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## ***Position Statement***

### **Introduction: The Social Work Platform**

The social work profession is committed to maximising the well being of individuals and society. It considers that individual and societal wellbeing is underpinned by socially inclusive communities which emphasise principles of social justice and respect for human dignity and human rights, including the right to freedom from intimidation and terror in society. Minimum standards of human rights also include the right to adequate housing, income, employment, education and health care.

### **Role of Social Workers**

The Australian Association of Social Workers (AASW) is the only national organisation for social workers in Australia, with over 6,000 members, many of whom are involved in the delivery of asylum seeker and refugee services in a range of fields of practice.

Social workers deliver services to asylum seekers and refugees in the context of support services: including advocacy, health and mental health services to asylum seekers awaiting determination of their status. Services to refugees are provided in the context of re-settlement, and other community based services including, health, mental health (including trauma recovery), income support, domestic and family violence, housing and child protection.

### **Policy Context**

The presence of people of many cultural backgrounds in Australia greatly enriches our society and should be celebrated. Australian society, culture and the economy has benefited, and will continue to benefit, from immigration of people from around the world. Australia has international humanitarian and legal obligations to accept refugees and reunite families.

The International Federation of Social Workers (IFSW) is a global federation of national organisations of social workers including the AASW. The IFSW has an International Policy on Refugees, (Approved by the IFSW General Meeting, Hong Kong, 21-23 July 1998), recognising that the physical needs of asylum seekers and refugees, for food, clothing, health care and shelter, have to be met. Policies also need to focus on the psychosocial needs and related social functioning of refugees, as those aspects of human well-being are the central concerns of the social work profession.



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Professional social workers are committed to basic ethical principles, as reflected in the IFSW International Code of Ethics. Not least is their belief that each human being is a person of unique value, whose dignity and right to life and liberty must be preserved. It follows from this that there is a right to seek asylum from persecution. Further, there is an ethical commitment to the development of human potential.

Internationally, and as defined in the UN 1951 Convention Relating to the Status of Refugees, a refugee is someone who is outside his/her country of nationality and has a well-founded fear of returning because he/she might be persecuted there because of his/her race, religion, nationality, membership of a particular social group or political opinion. In practice, the issue is not always clear cut. However, for the definition to operate, some degree of proof that persecution might take place is required. This necessitates a screening process, which normally takes place when and where an individual or a small number of people seek asylum. A mass influx of people from one country into another may be treated differently; as it is not always clear whether people are fleeing from persecution of some kind, or from hardship. If the refugee concept is not to be discredited, international criteria need to be followed, until changed by general agreement.

In addition to the 1951 UN Convention, the UN Protocol 1967, relating to the status of refugees, defines their rights and duties and contains provision in respect of a variety of matters in day-to-day life, such as the right to work, public assistance, and social security. In many such matters, refugees are to receive the same treatment as nationals of the country of settlement or resettlement. Social workers in the vast majority of countries will be required to address the problems facing refugees in their practice.

IFSW believes that work with refugees needs to be part of the mainstream of social work education and practice. Therefore, IFSW recommends that formal social work education include refugee studies, cross-cultural counselling and access to specialised training in the counselling of refugees and victims of torture and trauma.<sup>1</sup>

The AASW Code of Ethics<sup>2</sup> includes a commitment to respect for human dignity and worth and to social justice and human rights. The AASW Code of Ethics underpins the AASW supporting the elimination of the policies of mandatory detention, and other forms of harsh, punitive or discriminatory treatment of asylum seekers and refugees.

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<sup>1</sup> <http://www.ifsw.org/p38000216.html>

<sup>2</sup> AASW Code of Ethics 2010



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The term 'asylum seekers' refers to all people who apply for refugee protection, whether or not they are officially determined to be refugees.

In line with human rights conventions to which it is a party, Australia has obligations to protect the human rights of all asylum seekers and refugees who arrive in Australia, regardless of how or where they arrive and whether they arrive with or without a visa.

As a signatory to the Refugee Convention, Australia has agreed to ensure that people who meet the definition of refugee under the Convention are not sent back to a country where their life or freedom would be threatened. This is known as the principle of *non-refoulement*.<sup>i</sup>

Australia has obligations not to return people who face a real risk of violation of certain human rights under the International Covenant on Civil and Political Rights, the Convention Against Torture and the Convention on the Rights of the Child - even if they do not meet the definition of refugee under the Refugee Convention. The Australian Government has obligations to ensure that human rights of asylum seekers and refugees are respected and protected (under various international treaties including the [International Covenant on Civil and Political Rights](#), the [International Covenant on Economic, Social and Cultural Rights](#), the [Convention against Torture](#) and the [Convention on the Rights of the Child](#).)

Rights for asylum seekers and refugees enshrined in The United Nations Convention Relating to the Status of Refugees include the following:

- Rights of Association (Article 15)
- Access to the Courts including legal assistance (Article 16)
- The right to engage in wage earning employment (Article 17), self employment (Article 18) or professional practice (Article 19)
- Rights to housing (Article 21) and public education (Article 22)
- Freedom of Movement (Article 26)
- Freedom from penalty on account of illegal entry for refugees coming from a territory where their life or freedom was threatened (Article 31), and
- Prohibition of expulsion or return to a territory where their life or freedom is threatened (Article 33).

Article 9 of the International Covenant on Civil and Political Rights prohibits anyone from being subject to arbitrary arrest or detention.

Asylum seekers and refugees who are children have additional rights under the Convention on the Rights of the Child, including the following:



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- The primacy of the best interests of the child in all actions and decision making (Article 3)
  - Not separating a child from his or her parents unless it is necessary in the best interests of the child (Article 9)
  - Protection for all children seeking refugee status (Article 22), and
  - Children should only be subjected to detention as a last resort and for the shortest possible time (Article 37).

The AASW would call for policy responses and legislation to ensure that no family unit is forcibly separated by the Australian assessment processes. Note this also incorporates some family units including carers as some child refugees do not travel with parents. In Australia, the Minister for Immigration and Citizenship is the legal guardian of all unaccompanied minors seeking asylum. The Minister can delegate that role to officers of the Department of Immigration and Citizenship (DIAC). The AASW support the Australian Human Rights Commission's view, that these arrangements create a fundamental conflict of interest. It is not possible for the Minister or a DIAC officer to ensure that the best interests of an unaccompanied minor are their primary consideration when they are simultaneously the child's guardian, the detaining authority and the visa decision-maker. The Commission has repeatedly recommended that an independent guardian should be appointed for unaccompanied minors in immigration detention.<sup>ii</sup>

The AASW acknowledges concern and regret that some individuals and families feel they have such limited choices living their lives in transit countries with indeterminate status or facing imminent and constant life threatening danger in war zones or refugee camps that they choose to seek asylum on often extremely risky boat journeys. The AASW recommends that Australia increase refugee intake numbers, which may, in part, address this dilemma. The AASW endorses the following statement by the Refugee Council of Australia (2011) which summarises Australia's obligations to asylum seekers:

Asylum seekers who arrive in Australia by boat are not engaging in illegal activity. The UN Refugee Convention (to which Australia is a signatory) recognises that refugees have a lawful right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents. The Convention stipulates that what would usually be considered as illegal actions (e.g. entering a country without a visa) should not be treated as illegal if a person is seeking asylum. This means that it is incorrect to refer to asylum seekers who arrive without authorisation as "illegal", as they in fact have a lawful right to enter Australia to seek asylum.

In line with our obligations under the Convention, Australian law also permits unauthorised entry into Australia for the purposes of seeking asylum. Asylum seekers do not break any Australian laws simply by arriving on boats or without authorisation.

Refugees are, by definition, persons fleeing persecution and in most cases are being persecuted by their own government. It is often too dangerous for refugees to apply for a passport or exit visa or approach an Australian Embassy for a visa, as such actions could put their lives, and the lives of



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their families, at risk. Refugees may also be forced to flee with little notice due to rapidly deteriorating situations and do not have time to apply for travel documents or arrange travel through authorised channels.<sup>iii</sup>

### **Role of Government**

As a signatory to the relevant United Nations treaties, in particular the United Nations Convention and Protocol Regarding the Treatment of Refugees, it is the responsibility of the Australian Government to apply the principles of these treaties in responding to the situation of people who seek asylum within Australia, and to those who have been accorded refugee status. In particular the Australian Government has a responsibility to uphold the human rights of asylum seekers and refugees including the right:

- not to be subjected to arbitrary detention, torture, or cruel, inhuman or degrading treatment or punishment and if held in detention, only for the minimum period required to establish security and health status screening
- to challenge in court the legality of their detention
- not to be sent back to a country where their life or freedom would be threatened, and
- to work, housing, education, and physical and mental health care.

Child asylum seekers and refugees are entitled to special protection. For example:

- the best interests of the child must be a primary consideration at all times
- they are entitled to humanitarian assistance and tracing of family members in other parts of the world, and
- detention of a child must be a last resort and for the shortest appropriate period of time.<sup>iv</sup>

While Australia has established procedures for assessing the refugee claims of asylum seekers and programs for the re-settlement of refugees that are compliant with its international treaty obligations, the treatment of asylum seekers by the Australian Government falls short of these obligations in a number of important respects:

- Many adult asylum seekers have been subject to prolonged and indefinite detention under Australia's mandatory detention laws. In April 2011, of the 6,872 people in detention, 1,230 (17.9%) had been in detention for more than a year<sup>v</sup>. This has violated their rights to freedom from arbitrary detention and may have serious social and mental health implications for many people who are already suffering the effects of serious trauma in their country of origin.



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- Many children have been held in immigration detention centres for long periods of time, in breach of their rights to be detained only as a measure of last resort and with serious implications for their mental health, social and emotional wellbeing and long term social adjustment. In April 2011, there were 1,048 children held in immigration detention<sup>vi</sup>.
  - Some asylum seekers are given bridging visas that allow them to live in the community, but without the right to work or to receive Medicare.
  - The High Court of Australia in September 2011 ruled as invalid an agreement for the transfer of asylum seekers to Malaysia, a country that is not a signatory to the United Nations Convention regarding the Treatment of Refugees and where their rights under that convention may be in jeopardy.
  - Under the Malaysian agreement, the Australian Government proposed to deport unaccompanied children, an act that has many questioning Australia's commitment to policy and practice that upholds the best interests of the child being paramount at all times.
  - Asylum seekers arriving by boat have been singled out for particularly harsh treatment and even though it is legal to seek asylum by boat in Australia, boat arrivals make up only approximately 2% of Australia's annual immigration intake and nearly all asylum seekers arriving by boat are found to be genuine refugees.<sup>vii</sup>
  - Asylum seekers who arrive in excised offshore locations such as Christmas Island are barred from the refugee status determination system that applies under the Migration Act. These asylum seekers are not able to submit a valid visa application unless the Minister for Immigration exercises his or her personal discretion to allow them to submit an application. They have no access to the Refugee Review Tribunal. Instead, their refugee claims are assessed through a 'non-statutory' process.<sup>viii</sup> This undermines Australia's international human rights obligations and obligations under the Refugee Convention.
  - The Australian government has failed to provide the public with balanced information both regarding the treatment of asylum seekers and refugees, and our obligations as a signatory country to those who seek asylum in this country. This has had a detrimental effect not only on public perceptions of asylum seekers and refugees but also on the already re-settled communities of refugees. Social workers working with these communities regularly encounter stories of increased racism and community exclusion experienced



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at the hands of a general public who is misinformed and/or frightened by new arrivals. These situations are having a long term impact on social cohesion and sustainable cultural harmony.

The *People's Inquiry into Detention* in 2006 established by the Australian Council of Heads of Social Work provides a compelling and disturbing account of the devastating effects of Australia's detention policies on the lives of refugees who have sought asylum in our country. The results of this Inquiry are published in "*Human Rights Overboard – Seeking Asylum in Australia*".<sup>ix</sup>

As a signatory to the relevant international treaties and as a country with an advanced and healthy economy, Australia should be a leader in fulfilling its international obligations to asylum seekers and refugees instead of pursuing policies that amount to the quasi-criminalisation of asylum seeking.

More than 80 percent of the world's refugees are in developing nations. Australia received 8,250 applications for asylum in 2010 - a 33% increase compared to 2009, but down more than a third from 2001. The 2010 figure was well below levels reported by other industrialised and non-industrialised countries, putting Australia at 15<sup>th</sup> on the list of asylum receiving countries that year.<sup>x</sup> Countries that received the most asylum seekers include the United States (55,530), France (47,800), Germany (41, 330), Sweden (31,800) and Canada (23, 200). It's important to put the issue of people smuggling in perspective. According to the UNHCR, in 2008, more than 51,000 asylum seekers crossed the Gulf of Aden making their way from Somalia to Yemen by boat. Also during 2008, more than 67,000 people travelled on boats to the European coast, 38,000 who landed in Italy. Despite the increase in boat arrivals in Australia in November 2011, arrivals in Australia were down from 6879 in 2010 to 4184 as of 16 December 2011. This accounts for just 0.009% of the 43.7 million refugees, asylum seekers and displaced people globally.

Current Australian Government policies amount to systematic discrimination against already vulnerable people, many of whom have already suffered serious trauma and abuse and are merely exercising their rights under international law to seek sanctuary from fear and oppression for themselves and their families. In this respect Australia is currently failing in its obligations to asylum seekers and refugees. If Australia were to resettle an increased intake of refugees and adequately contribute to the improvement of conditions in countries of origin and first asylum, it may reduce the incentives for asylum seekers to embark upon the dangerous boat trip. Australia would then be in a more credible position to pressure countries in the region to improve their treatment of asylum seekers and push for the adoption of regional standards, thereby reducing the likelihood of irregular secondary movements.



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The AASW endorses the IFSW recommendation that practical services, before settlement or resettlement, should include:

- cultural orientation
- adult literacy
- language training
- health care
- skill development to enhance employment prospects
- family life education
- child care and education
- development of creative abilities
- recreational facilities
- specific services for special or vulnerable groups, such as unaccompanied women and children, elderly people, people with disabilities, and
- counselling, including counselling on re-adaptation for refugees who opt for voluntary repatriation.

The AASW also supports the IFSW comments that the refugee community plays an important role in its own resettlement, providing members with direct and indirect forms of support. In this situation the active involvement of the refugees themselves remains crucial. The AASW agrees with the IFSW and believes that once the goal of settlement or resettlement has been achieved, ethnically sensitive services that are culturally competent and culturally safe are required in order to facilitate adjustment. These include:

- Housing provision, based on a policy which allows for reasonable proximity to people of the same ethnic group in order to maintain cultural identity
- language training
- career counselling and vocational training
- social and recreational facilities to reduce any sense of social isolation
- facilitation of self-help groups
- health care
- income maintenance
- provision for unaccompanied minors, based on child care policy which recognises the importance of maintaining culture as an important aspect of self-identity
- use of para- professionals drawn from the same ethnic group, including from the refugee population
- interpreter services
- specific mental health programs
- counselling services
- provision for relatives who join refugees under Family Reunion policies, and





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- public education programs.

The AASW endorses the IFSW support of the principle of co-existence or integration within a pluralistic society, rather than assimilation, where refugees are expected to merge with the host culture. This supports the emphasis being placed on providing specific services for special or vulnerable groups, such as women and unaccompanied children, torture and trauma victims, elderly people and people with disabilities.

**The AASW calls** for the Australian Government to fully discharge its international obligations to asylum seekers and refugees and in particular to:

- Treat all refugees and asylum seekers equally and fairly regardless of whether they seek asylum by boat or by plane
- No child be placed in any form of detention centre
- In all cases accommodate children and their families in the community rather than in detention and lead a place-based community campaign of welcome and support, challenging the stereotypes that exist within communities
- Policy responses and legislation to ensure that no family unit is forcibly separated by the Australian assessment processes
- Deal directly with all applications for asylum in Australia and abandon its plans to transfer asylum seekers offshore to Malaysia or any other country
- Cease the mandatory/arbitrary detention of asylum seekers and as a first resort, following health checks, provide accommodation in the community for asylum seekers awaiting determination of their refugee status
- Ensure that all asylum seekers have access to services essential to their wellbeing including mental health and other services necessary to support their recovery from past trauma
- Australia's laws should be amended so that the Minister for Immigration is no longer the legal guardian of unaccompanied children in immigration detention. An independent guardian should be appointed for unaccompanied children in immigration detention and they should receive appropriate support.
- Undertake the assessment of applications for refugee status as quickly as possible to reduce the ongoing trauma associated with uncertainty and its inherent mental health implications
- Support preparation for future re-settlement by asylum seekers by allowing maximum participation in all forms of community life whilst awaiting determination
- Provide all asylum seekers with access to the means to legally challenge decisions relating to their accommodation/detention and to the



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determination of refugee status, by repealing the provisions of the Migration Act relating to excised offshore locations, and

- Process all arrivals seeking asylum within Australia and not seek deals to transfer them to other countries.

### **Talking Points**

- Refugees are by definition people who are seeking refuge from persecution in their own country. Australia has committed to assess in good faith all asylum seekers who arrive on our mainland or any of our islands, without discrimination based on the method of arrival.
- Asylum seekers arriving in Australia by boat are not breaking the law. The United Nations Convention on Refugees recognises that refugees have a right to enter another country for the purpose of seeking asylum, with or without valid travel documents. If Australia were to resettle an increased intake of refugees and adequately contribute to the improvement of conditions in countries of origin and first asylum, it may reduce the incentives for asylum seekers to embark upon the dangerous boat trip.
- The majority of asylum seekers who enter Australia by boat are subsequently found to be genuine refugees. (Over the last decade between 70-97% of asylum seekers arriving by boat to Australia have been found to be refugees and have been granted protection.<sup>xi</sup>)
- As a relatively affluent country Australia should be expected to show leadership and compassion in terms of its treatment of asylum seekers and refugees.<sup>xii</sup>
- Australia's policy of mandatory detention of refugees is in breach of its international obligations under the Refugee Convention and also serves to further traumatise many people who have already been the victims of terror and persecution in their countries of origin. The implications of this policy for the social adjustment and mental health of asylum seekers are potentially devastating.
- The detention of child asylum seekers is in contravention of Australia's obligations under the United Nations Convention on the Rights of the Child.
- By entering agreements to transfer asylum seekers to other jurisdictions for processing, in particular countries that are not a signatory to the Refugee



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Incorporated in the ACT

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**Asylum Seekers and Refugees Position Paper**

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Convention, Australia is failing in its international obligations to protect the rights of asylum seekers and refugees.

*Disclaimer: Position statements*

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<sup>i</sup> United Nations Convention Relating to the Status of Refugees, Introductory Note by the Office of the United Nations High Commissioner for Refugees, Geneva, December 2010.

<sup>ii</sup> [http://www.hreoc.gov.au/legal/submissions/2011/201108\\_child\\_rights.html](http://www.hreoc.gov.au/legal/submissions/2011/201108_child_rights.html)

<sup>iii</sup> Refugee Council of Australia, <http://www.refugeecouncil.org.au/asylum/boats.php>

<sup>iv</sup> Australian Human Rights Commission, "Let's Talk About Rights", National Human Rights Consultation Toolkit, February 2009.

<sup>v</sup> HEROC, [http://www.hreoc.gov.au/human\\_rights/immigration/detention\\_rights.html#howlong](http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html#howlong)

<sup>vi</sup> HEROC, [http://www.hreoc.gov.au/human\\_rights/immigration/detention\\_rights.html#howlong](http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html#howlong)

<sup>vii</sup> Amnesty Australia, <http://www.amnesty.org.au/refugees/comments/24019/>

<sup>viii</sup> Australian Human Rights Commission, [http://www.hreoc.gov.au/human\\_rights/immigration/asylum\\_seekers.html](http://www.hreoc.gov.au/human_rights/immigration/asylum_seekers.html)

<sup>ix</sup> Briskman, Linda; Latham, Susie and Goddard, Chris; "Human Rights Overboard – Seeking Asylum in Australia", Scribe Publications, Australia, 2008.

<sup>x</sup> UNHCR – "Asylum Levels and Trends in Industrialised Countries 2010", 28 March 2011, [UNHCR's report 'Asylum Levels and Trends in Industrialised Countries 2010'](#)

<sup>xii</sup> UNHCR – "Asylum Levels and Trends in Industrialised Countries 2010", 28 March 2011, HYPERLINK "<http://www.unhcr.org/4d8c5b109.html>" \t "