

REFUGEE COUNCIL OF AUSTRALIA

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REFUGEE COUNCIL OF AUSTRALIA: CORE POSITION

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The Refugee Council of Australia is Australia's peak refugee organisation. Its members represent all sectors of refugee support and assistance in Australia and around the world. The aim of the Refugee Council is to promote the adoption of flexible, humane and constructive policies towards refugees, asylum seekers and displaced persons by the Australian and other Governments and their communities.

This paper provides a brief overview of the Refugee Council of Australia's current position on key matters concerning refugees and humanitarian entrants. More details about RCOA, its work and policies can be obtained from the Council or through its website (www.refugeecouncil.org.au). The website contains comprehensive statistics, information and analysis on Australia's Refugee and Humanitarian Program.

Formulating a Response:

Australia has a long tradition of international engagement. It has been a key player in the formulation of the international humanitarian legal framework and has a proud tradition of assisting countries and peoples in need.

In the post-Cold War era, international relations are not as clearly defined as they were. This is further complicated by globalisation, both of the market place and through information technology. Movements of people, ideas and information are complex, fluid and have changed significantly in recent decades.

It is important that Australia's response to refugees and asylum seekers reflects this current global reality. To this end, it is essential that Australia develop an ethically sound and legally defensible refugee policy that is:

- informed by and consistent with key international human rights treaties and programmatic documents, particularly those which Australia has signed, ratified or accepted;
- balanced and internally consistent within and between the various areas in which Australia responds to refugees;
- articulated in legislation which is accessible, straightforward and consistent; and
- underpinned by an appreciation that Australia has historically been enriched by the protection and resettlement of refugees.

The International Human Rights Framework:

Since the end of the Second World War, the international community has developed a set of instruments that constrain the actions of States in relation to the protection of their citizens and others in their jurisdiction. The fundamental principles enunciated in the Universal Declaration of Human Rights are further developed in a number of treaties that include:

- The Charter of the United Nations;
- the International Covenant on Civil and Political Rights (ICCPR);
- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the Convention on the Rights of the Child (CROC);
- the Convention on the Elimination of Discrimination Against Women (CEDAW);
- the Convention Against Torture (CAT);
- the Genocide Convention;
- 2 Conventions Against Statelessness;
- the Convention on the Elimination of Racial Discrimination (CERD);

... and, of particular significance:

- the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

Australia was one of the countries behind the drafting of these treaties. It has also acceded to each. Such accession leads to an expectation that Australia will incorporate the treaty obligations in some form of domestic legislation or ensure their reflection in a legally binding Bill of Rights. That this has not yet been done comprehensively is a major flaw in Australia's refugee policy.

Australia, as a key regional player, should have an important role to play promoting and protecting refugee rights in the Asia-Pacific region, including promoting accession to the 1951 Convention and the other human rights treaties. The absence of a clearly defined human rights framework in this country, however, impedes Australia's ability to perform this important function.

Formulating Australia's Response:

A key feature of a responsible refugee policy is that it is balanced and consistent. To achieve this, it is necessary that there be coordination of policy and programming within and across portfolios in five key areas:

- Prevention of human rights abuses that lead to population displacement, through participation in international fora and bilateral initiatives.
- Participation in international peacekeeping operations.
- Assistance for refugees, returnees, internally displaced persons and host communities through the international aid program.
- Provision of resettlement opportunities for refugees for whom no other durable solution exists.
- Granting asylum to those who are determined to be refugees.

Close cooperation between government, the office of the United Nations High Commissioner for Refugees (UNHCR), other Intergovernmental Organisations (IGOs) and Non-government Organisations (NGOs) is essential in the formulation and delivery of all refugee support initiatives.

Further, the Refugee Council:

- recognises the fundamental importance of UNHCR as the multilateral institution with the mandate to provide protection to refugees and to promote durable solutions;

- stresses the importance of Australia's support for UNHCR, respect for the Refugee Convention and Protocol, Excom Conclusions and UNHCR Guidelines and participation in the implementation of the Agenda for Protection.

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Within this overall framework are key policy areas on which the Refugee Council has adopted the following positions:

i. Development Assistance:

- Refugees are entitled to the security of a durable solution in the form of voluntary repatriation, local integration or resettlement, within a reasonable time frame.
- The Australian Government has a responsibility to ensure that its development assistance program makes adequate provision for the financial needs of UNHCR.
- Australian development assistance to refugees, returnees and internally displaced persons should:
 - address basic protection issues, including the separation of civilians from combatants;
 - ensure that adequate provision is made for especially vulnerable groups;
 - have an emphasis on programs which foster pluralistic legal and political structures and promote and protect fundamental human rights;
 - target the root causes of flight and secondary movement;
 - aim to strengthen the capacity of host communities;
 - foster better partnerships between key stakeholders.

ii. The Humanitarian Program:

- Resettlement is an important tool of international protection as it is the only feasible durable solution for many refugees. It is not a substitute for asylum but rather a complementary way to provide permanent protection to people in need.
- Resettlement is an integral part of Australia's response to refugees and the continued provision of resettlement places is regarded both domestically and internationally as indicative of Australia's role as a responsible member of the international community.
- After consultation, the Australian Government should each year determine the size and composition of the humanitarian intake for the following year.
- In addition, there should be regular consultation between the Government, international organisations, in particular the United Nations High Commissioner for Refugees, and non-government organisations about the composition and implementation of the humanitarian program.
- The humanitarian program must be flexible enough to accommodate changing circumstances.
- The humanitarian program should be considered independently of the general migration program.
- Selection for the humanitarian program should be based primarily on whether the individual has a need for protection that can only be met through resettlement.
- Every effort must be made to ensure universally transparent and correct procedures are adopted by Migration Posts when they are determining who is to be granted humanitarian entry to Australia.

- A minimum of 10% of each year's refugee program should be devoted to Refugee Women at Risk entrants.
- The humanitarian intake and the onshore refugee program should not be linked numerically as the former reflects Australia's responsibility sharing and the latter is driven by international treaty obligations.
- Generosity in relation to an offshore program should never be used to justify harsh policies that disadvantage or demonise asylum seekers.
- Family reunion should not be a part of the humanitarian program. Instead there should be a separate Humanitarian Family Reunion category within the Family Reunion Program.
- Educating the Australian community about who refugees are and why they come to Australia is essential to ensure ongoing support for the humanitarian program.

iii. Settlement:

- It is recognised that refugees and humanitarian entrants have settlement needs additional to and distinct from those of migrants that might involve extra cost and burden to the community.
- It is recognised that the following are the key indices of settlement as proposed by UNHCR:
 - ◆ access to employment
 - ◆ acquisition of English language skills
 - ◆ receipt of community support
 - ◆ reunification with immediate family members
 - ◆ access to appropriate settlement services
 - ◆ access to appropriate (physical and mental) health care
 - ◆ access to education
 - ◆ access to affordable and secure housing.
- The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) should have the principal responsibility for ensuring the coordination of service delivery by all government departments (at federal, state and local levels) for refugee and humanitarian entrants.
- All relevant government departments should include a separate section on refugees and humanitarian entrants in their policy statements.
- The outsourcing of service provision to community-based services must be accompanied by the provision of appropriate funding and support, including training and advice.
- The role of NGOs, community based agencies and the community sector in assisting with the settlement of refugees should be recognised.
- It is recognised that refugees have particular physical (including dental) and psychological health needs for which specialist services are required.
- DIMIA has a responsibility to ensure that all personnel, including volunteers, engaged in providing government initiated settlement services have access to training and are adequately resourced and supervised.

iv. Refugee Status Determination:

- A person becomes a refugee from the point at which he or she satisfies the criteria set out in the Refugee Convention, not from the point at which a determination is made by UNHCR or a State authority.

- Every person who reaches our territory should have an unfettered right to seek asylum and be granted it if warranted.
- Legislative or policy devices should not be used to prevent people from having their status as refugees considered.
- Refugee status determination procedures in Australia should be humane, just, fair, timely, transparent and thorough so as to ensure that all who need protection receive it.
- Decisions should be made:
 - by suitably qualified personnel;
 - in accordance with recognised principles of refugee law;
 - on the basis of careful, thorough and balanced analysis of independent information about the situation in the country of origin.
- The decision to deny a person access to the refugee status determination process should be subject to a truly independent merits review.
- Access to judicial review is essential to ensure that decision makers act in accordance with the law.
- To ensure compliance with human rights obligations and consistency between the offshore and onshore programs, there should be an administrative determination process with power to confer humanitarian (complementary) status on those who do not meet the strict definition of a refugee but who have compelling protection-related reasons not to return to their country of origin.
- Applications for protection should be processed in a timely manner. The existence of a state of flux in a country of origin should not be used to delay consideration for anything other than a brief period (no more than 2 months).
- All asylum seekers should have access to application assistance.
- Convention refugees should be granted permanent protection.

v. Detention:

- The deprivation of liberty of any person is a serious act and must only be done in accordance with national and international law.
- It is the view of the Refugee Council that Australia's policy of mandatory non-reviewable detention of unauthorised arrivals, in so much as it affects asylum seekers, is contrary to the country's obligations under, *inter alia*, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, and to UNHCR's Guidelines on Detention.
- The management of detention centres is a government responsibility that should not be delegated to private contractors.
- The Council acknowledges the right of the Government to control the borders and to detain, for an initial brief screening period, any person who seeks to enter without authorisation.
- Once identity has been ascertained, asylum seekers should only be detained if it can be established that the individual concerned poses a serious threat to national security, public order or public health.

- There should be an automatic right to independent and regular review of the decision to detain an asylum seeker beyond this initial screening period.
- All detainees should be advised as a matter of course of their right to seek legal advice.
- Immigration detention centres should be subject to monitoring by an appropriate interdependent watchdog capable of making unfettered and unannounced visits.
- The conditions in immigration detention centres must be informed by, and consistent with, international standards for the treatment of people deprived of their liberty, and with relevant international treaties, in particular those pertaining to the detention of minors.

Further:

- Given the number and consistency of concerns raised in authoritative reports and during informed testimony about the conditions in and management of immigration detention centres, there should be a judicial inquiry to establish whether these concerns have substance.
- The selective release of women and children from immigration detention centres and the establishment of alternative detention facilities does not, in itself, address the real problems associated with Australia's detention regime.

vi. Asylum Seekers in the Community:

- All asylum seekers are entitled to be treated with dignity and humanity and in accordance with accepted human rights principles.
- All asylum seekers in the community should have equal access to income security (on a means tested basis) and medical benefits throughout the determination process.
- Asylum seekers should be given permission to work.
- Government funding should be provided to enable agencies to provide case management and other support to asylum seekers in the community.

vii. Temporary Protection:

- It is not acceptable to grant Temporary Protection Visas to people determined to be refugees.
- The Refugee Council remains fundamentally opposed to the current TPV regime for a number of reasons, not least:
 - the regime results in breaches of Australia's international treaty obligations and is an impermissible penalty for unauthorised entry;
 - the denial of basic services prevents refugees from participating in the Australian community and condemns many to a life of dependency;
 - the failure to allow family reunion is causing immeasurable anguish to the refugees in Australia and their families overseas and is potentially placing family members in highly dangerous situations; and
 - the requirement that the refugees undergo refugee status determination at three yearly intervals leaves the refugees in a state of nervous limbo from which no healing of past trauma is possible.
- The current policy of granting Temporary Protection Visas to Convention refugees (irrespective of where they are processed) also perpetuates suffering, threatens social cohesion and wastes precious human and fiscal resources.

- The Council believes that the current policy of granting temporary protection to Convention refugees must be repealed.
- If the temporary protection regime is to be retained in Australia, it is the view of the Refugee Council that:
 - those to whom it is granted should be given access to income support, permission to work, Medicare, specialist settlement services, reunification with immediate family members and the right to re-entry if they travel overseas;
 - the 7-Day Rule should be repealed;
 - a TPV should automatically be converted to permanent protection visa if there has not been substantial, effective and durable change in the country of origin at the expiry of the term of the TPV.
- RCOA recognises that there are limited circumstances in which there are legitimate uses for temporary protection visas and sees these being as follows:
 - when events unfold overseas that require the urgent and temporary evacuation of displaced persons, as happened in the case of people from Kosovo and East Timor;
 - in situations of mass influx;
 - when conflict arises overseas and nationals of that country already in Australia are unable to return.
- When temporary protection is offered in such circumstances, those granted temporary protection visas must not be prevented from lodging an application for refugee status.

viii. Security

- There is no credible evidence of a link between asylum seekers and terrorists.¹ Rather, in most cases, asylum seekers are fleeing the regimes that perpetrate terror on their populations and others.
- It is nevertheless appropriate that asylum seekers be screened to determine whether they pose a serious threat to national security or public order.
- The Government has an obligation to explain to the public that the refugee status determination process includes safeguards that protect Australia's security.
- To link asylum seekers and terrorists or suggest that they pose a threat to Australia is unacceptable.

ix. Responses to Unauthorised Arrivals

- A nation's sovereign right to control entry does not extend to preventing the entry of *bona fide* asylum seekers.
- In accordance with Australia's Convention obligations, protection must be placed at the core of any solution. The vocabulary of "border protection" must not be used to abrogate responsibilities towards those seeking protection.

¹ In August 2002 the Director General of ASIO, Dennis Richardson, told the Human Rights Committee of the Australian Parliament that it has provided security assessments of 5,986 asylum seekers between July 2000 and 16 August 2002. He reported that "in none of those cases had it been assessed that the person's entry to Australia would pose a direct or indirect threat to Australia's security, on the grounds that he or she could be involved either in espionage related activities or in terrorist activities".

- When confronted with an instance of large-scale irregular secondary movement, the response must involve cooperation rather than “burden shifting”.
- Resources must be redirected towards targeting the root causes of the irregular movement, including addressing declining standards of protection in countries of first asylum.

x. Interdiction and Interception Policies

- It is not a legitimate role of Australia’s navy or coastguard to block the access of vessels reasonably assumed to be carrying asylum seekers to Australian territorial waters.
- Fostering a “solution” that sees asylum seekers remaining in transit countries for extended periods without access to durable solutions is not a responsible way to deal with refugee protection nor regional cooperation and stability.
- The use of extra-territorial processing centres for asylum seekers on route to Australia is unnecessarily expensive, impairs assessment, reduces necessary procedural fairness and undermines Australia’s relations with its Pacific neighbours.
- The diversion of asylum seekers to Pacific processing centres should cease.
- All initial processing of intercepted boat arrivals should take place on the Australian mainland and be in accordance with the Council’s position on detention and refugee status determination.
- For as long as processing centres in the Pacific remain open, there must be independent monitoring of the conditions in the centres and the provision of legal advice to the detainees.
- The excision of islands and territories from the Migration Zone cannot expunge Australia’s protection obligations to persons who seek protection at such places. Treating people who land in excised zones differently from those who reach the mainland is contrary to the spirit of the Refugee Convention and creates an unnecessary level of complexity in status determination.

RCOA has developed detailed Position Papers on many of the issues covered in this document. These can be found on RCOA’s website at www.refugeecouncil.org.au.