Factsheet: Refugees and asylum seekers

**Background information**

Australia maintains a policy of mandatory immigration detention, with people who arrive by boat without a valid visa, including children, liable for detention. Australia’s system is one of the strictest in the world because it is mandatory, it is not time limited, and people are not able to challenge the need for their detention in a court.

In 2012 offshore processing was introduced whereby all people arriving by boat without a valid visa are transferred to the jurisdiction of third countries (currently Papua New Guinea or Nauru) for processing of their asylum claims. Policy was toughened further when the government announced that all persons arriving by boat after July 2013 would not be resettled in Australia.

The number of people held in closed detention peaked in July 2013. In 2014, there was a decrease in the number of children held in closed detention with the use of community arrangements. All children and their families that were detained on Christmas Island were transferred to mainland Australia.

As of May 2015, there were 2026 persons held in immigration detention facilities in Australia, including 138 children. In addition there were 943 asylum seekers detained in the ‘regional processing centre’ on Manus Island in Papua New Guinea, and 634 asylum seekers detained in Nauru (including 81 children). As at May 2015, over 30,000 asylum seekers were waiting for their claims to be processed.[[1]](#endnote-1)

**Key issue – Prolonged detention in closed facilities**

Prolonged mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays, in breach of Australia’s international obligations.[[2]](#endnote-2) The average length of time people were being held in immigration detention facilities in Australia as of 31 May 2015 was 394 days. [[3]](#endnote-3) Some people have been held in detention for multiple years as a result of a family member receiving an adverse security assessment, which is not periodically reviewed.[[4]](#endnote-4)

**Recommendation**

***Introduce time limits and access to judicial oversight of detention so that detention occurs only when necessary, for a minimal period, and where it is a reasonable and proportionate means of achieving a legitimate aim. Government continue to expand the use of alternatives to closed detention.***

**Key issue – Offshore processing**

Australia’s reintroduction of third country processing arrangements results in many asylum seekers, including children, being sent to remote detention facilities in Papua New Guinea and Nauru. If owed protection, refugees subject to these arrangements are resettled in Papua New Guinea, Nauru, or, under a recent agreement, Cambodia. There have been numerous reports about the harsh conditions and risks to the safety of asylum seekers in the detention centres in Papua New Guinea and Nauru.[[5]](#endnote-5) Long term detention has detrimental impacts on their physical and mental health.[[6]](#endnote-6)

Currently children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress. Additionally the level of health care provided to asylum seekers in these centres is inadequate, with more significant health issues requiring patients to be flown back to Australia for treatment.[[7]](#endnote-7)

**Recommendation**

***Government immediately cease the transfer of people to Papua New Guinea and Nauru and return people transferred back to Australia. Government should continue to negotiate regional settlement arrangements through the Bali Process Regional Cooperation Framework.***

**Key issue – Changes to the legal framework**

Australia has an established statutory complementary protection framework to provide protection for those not classified as refugees but that cannot be safely returned to their countries.

Recent legislative changes have empowered the government to remove asylum seekers from Australia even where this violates *non-refoulement* obligations under international law.[[8]](#endnote-8) Under current immigration policy the government uses the Australian navy to turn back boats assumed to be carrying asylum seekers. This may violate *non-refoulement* obligations as the people on board these boats are not properly assessed or processed.

In 2014, the government passed legislation that removed references to the Refugee Conventionfrom the *Migration Act 1958* (Cth), and inserted a different, narrower definition of who is a ‘refugee’ than appears in the Convention. That legislation also placed limitations on merits review of refugee claims.[[9]](#endnote-9)

Temporary protection visas were reintroduced in 2014, which means that asylum seekers in Australia that are found to be refugees will not be granted permanent residency. Temporary protection visas require these refugees to reapply for their protection status every few years.[[10]](#endnote-10) The granting of protection to refugees on a temporary basis, and the resulting uncertainty about their future, had a detrimental impact upon the mental health of TPV holders when they were last used.[[11]](#endnote-11)

**Recommendation**

***Government retain its complementary protection framework and codify the obligation of non-refoulement in law. Government review the impact of temporary protection visas and restore full access to merits review to all asylum seekers.***

1. Department of Immigration and Border Protection, *Immigration Detention Statistics for 31 May 2015*. At <http://www.immi.gov.au/About/Pages/detention/about-immigration-detention.aspx> (viewed 22 June 2015). [↑](#endnote-ref-1)
2. See Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013), p 150. At <http://www.ombudsman.gov.au/reports/> investigation/2013 (viewed 21 March 2015). This was the overarching finding of the Australian Human Rights Commission’s report: *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* (2015). At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children> (viewed 24 June 2015). [↑](#endnote-ref-2)
3. Department of Immigration and Border Protection, note 1. [↑](#endnote-ref-3)
4. See Australian Human Rights Commission, *Refugees with adverse security assessments*, http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/refugees-adverse-security-assessments (viewed 25 June 2015). [↑](#endnote-ref-4)
5. United Nations High Commissioner for Refugees (UNHCR), *UNHCR Mission to the Republic of Nauru, 3–5 December 2012* (2012); UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11–13 June 2013* (2013), p 10-11; Senate Legal and Constitutional Affairs References Committee, Australian Parliament, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (2014. At http://www.aph.gov.au/Parliamentary\_Business/Committees/Senate/Legal\_and\_Constitutional\_Affairs/Manus\_Island/Report (viewed 25 June 2015); Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru: Final Report* (6 February 2015). At http://www.immi.gov.au/about/dept-info/nauru.htm(viewed 24 June 2015). [↑](#endnote-ref-5)
6. See K Bem et al, A price too high: the cost of Australia’s approach to asylum seekers (2007), section 3.4. At <http://oppenheimer.mcgill.ca/A-Price-Too-High-the-cost-of> (viewed 24 June 2015). [↑](#endnote-ref-6)
7. See Australian Human Rights Commission, *The Forgotten Children,* note 3*,* Chapter 12. [↑](#endnote-ref-7)
8. *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth). [↑](#endnote-ref-8)
9. See Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Australian Government’s Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth)* (31 October 2014). At https://www.humanrights.gov.au/submissions/migration-and-maritime-powers-legislation-amendment-resolving-asylum-legacy-caseload (viewed 24 June 2015). [↑](#endnote-ref-9)
10. *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth). [↑](#endnote-ref-10)
11. See, for example, Z Steel et al, ‘Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies’ (2011) 72 *Social Science & Medicine* 1149. [↑](#endnote-ref-11)