

21 May 2006

MIGRATION AMENDMENT (DESIGNATED UNAUTHORISED ARRIVALS) BILL 2006

To the Senate Committee

I am writing to express my deep concern about the proposed Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, and I make the following points:

1. This Bill is completely contrary to our international obligations that we voluntarily assumed when we became a signatory to the Refugees Convention of 1951 and the Additional Protocol of 1967. It is a breach of the Refugees Convention to impose penalties on asylum seekers due to their mode of arrival. The result of this amendment will mean that asylum seekers will be treated differently depending on whether they arrived by air or by sea, even though the vast majority of people who arrive via boats are accepted as needing protection, while only a small minority of people who apply after arriving in Australia “lawfully” obtain refugee status. It is therefore clear that this proposal is designed to detrimentally affect those who, in the main, are genuine refugees. As most refugees have suffered significant persecution before arriving in Australia, subjecting them to this degrading and discriminatory treatment will just be compounding their problems.
2. Asylum seekers who are processed offshore will have no access to lawyers or assistance, and will have no right of independent review. Without independent review potentially important facts will not emerge and it is quite likely that genuine refugees will be mistakenly sent back to a country which will persecute and perhaps torture and kill them.
3. This Bill has clearly been introduced as a result of pressure from the Indonesian government as a result of the arrival of 43 West Papuan asylum seekers. As 42 of those people have been granted refugee status it is clear that they suffered persecution at the hands of the Indonesian government. Amending Australia’s legislation as a result of external pressure from a government that is clearly abusing human rights is an appalling ceding of our sovereignty, and I do not understand how the Indonesian government can dictate the policies of a democratic country. To use human beings as pawns in this political game is particularly appalling.
4. I am very concerned that any asylum seekers who are detained in this way will be locked up for years to come as no third country will be willing to allow these people entry. I imagine all third countries will rightly see this as Australia’s responsibility under international law and will be loathe to shoulder the responsibility. This will mean children, women and men will be kept in detention in remote areas for years to come, further compounding their trauma.
5. I am also concerned about the dishonest device of using other countries to evade the Australian legal system. It is a misuse of the executive power to detain people

by shipping them off to compliant third countries that are not governed by the rule of law (it has the flavour of an Australian version of Guantanamo Bay). In particular, Nauru is not a signatory to the Refugee Convention, meaning it is potentially a breach of our *non-refoulement* obligations to send asylum seekers to such a country. This sets a dangerous precedent that other countries may follow. If every country decided to use a third country to process refugee claims and get rid of unwanted problems (otherwise known as desperate human beings) the entire system of international protection set up after the horrors of World War II would fail.

6. Finally, apart from being legally and morally wrong, this proposal also makes no economic sense. As a taxpayer I am appalled that millions of dollars of taxpayers money will be spent maintaining these off-shore facilities and flying people to these remote outposts.

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