

2 May 2014

Legal and Constitutional Affairs  
References Committee  
Parliament House  
PO Box 6100  
CANBERRA ACT 2600

via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senators

**Inquiry into the incident at the Manus Island Detention Centre  
from 16 February to 18 February 2014**

The Federation of Ethnic Communities' Councils of Australia (FECCA) welcomes the opportunity to make a submission to the *Inquiry into the incident at the Manus Island Detention Centre from 16 February to 18 February 2014*.

FECCA is the national peak body representing Australians from culturally and linguistically diverse (CALD) backgrounds. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to the Australian Government and the broader community. FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism, so as to build a productive and culturally rich Australian society. FECCA's policies are designed around the concepts of empowerment and inclusion, and are formulated with the common good of all Australians in mind.

FECCA reiterates its strong stance against offshore processing and its opposition to the Australian Government's decision to deny asylum seekers who arrived by boat and are found to be refugees the right to be resettled to Australia.

As per the terms of reference of the Inquiry, FECCA presents its views to the Australian Government regarding its duty of care obligations and responsibilities and the refugee status determination processing and resettlement arrangements in Papua New Guinea (PNG).

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### Australian Government's duty of care obligations and responsibilities

As a signatory of the 1951 *United Nations Convention and Protocol Relating to the Status of Refugees* (the Convention), Australia has agreed to ensure that asylum seekers and refugees have the right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents.<sup>1</sup>

Article 33 of the Convention compels the signatory states to not return a refugee to a place where his or her life or freedom would be threatened, on account of his or her race, religion, nationality, membership of a particular social group or political opinion. In this context, Australia has related obligations under international law to ensure that adequate protection is awarded to individuals seeking refuge and asylum on Australian shores. This remains valid despite Australia's efforts to dispose of its obligations and responsibilities to ensure the safety of asylum seekers by sending them to a third country for processing and resettlement.

FECCA is concerned that through outsourcing Australia's obligations under international law to a third party (a developing nation), such arrangements adversely affect, and place under severe hardship, individuals who already face incomprehensible challenges.

In this context, FECCA views the indefinite nature of offshore processing, its harmful implications upon the mental, physical and emotional health of individuals, the denial of resettlement rights in Australia, the poor resettlement prospects in PNG and its poor human rights record, as all contravening Australia's international humanitarian obligations and responsibilities as a signatory of the Convention.

FECCA's long-standing position is that offshore processing is protracted, expensive and contrary to basic human rights provisions that should be awarded to all individuals. FECCA has highlighted on several occasions the negative implications resulting from detaining asylum seekers offshore, including the adverse impact upon their welfare, mental health and the prospective inability to access full rights and entitlements awarded under international and Australian law that relate to the protection of refugees.

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<sup>1</sup> Refugee Council of Australia, *Myths about Refugees and Asylum Seekers*, available at <http://www.refugeecouncil.org.au/f/myth-long.php>

Reports from Amnesty International and the Office of the United Nations High Commissioner for Refugees (UNHCR) have highlighted the difficult and traumatic conditions endured by asylum seekers in offshore detention facilities and have warned against the harmful consequences of detaining individuals indefinitely, without any substantial prospect of resettlement.

### Refugee status determination processing and resettlement arrangements in Papua New Guinea

FECCA has cited its concern regarding PNG's capacity to provide asylum seekers with access to a fair and adequate refugee status determination process, as well as its capacity to accommodate the settlement needs of those who are found to be refugees.

FECCA is concerned that while PNG's national legislation may be amended to grant visas for refugees, it still does not prohibit various forms of discrimination, such as on the grounds of sexual orientation and gender.

UNHCR has expressed its serious concerns with regard to the lack of adequate protection standards and safety measures for both asylum seekers and refugees in PNG. UNHCR's assessment noted that PNG is lacking appropriate legal frameworks, as well as experience and the capacity to effectively receive and process asylum seekers attempting entry to Australia. It also noted that the poor physical conditions of the detention sites could have a harmful impact on the physical and psycho-social well-being of detainees, families and children in particular<sup>2</sup>.

As Australia's own experience has demonstrated the settlement process requires adequate support for housing, employment, education, healthcare, language skills and overall social integration, constituting a lengthy and complex process that involves the availability of appropriate resourcing. Moreover, as the UNHCR has highlighted, the sustainable integration of refugees settled in PNG will be seriously challenged by the current socio-economic and cultural aspects within the nation.

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<sup>2</sup> UNHCR, *Australia-Papua New Guinea asylum agreement presents protection challenges*, 26 July 2013, available at [http://unhcr.org.au/unhcr/index.php?option=com\\_content&view=article&id=344:unhcr-australia-papua-new-guinea-asylum-agreement-presents-protection-challenges-&catid=35:news-a-media&Itemid=63](http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=344:unhcr-australia-papua-new-guinea-asylum-agreement-presents-protection-challenges-&catid=35:news-a-media&Itemid=63)

As such, FECCA strongly urges the Committee to consider the above concerns with regard to the legitimacy of the resettlement arrangements in PNG, the lack of compliance with Australia's humanitarian obligations and the safety and well-being of asylum seekers detained offshore.

FECCA appreciates the opportunity to submit the above matters for the Committee's consideration. For further information, please do not hesitate to contact the FECCA Office on (02) 6282 5755.

Yours sincerely

**Joseph A. Caputo OAM JP**  
**FECCA Chair**