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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600
BY EMAIL: legcon.sen@aph.gov.au

Dear Secretary

Submission to the Senate Legal and Constitutional Affairs Committee - Inquiry into the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

I thank you for the opportunity to comment on the inquiry into the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012.

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 employment, goods and services, housing, and education 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 has a number of concerns about the proposed Bill. These relate to possible discrimination, treatment of children, access to legal avenues and ability to work.

Under the proposed changes, the differential treatment of people seeking asylum who arrive by sea, as opposed to those who arrive by plane, will be greater than it is currently. 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 eventually granted refugee status than those that arrive by plane, demonstrating that a higher proportion of people who arrive by boat are found to be 'genuine' refugees.

Under the proposed Bill, however, asylum seekers arriving by sea will not be able to apply for a protection visa and will be removed to a third country for off-shore processing. The Commission believes that detainment should be a last resort and has grave concerns about transferring asylum seekers to a third country where there is a risk that the human rights of those transferred will be breached, that the standards of services provided to the asylum seekers will not be adequate and that processing will be protracted. There is also a recognised risk that asylum seekers could be returned to their country of origin where they

face danger, breaching Article 33(1) of the UN Convention Relating to the Status of Refugees (the Refugee Convention), which establishes the requirement of *non-refoulement*.

Given that asylum seekers arriving by boat are far more likely to come from a handful of countries such as Afghanistan and Sri Lanka, there is also an argument that, by treating asylum seekers differently based on their mode of arrival, the Bill indirectly discriminates on the basis of country of origin, rather than assessing asylum seekers on the merits of their claim.

The South Australian Equal Opportunity Commission is also particularly concerned about the off-shore processing of children. Under the Convention on the Rights of the Child, the detention of children must be a last resort and for the shortest possible period of time. 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 for detention is clearly not in the child's best interests and a significant body of research shows that prolonged detention is likely to cause long-term mental harm.

The Commission also has concerns about 'transitory' persons transferred to Australia. Under the Bill they will be classified an 'unlawful non-citizen' and unable to apply for a permanent protection visa for a set period of time, which may be years. They will therefore be unable to be reunited with family or to work - a fundamental human right under the Refugee Convention . By classifying this group of asylum seekers as 'unlawful non-citizens', they are being denied an opportunity to participate in public life and to build up any kind of economic security for an extended period of time. Under the Bill, all unauthorised maritime arrivals, unlike other unlawful non-citizens, are also denied the right to assessment of their refugee status by the Refugee Review Tribunal. Hence the classification of 'unlawful non-citizen' denies persons who are deemed to be refugees fundamental rights that refugees have under the Refugee Convention, namely the right to work and the right to access to courts of law and legal assistance.

In the view of the South Australian Equal Opportunity Commission, if the goal of the Bill is to better protect the health and lives of asylum seekers (by deterring those individuals from risking the extension of a dangerous boat journey trying to reach the Australian mainland), the Government must consider that, by further restricting the rights of unauthorised maritime arrivals, the Bill nonetheless places these asylum seekers at a heightened risk of harm to their physical and mental health, including loss of life. Hence, the South Australian Equal Opportunity Commission urges the Government to reconsider this policy.

If you would like any further information regarding the above submission, please do not hesitate to contact me.

Yours sincerely,

ANNE GALE
COMMISSIONER FOR EQUAL OPPORTUNITY