



Australian Government
**Department of Immigration and Multicultural
Affairs**

**The Senate Legal and Constitutional Legislation Committee's
inquiry into the provisions of the Migration Amendment
(Designated Unauthorised Arrivals) Bill 2006**

QUESTIONS ON NOTICE

**Public hearing
Sydney, Tuesday 6 June 2006**

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Committee questions

Deadline: Wednesday 7 June (close of business)

Q.1. Can the Department provide a copy of the 2005 health report? (see discussion p. 36 of Hansard)

Answer

No, the report was commissioned by the Minister and is therefore confidential.

Q.2. What date was the 2005 health report provided to the Minister? (see discussion p. 36 of Hansard)

Answer

October 2005.

Q.3. What date did the Minister commission the 2005 health report? (see discussion p. 36 of Hansard)

Answer

October 2005.

Q.4. What is the budgetary breakdown, per detainee, for the offshore processing centres? (see discussion pp. 38-39 of Hansard)

Answer

There is no budgetary breakdown of costs per Offshore Processing Centre resident.

Q.5. What is the number of children who have been returned to Afghanistan from Nauru? How does that figure compare with children returned to Afghanistan from onshore detention centres? What is the status (i.e. accompanied or unaccompanied) of children returned to Afghanistan from either Nauru or Australia? (see discussion p. 47 of Hansard).

Answer

20 minors returned voluntarily to Afghanistan from Nauru. 13 returned within their family unit (that is, they were accompanied by their parents or guardians) and seven returned voluntarily to be reunited with their immediate families. All voluntary returns were facilitated by the International Organization for Migration.

Senator Ludwig

Deadline: Wednesday 7 June (close of business)

Q.1. What definition of 'persecution' does the Department use?

Answer

When conducting refugee status assessments in offshore processing centres, the Department uses the same definition of persecution which is used for onshore protection visa decision making. This is the definition set down in international law, as interpreted by the Australian courts and in key elements of the definition which are codified in Section 91R of the *Migration Act 1958*. Section 91R is set out below.

Section 91R. Persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:
 - (a) that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution; and
 - (b) the persecution involves serious harm to the person; and
 - (c) the persecution involves systematic and discriminatory conduct.
- (2) Without limiting what is serious harm for the purposes of paragraph (1)(b), the following are instances of *serious harm* for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (3) For the purposes of the application of this Act and the regulations to a particular person:
 - (a) in determining whether the person has a well-founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol;
disregard any conduct engaged in by the person in Australia unless:
 - (b) the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol.

Senator Brown

Deadline: Wednesday 7 June (close of business)

Q.1. What are the rules, laws or guidelines used to process applications for refugees in Nauru or Manus Island?

Answer

Refugee status assessments conducted in the offshore processing centres are conducted in accordance with the administrative arrangements set down in the Onshore Protection Interim Processing Advice (OPIPA) No.16: Refugee Status Assessment Procedures For Unauthorised Arrivals Seeking Asylum On Excised Offshore Places And Persons Taken To Declared Countries. A copy of this advice is at Attachment A for your reference. Paragraph 20 of that document requires that the assessing officer is to consider and take into account the following reference material in making the refugee assessment:

- the Refugees Convention;
- the United Nations High Commissioner for Refugees (UNHCR) guidelines (Handbook) – copy at Attachment B;
- the *Migration Act 1958* and *Migration Regulations 1994* (including any relevant guidance on Convention interpretation introduced by MLAA6); and
- all other relevant information, including information and source material held by DIMA.

In addition to OPIPA No.16, other relevant information relied on in onshore and offshore decision making includes: the Refugee Law Guidelines (Attachment B); and issues papers (copies attached) which are also sent to the Refugee Review Tribunal for consideration.

Assessing officers in the offshore process are trained protection visa decision makers, experienced in assessing refugee status. The source material to which these officers have access includes the Department's country information holdings maintained for onshore protection visa decision making.

Q.2. How do these rules, laws or guidelines differ from those applying to processing of refugees in Australia?

Answer

The test for assessing refugee status is essentially the same onshore and offshore.

Arrangements for decision making differ in that, in Australia, decisions about refugee status are made as a component of a broader decision about whether a person qualifies for the grant of a protection visa. This onshore visa decision incorporates a range of technical and legal considerations, such as whether a visa application has been validly made and whether health and character requirements have also been met. In the offshore refugee process, the assessment focuses on the issue of whether the person is a refugee under the Refugees

Convention, without having to deal with the range of other technical criteria which need to be taken into account in assessing whether the person qualifies for a protection visa. If a person found to be a refugee is to be considered for resettlement to Australia from an offshore processing centre, there is a separate decision-making process on an application for an offshore humanitarian visa.

The offshore refugee determination process incorporates arrangements at review stage to identify possible non-Refugees Convention related reasons for providing protection to an individual. For example, paragraphs 38, 39 and 40 of the Onshore Protection Interim Processing Advice (OPIPA) No.16: *Refugee Status Assessment Procedures For Unauthorised Arrivals Seeking Asylum On Excised Offshore Places And Persons Taken To Declared Countries* (as above, see [Attachment A](#)) set out arrangements to identify possible international obligations under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR), as well as possible humanitarian issues such as family links with Australia. None of these considerations is included in the decision on whether a person in Australia is eligible for a protection visa.

The offshore refugee determination arrangements are less formal than those applying onshore - with consequent greater reliance on face-to-face, oral interaction with the asylum seeker. By comparison the onshore process is more heavily reliant on documentation of claims by, and written communications with, the applicant.

In the offshore processing arrangements, the Department can at any time reopen and reconsider cases previously found not to be refugees, if there are significant changes to the individual's claims or in the home country (paragraphs 50 and 51 of the OPIPA, refer). In the onshore process, a person who is conclusively found not to be eligible for a protection visa is unable to make a further application for a protection visa if there are changes in circumstances, unless the Minister uses a personal, non-compellable power to allow this to occur.

Q.3. Will you provide the rules, laws or guidelines used to guide DIMA officials on Nauru or Manus Island? If not, why not?

Answer

Yes. Copies of the documentation identified in the response to question 1 from Senator Brown are attached.

A copy of the UNHCR Handbook is at [Attachment B](#), and can also be accessed at:

<http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=PUBL&id=3d58e13b4>

A copy of The Refugees Convention and Protocol is at [Attachment C](#) and can be viewed at:

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3b66c2aa10>

The *Migration Act 1958* and *Migration Regulations 1994* are available at www.comlaw.gov.au. The most relevant sections for offshore refugee assessments are sections 91R and 91S of the Migration Act. Section 91R is provided in the text of the answer to the question by Senator Ludwig. The text of section 91S is reproduced below.

Section 91S Membership of a particular social group

For the purposes of the application of this Act and the regulations to a particular person (the *first person*), in determining whether the first person has a well-founded fear of being persecuted for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol; and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or
 - (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Senator Nettle

Questions provided in the Appendix to the *Australian Lawyers for Human Rights* submission to the inquiry (submission No.78, pp. 33-36).

Deadline: Friday 9 June

RATIONALE FOR THE LEGISLATION

Q.1. Given there is no likely wave of asylum seekers, what is the rationale for this legislation coming now?

Answer

See response to question 10 on notice from 26 May.

Q.2. Does the Government consider asylum seekers who approach Australia directly (ie as a country of first asylum with no transit countries) differently to secondary movers? How?

Answer

The current legislative arrangements and that proposed in the Bill make no distinction between an asylum seeker coming directly or secondary movers in terms of reception arrangements or access to effective refugee status determination processes.

Q.3. Is the Government's desired outcome from the passage of this legislation that those in West Papua get the message that they are not welcome and therefore do not come to Australia?

Answer

The proposed legislation will apply irrespective of nationality or country of origin. See also the department's response to question 10 on notice from 26 May.

Q.4. If a person from West Papua wished to apply for asylum in Australia how would you suggest they do so?

Answer

See response to question 21 and 22 on notice from 26 May.

Q.5. If the Government is committed to an outcome where no West Papuan is granted asylum on Australian shores, then what will be its response if a West Papuan arrives by air using false documents? (We think it can be safely assumed that Australia will not actually grant a visitors visa to anyone from the province).

Answer

Any person who arrives at an Australian airport with false travel documents will be refused immigration clearance. At this point they would be unlawful and subject to

detention. If during this process the person raises claims or information which prima facie may engage Australia's protection obligations, they are provided with publicly funded migration agent assistance and visa application forms in order to pursue claims for protection in Australia. Whilst the visa application is being processed, the person would generally remain in immigration detention.

These arrangements apply irrespective of the nationality or place of origin of the person.

IF WEST PAPUANS CANNOT SEEK ASYLUM IN AUSTRALIA, WHAT THEN?

Q.6. If persons from West Papua should not apply for asylum in Australia what should they do? Go to PNG?

Answer

See response to question 21 and 22 on notice from 26 May and the reply by Mr Hughes at the 6 June hearing (Hansard L&C 6 June 2006, page 46).

Q.7. For the last two decades, Papua New Guinea has tolerated virtually uncontrolled border crossings from West Papua. The Port Moresby office of the UNHCR is monitoring a “population of concern” of over 8000 people in Papua New Guinea. On the latest available figures, this includes 7627 refugees and another 198 asylum seekers whose cases are being processed. Half of this refugee group are children under the age of 18. According to UNHCR, by early 2005 there were 2677 West Papuans at the East Awin camp in Western Province, 138 “stateless persons” in Daru, Western Province, another 5400 people dispersed in five unofficial camps along the border, and a handful of refugees in other urban centres¹. Does Australia expect PNG to keep its borders open and accept all West Papuan refugees in future?

Answer

This is a matter for the PNG Government.

Q.8. What does PNG think about Australia deciding that West Papuan asylum seekers should all go to PNG?

Answer

The Australian Government has not decided this. Papuan asylum seekers in PNG are a matter for the PNG Government.

DISCRIMINATION

Q.9. Does the Government acknowledge that recognition of a person’s refugee status is a neutral, humanitarian and non-political act, as is constantly reaffirmed by UNHCR and 1951 Refugee Convention signatory states? If not, why not?

¹ N.Maclellan *West Papua’s forgotten asylum seekers*, 13 April 2006, available online at www.apo.org.au

Answer

Yes. This is the approach consistently followed in Australia's refugee assessment processes in Australia and in the offshore processing centres.

Q.10. Does the Government acknowledge that it should uphold its refugee protection obligations regardless of an asylum seeker's country of origin? If not, why not?

Answer

Yes.

Q.11. Does the Government consider it appropriate for other State parties to the 1951 Refugee Convention to amend their asylum processes so as to exclude particular ethnic or racial groups from accessing these processes? If not, why not?

Answer

Not appropriate for the Department to comment on the appropriateness of other Government's policies.

DISCREPANCIES BETWEEN AUSTRALIAN ACTIONS AND EXPECTATIONS

Q.12. Is the Government aware that the overwhelming majority of refugee movements around the world are unauthorised border crossings?

Answer

The Department does not have comprehensive information on the legal basis on which current world refugee populations originally crossed borders into asylum countries.

Q.13. Does the Government recognize that refugees seeking asylum often have no choice than to enter a country by crossing a border without authorization?

Answer

Yes.

Q.14. Does the Government acknowledge that its offshore program (whereby refugees in foreign countries are resettled to Australia) depends upon other States permitting un-authorised border crossings into their territories, and a willingness to host refugee populations pending a durable solution? If not, why not?

Answer

No. The offshore program depends on States not refouling asylum seekers who present themselves at or within their borders, and a willingness to arrange support for such people pending an assessment of their claims and access to a durable solution for those found to be refugees. This may or may not involve the State in question permitting asylum seekers to enter its territory or the hosting of populations in its territory.

Q.15. If so, does the Government recognize that Australia is requiring other countries to act one way, permitting unauthorised border crossings, while exempting itself from the same obligations?

Answer

There is no double standard. There is no entitlement for an asylum seeker to select the country in which their claims will be assessed or in which protection will be provided if they are refugees. Australia's arrangements to have some asylum seekers processed in another country are consistent with our international obligations. Other countries are able under the Refugees Convention to make similar arrangements for the protection of refugees arriving at their border.

INTERCEPTION

Q.16. Where does the Government plan to intercept West Papuan asylum seekers? In Indonesian waters? On the High Seas? In Australian territorial waters?

Answer

Australia has no authority to conduct intercept operations in Indonesian waters. International law would severely limit the ability to intercept a vessel on the high seas. Australia is able to intercept a vessel in Australian or the adjacent Contiguous Zone in certain conditions which are defined by legislation.

Q.17. Whether or not any asylum seekers are actually transported for processing in Nauru or Manus, or are forcibly returned to West Papua, depends upon what happens at the point of interception. What will be the instructions to Australian navy and customs personnel if they encounter a boat on the open water? Will we model some of the appalling practices used in the Mediterranean and by the US in relation to Haitian boat people?

Answer

Any instruction would be to operate in accordance with international or Australian law as appropriate at all times.

Q.18. How will the Indonesian navy respond to whichever course of action is decided on? How likely are joint Australian/Indonesian exercises? If this was a joint exercise how would the response at the point of interception be different?

Answer

We have consulted with the Department of Defence and this is a question more appropriately directed to that department.

Q.19. Does the Government have any concerns about working with the Indonesian Government to intercept asylum seekers from West Papua?

Answer

See response to question 20 on notice from 26 May.

QUESTIONS REGARDING THE AUSTRALIAN GOVERNMENT OFFSHORE PROGRAM

Q.20. Does the Government acknowledge that the majority of countries of first asylum (upon which the Australian offshore program depends) are developing countries? And that the numbers of asylum seekers and refugees in these countries are often in the tens and hundreds of thousands? If not, why not?

Answer

Yes.

Q.21. Does the Government acknowledge that the number of countries of first asylum where asylum seekers can access the offshore program is limited? Is the Government prepared to provide a list of the countries of first asylum where persons access the Australian offshore program, the numbers of persons and the countries of first asylum from where they were accepted for resettlement to Australia? Can the Government provide the total numbers of refugees currently living in each of these countries of first asylum?

Answer

Refugees enter the international protection arrangements by approaching UNHCR or authorities of the country in which they are present. Access to Australia's offshore Humanitarian Programme by refugees is usually through referral from UNHCR after that agency had assessed the person to be a refugee and has concluded that resettlement is the appropriate durable solution for the particular individual. The durable solutions are voluntary repatriation in conditions of safety and dignity, local integration or resettlement in a third country. It is not necessary that there be an Australian mission in the relevant country.

The geographic and nationality focus of the annual Australian Humanitarian Programme is decided in consultation with UNHCR and reflects priorities set by UNHCR for the use of the finite number of resettlement places available worldwide. International resettlement efforts, including by Australia, are focussed on the particular caseloads in greatest need of resettlement as distinct from other durable solutions. As a result the Australian Humanitarian Programme can potentially resettle refugees from any part of the world depending on those judgements on relative need for a resettlement outcome.

In addition, any non-citizen outside Australia may make an application direct to Australia for a class XB Refugee and Humanitarian visa from any country. Application forms can be obtained by visiting, writing to or telephoning a DIMA office or Australian overseas mission. They are also available from the Department of Immigration and Multicultural Affairs' website. When completed, applications can be lodged by mail or in person.

A list of countries and numbers of persons resettled under the Humanitarian Programme over the past 6 years is attached.

Statistics on the total numbers of refugees currently living in countries of first asylum may be found in UNHCR publication 2004 Global Refugee Trends. A copy of this

can be viewed at:

<http://www.unhcr.org/cgi-bin/texis/vtx/events/opendoc.pdf?tbl=STATISTICS&id=42b283744>

A relevant extract is also attached.

Q.22. Where is the “queue” that the West Papuan asylum-seekers should have joined?

Answer

Any non-citizen outside Australia may make an application for a class XB Refugee and Humanitarian visa. The application will be considered on its merits for a resettlement place in the annual Humanitarian Programme.

NON-REFOULEMENT

Q.23. Does the Government consider that it has *non-refoulement* obligations under international refugee law towards persons who reach Australian territorial waters and wish to seek asylum? If not why not?

Answer

The Government has *non refoulement* obligations under the Refugees Convention to persons in Australian territory.

Q.24. Does the Government consider that it has *non-refoulement* obligations under international refugee law towards persons who are picked up/ intercepted by Australian vessels (in the context that the Tampa was a Norwegian vessel) and wish to seek asylum? If not why not?

Answer

The arrangements put in place by Australia have ensured that the principle of *non refoulement* has been upheld in the offshore processing centres irrespective of whether a person has landed on Australian territory.

TREATMENT OF PERSONS IN OFFSHORE PROCESSING CENTRES

Q.25. Does the Government consider that it retains 'effective control' over the populations intercepted, transferred and subsequently detained on Nauru and Manus Island?

Answer

The Australian Government has ‘effective control’ over any interception and transfer of persons to Nauru or Manus Island. The Government does not have effective control over such persons on Nauru or Manus, in the sense of controlling every day to day activity affecting them, given that they are within the territory of another State.

Q.26. If so, does the Government acknowledge that it remains legally accountable for human rights violations taking place extra-territorially?

Answer

No. Responsibility rests with the country concerned but the Minister, before declaring a country under subsection 198A(3) of the *Migration Act 1958* would need to be satisfied that it meets human rights standards in providing protection.

Q.27. If not, who does? And are they then bound by the same human rights standards as the Australian Government?

Answer

Human rights standards apply to all States parties to relevant Conventions (subject to relevant reservations). Some countries may not be States parties to all of the Conventions that Australia is a signatory to, but may otherwise meet international human rights standards in practice.

Q.28. How does the Government ensure that the human rights of persons outside Australian territory but under Australia's effective control are respected, protected and fulfilled under the 1951 Refugee Convention, and other international human rights treaties to which Australia is a State Party (ICERD, ICCPR, ICESCR, CRC, CEDAW, and CAT)?

Answer

Persons in Nauru (or PNG) are not under the effective control of Australia in terms of their day to day management and dealings with the Government of Nauru (or PNG). See also the answer to Question 32. The Minister, before declaring a country under subsection 198A(3) of the *Migration Act 1958* would need to be satisfied that it meets human rights standards in providing protection.

Q.29. Papua New Guinea is not party to the ICCPR, ICESCR, or CAT. What measures does Australia have in place to ensure that effective remedies are available in the event of violations of provisions of these instruments? What are those remedies? How are they given effect? How is the existence of the rights and availability of the remedies communicated to detainees?

Answer

See answers to Questions 28, 31 and 32.

Q.30. Nauru is party to the CRC and has signed but not ratified a number of other human rights instruments. It is not party to the Refugee Convention. What measures does Australia have in place to ensure that effective remedies are available in the event of violations of provisions of these instruments? What are those remedies? How are they given effect?

Answer

See answers to Questions 28, 31 and 32.

Q.31. How is the existence of the rights and availability of the remedies communicated to detainees?

Answer

There is no formal process for communicating advice regarding rights and remedies. However, regular meetings are held with designated unauthorised arrival / transitory person representatives, IOM and DIMA where any issues of concern can be raised.

Q.32. How does Australia ensure that there is monitoring, reporting and action taken on any breaches of the above mentioned human rights standards? Who will do this?

Answer

Any individual who claims that his or her human rights have been violated by Australia has the right to make a complaint to the appropriate United Nations authority. However, regular meetings are held with designated unauthorised arrival / transitory person representatives, IOM and DIMA, where any issues of concern can be raised. At these regular meetings the unauthorised arrival / transitory person representatives at the Offshore Processing Centre (OPC) can request a face to face meeting with a DIMA official and matters can be discussed and resolved where possible. Any OPC resident can request a meeting with the DIMA official in Nauru, where issues regarding OPC services can be raised in private.

Q.33. If those rights are not given due recognition and respect, what arrangements does the Government have in place for taking back those whom it has exposed to human rights violations or abuses?

Answer

The Government would make appropriate arrangements were this situation to arise.

DETENTION

Q.34. The Government has stated it does not detain children and has claimed that all asylum seeker children have been released from detention. How does the Government plan to reconcile this current bill with the policy that asylum seeker children should not be detained?

Answer

No person in an offshore processing centre will be detained. This includes asylum seeker women and children.

Q.35. Does the Government acknowledge the damage detention can cause to vulnerable persons, in particular children? What measures does the Government have in place for alternatives to detention in 'declared countries'?

Answer

Conditions of residence in a declared country will be determined by that country. No asylum seeker will be detained in Nauru but may have visa conditions setting out where they reside. There will be special measures for women and children as there have been in the past, but with a move to residential style accommodation for women children and families.

Also, see response to Question 17 on notice from 26 May, oral evidence to the Committee by the Department on 6 June (Hansard L&C, pages 32-33) and answers to questions on notice by Senator Brown arising from that hearing.

REFUGEE STATUS DETERMINATION

Q.36. Who will be performing the RSD processing? If DIMA, what law and standards will it apply?

Answer

See response to question 17 on notice from 26 May, oral evidence to the Committee by the Department on 6 June (Hansard L&C, pages 32-33) and answers to questions on notice by Senator Brown arising from that hearing.

Q.37. Will asylum seekers be given access to legal advice? If not why not?

Answer

Refer to response by Mr Hughes at 26 May and 6 June hearing (Hansard L&C 26 May, pages 59-60; Hansard L&C 6 June, page 31). Whether publicly funded advice is provided is a matter for Government to decide.

Q.38. Will asylum seekers be given access to up to date country of origin information?

Answer

Refugee status decision makers in the offshore process will have access to the up to date country of origin information holdings maintained by DIMA for use in assessing onshore protection visa applications. As at 7 June 2006 this includes over 112,000 electronic documents and over 8,000 hardcopy human rights publications. Where personal adverse information is relevant to the decision, this will be disclosed to the asylum seeker and they will have an opportunity to comment on it.

Q.39. Will asylum seekers be able to apply for derivative status?

Answer

No. The concept that family members of a refugee are refugees automatically is not supported by the Refugees Convention and is not applied by Australia.

Q.40. What is the rationale for denying offshore asylum seekers access to fair and effective merits and judicial review procedures?

Answer

The offshore arrangements ensure all asylum seekers have access to a fair and effective refugee status determination process, including merits review. This refugee status determination process meets the UNHCR Executive Committee's non binding guidance on recommended features for refugee status assessment processes.

In relation to review, this guidance recommends that if the applicant is not recognised as a refugee: "he should be given a reasonable time to appeal for a formal

reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system" (Conclusion no. 8(e)(vi)).

RAMIFICATIONS INTERNATIONALLY OF THIS LEGISLATION

Q.41. Does the Government acknowledge that other countries might adopt the Australian model of offshore processing? If not why not?

Answer

It is possible that other countries might adopt the Australian approach to offshore processing or the approaches already used or mooted by other countries. That is a matter for judgement by those countries.

Q.42. Does the Government acknowledge that if other countries adopted the Australian model, the offshore processing centres could be located in countries with very poor human rights records? If not why not?

Answer

No. The Australian model builds in statutory safeguards at section 198A of the Migration Act to ensure the protection of human rights is a criterion in the Minister's declaration of the country.

Q.43. Does the Government acknowledge that if other countries adopted the Australian model, this might include denying access by media or human rights groups to such centres? If not why not?

Answer

The access provided by a declared country to the asylum seekers they host is a matter for that country and the asylum seekers concerned.

Q.44. Does the Government acknowledge that if other countries adopted the Australian model, the international system of protection will be undermined? If not why not?

Answer

No. Individual Convention signatory countries, in implementing the Refugees Convention, can choose to respond to special circumstances in their own way provided asylum seekers have access to determination procedures and protection against refoulement if found to be refugees. It is hypothetical to analyse an extension worldwide of the model of the government's approach to unauthorised sea arrivals by other countries. However, such an approach to unauthorised sea arrivals by other countries would provide basic Convention safeguards and would ultimately result in protection and durable solutions for refugees, though not necessarily in the preferred country of destination.

Q.45. How does the Government propose to deal with these ramifications?

Answer

No. Australia's offshore processing arrangements provide strong guarantees that asylum seekers arriving at our borders without authority will be kept safe and will have access to effective refugee assessment processes and to protection against *refoulement* if they are refugees.

RESETTLEMENT AND INTERNATIONAL BURDEN SHARING

Q.46. Does the Government acknowledge that as a good international citizen, a member of the international community, and as a signatory to the Refugee Convention it has international burden and responsibility sharing obligations within the international refugee context? If not, why not?

Answer

Yes. Australian Government has continued to be involved in responsibility sharing for over 60 years through resettlement of over 660,000 people in Australia on a humanitarian basis.

Q.47. Does the Government commit to resettling in Australia refugees recognised through the Australian offshore processing program in 'declared countries'? If not, how does the Government reconcile this with its international burden and responsibility sharing responsibilities?

Answer

Australia's approach to unauthorised arrivals will continue to reflect our commitment to our international protection obligations. Unauthorised boat arrivals found to be refugees will remain offshore until resettlement is arranged and this could include resettlement to Australia.

Q.48. If recognised refugees are not going to be resettled in Australia, where does the Government propose they should go?

Answer

There are ten countries worldwide, including Australia, which regularly participate in the resettlement of refugees. Over a thousand Offshore Processing Centre residents have already been resettled in Australia and other countries with UNHCR or DIMA assistance or on their own initiative. Any new Offshore Processing Centre residents would be managed in a similar way.

Q.49. Does the Government commit to a maximum detention time for persons recognised as refugees and accepted for resettlement in Australia prior to their resettlement?

Answer

Australia will be making every effort to secure a durable solution for refugees as quickly as possible. Under current arrangements, the duration of Offshore Processing

Centre residents' stay will depend on the circumstances at the time. It should be noted that, as at 17 May 2006, 41% had spent less than 12 months in OPCs and 81% less than 24 months. This includes the time taken to assess and decide any refugee claims and to identify and implement resettlement or other departure arrangements.

Q.50. Does the Government foresee any problems with asking third countries to accept refugees recognised through the Australian off shore processing program? How will these be addressed?

Answer

No. See response to 48.

ENSURING THE PLACE WHERE PROCESSING TAKES PLACE WILL ACCORD EFFECTIVE PROTECTION

Q.51. Will the Minister's declaration that a country is appropriate for processing (a "declared country") be transparent and will the process and reasoning be made publicly available? If so how? If not, why not?

Answer

The criteria for the Minister's declaration are specified in section 198A(3) of the *Migration Act 1958*. See response to question 13 on notice from 26 May.

Q.52. Can the Minister's "declaration" of a country for processing be reviewed by a court? If so, how? If not, why not?

Answer

See response to question 16 on notice from 26 May.

Q.53. The UNHCR has created a list of criteria when designating a safe third country or where countries may be considered to accord effective protection. Why has the Government not incorporated these requirements into the process of assessing whether a country should be "declared country"?

Answer

The concept of "effective protection" has been a matter of discussion between UNHCR and States for a considerable period and no consensus has been reached on the matter. In our view, it is important to closely examine a State's practice in dealing with asylum seekers and refugees in determining whether a country provides effective protection. Whether a country is a party to the Refugees Convention is not necessarily indicative as to whether effective protection is available in that country.

See response to question 10 on notice from 26 May.