MOTION & TERMS of REFERENCE
Senators Ludwig, Bartlett and Nettle: To move-That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report by 8 November 2005:

a. the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
b. the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
c. the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
d. the outsourcing of management and service provision at immigration detention centres; and
e. any related matters.

Submission for Senate Committee inquiry into Immigration and Mandatory Detention

a. The processing of asylum seekers who arrive without passports in immigration detention centres is a violation of Article 31 of the UN Convention Relating to the Status of Refugees, which states that, "States shall not impose penalties on refugees who enter without authorisation". Moreover, Australia is the only Western country that mandatorily detains asylum seekers whilst their claims are being heard. This is a clear violation of every individual's right to not be detained unless proven guilty. In Australia even the guilty – prisoners – are told of the length of their punishment and do not have to suffer the trauma of indefinite detention as many refugees do. Similarly, there is no logic for visa over-stayers to be detained if they are no threat to the community.

Refugees are often survivors of torture and trauma, and require urgent medical, psychological and social support. It is no fault of their own that they are stateless, and we merely heighten their stress by detaining them indefinitely.

Furthermore, mandatory detention is a complete waste of tax-payers' money. Rather than our money being used to detain refugees and thus waste years of their lives, our money should be directed towards resettlement programs that allow refugees to participate fully in the community.

Many asylum seekers have said that when their claims for asylum are in danger of being rejected, it is because they cannot provide "valid documentation" that they will be in real danger if returned to their country of origin. This is an almost impossible demand to meet because in many cases such documents do not even exist; and if they do are controlled by the governments, companies etc. that is persecuting the individual in the first place. This has resulted in many asylum seekers being forcibly deported to situations where they are in extreme danger and cannot continue to live safely and securely, as every individual has the right to do.

This has been well documented in the “Deported to Danger” report by the Edmund Rice Centre.

The Minister of Immigration and Multicultural and Indigenous Affairs has justified the government’s policy of mandatory detention by claiming that asylum seekers are “illegal”. However, under both Australian and International Law a person is entitled to make an application for refugee asylum in another country when they allege they are escaping persecution. Article 14 of the Universal Declaration of Human Rights states that “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. Moreover, it is not illegal to arrive on our shores without prior documentation from Australia. Rather, these people are asylum seekers – a legal status under international law. As noted above, many asylum seekers are forced to leave their countries in haste and are unable to access appropriate documentation. Many have little choice but to come here first and then seek asylum because Australia has no diplomatic representation in countries such as Iran, Iraq and Afghanistan. Few countries between Australia and the Middle East are signatories to the 1951 UN Refugee Convention, and hence asylum seekers are forced to continue travel to another country to find protection. For many Chinese asylum seekers there is little choice but to come here before claiming asylum because of the extensiveness of the operations of the Chinese Communist Party.

b. The “Deported to Danger” report by the Edmund Rice Centre outlines how DFAT has (ironically) issued false passports and visas in order to be able to deport people. This is absolutely unacceptable, as it places individuals in even more danger than they would be in otherwise. In some cases DFAT has even given information on asylum seekers to the governments they were escaping in the first place. As a concerned citizen of Australia, I question the motive of such actions – it appears as though the Australian government is deliberately trying to deport people to dangerous situations.

e. The fact that Global Solutions Limited (GSL) has a contract with the government to have a minimum number of people in detention in order to keep the operation of IDCs profitable is of great concern. Australia’s immigration policy should respond to the needs of individuals and groups seeking to establish a safer life here and contribute to our society, not to the needs of a private company seeking to simply maximise profits to its shareholders.

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