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Mr Jonathan Curtis,
Committee Secretary,
Senate Legal and Constitutional Legislation Committee,
Parliament House,
Canberra ACT 2601

Dear Mr Curtis

Submission on the provisions of the *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*

Liberty Victoria (Victorian Council for Civil Liberties Inc) traces its history back for 70 years in advocating the recognition and protection of civil rights in this country. Liberty took action in the Federal Court over the *Tampa* case in 2001. We welcome the opportunity to make a submission in relation to the *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* ("the Bill").

The time available for submissions is very short, and Liberty is not in a position to provide the detailed response it would prefer to make.

Nevertheless, Liberty wishes to record its opposition to this Bill, which is contrary to Australia's international human rights obligations. The Bill proposes to amend the *Migration Act 1958* by transferring all "unauthorised" boat arrivals to offshore centres to have their claims for refugee status assessed. No distinction will be made as to whether the asylum seekers reached an excised or non-excised location. It has been indicated that Nauru is the preferred site for this offshore centre, with PNG's Manus Island the next choice and Christmas Island an additional option.

This Bill, in practice, revives the discredited "Pacific solution" and avoids fulfilment of our obligations toward asylum seekers by passing that responsibility on to others.

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It is apparent that while the refugee status decision in relation to such asylum seekers will be made by Australian immigration officers, the exercise of that decision will not be subject to Australian law in any practical sense. There will be no access to the Refugee Review Tribunal. Given that the RRT has frequently overturned the decisions of DIMA in relation to visas, this seriously compromises the ability of asylum seekers to have their rights vindicated. Access to the Federal Court will in practice be impossible. In this sense, the proposal undermines the rule of law in Australia.

The context of this amendment is the recent arrival of West Papuan asylum seekers in Australia, and their subsequent grant of asylum status, in a manner which caused friction with the Indonesian government.

Unlike the Tampa refugees, who after fleeing their own country had arrived in neighbouring countries before attempting to gain entry to Australia, the West Papuans are fleeing directly to Australia from a country where they are (as has now been recognised) subject to persecution.

Of the 1063 refugees that were settled in the last use of the Pacific Solution, only 46 (4.3%) were accepted into countries other than Australia or New Zealand. It is unrealistic to expect this proposal to meet with any greater success, and the procedure can only lead to longer periods of detentions as refugees wait for a country to accept them.

The proposal to use Nauru in relation to the asylum seekers is inappropriate, because Nauru is not a signatory to the 1951 Refugee Convention. It is bad enough for Australia to shirk its own international obligations towards refugees by passing the responsibility to other countries, but to circumvent those obligations by passing responsibility to a country which does not have any such obligations itself is particularly cynical.

This is made worse by the fact that the countries proposed to be used are small and less developed, and need Australian aid. To pay them money to secure their help in Australia avoiding its international obligations sets an appalling international precedent.

Moreover, the constitution of Nauru prohibits detention administratively, and any agreement with Nauru has the effect of subverting that country's constitution in a manner which undermines the rule of law, and hence stability, in our region.

Although the *Migration Act* requires detention of children to be a last resort, the proposed amendments will have the effect of automatically detaining children, albeit in places overseas. Past experience has shown that there will in

practice be no opportunity for Australians to properly monitor the conditions of that detention.

It is integral to Australia's interest and ethical values as a democratic country that our nation does not yield to external pressure which compromises our commitment to protecting basic human rights. However, the motivation for this legislation appears to be subservience to overt pressure from the Indonesian government.

The legislation being considered by the Committee revisits policy which has drawn widespread condemnation of Australia in the past. It should be rejected.

Yours faithfully,

Brian Walters SC
President