

**UNHCR concerned about possible implications of new legislation to strengthen border control measures.**

Echoing the statement made by UNHCR Headquarters in Geneva on 18 April, UNHCR's Regional Office in Canberra today expressed concern at the possible implications of proposed new 'border control measures' announced by the Immigration Minister late last week, which would involve the transfer of all future 'unauthorised boat arrivals' to offshore processing centres, in order to have their asylum claims processed.

UNHCR welcomes the Australian Government's assurance that any new legislation would reflect its commitment to international protection obligations. However, it remains worried about the prospect that the proposed changes might deflect elsewhere Australia's responsibility to ensure protection is available to *bona fide* refugees. Depending on the details of the proposed changes, they could also amount to penalising people who have directly fled persecution and exercised their right to seek asylum in Australia.

UNHCR Regional Representative Mr Neill Wright said UNHCR is aware of the difficulties governments face dealing with irregular arrivals in their territories, including unauthorised boat arrivals. Nevertheless, a particular concern with the new proposals is their stated aim that even persons who land on the Australian mainland will be taken offshore for an assessment of their claim.

"The Refugee Convention explicitly calls upon States not to penalise refugees directly fleeing persecution and seeking asylum, 'provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.'" [Article 31, 1951 Convention Relating to the Status of Refugees]"

The widely adhered to practice of State signatories to the 1951 Refugee Convention, like Australia, for asylum seekers is that they receive:

- Access to a fair and efficient refugee status determination process to determine protection needs, implemented by the competent state authority with the real possibility of timely and appropriate solutions for those found to be refugees;

- The exclusion of any possibility of *refoulement* – that is the forced return of a person to a country where they face persecution; and
- That the asylum-seekers should be able to live in humane, decent conditions which respect family unity while waiting for their claims to be processed and a solution found.

Mr Wright urged the Government, in drafting any new legislation to ensure appropriate safeguards are in place to ensure the rights of asylum-seekers are respected. “It would be important that any new off-shore processing arrangements meet the same standards Australia has previously set for its own mainland processes, otherwise the alternative system could be tantamount to a penalty for ‘illegal entry’,” said Mr Wright.

The new proposals also beg the question as to whether or not Australia will in future undertake to provide protection to those asylum-seekers processed in off-shore centres who are found to be refugees. It would obviously be regrettable if one result of the changes would be refugees left in limbo with no prospect of an appropriate solution within a reasonable time frame.

“At a time when the number of asylum claims is in decline around the world, and particularly in the absence of anything approximating a mass influx, UNHCR is concerned about any precedent set by states with fully functioning and credible asylum systems, which would have the effect of deflecting elsewhere the responsibility to handle claims actually made on their territories, as well as to find solutions,” said Mr Wright.

UNHCR has not been formally asked to play any specific role in the new arrangements, but in keeping with its role under the 1951 Convention, would welcome being approached to provide its comments on the proposed changes to the *Migration Act*, and their refugee protection implications.

Australia remains a valuable resettlement and global protection partner for UNHCR.

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