

Social and Economic Justice

9. ASYLUM SEEKERS AND REGUGEES – 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 65 million displaced people as at 2017 – surpassing the levels seen after World War II. As a signatory to the 1951 United Nations *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 United Nations (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 that seeking asylum is 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 2015, just 0.48% were assisted by Australia (11,776 people). By this measure, Australia was ranked 25th overall, 32nd per capita and 47th 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 new five-year SHEVs introduced in 2016, incentivise 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. 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 the detention centres on Manus Island, Nauru, and any other offshore detention centres to be closed.

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. Congress condemns the signing of a Memorandum of Understanding by the Australian Government with the Government of the Kingdom of Cambodia on 26 September 2014 that will allow the settling of persons who have been determined to be a “refugee” in the refugee status determination process in the Republic of Nauru. This Memorandum of Understanding has been widely criticised as Cambodia has a poor human rights record and contradictory policies vis à vis refugees and asylum seekers. Cambodia also has poor health services. Transparency International considers it one of the most corrupt countries in the world. Furthermore Cambodia’s own people struggle to survive in a challenged economy and political environment. Both the Australian and Cambodian governments said, when signing the Memorandum of Understanding, that they rely on the UNHCR to help implement the resettlement programme. However UNHCR announced that it will play no role in resettling refugees in Cambodia. UNHCR is concerned about countries shifting their refugee responsibility to developing countries. On this basis, Congress calls on Australian and International aid agencies to desist in assisting the re-settlement of asylum seekers in Cambodia. As noted in the 2017 “Report of the Special Rapporteur on his Mission to Australia and the regional processing centres in Nauru,” the five refugees resettled in Cambodia left due to the harsh conditions experienced in Cambodia.

DETENTION

14. Congress notes the 2015 “Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru” (“The Review”; sometimes referred to as the “Moss report”). The Review was commissioned by the then Minister for Immigration and Border Protection. The Review uncovered serious allegations of sexual and other physical assaults on women and children, including two rapes, at the detention centre on Nauru. The Review also concludes that many detainees “are apprehensive about their personal safety and have concerns about the privacy at the Centre”.
15. Congress notes the 2015 “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, which was submitted to the Human Rights Council in Geneva by Juan E. Méndez. In the Report, “the Rapporteur concludes that the Government of Australia, by failing to amend the provisions of the two bills to comply with the State’s obligations under international human rights law, particularly with regard to the rights of migrants, and asylum seekers, including children, has violated the rights of migrants and asylum seekers to be free from torture or cruel, inhuman or

degrading treatment, as provided by articles 1, 3, and 16 of the CAT [Convention against Torture].”

16. Congress notes the Decision taken by the Australian High Court on 20 June 2014 that questioned the ability of the Minister to limit or cap the number of protection visas that can be granted. Both major political parties need to respect the full implications of the High Court ruling, including that neither indefinite detention nor sending asylum seekers to an uncertain future in other countries is a just or credible response to the needs of people seeking asylum and protection in Australia.
17. According to the 2017 Human Rights Council “Report of the Special Rapporteur on the human rights of migrants” asylum seekers spend an average over 450 days in detention. 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.
18. 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.
19. Congress condemns the outsourcing of detention services. Between mid-2007 and mid-2014, the Australian government awarded over \$10 billion worth of contracts to private entities for the provision of services related to mandatory detention. The private provision of detention services has been a failed 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.
20. Congress calls on the federal government to act with a rights-based approach to the 2016 Supreme Court of Papua New Guinea ruling that asylum seeker and refugee detention on Manus is unconstitutional. The federal government should accept full responsibility for the refugees and asylum seekers that continue to be in Papua New Guinea and Nauru. In agreement with the recommendations of the 2017 Human Rights Report, Congress calls for the immediate closure of regional processing centres in both Papua New Guinea and Nauru and for the federal government to consider the offers for refugee resettlement by the US and New Zealand if refugees do not wish to be resettled in Australia.

WELFARE OF ASYLUM SEEKERS AND THE RIGHT TO WORK

21. We note the limited financial assistance provided to asylum seekers awaiting a decision on

their refugee claim and call on adequate assistance to be provided.

22. 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 Newstart 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.
23. 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.
24. 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.
25. Congress affirms that every worker, no matter where they have come from, should be treated with dignity, fairness and respect in the workplace.
26. Refugees and asylum seekers should be able to apply for skilled migration under same rules or programs as any other skilled migrant applicant
27. Applications for skilled migration should be possible from their country of origin, transit countries, and/or off-shore detention
28. 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

29. 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

30. 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

31. 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.
32. 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.
33. 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.