

ADDITIONAL COMMENTS FROM SENATOR COONEY

ON THE NEED FOR AN ONSHORE HUMANITARIAN PROGRAM AND

SECTION 417.

A HUMANITARIAN PROGRAM AND SECTION 417

Australia does not have an onshore humanitarian program. Section 417 of the Migration Act gives the Minister for Immigration and Multicultural Affairs the ability to grant a person who has exhausted all other avenues but is in need of humanitarian relief permission to remain here and so to save him or her from the ill consequences of returning to where he or she would otherwise have to go. Section 417 provides the Minister with a discretion which he may or may not choose to use. If he decides to exercise it he can do so as he feels fit. Section 417 enables the Minister to give relief on humanitarian grounds or indeed on any other ground which he considers appropriate.

Section 417 does not equip Australia with a humanitarian program. A discretion which is at large, whose exercise is unfettered and non reviewable, and whose use can in effect be arbitrary, does not constitute a humanitarian system.

THE FUNCTION OF SECTION 417

In my view section 417 is an essential part of Australia's immigration regime. It is vital to have a means to accommodate the unusual or unexpected or exceptional which may arise within the regime. Section 417 provides that means. The present Minister for Immigration and Multicultural Affairs has used it to good effect. But section 417 does not constitute a program, a system, an ordered process for dealing with those who claim humanitarian relief from Australia. Nor in my view should it. It ought be used only for the purpose for which it was legislated into law. To have it do more is to put too great a strain on its proper function and is to give a false response to Australia's obligation to afford humanitarian relief in appropriate circumstances.

COMMON HUMANITY AND COMMON DECENCY

Common humanity and common decency compel us as Australians to give humanitarian help to those who need it. Clearly there is a limit to what we as a Nation with finite resources can do : but where we can do what is right we ought do so. To give succour to people who are at risk of being killed or tortured or subjected to degrading treatment or punishment were they to be returned to their homeland is to comply with good conscience and high principle. Even where the threat to the person seeking relief is not as terrible as that but is nevertheless real Australia ought have in place a program to consider and if appropriate to grant it.

RATIFIED CONVENTIONS

The truth of these propositions is reinforced by Australia's signing of international conventions including the Convention against Torture and Other. Cruel Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR). CAT specifically requires those who have ratified it to refrain from sending anyone who is at risk of torture, degrading treatment or punishment back to his or her homeland. Australia has made itself subject to these conventions because it sees itself as a decent and humane Country and a good citizen of the World Community.

CONSEQUENCES OF REFUSING RELIEF

The consequences of Australia's failing to give humanitarian relief where it is needed may be that the people turned out of our Country are killed or tortured or treated in a degrading manner or wrongly imprisoned. Accordingly it is essential to have a program in place which as far as is reasonably possible truly identifies those who are genuinely at risk and which delivers them relief. Section 417 does not provide such a program.

A PROGRAM SHOULD BE INSTITUTED

The present system dealing with claims made in Australia for refugee status should be adapted to encompass applications made for humanitarian help.

CONCERN ABOUT THIS PROPOSITION

Concern is expressed, at times most forcibly, that to institute a humanitarian program akin to the refugee one now operating, would threaten the immigration regime with expensive processes, unacceptable time delays, costly legal proceedings, and unwanted outcomes. Against these considerations must be placed the horrible consequences which may be visited on those who though in need of humanitarian relief are refused it. Further where Australia has ratified conventions it ought do its best to carry out the obligations they place upon it.

THE PRICE OF JUSTICE AND JUDICIAL REVIEW

It seems that in these days a price must be placed on justice. I consider that a questionable thing to do. But if it is to be done then the price should be high. An onshore humanitarian program should provide for judicial review. Judicial review is needed to provide quality control for any system which determines amongst other things whether particular people face the risk of death, torture, degrading treatment or unjust imprisonment and if they do whether they should be sent from Australia to encounter it. The doing of justice is one of the three essential functions of government. If a price is to be set for justice then it should be set on that basis.