



*Centre for Advocacy Support and Education
for Refugees Incorporated*

Justice sans frontières

The Hon Wayne Martin
Chief Justice of Western Australia

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Central Park Theatrette

It's a very great pleasure to be invited to address the Annual General Meeting of the Centre for Advocacy Support and Education for Refugees Incorporated, which is a bit of a mouthful, so I will adopt the acronym CASE from now on. My pleasure is advanced not only because I have the opportunity to acknowledge the terrific work which has been done and which continues to be done by this organisation, but also because of a long-standing personal interest which I have had in immigration.

But I would first like to acknowledge the traditional owners of these lands, the Nyoongar people, and to pay my respects to their elders, past and present. Of course when one has regard to their occupancy of the country in which we live, it reminds us that we are all very temporary immigrants as compared to them. I think that provides a useful perspective for looking at some of the issues that CASE is involved with.

My long-standing personal interest in immigration derives from the fact that for two years in 1979 and 1980 I worked in the Immigration Department. The Immigration Department in those days - and I worked for the Department in Canberra - was I think quite different to the organisation which it is today. It had been formed as a department following the Second World War and when the circumstances in Australia were really very different.

Many of the personnel of the Department when I worked there in the late 70s were the people who had been at the Department since its inception following the Second World War and many of them were returned soldiers. Many of them had had an experience of the work of the Immigration Department which was basically centred around that Department being a recruiting agency. It was their task to go out to different parts of the world, particularly Europe in those days - of course Europe having been very unsettled by reason of the events of the Second World War - to recruit worthy people to come and populate a very underpopulated country.

So the whole focus of their careers within the Department had been looking for people and recruiting them to come to Australia. Now, of course, that focus seems to have changed and today a significant part of the Department's work tends to be on stopping people coming to Australia. But in those days in the late 70s, a lot of the people with whom I worked were still very focused on the recruitment side of the Department's business. They were very genuine people and they had great empathy and sympathy for the people with whom they dealt and I'm sure their hearts were very much in the right place. I don't say that by

way of criticism of the current Department, but I think attitudes and ethics are shaped by the particular political imperatives of the day, and those imperatives have changed.

Of course until 1951 there was no convention on refugees. A lot of the recruitment of migrants to Australia following the Second World War was of people who probably may not have met the criteria for classification as a refugee under the 1951 convention. Many of them though were refugees (in a broader sense than Convention refugees) from a very disrupted Europe. They came to Australia and settled here to the enormous benefit of this country. When I look back at those with whom I worked in the Immigration Department, their recruitment of migrants, many of whom were refugees in this broader sense, was very effective and was undoubtedly to the enormous benefit of this country.

The situation of refugees when I worked for the Department in the late 70s was very different to the regime that we experience today. Refugee status was determined by an inter-departmental committee which had representatives of the Immigration Department, Foreign Affairs Department and Attorney General's Department. The pressure of work was so low that that committee had only to meet once a month and was usually completed its business by lunchtime. Virtually no litigation was generated by the work of that committee so there were very few requests for refugee status at that time.

I was recruited to the Department because those in charge of the Department in those days realised that, despite their best efforts, they were going to be dragged kicking and screaming into the brave new world of review, both administrative review and judicial review, and they needed some lawyers to navigate them through that brave new world. I was the inaugural director of a section within the Department called the Review Section. Our task was to bring the Department into this brave new world of merits review, in those days limited to cases before the Administrative Appeals Tribunal mainly in the criminal deportations area. But we were also gearing up to enter the world of judicial review with the proclamation of the *Administrative Decisions (Judicial Review) Act*. That legislation introduced what was a revolution for the Department in the form of the obligation to provide reasons for decisions which they gave. Up until that point, without an obligation to provide reasons, a lot of the decisions made by the Department had been almost intuitive. The potential obligation to provide reasons imposed a very important obligation, which is to reason out the process, to intellectually work through the process by which those decisions were being made.

Subsequent to my time at the Department, there was a dramatic expansion in review mechanisms. That was preceded by the codification of what had previously been very broad discretions, basically reposed within the Minister for Immigration who delegated those discretions to departmental offices.

During the 80s those very broad discretions were codified in quite elaborate and complex rules and regulations. Combined with that there were mechanisms for merits review. Initially the AAT and then more specific merits review mechanisms such as the Refugee Review Tribunal and the Migration Review Tribunal were provided. During the 80s, we had the definition and limitation of discretion and the growth of merits review. That was followed by the countercycle in the 90s where the focus of a lot of government policy was on closing off avenues for review. During the 90s, there was a lot of litigation conducted in the High Court because of the actions of government in closing off other avenues for challenge to migration decisions. A lot of that litigation was pre-occupied with assessing the success of those attempts by government to close off avenues for judicial review. The migration area has spawned a whole raft of Australian jurisprudence in the administrative law area because of those various attempts to limit judicial review. So it's been a bit of a seesaw in relation to immigration and the review of immigration decisions over the last 30 years.

Moving more specifically to the organisation which has its annual general meeting tonight, your organisation was established in 2002. It is the only community legal centre in Western Australia which specialises in providing legal assistance to refugees. Between its establishment in 2002 and June 2007 (which are the last figures I have), CASE helped 1,280 clients from 19 countries including Afghanistan, Eritrea, Iraq, Sierra Leone, Kuwait, Iran, Sudan, Ethiopia, Vietnam, Guinea, Liberia, Somalia, Democratic Republic of Congo, Nigeria, Burma, Burundi, Pakistan, Bangladesh and Uganda. Extraordinarily, the success record of CASE over that period before the Refugee Review Tribunal was about 94% which is an amazing record, demonstrating the quality and efficacy of the work performed by CASE.

The work undertaken by CASE has changed with broader changes in policies in relation to the treatment of refugees in Australia. CASE was established essentially to assist temporary protection visa (TPV) holders to obtain permanent protection visas. The work in that area has now been eliminated with the abolition of that form of visa. In 2005, that work was

significantly reduced as a result of changes to detention and temporary protection processes brought about largely, I must say, by the courageous stand adopted by two government backbenchers, Petro Georgiou and Judy Moylan. I must say for me it was a time for great pride that one of those who took what was, in many eyes, an unpopular stand was a Western Australian Member of Parliament. As a result of their stand it was agreed that quite significant and beneficial changes would be made in relation to the processes for dealing with asylum claims.

Between 2002 and 2006 CASE assisted 850 TPV holders to establish their claims for further protection in Australia which again I think is a fantastic success record. About 85% of those were found to have been victims of torture and trauma. With the changes to TPV policy and the abolition of the TPV process, CASE has now expanded its operations to include humanitarian visa holders, to focus also on family reunion applications for those who are already in Australia and also to focus on citizenship for those who have been given permanent residence, which is of course a very significant change in status for those concerned.

Now how has CASE been able to do all that? It is because of the enormous contribution made by hundreds of volunteers, including lawyers, law students and board members, as well as its staff, assisting humanitarian refugees and visa applicants and members of their families.

I'd also like to take this opportunity to acknowledge the support that was provided by my predecessor, Professor David Malcolm, both during his term as Chief Justice and through his continuing interest in his role as an academic at Notre Dame University.

CASE's activities have now extended beyond migration work and have extended to providing assistance to victims of domestic violence and by providing immigration assistance to women who have been trafficked. So the capacity for CASE to provide support to people who are obviously in desperate need of that support has been well demonstrated.

I would like to now refer briefly to the global position in relation to refugees by running through some figures that might be of interest. During 2007 the number of refugees and internally displaced persons increased to 67 million people. Just to put that in context, of course that's about three times the population of Australia. To break those figures down, of that 67 million people, about 26 million people were internally displaced as a result of armed conflict. Another 25 million were internally displaced by natural disaster. So you can immediately see out

of the 67 million, we've got 51 million who were internally displaced. That leaves about 16 million. Of those 16 million, 11 million refugees fell under the mandate of the UNHCR and there were about 4.6 million Palestinian refugees under the mandate of the United Nations Relief and Works Agency for Palestine refugees.

Excluding Palestine, Afghanistan was the leading country of origin for refugees producing about 3.1 million. Iraqis were the second largest group making up about 2.3 million of the refugees under the care and control of the UNHCR. The next highest country of origin was Colombia with about half a million refugees.

At the end of 2007, over two and a half million refugees were residing in countries in the Asia Pacific region, with about 80% of those refugees being Afghans.

The Middle East and North Africa region was host to about a quarter of the world's refugees, primarily from Iraq, and according to estimates, Jordan and Syria hosted about 2 million Iraqi refugees.

In 2007 Pakistan continued to have the single largest number of refugees within its borders, being about 2 million - mainly Afghans. The Syrian Arab Republic hosted 1.5 million Iraqi refugees. The Islamic Republic of Iran hosted almost 1 million refugees. Germany reported almost 600,000 refugees and Jordan hosted half a million refugees. The USA was estimated as hosting a bit less than 300,000 refugees.

Now, it's often supposed by those in western and industrialised countries that refugees are flooding into our countries. That is not the truth. The UNHCR has cited data which shows that of the major refugee generating regions, on average they hosted between 83 and 90% of local refugees. Of the total refugees only about 1.6 million refugees, which is 14%, lived outside their region of origin.

How does Australia rate compared to the refugee taking countries in the world? In 2005 Australia hosted 65,000 refugees. Assessed on a per capita basis, that's 3.2 per 1,000 inhabitants. Assessed on financial basis, that's 2.1 refugees per US\$1 of GDP. By contrast, Pakistan had over 1 million refugees in 2005, that's 6.9 per 1,000 inhabitants and 1,782 per US\$1 of GDP. In the UK in that year there were about 300,000 refugees which is 5.1 per 1,000 inhabitants or 8.5 per US\$1 of GDP and the USA had about the same number which is 1.3 per 1,000 inhabitants and 9.7 per US\$1 of GDP. So if you rank us in that scale, there is I think an

opportunity for Australia to do more. That's not to say that we haven't made a significant contribution, but viewed in that scale, it can be seen that there is opportunity for us to do more. On a per capita basis, Australia ranks 14th in the world as a contributor to the work of the UNHCR. When you look at our geography and our location and look at where the refugees are, again I think there is room for argument that we could do a little more in relation to those contributions.

As I've mentioned, the history of refugee settlement in Australia has been extraordinarily positive. If you look back over the history of refugee settlement, refugees have made a fantastic and significant positive contribution to our community. Refugees tend to self select because of the trouble and effort that they go to in order to come to this country. Sometimes that's seen as queue jumping by reference to those who go through other more normal processes. While one can take that perspective, the history of refugee settlement in Australia tends to suggest that that process of self selection, the extraordinary trauma that many refugees have to go through in order to get themselves to this country, tends to produce people who are positively committed and thoroughly motivated to make a success of their time in Australia.

That's not to say that people who come from other countries having experienced torture and trauma and extraordinarily harsh living conditions don't need support and assistance when they arrive here. That's why organisations like CASE are enormously important. One looks for example at the refugees from the Horn of Africa and hears about the conditions in which they have been living in the camps prior to their arrival in Australia; situations in which violence and threat of death are daily occurrences; situations in which going armed is almost essential in order to preserve life. All of a sudden they arrive in our country and they find themselves in very different circumstances. That requires a degree of adjustment and a degree of support from understanding and supportive members of the Australian community. I am confident that with that support these people can and will make very substantial positive contribution to Australia. But because of the extraordinary circumstances from which they come, we can't take their successful integration into the Australian community for granted and they do need support from as many organisations as can provide that support. That is another reason why I think it's enormously important for organisations like CASE to exist and to provide these folk with the support and assistance which they need to make the contribution that I'm sure they will make to our community.

As I have suggested, I think it is important for Australia to try and do a little more. As I mentioned at the commencement of this address, we are immigrants of one form or another. Most of us are recent immigrants compared to the original inhabitants of these lands, the Aboriginal people. Having been permitted either ourselves, or through our parents or their forebears to come to Australia, it seems to me to behove us to be as charitable as we possibly can to those who seek to follow in our footsteps and to join us in this wonderful country of opportunity and to take and share the advantages which we enjoy.

That's why I think that it is enormously important for organisations like this to continue to do their great work and that's why it's been a particular pleasure for me to come and address you this evening.