

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

For the attention of: Committee Secretary

*Re: Proposals to Amend the Migration Act 1958*

I am writing in relation to the proposed Bill to amend the Migration Act 1958 to expand the offshore processing regime currently applying to offshore entry persons and transitory persons to include, in addition, all persons arriving at mainland Australia (meaning other than at an excised offshore place) unlawfully by sea on or after 13 April 2006.

This proposed Bill has arisen as a direct consequence of the decision of the Department of Immigration and Multicultural Affairs [DIMA] to grant temporary visas to 42 West Papuans. That decision was taken on or about 23 March and was based on independent assessment by officers of DIMA who concluded that the claims made by the asylum seekers had sufficient basis to trigger Australia's international legal obligations and Australian domestic law. In short the West Papuans were in danger as defined by the Refugee Convention and could not be guaranteed safety if returned to West Papua.

Since that time Indonesian parliamentarians, the Indonesian press and the Indonesian government has been vociferous in its criticism of the decision by DIMA. The criticism included the withdrawal of the Indonesian Ambassador to Australia. The Australian government has responded with numerous statements from the Prime Minister, Foreign Minister and others implying that decisions relating to granting of temporary protection visas for persons from West Papua could not and should not be taken without reference to Australia's strategic engagement with Indonesia. Of course such statements referred to Australia's international obligations under the Refugee Convention but there can be no doubt that the Australian government is acquiescing to the demands from Indonesia and specifically the Indonesian government.

Given this, I object to the proposed amendments because they are not made on grounds relating to meeting the protection needs of asylum seekers but rather on the foreign policy objectives of creating a relationship with Indonesia. Australia should not allow such important obligations for protection to be diminished by such strategic and foreign policy objectives. My fear is that Australia will compromise its obligations to asylum seekers in order to placate Indonesia. It must be remembered that the original decision makers in DIMA concluded that the situation in West Papua was such to grant temporary protection visas.

Given this policy of appeasement I am concerned that some persons fleeing the demonstrated persecution in West Papua may be forced to return to West Papua and denied even the possibility of making a claim upon Australia's protection obligations.

While this is not explicit in the proposed changes to law, it is reasonable to hold the view that in practice those charged with the border patrol of Australia may be encouraged to turn back prospective asylum seekers.

As I understand the proposed amendments all asylum seekers arriving by boat would be removed from Australia, sent to offshore centers and held there until a 'third country' provides refuge. I note that the Australian government continues to use the pejorative term unauthorized boat arrivals but in terms of international refugee law these persons are not unauthorized nor illegal but legitimate asylum seekers. It may suit the Australian government's domestic agenda to use pejorative terms but that reflects poorly on its preparedness to genuinely recognize and protect asylum seekers whose lives are in danger. I remind you again that DIMA reached the conclusion that the West Papuans were in danger.

The impact of this amendment would be to repeat the injustices of the past policies which saw many asylum seekers confined in detention in Pacific Island countries only to be subsequently granted refugee status. This policy will inevitably result in long term detention for persons who are legitimate refugees. It will also mean the detention of children which itself is a contravention of the Convention on the Rights of the Child and a breach of undertakings made by the government that children would cease being held in detention. The amendments will deny asylum seekers access to fair and just Australian review procedures and in particular claims to the Refugee Review Tribunal.

Finally, these amendments mean that those persons who arrive by boat to claim asylum will be dealt with in different ways to those who arrive by air and those who might arrive on a valid visa but who subsequently breach the terms of that visa. In short, the Australian government will deal with asylum seekers in quite inequitable ways and that is a clear breach of procedural fairness.

I ask the Senate to reject these amendments as they clearly based on a policy to appease the Indonesian government. Such appeasement will inevitably mean that Australia will fail to live up to its international obligations arising from the Refugee Convention.

In my view, instead of backing down to the Indonesian government and the vested interests who are served by the oppression in West Papua, the Australian government should demand that the Indonesian government give full protection to those in West Papua and make every effort to cease the long standing and systemic human rights violations that have occurred in West Papua for many decades. In the interim Australia should be unequivocal in its commitment to protect those who are oppressed and determined to meet its international obligations towards asylum seekers.

Ross Daniels  
The Gap. Q.