

# REFUGEE COUNCIL OF AUSTRALIA

INCORPORATED IN A.C.T. - ABN 87 956 673 083

37-47 ST JOHNS RD, GLEBE, NSW, 2037  
PO BOX 946, GLEBE, NSW, 2037  
TELEPHONE: (02) 9660 5300 • FAX: (02) 9660 5211  
info@refugeecouncil.org.au • www.refugeecouncil.org.au

## MEDIA RELEASE

13th August 2001

### MINISTER'S LEGISLATIVE AMENDMENTS THREATEN REFUGEE PROTECTION

Far from “restoring integrity to (the) Refugees Convention” as claimed by the Minister for Immigration in his press release, the legislative amendments announced today pose a significant threat to refugee protection and could undermine international support for refugees.

The right to seek and enjoy protection from persecution is a fundamental right enshrined in the Universal Declaration of Human Rights. The responsibilities of countries to provide protection are set out in the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) which Australia played an active role in drafting and ratified without reservation. “It would be a tragedy if 50 years down the track Australia were to take unilateral action that could lead to the unraveling of everything that has been put in place to protect some of the most vulnerable people on earth” said David Bitel, Refugee Council President.

“The loopholes the Minister claims to be concerned about are not loopholes but ways to protect people’s lives”, he continued.

Each of the proposed amendments is deeply flawed and counter to the spirit – and sometimes to the letter – of the Refugee Convention. The Refugee Council is particularly concerned about:

- efforts to narrow by inflexible legislation the commonly accepted and legally interpreted elements in the definition of a refugee. The meanings of the terms “persecution” and “serious harm” are not capable of precise, prescribed definition. The original drafters of the Convention intentionally left the definition wide enough to accommodate changing world circumstances;
- the failure of the proposed changes to recognise that persecutors might have more than one reason for inflicting harm on an individual and the mere fact that the “predominant motivation” is not Convention related does not necessarily mean that the person being harmed is not a refugee;

- the denial of fundamental freedoms we all take for granted – such as freedom of speech and association – to people seeking protection from regimes which do just this;
- imposing double penalties on people who commit minor offences: not only will these people have to undergo the punishment imposed by the Court, they will also be denied permanent status – and thus family reunion rights – for four years after the date of conviction;
- the removal of powers from decision makers to weigh up the significance they give to an applicant’s failure to give evidence on oath or affirmation;
- the Government’s failure to recognise that many genuine refugees are unable to travel through legitimate channels and might not have documents to prove their identity. Drawing adverse inferences from a person’s lack of identification runs counter to the intention and terms of the Convention and to UNHCR’s interpretive guidelines;
- the denial of second applications from a person previously covered by a family application: in many instances, particularly when applications are prepared in haste (as in the case of detention cases) or where applicants are unrepresented, it is usual to focus on the claims of the head of household. Much stronger claims for protection by the wife, children or other family members might, for valid reasons, go unarticulated. Denying these people the opportunity to present these claims at a later date could result in sending people back to countries where they could face death, imprisonment or gross violation of their rights in breach of Australia’s Convention obligations;
- the requirement that temporary protection visa holders must notify the Department of Immigration within 14 days of changing address can only be seen as an attempt to “catch people out” and thus to cancel their visas, send refugees back into detention and then deny them the possibility of applying for permanent residence. Further, this is an unacceptable level of intrusion into the personal lives of vulnerable people.

The proposed changes do nothing to bring credit to this country. They are a complete over-reaction to a set of circumstances that do not warrant anything like this response. Far from being a country of fairness and morality, Australia will be seen to be self-serving and mean spirited, not prepared to think beyond narrow parochial concerns.

“There are some who claim that the Convention needs amendment to make it relevant for the 21st Century. If the refugee protection regime is to be preserved, this can only be done collectively by the countries that have signed the Refugee Convention. In a democratic country governed by the rule of law, it can and must not be done by one country simply because the Minister does not always get the outcome he wants” Mr Bitel concluded.