

# REFUGEE COUNCIL OF AUSTRALIA

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## MEDIA RELEASE

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### REFUGEE COUNCIL DENOUNCES LATEST KNEE-JERK PROPOSALS

"The Government's proposal to exclude Christmas Island and Ashmore and Cartier Reefs from Australia's 'Migration Zone' should be seen for what it is: an attempt to evade Australia's voluntarily-assumed international responsibilities", said David Bitel, President of the Refugee Council of Australia. "As Professor Goodwin-Gill has written in his classic work on The Refugee in International Law, 'It is a fundamental principle of international law that every State enjoys prima facie exclusive authority over its territory and persons within its territory, and with that authority or jurisdiction goes responsibility'.

One cannot simply define Australia out of existence in order to appease domestic opinion. This is a recipe for making Australia a laughing-stock. At the very least, the Senate should refer this bill to an appropriate committee so that its full implications can be explored."

"This proposal will be ineffective as far as obligations under the 1951 Convention Relating to the Status of Refugees are concerned. It is quite clear that domestic law defining 'migration zones' cannot override these obligations: Article 27 of the Vienna Convention on the Law of Treaties plainly states that 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.

"Nor will this proposal stop people in desperate circumstances from seeking to reach Australia. At most it may incline some boats to head for the mainland, at greater risk to the passengers. Is this really what the Government wants to see happening?"

"Has the Government thought how it will manage those who continue to reach Christmas Island and Ashmore and Cartier Reefs? When – as is inevitable – such people are moved to the mainland, will they then be denied access to protection visas even if they are refugees as defined in the 1951 Convention? To hold them in such circumstances would amount to arbitrary detention as defined in Article 9 of the 1966 International Covenant on Civil and Political

Rights, and would be a recipe for prolonged and expensive litigation (since the High Court's constitutional jurisdiction cannot be excluded). It would also send through the roof the cost to taxpayers of the already-expensive system of mandatory detention."

"The Refugee Council of Australia," Mr Bitel concluded, "is not opposed to proposals to alleviate the circumstances which drive people to flight. Indeed, well-thought-out proposals, devised in cooperation with UNHCR, lie at the heart of any sensible measures to address the issue of people-smuggling. But there is nothing to be said for half-baked measures which violate our responsibilities under international law, and create the impression that we are seeking to dump 'problems' in the laps of our neighbours. This is not a sensible way of securing their cooperation."