

Position Paper

Where Do We Stand: Off Shore Processing of Asylum Seekers?

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Position Paper

Where Do We Stand: Off Shore Processing of Asylum Seekers?

Abstract

Rather than “What shall we do?” this Paper asks the question “Where do we stand?” on the issue of Off Shore Processing of Asylum Seekers. The question is put as the subject of discussion of a Church Members’ meeting, or an Elder Board meeting. In the life of the writer’s own local church this is an important question. Not only is it a divisive question currently confronting the broader Australian public, in a recent “non violent resistance action”, three young people from the writer’s own church community were involved in the Subiaco local office of the federal Minister for Immigration on the related matter of asylum seeker children being held in detention.

This Paper provides an overall appreciation of the contemporary complexity of refugee traffic to Australia, and matters around asylum seeking upon arrival. Biblical and theological perspectives on flight, refugee status and trafficking, the plight of marginalised people, questions about the humanity of detention – particularly of children in detention, are discussed, as are secular and limited philosophical perspectives on this subject matter.

A brief schedule of recommendations conclude the Position Paper and are presented to the Elder Board at the writer’s local church at its June 2014 meeting.

Introduction

This Position Paper examines many of the aspects related to asylum seekers arriving in Australia and the manner in which Australia receives and treats them in accordance with international agreements and conventions. This is a complex subject to embrace. The author has attempted to provide both insight and an historical overview sufficient to highlight how Australia has traversed the matter of assessment of asylum seekers throughout its history, but particularly the past thirty or so years. In addition, in order for the Church to wisely consider the matters developed in this Paper, concepts of the theology of refugeeism, and our ethical approaches to this overall problem of off shore assessment of asylum seekers are provided.

This Paper discusses how the Church might respond to what is a developing global problem, but considers this in light of home base matters of children in poverty here in Australia. There presently are several church leaders taking occasional opportunities of non-violent resistance to attempt to influence the Australian Government to release children from Australian immigration detention. All children matter. Action is required for them all.

Finally, the Paper provides several recommendations on how the Church at large might respond to government and other key stakeholders in this overall matter. The recommendations written are those that the author's local church will be considering as a direct result of this Paper being prepared.

Australia – An Island Nation

Like many in the world Australia is an island nation. It is the largest island on the planet, surrounded by at least hundreds of kilometres of ocean. Until less than 100 years ago, the only form of realistic access to any part of the Australian mainland was by boat. This includes the very first Australians – indigenous aboriginal Australians. The following estimates of human history will challenge many with respect to the age of the planet on which we live. Whilst not overly material to the outcomes of this Paper, for the purpose of this Paper and the appreciation of the content matter under debate, it is assumed that the scientific assumptions used here are correct.

It is possible that there were humans crossing a land bridge of sorts before Pangaea first split into Laurasia and Gondwana about 275 million years ago. However, with the possible and subsequent split of Gondwana into the major southern continents as we now know them, it is more likely that the first human migration to the southern continent we now call Australia was by small marine vessel from South East Asia. Such initial presence is likely to have occurred no later than 40,000 years before European settlement, and not earlier than 80,000 years before. Whilst there is not universal agreement with either the timing, whether it is a young earth, or an old earth, or the movement of humanity out of Africa, there are those that believe the original Australian inhabitants were amongst some of the very earliest human travellers. It is suggested that these intrepid travellers followed the southern

coastline of Asia, crossed about 250 kilometres of sea, and colonised Australia by around 50,000 years ago.¹ Whatever the time of first human inhabitation, it seems safe to assume that these people came by boat.

By the time the British arrived in force and claimed Australia as a colony of the British Empire, Australia was far from a vacant land. Indigenous Australians had inhabited much of the continent. There is some disputed evidence of centuries old interaction with Australian aborigines and Macassan traders – Indonesian fishermen – keen to fish for sea slugs or sea cucumbers that were considered to be a delicacy in both Indonesia and China. The disputation arises over the dating of materials, whether 500 years plus, or unreliable because of its mangrove nature. Again, irrespective of timing, it is accepted that this involvement predates any European travel to Australia. There is also evidence of interactions with Papua New Guineans. All of this is hardly surprising given the location of northern Australia to the Southeast Asian archipelago, and seasonal fishing trades between ancient cultures.

Prior to the major colonial incursions by the British, initially by Dampier (1688) on the northwest cape of Western Australia, the Dutch, French, and Portuguese visited Australia, leaving artefacts as they travelled through. It was not until James Cook travelled up the east coast of Australia and “discovering” Botany Bay that set Australia as a British colony.

For all but the past 235 years Australia was of non-European settlement.

With respect to travel, Australia remained a nation of people who were boat arrivals until about fifty years ago. Although the country of migration patterns were beginning to slowly shift from a significant European focus, the greatest change in migration was the shift in mode of transport, from boat to aeroplane.

Through recent stringent political endeavour, the recent number of arrivals by boat to Australia has dwindled to where it is now most common that if you arrive by boat, you are by many, perceived to have arrived in Australia illegally.

In summary:

- Australia is an island nation with travel to and from over any great distance really only possible by boat and aeroplane.
- The number of “boat people” arriving in Australia has recently dwindled to less than a trickle due to political endeavours to “Stop the boats”.
- Current refugee boat arrivals are considered to be illegal, and, in any event, people on board are taken to off shore detention centres in Nauru and Manus Island in Papua New Guinea.

¹ Spencer Wells, *The Journey of Man : A Genetic Odyssey*, Random House trade paperback ed. (New York: Random House Trade Paperbacks, 2002), 267.

Rates of Successful Asylum Applications

Australia and, more recently, New Zealand, have placed caps on both their general annual migration intake and resettlement programs and their refugee intake programs. Not every sovereign state adopts this pathway. It is accepted that most refugees cross borders into neighbouring nations. Australia and New Zealand do not have the same border permeability of many nations in the world. Because both nations are sea-locked, an expectation has been built that we can better control our borders, and boat arrivals must be dealt with as illegal immigrants to our respective nations.

That could be seen as a positive opportunity to plan services well around the anticipated influx of permitted refugees. Matters of housing, welfare services and health services in an urban or regional community setting can be thought through and developed according to a planned logistical development cycle once robust numbers of accepted migrants and refugees are allocated places. But the allocation of a fixed number of incoming migrants and refugees can also be used as a wedge in so many ways. For example, from good international citizen and neighbour through to fear of them not being like us, and limiting access so we do not lose our Australian identity.

Whilst fear of change and fear of loss of national identity seem to have been used as spin to stir up the emotional response of Australians to the acceptance of both migrant and refugee populations, the annual intakes suggest a very well planned and small number of both. Approximately 220,000 people – migrants and refugees – were approved for stay in Australia in the 2012 calendar year. Of that number just less than 200,000 were successful migration applications and the balance of just over 20,000 people receiving protection visas as approved asylum seekers. That total figure is barely 1% of the total Australian population – hardly a number that is going to change the face of Australian society each year. And a number that seems well able to be managed, whether people are located in urban or regional centres.

Although described as “historical onshore asylum application data does not specify the mode of arrival of each applicant, it is only possible to roughly calculate the proportions”², the data below suggests that in the very recent years reviewed the number of asylum seekers travelling by boats had increased beyond those arriving by air travel.

² http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumFacts#_Toc348096468. Accessed 21 May 2014.

Onshore asylum applications

Program year	Non-IMA (air arrival) Protection visa (PV) applications lodged		IMA (Irregular Maritime Arrival) refugee status determination requests received		Total
	Number	Per cent of total applications	Number	Per cent of total applications	
2001-02	7,026	76.0	2,222	24.0	9,248
2002-03	4,959	98.8	60	1.2	5,019
2003-04	3,485	97.6	87	2.4	3,572
2004-05	3,062	95.4	146	4.6	3,208
2005-06	3,191	96.9	101	3.1	3,292
2006-07	3,723	99.4	23	0.6	3,746
2007-08	3,986	99.5	21	0.5	4,007
2008-09	5,072	88.0	690	12.0	5,762
2009-10	5,987	56.6	4,591	43.4	10,578
2010-11	6,316	55.0	5,175	45.0	11,491
2011-12	7,036	48.8	7,379	51.2	14,415

And, of interest, the success rate of applicants for protected visa status is significantly higher if one applies as a boat arrival compared to a plane arrival³:

Final grant rate (plane arrivals), 2006-07 to 2012-13

Year	Grants	Refusals	Total decisions	Grant rate
2006-07	1,692	2,651	4,343	39.0%
2007-08	1,898	2,107	4,005	47.4%
2008-09	2,173	2,616	4,789	45.4%
2009-10	2,364	2,266	4,630	51.1%
2010-11	2,099	2,737	4,836	43.4%
2011-12	2,272	2,826	5,100	44.6%
2012-13	2,555	2,719	5,274	48.4%

³ <http://www.refugeecouncil.org.au/r/stat-as.php>. Accessed 21 May 2014.

Final grant rate (boat arrivals), 2008-09 to 2012-13

Year	Grants	Refusals	Total decisions	Grant rate
2008-09	209	0	209	100.0%
2009-10	2,152	26	2,178	98.8%
2010-11	2,721	134	2,855	95.3%
2011-12	4,766	454	5,220	91.3%
2012-13	4,949	675	5,624	88.0%

In summary:

- Over the past handful of years boat arrivals of asylum seekers has surpassed plane arrivals;
- Boat arrival applications have a higher success rate of approval for protection visas rather than plane travellers;
- The rate of boat arrival approvals have progressively reduced however suggesting that the restraint by successive Labor and Coalition governments in Australia to the targets adopted for approvals of protection visas.

A Brief History of Migration and Current Migration Status in Australia

Australia has continued to effectively support immigration since its inception and has been accepting refugees since the 1830s. In the years leading up to the Second World War (WWII) Australia was characterised by a wide and active migration, particularly of southern European, Adriatic and Mediterranean men. In conjunction with continuing British migration, this major push to welcome the foreigner and stranger to Australia is a key plank to the development of the Australian nation.

In June 1947, immediately post WWII, Australia entered into an agreement with the new International Refugee organisation to settle displaced people from camps in war torn Europe. Of interest, in a 30 November 2013 updated web page, the Australian Government states that:

“The difference between a migrant and a refugee is explained by UNHCR, the UN Refugee Agency:

Economic migrants normally leave a country voluntarily to seek a better life. Should they elect to return home, they would continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the prevailing circumstances.”⁴

Approximately half of the immigrants arriving in Australia in the 1950s and 1960s were surprisingly, to the Australian Government, from eastern Europe, arising from the growth of the eastern bloc.⁵ Australia’s immigrant began to diversify away from

⁴ Australian Government. <http://australia.gov.au/about-australia/australian-story/changing-face-of-modern-australia-1950s-to-1970s>. Accessed 15 May 2014.

⁵ Ibid.

Europe in the 1960s and into the 1970s with refugee migration extending to Uganda, Chile, Cyprus and East Timor.⁶

The 2012-2013 immigration profile for Australia is for the admission of 190,000 immigrants – on track with its planning targets. The major source countries for arriving migrants are India, China and the United Kingdom. Some 3,850 child migrants were among this total number of immigrants for 2012-2013.⁷ This number of immigrants does not include people relocating from New Zealand under the terms of the Trans-Tasman Mutual Recognition Agreement, or the humanitarian (refugee) intake.

In the 2012-2013 financial year in Australia some 20,019 Refugee and Humanitarian visas were issued. Rather too critically Vertigan⁸ writes, “Australia takes in a paltry 20,000 of the world’s 15.4 million refugees per year.” Vertigan would have us believe that Australia annually admits a mere 0.13% of the global refugee population. Certainly the figures can be argued that way. But, it is a matter of use and interpretation of data. Of the total global refugee population stated by Vertigan only 893,700 refugees had individually applied for asylum through the UNHCR⁹. Australia’s proportional intake per head of population climbs to 2.23% of the Australian population. In terms of global population Australia makes up 0.30%. In terms of asylum seeker intake therefore Australia fares quite well internationally on a per capita total population.

But Australia is a large, largely uninhabited continent. And in global terms we are wealthy. Perhaps our population as a proportion to that of the global human population is not the only marker on which to base our relative intake of refugee and asylum seekers.

Vertigan reminds us that the number of refugees worldwide equates to approximately three quarters of the Australian population number – 15.4 million at the close of 2012. At 31 December 2012 the UNHCR estimates 45.2 million people were displaced worldwide by persecution or conflict.¹⁰ With the Syrian crisis and several other conflicts continuing around the globe, we assume that refugee displacement will continue for some years to come. The “refugee problem” is a contemporary world problem, and one that may persist for at least one further generation.

Refugee Week here in Australia writes that “In terms of global resettlement needs, in its planning for 2014, UNHCR identified over 690,000 refugees in need of resettlement. Unfortunately, the number of resettlement places offered by governments to UNHCR is expected at most to be around 85,000.”¹¹ The gap in need is a world problem.

⁶ Ibid.

⁷ Australian Government, Department of Immigration and Citizenship. <http://www.immi.gov.au/media/statistics/pdf/report-on-migration-program-2012-13.pdf>. Accessed 15 May 2014.

⁸ Laura Vertigan. In On Line Opinion. <http://www.onlineopinion.com.au/print.asp?article=16224>. Accessed 21 April 2014.

⁹ <http://www.refugeeweek.org.au/resources/stats.php>. Accessed 15 May 2014.

¹⁰ Ibid.

¹¹ <http://www.refugeeweek.org.au/resources/stats.php>. Accessed 15 May 2014.

Whilst UNHCR notes that at the end of 2012 approximately 46% of all refugees are less than eighteen years of age,¹² one simply cannot extend that proportion to Australia's refugee situation. However, it is a human tragedy that the displacement of individuals often translates to the displacement of families and their children. Australia is not alone in its detention practices of people seeking refuge and asylum. Some international developments of detention are covered later in this Position Paper.

For now though we acknowledge that there has been some recent non violent resistance form of activism at four known locations by some "Christian Church leaders" in Australia. During March, April and May 2014, these "leaders" have staged "sit-in prayer meetings" in the electorate offices of The Federal Minister for Immigration, the Federal Foreign Affairs Minister, the Prime Minister, and the Leader of the Opposition. Although there is concern being expressed about any form of mandatory detention, it seems that the primary drivers of concern and resistance are:

- 1 The high number of children in Australian mainland closed detention centres and in off shore detention in Nauru, Christmas island, and Cocos Keeling Island; and
- 2 The growing, excessively unreasonable time that people are generally being held in detention that seem to be creating some backlash by Christian activists during March, April and May 2014.

During the 2012-2013 financial year, in excess of 12,000 of these visas were issued as part of the off shore Refugee Program, and a further 7,500 or so Onshore Protection visas were issued in Australia. The balance of just over 500 visas were issued as Special Humanitarian Program visas. The total number of these visas issued represents approximately 40% of all such Refugee and Humanitarian visa applications.¹³

At 30 April 2014, some 6,200 people continue to be held in closed immigration detention facilities in Australia. The number of people in immigration detention who arrived unlawfully by air or boat as at 30 April was 3,855, of whom all but 544 were asylum seekers who had arrived by boat – now termed Illegal Maritime Arrivals. In excess of 770 of these people have been in detention for greater than twelve months, and almost 130 for greater than two years. Only 141 (3%) of detainees are in detention for 31 days or less.¹⁴ At 30 April 2013 there were 1,023 children held in facility-based detention, 1,490 in community detention arrangements and 1,827 in the community on Bridging Visa E. Of these detainee populations, some 2,450 asylum seekers were detained in Australian-funded Offshore Processing Centres in Nauru (1,177 people detained) and Manus Island in Papua New Guinea (1,273). They included 190 children detained in Nauru.¹⁵

¹² <http://www.unhcr.org/uk/about-us/key-facts-and-figures.html>. Accessed 24 May 2014.

¹³ <http://www.refugeeweek.org.au/resources/stats.php>. Accessed 15 May 2014.

¹⁴ Department of Immigration and Border Protection. *Immigration Detention and Community Statistics Summary*. Australian Government, 30 April 2014, 3,4,6,11.

¹⁵ *Ibid*.

In summary:

• Planned regular Migration Intake 2012-2013	190,000	
• Planned Humanitarian – Refugee Intake 2012-2013	20,000	
• Actual Humanitarian – Refugee Intake 2012-2013	20,019	
○ <i>Inclusive of off Shore Refugee Intake</i>		12,000
• People in Immigration Detention at 30 April 2014 (31 January 2014) ^{16,17}		
○ <i>In “non community based residential” Detention</i>	7,289	(9,188)
○ <i>Detained in Australian closed detention</i>	3,435	(4,923)
○ <i>Detained in Off Shore centres</i>	3,854	(4,265)
○ <i>Total Children detained in centres</i>	1,023	(1,138)
○ <i>Children in Australian closed detention</i>	579	(582)
○ <i>Children in Off Shore detention</i>		(556)
○ <i>Community detention – residence determination</i>	2,913	(3,391)
▪ <i>Children</i>	1,490	(1,631)
○ <i>Community detention – Bridging Visa</i>	24,273	(22,670)
▪ <i>Children</i>	1,827	(1,751)

Boat People versus Ocean Liner Immigration

By the end of the 1970s the ocean liner British immigrants had largely declined. Air travel had taken over as the travel method of choice for most people arriving in Australia. But with the decline of the ocean liner the rise of smaller, much less sea worthy vessels were taking to the open seas in an effort to transport their occupants to a new future.

The Vietnamese boat people phenomenon in particular led to much debate in the Australian public. Australia was an ally of the South Vietnamese government during the 1960s and early 1970s Vietnam War. Ex patriot Vietnamese people, among them Pastor Binh Nguyen,¹⁸ have discussed with me the turmoil in which they lived as South Vietnamese people. As children they can recall the strong fear that their families held for their very lives once the outcomes of the Vietnamese war had arrived. Families put to the open ocean in the South China Sea, planning for a maximum of eight days in open waters, and hoping (and praying) that they would be collected by the US Navy who has remained at sea during this extended time of peace monitoring after war had been declared concluded.

These family groups, perhaps twenty to thirty a time in open small marine vessels of two decks, had minimal supplies and no protection against the natural elements, pirates, and the Viet Cong that might pursue them. Apparently thousands died. But those that were rescued were taken to major South East Asian cities, processed as refugees, and asked to which country and city they would like to be sent. Australia, as one of those allies, became a popular destination. Therefore, any “boat people” arrival off Australian shores was by far the exception than the rule. But this influx of

¹⁶ Department of Immigration and Border Protection. *Immigration Detention and Community Statistics Summary*. Australian Government, 31 January 2014, 3,4.

¹⁷ Department of Immigration and Border Protection. *Immigration Detention and Community Statistics Summary*. Australian Government, 30 April 2014, 3,4.

¹⁸ Binh Nguyen. Personal discussion 9 April 2014.

Vietnamese people increased the perceptions about imbalance of multiculturalism, and the Australian public had mixed feelings about the perceived loosening of ties to the United Kingdom, and a shift towards Asia.

But South Vietnam was an ally, and in the tradition of Australian mateship, the opening of our borders to an increased influx of people from Asia, initially Vietnamese, then Cambodian and Chinese, contributed to further diversification of the typical Australian profile. Even so, we find it fascinating that for asylum seekers in the south east Asian area, most of whom today are Afghani refugees, are not treated similarly by us as an ally nation supporting Afghanistan in a decade long war as part of the broader war against terror that has been pervading the planet. But Afghanistan is a tired war torn nation and has been in conflict for over thirty years.

From the UNHCR *Global Trends 2012: Displacement, The New 21st Century Challenge*,¹⁹ informs us:

With close to 2.6 million refugees in 82 countries, Afghanistan remained the leading country of origin of refugees in 2012. The country has remained on top of the list for 32 consecutive years with numbers varying from 500,000 refugees at the onset of the crisis in 1979, to more than 6.3 million at its peak in 1990. On average, one out of four refugees in the world are from Afghanistan, with 95 per cent of them located in Pakistan and the Islamic Republic of Iran.

We find it against the Australian ethos of giving a “fair go” that we might be so uncompassionate to those whom we fight alongside, and who, as a nation, have been so brutalised by war over more than three decades. That boat people from Afghanistan would be turned away when their asylum seeking status is determined, and found to be permitted as legitimate refugees, albeit highly likely to not have grown in, or pursue the same faith base, as an Anglicised Christian nation such as Australia – we say this rather tongue in cheek – seems to be unnecessarily harsh from a nation that has supported these people through war, military, policing, and aid effort.

Excluding asylum seekers, at the end of 2012 there were 7,192 Afghani persons in Australia – well up on the previous year. But Australia’s official figures are based on the number of applications lodged for protection visas. They do not include the estimated 9,000 to 10,000 asylum seekers who arrived in Australia by boat in 2012 and have not been able to lodge protection visa applications or who have been transferred to third countries for refugee status determination.²⁰ Those figures should be available by mid 2014.

¹⁹ United Nations High Commission for Refugees. *Global Trends 2012 : Displacement, The New 21st Century Challenge*. UNHCR, Geneva, Switzerland, 2013, 14.

²⁰ United Nations High Commissioner for Refugees. *Statistical Yearbook 2012*. UNHCR, Geneva, Switzerland, 2013, 122.

While boat arrivals enjoyed a high rate of acceptance of asylum applications compared to plane arrivals, the data pertaining to Afghani asylum seekers raises some concerning points for our allies, and boat arrivals generally, if these application data continue to be reflected:

- Of all 3,079 applications for asylum by Afghani refugees during 2012 in Australia, only 1,874 were confirmed;
- In excess of 490 applications were rejected (16.1%);
- A total of 826 applications remained open and pending (26.8%), an increase of 606% on the previous year in pending cases.²¹

There is however no reliable data regarding children in detention worldwide. In response to a question “I am interested in some international estimates of numbers of “refugee children” in detention each year”, Mike Flynn, founder and Director of the Global Migration Centre, in personal correspondence advised, “As far as we can tell, no such statistic exists of the kind you are looking for regarding minors in detention.”²² We find this to be a weakness in the nature of refugee demographical statistics kept by UNHCR and its role to uphold the right to protect children and the responsibility of doing so globally with the relevant instruments committed to by constituent member nations to the United Nations.

In summary:

- People no longer migrate to Australia via ocean liner. They now arrive by commercial air flight or via intrepid ocean bound travel in small, barely sea worthy vessels;
- The nature of many boat arrivals is still largely and Asian cohort, but not pre-approved for asylum, and often without appropriate papers;
- Rather than be received as approved refugees, the contemporary cohort of arrivals is placed in off shore detention for asylum assessment in a third party partner nation of the Australian government;
- Statistical data is available but shows the number of people awaiting asylum application approval has increased significantly, probably due to the increasing length of processing time for identification purposes; and
- There is little useful and reliable international data about children / minors in detention awaiting asylum application processes to be finalised so that Australia’s practices can be compared to others, and the size of the problem can be measured.

Illegality of Marine Arrivals to Australia

Over the past decade or so the nature of marine arrivals – boat people – has become one of demonisation and related complex argument. Arguments about the illegal activity of people arriving by boat on our shores is combatted with the equally strident remarks about the perfectly acceptable form of arrival of safe refuge seeking people, by boat, to Australian land. There is argument and counter argument about

²¹ Ibid, 106.

²² Michael Flynn. Graduate Institute Global Migration Centre, Geneva, Switzerland. Personal email to Wayne Belcher, 19 May 2014.

what the United Nations 1951 Convention Relating to the Status of Refugees (“Convention”) means, and how it should be interpreted, and how this Convention fits in respect of the Australian Commonwealth Migration Act of 1958.

In part the Convention defines the term “refugee” as:

“... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”²³

However, Article 31.1 of the Convention does use the phrase “illegal entry or presence”²⁴ with respect to entry into the “Contracting State”, in our case, Australia. Of interest is that the Australian Broadcasting Commission’s Fact Finder service found in September 2013 that the now Minister for Immigration was correct when he, the then Opposition Spokesperson on Immigration, stated that the particular phrase was in the Convention.²⁵

We need to continually remind ourselves, and all Australians, that the phrase that is used in the Convention is so used in the context of not adding penalty to refugees on the basis of the illegal entry or presence provided that they present to authorities without delay and show good cause for such illegal presence.

But how does a person in flight show such cause? And is the action by the Australian government/s of receiving, or indeed retrieving, boat arrivals from maritime entry and re-sending them to a third party State not adding penalty to such refugees – albeit that refugee status has to be determined?

In any event it seems that Australia has not been capable of thinking through alternate solutions of mandatory detention for illegal maritime arrivals (“IMA”) people, and that as a nation we are content to detain people simply on the basis that:

- They have entered Australia’s borders illegally, but could be legitimate refugees; and
- We have a closed door policy to such illegal arrivals for ongoing asylum seekers.

We have successfully made the term “illegal” a pejorative term of degradation for those who, whether for genuine fear and flight purposes, or for a better economic reason, wish to travel to Australia. Yes, it appears that if people breach the border of a sovereign nation they have illegally entered that nation. But if those people are either detained because they are rescued from the sea, or they voluntarily present themselves for immigration detention, have they not fulfilled their responsibilities

²³ United Nations High Commission for Refugees. *Convention and Protocol Relating to the Status of Refugees*. Geneva, Switzerland, 1951, 14.

²⁴ *Ibid*, 29.

²⁵ <http://www.abc.net.au/news/2013-09-06/morrison-correct-illegal-entry-people/4935372>. Accessed 21 May 2014.

under the refugee Convention? (It is interesting to note that prior to 2013, such “illegal maritime arrivals” were more appropriately known as “irregular maritime arrivals.”)

It clearly seems that Australia has criminalised asylum seekers for their arrival, and we have lately added penalty by now re-routing so labelled “Illegal Maritime Arrivals” to a third party nation for detention and assessment. As of 22 May 2014, when the first asylum seekers to Nauru were released on visa entry to resettle in Nauru, and, with one exception, by virtue of their visa, entitled to travel to any other country in the world, these people were forbidden by the Minister for Immigration and Border Protection to ever set foot on Australian soil. Minister Morrison is quoted as saying “They will not be able to enter Australia.”²⁶ Furthermore, to underpin what we believe to be an act of penalty to others, the Prime Minister in the very same day in a talkback radio program, admittedly related to the likely impact of the recent Australian federal budget on youth unemployment in Tasmania, said “If people have to move for work, that’s not the worst outcome in the world ... for hundreds and hundreds of years people have been moving in order to better their life.”²⁷

We suspect that a successive Australian government will eventually change this outcome. So, why do we have to put these people through such trial and oppression? That approach to refugees and asylum seeking, we believe, has added significant penalty to the plight of legitimate asylum seekers arriving in Australia. We would go so far as to say that is a failing of our current, and immediate past federal governments to honour decades old principles related to the protection and care of legitimate refugee and asylum seeking persons – principles to which Australia was an initial signatory.

Nothing in what is written above should suggest that we do not uphold the view that Australia as a sovereign State does not have the right to make its own laws, even as a Contracting State to the Convention. We believe the outcomes we currently face with thousands of people in immigration detention, including well over 1,000 children, where as of 30 April 2014, the average waiting time for asylum applications to be processed is now an average of 305 days,²⁸ is harsh and oppressive, and an unnecessary penalty on already marginalised people.

In summary:

- Australia has successfully created a perception of criminalising of refugees and asylum seekers that arrive illegally in Australian waters.
- The terminology used in the United Nations 1951 Convention Relating to the Status of Refugees could well be redrafted to remove the word “illegal” from the text of the Convention so that recognition of entry without permission or

²⁶ <http://www.smh.com.au/action/printArticle?id=5445308>. Accessed 24 May 2014.

²⁷ <http://www.themercury.com.au/news/tasmania/prime-minister-tony-abbott-tells-hobart-press-conference-young-tasmanians-may-have-to-move-to-find-work/story-fnj4f7k1-1226927014431>. Accessed 24 May 2014.

²⁸ Department of Immigration and Border Protection. *Immigration Detention and Community Statistics Summary*. Australian Government, 30 April 2014, 10.

authority is granted by a Contracting State without any inclination to consider such entry illegal, unless refugee or asylum seeking status is later denied.

- We believe Australia is failing in its responsibilities to the Convention by it adding penalty to boat arrivals.

People in Detention

Australia and New Zealand are among some unique friends in the world. We are island states with several hundreds of kilometres separating us from our nearest of neighbours. This makes border control in some respects perhaps easier than many Asian, European, and African nations.

In some countries geographic boundaries may very well cross centuries old, people group, locations. In those places it may not be civil conflict that forces people away from a usual dwelling place, but rather natural or man-made disaster. People literally vote with their feet and walk to what they hope will be a safe haven. In such instances, and in continents with several constituent nations, the permeability of refugee and asylum seeking is not as clearly defined as the land down under bordered by ocean.

In Australia we can take some control of who crosses our sovereign borders. It makes sense that once crossed some people are placed in migration detention centres for assessment of asylum and refugee claims.

But detention of migration arrivals, is not unique to Australia. Refugee detention, whilst not a new practice, was not overly commonplace prior to the 1980s. Off shore interdiction and detention raise important questions about sovereignty, accountability, and custody of detainees. Contemporaneously such actions should require us to consider where the responsibility and welfare of migrants begins and ends.

Although not the first such form of border control, Australia has revived its Pacific Solution into Operation Sovereign Borders with large scale interdiction of people smuggling operations. Migration scholars have referred to this as “remote control”²⁹ of migrants long before they reach their intended destination. For example, the European Union (“EU”) stepped up maritime interdiction patrols through the mechanism of the Frontex agency.³⁰ The EU States have had on-again-off-again plans to establish “processing” centres for asylum seekers outside the borders of Europe, as well as multiple efforts by individual European countries to fund and support detention practices in neighboring non-EU countries.

²⁹ Aristide Zolberg initially developed the concept of “remote control” to characterize the emergence of visa regimes, which enable states to regulate entrance onto their territory before a person’s arrival. See Zolberg, “Matters of State: Theorizing Immigration Policy,” in Charles Hirschman, Philip Kasinitz, and Josh DeWind, *The Handbook of International Migration: The American Experience* (New York: Russell Sage Foundation, 1999), 71-93.

³⁰ Michael Flynn. *How and Why Immigration Detention Crossed the Globe*. Global Detention Project Working Paper No. 8. Geneva, Switzerland, 2014, 3.

Flynn writes, "... the deprivation of liberty of non-citizens for reasons related to their immigration status has truly gone global. From Mexico to the Bahamas, Mauritania to Lebanon, Turkey to Saudi Arabia, South Africa to Indonesia, Malaysia to Thailand, detention has become an established *modus operandi* that counts on dedicated facilities and burgeoning institutional bureaucracies."³¹

Remote control means to a set of policies, practices and trends that are changing what might be called the political sovereign geography of a nation's migration control, extending border controls away from the wealthiest 'countries of destination' and closer to what official discourse designates as 'countries of transit' and 'origin'. Often precautionary and preventative in logic, these policies and practices include the widespread use of visa programmes to code risky nationalities and filter out unwanted travellers. Effectively in Australia remote control migration policies and practices are used to conduct the processing of Australia bound asylum applicants 'offshore' well before they can reach the 'territory' of Australia.

This remote control management of the interdiction, detention, and processing of refugees largely applies to Australia's "illegal maritime arrival" population being held in Christmas Island, Cocos-Keeling Island, Manus Island, and Nauru. However, not all arrivals are via remote control.³²

Program year	Non-IMA (air arrival) Protection visa (PV) applications lodged	
	<i>Number</i>	<i>Per cent of total applications</i>
2001-02	7,026	76.0
2002-03	4,959	98.8
2003-04	3,485	97.6
2004-05	3,062	95.4
2005-06	3,191	96.9
2006-07	3,723	99.4
2007-08	3,986	99.5
2008-09	5,072	88.0
2009-10	5,987	56.6
2010-11	6,316	55.0
2011-12	7,036	48.8

Irrespective of the nature of remote control, it is not unreasonable that there is a period of detention that must be served whilst boat arrivals are health assessed, and the process of refugee and asylum seeking has commenced. Even Burnside refers to an initial period of detention in his redesign of the system and the "asylum seeker problem".³³ What seems to be the key issue is the length of time that "detainees" spend in (any form of) detention that damages mental and emotional well being, and

³¹ Ibid, 4.

³² http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumFacts. Accessed 24 May 2014.

³³ <http://thebigsmoke.com.au/2014/04/07/reality-boat-people-solution-asylum-seeker-problem/>. Accessed 21 April 2014.

adds to the likelihood that even a successful visa applicant's outcomes will be poorer health wise directly due to an extended period of detention.

It is quite right to suggest that there might be more appropriate and legal ways in which refugees and asylum seekers can "get" to Australia. The sad reality is that many of the people waiting in Indonesia (and no doubt other places) for visa approval to enter Australia "legally" have waited and continue to wait for years when they correctly fulfill their obligations under Australia's immigration policies. Former Australian Prime Minister Malcolm Fraser's recent commentary on this choice speaks volumes about the formal off shore processing that enables people to enter Australia legally when he writes, "What we must finally understand is there is no regional process; people languish for years in Indonesia with no end in sight. Forcing them to languish further in offshore detention centres in remote places is costly, cruel and, as shown by the events on Manus Island, increasingly dangerous."³⁴

Perhaps the heightened levels of concern might be mitigated if Australia was able to dramatically reduce the periods of detention that people are forced to spend before processing and applications for asylum are under way. There has been a significant rapid deterioration in time spent in detention. This decline³⁵ after November 2011 (277 days average), and January 2014 (226 days), suggests that the time spent in detention is volatile, and lengthy. It also suggests failure of the processing to deal with boat arrivals in a reasonable time. In the United Kingdom at 31 December 2012 almost 60% of detainees had spent 2 months or less in detention.³⁶ The average length of immigration detention in Canada was 25 days in financial year 2010-2011, compared to approximately six months in Australia at that same time, 30 days in the United States, and 10 days in France.³⁷ At 30 April 2014, the average time spent in off shore detention in Australia was 305 days.³⁸ Australia has progressively declined in performance.

And why the need to keep people off shore? Surely the infrastructure developed in urban or regional Australian centres can provide for essential minimal periods of detention, **and** also for assisted housing. Such built form infrastructure could, if built with modular styling to permit building adaptability, could be used for a range of subsequent purposes – residential care of frail elderly people or people with disabilities, educational institutions, and the like.

It is time for Australia to once again fully accept our place as a global nation with global responsibilities – to the enduring principles of the United Nations 1951 Convention Relating to the Status of Refugees. Displaced people are a global

³⁴ <http://www.canberratimes.com.au/comment/manus-island-so-many-questions-one-simple-solution-20140220-333sn.html>. Accessed 22 May 2014.

³⁵ Department of Immigration and Border Protection. *Immigration Detention and Community Statistics Summary*. Australian Government, 31 January 2014, 10.

³⁶ <http://migrationobservatory.ox.ac.uk/briefings/immigration-detention-uk>. Accessed 22 May 2014.

³⁷ <http://www.globaldetentionproject.org/countries/americas/canada/introduction.html>. Accessed 22 May 2014.

³⁸ Department of Immigration and Border Protection. *Immigration Detention and Community Statistics Summary*. Australian Government, 30 April 2014, 10.

phenomenon and the Refugee Convention is the world's agreement to protect people fleeing harm.

In summary:

- Whilst immigration detention is not a new way of dealing with boat arrivals, through remote control management, it depersonalises our refugee and asylum responsibilities to others.
- The average period of time spent in detention as at 30 April 2014 is ten months. That is an increase in detention time over the preceding three years – at the detriment to Asylum seekers. It fails the benchmark of other western nations such as Canada, France, the USA, and the United Kingdom.
- We believe Australia needs to fulfil its humanitarian and moral obligations under the United Nations 1951 Convention Relating to the Status of Refugees.

What does the Australian Community Think?

One series of comments is not a reliable source of the sense of rounded feedback to a particular issue. However it might serve to underscore the diversity of view and opinion on the matter of non violent resistance to the “children in detention” issue that has been running in the Australian media during March, April and May. Vertigan wrote an on line opinion on 17 April 2014 entitled “Why we broke the law”.³⁹

By the time this author first accessed Vertigan's blog piece on 21 April it had received 89 follow up comments. Of the 89 follow up comments only 9, just over 10%, were supportive of the article by Vertigan and the actions taken by her and her colleagues. Of the remaining 80 comments, most were completely off topic and arguing about the merit of comparative religion, any religion, and in large measure decrying Christianity and do-gooders generally. Of those commenting on the article itself, most were disagreeing with the action based on a different ideology, and that stopping the boats had actually successfully brought about an end to the business of people smuggling, and that remote control management of asylum seekers was a continuing deterrent to such a business model.

If this level of qualitative commentary were representative of all feedback that has been posted on social media, and / or other media, then we suggest two things follow:

- 1 The Australian government will be mindful of, but not overly concerned about, this action at this time; and
- 2 The heart and mind of Australians has not yet been won to the plight of asylum seekers warehoused off shore and awaiting asylum processing, and generally the matter of children in detention.

³⁹ Laura Vertigan. In On Line Opinion. <http://www.onlineopinion.com.au/print.asp?article=16224>. Accessed 21 April 2014.

A recent Lowy poll found that 59 per cent of voters say “asylum-seekers should be processed offshore, in places such as Nauru and Papua New Guinea”.⁴⁰ The poll also showed that “The Prime Minister's turn-back policy is backed by 71 per cent of Australians”.⁴¹ But in a sign of community divisions over boat arrivals, 57 per cent disagreed that “no asylum seeker coming to Australia by boat should be allowed to settle in Australia”.⁴² There remains a quite diverse view of these matters within the Australian community.

In summary:

- Even if the Australian church were fully enrolled in the battle against the harshness of treatment of refugee and asylum seeker maritime arrivals to Australia, and we believe it is not, the hearts of the Australian community have certainly not yet been won.
- As there does not yet seem to be any critical mass opposition against the two major Australian political parties' off shore detention and processing of asylum seekers, it appears that the current Australian government will not rush into any re-arrangement of its Sovereign Borders program of interdiction and remote control management of illegal maritime arrivals.
- Accordingly there appears to be no early solution to the matter of children in detention. That is, unless the Church convinces a critical mass to commence a change process. The church collectively in Australia does have the capacity to elicit that response.

Detention negatively impacts people

There is compelling evidence that immigration detention has a detrimental impact on the mental and physical health of those detained, be they children or adults. Much research has been conducted into the psychosocial impacts of immigration detention on adults. For example, a United States study of 70 detained asylum seekers, published in *The Lancet*, found that 77 per cent of the group had “clinically significant symptoms of anxiety”,⁴³ 86 per cent had depressive symptoms, and 50 per cent displayed symptoms of Post Traumatic Stress Disorder.

In a recent Canadian study the following findings were reported for detainees. The results were based on a Systematic study of a representative sample of 122 asylum seekers held in Montreal and Toronto, and a comparison sample of 66 non-detained asylum seekers:

⁴⁰ <http://www.theaustralian.com.au/national-affairs/policy/lowy-institute-poll-shows-strong-support-for-asylumseeker-policies/story-fn59nm2j-1226942198917?nk=e634af9bbfadf973bd566753d9edd1c3>. Accessed 4 June 2014.

⁴¹ <http://www.smh.com.au/federal-politics/political-news/asylum-seeker-boat-turnbacks-supported-by-71-per-cent-in-poll-20140603-39h2a.html#ixzz35cEsTrep>. Accessed 4 June 2014.

⁴² *Ibid.*

⁴³ Allen S. Keller et al., "Mental Health of Detained Asylum Seekers," *The Lancet* 362, no. 9397 (2003): 1721-1723.

“ ...

- The majority of asylum seekers arriving in Canada (both detained and nondetained) have experienced multiple serious traumatic events and should be considered psychologically vulnerable. On average, asylum seekers had experienced 9 serious traumatic events such as physical or sexual assault, murder of family or friends, and being close to death.
- Detention, even for short periods, is harmful to asylum seekers. After a median detention of only 18 days, over three-quarters were clinically depressed, about two-thirds clinically anxious, and about a third had clinical post-traumatic stress symptoms.
- For previously traumatised persons, imprisonment can trigger re-traumatisation, as evidenced by the high levels of post-traumatic stress. Our study shows that detained asylum seekers are almost twice as likely as their nondetained peers to experience clinically significant post-traumatic stress symptoms.
- Numerous scientific studies have shown that being deprived of control over one's daily life and trapped indefinitely in a demeaning situation is a risk factor for depression. We found that depression rates were 50% higher among detained asylum seekers than among their nondetained peers. Anxiety rates were also considerably higher among detainees.
- In short, our findings show that for asylum seekers, detention very frequently leads to high levels of psychological distress. It places asylum seekers in a position of disempowerment, uncertainty, isolation, and humiliation, in which they are treated like criminals despite having committed no crime. ...
- Even short term detention has a negative impact on children, both directly and also because parents often become too depressed and anxious to provide adequate care. Over time parental distress tends to worsen, and ability to care for children is increasingly likely to be impaired.
- Detention of women who are pregnant or have recently given birth may have particularly serious consequences because of the negative impact of maternal depression on the child's physical and mental health.
- Children may experience long-term detrimental effects after release from detention, including nightmares, sleep disturbance, severe separation anxiety, and decreased ability to study.”⁴⁴

In the Canadian Bill cited above *the researchers claim that the clearest evidence for the outcomes of harm in long term detention arises from Australia*. They state that in the 2010-2011 financial year in Australia there were over 1,100 incidents of self harm including six (6) suicides within a population of about 6,000 people detained for a median period of six months – an outcome of over ten times the suicide rate in the general Canadian population.

⁴⁴ Janet Cleveland et al. Brief for submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada's Immigration System Act. Canadian House of Commons, 2012, 2-3.

Just Monday 26 May 2014, commentary has been abounding about a report released the previous week by International Health and Medical Services, an organisation that undertakes the provision of some medical and health services on behalf of the Commonwealth of Australia in some of its immigration detention centres. The commentary reports “About half the asylum seekers in detention on Manus Island and Nauru are suffering from significant depression, stress or anxiety, according to clinical assessments.”⁴⁵ Whilst the Minister’s remarks have not quite been to ignore the extent of the problem, they have been more of a sense of the provider being there and the problems will diminish over time with specialist psychiatric services being made more readily available. The reporting goes on to say that the mental health situation is “worse than for those in detention on the mainland and on Christmas Island, where a third are suffering major mental health problems, the assessments reveal.”⁴⁶ Importantly the report continues suggesting that both the proportion of asylum seekers with serious mental health illnesses, and the severity of those illnesses are increasing the longer these people are detained in centres.

Does the Minister for Immigration and Border Control believe in exceptionalism – that asylum seekers arriving in Australia and / or its territories are different, exceptional, in their desires, aspirations, concerns, suffering and persecution to others who are seeking refuge elsewhere in the world? Does he think deep down that asylum seekers, deep down, don’t have the same aspirations as we Australians do – a place to call home, enough food each day to feel filled, a safe environment to raise their children, a job that pays so they can make their way. These are not exceptional dreams but are common to man. These mental health conditions have been reported over the years in several jurisdictions. It seems that Australia might be one of the few nations stretching the nature of exception in the way it practices, and largely accepts its border control management.

We, Australia, are adding pain to the lives of individuals, in the manner in which we manage by remote control, the lives, aspirations, and destiny of others. Coincidentally, we damage our own reputation and relationships with our neighbours in the world around us.

In summary:

- If these data do not move us to significant concern about the welfare of others, particularly of children in detention, then we fail to understand even how appalling our, Australia’s, treatment of asylum seeking detainees is compared to other western nations. Our record is not great and seems to be deteriorating.
- We believe that asylum seeking children, their parents, and pregnant women, should never be detained – the costs of adverse health and mental anguish concerns are too great.
- We recognise that some detention immediately upon arrival is likely, but this should be kept to an absolute minimum of, say, 30 days or less, in order that essential health and border control checks can be carried out.

⁴⁵ <http://www.theage.com.au/federal-politics/political-news/manus-island-asylum-seekers-in-mental-health-crisis-20140525-38wwd.html>. Accessed 26 May 2014.

⁴⁶ *ibid.*

- We recommend an absolute maximum of 45 days detention for any person awaiting refugee status outcomes.

What Should Be the Response of the Church?

With an estimated 45 million people displaced or in conflict situations around the world, the future does not look optimistic for refugee and asylum seekers to have a prompt solution to find peace and shelter. These are fundamental aspirations of humanity. They seem far off for so many.

Snyder writes that the word refugee was “probably first associated with the Huguenots in the sixteenth century who described themselves as ‘*réfugiés*’ and communally as ‘*le refuge*’.”⁴⁷ Tens of thousands of these French protestant Christians were slaughtered by their own people, sought safety in Great Britain, and settled in several places in the world, including the east coast of the USA, and South Africa. It was the church in welcoming countries that largely made the journey to safety of these French Christians possible. What has been the response of the Church?

What should be the response of the Church to today’s global refugee concern? What about individual Christ followers? How should I respond to the off shore detention and processing of asylum seekers as part of my own government’s policies? How might I respond to the reported 575,000⁴⁸ children in Australia who are living in poverty? Is there any priority order of need? Should we respond to our own people and children before we take on the responsibility? Is it an “either – or situation”, or a “both – and” scenario, and how do we address that from the perspective of the Church in Australia. How do I respond to what Scripture refers to as the foreigner, the needy, the homeless, and the hungry?

What does Scripture have to say to me about my behaviour, my being Christ to the world. As a Christian do I have the right to speak into the world – my world and that of the refugee – about the role of Jesus Christ in this contemporary global challenge? What do I say, and how do I get that message out to be heard?

⁴⁷ Susanna Snyder, *Asylum-Seeking, Migration and Church*, Explorations in Practical, Pastoral, and Empirical Theology (Farmham Surrey, England ; Burlington, Vermont: Ashgate, 2012), 10.

⁴⁸ The report *Poverty in Australia 2013* advises that in excess of 2.25 million people in Australia, that is over 12.5% of the total Australian population, live under the OECD poverty line of 50% of median wage. This includes just under 1 in every 5 Australian children. The proportion of Aboriginal and Torres Strait Islander people living under the same OECD benchmark is over 19%, some 50% higher than for all Australians. Overall, some 17,845 Australian children under 12 years of age are considered to be homeless. In <http://www.acoss.org.au/policy/poverty/>. Accessed 10 April 2014.

A Theology of Refugeeism

Jesus as the Refugee

Much is made by Christian ethicists about Jesus being a refugee, a marginalised person, who lived in relative poverty and recognised the plight of others much more than we can.

In the Gospels of Matthew and Luke, Jesus is portrayed as being “born on the road”.⁴⁹ Furthermore the Gospels suggest that Jesus lived as a wandering stranger with and among others around the edges of society. We read in Luke 2 that Jesus’ parents’ travel to Bethlehem for a census. In Matthew 2 we read that when Jesus is an infant an angel of the Lord speaks to Joseph, Jesus’ earthly father, warning Joseph to take Mary and Jesus to Egypt to escape King Herod. At what stage Jesus returns to Israel we are not sure. What is known is that Nazareth of Galilee is part of the Galilean territory that had been in question of its own origin for some years. Nazareth really makes no impact in Israel’s history until the 1st Century – directly as a result of where Jesus spends some of his childhood. Jesus was an unknown lad in an unspectacular town. Of Jesus Himself being from Nazareth, it is written in John 1:46, “Can anything good ever come out of there (Nazareth)?” Jesus travelled extensively during His ministry, and encouraged His disciples to do likewise, often taking very little with them. Jesus called His Disciples to leave their families and follow Him. Together they journeyed around Galilee, to Jerusalem and further afield to foreign territory.

Jesus then is considered a returning, repatriated refugee, an itinerant preacher, and in his latter years, an unwelcome stranger in His own land. Senior⁵⁰ says of Jesus that Jesus was an itinerant preacher who stood alongside the marginalised and who migrated from heaven to earth and back again.

But was not Jesus, by His own testimony in John’s Gospel, sent to the world, to save it and not to destroy it? Is not where Jesus sent just a little irrelevant? After all, Jesus was sent to the people of God, then already under an occupying force. Was not the entire Jewish nation, in contemporary refugee and asylum seeker terminology, internally displaced people? It may be true that the Roman Empire was “kindly” enough to Israel and other nations provided they ultimately worshipped Caesar, but I am not convinced the average Jewish person of the time would have necessarily thought the Roman soldier to be personally so kindly.

Our sense is that given all the troubled history of Israel over the centuries, the tribulation that Israel has faced in the past 100 years through war and holocaust, but also the seeming arrogance by Israel since the mid 1960s to fail to see its neighbour achieve the statehood that Israel itself has fought so stubbornly for, we are not convinced that the refugee model of Jesus the Jew of history carries the best metaphor for the Church today in its challenge to support the rehoming and care of

⁴⁹ Snyder, 132.

⁵⁰ Donald Senior. *Beloved Aliens and Exiles: New Testament Perspectives on Migration*. In D.G. Groody and G. Campese, *A Promised Land, a Perilous Journey: Theological Perspectives on Migration* (University of Notre Dame Press, 2008), 23-24.

refugees, the safe passage of asylum seekers to residency in new nation, and the freedom of children from bondage.

The Church as the refugee

We believe a better metaphor for the Church to use in its struggle for recognition of the plight of the contemporary is that the Church, at least those people who are the Church, are the refugee.

Having been saved by grace and looking forward to a new home forever with God and the Lamb, we are now citizens of another place. We have become displaced on earth. We desire to be where God and Jesus are but we are told that we have more work to do on this earth to see others move from a position of citizenship on earth to citizenship in heaven.

This model of refugee sees Jesus being the Minister for humanity's Reconciliation and Immigration. His role in reconciling us to God through faith in Him, although crucified and victoriously raised from the dead. This role is completed by Jesus providing salvation and migration to all those who choose to repent, seek forgiveness for sin, and accept his passport and visa and be given asylum with Him in heaven.

Hauerwas and Willimon suggest that Christians are "resident aliens" on this planet, that is, we aren't citizens of this world but of heaven. We remain living in this world in order to pursue a pathway placed before us by God himself. Our role is to live as a people who are radically other and different to the society that is around us, taking the view that the Church exists as "an adventurous colony in a society of unbelief".⁵¹ Hauerwas and Willimon add that Jesus Christ is the supreme act of divine intrusion into the world's settled arrangements. The message that sustains the colony is not for itself but for the whole world.

Yoder argues that the ethics and politics of Jesus are relevant for social life, but that the ethics of Jesus will not find its primary expression in a fallen world, and it is primarily in the Church where we can expect to find Jesus' politics manifest.⁵² Yoder believed we cannot "deny the powerful ... impact on society of the creation of an alternate social group, and ... overrate both the power and the manageability of those particular social structures identified as 'political'."⁵³ What Yoder is saying is that the fundamental responsibility of the Church is not to manage society or even be effective in it, but to embody the way of Christ in it. From Yoder again, "The very existence of the church is her primary task. It is in itself a proclamation of the Lordship of Christ to the powers from whose dominion the church has begun to be liberated."⁵⁴ Whether we act in community, or each of us acts as an individual, be Christ!

⁵¹ Stanley Hauerwas and William H. Willimon, *Resident Aliens: Life in the Christian Colony* (Abingdon Press, 2004), 49.

⁵² Dennis P. Hollinger, *Choosing the Good: Christian Ethics in a Complex World* (Grand Rapids, Mich.: Baker Academic, 2002).

⁵³ John Howard Yoder, *The Politics of Jesus: Vicit Agnus Noster*, 2nd ed. (Grand Rapids, Mich.: Eerdmans, 1994), 111.

⁵⁴ *ibid.*, 153.

The Church, called out from the world, but in the world remaining as a refugee colony, has significance only as God's means for saving the whole world. What grace, what favour, and what a challenge. How does God save the world? What would Jesus be? What would Jesus do? He would hope that each of us are taking part in His work and being.

Caring for the Stranger

Verhey focuses very heavily though on some "problems"⁵⁵ of Scripture, and how we might wish to use it in arguing the morality or ethical approaches of complex situational matters:

- The Silence of Scripture; and
 - Our lack of familiarity with Scripture;
- and that Scripture must "somehow"⁵⁶ inform a contemporary Christian ethic.

Sometimes well-meaning Christians struggle to understand how contemporary situations that demand a Godly response actually apply to their daily life and their daily walk with their Saviour Jesus the Christ. They might well ask, "What part do I have to play in the global refugee crisis issue? I see no part of Scripture really covering this. Is the word refugee actually mentioned in the Bible?" Whilst the direct answer to that question is likely a strong "No!" there should also be the accompanying "but". The Bible certainly does often discuss the poor, the needy, the stranger, the alien, the friendless, those who seek refuge, and fugitives.

Let us briefly examine some of these matters.

In terms of refugees, although not specifically described as that, Scripture discusses, amongst other examples:

- Genesis 16:6-8 – the angel of the Lord sending Hagar back to Sarai and Abram;
- Genesis 46:1 – Joseph, now Governor of Israel, provides refuge to his family Israel;
- Exodus 12:37-39 – the Israeli exodus out of Egypt, into the wilderness, and into God's care;
- Ruth 1 – Ruth, a Moabite, travels to Bethlehem with her mother-in-law Naomi after her first husband dies; and
- Matthew 2:13-15 – Joseph has an angelic visitation and is instructed to take his wife Mary, and son, Jesus, to Egypt, from where God will call His Son.⁵⁷
- Luke 10:25-37 – in the paradox that turns stranger danger on its head, the parable of the Good Samaritan shows us the benefactor to the Jewish traveller to be a stranger to the man attacked by robbers. Two religious Jewish men hurried by the wounded, suffering man, no doubt leaving him to die, or at least for someone else to care for him so that they did not consciously cause

⁵⁵ A. Verhey, *Remembering Jesus: Christian Community, Scripture, and the Moral Life* (W.B. Eerdmans, 2002), 50.

⁵⁶ *ibid.*, 55.

⁵⁷ This quotation fulfills prophecy in Hosea 1:1 - When Israel was a child, I loved him, and out of Egypt I called my son.

themselves to become unclean. The Samaritan man, the filthy, untouchable Samaritan, a stranger to all Jewish men, saves and serves the Jewish traveller. Are we, as Church, acting like the religious Jews by not serving the wounded man?

In addition to describing possible refugee situations, Scripture also describes the responsibility of the people of God to those escaping slavery, or hardship experienced under others, by treating them with kindness:

- Deuteronomy 23:15-16 – we shall not hand over to others those who are escaping oppression and come to you for assistance;
- Matthew 25:34-40, but particularly verse 35 – we are to feed the hungry, provide water and refreshment to the thirsty, and **welcome the stranger**.

Scripture also describes in Numbers 35 and Joshua 20 that we are to ensure that even a person who might have been accused of some wrongdoing shall be provided with legal safety and sanction until those matters can be addressed.

Finally, and importantly for us, whom we believe are in a state of refuge until we see the King of Glory in eternity, God is our strength, our safety and assurance – and as the Psalmist (and others) have written, “The LORD is a stronghold for the oppressed, a stronghold in times of trouble.”⁵⁸

It seems to us that there should be no escaping the eye of any believer that we have responsibility to those who are both less fortunate than us, and those who have, for whatever reason, taken flight from their home to another place. Particularly to a new nation that cannot guarantee them immediate safety upon arrival. The latter is part of the work of God’s people, should the destination of the stranger indeed be a place where God’s people reside. Sadly in Australia it seems that too few of God’s people understand that Scripture does indeed have much to say on refugees, poverty, the poor and the stranger, and related matters, and that the role of welcoming a stranger is a key role for any one of God’s people.

It is true that there is much need around us. For those who have relative wealth in Australia, there is no shortage of a good cause. But Scripture does not discriminate, and, we believe, does indeed inform us about this matter of ill treatment of asylum seekers. If one follows what we have proposed about the believer being a refugee in his/her own place of living, one could be excused for thinking our responsibility for the stranger to attempt to enter this nation of Australia has been absolved. But we do not believe that Scripture suggest that at all. Scripture talks as much about the care of the needy as it does the hospitality and welfare of the stranger. These are God’s commands, and have been interpreted to be a part of God’s law for all. These are not ‘either – or’ situations. Rather these presenting needs are ‘both – and’ scenarios. That is to say, we are not convinced that God requires us all to spend equal amounts of money to support all worthwhile charitable organisations in their efforts of making Australia a better place for many deserving people. We believe that it is right for us all to consider the relative merit of which few to contribute to. But in terms of moral support, a voice behind that that do advocate and place themselves in harm’s way in

⁵⁸ Psalm 9:9

support of specific groups of disadvantaged people, the whole Church, and every individual in it, have a voice that must support what God is saying needs to be said.

We are of the view that each and every believer should be actively speaking out for some one or more specific causes that they feel personally very supportive of. But together the Church needs to speak out on behalf of all to those people wrong seems to be perpetuated. This is certainly the case with asylum seekers desiring to make their way to Australia.

Which Ethic?

In his seminal work *The Seven Habits of Highly Effective People*, Steven Covey, a psychologist preparing a doctoral thesis, writes that reviewed literally hundreds of books covering subjects of self-improvement, popular psychology, and self-help. Reviewing literature over some 200 years of United States history Covey writes that he noticed a startling pattern emerging in the literature – a shift from shortly after WWI from a character ethic to a personality ethic.⁵⁹

In summary a character ethic suggests that there are basic principles of effective living, and that people can only experience true success and enduring happiness as they learn and integrate these principles into their basic character. A developing personality ethic took two divergent paths. One was the desire of success with use of human and public relations techniques, and the other the focus on positive mental attitude.

Stassen and Gushee describe modern society as moving us “away from our roots and our communities”,⁶⁰ teaching us to take on the persona of personal ethics. In turn they, Stassen and Gushee, return to character as the guide for behaviour. They write, “To counter the corrosive force of modern atomistic individualism, several ethicists are arguing that we need to focus not only on right and wrong decisions but on what shapes the character of those who make the decisions and do the action.”⁶¹ And Stassen and Gushee cite Kotva⁶² several times in their work referring to Kotva’s development of character ethics as a better way of reasoning. Stassen and Gushee build on character ethics in a systematic way through their text. They argue four dimensions are important:

- Our passions / loyalties;
- Our perceptions;
- Our way of reasoning; and
- Our basic convictions.

and suggest that if an ethic lacks explicit attention to any of the four dimensions, that ethic “lacks the ability to take a clear stand on concrete ethical issues, or it takes the

⁵⁹ Stephen R. Covey, *The Seven Habits of Highly Effective People : Restoring the Character Ethic* (New York: Simon and Schuster, 1989), 18.

⁶⁰ Glen Harold Stassen and David P. Gushee, *Kingdom Ethics : Following Jesus in Contemporary Context* (Downers Grove, Ill.: InterVarsity Press, 2003), 56.

⁶¹ *ibid.*

⁶² Joseph J. Kotva, *The Christian Case for Virtue Ethics* (Georgetown University Press, 1996).

stand naively, unaware of and uncritical about its own crucial assumptions.”⁶³ Stassen and Gushee desire a “character ethics with all four dimensions, because all four dimensions are crucial in Jesus’ teachings and in biblical ethics generally.”⁶⁴

We agree with this, yet we would add that anything short of all four of these dimensions being present might provide an ethic that is incomplete or misleading / misinforming. For example, if our basic convictions are not based on God’s law revealed through Jesus and Scripture, and we do not consider these convictions though a balance of God’s commandments and what is best in a given situation, then we have an incomplete base on which we our convictions rest. If we are ignorant to the full teaching and life of Christ then we may be aware of circumstances happening around us but neither do what we are commanded, nor be moved to the circumstances of the other. Our perceptions of our own needs and aspirations over take us. As these perceptions of self grow we become insensitive, and immune to the needs of others – both those within our own society, and to those we may have desiring to join our society. We see these matters as an “either – or”, either its them or its me. But it needs to be a both – and. It can be both them and me, all of us. We may articulate our concern, even, seemingly gladly, pop some money into a hand, or pledge to a good cause, because it seems so worthwhile. But actually take the time to care ... Who does that?

Jesus did that, very often! It was who He was. It’s about who He wants us to be. Jesus turned the application of the Law on its head. He did not do away with the Law – He fulfilled it. He showed us how to get the balance right between God’s commands, and how they really do work best for people. His was a life of virtue – being the very personification of God in our midst, demonstrating who we are to be in His service.

What Activism might be recommended?

Some young Christian leaders recently held in Perth a few hours of non violent resistance at the local electorate office of The Hon Julie Bishop MP. These young leaders, including three people from our own church, and various representatives from a range of other church traditions here in Western Australia sat in Bishop’s office, prayed and presented to Bishop’s staff a request to free children held in immigration detention. These people were duly arrested, escorted from the property, taken to a watch house, released and a Court date set. The first Court date has come and gone without penalty. The subsequent hearing was Wednesday 28 May 2014, and, fortunately for all, the outcome was one of welcomed minor impact.

Was this action appropriate? Those taking part would say that there was very little else that could be reasonably done. Chris Bedding, an Anglican parish priest in Perth and one of those protesters, said that those involved had actually tried everything that they thought was a significant. He says that for a decade some of these church folks have had “letters and discreet conversations, petitions and talkfests, research projects, rallies in the streets and sermons. We’ve fed and clothed and housed asylum

⁶³ Stassen and Gushee, 59.

⁶⁴ *ibid.*

seekers that few care about, and we've argued for more foreign aid and better regional partnerships. We've offered our facilities and homes to provide a more humane living environment, and we've harnessed our media machine to advocate for common decency.”⁶⁵ To no avail yet.

Hollinger⁶⁶ discuss nine models of Christian influence, some of which have clearly been used by this group of Christian activists. Lobbying to both major political parties that have held office in the Australian Government in the past decade, Christian activists have been for a decade or more suing some of these various methods to gain support from legislators to the cause of asylum seeking detainees. These models are broken into two continuums of action – remedial and preventative actions.

Within the preventative continuum are models of lobbying, establishment of political parties and groups, non-violent resistance, being the embodiment of a Christ follower, and individual impact. It is perhaps the wisdom one uses about the choice of model that holds some of the greatest impact. For example, the choice of some pro-life groups over the past few decades to use violence as a means to lobby against abortion has probably significantly undermined and held back the pro-life movement for years.

And this is where the community of believers can greatly assist. Not only can they support individuals who are involved with a wisely chosen form of activism, the community can guide and encourage such movements. Hollinger purports of Hauerwas that the church does not have a social ethic. Rather the church is a social ethic.⁶⁷

The issue for us is, how well do we know what action is being taken, how well do we understand how the matter hurts God’s heart, and therefore, if we are not personally involved, how we are going to support those brothers and sisters who are involved.

How Do We Develop and Support this Virtuous Life?

How do we best develop this virtuous life and behaviour? Hopefully in the community of believers in which we are a part. Within the community we should be challenged in our faith, in our disciplines and formation as a believer in Christ. We should be growing in our faith as a disciple, and in the discernment of and practice of our gifting from God. We should be able to explore the beginnings of the passions that Jesus places on our heart. There will be differences. Some will have a passion for the poor, some for broader justice matters, some will be inclined to be a minister in the market place around them in their developing career. Some will identify active mission service as a minister of the gospel, and some will be inclined to support Christian activism movements. All are important, none is without immense

⁶⁵ <http://www.abc.net.au/news/2014-05-20/bedding-love-makes-a-way/5465300>. Accessed 27 May 2014.

⁶⁶ Dennis P. Hollinger, *Choosing the Good : Christian Ethics in a Complex World* (Grand Rapids, Mich.: Baker Academic, 2002), 256-272.

⁶⁷ *ibid.*, 268.

value to the Kingdom of God and to improvement of the world in which we live. What is of damage is when believers criticise each other for the passion they have before God pursued. Brothers and sisters in Christ, love one another. Other than for our love and service to Christ, we may not be united on what the passion of each is. We are not asked to be. We are to love each other and support each other in the ministry that God has placed before each of us and our local community of believers.

Ogletree writes that although Church bodies regularly venture to speak on matters like Off Shore Asylum Seekers, and the manifold issues of poverty in our own society, because of the way in which our societal ethical position has slipped to very much an individualised personality ethic, the Church has slipped in its capacity in advanced industrial societies to address major social questions of today.⁶⁸ The Church may provide support to various valuable ethical issues in the surrounding secular culture, but largely society now does not first turn to the Church for advice. Accordingly the primary impetus from the Church actually comes from individuals, or groups of individual Christians, often ad hoc in nature because they are drawn together by a passionate cause, but in their activism, the notion of Church is lost. This is because the Church itself has lost its relative appeal to society around us. But if the Church is not intent on pursuing a personality ethic, the Church will not be overly concerned about its relegation, provided the ministry of Jesus Christ is prominent in the activism that is portrayed. The ancient text of the Bible may not be overly heard today. But where there are faithful people living out the personhood of the Bible, Jesus is present. After all, Christians should be serving a reality in Jesus Christ, not a morality, or a specific ethical model.

Grenz agrees that the community of believers is the best place for individuals to develop their gifting and passion, but in exercising them, to be supported by their community. He develops a “Christian communitarian virtue ethic”⁶⁹ in which generation after generation transmits traditions of virtue, common good, and meaning of life and God.

The ethical task therefore is to be guided by a Godly Christian vision that arises from the narrative of Scripture. It is a narrative about a God and Saviour who is active in the world. It is a narrative that describes God’s continuing total commitment and love of humanity. Grenz states the one word he believes underpins God’s resoluteness to humanity – faithfulness.⁷⁰

If God is faithful to us, can we describe our same level of faithfulness to the people around us – particularly those in need?

The questions then that arise are what are we doing in community that develop the faith walk, preparedness for ministry – whatever that might be – development of passionate believers in light of the world outside our local faith community, and how we support individuals in exercising that ministry.

⁶⁸ Thomas W. Ogletree, *The Use of the Bible in Christian Ethics : A Constructive Essay* (Louisville, Ky.: Westminster John Knox Press, 2003), 183.

⁶⁹ Stanley J. Grenz, *The Moral Quest : Foundations of Christian Ethics* (Downers Grove, Ill.: InterVarsity Press, 1997), 231.

⁷⁰ *ibid.*

A young colleague recently preached about “remembering the temple of our God” from Nehemiah 10:39c.

His concluding remarks⁷¹ are a simple, yet sharp reminder of our role and responsibility as the people of God to offer to all the people of God’s creation:

Hope: for a better future.

Help: for those in need.

A Voice: that calls people home.

Recommendations

These recommendations are hopefully clearly able to be seen as achievable and practical actions arising from the Position Paper, and that can be considered by the Elder Board as part of a way forward in this complex, often fear trafficked debate.

Back in August 2012 Australian Baptist Ministries made the following recommendations to the Australian Government with respect to a more compassionate immigration policy:

- (a) reduce the rate of asylum claims by addressing human rights violations in countries of origin and disempowering people smugglers;
- (b) pursue policies that seek to strengthen regional cooperation and expand protection of asylum seekers and refugees in the region;
- (c) further increase the annual quota of UNHCR-registered refugees over the next five years;
- (d) process claims for refugee status expeditiously and within 90 days;
- (e) place child asylum seekers in appropriate community care while their claims for refugee status are assessed;
- (f) cease the practice of sending unaccompanied minors to third countries.⁷²

There has since that time it seems been no further formal commentary by Australian Baptists with respect to Off Shore processing of Asylum Seekers.

As a signatory to the United Nations High Commission for Refugees *Convention and Protocol Relating to the Status of Refugees* Australia is obligated under international law to assess the claims of all who arrive seeking asylum and to ensure their protection should they be found to be refugees. We therefore are obliged to care for as many who arrive seeking asylum and consider each application made on an individual and non-pejorative basis.

⁷¹ Jonathon Bergmann. Nehemiah 10: Sunday morning Message. Lake Joondalup Baptist Church. 25 March 2014. (With permission.)

⁷² Australian Baptist Ministries. http://www.baptist.org.au/News/Articles_and_Statements/Baptists_call_for_more_compassionate_immigration_policy.aspx. Accessed 27 May 2014.

We, the Lake Joondalup Baptist Church Incorporated in Western Australia make the following recommendations:

- 1 We request our Australian Government in this current term of office to remove any upper cap on total number of people seeking asylum and progressively increase the intake of off shore asylum seekers through and beyond this term of federal government.
- 2 We request our Australian Government in this current term of office to uncap the total per annum entrance of asylum seekers to Australia beginning with equivalent to 0.25% of the annual Australian total population estimate by the end of this current term of federal government.
- 3 We request our Australian Government to resolve that children and their parents in off shore detention, and in institutional based detention in mainland Australia be released, without delay, to a community based accommodation service, and that all such people be released by the end of the 2014 calendar year.
- 4 We request our Australian Government in this calendar year to resolve that all pregnant women and their spouse / partner in off shore detention, and in institutional based detention in mainland Australia be released to a community based accommodation service by the end of the 2014 calendar year.
- 5 We request our Australian Government in this next 2014-2015 financial year to have targeted reduced lengths of detention for all asylum seekers to an average of less than 30 days, with, unless community safety is at a raised alert level, an absolute maximum of 45 days in detention.
- 6 We request our Australian Government to immediately conclude sending parents with children, unaccompanied children, and pregnant women with their spouse / partner to off shore detention.
- 7 We request our Australian Government to work more closely with its regional neighbours to ensure that more appropriate and secure off shore asylum processing occurs in States of origin rather than an outcome of maritime travel across dangerous seas to Australia.
- 8 We request our Australian Government in this current term of office to revise its Sovereign Borders' policy to cease sending of any so called illegal maritime arrival to a third party contracting State, and house all arrivals on mainland Australia or in its own off shore facilities.
- 9 We write to the United Nations High Commission for Refugees and to relevant Australian diplomatic personnel, requesting that Article 31.1, and the heading to Article 31 of the UNHCR Convention Relating to the Status of Refugees, that the words "Unlawful" and "illegal" be amended by the Contracting States to terminology that is less pejorative of those seeking asylum and refugee status.
- 10 We write to the United Nations High Commission for Refugees requesting that Commission, or another United Nations instrumentality with the governance of matters relating to children, commission a study that identifies the likely number of children held in immigration detention amongst the UN member States, and throughout the world, and begin to fund programs that bring resolution of children being held in immigration detention in its member States.
- 11 We write to the Australian Government via the Prime Minister, the Minister for Immigration and Border Protection, and our local electorate member advising them of these requests.

- 12 We request the Australian Government to revert from the phrase “Illegal Maritime Arrival” to the clause used by the preceding government “Irregular Maritime Arrival”.
- 13 We revise our Church teaching programs so that we include in them a more focused weekly basis through our general communication and Service focus, discussion of the stranger, the needy, matters of social justice and injustice, alleviating of poverty, and so on.
- 14 We develop a quarterly forum opportunity for the church to consider Position Papers on social and ethical matters that pervade our broader community.
- 15 We write to Baptist Ministries of Western Australia, and Vose Seminary inviting them both to undertake larger forums for our churches on similar matters.
- 16 We write to Australian Baptist Ministries requesting them to develop position papers for the early part of the 21st Century on matters of off shore processing of refugees, poverty in Australia, Christian activism, and a range of associated ethical issues.
- 17 We consider developing the portfolio of LJ Care Fund in light of the findings of this Position Paper and its recommendations.
- 18 We request our Australian Government in this calendar year to commence a range of enquiries into matters surrounding poverty, its relief, and associated accommodation matters for under-privileged people within Australia. These reviews to be undertaken on the basis that some 17% of all Australian children live under the poverty benchmark set by the OECD, and of whom, some 17,700 children aged less than twelve years are homeless.

Conclusion

What is our stand on Off Shore Processing of Asylum Seekers – people who are seeking refuge in Australia? Without detracting from its sovereign right to manage its own immigration programs, this Position Paper paints a grim picture of Australia’s harsh response to human need by the Australian Government with respect to Asylum Seekers. Off Shore processing almost today significantly is seen pejoratively as the illegal maritime arrival of people seeking asylum to a country whose largest part of its history included people arriving by sea to settle and develop this nation.

We believe our national position is unfair and damaging to people seeking refuge and a better, safer life in Australia. We believe that the manner in which our treatment of asylum seekers so closely tests international conventions that it strikes at the heart of what our national character is like – arrogant, unkind, and disdainful.

Our role as Church, in a land where God’s voice now struggles to be clearly heard, is to promote the love of God towards all by the support we show to those active in ministry with a welcome to these arriving people; it is how we develop a sense of urgency in our community to love and accept the stranger; and serve them in what ever way we can; it is support those who are actively involved in ensuring the broader Australian society around us have our prayer support in their drive to change Australia’s response to such people; and it is the personal prayer, mentoring, and financial support of the few in our own community who are actively involved in the

change effort of the church and broader society to accept the stranger, care, feed, and shelter them, as they arrive in this rich and abundant land.

We do this because this is how we follow Jesus and live out His ministry in Lake Joondalup Baptist Church. But we want to share this Paper with other churches. Like us, we really have not taken a deep view of this complex matter. This Paper in some way does that for us all, but the Paper is really only a beginning of the work that is required in each of us, and together in our communities. This world is filled with complex problems that we, the Church, are perhaps not dealing with as well as we ought. If this is just a beginning of getting us to discuss these matters together, being able to grow together and provide the world around us with God's view of life and things that matter, then this will have been a most worthwhile task.

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