

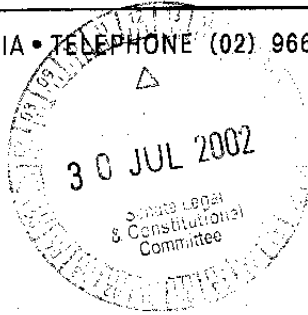
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Submission 17

**NSWCCL****NSW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INC**

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25 July 2002

OK to receive  
and publish in a  
submission

Mr Peter Hallahan  
Secretary  
Legal and Constitutional References Committee  
Australian Senate  
Parliament House  
Canberra ACT 2600

By facsimile 6277 5794

Dear Sir,

**Inquiry into Migration Zone Excision  
Migration Legislation Amendment (Further Border Protection) Bill 2002**

I refer to your letter dated 4 July 2002 addressed to Mr Cameron Murphy, the President of this Council, inviting a submission in relation to inquiries on the above legislation.

Thank you for your invitation. The NSW Council for Civil Liberties makes the submission set out below.

*General observation*

1. In making this submission, the Council asks the Committee to note that this submission has been prepared on short notice, and that the Council would be happy to develop its submissions at the public hearings in August.

*Submission*

2. The proposed legislation breaches Australia's international obligations of a humanitarian character<sup>1</sup>, which Australia has voluntarily accepted, by qualifying access to the rights afforded to persons facing potentially severe risks to their lives and physical safety.
3. Under the Refugee Convention, a signatory country's obligations come into effect after an asylum seeker has entered the country. For obvious reasons, there is no provision within the convention for creating a zone in which convention protections do not apply.
4. The appropriate course of action for a country which does not wish to provide Convention protections in accordance with the convention is to cease to be a signatory. Exclusion of territory from the Migration Zone raises grotesque

<sup>1</sup> 1951 United Nations Convention Relating to the Status of Refugees

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policy issues and contradictions which are of serious concern to those concerned generally with the operation of a civil society under the rule of law.

5. Accordingly, the NSW Council for Civil Liberties is opposed to this legislation on two primary bases:-

- (a) that it increases the power of the State to act arbitrarily in relation to individuals (who are facing potentially severe risks to their lives and physical safety); and
- (b) it represents a style of legislation which threatens the operation of a civil society under the rule of law.

6. In addition, this legislation can be criticised on linguistic grounds. It is bizarre to have this legislation represented as furthering "border protection". One would have thought that border protection policy would focus on protecting the borders, rather than some assumed inner sanctum. A more honest label for this legislation would be Migration Legislation Amendment (Inner Sanctum Protection Measures) Bill.

7. The form and focus of the legislation and supporting materials is to specify that persons arriving in the excised parts of the Migration Zone without authority will not have any right to apply for a visa under the Migration Act. What is not set out is the legal regime that will apply to such persons. Presumably, the State (acting solely through the executive branch) will have the right to deport such persons without recourse or review.

8. An executive deportation right without recourse or review is one of the hallmarks of a totalitarian state. Accordingly, the proposed legislation is inherently fascist or totalitarian in nature.

9. Further, unlike with previous legislation of a similar character, there are no codes of procedure to govern the operation of the executive arm of the State in its actions affecting unauthorised persons outside the Migration Zone. Thus, this legislation necessarily involves the creation of a bureaucracy fashioned according to the style of a totalitarian state to effect the removal of such unauthorised persons. Are they to be uniformed in brown or black shirts? What, legally, will distinguish the activities of the deporters from those who gave rise to the Refugee Convention in the first place?

10. There is not even provision for the executive to be answerable to parliament for its actions in deporting unauthorised persons from outside the Migration Zone.

11. It will not be long before the executive branch realises that it requires protection from other legislation in order to effect its purpose in the area outside the Migration Zone. It will presumably be necessary to exclude the operation of the Crimes Act (both State and Federal) to avoid the possibility of prosecution of Federal officers who use an unreasonable degree of force to remove unauthorised persons. Or will this be done retrospectively, as with the *Border Protection (Validation and Enforcement Powers) Act 2001*?

12. Fascist or totalitarian legislation must be opposed. To do otherwise provides a toehold for those interests opposed to a civil society operating under the rule of law. The creation of a section of the executive branch of government unaccustomed to acting in a manner consistent with a civil society is itself a

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danger. That section will inevitably seek to widen the scope of its operation. Members of that section will be circulated through other areas of the bureaucracy and provide practical first hand experience of totalitarian methods.

13. Once the exclusion zone is established, other areas which might be excluded could come to mind. The Australian Capital Territory? Convents?
14. Also, other Federal legislation might be made operative only in certain parts of the Commonwealth. Can an exclusion zone be created from the operation of the Constitution?
15. There are some laws parliament should not be permitted to pass. This is one of them.

Signed for and on behalf of the  
Committee of the NSW Council for Civil Liberties

**Stephen Blanks**

per: 