



**The Law Society
of New South Wales**

ACN 000 000 699

Our Ref: JMcP:SRC:HR2006

23 May 2006



Mr Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Curtis

Re: Inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006

The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 proposes to amend the *Migration Act 1958* to expand the offshore processing regime currently applying to offshore entry persons and transitory persons to include, in addition, all persons arriving at mainland Australia (meaning other than at an excised offshore place) unlawfully by sea on or after 13 April 2006.

In view of the short time allowed for submissions to your Committee's inquiry, the Law Society's Human Rights Committee will focus this submission upon one particular aspect of the proposed new law: that asylum seekers will be taken outside of the operation of the *Migration Act 1958* and the rule of law in general.

At present, an asylum seeker onshore may apply for a protection visa and the basis for the grant is establishing that the visa applicant is a refugee. It appears that the Unauthorised Arrivals Bill will effectively serve to ensure that the Australian Government's actions in relation to asylum seekers arriving by boat are not governed by the *Migration Act*, and that accountability mechanisms will be largely non-existent.

In particular, the Human Rights Committee is concerned that:

1. Since the offshore asylum seekers will not be processed under the *Migration Act*, they will have no rights to merits review in the Refugee Review Tribunal or judicial review in the Federal or High Court in relation to visas (because they are not applying for visas under the *Migration Act*).
2. No legal assistance will be provided for asylum seekers removed under the new provisions. Currently, legal assistance is provided under the government funded Immigration Advice and Application Assistance Scheme to asylum seekers who

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are in immigration detention, have not been immigration cleared (i.e. boat people) and request a lawyer. Additionally, for asylum seekers in immigration detention who have been immigration cleared (e.g. those who arrive with a passport and visa), legal assistance is provided to assist with protection visa applications. The legal assistance currently provided to asylum seekers is limited, but nevertheless of critical importance to the administration of justice - especially considering that asylum seekers often do not speak English, are traumatised and have difficulty trusting authority figures.

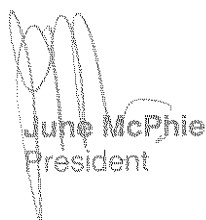
As Associate Professor Mary Crock points out in her submission to your inquiry, even if an offshore asylum seeker obtains a declaration from the High Court that he or she is a refugee under the 1951 Refugee Convention (although, without a system of funded legal assistance such declarations will be rare), this will not create any obligation upon the government for the grant of a visa.

Many commentators have raised the issue the new laws breach Australia's international legal obligations under the Refugee Convention. In this regard, I refer you to press releases by the Refugee Council of Australia and 'A Just Australia' which set out the relevant Convention Articles and the context in which the laws are directed towards individuals fleeing from neighbouring countries. There is great concern that the proposed laws constitute a flagrant refusal to participate within an international human rights system or to uphold international human rights law.

It seems as though we have moved a long way from the time when Federal Court judges held that Australia's national interest incorporated the concept of "Australia's good name" within the international community: "... it is in Australia's best interests to be seen as civilised and compassionate" (*Chaudhary v MIEA* (1994) 49 FCR 84).

The Human Rights Committee regards it as essential that the Senate Legal and Constitutional Committee fully investigate the processes proposed for assessing refugee status. I urge the Senate Committee to make appropriate recommendations to government to ensure that funded legal assistance will be made available and that people will have the right to an independent, merits review.

Yours faithfully



June McPhie
President