires the Minister to refuse a visa, among other occasions, where a sponsor has already sponsored two spouses in five (5) years unless there are compelling circumstances.<sup>26</sup>

The real extent of the serial sponsorship problem is difficult to ascertain. In 1994 the Australian Law Reform Commission noted:

*10.28 The extent of serial sponsorship. The Department of Immigration and Ethnic Affairs does not keep statistics on the number of sponsorships by individuals. It is difficult, therefore, to obtain an accurate picture of the extent of this practice. However, reports and submissions to the Commission suggest that repeat sponsorship is not uncommon. The Iredale Report identified 110 repeat sponsors, of whom 53 had sponsored on two occasions and 57 had sponsored at least three partners. The maximum number of women sponsored by any one person in that study was seven. Eighty of those repeat sponsors were known to have subjected their partners to violence.*<sup>27</sup>

It would be interesting to see whether the insertion of regulation 1.20J has had an impact on serial sponsorship. Anecdotal evidence from community workers suggests that sponsors are well aware of the effect of the provisions and are finding ways around them.

### ***Trans Tasman Arrangements for Social Security***

In Perspectives on Migrants the ABS gave a potted history of Trans Tasman migration:

*Since the 1920s, there has been virtually unrestricted movement between the people of Australia and New Zealand... Under the 1973 Trans-Tasman Travel Arrangement both Australians and New Zealand citizens have had reciprocal right to visit, work and live in either country, without the need to apply for authority to enter. More recently, changes made to the Migration Act 1958 in 1994 resulted in the legal requirement for all non-citizens to hold visas resulting in the Special Category Visa (SCV) being introduced for New Zealand citizens... Statistically, New Zealand citizens are not counted as part of Australia's annual planned migration program but the figures are included in the Settler Arrivals reports and net overseas migration... the level of New Zealand citizens arrivals*

<sup>24</sup> See for example, Australian Law Reform Commission, Report 69, Equality Before the Law: Justice For Women, 10. Violence Against Women and Immigration Law, 1994; Rosemary Hunter, Gender, “Race” and International Relations: Violence against Filipino Women in Australia by Chris Cunneen and Julie Stubbs - [1998] SydLRev 29; (1998) Sydney Law Review 647 .

<sup>25</sup> Ibid, at ¶10.29.

<sup>26</sup> Compelling circumstances are non-exhaustively described in the Procedures Advice Manual.

<sup>27</sup> Above note 11, at ¶10.28.



*has over the past decade, ranged from a low of 16,364 in 2002-03 to a high of 42,257 in 2000-01.*<sup>28</sup>

2006 Census country of birth data showed there were 476,700 New Zealand born Australian citizens in Australia making it the second highest country of birth behind the United Kingdom.<sup>29</sup> The 2006 Census found that of 336,400 New Zealanders resident in Australia for two years or more, 39.4% had become citizens.<sup>30</sup> In 2005-2006 New Zealanders accounted for 7% of all citizenship grants.<sup>31</sup> Additionally, self reported ancestry in the 2006 Census found:

- 160,700 were from New Zealand;
- 92,900 were Maori; and
- 117,700 were other Pacific Islander.<sup>32</sup>

It has been suggested by expert NGO commentators that Trans Tasman arrangements across several areas of federal government policy have a discriminatory impact on New Zealanders living in Australia.<sup>33</sup> In particular social security law and policy treats New Zealanders, including territorial islands of Tokelau, the Cook Islands and Niue strictly with respect to eligibility for payments. The position of Pacific islanders is particularly problematic where residents of island territories face all the disadvantages of being a New Zealander within the Australian system but have few of the advantages.

A stark example of this is where Centrelink refuses a claim for Australian social security payments because of the applicant's New Zealand citizenship and there is no entitlement to reciprocal payments from New Zealand's Department of Work and Income or to Superannuation from New Zealand. In both cases entitlement may be refused on the basis of resident status. In the case of older women from territorial Pacific islands, paid work is often not a feasible option

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<sup>28</sup> Australian Bureau of Statistics, 3416.0 - Perspectives on Migrants, 2009.

<sup>29</sup> Ibid, 7.39 Main Countries Of Birth.

<sup>30</sup> Australian Bureau of Statistics, 1301.0 - Year Book Australia, 2008, 14.40 Overseas-Born People Resident In Australia For Two Years Or More – 2006.

<sup>31</sup> Ibid, 14.41 People Granted Australian Citizenship - 2005-06.

<sup>32</sup> Ibid, 14.42 Population, By self-reported ancestry.

<sup>33</sup> National Welfare Rights Network

and they become solely dependent on family and church support. There seems no doubt that this reliance and lack of autonomy and independence compromises their role as elders within the community. It also seems that the arrangements may be racially discriminatory. Similar problems exist for New Zealanders trying to find eligibility for state government assistance such as public housing where a “permanent visa” is required. Despite having the right to reside permanently in Australia, special category visa holders do not have “permanent residency”.

### ***Transnational Migrant Workers***

The rights of migrant workers have been a focus of community legal services across western democracies for at least thirty (30) years. In North America and Canada migrant worker services and farmworker services have been operating since the 1970s.<sup>34</sup> These services were established because of concerns that migrant workers were easily exploited. The Michigan Migrant Legal Assistance Project Inc. described it thus:

*We serve migrant, seasonal, and settled-out farm workers and their dependents, who, because of their extremely low income, language barriers, isolation and transience, lack access to the institutions which could otherwise ensure their legal rights.*<sup>35</sup>

Australia is no stranger to the historical exploitation of migrant workers. North Queensland's industrial history in this regard is worth reviewing briefly. In 1896, Japan established its first Australian consulate in Townsville to service some 4,000 Japanese workers who arrived to work in the sugar cane, turtle, trochus, beche de mer and pearling industries. The White Australia Policy caused the demand for Japanese workers to decrease, causing the consulate to finally close in 1908.

Additionally, between 1863 and 1904, more than 60,000 South Sea Islanders were brought to Australia to labour on sugar-cane and cotton farms in Queensland and northern New South Wales. These labourers were called “Kanakas”<sup>36</sup> and their recruitment often involved

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<sup>34</sup> See for example the Michigan Migrant Legal Assistance Project, Inc. <http://www.mmlap.com/Pages/History.htm>

<sup>35</sup> Ibid.

<sup>36</sup> ‘Kanakan’ was a Hawaiian word meaning ‘man’.

forced removal from their homes. This practice of kidnapping labour was known as “blackbirding”.<sup>37</sup> They came from more than eighty Pacific Islands, including Vanuatu<sup>38</sup> and the Solomon Islands, and to a lesser extent, from New Caledonia, Papua New Guinea, Kiribati and Tuvalu. Most were young men and boys aged from 9 to 30 years. There were relatively few women and girls.<sup>39</sup> The *Pacific Island Labourers Act 1901* was designed to facilitate the mass deportation of nearly all the Pacific Islanders working in Australia. Along with the *Immigration Restriction Act 1901* it formed an important part of the White Australia policy. By 1901, there were approximately 10,000 Pacific Islanders working in Australia, most in the sugar cane industry in Queensland and northern New South Wales. The Act ultimately resulted in the deportation of approximately 7,500 Pacific Islanders.<sup>40</sup>

In recent times, the 457 visa<sup>41</sup> is the most commonly used program for Australian or overseas employers to sponsor skilled overseas workers to work in Australia temporarily. Following concerns about the treatment of 457 visa holders, the federal Government initiated an inquiry. TCLS has heard first hand many of the concerns about the treatment of 457 visa holders. The Visa Subclass 457 Integrity Review released its Final Report in October 2008.<sup>42</sup> The Report made wide-ranging recommendations for changes to the program. Following the report the Federal Government announced changes to the 457 visa program “to improve both its integrity and ability to deliver the skills needed in the economy.”<sup>43</sup> Whether the measures achieve these objectives remains to be seen.

In August 2008 the federal Government introduced the Pacific Seasonal Worker Pilot Scheme. The Australian Government is conducting the pilot to examine whether a seasonal worker program could contribute to Australia’s Pacific region economic development objectives

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<sup>37</sup> ‘Blackbird’ was another word for slave.

<sup>38</sup> Then called the ‘New Hebrides’.

<sup>39</sup> [http://www.hreoc.gov.au/racial\\_discrimination/forum/Erace/south\\_sea.html](http://www.hreoc.gov.au/racial_discrimination/forum/Erace/south_sea.html)

<sup>40</sup> [http://en.wikipedia.org/wiki/Pacific\\_Island\\_Labourers\\_Act\\_1901](http://en.wikipedia.org/wiki/Pacific_Island_Labourers_Act_1901)

<sup>41</sup> The full title of this subclass of visa is Temporary Business (Long Stay) Subclass 457.

<sup>42</sup> B. Deegan, Visa Subclass 457 Integrity Review, October 2008.

<sup>43</sup> <http://www.minister.immi.gov.au/media/media-releases/2009/ce09034.htm>

and also assists Australian employers. The Pacific Seasonal Worker Pilot Scheme will initially be limited to the horticulture industry and will be available to citizens of Kiribati, Papua New Guinea, Tonga and Vanuatu. Successful applicants are issued with a Special Programs Visa (Subclass 416). The pilot aims to:

- Enable workers to contribute to economic development in home countries through employment experience, remittances, and training gained as part of the pilot
- examine the benefits to the Australian economy and to employers who can demonstrate they cannot source local labour.

Under the pilot scheme, workers are subject to very strict conditions:

- Allowed to work in Australia for seven months in any twelve months;
- Permitted multiple entries to Australia during this period;
- Able to return to work in future years, if they comply with visa conditions;
- Required to maintain private health insurance during their stay;
- Not permitted to apply for another visa while in Australia;
- Required to pay for half their international travel, living expenses, and other incidentals;
- Limited to working with approved employers; and
- Not permitted to bring dependants with them.<sup>44</sup>

In terms of the protection of the rights of migrant workers, the *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families* is the leading international standard.<sup>45</sup> Significantly, Australia is yet to ratify the Migrant Workers Convention. Amnesty International has suggested that ratification of the Convention would “ensure that the specific dangers that migrant workers and their families face are addressed, and their rights are properly protected.”<sup>46</sup> It is remarkable that none of the three (3) issues

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<sup>44</sup> <http://www.immi.gov.au/skilled/pacific-seasonal-worker.htm>

<sup>45</sup> Entered into force on 1 July 2003.

<sup>46</sup> <http://www.amnesty.org.au/refugees/comments/20435/>

papers<sup>47</sup> or the final report of the 457 visa regime made mention of the Convention or its potential value as a human rights norm. In the very least it seems that ratification of the Migrant Workers Convention would provide Australia with a template against which its current arrangements might be judged and necessary improvements identified.

### ***Refugee Family Reunion***

As a signatory of the Refugee Convention, Australia shares a global responsibility to protect the world's most vulnerable people. There are currently 11.4 million refugees and 26 million internally displaced persons around the world, according to UNHCR (the United Nations refugee agency). In 2009-10, Australia will resettle 6,000 of these and a further 7,750 people on Special Humanitarian Program visas (resettled from outside Australia) and on Protection Visas (granted asylum in Australia).<sup>48</sup> Refugee and humanitarian arrivals in the last five (5) years to North Queensland have been relatively low. The numbers were 248 to Cairns, 112 to Townsville, 7 to Thuringowa and 1 to Mount Isa, a total of 368.<sup>49</sup> To put this in perspective this was just below the local government area of Bayswater (370) which was the 38<sup>th</sup> ranked area of total intake. Brisbane was the largest intake at 3,983.<sup>50</sup> These statistics do not address internal migration.

Migration laws allow refugees to make application for members of their family to settle in Australia. The scheme seems to be poorly understood by refugees, particularly some of the limitations on who they can sponsor. Australian citizens or permanent residents who hold or have held an offshore refugee or humanitarian visa or an onshore permanent protection visa who are separated from their immediate family may be able to propose their immediate family

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<sup>47</sup> B. Deegan, Visa Subclass 457 Integrity Review, Issues Paper #1: Minimum Salary Level / Labour Agreements, July 2008; B. Deegan, Visa Subclass 457 Integrity Review, Issues Paper #2: English Language Requirement / Occupational Health and Safety, August 2008; B. Deegan, Visa Subclass 457, Integrity Review, Issues Paper #3: Integrity / Exploitation, September 2008.

<sup>48</sup> [http://www.refugeecouncil.org.au/docs/refugeeweek/2009/Refugees\\_in\\_Australia.pdf](http://www.refugeecouncil.org.au/docs/refugeeweek/2009/Refugees_in_Australia.pdf)

<sup>49</sup> [http://www.refugeecouncil.org.au/docs/refugeeweek/2009/Refugee\\_stats\\_04-09.pdf](http://www.refugeecouncil.org.au/docs/refugeeweek/2009/Refugee_stats_04-09.pdf)

<sup>50</sup> *ibid.*

for entry into Australia.<sup>51</sup> “Immediate family” is limited to husbands and wives, de facto partners and dependent children or the parents of a child under eighteen. Many misunderstand that the process will not allow sponsorship of other family members such as siblings, cousins, aunts and uncles. It will not allow sponsorship of those considered to be family but where there is no actual or legal familial relationship. Additionally, depending on the priorities of the Australian Government, the number of places available for family reunion may change over time. This means that many who find protection on our shores also find loneliness and isolation from family.

### ***The Future of Human Rights in Australia***

Australia is currently investigating whether to enact statutory protections for human rights with the most discussed model being a human rights act. The National Human Rights Consultation has been running Roundtables across Australia with three terms of reference. The Committee will ask the Australian community:

- Which human rights (including corresponding responsibilities) should be protected and promoted?
- Are these human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?<sup>52</sup>

The Consultation Committee will report to the Australian Government by 31 September 2009. More than 40,000 submissions have been made to the consultation and this number eclipses any past inquiry. Commentators eagerly await the outcome of the process.

### **Conclusions**

The issues raised are just a few – a snapshot. Most of the issues reveal some inconsistency with fundamental human rights. In any event, observance of relevant human rights norms would ameliorate the impact. Our concluding observations include:

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<sup>51</sup> Kamand et al, *The Immigration Kit – A Practical; Guide to Australia’s Immigration Law*, 8<sup>th</sup> Edition, The Federation Press, 2008, 529.

<sup>52</sup> [http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Terms\\_of\\_Reference](http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Terms_of_Reference)

- Victims of family violence within the immigration system should not be treated differentially;
- The treatment of fiancé visa holders may well constitute discrimination on the basis of marital status;
- Observance and entrenchment of Convention on the Elimination of all Forms of Discrimination against Women and Declaration on the Elimination of Violence against Women should be the ultimate goal of the Australian Government;
- Systemic discrimination against New Zealanders should be subject of detailed consideration, particularly those who are most disadvantaged by the current arrangements such as those from Pacific Island territories.
- Differential treatment of New Zealanders may be found wanting under the Convention on the Elimination of all Forms of Racial Discrimination and the non-discrimination provisions in the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.
- Exploitation of transnational migrant workers would be ameliorated by ratification and observance of the Migrant Workers Convention;
- The family reunion program needs to be assessed against the actual family needs of refugees and the diversity of family relationships within specific cultures;
- Recently settled refugees need access to clear information about their rights to sponsor family members.

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