Inquiry into the

"Migration Amendment (Unauthorised Arrivals) Bill 2006"

Submission to the
Senate Legal and Constitutional Committee
of the Parliament of Australia

A submission by the members and National Executive of
The Migration Institute of Australia Limited
May 2006

THE MIGRATION INSTITUTE OF AUSTRALIA LIMITED ("MIA")

The Migration Institute of Australia Limited ("MIA") is the peak association providing excellent service advocating the benefits of migration and advancing the standing of the migration profession – leading professionalism in the migration field.

The MIA is the peak body representing the professional interests of its more than 1,500 (registered migration agent and corporate membership) members throughout Australia.

The MIA is perhaps better known to the Parliament for the exercise of its public responsibilities as the Migration Agents Registration Authority (MARA), under an Instrument of appointment by the Minister for Immigration & Multicultural Affairs.

This submission is written to the Parliament in MIA's representation role as the professional body, and in no way is the submission provided in MIA's capacity as the profession regulator.

This submission has been drafted by MIA members: Marianne Dickie and Angela Chan behalf of the MIA.

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Migration Amendment (Unauthorised Arrivals) Bill 2006

The Migration Institute of Australia Limited (MIA) is the peak association representing the professional interests of more than 1400 members throughout Australia. The MIA provides service to its members, advocates the benefits of migration and advances the standards of the migration profession.

The MIA liaises regularly with Government departments on behalf of our members on aspects of migration policies and programs and as such welcomes the opportunity to comment on the introduction of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006.

The MIA opposes the introduction of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, in its entirety.

Many Registered Migration Agents and lawyers who practice migration law represent asylum seekers and refugees both on a paid and pro bono basis. Their work within community legal centres and private practice has been invaluable, assisting refugees, non government agencies and the government. Many cases that have gone to Ministerial intervention have seen positive outcomes due to the work of migration agents. Many of the changes in government policy and practice towards refugees have come after many hours of work and advocacy by migration agents along with the wider community.

The MIA has welcomed recent changes to the Migration Act (1958) which has resulted in children being detained as a last resort. Similarly the MIA has welcomed the changes to the Department of Immigration and Multicultural Affairs following recommendations of the Palmer and Conrie reports along with the many reports by bodies such as the Commonwealth Ombudsman and the Human Rights and Equal Opportunities Commission.

The MIA believes that extending the excision provisions of the Migration Act (1958) to create a new visa regime for all unauthorised arrivals onshore is in direct contrast to these changes and as a result is against the interest of our members, the clients they represent and the wider Australian community.

The MIA remains concerned that the Bill introduces a regime for assessment procedures of all unauthorised arrivals claiming asylum that stand outside of Australia's domestic law. Asylum seekers will be sent to an offshore location and subject to an assessment regime that is unknown. At the present time the only information forthcoming regarding assessment has been a statement by the Minister for Immigration, the Hon Senator Amanda Vanstone that the assessment will be undertaken by officers of the Department of Immigration. This will be a process that is neither subject to scrutiny nor the rule of law.

Under this system asylum seekers will have no right to legal assistance either funded or unfunded. They will be prevented from seeking any legal advice and clearly disadvantaged if they feel they need to access any individual or body either domestic or international for refugee claims, or claims such as claims of human rights abuse.
Previous experience with offshore assessment of asylum on Nauru has shown that the government of Nauru actively prevented legal advisers accessing those who were being assessed by refusing visas to lawyers or migration agents.

Asylum seekers on Nauru were finally able to access a migration agent following a visit by Australian Democrats Senator Andrew Bartlett, who arranged for asylum seekers to fill in forms appointing an agent. There was only one Registered Migration Agent allowed to obtain a visa and visit clients on Nauru.

The Government of Nauru has actively prevented scrutiny of conditions of the processing centres (or refugee camps) by refusing visas to aid workers, journalists, lawyers, priests, family, friends and even tourists.

Applicants will also be prevented from accessing any review of their assessment, either by the Refugee Review Tribunal or judicial review. The MIA is strongly opposed to the prevention of review of an application for a refugee visa, on the grounds that the result of an incorrect assessment can have serious and in some cases fatal consequences to the applicant.

Furthermore the MIA remains concerned about the obligations of a country such as Nauru under the provisions of this Bill. Nauru has no legal obligation to protect asylum seekers and can expel or return asylum seekers back to their country of persecution or to another country whereby they may be returned. Whereby Australia has a fundamental legal duty to ensure that no person is refouled, this concept is a basic obligation under the Refugee Convention and is entrenched in domestic law.

It is widely accepted that countries that abide by the rule of law have an obligation to protect children, the weak and the elderly. These obligations extend beyond the protection of citizens, to all who live within their borders. Australia has a long history of acknowledging these obligations, as reflected in it being a signatory to the 1951 Refugee Convention and 1967 Protocol, the Convention on the Rights of the Child (CROC), and the International Covenant on Civil and Political Rights.

Recent changes to the Migration Act (1958) have assured Australians that the rights and safety of children will take precedence in migration decisions and that children will be detained as a last resort. This legislation does not take these changes into account.
There is no legal or moral way to ensure that another country abides by this concept.

The practice of assessment on offshore locations will ensure that Australia remains in the position whereby it may breach its international obligations under a series of international treaties such as the Refugee Convention, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child.

Conclusion

In conclusion the MIA opposes the introduction of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. The MIA feels the implementation of the Bill may place Australia in breach of its international obligations under several treaties, extend a regime of assessment not subject to domestic law, scrutiny or review and further disadvantage migration agents and lawyers working in the area of refugee law.

The MIA has a keen interest in the proposed Unauthorised Arrivals legislation. We are readily available to discuss or expand on the above comments and suggestions as appropriate and would be pleased to appear before this Senate Inquiry should we be invited to do so.

We would appreciate the opportunity to provide additional submissions to the Committee if further relevant information comes to notice.

The Migration Institute of Australia Limited
May 2006