



Australian
Bar Association

8 principles adopted by the ABA Council with respect to asylum seekers and refugees

1. That the rule of law should be upheld with respect to the manner in which Australia treats asylum seekers and refugees.
2. That Australia should comply with its obligations under international law with respect to asylum seekers and refugees including, but not limited to, the following international treaties (and related protocols) ratified by Australia:
 - a. *The Convention Relating to the Status of Refugees 1951;*
 - b. *The International Covenant on Civil and Political Rights 1966;*
 - c. *The Convention on the Rights of the Child 1989;*
 - d. *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;* and
 - e. *The International Covenant on Economic, Social and Cultural Rights 1966.*
3. That in keeping with Australia's obligations under international law:
 - a. Asylum seekers are entitled to seek asylum in Australia in accordance with the Refugees Convention;
 - b. Asylum seekers and refugees shall not be refouled by expelling or returning a refugee to the frontiers of territories wherever his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion;
 - c. Asylum seekers and refugees shall only be detained for the minimum period necessary to ascertain their health status and whether they pose a violent threat to Australia, and shall not be arbitrarily detained;
 - d. Asylum seekers and refugees who are detained shall be able to have the reasons for their detention reviewed by an independent body and judicially reviewed;
 - e. The interests of asylum seeker and refugee children shall be the primary consideration in matters involving them;



- f. Asylum seeker and refugee children shall only be detained as a measure of last resort and for the shortest period possible;
 - g. Asylum seekers and refugees shall be entitled to the same standard of health care as those in Australia; and
 - h. Asylum seekers and refugees shall be entitled to be treated with dignity and humanity.
4. That asylum seekers and refugees are entitled to publicly funded legal representation and interpreting services in order to be able to make application for refugee status and any related application for judicial review or appeal.
5. That asylum seekers and refugees are entitled to a procedurally fair, independent and consistent process for the consideration of their claims to protection, irrespective of how they have arrived in Australia.
6. That the following principles apply to the detention of asylum seekers and refugees:
 - a. That conditions of detention never amount to torture or cruel, inhuman or degrading treatment;
 - b. That no one will be held incommunicado or in lengthy solitary confinement;
 - c. That family members will be accommodated together;
 - d. That detainees will have access to education, recreation and health care including mental health services, provided in a timely fashion.
7. That due to continuing human rights concerns about the conditions of detention in off-shore places used for the processing and detention of asylum seekers and refugees (such as Nauru and Manus Island, Papua New Guinea), all asylum seekers and refugees who have arrived in Australia will be processed in Australia
8. That these principles apply wherever Australia exercises effective control over asylum seekers or refugees, including outside of Australia.