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Senate Legal and Constitutional Legislation Committee  
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Please find enclosed my submission to the Inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006.

Regards

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## Introduction

I thank the Committee for the opportunity to make a submission on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006.

For the period 1998 to 2004 I was employed as an adviser to the Australian Democrats Senator's predominately working on the portfolio of Immigration and Multicultural Affairs.

During this time I came to understand the importance of fully assessing the impact of legislation upon the community and individuals when considering the passage of a Bill.

I would like to state that I am against the present excision legislation and the continued policy of offshore processing of asylum claims. I am also completely against the introduction of any legislation that will expand the scheme that is already in place.

This submission will concentrate on the human impact of Australia's offshore processing system. It is relevant to this inquiry as the proposed legislation seeks to expand the reach of the present scheme.

I will not undertake to comment on the possible breaches of international law as a result of the legislation as I understand the committee will receive a wide range of submissions outlining the impacts in this area.

In 2003 and 2004 I was privileged to accompany Senator Bartlett on his visits to Nauru.

This places me in the unique position of being one of the few people who have visited the detention centre on Nauru and witnessed the human impact of offshore processing.

The airfares, accommodation and expenses for my first trip to Nauru were paid personally by me; I received a subsidy for the airfares of my second trip from a well known refugee advocacy organisation.

I initially agreed to pay the costs and travel to Nauru with the Senator after I was contacted by a refugee in Australia on a temporary protection visa (Mr S). He had reached me through a Melbourne woman who had contacted the office of Senator Bartlett.

He told me that his wife and daughter were on Nauru along with his younger brother. They had been refused refugee status and according to his wife and brother were constantly badgered by DIMIA officials to return to Afghanistan. He was concerned that his wife would not disclose information readily to a man.

The initial excision Bill and the subsequent removal of asylum seekers to offshore processing centres has resulted in a dual processing system for refugee applicants. The two systems deliver outcomes that are clearly different for the two groups and had severely disadvantaged those processed offshore.

After our initial discussions with Mr S. in Melbourne we contacted the UNCHR representative about the Senators trip to Nauru and were given a list of nine women and fourteen children who were in the same situation. The Australian government had recognised their husbands as refugees but refused to grant them the same status. The conditions of the temporary protection visa their husbands held meant they could not apply for family reunion. Without recognition they were left to fend for themselves.

The UNHCR considered them refugees but had made a clear decision that their role regarding the people on Nauru and Manus would be a restricted one. The UNHCR consideration of their status was made under the Principle of Family Unity.

The principle of family unity is not in the Refugee Convention as such but was adopted as a recommendation in the Final Act of the Conference that adopted the 1951 Convention: The recommendation reads;

“ Recommends Governments to take into account the necessary measures for the protection of the refugees family especially with a view to:

- (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.
- (2) The protection of refugees who are minors, in particular unaccompanied children and girls with special reference to guardianship and adoption.”<sup>1</sup>

With the information provided by the UNHCR and the men who were in Australia we travelled to Nauru with a clear goal of assessing their situation.

## GENERAL CONDITIONS

The conditions on Nauru in general were quite shocking. The island is small and infrastructure was completely broken down. On my first trip, power was not consistently available, nor was access to water. The desalination plant had not been working for over a month. The residents of Nauru had not been paid wages by the government for months before we had arrived and the main source of income for families on the island was the work that had resulted from the establishment of the detention centre.

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<sup>1</sup> Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 189 U.N.T.S. 37, 1951 (Section IV B on the Principle of the Unity of the Family).  
UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees', HCR/IP/4/Rev.1, 1979, paras. 181-188

The medical facilities on Nauru are basic. Specialists have to visit the island with a flight from Australia averaging \$2000 return. There were four doctors on the island and a shortage of nurses.

The camp was relatively open but primitive. The detainees lived in small demountables similar to those on construction sites. There were larger buildings for meetings and a large open style structure for meals. The facilities in the camp were well maintained.

The camp had a disproportionate number of doctors to residents. The camp employed a psychologist and psychiatrist to cope with the depression and other stress conditions amongst the detainees.

The detainees appeared to be on good terms with IOM, the Chubb security guards, the AFP and Eurest staff. They did not however have a high opinion of some of the interpreters who were provided by DIMIA and complained of bias in the interpreting with some people refusing to allow certain interpreters to work with them.

The camp had around 100 single men at the time we visited. All detainees mingled together and this was I feel a good thing despite a number of problems experienced by women particularly those who were single. There were wonderful stories of generosity and compassion amongst the detainees and the bonds they built with those employed to work at the camp were solid and lasting.

I was able to meet with Eurest staff who had been on the island since the beginning of the camp. They had never been asked their opinion of conditions or detainees and were extremely grateful for the opportunity. They were at great pains to let me know that relations with the detainees were good. They produced a list of people they felt deserved to have their cases heard. This was not on the grounds of refugee status but touched at the humanity of the people detained and those they came into contact with.

The list was of people who had worked initially for pay and who had continued to work without pay to ensure that the conditions within the camp met a high standard. People, who cleaned toilets and bathrooms, cooked meals, cleaned the kitchen and taught others computer skills. All in all people who would make great citizens wherever they lived.

A number of the young men who are now living in Brisbane have stayed in contact with Eurest and Chubb security staff. The respect they have for each other has become a lasting friendship.

## **IMPACT ON WOMEN**

I managed to speak to at least 100 women during my combined visits to Nauru, both in large groups and individually. There are several cases which

stand out as good examples of the situation facing all the women detained there.

Of the nine women separated from their husbands who had refugee status in Australia, several had been pregnant when their husbands left and had children who had never met their fathers. One told us she had been too frightened to tell the DIMIA officers that two of her children had died in Afghanistan before she left. She did not know that her husband was in Australia until we had asked to see her.

The family of Mr S consisted of his wife, his young daughter and his nineteen year old brother. They had not seen Mr S for a number of years, having fled Afghanistan at different times. The daughter had no memory of her father other than the stories her uncle and mother had told her.

Mrs S was extremely distraught, she had left a young son in Afghanistan with her mother and had lost track of them completely. She could not understand why she was in Nauru and was suffering from constant depression. We were not allowed to take video footage of this young family to give to Mr S in Melbourne and we were prevented from taking photographs of them.

After trying desperately to get his four year old daughter to speak into a tape machine for me she finally whispered in my ear “tell daddy I love him.”

The family was finally accepted by New Zealand. Mr S who was a talented tradesman left Australia to join his family. His brother was also accepted under the principle of family unity due to the role he had played for so many years in the life of his young niece. They eventually located their young son and were reunited as a family by the New Zealand government. One year later Mr S who was aged around 36 was killed in a car accident.

There is no doubt in my mind that this family was robbed of precious time by a system that had failed them. The dual processing system had resulted in outcomes for nine women, fourteen children and their husbands that were clearly incorrect. Correct processing or at the very least an independent review of the initial rejection by DIMIA officers would no doubt have saved them heartache, stress and ill health. A fast resolution of their claim would undoubtedly have saved the taxpayers of Australia money and kept talented and much needed tradesmen in the country.

Another unaccompanied wife had travelled to Australia after her husband. She travelled with her 3 year old daughter, sister and brother in law. She was separated from her sister and they arrived on two different boats. The sister and her husband were accepted by New Zealand and granted refugee status. Her husband had been granted a temporary protection visa in Australia. She of course was rejected by DIMIA and remained in Nauru for two years before she was finally accepted by New Zealand and reunited with her husband who travelled there to join her.

One family we met had five daughters. They had found themselves in a terrible situation. Their father is a quite gently spoken man who described to us how he had fled the Taliban, he wanted a life for his daughters where they would not be persecuted, where they would not be forced to wear the hijab and where they could work, and enjoy human rights and freedoms we take for granted. His despair at finding himself on Nauru trapped and unable to assist his family was tangible. The distress of the daughters at their parents physical and mental disintegration was almost too much to bear. They had been accompanied by an older brother who had returned to Afghanistan at the urging of DIMIA officials. Since his return they had not heard from him and feared he was dead.

The girls were subjected to continuous harassment. They could not go to the toilets or to get food unaccompanied. They were virtually confined to their 'rooms'. Their father was also harassed. Their distress was obvious and overwhelming. When I talked to an Australian counsellor employed at the camp she insisted the girls were lying. However a Chubb security guard present at the interview confirmed their story. Measures were finally put in place by IOM to assist the family.

These girls were subjected to enormous strain. Their parents were placed in a position whereby they could no longer assist their family or display any authority. Their mother was under great stress and was severely depressed with both parents discussing openly their desire to die and their shame at the situation they were in. The children ranged in age from 12 to 19.

The issues faced by this family were in part women's issues. Their father had taken his family away from violent and blatant discrimination and persecution and pleaded with me that they be sent anywhere in the world to any country as long as it was not a fundamentalist Islamic one. He had fled to give his daughters the kind of life Australians send their children to war to fight for.

The family were recognised as refugees by the Australian government after living on Nauru for three years.

When they received the news they had finally been given a visa one of the children rang me. She was now 15 years old. I was the second person she rang to thank, the other had been her friend in Melbourne. She said we had been the two people who had understood their story and continued to fight for them. In all her grief and joy she was gracious and caring about those who would be left behind on Nauru.

On my second visit I spoke to a woman whose husband was on a hunger strike. She told me that it was the only time she had peace since they had been detained. The stress of living in the camp had changed her husband and he was growing increasingly violent. She did not want to report this to IOM as they would separate the family. She knew that she would be in a more vulnerable position if she was without her husband. She was genuinely afraid of how they would keep living in the situation they were in.

I later spoke to her husband who independently raised the issue of his mental health and the changes that had come over him. He asked me to alert a doctor about his anger which he felt was beyond “comfort” as he too was afraid of what would happen to his family and himself if forced to endure the situation long term. Unfortunately he had reached the point where he thought it would be better for his wife if he died.

They were eventually recognised as refugees and settled in Australia about 8 months after I had met them. They had been in Nauru for 3 years following their initial rejection by DIMIA officers.

Two women who were of the Sabian Mandaen faith were placed in a dangerous position due to the religion and their status as single women. They had arrived with others of the same faith but were the only ones rejected. They did not want their relatives in Australia to know of the harassment they were subjected to. Once again they were finally recognised as refugees.

The situation faced by all the women in the camp was compounded by the experiences that had caused them to flee their countries. I have a long history of working with refugees. Yet the experiences recounted to me were so distressing I was unable to discuss them for three weeks after I returned to Australia.

In a scenario repeated across Australia these stories were not told to DIMA officials at the first and only interview these women had. In many cases they told me they did not trust the interpreters who were from rival ethnic groups, they did not know what information they needed to give, they were not able to give a written submission and did not understand the process they were undertaking, or they were forced to speak of events with strange males in the room.

I now know that when a person says to me “I fled xyz country to find a better life” they are not necessarily talking about an economic decision. The actual reason may be too painful or in their mind too obvious to go into. I have no doubt that experienced officers who had dealt with persons subjected to torture and trauma would have elicited a different response.

## **IMPACT ON CHILDREN**

I have watched with interest media coverage of the proposed legislation and the issue of children in detention. There has been discussion that the children and families will not be in detention on Nauru but allowed to roam freely on the island.

This is in direct contrast to the situation faced by the families we met. On our first visit we were accompanied on all our meetings with government officials by a DIMIA representative of quite high standing. This had not been arranged with us and was unexpected. We were told by the Members of Parliament that the asylum seekers were not detained on Nauru but were merely on visas that

allowed them access to a specific geographic location on the island unless accompanied by staff from IOM, or DIMIA or security personnel.

Our DIMIA representative went to great pains to explain that it would be unsafe for the detainees to roam the island due to packs of wild dogs and the locals who were not that friendly.

I did not accept this explanation on my first visit, however on my second I discussed these issues with several locals, IOM staff and their families. The issue of safety for children was quite a complex one. Almost the entire island is a former mine. It is riddled with deep and unexpected holes. It is not a safe place to roam if one does not understand the nature of the landscape. The issue of dogs is a real one and people are wary of encountering large groups of untrained dogs. The real issue appeared to be the crime rate and the propensity of detainees to be blamed for crimes committed by locals. Given the visa restrictions enforced by the Nauru government I am unsure that a change of conditions would be forthcoming.

I was amazed on my first visit to the detention centre at the number of young children. They surrounded the gate clearly excited that they had visitors and held up flowers, the older children held signs saying “ don’t I look like your children”

The committee should understand that the community of asylum seekers including the many children we met were in no doubt as to their status. They considered themselves in detention and suffered accordingly. Their parents had no control over the day to day management of their lives. All decisions were made by others. This included basic decisions such as what they ate, when they ate, when they could swim, attend school, go for a walk etc.

I spoke to a young girl of sixteen who had lost her grandmother when she drowned whilst fleeing to Australia. She was from a large family and her brother had been accepted as a refugee by Australia. She told me her mother was always sick and suffered from terrible headaches. Her mother could not leave her bed to care for the smaller children, she was terribly afraid her mother would die like her grandmother had.

The impact of this upon families cannot be underestimated. In many cases the children interpreted for their parents. They lived in fear that their parents would die of grief or depression. In some cases they had vague memories of why they had fled, in others they had experienced situations that no child should live through and had a maturity beyond their years.

One woman said to me “When we left we were not expecting such a life as this. Our children are accusing us of playing with their lives, they do not remember the danger but they know we are not free.”

Children will be detained in direct contrast to changes to the Migration Act (1958) implemented this year which enforced the wishes of parliament that no child be detained unless it is a last resort.



## **IMPACT ON MENTAL HEALTH**

The impact of detention on mental health is well documented and is of ongoing concern.

The majority of the adults I met were on anti depressants, the camp had a large number of medical staff equipped to deal with mental illness. In my discussions with the staff they made it clear they were only able to treat the symptoms of depression and were not in a situation to address the torture and trauma suffered by detainees prior to their arrival or assist with the cause of their depression particularly as it was related to their continued detention on Nauru.

The psychologist explained to us that the people on Nauru were suffering from a condition akin to post traumatic stress however the stress was ongoing.

They were deeply concerned for the children who had shown an increase in sleeping, eating and anxiety disorders and were tending to regress in their behaviour with symptoms such as bedwetting. They had serious problems with who they should obey, be it father, camp manager, DIMIA or Australian friend.

The psychologist told me that a typical politician is driven to help the cute kids but the effect on a 12 year old of staying in that situation for three years can be devastating. It was her opinion that children who are approaching puberty need to be removed quickly or they will struggle to recover for the rest of their lives.

## **CONCLUSION**

The situation faced by the detainees on Nauru did not have to occur and does not have to continue.

The economic cost to the Australian public alone should have been enough to ensure the policy of offshore processing was cancelled.

The cost in health to the individuals affected is unmeasurable. The damage to children and families is unknown.

The committee should note that the isolation and deliberate removal of hope does enormous damage to individuals.

People are immediately disadvantaged by the isolation. They are unable to seek independent legal advice. They do not understand the process they are undertaking. They must deal with trauma and a deep fear of authority when first interviewed and have no understanding of why their claims are rejected.

There is no ability for an independent body to scrutinise the assessment process. The Nauru government did not grant visas to journalist, lawyers, migration agents, priests, media, family or friends of detainees during the entire three years those I met were on the island.

The isolation allows the process to operate outside of Australian law. DIMIA officials are not operating under UNHCR guidelines. They are not auspicing a process on behalf of UNHCR or any other country.

Every person I met was eventually granted refugee status. They were settled in New Zealand or in Australia.

Many had been considered refugees by the UNHCR before we met them.

There is no reason to believe that any of these concerns will be alleviated by the introduction of expansion of the scheme as proposed by this legislation

Instead the legislation will ensure that these types of cases occur again and again.

The Bill should be rejected.