

# Asylum Seekers and Refugees-A rights Based Approach

## Introduction and Background

1. The Australian Union movement has a strong position in support of people who are refugees and asylum seekers. We stand in solidarity with refugees and asylum seekers and call for a humane refugee policy that respects human rights and upholds our international obligations. The union movement is committed to ensuring that people fleeing violence and persecution are given protection and safety and are able to stay in Australia permanently and build a life with their family and become a permanent part of our workplaces and communities.
2. Australia's policies towards asylum seekers and refugees should, always reflect respect and decency, consistent with Australia building a society that celebrates diversity, inclusion, compassion and multiculturalism and recognises the vast contribution of generations of refugees and other migrants to building this society. 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.
3. Congress recognises refugees and asylum seekers are among the world's most vulnerable people with an estimated 110 million displaced people worldwide, with over 36.8 million refugees as of mid-2023 driven by ongoing and new conflicts—surpassing the levels seen after World War II. A global scenario of increased conflict, violence, repressive, authoritarian and far-right regimes and failed states is leading to an increased number of people displaced. Discrimination and persecution, including on the basis of sexuality and gender identity also leads to people fleeing for their lives in search of safety: 11 countries continue to kill LGBTQIA+ people as part of state-sanctioned killing, and 79 countries continue to criminalise homosexuality. In addition, the climate crisis is likely to precipitate increased numbers of refugees. Australia should respond to this increasing uncertainty by ensuring that we accept an increasing number of refugees. 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 opposes discrimination in the processing of application for asylum based on the mode of arrival.
4. Congress recognises seeking asylum as a fundamental human right. The approach adopted by Australia has focused 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 demonises people seeking asylum and refugees and serves to divide workers. Refugees should not only be viewed through the lens of displacement and vulnerability: refugees are capable, educated and skilled individuals who are a net benefit to our society.
5. 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.
6. 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. Over the 10 years to December 2022, Australia recognised or resettled 180,073 refugees, 0.75% of the global total of 23.99 million refugees recognised or resettled in that period. On this measure, Australia was ranked 30th overall, 41st on a per capita basis and 77th relative to national Gross Domestic Product (GDP).
7. 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.

## Permanent protection

8. 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.
9. Congress welcomes the Labor Government’s commitment to end the cruel and inhumane policy of temporary protection and transition over 19,000 people holding TPVs and SHEVs to a permanent visa . This means thousands of refugees will finally have the opportunity to lay down roots in Australia, ending years of living in limbo. Congress notes, however, that progress to convert TPV and SHEV holders to a permanent Resolution of Status (RoS) visa has been slow, and that an RoS visa does not guarantee refugees can reunite with their families.
10. Congress notes, however, that 12,000 people have been left behind – those processed under the flawed ‘fast track’ refugee assessment, and asylum seekers who have arrived by boat. The ‘fast track’ assessment process is a legacy of the Coalition Government. Those victim to the fast-track process are still on temporary bridging visas and have no pathway to permanent residency, no access to Medicare, and no access to education or work. Congress supports the need to urgently review the cases of this cohort and provide them with a pathway to permanency, and to immediately abolish the fast track assessment process.

## Onshore processing

11. 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.
12. 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. Unions are encouraged to employ refugees, encourage employers to hire more refugees, and support the development of refugee workers as workplace delegates.
13. Congress calls for fair, efficient and just refugee status determination process, and access to government-funded legal support throughout the process.

## Offshore processing and resettlement in third countries

14. Congress calls for a decent, humane refugee policy, respect for the human rights of refugees and asylum seekers and an end to ‘offshore 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 onshore 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 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 a complete end to offshore processing and detention, and for Australia 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.

15. 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.

## Detention

16. Australia's system of mandatory, indefinite detention for asylum seekers and refugees continues to be a 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. 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.
17. Under the Convention of the Rights of the Child, 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.
18. Congress condemns the outsourcing of detention services. 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 opposes the outsourcing of detention to private, for-profit companies and Australia should accept full responsibility for the treatment of asylum seekers.
19. Congress notes that indefinite detention should not be replaced with indefinite monitoring and punishment, without any time limit or independent oversight. Congress reinforces the importance of keeping communities safe, but notes that our criminal justice system should operate in the same way whoever you are and wherever you come from: there is no basis for treating refugees differently from anyone else in our community who has committed a crime. We do not believe that people should have fewer rights because of their visa status.
20. Congress calls for an end to the arbitrary and indefinite detention of all refugees and asylum seekers, including those seeking asylum in Australia without visas.
21. Congress reaffirms that people fleeing persecution must not be returned to their home country where they could face harm.

## Welfare of asylum seekers and the right to work

22. 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.

23. 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.
24. Congress calls for to improved funding and availability of Commonwealth funded migrant and settlement services that provide critical support to new migrants and people seeking asylum. Congress calls for sufficient long-term Commonwealth funding and resourcing that delivers high quality settlement services, including fair pay, permanent employment and decent working conditions for the community sector workers delivering these migrant and resettlement services.
25. 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.
26. Congress notes that refugees in Australia often represent the most disadvantaged groups in their workplaces and the broader community. Temporary visas for asylum seekers create a “two-tiered system” where asylum seekers are vulnerable to unscrupulous employers. 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.
27. 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.
28. Congress affirms that every worker, no matter where they have come from, should be treated with dignity, fairness and respect in the workplace.
29. Refugees and asylum seekers should be able to apply for skilled migration under same rules or programs as any other skilled migrant applicant
30. Applications for skilled migration should be possible from their country of origin, transit countries, and/or off-shore detention
31. 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

32. Congress opposes the forcible deportation of asylum seekers. In numerous previous cases, such removal has resulted in imprisonment, torture, and in some cases, death. Congress 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. Congress 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

33. 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

34. 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.
35. Congress calls for 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 resettling refugees from Indonesia. Indonesia is the major regional gateway for people to come to Australia from countries such as Afghanistan, Iran and Sri Lanka; Indonesia is not a signatory to the Refugee Convention and so does not recognise the existence of the approximately 14,000 refugees who are in limbo, living in poverty without work rights. Asylum seekers in Indonesia who are recognised as refugees and who wish to settle in Australia should be resettled here.
36. 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.