



## Refugees and Asylum Seekers

### Refugee

The United Nations 1951 Convention Relating to the Status of Refugees (and its 1967 Protocol) to which Australia is a signatory sets the minimum acceptable standard for the treatment of refugees, who are defined as:

*Any person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country.<sup>1</sup>*

### Asylum

The grant of protection by a country to people fleeing persecution or serious danger in their own country. Asylum includes a variety of elements such as the principle of non-refoulement and ensuring humane standards of treatment.<sup>2</sup>

### Asylum Seeker

A person who seeks safety from persecution or serious harm in a country other than her/his own. Not every asylum-seeker is a refugee, but every refugee is initially an asylum-seeker.<sup>3</sup>

Under the Australian Humanitarian Migration Program, the Government sets the total number of refugee and other humanitarian claims that can be granted a permanent visa each year, including claims made offshore and onshore. Currently this number is around 13,750<sup>4</sup>.

People seeking asylum in Australia, who arrive with or without a valid visa, or who remain in Australia after that their visa has expired, are not deemed refugees until such time as they make an application and are assessed and declared to meet the set criteria.

If a person is a refugee, the Australian Government is required to protect the person from being returned involuntarily to their country of origin. The UN Refugee Convention and its Protocol also make stipulations in relation to access to employment, education, the legal system and civil rights.

People seeking asylum in Australia who are without a valid visa, that is, arrived without a visa, overstayed their visa, or had their visa cancelled, may be mandatorily and indefinitely detained under Australia's Migration Act 1958 and its subsequent amendments. The Act also states that unless people are granted permission to remain in Australia while their claim is processed, they must be removed as soon as practicable.

It is the position of the Australian Nursing and Midwifery Federation that:

1. As an advanced and civil society, Australia has a moral and legal obligation to treat every human being compassionately and with respect, courtesy and consideration;
2. The Australian Government has a responsibility to use language appropriately to avoid labeling, negative imagery and racist remarks that incite fear and division within the community;



3. The Australian Government has a role to play in protecting people living in countries where persecution and conflict is taking place, such as the provision of aid to the affected population, diplomatic initiatives, and peacekeeping endeavours;
4. The Australian migration system should be responsive to the needs of people who live in societies where oppressive regimes, and armed conflict forces them to displacement and seek asylum, or who live in underdeveloped countries struggling with poverty, famine and environmental disasters;
5. Australia's humanitarian migration quota should be more flexible, responsive and proportional to the number of refugee intake when it is apparent that large and growing numbers of refugees are, and will be seeking protection globally. The number of refugees (Visa 200) accepted annually must not be influenced by the number of entrants accepted by Australia under the Humanitarian visa (Visa 202), or the number of onshore asylum seeker applications granted permanent residency in Australia each year;
6. While their application is being processed, people seeking asylum in Australia should receive treatment which is consistent and humane, regardless of how they entered Australia or country of origin;
7. The exclusion of any territories from Australia's migration zone is not supported as it contradicts the United Nations High Commissioner for Refugees guidelines and creates a two-tier system. The ANMF does not consider this an effective policy in dissuading people from seeking asylum in Australia, nor believe it is fair;
8. The Australia Government and other interested/relevant parties should actively uphold, participate and to; implement and evaluate the existing UNHCR process in the assessment of refugee status for all people seeking asylum on Australian territory or entering Australian waters;
9. Unauthorised arrivals seeking asylum may only be detained for a legally enforced limited time for the purposes of health, character and security checks, and following these preliminary assessments they should be fast tracked through the immigration process and appropriately housed in the Australian community while they await the outcome of their refugee application;
10. Children must not be detained and must be released swiftly with their principal care giver (or with appropriate foster care arrangements if unaccompanied and with no relatives in Australia) into the Australian community;
11. Maternity care in appropriate health care settings must be provided to pregnant women and babies;
12. The ANMF does not support the use of off-shore detention centres for the housing and detention of unauthorised individuals seeking asylum.
13. The ANMF does not support any policy that determines an individual will never be allowed to settle, be accepted in Australia as a deterrent to seeking asylum in this country.
14. All unauthorised arrivals are deserving of a timely individual assessment whilst waiting on an outcome of their refugee application. There must also be an appeal process available.



15. All signatories to the UN 1951 Convention and Protocol, including Australia, should develop and adhere to a set of benchmarks that set the standard for timely, equitable and transparent processing of refugee claims. Appropriate resources must be provided so that the Australian Government's immigration services are able to meet these standards;
16. Immigration detention centres may only be necessary for the swift ascertainment of health, security and identity status, and should be located in metropolitan areas where appropriate services including health care can be easily provided and accessed;
17. External scrutiny of immigration detention centres, including visits undertaken by the Human Rights and Equal Opportunities Commission, the Commonwealth Ombudsman, the United Nations Human Rights Commission officers and those from the Office of the United Nations High Commissioner for Refugees, should be strengthened to assist with identifying where internationally agreed minimum standards of detention are not being met;
18. Any person seeking asylum in Australia must not be excluded from the Australian judicial system. This includes fair and independent right to judicial review;
19. All people seeking asylum and refugees must have access to free and comprehensive health care. This health care should range from primary to tertiary health care at a similar standard provided to members of the Australian community, including access to Medicare, PBS, and Health Care Benefits. These services should accommodate cultural and language differences. Information and education should be available for health practitioners about the health problems that people seeking asylum and refugees may experience, in addition to more common disorders (such as, physical and mental effects of persecution and torture, and illnesses not commonly found in Australia);
20. All people seeking asylum and refugees, should be allowed to access housing assistance, social security payments and employment opportunities in line with Centerlink's policies for residents, as well as access to English language classes, family reunion provisions and financial support for primary, secondary and post-compulsory education, including traineeships for people with low literacy skills;
21. Nurses and midwives must be enabled to meet their Codes of Ethics and Professional Practice Standards in the provision of health care and can not be asked to carry out any procedures, treatments or investigations which violate or compromise those Standards;
22. There should be no coercion associated with voluntary repatriation, including the use of financial incentives. This does not preclude the provision of financial assistance for resettlement should the person seeking asylum choose to be repatriated. Voluntary repatriation should be safe and dignified and only offered after the provision of information and the option of exploratory visits with a guaranteed return to Australia.

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#### References

- 1 United Nations. 1951. Convention relating to the status of refugees. Available at: <http://www.unhcr.org/pages/49da0e466.html>
- 2 United Nations High Commissioner for Refugees. UNHCR and International Protection: A Protection Induction Programme. Glossary of Terms and Credits. Available at: <http://www.unhcr.org/44b5021d2.html>
- 3 Ibid.
- 4 Australian Government Department of Immigration and Border Protection. 2010. *Fact Sheet 20 – Migration Program Planning Levels*. Available at: <http://www.immi.gov.au/media/fact-sheets/20planning.htm>