



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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Submission No. 42

Date Received. ally

The Secretary
Joint Standing Committee on Migration

By Email: jscm@aph.gov.au

RECEIVED
18 JUL 2008

Dear Madam/Sir

BY: M/G

Inquiry into immigration detention in Australia

The Queensland Council for Civil Liberties ("the Council") is a purely voluntary organisation which has amongst its objects to:-

1. Make every effort to ensure that the Universal Declaration of Human Rights is upheld;
2. Be vigilant in matters affecting the rights and liberties of the individual;
3. Develop respect for human rights and freedoms;
4. Expose abuses of civil liberties;
5. Publicly oppose laws and actions that undermine civil liberties.

As a purely voluntary organisation the Council does not have the resources to pursue all abuses of civil liberties.

However in our view the system of immigration detention which has been in place in the country since the early 90s, with generally speaking the bipartisan support of both major political parties, represents a significant blight on the human rights record of this country.

We do not intend to set out here in detail the abuses which this system has fostered but refer in general terms to the article by Julian Burnside contained in his collection of essays entitled "*Watching Brief*" at page 105.¹

Legislative arrangements introduced to shield the immigration detention system from public scrutiny and the rule of law particularly by judicial

¹ Scribe, 2007.

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Watching them while they are watching you!

review have resulted in a number of serious abuses the most well known of which involves Ms Cornelia Rau.

In our view that such abuses would occur was perfectly predictable. It is one of the fundamental principles of the human rights and civil liberties movements that the exercise of power must be limited and the subject of supervision to prevent its abuse.

In general Australia has taken on obligations pursuant to the International Covenant on Civil Political Rights (ICCPR) and the Refugee Convention to protect asylum seekers while their status is being determined.

As early as April 1997 the Australian system of immigration detention had been held to amount to arbitrary detention in violation of Australia's international human rights obligations.² The convention relating to the Status of Refugees provides relevantly:-

1. Article 16 that a refugee shall have free access of the courts;
2. Article 31 prohibits country parties from imposing penalties on account of a refugee's illegal entry or presence where they come directly from a territory where their life or freedom was threatened provided that they present themselves to the local authority to show cause for illegal entry or presence.

Whilst the Refugee Convention does not prevent the use of detention it authorises it only to the extent *necessary*. In our view the current system, even as modified in recent years does not meet that criteria and is still arbitrary within the meaning of the ICCPR.

One of the continuing absurd features of the current system has been that the main fact which determines whether or not you are locked up in a detention centre is whether or not you arrive without a visa. The figures over the period of the legislation consistently show that only between one third and one quarter of the people who arrive and subsequently seek asylum are detained.

A final comment that should be made is that the Council rejects a common argument that Australia should not give asylum to those who have passed through third world countries. That is contrary not only to the principles agreed by the Lisborn Expert Round Table in December 2002 but highly immoral unless it can be established that:-

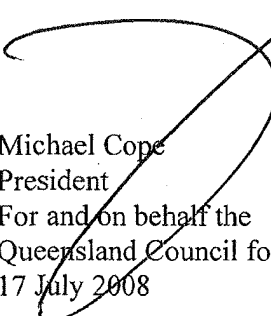
1. The applicant does not have a well founded fear of persecution in that third state;
2. The applicant's fundamental human rights are respected in that third state;

² A v Australia Communication No. 560/1993
14.07.08:MJC:jgb:W\50882\P424.DOC

3. There is no risk that the third state will return them to the state from which they have escaped;
4. The third country has a fair and appropriate asylum seeker assessment process.

In the Council's view the recommendations made by the Human Rights and Equal Opportunity Commission in its report "Those who've come across the seas" May 1998 for the minimum requirements for a system for the detention of asylum seekers remain appropriate and should be implemented.

Yours faithfully,



Michael Cope
President
For and on behalf the
Queensland Council for Civil Liberties
17 July 2008