Introduction: A Fair Go for Refugees?

My starting point is that Australia does give a fair go to offshore refugees who are to be resettled in Australia. In comparison with most other countries, we have superb resettlement services, though the government contribution to such resettlement is now less than it was when the Vietnamese boatpeople first arrived. Government now leaves more of the resettlement work to civil society. We have increased our humanitarian intake from 12,000 to 13,000 pa. And within that cohort, we have increased the refugee component from 4,000 to 6,000, there being no need for the refugees to have already established links with Australian society.

Within our Department of Immigration and Citizenship we have many fine public servants who are dedicated to efficient and compassionate resettlement of refugees. That department has had to wear the wrap for much of the humanitarian failure of government policy in detention centres. In his inquiry on immigration detention, ex police commissioner Mick Palmer was scathing about the department but he had no power to examine the Minister, ministerial staff or government policy. He found there was an entrenched culture at DIMIA which contributed to mistakes. Palmer found fault with the department without having had the opportunity to scrutinise what government ministers and staffers demanded of departmental officers. Convinced that “a strong government policy places on the agency tasked with its implementation a duty to provide assertive leadership”, he found “considerable evidence of deafness to the concerns voiced repeatedly by a wide range of stakeholders, a firmly held belief in the correctness and appropriateness of the processes and procedures that exist, and a culture that ignores criticisms and is unduly defensive, process motivated and unwilling to question itself.”¹ My experience was that the department usually was doing what the government expected of it. Government was reckless about the human wreckage to be caused by permitting long term detention of persons including children in facilities run by contractors in locations out of the public eye and beyond the jurisdictional reaches of the courts.

We are a net migration country, receiving up to 140,000 new migrants each year. Emigration is increasing and is presently running at 68,000 pa. Within the non-humanitarian quota of new migrants, we have a strong preference for skilled migrants responding to the business demands of our economy over family members who are

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migrating for family reunion. The skilled migrants account for 70% of the non-humanitarian intake.

Though government has trimmed some of the wanton excesses of the *Tampa* response, we are still unreasonably harsh on unvisaed persons heading for Australia seeking asylum. Government is entitled and obliged to maintain a strictly enforceable border protection regime. But the Pacific solution is now completely unprincipled and the temporary protection visa works continued injustice and suffering on very vulnerable individuals. Fortunately, we have a clear difference of policy between the major political parties on both these aspects of our border protection regime. Labor together with the minor parties supports the scrapping of the Pacific Solution and of the temporary protection visa. Civil society can contribute to a more just, more coherent refugee policy despite the past electoral popularity of harsh measures including the Pacific solution.

**What Makes a Civil Society?**

Every time an Australian travels overseas, we are aware that there are two classes of persons on the globe – those free to travel almost anywhere and those who are not. An Australian passport is a precious possession. We are citizens of a nation state with free citizens and very secure borders. Freedom and security are fine ingredients for a civil society.

As members of civil society, we can increase and decrease our circle of acquaintances beyond national boundaries. We can contest government policy even if the policy be popularly endorsed by the majority of citizens. We can formulate arguments for a more just policy, a more ethical implementation of policy and a more moral approach to life in community.

While we expect that our government will implement foreign policy consistent with our national interest, we are free to debate the extent to which our foreign policy should also be informed by internationally affirmed human values and guided by our own ideology and distinct Australian values – though mind you, most talk of Australian values tends to be a jingoistic wrapping of universal values or populist aspirations in the flag.

One of the benefits of living in a civil society is that those of us who advocate unpopular policies which cut across government objectives can gradually win the day, against the odds, by highlighting the incoherence or long term non-utility of such policies. At the outset we are identified as do-gooders, absent minded academics or moral purists who do not have to run the electoral gauntlet. But over time, our confidence in rational discussion can be rewarded by change in the thinking of key decision makers. We may even have the chance to prick the conscience of some government members. I think the morphing of the so-called Pacific Solution is a good illustration of the workings of civil society slowly wearing away the fetish of the nation state obsessed about border security and the sending of messages. I will argue in this paper that the Pacific solution is now completely incoherent, useless and expensive.
An incoherent policy can become the stuff of political contest even when it has paid political dividends for government once opposition parties have the courage to proclaim that good policy is good politics. Civil discourse permits us to look the decision makers in the eye conceding, “We understand that you want to stop people smugglers. We understand that you want to maintain an orderly migration program. We understand that you want to secure our borders. But what is to be gained by sending unvisaed boat arrivals outside the jurisdiction when they could be processed at Christmas Island and despatched home just as readily if they are proved not to be refugees?”

In civil society, it is still properly considered unseemly for a nation state not to pull its weight in addressing shared international problems or to adopt remedies to problems which would be unworkable if all other nation states adopted such remedies. When Minister for Immigration, Philip Ruddock often emphasised that the international system was not working efficiently, that it had in fact broken down, with first world countries spending inordinate amounts of money on border protection and next to nothing on supporting UNHCR and host governments in the neediest refugee camps. He thought that regional holding and processing centres could help streamline and economise the national border issues, freeing funds for channelling to the neediest refugees. UNHCR did not have the political muscle to lead co-operative international experiments so it was only appropriate that Australia experiment with its own unique problems and possibilities. At first, Ruddock sounded out Indonesia for the lease of an Indonesian island or two for the location of regional holding and processing centres. The Indonesians were not much interested in surrendering their real estate for such purposes.

The next idea was the Pacific solution – using someone else’s islands once the asylum seekers had reached Australian territory. If the Pacific solution could be made to work without the need for refoulement, this could provide a model for other countries. All you needed was a compliant, indigent island neighbour.

The extended Pacific solution does not provide a workable or principled alternative for many other governments whose publics more readily appreciate mutual international obligations. If every country signed the Refugee Convention and then adopted the Pacific Solution Mark 2, there would be nowhere in the world for asylum seekers to land. The Convention would be dead in the water. Ruddock has long lost sight of providing workable models for other countries. Australia has gone it alone – with smoke and mirrors. If UNHCR maintains its criticisms, it is unlikely to receive any additional funds from the government which set out to reform the international system for the processing of asylum claims so that all refugees might be given a fair go.

**Does Social Justice Stop at our Borders? The National Interest and the Rights of Others**

I recently spent a month in Papua – the west of the island of New Guinea taken over by Indonesia in 1963 and oppressively administered ever since. It took the arrival of 43 Papuan asylum seekers on a boat last year to convince me that it was time to go and see the situation next door. These people have known endless oppression for four decades and they live just 300km from our shores.
I was meeting with a group of women in Jayapura. One told me that she was very sad that Australia had taken no notice of her people for more than 40 years and that it took just one boatload of asylum seekers to make Australians curious, if not interested, in the people next door. The overwhelming majority of the Papuans are Christians – mainly Catholic in the south and Protestant in the north. They are at the interface between Asia and Melanesia. The Indonesian military long regarded Papua as their playground – helping to exploit the fabulous natural resources and oppressing the local people who harboured a desire for freedom and independence.

Ever since that boat arrived in Australia, we have heard from our own government how preposterous it would be to consider independence for Papua from Indonesia. I agree that independence for Papua is now virtually inconceivable and I respect those Papuan church groups who speak not about independence, but about the need for Papua to be a Land of Peace – tannah damai. But it was not always preposterous to consider that at some time in the future the people of Papua might be free. Back in 1950, Sir Percy Spender who was Foreign Minister to Sir Robert Menzies (hardly a trendy lefty of the modern persuasion) wrote to the Dutch Ambassador in Canberra saying:  

> The Australian government does not regard Dutch New Guinea as forming part of Indonesia. We believe that the people of West New Guinea have little in common, except a past common administration, with the peoples of Indonesia. Their developmental problems are separate and the level of political development necessitates placing them in a category quite different from the United States of Indonesia. In fact, we regard Dutch New Guinea as having much in common from an ethnic, administrative, and developmental point of view with our territories of New Guinea and Papua.

Later that year, Prime Minister Menzies met with the Dutch representative at the UN and told him, “We want to retain you as our neighbours in New Guinea and want nobody but you. In no case do we wish the Indonesians to take over.” Spender was replaced by Richard Casey as Foreign Minister who seven years later was still able to argue at The Hague:  

> It is important that the two administrations should not pursue policies that are in conflict on any basic matter or which would hinder understanding between people in the two halves of the island, if at some future date they should decide, of their own free will, that they want to come together politically. Melanesia and Indonesia are distinct entities.

The principle of free choice and the concern for culturally distinct peoples went out the window once our national interest was lined up with the United States’ revised assessment of the desirable shape of the political map in this part of the world. By 1962, all key players had put to one side the free choice of the Pauans and any concern about cultural conflict between Melanesia and Indonesia. Our government joined others at the UN in signing off on a deal which saw sovereignty in Papua transferred to Indonesia on 1 May 1963 with provision for a later act of free choice which took place in 1969. Such an arrangement could only have made sense to intelligent, self-deluded diplomats who were reckless in their consideration of the

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3 Quoted at p. 307
4 Quoted at p. 316
perspective of the people whose lives they were playing with. Under the 1962 agreement between Indonesia and the Netherlands, provision was made for the eligibility of all adult residents, not foreign nationals, “to participate in the act of self-determination, to be carried out in accordance with international practice” whatever that meant. Early on, the Indonesians insisted that it could not mean one person – one vote, but rather a mode of consultation (musjawarah) whereby 1,026 appointed representatives voted unanimously at eight regional meetings for continued incorporation into Indonesia. Even the UN Secretary General’s special representative abandoned any reference to “international practice” and reported: 5

It can be stated that, with the limitations imposed by the geographical characteristics of the territory and the general political situation in the area, an act of free choice has taken place in West Irian in accordance with Indonesian practice in which the representatives of the population have expressed their wish to remain with Indonesia.

Fast forwarding the tape to 2007, I wonder what a good neighbour should now do, given that there is little doubt that most Papuans still think they were duped by the international community and denied an act of free choice. Returning to Australia from Papua, I find an eerie parallel with my first visit to East Timor. I first visited East Timor in November 1992 – a year after the Santa Cruz massacre. I went with the firm intention of returning to Australia and saying nothing publicly. But on my last night in Dili, Bishop Belo took me to a party where I met Mario Carrascalao who had been governor of East Timor. The two of them urged me to return to Australia and speak publicly but under no circumstances was I to speak about the need for independence. They did not think it achievable and they thought such talk simply made the situation more difficult for the young people who were unwilling to accept the inevitability of their situation. They urged that I speak about three things:

1. the need to reduce the Indonesian military presence
2. the need for greater respect for human rights in East Timor and greater supervision of human rights violations by the Indonesian authorities
3. the need for greater cultural autonomy in the province.

I returned to Australia and faithfully kept to the text. There were many church and NGO people in Australia who thought I was guilty of appeasement. I had been to East Timor. I had seen the situation. Surely I was obliged to speak strongly about the Timorese right of self-determination. Such a morally pure stance by me might have resulted simply in greater suffering and bloodshed for people in East Timor, threatening the people I had spoken to. It was not my life at risk. It was not my blood that would be spilt.

So when I fast forward from Dili in 1992 to Jayapura or Manokwari in 2007, what do I do? What can any of us say? No doubt the so called act of self-determination supervised by the UN in 1969 was a sham. But applying the same principles as I applied in East Timor, I will keep silent unless and until I hear from those whose lives are on the line, those whose blood will be spilt in any fight for self-determination. If anything, I will be even more cautious, hopefully not because I am growing more conservative but because the parallels with East Timor highlight greater problems.

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5 Para. 253, Report by the representative of the Secretary General in West Irian, November 1969
East Timor was costing Mr Habibe US$100 million per annum from the Jakarta coffers. The Freeport mine in the Papua province is Jakarta’s largest single taxpayer. Of the 2 million people in the two Papua provinces, there are 800,000 transmigrants from other parts of Indonesia, and they are the majority of the business class. East Timor was always left on the unresolved list of the UN General Assembly. The UN signed off on the integration of West Papua as part of Indonesia more than 30 years ago. The UN is not in the habit of reopening questions about the territorial boundaries of member states. Papuan independence groups do not have an international network of their own people advocating independence at the highest levels on the diplomatic cocktail circuit. Duncan Campbell urges that Papuan grievances “be routed through UN human rights channels”. He thinks we should “support every effort to open West Papua to wider international aid” while quietly encouraging “PNG to speak up more for its fellow Papuans”. We need to heed Sidney Jones’s warning, “The OPM and the radical student movement are not necessarily representative of what’s taking place in Papua today, and the concerns of Jayapura, the capital, are not necessarily those of more remote areas.” More of us Australians need to go and listen, come and see.

Even if the two Papuan provinces were now to be granted independence, is there any guarantee that the profits from the mine would be shared throughout the land? Would we have another Bougainville? I note John Bruni’s observation that “the topography of West Papua is highly conducive to Melanesian tribes maintaining their separate identities. Only among the few educated and the more radicalised disenfranchised, did a sense of Melanesian ‘West Papuan’ nationalism emerge.”

If we were discussing Papua amongst educated circles in Jakarta or Yogyakarta, the conversation would soon turn to Australian Aborigines. It would run something like this. We understand that you have Aborigines in Australia who still endure appalling social conditions. Some of them live in remote parts of Northern Australia such as Arnhem Land where they are in the majority and where there are major mining projects. We understand your concerns about the transparency of the Act of Free Choice in Papua in 1969. You think the Papuan leaders were bought off or misled by Jakarta and the UN. When were your Aborigines given any act of free choice at all? Should they be given one now? Why should Australia’s territorial sovereignty be any more assured than Indonesia’s?

When Gus Dur was Indonesian President, I was privileged to meet him when he received an Australian group of conference goers at his presidential office late one night. He told us, “You Australians are not to be trusted on Papua. It does not matter what your government says to us. We are not interested in their guarantees. Being a democracy, your government will have to react to community pressure on Papua, just as it did on Timor. It does not matter what the major political parties say or agree on.”

The Morphing of the Pacific Solution

Kevin Andrews, the new Minister for Immigration, has sounded muddled in his statements defending the government’s decision to send 83 Sri Lankan asylum seekers to Nauru for processing. It is not all his fault. Even when he gets up to speed in the portfolio, there will still be much confusing complexity. The “Pacific solution” is now so morphed as to be incoherent.
Philip Ruddock was the proud evangelist for the original Pacific solution. Having failed to convince the Indonesians to lease us an island or two from their archipelago for the warehousing and processing of boat people intercepted between Indonesia and Australia, he decided on the second best option – transporting asylum seekers to a Pacific island once they had arrived within the Australian jurisdiction but before they had reached the mainland. The government wanted to send a double message. First, in the wake of *Tampa*, it wanted to send a message to people smugglers and their prospective clients: “Don’t bother heading for Australia by boat and without a visa. You won’t get here. You will be intercepted. You will spend a long time in detention, in dreadful conditions, on a remote Pacific island. And even if you can prove that you are a refugee you will never be allowed to settle in Australia.” Second, in the wake of Pauline Hanson’s *One Nation* stand on refugees, the Coalition government wanted to send a message to the Australian people, “Vote for us because our border protection policy is tougher than Labor, the Democrats and the Greens.” The second message will backfire if the first message is no longer apt.

Back in 2002, John Hodges, ex-Liberal Minister and the head of the government’s Immigration Detention Advisory Group, described Nauru as “by far the worst of the detention centres”. Given that detention without a court order was unconstitutional in Nauru, Mr Ruddock saw a need to change the description of the accommodation arrangements in Nauru. The Australian government websites were amended and all reference to detention was omitted. The first message started to change.

By 2005, many Coalition members were feeling very squeamish about the long term treatment of asylum seekers who had been “housed” in Nauru for more than three years. Last year in attempts to appease Coalition senators, the government started talking up the delightful conditions on Nauru. The government website now declares that the centres in Nauru are “maintained on an ‘open centre’ basis which allows residents freedom of movement between 8am and 7pm from Monday through Saturday”. The website boasts air-conditioned accommodation, prayer rooms, recreation and sporting facilities, and holistic programs including:

- satellite television, videos and reading materials
- education programs including language classes and computer skills
- regular excursions for shopping and swimming
- school-aged children regularly attend local schools
- regular access to Internet and personal e-mail in the town centre,
- Occupational activities including catering, gardening, nursery management, woodworking, electrical equipment maintenance and repairs and poultry farming.

Under the Pacific Solution, 958 asylum seekers have established their refugee claims and been resettled. 96% of them have ended up in Australia or New Zealand – the majority of them in Australia. No failed asylum seekers have been forcibly repatriated. Most of those who cannot establish asylum claims are voluntarily repatriated on receipt of a financial payment. All this could be done within the
Australian jurisdiction, on Christmas Island. So what is the difference in outcome? And what is the message being sent? It is no deterrent to bona fide refugees to tell them that they will end up in either Australia or New Zealand. It is no deterrent to tell them that they will be held in an open centre with appropriate facilities. They are fleeing dreadful persecution.

On 9 August 2006, supporting the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, a strong government backer of the legislation, Mr Don Randall told Parliament:

The accommodation on Nauru will be first class, because we are currently in negotiations, if this legislation goes through, to get probably the best accommodation on Nauru, in a former weightlifting village, and to make sure that it is built to such a level that it will accommodate families with children in particular in air-conditioned accommodation with all the mod cons that many Nauruans would seek for themselves. Let me outline what’s wrong with Nauru.

Bruce Baird who led the backbench revolt on the extension of the Pacific Solution informed Parliament on 9 August 2006 that it was no longer a solution at all:

Finally, the worst feature of the legislation is the last part. What happens to people who are found to be genuine refugees? The answer is: we do not know what is going to happen to them. They could be sent to New Zealand. But there is a problem there. I was with a delegation over in New Zealand just two weeks ago. The minister there said, ‘I have a message to give to Canberra: if you continue to excise the whole of Australia, we will not take any of the people you process.’ I am not sure of the number of people who were taken by New Zealand before; I have been given one figure of 35 and another of 128 out of the 1,500 people who were on Nauru. I think New Zealand is basically the only country that took other people. New Zealand is saying, ‘Sorry, we are not going to take them.’ Is Europe going to take them, with all the hordes of people knocking on their door? The answer is no.

At first, Mr Andrews was unaware that his own public servants would continue to process the refugee claims on Nauru, just as they would if the asylum seekers remained on Christmas Island. There remain two material differences between Nauru and Christmas Island. Failed asylum seekers on Nauru have no right of appeal to the Refugee Review Tribunal or to the courts. Wisely, the government does not make too much of this difference in public because it leads to the inference that decent Australian public servants are likely to make different decisions if their deliberations are made out of the jurisdiction and without the prospect of review. When you are trying to change the culture and the public image of a government department that has had a rough trot with cases like Cornelia Rau and Vivian Solon, this is not a good look – particularly from an earnest lawyer like Andrews. The Sri Lankans will be an interesting test case of the public service’s integrity. Last year, they ruled that all 43 Papuans on Christmas Island were refugees. There is every reason to expect that most or all of the 83 Sri Lankan Tamils are refugees or persons who could not return home for fear of torture.

The second difference is that lawyers and do-gooders like me can be kept out of Nauru by a government that acts in an arbitrary and capricious manner. I speak from experience. I was issued with a visa to Nauru in 2003, having accepted hospitality and an invitation from the local Catholic parish. The government cancelled my visa at the last minute informing the parish priest, “Noting that Fr Brennan's request to

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6 (2006) CPD 27 (HofR); 9 August 2006
7 (2006) CPD 124 (HofR); 9 August 2006
8 See Appendix
enter Nauru is not for the purpose of conductive parish or pastoral work with the Catholic mission, I wish to inform you that his application is denied at this stage.” I appealed the decision. The Minister did not even acknowledge the appeal.

The morphed, useless, expensive and discredited Pacific Solution now amounts to a policy aimed at keeping lawyers away from asylum seekers and immunising public servants from scrutiny by courts and tribunals. Mr Andrews was an accomplished barrister before entry to Parliament. Unlike his ministerial predecessors, he will continue to look uncomfortable and confused as he defends an incoherent policy.

**Conclusion**

Manning Clark House is a place where ideas can be discussed rationally and with passion. Many of the participants this weekend will be strong opponents of the new Christmas Island facility. I have continually conceded to government the place of such a facility in a border protection strategy aimed at isolating and detaining unvisaed boat arrivals until initial screening can occur, permitting immediate return of those with demonstrably unmeritorious asylum claims, and facilitating health and security checks of those asylum seekers whose claims will take some time to process. Whatever our differences about the utility or justification for the Christmas Island facility, I am honoured to be with such a group of Australian thinkers who have contributed to change in draconian populist refugee policy, and to add my voice to those who demand an end to the Pacific strategy which is now no solution to any problem other than the Howard government’s problem in eliciting votes from those voters who in the past responded to Hanson policy pleas.

It is becoming in civil society that we give credit where it is due. We must acknowledge that the Howard government has increased the size of our migration program, including the refugee and humanitarian component. We must also acknowledge that the Rudd Opposition has sustained its opposition to the Pacific solution and the unfortunate consequences of the temporary protection visa. Courageous Coalition backbenchers have heeded the call to end long term detention of children. In the forthcoming federal election, there will be some people who will vote against the Howard government because of that appalling Pacific solution and the ongoing effects of the too tough TPV regime. Hopefully there will be fewer people voting for the Howard government because of policies like the Pacific solution which is now completely incoherent. We continue to hope that the deliberations of civil society might even make a difference in the policy formulation of the political parties and the people’s choice of government, providing a fair go for all refugees, including those who arrive by boat without a visa.
APPENDIX: The Experience of an Australian Citizen Trying to get to Nauru

On 28 May 2003, I sought assistance from Mr Ruddock, then Minister for Immigration, in gaining access to Nauru. He informed me that the arrangements in Nauru were working well without any outside interference and he reminded me that I would need a visa to enter Nauru.

I wrote to the parish priest of Nauru on 16 July 2003 informing him of my desire to visit Nauru. I explained to the parish priest, "I would like to come so that I can get some understanding of the local situation in Nauru with the asylum seekers who have been sent to Nauru for processing from Australia. I would be particularly interested in meeting Nauruan citizens and church members who would like to talk to me about these questions. Of course, I would also enjoy the opportunity to get some understanding about other church and social issues in Nauru." The parish priest was happy to invite me and to assist with the application for a visa.

I submitted the application for a visa on 29 July 2003. The Nauru Consul General in Melbourne then requested that I provide a letter from the parish priest in which the parish priest would guarantee that I was to be the guest of the parish priest and that he would be responsible for me during my visit. Such a letter was provided. It stated, "This letter serves as confirmation that I, Fr Joseph Kanimea MSC, acting Parish Priest of the Church here in Nauru, that Fr. Frank Brennan SJ is to stay with me here in Nauru. I will be in full responsibility of his welfare during his duration with me. Fr Frank Brennan intends to visit Nauru and I will be happy to receive him."

On 4 August 2003, the Consulate General of the Republic of Nauru issued me with a certification for travel and entry to Nauru on 7 August 2003. On 5 August 2003, I received a fax from Mr Edwin McPhail, Administration Manager of the Republic of Nauru attaching a letter from the Acting Chief Secretary to Fr Joseph Kanimea "advising that your application for a visa to enter Nauru has been denied at this stage." I was told that my visa was now cancelled. Referring to Fr Kanimea's letter of 16 July 2003, the Acting Chief Secretary had written to him, "Noting that Fr Brennan's request to enter Nauru is not for the purpose of conductive parish or pastoral work with the Catholic mission, I wish to inform you that his application is denied at this stage."

The denial of a visa to a priest anxious to meet with church members as a guest of the parish on the grounds that government thinks his visit "not conductive of parish or pastoral work" is not consistent with the Nauruan constitution which provides:

11. (1) A person has the right to freedom of conscience, thought and religion, including freedom to change his religion or beliefs and freedom, either alone or in community with others and in public or private, to manifest and propagate his religion or beliefs in worship, teaching, practice and observance.

(2) Except with his consent, no person shall be hindered in the enjoyment of a right or freedom referred to in clause (1) of this Article.

Section 15(1) of the Nauru Immigration Act provides:

A person aggrieved by a decision of the Principal Immigration Officer or an immigration officer under this Act, other than a decision made by the Principal Immigration Officer or an immigration officer acting in any particular case in accordance with the directions of, or instructions given by, the Minister, may appeal by written petition to the Minister who may, in his discretion, uphold, vary or revoke the decision.
I presented a written petition to the minister on 12 August 2003 requesting him to vary his decision and to give favourable consideration to a future request by me to enter Nauru. I sought the issue of another certification for travel and entry to Nauru valid for six months from the date of issue.

In my petition, I said I would appreciate a prompt reconsideration of my request for a visa to visit Nauru so that I might discuss social issues with the parishioners of Nauru in the light of the Christian gospels and in accordance with the principles of Catholic Social Teaching.

I stated:

I make no apology for the fact that my view of Australia's "Pacific Solution" has political ramifications for Australia and Nauru. But you will appreciate that my purpose in speaking with church members is to reflect further on the issues raised in the statement by the Australian Catholic Bishops of 26 March 2002 in which they said:

We call for an abandonment of the so-called "Pacific Solution" whereby asylum seekers are taken to other neighbouring countries. The Assessment Centre at Christmas Island is a better alternative, though we would like to see the United Nations High Commission for Refugees invited to process those seeking asylum, especially if other countries are to be asked to accept a number of those deemed to be true refugees.

The human dignity of people seeking refuge from persecution must be reflected in our nation's policies. We have grave doubts that this is so at the present time. We urge the Australian Government to review the current policies for dealing with those who seek asylum here, so as to ensure that they are not discriminated against because of their mode of arrival in Australia.

We call for the abandonment of the practice of turning boats away and of escorting asylum seekers to other countries such as Nauru and Papua New Guinea. This is an unconscionable practice.

Being a lawyer and a priest, I give every assurance that I would not be any threat to law and order on my visit to Nauru. I would like to learn more about the Nauruan church response to the statements of the Australian Catholic church about the Pacific solution. Naturally I would also appreciate the opportunity to meet with detained asylum seekers if it were lawful to do so and if they wanted to see me. But that is a completely separate question from whether or not I should be allowed to visit Nauru at the invitation of the local church community. I seek your approval for a tourist visa to visit Nauru for one week as a guest of the parish priest of Nauru.

I received no reply from the Minister. Back in 1992, I had been denied access to East Timor by the Indonesian authorities until they received a letter from the local church authorities attesting that I was their guest and that they would be responsible for me during my visit. On production of such a letter, I was allowed entrance to East Timor one year after the Santa Cruz massacre. In stark contrast, the production of such a letter is not adequate to permit entrance to Nauru.

On 18 August 2003, I sought Mr Ruddock’s assistance to vouch for my good standing so that I might obtain a visa to visit Nauru for the initial, primary purpose of meeting with church members and other Nauruans to discuss the Pacific solution. In my request I stated:

I would like to know what understanding, arrangements or requests have been made by the Australian government to/with the Nauruan government to preclude the issue of visas to church personnel and other Australians interested in discussing sensitive social, political and religious questions in Nauru. I would also like to discuss whether Nauru is an appropriate country for a s.198A declaration under the Migration Act if it is proven to exercise its migration discretions for the issuance of simple tourist visas in a capricious and arbitrary manner.

We met to discuss the matter. He then wrote to me on 2 September 2003:
I made the point strongly to you in our discussion and I reiterate it here: the Australian government has
not been involved in any attempt to influence the Government of Nauru on matters surrounding your
application for a visa to enter Nauru.

This statement was at variance with my recollection of the discussion. I brought to
Mr Ruddock’s attention my notes of our 19 August discussion made on 20 August
2003:

R says that neither he nor his department blackballed me for entry to Nauru. He could not speak for
Downer or his department. Important to remember that the Nauruans are weary of admitting persons
who then bag them in the international media. In the past, people abused the system of transit visas and
Julian Burnside’s wife gained admission. Andrew Bartlett probably did not help things for future
admissions. Formally, R is not in a position to assist.

I wrote to Mr Ruddock on 19 September 2003 stating:

Of course, any public statements I have made have been consistent with my record of our conversation.
If you are now in a position to assure me that neither the Minister for Foreign Affairs nor his
department have been involved in any attempt to influence the Government of Nauru on matters
surrounding visa applications by Australian citizens such as myself, I will be happy to receive the
assurance and repeat it publicly should that be appropriate.

He provided no such assurance. Unbeknown to me, the Greens had put a question on
notice in the Senate on 22 August 2003 asking:

With regard to the visa for Father Frank Brennan, a Jesuit Priest, to visit Nauru: (1) was the visa
granted to Father Brennan for travel to Nauru; if so, when. (2) Is it true that this visa was subsequently
withdrawn; if so: (a) when; and (b) why.

On 11 September 2003, Senator Ellison, Minister for Justice and Customs, provided
this answer:9

Under international law sovereign states have the right to determine who is entitled to enter and remain
in their territory. Nauru, as a sovereign state, has therefore the right to determine for itself who it will
allow to enter and who it will refuse entry. The policies and procedures relating to visas for Nauru are
totally a matter for the Government of Nauru.

As a follow up, Senator Brown then asked the Minister for Immigration and
Multicultural and Indigenous Affairs, upon notice, on 7 November 2003:

Have there been any direct or indirect exchanges of information about Father Frank Brennan between the Australian Government
and the Government of Nauru.

Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs
answered:10 I am not aware that there have been any direct or indirect exchanges between the governments of Nauru and
Australia about Father Frank Brennan. I can, however, say that I have received advice from the Department of Foreign Affairs
and Trade stating that the Australian Government did not seek to influence the Government of Nauru in relation to its
consideration of Father Brennan's visa application, nor has the Government sought to influence decisions on applications by
other Australian citizens for visas to enter Nauru.

9 (2003) CPD 15078 (S); 11 September 2003
10 (2004) CPD 20500 (S); 1 March 2004
So there you have it. There is no need for the Australian government to blackball do-gooders like myself. The Government of Nauru can be relied upon to exclude people like me from Nauru in an arbitrary and capricious way.