



# Melbourne Catholic Migrant & Refugee Office

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Mr Jonathan Curtis  
Committee Secretary  
Senate Legal and Constitutional Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Mr Curtis

**Re: Submission to the Inquiry into the migration Amendment  
(Designated Unauthorised Arrivals) bill 2006**

The Melbourne Catholic Migrant and Refugee Office (MCMRO) is an agency of the Catholic Archdiocese of Melbourne. It provides advice and guidance from the Catholic perspective in response to the policy and program issues relating to migrants and refugees.

As Catholic, we are guided by the philosophies of the Gospel –

- to not mistreat the foreigner (Exodus 22:21 and Leviticus 19:33)
- to show love and compassion towards others especially those who have less than us (John 13:34-35 and 1 John 3:17)
- to welcome strangers into our midst (Matthew 25:31-46).

Based on reading the Amendments, the Explanatory Memorandum and the Second Reading speech, the MCMRO **strongly opposes** the introduction of the *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* on the following grounds –

By expanding the offshore processing regime, Australia will be shirking its international obligations towards asylum seekers and refugees.

Despite what the members of Goldstein suggested 'the offshore processing arrangements introduced in the October 2001 have [NOT] been an outstanding success'. They have been a costly exercise both in terms of taxpayers' money and the personal cost to asylum seekers' psychological and physical health.

The motivation behind introducing the legislation, at this time, is highly questionable.

## Australia's international obligations

To excise the mainland of Australia from the migration zone, when it comes to the processing of asylum seekers claims, is a *denial of reality*. Under the proposed legislation, asylum seekers that make it to the Australian mainland would not be able to call on Australia directly to hear their claims.

This legislation is against the spirit of the United Nations Refugee Convention and it could be argued that it breaches international law.

### *Article 33.1*

*No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.*

Turning back boats of asylum seekers that have reached Australian waters, coming directly from a country of persecution, and returning its occupants to that very country, is a clear breach of this Article.

### *Article 32.1*

*The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.*

Small numbers of unarmed asylum seekers do not constitute a threat to Australia's security.

### *Article 31.1*

*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugee who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

Treating 'unauthorised boat arrivals' differently to 'plane arrivals' is a clear breach of this Article. Though, under this legislation, some 'plane arrivals' will be classified as 'boat arrivals' (again *denying reality*) if they had travelled a significant part of the journey to Australia by boat. (It is also noted that the government previously made unsuccessful attempts to bring 'plane arrivals' under the same system as 'boat arrivals'.)

### *Article 3*

*The Contracting States shall apply the provisions of this convention to refugees without discrimination as to race, religion or country of origin.*

This legislation has been designed to deal with asylum seekers from Papua and, as such, its purpose can be viewed as in breach of this Article.

In the Second Reading speech, the Member for Goldstein, Mr Robb stated, 'The changes proposed in the legislation reflect the government's continuing focus on ensuring that there are appropriate and effective capacities in place to manage our borders and preserve Australia's sovereignty.' How excising a country's mainland from its migration zone preserves its sovereignty seems to be an oxymoron requiring a great philosophical leap to understand.

As a signatory to the UN Refugee Convention, Australia forgoes its sovereign right to determine *who shall come to this country and under what circumstances* when it comes to people seeking asylum from persecution.

The MCMRO is not opposed to Australia strengthening its borders against drug trafficking and terrorists, or to prevent people being trafficked into prostitution and other forms of exploitation in Australia. However, this legislation is quite clearly designed to deter asylum seekers – the very people to whom we have an obligation.

### **Precedents set by the previous 'Pacific Solution'**

Asylum seekers are legally and morally entitled to claim asylum and to have their claims heard. They are also entitled to live with dignity during the claim period.

The previous 'Pacific Solution' did not afford such dignity as many of them suffered psychologically and physically.

The 'Pacific Solution' as a precedent illustrated that people would be left indefinitely in offshore detention. It was Petro Georgiou's Private Members Bills 2005 (that forced the government to release children with their whole families and to process asylum seekers' claims in a timely manner) that finally got most of the long term, offshore detainees processed.

It is unclear whether Australia will put itself forward as a 'third country' for the purposes of permanent settlement. The previous 'Pacific Solution' illustrated that the international community saw the asylum seekers housed on Nauru and Manus Island were as Australia's responsibility so few countries came forward to offer permanent resettlement.

It is also uncertain whether UNHCR and/or IOM will be involved in processing asylum seekers' applications causing the responsibility to fall to Australian authorities.

As David Manne, the Co-ordinator of the Refugee & Immigration legal Centre pointed out –

- There will be *no* access to any legal advice or assistance, or other appropriate supports.
- There will be *no* proper independent administrative review mechanism (only an internal review – that is, a review of a refusal by those who have already refused the case).
- There will be *no* access to the Australian Courts in relation any matters, including errors in the decision on refugee status, treatment in detention, or even *habeas corpus*.

David Manne went on to state ‘there will be a fundamental absence of basic scrutiny and accountability mechanisms’ and illustrated his concern by quoting that, over the last three years, the Refugee Review Tribunal (an independent review body that would not be available to future offshore asylum seekers) had overturned 92% of DIMA refusals. In human terms, this amounted to 3,200 people finally being granted protection rather than sent back to countries, such as Afghanistan and Iraq, where they faced a real chance of being persecuted – 3,200 potential tragedies that were averted!

### **Appeasement of a foreign country**

Most disturbing is the motivation behind the implementation of this legislation.

Though the government may have wanted to excise the Australian mainland from the migration zone on two previous occasions, this latest attempt coincided with the acceptance of 42 West Papuan asylum seekers and the subsequent attempts to appease the Indonesian government.

In a recent article in *Eureka Street*, Fr Andrew Hamilton SJ wrote ‘The treatment of the first West Papua asylum seekers was exemplary in its focus and execution. But subsequent decisions to hold one of the asylum seekers on Christmas Island, to assist the Indonesian navy in patrolling the West Papuan coast, and to apply the Pacific solution for all on-shore applicants for asylum, however, made the dignity of asylum seekers subservient to a compliant relationship with Indonesia. As it had done in devising the Pacific Solution, the Government chose expediency over morality.’

Moves to heal the diplomatic rift with Indonesia, by Australia offering to review its immigration procedures was met with President Susilo Bambang Yudhoyono warning ‘Don’t insult us, don’t toy with us and don’t deny us justice’. Australia needs to be honest and work with integrity in its dealings with Indonesia if it is to get any form of respect.

DIMA has shown itself to be able to work efficiently and effectively to process people’s asylum seeker claims. It is just unfortunate the government will not allow it.

### **Recommendations**

The MCMRO recommends that –

- The ***Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*** creates a dangerous precedent for the future of the international protection system and **should not be implemented**.
- **Previous amendments** to the *Migration Act*, excising areas from Australia’s migration zone, **should be repealed**.
- **All people seeking asylum** that make it to Australia’s territories, mainland or territorial waters **should be allowed** to call on Australia (as a signatory to the *Refugee Convention*) to listen to their asylum claims.

- While their claims are being assessed, asylum seekers are not detained for an inordinate amount of time but rather their applications are processed in an efficient and timely manner. **Alternative models** to detention, such as the *Justice for Asylum Seekers 'The Better Way'*, **should be implemented**.
- If found to be a **refugee**, they should be afforded **permanent** (not temporary) **protection** including all the services and supports refugees, who have come through Australia's Refugee & Humanitarian Program, receive.

The MCMRO reiterates the request from Bishop Joseph Grech, the Australian Catholic Bishops spokesman on Migrants & Refugees, that the government 'reconsider the planned policy change and to fulfil Australia's international asylum processing obligations on our own soil, treating those who seek our protection with the care and dignity they deserve'.

Yours sincerely

Brenda Hubber  
Executive Officer