FECCA
Federation of Ethnic Communities' Councils of Australia

12 December 2012

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dennett

Inquiry into the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

The Federation of Ethnic Communities' Councils of Australia (FECCA) welcomes the opportunity to make a submission to the Inquiry into the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012.

Background

FECCA is the national peak body representing Australians from culturally and linguistically diverse (CALD) backgrounds. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

Recalling the *Expert Panel on Asylum Seekers'* statement that all possible measures be implemented to avoid creating an incentive for people to bypass excised offshore places to reach the Australian mainland, FECCA cites its deep concern regarding the resultant proposal to excise the Australian continent from the Migration Zone. FECCA also reiterates its opposition to the policy of offshore processing associated with the proposed Bill amendment. In particular, FECCA highlights the negative implications resulting from the these amendments with regard to the impact upon the welfare of individuals seeking asylum in Australia, and their prospective inability to access full rights and entitlements awarded under international and Australian law that relate to the protection of refugees.

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The Bill

FECCA understands that if the Bill is passed, all asylum seekers looking for protection in Australia shall be processed offshore and will subsequently remain in a transitory status, regardless of whether or not an official status of 'refugee' is designated. Given the legal recognition of rights and entitlements awarded to an individual who legitimately flees persecution following the granting of refugee status, the transitory state face by individuals implicated by the policy of offshore processing, and their inability to be granted such recognition, is of particular concern.

As a signatory to the 1951 Convention Relating to the Status of Refugees, Australia has agreed to ensure that asylum seekers and refugees have the right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents[1]. In this context, the indefinite nature of offshore processing and its harmful implications upon the mental, physical and emotional health of individuals, render the proposed Bill amendments contrary to humanitarian considerations. FECCA draws the Committee's attention to the International Detention Coalition's 2011 publication '*There are Alternatives*', which notes negative health implications in its top three concerns surrounding immigration detention, as advocated through the policy of offshore processing:

> The third major concern is that the potential impact of detention on the health of those detained is so severe that its use as a message of deterrence and control cannot be justified. Research has demonstrated that being in detention is associated with poor mental health including high levels of depression, anxiety and post-traumatic stress disorder (PTSD) and that mental health deteriorates the longer someone is detained. One study found clinically significant symptoms of depression were present in 86% of detainees, anxiety in 77%, and PTSD in 50%, with approximately one quarter reporting suicidal thoughts. The impact on children is particularly disturbing, especially as the consequences for their cognitive and emotional development may be life-long. For adults, it has been found that the debilitating impacts of detention extend well beyond the period of confinement, especially for those detained for prolonged periods.[2]

FECCA's long-standing position is that offshore processing is protracted, expensive and contrary to basic human rights provisions that should be awarded to all individuals. Indefinite detention is not a cost-effective approach compared with community detention[3] and time wasted in detention reduces an individual's ability to effectively participate in the workforce, and by extension, contribute to Australian productivity and growth. It also inhibits an individual's ease of settlement into the community.[4]

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[1] Refugee Council of Australia, *Myths about Refugees and Asylum Seekers,* http://www.refugeecouncil.org.au/f/myth-long.php (accessed 11 December 2012)
[2] International Detention Coalition (IDC) *There are Alternatives,* IDC handbook for preventing unnecessary immigration detention, May 2011, pp 11–12, http://massivefishball.com/IDC_Handbook.pdf (accessed 12 October 2012).
[3] John Menadue et al, Centre for Policy Development, *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*, August 2011, p. 33, http://cpd.org.au/2011/08/a-new-approach/ (accessed 12 October 2012).
[4] Ibid, p. 40.

Further to this, FECCA also believes that offshore processing of immigrants is not a deterrent for other asylum seekers to attempt entry to Australia by boat. Given that asylum seekers are forced to leave their country of origin to seek protection from situations of war, unrest, violence and human rights abuses that have been suffered,[5] FECCA does not consider adherence to a policy of offshore processing as an effective mechanism through which to discourage movements of individuals fleeing from such conditions suffered in their country of origin.[6]

Furthermore, FECCA rejects the humanitarian argument presented in support of offshore processing, namely, that such a policy, coupled with the excision of the Australian mainland from the Migration Zone, would mitigate "even greater risks" faced by individuals attempting to bypass excised offshore places to reach the Australian mainland.[7] FECCA contests the legitimacy of this claim, as forwarded by the Expert Panel, and the implication that amendments to the Migration Act should be founded upon principles that are contrary to the ethic of international humanitarian law and the obligations of states such as Australia to make provision for allowing entry of individuals fleeing fear of harm and persecution.

Related to this point, FECCA notes the extent to which excision from the Migration Zone would facilitate temporary protection for individuals seeking asylum, as per the temporary arrangements for detaining individuals currently established through facilities on Christmas Island, Nauru and Manus Island. Whilst such temporary protection is consistent with international legal obligations, FECCA fundamentally questions the policy on the basis of it providing *only* temporary protection, rather than a means through which to facilitate permanent settlement options for individuals seeking asylum in Australia.

At a fundamental level, Australia's humanitarian program contributes to the broader efforts of the United Nations High Commission for Refugees' (UNHCR) global resettlement program and subsequently enhances Australia's international humanitarian reputation. Consistent with this arrangement however, Australia has related obligations under the Refugee Convention to ensure that adequate protection is awarded to individuals seeking refuge and asylum on Australian shores. By excising the Australian continent from the Migration Zone, Australia negates its responsibility to grant visas for permanent settlement to Australia and subsequently denies individuals the ability to enjoy full rights, entitlements, and safety via this arrangement. As such, whilst Australia would theoretically qualify legal requirements through pursuing a policy of offshore processing, it fails to uphold its international humanitarian reputation through providing only temporary measures to issues requiring long-term solutions. The processing of individuals offshore falls short of allowing individuals' full protection under Australian law, through failing to provide assurances that humanitarian rights and obligations

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[5] Refugee Council of Australia, *Myths about Refugees and Asylum Seekers*, http://www.refugeecouncil.org.au/f/myth-long.php#deterrence (accessed 5 December 2012)
[6] Asylum Seekers Resource Centre, *Offshore Processing Myth Buster*, http://www.asrc.org.au/media/documents/offshore-processing-mythbuster-2012.pdf (accessed 5 December 2012)
[7] Report of the Expert Panel on Asylum Seekers, page 52, http://expertpanelonasylumseekers.dpmc.gov.au/sites/default/files/report/expert_panel_on_asylum_seekers_full_report.pdf (accessed 11 December 2012)

would be respected and protected, given an individuals' inability to be processed whilst in Australian territory.[8]

Offshore processing also restricts asylum seekers' access to legal representation, which also fundamentally limits their potential to enjoy full rights and entitlements with regard to both undue discretionary excision procedures and lack of transparency in review processes.[9] In addition, isolation is another problematic factor encountered by individuals in their attempts to access services whilst detained offshore.[10]

Recommendation 1:
FECCA asks the Committee to recommend the Bill not be passed.

FECCA stresses the importance of a recognising and adhering to policies that advocate for the more humane treatment of individuals seeking asylum. Developing policies on the basis of deterrence has been proven an inadequate strategy as a result of the failure to fundamentally acknowledge the conditions that force individuals to flee their countries of origin. FECCA supports a fairer and more humane process for receiving and processing asylum seekers in this country, and one that entitles individuals that ability to receive the full protections of Australian law.

Recommendation 2:
In the event that the Committee forwards a recommendation that the Bill be passed, FECCA asks the Committee to recommend that the Australian Government provide an indication of:

- how it intends to comply with humanitarian obligations concerning the permanent settlement of individuals fleeing fear and persecution;
- the manner in which the Australian Government intends to implement protections and welfare arrangements of refugees and asylum seekers held in detention facilities; and
- how these will be monitored, including whether they will be independently monitored.

FECCA thanks the Committee for its inquiry and the opportunity to comment.

Yours sincerely

Pino Migliorino
FECCA Chair

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[8] Australian Human Rights Commission, *Asylum Seekers and Refugees,* http://humanrights.gov.au/human_rights/immigration/asylum_seekers.html (accessed 5 December 2012)
[9] Federation of Ethnic Communities' Councils of Australia, *Submission to the Inquiry into the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2012,* http://www.fecca.org.au/images/stories/documents/Submissions/2011/submissions_2011044.pdf (accessed 5 December 2012)
[10] ibid.