



# **Shelter from the Storm**

**A Uniting Church in Australia  
Statement on Asylum Seeker &  
Refugee Policy**

**Adopted by the Fourteenth Assembly July 2015  
Resolution 15.23.09**



**Uniting Church in Australia  
ASSEMBLY**



“

**In a just and democratic society, people and governments work together to ensure that systems, structures, policies and public conversation are life-affirming, respectful of our differences and attentive to the special needs of those who have suffered violence, abuse and persecution**

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## Preamble

# Policy Principles for the Protection of Asylum Seekers and Refugees

When we consider, as Christians, what is necessary for a just society, the imperatives to care for the stranger and bring freedom to the oppressed are central. A just society upholds the dignity of every person and the life of every person is valued, while those who are most vulnerable and in need of care and protection find safety and security and are able to fulfil the hope of a decent life for themselves and their family. In a just and democratic society, people and governments work together to ensure that systems, structures, policies and public conversation are life-affirming, respectful of our differences and attentive to the special needs of those who have suffered violence, abuse and persecution. Public policies which seek to punish people who have done no wrong, and political and media rhetoric which serve to demonise a group of people, are unjust. Such policies and practices should be resisted as we work together to build a society where all people can live in peace and with hope.

As Christians called to love our neighbour, welcome the stranger, challenge unjust systems and offer refuge and care to those who are marginalised and in exile, we have a particular responsibility in our society when it comes to responding to issues related to asylum seekers and refugees. The 'Principles for Good Policy' must be read in light of the following affirmations.

### **All people should be treated with respect and accorded the dignity they deserve as human beings.**

- People do not flee their home, their family, friends and community and undertake perilous journeys without very good reason.
- Refugees should be able to find hope, shelter and restoration from the despair and persecution from which they have fled.
- Asylum seekers and refugees should not be used for political point scoring or as a distraction from other policy issues.
- Punishing a vulnerable group of people (asylum seekers) in order to deter others ('people smugglers' and other asylum seekers) is immoral.



**Australia's policies relating to asylum seekers should be driven by bipartisan commitments to a humanitarian response focussed on protection needs and to upholding our obligations under international law**



**As one of the wealthiest, safest and most secure countries in the world, Australia should do its fair share to ease people's sufferings in the context of what is a global problem. We must not shift our responsibilities to poor and developing countries.**

- Australia must work productively in our region over the long-term to ensure that asylum seekers and refugees throughout the region feel safe, can see a future for themselves and are treated justly and humanely as their claims for refugee status are assessed.

**Australia's policies relating to asylum seekers should be driven by bipartisan commitments to a humanitarian response focussed on protection needs and to upholding our obligations under international law.**

- Government policies and the implementation of those policies should not deliberately expose people to harm and policies proven to cause unintentional harm must be reformed.
- The principles of natural justice<sup>1</sup> and procedural fairness must be applied without discrimination.
- No-one should be subject to mandatory and indefinite detention without charge and without the right to challenge their detention.
- Children must be protected from harm and provided every opportunity to flourish. Decisions about policies which affect children must always be made with the best interests of the child as the primary consideration.<sup>2</sup>

**The Australian Government must be transparent in the implementation of its policies, open to scrutiny by the courts and the media and to critique and advocacy from civil society.**

**The media should not demonise or inflame prejudice against asylum seekers and refugees by deliberately promoting misunderstanding.<sup>3</sup>**

# Principles for Good Policy for the Protection of Asylum Seekers and Refugees



**Asylum seekers  
and refugees must  
have their dignity  
upheld and be  
treated humanely  
and with respect  
at all times**



- 1. The human rights of asylum seekers and refugees should be upheld at all times.**
  - 1.1** Everyone has the right to seek and to enjoy in other countries asylum from persecution.<sup>4</sup>
  - 1.2** Australia should uphold the rights recognised under, and fulfil our obligations under, all United Nations (UN) treaties that Australia has ratified, including the *Refugee Convention*, the *Convention on the Rights of the Child* (CRC), the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and the *International Covenant on Civil and Political Rights* (ICCPR). The treaties should be incorporated into Australian law and Australia should ratify additional protocols.
  - 1.3** Asylum seekers and refugees should not be discriminated against on the basis of race, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.
  - 1.4** There should be no discrimination in the treatment of asylum seekers, refugees and humanitarian entrants. Policies, including access to visas and the formulation of visa subclasses and access to public services, social services, and settlement support, should not discriminate against people on the basis of their mode of arrival, movements prior to their application for protection or resettlement being made.<sup>5</sup>
  - 1.5** Asylum seekers should not be penalised for arriving without valid documentation.<sup>6</sup> The Refugee Convention assumes an understanding on the part of signatory states that there are many legitimate reasons why asylum seekers may not have documents with them.
  - 1.6** Asylum seekers who arrive by boat must not be subject to arbitrary detention which is illegal under international law.<sup>7</sup>

- 1.7** Australian law must never risk the *refoulement* of refugees or people owed protection under other treaties to which Australia is a signatory. The obligation to not *refoule* (return people to places where their life or freedom may be threatened) is one of the most important principles of international law and should never be limited by domestic law.<sup>8</sup>
- 1.8** Refugees should have access to the same rights and entitlements as Australians, including access to government assistance.<sup>9</sup>

## **2. The Australian response to asylum seekers and refugees should be based on humanitarian principles.**

- 2.1** Australia's policies and legislation should reflect a commitment to the rights and safety of asylum seekers and refugees. This commitment should be clearly distinguished from issues of border protection and security, and from responses to 'people smuggling'.
- 2.2** Asylum seekers and refugees must have their dignity upheld and be treated humanely and with respect at all times.
- 2.3** Asylum seekers and refugees should not be subject to cruel, inhuman or degrading treatment or torture.<sup>10</sup>
- 2.4** Asylum seekers and refugees should not be subject to harsh and punitive policies and treatment in order to deter other asylum seekers and people smugglers.
- 2.5** Asylum seekers and refugees should never be used for political gain and their rights should never be held hostage in political processes.
- 2.6** Government policies and public statements should not encourage fear, racism or hatred towards asylum seekers and refugees. Language used to describe and discuss refugees and asylum seekers should be truthful, appropriate and sensitive.



**Asylum seekers should only be detained for short pre-determined periods of time for the sole purpose of conducting health, identity and security checks**



**3. Asylum seekers must not be subject to mandatory and indefinite detention.**

- 3.1** Detention in the migration context must not be arbitrary. A decision to detain for extended periods must be made on a case-by-case basis, should be regarded as an exceptional measure and subject to independent review.<sup>11</sup>
- 3.2** Asylum seekers should only be detained for short pre-determined periods of time for the sole purpose of conducting health, identity and security checks. For children and their families this should be a maximum of 72 hours.<sup>12</sup>
- 3.3** A maximum limit (7 days unless there are exceptional circumstances) on the length of time an asylum seeker can be detained should be set in law<sup>13</sup> and include processes for administrative and judicial review of individual cases whenever the limit is exceeded.
- 3.4** After initial processing, asylum seekers should live in the community (together with their family members) while their claim for protection is assessed.<sup>14</sup>
- 3.5** Immigration detention centres must be located on the Australian mainland and close to major population centres where asylum seekers have access to legal, medical, educational, recreational, spiritual, pastoral and other services. Offshore detention facilities (Christmas Island) and regional processing centres (Nauru and Manus Island, PNG) should be closed and all asylum seekers and refugees transferred to the Australian mainland.
- 3.6** The excision of Australian territories and the Australian mainland from the migration zone must be repealed.



**Children should be treated with care and respect, never being subjected to violence or abuse or placed in situations where they may witness violence or abuse**



**4. Australia's policies and legislation should refer particularly to the rights and needs of child asylum seekers and refugees.**

- 4.1** The mandatory detention of children is a gross violation of their human rights. Child asylum seekers should only be detained as a matter of "last resort and for the shortest appropriate period of time" and after an independent authority has reviewed the decision to detain.<sup>15</sup>
- 4.2** All decisions about child asylum seekers and refugees should be made with the best interests of the child as the primary consideration.
- 4.3** Children should be treated with care and respect, never being subjected to violence or abuse or placed in situations where they may witness violence or abuse.
- 4.4** Children should have access to timely and appropriate healthcare and mental health support.
- 4.5** The specific rights of child asylum seekers, including the right to education, should be upheld. Education should be provided at the level appropriate to the age and stage of development of the individual child.
- 4.6** All children and their families must live in the community on the Australian mainland while their claims for protection are processed. Children and their families should not be detained in closed, offshore or remote Australian immigration detention centres or centres in regional processing countries.
- 4.7** Children without parents ('unaccompanied minors') must be immediately placed in the care of an independent guardian. The independent guardian should ensure that children are involved in decisions regarding their welfare, and monitor their condition.



**Detention facilities should be of a standard that ensures people's wellbeing**



**5. The conditions of detention must be humane and uphold people's dignity.**

- 5.1** Asylum seekers in detention must be treated with dignity and respect at all times.<sup>16</sup>
- 5.2** Detention facilities should be of a standard that ensures people's wellbeing and that their psychological, social and health needs are addressed.
- 5.3** Minimum conditions for detention need to be codified and conform to our international human rights obligations.<sup>17</sup>
- 5.4** Healthcare must be provided at a standard commensurate to that available to Australian residents.
- 5.5** Food must be nutritious and suitable for people's age and religious and cultural background. Asylum seekers should be able to prepare their own food wherever possible.
- 5.6** Accommodation and bathroom facilities should be of a standard necessary to uphold people's dignity, health and privacy.
- 5.7** Asylum seekers must have access to means of communication including phones and computers (including internet).
- 5.8** Access to legal support and translation services should be provided immediately upon arrival and be readily available throughout the stay in detention facilities.
- 5.9** Asylum seekers must be allowed regular contact with and visits from family, friends, religious organisations and community groups. Visitation facilities must be adequate, including the provision of spaces for private conversation.
- 5.10** Detention centres must provide adequate education and vocational training opportunities, and recreational facilities and programs.
- 5.11** Asylum seekers must be free to practice their religion.

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- 5.12** Solitary confinement is never appropriate for asylum seekers.
  - 5.13** All detention centre staff must be properly trained, including about matters relating to the right to asylum, sexual and gender-based violence, human rights and human rights standards, cultural awareness and sensitivity, symptoms of trauma and the special needs of people with disabilities.
  - 5.14** People who are detained must have access to a non-discriminatory complaints process which includes an independent appeals process and have the right to make a complaint to external authorities including the Commonwealth Ombudsman and the Australian Human Rights Commission.<sup>18</sup>
  - 5.15** An independent authority should monitor and report publicly on the conditions under which asylum seekers are held, and ensure that they are treated justly and humanely.
  - 5.16** All immigration detention facilities must be accessible for monitoring by independent bodies including the United Nations High Commissioner for Refugees (UNHCR), the Australian Red Cross, the Commonwealth Ombudsman and the Australian Human Rights Commission.<sup>19</sup>

**6. Australia must support and uphold the legal rights of all asylum seekers, including a fair, transparent and timely process for assessing people's refugee claims.**

- 6.1** On arrival, asylum seekers should be able to notify their families or others and UNHCR of their arrival.<sup>20</sup>
- 6.2** Once a person has told the government that they are seeking asylum they should cease to be considered to be an 'illegal entrant' under existing Australian law.
- 6.3** Upon completion of health, identity and security checks, all asylum seekers should be issued a bridging visa valid until they are either granted a protection visa or, if their claim is unsuccessful, are voluntarily returned. Bridging visas should, at the very least, include the right to work, access to Medicare and English classes.



**Refugees should be offered permanent protection, regardless of their means of arrival**



- 6.4 All asylum seekers should have their claims for protection processed in a fair, transparent and timely manner. Their claim for protection should not proceed until they are recovered from the journey.
- 6.5 All asylum seekers should have immediate access to funded legal advice and assistance to prepare their claims.
- 6.6 All asylum seekers should have access to sufficient, culturally sensitive translation services from the time that they arrive in Australia.
- 6.7 All asylum seekers should have access to full administrative and judicial review of their case should protection initially be denied.
- 6.8 Accelerated refugee status determination processes, including 'enhanced screening' and 'fast track' processes, are generally inadequate and potentially dangerous. Such brief, non-reviewable or limited-review processes increase the risk of people in need of protection being 'refouled'. Accelerated processes should only be used to identify those who may be in urgent need of protection.<sup>21</sup>
- 6.9 Recognising the detrimental social and health impacts of family separation, all refugees and others who are found to be owed protection, should have the right to be reunited with their families. Intake numbers for family reunification should not be tied to any caps on existing migration and humanitarian programs.
- 6.10 Refugees should be offered permanent protection, regardless of their means of arrival.
- 6.11 Refugees who receive adverse ASIO security clearances should be told why their security clearance has been refused, have access to an independent review of their cases and be able to appeal the decision. Should an independent review determine that they pose no threat to the Australian community, arrangements for community-based detention should be applied.



**7. Australia must provide adequate psychological, social and medical care, and access to education for all asylum seekers.**

**7.1** All asylum seekers should have access to healthcare including trauma and torture services, Medicare and public health services from the time that they arrive in Australia.

**7.2** Specialist mental health services should be provided to asylum seekers and refugees, recognising the traumatic situations from which they have come and any injuries and untreated medical conditions they may be suffering.

**7.3** Asylum seekers should be provided with access to education and vocational training, English-language education, work rights, work-ready support, income support, housing support and casework support while they await the outcome of their claims, and after they are granted protection, for as long as it is required, on a case-by-case basis.

**8. Australia should take a lead in the development of a genuine regional approach to the protection of asylum seekers and refugees.**

**8.1** A regional solution should be focussed on upholding and protecting the rights of asylum seekers and refugees and supporting the development of a rights-based approach in countries across the region.

**8.2** A regional solution would ensure that asylum seekers and refugees are safe where they are, have hope for a secure future for themselves and their families and, if necessary, be able to access appropriate resettlement within the region. There would be no need for people to embark on dangerous sea journeys.

**8.3** A long-term, effective and genuinely shared regional solution should be negotiated multilaterally, in consultation with UNHCR and with civil society through such mechanisms as Track II dialogue.<sup>22</sup>

**8.4** Protection claims must be processed fairly, quickly and transparently by UNHCR, with support from nations like Australia.



**Australia's responses to asylum seekers should embody the spirit of international responsibility sharing**



**8.5** In order to make a positive contribution, Australia must cease unilateral actions such as the interception and turning back of boats and end its bilateral arrangements with the poorest countries in the region.

**8.6** Development aid should never be used as a lure to engage poor and developing countries in bilateral agreements about the settlement or detention and processing of asylum seekers.

**8.7** Australia must demonstrate its commitment to a regional solution by resettling a substantial number of refugees from the region.<sup>23</sup>

**9. Australia should take a truly global approach to refugees, asylum seekers, and displaced persons.**

**9.1** Australia's responses to asylum seekers should embody the spirit of international responsibility sharing, in the knowledge of our nation's relative wealth and good fortune, and the burden that has been disproportionately imposed on developing nations.

**9.2** The desire to build a trading relationship with a country should never be a factor taken into account when determinations are made on the refugee status of citizens of that nation.

**9.3** Australia should increase its commitment to offering resettlement places for refugees referred to us by UNHCR. Australia should (gradually) increase its annual overall humanitarian intake to at least 60,000 by 2020.

**9.4** Australia's onshore (refugees whose claims have been processed in Australia) and offshore (resettlement on UNHCR referral) humanitarian program intakes should be de-linked. Australia is the only country that links onshore and offshore humanitarian intakes. The linking of the two components has contributed significantly to the perception that asylum seekers arriving by boat are queue jumpers taking the place of so-called 'legitimate' refugees residing in refugee camps overseas.



## Children born to asylum seeker parents in Australia should have a right to claim Australian nationality



**9.5** Australia should constructively engage with UN treaty bodies and the Universal Periodic Review process and strive to meet recommendations made by UNHCR in recognition of its mandate to lead and coordinate international action for the world-wide protection of refugees and the resolution of refugee problems.

### **10. People whose refugee claims have been rejected should be treated justly and humanely.**

**10.1** People whose refugee claims have been rejected should be treated with respect and receive assistance from the government to enable them to return voluntarily and with dignity.

**10.2** People who are stateless should be granted complementary protection.<sup>24</sup>

**10.3** Every person has a right to a nationality<sup>25</sup> and every child has a right to acquire a nationality.<sup>26</sup> Children born to asylum seeker parents in Australia should have a right to claim Australian nationality.<sup>27</sup>

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1 'Natural justice' is one of the foundational principles of law that refers to the right to have a fair trial or hearing and the right to be free from bias or prejudice in decision-making.

2 *Convention on the Rights of the Child*, Article 3(1), <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

3 The Australian Press Council has a guideline and has made three rulings regarding the term 'illegal' for refugees and asylum seekers: 1. Guideline No. 262 (2004) states: "The Australian Press Council has received complaints about the terminology that is applied, and ought to be applied, to those arriving in Australia who do not have normal immigrant credentials. Technically in Commonwealth immigration legislation they are referred to as 'unlawful non-citizens'. However, they are often referred to as 'illegal immigrants', or even 'illegals'. The problem with the use of terms such as 'illegal refugee' and 'illegal asylum seeker' is that they are often inaccurate and may be derogatory. The Council cautions the press to be careful in the use of such unqualified terms in reports and headlines". 2. Adjudication No. 1430 (31 July 2009) states: "The Australian Press Council has upheld a complaint brought by an advocacy group, A Just Australia, against *The Australian* about some of the language used in four articles and an editorial on boat arrivals published in April 2009". 3. Adjudication No. 1242 (June 2004) states: "The Australian Press



Council has upheld a complaint brought by Mira Wroblewski and others against *The Sydney Morning Herald* concerning the terminology used in a headline to describe people without the requisite migration documents or authority, who arrive seeking asylum in Australia.” So under Australian and international law and professional media industry guidelines the term ‘illegal’ should not be applied to refugees or asylum seekers. The UK-based Information Centre About Asylum and Refugees (ICAR) has a useful set of guidelines [http://www.icar.org.uk/Asylum\\_Seekers\\_and\\_Media\\_Briefing\\_ICAR.pdf](http://www.icar.org.uk/Asylum_Seekers_and_Media_Briefing_ICAR.pdf).

- 4 *Universal Declaration of Human Rights*, Article 14, <http://www.un.org/en/documents/udhr/>
- 5 *Convention Relating to the Status of Refugees*, Article 3
- 6 *Convention Relating to the Status of Refugees*, Article 31 (1)
- 7 *Universal Declaration of Human Rights*, Article 9 and the *International Covenant on Civil and Political Rights*, Article 9 (1)1, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- 8 People are protected against refoulement in a number of treaties and conventions including the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 3(1), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, the *International Covenant on Civil and Political Rights*, Articles 6(1) and 7, and the *Convention Relating to the Status of Refugees*, Article 31.
- 9 *Convention Relating to the Status of Refugees*, Article 23
- 10 *Universal Declaration of Human Rights*, Article 5
- 11 UNHCR (2013), *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum Seekers and Alternatives to Detention*, Guideline 4, available <http://www.refworld.org/docid/503489533b8.html>
- 12 Recommended by the Royal Australian and New Zealand College of Psychiatrists, ‘Children in immigration detention’, Position Statement 52, February 2015, <https://www.ranzcp.org/News-policy/Policy-submissions-reports.aspx>
- 13 UNHCR, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum Seekers and Alternatives to Detention*, op. cit., Guideline 6
- 14 Australia already implements a model for ‘community-based processing’ for asylum seekers who arrive by plane. Once their visa expires, they are granted a bridging visa until their claim is processed. During this time they do not receive Centrelink payments, but if assessed as particularly vulnerable may receive special assistance equivalent to 89% of the Newstart allowance. Most rely on the support of the community to meet their basic needs.
- 15 *Convention on the Rights of the Child*, op. cit., Article 37(b). The Royal Australian and New Zealand College of Psychiatrists has recommended a maximum of 3 days, in ‘Children in Immigration Detention’, Position Statement 52, February 2015, p. 3, op. cit.

- 16 These recommendations are consistent with those made by UNHCR, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum Seekers and Alternatives to Detention*, op. cit., Guideline 8, and Australian Human Rights Commission (2013) *Human Rights Standards for Immigration Detention*, <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/human-rights-standards-immigration-detention>
- 17 Such guidelines should be consistent with the UNHCR *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum Seekers and Alternatives to Detention*, *ibid.*
- 18 Australian Human Rights Commission, *Human Rights Standards for Immigration Detention*, op. cit., section 6.2
- 19 *ibid.*, section 6.1
- 20 *ibid.*, section 8.4
- 21 B. Douglas et al (2014), *Beyond the Boats: Building and Asylum and Refugee Policy for the Long Term*, Australia, p. 34 <https://www.australia21.org.au/publication-archive/beyond-the-boats-building-an-asylum-and-refugee-policy-for-the-long-term/#.Vi7E5NZeZcM>
- 22 Track II dialogue takes place between civil society or non-governmental organisations and aims to complement official diplomatic dialogue. In B. Douglas et al., *ibid.*, pp. 37-8
- 23 There are about 10,000 asylum seekers and refugees in Indonesia (the majority from Afghanistan) and about 150,000 asylum seekers, refugees and others of concern to UNHCR in Malaysia (the majority from Myanmar). Neither country is party to the Refugee Convention and the conditions for asylum seekers and refugees are harsh. Australia resettled only 560 refugees from Indonesia between 2001 and 2010 and has never taken more than 605 in one year. In November 2014, the Government announced that it would no longer be accepting refugees from Indonesia for resettlement. A generous regional intake would be a significant show of faith and provide an alternative pathway to a risky sea voyage. (Statistics from Elibritt Karlsen, 'Refugee Resettlement to Australia: what are the facts?' Research Paper, Australian Parliamentary Library, 3 Feb 2015, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/RefugeeResettlement](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/RefugeeResettlement))
- 24 'Complementary protection' refers to protection owed to people under conventions and treaties other than the Refugee Convention.
- 25 *Universal Declaration of Human Rights*, Article 15
- 26 *International Covenant on Civil and Political Rights*, Article 24(3)
- 27 This must be the case regardless of whether the mother and baby may be or are consequently transferred to an offshore detention or processing centre.

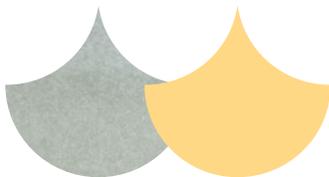
# Assembly Resolution

15.23.09

## The Assembly resolved to:

- (a)** Adopt the statement, *Shelter from the Storm: A Uniting Church in Australia Statement on Asylum Seeker and Refugee Policy*.
- (b)** Affirm the commitment and actions of Uniting Church in Australia members, groups, congregations and agencies who have worked tirelessly to provide practical care and support, pastoral visits, chaplaincy and specialist services to asylum seekers in the community and in detention.
- (c)** Affirm the commitment and actions of Uniting Church in Australia members who have advocated for the rights and wellbeing of asylum seekers and refugees through peaceful protests, non-violent direct action, direct lobbying of politicians and education and awareness raising programs and activities.
- (d)** Commit itself and call on members, councils and agencies of the Uniting Church to:
  - (i) continue to provide practical care and support to asylum seekers and refugees in the community and in detention centres as appropriate and where possible;
  - (ii) continue to peacefully advocate for the rights of asylum seekers and refugees using appropriate strategies based on the 'Principles for Good Policy for the Protection of Asylum Seekers and Refugees' in the statement *Shelter from the Storm: A Uniting Church in Australia Statement on Asylum Seeker and Refugee Policy*; and
  - (iii) continue to promote a more compassionate and informed response to asylum seekers within the church and Australian society.
- (e)** Reiterate the calls on the Australian Government to:
  - (i) end the policy of the mandatory and indefinite detention of asylum seekers and refugees:
    - o initial health, security and identity screening should be limited to seven days, with children held for a maximum of 72 hours; and

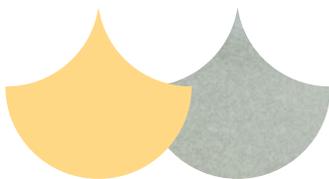
- asylum seekers should reside in the community in Australia with the right to work and access to education, healthcare and other social services as appropriate while their claims are processed;
- (ii) end the offshore processing of asylum seekers who arrive or attempt to arrive in Australia by boat:
  - immediately release all children and their families from detention centres including Nauru, and allow them to live in the Australian community with appropriate access to funded legal advice, medical care, social services including financial support, and education while their claims are processed; and
  - close the detention centres on Christmas Island, Manus Island and Nauru and bring all asylum seekers to Australia to have their claims processed while they reside in the community;
- (iii) revoke the excision of territories and the mainland from Australia's migration zone;
- (iv) provide permanent protection to all refugees including access to family reunion through the Special Humanitarian Program, regardless of visa class; and
- (v) remove the link between the offshore and onshore program intakes.
- (f)** Call on the Australian Government to
  - (i) implement the recommendations of the Australian Human Rights Commission report, *The Forgotten Children*;
  - (ii) increase the humanitarian intake to at least 25,000 in 2016–17, and increase it again over the following years to reach 60,000 by 2020;
  - (iii) act immediately to improve conditions in detention centres in Australia, Manus Island and Nauru including:



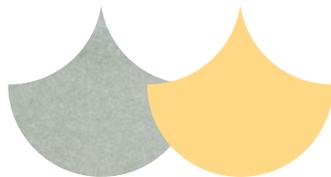
- the establishment of an independent monitoring committee made up of experts to regularly monitor conditions in immigration detention facilities and report publicly;
  - the provision of safe and secure accommodation and services including water, electricity and sewerage;
  - the provision of timely and adequate psychological, social and medical care and access to education and recreation; and
  - the implementation of clear regulations for the appropriate training and conduct of authorised staff in immigration detention centres, an independent complaints mechanisms for asylum seekers and refugees in detention, and pathways for unbiased legal processes if staff conduct is inappropriate or if there is unacceptable use of force;
- (iv) end accelerated refugee status determination processes, except in cases of specific cohorts from source countries with recognised protection needs; and
- (v) expedite a fair and transparent refugee determination process for all asylum seekers living in the community, ensuring people have work rights, education, healthcare and government assistance to support basic living needs while they wait, access to funded legal advice throughout, and access to independent and judicial review processes.

**(g)** Call on the Australian Government to work constructively with countries in the region to develop a genuine multilateral protection solution which upholds the rights of asylum seekers and refugees. This would include Australia acting to:

- (i) end bilateral agreements pertaining to the detention or transfer of asylum seekers between Australia and our developing country neighbours such as Cambodia, Papua New Guinea and Nauru;



- (ii) end the interception and turn-back of boats carrying asylum seekers;
- (iii) engage in genuine multilateral negotiations, in consultation with UNHCR, for a shared regional solution to the protection needs of asylum seekers and refugees;
- (iv) develop and fund a regional Track II dialogue on forced migration;
- (v) reverse the decision to refuse the resettlement of refugees from Indonesia and resettle a substantial number of refugees from the region; and
- (vi) ensure that the processing of refugee claims is fair, transparent and effective, wherever it takes place.



## Introduction

# Background and Rationale

### The Uniting Church, Justice and Human Rights

The Uniting Church in Australia was born in 1977 when the Congregational Union of Australia, the Methodist Church of Australasia and the Presbyterian Church of Australia joined together to form the nation's only truly indigenous mainstream Christian movement. The Uniting Church journeys with all Australians in the search for meaning, purpose and community in life. Through worship, sharing the story of Jesus, and service in the community, it witnesses to the belief that life is most fully found in God.

From its inception, the Church has been committed to justice and reconciliation between people. It considers that the world is a community in which all members are responsible for each other and the strongest have a special responsibility for the vulnerable. In the *Statement to the Nation* made by the Inaugural Assembly in 1977, the Uniting Church promised to "seek the correction of injustices wherever they occur", "work for the eradication of poverty and racism within our society and beyond", and "oppose all forms of discrimination which infringe basic rights and freedoms".<sup>1</sup>

The Uniting Church shares in a long and rich Christian tradition of social justice. The Church gave expression to that tradition in the *Statement to the Nation*, in which it described its commitment to promoting and upholding human rights and the democratic process, in recognition of the inherent value of each human being. In response to the Christian call to stand with people who are marginalised, poor and oppressed, the Uniting Church believes that it has a responsibility to contribute to the building of societies in which all people are valued and respected. The Church seeks the conditions that enable every person to thrive and to reach their full potential.

The Church's social justice advocacy and community services are an expression of the belief that every individual is equal before God. When advocacy and service are done with integrity, and as a proclamation of the Gospel, the Church bears witness to Christ, and enters fully into the faith and mission of the whole Christian church.

The Uniting Church believes that it is the responsibility of all of us as individuals and as a community to seek the common good, working together to build a just, peaceful,

inclusive and prosperous society, where all people are valued: where the First Peoples of this land are respected and honoured; where civil liberties are taken seriously and the diversity of religions, languages and cultures is regarded as a great gift; where everyone has a home, decent work, access to a good education and good healthcare; and where everyone has the opportunity to live meaningful lives free from fear, persecution, prejudice and violence.

Christian support for human rights rests on the understanding that the community flourishes when all people are included and accorded the dignity and respect they deserve as beloved children of God. Human beings are made in the image of God, and as such are precious, capable of marvellous things, and entitled to dignity, compassion and respect.

In 2006, the Uniting Church Assembly adopted the human rights statement *Dignity in Humanity: Recognising Christ in Every Person*. It describes the Church's beliefs that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.

Christians are called to love their neighbour as they love themselves and to extend that love even to enemies. It is the love of God in Christ Jesus which motivates us to live out this calling by working for peace with justice in our church, our communities and the world. The recognition of human rights is an affirmation of the dignity of all people and essential for achieving peace with justice.<sup>2</sup>

*Dignity in Humanity* affirmed the right of all people to "live free of persecution and violence, with access to all that is necessary for a decent life".<sup>3</sup> It also affirmed the Church's support for international human rights instruments and pledged the Church to critically assess national and international policies against these instruments:

We affirm our support for the human rights standards recognised by the United Nations (UN). Everyone has a birthright to all that is necessary for a decent life and to the hope of a peaceful



**Christian support for human rights rests on the understanding that the community flourishes when all people are included and accorded the dignity and respect they deserve**



future. This birthright is expressed in UN human rights instruments which describe human rights as civil, political, economic, social and cultural rights. These instruments provide a valuable framework for assessing political, economic and social systems and are an important tool for peace.<sup>4</sup>

It is out of these beliefs and affirmations, that the Uniting Church in Australia, through its councils, congregations, members, caring agencies and development aid, has been serving the needs of asylum seekers and refugees in Australia and across the world. The Church has been providing practical and pastoral support, specialist social services, immigration detention-centre chaplaincy, advocacy and prayer since its inception.

In 2000, the Uniting Church in Australia Assembly adopted a series of resolutions which specifically responded to asylum seeker and refugee policy, entitled *Welcome the Stranger*. The resolutions included a call on the Australian Government to end long-term, mandatory detention and to explore alternatives to detention, better support asylum seekers and refugees in the community and “demonstrate its international responsibility to the protection of vulnerable individuals”.<sup>5</sup> After the ‘Tampa incident’ and the introduction of offshore processing<sup>6</sup>, the Assembly Standing Committee adopted the Church’s *Asylum Seeker and Refugee Policy*.<sup>7</sup> This policy statement reiterated the Church’s commitment to the dignity and protection of all asylum seekers and refugees, and affirmed its belief that the rights and safety of asylum seekers must be separated from issues of border protection, and that asylum seekers should not be discriminated against because of how they arrived in Australia.

Since 2002, the global situation for refugees has significantly deteriorated. At the same time, Australia’s policies relating to asylum seekers and refugees have become increasingly punitive as well as complex. *Shelter from the Storm: A Uniting Church in Australia Statement on Asylum Seeker and Refugee Policy* builds on the principles articulated in the 2000 and 2002 statements and responds to the significant policy reforms made over more than a decade.



**We affirm our support for the human rights standards recognised by the United Nations**



## Public Debate in Australia

As Christians seeking to live faithful lives and respond to others with the grace of God, we are deeply challenged by the complexity of the debate surrounding policies responding to refugees and asylum seekers.

Many Australians support 'tough' positions against asylum seekers who arrive by boat, and rank asylum seeker policies as one of the top issues facing our country.<sup>8</sup> Some Christians, like many other Australians, are concerned about unsustainable numbers of asylum seekers arriving by boat and a fear of the 'floodgates' opening if we were to have more compassionate policies. Others have voiced concern about fears of Islamicisation and the changing demographic of Australia. Many more share a deep concern that people are drowning in small, overcrowded and unseaworthy boats making dangerous voyages to Australia.

We know that we do not always respond to human suffering and need with compassion and love. We are often driven by our fears and confusion to give assent to 'solutions' which punish rather than protect. Throughout the long national debates about how we should respond to asylum seekers, we have seen the best of the Australian national character—generosity, hospitality, practical care and deep compassion, and the worst of our nation—political opportunism, mean-spiritedness, fear of outsiders and a callous disregard for the welfare of vulnerable people, including children.

We are confronted not only by deaths at sea but also by our concerns for refugees in camps throughout Africa and Asia and people displaced by violent conflict and persecution in countries such as Syria and Iraq. We see vulnerable people suffering because of harsh and punitive policies administered by our Government here in Australia and in offshore detention centres on Nauru and Manus Island, Papua New Guinea (PNG). Children are locked up in immigration detention centres, asylum seekers are living in poverty in the community with no end in sight to their situation and on Manus Island and Nauru the conditions are harsh and damaging to people's health and wellbeing. The problems seem too great and the solutions elusive.

With such difficult questions around Australia's treatment of asylum seekers and refugees, it is important to step back from the prevailing public debate and draw guidance from our identity as Christians.



**It is important to step back from the prevailing public debate and draw guidance from our identity as Christians**



## Refugees and the Christian Tradition of Compassionate Love

*Christians believe that God's love is never-ending and that in Jesus Christ we see God's will for the reconciliation of all creation, the restoration of God's peace, God's shalom... We are called as Christians to serve that end...<sup>9</sup>*

Christians are called to be signs of God's will for peace and reconciliation in this world. The vision of God's *shalom*, described by the ancient Hebrew prophets and fulfilled in Jesus Christ, is a vision of God's love—offered to all without distinction—and God's justice: good news to the poor, freedom to the oppressed, liberation to the captives, food to the hungry and healing to the sick. The prophet Isaiah called on the Israelites to 'Learn to do good; seek justice, rescue the oppressed, defend the orphan, plead for the widow' (Isaiah 1:17). God's love shared among the peoples and the earth, brings justice where there is injustice, peace where there is fear and violence, and hope where there is none.

In the Jewish and Christian stories of faith, it is often refugees who seek and experience God's justice. The Israelites, strangers in the land of Egypt, became refugees fleeing the oppression of slavery in Egypt only to find hunger, thirst and isolation on the journey to the promised land. Many times more they became exiles and 'resident aliens' in the midst of empires. It is not surprising then, that God is often identified in the Hebrew scriptures as the God who cares for the exiled and the stranger, is a refuge to the poor and the needy, and a shelter from the storm for the oppressed. (Isaiah 25:1–5).

It is also no accident that refugees are identified in the Bible, together with widows and orphans, as the most marginalised people and that the test of faithful obedience to God was how a community and individuals cared for these very vulnerable people. The Israelites understood that God's call on them to welcome the stranger required the most profound expression of hospitality—the people of faith were to extend the rights of citizens to refugees in their midst:

When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt: I am the Lord your God. (Leviticus 19:33–34)



The Christian story continued to uphold God's call to solidarity with the homeless. Mary and Joseph were forced to flee and hide in Egypt as Herod sought to kill the baby Jesus. As an adult, Jesus travelled through strange lands choosing to spend time and share meals with the most marginalised and oppressed people of his society. Jesus called on people to love their enemies, give all they had to the poor, and offer hospitality to strangers as their ancestors had done before them. Like the prophets, he taught that faithful obedience to God was marked by such deeds and that it would be how well people responded to strangers and to the poor that would identify them as people of faith.

Jesus taught that faithfulness to God is to be expressed in how his disciples live out God's will for reconciliation:

I was hungry and you gave me food, I was thirsty and you gave me something to drink, I was a stranger and you welcomed me (Matthew 25:35).

This care for the most vulnerable in the world, should not, according to the Christian tradition, confine itself to people who are 'like us'. Christians are called to be agents of God's grace in the world, seeking justice and peace, reaching out with the love of God to those who are neighbours, those who are strangers and those who are enemies.

The scriptures are very clear that the faithful response to people in need should be driven by compassion. The writer of the Letter to the Hebrews calls people to empathise — "remember those who are being tortured as though you yourselves were being tortured" (Hebrews 13:3).

The Greek word for compassion is *splanchnizomai*. A more literal translation would be 'gut-wrenching'. It is used nine times in the New Testament in reference to Jesus himself and used another three times in parables told by Jesus (the parable of the good Samaritan where the Samaritan had compassion for the wounded Jew, the parable of the prodigal son where the father had compassion for his wayward son, and the parable of the unforgiving servant where the king had compassion on the slave who owed him money, forgiving his debt). When Jesus was moved by compassion he reached out to touch people, often those who were not meant to be touched. His compassion led to acts of justice: feeding, healing, forgiving, comforting and

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**I was hungry and you gave me food, I was thirsty and you gave me something to drink, I was a stranger and you welcomed me**

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praying. These were not just occasional acts; it was a way of being in relationship that arose from the connection he felt with people. The message was clear: God's grace is for everyone. Jesus' compassionate life challenged systems and structures which excluded and oppressed people. It was forgiving and full of grace. It was nourishing and transformative.

As the embodiment of divine compassion, Jesus lived a life of full embrace and called his followers to do the same. We are to live compassionate lives, looking and reaching out to the edges of our communities, inviting into our house people rejected by society, those who are strangers in our land and those who are fleeing situations of hunger and persecution. In a world where so many suffer appalling violence and persecution, we cannot turn people away, we cannot cross to the other side of the street and we cannot fail to offer care and hospitality. We are to share what we have with them. Above all, as Christians, we are to restore hope in this world, for it is in this that God's love will be known to all.

It is out of these beliefs and traditions that, since its inception, the Uniting Church in Australia through its congregations, members and service agencies, has provided care and support to asylum seekers and refugees in immigration detention and in the community. The Church has consistently spoken out against all government policies that are harmful to asylum seekers and refugees, advocating for policies which are humane and which uphold people's rights under international law. It has worked ecumenically and in partnership with civil society organisations and groups, and has been active locally, nationally and internationally to raise awareness of the situations faced by asylum seekers and refugees, not just in Australia but throughout the world.



## A World of Refugees: the Global Context

In 1951, after the horrors of the Second World War, the international community came together to sign an agreement about the protection of refugees. This agreement—the *Convention Relating to the Status of Refugees*—defines who is a refugee and what rights they should be afforded.<sup>10</sup> A Protocol was added in 1967 to ensure that the principles of the Convention would apply to everyone suffering persecution regardless of where they are in the world.

Countries which have signed the Convention and the Protocol are responsible for ensuring that they do not return people to countries where their life or freedom would be threatened. This principle—*non-refoulement*—is one of the key features of the international system of refugee protection.

An asylum seeker is someone who has fled their own country and applies to the government of another country for protection as a refugee. The term ‘asylum seeker’ refers to all people who apply for refugee protection, whether or not they are officially determined to be refugees.

The word ‘refugee’ denotes a specific legal status granted to some asylum seekers. The Refugee Convention defines a refugee as “someone 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 the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country” (Article 1).

The Convention outlines the rights of refugees, including freedom of religion and movement, the right to work, education and accessibility to travel documents. Article 31 (1) states that no penalties should be imposed on refugees for the way that they enter a country, provided that they present themselves without delay to authorities and have a good reason for their arrival:

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in

their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

In June 2014, the UN Refugee Agency (UNHCR), reported that the number of people forcibly displaced from their homes exceeded 50 million for the first time since the post-WWII era. This was an increase of 6 million since 2012 (2.5 million of those were from Syria). This number includes refugees, asylum seekers and people regarded as 'internally displaced'—forced from their homes but still in their own country. 16.7 million of those displaced are refugees and half of them are children.

In 2013 alone, over 1 million people applied for refugee protection including over 25,000 children without parents. However, only about 98,400 refugees were resettled (across 21 countries) and just over 400,000 people returned home. The largest refugee population in the world is in the Asia-Pacific region with over 3.5 million people. The majority of the world's refugees (about 81%) are being hosted by developing countries, with Pakistan hosting the greatest number of refugees (over 1.6 million at the end of 2013).

Australia hosts a relatively small number of asylum seekers and refugees and the number of applications for asylum has always been small compared to other industrialised countries. In Australia, the highest number of applications for onshore asylum occurred in 2012–13, when 18,365 people who arrived by boat made protection claims. The second highest number of applications by boat arrivals was just over 9000, in 2013–14. By comparison, 109,600 asylum claims were made in Germany in 2013—the highest number of asylum claims in any industrialised country that year.<sup>11</sup>



**In 2014, the number of people forcibly displaced from their homes exceeded 50 million for the first time since the post-WWII era**



## Australian Policy Responses to Asylum Seekers and Refugees

Australia signed the Refugee Convention in 1954 and the Protocol in 1973, and has since incorporated many of its responsibilities into the Migration Act. As well as the Refugee Convention, Australia has responsibilities to refugees and asylum seekers under a number of international treaties. These include:

- the *Convention Against Torture and Other Cruel, Inhumane or Degrading treatment or Punishment* (CAT);
- the *International Covenant on Civil and Political Rights* (ICCPR); and
- the *Convention on the Rights of the Child* (CRC).

These treaties contain many important obligations for Australia. The CAT states that no-one should be sent to a country when there are reasonable grounds that they may be in danger of being tortured. The ICCPR provides broad coverage for human rights, stating that everyone has a right to life and the right to have their life protected by law. Everyone is also entitled to a life free from torture, cruel, inhumane or degrading treatment or punishment. Everyone is also entitled to live free of arbitrary arrest, and has a right to liberty and security. Not all of these rights are being upheld in Australia, because they have not been incorporated into Australian law or they have been removed from law. This means that our domestic laws do not measure up to the commitments we have made under international law.

### Mandatory Detention and Policies of Deterrence

The mandatory detention of asylum seekers who arrive by boat seeking refugee protection in Australia without valid visas began in 1992 under the Labor Government. This was to be a temporary measure to deal with an influx of refugees from Vietnam, Cambodia and Laos (Indochinese refugees). In 1994, the mandatory detention legislation came into effect. This legislation also created the distinction between 'lawful' and 'unlawful' non-citizens and removed a limit on how long 'unlawful non-citizens' could be detained in immigration centres.

In 1999, the Coalition Government introduced Temporary Protection Visas (TPVs) for the express purpose of deterring others from attempting to come to Australia.

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**The mandatory detention of asylum seekers who arrive by boat seeking refugee protection in Australia without valid visas began in 1992**

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Two years later, in August 2001, in response to the arrival of 433 asylum seekers rescued by the Norwegian vessel *Tampa*, the Coalition Government implemented what would become known as the ‘Pacific Solution’. The asylum seekers from the *Tampa* were transferred to a navy vessel and taken to the Pacific island of Nauru. The Australian territories of Christmas Island, the Cocos (Keeling) Islands and Ashmore and Cartier Islands were excised from the migration zone, ensuring that asylum seekers arriving at any of these places would not trigger Australia’s international and domestic legal obligations to assess their claims for protection.<sup>12</sup>

The Government continued to implement the ‘Pacific Solution’ policy until 2008 even though 70 per cent of those detained on Manus Island and Nauru between 2001 and 2008 were found to be refugees and the majority resettled in Australia.<sup>13</sup> Conditions in Australian mainland immigration centres including those in Woomera, Port Hedland and Baxter where harsh and dehumanising — people, including children, were referred to by number — and riots were not uncommon. In 2004, the Human Rights and Equal Opportunities Commission (HREOC, now AHRC) released its first comprehensive report into children in detention, *A Last Resort?*. It found that children were not safe in detention, they were suffering significant rates of mental and physical illness and were witness to the suffering of the adults (including suicide attempts) and the violence of riots (which included the use of water cannons and tear gas).<sup>14</sup>

Between 2005 and 2011, successive governments softened some aspects of their policies. In 2005, the Coalition Government released all children and their families from detention to live in the community while their protection claims were processed. After winning the federal election in 2007, the Labor Government ended the ‘Pacific Solution’ in 2008 and although mandatory detention remained a key policy, it moved to improve conditions in detention centres based on a set of ‘detention centre values’. Over the following few years, with deteriorating situations in Afghanistan (2.7 million refugees in 2011 alone), Iraq and Iran, Australia saw a rise in the number of asylum seekers arriving by boat.

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**Conditions in detention centres, both in Australia and on Manus Island and Nauru, are harsh and unsuitable for asylum seekers**

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The Labor Government moved to resume ‘offshore processing’ as a deterrent. After a failed attempt to set up a processing centre in Timor Leste and the failure of ‘refugee swap deal’ with Malaysia in 2011, the Government resumed the transfer of asylum seekers to processing centres on Nauru and Manus Island in 2012. In May 2013, the Australian mainland was excised from the migration zone and on 19 July that year, the Labor Government determined that no asylum seekers arriving by boat would be resettled in Australia. It signed a new bilateral agreement with PNG that would see asylum seekers both processed and resettled there.

In September 2013, the newly sworn-in Coalition Government militarised the response to asylum seekers by charging the Australian Defence Force to intercept and turn back boats to Indonesia under the policy name ‘Operation Sovereign Borders’. Family groups and children without parents (‘unaccompanied minors’) in Christmas Island and mainland centres became subject to possible transfer to Nauru and single men to Manus Island. In December 2014, a bill was passed that legalised the ‘Operation Sovereign Borders’ policy.<sup>15</sup> This legislation removed all references to Australia’s obligations under the Refugee Convention from the Migration Act, effectively placing Australia outside of international law. The Bill also limited the ability of the courts to examine the Government’s treatment of asylum seekers and refugees. The legislation reintroduced Temporary Protection visas and increased the Government’s power to return people to the places from which they had fled without an appropriate, detailed assessment of their need for protection.

#### Detention Centres

Conditions in detention centres, both in Australia and on Manus Island and Nauru, are harsh and unsuitable for asylum seekers. A number of organisations including UNHCR, Amnesty International Australia and the Australian Human Rights Commission (AHRC) have found healthcare, education, translation and legal services, and recreational facilities to be grossly insufficient. The accommodation is cramped and often lacks privacy. Water, electricity and sewerage services are problematic, especially on Manus Island and Nauru. Together with the heat, the prison-like conditions and the indefinite nature of the detention, the



centres are breeding grounds for physical and mental illness in adults and children.

Healthcare professionals and national health peak bodies have had long-standing concerns about the damaging effects of detention on asylum seekers. Doctors visiting the centres have diagnosed disproportionately high rates of severe depression and self-harm, including attempted suicides, even by children. In November 2013, 15 doctors who had worked in the detention centre on Christmas Island wrote a letter expressing serious concerns for “the numerous unsafe practices and gross departures from generally accepted, medical standards which have posed significant risk to patients and caused considerable harm”.<sup>16</sup> In February 2014, a medical committee visited Nauru and their report outlined many serious personal and public health issues with “substantial ongoing risk factors for physical and mental health”, including for 10 children without parents.<sup>17</sup> In March 2015, Australia’s peak health professional bodies issued a joint statement calling on the Government to immediately release all children and their families from detention citing the “the devastating impact of detention” on children’s health and wellbeing.<sup>18</sup>

Reviews commissioned by the Government (the Cornall Report and the Moss Review) as well as the extensive studies of children in detention carried out by the AHRC (*A Last Resort?* and *The Forgotten Children*) have all described the centres as extremely unsafe environments and detailed cases of psychological and physical abuse, including sexual harassment, indecent assault, rape and the sexual abuse of children.<sup>19</sup>

Since 2000 there have been 29 recorded deaths in Australian detention facilities, and one death on Nauru.<sup>20</sup> Disturbingly, there were two deaths on Manus Island within an eight-month period. In February 2014 a young Iranian man, Reza Barati, was beaten to death during a riot at the detention centre. Dozens of others were injured. In September 2014, another young Iranian man, Hamid Kehazaei, died in hospital after he contracted septicaemia from an infected and untreated cut on his foot. There are numerous reports of suicide and serious self-harm by asylum seekers living in the community who have been stripped of hope as a result of visa restrictions, such as Leo Seemanpillai, a 29 year-old Sri Lankan man, and Rezene Mebrahta Engeda, a 30-year-old man from Eritrea.

## Temporary Protection Visas

Another damaging policy of deterrence has been the imposition of Temporary Protection Visas (TPVs) for refugees. TPVs withhold a range of services from refugees that would make settlement in Australia easier. Travel outside Australia is allowed only on application and in limited circumstances, and there is no right to family reunion, as well as limited welfare and work benefits. There are also limited entitlements to services such as accommodation, food, household goods, finances, language training, employment advice and medical care. In addition, people granted a TPV are expected to undergo a re-assessment of their status at least every three years.

Due to the uncertainties associated with TPVs, people on these visas have, in the past, shown higher levels of anxiety, depression, post-traumatic stress and other psychiatric illnesses than the rest of the population. A study published in the *Medical Journal of Australia* found that temporary visa status was a significantly stronger predictor of anxiety, depression and post-traumatic stress disorder than permanent protection visa status.<sup>21</sup> A Senate Inquiry in 2006 found that there was little real evidence of the deterrent value of TPVs, and that the visas imposed a significant cost in terms of human suffering.<sup>22</sup> A submission by the UNHCR to the Expert Panel on Asylum Seekers expressed serious concerns about TPVs, specifically that they subject refugees to unnecessary hardship and perpetual uncertainty.<sup>23</sup>

In addition to the psychological impacts of TPVs, there is evidence to suggest that TPVs increase, rather than decrease, the likelihood of people trying to arrive in Australia by boat. Without the possibility of family reunion provisions that are available with permanent protection visas, family members trying to unite with a person on a Temporary Protection Visa are far more likely to board a boat. Former Immigration Minister Chris Evans indicated that the proportion of women and children arriving in Australia by boat increased from 25 to 40 per cent in 2001, the year following the introduction of TPVs.<sup>24</sup> According to the Refugee Council of Australia, of the 353 people aboard the SIEV X when it sank in 2001, 142 were women and 146 were children hoping to reunite with husbands and fathers already in Australia on TPVs.<sup>25</sup>



**Temporary Protection Visas subject refugees to unnecessary hardship and perpetual uncertainty**





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**The obligation on states to avoid the risk of refoulement is one of the core principles of international law**

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### Refugee Status Determination Processes

A number of accelerated refugee status determination procedures have been used by successive governments. ‘Enhanced screening’ processes were introduced in 2012 for asylum seekers arriving by boat from Sri Lanka. The process allowed for asylum seekers to be interviewed by two departmental officers who made a decision about whether a person may have a claim for refugee protection. If they determined there was no case, the person was returned to Sri Lanka. The process did not allow for people to be informed of their right to seek asylum, the interviews were short (only four questions were asked), no legal advice was available and there was no right of appeal or independent review.

‘Fast track’ assessment was introduced in late 2014 and applies to asylum seekers who arrived by boat between August 2012 and December 2013, about 30,000 people. People refused protection by the Department will only be eligible for a limited review with no interview and, generally, no new information is able to be presented.

Accelerated determination processes which aim to quickly ‘screen out’ (rather than ‘screen in’) raise the risk of refoulement, that is, the return of refugees to places where they risk persecution, torture, imprisonment or even death. The obligation on states to avoid the risk of *refoulement* is one of the core principles of international law. Ensuring that asylum seekers have access to a fair and transparent process, including access to legal advice before they make their claim, is crucial in avoiding *refoulement*. It is also important that the process accounts for the fact that asylum seekers fleeing persecution rarely trust government officials with their whole story without being given time to recover from their journey and the support necessary to build trust in an unfamiliar system.

### Policies of Punishment

These policies, variously implemented by both Labor and Coalition governments, are deliberately harsh. They are designed to punish asylum seekers who arrive or try to arrive in Australia by boat in order to deter others from attempting the journey. Indeed, boat turn-back policies have been successful at ensuring that no boats have arrived on Australian shores. However, despite continued

claims that the “boats have stopped”, the UNHCR reports that 54,000 people undertook sea crossings in the Southeast Asian region in 2014. Of those, at least 540 died in their attempt, while others have fallen victim to organised crime operations in the region, including human trafficking and slavery.<sup>26</sup> The Australian Government has remained silent on these journeys, refusing to confirm how many have reached Australian waters, or how many have been intercepted and returned by Australian naval patrols, citing “on water security” for the lack of transparency.

Importantly, the effectiveness of Operation Sovereign Borders, and indeed all of our policies impacting refugees and asylum seekers, should not be measured simply in terms of the number of boat arrivals. Rather, any assessment should take into account the broader legal and human costs of ‘stopping the boats’, particularly in light of the reasons Australia signed the Refugee Convention and other international human rights treaties in the first place.

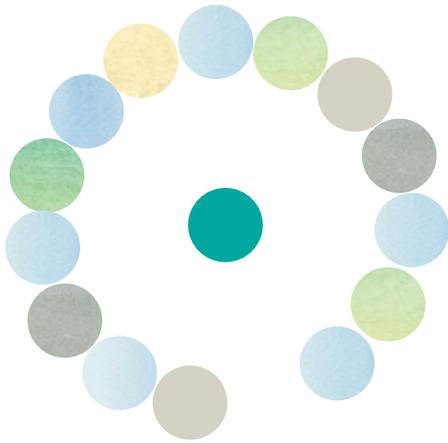
Under international maritime law it is illegal to stop boats in international waters and then forcibly transport these boats or their passengers through international waters without their informed consent. Forced tow-backs and military escorts out of Australian waters also contravene our obligations under the Refugee Convention, however these are accepted practices under Operation Sovereign Borders. Naval personnel engaged in these acts have been granted immunity from prosecution for any acts done in the course of their border protection duties as state agents. This has led to multiple confirmed instances of human rights abuses and acts of cruelty against asylum seekers, which most certainly violate the spirit of accepted international norms governing crimes against humanity. It is against these norms that any assessment of our existing policies must be made.

Focussing our attention solely on border protection and implementing policies of deterrence will not reduce the numbers of those seeking asylum around the world. In fact, with the number of refugees and asylum seekers at an all-time high, our policies have done nothing to ensure that those in need of protection are safer or that fewer people are fleeing their homes. Australia should ensure that immigration policies do not use human lives as collateral damage in an attempt to maintain and assert our sovereignty.



**Forced tow-backs and military escorts out of Australian waters contravene our obligations under the Refugee Convention**





- 1 Available at <http://www.unitingjustice.org.au/uniting-church-statements/key-assembly-statements/item/511-statement-to-the-nation>
- 2 Uniting Church in Australia Assembly (2006), *Dignity in Humanity: Recognising Christ in Every Person*, pars. 2 and 5 <http://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>
- 3 *ibid.*, par. 6
- 4 *ibid.*, par. 12
- 5 Uniting Church in Australia Assembly (2000), *Welcome the Stranger*, <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/uca-statements/item/478-welcome-the-stranger>
- 6 In 2001, a Norwegian vessel, the *Tampa*, rescued over 400 asylum seekers in Australian waters but the Australian Government refused the captain permission to bring the asylum seekers to the mainland. The asylum seekers were taken to the Pacific state of Nauru to be detained while their claims were processed.
- 7 Uniting Church in Australia Assembly Standing Committee (2002), *Asylum Seeker and Refugee Policy*, <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/uca-statements/item/477-asylum-seeker-and-refugee-policy>
- 8 See for example the 2014 Scanlon Social Cohesion survey, conducted by Monash University, <http://monash.edu/mapping-population/social-cohesion-report.html>
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