



NCCA Submission to the Senate Select Committee Inquiry into

A Certain Maritime Incident



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Introduction

The National Council of Churches in Australia (NCCA) welcomes the opportunity to submit its views to the Senate Select Committee, as it enables the NCCA to contribute the knowledge it has gained from its involvement in refugee and asylum issues since 1948.

The NCCA is comprised of fifteen major Christian churches working together to strengthen relationships and understanding of each other and to fulfil common witness, mission and service. Through the NCCA, member churches come together to break down the structures that create and perpetuate poverty, oppression, injustice and division.

The National Program on Refugees and Displaced People operates under the Christian World Service Commission of the NCCA. It is concerned with policy relating to refugees, asylum, settlement, access and equity. It is also involved in awareness raising, education, community development and advocacy. This work is done in partnership with the State Councils of Churches, which each have a refugee program that maintains close links to the community and involves member churches in providing services to refugees and asylum seekers.

The NCCA also works in partnership with National Councils of Churches in the Pacific through the Pacific Conference of Churches, and is an active member of the World Council of Churches' Global Ecumenical Network for Uprooted People, which brings together regional working groups on uprooted people.

It is within the context of these relations and concerns that the NCCA makes the following submission on *criterion c) of the terms of reference* (the Pacific solution):

(c) In respect of the agreements between the Australian Government and the Governments of Nauru and Papua New Guinea regarding the detention within those countries of persons intercepted while travelling to Australia, publicly known as the 'Pacific Solution':

- (i) the nature of negotiations leading to those agreements,*
- (ii) the nature of the agreements reached,*
- (iii) the operation of those arrangements, and*
- (iv) the current and projected cost of those arrangements.*

NCCA's Response to the Terms of Reference

Given the overlap of issues within the terms of reference, particularly between points I to III, the following submission is made in a thematic format, with each section addressing one or more of these four terms of reference.

The NCCA has been deeply saddened by the events that transpired after the arrival of the M.V. Tampa in September 2001. While the so called 'Pacific solution' appears to offer an answer to the problem of 'unauthorised arrivals, the NCCA believes it is unsustainable and an undesirable way to deal with uprooted people.

The NCCA is concerned that the Pacific solution:

1. Goes Against the Spirit of the 1951 Refugee Convention

While the NCCA recognises the generosity of successive Australian Governments in maintaining an offshore program, it reminds the Government that its primary responsibility under the 1951 Refugee Convention and its 1967 Protocol is towards refugees arriving onshore. In the NCCA's view, turning back asylum seekers at the border is contrary to the spirit of the 1951 Refugee Convention.

- Our church partners in the Pacific feel that deploying the Royal Australian Navy to intercept boat people and forcibly transfer them to detention centres in the Pacific for the duration of the refugee status determination process lacks proportion, both as a response to a comparatively minor influx of asylum seekers, and as a measure to combat people smuggling and secondary movement.

Under international law, it is clear that any domestic law redefining migration zones cannot override the obligations Australia has entered into under the 1951 Refugee Convention. Article 27 of the Vienna Convention on the Law of Treaties plainly states that "*a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*".¹ In excising sovereign Australian territory, the Commonwealth Government also appears to have failed to properly consider the undertaking it made when signing the International Covenant on Civil and Political Rights "*to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant.*" (Article 2).

2. Sets a Poor Precedent for Other Countries

- The NCCA believes the Pacific solution signals a further withdrawal from the Refugee Convention and sets a negative precedent that may encourage other developed countries to abrogate their responsibilities. It also sets a poor precedent for developing countries such as Iran and Pakistan that have borne the brunt of mass influxes in the millions from Afghanistan. Indeed, in justifying closing its borders in 2001, Pakistan cited Australia's reaction to the Tampa asylum seekers.
- The use of aid as a lever to extract concessions from smaller aid dependent countries also leaves a lot to be desired, particularly when it involves forcibly relocating asylum seekers. What if other countries were to follow Australia's lead in making aid conditional upon taking asylum seekers turned away from their borders?

¹ Refugee and Immigration Legal Centre, *Submission Concerning Article 31 of the Refugee Convention – "non-Penalisation, Detention and Protection"*, November 2001.

3. Harms Australia's International Reputation

- Far from creating the impression that Australia is trying, in a cooperative manner, to find solutions to alleviate the circumstances that drive people to flight, the Pacific solution creates the impression that we are seeking to dump our 'problems' on small less-developed and/or dependent nations. This makes Australia look like an unwelcoming country instead of a tolerant, compassionate, multicultural society, and will have the effect of discouraging skilled migrants, as business groups have noted. Australia is, after all, in competition with developed nations for such migrants and it is Australia's image that is one of our major attractions.
- Since the Tampa stand-off, the impression expressed by our church partners in the Pacific and internationally is one of Australia lacking compassion and violating international law. Such a perception could undermine Australia's efforts to promote human rights, good governance and the rule of law abroad.

4. Distorts Australia's Pacific Development Priorities

- As an ecumenical Christian organisation working in partnership with National Councils of Churches in the Pacific through the Pacific Conference of Churches, the NCCA is deeply concerned about the potential the policy has for distorting Australia's development assistance priorities in the Pacific. Nauru, for instance, has been promised \$30 million in aid (on top of \$72 million for detention centres) for 2001-02, but the Government has only budgeted for \$20 million², leading to fears that the other \$10 million will be cut from bilateral or regional programs. Given the outlay is more than Nauru received from 1993 to 2001 and takes up 18% of AusAID's entire budget for the Pacific, there is legitimate concern that AusAID's priorities may now shift away from poverty alleviation and good governance.³

5. Causes Distortions

- The NCCA is also concerned over the impact that large offers of conditional development aid have on the domestic politics of PNG and Nauru, particularly on the freedom of the media in these countries. According to the Age, the Governments of PNG and Nauru have been quick to stifle debate over the deal. In Nauru, Dr. Kieran Keke, one of two doctors at Nauru's main hospital, and David Adeang, Presidential Counsel, were suspended without pay on orders of President Rene Harris after they took a stand on the asylum seeker deal.⁴ In PNG, Prime Minister Mekera Morauta sacked Foreign Minister John Pundari for his opposition to Australia's plans. It also appears that the Government's decision to lift sanctions against Fiji just 5 hours before Australia's Federal Election was announced on 5 October 2001, was premature, and clearly designed to facilitate negotiations for Fiji to become another Pacific camp for Afghan and Iraqi asylum seekers.⁵

² In its Mid Year Economic and Fiscal Outlook Statement, the Government allocated an extra \$16.4 million to Nauru, on top of existing AusAID commitments of \$3.4 million.

³ Oxfam-Community Aid Abroad, *Adrift in the Pacific: the Implications of Australia's Pacific Refugee Solution*, February 2002.

⁴ Paradise Lost? Nauruans Begin to Question the Deal, Clare Miller, the Age, 19 October 2001.

⁵ Fiji Sanctions Lifted Early for Boat People Deal: ALP, The Age, 19 Oct 2001.

- In prematurely lifting the sanctions, the Government also appears to have broken ranks with New Zealand and the Commonwealth Ministerial Action Group. This undermines Australia's credibility. On the one hand, we are seen to be acting without adequate consultation, and on the other, we are recommending strengthening the multilateral institutions we have failed to consult with.
- Despite the fact that Australia has long encouraged Pacific Island nations to assume financial responsibility, the deal offers a way for the Government of Nauru to avoid balancing its books.

6. Has Serious Practical Drawbacks

- The most serious problem is that the legislation fails to articulate adequate guarantees of safety in defining what constitutes a 'safe country'. This is particularly worrying given that Australia is sending asylum seekers to Nauru, which is not a signatory to the 1951 Refugee Convention and is therefore under no legal obligation not to return or expel refugees. Although PNG has signed the Refugee Convention, it has done so with significant reservations.⁶
- There are a number of other drawbacks as well. First, asylum claims are being processed by Australian immigration officials, but not under Australian law, creating concerns over claimants right to judicial appeal. Access to legal advice is also of concern, as neither PNG nor Nauru have the capacity to offer adequate legal assistance. Second, security and other contracts have been given to private corporations, creating concerns over transparency and accountability, particularly given the remote location of the detention centres, which will make it difficult for NGOs and Churches to monitor detention conditions and processing standards even if greater access to the centres is granted. Third, there is genuine concern that if resettlement places cannot be found or unsuccessful applicants cannot be returned home, then they may face indefinite detention.
- In practice, the policy is unlikely to stop desperate people from seeking to reach Australia. In fact, it may induce some boats to head for the mainland, increasing the risk for passengers. One thing is certain. Through further restricting official channels for asylum seekers, it will create greater pressure to circumvent recognised channels. For example, by obtaining false documents to enter Australia by air (particularly for those denied reunion with family members in Australia).

7. Distorts Pacific Approaches to Refugees

- The policy also sets poor precedents for the region in the treatment of asylum seekers. Through exporting its problem and casting the burden on aid dependent countries, Australia has distorted the policy and practise of countries like Nauru and PNG. Left to their own devices, PNG and Nauru may have chosen approaches more in keeping with UN Conventions.

8. Creates Strong Pacific Opposition

- Outside government circles in the Pacific, Australia's plans are clearly unpopular, with vocal opposition from our main partners, the Pacific Conference of

⁶ Oxfam-CAA, op cit, February 2002.

Churches and the Pacific Desk of the World Council of Churches, along with the NGO Coalition on Human Rights, Nauru's main opposition party and others. The comment of Hilda Lini, Director of the Pacific Concerns Resource Centre, sums up this feeling: *"The Pacific has always been a dumping ground for everything industrialised countries reject, whether its weapons, whether its military bases, (nuclear) testing, or in this case dumping of human beings from other regions"*. On balance, it is clear that these financial inducements have heightened feelings of neo-colonialism, and the sense that Australia has impinged upon the sovereignty of Pacific Island nations.

8. Lacks Transparency

- Another major concern has been the Government's secrecy over the cost of the policy and lack of detailed information communicated regarding decisions being taken and the implementation of the policy.

8. Disproportionately Allocates Resources

- Official Government figures estimate the cost of setting up and running the detention centres in the Pacific at \$96 million in 2001-02. Recent reports, however, state that the Cabinet has been told it will cost up to \$500 million.⁷ If this is the case, the NCCA believes the resources being employed to administer the Pacific solution lack proportion in comparison to the resources it has allocated to supporting countries of first asylum. Last year, for example, Australia's total allocation to the countries surrounding Afghanistan, Australia's largest source country for asylum seekers, was just Aust. \$21.3 million.

NCCA Recommendations:

The NCCA recommends abolishing the 'Pacific Solution' and recommends that any future measures to counter people smuggling is targeted, humane and proportional to the problem.

The NCCA recommends that the Government enlighten the community on the status and future of the asylum seekers detained on Nauru and Manus Island and its guiding principles in developing the 'Pacific solution'.

For more information, please contact:

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⁷ The estimate, approved by Cabinet in September when Nauru first agreed to house and process asylum seekers, was based on a joint submission from Immigration Minister Philip Ruddock, the Foreign Minister, Alexander Downer, and the then defence minister, Peter Reith.