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The Secretary
Senate Legal and Constitutional References Committee
Parliament House
Canberra ACT 2600

Submission to the inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006

I am totally opposed to this Bill, for the reasons outlined below.

1. It is reprehensible that a country such as Australia uses its poorer neighbours in this manner, which has the potential to create resentment and conflict within those countries, as was seen in Nauru under the first Pacific Solution where local medical services were stretched and local people perceived that the detainees were better fed and watered than the local population.

2. It will lead to the perception if not the reality that aid monies are compromised according to a poorer neighbour's willingness to be part of the 'solution'.

3. The process used to assess asylum claims will not be to the standard of that in place in Australia, and importantly will not have the safeguard of review by Refugee Review Tribunal. The RRT reversed many decisions of DIMA officers in respect of asylum seekers from Afghanistan and Iraq.

4. If Australia is true to the spirit and intention of the refugee convention, it is critical that processes are in place that ensure fair assessment of claims. This cannot occur without review by a body external to DIMA.

5. This Bill sends the strong message that the government is fundamentally opposed to the rights of those seeking asylum. The Palmer inquiry highlighted many deficiencies in the system and the Immigration Department. That steps have been taken to address these through training and upgrading processes and systems is admirable, but the reality is that culture change of a large organisation takes years, and success is dependant upon attitudes demonstrated by the leadership. This Bill undermines the rhetoric that there is the political will to address deficiencies in the system.

6. Further, this Bill undermines the improvements to the immigration detention system introduced last year in the wake of the Rau and Solon affairs and following representations by Liberal backbenchers. The Migration Act was amended to include the principle that women and children would only be detained as a last resort, and cases of long term detainees would be reviewed by the Ombudsman after two years. This Bill means women and children seeking asylum will be automatically detained, and even when the detention exceeds two years, there is no review of the case.

7. The Bill almost certainly leads to a situation of long term indefinite detention for men, women and children. However quickly cases might be assessed, there is no clear provision for people to be resettled within a set time frame. It is unlikely that other countries will be prepared to assist given this is essentially an Australian issue. So the people assessed as refugees under the proposal will likely be stuck in limbo, locked up, for many years. (Note that UNHCR-assessed refugees in Indonesia have been awaiting resettlement for many years.)

8. Australia is walking away from its responsibilities as an international citizen. The vast majority of asylum seekers who have arrived by boat on Australian shores are found to have genuine claims and been settled here. Refugees do not flee their homelands unless they have to and often are fleeing for their lives. Their experiences in their homeland which caused them to flee - arbitrary imprisonment; torture; murder or disappearance of family members; continued and violent harassment; death threats - lead to high levels of trauma within refugees as a group. This is acknowledged by the Commonwealth through provision of free torture and trauma counselling, including to Temporary Protection Visa holders not entitled to other benefits enjoyed by refugees with Permanent Protection.

9. There is a cost to the broader community in treating asylum seekers harshly as they then need greater support from overstretched health services, particularly mental health services, as we have seen from long term detainees hospitalised in psychiatric units and the well-documented mental health problems experienced by TPV holders.

10. These are people already carrying huge burdens before seeking the assistance of Australia. There is something particularly distasteful in treating desperate people so harshly.

11. The first Pacific Solution did not provide solutions only the appearance of such. In actuality, most of the people moved to Nauru and PNG were found to be refugees, with many eventually settled in Australia. This occurred only after lobbying and re-examining claims. The first Pacific Solution resulted in ludicrous situations such as that of Aladdin Sisalem who was kept on his own on Manus Island for 9 months before being granted protection and being settled in Australia.

12. Offshore detention facilities do not provide adequate services. Given the problems associated with onshore facilities such as Baxter, Woomera, Villawood, Curtin, Port Hedland and other centres, sending people offshore creates circumstances that are even more difficult to monitor. The difficulties faced by refugee advocates, lawyers and doctors in gaining access to Nauru and PNG were almost farcical.

13. The appropriate way to deal with asylum claims, given that a wrong decision could mean repatriation to death or torture, is to ensure that applicants understand what is required of them to lodge a claim, and that legal advice is available. The possibility of error is minimised. Placing processing centres away from basic services and scrutiny does exactly the opposite.

14. It is paramount for the reasons mentioned above that asylum seekers have good access to legal and health services, community support and that the children are able to receive adequate education. Other submissions will no doubt describe the conditions on Nauru and the financial cost to Australia of the Pacific Solution, compared with the far cheaper option of assessing asylum claims in Australia.

Number 5 of the main findings of the Palmer report include the observation that "the speed of change in the immigration detention environment since 2000 has led to policy, procedures and enabling structures being developed on the run" and this seems to be another example.

This Bill ignores Recommendation 8 of the recently-tabled Senate report into the Administration and operation of the Migration Act 1958. Recommendation 8 reads

> "2.109 The committee recommends that the Migration Act and Regulations be reviewed as a matter of priority, with a view to establishing an immigration regime that is fair, transparent and legally defensible as well as more concise and comprehensible."

Denying asylum seekers the right to access refugee determination systems on the Australian mainland is bad policy, and reflects badly on Australia as well as increasing hardship to a vulnerable group of people. This Bill should be rejected outright.

Yours sincerely

Sue Hoffman
May 22nd 2006