

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

### Developments since Congress 2009

Australia's Humanitarian Program consists of two components:

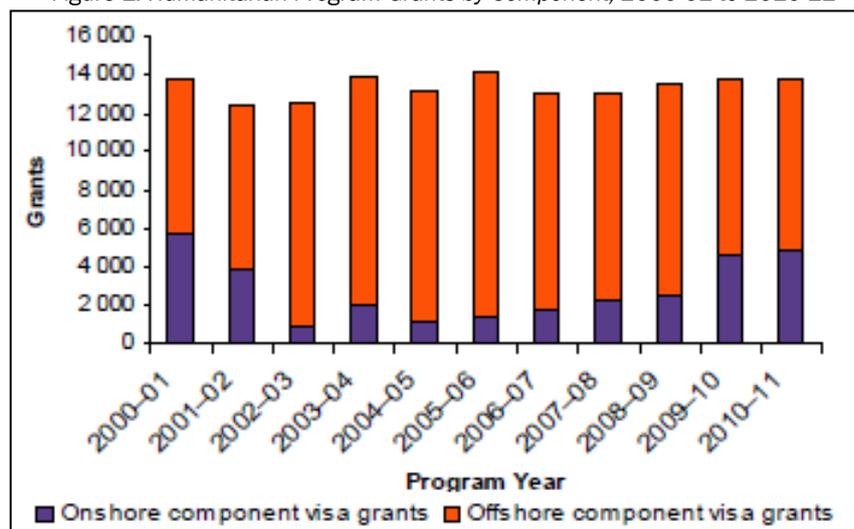
- Resettlement for people outside Australia in need of humanitarian assistance (offshore);
- Protection for people already in Australia who are found to be refugees (onshore).

In 2010-11, 13,799 visas were granted under the Humanitarian Program:

- 8,971 visas granted under the offshore component;
- 4,828 under the onshore component.

The greater percentage of refugees received under the offshore program has been consistent since 2000. In 2010-11, the top 10 countries of birth for offshore grants were Iraq, Burma, Afghanistan, Bhutan, Congo (DRC), Ethiopia, Sri Lanka, Iran, Sudan and Somalia. The top ten countries of birth for onshore grants were Afghanistan, Iran, Stateless, Iraq, Sri Lanka, China, Pakistan, Zimbabwe, Egypt and Fiji.

Figure 1: Humanitarian Program Grants by Component, 2000-01 to 2010-11



In April 2009 and December 2010, two boats of asylum seekers foundered off the coast of Ashmore Reef and Christmas Island, respectively. In the first accident over 44 people were injured and 5 asylum seekers lost their lives. In the 2010 incident, up to 50 asylum seekers were believed to have drowned in the accident. Both accidents

contributed to a broader national debate – already divisive and politicised – on the appropriate policy response to asylum seekers arriving in Australia.

In May 2011, the Government announced plans for a cooperative transfer arrangement with Malaysia that would see asylum seekers arriving by sea in Australia transferred to Malaysia. The stated intention of the arrangement was to undermine the ‘business model’ of people smugglers, and hence reduce the number of asylum seekers embarking on dangerous sea travel to Australia. The core elements of the arrangement were:

- 800 persons arriving by boat would be transferred to Malaysia for refugee status determination; and
- Over 4 years, Australia would resettle 4,000 refugees currently residing in Malaysia

A High Court ruling in August found the proposed Malaysia solution to be illegal.

## Key Issues

An asylum seeker is a person who has sought international protection and whose claim for refugee status has not been determined yet.

A refugee is someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality, and is unable to, or owing to such fear, is unwilling to avail themselves of the protection of that country or return there because there is a fear of persecution.

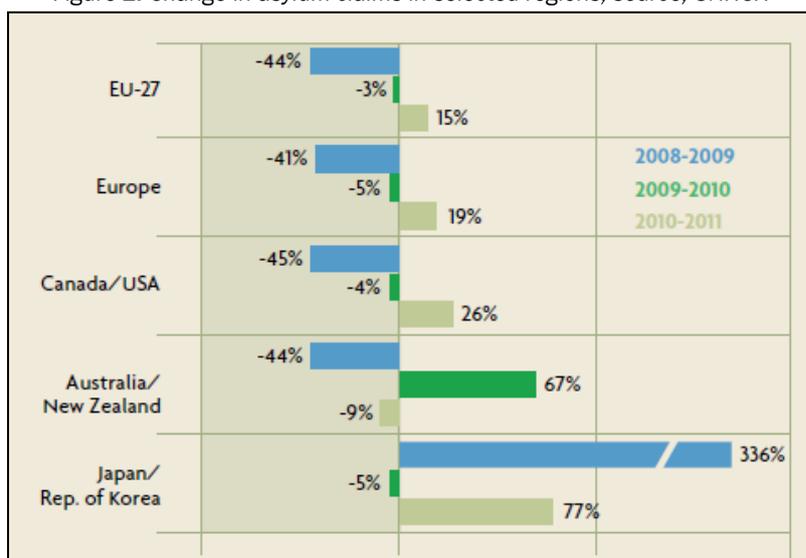
The right to seek asylum from persecution is found in the *Universal Declaration of Human Rights*. The *United Nations Convention on Refugees* is the key legal document in defining who is a refugee, their rights and the legal obligations of states. Australia ratified the Convention in 1954. As a signatory to the Convention, Australia is required to:

- Not return a refugee to a country where he or she faces serious threats to his/her life or freedom;
- Not expel any person seeking asylum except under certain, strictly defined conditions;
- Not punish asylum seekers for entry into the territory of the receiving country; and
- Uphold the right to work, housing, education, assistance, freedom of religion, access to the courts, freedom of movement, and the issue of identity and travel documents.

There are approximately 44 million forcibly displaced people worldwide. Of these, 15.4 million are classified as refugees and over 800 000 are asylum seekers.

In 2011, an estimated 441,300 new asylum applications were registered across industrialised countries, the highest level of applications since 2003 when 505,000 asylum applications were lodged in industrialised countries.

Figure 2: Change in asylum claims in selected regions, source, UNHCR



While the number of claims increased globally in 2011, the number of asylum seekers seeking refuge in Australia decreased by nine per cent (from 13,000 to 11,800 claims). It was the first decrease in six years and was due to fewer asylum seekers arriving by boat.

Three quarters of the world's refugees reside in countries neighbouring their country of origin, and in the majority of cases this is a developing country. For example, in 2008, Pakistan was host to over 1.7 million refugees and asylum seekers. The United Nations High Commission for Refugees (UNHCR) estimates that only 16% of the world's refugees seek assistance outside their region of origin.

In 2010, Australia was ranked third in the top five UNHCR resettlement countries (i.e. Australia's offshore program). The top five countries were the United States (71,400), Canada (12,100), Australia (8,500), Sweden (1,800) and Norway (1,100).

When compared to other industrialised countries (see Figure 3) receiving asylum seeker claims, Australia ranks thirteen. The top five receiving countries of asylum claims together accounted for 53% of all asylum claims received in 2011.

Figure 3: Top-15 Receiving Countries (industrialised) of Asylum Applications

Rank	Country	Asylum applications submitted (2011)	Per 1 USD/GDP per capita
1	United States	74,020	1.6
2	France	51,910	1.5
3	Germany	45,740	1.3
4	Italy	34,120	1.2
5	Sweden	29,650	0.8
6	Belgium	25,980	0.7
7	United Kingdom	25,420	0.7
8	Canada	25,350	0.6
9	Switzerland	19,440	0.5
10	Turkey	16,020	1.2
11	Austria	14,430	0.4
12	Netherlands	11,590	0.3
13	Australia	11,510	0.3
14	Greece	9,310	0.3
15	Norway	9,050	0.2

Australia is one of only a few countries with a policy of mandatory detention of asylum seekers. The United Nations High Commission for Refugees has found the detention of asylum seekers to be inherently undesirable. Consistent with the Convention, detention should only be resorted to in cases of necessity; it should not be automatic or unduly prolonged. It is the position of the UNHCR that minors should not be detained. It is important to note that between 85% and 90% of asylum seekers arriving by boat are found to have legitimate refugee claims. This compares to approximately 40% of asylum seekers that arrive via plane with a valid visa (e.g. a tourist visa).

Some asylum seekers arriving by boat are released into the community, subject to health and security checks, on a bridging visa while they are waiting for their application for a protection visa to be assessed. As a result of this change in policy, the average period of detention has decreased significantly, from 277 days as at November 2011, to 157 as at March 2012. Community detention is also estimated to cost significantly less, due to reduced infrastructure, housing and security costs. In 2010-2011, \$772.17 million was spent on mandatory detention, while community detention is only estimated to cost \$150 million in 2011-2012.<sup>i</sup>

Asylum seekers awaiting a determination on their refugee status receive very limited financial assistance – 89% of the basic Centrelink allowance (i.e. Newstart) or approximately \$400 per fortnight. Unions have long argued that the Newstart Allowance is inadequate to cover basic living costs.

## Agenda 2012-2015

Over the next three years, the policy provides that unions will advocate for an expansion of Australia's intake under the refugee program.

The policy supports community detention and community release as the most compassionate method of processing asylum claims. Unions also oppose the detention of children and will continue to call for the Rights of the Child to be protected.

Many asylum seekers living in the community on a bridging visa face financial difficulties due to restrictions on their right to work. The policy calls for a more consistent and comprehensive approach to providing asylum seekers with working rights. In particular it states that all asylum seekers in community detention or living in the community pending a judicial review or Ministerial intervention should be granted work rights, without first needing to demonstrate financial hardship. With the extension of working rights must be the protection of work rights under Australian industrial laws.<sup>ii</sup>

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<sup>i</sup> Note that community detention costs may increase and mandatory detention costs may decrease as more people move into community detention. However, community detention costs are expected to decrease on a per capita basis after factoring in the initial start-up costs, such as purchasing furniture and connection of utilities. See Final Report, Joint Select Committee on Australia's Immigration Detention Network, 12 April 2012.

<sup>ii</sup> Sources include the United Nations High Commission for Refugees. See for example, the Statistical Yearbook 2010 available at <http://www.unhcr.org/4ef9cc9c9.html> and Asylum Levels and Trends in Industrialised Countries for 2011. See also Department of Immigration and Citizenship, available at <http://www.immi.gov.au/media/publications/refugee/ref-hum-issues/pdf/refugee-humanitarian-issues-june11.pdf>; and the website of the Refugee Council of Australia, [www.refugeecouncil.org.au](http://www.refugeecouncil.org.au).