

MARCH 2016

Submission to the Department for Immigration and  
Border Protection

# Australia's Humanitarian Programme 2016-17



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

# Introduction

UnitingJustice Australia (UJA), the justice policy and advocacy unit of the Uniting Church in Australia Assembly (the Church's national council) 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 2016 – 2017 and future years.

This submission responds to the Discussion Paper issued by the Department of Immigration and Border Protection (DIBP) and focuses on the management, size and composition of the programme, and the need for a genuine regional protection framework.

Since its inception in 1977, the Uniting Church in Australia has been concerned for justice for those who experience persecution, oppression and marginalisation. It has consistently expressed concern for the plight of refugees. The Church approaches 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.

The Uniting Church's statement on asylum seeker and refugee policy, *Shelter from the Storm*, declares that:

**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.<sup>1</sup>**

*Shelter from the Storm* sets out a number of important principles that the Uniting Church believes should apply to Australia's policies, legislation, programmes and practices toward asylum seekers, refugees and humanitarian entrants.

- All people should be treated with respect and accorded the dignity they deserve as human beings.
- Australia should do its fair share to ease people's sufferings in the context of what is a global problem and not shift our responsibilities to poor and developing countries.
- Policies should be driven by bipartisan commitments to a humanitarian response focussed on protection needs and to upholding our obligations under international law.
- 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.<sup>2</sup>

<sup>1</sup> Uniting Church in Australia Assembly (2015) *Shelter from the Storm: A Uniting Church in Australia Statement on Asylum Seeker and Refugee Policy*, Resolution 15.23.09, Preamble, p. 4 <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/uca-statements/item/1105-shelter-from-the-storm>

<sup>2</sup> *ibid.*, pp. 4-5

**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.**

The Australian Government must uphold the international treaties and conventions that Australia has signed including:

- the United Nations Convention Relating to the Status of Refugees (the Refugee Convention);
- the Universal Declaration of Human Rights;
- 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).

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. The Australian response towards asylum seekers should be culturally sensitive and take into account the situations from which people have come. People should be able to find hope, shelter and restoration from the situations of despair and persecution from which they have fled.

Australia has an interest in promoting human rights and democracy within the region, and the fairness and integrity of its policies for refugees and asylum seekers play a key role in achieving this goal. 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 Australia's obligations under international law and the moral imperative to extend welcome to those in need, UnitingJustice also recognises the significant financial, social and cultural contributions made by refugees to Australia over the long term. There are many reasons to support a strong, rights-based humanitarian programme.

# 1. A Note on the Aims

UnitingJustice Australia supports the aims of Australia's Humanitarian Programme as described in Australia's Humanitarian Programme 2016-2017 Discussion Paper (hereafter referred to as the Discussion Paper) which are 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;
- 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; and
- meet Australia's protection obligations.

UnitingJustice commends the inclusion of the aim to meet Australia's protection obligations but is extremely concerned that legislation passed in the term of this Government has redefined Australia's protection obligations in a much narrower way. For many years, Australia has justified harsh and punitive policies based on strictly minimalist readings of the Refugee Convention. In 2014, UnitingJustice expressed grave concerns about changes to the Migration Act 1958 enacted by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (RALC Bill).<sup>3</sup> The Migration Act as amended by this legislation significantly undermines Australia's commitment to meet its international legal obligations to protect victims of persecution. The amendments saw the removal of most references to the Refugee Convention, the reinterpretation of the definitions of 'refugee' and 'well-founded fear of persecution', and the legalisation of enhanced screening and 'fast track' refugee status determination processes – all of which place Australia at increased risk of breaching international law, undermine the international protection regime and increase the risk of refoulement.

The Uniting Church believes that Australia has both a moral responsibility and an obligation under international 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). While the RALC Bill amendments remain in place it is difficult to see how the Government can adequately meet its protection obligations. In this context, therefore, it is critical that the offshore resettlement programme (not an obligation under international refugee law) be as generous and as expansive as possible.

<sup>3</sup> UnitingJustice Australia (October 2014) Submission, Senate Legal and Constitutional Affairs Legislation Committee inquiry in to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, <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>

## 2. Management, Size and Composition

### **In your view, how many places should Australia attribute to the offshore component of its Humanitarian 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. The Uniting Church has for many years been calling for an increase in the overall size of the humanitarian programme. The UNHCR estimates that there are more than 50 million refugees and displaced people worldwide.<sup>4</sup> Australia's annual minimum quota of 13,750 for refugees and others with humanitarian needs in 2016-17 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 is well placed to offer a far more generous number of places for refugees fleeing these conflict-ridden areas.

The amendments made to the RALC Bill 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.

*UnitingJustice Australia recommends an increase of the Offshore Humanitarian Programme to at least 25,000 for 2016-17 and an increase to at least 60,000 by 2020.*<sup>5</sup>

The Uniting Church applauded the Government's September 2015 announcement to offer resettlement to an additional 12,000 refugees from Syria, recognising the devastating crisis happening in that country. As stated in the Discussion Paper, this offer is over and above the existing Humanitarian Programme. Given the continuing crisis situation for so many millions of refugees from Syria, and Australia's capacity and experience in resettlement, UnitingJustice Australia recommends an additional intake of refugees from Syria for 2016-17 of 13,000 thereby taking our total to 25,000.<sup>6</sup>

The Uniting Church is concerned at the time being taken to process and resettle the refugees from Syria. At the time of writing only 29 of the 12,000 Syrians have arrived. Canada, on the other hand, has seen the arrival of more than 26,000 people since November 2015. There has been no suggestion that Canada's

4 United Nations High Commissioner for Refugees, Key Facts and Figures <http://www.unhcr.org/au/about-us/key-facts-and-figures.html>

5 Uniting Church in Australia Assembly (2015) *Shelter from the Storm*, op. cit., Principles for Good Policy for the Protections of Asylum Seekers and Refugees, par. 9.3, p. 14 and Resolution 15.23.09(f)(ii) p. 19

6 In a press release issued by the Uniting Church in Australia Assembly on 7 September 2015 (ahead of the Government's announcement of the offer of 12,000 places), the President of the Church, Mr Stuart McMillan, called for Australia to offer resettlement to up to 20,000 Syrian refugees ('Immediate sanctuary required for refugees fleeing Syria and Iraq', available at <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/news/item/1095-immediate-sanctuary-required-for-refugees-fleeing-syria-and-iraq>)

security screening has been less than adequate. UnitingJustice encourages the Government to do all it can to speed up the process to bring people here to safety as soon as possible. Our church communities were grateful for the original offer and are still standing by to help.

*UnitingJustice Australia recommends an additional intake of refugees from Syria for 2016-2017 of 13,000.*

### **What do you think should be the proportion split between the SHP and Refugee categories in the offshore component of its Humanitarian Programme?**

UnitingJustice supports the Special Humanitarian Programme (SHP), providing as it does, resettlement opportunities for people who, while in dire circumstances, cannot access UNHCR processes. In its submission to last year's Humanitarian Programme consultation, the Refugee Council of Australia (RCOA) commented on the dramatic increase in the number of Special Humanitarian Programme (SHP) visa grants. This number was generally welcomed by RCOA's constituency, as it increased the possibilities for family reunion, but a caution was made relating to changes to settlement patterns. Inconsistency in arrival numbers affected advance planning of service providers and is a factor the Department of Immigration and Border Protection should take into consideration.<sup>7</sup>

Family reunion remains one of the biggest issues for refugees and humanitarian entrants who are in contact with Uniting Church members and congregations. Given this and RCOA's evidence, we believe that family reunion should continue to be afforded a high priority in visa processing.

However, we are concerned that SHP places are very limited for those who have no alternative visa pathway – those at risk of human rights violations and who do not have family members in Australia and who do not have UNHCR recognition. The number of places for people in this situation would appear to be in significant decline.

As well as the SHP being used for family reunion, another contributing factor to this decline is the linking of the onshore and offshore humanitarian programmes (as discussed below) which has distorted the intended purpose of the SHP and severely limited the ability of community organisations, church groups and other individuals to propose individuals at risk.

Notwithstanding this issue, a possible remedy would be the creation of a new Humanitarian Family Reunion visa and a refining of the SHP to focus on vulnerability. This would signify the priority of family reunion as separate from refugee need, giving it its own criteria and distinct process within the Humanitarian Programme.<sup>8</sup>

UnitingJustice is concerned about the questions posed in the Discussion Paper which essentially invite us to make a claim for more places for one group of

<sup>7</sup> Refugee Council of Australia (2015) 'Australia's Refugee and Humanitarian Program 2015-16: community views on current challenges and future directions', p.4 <http://www.refugeecouncil.org.au/wp-content/uploads/2016/01/2015-16-IntakeSub.pdf>

<sup>8</sup> This proposal was first offered to the Department in 2011: UnitingJustice Australia (January 2011) Submission to the Department of Immigration and Citizenship on Australia's Humanitarian Program 2011-12, p. 5, <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/submissions/item/605-consultations-on-migration-humanitarian-program-2011-12>

**Australia must take a lead role in addressing the needs of asylum seekers in our own region. We would especially urge that the Government reconsider its decision to not resettle refugees from Indonesia.**

people in need rather than another, in this case people who would qualify for a SHP place against those who would qualify for the Refugee categories. We are unable to answer such a question and would urge the Department to focus on vulnerability rather than category numbers when granting visas.

*UnitingJustice Australia recommends that the SHP be refined to focus on vulnerability.*

*UnitingJustice Australia recommends the creation of a new Humanitarian Family Reunion visa category.*

The Uniting Church has long been concerned about the linking of certain categories within the Humanitarian Programme and in 2015 the national council of the Church formally resolved to call on the Government to remove the link between the offshore and onshore program intakes.<sup>9</sup>

With a minimum of 11,000 places marked for the offshore programme, and the programme numbers linked to the onshore component, this leaves a maximum of only 2750 onshore places for 2016-17. Considering the number of asylum seekers residing in the community waiting to have their claims for protection processed (the so-called 'legacy caseload' which numbers up to about 30,000), this number of places is woefully inadequate. We are extremely concerned that this limit will function as a de facto limit to the number of positive assessments possible, thereby rejecting potentially appropriate claims and exposing people to the risk of refoulement.

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.

*UnitingJustice Australia recommends that the link between the offshore and onshore programme intakes be removed.*

#### **To which regions (Africa, Asia or Middle East) do you think most places should be allocated?**

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. We would especially urge that the Government reconsider its decision to not resettle refugees from Indonesia (who applied for resettlement after 1 July 2014).

<sup>9</sup> Uniting Church in Australia Assembly (2015) Shelter from the Storm, op. cit., Resolution 15.23.09(e)(v) p. 19

**In your view, how important is the Woman at Risk programme?**

The Woman at Risk programme is a vitally important programme with a long and outstanding history of providing protection to women at extreme risk of violence. The programme must continue.

**Should the available places under CPP be increased?**

The Community Proposal Pilot has met with mixed reviews from the community. In its submission last year to Australia's Refugee and Humanitarian Program the RCOA shared the concerns of community members and service providers. They argued that the fees were too costly, and that the cost structure was counter to the humanitarian intent of the programme.<sup>10</sup> UnitingJustice believes the CPP should be separated numerically from the offshore Refugee and Humanitarian Programme, and that if it is to continue, the programme should be more affordable. We do not believe it is appropriate in its current form.

**Do you have other comments, particularly on the offshore component of the 2016-17 Programme?**

The Uniting Church is extremely concerned for the wellbeing of the approximately 30,000 asylum seekers who are currently in Australia either in detention centres or in the community on bridging visas. Some of these people have been waiting for many years for their protection claims to be processed.<sup>11</sup> While we maintain our opposition to the use of Temporary Protection Visas and hold concerns about the conditions of the Safe Haven Enterprise Visa,<sup>12</sup> it is critical that the claims are now processed as quickly as possible and in a fair and transparent manner. In instituting so-called 'fast track' processing, the RALC Bill has increased the risk of people who need protection being given a negative assessment and returned to danger. In our submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the RALC Bill, UnitingJustice drew on a number of reports that highlighted the dangers:

*In the past, the rate at which decisions made during a fast track process were subsequently found to be incorrect was significantly high. In its submission to the Expert Panel on Asylum Seekers, the UNHCR expressed concern about the inconsistency of Australia's refugee application processes, highlighting numerous discrepancies between initial assessment and final review outcome. The introduction of removal powers under Section 198 of the Migration Act will be independent of assessments of Australia's non-refoulement obligations. We are concerned that fast track removal processes, without recognition of rights of asylum seekers or concern for non-refoulement obligations, will lead to greater numbers of people returned to situations of harm and danger.*

<sup>10</sup> Refugee Council of Australia (2015) 'Australia's Refugee and Humanitarian Program 2015-16: community views on current challenges and future directions', p.38 <http://www.refugeecouncil.org.au/wp-content/uploads/2016/01/2015-16-IntakeSub.pdf>

<sup>11</sup> As at 30 November 2015, there were 29,008 people in the community, 1,852 people in immigration detention facilities, and 585 people in community detention. See Australian Human Rights Commission statistics <https://www.humanrights.gov.au/immigration-detention-statistics>

<sup>12</sup> 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>

The only case we see for fast-track assessment would be in the situation where approval of protection is sped up. For example, when it is clear that all members of a particular minority group have experienced persecution, the Australian Government might choose to fast track protection application approval of all people from that particular minority group.<sup>13</sup>

The Uniting Church believes that:

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>14</sup>

The Uniting Church has also called on the Government to ensure that every asylum seeker has access to funded legal advice and assistance to prepare their claims and access to full administrative and judicial review of their case should protection be initially denied.

*UnitingJustice recommends an end to ‘fast track’ processing for asylum seekers who have arrived by boat.*

*UnitingJustice Australia recommends that asylum seekers have access to funded legal advice and assistance to prepare their claims and access to full administrative and judicial review of their case should protection be initially denied.*

### 3. A Regional Protection Framework

A number of “regional solutions” have been trialled by recent Governments which have seen agreements attempted and made with Malaysia and Cambodia, and Papua New Guinea and Nauru. These are bilateral agreements which UnitingJustice believes undermine the development of a genuine multilateral regional solution. The key goal of a regional framework should be its ability to improve the prospects of durable solutions for refugees and displaced people in the region. Increasing the offshore programme numbers as we recommend would be one positive contribution Australia could make. It would be a demonstration of goodwill that would help signal Australia’s willingness to engage in a genuinely negotiated regional solution.

<sup>13</sup> *ibid.*, p. 5

<sup>14</sup> Uniting Church in Australia Assembly (2015) *Shelter from the Storm*, op. cit., Principles for Good Policy for the Protections of Asylum Seekers and Refugees, par. 6.8, p. 12

The Uniting Church in Australia believes that it is vital for Australia to take a lead in the development of a genuine regional approach to the protection of asylum seekers and refugees. The Church's 'Principles for Good Policy for the Protection of Asylum Seekers and Refugees' describe the key elements of such a solution:

- 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.
- 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.
- 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.
- Protection claims must be processed fairly, quickly and transparently by UNHCR, with support from nations like Australia.
- 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.
- 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.
- Australia must demonstrate its commitment to a regional solution by resettling a substantial number of refugees from the region.<sup>15</sup>

*UnitingJustice Australia recommends instituting a regional intake programme (including resettling refugees from Indonesia) as part of the development of a regional framework which prioritises the rights of asylum seekers and refugees and which can act as an international 'best practice' model for regional cooperation and collaboration.*

<sup>15</sup> Uniting Church in Australia Assembly (2015) *Shelter from the Storm*, op. cit., Principles for Good Policy for the Protection of Asylum Seekers and Refugees, Section 8, pp. 13-14

# Summary

As the justice policy and advocacy unit of the Uniting Church in Australia Assembly, 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 be generous commensurate with our prosperity and security, 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.

*UnitingJustice Australia recommends:*

- *that the Offshore Humanitarian Programme be increased to at least 25,000 for 2016-17 and to at least 60,000 by 2020;*
- *an additional intake of refugees from Syria for 2016-2017 of 13,000;*
- *that the Special Humanitarian Programme be refined to focus on vulnerability;*
- *the creation of a new Humanitarian Family Reunion visa category;*
- *that the link between the Offshore and Onshore Programme intakes be removed;*
- *an end to 'fast track' processing for asylum seekers who have arrived by boat;*
- *that asylum seekers have access to funded legal advice and assistance to prepare their claims and access to full administrative and judicial review of their case should protection be initially denied; and*
- *instituting a regional intake programme (including resettling refugees from Indonesia) as part of the development of a regional framework which prioritises the rights of asylum seekers and refugees and which can act as an international 'best practice' model for regional cooperation and collaboration.*

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

*Australia's Humanitarian Programme must be generous commensurate with our prosperity and security, and grant asylum seekers and refugees the rights accorded to them under international law.*



Uniting**Justice**  
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