MIGRATION AMENDMENT (DESIGNATED UNAUTHORISED ARRIVALS) BILL 2006

Introduction

The Edmund Rice Centre wishes to lodge a strong objection to the above Bill designed "to further strengthen border control measures in relation to unauthorised boat arrivals".

The Edmund Rice Centre for Justice and Community Education (ERC) has a strong focus on Refugee and Indigenous issues. In October 2004, ERC published its research report, *Deported to Danger*. This attempted to fill the gap left by the Government's failure to monitor the quality of Australia's refugee assessment system by checking its ultimate outcome - whether "rejected" asylum seekers are (or are not) in danger, as they claim, when refused protection by Australia and removed. The results indicate that Australia's existing system of assessing and managing asylum seekers needs urgent reform in the interest of human rights and Australia's reputation. It does not need the watering down characteristic of the above Bill.

It is clear that this Bill has been drafted specifically to circumvent further attempts by residents of West Papua fleeing persecution at home to seek protection in Australia. It is also designed to placate the government of Indonesia which reacted strongly against Australia's recognition of the rights of the 42 West Papuans already given at least temporary protection here. Other asylum seekers will also be subject to its provisions.

A DEFECTIVE ASPECTS OF THIS BILL

1 Human Rights of Refugees

People experiencing persecution (or in danger of it) have a RIGHT to ask Australia for protection, a right established in 1951 by the Refugee Convention and further developed by later Conventions and Covenants which Australia has signed and ratified. Despite the claims of the Minister presenting the Bill at Second Reading stage, the amendments to the Migration Act in the above Bill disregard significant parts of the international system of protection for basic human rights and our obligation to uphold it.

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2. Disregard of Conventions and Covenants

a **Article 31***: States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...*

The regimen proposed by the Bill would punish all boat arrivals by refusing them access to Australia, by having them detained in a foreign country, cut off from the safeguards which could apply in Australia, such as legal aid, merits review, monitoring by independent agencies like HREOC and the Ombudsman. In the current Pacific Solution Australia has already created a category of second-class asylum seekers; this Bill's provisions would extend and perpetuate that inhumanity. It clearly *imposes a penalty* and thus contravenes Article 31

b **Article 3***: The Contracting States shall apply the provisions of this convention to refugees without discrimination as to race, religion or country of origin***.**

Because this Bill clearly targets the people of West Papua, it is open to the charge of discrimination on country of origin grounds.

c **Article 33:** *No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*

The stated intention of the Government to increase coastguard or naval patrols to prevent boats from entering Australian waters raises questions related to this Article. If the impact of the patrols forced people back to the country from which they were fleeing, in this case Indonesia, Australia could be in breach of Article 33.

3. Damage to Relationships and Reputation

a. The proposed laws would further erode Australia's international reputation as a nation upholding and defending human rights. What is envisaged would be destructive of the international system designed to protect these rights, by failing to support its principles in both policy and practice. The Bill indicates Australia's willingness to allow policy to be determined by the demands of one powerful neighbour rather than by the internationally recognised rights of people seeking asylum. Our national integrity is involved.

b. If Australia is to build good relationships and exercise constructive leadership in our region, our smaller neighbours need to know that we can be trusted to maintain policies which uphold their basic human rights when these are threatened. The measures this Bill proposes would give them no grounds for such trust.

4. Fallacies in the Government's arguments to support the Bill.

In the Second Reading Speech, Mr Robb Goldstein (Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) stated that: *The introduction of the offshore processing arrangements in 2001 was greeted in some quarters with a degree of concern and criticism. Some claimed the offshore processing arrangements were a sign of Australia resiling from its international obligations. Nothing can be further from the truth.* He went on to say that:

Since 2001, there have been 1,547 people processed offshore under these arrangements. All had access to reliable refugee assessment processes, undertaken either by the United Nations High Commissioner for Refugees (UNHCR) or by trained Australian officers. Not one person found to be a refugee in the offshore processes has been forced to return to their homeland. This record has demonstrated that the government has delivered on its obligations under the refugees convention to all of the people processed under those arrangements.

What Mr Robb did not say is that there is a long list of concerns about what happened to people during this process. For example, he does not record:

- The ultimate futility of the Nauru operation, since **the majority of the detainees were eventually assessed as refugees.** Of these 1063 found to be genuine refugees, 1017 were eventually settled in Australia and New Zealand. Then, after major efforts to have the remaining asylum seekers accepted by other countries or returned home, 25 or 27 remaining people on Nauru had to be brought to Australia because of serious medical concerns about their mental health.
- That almost $200 million dollars were spent to hold on Nauru for years those 1017 genuine refugees who were eventually settled in Australia or New Zealand.
- The fact that some people, genuinely in danger in their own countries, opted to return there at risk rather than face the prospect of endless detention (See four Afghan cases in ERC *Deported to Danger* Report)
- The evidence of lawyers, immigration agents, medical experts and others in Australia who have spoken out about the unreliable quality of offshore assessment and the harm it causes including serious physical and mental illness.
- The ongoing social and medical costs to Australia in resettling many people seriously harmed by their long term indeterminate offshore detention.

ERC believes that a less costly, more humane system is possible – one that would also be legally and ethically superior and in the best interests of Australia's international reputation.

B ELEMENTS OF A BETTER SOLUTION

1. Assessment must be first class when peoples' lives may be at stake.

The Cornelia Rau and Vivienne Solon cases led to widespread public concern about the quality of assessment of the "trained Australian officers" on whom Mr Robb so sanguinely

relies. The *Deported to Danger* Report noted that the RRT, despite clear need for improvement in its processes, did operate as a check on Departmental decisions which wrongly rejected a valid refugee claim. In 1998-1999 the RRT set aside 24% of Departmental decisions. When the ERC Report was written in 2004, the RRT was still setting aside 6% of Departmental decisions. Granted that a wrong decision can lead to torture, imprisonment or death, even this number of mistakes should be a matter of concern to the Government. Quality independent administrative merits review is an essential safeguard against Departmental errors.

In this area the bill is a backward step. Without the DIMA infrastructure and resources such as interpreters, without the RRT, without monitoring by HREOC and the Ombudsman, the Bill provides for a worse assessment system than we have now. If Australia is to use off shore assessment of refugee claims, it must be done under Australian authority and must be well resourced, reviewable and monitored.

2. Detention should be short term

Detention should not be longer than is necessary to allow basic security and health checks. There is a great deal of evidence to show that indeterminate long-term detention leads to despair, mental illness and permanent harm. It also subjects many innocent people to penalties which are harsher that those imposed on convicted criminals.

Refugee claims should be assessed within a brief time frame, after which, people should be allowed to wait for final decision in some form of community accommodation,

3. Children should not be held in detention.

The Australian public has been promised that children will not be held in detention. The harm they suffer in this situation is well documented. The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 should be rejected on this ground also, as there can be no guarantee that families with children would not be among future asylum seekers.

CONCLUSION

Through its research and advocacy experience the ERC has been exposed to the extreme harm that can come to unsuccessful asylum seekers returned by Australia to places of danger. To prevent such personal tragedies it is necessary to have a valid, reliable assessment process. The offshore solution proposed by this Bill will weaken the chances of good assessment and remove the onshore safeguards of professional assistance, merits review and human rights monitoring.

In addition, the Bill subjects asylum seekers and their children to the known harm of indeterminate long term, isolated detention outside the protection of Australian law. It shamefully places Australia in the position of contravening significant articles of the Refugee Convention and further risks our reputation as nation which respects human rights and the rule of international law.