



## PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

12 February 2013

The Hon Mark Dreyfus QC MP  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Dear Attorney-General

*Mark*

### **Examination of the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation**

I am writing on behalf of the Parliamentary Joint Committee on Human Rights with regard to the committee's examination of the human rights implications of the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation.

You may be aware that the committee held two public hearings on 17 and 19 December 2012 to explore the human rights issues arising from this package of legislation. The committee invited and received evidence from representatives from the Department of Immigration and Citizenship as well as several other interested parties. The committee invited your department to attend the hearings, but was advised on 12 December 2012 that departmental representatives would not attend.

The purpose of the hearings was to assist committee members to develop an understanding of the human rights implications of these significant and complex legislative reforms. As your department provides expert support to government on matters relating to international law and human rights, the committee is keen to draw on that expertise to better understand the nature and scope of Australia's international obligations in this context. The committee therefore seeks your written submissions on the following issues to assist its consideration of this legislative package:

1. The Department of Immigration and Citizenship (DIAC), in response to questions on notice, has advised the committee that 'the Australian Government is guided on the extraterritorial application of human rights obligations by the Attorney-General's Department' and that 'individual departments do not have separate policy positions on this point'. The committee therefore seeks your views on the extent of Australia's human rights obligations with regard to individuals who are removed to regional processing countries. In seeking your views, the committee notes the following:
  - The committee heard consistently from international law experts that Australia cannot absolve itself of its obligations under the human rights treaties by removing individuals to another state. The committee understands that Australia owes human rights obligations in relation to individuals within its 'jurisdiction' regardless of their immigration status or whether they are outside Australian territorial borders.

- The committee also understands that the transfer of persons in Australian immigration custody or detention to another state may raise further issues of Australia's responsibility. For example, Australia may be jointly responsible for any violations that take place in that other state, especially where Australia is de jure or de facto in (joint) control of what is going on or is providing significant material assistance and support for such activities, pursuant to an international agreement with that other state or otherwise.
2. Whether Australia's obligations under the 1951 Refugee Convention and 1967 Protocol are relevant to the interpretation of Australia's obligations under the seven human rights treaties.
  3. The consistency of the offshore processing regime under consideration with Australia's obligations of non-refoulement (article 3 of the Convention against Torture and article 7 of the International Covenant on Civil and Political Rights (ICCPR)).
  4. The consistency of these measures with the 'best interests of the child' principle in the Convention on the Rights of the Child (CRC), and other provisions of the CRC, including the rights it guarantees in relation to children who are refugees or seeking refugee status (article 22) and family rights (including in articles 17 and 23 of ICCPR) and the obligation to ensure that children are detained only as a measure of last resort, and for the shortest appropriate period of time (article 37(b) of CRC).
  5. The consistency of the underlying 'no advantage' principle with the prohibition against arbitrary detention (article 9 of ICCPR), including the types of review mechanisms that would be necessary to ensure that any detention both here in Australia as well as in Nauru and Papua New Guinea is consistent with article 9(1), article 9(4) and article 14(1) of ICCPR.
  6. The committee has been told that drug-resistant malaria is present on Manus Island, as well as dengue fever. If this is the case, is it consistent with Australia's obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 10 of ICCPR and article 24 of the CRC to send persons, in particular minors, to such an environment?
  7. Whether the differential treatment of asylum seekers based on their method of arrival is consistent with the right to equality and non-discrimination in article 26 of the ICCPR.
  8. Whether transferring some asylum seekers who arrived after 13 August 2012 to Nauru and Manus Island but permitting others within the same cohort to be processed in Australia is consistent with the right to equality and non-discrimination in article 26 of the ICCPR.
  9. The committee has heard that while both Papua New Guinea and Nauru are parties to the Refugee Convention, Papua New Guinea has entered a number of reservations to the Convention, the effect of which is that Papua New Guinea has accepted a significantly lesser range of obligations under the Convention than has Australia. The result would appear to be that persons transferred to Papua New Guinea may enjoy less extensive rights than if they had remained in Australia. Is it consistent with Australia's obligations vis-à-vis non-discrimination provisions in the relevant human rights treaties to transfer persons to a state that offers a lesser level of protection than would be available in Australia under the Refugee Convention?

10. Whether preventing particular bridging visa-holders from working is consistent with article 6 of ICESCR, including the right to non-discrimination with respect to the right to work. To what extent might these measures raise issues vis-à-vis article 7 of ICCPR – for example, if the work ban combined with minimal support results in destitution?

It would be appreciated if you could provide the committee with your views on these issues by **Thursday, 28 February 2013**.

Should you have any queries, please contact the committee secretary, Jeanette Radcliffe, on (02) 6277 3823.

I look forward to your response.

Yours sincerely



Harry Jenkins MP  
Chair