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The Secretary
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600

By Email: legcon.sen@aph.gov.au



Dear Secretary

Inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003

I write as National Director of *A Just Australia* to submit some concerns about the Bill to amend the structure, powers and composition of the Human Rights and Equal Opportunity Commission.

With the short time frame for preparation and consideration of submissions to your inquiry, it has not been possible to consult widely within the range of organisations and individuals which make up our organisation. Consequently the views expressed herein are mine, but I am confident they would enjoy considerable support within *A Just Australia*.

In summary, the concerns are:

- The motivation for the proposed changes at a time of lessened commitment from Government to human rights;
- The loss of the intervention power;
- The abolition of the specialist commissioners, in particular the Race Discrimination Commissioner; and
- The name change and rearrangement of the functions.

We believe that there is a need to strengthen rather than weaken the Human Rights and Equal Opportunity Commission. At a time when the Government's actions towards asylum seekers have lost it the trust of a significant section of the community, we believe that the Government should take a different tack. This is an opportunity for the Government to move forward on human rights, establish its credibility and provide leadership for the Australian people on the issues of equality and fairness that we espouse as true Australian values. The amendments in this Bill do not move forward, they set the clock back twenty years.

I also take this opportunity to bring to the Committee's attention changes we propose to the Commission's legislation which would provide greater protection to the human rights of refugees and asylum seekers.

1. Background

Australians for Just Refugee Programs was launched on 20 February 2002, after some months of consultations amongst organisations and individuals in Sydney, Melbourne, Adelaide and Perth. *A Just Australia* is the theme of its campaign launched in July 2002, and an alternate name for the organisation. *A Just Australia* is a national campaign umbrella group, with 98 Organisational Supporters, 9,500 individual supporters, and with 64 distinguished Australians as Patrons. Governed by a Board comprising organisational representatives and individuals from each State, it is a not-for-profit organisation incorporated in NSW.



www.ajustaustralia.com

A full list of Board, Patrons and Organisational Supporters can be found at www.ajustaustralia.com by clicking on "Who are we".

Our work is coordinated by a small national secretariat based in Sydney, and carried out through the efforts of members of its board, executive, patrons and other supporters. Funding is primarily (80%) from thousands of private donations, 11% from foundations and the balance from fund raising activities. We spend funds raised on public education campaigns (37%), coordination of organisations (35%), direct support and grants (10%) and administration (17%).

1.1 Charter Statement

Organisations and individuals have united around the following charter statement.

We believe that Australia's policies toward refugees and asylum seekers should at all times reflect respect, decency and generosity to those in need, while advancing Australia's international standing and national interests. We aim to achieve just and compassionate treatment of asylum seekers, consistent with the human rights standards which Australia has developed and endorsed.

1.2 Priorities

The organisation has as its major goal "Action by Government to reform asylum seeker programs in line with our charter statement, as rapidly as possible". To this end, we initially worked to:

- Develop coordination between like-minded groups;
- Build the profile and credibility of groups proposing alternate approaches;
- Break the bi-partisanship between Government and the ALP; and to
- Seek urgent reforms to the treatment of children in detention.

With some success in our first year on these four priorities, we have adopted the following campaign goals for 2003:

- Get children out of detention and into school;
- Permanent protection for refugees on temporary protection visas; and
- Commonsense and humanitarian solutions for long term detainees.

A more detailed alternate policy has been developed for consultation with our supporters, and will be released later in the year.

2. Australian values and human rights protection

Mateship, a fair go, concern for the environment, desire for prosperity with a share for all, participation in sport, cultural diversity, the importance of strong community values and support systems and a keen sense of the contribution that we have to make on the world stage – these are all considered key factors in the Australian national identity.

Tolerance, pluralism, democracy, equity and equality of opportunity are values that Australians commonly aspire to even though they do not universally enjoy them. A certain quality of irreverence could be added to this list.

This particular combination of values was celebrated and championed through the 1990s. These values are found among many peoples, of course, not just among Australians.

The images from our history describing our positive virtues are courageous Anzacs, bushies, pioneering women, mates, fire-fighters, lifesavers, stalwart mothers and backyard family cricketers. They include people from obviously diverse ethnicities – indigenous Australians and from the millions of migrants – hundreds of thousands of refugees among them.

Yet deeply connected to our national identity – as Australian as these values – are two other factors: a sense of superiority to, or contempt for, indigenous people and the fear that outsiders who are different will change our way of life.

The interplay of these values is the substance of human rights campaigns and political debate in Australia.

Australia has maintained its active participation in world governance bodies. It was a founding member of the United Nations, active in the debates leading to the *Universal Declaration of Human Rights*, an early signatory to the *Refugee Convention*, integral to the development of other human rights treaties like the *Convention on the Rights of the Child* and regularly nominates Australians as expert members of international human rights monitoring and enforcement bodies.

In the absence of a Bill of Rights to govern the relationship between the state and the individual human being, Australian Governments rely on international treaties, and legislation based on these, to provide some form of protection of human rights. The Racial Discrimination Act of 1975, the Sex Discrimination Act of 1984, the Human Rights and Equal Opportunity Commission Act of 1986, the Privacy Act of 1988, and the Disability Discrimination Act of 1991 all bring international human rights treaties into play in Australia.

The level of protection from human rights abuses in Australia varies depending on the type of human, the type of right and the location of the abuse. The way we treat the most vulnerable mirrors our regard for tolerance, justice and support for human rights. Indigenous Australians have suffered violations of their rights for more than two centuries. Their treatment is one test of our values. Refugees and asylum seekers are also among the most vulnerable. Their treatment is another test of our values.

Many of us are deeply concerned by the violations of human rights in Australia. We are alarmed by the deliberate creation of divisions in our community. We are fearful of the legacy our children and theirs will inherit from us. ***A Just Australia*** has many concerns about the treatment of indigenous Australians and other human rights issues in Australia. Our mandate, however, specifically relates to refugees and asylum seekers.

3. Abuse of the human rights of refugees and asylum seekers by the Australian Government

Many of Australia's policies and practices in relation to refugees, asylum seekers and immigration detainees violate its human rights commitments. They are without justification. They shame us all. The following are situations and practices which we find unacceptable:

- Immigration detention centres for unauthorised arrivals (boat people) are located in under-populated desert locations, run for profit by private security firms, behind razor wire and electric fences, inaccessible to the media.
- For one class of asylum seeker, defined by how they arrived in Australia, detention is automatic, indefinite and non-reviewable by courts.
- Children who are unauthorised arrivals are automatically detained and can be kept in detention for years, unless the Minister, simultaneously their guardian and detainer, frees them as an act of personal discretion, which is also non-reviewable.
- Detained children are entitled to a range of support and services necessary for their development, including health care, education and recreation. They are denied these entitlements. Their best interests are not the major factor in their treatment.
- Family members who arrive separately are kept separate.
- Asylum seekers attempting to reach Australia by boat encounter a naval blockade. Live ammunition is fired as they approach Australian territorial waters. Armed boarding parties seize the boats. The boats are turned round at sea if considered seaworthy and their passengers returned to unsafe conditions. If the boats are not considered seaworthy, the asylum seekers can be forcibly removed and taken to remote camps in Pacific island states bribed to hold them beyond the reach of Australian law.

- According to medical authorities, detainees in camps both on-shore and off-shore receive inadequate medical attention for physical, mental and emotional illness. It has been said that appropriate medical attention is routinely denied.
- Significant numbers of detainees sicken, mentally and physically, in exactly the way that is expected from arbitrary indefinite detention.
- No other country in the world practices a system of mandatory, indefinite detention of children, women and men without effective access to court challenge.
- Error ridden refugee determination processes take long periods before determining that the majority of detained asylum seekers are legitimate refugees – yet detention continues while status determination processes drag on and then still longer.
- Legitimate refugees released from detention are given no commitment to protection beyond three years, limited services and no prospect of reunion in Australia with close family members.
- Many people not accepted as refugees are detained, indefinitely, for years without any end in sight and with no clear processes for release.
- Those who are deported can be drugged, handed to private security firms, and flown out, without any monitoring of their future, if indeed they have one.

4. Response of Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission (HREOC) has, since its inception in 1986, taken issue with the Australian Government on many cases of the treatment of asylum seekers and refugees.

4.1 Court interventions

Using its power to make interventions in Court proceedings, HREOC has made submissions in the following matters relating to the human rights of refugees or asylum seekers:

YEAR	NAME OF CASE	SUBJECT MATTER OF CASE	COURT
1994	Minister of State for Immigration and Ethnic Affairs v Teoh	Family Law - Deportation of the father of seven children	High Court
1995	C, LJ & Z v Minister for Immigration and Ethnic Affairs	Refugee Law – 'One child policy' of the Peoples Republic of China	Federal Court Full Federal Court
	Wu Yu Fang v Minister for Immigration and Ethnic Affairs and Commonwealth of Australia	Refugee Law - Access to lawyers by persons in detention	Federal Court Full Federal Court
2001	Ming Dung Luu v Minister for Immigration and Multicultural Affairs	Refugee Law – Criminal deportation	Federal Court Full Federal Court
	Vadarlis and Victorian Council for Civil Liberties v The Commonwealth	Refugee Law – Tampa litigation	Federal Court Full Federal Court High Court

YEAR	NAME OF CASE	SUBJECT MATTER OF CASE	COURT
2002	Peter Martizi and Simon Odhiambo v Minister for Immigration and Multicultural Affairs	Refugee Law – Guardianship of unaccompanied minors	Full Family Court High Court
	NAAV & NABE v Minister for Immigration and Multicultural Affairs	Refugee Law – Privative clause amendments	Full Federal Court
2002	Alsiddig Mohammed	Refugee Law – 'sur place' amendments to <i>Migration Act 1958</i> (Cth)	Refugee Review Tribunal
	S134 and S157/ 2002 v Minister for Immigration and Multicultural Affairs	Refugee Law – Privative clause amendments	High Court
	VFAD v Minister for Immigration, Multicultural and Indigenous Affairs	Refugee Law – Power to detain under s 196 of the <i>Migration Act 1958</i> (Cth)	Full Federal Court
	Al Masri v Minister for Immigration, Multicultural and Indigenous Affairs	Refugee Law – Power to detain under s 196 of the <i>Migration Act 1958</i> (Cth)	Full Federal Court
	Death of Nurjan and Fatimeh Hussein	Coronial inquest – Death of "unlawful non-citizens" at sea	WA Coroner's Court

4.2 Reports to Parliament on complaint investigations

HREOC also has a broad power to investigate complaints of human rights abuses, attempt to settle such complaints, and has an important power to report to the Parliament, through the Attorney General, matters which it has not been able to settle, but which need to be brought to the attention of the Parliament for its consideration.

Considered by many to be the ultimate sanction available under the HREOC Act of 1986, the report to Parliament was not used by the first Human Rights Commissioner under that Act, except as a bargaining tool to seek action from the Federal Government to redress the abuses identified. While this "behind the scenes" use of the power is difficult to document, it is well known that there were many arguments between HREOC, the Minister for Immigration, Attorney General and other Ministers about the treatment of asylum seekers, and in particular the policy of mandatory detention of people arriving without authorisation introduced in 1992.

The sanction of reports to Parliament was first made in 1996, and of the reports made since that time, the overwhelming number have been about the abuse of human rights of asylum seekers by the Federal Government. A list of the matters investigated and reported to Parliament regarding asylum seekers and refugees follows.

Reports of the Human Rights and Equal Opportunity Commission to Parliament

No. 5 - Preliminary Report on the detention of Boat people (1997)

No. 10 - Report of an inquiry into Immigration Detention Centre (2000) *Johnson v. Department of Immigration and Multicultural Affairs*

- No. 12 - Report of an inquiry into complaints into Immigration Detention Centre (2000) Qing & Fei v. Department of Immigration and Multicultural Affairs
- No. 13 - Report of an Inquiry into a Complaint of indefinite nature of detention in Prison (2001) Kiet & Ors v. Department of Immigration and Multicultural Affairs
- No. 15 - Report of an inquiry into a complaint by Ms Elizabeth Ching concerning the cancelling of her visa on arrival in Australia and subsequent mandatory detention (2002)
- No. 16 - Report of an inquiry into a complaint by Mr Hocine Kaci of acts or practices inconsistent with or contrary to human rights arising from immigration detention (2002)
- No. 17 - Report of an inquiry into a complaint by the Asylum Seekers Centre concerning changes to the Asylum Seekers Assistance Scheme (2002)
- No. 18 - Report of an inquiry into a complaint by Mr Duc Anh Ha of acts or practices inconsistent with or contrary to human rights arising from immigration detention (2002)
- No. 21 - Report of an inquiry into a complaint by six asylum seekers concerning their transfer from immigration detention centres to State prisons and their detention in those prisons (2002)
- No. 22 - Report of an inquiry into a complaint by Mr XY concerning his continuing detention despite having completed his criminal sentence (2002)
- No. 23 - Report of an inquiry into a complaint by Mr Hassan Ghomwari concerning his immigration detention and the adequacy of the medical treatment he received while detained (2002)
- No. 24 - Report of an inquiry into complaints by five asylum seekers concerning their detention in the separation and management block at the Port Hedland Immigration Reception and Processing Centre (2002)
- No. 25 - Report of an inquiry into a complaint by Mr Mohammed Badraie on behalf of his son Shayan regarding acts or practices of the Commonwealth of Australia (the Department of Immigration, Multicultural and Indigenous Affairs) (2002)

4.3 Inquiries

The other power of HREOC is to conduct inquiries. Using this power, the Human Rights Commissioner has reported on his visits to Immigration Detention Centres, and in November 2001 commenced an inquiry into children in immigration detention.

5. Response of the Federal Government to reports of HREOC

The criticisms contained in the numerous HREOC reports together document a clear view that asylum seekers and refugees are entitled to the enjoyment of universal human rights, but that these rights are systematically denied by the Federal Government, with severe consequences for thousands of individuals. This view is similar to those expressed by non-government and international human rights bodies. The Federal Court and the High Court have also made criticisms of government policy as it impacts on human rights.

The response of the Federal Government to all these criticisms is to attack the credibility of the body making criticism, often in the crassest and most populist terms. It nit-picks the criticism, often using minor change to a situation with the passage of time, or a minor error of detail, to dismiss the unarguable fact of the denial of the application of universal human rights.

It is beyond the scope of this submission to compare the responses by the Federal Government to HREOC reports and criticisms. The contest between those charged with protecting human rights and the Government has been played out in many forums, but the continued amendments to the Migration Act are the clearest documentation of the Government's struggle to suppress human rights for its policy objectives.

The Government has sought, in some cases unsuccessfully, to deny courts the ability to review the protection of the human rights of asylum seekers. It has done this openly, and attacked the judiciary for not allowing it to govern with impunity.

The Commission has, in the same period as the Government has increased its attacks on the human rights of asylum seekers, not enjoyed the same level of resources, and has not had statutory appointments filled. It has been operating under threat of restructure, of which the current Bill is the latest.

HREOC's latest inquiry into the human rights of children in immigration detention commenced in November 2001, and may not report until as late as September 2003.

6. Objections to the Australian Human Rights Commission Legislation Bill 2003

6.1 Motivation for the proposed amendments

The behaviour of the Government towards asylum seekers has lost it the trust of a substantial section of the Australian community. "Children overboard" has become a catchphrase which speaks of Government deceit for electoral advantage. The motivation of the proposed legislation cannot simply be taken at face value, coming after the attacks on the judiciary, the United Nations and other human rights institutions.

Patron of *A Just Australia*, Eva Cox AO, has researched and written extensively on civil society and trust in Australia. I endorse Eva Cox's submission to this inquiry, and its recommendations. For the sake of completeness in this document, I quote her comments on the significance of this Bill for the legitimacy of Government.

Where governments seek to undermine their own systems of governance because they are finding some 'meddlesome' agency challenging them on their own criteria, then it is important for those who care about democratic process to refuse them the opportunities. The changes proposed in the present legislation are undermining the ability of an independent agency to question government policies and legislation and affecting its independence and powers to act in accord with our own legal and international obligations.

Democracy depends on reciprocity of trust between those in power and those they rule. Where there is a gross lack of trust from a substantial proportion of the population, it is possible to create situations of ungovernability. While many of us may not agree with the incumbents at certain times, we need to believe that we are all playing by agreed rules and therefore we remain legitimate oppositions working within the framework of law and institutions.

Where this sense of legitimacy is undermined by actions of government who seek to bend laws to purposes that are not seen as appropriate, such trust can be lost. Governments generally have lost credibility over the past two decades with falling responses on trust of politicians and political parties (Roy Morgan Polls). This results often in both wild swings, loss of rusted on party loyalty and support for 'conviction' politics and populism. All these are prevalent in the community.

The current government has already been seen to attack the courts when they fail to win cases. Relationships between the High court and the Government have been strained by the failure of government to support the system and the individuals within it. All of these suggest strains in the government's view of its legal constraints and affects the public's views of the legitimacy of the government. If the government acts to silence an independent voice it has itself established which has now challenged its own policies as inconsistent with human rights, it looks very much as though it is undermining the delicate balance and trying to rewrite the rules in its favour.

Were this Bill not introduced after a series of embarrassing losses for the government in the courts, sometimes involving HREOC, then one could expect the AG to act as principal law officer and not use his power to protect the government. Given the present circumstances, it does not appear that the government would use its powers to refuse permission in the public interest, rather than its own. Given that HREOC is a body with all its senior appointments selected by this government, the opposition to such changes by the incumbents requires us to ask why the government is doing this. If its own appointees in the last two years have felt

impelled to intervene so often in support of cases which seem to breach current laws and obligations, then the citizenry can legitimately question their muzzling.

I specifically commend Eva Cox's other analysis and recommendations in her submission to this Inquiry.

6.2 Changes to the name and functions

The Bill proposes a name of "Australian Human Rights Commission". This removes "and Equal Opportunity" from the title of the authority, and recalls the name of the first human rights body established in 1981 by the Fraser Government. Despite distinguished leadership under Dame Roma Mitchell, the first Human Rights Commission developed a reputation as a paper tiger. It conducted a wide range of educational activities, and produced many coloured reports which can still be seen on bookshelves to this day. It had no processes to compel attention from government, or indeed the community. Human rights were promoted generally as an abstract good, but there was no rigorous agenda for change.

The 1986 legislation which established the Human Rights and Equal Opportunity Commission was one of the boldest social reforms of Federal Government. Despite deficiencies and exemptions to its powers, it provided an independent and well resourced authority which has had a marked impact on Australian society. The Homeless Children's Inquiry, Mental Illness Inquiry, Racist Violence Inquiry, Disability Discrimination Act, Privacy Act, Stolen Generations Inquiry – and many landmark cases about the role of women in working life and society – have all been part of the modernisation of Australia. Our international reputation as a nation concerned with human rights and justice owes a large debt to the work of HREOC since 1986.

The public education activities of HREOC have made the major contribution in making human rights a central part of public and political debate. I was appointed to the staff of HREOC in its first year of operation, and can attest to a deliberate rejection of woolly and abstract education campaigns, in favour of education through action. The public inquiries were deliberately designed to educate the public that intractable social problems could be addressed through analysis from a framework of international human rights standards.

Some examples of other work of an action/education nature, include:

- Consultations with national social policy non-government organisations on how their policy agenda could be recast in a human rights framework
- Funding of disability organisations to examine how human rights legislation could improve the lives of people with disabilities, leading to the Disability Discrimination Act
- Funding of the Aboriginal children's agencies to examine how the proposed Convention on the Rights of the Child could provide insight into the situation of Aboriginal children – work which led to pressure for an inquiry into the stolen generations.

In a short period, public awareness of human rights, and the protections available, grew substantially, purely by demonstration of their relevance to issues of public concern.

Public information campaigns on how to use the protections in the various Acts were also conducted, such as a campaign to tell young women how to protect themselves from sexual harassment in the workplace. There was a deliberate policy of encouraging complaints to demonstrate how HREOC could protect human rights.

Abstract education campaigns were not conducted in the years that I was involved, as there was little desire to reproduce the impotence of the superseded commission.

The return to the old name signals a return to the days of ineffective protection of human rights. The proposed primacy of the education function reinforces this.

The proposal to include a by-line "human rights – everyone's responsibility" is particularly cloying. The Act is about how the Government provides protections of the rights of humans in its area of

responsibility and influence. *A Just Australia* formed because the Government is not meeting its responsibility. We don't need this same Government to tell us that we have responsibility.

6.3 A bad time not to have a Race Discrimination Commissioner

Our research, and we are sure that of the Government, indicates clearly that there is a conflation in the public mind of issues of refugees, race, religion and terrorism.

The wars in Iraq and Afghanistan, and the rise of terrorist acts perpetrated by fundamentalist extremists have increased the fear in public debate, with many holding views that go along the lines:

Asylum seekers are all Muslims who all support terrorism and want to destroy our way of life and they live illegally in the community and we have to find them and lock them up and otherwise there'll be more bombings like in Bali.

Being seen to take strong action in response to these fears has been of enormous electoral advantage to the Government. Countering these fears with sober reality is a challenge for us all. The impact of these fuelled and fanned flames of fear on Australian society is now immense. When we lock children behind razor wire in the desert for years on end we cannot escape the consequences. As the Stolen Generations Inquiry demonstrated, the consequences of mistreatment of the most vulnerable of other races will be with us for decades.

The Race Discrimination Commissioner position was established in 1986, being a reformation of the position of Community Relations Commissioner created in 1975. The position has been responsible for taking action when behaviour between individuals or groups of different cultural or ethnic background has become unacceptable in terms of human rights standards. This role of monitoring and enforcing standards of behaviour is a necessary part of longer term attitudinal change, as promoted by multicultural and community relations agencies, or indeed through community life and the passage of time.

When Government itself condones behaviour which is unacceptable, then a Race Discrimination Commissioner would be expected to see an increase in unlawful behaviour. But the position has not been substantively filled since 1999.

The period of absence of a Commissioner with these functions, enjoying the clear support of Government to tackle such problems, has coincided with a massive increase in the vilification of refugees, and attacks on Muslim Australians greater than at the time of the National Inquiry into Racist Violence. Author Hanifa Dean, comparing when she was meeting and conversing with Muslims in Australia in 1991 and 2001, writes:

Most people were indifferent towards Muslims: voices of prejudice spoke mainly in whispers; they were hidden out of sight; for the most part they were not respectable... While ten years ago Muslims were a "problem", seen to have little in common with other Australians, today they have graduated into becoming a problem with potential enemy status. Seldom are they thought of as people who mow their lawns, are preoccupied with losing weight, worry about their jobs and mortgages, play sport, swap jokes or tell their children bedtime stories.

Hanifa Dean, *Caravanserai*, New edition, 2003

It could not be argued that the absence of a substantively appointed Race Discrimination Commissioner has of itself led to the deterioration in community relations. But it has not helped.

While the domestic consequences of the abolition of the Race Discrimination Commissioner position are of most concern to us, the international dimensions are worth noting too.

With Australia's role alongside the United States and the United Kingdom as the major prosecutors of the war against Iraq, increased international attention flows to our human rights policies. With Oxfam Community Aid Abroad, we have released a report on the contradictions between our concern for human rights in Iraq and the human rights of Iraqis in Australia – *Between Iraq and a Hard Place* (April 2003). Apart from the international attention given when the United Nations, Human Rights Watch and others condemn our asylum seeker policies, the following report from the Sydney Morning Herald of 16 April 2003 indicates what we believe is the beginning of things to come:

The Australian government's uncompromising stance on asylum seekers today came back in embarrassing fashion when an Iraqi cleric at the inaugural meeting to form a new Iraqi government hit out at the jailing of fellow Iraqis in

Australia ... Conference delegate Sheikh Sayed Jamaluddin, a Shi'ite cleric, thanked the United States and Britain for liberating the Iraqi people from the oppressive tyrant Saddam Hussein and he called for the creation of a system of government which separated belief from politics. Then he had some terse words for Australia's policy of mandatory detention for asylum seekers who have included many Iraqis fleeing the regime of Saddam Hussein. "I call on the representatives of the Australian government to ask the government to accept the human rights of those Iraqis who are held prisoner... If you come here and tell us that we need to build an Iraq that is democratic and respects human rights you should respect the rights of the Iraqis who happen to be in your prisons."

We believe that the position of Race Discrimination Commissioner needs to be filled, and given priority responsibility to examine and make recommendations to overcome the Australian social impact of the Government's asylum seeker policies.

7. Strengthen, not weaken, the Human Rights and Equal Opportunity Commission

The ability of the Government to avoid or ignore the illegality of its actions towards asylum seekers requires a strengthening of the body charged with protection of human rights laws.

The Senate consideration of the Bill provides an opportunity to Senators, concerned about the ongoing abuses of asylum seekers and refugees human rights, to pressure the Government to stop acting in contravention of international and domestic standards.

For the information of the Committee, we advise that we are proposing to Senators that the Bill be amended to give the Commission specific powers over Commonwealth officers to require them to observe the human rights standards. Specifically, we are calling on the Senate to amend the Bill to:

- Affirm the universality of the human rights standards in the conventions appended to the Human Rights and Equal Opportunity Commission Act, and in particular affirm that they apply to humans seeking asylum in Australia;
- Require that the best interests of the child are a primary consideration in all matters affecting asylum seeker and refugee children, consistent with the Convention on the Rights of the Child;
- Empower the Commission to act as official visitors to immigration detention centres, modelled on State Prison Visitors, with the ability to investigate complaints against Immigration Department officials and contractors to the Immigration Department;
- Empower the Commission to investigate complaints over decisions of Commonwealth officers operating in 'excised territories', Nauru and Papua New Guinea;
- Empower the Commission to investigate complaints against military personnel and military contractors engaged in 'Operation Relex', as documented in the Human Rights Watch report on Australia of December 2002; and
- Empower the Commission to devise and require compulsory human rights training for Commonwealth Officers and contractors who are charged with dealing with refugees and asylum seekers.

8. Additional recommendations to Senate Legal and Constitutional Committee

8.1 Outstanding matters reported to Parliament

The Committee's Inquiry into the provisions of this Bill bring to public attention the failure of the machinery empowered by the Parliament to protect Australia's observance of its international human rights treaty obligations.

As noted previously, it is not within our capacity to examine the full extent of that failure, by examining the reports to Parliament of the Human Rights and Equal Opportunity Commission, the response by Government to the recommendations in those reports, and the consequences of those responses or lack of response by Government. We believe that the Senate Legal and Constitutional Committee should examine this, as a way of documenting urgent or unfinished human rights business.

8.2 Absence of a "bill of rights" and Australia's poor record with asylum seekers

The following table highlights the small number of asylum claims made in Australia compared to the rest of the world. Yet Australia's treatment of asylum seekers is now the subject of increasing international concern. We recommend that the Senate examine how European nations handle larger numbers of asylum seekers within the constraints of European human rights laws, whether there are better models and whether international cooperation can assist Australia in developing an asylum program which meets international standards.

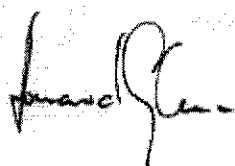
ASYLUM TRENDS IN INDUSTRIALIZED COUNTRIES, FEBRUARY 2003
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, GENEVA, APRIL 2003

Table 1. Monthly asylum applications lodged, January and February 2002 and 2003
A dash (-) indicates that the value is not available.
See notes below.

Country of asylum	2002				2003				Change Jan+Feb
	Jan.	Feb.	Total	change	Jan.	Feb.	Total	change	
Austria	2,958	2,401	5,357	-19%	-	-	-	-	-
Belgium	1,858	1,394	3,252	-25%	1,449	1,103	2,552	-24%	-22%
Bulgaria	350	324	674	-7%	187	137	324	-18%	-65%
Czech Rep.	1,332	678	2,010	-49%	665	-	665	-	-
Denmark	773	946	1,419	-16%	373	389	742	-1%	-48%
Finland	171	120	291	-30%	298	319	585	20%	101%
France	4,032	4,118	8,149	2%	3,653	4,280	7,913	17%	-3%
Germany	7,762	5,771	13,533	-26%	8,124	4,488	10,810	-27%	-22%
Greece	589	435	1,024	-26%	815	871	1,486	42%	45%
Hungary	612	527	1,139	-14%	228	234	462	3%	-59%
Ireland	838	763	1,601	-9%	979	947	1,926	-3%	20%
Liechtenstein	5	7	12	40%	11	5	16	-55%	53%
Luxembourg	47	38	85	-17%	79	-	79	-	-
Netherlands	2,377	1,972	4,349	-17%	1,234	1,042	2,276	-16%	-48%
Norway	1,613	1,385	2,998	-8%	1,190	1,163	2,353	-2%	-19%
Poland	227	292	519	29%	364	-	364	-	-
Portugal	28	12	40	-57%	11	5	16	-55%	-80%
Romania	129	97	226	-25%	80	63	143	-21%	-37%
Slovakia	751	862	1,413	-12%	442	386	828	-13%	-41%
Slovenia	39	59	98	51%	102	122	224	20%	129%
Spain	986	801	1,787	-18%	784	411	1,175	-48%	-33%
Sweden	2,837	2,242	4,879	-15%	3,112	2,514	5,626	-19%	16%
Switzerland	2,008	1,767	3,775	-12%	2,196	1,848	3,844	-25%	2%
United Kingdom	8,495	8,258	16,751	-3%	-	-	-	-	-
Canada	2,827	2,051	4,878	-19%	3,786	2,983	6,749	-21%	47%
USA	7,500	6,118	13,618	-18%	5,559	4,652	10,212	-18%	-26%
Australia	655	490	1,145	-25%	393	330	723	-16%	-37%
New Zealand	94	82	156	-34%	90	88	178	-4%	13%
Japan	18	18	36	0%	28	24	50	-8%	39%
EU-11	22,024	18,272	40,296	-17%	18,580	16,327	34,907	-12%	-13%
Western Europe	25,550	21,431	46,981	-16%	21,977	19,143	41,120	-13%	-12%
Central Europe	1,881	1,889	3,660	-11%	1,019	942	1,961	-8%	-45%
Europe	27,431	23,100	50,531	-16%	22,996	20,085	43,081	-13%	-15%
North America	10,027	8,169	18,196	-18%	9,325	7,635	16,961	-18%	-7%
Australia/New Z.	749	552	1,301	-26%	483	418	899	-14%	-31%
Total	38,235	31,838	70,064	-17%	32,830	28,160	60,991	-14%	-13%

Notes:
All figures are provisional and subject to change.
Germany and USA: new applications only.
UK: Data reflect no. of persons (no. of cases multiplied with 1.289 (official estimate)).
USA: Data reflect no. of persons (no. of cases multiplied with 1.4). Source: INS.
EU-11: European Union member countries listed for which February 2003 data were available.
Western Europe: EU-11 plus Liechtenstein, Norway and Switzerland.
Central Europe: Bulgaria, Hungary, Romania, Slovakia and Slovenia.
Europe: European countries listed for which January 2003 data were available.
Total: All countries listed for which January 2003 data were available.
Source: Governments, compiled by UNHCR (Population Data Unit/PGDS).

On behalf of *A Just Australia*.



HOWARD GLENN
National Director

24 April 2003