



## Refugee & Immigration Legal Centre Inc

22 May 2006

**By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)**

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

**Re: *Senate Legal and Constitutional Committee Inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 (“the Bill”)***

We refer to the above matter.

In this regard, we thank the Committee for the opportunity to make submissions concerning the Bill. The following documents, which are attached, form the basis our submissions:

- (a) Speech by David Manne for Castan Centre for Human Rights Law: “*Boatloads of Extinguishment? Forum on the proposed offshore processing of “Boat People”*” (5 May 2006).
- (b) Submission to the Senate Legal and Constitutional Affairs Committee on Migration Legislation Amendment (Further Border Protection Measures) Bill 2002.
- (c) RILC Response to Legislative Changes (September 2001).

(Please note that documents (b) and (c) mentioned above have been submitted as part of the one PDF document.)

In relation to the document mentioned at paragraph (a) above, we note that while this speech was made before the introduction of the Bill, the provisions of the Bill do not differ in any material respect from the proposed changes announced by the Immigration Minister on 13 April 2006 which formed the basis of this speech.

Further, in fundamentally opposing the provisions of the Bill in their entirety, we wish to make the following submissions by way of summary:

- (1) The measures proposed in the Bill represent a flagrant violation of the spirit and the letter of Australia’s obligations in relation to numerous principles and practices under international refugee and other human rights law. In particular, it

is fundamentally at odds with the basic, core right of a person to seek and to be afforded protection from persecution within the territory to which they flee; it has the very real potential to violate the non-refoulement principle and to thereby place people at grave risk of human rights abuse. The Bill also proposes discriminatory treatment and penalisation of refugees, such as West Papuans, who flee directly from their country of origin, in direct violation of the express prohibition of such conduct under Article 31 of the Refugees Convention.

- (2) The Bill is predicated on the concept of the transfer of asylum seekers to a 'safe third country'. The 'safe third country' concept presupposes some linkage to the country in question, generally through rights acquired by a period of residence or other relevant connections in or with that country. Use of the concept of the safe third country to transfer asylum seekers to transit camps in countries such as Nauru or PNG where they have no right of entry, to which they have no connection and which have no capacity to facilitate their resettlement is a serious and dangerous misrepresentation and misuse of the concept of the 'safe third country.'
- (3) People who arrive by boat in Australia and apply for refugee status would be subjected to a system of fundamental unfairness in which they would be denied access to the Australian legal system and due legal process, and would also be denied access to any legal assistance or other basic support. There would be a fundamental absence of basic scrutiny and accountability mechanisms; mechanisms long considered a basic pre-requisite for fair and just administrative decision-making in Australia.
- (4) There is clear and concrete evidence that in recent years, the inferior refugee status determination processes applied by the DIMA and the UNHCR on Nauru contained serious and systemic flaws which were material to the outcome of many cases. A pattern of fundamental errors in assessment of cases resulted in the refusal of cases which were only overturned in some cases years later after intervention by legal advisers.
- (5) There is clear and concrete evidence in recent years of the terrifying human destruction which was suffered by many of the people subjected to the 'Pacific Solution' policy and its practices who were detained on Nauru. The substandard living conditions and dangerously inadequate access to medical treatment have been well-documented, as has the physical and psychological disintegration commonly experienced by those detained in Nauru.
- (6) There is clear and concrete evidence in recent years of how inordinately long it took - in many cases years - to resettle refugees, including unaccompanied children and that the majority were resettled in Australia despite efforts and rhetoric to the contrary. This occurred largely because the international protection framework is predicated on burden-sharing and other countries rightly refused to

accept responsibility for that which was clearly Australia's obligation and responsibility.

- (7) In the circumstances, it is most likely that resettlement of refugees will be even more problematic than under the recent Pacific experiment. The core aim propounded by the United Nations High Commissioner for Refugees of finding a 'durable solution' for refugees where they can rebuild their lives in dignity and safety will be uncertain and, quite possibly, illusory. At its core, the proposal in Bill would result in refugees being cast into indefinite exile. It is completely unclear why any other country, already reluctant to take up what are properly Australia's obligations and responsibilities, would be in the slightest interested in resettling people, such as West Papuans, who have already been subjected to ethnic and political vilification and then discarded as too troublesome politically.
- (8) Were all other countries to adopt such unprecedented policies and practices as proposed by the Bill, the international framework designed to protect refugees would be so seriously undermined as to be rendered ineffective and meaningless. It would, in fact, collapse.

If you have any queries or require any further additional information, please contact David Manne of this office on **(03) 9483 1144**.

Yours sincerely,

David Manne  
Co-ordinator/Principal Solicitor & Registered Migration Agent  
(and Head of the Legal Team for the West Papuan refugees)  
**REFUGEE & IMMIGRATION LEGAL CENTRE INC.**