

A brief primer on Australia's treatment of refugees and asylum seekers

Court of Conscience
Editorial Team

I What is the difference between refugees and asylum seekers?

Asylum seekers

An asylum seeker is a person seeking protection under international law.¹ Not every asylum seeker will be found to be a refugee; however, every refugee has once been an asylum seeker.²

Refugees

Refugees are asylum seekers who have been declared to be refugees under the 1951 *Refugee Convention* and 1967 Protocol (collectively, the '*Refugee Convention*').³ The test for refugee status is set out in art 1A(2) of the *Refugee Convention*, which defines a refugee as a person who:

owing to 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.⁴

According to the UNHCR Handbook:

Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.⁵

Economic migrants

In contrast to refugees and asylum seekers, economic migrants leave their country for financial reasons (such as for a better life) rather than for international protection from persecution.⁶

II How does Australia determine refugee status?

As a signatory to the *Refugee Convention*, Australia has incorporated many of its obligations into the Migration Act 1958 (Cth) ('Migration Act'). However, contrary to art 42 of the *Refugee Convention*, it has qualified the circumstances in which persecution will be



Asylum seekers arriving by boat are escorted by Australian navy boats operating under the Border Protection Command. Flying Fish Cove, Christmas Island, 16 August 2012 (Scott Fisher/AAP Image)

established.⁷ Australia has also codified the refugee definition for applications made on or after 16 December 2014 under s 5H, and further defined the ‘particular social group’ ground under s 5L.⁸

Australia has different systems in place for processing Protection Visa applications, depending on the asylum seeker’s mode of entry.

Onshore processing – arrival with a valid visa

An asylum seeker arriving with a valid visa (eg student or tourist visa), usually by plane, has their claim for protection assessed onshore, in Australia.⁹ These asylum seekers can apply for a Permanent Protection Visa, which grants them the right to live and work as a permanent resident.¹⁰

An asylum seeker whose refugee status is to be assessed onshore must first lodge a claim for protection with the Department of Home Affairs.¹¹ A Department official assesses the claim on the basis of the asylum seeker’s reasons for seeking refuge in Australia.¹² If the claim is approved, the asylum seeker is granted refugee status.¹³ If the claim is rejected, the applicant has a three-level avenue of appeal: first, to the Migration and Refugee Division of the Administrative Appeals Tribunal (MRD-AAT); second, to the courts; and finally, to the Minister.¹⁴ This is the standard process for refugee status determination.¹⁵

Offshore processing – arrival without a valid visa

Asylum seekers who arrive by boat, without a valid visa, are either turned back or forcibly transported to have their refugee status assessed at an offshore processing facility.¹⁶ Asylum seekers who arrive without a valid visa cannot apply for Permanent Protection Visas, but can apply for a Temporary Protection Visa or a Safe Haven Enterprise Visa, which last for three and five years respectively.¹⁷

Asylum seekers who arrived without a valid visa, on or after 1 January 2014, are also subject to the standard process of refugee status determination.¹⁸ However, their claims are processed offshore and they will not be settled in Australia.¹⁹

Fast-track processing

Asylum seekers who arrived in Australia without a valid visa between 13 August 2012

and 1 January 2014 were not taken to Manus Island and Nauru for offshore processing. These applicants are subject to ‘fast track’ processing,²⁰ which involves an expedited review of each refugee status claim and limited avenues for appeal.²¹

iii Australia’s policy on asylum seekers and refugees

How much does Australia spend on offshore asylum seekers and refugees?

The Refugee Council of Australia estimates that Australia spends \$573,000 a year per asylum seeker in offshore detention compared to \$346,000 per person in onshore detention.²² At only \$10,221 per person, it costs significantly less for asylum seekers to live in the community on a Bridging Visa.²³

What access do asylum seekers have to welfare benefits?

If an asylum seeker is living in the community while their Protection Visa claim is processed, they will have access to benefits worth up to 89% of the Newstart Centrelink benefit.²⁴ These benefits are accessed through two government support schemes: the Asylum Seeker Assistance Scheme and the Community Assistance Support Program.²⁵ Whilst asylum seekers detained onshore can receive a small weekly allowance for daily expenses, asylum seekers detained in offshore facilities have no access to any welfare benefits.²⁶ If their Protection Visa is approved, an asylum seeker has access to the same Centrelink benefits as other Australians.²⁷

How does Australia’s intake of refugees compare to other countries?

Of the 2.3 million refugees recognised in 2018, Australia hosted 56,993 refugees, ranking 45th in comparison to other countries.²⁸ Despite settling relatively few refugees, Australia has a comparatively generous resettlement program. In 2018, Australia resettled 12,700 refugees, placing it third worldwide, behind Canada and the United States.²⁹ Despite this, less than 10% of global resettlement needs were met in 2018.³⁰ ¶



Iranian refugee interacting with local children on Manus Island (Jonas Gratzner)

References

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MV Tampa (Remi Jouan/Wikimedia Commons)