

August 2016

Academics for
Refugees Policy Paper
**A Just and Humane
Approach for Refugees**

Executive Summary

Australia must end its harmful policies of offshore processing, boat turnbacks and the mandatory detention of people seeking asylum. These policies have failed and cannot be maintained. A framework of deterrence has not and does not ‘save lives’. It has not addressed the underlying reasons why people embark on dangerous journeys in search of refuge, nor has it contributed to improving the global humanitarian situation. Rather, it has created serious and increasingly intractable new problems, by attempting to shift responsibilities elsewhere, and created prolonged suffering for individuals seeking asylum.

This Policy Paper sets out practical and sound measures to be considered by the Australian government in order to adopt a just and humane approach towards people seeking asylum in Australia. Such an approach recognises that it is lawful to seek asylum and that people should not be penalised for how they arrive in Australia. It should adopt the following four measures:

- close immigration detention centres and end mandatory detention;
- initiate comprehensive law reform to ensure Australia upholds its international obligations;
- promote a decent livelihood and thriving communities for people seeking asylum or who have been granted Australia’s protection; and
- foster positive empathetic narratives about people seeking asylum.

Australia should work with other countries in the Asia Pacific region to create a new regional approach based on equity, capacity, responsibility and solidarity. Australia should contribute towards making the international system more sustainable, equitable and humane.

Australia should convene a National Policy Summit in 2017. The Summit should bring together asylum seekers and refugees, migrant and refugee advocates, policy experts, community representatives and politicians from all parties. The Summit should aim to:

- generate constructive policy options and pathways for people seeking asylum and refugees that recognise the need for people to seek a life of safety;
- recognise and facilitate the positive contributions of refugees to Australia’s communities;
- recognise Australia’s responsibility to provide material support for asylum seekers and refugees;
- respect Australia’s international obligations;
- reflect a respectful relationship between Australia and its regional neighbours; and
- recognise Australia’s potential for leadership on this issue.

1. Introduction

This Policy Paper sets out key measures that Australia can take to adopt a **just and humane approach** towards people seeking asylum. It focuses on Australian, regional and international measures, drawing on robust evidence-based research.

2. Australia's Current Policies are Harmful

There is now conclusive evidence to demonstrate that Australia's policies of offshore processing and the mandatory detention of people seeking asylum are harmful and have had serious consequences.

The policy of mandatorily detaining people seeking asylum is cruel towards those seeking asylum. Studies have long shown that prolonged periods in immigration detention have severe impacts on the psychological well-being, inter-personal relationships and quality of life of individuals.¹ They can cause ongoing developmental harm for children and adults.² Such policies make it more difficult for individuals to rebuild their lives once granted protection. The average time spent in onshore immigration detention was a staggering 459 days in May 2016.³

Processing people seeking asylum in offshore camps has exacerbated these harmful effects.

The UN has described these arrangements as deeply damaging and untenable. The large majority of people who come to Australia by boat to seek asylum actually meet the legal definition of a refugee set out in the UN Refugee Convention. This means that Australia detains people who have experienced, or have a reasonable fear of, persecution in their country. Many have experienced torture or trauma.

As of May 2016, there were 1570 people in immigration detention in Australia and another 1,313 people being held in Australian-funded camps on Nauru and PNG. A further 341 adults and 317 children are in community detention on the Australian mainland. There are also 28,328 people living in the community on a Bridging Visa E.⁴

Australia's current offshore processing arrangements are in breach of international standards, including the prohibition against torture and **cruel, inhuman or degrading** treatment.⁵ Such offshore processing is driving people to take desperate measures: between September 2012 and April 2015, there were at least 253 incidents of self-harm in the Nauru camp alone.⁶ These distressing events are often witnessed by other people, including children, who are particularly vulnerable in traumatising environments. There have also been disturbing instances of sexual assault of women in Nauru and physical abuse of people seeking asylum. Cases of women who are pregnant as a result of sexual assault highlight the lack of safety and protection for women and girls.⁷ There are also significant concerns about the provision of health and mental health care in offshore camps. People have died as a result of delays in treatment and inadequate local medical facilities.

Additionally, Australia has routinely denied people seeking asylum who are on bridging visas the **right to work** to sustain themselves and to adequate **healthcare** — producing enforced poverty and dependency. This has resulted in people seeking asylum having limited and unequal access to their basic social and economic rights. It also makes it harder for people to re-establish their lives in the Australian community.

'We have been here for 3 years. We have survived the conditions in detention. ... Being detained on Manus for so long is psychological torture. If there were safer ways for us to seek safety, we would have done it. We need freedom to live like other normal human beings. We need certainty for our future. We kindly ask to be resettled in Australia so we can work hard and contribute to the society, and finally live in peace. We have nowhere else to go and we cannot return to Sri Lanka.'

Statement of Sri Lankan Tamil refugees detained on Manus Island, released via an advocate with permission.

Australia's current regime is costly. Currently, the Australian government spends over \$3.3 billion per year on immigration detention, including \$1.2 billion to fund the offshore processing camps in Nauru and Papua New Guinea in 2015.⁸ Estimates show that it is **10 times more costly** to hold a person in immigration detention than to allow them to live in the community while their claims are being processed.⁹

Australia's current regime has legal consequences. Australia risks breaching its legal duty of care towards people in immigration detention and detaining people in contravention of domestic and international law. Further legal complaints and claims for compensation can be expected, costing billions of dollars,¹⁰ especially following the decision of the PNG Supreme Court that ruled the Manus Island detention centre to be illegal.

3. The Need for a New Approach

Australia has a duty to provide people seeking asylum with the right to have their claims assessed in a fair and efficient manner and with access to pathways to permanent protection. It should adopt policies that facilitate, not impede, access to safety and offer genuine opportunities to people to rebuild sustainable decent lives for themselves and their families.

The binary choice between either adopting policies that result in people 'drowning at sea' or adopting policies of offshore processing that 'stop the boats' and 'save lives' is a false one.

Australia's current policies do not 'save lives' and merely put people in danger elsewhere. These policies fail to address the global humanitarian situation in which people lack access to safe pathways to protection or durable solutions. This means that people may still be compelled to undertake dangerous journeys in search of safety or remain in places of persecution, transit, insecurity or conflict.

Australia's policies have not stopped people from attempting to travel to Australia by boat to seek asylum. The policy of 'boat turnbacks' has the effect of returning people to places where they may face great harm.

Sound policy alternatives move beyond this false binary choice. These policy alternatives take humanitarian and political considerations seriously. People in search of refuge need better and safer options so that they do not need to risk their lives and embark on dangerous journeys. Australia can adopt regional and global measures, set out below, that provide protection to people seeking asylum and prevent them from having to risk their lives at sea.

4. Australian Measures

i. Close Detention Centres and End Mandatory Detention

As an initial measure, Australia must close its offshore processing centres on Nauru and Manus Island.

Australia should move to replace its harmful policy of onshore mandatory detention of people seeking asylum with alternatives to detention. Such alternatives should include a range of accommodation options (including community housing and open facilities) for asylum seekers while their applications for protection are assessed. Such arrangements allow people seeking asylum to access services and build support networks. Alternatives to detention, when implemented well, are much less damaging to the people who are seeking asylum and allow them **to re-establish their lives** with support and dignity. They are also **demonstrably cheaper** than prison-like detention facilities.

ii. Initiate Law Reform

In laying the groundwork for a just and humane approach to people seeking asylum in Australia, several aspects of existing law and policy should be immediately repealed or reformed. In the initial stages of implementation, these reforms will take time and resources to enact sound policy and legislation. In the long-term, these reforms will create a more economical, efficient and just foundation for the reception and processing of people seeking asylum in Australia.

Each of the proposed reforms leads toward the broader policy goal of removing policies that discriminate between people seeking asylum on the basis of the way they arrive and their legal status when they arrive in Australia. These reforms seek to ensure that asylum seekers are not punished on the basis of their mode of arrival, in breach of Article 31 of the UN Refugee Convention.

*“Dear bird send my message,
Send an image of my eyes - to Abbott -
where tears are rolling like a river,
send my heart full of sorrow,
send my mind full of thoughts,
send him images of why I came. “*

Letter written by 17 year old asylum seeker ¹¹

We recommend the following urgent legislative reforms:

1. Repeal all legislation giving effect to the excision of Australian territory from Australia's migration zone.
2. Repeal the legislative category of 'unauthorised maritime arrival' and permit persons arriving by sea as unlawful non-citizens to be processed under the existing protection visa regime established for lawful non-citizens.
3. Repeal the Temporary Protection Visa (TPV) (Class XD) and the Safe Haven Enterprise Visas (SHEV) so that people seeking asylum who are found to be in need of protection are provided with permanent visas, a pathway to citizenship and the right to family reunion.
4. Cease the practices of 'boat turnbacks' and of 'enhanced screening' of asylum seekers at sea to ensure full compliance with Australia's duty of non-refoulement under the UN Refugee Convention.

iii. Promote Decent Livelihoods and Thriving Communities

People seeking asylum must have the right to a decent livelihood. Australia should allow them to live in the Australian community and to have the right to seek work, to education and to proper healthcare. This would ensure that the psychological needs of people seeking asylum, in particular children, are met and that people are able to thrive.

A large body of research has demonstrated that denying asylum seekers the right to a secure migration status, work, health, welfare and education has serious and deleterious long-term effects on their mental and physical health.¹² Detaining children, in particular, and denying them full access to education can irreparably affect their mental and physical health and their capacity to adjust and resettle in Australia.¹³

Under current Australian policy, some people seeking asylum are not permitted full rights to work; to welfare; to healthcare or to education. At present, the Department of Immigration and Border Protection has too much power and discretion over who is given these rights and who is not.

It is recommended that fundamental **social and economic rights** be provided to all people seeking asylum and refugees on a non-discriminatory basis to ensure their dignity and health. We call for a policy where refugees and asylum seekers are provided with full rights to work, to education, to healthcare and to social welfare.

iv. Foster Positive and Empathetic Narratives about People Seeking Asylum

Studies have shown that public narratives influence community perceptions and reactions to people seeking asylum.¹⁴ As long as the narrative around asylum seeking remains fear-based and negative, then there appears an apparent justification for unnecessarily tough policies that continue to inflict violence and cause harm to people seeking asylum and safety.

Fresh narratives are needed that emphasise the following principles:

- **It is lawful to seek asylum.** The right to seek asylum is a fundamental human right and states have an obligation to facilitate refugees with access to protection and safety. Under international law, people seeking asylum should not be penalised for how they arrive in a country.
- Australia has been **positively transformed** and enriched through the contributions of people from refugee backgrounds: economically, culturally and socially. Encouraging migration and cultural diversity should be seen as an opportunity for celebrating our shared existence and diverse heritages.
- Seeking asylum should be framed as an issue of **human rights and justice**, and not a security issue. There is a need to ensure that there is not a conflating of people seeking asylum with threats to national security and stability.
- People seeking asylum and refugees should be **guiding discussions about asylum**, and their skills and expertise in determining their own lives and futures must be recognised.
- Mobility is experienced by most people and should be seen as **part of human experience**, not as an aberration or problem.

5. Regional Measures

The Asia Pacific region hosts 3.5 million refugees, 1.9 million internally displaced people and 1.4 stateless people.¹⁵ Many people seeking asylum in Southeast Asia have no rights to work, or access to healthcare and education. This means that refugees are particularly vulnerable and are in acute need of safe pathways to spaces of protection.

Australia should work with states in the Asia Pacific region to contribute to a new regional approach based on **equity, capacity and responsibility**.

At present the Asia Pacific region lacks a comprehensive mechanism for human rights based approaches to people seeking asylum. There is an opportunity for new thinking and humanitarian leadership. Australia has the capacity to assume a substantial responsibility for the protection and resettlement of people seeking asylum in the Asia Pacific region.

Australia can make a regional difference in five key ways.

- i. Australia should **reinstate resettlement processes** for refugees from the region. Australia drastically reduced its resettlement intake from the region in recent years, a decision that needs to be reversed. Regional resettlement processes might include:
 - Adopting a strategic resettlement scheme, with the aim of building mutual cooperation with regional partners such as Thailand, Indonesia, New Zealand and Malaysia.
 - Opening up options for asylum seekers and refugees to apply to migrate to Australia using the regular migration channels including being granted skilled and family visas.
- ii. Australia can work with governments in the region to **improve the conditions for refugees and people seeking asylum** within their states, including granting access to work rights, education and health care. It can establish a principle of a prioritised obligation towards refugees from particularly dangerous countries of origin, including Afghanistan and Myanmar. Australia has a national interest and ethical responsibility to respond to people from these areas.
- iii. Australia can work with other states to promote bilateral and multilateral responses that **enhance protection in the region**. Existing multilateral forums include the Association of Southeast Asian Nations (ASEAN), the Bali Process for People Smuggling, Human Trafficking and Transnational Crime, and the East Asia Summit, for example. Australia has the opportunity to reframe these forums towards a human rights based approach and enhance capacity across the region.
- iv. Australia can promote further **regional consultation of experts**, in particular consultation between migration experts, humanitarian actors and displaced people themselves.
- v. Australia should commit to ensuring that **Australian aid money is not tied** to the processing or detention of people seeking asylum. Australia should use its aid program more effectively to enhance refugee protection in the region, including through increased funding to the UNHCR and other NGOs.

6. International Measures

This year, human displacement hit an all-time high with a staggering 65 million people forcibly displaced from their homes.¹⁶ The UNHCR calculates that one in every 122 people is now a refugee, asylum seeker or internally displaced person. This is the defining humanitarian crisis of the 21st century and calls for an **unprecedented response** from the global community.

The current international humanitarian system is struggling to cope and needs to be reinvigorated. States are seeking policy options. Australia should contribute towards making the international system more sustainable, equitable and humane. At present, only a small proportion of the world's refugees have access to effective and durable spaces of international protection.

Australia can take at least **three international measures** in order to promote a new standard of international humanitarianism:

i. **Expand the available safe pathways to refuge by substantially increasing UNHCR Funding and In-Country Assistance and Processing:**

Refugees need safe and viable pathways to ensure their safety, livelihoods and well-being. Australia can help to facilitate these pathways by offering greater assistance to UNHCR missions in refugee source countries and nearby host countries. It can provide and call for greater assistance to UN efforts to address the root causes of refugee flows. This includes:

- Assisting with **orderly departure programmes** so that people seeking asylum can do so in or near their home countries.
- Working to **fulfil resettlement needs** identified by the UNHCR. This means increasing the number of people that are accepted under Australia's Humanitarian Program.
- Establishing a **Global Refugee Fund** to be used for immediate refugee relief measures in times of crisis.

ii. **Substantially Increase Australia's**

Humanitarian Program: Each year around 190,000 people permanently migrate to Australia through its Migration Program. Refugees and their families amount to less than 7.3% of this figure. Australia's annual humanitarian intake in 2015 was only 13,750 people, with a further 12,000 places made available to those displaced by the war in Syria. In times of refugee crises, Australia has acted to implement exceptional measures. For example, in 1949, Australia resettled over 75,000 refugees while only having a population of 7 million people. Also, during the Indochinese crisis, Australia took around 100,000 refugees in the space of a few years. Australia has the capacity to undertake such action again.

iii. **Engage in a Strategic Global Dialogue for a**

New Humanitarian Compact: In April 2016, the UN Secretary General released a report calling for a new Global Compact on Responsibility-Sharing for Refugees. This Global Compact would work towards addressing the root causes of human displacement while also promoting the equitable and differential sharing of responsibility among states based on international law and proven good practices. Australia should constructively engage with proposals to develop a consensual and shared approach in a regional and international context.

7. Call for a National Policy Summit

There is a need for a national conversation about Australia's responses to people seeking asylum. The federal government should organise a Policy Summit to bring together people seeking asylum, refugees and former refugees; refugee advocates; policy experts; community representatives and politicians from all parties. Summit participants should be appointed through broad consultation with the wider community. The Summit would discuss how to advance a just, humane and dignity-centred Australian framework for people seeking asylum. The experiences, knowledge and expertise of people from a refugee background must be of central importance throughout the discussions and should be recognised as key to ensuring a just, humane and sustainable set of policies.

The two-day Summit should aim to identify constructive policy options and solutions for people seeking asylum that:

- Recognise the need for people to seek a life of safety for themselves and their families;
- Recognise the positive contributions of refugees to Australia's communities;
- Respect Australia's international obligations;
- Reflect a working and respectful relationship between Australia and its regional neighbours that ensures resettlement is a shared responsibility; and
- Recognise Australia's potential for leadership on an issue that crosses national boundaries.

It is proposed that this inclusive Policy Summit be held in 2017. The Summit will seek to produce a **Plan of Action with concrete proposals for change**. This Policy Paper seeks to present a set of options for consideration at the Summit.

About The Policy Paper

This policy paper was written by several scholars from a variety of academic disciplines across Australian universities.

About Academics for Refugees

Academics for Refugees came together in 2013 in response to increasingly harsh policies in Australia towards people seeking asylum. It promotes cooperation among academics to seek human rights for asylum seekers and refugees. Academics for Refugees is not politically affiliated and has a broad base. <https://academicsforrefugees.wordpress.com/>

The Steering Group of Academics for Refugees consists of:

Prof Linda Briskman, Swinburne University
Prof Stephen Castles, University of Sydney
Sara Dehm, University of Melbourne
Dr Lucy Fiske, University of Technology, Sydney
Dr Caroline Fleay, Curtin University
Prof Sandra Gifford, Swinburne University
Prof Sarah Joseph, Monash University
Dr Lisa Hartley, Curtin University
Prof Harry Minas, University of Melbourne
Dr Antje Missbach, Monash University
Prof Philomena Murray, University of Melbourne
Dr Amy Nethery, Deakin University
Prof Klaus Neumann, Swinburne University
Prof Louise Newman, University of Melbourne
Prof Sharon Pickering, Monash University
Dr Jordy Silverstein, University of Melbourne
Dr Anthea Vogl, University of Technology of Sydney

References

- 1 Guy Coffey et al, 'The Meaning and Mental Health Consequences of Long-term Immigration Detention for People Seeking Asylum' (2010) 70 *Social Science & Medicine* 2070.
- 2 Sarah Mares, 'Fifteen Years of Detaining Children who Seek Asylum in Australia: Evidence and Consequences' (2016) 24 *Psychiatry* 11.
- 3 <https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2016.pdf>
- 4 http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT_C_AUS_CO_4-5_18888_E.pdf
- 5 <http://www.theage.com.au/federal-politics/political-news/asylum-seekers-selfharm-in-detention-centres-at-epidemic-levels-internal-documents-show-20160114-gm6gqp>
- 6 The practice of keeping pregnant women on Nauru increased risk for both mother and infant with a recent case of poor treatment of pre-eclampsia highlighting the lack of obstetric and neonatal expertise and facilities.
- 7 <http://www.smh.com.au/federal-politics/political-news/government-spends-12-billion-on-offshore-processing-centres-in-one-year-2E0150205-13708n.html>
- 8 It costs an estimated \$8.80 to \$38 per day to allow a person to live in community while their claims for asylum are processed (in contrast to \$655 per day in immigration detention). International Detention Coalition, *There are Alternatives* (October 2015) <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>
- 9 <http://www.smh.com.au/federal-politics/political-news/australian-government-faces-potential-claims-of-more-than-1-billion-after-manus-island-deal-implodes-20160428-goh5jq.html>
- 10 See especially Shakeh Momartin et al, 'A Comparison of the Mental Health of Refugees with Temporary versus Permanent Protection Visas' (2006) 185 *Medical Journal of Australia* 357; Zachary Steel et al, 'Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees' (2006) 188 *The British Journal of Psychiatry* 58.
- 11 Human Rights and Equal Opportunity Commission, 'A Last Resort? National Inquiry into Children in Immigration Detention' (April 2004) Chapter 16 <https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf>; Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2014) <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>>.
- 12 See eg Fiona H. McKay et al, "It Would be Okay If They Came through the Proper Channels": Community Perceptions and Attitudes toward Asylum Seekers in Australia' (2012) 25 *Journal of Refugee Studies* 113; Anne Pedersen et al, 'The Role of False Beliefs in the Community's and the Federal Government's Attitudes toward Australian Asylum Seekers' (2006) 41 *Australian Journal of Social Issues* 105.
- 13 <http://www.unhcr.org/asia-and-the-pacific.html>
- 14 <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>
- 15 <http://newsroom.border.gov.au/channels/operational-updates/releases/monthly-operational-update-may-3>; <https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2016.pdf>
- 16 'Dear Bird Send My Message', from "Submission No 20 – Name withheld – 17 year old asylum seeker," Australian Human Rights Commission National Inquiry into Children in Detention, 2014, p. 4, <https://www.humanrights.gov.au/sites/default/files/Submission%20No%2020-%20Name%20withheld%20-%2017%20year%20old%20asylum%20seeker.pdf>