

Australia West Papua Association (Melbourne) submission to Senate Legal and Constitutional Committee on the Migration Amendment (Designated Unauthorised Arrivals Bill) 2006.

1. The proposed amendments breach international law and repudiate Australia's international obligations under the Convention Relating to the Status of Refugees 1951 (***the Refugee Convention***) and the Convention on the Rights of the Child. Further, the Bill denies a person seeking asylum human rights and fundamental freedoms.
2. According to the Explanatory Memorandum, the proposed regime under the Bill means that all unauthorised boat arrivals will be liable to be transferred to offshore processing centres for assessment of their refugee claims. The power to remove a person to another country for processing is dependent on a declaration from the Minister that the specified country provides access to '*effective procedures*' for assessing the person's need for protection. The Bill is silent on criteria by which procedures are deemed to be '*effective*'. In particular, the Bill does not ensure persons removed to another country for processing have access to the rights afforded under the Refugee Convention.
3. The proposed amendments do not require Australia, in rendering asylum seekers to third party States for processing, to ensure practice in these overseas countries conform with requirements of the Refugee Convention and the Convention on the Rights of the Child. The Bill therefore erodes the international standards of protection and redress legitimately expected of persons seeking asylum in countries bound by these international instruments.
4. The Explanatory Memorandum clearly identifies that restrictions relating to legal proceedings in respect of offshore entry persons will continue and will extend to apply to 'designated unauthorised arrivals'. These provisions restrict the institution of legal proceedings in relation to persons seeking asylum and deny a persons seeking asylum the fundamental right to appropriate and adequate legal representation.
5. Australia is required under Article 31 of the Vienna Convention on the Law of Treaties 1969 to interpret a Treaty in good faith and in accordance with the ordinary meaning of the Treaty's terms. The Bill conflicts with Australia's ability to carry out its global undertakings in good faith as a founding member and signatory to the Refugee Convention.
6. The Bill abrogates the rights of children under international and Australian law, in particular, the requirements that a child should only be detained as a measure of last resort and for a short term period. The proposed amendments allow for indefinite detention of persons in offshore centres and do not set out how rights of children against the arbitrary or unlawful detention will be protected.
7. The political imperative driving the Bill relates to the granting of asylum to 42 West Papuan refugees in January 2006. The proposed amendments operate to treat persons arriving in Australia by sea differently from those arriving in Australia by air. Not only is the Bill founded on discrimination; it also operates to discriminate against persons seeking asylum through direct and high risk measures.

8. The Bill supports a method of offshore processing and detention which will have serious and well documented adverse impacts on the mental and physical health of refugees. Experience at Nauru shows the particular health concerns associated with offshore processing. It is reasonably foreseeable that an expansion of this practice, as contemplated by the Bill, will perpetuate harm to the mental and physical health of persons seeking asylum.
9. Finally, it is a matter of grave concern that the government has provided such insufficient time for experts, organizations, groups and interested parties to review the Bill and prepare submissions for this inquiry. The government's proposal is hasty and reactionary. The government has not adequately consulted with, or allowed sufficient time to consider the opinions of, the Australian community. This is particularly appalling given the significant humanitarian ramifications of the proposed changes.
10. The proposed legislation breaches Australia's treaty obligations, is discriminatory in its conception and operation and demonstrates a negligent and reckless attitude from the government towards Australia's duties to persons seeking asylum. The proposed actions of the government are not consistent with actions and attitudes of a nation that considers itself a leader in the region and as a responsible member of an international community.

Endorsement of Submissions by other organizations:

The Australia West Papua Association (Melbourne) endorses the comments made by the Public Interest Law Clearing House and the Victorian Bar and the Human Rights Law Resource Centre in their submissions.