

ASYLUM Seekers

Challenging the Misconceptions



"The purpose of this document is to present some facts regarding asylum seekers, and to challenge the current myths and misconceptions that are hindering the need for debate and policy development based on evidence and compassion."

I welcome and look forward to your comments, and would be pleased to provide further information on any issue concerning asylum seekers."

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Clarification of Terms

Asylum Seekers and Refugees

A **refugee** is someone who has gained refugee status under United Nations criteria because he or she was able to prove persecution because of race, religion, nationality, or membership of a particular social group or political opinion.

On the other hand an **asylum seeker** is yet to have gained formal recognition of their refugee status (under United Nations criteria) and as such is seeking that protection from within the country of chosen refuge. If asylum seekers' claims are considered 'unfounded' they can be refouled (returned) to the country they fled.

United Nations Convention and Protocol

Australia is a signatory to the United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

As a signatory to the Convention Australia has an obligation to respond according to the Convention with respect to refugees.

Other Relevant Covenants and Conventions to which Australia is a Signatory.

As well as being a nation-state party to the 1951 Convention and Protocol, and a member of the executive committee of the UNHCR, Australia is also a signatory to a number of other international human rights instruments relevant to the treatment of refugees and asylum seekers. Other relevant instruments to which Australia is a signatory include the International Covenant on Civil and Political Rights, the United Nations Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights. Based on its lawful commitment to these instruments and the Refugee Convention, Australia has both a legal and a moral obligation towards refugees and asylum seekers (Refugee Council of Australia, 1999).

Lawful and Unlawful Migration

Persons with a valid visa authorising their stay in Australia are termed 'lawful non-citizens' and those who are without a valid visa are termed 'unlawful non-citizens' (Crock, 1998:177-178). The 'unlawful non-citizens' in Australia are numerically overwhelmingly the ones who arrive from Britain, Europe or the United States on visitor visas and then find work and stay in Australia without the valid immigration documentation.

Under Australian and International law a person is entitled to make an application for refugee status in another country when they allege they are escaping persecution.

According to the 1951 definition, a person is a refugee 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 or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'.

Myths and Misconceptions

The propaganda and myths as they are perpetuated by the government and through some sections of the media are largely based on incorrect assumptions and faulty analysis.

Following are some of the most commonly heard myths and misconceptions:

Myth no.1: Large numbers of boat people are coming to Australia

The government is constantly referring to the large numbers of 'boat people' coming to Australia. Despite this, if the numbers of asylum seekers are put into an international context, it is clear that Australian society is not under any threat. In 1997-98 there were 157 'boat people' arrivals, in 1998-99 there were 921 and by November of 1999 there were 1789. These numbers should be viewed in the international context. In consideration of the 1999 financial year, 41,377 people applied for asylum in the United States (US Committee for Refugees 2000). Further, in 1998 Germany had 98,644 asylum applications submitted (UNHCR, 2000).

There are currently estimated to be 50,000 illegal entrants currently residing in Australia who arrived by airplanes (mostly from the UK and America) and who work in Australia without paying tax. Originally most of these people entered with valid travel or work visas and then let them expire. If the Australian government was really dedicated to protecting jobs and to removing people unlawfully living in Australia, avoiding tax and using taxpayer funded services, then they should concentrate on this group as the priority.

Myth no. 2: Asylum Seekers are Illegal Immigrants

Another misleading argument used by the Howard government and perpetuated in the media is that asylum seekers are illegal immigrants. Under the Declaration of Rights any person has the legal right to seek asylum from persecution. Asylum seekers therefore have a right to an opportunity to explain their fears of persecution and to have their claims rightfully assessed. If they are found to be bona fide refugees they should be granted refugee status, and if not they can be required to leave. The vast majority of recent boat arrivals (87%) have satisfied the United Nations refugee criteria.

Myth no. 3: Asylum Seekers are Queue Jumpers

The myth that asylum seekers are 'queue jumpers' is also frequently used as a common-place descriptor of asylum seekers by the government. The term implies that asylum seekers who come to Australia do so by purposely circumventing the immigration and refugee assessment processes and by so doing disadvantage those who follow the rules and apply outside Australia for refugee or humanitarian status (Piper, 1992:162).

In fact, in many countries there are no 'queues' because there are no official avenues for asylum seekers to apply for refugee status. Secondly, asylum seekers are often forced to flee for their lives, and

are therefore not in a position to wait until a claim for refugee status has been processed and then a country has been located which will accept them. The ship that sunk off the coast of Indonesia in 2001 was carrying people who had been assessed as genuine refugees by the UNHCR in Jakarta. Despite the asylum seekers having met UN criteria for refugee status there was no country offering to take them. The fact is that Australia is not accepting genuine refugees who have applied off-shore in Jakarta, forcing people into the hands of people smugglers and to risk their lives to enter Australia by unsafe boats.

The harsh measures taken against on-shore applicants (such as mandatory detention) are incorrectly legitimised by the government under the guise of protecting the rights of those who are 'genuine refugees' waiting off-shore in 'the queue' to be offered resettlement here. The on-shore and off-shore applicants are therefore pitted against one another in a competitive dynamic where off-shore applicants are reduced when there is an 'excess' of on-shore applications. This dynamic serves to disadvantage those refugees who desperately need to be resettled in Australia, as well as depicting on-shore applicants as less needy, less legal and to be disadvantaging 'legitimate' refugees by their actions.

Myth no. 4: Asylum Seekers Must Be Very Wealthy To Pay People Smugglers.

People smuggling is a crime that requires a harsh response from the international community. People smugglers force asylum seekers to pay them for assistance with seeking sanctuary in another country. Regardless, the fact that asylum seekers are forced to pay people smugglers does not mean they are not genuine refugees.

The UNHCR questions the claim that 'cashed up' asylum seekers are entering developed countries, saying that payments made to people smugglers in fact range from \$4,000 to \$5,000 AUD. The reality is that families and communities often pool their resources in an attempt to send their relatives to safety (Global Solidarity Collective of Sydney, 2002).

Myth no. 5: If We Let Asylum Seekers In They Will Take Our Entitlements

The fact is that refugees, like migrants, create a demand for goods and services, thus stimulating the economy and generating growth and employment. A recent Australian study of asylum seekers residing in the community identified the clear aspiration of the asylum seekers to work and to contribute to the Australian community and economy (Rees, 2001). Further, a University of California study has shown that unauthorised immigration boosts the US economy by \$800 billion per year (Global Solidarity Collective of Sydney, 2002).

Myth no. 6: Asylum Seekers destroy their own documentation before entering Australia.

Most asylum seekers who arrive without valid documentation do so because they have not had the opportunity to apply for valid documents. A small number of asylum seekers arrive without even identification papers. Most asylum seekers are forced to flee their

homes with few belongings, many others would rationalise that on the journey to the country of perceived safety they would be better to not be identified. Others might have lost or sold their documents in transit countries.

Asylum seekers do not benefit in any way from destroying their passports or personal documents for the purposes of entering Australia. The very few asylum seekers who arrive incorrectly claiming to be from a country where the likelihood of a successful refugee claim would be higher, would be revealed as bogus during the assessment period. It needs to be remembered that by far the majority (87%) of asylum seekers are found to be genuine refugees under United Nations criteria.

Myth no. 7: Boat People are Terrorists

Just 11 of more than 13,000 people who sought asylum in Australia last year were rejected on "character grounds" and only one was regarded as a security risk. There is no evidence that any asylum seekers currently arriving by boat have any link with terrorist activities (Just Comment, 2002). On the contrary, asylum seekers entering Australia by boat do so in desperation, after fleeing terrorism such as that which occurred under the Taliban and under Saddam Hussein in Iraq.

Myth no. 8: Boat People Display Behaviour that is Bad and Such Behaviour is Unwanted in Australia

To further demonise asylum seekers the government and some sections of the media have attempted to link acts of desperation among asylum seekers with a culturally implied 'bad character.' This type of racist vilification ignores evidence that asylum seekers are fleeing significant human rights abuses including rape, torture and trauma, and that they have an immediate psychological need for safety and security. To be met with mandatory detention and treated as criminals in a prison environment without any control over their fate clearly explains the kinds of desperation and depression that have been seen among asylum seekers in Australia.

Prior to the last election Prime Minister Howard and Minister for Immigration Phillip Ruddock argued that asylum seekers on board a boat bound for Australia threw their children overboard. These claims, which were used to further the government agenda of vilifying and demonising asylum seekers to the Australian public, were untrue and the government is currently attempting to rationalise why they allowed these lies to be promoted in such a way. The truth is that asylum seekers are not 'bad people' trying to threaten the fabric of Australian society, they are ordinary people escaping horrendous human rights abuses and looking for safety and security on Australian soil.

Myth no. 9: There is no Alternative to Mandatory Detention

There are many successful models world-wide (for instance in Finland and Sweden) where asylum seekers are not held in detention camps. Few people question the need to detain asylum seekers until health checks and basic security checks are undertaken.

However, the legitimacy of claims for refugee status can be undertaken whilst the asylum seekers are residing in the community. Australia is the only Western country that has mandatory detention of asylum seekers for the duration of the assessment of their claims for refugee status. Asylum seekers are not criminals and in fact require a supportive environment after having fled significant human rights abuses. Further, the cost

of \$104 a day per asylum seeker (a cost of \$353,000 AUD per year in 2001) means the policy of detention is very expensive. Research into alternatives to incarceration has found that community based options were significantly less than half the cost of detention.

In addition to the costs of detention in Australia the government's policy of off-shore processing for boat arrivals is another huge financial outlay. For instance, the so called 'Pacific Solution' will cost Australia between \$500 million and \$1 billion over 5 years. Already, the cost of establishing and maintaining the Nauru facility has been estimated at \$72m for 2001-02 and the cost of the PNG facility is estimated at \$24m for 2001-02.

Myth no. 10: Asylum seekers residing in the community would abscond.

Asylum seekers residing in the community with access to services and supports would have no need to abscond. Asylum seekers who arrive in Australia with a tourist or student visa and then overstay the visa and apply for refugee status remain in the community, and there has been no evidence of absconding from those asylum seekers. In other countries where asylum seekers reside in community there are no concerns regarding absconding, however if the asylum seeker is unable to prove their identity or is at risk of absconding for another reason they are understandably not given access to community living.

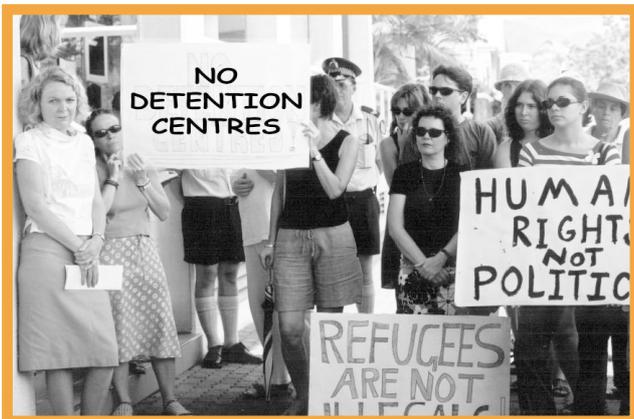


***'There are better methods (to detention) – used in many countries successfully, whereby people who are seeking asylum are dealt with, compassionately, respectfully and humanely. We are underselling ourselves as a nation if we do not sensibly respond to these desperate people in a way that dignifies us all.'* (Senator Jan Lucas, Address to Public Rally organised by the Cairns Refugee Action Collective, Monday 4 February, 2002).**

Principles of a Lasting Solution

Australia needs to take a 'burden sharing' role in addressing the global issue of asylum seekers. Australia should take a proactive international role, rather than be harshly reactive and implementing policies that do nothing to alleviate the actual causes for increasing asylum seeker numbers worldwide. Effective policy aimed at addressing asylum seeker movements affecting Australia within a global framework should involve the following:

- Addressing the root causes of population movements. A commitment to reducing worldwide economic disadvantage and disparity, human rights abuses, human and environmental exploitation and destruction of the means to self-sufficiency.
- Increasing awareness of human rights and human rights obligations. Supporting global movements and international frameworks in gaining greater effectiveness in influencing and protecting human rights including asylum seeker and refugee rights.
- Participating in international peacekeeping initiatives.
- Increasing aid and support to countries in need.
- Halting the exportation of weapons to countries that persecute people. Halting military training and support to countries which persecute people.
- Increasing pressure to modify the practices of regimes that cause people to become asylum seekers (Haigh, 2000).
- Approving better means for people to apply for off-shore refugee status in Australia.
- Providing asylum. As a signatory to the 1951 Convention and 1967 Protocol, Australia has an obligation to protect refugees who have entered Australia seeking asylum. Whilst every effort is made to protect populations within their home countries there will be those who will require protection which is unable to be gained via off-shore programs. 'As a responsible member of the international community Australia should meet its obligation to protect and provide adequately for asylum seekers'. (RCOA, 1999)



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