



# UNHCR

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **MIGRATION LEGISLATION AMENDMENT (FURTHER BORDER PROTECTION) BILL 2002**

### **Supplementary Submission**

#### **Response of the Office of the United Nations High Commissioner for Refugees (UNHCR) to the Senate, Legal and Constitutional Committee to questions that were put “on notice” during the public hearing on 06 August 2002**

UNHCR is pleased to complement its submission to the inquiry with the following comments to questions from the Senate Committee, which were put “on notice”. (Refer to the transcripts of hearing of 06 August 2002 as published by Proof Committee Hansard.)

**1. p. 51, para. 7 - On the number of families from DIMIA caseload who were not given derivative status:**

**R:** UNHCR confirms that there are seven families from the DIMIA caseload who have approached UNHCR on the basis that they were not recognised as refugees on their own merit nor granted derivative status despite being immediate relatives of refugees on Temporary Protection Visas in Australia.

**2. p. 52, para. 8 – On up to date statistics on resettlement from Indonesia:**

**R:** As of 31 July 2002, out of 528 refugees recognised by UNHCR in Indonesia, 124 had been accepted for resettlement and were awaiting departure; 234 of them were submitted for resettlement but are still pending decision from resettlement countries; and, 170 were still to be submitted or re-submitted. In addition, 283 persons had already departed for resettlement.

**3. p. 54, paras. 1-5 – Whether there might be a breach of Article 31 of the 1951 Convention in the legislation:**

**R:** Reference is made to paragraph 18 of the submission which states that legislation imposes restrictions on the movement of a refugee whose status in the country has been regularised, in contravention of Article 31(2) of the Refugee Convention.

With regard to Article 31 (1), UNHCR views that the Bill is not in itself a breach. The denial of access to the regular asylum procedure in mainland Australia or the requirement of the Minister to lift the bar for entry to “mainland Australia” is not a penalty, within the meaning of Article 31 (1).

However, as noted in paragraph 12 of our submission, treatment once in the excision area must be in accordance with Australia’s international obligations. Section 189 of the Migration Act 1958 provides that a person in an excised offshore place may be detained.

As a general principle, asylum seekers should not be detained. The detention of such persons should only be resorted in cases of necessity, and on exceptional grounds, i.e., to verify identity, to determine the elements on which the refugee claim is based, in cases where the asylum seekers have destroyed their travel/identity documents or have used fraudulent documents in order to mislead the country of asylum, and to protect national security and public order.

In UNHCR's understanding detention of asylum seekers arriving in a manner covered by Article 31 (1) for purposes other than those above, for instance as a deterrent or a punitive measure for illegal entry/presence is considered to be at variance with Article 31.

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