

I wish to express my concern at the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. I will briefly highlight the central points I wish to make.

- Deprivation of individual liberty must only be used in extreme circumstances and as a measure of last resort, and it must be appropriately justified. When deprivation of liberty is required as policy irrespective of the circumstances of that particular individual it cannot be said that it has been properly justified with respect to that individual.
- It will erase the positive steps made in recent times to release children from detention and to wind back offshore processing. It cannot be said that children are being detained as a 'measure of last resort' if all such 'unauthorised arrivals' are to be transferred offshore for processing. The proposed amendments contravene Article 37(b) of the *Convention of the Rights of the Child*, which states that detention of children is to be used only as a measure of last resort. Children are deserving of special protection and consideration; the proposed amendments do not provide for this.
- It will eliminate access to a proper merits review process at the RRT. 33% of decisions appealed to the RRT were overturned, a strong suggestion that the initial determination process cannot be relied upon to accurately identify genuine refugees. A proper review mechanism is needed to correct this; no such review mechanism will be available under the proposed amendments to the Migration Act. It also creates the significant risk that refugees will be refouled, and may contravene Article 33 of the *Refugee Convention*. By limiting access to legal assistance through the IAAAS, it will increase the risk of refoulement; asylum seekers have experienced particularly harrowing experiences on their way to Australia and without assistance they may struggle to make a proper application for protection.
- The elimination of merits review and limitation of judicial review appears to be a violation of Article 16 of the *Refugee Convention*, which guarantees 'free access' for refugees to our Court system. This right is presumptively owed to those who are claiming refugee status, even if they have not undergone any determination process: a person is a refugee as soon as they fulfil the criteria in 1A(2) of the *Refugee Convention*, not when they are 'declared' to be Refugees by a party to the Convention.
- Creating different processes and rights for those claiming refugee status who are 'designated unauthorised arrivals' (when compared to those claiming refugee status but who are not 'designated unauthorised arrivals') constitutes a violation of Article 31(1) of the *Refugee Convention*, which states that refugees coming directly from a place of persecution cannot be penalised on account of their illegal entry, provided they present themselves to the authorities immediately and show good cause for their entry.
- Asylum seekers have often experienced tragic personal loss and traumatic events, indeed most asylum seekers who arrive by boat are found to be genuine refugees. These amendments do not recognise this and do not provide for the appropriate degree of care for asylum seekers.

Australia can and should provide for better treatment of asylum seekers. I oppose the amendments and urge our parliamentarians to do the same.

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