

## **Commissioner for Equal Opportunity, South Australia**

### **Submission to the Standing Committee on Legal and Constitutional Affairs - Inquiry into the agreement between Australia and Malaysia on the transfer of asylum seekers to Malaysia.**

Thank you for the opportunity to comment on the inquiry into the agreement between Australia and Malaysia on the transfer of asylum seekers to Malaysia.

The role of the South Australian Commissioner for Equal Opportunity is to administer the *Equal Opportunity Act 1984* (SA). I am able to accept complaints of discrimination in areas such as the workplace, goods and services, housing, education etc. for grounds such as race, age, sex and disability. The Commission also has a role in providing equal opportunity training and education to the community.

The South Australian Equal Opportunity Commission believes that detainment should be a last resort and has grave concerns about transferring asylum seekers to a third country.

As signatory to the UN Convention Relating to the Status of Refugees, Australia is obliged to protect refugees that arrive in its territory and should process these asylum seekers in a prompt and efficient manner. Given that Malaysia is not a signatory to the Refugee Convention, it is of particular concern that these asylum seekers will not be afforded the appropriate human rights protections and that the asylum seekers could be returned to their country of origin where they face danger. This could breach Article 33(1) of the Convention, which establishes the requirement of non-refoulement. The Commission is concerned that intended safeguards in the agreement will be difficult to enforce, that there is a risk that the human rights of those transferred will be breached and that the standards of services provided to the asylum seekers will not be adequate.

Furthermore, under the Convention on the Rights of the Child, which Australia is a signatory to, the detention of children must be a last resort and for the shortest possible period of time.

The Commission in particular does not support the transferring of children. As the legal guardian of any unaccompanied minors arriving in Australia, it is the Minister's role to act in the best interests of the child. Transferring an unaccompanied minor to a third country, and in particular one who is not signatory to the Refugee Convention and has a questionable human rights record, is clearly not in the child's best interests. A significant body of research shows that prolonged detention is likely to cause long-term mental harm.

Australia receives far more asylum seekers who arrive by plane rather than by boat - some figures cite approximately three to one. Most asylum seekers who arrive by plane receive bridging visas and are permitted to live in the community while their applications are being determined. On the other hand far more asylum seekers who arrive by boat are granted refugee status than those that arrive by plane, demonstrating that most people that arrive by boat are found to be 'genuine' refugees. It seems incongruous that this is the group who faces detention.

The Commission urges the government to reconsider this policy.