

REFUGEE COUNCIL OF AUSTRALIA

INCORPORATED IN A.C.T. - ABN 87 956 673 083

37-47 ST JOHNS RD, GLEBE, NSW, 2037
PO BOX 946, GLEBE, NSW, 2037
TELEPHONE: (02) 9660 5300 • FAX: (02) 9660 5211
info@refugeecouncil.org.au • www.refugeecouncil.org.au

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RCOA POSITION PAPER AUSTRALIA'S REFUGEE AND HUMANITARIAN PROGRAM

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.

This paper provides a brief overview of the Refugee Council of Australia's position on matters concerning refugees and humanitarian entrants in Australia. More details about RCOA, its work and policies can be obtained from the Council or through its website (<http://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 politics are not as defined as they were. This is further complicated by globalisation, both of the market place and through information technology.

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

- informed by and consistent with the international human rights treaties to which Australia has acceded;
- balanced and internally consistent within and between the various areas in which Australia responds to refugees;
- articulated in legislation which is accessible, straight forward 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 have joined forces to develop a set of treaties that guide the actions of States in relation to the protection of their citizens and others in their jurisdiction. These treaties include:

- 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);

- 2 Conventions Against Statelessness; and, of particular significance:
- the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

As mentioned, 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 bill of rights. The fact that this has not yet been done is seen as a major weakness 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:

As previously stated, the other 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 that cover the following 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 in countries of first asylum and when repatriating through the international aid program, with an emphasis on programs which strengthen democratic, legal, political and institutional structures;
- 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, UNHCR and non-government agencies is essential in the formulation and delivery of all refugee support initiatives.

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

(i) 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 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 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 which 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.
- The humanitarian program must be flexible enough to accommodate changing circumstances.
- 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.
- 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 should be regarded as a priority.

(ii) Refugee Status Determination:

- Refugee status determination procedures in Australia should be transparent, fair, expeditious and thorough so as to ensure that all who need protection receive it.
- The decision to deny a person access to the refugee status determination process should be subject to independent review.
- An independent merits review is an essential component of the refugee status determination process.
- Access to judicial review is a right enshrined in international law.
- To ensure consistency between the offshore and onshore programs, there should be an administrative determination process with power to confer humanitarian status on those who do not meet the strict definition of a refugee but who have compelling reasons not to return to their country of origin.
- Application assistance should be provided for asylum seekers in the community who pass a means and merits test and to all detained asylum seekers.

(iii) Detention:

- 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 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 Council acknowledges the right of the Government to control the borders and to detain, for an initial period, any person who seeks to enter without authorisation.
- Attention is drawn to Article 31 of the 1951 Convention Relating to the Status of Refugees which states that penalties shall not be imposed on asylum seekers as a result of illegal entry.
- Once identity and intent have been established, asylum seekers should only be detained if it can be established that the individual concerned poses a threat to national security, public order or public health.
- In accordance with international law, there should be independent review of the decision to detain an asylum seeker.
- All detainees should be advised as a matter of course of their right to seek legal advice.
- Each immigration detention centre should have an advisory committee with members drawn from community agencies such as the Australian Red Cross, and the advisory committee should be kept informed of the status of all detainees.
- 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.

Further:

- Given the number and consistency of allegations concerning the conditions in and management of immigration detention centres, there should be a judicial inquiry to establish whether these concerns have substance.
- The trial release of women and children from Woomera Immigration Reception and Processing Centre does not, in itself, address the real problems associated with Australia's detention regime.

iv. Asylum Seekers in the Community:

- All asylum seekers in the community should have access to welfare and medical benefits throughout the entire administrative determination process on a means test basis.

v. Settlement:

- It is recognised that refugees and humanitarian entrants have settlement needs additional to and distinct from those of migrants.
- 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 Affairs (DIMA) 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 provision of specialist torture and trauma counselling is an integral part of ensuring support for humanitarian entrants.
- The devolution of service provision to community based services must be accompanied by the provision of appropriate funding and support (including training and advice)
- DIMA has a responsibility to ensure that all volunteers engaged in providing government initiated settlement services (such as through the Community Support for Refugees Scheme) are adequately trained, resourced and supervised.

(vi) Temporary Protection:

- The circumstances in which there are legitimate uses for temporary protection visas are as follows:
 - when events unfold overseas that require the evacuation of displaced persons, as happened in the case of people from Kosovo and East Timor;
 - when conflict arises overseas and nationals of that country already in Australia are unable to return.
- It is not acceptable to grant temporary protection visas to people determined to be refugees.
- People granted temporary protection visas should be granted access to income support, permission to work and Medicare.
- Temporary humanitarian visas should be valid for a minimum period of 12 months.
- In accordance with international law, people granted temporary protection visas must not be prevented from lodging an application for refugee status.

- It is the view of the Council that the limitations placed on access to essential settlement services under the current Temporary Protection Visa regime for refugees (ie those granted visas under Section 785 of the Migration Act) will have significant social and economic costs to the community in the long run and is causing substantial harm to the refugees. Further, there is little evidence that the regime is having the desired deterrent effect. For these reasons, the Council argues it should be abandoned.
- While the current Temporary Protection Visa regime is in place, those granted subclass 785 visas should have access to minimum settlement services (including English classes, job search assistance and DIMA-funded settlement support) and information concerning the status determination process they will undergo and the prospects for family reunion.