

694-1125



The Hon Brendan O'Connor MP
Minister for Immigration and Citizenship

The Hon John Murphy MP
Chair
Standing Committee on Petitions
House of Representatives
PO Box 6021
PARLIAMENT HOUSE ACT 2600



Dear Mr Murphy

Thank you for your letter of 11 October 2012 to the former Minister for Immigration and Citizenship, the Hon Chris Bowen MP, enclosing the transcript of a parliamentary hearing of the Petitions Committee, held in Attadale, WA, with certain petitioners, who are students of Santa Maria College, and who had petitioned the Australian Government to ensure policies regarding asylum seekers are in line with the Declaration of Human Rights. I regret the delay in responding.

As noted in Minister Bowen's response to your letter of 20 August 2012, Australia takes its international obligations seriously and considers that it meets its human rights obligations in relation to asylum seekers. The petition has raised several articles under the *Universal Declaration on Human Rights* (UDHR). The UDHR is not a binding instrument, however, Australia does have binding obligations under several other human rights conventions.

The four articles raised by the students under the UDHR, namely Articles 3, 5, 14 and 25, are similar to obligations contained in Articles 6(1) and 7 of the International Covenant on Civil and Political Rights, Article 3(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 33 of the Convention Relating to the Status of Refugees and Articles 11(1) and 12 of the International Covenant on Economic, Social and Cultural Rights.

In regard to future legislation, the *Human Rights (Parliamentary Scrutiny) Act 2011*, (the Act), commenced operation on 4 January 2012. This Act defines 'human rights' as the rights and freedoms contained in the seven core human rights treaties to which Australia is a party.

The Act requires Statements of Compatibility with human rights to be prepared for all new Bills and disallowable legislative instruments. As you are aware, the Act also introduced the new *Parliamentary Joint Committee on Human Rights*, which was established on 13 March 2012.

The Committee's role is to examine Bills and legislative instruments for compatibility with human rights. The Statement of Compatibility encourages early consideration of human rights in the development of policy and legislation and the role of the Committee allows greater oversight by Parliament of how the Australian Government ensures that any amendments to existing legislation and any future legislation is consistent with Australia's international human rights obligations.

Concerning matters raised in the transcript of the hearings at Santa Maria College, I would comment that the issue of asylum seeker policy is among the most complex and challenging areas of government policy. The Australian Government is motivated by a strong desire to see an end to asylum seekers boarding boats and risking their lives on the dangerous journey from Sri Lanka and Indonesia to Australia. We have seen too often in recent times the fatal consequences for men, women and children of this perilous voyage.

I note the Petitions Committee mentioned the recommendations of the Expert Panel on Asylum Seekers and in this regard I provide the following comments for the petitioners.

In order to work towards a consensus on this issue, the Australian Government announced the creation of the Expert Panel on Asylum Seekers. The Panel was asked to provide advice and recommendations to the Australian Government on policy options to prevent asylum seekers risking their lives on dangerous boat journeys to Australia. The Panel's report was released in August and contained 22 recommendations. The Panel has recommended the implementation of a 'no-advantage principle', regional processing, and the implementation of the Malaysia Arrangement with additional safeguards. The Australian Government has accepted each of these recommendations in-principle, and is working on their implementation.

The 'no advantage' principle means that no benefit should be gained from circumventing regular migration arrangements by arriving in Australia by boat. To this end, the report recommends that asylum seekers who arrived by boat and are confirmed to be refugees should not be resettled in Australia for a period equivalent to the period an asylum seeker would wait for resettlement offshore. Those who are found not to be refugees are returned to their countries of origin as soon as practicable.

In September 2012, the Australian Government began transferring asylum seekers to the regional processing centre at Nauru. Regional processing facilities on Nauru and Manus Island will initially comprise of temporary accommodation until the construction of more permanent facilities can be completed.

Importantly, there cannot be any broad or blanket exemptions to transfer. Any such exemptions, for example of women and children, would be quickly exploited as a loophole by people smugglers, who would simply resort to filling boats with women and children. Appropriate support and care will be available on Nauru for children and families. Consideration will be given to the exemption of individuals from transfer on a case by case basis and only in particularly compelling circumstances.

The Panel has also recommended the implementation of the Malaysia Arrangement, following the codification of additional safeguards. The Panel described the Malaysia Arrangement as 'innovative' and a solid building block toward further regional cooperation. The Australian Government shares that view. The Panel specifically made it clear that it was important that Australia engage with countries in our region who are not signatories to the Refugee Convention. The Australian Government remains committed to the Malaysia Arrangement and we will engage with our Malaysian counterparts to implement the Panel's recommendations.

The Australian Government has increased the size of Australia's humanitarian visa program from 13 750 places to 20 000 places in 2012-13. This increase will assist those asylum seekers who are most in need, vulnerable people overseas who cannot afford to pay people smugglers. The Australian Government is proud that this represents the biggest boost to our nation's refugee intake in 30 years. It puts Australia among the top three resettlement countries in the world and has made Australia the largest United Nations High Commissioner for Refugees (UNHCR) resettlement country on a per capita basis.

As part of this increase to 20 000 places, the Australian Government has specifically allocated an additional 400 places in 2012-13 for UNHCR mandated refugees in Indonesia who are in need of determination. This allocation of 400 places will help asylum seekers within our region to pursue regular migration options rather than pay a people smuggler to come by boat. Complementing this approach, the Humanitarian Program will also target displaced refugee groups in the Middle East and South-West Asia who may otherwise have sought to engage people smugglers to travel to our immediate region.

By increasing the size of our humanitarian visa program and allocating specific places for asylum seekers from Indonesia, the Australian Government has shown that there are established pathways for asylum seekers in our region to seek protection in Australia, rather than risking their lives on a dangerous and perilous boat journey at the hands of unscrupulous people smugglers.

The Australian Government will also immediately allocate \$10 million for regional capacity building projects with a special emphasis on UNHCR refugee processing, which was also recommended in the Panel's report. This funding boost will assist the UNHCR and other non-government organisations in our region, particularly in their operations in Malaysia and Indonesia, assisting to strengthen safer and more orderly migration pathways.

The Australian Government remains strongly committed to our Humanitarian Program as an engaged and leading international citizen willing to do our part to assist the world's refugees. At the same time, however, we are also committed to removing the incentive for people to travel by Australia by boat, with the tragic loss of life at sea that we have seen as a result.

Thank you for bringing the Santa Maria College students' concerns to my attention.

Yours sincerely

BRENDAN O'CONNOR

21 MAR 2013