



amnesty international australia

21 August 2006

Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Curtis

Re: Inquiry into the provisions of the Migration Amendment (Visa Integrity) Bill 2006

Amnesty International Australia welcomes the opportunity to comment on the Migration Amendment (Visa Integrity) Bill 2006, currently being considered by the Committee. We provide the following comments to clarify the implications of two provisions in the Bill:

Section 48(3)

Amnesty International Australia seeks to clarify and ensure that the persons affected by proposed section 48(3) are not then excluded from applying for a waiver of section 48B. While we can understand the Government's reasoning in making this amendment in relation to substantive visas, we have human rights concerns regarding its application to those with asylum claims.

For example it is possible that part way through a protection application, an asylum seeker is granted a Bridging Visa B, visits their family in a safe country overseas, returns to Australia and is subsequently refused protection. Following this refusal, there may be new information on a case, a gender based claim not previously heard, or many other persecution based reasons for this person to have their claim re-heard. This would be possible should the Minister choose to exercise discretion and waive section 48B. The asylum seeker may later be deemed to be a refugee and protection should not be denied on the basis of having visited a relative overseas throughout their application process. Amnesty International Australia seeks assurance that section 48(3) will not negate any access to a section 48B waiver.

Section 172(1)(ba)

Persons in immigration detention are not deemed to be immigration cleared. Persons held in residence determination, or an alternative place of detention such as a hospital are also categorised as not being immigration cleared. The significance of this is in relation to section 172(1)(ba), which does not cover a child's status in a situation where both parents are non-immigration cleared at the time of the child's birth. Depending on the country involved, the child may have great difficulty in obtaining a passport or travel document from the country of his/her parent's origin. This exact case was proven by Virginia and Naomi Leong. Naomi was born while her

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mother, Virginia was a detainee at Villawood Immigration and Detention Centre, the Malaysian Government denied Naomi any lawful status to enter Malaysia. Amnesty International Australia's concerns in this regard relate to Australia's obligations under the Convention on the Rights of the Child and the Convention on Statelessness to ensure the welfare and lawful status of children and preserve family unity.

Yours sincerely

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