We make the following submission to the Senate Enquiry into this matter

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Summary

The proposed legislation will:

a.. Breach our international obligations under the 1951 Refugee Convention;
b.. Reverse the hard-won reforms of 2005 which set time-limits on detention and legislated the detention of children only as a last resort;
c.. Remove access to legal help and appeal mechanisms available on the Australian mainland;
d.. Has considerable unecessary cost;
e.. Change Australian law in response to pressure from Indonesia.

Detailed Submission

We consider that the legislation will be unjust and should be opposed for the follwoing reasons:

* The policy breaches our international obligations under the 1951 UN Refugee Convention:

* Article 31 obliges us not to penalize refugees on account of their entering or being present in Australian territory without authorization. For asylum-seekers processed offshore, they will not have access to merits review of their case if they appeal a negative primary decision, they will be detained in sub-standard conditions with limited or no access to humanitarian and legal support.

* Article 32 obliges us not to expel refugees lawfully in Australian territory save on grounds of national security or public order.

* Article 33 obliges us not to return or expel refugees to the frontiers of the territory where they face persecution. If the Australian navy is used in any way to return West Papuan refugees to international waters, to Indonesian territorial waters, to turn them over to Indonesian authorities, or to assist Indonesian authorities to intercept them, this will constitute a clear breach of this article.

* Under the proposed legislation, children and families who arrive by boat will again be detained on Nauru, Manus Island or Christmas Island. This is a clear breach of the reforms negotiated by Petro Georgiou and others in 2005, that amended the Migration Act to enshrine the principle that children should only be detained as a matter of last resort.

* All people arriving by boat and making a claim for protection will be denied access to full status determination and appeals process provided for by Australian law - the Refugee Review Tribunal and courts. Between 1993 and 2006, the Refugee Review Tribunal has 'set aside' on appeal the negative primary decision of the Department of Immigration in 11.8% of cases. That is, the Department's determination that a person was not a refugee was overturned in 11.8% of all appeals to the RRT.

In 2001-02, in the case of Afghani asylum-seekers, the RRT set aside the Department's negative determination in 62% of appeals, and 87% in the case of Iraqis.

Without access to these appeal mechanisms, therefore, and with a determination process inferior to that undertaken in Australia, it is highly likely that the Department will make faulty determinations and send refugees back to persecution.

* The Government has expressed the preference that all boat arrivals be resettled, not in Australia, but in a 'third country'. Previous experience of the Pacific Solution suggests that this will leave people in detention for years (perhaps indefinitely) while Australia shirks its responsibilities and find other countries to take refugees who should have been able to make their claim and seek protection here.

96% of the refugees previously held in detention on Nauru and Manus Island were eventually resettled in either Australia or New Zealand.
Only 4.3% were settled in any other country, and then only because they already had family connections to that other country.

* The legislation creates the impression that Australia is seeking to avoid its responsibilities, avoid our legal obligations and dump our 'problems' on our poorer neighbours. This perception could well undermine Australia's ability to promote human rights, good governance and the rule of law in the international arena.

* The legislation appears to have been proposed in response to pressure from Indonesia. This could signal that, rather than promote and defend human rights, Australia is prepared to alter policy and legislation to accommodate the wishes of foreign powers.

* The practice of Pacific Island detention is costly and inefficient. The Government estimates that $240 million has been spent so far on Nauru - that comes to approx $195,000 per asylum seeker housed there.