

Submission on behalf of the United Nations High Commissioner for Refugees
Joint Standing Committee on Migration
Migration Legislation Amendment Bill No. 2 (2000)

The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide its observations and comments to the Joint Standing Committee on Migration on *Migration Legislation Amendment Bill No. 2 (2000)*, in accordance with its supervisory functions and Article 35 of the *Convention relating to the Status of Refugees (1951)*.

The *Migration Legislation Amendment Bill No. 2 (2000)* has two main features. First, the Bill creates a prohibition on class actions in migration litigation and limitations on the commencement and continuance of proceedings in courts, effectively restricting the right of judicial review to individual applicants. Second, the Bill clarifies the powers of the Minister to substitute an adverse decision for a non-adverse decision of the Delegate or the Administrative Appeal Tribunal in matters relating to the character criteria for the issuance of visas.

As members of the Joint Standing Committee on Migration are aware, Australia is signatory to the *Convention relating to the Status of Refugees (1951)* and the *Protocol relating to the Status of Refugees (1967)*. A criterion for the grant of a Protection Visa under the *Migration Act 1958* is that the applicant for the visa is a non-citizen in Australia to whom Australia has protection obligations under these two international instruments.

Although the Convention does not specify an obligation upon Contracting States to create procedures for the determination of refugee status, it implies the establishment of a mechanism to identify individuals who fall within the ambit of its provisions. UNHCR's governing body, the Executive Committee of the High Commissioner's Programme (EXCOM), of which Australia is a member, has established international standards for these procedures. Australia has established sophisticated procedures for the determination of refugee status, which are in compliance with the aforementioned standards.

A main strength of Australia's administrative processes, notably those relating to the determination of refugee status, has been the supervision of the courts. Although class actions in migration litigation are prohibited under the terms of the Bill, UNHCR welcomes the specific preservation of the possibility for individuals to petition courts for judicial review. Review by the courts in common law systems essentially ensures the correction of errors of law and maintains the integrity of the proper exercise of discretionary powers, both of which are crucial for a credible refugee status determination system. In Australia, review by courts has had two key benefits: allowing the correction of