



Federation of Community Legal Centres (Vic) Inc

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Fax: 02 6277 5794
Email: legcon.sen@aph.gov.au

Monday 22nd May, 2006

**Submission to the
Senate Legal and Constitutional Legislation Committee Inquiry into
provisions of the *Migration Amendment (Designated Unauthorised
Arrivals Bill) 2006***

Dear Secretary,

We welcome this opportunity to submit to the inquiry regarding the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 ('the Bill').

The Federation of Community Legal Centres Vic. Inc ('the Federation') is the peak body for fifty-one Community Legal Centres across Victoria, including both generalist and specialist centres. Community Legal Centres provide free legal advice, information, assistance, representation and community legal education to more than 60,000 Victorians each year. We also work on strategic research, casework, policy development and social and law reform activities.

In summary, the Federation wishes to record its serious objections to the Bill. Unauthorised asylum seekers will no longer be detained in Australia and under Australian law which fundamentally threatens detention standards, length of detention and accountability of those responsible for detention. The proposed laws in their present form, or any amended form which denies asylum seekers access on Australian territory to the full benefits of the refugee determination processes, represents a violation of Australia's international human rights obligations and must not be passed.

Firstly, one of the principle problems presented by the Bill is that the 'processing' of refugees exterior to Australian law will dissolve the current system of checks and balances. The Amendments will ensure that all people who arrive informally ('unauthorised') in Australia by boat will be automatically transferred to 'offshore' processing centres to have their claims for refugee status assessed.

Suite 11 1st Floor 54 Victoria Street Carlton South 3053

T 03 9654 2204 F 03 9654 5204

E fedclc@vicnet.net.au W www.communitylaw.org.au

ABN 30 036 539 902 Inc Reg No A0013713H

Importantly, the Bill will not be constrained by Australian law which consequently results in no independent scrutiny or accountability mechanisms and no access to genuine merits review by the Refugee Review Tribunal or judicial review by the courts. The latter is absolutely detrimental when one considers that in the last three years, the Refugee Review Tribunal (RRT) has overturned 92% (3,200 people) refusals by the Department of Immigration officials of Iraqi and Afghan Protection Visa applicants. Not only does the *Migration Act* stipulate that a person in immigration detention has the right to obtain legal advice, but they are also essential in affording individuals their full rights and dignity.

Secondly, these newly proposed laws are discriminatory on the basis of the asylum seekers' mode of arrival into Australia. A temporary visa holder who becomes unlawful after visa expiry and applies for protection while in detention will be afforded legal advice, merits review and judicial review (if required). When this is contrasted by the denial of rights for asylum seekers arriving in an unauthorised manner by boat, there is an evident breach of Article 31 of the Refugee Convention.

In addition, the suggested resettlement to 'third countries' poses a real threat of indefinite detention of those most vulnerable and deserving of our protection. Asylum seekers targeted by the Bill will be victims of trauma whose illness can only be exacerbated by long-term detention with limited health care and community care. As there is no set time period for the processing of asylum seekers and other countries are unlikely to accept any resettlements once they have been re-allocated by Australia, the result will be asylum seekers living in exile in inhumane conditions without any guidelines of time. As noted by the HREOC, this particularly raises concerns about Australia's breach of Article 9(1) of the *International Covenant on Civil and Political Rights* referring to arbitrary detention.

Furthermore, the Bill will have the effect of creating the risk of situations of returning persecuted refugees back to their country. It involves the Government being able to use the navy or interdict boats to hand the asylum seekers back to the alleged persecutors without undertaking any assessment of the person's fear or need for protection. This is a serious violation of the core obligations of Article 33 of the Refugees Convention.

Finally, the Federation strongly objects to the implementation of the Bill based on its violations of Australian's international obligations. Other than the breaches relating to the Refugees Convention already stated, the proposal will also deviate from its obligations under the Convention of the Rights of the Child. More specifically, those obligations relating to acting in the best interest of the child (Article 3(1)) and the principle that children should only be detained as a measure of last resort (Article 37(b)).

We believe that the proposed Amendments to the *Migration Act* contained in the Bill will further harm Australia's international reputation. As a democratic country, it is vital to our national interest and our ethical values that we uphold the protection of human rights. Moreover, the proposed law sets a very detrimental precedent for future relations with other States and it encourages developed countries to abrogate their responsibilities. Australia must not jeopardise fundamental individual rights.

In accordance with the above, the Federation would like to specifically endorse the detailed submissions regarding this inquiry provided by the:

- Refugee & Immigration Legal Centre Inc (RILC)
- Refugee Council of Australia
- Joint submission of the Public Interest Law Clearing House (Vic) Inc and the Victorian Bar

For any further information or if you require a central point of contact for future consultation with the Community Legal Service sector, please direct inquiries to Anthony Kelly, Policy Officer, on 9654 2204 or Anthony_Kelly@fcl.fl.asn.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pauline Spencer', written in a cursive style.

Pauline Spencer
Executive Officer