

THE SOCIAL
RESPONSIBILITIES
COMMISSION

ANGLICAN PROVINCE
OF WESTERN AUSTRALIA

Australian Senate
Legal and Constitutional Committee
Parliament House
CANBERRA ACT 2600

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

Attention: Mr Peter Hallahan

Dear Mr Hallahan,

Re: Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002

The Social Responsibilities Commission was established in 1983 to provide the Church with analysis and recommendations on a range of issues of community concern. Asylum seekers and refugees clearly fall within the Commission's agenda. This submission is that of the Commission, and does not purport to be authorised by any other body of the Anglican Church of Australia.

The legislation to excise certain islands from the Migration Zone is offensive for a range of reasons, and we are aware that we can address some, not all.

1. The excision is a crude means of denying asylum seekers the opportunity to apply for the protection which Australia has committed itself to providing under the 1951 Convention Relating to the Status of Refugees and the 1967 protocol. It also does not exclude those asylum seekers who arrive (unauthorised) by air.
2. The attempt to excise a number of islands is being legislated in an atmosphere of 'crisis' which has been carefully crafted by Australian Governments since the late 1980s. The community has been led to believe that large numbers of asylum seekers are arriving, or are about to arrive, at any moment.
3. The excision has an air of desperation about it, and comes as another step in a long line of means of dissuading people seeking refugee status (witness the earlier provisions in the Migration Act which required asylum seekers to demonstrate the extent of their claim before an application form would be provided [*Fang & Others v DIEA (1996) 135 ALR 583*]).
4. Concern has been raised in public debate about this issue, and in Parliament, that it may have the perverse effect of putting asylum seekers' lives in further danger as they bypass excised islands and lengthen their journey by attempting to reach the mainland.

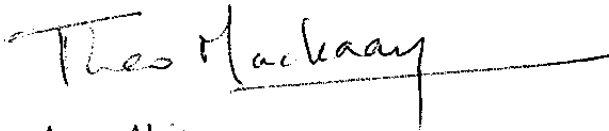
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5. Any attempt to deny access to asylum seekers must raise concerns that Australia is seeking to overturn its obligations under the 'first country of asylum' provisions of the Convention. It is abundantly clear from statements by the Prime Minister and by the Minister for Immigration, that the goal of this policy is to ensure that no asylum seekers reach the Migration Zone and that the Government will 'pick and choose' candidates for its refugee intake from UNHCR camps.
6. We note that the submission from Australian Lawyers for Human Rights (ALHR) draws attention to the Vienna Convention on Treaties and raises the possibility that the legislation breaches the following provisions:
 - Implementation of treaty obligations in good faith
 - Treaty obligations extend to all territory
 - It is no answer to a breach of international law to rely on inconsistent domestic law.
7. As part of an international trend to deny asylum seekers access to developed countries, the decision to excise Australian islands will add to the pressure on Third World countries, which already 'host' a disproportionate number of people of concern to the United Nations High Commissioner for Refugees.
8. There is also a civil liberties concern for Australian residents in the Government's decision to legislate in this fashion. It is not inconceivable that, in future, governments will decide that certain rights and privileges are denied to people in certain parts of the country. An hypothetical example which comes to mind is a decision to excise certain popular parts of the country from certain provisions of the Social Security Act, in order to deny unemployment benefits to young people who are perceived as 'living on the dole' in popular surfing spots. Or areas outside the major metropolitan areas might be excluded from the 'standard postage rate'. Or it may be decided that certain islands will not be accorded defence coverage in time of war or natural disaster.
9. The ALHR submission suggests that the proposal to excise islands from the migration Zone amounts to a "de facto withdrawal from refugee law".

We urge the Committee to recommend that the legislation be withdrawn for all these reasons.

Yours sincerely



 Angus Algie
A/chairperson

August 1st, 2002