



Refugee Council
of Australia

2010 HIGH PRIORITIES LIST: ASYLUM POLICY ISSUES

This list of high priority issues has been compiled by the Refugee Council of Australia, after consultation with member agencies involved in supporting asylum seekers.

1. Regional refugee protection framework

In working towards the establishment of an Asia-Pacific regional refugee protection framework, Australia must ensure the framework focuses on the rights and protection needs of refugees and does not deflect Australia's legal responsibilities to neighbouring countries. A sustainable regional protection framework can be developed only through genuine dialogue with, and participation from, Asian countries affected by significant flows of asylum seekers, current and potential countries of resettlement, UNHCR and non-government organisations. The shared outcome of this comprehensive regional protection framework must be the establishment of a multilateral protection regime which ensures that the processing of asylum claims meets international standards, that asylum seekers can live in dignity while their claims are determined and that timely resettlement options are available. For its part, Australia must be prepared to commit to an expansion of its resettlement program, to allow greater resettlement from Asia without ignoring pressing needs elsewhere.

2. Indefinite mandatory detention

The announcement, on 18 October 2010, that many children and their parents will be moved from immigration detention to community support arrangements is a welcome step in detention reform. The next priority must be a review of the policy of indefinite mandatory detention for asylum seekers. This policy is resulting in lengthy periods of detention for thousands of people who do not need to be detained, causing considerable harm to already vulnerable people and resulting in hundreds of millions of dollars of unnecessary expenditure each year. The template for a new approach can be found in the Government's 2008 *New Directions in Detention* policy. In announcing the policy, Senator Chris Evans noted: "If a person is complying with immigration processes and is not a risk to the community then detention in a detention centre cannot be justified."

The detention values outlined in the *New Directions in Detention* policy need to be legislated. Particular attention should be given to the time limits to trigger independent judicial review with enforceable remedies, the standards for conditions of detention, the effective monitoring of these conditions, and the risk-based criteria for the 'need to detain', including well-defined parameters for health, security and compliance issues. Current immigration detention policy and laws are a radical departure from ordinary principles governing incarceration under Australian domestic law and are a continued breach of article 9 of the International Covenant on Civil and Political Rights.

The Government should build on its October 2010 announcement, legislating to ensure that no child is held in any form of immigration detention. In addition, an advisory panel of child protection agencies and experts should be formed to oversee all aspects of DIAC work relating to children. Among concerns to be addressed is the conflict between the Minister's role as guardian to unaccompanied minors and the Ministerial powers to determine status and detain.

3. Community-based asylum seekers

While there have been some much-needed reforms of policies and programs for community-based asylum seekers, further reforms are needed to ensure asylum seekers residing in the community are able to meet their basic needs and have the opportunity to live in dignity and safety, pending a fair, transparent and timely decision on their Protection Visa applications. Community care options for asylum seekers should be enhanced through the expansion of the Community Assistance and Support Program, and through the provision of housing and employment support services.

4. Complementary protection

Having argued for its need for some years, and having been specifically recommended by a number of Parliamentary and UN reports, agencies working with asylum seekers support the introduction of a system of complementary protection and applauded the Government's initiative in 2009 in introducing the Migration Amendment (Complementary Protection) Bill. However, submissions to the inquiry conducted by the Senate Standing Committee on Legal and Constitutional Affairs highlighted the need for some important redrafting of the legislation, with concern focusing particularly on the standard of proof outlined in the Bill. The threshold has been set so high – and in a manner inconsistent with international and comparative standards. If unamended, this legislation could result in the denial of protection to people who require it, putting Australia in breach of its human rights treaty obligations. In addition, the Government should follow through on its commitment to developing a clear and fair process to resolve the situation of stateless people.

5. Offshore processing

The Howard Government's 2001 excision legislation introduced discriminatory processes into Australia's refugee determination system, leaving people seeking to establish their need for protection hampered by a process with no transparency and no access to judicial review. This legislation must be repealed and replaced with non-discriminatory and just processes for all asylum seekers, regardless of their mode of arrival.

6. Refugee status determination and assessment

While there have been changes to the onshore Refugee Status Determination (RSD) process and to the Refugee Status Assessment (RSA) process for asylum seekers affected by the excision policy, additional improvements are required. Many of the shortcomings in the current process relate to the absence of good quality advice for some asylum applicants and the very limited transparency and accountability in the decision-making process. The quality of advice available to applicants can best be improved by the provision of credible, affordable legal advice to all protection visa applicants at all stages of the process through fully funding Immigration Advice and Application Assistance Scheme (IAAAS) and Legal Aid services. Transparency can only be ensured through access to robust administrative and judicial review procedures. All refugee and humanitarian determination decisions – including ministerial intervention decisions and the Independent Merits Review process for people affected by the excision policy – should be able to be tested before the courts.

7. Removals

Further work is needed to improve return procedures, including through clearer, more robust guidelines on returning physically or mentally ill asylum seekers and risk assessments for safety upon return. The introduction of an open and transparent Pre-Removal Risk Assessment procedure and the provision of appropriate legal advice and psychological support to people on a removal pathway will help to ensure no humanitarian or public interest grounds remain unconsidered.

8. The numerical link between the onshore and offshore humanitarian programs

Australia is the only country in the world which subtracts a place from its offshore humanitarian resettlement program each time an asylum seeker is recognised as a refugee. As NGOs and UNHCR have consistently argued since this policy was introduced in 1996, the onshore and offshore programs are designed to meet quite different international responsibilities. The onshore protection program aims to meet Australia's obligations as a signatory to the Refugee Convention, enabling people at risk of persecution to seek refuge in Australia. The offshore resettlement program is a voluntary contribution to the sharing of international responsibility for refugees for whom no other durable solution is available. This numerical link has aided those promoting the view that the only genuine refugees in Australia are those who have been resettled from countries of first asylum. The removal of the numerical link between the onshore and offshore programs would illustrate the strength of the Australian Government's support for the Refugee Convention and its wish to have the international refugee protection system better understood and supported by the Australian people. It would also greatly improve the planning of the offshore Refugee and Humanitarian Program, from the allocation of visas to the availability of resources for on-arrival services.

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