

**The Newly Proposed Refugee Laws: A  
Renovation of John Howard's Pacific Solution**

*Jessie Taylor*

By now, you may have heard of the reforms to the Refugee Law that were announced the week before Easter.

These changes have come as a surprise to many refugee advocates and lawyers, as recently the Government had been softening its line on asylum seekers, acknowledging that most boatpeople (around 93%) who apply for refugee status in Australia are eventually accepted as legitimate refugees.

Arriving in Australia without documents, in a boat, uninvited, is not illegal under International or Australian domestic law. In fact, this exact situation is provided for in the Universal Declaration of Human Rights, the UN Refugees Convention, and in section 36 of Australia's own *Migration Act*. But since 1992, the Australian policy has been to detain such people mandatorily and indefinitely – until they are granted a visa or removed. The nature of Australia's refugee determination process is such, however, that thousands of people (including many hundreds of children) have been jailed for years while their applications are processed, and mostly eventually found to be legitimate.

Recently, particularly following the Cornelia Rau episode and Petro Georgiou's Private Members Bill in 2005, the Howard Government has been softening its line. It admitted that it

was not morally sustainable to detain children, and it rolled back the 'Pacific Solution'. This does not constitute a relaxing of Australia's border protection policy, as all entrants into Australia still undergo rigorous identity, health, security and 'public interest' checks. ASIO has also stated on a number of occasions that never in history has an asylum seeker posed a security risk to Australia.

I had believed - hoped beyond all hope - that all of this indicated that the Government's very harsh treatment of refugees was sort of coming to an end, but now suddenly the Government has regressed by about 5 years, straight back into the Tampa days - from the 'change of culture' and 'softer approach to asylum seekers' straight back into the Pacific Solution of 2001 - the 'sending a strong message to people smugglers' and other extremely harsh ideas that resulted in the 2001 Howard election victory.

There are some very serious consequences to the policy changes that have been announced. This is the most drastic amendment to the Migration Law in Australia's history, trumping even the introduction of the mandatory detention provisions in 1992. I will outline a few of the changes and their consequences here...

**ASYLUM SEEKERS WILL BE PROCESSED  
OFFSHORE**

Asylum seekers will not be able to wait in mainland detention centres while their claims are processed. They will be sent to Christmas Island, Manus Island, and the tiny, bankrupt heap of an island - Nauru. It will be here - out of sight and

out of reach of the media, lawyers, medical professionals and the Australian public - that their cases will be determined. There will be no external review of decisions made by Australian Immigration officials on Nauru. In the current system, the external review function is performed by the Refugee Review Tribunal, which overturns around 45% of all negative DIMA decisions, and grants the applicants protection. In the case of Iraqi and Afghani asylum seekers, the RRT eventually overturns over 90% of negative decision by DIMA. Under the proposed bill, there would be no such opportunity to have errors corrected by an external body.

The Pacific Solution is economically unjustifiable. It currently costs the government \$1.8 million annually to maintain Manus Island with no detainees. The transportation of 43 West Papuan asylum seekers to Christmas Island in January cost more than \$700,000. (These figures do not include the more than \$1 billion dollars already spent on detention, transportation and deportation). In full swing, it costs the Australian government around \$100 million a month to keep Nauru operational. It is currently costing over \$1 million per month to keep two young Iraqi men (both assessed as refugees by Australia AND the United Nations High Commissioner for Refugees) detained on Nauru, even with massively reduced services. Last week I received an email from one of them, which stated the following: *“Every thing is terrible here and the situation is becoming more unbearable day after day, or let me say hour after hour. I hope you had nice dreams last*

*night. As for me, I'm only having nightmares and no matter while I'm asleep or awake... it's all the same”.*

The Pacific Solution is very, very costly, both in financial terms, and in human terms.

#### AUSTRALIA WILL NOT BE ACCEPTING ANY 'BOATPEOPLE' AS REFUGEES

By deciding only to take asylum seekers as a very last resort, Australia has reneged from its obligations and responsibilities under International Law. It has crossed a line that indicates a disregard for principles of international burden sharing and responsibility for some of the world's most needy individuals. This policy breaches the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention Against all forms of Racial Discrimination, the Refugees Convention, the Convention Against Torture, and a few others. This is not something we should be proud of. Remember that all of these Conventions were drafted as a reaction to the horror of the Holocaust, and the conviction of the international community that it is our global responsibility never to let such a thing happen again. By making these changes Australia is indicating that we don't see that as being much of a priority anymore, and opening the door for other countries to disregard those documents too. This is very dangerous territory

#### CHILDREN WILL BE DETAINED AGAIN-MANDATORILY & INDEFINITELY

Last year, the Howard Government conceded that it is unacceptable policy to detain children indefinitely, under any circumstances. This

resulted in all children being released from immigration detention by the end of July 2005. The long-lasting and horrific impacts of immigration detention on children are very well known. In Australia, the only documented incidents of *pre-adolescent* suicide attempts are in Immigration Detention. And there have been many. Previously-healthy children as young as 5 have deeply cut themselves, starved themselves, hanged themselves with bed sheets, belts and electrical cords, and drunk cleaning fluids to try and end their own lives in detention. The Human Rights and Equal Opportunity Commission Report of the National Inquiry into Children in Immigration states that “children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children in detention”.

Here are some case notes from a 12 year old boy, also found in the HREOC report. This is just one of more than a hundred cases examined by the Commission:

*11 April 2002: Child attempts to hang himself with a bed sheet on playground equipment.*

*12 April: Child's mother becomes very upset and is taken to hospital for observations and assessment by psychologist. Says that she is on hunger strike. Child recorded as saying: 'he wanted to kill himself because his mother doesn't eat and she cries all the time...Very tired*

*of camp, getting up in the morning and seeing the fences and dirt. "We came for support and it seems we're being tortured. It doesn't matter where you keep me, I'm going to hang myself".'*  
*19 April: Child attempts to hang himself from playground equipment. Child taken to hospital with his father.*

*17 May: Child attempts to hang himself from playground equipment. Taken to Woomera and then returns.*

*30 May: Psychiatrist reports that 'for this child the matter is simple. If he remains in custody he wishes to die. He can no longer bear razor wire and dirt.'*

*7 June: Child found in the razor wire. Says 'he can't go on anymore.'*

*8 June: Child found in razor wire again.*

*14 June: Child climbs fence into the razor wire a third time. After about 8 minutes climbs down again.*

*24 June: Child on hunger strike.*

*13 July: Child found in razor wire.*

*26 July: Child attempts to hang himself.*

*29 July: Child smashes lights in dining area, slashes arm with fluorescent tube...*

(This is just a sample. The case notes continue in this way for more than a year).

In order to send its 'strong message', the government has decided that the suffering and permanent damage of children is a legitimate means to achieving a policy objective. This is obviously unacceptable, and must not be allowed to creep back into Australian law.

FOREIGN POLICY CONSIDERATIONS  
WILL NOW TRUMP AUSTRALIA'S  
OBLIGATIONS TO REFUGEES

By asking countries of origin to comment on the legitimacy of refugee claims, a number of unsatisfactory things are occurring:

- Australia is pandering to its own domestic interests - a factor which is never supposed to come into consideration in the refugee determination process. International Human Rights Law is supposed to transcend nationalistic foreign affairs issues and objectives.

- The recent suggestion that the Indonesian military be allowed to assess the refugee claims of West Papuan applicants is quite absurd. It's like asking Saddam Hussein's regime to review Iraqi asylum claims. Or the Taliban to look at Afghan Hazara claims. Or the Nazis to look at 1940s Jewish claims. Or the Dark Lord Sauron to assess Frodo Baggins' claim. We are looking at a Government that clearly has very little concept of what the realities of persecution look like. This is an idea which is either shortsighted, or willfully cruel.

- We are making a mockery of ourselves on the world stage. The International community has not looked at Australia with such contempt and incredulity since we threatened to seize the *MV Tampa* and its cargo, and charge its Norwegian captain Arne Rinnan with the crime of people smuggling! This posturing caused a major international incident, which was diffused only by the extremely generous attitude of the Norwegian government. In Geneva, Australian-Norwegian relations are only just recovering. We are not doing ourselves any favours by turning away from widely recognised

international standards of Human Rights, and opening the way for other countries to do the same.

THE AUSTRALIAN MAINLAND IS BEING  
EXCISED FROM THE 'MIGRATION ZONE'

During the Pacific Solution, Australia took the extraordinary step of 'excising' thousands of Australia's islands from the 'migration zone'. This set up an extraordinary distinction between Australia's sovereign territory, and its migration zone. This meant that anyone arriving on those islands was not arriving in Australia's 'migration zone', therefore had no rights in Australian law, and no recourse to the Australian legal system. This idea was slammed from many angles, not least of all because it was enacted retroactively – that is, it stripped the rights of people who had landed on the islands even *before* the law was passed.

Under the proposed changes, *the entirety of Australia will be excised from the Australian 'migration zone'*. People arriving in Australia will not be able to avail themselves of Australia's protection, which it promised by signing and ratifying the UN Refugees Convention. It is not difficult to see why this is highly problematic and unfair.

In summary, **this stuff is huge**. We are backing away from our obligations under International Law. Re-activating a policy that has been slammed by the International community, the United Nations, welfare groups, human rights groups, psychiatrists and other nations. Adjusting things so that children can be detained again. We will be shopping around trying to

make other countries take refugees who have landed on our soil.

If you voted for John Howard at the last election, you should write to him and TELL him that, and then tell him that this proposed change is untenable. Let him have it. Even if only for the fact that there is no way that it is acceptable to lock up innocent, already traumatised children on a desert island indefinitely.

If every country behaved in the way Australia is behaving at the moment, there would be literally nowhere in the entire world where it would be possible for refugees to go and finally find some peace, safety and security.

If you have questions contact Jess Taylor:  
[jessie@thejusticeproject.com.au](mailto:jessie@thejusticeproject.com.au) or 0407 220 443

#### SO WHERE ARE WE NOW?

This Bill was supposed to pass in the week of Monday 8 May 2006. However, there were such grave concerns raised from within the Liberal Party itself that the Government has had to submit the Bill for inquiry to the Senate Legal and Constitutional Committee. The LegCon Committee is due to report on 13 June. Up until 22 May, you are able to lodge your *own* submission about the Bill, for consideration by the Committee.

The other good thing about it having been referred to LegCon is that it delays the possible passage of the Bill by at least a month. This leaves plenty of time to let our elected

representatives know we are not happy with this policy.

#### DON'T GET MAD. GET ACTIVE!

On the next page you will find some points you can use to write letters to some politicians, and even make a submission to the Senate Legal and Constitutional Committee.

I know a lot of you will be nervous about doing this because you feel like you don't know the issue well enough and you don't know fancy language to express yourself in. But some of the BEST letters I've ever seen are written by people who are just unhappy with what they are seeing happen. They're not lawyers, they're not politicians, they're just Australian citizens who hate injustice. So get into it!

And tell your friends and family to do the same! If we sit back and take no action on this reversion to the Pacific Solution Episode II, before long we will be kicking ourselves. Hard.

#### WRITE TO THE POLITICIANS WHO WILL VOTE ON THE BILL

Here are some points you might like to include in your letters. You can say that:

- You congratulate Australia's generosity and fairness for granting the West Papuan asylum seekers Temporary Protection Visas.
- You encourage the Government to reflect Australia's multicultural history by accepting refugees in an open and generous way, subject to health and security checks

- You are disappointed to see Australia turning away from its obligations under International Law by suggesting this policy.
- You think it is a bad idea to send asylum seekers to islands for processing because they should be able to have access to lawyers, friends, the media, medical professionals and visitors.
- You think Australia should keep accepting refugees, because they are people in desperate need of our help, and Australia has signed UN Conventions agreeing to help them.
- You think it is not a good idea to have any policy that allows for innocent people to be locked up for years and years, ESPECIALLY children!
- (These are only a guide – really, the best way to express yourself is on your own terms and with your own priorities...)

For a list of people you may like to write to, see <http://asylumseekernews.blogspot.com>

I would recommend particularly that you contact Senator Steve Fielding (Family First), and Senators Vanstone, Payne and Troeth (Liberal).  
C/- Parliament House  
Canberra, ACT 2600

But there are many more and they ALL need to hear it.

#### WHERE CAN I LEARN MORE?

If you want to learn more about this issue generally, there are many websites you may wish to look at.

- This blog site about various issues relating to refugees in Australia:  
<http://asylumseekernews.blogspot.com>
- The Asylum Seeker Resource Centre:  
[www.asrc.org.au](http://www.asrc.org.au)
- Left on Nauru (the website of the 2 remaining Nauru detainees):  
[www.leftonnauru.com](http://www.leftonnauru.com)
- The Justice Project  
[www.thejusticeproject.com.au](http://www.thejusticeproject.com.au)
- [www.getup.org.au](http://www.getup.org.au)