A FAIR GO FOR ALL

20. ASYLUM SEEKERS AND REFUGEES – A RIGHTS BASED APPROACH

INTRODUCTION AND BACKGROUND

1. Australia’s policies towards asylum seekers and refugees should, at all times, reflect respect and decency, consistent with Australia building a society that is a tolerant, compassionate and multicultural nation and in recognition of the role refugees and other migrants from all over the world have contributed to our country. Congress calls on Australian Parliamentarians to pursue a refugee policy that re-establishes Australia’s reputation as a welcoming and humane society.

2. Congress recognises refugees and asylum seekers are among the world’s most vulnerable people. As a signatory to the 1951 United Nations Convention and Protocol 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. Under international human rights law, asylum seekers arriving by boat are not illegal and Australia is required to ensure that claims of people seeking protection are assessed in accordance with the United Nations (UN) Refugee Convention. Congress calls upon the Government to ensure that there is no discrimination in the processing of application for asylum based on the mode of arrival.

3. Congress recognises that seeking asylum is a fundamental human right. The current approach adopted by Australia focuses on deterrence and reflects a xenophobic fear of the outsider, based on judgement that we are entitled to our good fortune and have no obligations to share it with those less fortunate.

4. Congress reiterates that a refugee is someone who has fled their home country and is seeking protection. The process of assessing asylum claims in-country is standard practice. 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. According to the UNHCR, Australia receives fewer applications than comparable industrialised countries. Among the industrialised countries, Australia ranks 19, i.e. 18 other industrialised countries have a higher share of asylum applications than Australia. ACTU Congress reaffirms that Australia should increase its intake of refugees to meet the levels received by other industrialised countries.

5. Congress calls on Australian Parliamentarians to take leadership and to reframe the national debate about refugees and asylum seekers, explaining that the majority of people who have entered Australia by boat seeking asylum have been found to need protection
from persecution, and therefore the vulnerability of asylum seekers must be a primary consideration in any government response to people movement.

**ONSHORE PROCESSING**

6. ACTU Congress urges all political parties and Members of Parliament to adopt policies that fulfil Australia's commitment under the Refugee Convention to treat people humanely, process applications for asylum onshore, and promote the better treatment of asylum seekers and refugees in our region. The use of policies on asylum seekers to foster misunderstanding, social division and distrust is a disgrace and stains our national character.

7. Congress recognises that unions can also play a role in changing the national debate through countering misleading information spread about refugees. Unions are encouraged to have refugee speakers at meetings and conferences, to distribute information internally, to support and participate in organisations and campaigns which support refugees and their rights such as Unions for Refugees and the Welcome Refugee Movement.

8. Congress calls for an independent review into existing decision making procedures and processes under the Migration Act for asylum seekers who are assessed onshore. This review would be conducted with a view to ensuring that principles of procedural fairness, natural justice and genuine independence are upheld.

9. People found to be refugees must be offered permanent protection visas. Temporary Protection Visas condemn refugees to further fear and insecurity. They prevent travel, family reunion and secure work, thus preventing refugees from properly establishing new lives in Australia. Temporary Protection Visas must be abolished.

**OFFSHORE PROCESSING AND RESETTLEMENT IN THIRD COUNTRIES**

10. 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 1958 Migration Act has been used to administer two systems to assess asylum seekers’ refugee status - 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 in Nauru and Manus Island is discriminatory, and lacks transparency and independent oversight. Congress does not accept the removal of asylum seekers from Australian territory for assessment and eventual resettlement in a third country. Congress calls for the detention centres on Manus Island, Nauru, and any other offshore detention centres to be closed.

11. Congress rejects other policies of ‘deterrence’ implemented alongside off-shore detention, especially intercepting and turning back boats at sea, or transferring refugees to other vessels for immediate return to their countries of origin without a proper assessment of their claims for protection. Such policies needlessly put both asylum seekers and seafarers in danger. Provisions in the *Migration and Maritime Powers Legislation Amendment Act 2014* which facilitate boat turnbacks and give the Immigration Minister the power to secretly suspend the application of Australian Maritime Law and International Maritime Conventions to any vessel must be repealed.

12. Congress condemns the signing of a Memorandum of Understanding by the Australian Government with the Government of the Kingdom of Cambodia on 26 September 2014...
that will allow the settling of persons who have been determined to be a “refugee” in the refugee status determination process in the Republic of Nauru. This Memorandum of Understanding has been widely criticised as Cambodia has a poor human rights record and contradictory policies vis-à-vis refugees and asylum seekers. Cambodia also has poor health services. Transparency International considers it one of the most corrupt countries in the world. Furthermore Cambodia’s own people struggle to survive in a challenged economy and political environment. Both the Australian and Cambodian governments said, when signing the Memorandum of Understanding, that they rely on the UNHCR to help implement the resettlement programme. However UNHCR announced that it will play no role in resettling refugees in Cambodia. UNHCR is concerned about countries shifting their refugee responsibility to developing countries. On this basis, Congress calls on Australian and International aid agencies to desist in assisting the re-settlement of asylum seekers in Cambodia.

DETENTION

13. Congress notes the 2015 “Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru” (“The Review”; sometimes referred to as the “Moss report”). The Review was commissioned by the then Minister for Immigration and Border Protection. The Review uncovered serious allegations of sexual and other physical assaults on women and children, including two rapes, at the detention centre on Nauru. The Review also concludes that many detainees “are apprehensive about their personal safety and have concerns about the privacy at the Centre”.

14. Congress notes the 2015 “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, which was submitted to the Human Rights Council in Geneva by Juan E. Méndez. In the Report, “the Rapporteur concludes that the Government of Australia, by failing to amend the provisions of the two bills to comply with the State’s obligations under international human rights law, particularly with regard to the rights of migrants, and asylum seekers, including children, has violated the rights of migrants and asylum seekers to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 3, and 16 of the CAT [Convention against Torture].”

15. Congress notes the Decision taken by the Australian High Court on 20 June 2014 that questioned the ability of the Minister to limit or cap the number of protection visas that can be granted. Both major political parties need to respect the full implications of the High Court ruling, including that neither indefinite detention nor sending asylum seekers to uncertainty in other countries is a just or credible response to the needs of people seeking asylum and protection in Australia.

16. Congress condemns the indefinite detention of asylum seekers and refugees, including children. Health, identity and security check processes can and should be undertaken without mandatory detention, as happens in most other recipient nations.

17. Congress notes the 2014 Australian Human Rights Commission report on “Forgotten Children: National Inquiry into Children in Immigration Detention 2014” (authored by the President of the Australian Human Rights Commission, Prof. Gillian Triggs). According to the report, “Australia holds 800 children in mandatory closed immigration detention for indefinite periods, with no pathway to protection or settlement.” [...] “Over 167 babies have been born in detention between 2012 and 2014. Children detained indefinitely on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress”.

A Fair Go For All Asylum Seekers and Refugees – A Rights Based Approach - Policy | Page 3
18. Congress calls on the Federal Government to comply with the Convention on the Rights of the Child, where the children of asylum seekers and unaccompanied minors are entitled to have their welfare and human rights protected. It is incumbent that the Government ensure that Australia complies with the 1989 UN 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. Congress particularly condemns the placement of children and their families in detention centres.

19. Congress condemns the outsourcing of detention services. Between mid-2007 and mid-2014, the Australian government awarded over $10 billion worth of contracts to private entities for the provision of services related to mandatory detention. The private provision of detention services has been a failed approach, with numerous investigations finding that, for example, the provision of mental health services is inadequate, and staff were improperly trained. The outsourcing of detention allows government to shift accountability and responsibility for conditions in detention. Congress calls on the federal government to stop the outsourcing of detention to private, for-profit companies.

WELFARE OF ASYLUM SEEKERS AND THE RIGHT TO WORK

20. 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.

21. Many asylum seekers do not have 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 extension of the right to work to all asylum seekers to allow them to support their families and to have the protection of their work rights under Australian industrial laws. Asylum seekers entitled to welfare payments should receive the full Newstart allowance, subject to the same conditions as Australian citizens, in order to ensure that they are adequately supported to fully participate in society.

22. 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.

FORCIBLE DEPORTATION

23. 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 allows involuntary removals to Afghanistan. The ACTU also condemns the close cooperation between the Australian and Sri Lankan government to stop Sri Lankans from leaving the country and prevent them from seeking asylum in other countries, despite credible allegations of human rights abuses in Sri Lanka.

SECURITY ASSESSMENTS

24. 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. ASIO assessments should be subject to independent external review.
Asylum seekers that are denied asylum based on ASIO assessments should have the right to appeal.

INTERNATIONAL COOPERATION

25. Congress calls on the Australian Government to continue to work towards a regional solution to the plight of people seeking asylum. This includes improving access to protection in all countries in the region, improving living standards for asylum seekers and increasing the humanitarian intake of refugees.

26. Congress calls on the Australian Government to support the UN High Commissioner for Refugees (UNHCR) so that the UNHCR can register asylum seekers and carry out Refugees Status Determination (RSD) in Indonesia within an appropriate time. Australia must end its ban on accepting refugees (as determined by UNHCR) from Indonesia. Asylum seekers in Indonesia who are recognised as refugees and who wish to settle in Australia should be resettled here.

27. The global challenge of refugees fleeing persecution will continue until human rights, including the ILO’s core labour standards, are recognised and enforced all over the world. Australia must become part of the solution and stop being part of the problem. Australian trade unions call for international action to achieve peace, democracy, sustainable development, freedom from repression 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.