



Dear Jonathon Cutis,
Senate Legal and Constitutional Legislation Committee
Committee Secretary

RE: Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006

The Australian Lawyers Alliance would like to thank the Committee for this opportunity to comment on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 and looks forward to your report on 13 June 2006.

The Australian Lawyers Alliance submits that the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 has little merit. We believe that the Bill in question, that plans to transfer people arriving by boat from the mainland to such remote Pacific islands as Nauru to process their asylum claims, is in direct violation of the 1951 Refugee Convention, which Australia has ratified. Amnesty International has also described the Australian governments plan to process refugees arriving by boat at an offshore centre as a violation of the United Nations Convention on refugees.

The Australian Lawyers Alliance understands that issues concerning Indonesian-Australian relations have prompted the Bill in question. However, a diplomatic response to Indonesia over the West Papuan refugee situation that does not compromise Australia's integrity, in the way that this Bill does, would be preferable. The Bill in question will deny all people arriving by boat without a visa the right to have their claims to refuge under our Refugee Convention obligations considered while they are in Australia, in clear breach of our obligations.

The Australian Lawyers Alliance would like to address what we see as the main issues arising out of the Bill.

Breach of Art. 31(1) Refugee Convention

The Bill gives effect to Senator Amanda Vanstone's announcement that all unauthorised boat arrivals will be liable to be transferred to Off-shore Proceedings (OPC) – Nauru, Manus Island, and Christmas Island – for assessment of their refugee claims.

This includes those persons coming directly from territories where their lives or freedom were threatened. Government policy previously excluded those persons who had the opportunity to seek refuge in another country in which they were currently (albeit temporarily) residing. Those persons were not covered by Art. 31 of the Convention. This legislation deliberately flouts the Refugee Convention in this regard.

The underlying reason for this legislation is to placate Indonesia. The West Papuan asylum-seekers have thus been caught in the middle of a foreign policy matter. Australia should not be complicit in doing another country's dirty work, by sending West Papuans off to Nauru to be processed (which is not a signatory to the Convention).

Indonesia has an appalling record on human rights. Consequently the Australian Lawyers Alliance is concerned that this Bill is primarily designed to placate Indonesian disquiet rather than to promote either Australia's national interests or its international reputation.

The Australian Government should not seek the co-operation of the UN High Commission for Refugees to assist in the administration of this exercise in OPC including assessment of the claims. To seek cooperation for this task is to seek acquiescence to the breach of the Refugee Convention.

Children in Detention

There has been a long, hard debate over women and children being held in detention, including OPCs. However, this Bill does not give children and their parents any succour. Suppose no other country will take these persons after their assessments have been made either positively or negatively? What kind of professional counseling services will be made available to these people? The Lawyers Alliance submits that there must be real concerns about the likely effect of such measures upon the mental health of such people.

Invention of terms

People attempting to seek refuge in Australia by boat have been labelled in various ways, mostly negative and/or demonising. The new politically correct words are "designated unauthorized arrivals" and "transitory person", the current usage being "offshore entry persons and transitory persons". These terms conveniently neutralise the personal hardship of those whom they are used to describe.

Annual Report

The Bill stipulates that the Secretary of the Department shall report annually on OPC arrangements. This is not a useful measure. Given that there has been a great deal of controversy in this area of law and many parliamentarians are concerned about the efficacy of the OPCs and their effect on children and their families, it would be more appropriate to appoint a parliamentary committee to oversee the legislation and report regularly to Parliament on the implementation and execution of the provisions of this Act. An annual report as suggested by the Minister is not useful given the inevitable delay thereby caused.

The Australian Lawyers Alliance thanks you for this opportunity to comment on the proposed Bill and looks forward to the results of this inquiry.

Yours Faithfully,

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