

## A Rights Based Approach to Asylum Seeker and Refugee Policy

1. Australia's policies towards asylum seekers and refugees should at all times reflect respect and decency, consistent with Australia's proud history as a tolerant, compassionate and multicultural nation and in recognition of the role migrants from all over the world have contributed to our country.
2. Congress recognises refugees and asylum seekers are among the world's most vulnerable people. As a signatory to the *United Nations Convention Relating to the Status of Refugees*, Australia has an obligation to protect the human rights of all asylum seekers and refugees arriving in Australia, regardless of the manner in which they arrived and the country of origin.
3. While we have applauded moves towards a more decent and humane immigration detention policy, consistent with the human rights standards which Australia has developed and endorsed, more needs to be done. Government must honour its moral and legal commitments and develop policies and programs for the treatment of asylum seekers, including their families and children, which ensure that among other basic human rights, the education, health and developmental needs of all asylum seekers, refugees and their children, many of whom have suffered severe physical and mental trauma, are met.
4. Under international human rights law, asylum seekers arriving by boat are not illegal and Australia is required to ensure that claims of arrivals seeking protection are assessed in accordance with the United Nations (UN) Refugee Convention.
5. We do not accept the use of the term 'queue jumpers' when referring to asylum seekers that arrive by boat. Their claim is no less genuine than those accepted through the UN resettlement program. A refugee is someone that has fled their home country and is seeking protection, thus the process of assessing asylum claims in-country is standard practice. The use of the term 'queue' inaccurately characterises the UN process for refugee resettlement, which is not on a time basis but on a needs basis, and needs fluctuate and are continually re-assessed. As such, Australia should immediately reverse the policy imposed by the Howard government that links the quotas on onshore arrivals to other classes of visa, including those resettled from overseas via the UN.
6. Australia has the capacity and international responsibility to take both refugees that arrive in Australia seeking asylum and those identified through the UN resettlement system. Currently Australia takes fewer refugees than comparable

developed countries. ACTU Congress believes that Australia should increase its intake of refugees to meet the levels received by similar countries internationally.

7. Congress opposes with concern, the ongoing and indefinite detention of large numbers of asylum seekers and refugees, including children. This approach is inconsistent with the practice of most receiving countries, with Australia one of a small group of nations to use mandatory detention. Health, identity and security check processes can and should be undertaken without mandatory detention as happens in most other recipient nations. In the immediate term, priority should be given to identifying any risks and moving asylum seekers for whom no risk is identified out of detention as quickly as possible and placed in the community whilst waiting for a decision.
8. The ACTU Congress calls for a decent, humane refugee policy, respect for the human rights of refugees and asylum seekers and an end to 'off-shore solutions' which breach Australia's international obligations under the UN Refugee Convention. The excision of Australian territory from the effect of the Migration Act has been used to administer two systems to process asylum seekers – one for those who arrive on-shore and another for those intercepted at sea or who arrive at excised places such as Christmas Island. The off-shore processing system of asylum seekers on Christmas Island is discriminatory, and lacks transparency and independent oversight.
9. We do not accept the removal of asylum seekers from Australian territory for processing in a third country.
10. With respect to children, it is incumbent that the Government ensure that Australia complies with the *Convention on the Rights of the Child*. The welfare and rights of children of asylum seekers and unaccompanied minors are to be protected. The right to an education must be upheld.
11. We note the limited financial assistance provided to asylum seekers awaiting a decision on their refugee claim and call on adequate assistance to be provided. Changes which now grant permission to work to some visa applicants are welcome. However, we note that these changes mainly affect asylum seekers released from mandatory detention into the community on Bridging Visa E. Asylum seekers in community detention, those undergoing a judicial or Ministerial review, or those who arrived by plane on a visa without work rights, are still restricted from the right to work. This makes it difficult for families to cover basic costs, increasing the dependence of already vulnerable asylum seekers on support from resource-stretched non-profit organisations. Congress calls for the expansion of the right to work to all asylum seekers in community detention or released into the community, to allow them to support their families and to have the protection of their work rights under Australian industrial laws.
12. Australian trade unions call for international action to achieve peace, sustainable development and decent work for all to address the push factors which cause people to flee their home countries. The goal should be to minimise the need for people to flee their home country due to conflict. Congress notes that the majority of recent asylum seekers arriving to Australia

originate from parts of the world most affected by violent conflict and high levels of poverty, including Iraq, Burma, Afghanistan, Sri Lanka and Bhutan.

13. Congress notes that refugees in Australia often represent the most disadvantaged groups in their workplaces and the broader community. Congress encourages affiliates to resource organising and outreach programs for refugee communities in Australia.
14. Congress notes that companies are using the exclusion of Australian territory from the Migration Act to reduce conditions for offshore workers in those areas. Congress calls on government to abolish these exclusions and to create one transparent and accountable system for processing the applications of all asylum seekers and workers in Australia.
15. Congress opposes the forcible deportation of asylum seekers. In numerous past cases, such removal has resulted in imprisonment, torture, and in some cases, death. The ACTU joins with civil society organisations in expressing grave concern about the Memorandum of Understanding between the Australian and Afghan governments that would allow involuntary removals to Afghanistan. Furthermore, the ACTU will coordinate a union response to the issue of the forced removal of asylum seekers.
16. Congress notes that current procedures surrounding ASIO security assessments are not transparent and can lead to indefinite detention, despite individuals having been granted refugee status. Congress calls for such assessments to be made reviewable.