



## Two Sydney Law Academics: Offshore Refugee Processing is Unlawful 14 June 2006

Associate Professor Mary Crock and Dr Jane McAdam of the Sydney University Law Faculty were quoted extensively in a report tabled late yesterday by the Senate Legal and Constitutional Legislation Committee on the Government's proposal to process asylum seekers who arrive by boat on Nauru.

The Senate Committee recommended that the Government should not proceed with the proposal in its current form. It recommended that the following safeguards be built into the legislation:

- asylum seekers who are found to be refugees after being processed offshore should be resettled in Australia if resettlement in other countries is not available;
- the principle that children should only be detained as a measure of last resort should apply offshore as well as onshore;
- asylum seekers who are detained and processed offshore must have access to independent legal advice and legal representatives to assist them in making their protection visa applications, as well as access to community welfare and support organisations;
- the legislation should specify a reasonable time period in which the Minister must determine protection visa applications for asylum seekers detained in offshore processing centres;
- DIMA should report to the Commonwealth Ombudsman or Australian Parliament on asylum seekers detained in offshore processing centres, and allow the Ombudsman oversight of the centres; and
- asylum seekers who are detained and processed offshore should have a right to have a negative decision on their protection visa application independently reviewed on the merits.

Associate Professor Crock gave evidence that children processed on Nauru in the recent past were far more likely to be sent back to their country of origin than those processed in Australia. According to the International Organisation of Migration, 32 of the 55 unaccompanied children on Nauru were returned to Afghanistan in 2002-2003. At least one of these was subsequently killed. Of 290 such children who made it to Australia, none was returned over the same period.

Dr McAdam argued that sending refugees to countries like Nauru, which have not ratified the Refugee Convention and other international human rights instruments, could lead to Australia breaching its own international legal obligations.

Associate Professor Crock and Dr McAdam welcome the Senate Committee's findings, and urge the Government to heed the Committee's recommendations not to pass the Bill in its present form.

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