



Federation of Ethnic Communities' Councils of Australia

FECCA Submission

to the Senate Legal and Constitutional Committee

Inquiry into the administration and operation of the Migration
Act 1958

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FECCA thanks the Senate Legal and Constitutional Committee Inquiry into the administration and operation of the Migration Act 1958 for the opportunity to present this submission.

FECCA is the national peak body representing Australians from diverse cultural and linguistic backgrounds. Our role is to advocate, lobby and promote issues on behalf of our constituency to government, business and the broader community. Our charter includes promoting full access and equity, advocating community harmony and the celebration of diversity, championing human rights and arguing that Multiculturalism is central to the social, economic and cultural health of Australia.

FECCA believes that the issue of asylum seekers and their treatment in immigration detention has impacted on our carefully fostered sense of community harmony that is at the cornerstone of Australian Multiculturalism. It is FECCA's view that the current commonwealth government asylum seeker policies do not serve the national interest. They flout fundamental principles of human rights and natural justice and, moreover, create social disharmony and divisiveness. These policies also contravene a number of international conventions to which Australia is a signatory. FECCA urges a more humane approach to Australia's treatment of asylum seekers. We believe that Australian government policy should not focus on punishment, deterrence and denial of our international and domestic responsibilities to address the needs of refugees or asylum seekers

Our submission will address in turn each of the issues identified in the terms of reference for the inquiry.

a. The administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and deportation of people from Australia

There are alternatives to prolonged mandatory immigration detention, which have been used effectively by other countries in our region, for example New Zealand. Australia is the only country which detains asylum seekers for extended periods, whilst claims for asylum are being assessed. FECCA is concerned that current policies are discrediting Australia's good name in the international community.

There are more humane approaches to Australia's current treatment of refugees. FECCA is particularly concerned about the current "Pacific Solution" and border protection legislation, which we believe violate a number of international conventions to which Australia is a signatory, for example:

- that require that the right to equal treatment is not reduced on the basis of particular nationality (International Covenant on the Elimination of All Forms of Racial Discrimination, 1965, Article 1);
- that recognise the right of every child to a standard of living adequate for their physical, mental, spiritual, moral and social development (Convention on the Rights Of the Child, 1989, Article 27.1).

While FECCA is pleased that recent decisions have lead to families being released from immigration detention centres in Nauru, there are still asylum seekers who have been languishing in offshore immigration detention facilities for a number of years. This is unacceptable.

FECCA is particularly concerned about the impact of long delays in processing and assessing applications for visas. We advocate for urgent reforms to the way that asylum seeker applications for visas are processed and assessed. We believe the government must ensure that asylum seekers are held on arrival only for a period necessary to determine initial issues of identity, health (in particular screening for communicable diseases) and national security measures. Following initial checks, release into suitable accommodation in the community should be made, while visa applications continue to be assessed.

FECCA argues that immigration reception centres must be in surroundings that permit reasonable access of local service providers, community groups and faith representatives providing support for detained asylum seekers. This could include creating service facilities closer to established cities, which have more available amenities.

FECCA is concerned that full protection be afforded to the most vulnerable in reception centres, namely women and children. We argue that family units and unaccompanied women and children should be allowed into receptive communities as soon as the required identity, health and security checks have been completed. All unaccompanied minors should be delivered into appropriate community care within 48 hours. This is particularly important given the deteriorating mental health status of many people who have been in immigration detention for lengthy periods of time, and the risk of children in immigration detention being exposed to “crazy people trying to hurt themselves”, as reported by Ian Hwang, a 12 year old who was removed from his school, and placed in Villawood Detention Centre, despite being legally in the country at the time he was detained.

Community concerns

FECCA's affiliated organisations are aware of deep community concern expressed by migrants who feel vulnerable to being taken into immigration detention, and not being able to prove their identity. We have been told that many people now feel that they must carry their passports with them at all times. Communities are feeling concerned about the perceived power of DIMIA officers to act on suspicions that people may be in Australia illegally. After the revelations about Cornelia Rau and Vivian Alvarez some migrants are asking, “What is the use of being an Australian citizen if our rights are not protected.” There is real community concern that proper checks and balances either do not exist, or are not utilised, resulting in a risk of people being inappropriately placed in immigration detention facilities.

At the recent FECCA Congress (May 2005), delegates expressed a concern that despite over 200 recorded incidents of people being incorrectly taken into immigration detention, the Government had still not instigated a Royal Commission to fully investigate the administration of the Migration Act with particular reference to immigration detention and the deportation of people from Australia. We believe that such a Royal Commission is especially important, given the recent High Court decision that the Commonwealth Parliament could legislate for the indefinite detention of asylum seekers. This illustrates that the present Australian Constitution is being interpreted in such a way that it allows the enactment of laws which are unjust and contrary to human rights.

Temporary Protection Visas

FECCA is acutely aware that the current system of issuing Temporary Protection Visas (TPVs) is creating pain and confusion. TPV holders find it almost impossible to get immediate family members to join them in Australia. This system of enforced separation can last for years, destroying family cohesion and enforcing poverty. Even voluntary immigration is a stressful and disorienting time for people. For those tortured people who have experienced an (often traumatic) exodus, periods of detention or exploitation in transit camps, but who eventually arrive in Australia only to face years in immigration detention, the psychosocial effects they experience are akin to adding a new torture on top of an already tortured existence. Australia's current detention regime could therefore be likened to institutional abuse for some asylum seekers.

FECCA argues that the Government must provide all asylum seekers who are granted TPVs with equal treatment and full access to settlement assistance including health services, legal aid, Centrelink services, trauma counselling and English language training. Mode of entry should not be used to penalize asylum seekers by denial of services, permanent residency or access to family reunion. Despite claims to the contrary, there are no global "queues" of asylum seekers, and there are often no diplomatic avenues for people seeking to safely leave their country of origin. We believe that immigration detention and denial of services violates the rights of asylum seekers and refugees to protection under article 5 of International Covenant on the Elimination of All Forms of Racial Discrimination.

b. The activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies surrounding the deportation of people from Australia

FECCA is alarmed that there is a lack of transparency surrounding the deportation of people from Australia. The approach to deportation of asylum seekers from Australia is particularly problematic in the Vivian Alvarez case, where concerns were apparently expressed about her vulnerable physical health and well being at the time of her deportation. The International Convention on Civil and Political Rights states that *everyone within Australian territories is entitled to have their human rights equally respected and protected*. We believe the deportation of Ms Alvarez clearly shows that her human rights were abused, and the appropriate duty of care by Australian government departments, including DIMIA and the Department of Foreign Affairs and Trade, was not met.

FECCA is astonished that there were multiple occasions when boats filled with asylum seekers attempted to claim refuge in Australia, but were "turned around", and towed out to sea, without any appropriate safeguards or guarantees that their physical safety and human rights would be protected. In these instances the government clearly breached its responsibilities under the Refugee Convention. These asylum seekers were not granted access to proper process, or the opportunity to claim asylum. Such situations must never be allowed to happen again.

While not directly related to the deportation of people from Australia, FECCA is concerned at recent publicity about the claim for asylum lodged by Chen Yonglin. As a result of publicity about Mr Chen's case, the office of the United Nations High Commissioner for Refugees has called on the federal government to ensure confidentiality of all claims for refugee status, arguing that publicity risks placing

asylum seekers in danger.

c. The adequacy of health care, including mental healthcare, and other services and assistance provided to people in immigration detention

FECCA is highly critical about the lack of public scrutiny of migration detention facilities, particularly given the geographic isolation of some of these centres. We are of the view that the Australian government needs to fully co-operate with relevant United Nations working bodies to ensure Australia is not contravening human rights obligations, international law and conventions. To do this, the government needs to facilitate routine on-site monitoring by appropriate local and international independent agencies, of all reception and detention centres or other facilities at which asylum seekers are housed.

FECCA believes that health care, including mental health care and assistance provided to people in immigration detention is not adequate to effectively meet their needs. This is particularly relevant for people who are detained in offshore detention centres.

We believe that appropriate and immediate medical attention must be provided to adult and child detainees in both remote and metropolitan immigration detention centres, whenever needed, but particularly when people display signs of psychological damage and depression which can be directly attributed to the environment and duration of detention in these centres. Depression, psychosis, personality and anxiety disorders and their resulting behaviours must not be regarded as “normal in this context”. FECCA argues that current policies, and a lack of attention to good quality mental health care for detainees, is creating real psychological and emotional damage that can perhaps never be undone. This severely impacts on the ability of refugees to successfully settle into the community after their release from immigration detention. It also has a long term cost implication to the community, as specialistic services may be required for long periods of time to help people cope with the impact of their experiences in detention.

The experience of torture and/or trauma that many refugees and asylum seekers have suffered must be acknowledged and responded to by policy makers and service providers, including providers of immigration detention facilities. Torture and trauma rehabilitation services must be available to those who need it. We call for the immediate prohibition of any administration of all chemical substances, whether medicinal or other chemical restraints, used for the purposes of subduing, restraining or affecting the conscious state of any asylum seeker. Medical decisions must be made in a timely fashion, and with the best interests of detainees as a foremost consideration, rather than a focus on “managing behaviour”. It is also essential that appropriate pathways of care are established to ensure that psychiatrists, psychologists and mental health professionals are legally able to adopt a genuine duty of care to detainees.

d. The outsourcing of management and service provision of immigration detention centres

FECCA argues that the government should instigate a full judicial inquiry to examine the management and treatment of detained asylum seekers within all the present detention centres. The recommendations of the recent Palmer report indicates the need for a re-examination of the contractual relationship between DIMIA and GSL, to ensure more positive outcomes for asylum seekers within immigration detention facilities.

Currently, Australia's immigration detention centres are "prison" like environments which are not people-focused and do not recognise, or account for in any way, the often extreme circumstances that have lead asylum seekers to Australia. We are concerned that there appears to be a lack of cultural competency in both "on the ground" staff and management, which often results in violation of human rights of people in immigration detention facilities. For example, recently there was a case reported where a Muslim woman was the only woman in an immigration detention facility housing 50 Muslim men. The fact that she found herself in this situation shows a lack of cultural understanding, and lead to a violation of her human rights and her cultural liberty.

It is vitally important that there be clear guidelines and protocols for management of detention centres that ensures that human rights are upheld, that people be treated with compassion and concern for their physical, emotional, spiritual and psychological welfare.

e. any related issues

FECCA is disturbed at the tendency by the media and some high profile people in public life to describe people who seek asylum and arrive in Australia by boat as "illegals", "queue jumpers" or, worse still, potential terrorist infiltrators. These descriptions are misleading, inaccurate and cruel. It has the effect of reinforcing racial and/or religious stereotyping and can lead to community intolerance, fear and racism. This, in turn, can have an effect on other members of the community who have no connection to the group being marginalised. FECCA argues that it is important to undertake a public campaign to educate the public about the causes of the current refugee outflow rather than promoting false images of "boat people, illegals, potential terrorists and queue-jumpers". This is particularly important in the current climate of fear resulting from the London terrorist attacks.

The Refugee Council of Australia argues that

"over 90% of the so-called 'unauthorised boat arrivals' have been determined by Australia to be **refugees**".

They quote DIMIA figures that state that

"8,260 of the 9,160 people who arrived between July 1999 and June 2002 received visas. They were never illegals; they were asylum seekers who have now been recognised as refugees."

(Refugee Council of Australia, Open Petition, November 2003).

This reinforces the need for a radical change in the way that people seeking asylum are described in the public domain.

FECCA argues that the Minister for Immigration and Multicultural and Indigenous Affairs must show strong leadership in re-orienting the way that the Migration Act (1958) is administered, to ensure that it is administered compassionately with a prime focus on upholding the humanity and human rights of all people in immigration detention and at risk of deportation.

FECCA would welcome the opportunity to discuss any of the issues raised in this submission. Please do not hesitate to contact either the FECCA Chairperson, Mr Abd-Elmasih Malak on [REDACTED] or the FECCA Director, Mr Conrad Gershevitch on (02)6282 5755, should you wish to do so.

Thank you for the opportunity to present our views to the important Inquiry.