



PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

12 February 2013

The Hon Brendan O'Connor MP
Minister for Immigration and Citizenship
Parliament House
CANBERRA ACT 2600

Dear Minister *Brendan*

Examination of the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation

I am writing on behalf of the Parliamentary Joint Committee on Human Rights with regard to the committee's examination of the human rights implications of the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation.

The committee held two public hearings on 17 and 19 December 2012 to explore the human rights issues arising from this package of legislation. The committee invited and received evidence from a number of interested parties. Representatives from your department made themselves available for both hearings and have provided written information to the committee in response to questions taken on notice, for which the committee is grateful.

To further assist its consideration of this legislative package, the committee has resolved to request information on several matters that have been highlighted through our investigation of this legislation. In particular, the committee would be grateful for the following information:

A. Make-up of the population of asylum-seekers subject to the offshore processing regime

1. How many men and women are currently in the population of persons that come within the scope of the offshore processing regime? How many minors, also broken down by gender?
2. What is the male/female breakdown of those who have been transferred to Manus Island and Nauru?
3. Please provide an update on how many children have been transferred to Manus Island and to Nauru and whether these include any unaccompanied minors. Please also provide the ages of the child transferees.
4. What are the nationalities of the persons covered by the offshore processing regime?
5. What avenues are there for these groups to travel 'lawfully' to Australia? Please provide a summary of the types of visas for which these groups may be eligible, including the number of successful and unsuccessful applications per year.
6. How many post-13 August 2012 arrivals have been assessed to be refugees? How many have been assessed not to be refugees? How many of these decisions are currently the subject of appeal? How many of these persons have been returned?

7. How many post-13 August 2012 arrivals are currently being processed in the community? How many are still in detention in Australia? Are their claims being processed?

B. Criteria for transferring persons offshore

8. Given that the number of persons who have arrived after 13 August 2012 exceeds the number of available places on Manus Island and Nauru, what criteria have been used to select persons for transfer to Manus Island and Nauru?
9. What avenues are available for persons to challenge a decision to transfer them to Nauru or Manus Island?
10. How long are persons being detained in Australia prior to being transferred to Nauru or Manus Island?

C. Transfer of persons to Manus Island and Nauru

11. Who is responsible for carrying out the physical transfer of persons to Manus Island and Nauru?
12. What standards and procedures are in place to ensure that persons being transferred are treated with dignity and humanity, and are informed of what is happening to them? Please provide a copy of the relevant procedures for the committee's consideration.
13. Have any complaints been received from persons transferred about the mode in which this transfer has taken place? If so, what action has been taken in response?

D. Conditions on Nauru and Manus Island

14. Please outline the extent of any restrictions placed on the liberty and freedom of movement of persons transferred to Manus Island or Nauru and the reasons for any such restrictions. Are persons free to come and go from the processing centres unescorted? Under what circumstances would they be permitted to leave Nauru or Manus Island?
15. What access to legal or migration advice do persons transferred to Manus Island and Nauru have? How does this compare with that which might be available to onshore applicants/detainees?
16. What avenues are there for persons to challenge the fact or conditions of any detention, or the procedure for determination of refugee status before the courts of PNG or Nauru?
17. The committee has been told that drug-resistant malaria is present on Manus Island, as well as dengue fever. Is this the case and, if so, could you explain how it could be consistent with Australia's obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 10 of the International Covenant on Civil and Political Rights (ICCPR) and article 24 of the Convention of the Rights of the Child to send persons, in particular minors, to such an environment?

E. Australia's international responsibility in relation to violations that take place in PNG and Nauru

18. Your department has suggested that, once legal and other arrangements are fully in place in PNG and Nauru, Australia will not have 'effective control' of transferees. This argument does not address the issue of whether Australia might nevertheless be liable jointly with PNG

and Nauru, or liable for aiding or assisting, for any human rights violations because of its level of involvement in the whole process. The latter is a distinct issue from effective control, as set out in Article 17 of the International Law Commission's *Articles on State Responsibility*. Have you considered whether Australia could be held jointly responsible for any violations or liable for aiding or assisting in such violations? If so, what conclusions have you drawn regarding Australia's liability for any violations?

19. Does Australia have human rights obligations with respect to persons during the process of transferring them to Nauru and Manus Island? If not, who does?
20. PNG is a party to the Refugee Convention and has accepted the obligation of non-refoulement, but has entered reservations to that Convention in relation to rights to work, education and other articles. Given that Australia has accepted those obligations, the result is that persons transferred to PNG may enjoy less extensive rights than if they had remained in Australia. Do you agree that this is the case?

F. 'No-advantage' principle

21. The committee is concerned that a practical consequence of the application of the 'no advantage principle' would appear to be either a deliberate slowing down of processing applications for refugee status or deliberate delays in resettlement or transfer once a person has been determined to qualify as a refugee. In each case the person would remain on Nauru or Manus Island for longer than would otherwise have been necessary. Could you indicate why this is not an arbitrary detention within the meaning of Article 9 of the ICCPR or a penalty under the Refugee Convention?
22. Has the processing of asylum seekers' claims in Nauru and Manus Island commenced? If not, when is processing expected to commence?
23. What steps have been taken to progress a 'managed regional system', which was a central plank of the Expert Panel's model for addressing irregular entry into Australia?

G. Family reunion

24. Please outline the scope and operation of the new family reunion regime, including the scope and impact of the changes introduced by the Migration Amendment Regulation 2012 (No. 5).

H. Bridging visas – work restrictions

25. Please provide an outline of the operation of the new bridging visa regime and its associated work restrictions. Do the work restrictions apply only to asylum seekers who are waiting for their claims to be processed?
26. Does the legislation ensure that those whose claims have been approved will be allowed to work?
27. How has the disallowance of the Migration Amendment Regulation 2012 (No. 6) affected these measures?
28. Are the measures consistent with article 6 of ICESCR (relating to the right to work)? To what extent might the measures raise issues vis-à-vis article 7 of ICCPR – for example, if the work ban combined with minimal support results in destitution?

I. Non-discrimination

29. The committee has heard that Australia's differential treatment of asylum seekers based on their method of arrival may be inconsistent with the right to equality and non-discrimination in article 26 of the ICCPR. Do you agree with this assessment/view? If not, on what legal basis do you reach a different conclusion? In addition, have you considered whether transferring some post-13 August 2012 arrivals to Nauru and PNG but permitting others within the same cohort to be processed in Australia is consistent with the right to equality and non-discrimination in article 26 of the ICCPR?

It would assist the committee, if you could provide the committee with the further information requested by **Thursday, 28 February 2013**.

Should you have any queries, please contact the committee secretary, Jeanette Radcliffe, on (02) 6277 3823.

I look forward to your response.

Yours sincerely



Harry Jenkins MP
Chair