

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

Submission by Linda Jaivin (author and translator)  
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I urge the Legal and Constitutional Legislation Committee to recommend against passage of the above amendment presented to Parliament by the Government on both legal and moral grounds.

Legal grounds for rejecting this amendment:

The amendment would create an unprecedented regime for the processing of asylum claims which, from what I understand, both explicitly and implicitly violates our undertakings under the Refugee Convention to which Australia is a signatory. Here are two obvious and clear examples of how the amendment contravenes our obligations under the convention.

- 1) It would punish asylum seekers arriving here by boat without authorization for contravening normal migration procedures despite the fact that the Refugee Convention explicitly states, in Article 31: 'The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.' That it does not appear apply to asylum seekers arriving by plane would suggest that there are short-term political motivations behind the amendment.
- 2) The amendment would deny boat arrivals access to the courts, and even to an appeal being lodged with the Refugee Review Tribunal. And yet Article 16 of the Convention states that 'A refugee shall have free access to the courts of law on the territory of all Contracting States.' The amendment directly contradicts this article.

These points are clear to me even though I am not a lawyer.

Moral grounds for rejecting the amendment

As a regular visitor to Villawood IDC between November 2001 and June 2005, I had plenty of opportunity to observe how prolonged, indefinite detention caused profound psychological harm to the

asylum seekers who were detained there. This was particularly true with regard to children, though adults were vulnerable as well. I witnessed numerous cases in which asylum seekers pushed to the limit of their patience, understanding and self-control by an obtuse and often blatantly hostile system, committed acts of self-harm or retreated into the depths of clinical depression. I am thinking of fifteen-year-old girls immobilised by depression, teenage boys slamming their hands down on the razor wire after being taunted by guards, and so on. The detention regime needs reform, not extension. The human cost is extreme. Nearly every single one of the people I visited, some of whom were in for as long as six years, were eventually recognised as refugees. We have no right to do this to other human beings.

There is general consensus that children should not be kept in detention. The amendment would return countless children to this situation - and it is no comfort that they may be allowed to wander around Manus Island or Nauru or Christmas Island by day if they are locked up at night, far from any real place of refuge.

Justice has been eventually served in the cases of many genuine refugees detained in mainland detention centres thanks to the vigilance of advocates and lawyers who have had relatively uninterrupted access to the detainees, as well as the asylum seekers' own access to avenues of appeal provided by the Refugee Review Tribunal and the courts (as limited as their access to the latter has been). One can only assume that there is an assumption on the part of those who drafted this amendment that it will keep future arrivals safely 'out of sight and out of mind' and that whatever happens to them, and with their cases, there won't be anyone watching. This is no way for a democratic government to operate; we need transparency and accountability, and this amendment will bury both.

Finally, if asylum seekers arrive in Australia asking for protection and are found to be genuine refugees, we ought to take them, not allow them to wither away for years on a Pacific island. It's inconceivable that anyone can see this as a just and humane outcome.

Thank you for your attention.  
Linda Jaivin