

**Castan Centre Addendum in lieu of Opening Statement**  
**Friday 26 May 2006**

Thank you for the invitation to address you today. We appreciate the opportunity to speak with you with respect to the impact of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 on Australia's ability to comply with its obligations under international law. We believe that the bill's enactment would render Australia unable to comply with its obligations under a range of international instruments, including the Refugee Convention, and would compromise Australia's position as a leader in the region.

The human rights of asylum seekers may be seen as a lens through which our obligations under international human rights law can be viewed. Refugees are among the most vulnerable individuals subject to our jurisdiction. They have experienced prior trauma and have been unable to enjoy fundamental human rights in their country of origin. The bill seeks to remove these individuals who have sought our protection from the ambit of Australia's obligations under international human rights law.

It is our view that refugees and asylum seekers processed in offshore processing centres such as Nauru will be detained. UNHCR defines detention of asylum seekers as confinement within a narrowly bounded or restricted location where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory. The degree of curtailment of movement in offshore processing facilities such as Nauru brings the arrangements within the scope of detention. The detrimental impact of immigration detention on refugees and asylum seekers has been well documented. It is known that the mental health of refugees and asylum seekers is further compromised by their detention in remote locations. This bill may compromise the health and welfare of asylum seekers and refugees by isolating them from adequate support networks and care.

We are also concerned that refugees and asylum seekers processed outside Australia will be detained under the care of the International Organisation of Migration (IOM). IOM has no protection mandate. Should the human rights of those in the care of IOM be breached, there is no internal avenue through which concerns can be addressed.

The Refugee Convention calls on state parties to promote the rights of refugees without discrimination as to race, religion or country of origin; to desist from imposing penalties based on illegal entry or presence and prohibits *refoulement*, or return of refugees to a place where they face persecution. The bill is designed to deal with asylum seekers coming from regions of Indonesia who come to Australia by boat, thus raising concerns about discrimination on the basis of country of origin and about the imposition of penalties based on illegal entry.

Deflecting asylum seekers to Nauru, which is not a party to the Refugee Convention, may result in the return of refugees to a place where they may face persecution. A Memorandum of Understanding between the governments of Australia and Nauru, which appears to address concerns about *refoulement*, is of uncertain legal effect and does not adequately address concerns about Australia's ability to monitor and regulate offshore facilities in other nations. Concerns of *refoulement* are fortified by DIMA's recent confirmation that Operation Relex has not yet concluded.

The bill flouts the central premise of the Refugee Convention, which is one of burden sharing between state parties. Australia's experience with refugees processed in Nauru, Manus Island and Indonesia has been that third countries are reluctant to accept refugees processed offshore on the basis that their protection lies within Australia's responsibility. It is foreseeable that refugees and asylum seekers are therefore likely to remain in offshore processing centres for extended periods of time; perhaps several years if not indefinitely.

Legislation which subordinates humanitarian concerns in order to appease other states is unlikely to foster respect for Australia's sovereignty or an enduring mutual respect between nations. Human rights are inextricably linked with international peace and security. Australia has recognised this connection in acceding to the Charter of the United Nations and a range of United Nations based human rights treaties. Australia's proper place within the Asia-Pacific region is that of a fair minded and principled power; committed to upholding fundamental human rights and maintaining international peace and security. Australia is at present discharging its leadership role in East Timor, as it did in recent weeks in the Solomon Islands. As a leader in our region, it is incumbent upon Australia to set a positive example. The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 would instead establish a catastrophic humanitarian precedent. We strongly oppose the bill.