Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010

INTRODUCTION

The *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010* ('Bill')[1] proposed by Senator Hanson-Young is a welcome embrace of humanitarian reforms in response to the oppressive asylum seeker regime under the *Migration Act 1958* (Cth) ('*Migration Act*').[2] The history asylum seeker treatment in Australia is marred with restrictive and archaic practices, which have in an attempt to preserve national security and sovereignty, failed to implement Australia's international obligations under several human rights instruments. As a highly advanced Western economy, Australia has the capacity to engage with the global refugee crisis with compassion, equality and efficiency.

Instead, the current administration demonises asylum seeker who are vulnerable persons – criminalising them through mandatory detention and limiting their basic human rights through offshore processing. Combined with these two mechanisms, are the restrictions upon the role of the federal judicial system under the *Migration Act*. Through the removal of these three key aspects of the current legislative scheme, Australia's domestic treatment of asylum seekers will improve significantly. These benefits are not limited to ensuring compliance with international obligations, but would further Australia's global reputation, produce a more efficient system of asylum seeker assessment and restore principles of fairness to that process.

[1] *The Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010* (Cth).
[2] *Migration Act 1958* (Cth).

This submission will thus first explore the offshore processing mechanism introduced following the Tampa Crisis in 2001. In particular, Australia's obligation under the fundamental international legal norm of non-refoulement will be examined in relation to the use of host nations in order to neglect asylum seeker responsibilities. An economic and social analysis of the policy will further emphasise the benefits of the proposed Bill. Following this, an exploration of mandatory detention will conclude that this policy does not serve its deterrence objective, and is in fact a mechanism that subjects vulnerable asylum seekers to arbitrary punishment. Finally, in restoring common law processes regarding procedural fairness and access to Australia's judicature for asylum seekers, the Bill will ensure compliance with basic notions of the rule of law and Australia's obligations under international law – in particular *the Convention Relating to the Status of Refugees*.[3]

Before exploring these three key proposals, it is important to note the introduction of asylum seeker principles, which form the underlying policy for the reforms contained in Hanson-Young's Bill. These principles are contained in s4AAA and they are designed to provide the administration of asylum seeker policy with regard to an agreed upon set of morals and objectives.[4] While this section is an important component of the amendments a Canadian example of a similar provision provides the illustration the Act can go further.[5] The Canadian principles include a statement detailing their national interests and goals for the future.[6] Following this example, Australia, in s4AAA, should take the opportunity to express its will to lead the world in human rights – especially refugee law. Ultimately, this is a key moment in Australian migration history, and this

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[3] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, (entered into force 22 April 1954).
[4] *Migration Act 1958* (Cth), s4AAA.
[5] Mary Crock. "You Have to be Stronger than Razor Wire: Legal Issues Relating to the Detention of Refugees and Asylum Seekers". Australian Journal of Administrative Law. Vol: 10, (2002), 46.
[6] Ibid, 46.

Bill presents an opportunity to align Australia with its international obligations, as well as restoring sustainable policies and principles in regards to the treatment of asylum seekers under the *Migration Act*.

EXCISED OFFSHORE PROCESSING

The *Migration Amendment (Excision from Migration Zone) Act*, established in 2001, developed the mechanics required for offshore processing. The *Migration Act* creates 'excised offshore places', territories removed from the Australian Migration Zone.[7] While some locations are expressly listed in the Act, the legislation also describes such territories as 'any other external Territory that is prescribed by the regulations for the purposes of this paragraph.'[8] The framework allowing applicants to be assessed offshore is established under s198A of the *Migration Act*. This provision allows 'an offshore entry person' to be removed from Australian territory and taken to a 'declared country' for processing.[9] Senator Hanson-Young's Bill eliminates, completely, the program of offshore processing in Australia. This is achieved through the removal of all reference to 'offshore entry persons' and excised territory, ensuring Australia remains rightly responsibly for those individuals who arrive in Australia's territory. Unlike Labor's recent policies that did not remove the mechanics of the Howard Government's 'Pacific Solution', these amendments dismantle the structure required for such an oppressive regime.

[7] *Migration Act 1958* (Cth), s5(1).
[8] *Migration Act 1958* (Cth), s5(1).
[9] *Migration Act 1958* (Cth) s198A.

HISTORY AND RATIONALE FOR OFFSHORE PROCESSING

The offshore processing regime in Australian migration law developed out of a political climate of fear and should now be overturned. In the wake of Tampa, expanded upon below, the Howard Government sought to exclude illegal 'queue jumpers' who landed on offshore territory from being processed within Australia. This was the beginning of the 'Pacific Solution' where asylum seekers arriving on excised Australian territory, or who were intercepted in Australian waters, had their refugee applications processed in neighbour states, such as Papua New Guinea and Nauru. The Government was able to use the terrorist attacks of September 11 and the Tampa Crisis to convince voters its harsh regime of border protection was necessary.

In August 2001, the Norwegian vessel the MV Tampa rescued over 400 individuals from a sinking vessel off the North-West coast of Australia. Against the directives of the Australian Government the Tampa's captain, Arne Rinnan, declared a state of emergency and turned for Christmas Island.[10] Australian Special Forces were then ordered aboard the vessel to prevent the asylum seekers setting foot on Australian territory, after which time they would be permitted to apply for asylum.[11] These events occurred in a political climate of growing rhetoric against asylum seekers as 'illegal immigrants' and 'queue jumpers'.

The Howard Government quickly implemented legislation, including retrospective provisions validating the actions of the Government in response to Tampa. The Government used fear as a method of galvanising support for a hardline approach to unauthorised arrivals. Prime Minister Howard's nationalistic statement, "we will decide

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[10] Rachel Mansted, "The Pacific Solution - Assessing Australia's Compliance with International Law". *Bond University Student Law Review*. Vol: 3, No: 1, (2007) 1-2.
[11] Ibid, 1-2.

who comes to this country and the manner in which they come",[12] defined the approach the Government took as it focused primarily on national security. These amendments were simply a response to a specific political event and were developed in an unjustified era of fear. Senator Hanson-Young's amendment has the capacity to correct the wrongs committed by the Howard Government and return logic, compassion and efficiency to Australian migration policy.

The main rationale behind the 'Pacific Solution' and 'offshore' regime is the deterrence role it plays. Successive Australian governments have argued that this system deters illegal migration to Australia as 'illegal immigrants' will receive no access to the support structures on mainland Australia unless they are found to be a legitimate refugee, and importantly, only until this application is complete. The Howard Government argued the measures were humanitarian as they help save lives by discouraging boats from beginning the journey to Australia. They also work to defeat people smugglers by significantly reducing their business interests in Australian migration. However, there is little doubt national security and border protection were the major influences of such a policy.

In recent years the global trend has been for nations to frame their migration and refugee policies only in terms of national security and sovereignty. Fethi Mansouri, Michael Leach and Amy Nethery argue that in recent decades Western democracies have displayed little consideration for human rights principles.[13] Mary Crock has argued the Australian policy is simply an attempt to have a controversial issue shifted out of the

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[12] Bernard Keane. "The issue is Refugees, not Boats". Crikey. (22 October 2009). [online] http://www.crikey.com.au/2009/10/22/the-big-issue-is-how-many-refugees-we-accept-not-boats/

[13] Fethi Mansouri & Michael Leach & Amy Nethery. "Temporary Protection and the Refugee Convention in Australia, Denmark and Germany". *Refuge.* Vol: 26, No:1, (2010): 145.

sight of the Australian public. She provocatively compares the isolation felt by asylum seekers in the remote Pacific to their isolation from the judicial system in Australia.[14] However, there is clearly some truth in the 'out of sight, out of mind principle'. Perhaps asylum seekers being taken to distant islands are best described as a metaphor for the prison they have been confined to – most notoriously, Christmas Island. Whatever the motivators for the policy, the following sections of this submission will suggest policies of offshore processing do not achieve their policy outcomes. Furthermore, they are contrary to Australia's international legal obligations.

NON-REFOULEMENT

Australia has a number of international obligations relating to refugees resulting from its ratification of the *Refugee Convention*.[15] The primary obligation states owe to refugees is that of non-refoulement. Article 33 of the *Refugee Convention* stipulates that "no contracting state shall expel or return a refugee in any manner to the frontiers where his life or freedom would be threatened on account of his race, religion, nationality, social group or political opinion".[16] Once asylum seekers present themselves at the border, the state has a responsibility not to return the individual to their originating country or a third country where they will face persecution.[17] Chain-refoulement occurs when states send an individual to another state that in turn returns them to face persecution.[18] Any nation

[14] Mary Crock & Daniel Ghezelbash. "Due Process and Rule of Law as Human Beings: The High Court and the Offshore Processing of Asylum Seekers". *Australian Journal of Administrative Law*. Vol: 18, (2011), 103.
[15] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, Article 2, (entered into force 22 April 1954).
[16] Ibid.
[17] Guy Goodwin-Gill & Jane McAdam. *The Refugee in International Law – Third Edition*. (Oxford: Oxford University Press, 2007), 206-207.
[18] Ibid, 252-253.

which is involved in a refoulement that ultimately results in persecution will be liable under a breach of Article 33.[19]

Australia also has non-refoulement obligations under the *Convention Against Torture (CAT)*[20] and the *International Convention for Civil and Political Rights (ICCPR).*[21] Article 3 of the *CAT* re-states the obligations on states relating to non-refoulement.[22] Australia is also a party to this treaty so it further re-affirms its obligation under international law to respect the principle of non-refoulement. Article 6 of the *ICCPR* obliges all states to recognise an inherent right to life, while article 7 forbids “torture or cruel, inhuman or degrading treatment or punishment”.[23] If an applicant sent from Australia to a third country suffers any treatment prohibited in these provisions Australia will also breach its obligations under these instruments. Australia is in grave danger of breaching its non-refoulement obligations under three international treaties as a result of its offshore processing regime. This amendment ensures those obligations will be met and refugee applicants afforded the respect they deserve.

Refugee status is declaratory, not constitutive, therefore if Australia rejects an application of a legitimate refugee they will have breached their international obligations. There are fears that Australia does not have the appropriately trained officials to make correct refugee determinations.[24] It is argued that too many applications that should succeed

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[19] Ibid, 252-253.
[20] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, Article 3, (entered into force 26 June 1987).
[21] *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171, (entered into force 23 March 1973).
[22] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, Article 3, (entered into force 26 June 1987).
[23] *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171, Articles 6, 7, (entered into force 23 March 1973).
[24] Taylor Savitri. “Australia’s Implementation of its Non-Refoulment Obligations Under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights”. *University of NSW Law Review*. Vol: 17, No: 2, (1994), 462-463

under the *Refugee Convention* are being rejected.[25] Specifically in relation to offshore processing, Australia may risk breaching its international obligations by sending asylum seekers to foreign countries. If that country either persecutes the individual or returns them to a country in which they are persecuted, Australia will be liable for chain refoulement.[26] Therefore the policy of offshore processing is not, in itself, contrary to international law, but it provides the circumstances for such a breach of international law.

SAFE-THIRD COUNTRY PRINCIPLE

The safe third country principle is largely how Australia legitimises offshore processing, however this is problematic. The principle was designed to allow states to transfer applicants to a third state which had a greater responsibility to provide protection.[27] The third country is required to have a substantial connection between the state and the applicant.[28] This may occur when a refugee applicant travels through one or more safe countries on the way to seeking asylum in the host nation.[29] It may also be employed where the first state does not have the resources to provide adequate protection. This usually occurs in cases of mass influx.[30] However, Australia uses the safe third country principle, not as a way to provide more effective protection to applicants, but as a 'deflection' mechanism.

The safe-third-country has been described as one of many methods states use to avoid their obligations to protect refugees.[31] In reference to Australia its use has been widely

[25] Ibid, 462-463.
[26] Guy Goodwin-Gill & Jane McAdam. *The Refugee in International Law – Third Edition*. (Oxford: Oxford University Press, 2007), 252-253.
[27] Ibid, 390-392.
[28] Ibid, 390-392.
[29] Ibid, 390-392.
[30] Ibid, 390-392.
[31] Taylor Savitri. "Australia's Safe Third Country Provisions: Their Impact on Australia's fulfilment of Its Non-Refoulment Obligations". *University of Tasmania Law Review*. Vol: 15, No: 2, (1996): 197-234.

questioned. Firstly, it is highly doubtful whether in most cases there is sufficient connection between the applicant and the third country.[32] Secondly, it is suggested that Australia is shirking its international obligations as a party to the *Refugee Convention* as a result of 'passing the buck' to another country.[33] Furthermore, in most cases the obligation for protection is passed to a nation with less economic and territorial capacity to provide such requirements. Thirdly, there is more concern over breaches of non-refoulement.[34] The *Migration Act* provides the mechanism for safe-third-countries to be used for processing.[35] However, it does not require the Minister to be satisfied that the country is, in fact, safe of the risk of persecution to the applicant – it simply provides the country be 'prescribed'. This provides severe obstacles to Australia fulfilling its international obligations relating to non-refoulement.

Australia argues offshore processing and its use of third countries is part of an international burden sharing arrangement and an example of co-operation. The United Nations High Commissioner for Refugees (UNHCR) and the United Nations (UN) regime in general encourage principles of co-operation and burden sharing amongst member states. Article 2 of the *Refugee Convention* provides for burden sharing in the granting of asylum, however, this is a relatively weak principle.[36] A foundational principle of international co-operation can be seen in the general purpose of the UN Charter.[37] *UNGA Resolution 57/187* recognised an international scope to the refugee problem and that all states should assist in the return of refugees to safety.[38] Australia

[32] Ibid, 219.
[33] Ibid, 201-202.
[34] Ibid, 218.
[35] *Migration Act (1958)* (Cth), s91D(1).
[36] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, Article 2, (entered into force 22 April 1954).
[37] *Charter of the United Nations*, opened for signature 26 June 1945, 1 UNTS XVI, (entered into force 24 October 1945).
[38] *UNGA Resolution 57/187*, 6 Feb 2003.

suggests its policy of offshore processing is implemented as part of such a burden sharing agreement.[39] However, through the transportation of applicants to poorer neighbours, Australia actually evades its international obligations rather than engages in burden sharing.[40]

THE MALAYSIAN PROPOSAL

The United Nations High Commissioner for Refugees (UNHCR) has announced it approves of such a burden sharing arrangement in the recently announced offshore processing program in Malaysia.[41] However, the United Nations High Commissioner for Human Rights (UNHCHR) has suggested this may be problematic.[42] Australia may well be transferring obligations it has to other, less advanced economies, but if that results in an increased number of refugees being affording protection, the UNHCR would recognise that as a positive development. The main issue in relation to this latest proposal in Malaysia is that it is not a party to the *Refugee Convention*.[43] As a result, Australia cannot be assured of the safety of applicants it transfers and the protection against persecution they must be afforded. While Malaysia has allegedly given Australia guarantees it will abide by international law, the accession to international instruments, or lack of accession, is a key indicator of whether the transferring state has done enough to satisfy its responsibilities.[44] Although the international opinion remains divided on this issue, it is still the case that removing the offshore processing regime in Australian

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[39] Ibid.
[40] Ben Kazimierz & Nina Field & MacLellan, Nic & Meyer, Sarah & Morris, Tony. "A Price Too High: The Cost of Australia's Approach to Asylum Seekers". *The Australian Government 's Policy of Offshore Processing of Asylum Seekers on Nauru, Manus Island and Christmas Island – A Research Project Funded by A Just Australia, Oxfam Australia and Oxfam Novib.* (August 2007): 5.
[41] Michael Edwards. "UN questions legality of Malaysia refugee swap". *ABC NEWS*. (May 24, 2011) [online].
http://www.abc.net.au/news/stories/2011/05/24/3224958.htm
[42] Ibid.
[43] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, Article 2, (entered into force 22 April 1954).
[44] Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers. Lisbon Roundtable, (9-10 December, 2002).

migration law is the desired solution. The Bill proposed by Senator Hanson-Young would ensure Australia is not at risk of breaching its obligations at international law.

INCORPORATION OVER TRANSFORMATION

The attempt of Australia to avoid its international refugee obligations is representative of a general approach that places international law as subordinate to domestic law. Virtually all states adopt the incorporation approach to international law. That is, once an international instrument is ratified by a state that treaty is automatically incorporated into domestic law.[45] Australia, however, applies the transformation approach which requires the implementation of legislation to then 'transform' the international principles into domestic law. [46] Australia has committed itself to the *Refugee Convention*, as well as the *ICCPR* and the *CAT*. It has a responsibility to abide by the purpose of the *Refugee Convention*,[47] that is, to protect refugees from persecution. If it is incapable or unwilling to fulfil such requirements Australia should simply cease to be a signatory. The Parliament can correct this blight on Australia's international record by implementing these amendments to the *Migration Act*, ensuring Australia satisfies its obligations to asylum seekers arriving on its borders.

POLICY ADVANTAGES OF REMOVING OFFSHORE PROCESSING

The removal of the offshore processing mechanism in the *Migration Act* (1958)[48] would also make Australia a leading party to the *Convention* and *Protocol*. There is no doubt that Australia's asylum seeker policies have a global influence, and as the Danish Refugee Council has suggested – "the extraterritorialisation phase of recent

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[45] Examples where incorporation has been accepted is *Trendex v Nigeria* 1977 1 QB 529 in UK and *Roper v Simmons* 543 U.S. 5500 in US.
[46] *Nulyarimma v Thompson* [1999] FCA 1192 & *Applicant A v Minister for Immigration and Ethnic Affairs (1997) 90 CLR 225.*
[47] Vienna Convention, Article 31.
[48] *Migration Act (1958)* (Cth).

developments in asylum seeker policy in Europe had been influenced by Australia's 'Pacific Solution' arrangements."[49] Thus, Australia's oppressive distinction between offshore excised territories and mainland Australia would be removed, dramatically improving the administration of the *Migration Act*. Australia's global influence upon domestic asylum seeker policy would therefore become an important new context for a global response in addressing the issues under the oversight of the UNHCR.

Senator Hanson-Young's proposed shift in asylum seeker politics in Australia is integral, especially considering the Gillard Government's insistence on pursuing a regional solution. The mandate following the 2007 election was clear on asylum seekers – there was a general consensus amongst Australians that the harsh treatment in this area was removed from humanitarian principles,[50] and rather based on fictional rhetoric surrounding an inundation of 'boat people'. Ultimately, this mandate became subsumed within past asylum seeker discourse. The search for the Rudd and Gillard Governments' own 'Pacific Solution' have and will continue to misuse Australia's position as an advanced Western economy, and proud upholder of human rights instruments in the international sphere.

The benefits of removing offshore processing under Australia's migration regime are not limited to humanitarian norms and obligations, but are also founded on economic and administrative efficiency. Offshore processing is abhorrently expensive. Since the *MV Tampa* crisis in August 2001, "Australian taxpayers…spent more than [one] billion dollars to process less than 1700 asylum seekers in offshore processing."[51] Incredibly,

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[49] Above n13, 145.

[50] Mary Crock, & Daniel Ghezelbash. "Do Loose Lips Bring Ships? The Role of Policy, Politics and Human Rights in Managing Unauthorised Boat Arrivals". *Griffith Law Review*. Vol: 19, No:2, (2010), 205.

[51] Bem Kazimierz, & Nina Field, & Nic MacLellan, & Sarah Meyer, & Tony Morris. "A Price Too High: The Cost of Australia's Approach to Asylum Seekers". *The Australian Government 's Policy of Offshore Processing of Asylum Seekers on Nauru, Manus Island and Christmas Island – A Research Project Funded by A Just Australia, Oxfam Australia and Oxfam Novib.* (August 2007), 4.

that figure is more than $ 500 000 per asylum seeker. Ironically, the cost for processing 1700 asylum seekers at Sydney's Villawood Detention Centre would have been $ 35 000, or "around 3.5% of the cost of processing them offshore."[52] Offshore processing is a high cost mechanism that damages Australia's political structure, economy and significantly, its international legal obligations. The Australian Government, through the continued approval of the Legislature, has wasted tax-payers money. The notion that the Gillard Government is even considering a return to such a system operating in Malaysia is not based in economic efficiency, national security or humanitarian concerns.
The policy is directed at the removal from society of vulnerable people that have come to represent the modern fear of 'other' in Australian society. The removal of the rule of law and the scope of judicial intervention (including access to effective legal services) is the underlying rationale for this policy.

The High Court has recently recognised that those vulnerable asylum seekers, removed from any form of society through offshore processing, are not beyond the minimal conception of the rule of law operating under Australia's *Constitution*. In a unanimous judgment, the Court in *M61*[53] held that unsuccessful asylum seekers "did have a right to have their determinations made in accordance with the rules of procedural fairness and general principles of law."[54] The full implications of that decision upon offshore processing remains unclear. However, the underlying rationale supporting the mechanism – that is, one that relies on efficient and unimpeded administration of migration – has Chapter III[55] limitations operating to displace the oppressive system currently operating in Australia for asylum seekers. The proposed Bill seeks to address

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[52] Ibid, 5.
[53] *Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia* [2010] HCA 41 (11 November 2010).
[54] Above n14, 101.
[55] The Australian Constitution, Chapter III.

the concerns of the High Court through restoring procedural fairness, and this aspect of the Bill will be explored below.

Australian asylum seeker policies must remove these excision techniques, and follow the UK and US where similar provisions were "eventually defeated" as inappropriate, oppressive and archaic.[56] Thus, this submission has established that the justifications for offshore processing are misguided, and ultimately rely on irrelevant issues. The proposed Bill, in removing offshore processing, would not only improve economic and administrative efficiency under the *Migration Act* when processing asylum seekers, but also allow Australia to comply with its international obligations in an effort to restore our country's human rights practice and reputation under the UNHCR.

MANDATORY DETENTION

The regime of mandatory detention has been one of the most criticised and controversial components of the Australian Migration program. Under the *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010,* the Australian Greens propose to eliminate mandatory detention. Recognising the illegitimacy of such a policy at international law, with reference to human rights law, human dignity and financial cost, detention will become a measure of last resort. The current regime requires a decision maker to detain an 'unlawful non-citizen', that is an individual without the correct documentation, to remain in Australia.[57] The detention is indefinite, and subject to the determination of the Department of Immigration and Citizenship.[58]

[56] Above n 14, 103.
[57] *Migration Act 1959* (Cth), s189.
[58] *Migration Act 1959* (Cth), ss196, 198.

The Amendment correctly re-focuses detention as the last resort rather than a default and mandatory process. It adjusts the language in s189 from an "immigration official *must* detain an unlawful non-citizen" to "*may* detain".[59] It also creates two new mechanisms that place the applicant in a more powerful and fair position. Firstly, s195B is proposed to enable detainees to apply for an order for release – allowing a right of review in cases of detention.[60] Secondly, s198C forces a decision maker to apply for an order that a person be detained for more than 30 days.[61] These requirements are more onerous on the executive and further, when the liberty of an individual is at stake, processes such as these are integral in ensuring detention is a complete necessity. Such an approach to asylum seekers has been lacking in the *Migration Act* since the early 1990s.

RATIONAL OF MANDATORY DETENTION

Mandatory detention has been implemented as another element in the deterrence approach discussed above. The Keating Government first introduced this policy in 1992 and as a result it has been endorsed and maintained by both sides of politics in four successive Governments. Anthony North and Peace Decle argue that the initial policy was introduced to "ensure the integrity of Australia's migration program",[62] and uphold its universal visa system.[63] After 2001 and the Tampa Crisis, the Howard Government came under criticism for its immigration program and sought to defend the continued use of mandatory detention.

[59] *The Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010* (Cth).
[60] *The Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010* (Cth).
[61] *The Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010* (Cth).
[62] Anthony North & Peace Decle. "Courts and Immigration Detention: The Australian Experience." *Administrative Journal of Administrative Law*. Vol: 10, (2002), 17.
[63] Ibid, 17.

North describes three main justifications for a policy of mandatory detention.[64] Firstly, detainees are available for any needs that may arise during the processing of their application, including health checks – ensuring the procedure is as efficient as it can be. Secondly, if applicants are unsuccessful they can be immediately removed from Australia. Finally, unauthorised arrivals are prevented from entering the Australian community before their status has been confirmed as a refugee and they are found to be no risk to national security.[65] The irony of the mandatory detention program is that the Immigration Department has argued the policy is in the interests of the applicant. The program aims at "providing asylum seekers access to appropriate services for the processing of refugee applications, and helping them through the culture shock of coming to a new country".[66] While controversial, the policy has been determined as legal by the High Court.

AL-KATEB

The Australian decision of *Al-Kateb* demonstrates how the High Court has been confined by the *Migration Act* in recognising basic human rights. The case involved an Afghan man who was a stateless person with no country permitting him to enter and reside and no country offering him protection from persecution.[67] Upon being intercepted in Australian waters he had been held in detention as an unauthorised boat arrival. The applicant claimed the *Migration Act* did not permit his indefinite detention, however, regrettably the argument was rejected 4:3 by the High Court.[68]

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[64] Ibid, 17.
[65] Ibid, 17.
[66] Ibid, 17.
[67] *Al-Kateb v Godwin & Ors* (2004) 219 CLR 562.
[68] Ibid.

The majority found the combined effect of ss189, 196 and 198 was to permit indefinite detention.[69] It found no temporal limitation in the words of the provisions.[70] The Court also did not find any Chapter III limitations regarding detention under s75 (v) of the Constitution.[71] In this case the High Court has been clear that international law is not used to interpret Australia's domestic law.[72] James Allan argues this approach is best as the language used in international law is too emotive and ambiguous.[73] Furthermore, much of the case law contains weak reasoning and as a result many of the principles of law are reliant on the writings of academics.[74] However, Justice Kirby's powerful dissenting judgment calls on Australia to adopt a Bill of Rights and recognise international law.[75] This approach would allow Australia's domestic law to adequately reflect the commitments Australia has given the international community, and international humanitarian norms.[76]

Al-Kateb is just a further example of the backward approach Australia adopts to international law. Other countries pay the requisite respect to international principles by incorporating them into domestic law. Australia, though, has continued to treat international law with distain and placed it subordinate to the domestic sphere. *Al-Kateb* re-affirmed that in Australia a decision maker only has to abide by domestic law and not international standards in making a finding.[77] The *Bakhtiyari Case* is a further example of this principle and provides a useful case study below to establish that Australia is

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[69] *Migration Act 1959* (Cth), ss189, 196, 198.
[70] *Al-Kateb v Godwin & Ors* (2004) 219 CLR 562.
[71] *The Australian Constitution*, s75(v).
[72] *Al-Kateb v Godwin & Ors* (2004) 219 CLR 562.
[73] James Allan. "'Do the Right Thing' Judging? The High Court of Australia in Al-Kateb." *The University of Queensland Law Journal*. Vol: 24, (2005), 18-26.
[74] Ibid, 18-26.
[75] Ibid, 9.
[76] *Al-Kateb v Godwin & Ors* (2004) 219 CLR 562.
[77] Ibid and *Applicant A v Australia*.

breaching its international obligations by implementing a policy of mandatory detention.[78]

NON-PENALISATION CLAUSE

Australia is arguably in breach of its obligations under the non-penalisation clause of article 31 of the *Refugee Convention*.[79] Article 31(1) stipulates states are not permitted to penalise asylum seekers as a result of their illegal entry and presence in the country, providing they present themselves to officials without delay and show good cause for entering illegally.[80] These two qualifications should not be used to limit the non-penalisation principle as the travaux preparatories indicate they were not designed to deny protection to those entering illegally.[81] The interpretation of this article further emphasises it is designed to ensure Australia, and all other states, do not punish those who arrive illegally in their country. Article 31(1) of the *Vienna Convention on the Law of Treaties* states the treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".[82] The purpose of the *Refugee Convention* is to protect refugees from persecution and to provide mechanisms for individuals to apply for asylum safely and fairly.[83] States are prohibited from penalising illegal arrivals claiming asylum.

Australia's policy of mandatory detention breaches its international obligation under the non-penalisation clause of the *Refugee Convention*. Asylum seekers should not be

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[78] [2002] UNHCR CCPR/C/79D/1069/ (unreported).
[79] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, Article 2, (entered into force 22 April 1954).
[80] Ibid.
[81] Guy S. Goodwin-Gill. "Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention and protection". In Feller, Erika & Turk, Valker & Nicholson, Frances (Eds). *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*. (Cambridge: Cambridge University Press, 2003), 189.
[82] *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331, Article 31(1), (entered into force 27 January 1980).
[83] Guy S. Goodwin-Gill, 2003, 189-190.

penalised as a result of their illegal arrival as their situation is entirely unique. Fleeing persecution often means they will not be able to collect or apply for adequate documentation. It is expected then that genuine refugee will be forced to illegally cross international borders to attain protection.[84] Penalisation has not been defined as an exhaustive list and could take a number of forms. Such action could include fines, criminal prosecution or imprisonment.[85] It should be noted Article 31(2) does permit restrictions on movements that will enable a state to properly process the individual's refugee application but critically, only what is 'necessary'.[86] Australia's policy of mandatory detention and the kind of indefinite detention as seen in *Al-Kateb* is not 'necessary' and thus it most likely contravenes Article 31.[87] Removing this policy from the *Migration Act* will realign Australia's obligations in relation to the non-penalisation clause.

INTERNATIONAL HUMAN RIGHTS LAW

There are various other articles within the *Refugee Convention* that indicate Australia's policy of mandatory detention is contrary to international law. The Convention requires refugees and refugee applicants to be granted as favourable treatment as aliens generally are afforded.[88] The *Convention* does permit states to limit freedom of movement as far as it pertains to assessing refugee status.[89] However, this must only occur in "grave and exceptional circumstances",[90] such as war or national security crises.[91] In holding

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[84] Erika Feller & Valker Turk & Frances Nicholson (Eds). *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*. (Cambridge: Cambridge University Press, 2003), 219.
[85] Ibid, 219.
[86] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, Article 32(2), (entered into force 22 April 1954).
[87] *Al-Kateb v Godwin & Ors* (2004) 219 CLR 562.
[88] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, Article 7(1), (entered into force 22 April 1954).
[89] Ibid, Article 9.
[90] Ibid, Article 9.
[91] Above n5, 37.

applicants in mandatory detention for indefinite periods Australia most likely breaches these articles.

Bakhtiyari concerned a family who was kept in detention in Australia after arriving illegally.[92] Despite examples of dishonesty by the family the UN Human Rights Committee found Australia had breached its international obligations in relation to a number of international provisions.[93] The *ICCPR* protects the liberty of all people and prohibits arbitrary detention.[94] It also protects the rights of family unity and unlawful interference with the family.[95] Further, every child has a right to protection equal to that deserved of a minor.[96] This is also reflected in the *Convention on the Rights of the Child.*[97] These articles all became relevant in *Bakhityari* as the children were in detention for two and a half years.[98] The case is one example where Australia has breached these international obligations.

The UNHCR Committee has, on a number of occasions, found Australia to be in breach of international law.[99] The Committee doesn't make binding decisions but suggests states "are well advised to have a sound legal basis" on which to continue its practices.[100] Australia was found to have breached Art 9(1) *ICCPR* because in *Bakhityari* it detained

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[92] *Bakhtiyari v Australia* [2002] UNHCR CCPR/C/79D/1069/ (unreported).
[93] These decisions have included *A. v. Australia*, Comm. No. 560/1993 (30 Apr. 1997); *C. v. Australia*, Comm. No. 900/ 1999 (13 Nov. 2002); *Baban v. Australia*, Comm. No. 1014/2002 (12 Aug. 2003); *Bakhtiyari v. Australia*, Comm. No. 1069/2002 (29 Oct. 2003); D. and *E. v. Australia*, Comm. No. 1050/2002 (11 Jul. 2006).
[94] *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171, Article 9(1), (entered into force 23 March 1973).
[95] Ibid, articles 17, 23(1).
[96] Ibid, Article 24(1).
[97] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, Article 3(1), (entered into force 2 September 1990).
[98] Ryszard Piotrowicz. "Bakhtiyari Case: Balance Between Asylum Seekers' and States' Rights". *Australian Law Journal*. Vol: 79, (2005), 336.
[99] These decisions have included *A. v. Australia*, Comm. No. 560/1993 (30 Apr. 1997); *C. v. Australia*, Comm. No. 900/ 1999 (13 Nov. 2002); *Baban v. Australia*, Comm. No. 1014/2002 (12 Aug. 2003); *Bakhtiyari v. Australia*, Comm. No. 1069/2002 (29 Oct. 2003); D. and *E. v. Australia*, Comm. No. 1050/2002 (11 Jul. 2006).
[100] Ibid, 336.

the wife and children beyond for what it could provide an "appropriate justification".[101] They could have completed the assessment of the claim much earlier.[102] The Australian government's "approach denies human dignity and respect for human freedoms and ignores international responsibility for offering refuge to refugees."[103]

The international obligations place relatively clear responsibilities on Australia in relation to mandatory detention. Mary Crock has argued the definitive interpretation by the UNHCR on the international instruments regarding detention is that it "should be legitimate, consistent with international standards, a last resort, and for the shortest possible period."[104] The *United Nations Committee against Torture* has re-affirmed this principle that detention should only be a last resort and should have a temporal limitation placed on it. [105] This is strictly in opposition to *Al-Kateb* which permitted indefinite detention in Australia.[106] Implementing the *Migration Act (Detention Reform and Procedural Fairness) Bill 2010* will remove mandatory detention from the *Migration Act* ensuring it fulfils its international obligations. This would move Australia to the forefront of the implementation of human rights through our embrace of the true spirit and legal obligations of the *Refugee Convention*,[107] as well as Australia's rights and obligations under the *ICCPR*[108] and the *Convention on Rights of the Child*.[109]

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[101] Ibid, 336.
[102] Ibid, 336.
[103] Nancy Hudson-Rodd. "Australia Limits Refuge for the Refugee." *Tamara Journal*. Vol: 8, No: 8 (September 2009), 200.
[104] Above n5, 40.
[105] Ibid, 40.
[106] *Al-Kateb v Godwin & Ors* (2004) 219 CLR 562.
[107] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137, (entered into force 22 April 1954).
[108] *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171, (entered into force 23 March 1973).
[109] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990).

POLICY ADVANTAGES OF REMOVING OFFSHORE PROCESSING

Further emphasising the importance of the removal of mandatory detention through the Hanson-Young Bill is the evidence that the mechanism has –

> "no appreciable impact on the rate of unauthorised boat arrivals. What is clear is that the policy has high financial, human and social costs, and potentially places Australia in breach of its international legal obligations. The enduring support for the policy probably owes most to the policy's domestic political function in assuring the Australian public that the government is in control of arrivals to Australia."[110]

Asylum seekers are not criminals, and as established above, are in fact entitled under the international law that governs Australia to claim refugee status upon arrival. However, the policy of mandatory detention effectively criminalises one of the most vulnerable groups of persons in the world. Any underlying notion of preventing the loss of life at sea in dangerous journeys is a superficial and highly politicised argument that serves to demonise asylum seekers, ultimately allowing an advanced Western nation to continue archaic and degrading punishment.

This aspect of the current mandatory detention regime is clearly demonstrated through the continuing use of remote locations – removed from the legal, social and health structures that characterise Australian society. Whether this Bill is passed through the 43rd Parliament or not, mandatory detention will ultimately be removed from our treatment of asylum seekers as our global society progresses. It is an embarrassment to all Australians that the current Commonwealth Legislature continues to stamp the practice of mandatory detention with its approval. As Mary Crock has suggested,

[110] Above n48, 260.

detainees have long been “isolated from the critical support structures that underpin the protection of human rights: lawyers, social services and human rights advocates.”[111]

Those who require the protection afforded by human rights law in Australia and abroad are not allowed the right to set foot into our community. Rather they are forced into modern cages, whose barbed wire and imposing cement have come to symbolise both the nation’s shame for this continued practice and the omnipresent rhetoric of fear, bordering racism,[112] pervading the public sphere of Australia. Surely this is not the Parliament’s vision for Australia, a nation upheld for its embrace of human rights. This reputation is one that is being continually eroded through persistent failure to remove the mechanism that criminalises asylum seekers.

A comparison of detention practices among the English common law systems undertaken by Mary Crock in 2002 – that is, Australia, Canada, New Zealand and the UK – revealed that “Australia stands out as the state with the harshest detention practices and the least articulated rights regime for refugees.”[113] The proposed Bill, in removing mandatory detention and providing that detention be used only as a last resort,[114] would rectify the diminishing reputation of Australia as a great defender of human rights, and restore humanitarian concerns to our implementation of the Convention, Protocol and other human rights instruments. Significantly, the Bill would also allow a shift away from the “growing tendency to conflate the discourse on detention with the discourse on border control and national sovereignty.”[115]

[111]Above n14, 111.
[112] Ibid, 111.
[113] Above n5, 35.
[114] *The Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010* (Cth).
[115] Above n5, 61.

Mandatory detention is not necessarily implemented as an expression of Australia's sovereignty when approaching migration generally, but regarding asylum seekers, it is an attempt to implement effective border control. Flight risk is not related to the protection of Australia's borders, and thus is a fundamental deception in the current policy of mandatory detention. A true characterisation of the issue of flight risk involves a vulnerable and desperate person, unable to avail themselves of the protection of a visa under the *Migration Act* (1958),[116] and illegally remains in Australia in an attempt to enjoy some aspect of the abundant prosperity of a highly advanced economy.

The benefits of the proposed Bill, and the inherent irony of mandatory detention as a deterrent policy, has been explained in detail. This paper has now argued the policies of offshore processing and mandatory detention must be abandoned at once in favour of the *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010.* This amendment would fulfil Australia's international obligations, restore its reputation as a human rights protector and, as will now be explored, re-align the law with Constitutional and Administrative procedural fairness obligations.

PROCEDURAL FAIRNESS

The final aspect of the Bill that will be explored in this submission is the removal of an effectively inoperative privative clause,[117] as well as the limitations placed on access to judicial review in the federal judicial system.[118] Essentially, the Bill seeks to remove the constantly changing limitations from asylum seeker decision making, thus restoring the rule of law for asylum seekers. The Bill also removes the procedural limitations upon

[116] *Migration Act 1958* (Cth).
[117] *Migration Act 1958* (Cth), s474.
[118] *Migration Act 1958* (Cth), s474.

courts within the federal migration system. Ultimately, parts 2 and 4 of the Bill restore the role of the judicature in administrative law as the highest appellate jurisdiction for those asylum seekers subjected to the broad limitations imposed by mandatory detention and offshore processing. The current solicitor general, Stephen Gageler, argues that the return to common law natural justice and conventional paths for judicial review, will in fact reduce asylum seeker litigation – an inherent policy justifying increasing limitations throughout the 1990s and 2000s.[119] However, before analysing the benefits of a return to common law procedural fairness, the importance of the rule of law, as well as relevant international law, will be examined.

RULE OF LAW

The rule of law is a complex, subjective and malleable concept that operates across all jurisdictions. In the Australian legal system, the rule of law is the foundation for administrative law and thus becomes an important justification for these amendments under examination. Ultimately, the critical element of the rule of law in Australia is "that the exercise of official power, whether legislative, executive or judicial, be supported by constitutional authority or a law made under such authority."[120] Migration legislation and litigation has played a significant role in the development of our current understanding of the rule of law as it applies in the Australian administrative system, beginning with the landmark decision in *Kioa v West*.[121]

In *Kioa*, the High Court found that the rules of natural justice – in this case procedural fairness – applied, and subsequently a circumstantial (thus subjective) test for the

[119] Stephen Gageler. "Impact of Migration Law on the Development of Australian Administrative Law". *Australian Journal of Administrative Law*. Vol: 17, (2010), 103.
[120] Robert French. "Administrative Law in Australia: Themes and values" in M. Groves & H.P Lee (eds) *Australian Administrative Law: Fundamentals, Principles and Doctrines* (Cambridge University Press, Melbourne, 2007) 15.
[121] *Kioa v West (1985)* 159 CLR 550.

requirements of natural justice was incorporated into Australian public law.[122] The development of these principles, in conjunction with tension between the Judicature and the democratically elected branches of government has continued since *Kioa*.[123] The entrenchment of a minimal content of the rule of law concept under the *Australian Constitution* was settled in *Plaintiff S157*,[124] and is thus a "fundamental part of Australia's political and legal system."[125] The Bill would restore the application of administrative law to protect asylum seekers, as it is the fundamental vehicle available to asylum seekers "to assert both their rights to protection and other human rights."[126]

INTERNATIONAL LAW

Another significant factor when approaching the Bill's restoration of procedural fairness is the relevant standards and obligations mandated under international law. The most prevalent obligations for Australia's domestic legal and administrative system are contained in Article 14 of the *ICCPR*,[127] which provides that "[a]ll persons shall be equal before the courts and tribunals."[128] Thus, there is an obligation on Australia's domestic legal system to provide that equality. The current scheme of limited judicial review and procedural fairness does not provide for equal access before the courts, as "a state should apply the same international standards of due process to the determination of a protection claim as it has undertaken to apply in a criminal trial."[129]

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[122] Ibid.
[123] Above n117, 103.
[124] *Plaintiff S157/2002 v Commonwealth* (2003) 195 ALR 24 and Leighton McDonald. "The Entrenched Minimum Provision of Judicial Review and the Rule of Law. *The Public Law Review*. Vol: 21, (2010): 14.
[125]Alice Ashbolt. "Taming the Beast: Why a Return to Common Law Procedural Fairness Would Help Curb Migration Litigation". *Public Law Review*. Vol: 20, (2009): 276.
[126] Above n107, 102.
[127] *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171, (entered into force 23 March 1973).
[128] Ibid, Article 14 (1).
[129] Above n23, 455.

Article 2 (3) of the *ICCPR*[130] further provides that "there is an appropriate remedy available for review of decisions where their rights have been violated."[131] Thus, Australia breaches its procedural fairness obligations in relation to the review of *Convention* determinations. The *UNHCR Compare Council of Europe Recommendation no. R(18)16* on the harmonization of national procedures in relation to asylum indicated that all states party should have in their systems, regarding the determination of refugee status, the right to appeal in a reasonable time.[132] Goodwin-Gill and McAdam argue that while the UNHCR does not specify precisely what form this appeal process should take, this recommendation nonetheless places an obligation on states to provide some sort of review.[133] Australia's current program of limiting reviews and determining the jurisdiction of the courts, at best, stretches this requirement. The minimum procedural fairness standards are not met in Australia because of the significant Ministerial discretion and failure to provide a hearing in all circumstances.

The current Bill would ensure compliance with these relevant obligations under international law. This is a welcome reform for Australia's reputation under the administration of the UNHCR, as well as other human rights treaties. There is an inherent perverseness in limiting the scope of judicial review for asylum seekers, as they're legitimately attempting to improve their standard of life for reasons of fear of persecution. They are a vulnerable class of persons, and whether or not they are in fact *Convention* refugees is irrelevant when establishing a fair system of administration and review for asylum seeker determinations.

International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171, Article 2(3), (entered into force 23 March 1973).
[131] Above n23, 455.
[132] *The UNHCR Compare Council of Europe Recommendation no. R(18)16.*
[133] Goodwin-Gill & McAdam, 2007, 536.

OTHER POLICY REASONS: RETURN TO THE COMMON LAW

A fundamental argument in support of the restrictions is that they decrease the amount of asylum seeker litigation in the federal judicial system. Ironically, however, the common law would provide for the decrease sought throughout the reforms to the treatment of asylum seekers in Australia. There are several key differences between the statutory scheme and the subjective common law requirements of the hearing and bias rules, and an analysis of these differences will emphasise the merits of the Amendment Bill.

Common law procedural fairness has two requirements: the hearing rule and the rule against bias. Essentially, it is an inquiry into what's fair in the circumstances, and thus is a flexible concept that is applied appropriately to the determination process as a whole.[134] Contrastingly, the statutory requirements are based on rules of providing evidence and procedure – any breach of which has been found to constitute jurisdiction error, and thus automatic invalidity of a determination following any breach of the statutory code.[135]

This consequence of a breach of the statutory requirements was found in *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs*,[136] where the High Court reasoning concluded that it –

> 'allowing invalidity to occur as a result of every error in procedure, rather than allowing discretion where the invalidity had no substantive effect, is unnecessary and erroneous.'[137]

Furthermore, the emphasis on fairness under the common law rules of procedural fairness allows more flexibility, and thus, a more appropriate outcome for each particular case. The notion that uncertainty is created through the common law in this area is also flawed.

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[134] Above n125, 284.
[135] Ibid, 284.
[136] *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs (2005)* 228 CLR 294.
[137] Above n125, 284.

The complex and dynamic jurisprudence developed in regards to the interpretation and operation of the *Migration Act*[138] has had the effect of increasing litigation of asylum seeker determinations.[139] Ultimately, the system of administrative review is an important aspect of the Australian legal system, and the Executive must allow the Judicature to ensure that its own powers are exercised within jurisdiction, adhering to the standards of fairness – a value that is appreciated by all Australians. These basic notions of fairness should not be excluded from asylum seekers to their detriment. Senator Hanson-Young's Bill would restore access to these common law rights, returning the administration of the *Migration Act* to a more flexible and efficient determination process.

CONCLUSION

The *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010,*[140] proposed by Senator Hanson-Young, is Australia's opportunity to rejuvenate its migration and refugee law. Over the past two decades successive Governments have slowly removed the protection refugees and asylum seekers have been afforded in this country. The Amendment Bill proposes to end the controversial elements of offshore processing and mandatory detention from the *Migration Act*,[141] as well as restore procedural fairness to the refugee application process. This paper has demanded the Amendment be passed by the Senate as it will re-align Australia's domestic law with its international obligations, restore human rights and will provide for a more effective application assessment process. The world is slowly moving towards the freedom of all its people from oppressive treatment, and on this issue Australia is falling behind. One hundred years from now how will the present Parliament, of an otherwise progressive,

[138] *Migration Act 1958* (Cth).
[139] Above n125, 287.
[140] *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 (Cth).*
[141] *Migration Act 1958* (Cth).

humanitarian country be viewed if it continues to implement degrading treatment to some of the world's most vulnerable people? The time has come to arrest the problems in the *Migration Act* and to do so this submission implores the current Parliament to pass the *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010*.[142]

[142] *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 (Cth).*

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