To: Senate Legal and Constitutional Committee

I am extremely concerned that the Government's proposed changes to the Migration Act to expand the so-called "Pacific Solution" undermine Australia's commitment to human rights and represent a backward step in Australia's treatment of asylum seekers.

I recognise the Government's intention to strengthen border protection policies, but the policies should not infringe people's human rights.

The changes, which will allow for offshore processing of all asylum seekers arriving in Australia by boat, will reverse important recent reforms to Australia's treatment of asylum seekers, including the removal of children from immigration detention.

I am deeply concerned that the proposed changes breach Australia's obligations under the Convention on the Rights of the Child including the obligation to act in the best interests of the child (Article 3(1) and the principle that children should only be detained as a measure of last resort (Article 37(b).

In recent years the Government has made significant efforts to remove women and children from immigration detention by finding alternative means of accommodation while asylum claims are being processed.

The practical effect of the present Bill is that children, once again, will be detained in conditions which endanger their well-being and mental health. Being held in an offshore processing centre is, without doubt, a form of detention.

The Convention on the Rights of the Child provides that detention of children must be a last resort and for the shortest possible period of time. Under the proposed changes detention of children will be a measure of first resort, not last resort.

These concerns are not new. The Human Rights and Equal Opportunity Commission's two-year "National Inquiry into Children in Immigration Detention, A last resort?" (published in April 2004), warned that the 2001 "Pacific Solution" breached several of Australia's human rights obligations and recommended a review of the impact on children of the legislation that created the "Pacific Solution". This recommendation was not implemented.

The proposed changes do not address the possibility of excessive or indefinite detention. There is no set time for offshore processing of claims for asylum and no set time in which a person who is determined to be a refugee must be resettled in a third country.

This potential for asylum seekers to be detained for an excessive period raises serious concerns about arbitrary detention, in breach of Article 9(1) of the International Covenant of Civil and Political Rights. It may also result in Australia being in breach of its obligations under Article 31 of the Refugee Convention which requires that asylum seekers are not penalised for arriving illegally.

The disastrous consequences of long-term detention on the mental health of asylum seekers are now beyond dispute. The proposed changes do not provide proper measures to address mental health concerns.

I am also deeply concerned that asylum seekers processed offshore do not have access to independent merits review and judicial review that is available to asylum seekers processed in Australia. As was illustrated by the tragic cases of Vivian Solon and Cornelia Rau mistakes do happen at a departmental level.

Independent merits review is essential to reduce the risk of a tragic mistake resulting in a genuine refugee being denied protection.

Finally, given the concerns about the rights of asylum seekers processed offshore, it is crucial that offshore processing centres are subject to the same level of independent scrutiny as immigration detention centres in Australia. There is no independent oversight of offshore centres by HREOC or the Commonwealth Ombudsman. This raises significant concerns both in terms of the conditions of detention and also the length of time for which persons are detained.

Yours sincerely
Denise Dalton
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