



# 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 celebrates diversity, inclusion, compassion and multiculturalism and recognises the role refugees and other migrants from all over the world have contributed to our country. Congress calls on Australian Parliamentarians to pursue an asylum seeker and 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 with an estimated 80 million displaced people as at mid-2020– surpassing the levels seen after World War II. As a signatory to the 1951 United Nations (UN) 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, seeking asylum is not illegal and Australia is required to ensure that claims of people seeking protection are assessed in accordance with the 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 seeking asylum as a fundamental human right. The current approach adopted by Australia focuses on deterrence and social exclusion reflecting a xenophobic fear of the outsider. This is based on belief that we are entitled to our good fortune and have no obligations to share it with those less fortunate or those that have been displaced. This is in contravention to the Australian values of being a good international citizen and makes a mockery of Australia's membership on the UN Human Rights Council.
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 and should not be overly bureaucratic. Australia has the capacity and international responsibility to take both refugees who arrive in Australia seeking asylum and those identified through the UN resettlement system.
5. ACTU Congress reaffirms that Australia should increase its intake of refugees to meet the levels received by other industrialised countries. According to the Refugee Council of Australia, Australia fails to take our fair share of responsibility for protecting the most vulnerable groups of refugees. Of the 21.3 million refugees who had their status recognised or were resettled in 2018, just 1.39% were assisted by Australia (23,002 people). By this measure, Australia was ranked 14th overall, 20th per capita and 60th relative to our total GDP.
6. Congress calls on Australian Parliamentarians to show true leadership and to reframe the public and political discourse about refugees and asylum seekers. Evidence shows that the majority of people seeking asylum by boat 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 the movement of people.

## Onshore processing

7. 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.
8. 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 to Australia movement.
9. Congress calls for an independent review into existing decision-making procedures and processes under the Migration Act 1958 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.
10. People found to be refugees must be offered permanent protection visas instead of temporary visas. Bridging Visa E (BVE), Temporary Protection Visas (TPV) or the Safe Haven Enterprise Visa (SHEVs) condemns refugees to further fear, insecurity and vulnerability. They prevent asylum seekers from travel, family reunion and work rights, thus preventing refugees from properly establishing new lives in Australia. These temporary visas create a state of being "permanently temporary" where asylum seekers may face years of uncertainty and separation from families because of their visa status. The five-year SHEVs introduced in 2016, have incentivised asylum seekers to move to regional areas and find work with the possibility of applying for a general migration visa should they not use social entitlements. While Congress supports work rights for refugees and asylum seekers it should not be conditional or negate Australia's duty to provide social services to the most vulnerable.

## Offshore processing and resettlement in third countries

11. 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 1958 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. Congress condemns the reopening of the Christmas Island detention centre in 2020. 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 an end to offshore processing, and calls on the Australian Government to accept full responsibility for the refugees and asylum seekers that continue to be stranded in Papua New Guinea and Nauru to be brought to Australia to be resettled permanently.
12. 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 turn backs 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.

13. Refugees brought to Australia from Papua New Guinea and Nauru for medical treatment under Medevac laws have been imprisoned for over 7 years, and in many cases have not received the medical treatment they need. Over 100 refugees brought to Australia under the Medevac laws for treatment continue to be detained in hotels in Melbourne, Darwin, and Brisbane. Congress calls for the immediate release of these refugees and for them to urgently receive the medical treatment they require.

## Detention

14. Australia's system of mandatory, indefinite detention for asylum seekers and refugees is in breach of international law. Detention is becoming 'more and more like prison', according to the Australian Human Rights Commission, and 'continues to result in people being detained where there is no valid justification'. People are detained for an average of 500 days – far longer than any comparable jurisdiction, and subject to punitive treatment. A Guardian Australia investigation uncovered allegations of assaults, abuse and mistreatment of detainees, and allegations that complaints by detainees were covered-up.
15. Indefinite detention has been recognised by a number of human rights organisations as cruel and inhuman treatment for the most vulnerable of people. 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.
16. 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 on the Government to 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 which is a breach of our legal commitment to uphold the Convention Relating to the Status of Refugees which outlines our obligations to ensure education under Article 22.
17. Congress condemns the outsourcing of detention services. On 19 July 2013 the Abbott government announced that no person seeking asylum in Australia by boat would be resettled in Australia, even if found to be a 'genuine' refugee. In the seven years to mid-2020, the Australian government has awarded over \$7.5 billion worth of contracts to private entities for the provision of services related to the mandatory detention of just 3,000 people. The private provision of detention services has been a failed, ideologically-driven approach, with numerous investigations finding that, for example, the provision of mental health services is inadequate, and staff were not properly 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 and accept full responsibility for the treatment of asylum seekers.

## Welfare of asylum seekers and the right to work

18. We note with deep concern the financial hardship facing asylum seekers and refugees in our community. There is limited financial assistance provided to asylum seekers awaiting a decision on their refugee claim and call on adequate assistance to be provided. Congress notes that there are thousands of asylum seekers in the community without work rights because they are waiting for their expired bridging visas to be renewed – when a visa expires a person's work and Medicare rights are suspended.
19. Although additional work rights have been granted to asylum seekers via temporary visas, asylum seekers are still faced with bureaucratic visa barriers that can be considered discriminatory. Barriers to secure employment can include cumbersome processes to continuously renew bridging visas in order to maintain work rights. 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 agrees with the 2017 “Report of the Special Rapporteur on his mission to Australia” that temporary visas for asylum seekers create a “two-tiered system” where asylum seekers are vulnerable to unscrupulous employers. All asylum seekers should be entitled to welfare payments and should receive the full JobSeeker allowance and healthcare subject to the same conditions as Australian citizens, in order to ensure that they are adequately supported to fully participate in society.

20. Congress notes that refugees in Australia often represent the most disadvantaged groups in their workplaces and the broader community. Congress acknowledges workers from non-English speaking backgrounds, including those who are asylum seekers and refugees, are particularly impacted by the scourge of wage theft, as well as harassment, discrimination and bullying in the workplace.
21. Congress encourages affiliates to resource organising and outreach programs for refugee communities in Australia, and to ensure materials and programs are available in languages spoken by asylum seekers and refugees.
22. Congress affirms that every worker, no matter where they have come from, should be treated with dignity, fairness and respect in the workplace.
23. Refugees and asylum seekers should be able to apply for skilled migration under same rules or programs as any other skilled migrant applicant
24. Applications for skilled migration should be possible from their country of origin, transit countries, and/or off-shore detention
25. Applications, processes, and decisions surrounding skilled migration should not impact a person’s right not to be forced to return to a country in which they are liable to be subjected to persecution (i.e. the principle of non-refoulement)

## Forcible deportation

26. Congress opposes the forcible deportation of asylum seekers. In numerous previous 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 and continued instability in Sri Lanka.

## Security assessments

27. 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 who are denied asylum based on ASIO assessments should have the right to appeal.

## International cooperation

28. 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.

29. 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.
30. 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.