

Project SafeCom Inc.
PO Box 364
Narrogin
Western Australia 6312

Mobile 0417 090 130
Fixed line (08) 9881-5651
Jack H Smit (MSocSc, BSW) - Project Coordinator
Email: jackhsmit@safecom.org.au



Website: <http://www.safecom.org.au/>

Thursday, 19 July 2012

Submission to the Houston Expert Panel on Asylum Seekers

Expert Panel on Asylum Seekers
PO Box 6500
Canberra ACT 2600
expertpanelonasylumseekers@pmc.gov.au

Dear Expert Panel members,

The following pages contain our submission to be considered by your members in line with your brief to provide policy advice on:

- how best to prevent asylum seekers risking their lives by travelling to Australia by boat;
- source, transit and destination country aspects of irregular migration;
- relevant international obligations;
- the development of an inter-related set of proposals in support of asylum seeker issues, given Australia's right to maintain its borders;
- short, medium and long term approaches to assist in the development of an effective and sustainable approach to asylum seekers;
- the legislative requirements for implementation; and
- the order of magnitude of costs of such policy options.

We will only address some of the points outlined in your Terms of Reference, but in endorsing three other submissions to your Panel you may regard the points made in those submissions as being relevant to this submission. Nonetheless, we hope our writing will provide salient and original contributions to the dilemmas before you.

Yours sincerely,

Jack H Smit (MSocSc, BSW)
Project Co-ordinator

A handwritten signature in blue ink that reads "Jack H Smit". The signature is written in a cursive style and is underlined.

Submission to the Houston Expert Panel on Asylum Seekers

I write this submission on behalf of Project SafeCom, but within the context of having been engaged within the asylum seeker policy area for more than a decade as an advocate and activist. My recently completed scholarship-based academic research on Australia's responses to asylum seekers who arrive by boat (see Smit, 2010, 2011) explored historical origins of the politics of asylum seeker policies, and inevitably my background as well as this research influences this submission.

This submission endorses the submission by 204 academics to your panel¹, the submission by the Asylum Seeker Resource Centre² also sent to you, and the submission by the NSW Refugee Action Coalition³.

The recommendations follow from the material argued in a number of subsections with large headings below.

1. Politicisation – rhetoric vs facts

1. Australia only has an “asylum seeker problem” because politicians have deemed this to be the case. In other words, we have a “political problem” you have been called to help resolve. There is nothing unusual in the arrival of irregular migrants knocking on the door of countries at the border. The first boat arrival from Vietnam in 1976 created this “new class” of maritime asylum seekers in Australia, yet over the 36 ensuing years just 37,000 asylum seekers arrived in this manner (that’s an average of a little more than 1,000 people per year; this compares to the annual arrival of 100,000 to 180,000 migrants). Compared to other countries, such as Germany, where an annual number of asylum applications of 80,000 or more are common, Australia does not have a problem if politicians would not regard it as a problem.

2. We are delighted that your Expert Panel members are not recruited from our “political class” and are therefore tasked to unpack the rhetorical layers in order to access the facts. We trust you are capable of this, but wish to offer a number of historical points at which politicisation entered the “reality” of Australia’s response to maritime asylum seekers.

3. Many of the deeply embedded labels and arguments in parliamentary and national discourse have their origins in rhetoric or rhetorical devices – political arguments to convince the Parliament and the audience of voters of the “better solution” of the political party the politician speaks for, a solution that is in this argument presented as “superior” than the plan of the other political parties. The nature of Parliamentary argument is that it minimises or trivialises the opposing argument and that it trivialises and ignores the weakness inherent in what has to be presented as “a solution”. For example, the term “queue jumper” was first proposed for use by the Immigration Department as a manipulative rhetorical device in April 1978 in a bipartisan meeting in Prime Minister Fraser’s Immigration Minister Michael MacKellar’s office – and keenly accepted by the Fraser government and the ALP opposition under the Hon Bill Hayden’s leadership.

4. Throughout the points below this submission will present more evidence that the contemporary “story” around boat arrivals has been laced with manipulative rhetorical constructs that do not cover the reality of maritime asylum seekers.

¹ http://our.murdoch.edu.au/Corporate-Communications-and-Public-Relations/_document/Media-Communications/OPEN-LETTER--Final.pdf

² <http://www.asrc.org.au/media/documents/asrc-submission-expert-panel.pdf>

³ <http://refugeeactioncoalitionsydney.files.wordpress.com/2012/07/rac-nsw-submission-to-expert-panel-on-asylum-seekers.pdf>

RECOMMENDATION 1: That the Expert Panel, in line with its mandate, shows excellence of performance in identifying, unpacking and setting aside those aspects of asylum seeker policy that have become embedded notions in political discourse but that are in nature manipulative rhetorical constructs.

2. Will we be “flooded” by asylum seekers?

5. The notion that Australia might be flooded by boat arrivals is a persistent notion – but also used as a rhetorical device in political discourse. It is however not backed by any factual evidence, and historically found to be false when used in the past. For example, during debate of several legislative measures in Parliament during 1999, former Immigration Minister Ruddock argued that “*whole villages are packing up*” in Afghanistan and he argued that there was “*a pipeline*” between Afghanistan and Australia, which would see the arrival of ten thousand or more asylum seekers per month. We can now check his rhetoric against real UNHCR refugee movement data from 1998 and 1999, which confirms that no more than 2-4% of the world’s asylum seekers made it to Australia, while the remaining 96-98% attempted to find shelter from Saddam Hussain and the Taliban in those years in Europe, the UK, Canada and the USA. UNHCR statistics published in July 2000 indicate that the overwhelming number of 1999 asylum applicants from Afghanistan had sought protection in Germany (60,380), the Netherlands (27,620), Denmark (15,790) and the United Kingdom (9,120). Australia ranked fifth in the table with 4,880 applicants; this included also those who arrived by air. For Iraqis, Australia also ranked fifth in 1999 (UNHCR, 2000). Generally speaking, this trend is confirmed throughout the ensuing years. Less than 2% of the world’s asylum seekers attempt to access our protection system; the rest moves elsewhere.

6. Another way of looking at the issue is to identify that throughout the period of boat arrivals from 1976 onwards, the number of maritime asylum seekers *has never exceeded 50% of Australia’s annual humanitarian intake* of between 12,000 and the current quota of 13, 750. It can confidently be stated that “*to be flooded by asylum seekers*” is a furphy and a manipulative rhetorical construct. If this is so, then the much argued notion that we should have *policies of deterrence vis-à-vis* maritime asylum seekers has lost most of its currency.

RECOMMENDATION 2: that the Expert Panel takes note of the rhetorical notion of instilling fear into the population and unmarks it as not being substantiated by facts.

3. Deterrence vs assistance

7. Australia’s response to unannounced asylum seekers has its basis in deterrence rather than in keenness to assist them to resettle in countries where safety from persecution is guaranteed. This is a saddening conclusion, more so because none of the deterrence measures have any impact on their desire to seek and find safety in Australia or elsewhere. First, the policy of *mandatory detention* has not had any impact other than on the mental health of asylum seekers, which *limits their economic and social contribution* as residents and citizens within Australia in the post-detention settlement period, in many cases for perhaps their entire life. Second, it has been noted by Labor politicians as well as others including migration experts that *Temporary Protection Visas do not deter asylum seekers* arriving in order to seek protection, but instead *changes the client cohort* that attempts to travel to Australia using the alternatives offered by smugglers – the starkest example being the foundered “*SIEV X*” vessel, which had large numbers of females and children seeking to join fathers and husbands already living as refugees in Australia. Third, mandatory detention *in remote regions or far-flung third countries* does not deter asylum seekers from attempting to seek safety by boat. Also, it has recently been noted that “*solutions*” such as *detention and processing in Nauru or Malaysia does not stop* smuggling sea journeys – because this detention and processing is *only reserved for those who have already made the maritime journey* facilitated by smugglers.

8. The *politics of keen assistance and resettlement* on the other hand will result in applause by the world community and the United Nations. There is a long-held tradition in conservative politics that argues that regard for a nation's sovereignty is more important than international engagement with the United Nations, where the UN and its Conventions is viewed as "interfering with national sovereignty". For example, former PM John Howard noted this in speeches and documents (see Howard, 1988, 1993). However, in an increasingly globalised world this position seems more and more untenable. By developing positive policies of assistance where we deal swiftly with asylum seekers in our own region *we will indeed be seen as carrying the same burden* as countries in Europe, the UK, Canada and the USA, countries who all deal with the refugees and asylum seekers in their region. The more we assist asylum seeker in transit in Indonesia before they jump on boats provided by smugglers, the better our bilateral relationship with Indonesia will be, and the higher our credibility will rate in the context of the Bali Process participant countries in our region. *Australia simply cannot afford to be seen as repelling asylum seekers* in the context that we, and not other countries in our region, are the country that has signed the UN Refugee Convention. The percentage of asylum seekers seeking settlement in Australia is minuscule compared to many other countries and sits between 2-4% of the world refugee cohort. This is unlikely to uncontrollably blow out of proportion if we start acting with decency and eliminate the deterrence elements of our policies. It may grow to 5% of the world's refugee cohort, but with our current migration intake levels of between 150,000 and 200,000 we can afford to raise our annual humanitarian intake to 25,000 to accommodate for this growth.

9. In recent years refugee advocates have visited Indonesia and interviewed as many as 250 asylum seekers (see Taylor, 2009, 2010). From these investigations it has become clear that UNHCR in Jakarta is chronically understaffed and under-resourced and that the process of registration and refugee assessment in Indonesia for asylum seekers who have fled from source countries to our northern Muslim neighbour country can take many years, and that on completing this quest UNHCR is unable to provide a resettlement country. The disappointment experienced by asylum seekers as a result of UNHCR Jakarta's limitations has been found to be a major if not central determining factor for those asylum seekers to resort to alternative travel means offered by smugglers to access Australia as a UN signatory country for safe resettlement.

RECOMMENDATION 3: that the Expert Panel takes note of how other countries regard Australia's policies of repelling and deterring refugees, and that it takes note that none of the deterrent policies have had any impact on the asylum seekers' urgency to find safety and resettlement options.

RECOMMENDATION 4: that the Expert Panel takes note of the fact that neither diverting asylum seekers to Nauru or to Malaysia stops them taking to boats, because these policies only apply to those who have already jumped on boats trying to reach Australia.

RECOMMENDATION 5: that Australia's annual humanitarian intake is increased to 25,000 in order to start clearing the backlog of asylum seekers in our region and to implement some measure of generosity in taking our share of the world's refugee burden by attending first to those in our immediate region.

RECOMMENDATION 6: that UNHCR in Jakarta immediately receives sufficient levels of direct funding from Australia in order to complete quick refugee assessment in collaboration with Australian immigration and resettlement officers and that this funding is tied to UNHCR performance and outcome levels.

RECOMMENDATION 7: that adequate resourcing of UNHCR in Jakarta is regarded as an immediate redress of asylum seekers taking recourse to smugglers and that Malaysia is in similar circumstances as Indonesia, and that in order to prevent an increase of vessels sailing from Malaysia to Indonesia Australia needs to also increase its resourcing of UNHCR in Malaysia.

4. The Immigration Department and the origins of Australia's current politics

10. The first full draft policy response to “unannounced” maritime asylum seekers was formulated by the Immigration Department in 1978-79 and presented at Fraser government Cabinet meetings in January and June 1979 (see CofA, 1979a, 1979b; CofA, 1979c). All proposed measures were extremely punitive in nature, based on the fact that the Department regarded unannounced asylum seeker vessels as “unauthorised boats” and “unlawful arrivals”. Amongst the proposals were plans for “go-slow” processing, temporary protection visas, mandatory detention, turning boats around to the last departure country or the country of flag registration, withholding social security benefits for the “unauthorised arrivals” and 10-year imprisonment of the crew and ship’s captains. It was also proposed to detain the arrivals in holding centres in other countries – but under no circumstances within Australia. PM Malcolm Fraser rejected many notions proposed, calling sections of the Department “racist”, “inflexible” and “arch-conservative” (see Fraser & Simons, 2010). He uttered similar descriptions as his predecessor Gough Whitlam who described the Immigration Department upon the abolition of the *White Australia Policy* as “beyond redemption” (see foreword in Grassby, 1979) before in effect dishonouring the Department by closing it down in 1974. It can be argued that the Immigration Department, having arrived in a vacuum of its enormous executive punishing powers when the *White Australia Policy* was abolished, in effect displaced its culture of control and excluding measures of “keeping out undesirable races” to depict unannounced maritime asylum seekers as the new “undesirable race”. This culture and the measures proposed in 1979 and presented during the Fraser Cabinet meetings can be viewed as the permanent template of measures accorded to asylum seeker boats: almost all measures have been implemented since 1979, with almost no new initiatives or ideas. We need to consider that in the context of attempting to draft new alternatives *the Immigration Department is not part of the solution but part of the problem.*

RECOMMENDATION 8: that the Expert Panel goes beyond the limited and punitive culture and solutions that have thus far emerged from the Immigration Department in its search for solutions, and that it regards the need to assist asylum seekers to find durable solutions as more important than the entrenched departmental (and political) culture that seeks to punish asylum seekers.

References

- CofA. (1979a). Commonwealth of Australia - (Submission No 2906) Decision No 7510: Review of the Indo-Chinese Refugee Situation. Cabinet Minute 23 January 1979. *Confidential Documents as released by the National Archives of Australia in 2010*. Retrieved Febr 15, 2010, from <http://www.naa.gov.au/>
- CofA. (1979b). Commonwealth of Australia - (Submission No 3200) Decision No 8905: Legislation Against Unauthorised Boat Arrivals. Cabinet Minute 7 June 1979. *Confidential Documents as released by the National Archives of Australia in 2010*. Retrieved Febr 17, 2010, from <http://www.naa.gov.au/>
- CofA. (1979c). Commonwealth of Australia: The 1979 Cabinet Records. *Fraser Cabinet: Refugees and migration*. Retrieved Jan 2, 2010, from <http://www.naa.gov.au/collection/explore/cabinet/by-year/cabinet-records-1979.aspx>
- Fraser, Malcolm, & Simons, Margaret. (2010). *Malcolm Fraser: The Political Memoirs*. Carlton, Vic: Miegunyah Press, Melbourne University Publishing.
- Grassby, Albert Jaime. (1979). *The Morning After*. Canberra: Judicator Publications.
- Howard, John. (1988). One Australia: Liberal-National Party Immigration and Ethnic Affairs Policy. *Liberal-National Party Document, Canberra, 15 August 1988*.
- Howard, John. (1993). Mr Keating's Mirage on the Hill: How the Republic, Like the Cheshire Cat, Came and Went. *Third Conference of the Samuel Griffith Society: Upholding the Australian Constitution (Esplanade Hotel, Fremantle; 5-6 Nov 1993)*. Retrieved Oct 12, 2010, from <http://www.samuelgriffith.org.au/papers/html/volume3/v3chap7.htm>
- Smit, Jack H. (2010). Malcolm Fraser's response to 'commercial' refugee voyages. *Journal of International Relations. University of Dhaka, Bangladesh* Vol 8 (2) (December 2010) pp. 76-103. Retrieved March 25, 2011, from <http://ro.ecu.edu.au/ecuworks/6218/>
- Smit, Jack H. (2011). The Political Origins and Development of Australia's People Smuggling Legislation: Evil Smugglers or Extreme Rhetoric? *Theses: Doctorates and Masters*, Paper 419. Retrieved Febr 21, 2012, from <http://ro.ecu.edu.au/theses/419>
- Taylor, Jessie. (2009). Behind Australian Doors: Examining the Conditions of Detention of Asylum Seekers in Indonesia. *Asylum Seekers in Indonesia: Project, Findings & Recommendations*. Retrieved Nov 10, 2009, from <http://www.law.monash.edu.au/castancentre/news/behind-australian-doors-report.pdf>
- Taylor, Jessie. (2010). Between the devil and the deep blue sea: a reflection on what turns a person into a boat person. *RMIT Local-Global Journal (Special Issue: Beyond Border Control)*, 2010(8), 22-27.
- UNHCR. (2000). Trends in Displacement, Protection and Solutions (1999). *UNHCR Statistical Yearbooks*, July 2000. Retrieved August 18, 2011, from <http://www.unhcr.org/3ae6bc834.html>