
impact of long periods of indefinite detention is irrefutable. Depressive illness, self-harm and suicide attempts were frequent in Australian detention centres such as Curtin. These centres should not be reopened.

ON THE AUSTRALIAN MAINLAND

In contrast to the detention conditions and systems in place on Christmas Island, asylum seekers who arrive by plane are processed on the Australian mainland, in accordance with the provisions of the Migration Act. The services Australia makes available to asylum seekers who arrive by plane represent good practise in many areas. Once it has been determined that asylum seekers who arrive undocumented pose no health or security threat, these people may be released into the Australian community until their claim has been assessed. Following recent changes, most are afforded work rights, and some are then able to support themselves. Those deemed to be particularly vulnerable, including torture and trauma survivors, may be eligible for the Asylum Seeker Assistance Scheme or Community Assistance Support Program, under which the government may provide financial and other support for variable periods of time while their claims are being assessed.

The success of the system in place on the mainland for asylum seekers who arrive by plane is evidence that such policies can work, and are far preferable to the policies that currently apply offshore for boat arrivals.

ALTERNATIVES TO DETENTION

Australia has an obligation to ensure that alternatives to detention are available and accessible by all asylum seekers. Detention reform developments in Australia since 2005 have led to the introduction of a number of alternatives to detention on the Australian mainland, including community detention and the

increased use of bridging visas. The Australian Government should move to ensure that these measures be extended to also apply to asylum seekers who arrive to Australia by boat.

RECOMMENDATIONS

- The Australian Government should cease offshore processing and mandatory detention and should process all asylum seekers equally, in line with the provisions of the Migration Act, regardless of their mode of arrival.
- The Australian Government should adhere to its own policy principles and detain asylum seekers only as a last resort, and for the shortest possible time.
- Women, children, family groups, unaccompanied minors and other vulnerable individuals, including torture and trauma survivors, should be housed in appropriate community accommodation in the community. These groups should be removed from remote and offshore detention immediately.
- Asylum seekers should never be detained in remote locations that make it logistically impossible to provide the support services they need.
- The policies of mandatory detention, offshore processing, the detention of children, and the suspension of processing all represent breaches of Australia's international obligations. These policies send the wrong message about the manner in which asylum seekers should be treated, and should not be emulated by other governments.
- All asylum seekers should have the right to judicial/administrative review of their detention.



ASYLUM AND DETENTION IN AUSTRALIA A TWO-TIERED SYSTEM

INTRODUCTION

International human rights standards articulate an inherent presumption against the detention of asylum seekers. Despite this fact, the Australian Government maintains a detention regime that fails to meet both the country's international obligations, and its own stated values, in terms of the treatment of asylum seekers who arrive by boat.

The Australian Government's policies of offshore processing, excision and mandatory detention have been widely criticised, including by the UN Human Rights Committee. In April 2009 the Committee recommended that these policies be abandoned in favour of a comprehensive immigration framework that complies with the International Covenant on Civil and Political Rights.

Australia's treatment of asylum seekers who arrive by boat sets a dangerous precedent and send the wrong message to other governments in terms of their treatment of asylum seekers - particularly in the Asia Pacific where Australia seeks to be a regional leader. These policies should not be emulated by other governments.

In contrast to the policies that apply to asylum seekers who arrive by boat, in many ways Australia's treatment of asylum seekers who arrive by plane - including work rights for some asylum seekers, permanent protection visas and alternatives to detention - represent good

practice. This fact is evidence that such policies can be implemented effectively and humanely.

This paper outlines some of the most concerning elements of the Australian Government's current asylum seeker policy, and makes recommendations as to what should be done to bring the country further into line with its international obligations to asylum seekers, including the development of viable and sustainable alternatives to immigration detention.

OFFSHORE PROCESSING

Australia currently has two totally separate systems in place to assess the claims of people seeking asylum - one for people who arrive in Australia by plane and a separate system for those who arrive by boat. People who arrive in Australia by boat are taken to the remote offshore facility on Christmas Island. Since 2007, the vast majority of asylum seekers arriving in Australia by boat have been detained on Christmas Island until their protection claim has been assessed. This is distinct from the Pacific Solution, under which the previous government detained asylum seekers in Australian-built detention centres overseas. The Pacific Solution was abolished in 2007, however the opposition party is proposing reintroducing similar measures if it wins the next election.

People arriving by boat to seek

The Australian Refugee Rights alliance is a coalition of Australian NGOs, academics and advocacy organisations who are committed to advocating for the rights of refugees at an international level.

For more information, visit www.arra.org.au

asylum in Australia are afforded fewer legal protections than those who arrive by plane. For example, those who arrive by plane have the automatic right to apply for a protection visa, and have their protection claim processed in accordance with Australia's Migration Act. This includes having the right to challenge decisions made against them in the Australian Court system.

In contrast, asylum seekers who arrive in Australia by boat must undergo a non-statutory refugee status assessment process. Unlike the system that applies on the Australian mainland for plane arrivals, this process is not codified in Australian law and is not legally binding. Asylum seekers processed under this system are not entitled to challenge decisions made against them in the Australian court system. Even if an asylum seeker who undergoes this non-statutory process has demonstrated that they meet the criteria for refugee status, this does not confer an automatic right to lodge a protection claim. Instead, they must rely on a non-reviewable discretionary decision by the Minister for Immigration as to whether they can apply for a protection visa.

By penalising asylum seekers on the basis of their mode of arrival to the country, Australia is failing to comply with the Article 31 of the 1951 UN Refugee Convention, which prohibits this practice.

MANDATORY DETENTION

Australia has maintained a regime of mandatory detention since 1992. The longest period of time any individual asylum seeker has been detained by the Australian Government under this legislation is seven years. This occurred under the previous government.

All asylum seekers who arrive in Australia by boat without a valid visa are subject to mandatory detention. Australia's Migration Act prevents these people from accessing the Australian Court system to challenge the legality of their detention. In

practice, this means that there is no judicial oversight for detention that occurs in excised offshore territories such as Christmas Island. The Migration Act also protects the government's right to detain unauthorised boat arrivals for indefinite periods of time, despite the fact that they have committed no crime.

DETENTION VALUES

When it took office in 2007, the current Australian Government introduced a set of guidelines it said would govern its immigration detention practice in office. These so called 'detention values' included commitments to the speedy resolution of protection claims, the use of detention as a last resort, and no arbitrary detention. The document also committed the government to ensuring that "conditions of detention will ensure the inherent dignity of the human person." While these values are effectively implemented on the Australian mainland, they are not being applied on Christmas Island or to asylum seekers who arrive by boat.

DETENTION ON CHRISTMAS ISLAND

Numerous independent agencies, groups and individuals, including the Australian Human Rights Commission and Amnesty International, have visited the immigration detention facilities on Christmas Island and found them to be highly inappropriate for the detention of asylum seekers.

The North West Point Immigration Detention Centre, where single male asylum seekers are housed, is a high security, prison-like facility. North West Point has been described by the AHRC as "not appropriate for detaining asylum seekers, particularly those with a background of torture or trauma". Originally purpose built to house a maximum of 800 asylum seekers, the North West Point IDC is now severely overcrowded. As at 19 May, 1746 men were being housed at the facility. Extreme lengths have been taken to enable the

facility to accommodate this number if people. A number of tents, each housing 40 men, have been erected within the grounds of the centre. Recreation spaces have been turned into dormitories and demountable accommodation has been brought in.

WOMEN & CHILDREN IN DETENTION

Women, children, family groups and unaccompanied minors taken to Christmas Island are detained in a facility known as 'Construction Camp, which consists of a series of cramped demountables and covered concrete walkways. Despite the cramped conditions, vulnerable groups with very different needs, such as families with young children and large groups of unaccompanied minors, are housed together. With the exception of school attendance, detainees must be accompanied by a guard at all times when leaving the complex.

The routine detention of children and unaccompanied minors under the conditions of the Construction Camp directly contravenes both the Convention on the Rights of The Child and the spirit of the Australian Government's own 'detention values'.

LOGISTICAL CHALLENGES

Due to the remote location of Christmas Island, 2600kms from the Australian mainland, the provision of adequate and appropriate services for asylum seekers is exceedingly difficult. Supplies, including all food, must be flown by charter jet to the island from the Australian mainland. Christmas Island has a small permanent population, however the ballooning detainee population and required support staff have placed significant pressure on the island's physical and social infrastructure.

The remote location of the island precludes the provision of adequate mental health care and other services required by traumatised asylum seekers.

Detainees requiring specialist medical care, including acute mental health services and obstetrics, must be flown to mainland Australia. Because of its remoteness, many asylum seekers on Christmas Island are not able to access pastoral care appropriate to their religious needs. The community support that is available to those held in detention centres in metropolitan and regional areas, such as supervised excursions and community visits, is not feasible on Christmas Island.

The cost of operating remote detention in Australia represents a significant burden to Australian taxpayers. Appropriate services could be provided to asylum seekers on the Australian mainland at a fraction of the operating cost of Christmas Island.

OTHER REMOTE DETENTION

Recent months have seen a number of concerning developments with regard to moves made by the Australian Government to recommence housing asylum seekers in detentions centres situated in remote Australian locations. On 9 April the Australian Government announced the suspension of the processing of asylum applications by Afghan and Sri Lankan nationals for six and three months respectively. As a result of the pressure placed on the detention system announcement, the government is currently preparing a number of detention camps in remote Australian locations, and has recommenced use of the notoriously bad Curtin Detention Centre. At least one disused mining camp in remote Western Australia is now accommodating family groups with children.

Unless the Australian Government removes the suspension on the processing of asylum applications from Afghan and Sri Lankan nationals, there is a real risk that these groups will face long periods of indefinite and arbitrary detention in remote locations.

The evidence of the harmful
