

## When is Australia not Australia?

*Social Issues briefing #050, 04/05/06*

*Everyone has the right to seek and enjoy in other countries, asylum from persecution.*

Universal Declaration of Human Rights, Article 14

*The purpose of this briefing is to give you some information about a recent decision by the Federal government. For the theological reasoning behind our position, please refer to Social Issues briefings #008, #010 and #043. Please note that these latest changes are in relation to unauthorised boat arrivals.*

International Law states that all people have the right to *seek* asylum in 'a safe country' in order to flee persecution. Asylum seekers are people who are in the *midst* of that process. Refugees are those who have been *granted* asylum in another country, having been found to be genuinely seeking protection from persecution.

The United Nations produced a document in 1951 known as the 1951 Refugee Convention (can be found online at <http://www.unhcr.org/cgi-bin/texis/vtx/protect?id=3c0762ea4>). 145 countries are signatories to the Convention. The document sets out a range of agreed upon measures in order to recognise those who are in genuine need of protection and the legal structures within which countries are to offer them that protection. If a person makes an asylum claim on the soil of a Convention signatory, that country's obligations under the Convention are immediately triggered. Australia is a signatory of the 1951 Convention. Nauru is not.

### Origins of the 'Pacific Solution'

It was 26 August 2001. In Australia there was emerging information about an Indonesian fishing boat that had run into trouble close to Christmas Island in the Indian Ocean. The Norwegian ship *MV Tampa* came to the rescue, throwing a veritable lifeline to the 438 people who were on board. They were mostly Afghan and Iraqi asylum seekers. When some of them insisted upon being taken to Australia, first the Australian and then the Indonesian governments denied them permission to land, despite the *Tampa's* crew sending medical distress messages. For eight days the governments of Australia, Indonesia and Norway argued about the fate of the 438 asylum-seekers.

On 1 September 2001, due to the refusal of the Australian government to allow the 438 to land on Australian territory, the small Pacific nation of Nauru offered to take in the asylum-seekers while their claims were being processed. Australia provided Nauru with an aid package of around \$20AUD million in return for it taking in the asylum seekers.

In response to the *Tampa* incident, the Federal government decided to process asylum claims off-shore for people who are intercepted attempting to enter Australia or who arrive in external territories of Australia unless they carry valid travel documents. However, people who arrived in mainland Australia without valid travel documents would still be processed under Australian migration law while being held in immigration detention. Two Pacific countries, the Republic of Nauru and Papua New Guinea (PNG), as well as the International Organisation for Migration (IOM) agreed to Australia's financial and aid incentives to detain asylum seekers in centres run by the IOM. Australia has been meeting the costs of establishing and maintaining these detention centres, and of processing asylum applications. This new approach has become known as "the Pacific Solution".

Following the Tampa incident, several more boats were intercepted and redirected by Australia to Nauru. The United Nations High Commissioner for Refugees (UNHCR) expressed the view that Australia's new policy of intercepting unauthorized arrivals who intended to make asylum claims and taking them elsewhere "is inappropriate and inconsistent with the edifice of asylum that's been built up over years".

On 11 October 2001, the Australian government announced it had signed a Memorandum of Understanding (MOU) with Papua New Guinea. Australia agreed to provide PNG with an initial aid package worth \$1AUD million in return for building a refugee processing centre. PNG chose to build the centre on the remote Manus Island.

It is estimated that the centre cost Australian tax-payers \$700,000 per month – and up until May 2004, only one detainee was held at the detention centre on Manus Island. The Immigration Minister Amanda Vanstone defended keeping the centre open as part of the off-shore processing system.

In November 2003 the government also acted to remove ('excise') 4,000 islands from Australia's migration zone, in order to deter unauthorised arrivals by preventing their access to Australia's refugee determination procedures altogether. The effect of this is that in most cases any unauthorized person who arrives in one of these territories by boat will not be able to apply for an Australian visa. Basically, there is some territory that triggers the Convention, and some territory that doesn't.

Last year a handful of Senators and MPs pressured the Government to overhaul Australia's strict, by international standards, detention and asylum-seeking regime. The changes that were agreed to by the Government, coming out of direct talks with the Prime Minister, included the release of all children from mainland detention centres and the involvement of the Ombudsman to review cases of those who have been held in detention for more than two years. This development had the effect of seeming to ease this aspect of existing government policy.

But last month the Prime Minister announced that the Government intends to extend the 'Pacific Solution' policy. It seems this extension will effectively tighten the policy more than it was in 2004, and the tightening is directed at unauthorised boat arrivals. From discussions held with the Government, here are some of the elements of the new policy:

- All asylum seekers who arrive by boat without documents (unauthorised arrivals), regardless of whether they reach the Australian mainland or not, will be sent to one of three immigration detention centres for processing – Nauru, Christmas Island or Manus Island in Papua New Guinea. These centres are not governed by Australian migration law – there will only be a refugee status decision by a DIMA officer and internal DIMA review. There will be no access to the Australian legal system such as a merits review by the Refugee Review Tribunal or judicial review.
- The change will be effected by Amendments to the Migration Act that treat unauthorised boat arrivals as subject to this off-shore processing regardless of where they land in Australia. It appears that unauthorised plane arrivals will not be included in the new off-shore processing.
- People found to be refugees will remain off-shore until resettlement to a third country is arranged. It is unclear whether Australia will be considered a third country option.
- There will be a non-reviewable, non-compellable power for the Minister to allow persons access to the on-shore process.

This proposal is due to be debated when Parliament resumes during the week of 8-11 May 2006.

### **Why are these changes a concern?**

The new system appears to offer no guarantee anymore that a person in a boat will be returned to a 'safe country'. The 1951 Convention guarantees return only to 'safe countries'; but all boat arrivals will find themselves in processing centres not governed by the 1951 Convention.

Much has been written about the deleterious mental health effects of those held for prolonged periods in immigration detention centres – particularly the most vulnerable. It is of significant concern that the new proposal increases the potential of children being placed in immigration detention centres in remote locations. The government's proposed changes will increase the number of children in offshore detention, who will find no protection from the concessions made by the Liberal backbenchers last year.

The Universal Declaration of Human Rights states that people who have a fear of persecution have a right to seek asylum in a safe country. Transferring asylum seekers to detention centres in remote, offshore locations is not very different from how we punish people.

Both asylum seekers, and those found to be genuine refugees, will face the prospect of indefinite detention in a remote and isolated location.

Asylum seekers will be denied access to a fair and impartial review process via the Refugee Review Tribunal. Access to legal advice and representation could also be restricted. The Tribunal has reversed thousands of the government's decisions in recent years. Without this review refugees may be returned to face persecution.

The Federal Ombudsman and HREOC will be unable to inspect the detention centres or review cases.

The physical remoteness of Nauru, Manus Island and Christmas Island will make it much harder for media, concerned Australians and asylum seeker support agencies to reach those held in detention.

Most importantly Australia will have effectively excluded itself from the provisions of a Convention of which it is a signatory. This legal manoeuvring seems mean-spirited, inhospitable and uncaring in the extreme.

Australia may be an island in geographic terms, but we are not an island in humanitarian terms. We must always therefore seek to fulfil our international responsibilities with compassion, wisdom and genuine care.

### **What can you do?**

Please write emails or letters to your elected Member of Parliament and Senators or phone their offices. Ask them all to uphold Australia's international obligations, provide protection to refugees and look after the best interests of children and families.

Australia currently has an international legal obligation to provide protection to asylum seekers who land in Australia. This obligation should continue to be met and not left to a 'third country' to meet.

Ask Coalition MPs to make a principled stand and cross the floor

You can find out the contact details of all MPs and Senators by going to <http://www.aph.gov.au/house/members/index.htm> or <http://www.aph.gov.au/senate/senators/index.htm>

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### **Sources/Further Reading:**

A Just Australia – you can write a letter to your MP through [http://www.ajustaustralia.com/thingsyoucando\\_writealetter.php](http://www.ajustaustralia.com/thingsyoucando_writealetter.php)

Uniting Justice – press release found at <http://assembly.uca.org.au/unitingjustice/mediareleases/index.htm>

Amnesty International – Australia – you can read a press release and write a letter at [http://www.amnesty.org.au/home/spotlights/australia\\_changes\\_to\\_australias\\_migration\\_act\\_a\\_travesty\\_of\\_justice](http://www.amnesty.org.au/home/spotlights/australia_changes_to_australias_migration_act_a_travesty_of_justice)

Chilout – you can read information and write a letter at <http://www.chilout.org/>

Get Up! – you can read information and sign a petition at [http://www.getup.org.au/campaign.asp?campaign\\_id=30](http://www.getup.org.au/campaign.asp?campaign_id=30)

Clausen, Lisa, Closing the Asylum Gate, *TIME South Pacific*, found online at <http://www.time.com/time/pacific/magazine/article/0,13673,503060501-1186618,00.html>

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