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**8 July 2013**

The Hon Kevin Rudd  
Prime Minister of Australia  
Parliament House  
Canberra ACT 2600

By email: [Kevin.Rudd.MP@aph.gov.au](mailto:Kevin.Rudd.MP@aph.gov.au)

Dear Prime Minister

### **Risks of refoulement in enhanced screening of asylum-seekers**

Australian Lawyers for Human Rights (**ALHR**) has several concerns to raise with you about the current procedures for assessing the protection needs of people who travel to Australia by boat.

ALHR is a network of more than 2000 lawyers and law students active in practising and promoting awareness of human rights in Australia.

We wish to draw your attention to a number of serious flaws and risks in the 'enhanced screening' procedure, and encourage the government to address them by adopting certain safeguards.

Australia's core legal and moral obligation in relation to asylum-seekers is to avoid forcibly returning them to persecution or danger. Without adequate procedural safeguards, any attempt to speed up the processing of irregular maritime arrivals risks violating this fundamental principle.

ALHR supports the government's aim of distinguishing between economic migrants and refugees. But that objective will not be served by asking asylum-seekers *fewer* and *more opaque* questions. There are other ways to address concerns about the credibility of their evidence than withholding information about the process and denying real opportunities to seek legal assistance.

#### ***Pressures on the system***

We understand that the Commonwealth government is under pressure to demonstrate its ability to handle asylum-seeker issues efficiently and effectively. We also understand that this pressure has led to the increased use of 'enhanced screening' for irregular maritime arrivals, particularly from Sri Lanka.

Our concern is that this approach is based on false assumptions and an insufficient appreciation of the risks.

We consider the current 'enhanced screening' methods to be inadequate at differentiating between people with real protection concerns and people with solely economic motivations. This inadequacy puts Australia at risk of breaching its international obligations and, more seriously, puts wrongly returned asylum-seekers at potentially grave risk of violence, torture and other forms of persecution.

The current use of enhanced screening alongside the mainstream refugee status determination process represents an incoherent allocation of resources. If the government considers that the procedural protections afforded by the mainstream process are necessary to meet Australia's legal and moral obligations, it is illogical to withdraw those protections in an arbitrary selection of cases.

### ***Inadequacy of abridged processes***

Enhanced screening assumes that individuals with real protection concerns will volunteer that information in an initial interview. It assumes that people who do not explicitly mention their need for protection must be purely economic migrants. Those assumptions are wrong:

- a) Trauma – particularly involving humiliation, stigma, torture or sexual violence – is likely to inhibit the unsolicited provision of detailed information.
- b) Cultural factors may also inhibit the effective communication of protection concerns, again where distressing or 'taboo' subjects are involved.
- c) Interviewees may not feel safe in disclosing information about their experiences to Australian officers, out of suspicion of authorities in general or fear of collaboration between Australian authorities and those in the country of origin.
- d) Interviewees who do not understand the criteria for visa decisions may not know what kinds of information they are expected to volunteer. They may mistakenly emphasise their ability to contribute to Australia's economy rather than the seriousness of the situation they have fled. They may interpret the question 'Why did you come to Australia?' as asking about their decision to choose Australia over other destinations, rather than 'Why did you leave your country of origin?' or 'What will happen if you return?' (which are the relevant questions).
- e) Minors are especially at risk in this process, and require special protections and safeguards.
- f) There is an unavoidable potential in *all* assessments for human error and overreliance on generalised country information. The procedural protections built into the mainstream process are there precisely to guard against such risks.

### ***Minimum necessary reforms***

We urge the government to discontinue enhanced screening for arrivals from countries with a demonstrated risk of persecution. The injustices that may have occurred in relation to people arriving from Sri Lanka are obvious. In the last six months detailed reports on Sri Lanka's human rights situation have been published by international bodies, including Amnesty International, Human Rights Watch, International Crisis Group, and the UK Foreign and Commonwealth Office. They show that abductions, harassment and physical attacks against civilians, and torture and sexual violence by security forces are certainly continuing in Sri Lanka, and did not cease with the end of the civil war in 2009.

Should the practice of enhanced screening continue, ALHR considers the following safeguards are necessary as a minimum standard to avoid unacceptable risk of returning people to grave danger.

1. Interviewees must be given specific information about why they are being questioned, what will happen if the officers are not satisfied with their answers, and the matters that the officers consider relevant.

2. Interviewees must be informed of their legal rights including their right to legal advice, and should be provided with the assistance required to exercise those rights.
3. Minors in particular must be accorded special protection. A situation in which the legal guardian of minors in detention is also the Minister for Immigration is a clear and serious conflict of interest that must be remedied.
4. All removal decisions must be transparent, accountable and reviewable.
5. Contact should be made with returnees to determine whether they are in fact safe after their return, in order to ensure that the system is not producing 'false negatives'.
6. Arrivals from countries with known and serious human rights problems must be subject to a presumption that protection concerns exist (rather than a presumption to the contrary). That presumption may be rebutted during the course of questioning. All removal decisions must be transparent, accountable and reviewable; any information that a decision-maker proposes to rely on in making an adverse decision must be put to the interviewee so that they can respond. In particular, it should not be presumed that Sri Lankans do not have protection concerns, in light of the substantial and credible evidence of ongoing persecution in that country.

### **Conclusion**

In June 2013 the UNHCR's regional representative, Richard Towle, described enhanced screening as 'unfair and unreliable'.

ALHR encourages the Australian government to change the current process to ensure that all irregular maritime arrivals are provided with adequate information, assistance and procedural safeguards.

We would be grateful if you could indicate whether the government proposes to adopt these recommendations, and if not how the government intends to deal with the risks we have identified. We would appreciate a response on these issues before the government enters its caretaker period prior to any federal election.

We would like to make this letter available through our website. This is a standard practice for all our work, wherever possible. If you do not want this letter to be made publically available, please can you advise us within 10 business days of receipt of this letter.

If you would like to discuss any aspect of this letter, please contact ALHR's President, John Southalan, on [john@southalan.net](mailto:john@southalan.net).

Yours faithfully



John Southalan

**President**

Australian Lawyers for Human Rights

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