

JANUARY 2015

Submission to the Department of Immigration
and Border Protection

Australia's Humanitarian Programme 2015–16 and Beyond



UnitingJustice Australia is a
unit of the Uniting Church in
Australia Assembly

1. List of recommendations

- Humanitarian Programme numbers should be increased to at least 25,000 for 2015–16, and increased over the following two to three years to 50,000.
- The offshore and onshore programme intakes should be de-linked.
- The decision to not accept refugees from Indonesia should be reversed and a regional intake programme instituted as part of the development of a regional framework which prioritises the rights of asylum seekers and refugees and which can serve as an international ‘best practice’ model for regional cooperation and collaboration.
- All refugees, regardless of visa class, should have access to family reunion through the Special Humanitarian Programme.

2. Introduction

UnitingJustice Australia (UJA), the justice policy and advocacy unit of the Uniting Church in Australia Assembly, welcomes the opportunity to contribute to the Department of Immigration and Border Protection’s inquiry into the management, size and composition of Australia’s Humanitarian Programme (the Programme) for 2015–16 and future years.

The Uniting Church in Australia has had long-standing concerns about Australia’s increasingly harsh treatment of asylum seekers and refugees who make the journey towards Australia by boat. We believe that there are necessary improvements which can be made to the humanitarian programme for 2015–16 and future years. The introduction in 2013 of the “Operation Sovereign Borders” policy marked a significant departure in Australian policy and programmes from Australia’s historical approach to the protection and resettlement of refugees. We believe that it undermines the humanitarian intent of the United Nations’ *Convention Relating to the Status of Refugees* (Refugee Convention) and breaches Australia’s human rights obligations. The passing of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* further entrenches these policies.

This submission responds to the Information Paper issued by the Department of Immigration and Border Protection (DIBP) and focuses on the aims and focus of the programme, the size and composition of the programme, a regional protection framework and access to family reunion.

Since its inception in 1977 the Uniting Church in Australia has been concerned for justice and the elimination of racism. It has expressed concern for the plight of refugees, and indeed all people who experience loss, oppression and persecution. The Church believes that every person is equal before God.

We believe that the principles of accountability and transparency, the spirit of international burden sharing and a commitment to protection should apply to Australia's policies.

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”, to “work for the eradication of poverty and racism within our society and beyond” and “to oppose all forms of discrimination which infringe basic rights and freedoms”.¹

We approach the protection of asylum seekers and refugees in the context of the Christian call to welcome the stranger, serve those in need and work for an end to injustice. We believe that they should be treated with dignity and respect and extended hospitality and care. We heed the words of Jesus who spoke of a new community established on righteousness and love, and based on a fellowship of reconciliation—a community in which all members work together for the good of the whole. As one of the wealthiest, most secure and stable countries in the world, Australia has a responsibility to make a positive contribution to the crisis of refugees and displaced people around the world. We can and should be a role model in our region in protecting people from human rights abuses and lead a genuinely multilateral and protection-focussed response to the problems of asylum seekers and refugees in our region. In addition to the humanitarian imperative to extend welcome to those in need, we also recognise and celebrate the significant financial, social and cultural contributions made by refugees to Australia².

The Uniting Church believes that asylum seekers and refugees must be granted the rights accorded to them under international law and that there should be no discrimination in the treatment of asylum seekers, refugees and humanitarian entrants regardless of where they have come from and how they have arrived in Australia. We believe those who come to Australia seeking asylum should be provided adequate psychological, social and medical care, translation services, legal services and should only be detained for the briefest period of time necessary³.

We believe that the principles of accountability and transparency, the spirit of international burden sharing and a commitment to protection should apply to Australia's policies, legislation, and practices toward asylum seekers, refugees and humanitarian entrants. The Australian Government must uphold the principles and the spirit of the Universal Declaration of Human Rights and international treaties and conventions that Australia has signed including:

- the Convention Relating to the Status of Refugees⁴;
- the Convention on the Rights of the Child; and
- the International Covenant on Civil and Political Rights.

We also believe that, in line with Article 3 of the Refugee Convention there should be no discrimination towards asylum seekers for reasons of race, religion, or country of origin. The Australian response towards asylum seekers should be culturally sensitive and take into account the situations from which people have come.

1 <http://www.unitingjustice.org.au/uniting-church-statements/key-assembly-statements/item/511-statement-to-the-nation>

2 see http://www.refugeecouncil.org.au/docs/resources/Contributions_of_refugees.pdf

3 <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/uca-statements/item/477-asylum-seeker-and-refugee-policy>

4 Convention and Protocol Relating to the Status of Refugees, available at <http://unhcr.org.au/unhcr/images/convention%20and%20protocol.pdf>

3. Management of the humanitarian programme

Aims and components

UJA supports the aims of Australia's Humanitarian Programme (described in the Information Paper) to:

- provide permanent resettlement to those most in need;
- reunite refugees and people who are in refugee-like situations overseas with their family in Australia; and
- use resettlement strategically to help stabilise refugee populations, reduce the prospect of irregular movement from source countries and countries of first asylum, and support broader international protection.

Notably absent from the aims of the humanitarian programme are the fair, efficient and transparent processing of the protection claims of asylum seekers who arrive in Australia and the provision of protection through settlement in Australia for those assessed as in need.

We urge the Government to include these aims. Article 31 of the Refugee Convention comprehends that refugees, by the very nature of their predicament, may arrive in a country without valid travel documents ('unlawfully'). They should not be punished and they have a right to have their claims assessed. For many years Australia has justified harsh and punitive policies based on strictly minimalist readings of the Refugee Convention. With the passage of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*, the Government has gone even further and legalised Australia's non-adherence to the Convention. The Uniting Church believes that Australia has both a moral responsibility and an obligation under international humanitarian law to uphold the rights of asylum seekers regardless of how they arrive and where they have come from (including travel through transit countries that are unable to offer safety). We call on the Government to end offshore ('regional') processing, work with countries in the region for a genuinely multilateral regional protection solution that ensures people are safe where they are (thereby minimising the need for people to use people smugglers) and offer a generous onshore protection programme.

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Composition of the programme

The offshore resettlement program is a voluntary contribution that Australia makes to the international effort to resettle refugees for whom no other durable solution is available. Australia is well-placed to offer a generous number of offshore resettlement places. The Church has for many years been calling for an increase in the overall size of the humanitarian programme and is disappointed at the recent reduction in program numbers. UNHCR estimates that there are more than 50 million refugees and displaced people worldwide⁵. Australia's annual quota of 13,750 for refugees and others with humanitarian needs in 2014–15 is not even 1% of the global total. It is clear that conditions in countries such as Syria, Iraq, Afghanistan and a number of African countries will continue to see people fleeing from violent persecution. Australia should be offering a generous number of places for refugees fleeing these conflict-ridden areas.

The amendments made to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* specify an increase in offshore places to a minimum of 16,250 in 2017–18 and 18,750 the following year. We do not believe that there is any reason to hold off on a generous increase beginning next year.

We recommend an increase to at least 25,000 for 2015–16, and an increase over the following two-three years to 50,000⁶.

We are also concerned about the cap set on the onshore programme. With a minimum of 11,000 places marked for the offshore programme, and the programme numbers linked, this leaves a maximum of 2750 onshore places for 2014–15.

Australia is the only country that links offshore and onshore humanitarian intakes. The linking of the two components in this way 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. Breaking the link between offshore and onshore intake would assist in rectifying this perception. The numerical link also has the potential to exacerbate divisions and hostility between refugee communities in Australia (i.e. between those who arrived by boat and those who arrived through resettlement programs and are attempting to bring family members to Australia).

Removing this link also has the potential to better inform the Australian public about our responsibilities under the Refugee Convention and how the international system of refugee protection works, including the foundational principle of the right to seek asylum.

We recommend that the offshore and onshore programme intakes be de-linked.

5 <http://www.unhcr.org/5399a14f9.html>

6 In September 2012 a meeting of the West Australian Synod of the Uniting Church in Australia agreed by consensus to request the Government increase its humanitarian intake to 60,000 which would set it at 20% of total migration intake <http://unitingchurchwa.org.au/blog/2012/09/justice-and-compassion-for-asylum-seekers/>

Asylum seekers in Australia

The Uniting Church is concerned for the wellbeing of the more than 20,000 asylum seekers who have been in detention centres or in the community on bridging visas, some for many years, waiting for their protection claims to be processed. While we maintain our opposition to the use of Temporary Protection Visas and hold concerns about the conditions of the Safe Haven Enterprise Visa⁷, it is critical that the claims are now processed as quickly as possible and in a fair and transparent manner.

4. Resettlement for refugees

Australia must continue to make a significant contribution to the work of UNHCR, especially in those countries and regions identified as 'Priority Situations'. We particularly welcome Australia's assistance to Syrian refugees and those Afghans who have worked supporting Australia's mission in Afghanistan. Australia must, however, take a lead role in addressing the needs of asylum seekers in our own region.

Regional protection framework

A number of "regional solutions" have been trialled by recent Governments which have seen agreements made with Malaysia and Cambodia, agreements for the management of offshore processing centres in PNG and Nauru and the recent decision to not accept UNHCR refugees from Indonesia. These agreements are bilateral, which we believe undermines the development of a genuine multilateral regional solution. The key goal of a regional framework should be its ability to improve the prospects of a durable settlement option for displaced people in the region. Increasing the offshore programme numbers as we recommend would allow for a significant resettlement intake from within our region.

In July 2014, National Director of UnitingJustice, Rev. Elenie Poulos, attended a national high-level roundtable on the future of Australia's refugee policy. The Roundtable report, entitled 'Beyond the Boats: building an asylum and refugee policy for the long term'⁸, included contributions from subject matter experts from civil society, government and academia and a section on solutions for regional and community engagement. The Roundtable has proposed a Track II Dialogue on forced migration as an important first step towards a durable regional solution.

Australia must take a lead role in addressing the needs of asylum seekers in our own region.

⁷ see the UnitingJustice Australia submission to the Senate Legal and Constitutional Committee Inquiry into the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*, available at <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/submissions/item/980-inquiry-into-the-migration-and-maritime-powers-legislation-amendment-resolving-the-asylum-legacy-caseload-bill-2014>

⁸ http://cpd.org.au/wp-content/uploads/2014/11/Beyond-the-boats_LoRes.pdf

A genuine regional protection framework must begin with Australia demonstrating that it is prepared to act in the region to uphold human rights and respond generously to the needs of vulnerable people.

A forum including international agencies such as UNHCR, governmental and law enforcement agents in a personal capacity, non-governmental organisations and civil society representatives, subject matter experts from the academy and think tanks, and other invitees could be a truly collaborative and creative beginning to the creation of a regional cooperation framework. It could include discussion of capacity building and issues of forced migration and transit⁹.

Another aspect of regional engagement is recognising the importance of continuing development aid to our neighbours. Development aid should be given in a spirit of international burden sharing, capacity building and humanitarian concern, rather than for reasons of nation interest, border protection or with trade relationships in mind. This funding should not be tied to bilateral refugee settlement or immigration detention facility agreements.

The recent decision to not accept UNHCR-referred refugees from Indonesia is a concerning development¹⁰. Australia has a responsibility within the region to accept our fair share of refugees and should not be shifting the burden of this significant regional problem onto countries such as Cambodia, PNG and Nauru—countries that have extremely limited capacities to offer appropriate services and support to refugees. A genuine regional protection framework must begin with Australia demonstrating that it is prepared to act in the region to uphold human rights and respond generously to the needs of vulnerable people. Asylum seekers and refugees living in transit countries in our region live lives of destitution, with little prospect for building decent lives for themselves and their families where they are and almost no hope of resettlement in Australia or elsewhere for years, or even decades.

We recommend reversing the decision to not accept refugees from Indonesia and instituting a regional intake programme as part of the development of a regional framework which prioritises the rights of asylum seekers and refugees and which can serve as an international ‘best practice’ model for regional cooperation and collaboration.

5. Family reunion

UnitingJustice welcomes the focus on family reunion in the Special Humanitarian Programme (SHP) for refugees who arrived as part of the Offshore Programme. We urge the Government to reconsider the decisions to place such a low priority on family reunion for those granted permanent protection through the onshore programme and to refuse reunion through the SHP to those who arrived after 13 August 2012. We believe that this is an unnecessarily punitive policy that serves no purpose in deterrence.

Studies have shown that family separation is a significant cause of stress, anxiety and depression¹¹. There are indications that not providing avenues for family reunion actually increases the chances of women and children boarding boats in order to unite with male family members already in Australia.

⁹ http://cpd.org.au/wp-content/uploads/2014/11/Beyond-the-boats_LoRes.pdf

¹⁰ <http://www.sbs.com.au/news/article/2014/11/19/australia-refuses-settle-post-july-refugees-indonesia>

¹¹ <http://www.unhcr.org/4b167ae59.html>

For example, the Refugee Council of Australia reports that 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 TPVs¹². In addition, former Immigration Minister Chris Evans reported that the numbers of women and children arriving in Australia by boat increased from 25 to 40 per cent in 2001, the year following the introduction of TPVs¹³.

In its 2014 submission on Australia's Refugee and Humanitarian Programme 2014–15, the Refugee Council of Australia noted that family separation was the issue of most concern to asylum seekers in the community¹⁴.

We recommend that all refugees, regardless of visa class, should have access to family reunion through the Special Humanitarian Programme.

6. Summary

As the justice policy and advocacy unit of the Uniting Church in Australia, UnitingJustice Australia seeks to contribute to the development of public policies and programmes which uphold the dignity of all people, offer appropriate care and support for people who are vulnerable, respond generously to those in need and uphold our international human rights obligations. We believe that Australia's Humanitarian Programme must grant asylum seekers and refugees the rights accorded to them under international law and that there should be no discrimination in the treatment of asylum seekers, refugees and humanitarian entrants regardless of where they have come from and how they have arrived in Australia.

We therefore recommend:

- an increase of the Humanitarian Programme numbers to at least 25,000 for 2015–16, and an increase over the following two to three years to 50,000;
- that the offshore and onshore programme intakes be de-linked;
- reversing the decision to not accept refugees from Indonesia and instituting a regional intake programme as part of the development of a regional framework which prioritises the rights of asylum seekers and refugees and which can serve as an international 'best practice' model for regional cooperation and collaboration; and
- that all refugees, regardless of visa class, should have access to family reunion through the Special Humanitarian Programme.

We look forward to a continued dialogue with the Department on these matters.

¹² http://refugeecouncil.org.au/n/mr/1409_TPVs.pdf

¹³ http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/11640/toc_pdf/6539-3.pdf;fileType=application%2Fpdf#search=%22committees/estimate/11640/0001%22

¹⁴ http://refugeecouncil.org.au/r/isub/2014-15_Intake%20sub.pdf

“Australia must take a truly global approach to refugees ... Our approach should embody the spirit of international burden sharing, in the knowledge of our nation’s relative wealth and good fortune.”

*Uniting Church in Australia,
Asylum Seeker and Refugee
Policy, 2002*



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