AUSTRALIAN LAWYERS FOR HUMAN RIGHTS

Australian Lawyers for Human Rights remains opposed to Migration Bill

Australian Lawyers for Human Rights ('ALHR') has reviewed the Prime Minister's set of proposed changes to the *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* ('the Bill'). ALHR remains deeply concerned with the Bill and urges Parliamentarians and Senators to reject the Bill in its entirety. This short briefing paper responds to the Prime Minister's package.

The proposed changes show that the Australian Government wishes to take no legal responsibility for detention on Nauru, for the quality of asylum determination processes, or for protection and resettlement outcomes.

ALHR considers that while the proposed changes make some concessions in relation to refugee status determination and detention conditions, the scheme proposed by the Bill remains fundamentally unchanged in terms of outcomes. In that sense, no real concessions have been made. On the contrary, the government remains committed to its primary purpose of keeping unauthorised boat arrivals out of Australia (except as a last resort and pursuant to discretionary powers) and beyond the reach of the judicial arm of government.

The refugee status determination process is described as 'non-statutory' and therefore unable to attract any form of statutory safeguard such as time limits, accountable merits review, or judicial review.

The Government proposes to fund lawyers for asylum seekers whose claims are processed on Nauru, including merits review. It must be pointed out that such lawyers will be working under Nauruan law and there will be no access to Australian courts.

The Government's proposal to have non-DIMA decision makers provide 'independent review' of rejected applications is ambiguous. The proposal does not make clear to whom they will be accountable, in what capacity they would be engaged, and by what standards and procedures they would be bound.

ALHR believes there is no question that 'accommodation in offshore processing centres' is detention under international law. Where one state (Nauru) on behalf of another state (Australia) detains a person, this brings the detention within the 'effective control' of Australia. It is not detention "under Australian law" only because it is not taking place in Australia or by Australians. Any human rights violations that flow from such detention therefore remain squarely within Australia's responsibility.

Conditions in IOM camps can be influenced by Australia through direct contractual relations with IOM and inter-governmental agreement with Nauru. Australia has done nothing to diminish the negative impacts that detention of this nature is known to have on children, and has not addressed the imperative that detention of children should only be as a last resort.

The Ombudsman will have no jurisdiction to oversee processing and detention provided by non-Australians.

A person who is recognised as a refugee and who has engaged Australia's protection obligations has a strong claim to protection in Australia. This does not undermine in any way

Australia's territorial sovereignty. On the contrary, agreement to be bound by the provisions of the Refugee Convention, through ratification, constitutes an exercise of Australia's sovereignty.

The Government's proposal is that Australia remains a 'last resort' for 'resettlement'. The proposal does nothing more than maintain the Pacific Solution *status quo*, which has already caused inordinate delays and consequential hardship to recognised refugees. The commitment to resettle 'as soon as possible' is also entirely dependent on other states coming to the party; an outcome which experience shows is highly unlikely to be forthcoming. The only safeguard the Government is offering against indefinite detention on Nauru is a ministerial discretion that is non-compellable, non-reviewable, and non-enforceable.

The only possibility for bringing detention to an end is to:

- wait for an unsecured agreement to resettle by another (as yet unidentified) country;
- wait for 'resettlement' by Australia as a 'last resort'; or
- return to the country of origin, which may constitute constructive *refoulement.*

In May 2006, ALHR made recommendations to the Senate Inquiry that the legislation should be rejected in its entirety. ALHR also suggested that root causes of the movement of refugees that has prompted this Bill must be addressed, that human rights must be complied with by Indonesia and the principles of burden- and responsibility-sharing between countries must be upheld.

Australia has an obligation in international law not to close its borders, either physically or legislatively, and thereby turn its back on human rights abuses taking place in neighbouring countries or turn its back on the persons seeking Australian protection from such abuses. Australia cannot credibly look to other countries to seek resettlement as an alternative to granting protection to refugees from Australia's neighbours. Resettlement is fundamentally a mechanism for alleviating refugee burdens internationally. Resettlement is already in short supply, with less than 1% of the world's population of 9 million refugees able to access it. Australia has no refugee burden which it can credibly request other states to share and should not be permitted to misuse resettlement as a durable solution.

ALHR made a written submission and gave oral evidence to the Senate Legal and Constitutional Committee inquiry into the Bill, the former can be accessed at http://www.aph.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/submissions/sub78.pdf.

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