



**UNHCR**

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

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Our code 13/MISC/006

Re: **EXAMINATION OF MIGRATION LEGISLATION AMENDMENT  
(REGIONAL PROCESSING AND OTHER MEASURES) ACT 2012  
AND RELATED BILLS AND INSTRUMENTS**

Dear Ms. Radcliffe,

Thank you for your letter of 14 January 2013 requesting a response to the question taken on notice on Monday 17 December 2012.

In response to Senator Thistlethwaite's question, I would like to provide the following comments.

UNHCR's preference has always been an arrangement which would enable all asylum-seekers arriving by boat into Australian territory to be processed in Australia. This would be consistent with general practice.

As a significant exception to this normal practice, arrangements to transfer asylum-seekers to another country should normally only be pursued as part of a burden-sharing arrangement to more fairly distribute responsibilities and enhance available protection space, and only when the appropriate protection safeguards are in place in the countries involved. We would expect that such safeguards should be set out in any formal arrangements between the transferring countries and that they be seen to be implemented, in practice.

At a minimum, these safeguards include:

- Full respect for the principle of *non-refoulement*;
- the right to asylum (involving a fair and accurate adjudication of claims);
- respect for the principles of family unity and best interests of the child;
- the right to reside lawfully in the territory until a durable solution is found;
- humane reception conditions, including protection against arbitrary detention;
- progressive access to Convention rights and adequate and dignified means of existence, with special emphasis on education, access to health care and a right to employment;

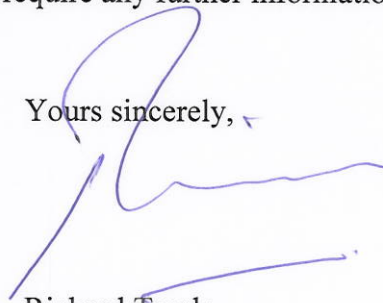
Ms. Jeanette Radcliffe  
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- special procedures for vulnerable individuals with clear pre-transfer assessments by qualified staff (including best interest determinations for children, especially unaccompanied and separated children) and support for victims of torture/trauma or suffering from disabilities (including aged/disabled); and,
- durable solutions for refugees within a reasonable period.

Following on-site visits to the processing centres in Nauru on 3-5 December 2012 and Manus Island, Papua New Guinea, on 15-17 January 2013, UNHCR has assessed that these fundamental protection safeguards are not fully or adequately in place in either location.

Please do not hesitate to contact me should you require any further information.

Yours sincerely,



Richard Towle