

Senate Legal & Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra, 2600
Australian Capital Territory

Monday May 22, 2006

Dear Senators:

Please find enclosed a copy of the community's 30,000-signatory petition calling on Senators to reject the proposed changes to Australia's migration laws, and to ensure no child who comes to Australia seeking asylum is put into detention. This petition has been facilitated by GetUp.org.au, an independent not-for-profit online community group, in partnership with *A Just Australia* and *Chilout*, and reflects the vast community support for the rights of children. **It achieved 10,000 signatures in its first six hours, arguably the fastest-growing online petition in Australian history¹.**

GetUp's submission to the Committee also includes a DVD copy of a nationally broadcast television advertisement featuring Jack Thompson, which calls on the government to desist with its plans to amend Australia's refugee policy. We request that the Senators view the 30-second clip as part of the Senate inquiry into the proposed legislation. For a live update of the petition's numbers, as well as an online (low resolution) copy of the advertisement, we would also encourage you to log onto www.getup.org.au/campaign/NoChildInDetention.

As noted in the volume of pages of petition comments, tens of thousands of Australians feel outraged that after finally pledging to end the detention of children and their families in 2005, the Australian Government is now proposing to detain children offshore, potentially indefinitely and without transparency or basic legal safeguards.

Furthermore, there is serious dismay that such a draconian new policy has come about as result of direct pressure, not from the Australian public, but from a foreign state. Any change to Australia's refugee policy must be in line with the 1951 UN Refugee Convention, and should be consistent with the views of the broader Australian population. It is inappropriate to further undermine stand-alone refugee determination procedures with reference to extraneous geo-political considerations.

We find the Minister for Immigration's arguments for this change in law (as expressed below in transcripts from an interview May 3, on SBS' *Dateline*) irresponsible and inaccurate:

¹ Please note the petition has been vetted for double entries and offensive language, however due to the overwhelming number of petitioners, we anticipate that there remains approximately 500 double entries out of 30,972 signatories, giving a total of 30,400.

SENATOR AMANDA VANSTONE: We can't make rules in relation to facilities and other countries. We can influence them but we can't make rules. We changed the rules in Australia...

GEORGE NEGUS: In moral terms, let's take the politics out of it, even the legality out of it. Isn't that a breathtaking display of hair-splitting? Why is it okay to put children in detention in Nauru but not in Christmas Island?

SENATOR AMANDA VANSTONE: Well we would prefer that there were no people in detention, that would clearly be my preference, but it is another country. I do not think that is spitting hairs, Australia is one country and Nauru is another, there is a fundamental difference.

As Australia is proposing to ship children who arrive on our shores to another country to be processed, it is misleading for the Minister to claim their subsequent detention is beyond our control. People who seek asylum in Australia remain our responsibility, and are therefore under our care, until they are appropriately processed and then granted a visa, deported or removed.

There are many other grave objections to the Bill expressed in the petition comments enclosed, including that it:

- breaches Australia's obligations under the UN 1951 Refugee Convention (*most notably under articles 31 and 33*) and the Convention on the Rights of the Child (*most notably under articles 37(b) and 3(1)*);
- lacks the right of appeal to Australia's legal system, which means that asylum-seekers who might be wrongly denied refugee status by DIMA are at risk of arbitrary and indefinite detention or of being sent to a place where they may face serious harm or torture;
- allows for boats to be intercepted and for their occupants to be returned to the country from which they are fleeing without being assessed to determine if that country is in fact persecuting them;
- detains children and their families in camps on remote islands with heavy surveillance, minimal facilities and bleak prospects for education, development or contribution;
- may result in even those granted refugee status languishing in indefinite detention while Australia searches for a third country to resettle them. Past experience shows that third countries are reticent to accept refugees who have sought asylum from another state.

The thousands of comments enclosed make it clear that the Bill offends fundamental principles and broader Australian values. The majority of Australians value children's rights and wellbeing first and foremost. It is commonly understood that no parent, if the safety of their family were threatened, would hesitate to escape persecution by whatever means necessary and therein seek their legal right to asylum. Australia should not be further punishing or deterring these people by shipping them offshore for indefinite mandatory detention, rather than allowing the opportunity to adapt to new lives in normal communities while asylum claims are processed and assessed.

But what is most alarming about this legislation is that if passed, it will knowingly and needlessly afflict long-term physical and psychological damage and distress to children and their families. The 2004 Human Rights and Equal Opportunity's national inquiry found overwhelming evidence of "disastrous consequences" for children in detention, and a chorus of criticism finally led to reforms in the Migration Act of 1958, with note to Section 4AA:

(1) The Parliament affirms as a principle that a minor shall only be detained
as a measure of last resort.

There is no just or compelling reason to overturn these reforms now, which would see every asylum seeker child who arrives by boat detained as a matter of course.

Australians are also rightly concerned about the cost of the proposal. It has been estimated that the Government has thus far spent \$240 million on the Nauru experiment alone – costs which are borne by Australian taxpayers and have yielded little but misery, protracted detention and a painful resettlement for over 90% of those determined to be refugees back on the Australian mainland.

Australia has every reason to stand as a beacon for human rights in our region. It is firmly within Australia's national interest to do all in our power to meet our moral and legal human rights obligations, in part to preserve our own authority when calling on other nations to lift their own standard of human rights, which would stop the flow of refugees at the source.

Only in leading by example and sincerely supporting other countries' efforts to abolish injustice and abuse will we reach a lasting solution – one that promotes the advancement of the human condition instead of the entrenchment of abuse and persecution.

Australia must strengthen our resolve, vision and leadership as a nation, both in the region and in the international sphere. In doing so we call on our Senate leadership to stand firm in opposition to this legislation.

GetUp would be pleased to appear before the Committee if appropriate.

Yours Sincerely,

Brett Solomon

Brett Solomon
Executive Director