ANGLICARE
THE CARE THAT CHANGES LIVES

ANGLICARE, Diocese of Sydney

Submission to the

Senate Legal and Constitutional Committee Inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006

from

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SUMMARY OF ANGLICARE SYDNEY'S POSITION

1. Anglicare Diocese of Sydney considers the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 to be unnecessarily harsh, and urges the Government of Australia not to legislate this bill.

2. Concerns over this bill relate to the following issues:

   2.1. Conditions that asylum seekers are likely to face in offshore processing centres could exacerbate the trauma they have already experienced in their home countries or en route to Australia;

   2.2. Past improvements made to Australian immigration detention and processing arrangements will not benefit the majority of future asylum seekers arriving unauthorised by boat, since they will be transferred to an offshore processing centre.

   2.3. The Department of Immigration and Multicultural Affairs (DIMA) involvement in offshore processing centres will be subject to less accountability than is required for the Australian onshore processing system.

   2.4. Offshore processing systems lack the independent review that is provided in the Australian onshore system and could result in otherwise genuine refugees being returned to countries of persecution.

   2.5. Under the proposed legislation, Australia appears to be in danger of avoiding its international responsibilities to respond to requests for protection, by transferring asylum seekers en route to Australia to other nations.

   2.6. The legislation appears to place Australia at risk of breaching the Refugee Convention and the International Convention on the Rights of the Child.

3. For a wealthy nation, Australia can afford to show more generosity towards asylum seekers arriving unauthorised by boat. The cost-benefit of domestic community detention far outweighs offshore processing, which is expensive, penalises vulnerable people fleeing persecution, lacks accountability and throws Australia's international obligations and human rights reputation into question.

4. Onshore community-style detention of asylum seekers arriving unauthorised by boat is far preferable to any offshore processing system.

CONCERN FOR THE WELLBEING OF AFFECTED ASYLUM SEEKERS

Impact of Detention

5. Anglicare Sydney currently provides services to refugees via our Integrated Humanitarian Settlement Strategy (serving rural NSW), Humanitarian Counselling Service, Community Settlement Services Scheme (CSSS) and various other Migrant Services. We have a long history of working with refugees, which began in the 1970s when housing and support was provided for Indo-Chinese unattached refugee minors. In 1999/2000 Anglicare participated in Operation Safe Haven, which involved receiving and supporting Kosovar and Timorese refugees. ANGLICARE Sydney has seven years previous experience providing humanitarian resettlement in the Sydney area. Our experience working with refugees brings us directly in contact with the vulnerability of people – particularly women and children – who flee persecution and oppression.

6. Whether applying for refugee status onshore or offshore, a person fleeing persecution is highly vulnerable. Evidence indicates that detention has many detrimental impacts on detainees and can exacerbate the vulnerability and trauma of people fleeing persecution.[1]

7. Under the proposed legislation, the improvements prompted by the Palmer Inquiry and various other inquiries, reviews and reports that have recommended changes in conditions of Australian detention centres, will not necessarily benefit the majority of asylum seekers who will not enter Australia but be redirected to offshore centres.

8. The stress and difficulties experienced by asylum seekers previously housed in Nauru are recognised[2]. As noted in the Refugee Council of Australia submission to this inquiry, '25 of the last 27 remaining failed asylum seekers were brought to Australia last year, on the expert advice of health professionals, because of serious mental health concerns.'[3]

9. Changes to Australian detention practice whereby children and their families are now allowed to live in community detention illustrate government recognition of the conditions that are most appropriate for families seeking asylum. Redirecting asylum seekers arriving unauthorised by boat to offshore centres where community detention is not in place shows disregard for the most appropriate welfare that these vulnerable people require. In effect, this bill indirectly sanctions the indefinite detention of children.

Lack of accountability

10. In administering the proposed legislation, it is understood that Australia will contribute towards the financing of detention arrangements, provide DIMA officers to process claims and conduct internal DIMA merits reviews of those claims, the majority of which will not be open to further scrutiny by the Refugee Review Tribunal or Australian legal system. Furthermore, it is our understanding that the Human Rights Commissioner or Federal Ombudsman will have no jurisdiction to review detention conditions or application processes. This amounts to the transferring of responsibility for the wellbeing of asylum seekers to a detention and processing system outside the Australian legal system, that DIMA is involved in administering but that is less accountable than DIMA operations in Australia.

Claims processing

11. There is a lack of independent review of protection claims processed in offshore centres. In 2004/05, 33% of DIMA primary decisions were set aside by the Refugee Review Tribunal (RRT), and 11% of RRT decisions lodged for further judicial review were remitted or overturned (either by the High Court, the Federal Court or the Federal Magistrates Court).[4] This lack of independent review in offshore processing systems could lead to inaccurate determinations of otherwise genuine refugees who could be returned to a country where they fear persecution. It is possible that some of these inaccurate determinations could be made by DIMA officers. However, Australia is avoiding accountability to its international obligations by ensuring that determinations would be made outside Australia's processing system.

INTERNATIONAL OBLIGATIONS

12. The proposed legislation appears to be a reaction to Indonesia's disapproval of Australia recently accepting Papuan refugees. In the case of future Papuans seeking asylum in Australia by journeying unauthorised via boats, the proposed legislation will in effect penalise people fleeing directly from a country of persecution. Penalisation is likely via the detention and processing arrangements that are at a lower standard compared with the system in Australia. This appears to breach Article 31(1) of the Refugee Convention. Furthermore it appears to breach Article 3 through the apparent purpose of the proposed legislation targeting a particular group of asylum seekers.[5]

13. The administration of the proposed legislation will likely involve the detention of children, which was denounced by the HREOC Inquiry into Children in Immigration Detention. Furthermore it appears to contravene Article 37(b) of the International Convention of the Rights on the Child, that "children shall be detained as a measure of last resort", which is also written into Australia's Migration Act. It also appears to contravene Article 3(1) of the same Convention, which obligates signatory nations to act in the best interests of the child.[6]

ECONOMIC AND MORAL CONCERNS

14. Contributing towards Pacific nation processing systems is not a cost effective solution. It has been reported that $240 million has been spent so far on Nauru, or $195,000 per detainee.[7] More humane and cost effective solutions have been recommended, one of which is being implemented through community detention of families with minors in Australia. This is far preferable to any offshore system.

15. Australia is economically well-off, evidenced by the forecast surplus of $10.8 billion in 2006/07[8], and we can afford to be more generous towards asylum seekers arriving unauthorised. Instead, taxpayers' money is being spent on expensive regimes that penalise vulnerable people fleeing persecution, lack accountability processes established in the domestic system, and throw Australia's international obligations and human rights reputation into question.

16. In response to the second reading of the bill in Parliament, ANGLICARE Sydney recognises the incongruence of separate policies for asylum seekers arriving in boats to excised places, and to the mainland. However, ANGLICARE Sydney argues that this needs to be rectified by allowing all asylum seekers travelling unauthorised to Australia by boat, to be processed inside Australia.

17. It is the view of ANGLICARE Sydney that the Australian government has a moral imperative not to legislate such an unnecessarily harsh policy.

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NOTES.

[1] Silove, D., Sinnerbrink, I., Field, A., Manicavasagar, V. and Steel, Z. (1997) 'Anxiety, Depression and PTSD in Asylum-seekers: associations with pre-migration trauma and post-migration stressors' The British Journal of Psychiatry, 170 (4) April 1997, p3. The authors cite Becker and Silove (1993)
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Sultan, A. and O'Sullivan, K. (2001) ' Psychological disturbances in asylum seekers held in long term detention: a participant-observer account' *Medical Journal of Australia* 3/17 December 2001 175:11 p 593-596.
For international examples of the impact on children: McCallin 1992 and McKelvey and Webb 1995, cited in Thomas, T and Lau, W. (2002) Psychological Well Being of Child and Adolescent Refugee and Asylum Seekers: Overview of Major Research Findings of the Past Ten Years, Submission to the HREOC National Inquiry into Children in Immigration Detention, viewed 17.10.02,
<http://www.humanrights.gov.au/human_rights/children_detention/psy_review.html>.
Sourander, A. (1998) 'Behaviour problems and traumatic events of unaccompanied refugee minors' *Child Abuse and Neglect* 22(7) 1998
[2] The Age (2004) 'Postcards from Hell', 29.3.04,
<http://www.theage.com.au/articles/2004/03/24/1079939712752.html>.
UNHCR (2005) 'Nauru: UNHCR welcomes Australian government decision, urges no detention', UNHCR briefing note 14.10.5, <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=434f837515&page=news>.
[3] Refugee Council of Australia (2006) *Position Paper: Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, viewed 18.5.06,
<http://www.aph.gov.au/Senate/committee/legcon_ctte/migration_unauthorised_arrivals/submissions/sub09.pdf>, p.2
[4] Refugee Review Tribunal (2005) Annual Report 2004/2005, viewed 19.5.06, <http://www.rrt.gov.au/annreports.htm>
[5] Office of the High Commissioner for Human Rights, viewed 19.5.06,
<http://193.194.138.190/html/menu3/b/o_c_ref.htm>.
[6] Office of the High Commissioner for Human Rights, viewed 19.5.06,
<http://www.unhchr.ch/html/menu3/b/k2crc.htm>.
[7] Cited from Refugee Council of Australia (2006) op.cit. and Tear Australia (2006)
<http://www.tear.org.au/advocacy/refugees/westpapua_takeaction.php>.
[8] Australian Government (2006) Budget 2006/07 Overview, viewed 19.5.06 <http://www.budget.gov.au/2006-07/overview/html/overview_02.htm>.

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