

Detention practices for refugees and asylum seekers

NGO Coalition Fact Sheet 7 (LOIPRs 12 - 15)

Australia's treatment of refugees and people seeking asylum is based on punitive deterrence. In particular towards people seeking asylum by boat.

Boat turnbacks and detention at sea

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The Australian Government has a militarised regime to prevent people arriving in Australia by boat. Its agents have the power to detain people at sea and to transfer them to any country or a vessel of another country, even without that country's consent.

As of April 2017, 30 boats carrying 765 people have been turned back to their country of departure. In one case, 92 asylum seekers were returned to Vietnam, despite later being found to be refugees facing persecution.

Further, Australia has an arrangement with Vietnam and Sri Lanka, to return people seeking asylum to their authorities. People who have been returned allege that they have been incarcerated and severely mistreated in their home country.

Australia should cease boat turnbacks and amend the *Maritime Powers Act 2013* (Cth) to remove powers to detain asylum seekers and refugees on the high seas and transfer them to any country or a vessel of another country.

Offshore detention

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Since 19 July 2013, people seeking asylum by boat are subject to offshore processing and are ineligible to ever be resettled in Australia.

Accommodation standards, facilities and services in these processing centres are dangerous and harmful. There have been consistent and alarming reports of abuse in Nauru with leaked incident reports revealing over 2000 cases of assaults, sexual abuse, self-harm attempts, child abuse and medical incidents.

There has been one murder and eight other deaths from inadequate medical and mental health care in offshore processing countries.

In total more than 2000 men, women and children have been held in these offshore processing countries for over four years.

Location and refugee status by processing country

	RPC	Non-RPC	Total	Refugees
Nauru	369 ^l	766 ^l	1135*	1056 ^{ll}
Manus	742 ^v	186 ^v	928*	730 ^{vi}

Australia knowingly sent gay, lesbian and bisexual people seeking asylum to harm in Nauru and PNG, where consensual sex between people of the same sex was an offence. Nauru amended its criminal code to eliminate this offence more than two years after the first gay refugees were sent there, but it remains an offence in PNG. In both countries, gay, bisexual or lesbian people are in danger from the local community. A gay couple on Nauru have been repeatedly assaulted and harassed by Nauruans.

Over 400 people previously held on Nauru and Manus have been returned to Australia for medical treatment, and remain there due to legal action. This includes over 50 babies who were born in Australia.

In August 2017 the Australian Government abruptly cut more than 60 of this group's income and housing support with no notice. The Australian Government is cruelly forcing these people to choose between destitution and deportation.

These 400 people are ineligible to apply for Australian visas and continue to face deportation to offshore processing countries. Some of these 400 people have been in closed detention centres now for over 4 years.

Australia should:

- **cease its offshore processing regime and all refugees and people seeking asylum currently held on Nauru and Papua New Guinea should be immediately brought to Australia.**
- **allow all refugees and people seeking asylum who have been evacuated from Nauru or Manus Island to Australia for medical treatment to apply for refugee status in Australia and to have their protection claims assessed under Australian law.**

Detention of children offshore

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As of 31 August 2017, 43 children were being held in a regional processing centre in the Republic of Nauru,^{vii} with numerous concerns about the conditions including substantiated reports of physical and sexual assaults to children.

Approximately a further 124 children live in accommodation outside the processing centre in dangerous conditions. After four years, all children are waiting for safe resettlement.

Australia should cease processing child asylum seekers in regional processing centres and bring them to Australia immediately.

Indefinite mandatory detention onshore

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Australia detains people who arrive without a visa on an indefinite and mandatory basis. As of 31 August 2017, there are 1259 people held in closed onshore immigration detention centres, of which 552 have been detained for over one year and 276 for greater than two years.^{xiii}

The Committee has repeatedly held that Australia's policy of mandatory detention is in violation of the ICCPR. Despite these findings, these cases have not been remedied by Australia.

Australia should:

- **repeal the mandatory detention provisions in the *Migration Act 1958* (Cth).**
- **codify that asylum seekers should be detained only as a last resort and for the shortest possible time. Children should never be detained for immigration purposes, in line with article 24 and best interest of the child obligations.**
- **stipulate in law maximum time limits on immigration detention.**
- **introduce a system of periodic judicial review of all decisions to detain.**

Indefinite detention under adverse ASIO assessments

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There are also approximately 10 people being held indefinitely in Australian detention centres. Regardless of being found to be refugees facing persecution, the Australian Security Intelligence Organisation's (ASIO) adverse security assessment means they cannot be granted a visa, nor can they be returned.

This subjects them to life in indefinite detention, despite no criminal conviction. These decisions are not reviewable, and ASIO may withhold information from the refugee in question if the Director-General feels its inclusion would be contrary national security interests.

The subject of the decision may never know why they were denied a visa or have the opportunity to challenge the assessment.

Australia should ensure that all people subject to its jurisdiction have access to merits and judicial review of adverse security assessments.

Asylum application processing

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Australia has introduced a "fast track" refugee status determination process for asylum seekers who arrived by boat after 13 August 2012 and who were not taken to Nauru or Papua New Guinea for offshore processing. People in this group whose applications are refused are affected by a deficient and inadequate review process. Some have no review rights.

From August 2012 to 2015, refugee status determination was suspended for asylum seekers who arrived in Australia by boat after 13 August 2012. The withdrawal of government-funded legal advice resulted in waiting lists of up to a year to access pro-bono services.

On 21 May 2017, the Minister for Immigration announced that people seeking asylum who did not submit applications by 1 October 2017 would be considered to have no protection claims and would face detention and deportation, despite having raised protection claims when they arrived in Australia.

Australia should:

- ensure that all people who raise protection claims have access to a fair refugee status determination procedure.
- abolish the 'fast track' process for protection visa applications and restore funding for legal assistance and language services for people seeking asylum.

Families kept apart

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Refugees who arrived in Australia by boat and have not yet become citizens have virtually no opportunities for family reunion. They are considered the "lowest processing priority" meaning that their applications to sponsor family members have little chances of success.

For those who arrived by boat after 12 August 2012, the Australian Government impedes their right to family reunion by only allowing this group to apply for temporary visas. Temporary Protection Visa (TPV) and Safe Haven Enterprise Visa (SHEV) holders are not permitted to sponsor family members under any program.

For those subject to offshore processing, they are unable ever to be reunited with their family in Australia. In a number of cases this has happened where families were split up in transit countries and arrived in Australia on different dates, some arriving in time to be eligible for a TPV or SHEV, while family members arriving days later were removed to indefinite limbo in offshore processing countries.

Family separation has a severe impact on refugee communities in Australia, with many service providers highlighting mental health concerns and the social and economic impact of separations. These policies violate Australia's obligations under article 17.

Australia should

- allow refugees who arrived by boat, including TPV and SHEV holders, to sponsor family members.

- allow families who are split between offshore processing countries and Australia to be reunited permanently in Australia.
- allocate at least 5000 visas under the family stream of the Migration Program for refugee and humanitarian entrants, and introduce needs-based concessions under this stream to make family visas more accessible.

Removal on character grounds

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Legislative amendments to section 501 of the *Migration Act 1958* in December 2014 significantly broadened grounds on which an individual can fail a character test and therefore be subject to removal or deportation.

The Minister for Immigration has the broad, discretionary power to cancel a person's visa on the basis of character issues. The use of visa cancellations raises concerns under Australia's *non-refoulement* obligations.

Australia should repeal the 2014 amendments to the *Migration Act 1958* (Cth) to limit visa cancellation powers under section 501.

SOURCES:

* Approximate

[i] Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (31 August 2017)

[ii] Australian Senate Estimates Committee, Questions Taken on Notice 27 February 2017

[iii] Australian Government Department of Immigration and Border Protection, Operation Sovereign Borders Monthly Update: September 2017 (10 October 2017).

[iv] Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (31 August 2017).

[v] Australian Senate Estimates Committee, Questions Taken on Notice 27 February 2017.

[vi] Australian Government Department of Immigration and Border Protection, Operation Sovereign Borders Monthly Update: September 2017 (10 October 2017).

[vii] Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (31 August 2017).

[viii] Department of Immigration and Border Protection, Review into Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru (2015) 36-42.

[ix] Australian Government Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (30 April 2017).

Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (31 August 2017)