



Refugee Council
of Australia

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HIGH COURT RULING A CRITICAL STEP TOWARDS FAIRER ASYLUM SYSTEM

Today's High Court ruling on Australia's offshore refugee status assessment process is a long-awaited and critical step towards a fairer and more rigorous system, the Refugee Council of Australia (RCOA) says.

The High Court of Australia ruled today that two Sri Lankan asylum seekers were denied procedural fairness in the review of their claims under the processing arrangements which apply to asylum seekers who enter Australia through excised offshore territory. In a unanimous decision, the High Court ruled that any review of a refugee status assessment must be bound by the provisions of the Migration Act and the decisions of Australian courts.

"The High Court has ruled that the offshore processing of asylum seekers cannot operate without regard to the principles of Australian law," RCOA chief executive officer Paul Power said. "When people acting on behalf of the government make errors in law or ignore procedural fairness in decisions which have a fundamental impact on the lives of others, it is critical that these decisions can be subject to external review.

"The main impact of this decision is to put all people seeking asylum in Australia on an equal footing. Both the mainland and offshore asylum processes will now be subject to judicial review in situations where an error in legal reasoning has occurred or where procedural fairness has been denied.

"Over the years, the additional scrutiny of the courts has been important in improving the effectiveness of Australia's mainland refugee status determination process. The High Court has ruled that this same scrutiny should also apply to the offshore process.

"Given the importance of the rule of law to Australian democracy and liberty, it would be difficult to argue against asylum seekers having the right to ask the courts to investigate decisions which are not legally sound. No fair-minded Australian would want to see people in need of protection being returned to situations of great danger and possible death because fundamental errors by decision makers could not be scrutinised independently.

"Sadly, the refugee determination process is dealing potentially with matters of life and death. The consequences of poor decision-making are dire.

"We urge the Australian Government not to legislate to undermine the impact of the High Court decision but to investigate how all refugee status assessment processes in Australia can be subject to the same high level of rigour and scrutiny."

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The Refugee Council of Australia represents
non-government organisations and
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in Australia and around the world