

ADVOCATES CAN INFLUENCE OUTCOMES

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A case study of the Australian asylum seeker/refugee advocacy movement¹ and the withdrawal of legislation in the Australian Senate.

If publics could be brought to see more clearly the ethical importance of saving strangers from persecution and danger, they would probably be more inclined to tolerate the inevitable imperfections associated with asylum policies (eg. large annual fluctuations in entrance numbers, unfounded claimants, problems with removal, etc). (Gibney 2004:245).

An education of the Australian public and Australian parliamentarians

In Australia, in recent years, an education process has occurred about the rights of asylum seekers and refugees who arrive without authorisation. It has been an education of some members of the Australian public. It has also been an education of some members of the Australian parliament. In regard to the rights of asylum seekers arriving without authorisation, this education has been carried out not by the government but by concerned citizens.

The culmination of this process of education was evident in the Australian parliament in August 2006, when the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 was withdrawn from the Senate. This legislation proposed ‘to amend the Migration Act 1958 (Migration Act) to expand the offshore processing regime introduced in 2001..... to all persons arriving at mainland Australia unlawfully by sea on or after 13 April 2006’ (2006:1).²

As the Prime Minister of Australia acknowledged, the Senate vote on the Bill faced possible abstention and/or opposition to the Bill by one or more government senators.³ In the House of Representatives, although the Bill was passed, three government members voted against it, and a further two abstained. Significantly, as well as minor party opposition to the legislation, the major opposition party also opposed the legislation.

The 2006 withdrawal of the proposed legislation was in marked contrast to the situation in 2001 when migration bills passed in the Australian parliament, without this dissent by government members and with the support of the major opposition party, formed the legislative basis for what became known as the “Pacific Solution” and later as the “Pacific Strategy” (2006:116-117).⁴

Why did this difference occur?

(a) Specific Aspects of the 2006 Legislation:

In a Government majority member senate inquiry into the Bill, the Senate Legal and Constitutional Legislation Committee noted that ‘With the exception of the Department of Immigration and Multicultural Affairs (Department), all of the 136 submissions and witnesses appearing before the committee expressed complete opposition to the Bill’ (2006:13:s.3.1).⁵ After examination of the proposed legislation, the submissions and witnesses, the primary recommendation of the Committee was that the Bill should not proceed (2006:ix).⁶

(b) Specific Aspects of the 2006 Situation:

- * The proposed legislation was announced following the granting by Australia of refugee status to 42 West Papuan asylum seekers and the objections of Indonesia to the Australian government in regard to this.⁷
- * There had been a history of positive contact between Australians and indigenous Papuan people.⁸
- * There was a lessened public perception of asylum seeker/terrorism links in regard to West Papuan asylum seekers.⁹
- * There was an issue of public resistance to perceived outside interference with Australia's migration policies.¹⁰

(c) A Shift in Public Awareness and Public Opinion in Recent Years:

By 2006, there was greater awareness in the Australian public of the harm that can come from immigration policies. This is the result of a public education campaign by asylum seeker/refugee advocates over a number of years, and well publicised evidence of harm from official inquiries into Australia's immigration policies.¹¹

Public education campaign by advocates.

Australian immigration policies such as mandatory detention had been contested for many years by small numbers of core refugee, human rights, professional and religious groups. However, following the much publicised events of 2001,¹² the myriad asylum seeker and refugee support groups which sprang up simultaneously across Australia to contest the policy have constituted a social movement (For a diagrammatic representation of sectors of involvement in this advocacy movement, see Gosden 2005A)

This Australian advocacy movement, which has both a humanitarian and a political dimension, has been described as:

a vast mosaic of overlapping networks: lawyers, church people, human rights advocates, welfare workers, political activists and ordinary people: from highly skilled professionals with specific expertise to the many thousands who have joined a grassroots movement to oppose the Government's treatment of asylum seekers (Coombs 2004:125-6).

The personal relationships established between asylum seekers and refugees and their supporters have been a significant aspect of the functioning of the Australian advocacy movement. This contact has occurred despite psychological and geographical obstacles, and has motivated many supporters into intense and sustained involvement. Across the barriers, a common humanity has bridged the gap, and the needs of asylum seekers and refugees has informed the resulting humanitarian and political action.¹³

'Not just the usual suspects'

Many Australian people have spoken out against the policy.¹⁴ Many have identified themselves as 'concerned citizens', keen to point out to their fellow Australians that it is not only 'the usual suspects' of established activists and human rights NGOs who oppose this policy. Together, they have aimed to educate the Australian public.

They have done this in multiple and varied ways across the spectrum of Australian society, eg. in community education; in personal conversations; in creative performance; through email and internet; at professional venues; at academic forums; at international forums; at protest rallies, in lobbying, and in parliament. They have also aimed to educate Australian parliamentarians, and an apt description of this work has been recorded by a Member of Parliament:

Many of them are not public figures. They do what they do not professionally, but simply in response to the plight of fellow human beings.....Their letters, emails, phone calls and personal visits remind parliamentarians that a significant section of the community to whom we are accountable cares passionately about the impact of our nation's policies on the individuals most immediately affected by them: asylum seekers and refugees (Georgiou 2005:10).

As an Australian historian has concluded, it was not the earlier 'bipartisan support for a hardline approach to asylum seekers' which has been unprecedented. What has been unprecedented in Australia, Klaus Neumann argues, has been 'the willingness of many ordinary Australians in the last few years to assist refugees and asylum seekers' (2004:113).

Between 2001 and 2004, a shift in public opinion was evident. While a poll in 2001 had indicated a 77 % strong agreement or agreement with the government policy of preventing boats carrying asylum seekers from entering Australian waters,¹⁵ by 2004 this figure had dropped to 54.4%.¹⁶

Well publicised evidence of harm from Australia's immigration policies.

In 2005, much publicised cases of immigration detention and deportation of an Australian permanent resident and an Australian citizen, played a major role in this process of public education, through media reports and through official inquiries.¹⁷ The inquiries investigating these circumstances provided exposure of problems within the Department of Immigration and recommendations for reform. The exposure of other cases have followed.¹⁸ This public exposure has reinforced earlier research evidence produced by health professionals.¹⁹

In 2005, legislation was passed in the Australian parliament which instigated some reform to policies affecting this group of people.²⁰ However, fundamental aspects of the Australian onshore policy remained unchanged²¹ and later in the year, more Australian territory was excised from Australia's migration zone.²²

(d) Specific aspects of the 2006 advocacy campaign:

In March 2006, the granting of refugee status to the 42 West Papuan asylum seekers appeared to have provided a validation of that reform process within the Department of Immigration and Multicultural Affairs. This optimism was short lived, as it was quickly followed by the announcement of the proposed legislation.²³ However, by contrast with the 2001 situation, there was not the same majority public support for the legislation which was proposed in response to that granting, and which would have prevented the granting of refugee status in a similar situation in the future.

In addition, the Australian asylum seeker and refugee advocacy movement had acquired over the years, a level of expertise, such that the many diverse and dispersed groups had developed effective lines of communication (albeit through multiple and over-lapping networks); an appreciation of the niche roles which could be utilised by individuals and groups with

different resources, skills and positionings; and an understanding of the way in which the parts of the movement could come together around a specific campaign to work effectively as a whole. The 2006 advocacy campaign against the proposed legislation also benefited from the additional resources of a number of new players,²⁴ who were well supported by the previously existing networks.

Most importantly of all, more Australian citizens (including members of parliament) had been made aware of the harmful effects of the policies which this legislation would extend, and were prepared to advocate against legislation which would further extend this harm.

Conclusion:

By 2006, more Australians, whether or not in formal positions in public life, knew about the human cost of Australia's immigration policies. That human cost would have been exceeded by this legislation. Its defeat is a small but significant step towards recognition that "common humanity requires human rights for all" (Fraser).²⁵

Time Line

2001 A poll in 2001 indicated a 77 % strong agreement or agreement with the government policy of preventing boats carrying asylum seekers from entering Australian waters.

2004 By 2004, this figure had dropped to 54.4% of those polled who strongly agreed or agreed with the government policy of turning back all boats carrying asylum seekers.

2005 In 2005, the Australian public witnessed the media exposure of the detention of an Australian permanent resident for 10 months in immigration detention, and the deportation of an Australian citizen. Exposure of other cases have followed. Reports investigating these circumstances have criticised the Department of Immigration and recommended changes.

In 2005, legislation was passed instigating some reform. However, later in 2005 more of Australian territory was excised from Australia's migration zone.

2006 The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 was withdrawn.

Endnotes:

1. The policies contested by this advocacy concern the onshore component of Australia's refugee program. As Crock et al. note, Australia continues to offer 'the third largest offshore refugee resettlement program in the world' (2006:3). However, refugee claimants who arrive without visas have been subject to policies which have further traumatised those who have fled persecution.

2. See Senate Legal and Constitutional Committee, 2006.

3. ABC Online, 2006. 'PM - Howard dumps Migration Bill', accessed 3 September 2006, <http://www.abc.net.au/pm/content/2006/s1714679.htm>.

4. See Crock et al. 2006.

5. Senate Legal and Constitutional Legislation Committee 2006. There is also a Submission 137 by the Department of Foreign Affairs and Trade in support of the Bill on the Inquiry website. Presumably this was a late submission after the writing of the report, since it is not listed in the 'Submissions Received' in Appendix 1.

6. Points raised in submissions opposed to the Bill included:

- * Inconsistency with recent positive changes to Australia's migration system (2006:13).
- * Incompatibility with the rule of law(2006:15).
- * Lack of access to the Australian migration system (2006:20).
- * Detention of children (2006:23).
- * Mental health care issues (2006:24).
- * Independent scrutiny and reporting requirements (2006:26).
- * Retrospective application of the Bill (2006:29).
- * Financial implications (2006:30).
- * Extraterritorial processing versus transfer of processing to a third country (2006:32).
- * Difficulties in ensuring effective integration or resettlement (2006:33).
- * Breach of Australia's obligations under international law (2006:36).
- * Relevant international law obligations
- * Principle of non-refoulement (2006:38).
- * Refoulement from a 'declared' country (2006:38).
- * Refugee status determination procedures (2006:43).
- * Refoulement directly from Australian waters (2006:48).
- * Prohibition on imposing a penalty for illegal entry or presence in a state (2006:50).
- * Arbitrary detention (2006:52).
- * Discrimination (2006:55).
- * Foreign policy concerns (2006:56).

7. These events have been explicitly linked in senate submissions opposing the Bill, and in Australian media.

8. Australians have had a history of positive contact with people from the Papua/New Guinea region through their mutual support in World War 11 campaigns. An identification remains with the indigenous West Papuan people through that earlier historical connection.

9. West Papuans are identified by Australians as predominantly Christian, and the public fear engendered in late 2001 around links between terrorism and fundamentalist Islamic beliefs, are not easily fostered in this instance.

10. This tended to detract from, rather than gain popularity for the legislation, since it was perceived to be a response to pressure from Indonesia (Senate Legal and Constitutional Legislation Committee, 2006:56-58, section 3.184-3.194). Newspolls conducted in 2006 show a majority positive stance of Australians towards West Papuan people, and only a minority support for changing Australian immigration policies in response to protests from Indonesia (Newspoll Market Research, 2006, No. 060404 (April) and 060507 (May) respectively).

11. See Palmer, M. 2005 and Commonwealth Ombudsman, 2005.

12. See Crock et al. (2006:113-117).

13. For a social movement analysis, see Gosden 2005B and 2006.

14. For personal accounts of advocacy and activism by 'ordinary' Australians, see Reynolds 2004.

15. See Goot (2002:72).

16. See Bean et al. 2005.

17. See Palmer, M. 2005 and Commonwealth Ombudsman, 2005.
18. See Commonwealth Ombudsman, 2006.
19. See Steel and Silove 2001; Steel 2003; and Steel et al. 2004.
20. This followed an initiative by some Government Members of Parliament (see Crock et al. 2006: 163-165). Reforms included 'Introducing the principle that the children should only be detained as a measure of last resort into the Migration Act 1958' and 'Requiring reports by DIMA to the Commonwealth Ombudsman on persons being held in detention for more than two years' (HREOC 2006: 4.8).
21. See Crock et al. 2006 for analysis of current policies. Asylum seekers arriving on already excised territory are still subject to the Pacific Solution/Strategy regime. See www.abc.net.au/am/content/2006/s1715110.htm, accessed 8 September 2006, for recent details.
22. See Crock et al. (2006:118).
23. See Manne 2006 for an overview of this period.
24. For an example, see the website of Getup (www.getup.org.au), an online human rights advocacy organisation, for its incoming role in this campaign.
25. See Fraser 2005.

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