

REFUGEE COUNCIL OF AUSTRALIA

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SUBMISSION TO THE SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

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1. Introduction:

The Refugee Council of Australia (RCOA) is Australia's peak refugee agency, representing over 120 organisations and individuals working with and for refugees in Australia and around the world.

The aim of the Council is to promote the adoption of flexible, humane and constructive policies towards refugees, asylum seekers and displaced persons by the Australian and other Governments. In furtherance of this aim we monitor Government policy as it pertains to refugees and, where relevant, seek to represent the views of our members to relevant legislative and policy bodies.

The Refugee Council notes that the most valuable witnesses for the current inquiry are those who have been central to the formulation of policy and/or those directly involved in the incident. The Council welcomes the opportunity to make some brief remarks related to the terms of reference of the current inquiry.

2. The Children Overboard Incident

Not being present when the incident took place, the Refugee Council does not consider it appropriate to comment on what did or did not take place when the Indonesian vessel was intercepted by the HMAS Adelaide in early October 2001.

The issue that we do wish to make comment on is the way this information was used by a number of politicians.

Within hours of the story surfacing, senior members of the government seized upon the unsubstantiated reports to make claims that children had been thrown overboard 'with the intention of putting us under duress'¹. To this, derogatory insinuations were made as

¹ Minister Ruddock.

to the motives of the alleged perpetrators of the supposed actions.

The Council also notes that similar unsubstantiated claims, derogatory to asylum seekers, were made:

- to the effect that adults in Woomera somehow induced children to sew their lips together. Subsequent inquiries by both HREOC and the South Australian Government found that these claims have not been supported by evidence; and
- in the period following 11th September when it was claimed that terrorists were amongst the asylum seekers attempting to enter Australia, neglecting the facts that the terrorists involved in the attacks had all entered the United States legally and the asylum seekers on route to Australia were fleeing the very people we were claiming to be the agents of the terrorist attacks.

The Refugee Council is deeply concerned at the way asylum seekers are being portrayed to the public by politicians. Instead of focusing on:

- the rights of people to seek protection;
- the probability that a significant proportion the people on board would have a well founded fear of persecution;
- the responsibilities that Australia has as a signatory to the 1951 Convention Relating to the Status of Refugees to assist those seeking protection;
- the measures that Australia has in place to determine whether asylum seekers warrant protection;
- the positive aspects for Australia of supporting refugees;

politicians have chosen to imply that asylum seekers:

- are barbaric and uncaring;
- live by values entirely unacceptable to Australians;
- pose a real threat to Australia.

Not only are these images they have chosen to portray entirely untrue, the Council has learnt from years of experience that the public generalises such stereotypes. While the initial comments might have been limited to one particular group of asylum seekers, the public internalises the very evocative images and applies them to “all refugees” or “all Muslims” or even “all people who look different”.² Evidence of this emerges in the results of the SBS survey published 21 March 2002.

Australia has been hailed as a highly successful multicultural society. What has to be recognised is that this is not an innate characteristic of society. It has come about as the result of a lot of hard work by responsible politicians and community leaders over many years. If community harmony is not nurtured, and if leaders are allowed to promulgate prejudices and misinformation, we run the very real risk of unwinding all that has been built.

² The fact that Sikhs have been the subject of anti-Islamic attacks in recent months bears out the lack of discrimination shown by racist members of the Australian community.

History gives many lessons of what happens when politicians play the “race card”. It is important that we learn from what happened in Germany in World War II and the Balkans in the early 1990s and ensure that politicians are bound by their peers to ensure that their statements are based on fact and do nothing to inflame or validate prejudices within the community. Politicians, as community leaders, also bear a heavy moral responsibility to show ethical leadership in sensitive areas of public administration.

3. The “Pacific Solution”

While the “Pacific Solution” which sees asylum seekers en route to Australia sent to Pacific Islands to be processed might have had value as a way out of an impasse that was acceptable to the Australian Government at the time, it cannot be argued that it is sustainable.

For a start, it is an enormously expensive exercise. Not only are there the costs of processing, which according to DIMIA sources are five times the cost of determination in Australia, but there are also the costs of the incentives that have been given to the Pacific states in order to gain agreement to establish the processing camps.

Expense need not only be measured in dollar terms. We also have to factor in the cost to Australia’s reputation:

- amongst our Pacific neighbours, especially if (as will be discussed below) the asylum seekers remain beyond the agreed period;
- in the international community, with Australia’s efforts to exclude asylum seekers being condemned by many countries, both developing and developed, and being used by Pakistan as an excuse for closing its border to fleeing Afghans.

The Council questions too how achievable the Australian vision for the Pacific camps is. There are two possible outcomes when people are processed to determine refugee status. Either:

- they are found not to be refugees, in which case there is an expectation that they will be returned to their country of origin. But in the case of the current caseload, the majority are from countries to which involuntary return is not possible;
- they are determined to be refugees and resettlement places will need to be found. ... but the Australian Government has said that they will not all come here and other countries have demonstrated with the Indonesian caseload that they are unwilling to provide resettlement places.

It would thus appear that the likely outcome is that irrespective of the results of their status determination, the majority of those being sent to the Pacific camps will remain long after their status is determined ... doubtless much to the chagrin of their hosts ... that is unless the Australian Government changes its policy and allows entry to Australia.

It is the view of the Refugee Council that Australia has a particular responsibility towards its smaller neighbours. We have already seen in both Papua New Guinea (within the Parliament) and the South Pacific Forum that the issue has caused dissent, and the issue is still new. What will happen as the months unfold, and as countries like Nauru

face further economic crises, and as the asylum seekers are not moved elsewhere? Australia cannot afford to destabilise its immediate region.

The Refugee Council argues that the “Pacific Solution” is a solution in name only and cannot be sustained. Now that the election is over, access to the Australian territory for status determination must be resumed. The effective closure of borders to persons seeking asylum, albeit by illegal entry means, is per se a breach of the heavy obligations imposed under the Refugee Convention to afford refugees effective protection.

The Refugee Council examined this and other issues relating to unauthorised arrivals in a submission to the Minister for Immigration and Multicultural and Indigenous Affairs in November 2001³. This examination led to the Council concluding that the “Pacific Solution” should not be looked at in isolation but should be examined in the context of a much larger picture of secondary movement of certain groups of asylum seekers from countries of first asylum where protection has either broken down or has not been offered. From the Council’s perspective:

- push factors are stronger than pull factors in the current movement of unauthorised arrivals;
- there are clearly defined factors in countries of first asylum that indicate a significant breakdown of effective protection;
- blocking the movement in mid-stream (through interception arrangements) is unlikely to resolve the problem;
- fostering a “solution” that sees large numbers of people from the Middle East remaining in Indonesia for extended periods will only exacerbate the existing ethnic tensions in the archipelago and take resources away from dealing with the much more pressing internal problems;
- burden shifting to Australia’s Pacific neighbours is not a sustainable solution. It is excessively costly, will damage Australia’s relations with its neighbours, is bringing Australia into disrepute internationally and will almost inevitably have exactly the same net result as if the asylum seekers were not intercepted – i.e. they will come to Australia;
- the TPV regime has done nothing to deter entry, in fact, it can be argued that it has in fact encouraged more people (spouses and children of TPV holders) to come through smuggling routes. Further, it has caused incalculable suffering and may well cause major social problems that will take considerable time and resources to heal.

The Council therefore argues that the way ahead must involve a philosophical re-examination of the “problem” such that:

- protection is placed at the core of any solution in accordance with our Convention obligations;

³ “Australia’s Refugee And Special Humanitarian Program: Current Issues and Future Directions - Views From The Community Sector”.

- the emphasis is on cooperation rather than “burden shifting”;
- resources are redirected to target the root causes of the irregular movement; and
- the community is helped to understand that refugees and asylum seekers do not pose a threat when there is a well managed program.

The Refugee Council favours a multilateral rather than bilateral approach to finding a solution to the current “problems” and argues that the dialogue must engage all relevant players, not just governments but also UNHCR, IOM, NGOs ... and ideally representatives of the effected refugee communities. In this regard we acknowledge the Bali Conference initiative as a start to the process.

The Council further argues that any coordinated response must include, *inter alia*:

- a significant increase in Australian aid to assist those responsible for the protection and support of refugees in countries of first asylum;
- an increase in the numbers of resettlement places offered and the resources directed at processing resettlement referrals and applications;
- assisting transit countries to ensure that the rights of asylum seekers are protected;
- preserving the right to seek asylum and ensuring that the rights of asylum seekers are respected;
- rethinking the value of the “deterrent measures” that are currently in place. This would include an analysis of the true costs – financial, social and political – of the current policy;
- devising alternatives that address the Government’s concerns, are cost-effective and, most importantly, ensure that Australia is able to meet its protection obligations in a comprehensive and responsible fashion; and
- helping the Australian public to understand the importance of such a coordinated response and the role they can play in assisting refugees.

4. Conclusion

The Refugee Council sees the “children overboard incident” as a deeply regrettable episode in Australia’s history. The challenge now facing the Parliament, we argue, is to make sure that lessons that have as their basis morality, compassion and responsibility are learnt from it.

*Compassion does not mean weakness.*⁴

⁴ Peter Mares’ concluding words in his acceptance speech on receipt of the 2001 Paul Cullen Award for Journalistic Excellence. 19 November 2001.