OFFICE OF THE PRIME MINISTER
CANBERRA

Mr Robin Rothfield
Convenor
Tampa Anniversary Remembrance Committee
12 Yarraford Avenue
FAIRFIELD VIC 3078

27 SEP 2005

Dear Mr Rothfield

Thank you for your correspondence received on 25 August 2005 to the Prime Minister regarding refugee policies. The Prime Minister has asked me to reply on his behalf.

The Prime Minister appreciates the time you have taken to convey the views of the Tampa Anniversary Remembrance Committee to him. The concerns raised by the Committee about the treatment of asylum-seekers and children in immigration detention have been noted. I can assure you that the government takes seriously the dignity and welfare of people in immigration detention and the Prime Minister appreciates your support for the changes to immigration detention he announced on 17 June 2005.

Immigration detention is an important component of the government's overall strategy to ensure the integrity of Australia's immigration arrangements, in keeping with our sovereign right to determine who enters and stays in Australia. Since September 1994, Australian migration law has required that all non-citizens who are unlawfully in Australia, for example because they arrived without a valid visa, overstayed their visa or breached a condition of their visa, must be detained.

While the broad framework of the Australian Government's policy on mandatory detention remains unchanged, the Australian Government is implementing a number of changes to both the law and the handling of matters relating to people in immigration detention. These changes continue to support the fundamental principle that people who come to Australia in an unauthorised fashion must expect a period of detention so that health, character and other relevant checks can be made. However, the changes will also mean that current policy is administered with greater flexibility, fairness and, above all, in a more timely manner.

Attached for your information is a media release issued by the Prime Minister on 17 June 2005 outlining in some detail the changes announced by the government. The key objective of these amendments is to ensure that families with children in immigration detention will be placed in the community, under community detention arrangements, with conditions set to meet their individual circumstances. Pursuant to these changes, the government announced on 29 July 2005 that it had moved all families with children, including those on Christmas Island, out of immigration detention centres and into accommodation within the community. Recent amendments to the *Migration Act 1958* have affirmed the principle that a child will only be detained as a measure of last resort.

The Committee has raised concerns about both Operation Relex and the SIEV-X incident. Since 1996, the Australian Government has implemented a holistic programme of legislative, technological, operational and diplomatic initiatives to enhance Australia's border protection regime and combat people smuggling. Operation Relex, an Australian Defence Force operation, forms part of this programme and involves air and surface patrols across Australia's northern approaches to detect and deter vessels carrying unauthorised arrivals. As with any operation of this nature, safety is paramount and no individual is put at risk. In fact, one key objective of the operation is to deter potential illegal migrants from engaging people smugglers who often place their clients in hazardous and life-threatening situations.

The SIEV-X incident is just one example of the tragic consequences people-smuggling activities can have as 353 people lost their lives. The organiser of this vessel, Abu Quassey, has since been successfully prosecuted in Egypt, in part due to vital assistance from Australian authorities. Please note that the government does not believe that a judicial inquiry into this matter is warranted. The review conducted by the Select Committee on a Certain Maritime Incident was comprehensive. While the Committee did find that there were some gaps in the chain of intelligence reporting, it found no grounds for believing that negligence or dereliction of duty was committed by Australian agencies.

The Committee's views on the Pacific Strategy have also been noted. The Pacific Strategy is another element of Australia's border protection regime. The offshore processing centres in Nauru and Papua New Guinea are part of this comprehensive strategy. The centres are run by the International Organization for Migration (IOM) which is known internationally for its care of migrants and asylum-seekers. Nearly all asylum-seekers live in air-conditioned accommodation, food is culturally appropriate, and there is a range of amenities available for residents. Australia has honoured its commitment to take its fair share of persons found to be refugees from Nauru and Papua New Guinea.

The Committee has raised concerns about the Temporary Protection Visa and the return of those people found not to engage Australia's protection obligations. As a signatory to the *1951 United Nations Convention* and the *1967 Protocol Relating to the Status of Refugees* (Refugees Convention), Australia provides protection for those people to whom it has obligations under the Refugees Convention, regardless of whether they entered Australia lawfully or unlawfully. However, being a refugee does not create a right to receive permanent residence or Australian citizenship.

The Temporary Protection Visa (TPV) was introduced in October 1999 as part of a suite of measures to combat people smuggling and forum-shopping. The TPV is consistent with Australia's obligations under the Refugees Convention. Under the protection arrangements applied by the international community, the preferred durable solution for most refugees is that they be given interim protection in a safe country until they are able to return to their homeland in safety and with dignity.

If a TPV holder is found to continue to require Australia's protection, they will be able to remain in Australia on a further protection visa. Whether that visa is temporary or permanent will depend on a number of factors, including the person's actions as they travelled to Australia. It is worth noting that since the Prime Minister's 17 June announcement over 1,800 TPV holders have been granted Permanent Protection Visas.

People whose claims for refugee protection are not accepted and who have no lawful basis to remain in Australia are required by law to be removed from Australia as soon as practicable. Their removal can only occur, however, following the conclusion of all litigation and when arrangements have been made to return them to their country of residence. They are not removed where this would place Australia in breach of its international obligations relating to the return of non-citizens.

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) puts considerable effort into counselling detainees who have been found not to engage Australia's protection obligations on their removal options. Where possible, DIMIA negotiates with governments of the detainees' countries of origin and consults overseas posts, representatives of other governments and the United National High Commissioner for Refugees (UNHCR) about the scope and methodologies for returns to particular countries. Australia also offers voluntary reintegration packages where appropriate (e.g. the Afghan package and the Iranian package). When overseeing the removal arrangements, DIMIA is also conscious of the need for proper care and support to ensure the return of the detainees in safety and with dignity.

Thank you again for taking the time to write to the Prime Minister on these important issues.

Yours sincerely

Simone Burford
Senior Adviser