



## The Coalition Rebels speak out

When the Migration Amendment Bill 2006 went up for debate in the House of Parliament on August 9 2006, an extraordinary situation arose when the vote came about the next morning. Three MP's - Hon Judi Moylan, Mr Russell Broadbent and Mr Petro Georgiou crossed the floor, sat in the opposition benches, and voted against the Bill with the Australian Labor Party and others opposed; and two more Coalition MP's abstained from the vote by absenting themselves from Parliament. This was a larger number of dissent votes than ever before during the ten years of the Howard government.

IMAGE: Thanks to [The Australian](#) and Bill Leak cartoons

Below are the speeches by the three dissenters. Also included is the speech by Peter Andren MP, Independent Member for Calare.

### Related pages:

**16 May 2006:** [David Manne at the "Boatloads of Extinguishment?"](#) - "The new policy of 'Radical Rejection' not only involves offshore processing. The Government has also refused to discount the possibility of using our navy to intercept or interdict boats with asylum seekers on board, without undertaking any assessment of the person's fears or need for protection..."

**13 May 2006:** [The Ban The Boatpeople Bill](#) - The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 should really be called the "Ban The Boatpeople Bill". Since Tampa the Howard government has been insistent that "unannounced boat-using asylum seekers" are "illegals" or "unlawful" in their entry. Both terms have no basis in law in Australia...

**18 April 2006:** [Call to Action: Australia banishes all boat people ... it must be a joke!!!](#) - A very serious request for your help: A scandalous and brutal Bill has been proposed by the Howard government to block all access to Australia of all asylum seekers arriving by boat, both for processing their claims and for settlement if these claims prove true.

**Speech: Migration Amendment (Designated Unauthorised Arrivals) Bill 2006:  
Second Reading > Georgiou, Petro, MP > 11:58:00, 10 August 2006**

Mr GEORGIU (Kooyong) (11.58 a.m.)--Thirty years ago, after a long and hazardous journey, a small group of Vietnamese refugees landed on a remote beach in Northern Australia. In today's parlance they were 'unauthorised arrivals'. These Vietnamese inaugurated Australia's modern era of boat people. There were shockwaves. The new arrivals were Asians and the White Australia policy had only recently been abandoned. The Fraser government decided that the refugees would be accepted and helped to settle successfully. But then, in 1992, the Keating government introduced a policy that the Fraser government had rejected--the mandatory detention of asylum seekers. Later, further stringent measures were implemented by the Howard government to prevent and deter asylum seekers from arriving here. Temporary protection replaced permanent protection, more punitive reception centre procedures were introduced and, in 2001, with the agreement of the opposition, parliament legislated to excise some Australian territory from the ambit of the Migration Act. Further excisions followed.

The rationales advanced for the harshness of these policies were that asylum seekers were being transported for profit by people smugglers--smugglers who were cruelly indifferent to the fate of their desperate passengers--that asylum seekers had passed through other countries and not sought protection en route to Australia, and that asylum seekers were not fleeing persecution but seeking economic benefit.

I do not disclaim responsibility for the measures adopted by the Howard government. Whatever my reservations at the time, I voted for them. The rationales for harshness, however, have been undermined in recent years. The overwhelming majority of asylum seekers have been found to be legitimate refugees. A combination of factors has led largely to unauthorised arrivals ceasing. The disturbing consequences of the mandatory detention regime became more apparent. It was recognised that vulnerable children, women and men had been harmed, that they had been physically and mentally damaged. It became transparent that people who had committed no crime were being detained for years with no certainty of them ever being released. The fact that the policy itself was open to abuse progressively became exposed. Revelations about the treatment of Cornelia Rau shocked us all. Other revelations have continued to shock us.

Public attitudes shifted. Australians who had once accepted the policy as being necessary came to see that it was cruel and wrong. These were not the usual suspects; these were the people who said: 'I believed in the policy at the time. Now I know what the consequences are and I think it's wrong.' Fewer Australians felt threatened by or hostile towards the new arrivals. More Australians believed that we should treat asylum seekers with greater compassion. The government, to its credit, did respond. A year ago the Prime Minister announced a program of significant measures. He said:

The broad framework of the Government's approach is unaltered. ... There can however be significant improvements which will mean that current policy is administered with greater flexibility, fairness and, above all, in a timely manner.

These changes were long overdue. Under the government's broad framework, people who sought asylum on our mainland--and Tasmania--were all assessed under Australian law and granted protection in Australia if they needed it. There was no difference between an asylum seeker who arrived by boat or one who arrived by plane. Within that broad framework the improvements were, as the Prime Minister stated, significant. In fairness, the improvements did not go as far as some of us wanted, but the improvements were significant.

The most important reform was that families with children were no longer to be detained in detention centres while their applications for refugee status were considered. Instead, families with children would be permitted to live in the Australian community and conditions would be set to meet their individual circumstances. Where they were found to be refugees, they would be given protection visas in Australia. Our monitoring and supervision systems were strengthened. Those improvements which required legislation were promptly enacted by parliament in a spirit of bipartisan consensus.

The reforms have generally been successful and, I believe, welcomed by the community at large. Asylum seekers in Australia are now treated more humanely and efficiently than has been the case for years. This was exemplified in the fair and timely processing of the West Papuans who arrived in Australia in January. It is a matter of sadness that, within months of the most recent piece of reform legislation being enacted, parliament is now being asked to approve a new and severely regressive measure. Barely having overcome our fears and introduced a more decent system, we are asked to turn back.

**The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 is the most profoundly disturbing piece of legislation I have encountered since becoming a member of parliament. The bill proposes a radical change to the broad framework that the government**

**committed to a year ago. If parliament agrees, the consequences will be draconic. The whole of Australia--and, in deference to you, Mr Deputy Speaker Quick, Tasmania--would be excised from the refugee protection regime afforded by the Migration Act for people seeking asylum who arrive on our mainland by boat. These asylum seekers will be sent to Nauru.**

In a number of key respects the treatment of asylum seekers who come to Australia by boat will be unacceptably worse than at present. This remains the case despite a number of improvements the government has agreed to regarding the bill as initially introduced. I will focus on three issues. First, families with children will not live in ordinary community settings either while their claims are being processed or after they are found to be refugees. If Nauru agrees, the government will establish what it calls a village where women, children and families can live so that they are not in the processing centre. The village will have a fence around it. The government says that the fence will be a non-intrusive one to ensure the security of the refugees or the asylum seekers. In the evening, again for their safety we are told, the residents will be required to stay in their accommodation and the village will be patrolled by private security personnel. The residents may be confined to their homes for as many hours a day or days of the week as the Nauruan government determines at various times. The Australian government insists that this is not detention.

A second major difference between the current situation and that proposed under this bill is that asylum seekers on Nauru will not have available the protections that exist in Australia. For example, they will not have a right of appeal to an independent statutory body against decisions by departmental officers on the merit of their applications. To understand the importance of this, one has to look at how many departmental decisions the Refugee Review Tribunal has overturned. In 2004-05, for example, the statutory Refugee Review Tribunal set aside 90 per cent of decisions on application from Afghanis, over 90 per cent relating to Iraqis and 33 per cent of all decisions. To dampen concerns about the absence of an independent review, the government says it will consider establishing a panel of non-departmental decision makers to review failed applications. But there is to be no statutory basis for this critical function. Panel members will be making decisions that could mean life or death for applicants without a legislated framework of accountability.

The third and most disquieting thing is that people found to be refugees may remain on Nauru indefinitely. This is not a fanciful prospect; look at the historical record. The excision of islands around Australia was introduced in order to deny protection in Australia to asylum seekers who landed on the islands. These asylum seekers were sent to places like Nauru. In the event, even though the refugees' claims for asylum were sustained, few countries were willing to take them off Nauru, and we ended up resettling around 60 per cent in Australia. We resettled some of those after a number of years when we could no longer ignore a situation in which their health, their mental health and their ability to subsist and exist on Nauru were seriously being put at risk. Today there seems to be even less possibility of finding other countries prepared to take refugees whom Australia refuses to accept.

In evidence to the Senate Legal and Constitutional Legislation Committee's inquiry into the bill, the representative of the UN High Commissioner for Refugees said:

I do not see any likely candidates. I think the countries who do accept resettlement of refugees ... would see this legislation in its current form as being a deflection of Australia's responsibilities to provide solutions on its mainland, therefore adding to the resettlement burden of the other countries in the world.

The Australian government has said that it would consider taking people who would not be resettled otherwise, but even this vague, non-binding offer comes without a timetable. Would consideration start after a year, three years, 10 years? The majority report of the Legal and Constitutional Legislation Committee recommended that the bill should provide an obligation on Australia to resettle refugees who could not be resettled elsewhere. But the government's amendments provide only that the minister have a non-compellable, non-reviewable power to grant a visa if this would be in the public interest, a term which is not defined.

**According to the Indonesian foreign minister, the Australian government has assured him that West Papuan refugees will not be allowed to settle here.** So far as we members of parliament are concerned, the only certainty is uncertainty. If we approve the bill, we do so knowing that it will result in refugees who are transferred from Australia to Nauru remaining there for an indefinite period. This will apply to children as well as to women and men. It has been suggested that the government is simply asking parliament to rectify an incongruous situation which came to light when a group of unauthorised people landed on the mainland in January this year. The incongruity was that people landing on the mainland were being treated differently from people arriving on excised islands. In fact, the difference between the mainland and the islands is well known. The decision to have different asylum regimes applying to the mainland and to largely uninhabited islands was quite deliberate. The government's primary concern, which was shared by others, was that people smugglers who might take the risk of landing their passengers on the islands would be reluctant to venture to the mainland where the risk of detection was greater. The

possibility of unauthorised arrivals coming to the mainland was noted and discussed in the parliament, and the government rejected any proposition about excising the Australian mainland.

So why has this heretofore rejected policy become an important strengthening of Australia's border control measures? There is no new threat from a criminal gang of people smugglers trying to penetrate our defences. Earlier this year, 43 West Papuans came directly, not through other countries, and they have been determined to be refugees fleeing persecution. They were only the second group of boat arrivals on the mainland since July 2003. One vessel with seven West Timorese arrived in November 2005, and that event did not cause the government to change its views about what was needed to protect us.

The Indonesian government has protested at Australia's granting of refugee status to the Papuan asylum seekers. The Indonesian government's complaint is understandable. Of course, it does not like being accused of persecuting its own citizens and, of course, Australia should be sensitive to the feelings of its neighbour. But we should not sacrifice Australian law. When Australians criticised Indonesian laws, our governments reminded us that we must respect Indonesia's right to determine and apply its own system. That was right--as was the decision made on the 43 Papuans. The decisions were made properly by Australian officials acting properly in accordance with our law and policy and appropriately reviewed by the Refugee Review Tribunal. From what we know of the situation in West Papua, the decision was not perverse. There is substantial evidence to support claims of persecution which, under the Migration Act, entitle people to receive protection in Australia--take, for example, the US State Department's report on the human rights situation in Indonesia.

The general human rights situation in Indonesia has improved in recent years, and I think we all welcome that. I am pleased that Australia is providing assistance to further that process, but, clearly, the problems have not all been resolved. As a supportive neighbour, we should make clear to the Indonesian government that we support its territorial integrity, that we do not support separatist movements and that if victims of persecution come to our door and ask for asylum we should not turn them away.

**The act of taking in a stranger in need is an ancient and universal virtue.** It was well captured in the acceptance speech of the UNHCR, when it was honoured with a Nobel Peace Prize in 1981. Throughout the history of mankind people have been uprooted against their will. Time and time again, lives and values built from generation to generation have been shattered without warning. But throughout history mankind has also reacted to such upheavals and brought succour to the uprooted. Be it through individual gestures or concerted action and solidarity, those people have been offered help and shelter, and a chance to become dignified, free citizens again.

Through the ages, the giving of sanctuary has become one of the noblest traditions of human nature. Communities, institutions, cities and nations have generously opened their doors to refugees. The ancient and universal tradition of providing sanctuary to those in danger is part of our refugee regime in Australia today, and it is demonstrated by the community at large when Australians respond generously to the suffering of others, both at home and abroad. The [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#) does not reflect this tradition. It does not uphold the deeply held Australian values of giving people a fair go, and of decency and compassion. I regret that I cannot commend this bill to the House and I will be voting against it.  
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## **Speech: [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#): Second Reading > Andren, Peter, MP > 12:16:00, 10 August 2006**

[Mr ANDREN](#) (Calare) (12.16 p.m.)--I applaud the member for Kooyong for that contribution, and say to other members and senators that no preselection and no perceived populist position will ever justify immoral and unconscionable policy like this. The member for Kooyong's electorate seems to have acknowledged that, and so, too, eventually--if not right now--will most Australians if they get the leadership the member for Kooyong, and some of his colleagues, have shown.

As with 'work choices', 'mutual obligation', 'fair dismissal', and 'electoral integrity', here we have another use of Orwellian doublespeak in a bill from his government: 'designated unauthorised arrivals'. Let us cut the nonsense; it is the '**appease Jakarta bill**'. The minister said so, on the 7.30 Report in June, when she admitted she was taking into account the concerns of the Indonesian government.

The bill again turns people who are running in fear for their lives into unwelcome 'illegals'--a familiar catchcry from the Howard government--with just a few of the more compassionate members of the coalition backbenches speaking out against this policy.

Recommendation 1 of the government majority Senate Legal and Constitutional Committee's report says it all: the bill should not proceed. I support the overwhelming number of submissions to the Senate inquiry which detail how this bill is fatally flawed. People who have a fear of persecution have a right to seek asylum and should never be punished for the way they arrive in Australia. That obligation remains true for those who sought our help in the years up to and after 2001, and for those asylum seekers who arrived here from West Papua in recent months.

This obligation cannot be outsourced to a third nation, as this legislation intends doing. It is no good to say that we will be paying for the infrastructure and processing; it will clearly be breaking our international obligations to receive and process those who seek our protection. Under this legislation, asylum seekers and confirmed refugees will face the possibility of being indefinitely detained in a remote and isolated island camp.

The reason for this is documented in the minister's press release of 13 April: that the government's priority in this policy is not to grant those found to be genuine refugees protection in Australia but to transfer them to any third country that will take them. This would require an attempt to bind a third country in a solid agreement to take over our responsibilities. This process could be as drawn out as you like, with no guarantee that any agreement will be reached. And what countries do we have ready to take these people? None. We only have countries which have said that they do not want a bar of this policy: New Zealand, Fiji, even Papua New Guinea and Nauru. They may process our asylum seekers but are not prepared to take on our responsibilities.

You cannot get a more indefinite situation than this, and it will only mean uncertain futures, complete with psychological damage on top of trauma, for those we remove offshore. They will be without ready access to support, especially legal advice. Children will again be detained--however this detention is dressed up--in breach of our international obligations. It makes a mockery of the Palmer inquiry's recommendations.

The government's minor concessions--a 90-day time limit on processing a review and having the Ombudsman oversee actions of DIMA officers--might look reasonable to some at first sight; however, the minister is not bound by the Ombudsman's recommendations. In supposedly reinforcing the universal obligation that children be detained only as a measure of last resort, the government will seek to provide hostel type accommodation on Nauru. Yet such accommodation is still, at the end of today, on a remote Pacific island thousands of miles from proper access and scrutiny by legal representatives and other support and advocacy services.

**This legislation is a complete buckling to the wishes of the Indonesian government. It is an immoral caving-in to the agenda of a country that has, sadly, a record of systematic human rights abuses over many years. By default we are endorsing those abuses through legislation like this.** President Yudhoyono may indeed be showing positive signs of cracking down on the excesses of the Indonesian military. The outcome in Aceh, tragically precipitated by the tsunami disaster, gives room for hope of a more responsible and caring administration, but we have not yet reached anywhere near that situation in West Papua, despite an apparent willingness of independence activists to lay down their arms in the hope of genuine negotiation.

The tragedy of East Timor was a tragedy the world, particularly Australia, turned its back on until we could not ignore it. We have not been prepared to properly supervise the transition to true stability and democracy and we have been party to exploiting the fledgling nation's fair share of natural resources in the Timor Gap. Such indifference must never be allowed to happen again in West Papua where already, since the sham vote of self-determination in 1969, there have been, on some estimates, a further 200,000 deaths under Indonesian control.

**Only the escape of 43 asylum seekers to our shores has heightened world and local awareness of the West Papua situation and perhaps prompted a recognition by Jakarta that changes are demanded in its West Papua approach.** But such awareness will be stifled if refugees are shipped out of sight, out of mind, outside our zone of conscience. Instead of buckling to Indonesia's demands that we sign a treaty forever recognising their formal sovereignty, we should make the genuine and lasting reform of Indonesian military practice in the province a precondition for any acceptance of Indonesia's sovereignty over West Papua. That rule should be conditional upon an internationally sanctioned process to deliver real autonomy within the wider Indonesian republic to the people of West Papua and a guarantee of a proper share of the resources of the province.

To stand up now and announce that he has no trouble with the demands of Indonesia does the Minister for Foreign Affairs no credit and belittles this nation in the eyes of the world and, I would suggest, the eyes of the majority of Australians. We should ask the US and other nations to call on the Indonesian government to genuinely engage in talks leading to a resolution of the legitimate grievances of the West Papuans and we should, along with other countries, insist on open access to West Papua for the world media. It is one thing for the foreign minister to say:

... the last thing we want to see is the disintegration of the Republic of Indonesia.

It is quite another thing to hide behind that concern and to conveniently ignore human rights abuses in any country, let alone one just 250 kilometres from our shores from which many Papuans would flee and indeed should flee if the cruel and oppressive behaviour of the Indonesian military and Indonesian authorities continues.

A majority of Australians were not, at the time, behind those who argued that the refugees and asylum seekers on board the Tampa should be processed in this country. A large part of that reaction was because of the obscene hysteria created around those people by the likes of former minister Peter Reith and others. Indeed, they were demonised as potential terrorists arriving by leaky boat, one of which, the SIEV X, sank with the loss of 350 lives as we did nothing. Another part of the Australian community's animosity towards the Middle Eastern refugees was the fact they were coming from countries of first, second or even third refuge--Malaysia, Thailand, but usually Indonesia.

None of that applies with the West Papuans and yet here we have this government prepared not only to send primary movement refugees who have reached Australia, the country of first asylum, to another country for processing, but to then seek another country to take them once their genuine asylum status has inevitably been ascertained. What does our Minister for Immigration and Multicultural Affairs say? She says,

'We can't allow these people to come here to conduct political campaigns'.

Is a call for an end to abuse and persecution, wherever it occurs on the planet, a political campaign? How about a cry for help? What's next? Is the government considering reviving the Pacific Islands Labourers Act 1901, which deported any of our South Pacific neighbours already in the country?

Our immigration laws over the years have at times been shamefully racist. In this case, we are debating a bill that deliberately is designed to do everything possible to hamper those who might try and flee oppression from our nearest offshore neighbour and others who will still and justifiably flee oppression in other countries--the Middle East, Asia and Africa. A European Commission asylum policy officer, Sandra Pratt, has criticised this bill thus:

We could not and would not do that in Europe ... we take very seriously the international conventions ... I think we have an experience of persecution in Europe still ...

I repeat: asylum seekers should be housed on the mainland with access to appropriate medical, legal and other support services. They should retain their right to timely review by the Refugee Review Tribunal and judicial review in the courts here, not on someone else's territory 4,000 kilometres away in the mid-Pacific. The position paper of the Refugee Council of Australia bears out the importance of access to the merits review process. It said:

Since February 2003 the number of judgments setting aside RRT decisions or involving orders remitting matters by consent is somewhere in the range of 500 to 750 cases. The risk of wrong decisions being made with fatal consequences of refoulement will be magnified in the proposed system which has no checks and balances.

In other words, with proceedings conducted 4,000 kilometres from our shores and without access to proper merits review, what hope will a genuine asylum seeker have with one shot at an offshore and potentially under-resourced process, when the fully resourced departmental and RRT processes have such a track record for error here?

Article 33 of the refugee convention contains the non-refoulement protection obliging countries not to return people to their country of alleged persecution. Shipping asylum seekers to Nauru, which is not a signatory to the 1951 Convention, does not uphold this obligation and neither does transferring refugees to a third country or worse turning them back at sea. Any use of our navy to turn back boats that have made it into Australia's territorial waters would definitely breach our obligations under article 33. I do not want to see a repeat of the notorious children overboard affair, leading up to the 2001 election, when our armed forces were used for blatantly political purposes and which placed our defence personnel in an unconscionable moral dilemma.

Indeed, these proposed amendments breach not only article 33 but article 32, that a state should not expel a refugee save on grounds of national security; article 31, that states should not impose penalties on account of illegal entry on refugees coming from a state where their life or freedom is threatened; and article 3, that a country should not impose penalties on the basis of race, religion or country of origin.

This is indication enough that **this bill is aimed squarely at what the government would no doubt call its 'West Papua problem.'** For our closest West Papuan neighbours Australia will accept no obligations towards any refugees under this bill other than to see whether a third country will take them. This will inevitably lead to indefinite and protracted detention, out of sight, out of mind of government perhaps, but more and more Australians are appalled at such a policy, especially now it impacts on West Papuans who might seek our help as a country of first refuge. **In effect, all of the Australian territory is excised in this bill, and all claims by people**

**such as the West Papuan asylum seekers will have to be made outside the Australian legal and immigration systems.**

Add to this the cost, \$195,000 per asylum seeker, for those refugees who have been detailed on Nauru alone since Pacific solution mark 1--a massive cost used to bribe a cash-strapped Pacific country, with outsourced security and detention contracts further hidden from public scrutiny. No-one objects to internment until the asylum claims of these people are investigated and their status confirmed, but it should occur on our shores, on our territory. To adopt this offshore policy--or, more appropriately, the 'buy-off of a poor island' policy--for immoral foreign policy purposes is to trash our international obligations. I call on those members and senators who are no doubt appalled by this piece of inhumane Realpolitik to stay firm behind the findings of the Senate inquiry's No. 1 recommendation and fight for the position won from the Prime Minister a few short months ago in the wake of Palmer.

**This bill is about discouraging dissent and the seeking of legitimate asylum. This is not about border protection; it is about supporting oppression.** It is about discouraging, even denying, the most basic of human rights--the right to live without fear for your life--and the duty we as members of the world family have to honour our international obligations to the powerless in the face of the powerful. This bill is aimed fairly and squarely at disadvantaging people who are fleeing well-documented persecution--persecution that will be encouraged by these very changes.

Under the bill, refugees will be shipped to Nauru under the surveillance of Nauruan law. Nauru is not a signatory to the international human rights conventions. In the event the DIMA people make a mistake--remember there have been 500 to 700 cases overturned in Australia after DIMA has got it wrong--there is nothing under Nauruan law that allows a review. The people are effectively isolated from appeal and could remain incarcerated even if they are legitimate refugees.

The government admits in the prime ministerial statement of 21 June that Australia cannot legislate offshore detention access for the Ombudsman because of sovereignty issues. **Persons in offshore detention centres are not detained under Australian law.** In fact, anyone allowed out of a camp on Nauru will only be out on a Nauruan visa. Such are the legal complexities the government says can be blithely dealt with by a memorandum of understanding. There are huge legal contradictions between Nauruan law and Australian law. For instance, in April 2004 the uncle of Nauru's justice minister was nominated to represent asylum seekers the day after the Nauruan justice minister barred an Australian legal team from entering Nauru. Such an incident could, of course, happen again, especially if Australian lawyers again attempt to question the validity of legal processes in Nauru. In fact, our High Court has confirmed the validity of the Nauruan visa process whereby visas are issued to each and every detainee, lawyer, visitor and indeed ombudsman who enters Nauru.

There are millions of dollars worth of income for cash-strapped Nauru at stake in this. Both the Nauruan and Australian governments have a huge interest in sustaining this legal limbo, which, unlike Guantanamo Bay, will not allow even military lawyers. The refugee victims of this legislation are being thrown into a legal vacuum. You cannot confer jurisdiction over another sovereign nation, whatever the bribe. The promises on processing in Nauru are technically unenforceable and outside any law.

Finally, we have the Edmund Rice Centre's disturbing report on the apparent disappearance and suspected death of 12 Afghan detainees who returned to Afghanistan, assured the country was safe. We hear of Yolanda and Rona, aged nine and six, killed by a bomb planted under their home because of their returned father's former political connections. Their father's own mother and granddaughter were also killed.

When I dared suggest at Christmas 2003 that, on my reliable advice, several returnees from Nauru to Afghanistan had been killed, I was threatened with legal action by the Afghan diplomatic representatives here in Canberra, as were any others who made what the Afghan authorities claimed were 'reckless and unwarranted' allegations. It was claimed by the embassy that returnees were monitored after their arrival back in Afghanistan--but only, according to the Afghan embassy website, while they were in Kabul. Then the returnees left for various provinces in different parts of Afghanistan and the monitoring ceased.

It took the Edmund Rice Centre to go there, have a look and find the facts about some of those disturbing cases, which happen because, I would argue, of a policy that is akin to refolement. Whatever the compensation or the resettlement money offered, these people were under duress in most cases when they accepted that compensation. They were in effect, de facto, forced back to Afghanistan, and I firmly believe that we have responsibility under all of those circumstances, when they have arrived as genuine asylum seekers, whatever the circumstances of the outcome, given the state of affairs in Afghanistan and elsewhere where these people are coming from. It is our responsibility, if we turn them away, even with a cheque for a couple of thousand bucks, to ensure their safety--and that includes the

responsibility of the Kabul administration and the new Afghan government.

Finally, I say: all power and all courage to those members and senators who are considering their position on this bill. There is a position that I believe Australians will support more and more, and they certainly have turned around since that day in August 2001 when I said my electorate perhaps did not support me but that I did not care at that point because I knew and felt in my heart of hearts that I was correct. I think circumstances have proved exactly that. If Family First means that--family first--then how could its senator not join other fair-minded members and senators in rejecting this bill too?

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## **Speech: [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#): Second Reading > Broadbent, Russell, MP > 12:36:00, 10 August 2006**

[Mr BROADBENT](#) (McMillan) (12.36 p.m.)--The path I take today I did not choose. This path chose me. I cannot simply walk away from the agreement reached and legislated nearly 12 months ago. The founder of the Liberal Party, Sir Robert Menzies, built the party on a foundation of the plural traditions of free thought and individual conscience. Free thought and individual conscience are not things to be used frivolously, nor taken lightly, but are freedoms that are embodied in the traditions of our party.

The decision I have taken to oppose this legislation, the decision to follow my conscience and vote for the first time, and I hope the last time, against the government of which I was elected as a member, is made because it is in the long-term national interest of this the great south land to continue to be a compassionate protector of the rights of refugees irrespective of the importance of a close relationship between Australia and one of our neighbours.

**There is no doubt that the changes introduced in the [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#) are being made as a reaction by the Australian government to Indonesian concerns about the correct and honourable decision by Australia to grant asylum to 43 refugees from West Papua.** In his second reading speech, the Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs offered no reason for the changes the legislation seeks to make beyond an assertion that:

It seems incongruous that an unauthorised boat arrival at an excised offshore place is subject to offshore processing arrangements, while an unauthorised boat arrival travelling, in some cases, only a few kilometres further to the Australian mainland is able to access the onshore protection arrangements ...

Yet the only actual example of this so-called incongruity he could find was 'the landing on mainland Australia of a group of unauthorised boat arrivals from Indonesia in January 2006'. The parliamentary secretary's speech highlighted not the incongruous outcome he spoke of but the sacrifice of what is right and what is in Australia's national interest. I recognise the Indonesian government's concerns. I assure them that as a partner in our region we honour and respect our neighbours. We support our neighbours in times of trouble. We may not always agree with their laws, but we do respect their right to enact their laws. We desire good relations. We do not question their sovereignty in any province or region.

The Howard government has demonstrated a proactive and decisive approach to the challenge of border protection and national security. Since the tragic episodes in 2001 that changed the way we look at the world, the government has implemented more than 100 measures and injected funding in excess of \$6.7 billion to fight terrorism and to improve national security. The 2006 budget builds further in this direction by providing over \$1.2 billion to fund additional national security related measures. In total, the Howard government has now committed \$8.1 billion in new spending on national security since 2001-02. Included in these important budget measures is \$20.2 million over the next four years to support the delivery, management and administration of the changes made last year to the Migration Act 1958 following the detention arrangements agreement. This comes on top of the \$9.3 million provided in 2005-06 to enable the detention of families with children to take place in the community and the introduction of processing time limits on the determination of primary protection visas.

I cannot fathom why we would spend over \$30 million implementing these measures only to turn around and abrogate them. **We cannot let our high regard for Indonesia override our obligations under the Refugee Convention.** As a signatory to that convention, we are charged with determining whether people who arrive on our shores have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and, among other things, are not war criminals or people who have

committed serious, non-political crimes. That is the independent process we followed with a group of a unauthorised boat arrivals from Indonesia in January 2006. It was determined that they did have a well-founded fear of being persecuted and were thus treated as refugees and given visas to stay in Australia. That was as it should be. **Australia should not bow to influences that would fundamentally change our laws or the way we process asylum seekers.**

Perhaps if there was any incongruity in Australia's position, it comes from the decision in 2001 to create an excised offshore place subject to offshore processing arrangements. That decision was made as part of the government's complete and determined approach to border protection to stop trafficking by criminal people-smugglers, which was reaching considerable proportions. It has been an effective deterrent. In 1998-99 there were 921 onshore boat arrivals and the number jumped to 4,175 in 1999-2000. In the following year there were 4,137 arrivals before a decline became evident in 2001-02 with 1,277 arrivals. In 2002-03 there were no arrivals whatsoever. In 2003-04 there were 53 arrivals, which was still lower than all the recorded numbers throughout the 1980s and 1990s. In 2005 four men, one woman and two children arrived by boat in Australian waters on the Kimberley coast. It is therefore wrong to say that the current legislative and cooperative measures in place have not been effective in protecting our borders. The measures have worked, and for that this government can take great credit.

The Howard government should be further praised for the flexibility it showed in amending the Migration Act to deal more compassionately with asylum seekers in light of the fact that the system was working. The Prime Minister said of the changes of that time:

The broad framework of the government's approach is unaltered. There can, however, be significant improvement, which will mean that current policy is administered with greater flexibility, fairness and above all, in a timely manner.

This legislation of last year came out of protracted and difficult negotiations. The agreement was then put in writing, announced by the Prime Minister, cleared and accepted by the party room, confirmed in two pieces of legislation before the parliament and then widely embraced by the Australian community. The package included four key elements. It provided for new arrangements to move families with children out of detention into the community. It set a time limit of three months for primary protection visa decision making, it allowed for review by the Refugee Review Tribunal and it provided for oversight by the Commonwealth Ombudsman.

Importantly, the legislation required the minister to table in parliament any assessments or recommendations from the Ombudsman. These reforms have been successful and the system is more flexible, fair and timely. Not only did they work, but they did so whilst ensuring we met our humanitarian obligations as a signatory to international conventions and as a compassionate nation. How could you possibly consider that the same outcome could be achieved by sending asylum seekers to Nauru? Australia has proved that strong border protection and human rights are not incompatible. In essence, they seek to assure the same values: that the innocent will be defended and that those who seek to do harm will be deterred. It is the very success of existing measures that makes this proposed legislation so disappointing.

**This bill excises the whole of Australia from the migration zone. In doing so, it also excises the safeguards and rule of law our judicial system provides under our statutes and regulations.**

Under this bill, the agreement reached last year would be made redundant. The bill amends the current act to allow a DIMA officer to take a designated unauthorised arrival to a 'declared country'. Because Nauru and Papua New Guinea are not bound by the Migration Act 1958, the rule requiring that a determination of protection visa applications for detained asylum seekers occur within 90 days would not apply. Even an in-principle attempt to construct a non-enforceable time limit would not be legally binding, as is the case in Australia. Provision for judicial oversight and transparent scrutiny by requiring reports from DIMA to the Commonwealth Ombudsman on persons being held in detention for more than two years would be irrelevant in Nauru. A private contracting firm would organise the accommodation on Nauru and PNG. But would the Nauruan government, which is not a signatory to the 1951 Refugee Convention, oversee asylum seekers' welfare, or would that responsibility fall to Australian officers operating under UNHCR guidelines and outside the reach of our legal system?

If the bill is passed, asylum seekers processed offshore will not have access to independent review by the Refugee Review Tribunal, or judicial review under Australian law. This bill has been roundly criticised by two agencies that deal with human rights and refugees. The United Nations High Commissioner for Refugees and the Human Rights and Equal Opportunity Commission both made submissions opposing the legislation to the Senate Legal and Constitutional Affairs Committee inquiry. That committee, in its report tabled in June this year, made the primary recommendation that the bill should not proceed. In the event the bill did proceed, the committee recommended a long list of qualifications that would have the same effect.

The former senator, vice president and President of the United States, Lyndon Johnson, once said:

You do not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs it would do and the harms it would cause if improperly administered.

I believe there is a potential for this bill to cause serious harm to the progress we have made on this issue as a nation and to the vulnerable people it would affect. I will be voting against these amendments knowing that there are some in my party who do not agree with the 'plural tradition' of the Liberal Party and its principles of free thought and individual conscience. Some warn that any dissent is a form of political death. I am no stranger to defeat. I have suffered defeat four times, but I have also been elected to this House three times. It is not the office of the federal member that is important; it is what you do when in office. I take comfort in the words of Dr Martin Luther King:

The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.

This bill is an issue of challenge and controversy. I had a letter recently from, Di Potter, a constituent in McMillan, expressing her anguish at this bill. She said:

I thought my letter writing days were over--

I, too, thought her letter writing days on this issue were over; finished. I note her broken-hearted response to the form of words used to describe asylum seekers in the legislation. I note her concern that this means Australia is no longer a place of refuge.

The Australia I know is a place where dreams come true, where the impossible becomes the possible and the probable becomes the inevitable. It is where people find a sense of belonging and it is a place of hope for generations of new immigrants. If I am to die politically because of my stance on this bill, it is better to die on my feet than to live on my knees.

**Honourable members**--Hear, hear!

Mr BROADBENT--We are suffering a drought in this nation and it is my fervent prayer that the rains would fall to fill our rivers and streams, our lakes and our dams so that each raindrop would form a mighty flood that is so full of compassion and justice that it would not only soften the parched earth but also soften the nation's heart. It is with regret that I cannot support this bill, and I will vote against it.

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## **Speech: [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#): Second Reading > Moylan, Judi, MP > 13:12:00, 10 August 2006**

[Mrs MOYLAN](#) (Pearce) (1.12 p.m.)--I begin by paying a compliment in particular to my colleagues the member for Kooyong and the member for McMillan for their contributions to outstanding debate in this parliament today. The [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#), amending the Migration Act, is not a matter between conscience and patriotism, for surely each one is worthless without the other and ethical principles should inform them both. The stranger that stumbles upon our shores has a claim on both our conscience and our patriotism and, when he or she arrives with credentials uncontaminated by smugglers and pleading a case that, at the very least, is worthy of a fair hearing, the qualities that constitute fairness are not those that visit unmitigated sequestration and inhumanity upon the stranger.

This is complex legislation because it places people seeking refuge on our shores out of reach of Australian domestic law and, by our hand, places them within the borders of a country that is not a signatory to international conventions protecting asylum seekers. It is incongruous that unauthorised boat arrivals are treated any differently from unauthorised plane arrivals. People coming by boat, unlike those arriving by plane, will be forcibly removed to Nauru and denied access to a properly constituted statutory Refugee Review Tribunal and to Australian courts for judicial review--this in a system that unlawfully detained Ms Rau and Ms Solon.

Further, asylum seekers arriving by boat will be denied those standards of public scrutiny that have been recommended and implemented in Australian detention centres since the release of the Comrie and the Palmer reports that arose from the Solon and Rau cases. Church leaders, non-government organisation representatives and others, including the fourth estate, have been refused visas to visit refugees held in offshore processing centres. The memorandum of understanding between Australia and Nauru in relation to this bill is not publicly available, so we cannot access details

about the future care of asylum seekers on Nauru or take any comfort that visas will be accessible in the future. The government has admitted that it has no control over the sovereign state of Nauru and its laws. How will we know what is or is not being done in our name? We must therefore search our consciences and ask if these unduly harsh measures are warranted. These amendments seek to broaden the scope of offshore processing, which means that families with children will once again be placed in fenced compounds, under guard and out of the range of Australian public scrutiny and support and the law.

I may not have shared many of Chief Justice Sir Owen Dixon's personal views, but he was known for his strict adherence to legal principles and a view that the rule of law is the assumption on which the Australian Constitution rests. The rule of law is a conservative principle. It is the foundation of democracy. It requires, as a minimum, access to judicial review of administrative action, the right to a fair trial, the right to private communications with a lawyer and access to the courts. This bill removes or diminishes each of those rights. Who or what is to protect these people from processing errors, of which there have sadly been so many in recent times? Future asylum seekers arriving by sea could be held offshore for indefinite periods of time.

Despite the first memorandum of understanding with the Nauru government aiming to remove people from the island within six months and despite earlier assurances by the Minister for Immigration and Multicultural Affairs to that effect, many people remained on Nauru for long periods, some spending four years on that island. Detention without hope of release has been identified as the prime cause of the mental health problems in asylum seekers, including self-harm and suicide. These long periods of uncertainty have clearly exacted an unacceptably high human cost.

Less than 200 unauthorised boat arrivals have reached Australian shores in recent times, amongst them 43 West Papuans fleeing from political oppression and human rights abuses. They arrived in small canoes, were not organised by smugglers and were unarmed. They did not proceed through interim countries but came directly to Australian shores. The majority of fair-minded Australians were relieved when 42 of the 43 West Papuans were given asylum. Since that time, the 43rd West Papuan, originally refused asylum, has had that decision overturned by the Refugee Review Tribunal. Such an appeal to a properly constituted statutory refugee review tribunal will be denied others under this legislation.

Following the successful claims of the West Papuans for asylum and complaints by the Indonesian government, including the withdrawal of their ambassador, the government announced the introduction of this amendment bill, to take effect retrospectively at the time of the cabinet decision. Following the decision to grant asylum to the West Papuans, the minister for immigration said:

Australia has always made decisions in relation to protection claims on the basis of the merit of the claim and this has to be the case whether we'll upset one or other of Australia's friends and allies.

It stands to reason then that Australia should not fashion its refugee policy to assuage the Indonesian government. Indonesia and its president may not have received nearly enough credit for the achievement of democratic institutions in a country so populous, so geographically complex and so variegated in its cultural affinities. But, given all that and given all the respect that these aspirations and achievements rightfully engender, that is the point beyond which our self-respect must give us pause.

One can understand concerns by the Indonesian government about the possibility of civil unrest generated by an independence movement in West Papua. But our government has been crystal clear in stating that it does not support an independence movement. Yet, cleaving as we do to basic freedoms of worship, speech and political association, it is axiomatic that we cannot condone explicitly or tacitly the persecution of people because they express dissenting political views. In such cases where asylum is sought, we have obligations to hear the claims and make a dispassionate decision free from political interference.

Our relationship with Indonesia must proceed on the basis of mutual accommodation and consistency in our argument of the paramountcy of the sovereign rights and laws of each nation. Most Australians are appalled at the release of Abu Bakar Bashir but understand that, regardless of how repugnant that decision is, Indonesian law will almost certainly prevail.

**Pressure Indonesia has brought to bear over the West Papuan asylum matter is offensive to our style of democratic government and to the rule of law which underpins it.** If we allow interference in the proper legal processing of asylum seekers, no matter where they come from, then where is the end point? We must ask the question: will there be further backdowns and compromises in the face of future threats by Indonesia?

Indonesia and Australia have worked cooperatively in building constructive dialogue and strong people-to-people links

in trade, regional security and border protection. The goodwill we have built up between our two countries is beneficial to the people of both nations and to the region. Exercising our domestic and international legal obligations is insufficient reason for fracturing a mature relationship.

It is hoped that the Indonesian government recognises and addresses the issues underlying the current unrest referred to by Indonesia's Minister of Defense, Dr Sudarsono, in February this year when he said:

I grant that there have been incidents of some brutality and torture and rape involving some of our troops, but there has been a tendency to blanket all of this into a notion that all of these efforts are systematic and institutional.

When these brutalities cease, then the desperation that drives people to risk their lives to cross the open sea in canoes will cease to exist, and there will be no reason for Indonesia to ask Australia to choose between its good relations with Indonesia and the legal and just applications of its own laws. It is surely safe to assume that West Papuans share the same aspirations as people everywhere: for food, shelter, health, education and access to the common pool of prosperity--40 per cent of West Papuans survive on less than \$6 a week. Given that Freeport is said to be the biggest earner of foreign currency in the country, that aim should not be too difficult to achieve.

Speaking in international forums, our Attorney-General, the Hon. Philip Ruddock, has observed that the focus of Western democratic states should be on helping to prevent refugee situations at source so as to ease the burden on countries of first asylum. Thus the primary hope is that West Papua should be a comfortable home for its citizens so that they have no reason to seek refuge elsewhere. The achievement of that goal remains solely within the prerogative of the Indonesian government, but I would venture to say that there are many in this country--indeed, in this House--willing, in the spirit of friendship and common humanity, to lend a hand, just as they have been all too willing in the recent past to lend a hand when our neighbour was beset on tragic occasions by natural disaster. However much history and arduous exertion have given Indonesia the right to insist on its own standards and laws, we in Australia are no more or less entitled to do precisely the same.

Last year this parliament unanimously endorsed important changes to the Migration Act. For me there was no more important change than to release families with children from behind the barbed wire and to place them in community housing, and that policy and process have gone smoothly. There have been no complaints. There have been no problems. So why, I ask, did we ever place children in prisons behind barbed wire fences?

Australia is a big country. The Australian people have big hearts. I cannot believe that they would condone a bill that is so regressive, a bill that sends asylum seekers to a place that puts them outside the reach of community support and outside the reach of domestic and international law.

**In considering this legislation we need to ask these questions in this place: what value do we place on the rule of law?** How can we in all conscience legislate to consign people to a place where they are out of sight and ostensibly out of mind? Do we assume that nothing culpable by way of mistakes and misdemeanours can possibly befall them? Why is this legislation before the House today, when a majority government member Senate committee recommended that the legislation be scrapped or, at the very least, amended?

This is virtually a declaration of infallibility, which is absurd, not to say dangerous. It flies in the face of that essential principal of democratic governance that there should be visible, credible checks and balances. I cannot believe that the citizens of this sovereign country would ever cease to wonder, nor would they ever forgive, were we in this House to acquiesce in silence to pressure from a neighbour on a matter so much at the heart of our principles of justice. I for one cannot remain silent.

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With thanks to <http://www.safecom.org.au/dissenters2006.htm>.

Project SafeCom is a community development project and an incorporated non-profit association based in Western Australia. It was established in December 2001. The vision of Project SafeCom is laid out in the constitution in summary form, but in practice this vision provides for a set of ethics, a direction for its values and social responsibilities.