

National Human Rights Consultation Submission

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Submission Text:

For 10 years HREOC, the UN working party, the Senate, lawyers, courts, judges and others have pointed out that it is not illegal to enter Australia without a visa and seek refugee protection yet we still have the new government, the media and others maintain that asylum seekers have entered "illegally"

As Merkel points out in Al Masri the refugee convention is enacted in our migration act but we still ignore it.

Would have a bill of rights protect the rights of asylum seekers as they have no protection now.

[http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2002/1009.html?query=title\(al%20masri\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2002/1009.html?query=title(al%20masri))

60 In any event, while it is literally correct to describe the applicant as an "unlawful" entrant and an "unlawful non-citizen" that is not a complete description of his position. The nomenclature adopted under the Act provides for the description of persons as "unlawful non-citizens" because they arrived in Australia without a visa. This does not fully explain their status in Australian law as such persons are on-shore applicants for protection visas on the basis that they are refugees under the Refugees Convention.

61 The Refugees Convention is a part of conventional international law that has been given legislative effect in Australia: see ss 36 and 65 of the Act. It has always been fundamental to the operation of the Refugees Convention that many applicants for refugee status will, of necessity, have left their countries of nationality unlawfully and therefore, of necessity, will have entered the country in which they seek asylum unlawfully. Jews seeking refuge from war-torn Europe, Tutsis seeking refuge from Rwanda, Kurds seeking refuge from Iraq, Hazaras seeking refuge from the Taliban in Afghanistan and many others, may also be called "unlawful non-citizens" in the countries in which they seek asylum. Such a description, however, conceals, rather than reveals, their lawful entitlement under conventional international law since the early 1950's (which has been enacted into Australian law) to claim refugee status as persons who are "unlawfully" in the country in which the asylum application is made.

62 The Refugees Convention implicitly requires that, generally, the signatory countries process applications for refugee status of on-shore applicants irrespective of the legality of their arrival, or continued presence, in that country: see Art 31. That right is not only conferred upon them under international law but is also recognised by the Act (see s 36) and the Migration Regulations 1994 (Cth) which do not require lawful arrival or presence as a criterion for a protection visa. If the position were otherwise many of the protection obligations undertaken by signatories to the Refugees Convention, including Australia, would be undermined and ultimately rendered nugatory.

63 Notwithstanding that the applicant is an "unlawful non-citizen" under the Act who entered Australia unlawfully and has had his application for a protection visa refused, in making that application he was exercising a "right" conferred upon him under Australian law. As he is entitled to do under the Act, the applicant has now requested his removal and the Minister is obliged to remove him but, in the circumstances of the present case, the Minister is no longer entitled to detain the applicant pending his removal.