



CATHOLIC COMMISSION FOR  
**JUSTICE,  
DEVELOPMENT  
& PEACE**  
MELBOURNE

**Submission**  
**To the**  
**Senate Community Affairs Legislation Committee**  
**About**  
**The Family and Community Services Legislation**  
**Amendment (Special Benefit Activity Test) Bill 2002**

**November 2002**

## **Introduction**

The Catholic Commission for Justice Development and Peace Melbourne (CCJDP) welcomes the Senate Community Affairs Legislation Committee Inquiry into the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.

The CCJDP's submission will address the following terms of reference of the Inquiry in the general discussion below (*identifying letters refer to the Inquiry's terms of reference*):

- *the ability of people to comply with complex mutual obligation requirements;*
- *the impact of breaching and financial punitive measures on already disadvantaged people;*
- *the ability of job network providers to provide language and culturally appropriate employment services; and .*
- *the ability of TPV holders to access the review and appeals system.*

*Consideration of the application of mutual obligation to the nominated special benefit recipients with particular consideration of:*

- a) language barriers and availability of English language tuition;*
- b) availability of Job Network services; and*
- c) practical implications for administration by Centrelink.*

To examine these questions, the CCJDP would like to focus on the nature of the Temporary Protection Visa (TPV) as a tool of policy, its effectiveness in meeting its stated aims. Once we have an understanding of the effects of this visa class, we can then approach the question of how relevant it is for the Government to apply mutual obligation requirements to refugees on TPVs in the light of a) Language barriers; and b) availability of Job Network Services.

Firstly, however, we will examine briefly how Catholic social teaching views the movements of people, human rights and state responses to people seeking asylum.

## **Catholic Social Teaching**

The CCJDP aims to help educate and give leadership to the Catholic and wider community in the gospel message of justice and in the social teachings of the Church. The Commission's Charter requires it to work for justice in public, local and national structures. It seeks to achieve these ends through research, analysis, working with parish networks, public forums, in schools and in the media. It actively

seeks to explore ways that social justice can be improved in society and in the performance of mechanisms that have a role in public life. The CCJDP has raised the issue of violations of human rights of asylum seekers in a variety of fora including the media, the lobbying of parliamentarians and producing documents. The CCJDP monitors developments regarding the human rights of asylum seekers via the Australian Human Rights Register. The Register records entries from non-governmental organisations and the media about development on human rights. The CCJDP published a special Refugee Edition of the Register in December 2001, which documented entries from Non-government Organisations around Australia, as well as from media reports.

In addition to the promotion of and respect for universal human rights and standards that will be referred to throughout this submission, the CCJDP uses the principles of Catholic social teaching to test the justness of public policy.<sup>1</sup> Pope John Paul II has voiced his concern about States having “contempt for the fundamental human rights of so many people, especially children...”<sup>2</sup>

Additionally, the Church has clear positions on the rights of asylum seekers. Pope John Paul II points out that refugees, however they might arrive in a country – illegally or not - still have their human rights:

*His irregular legal status cannot allow the migrant to lose his dignity, since he is endowed with inalienable rights, which cannot be violated nor ignored.*<sup>3</sup>

Moreover, the Catholic Church does not endorse sweeping State powers to detain all asylum seekers. The ‘Pontifical Council for Pastoral Care of Migrants and Itinerant People’ warned that:

*A person applying for asylum should not be interned unless it can be demonstrated that he or she represents a real danger, or there are compelling reasons to think that he or she will not report to the competent authorities for due examination of his or her case. Moreover such people should be helped with access to work and to a just and rapid legal procedure.*<sup>4</sup>

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<sup>1</sup> For example Catholic social teaching is concerned that public policy does not undermine the primacy of the family: “[T]he individual, the family and society are prior to the State, and...the State exists in order to protect their rights and not stifle them.” Catholic Social Welfare, Australian Catholic Social Welfare Commission, Vol.1, No.1, July 1992.

<sup>2</sup> John Paul II *Novo Millennio Ineunte: At the Beginning of the New Millennium*, Strathfield, 2001, p.68.

<sup>3</sup> John Paul II, Message for World Migration Day 1995-6, *Undocumented Migrants*, 25 July 1995 p.2.

<sup>4</sup> ‘Cor Unum’: Refugees: A Challenge to Solidarity, 1992, 11.

In its Statement of March 22, 2002, the Australian Catholic Bishops' Conference expressed concern about the detention of asylum seekers and minors by the Australian Government:

*Mandatory detention is itself a matter for concern: alone among the nations, Australia excludes any discretion being exercised as to whether, in particular cases, detention may be inappropriate or should be abbreviated.... Many asylum seekers, including whole families, have been detained for more than a year. The Church's pastoral care of asylum seekers convinces us that detention, beyond the minimum time necessary for carrying out security and health checks, identity checks and the lodgment for Protection Visas, is deeply destructive of human dignity. This is particularly true of children.*<sup>5</sup>

Having outlined this ethical framework, let us briefly examine the proposed bill in the light of Australia's human rights obligations and the existing effects of the Temporary Protection Visa (TPV).

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<sup>5</sup> Australian Catholic Bishops' Conference, 'Refugees and Asylum Seekers', March 22, 2002. This in turn is based upon the Pontifical Council for Pastoral Care of Migrants and Itinerant people warning that:  
A person applying for asylum should not be interned unless it can be demonstrated that he or she represents a real danger, or there are compelling reasons to think that he or she will not report to the competent authorities for due examination of his or her case. Moreover such people should be helped with access to work and to a just and rapid legal procedure. ['Cor Unum': Refugees: A Challenge to Solidarity, 1992, 11.]

## The Origin of the TPV

Temporary protection was first proposed by Pauline Hanson's One Nation party in July 1998. Pauline Hanson's One Nation immigration Policy proposed:

*Genuine refugees will be maintained at the current level. But there must be no expectation of automatic permanent residence. If possible, they will return to their own country when the unrest in their homeland has been resolved.*<sup>6</sup>

The following year the Federal Government introduced Temporary Protection Visas for Kosovars and East Timorese. In October 1999, three year TPVs were introduced by the Government with the aim, according to the Immigration Minister, Mr Ruddock, of:

*Excluding unauthorised arrivals from accessing permanent residence by giving genuine refugees a three-year temporary protection visa...*<sup>7</sup>

To further clarify, Mr Ruddock meant that people found to be refugees who had arrived in an unauthorised manner (i.e. by boat) would no longer receive permanent protection but only temporary protection. Mr Ruddock justified the new visa on the basis that it helped, “[p]revent unauthorised arrivals from obtaining permanent protection visas and the benefits, particularly family reunion,” and he added, “if they leave Australia, the temporary protection visa will cease and they will have no automatic right of return.” Thus the purposes of the visa were explicitly punitive. A second aim of the visa was to be a deterrent to others seeking to come to Australia in the same fashion. The Minister was quoted as believing that the initiatives “would go a long way to solving the problem of forum shopping and removing the incentives for authorised arrivals.”<sup>8</sup>

Mr Ruddock outlined "tough new measures aimed at curbing the growing number of people arriving illegally in Australia" with intended effect of punishing people for seeking asylum in a manner disapproved of by the Federal Government. A number of measures were included in the TPV to deny people who had been found to be refugees from benefits available to other refugees who had come in a manner approved by the Federal Government.<sup>9</sup> The Government removed "additional

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<sup>6</sup> [www.gwb.com.au/onenation/press/020798.html](http://www.gwb.com.au/onenation/press/020798.html)

<sup>7</sup> Press Release, Minister for Immigration, "Ruddock Announces Tough New Initiatives" MPS 143/99, 13 October 1999.

<sup>8</sup> Press release, 13/10/99, op. cit.

<sup>9</sup> Minister for Immigration, 'Border Protection: Temporary Protection Visas', [www.minister.immi.gov.au/borders/detention/fs\\_64\\_tpv.htm](http://www.minister.immi.gov.au/borders/detention/fs_64_tpv.htm)

benefits" that had been allegedly "encouraging the misuse of the protection process by unauthorised arrivals."<sup>10</sup> What are these benefits?

A refugee granted a TPV will be released from detention and granted the right to work, but they are not allowed, unlike other refugees, to access settlement services such as:

- Adult Migrant English Scheme which would allow them to learn English;
- Access to Migrant Resource Centres which provide information on financial matters, other sources of English Training and referral to various services for new Australians;
- *NewStart* which is paid to a person who is seeking work; and
- *Job Network* services such as
  1. 'Job search training' which provides extra support for looking for a job;
  2. 'Intensive support' which helps overcome any barriers that might occur for people from "diverse cultural and linguistic backgrounds";
  3. 'New Enterprise Incentive Scheme'
  4. 'Self-employment Development'. Refugees on TPVs are only allowed to access the touch screen computers to access the Job Matching Data, but are prevented from using the Job Network Services.

### **How effective has the TPV regime been?**

How effective has the TPV regime been in achieving its dual aims of being punishment to those who came by boat and a deterrent to others? To answer the question we should examine whom the Government has set out to punish. Mr Ruddock claimed that: *"...most of the individuals coming from Afghanistan and Iraq had been outside their country of decades...these people are trying to exploit Australia's generous arrangements for refugee to gain residence in their country of preference."*

The Minister asserts, in the quote above, that most people were allegedly living outside the country where they claimed to be persecuted. Secondly he accuses them of "exploiting" Australia. Both smears imply that they were somehow undeserving and by implication, without a well founded fear of persecution as defined by the United Nations Convention relating to the Status of Refugees (hereon the Refugee Convention). Yet, evidence given by the Minister to Parliament, a year after the introduction of the TPV regime shows that 90 % of the persons who had arrived by

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<sup>10</sup> Ibid.

boat and had their cases finalised were recognised as refugees.<sup>11</sup> In fact everybody who was granted a TPV, 871 people in 1999-2000; and 4456 in 2000-1 are refugees as defined under the Convention. These women, children and men are the victims of the Taliban; the Northern Alliance in Afghanistan and of Saddam Hussein in Iraq, they have been directly persecuted and Australia has recognised them as such.

### **How have TPV holders been Affected?**

How do people feel about their situation? CCJDP interviewed two young men in April 2002 who were granted TPVs. Unlike other refugees on TPVs who are denied federally funded English training, they were still children when released from Woomera, and both were able to access schooling and TAFE and were provided with English language training through their schools.

Their feelings of insecurity and uncertainty about their status led to difficulties with settlement and problems focussing on education. 'N' worried: "I want to keep studying, but I don't get enough money from Centrelink. I'm finding it really hard to live with the small amount of money I am given. I just don't get enough money for all the expenses I have. But I'd really like to keep studying." Nevertheless, the future was uncertain, "I don't know what will happen to me after three years."

'M' also felt insecure:

*I am not sure about my future. I still have to wait three years for my visa – I don't know what to do. I can't make any decisions because I don't know what's going on with my visa, if [my country's situation] changes, they [DIMIA] might send me back.*

Refugees on Temporary Protection Visas (TPV) are feeling afraid and confused in the lead up to the reprocessing of their visas by the Department of Immigration. The Australian Government plans to start reprocessing thousands of refugees granted three year TPVs since October 1999. The first TPVs are due to expire in November 2002.

Reports indicate that the TPV refugees are very apprehensive about the ordeal they are being put through. Having been found to be refugees once, they are being made to prove their fear of persecution again. Moreover, thousands will be adversely affected by the Government's laws of September 2001 which changed the criteria for

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<sup>11</sup> Hansard 1 November, 2000, p.19462

processing. Most have not been informed about these changes. If they had transited a country where they allegedly could have sought asylum in a period of more than seven days, then they will never be allowed to access permanent protection, family reunion or settlement services granted to other refugees. In fact, many were ordered by people smugglers not to leave the accommodation where they resided in Indonesia prior to embarking to Australia. Many are distressed and fearful that the Government will return them to situations where they will be persecuted.

The Government is not providing legal support to assist them with explaining any changes in their circumstances in their new applications and many will have difficulty explaining their cases because they have been barred from training in English.

### **Has the TPV Regime Been Successful as a Deterrent?**

Former Liberal Premier of South Australia, John Olsen, argued that people being denied English Language classes would hardly act as a deterrent to people, "who put their life into their own hands to take a boat trip across difficult waters to Australia;" the TPV regime created "two classes of Refugees," he judged.<sup>12</sup> Prohibitions on people granted TPVs from reuniting with their families directly contributed to people in Australia on TPVs sending for their spouses and children via people smugglers (and are why children ended up in a situation where they drowned on SIEV X). The number of children coming by boat in 1999 represented 13% of the total number arriving on our northern shores, but in 2001 this proportion had increased to 30%.<sup>13</sup>

In fact, despite the introduction of the TPV regime, between July 1999 and June 2001, there were 8,316 unauthorised boat arrivals, compared with 4,114 in the period from 1989-99.<sup>14</sup> Total asylum applications for the year 2001 amounted to 12,366 compared to 9,450 in 1999.<sup>15</sup> As mentioned, those from Afghanistan and Iraq have had very high success rates.<sup>16</sup> As a deterrent, TPVs have been a policy failure.

The reason for the decline in people coming since 2001 has been entirely due to the Royal Australian Navy turning away boats of refugees and the disruption of people smuggling efforts in Indonesia by police, diplomatic and other actions.

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<sup>12</sup> Quoted in Peter Mares, *Borderline*, Sydney 2002, p.194.

<sup>13</sup> Mary Crock and Ben Saul, *Future Seekers*, Sydney, 2002, p.77.

<sup>14</sup> Phillip Ruddock MP 'Background Paper on Unauthorised Arrivals Strategy' [www.minister.immi.gov.au/media01/ro1131\\_bgpaper.htm](http://www.minister.immi.gov.au/media01/ro1131_bgpaper.htm) accessed 18/3/02

<sup>15</sup> See UNHCR 'Asylum applications lodged in 29 industrialised countries, 1999-2001' <[www.unhcr.org](http://www.unhcr.org)>

<sup>16</sup> M. Crock and B.Saul, *Future Seekers: Refugees and the Law in Australia*, Federation Press, 2002, pp. 28-33.

### **Why the TPV violates human rights:**

The Government of Robert Gordon Menzies was one of twenty-six countries which participated, in 1951, in a Conference of Plenipotentiaries to complete the drafting of, and to sign, a Convention relating to the Status of Refugees and Protocol relating to the Status of Stateless Persons. Having helped draft the Convention, the Menzies Government signed it in 1954 and undertook that Australia shall:

- not impose penalties, on account of their illegal entry, on refugees coming directly from a territory where their life or freedom was threatened (Article 31);
- accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals (Article 23);

By introducing penalties for people found to be refugees on the basis of their having arrived without a visa (something inherent in the nature of being a refugee and recognised by the UNHCR) the current Government has abandoned the spirit of respect for human rights of refugees shown by the Menzies Government and is breaching Convention Article 31. Secondly, by consciously denying one group of refugees access to the same assistance as other refugees and nationals, the Government is acting in a discriminatory fashion, breaching human rights that successive Governments undertook to guarantee. For the Government to respect one article of a treaty it has signed (the right of asylum) and not others is illogical and poor administration; but to further discriminate against people whom it has found to have been persecuted, is unjust.

### **Mutual Obligation**

*The measures contained in the bill aim to encourage social and economic participation by treating work force age holders of the visas issued for temporary protection, humanitarian or safe haven purposes in a similar way to Australian nationals of work force age; that is, they will be required to be self-reliant and to fulfil a mutual obligation to the Australian community.*

Special Benefit Activity Test Bill 2002, Second Reading Speech

The principle of mutual obligation is based on the notion that there exists a social contract between people who are disadvantaged and the state. Benefits are conditional on people doing something in return. The Final Report of the

Government's Welfare Reform Group argued that welfare recipients should expect to participate in some form of economic activity if they are to continue to receive benefits.<sup>17</sup> By encouraging participation the Report seeks to ensure that the bonds of society are maintained and strengthened. These bonds, it is suggested, confer obligations as well as rights, are now implemented through the Social Security programs like 'Work for the Dole'. The 'Work for the Dole 2000' tender document states that participants are to develop "work habits" or generic work skills such as working independently, as part of a team or improving their communication skills.<sup>18</sup>

Yet the nature of the TPV is that it explicitly excludes people who are economically vulnerable from full participation in society. The TPV denies access to a range of services necessary for finding work. A TPV holder's communication skills are retarded because the Government denies access to language lessons; they are held back from working independently because they are prevented from seeking assistance with finding work except for all but the most minimal access to touch screens in the 'Job Matching' computers, which are of little use if they do not read English. Many refugees on TPV holders may have excellent "work habits" but they are steadily being eroded by their exclusion from services which help one find a job.

The Government claims its role in mutual obligation is not just to provide income support but also "invest more widely in helping people of workforce age build their capacities for economic and social participation."<sup>19</sup> In terms achieving this aim for people on TPVs however, the Government has not only failed them, but has actively discriminated against them. The Government has breached its obligation to invest in building their capacities. Unlike with individuals, who are alleged to have breached, there are no penalties for Governments who have failed in their obligations, highlighting the lack of "mutuality" inherent under government defined "obligations" under social security.

Given the long list of exclusions to work for TPV holders, enforced by the Government, it is impossible to see how the Government's proposal, outlined in its second reading speech of the Bill, to "encourage social and economic participation by treating work force age holders of visas issued for temporary protection...in a

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<sup>17</sup> Department of Family and Community Services [FACS], Final Report of the Reference Group on Welfare Reform: Participation Support for a More Equitable Society, Canberra, 2000.

<sup>18</sup> Department of Employment, Workplace Relations and Small Business, Work for the Dole 2000 Request for Tender: Community Work Coordinators, Canberra, 2000, p.4.

<sup>19</sup> Department of Family and Community Services, Final Report of the Reference Group on Welfare Reform, Participation Support for a More Equitable Society, Canberra, 2000.

similar way to Australian nationals of work force age" will be achieved. In practice this will not only be an unjust policy but an absurd one.

The effect of imposing mutual obligation requirements will be punitive one penalising some of the most economically vulnerable people in our community. The measures will further compound the discrimination and punishment inherent in the TPV regime which violates peoples human rights under the Refugee Convention which the Australian Government undertook to respect.

### **"Those who forget history...."**

There is a dangerous trend in Australia which seeks to demonise refugees and then pushes for discriminatory legislation to further enforce exclusion of the allegedly undeserving refugee. What evidence is there for this trend?

The increase to 4000, of people arriving to claim asylum in 1999-2000 has created great public alarm. Why? A survey in 1988 revealed that the average respondent mistakenly believed that 70 times more boat people came to Australia each year than actually did.<sup>20</sup> In September 2001 Oxfam Community Aid Abroad commissioned independent qualitative research entitled "Exploring Community Attitudes and Beliefs in Respect of Asylum Seekers".<sup>21</sup>

The research found generally negative attitudes amongst parts of the Australian community. The research found that people claiming asylum have become a focus for people's fears. The negative attitudes apply mainly to people from the Middle East – particularly Afghani and Iraqi people claiming asylum. Fears are:

- *Vast numbers of asylum seekers are potentially waiting to arrive on our shores;*
- *Queue jumping* is evidence not just of desperation but also of singling out Australia as a particularly desirable ultimate destination;
- Asylum seekers may include terrorists;
- Asylum seekers are culturally different to Australians and will change the face of Australian society; and
- Asylum seekers will take resources that should otherwise be going to other sectors of the community.

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<sup>20</sup> Cited in Christine Bacon, unpublished paper, "Mission Impossible? Zero Boat Arrivals: understanding the Government's approach to people smuggling", June 2002.

<sup>21</sup> Community Aid Abroad, 'Exploring Community Attitudes and Beliefs in Respect of Asylum Seekers', October 2001.

These attitudes in the Australian community play themselves out on a deeper national level – a profound sense of insecurity about life. Australians are feeling anxious about the dramatic social and economic changes of the past twenty years. Faith in many aspects of their lives, such as job security and a sense of peace and hope for the future, is fragile. This was true well before the collapse of Ansett and the atrocity of September 11, 2001. Many feel that Government has lost control over global economic processes and now fails to provide employment and an equitable wealth distribution. Such changes have caused widespread social dislocation in areas such as the job market and generated a sense of loss of control over people's lives. These findings about an anxious society correspond with the conclusions of other recent in-depth studies by social researchers.<sup>22</sup>

The interviews show that with many people feeling that things are apparently out of control, it becomes paramount to *keep* control over whatever we can. This is why appeals to policing our borders have had such resonance since 1998. The use of the Special Air Service (SAS) against defenseless refugees on the *Tampa* or the navy firing shots near refugee boats are seen not as matters for national alarm, but as taking a firm stand. The fact that Australia is currently imprisoning children seeking asylum is no longer a cause of shame. In fact, border control, people smuggling and the alleged negative traits of asylum seekers, become a very useful distraction and way of deflecting anger about other worries over the nature of the economy, survival and the future.

Our fears and anxieties are being projected onto refugees. In terms of the national psyche, our desire to dispel our anxieties and regain control over an uncertain future is being played out in a tragic drama on our northern coastline where we are repulsing the unwanted outsider. Refugees have become a scapegoat for the insecurity of the nation. Against such emotional and irrational fears, facts have little chance of making headway. Politicians are, arguably, merely articulating and amplifying our fears and prejudices. This is fertile ground for xenophobia.

The editor of the Queensland publication, 'National Interest Newspaper' argued in May 2001 editorial entitled '**Boat People Go Home**' that:

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<sup>22</sup> a) Robert Manne, The Barren Years: John Howard and the Politics of Leadership, Melbourne, 2001, pp.79-81; pp.122-3.

b) Donald Horne, Looking for Leadership: Australia in the Howard Years, Ringwood, 2001, pp.234-5.

c) Andrew Markus, Race: John Howard and the Remaking of Australia, Crows Nest, 2001, p.105.

*The Government treats boat people better than they treat our Age Pensioners (sic) who have paid taxes all their lives. These illegal immigrants are given legal aid we can't get. They are given job preference.... Had this man been a known terrorist, who had entered Australia illegally by boat, still of military age, with US\$20,000 in his pocket, Downing's [sic. Foreign Minister Alexander Downer] underlings in the Department of Foreign Affairs would have given him \$3,000 spending money, a free bus ticket, a promise of accommodation and put him on our welfare system for life. If the boat couldn't quite make it the Navy would have sent the coast guard out to tow the boat in so we could get more undesirable and illegal immigrants even quicker. It is high time the government started looking after the Australian people who pay the taxes and produce the wealth.<sup>23</sup>*

In response to such distortions of refugee settlement policy and other similar statements, some MPs, like former Community Service Minister Larry Anthony, member for the Queensland seat of Richmond, were at pains to prove the Government's credentials in getting tough on asylum seekers. Mr Anthony's newsletter showed pictures of the *Tampa* asylum seekers disembarking at Nauru and urged citizens, "If you want the Government to remain tough with illegals" to cut out and fill in an attached petition, which proclaimed with some hyperbole:

*The petition of certain citizens of Australia draws attention of the House [of Representatives] to the **strong stand the National and Liberal Government has taken to protect Australia's sovereignty and our borders from people smugglers and illegal immigrants.** [Mr Anthony's emphasis] ... Your petitioners therefore pray that the house call on the Australian Labor party and the Australian Democrats to allow the passage of the [Border Protection] Bill through both Houses of Parliament, and **be tough on illegal immigration.** [Anthony's emphasis].<sup>24</sup>*

There have been fundamental shifts in the Australian community since One Nation won one million votes in 1998. Political and media analysts have suggested that the Coalition's policy stance on refugees has shifted to attract and absorb the One Nation vote by reflecting and amplifying the views of that part of the Australian community.

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<sup>23</sup> National Interest Newspaper, Issue 28, 28 May 2001

<sup>24</sup> Tweed Shire Review: A Community newsletter from Larry Anthony MP, Federal Member for Richmond and Minister for Community Services, October 2001.

In the run up to the November 2002 election, politicians increased the anti-asylum seeker rhetoric focusing on the supposed negative qualities of refugee character, culture and being. Foreign Minister Alexander Downer claimed:

*These people have behaved abominably right from the start. The disgraceful way they treat their own children. Any civilised person would never dream of treating their children in that way...[they are]...not welcome in our country.*<sup>25</sup>

Or this statement from Western Australian Senator Ross Lightfoot:

*...These uninvited and repulsive people only serve to harden the resolve of decent balanced Australians. Add to that sordid list of behaviour, the scuttling of the Indonesian fishing boats that carried these pathetic cargoes and one wonders where these wretched people would be acceptable.*<sup>26</sup>

Senator Lightfoot's vilification of these persecuted people has grim historical antecedents. The Bulletin, stated in 1938 of the Jewish refugees,

*There must be something about them, which makes it difficult for people like them. They should look to themselves and not go around the world exhibiting their self-pity and asking for sympathy.*

The Bulletin's stance lent weight to the argument put forward by the Nazi SS newspaper *Schwarze Korps* which stated in 1938 that if the world was not yet convinced that the Jews were the scum of the earth, it soon would be when unidentifiable beggars, without nationality, without money, and without passports crossed their frontiers.<sup>27</sup> The historical parallels were clear in 2001, when the Howard Government took an unprecedented violent stance towards the *Tampa* refugees and using the SAS and Australian navy to repel them. Political analysis showed that this action resulted in very favourable opinion polls for the Prime Minister and the Government. Operation Relex was arguably a key factor allowing the political survival of the Liberal/ National Coalition whose chances of winning the November 2001 Federal election appeared thin earlier in 2001.<sup>28</sup>

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<sup>25</sup> Foreign Minister Alexander Downer, 10 October 2001.

<sup>26</sup> Senator Ross Lightfoot, 11 October 2001.

<sup>27</sup> Cited in Arendt, op cit. p.269.

<sup>28</sup> 7:30 Report ABC online, Transcript 'Tampa issue improves coalition election prospects' 4/9/01 [www.abc.net.au/7.30/s357998.htm](http://www.abc.net.au/7.30/s357998.htm) accessed 2/6/02

Eroding human rights inevitably leads a country to becoming less civilised, more ignorant and less humane. There are many historical examples of countries that have embarked upon such a descent into brutality – especially on the justifications of protecting ‘national sovereignty’. Weimar and Nazi Germany were premised on spurious notions of the primacy of national sovereignty and a disregard for human rights. The political philosopher Hannah Arendt described this trend in detail in her 1948 classic, The Origins of Totalitarianism, which analysed the plight of ‘stateless’ people and refugees prior to the Second World War.<sup>29</sup> She explains:

*Theoretically, in the sphere of international law, it had always been true that sovereignty is nowhere more absolute than in matters of "emigration, naturalisation, nationality, and expulsion"; the point however, is that practical consideration and the silent acknowledgement of common interests restrained national sovereignty until the rise of totalitarian regimes...there was hardly a country left on the continent that did not pass between the two wars some new legislation which, even if it did not use this right extensively, was always phrased to allow for getting rid of a great number of its inhabitants [refugees] at any opportune moment.*

Nationalism should never be placed before universal human rights standards as it embodies narrow, selfish sentiments that shut our minds and hearts to our common humanity. Arendt again comments on the dangers of abandoning equal treatment of people in a society:

*...the nation state cannot exist once its principle of equality before the law has broken down. Without this legal equality, which originally was destined to replace the older laws and orders of feudal society, the nation dissolves into an anarchic mass of over-and-under-privileged individuals. Laws that are not equal for all revert to rights and privileges, something contradictory to the very nature of the nation states.<sup>30</sup>*

The treatment of refugees on TPVs has disturbing historical parallels in Australia when Governments abandoned the principle of equity before the law and treated groups in a discriminatory fashion through legislation, administrative policy and practice.

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<sup>29</sup> Hannah Arendt, The Origins of Totalitarianism, (Harcourt Brace) New York, 1976, pp.278-9.

<sup>30</sup> Arendt, op cit., p.290.

In the first half of the twentieth century Australia adopted a framework of racist policies which sought to exclude Aborigines from full participation in society. Like Aborigines who were assigned to live permanently in designated areas, people arriving in Australia on boat, seeking asylum are segregated from the rest of the community in desert detention centres sometimes for many years. Aborigines had their families separated as a result of an assimilationist policy; refugees on TPVs are denied family reunion as a means of explicit punishment for having sought refuge in a manner disapproved of by the Federal Government. Both groups are economically vulnerable and form the poorest section of our society partially as a result of Government exclusion. Aborigines were granted rations in return for work or often earned income that was only a fraction of the white community. Refugees on TPVs do receive an income from the Government but are excluded from services which enable them to find work, perpetuating their economically vulnerable state.

Each generation has its ideology and propaganda to justify exclusion of groups. For Aborigines, it was an assimilationist doctrine that was explicitly racist. For refugees on TPVs, it is because they are, in the words of Minister Ruddock, "a major threat to national sovereignty and political stability."<sup>31</sup> They are "*uninvited and repulsive people*" in the words of Senator Ross Lightfoot, and the Prime Minister has asserted "Australia has no way to be sure that terrorists are not amongst asylum seekers trying to enter Australia by boat from Indonesia".<sup>32</sup> Such propaganda is undermined by facts, for example, the ASIO Director General Dennis Richardson told the Senate that of 5986 security clearances of asylum seekers between July 2000 and August 2002, none would pose a threat to Australia's security.

Such value judgements accompanied by propaganda about the "queue" and "illegals" form the basis of an ideology of exclusion which is enforced by discriminatory laws such as the TPV and which the Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002, is an attempt to discriminate on the basis of a group identified by the Government as "undesirable".

## **Conclusion**

The Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002, when applied to refugees on TPVs, stands in opposition to 100 hundred years of social welfare legislation and policy which sought to prevent

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<sup>31</sup> Phillip Ruddock MP: Speech, European Union International Meeting, Paris, 20 July 2000 [www.immi.gov.au/t.pts/transcripts00/euro\\_200700.htm](http://www.immi.gov.au/t.pts/transcripts00/euro_200700.htm) accessed May 4 2002

<sup>32</sup> D. Aitkins, 'PM vows to shut door on terror', Courier Mail 7/11/01

exclusion, discrimination and entrenchment of poverty. The Bill actively seeks to punish the vulnerable, who are already economically excluded from full participation in society as a result of a legislatively enforced status which denies them equality with other refugees and Australian nationals. The Bill undermines adherence and respect for human rights of people. This bill is ugly, unjust and not in the tradition of a 'fair go'.

### **Recommendations**

- 1. That the Family and Community Services Legislation Amendment (special Benefit Activity Test) Bill 2002 not be passed on the basis that it is inherently unjust when applied to groups of people excluded from full participation in society (TPV holders) as a result of Government legislation.**
- 2. That Refugees on TPVs be granted access to the Adult Migrant English Scheme**
- 3. That Refugees on TPVs be granted full access to the Job Network, in particular:**
  - **'Intensive Support' for "people from diverse cultural and linguistic backgrounds"**
  - **'Job Search Training'**
  - **'Transition to Work Services'**
- 4. As per the recommendation of the Refugee Council of Australia, extend coverage to TPV holders by the National Office of Overseas Skills Recognition (NOOSR) loan scheme to support bridging training for overseas-trained professionals. This scheme provides overseas-trained professionals with interest-free, deferred payment loans to cover the costs of tuition to assist them to meet formal professional recognition requirements in Australia.**
- 5. The Committee recommend to Parliament that it seeks to reverse the exclusion of groups of people from full participation in our society, and overturn the denial to equal access to services as a consequence of legislation, or administrative policy. In particular, the negative effects TPV on human beings are reviewed and the exclusionary and discriminatory nature of the visa is removed as a matter of urgency.**