Asylum Seekers and Immigration Detention

Edited by Justin Healey
Contents

CHAPTER 1
AUSTRALIA’S OBLIGATIONS TO ASYLUM SEEKERS
Seeking protection within Australia 1
Australia vs the world 3
Asylum seekers and refugees: what are the facts? 4
Who is a refugee? 5
Refugee program increased to 20,000 places 6
Refugees – the facts 7

CHAPTER 2
IMMIGRATION DETENTION IN AUSTRALIA
Immigration detention 10
Immigration detention in Australia – the issues in summary 13
Mandatory detention: twenty years of inhumane public policy 15
An unhappy 20th birthday for mandatory detention 16
Amnesty International Australia detention facilities visit 17
Case studies: the people behind the fences 18
Another day, another report: what more do we need to know about the harms of immigration detention? 19
Detention disgrace – there is an alternative to the inhumanity of mandatory detention 20
How immigration policy harms asylum seekers’ mental health 21
Twenty years after mandatory detention, kids still being detained 23
Children in detention 25
Locking up children is not making us safer 26
Community arrangements offer more humane approach to treatment of asylum seekers and refugees 27
Community arrangements for asylum seekers, refugees and stateless persons 28

CHAPTER 3
OFFSHORE PROCESSING POLICY DEBATE
Report of the expert panel on asylum seekers 29
A report on the Houston Report 31
Senate passes offshore processing bill 33
Australia’s moral obligations toward people seeking asylum 34
Let’s dispel a few myths about asylum seekers 38
Some disquieting questions on asylum seekers 40
Improving conditions for asylum seekers 41
Saving lives at sea: the asylum seeker expert panel reports 42
Offshore processing myth buster 44
The boats won’t stop – so what should we do? 46
Five ways to prevent more asylum seeker tragedies 48
Exploring issues – worksheets and activities 51
Fast facts 57
Glossary 58
Web links 59
Index 60

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au
Asylum Seekers and Immigration Detention is Volume 353 in the ‘Issues in Society’ series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

KEY ISSUES IN THIS TOPIC
The record rate of unauthorised and unsafe boat arrivals on Australian shores has further fuelled the longstanding asylum seeker debate and prompted the federal government to seek an effective solution to a seemingly intractable border control problem. The government’s recent policy backdown which resulted in the reintroduction of offshore processing for asylum seekers while at the same increasing the annual refugee intake, has drawn both praise and condemnation.

Should Australia ‘turn back the boats’ of the so-called ‘queue jumpers’ to deter the unsafe and unscrupulous practices of people smugglers? Should Australia maintain offshore processing in other countries such as Nauru and Papua New Guinea (Manus Island), or process asylum seekers onshore in Australia? What are Australia’s obligations to asylum seekers under the Refugee Convention and under its own laws? Is the practice of prolonged mandatory detention adding further trauma to the lives of people who may have already fled from desperate situations in their homelands?

SOURCES OF INFORMATION
Titles in the ‘Issues in Society’ series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the ‘Issues in Society’ series lies in its diversity of content and perspectives.

The content comes from a wide variety of sources and includes:
➤ Newspaper reports and opinion pieces
➤ Website fact sheets
➤ Magazine and journal articles
➤ Statistics and surveys
➤ Government reports
➤ Literature from special interest groups

CRITICAL EVALUATION
As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda. It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

EXPLORING ISSUES
The ‘Exploring issues’ section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

FURTHER RESEARCH
This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The ‘Web links’ section at the back of this book contains a list of useful websites which you can access for more reading on the topic.
Australia provides protection for asylum seekers who either:
➤ Meet the United Nations definition of a refugee, as defined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Refugee Convention), or
➤ Are owed protection under other international human rights treaties and conventions which give rise to complementary protection obligations.

The majority of people in need of protection in Australia are resettled from other countries through Australia’s offshore humanitarian resettlement program. In the 2010-11 program year, 65 per cent of visas were granted to people offshore under the offshore humanitarian resettlement program.¹ However, several thousands of people already in Australia make applications for protection each year. These include people who arrived lawfully and who have been staying in the Australian community, and people who have arrived unlawfully in Australia by sea or air.

If found to be owed protection through an assessment of their claims for asylum, these applicants will be granted a permanent protection visa, provided they meet health and character requirements.

Background
Until mid-1989, there were fewer than 500 refugee applications a year from people in Australia. Over the following two years there was an increase in people claiming refugee status, due primarily to the Tiananmen Square incident in the People’s Republic of China (PRC) in June 1989. Refugee status (protection visa) applications peaked at 16,248 during 1990–91, with about 77 per cent coming from PRC nationals.

The present system for processing protection visa applications in Australia was developed during the 1980s and 1990s in response to the increased number of asylum seekers.

The Refugee Convention
Australia is one of 147 signatory countries to the Refugee Convention.

The Refugee Convention defines a refugee as a person who:
➤ Is outside their country of nationality or their usual country of residence
➤ Is unable or unwilling to return or to seek the protection of that country due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion
➤ Is not a war criminal and has not committed any serious non-political crimes or acts contrary to the purposes and principles of the United Nations.

The Refugee Convention does not oblige signatory countries to provide protection to people who do not fear persecution and have left their country of nationality or residence on the basis of war, famine, environmental collapse or in order to seek economic opportunities.

Protection obligations may also not be owed to a person who already has effective protection in another country, through citizenship or some other right to enter and remain safe in that country.

International law recognises that people at risk of persecution have a legal right to flee their country and seek refuge elsewhere, but does not give them a right to enter a country of which they are not a national. Nor do people at risk of persecution have a right to choose their preferred country of protection.

Complementary protection
From 24 March 2012, complementary protection claims will be considered as part of the protection visa assessment process. Complementary protection is the term used to describe a category of protection for people who are not refugees but cannot be returned to their home country, in line with Australia’s international obligations, because there is a real risk that the person will suffer certain types of harm.
Temporary protection visa abolition and creation of resolution of status visa

On 9 August 2008 temporary protection visas (TPVs) were abolished. This means that all applicants for a protection visa who are found to engage Australia’s protection obligations now receive a permanent protection visa.

How claims are assessed

Applications for protection visas are assessed by trained departmental officers. All claims for protection are assessed on an individual basis against the criteria contained in the Refugee Convention and the complementary protection criteria, in accordance with Australian legislation, case law and up-to-date information on conditions in the applicant’s country of origin.

Applicants are expected to put their claims in writing. All applicants are asked to attend an interview to discuss their claims and provide further information if required. Procedural fairness is afforded to all applicants in responding to information that may impact adversely on the outcome of their assessment. Where needed, the department arranges qualified interpreters for any interviews.

All protection visa decisions are to be made by the department within 90 days of receipt of the application. The average 90 day processing rate in the 2010-11 program year was 60.7 per cent.\(^1\) Cases where these time limits are not met are the subject of periodic reports to the Minister for Immigration and Citizenship and are tabled in Parliament.

People who are found to be owed protection are eligible for the grant of a protection visa in Australia, provided they satisfy health, character and security checks.

Merits review of decisions

Where an application by a person in Australia is refused by the department, that person can seek a merits review of that decision from an independent tribunal either the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal (AAT), depending on the basis for refusal.

The RRT also examines the applicant’s claims against the Refugee Convention and the complementary protection criteria, providing an informal, non-adversarial setting to hear evidence.

Reviews by the RRT must occur within three months of application. Cases where these time limits are not met are subject to periodic reports to Parliament.

If the RRT is unable to make a decision favourable to the applicant on the written evidence available, it must give the applicant the opportunity for a hearing. A fee becomes payable by the applicant if the RRT affirms the original refusal decision.

People granted a protection visa as a result of an RRT decision and people on whose behalf the minister intervenes in the public interest do not have to pay the fee.

Protection visa applicants who have been rejected by the RRT (and who have no other legal reason to be in Australia) have 28 days to depart Australia. If they stay beyond this 28-day period, they may be removed from Australia.

Services for asylum seekers

The government provides a number of services for asylum seekers. These include:

- Financial assistance to eligible protection visa applicants who are unable to meet their basic needs for food, accommodation and health care while their application is being processed
- Help in preparing and lodging protection visa applications through the Immigration Advice and Application Assistance Scheme.

Statistics

In the 2010-11 program year, the Humanitarian Program delivered 13,799 visas. This number included 8,971 visas granted to persons offshore and 4,828 program countable visas granted to people seeking protection in Australia.\(^2\)

Status during processing

Asylum seekers that have arrived in Australia legally and subsequently apply for protection may receive a bridging visa upon lodging a protection visa application. In most cases, the bridging visa allows the applicant to remain lawfully in the community until the protection visa application is finalised.

Some bridging visas allow the applicant to work in Australia. Other bridging visas do not have work rights attached.

A bridging visa ceases in the following circumstances:

- Once the protection visa is granted
- When another bridging visa is issued in respect of that protection visa application
- 28 days after withdrawal of a protection visa application
- If the holder leaves Australia this applies to bridging visas A, C, D and E
- Upon cancellation of any substantive visa held this applies to bridging visas A, B and C only
- On the cease date if the bridging visa was granted for a particular period of time
- If the protection visa is refused, 28 days after notification of the primary decision by the department unless the applicant seeks merits review of the decision
- If the applicant seeks merits review, 28 days after notification of the decision of the review authority
- If the applicant seeks judicial review of a primary decision, or tribunal decision, the bridging visa held for that period will not remain in effect for judicial review. In this case, the applicant must apply for another bridging visa to maintain their lawful status for the duration of judicial review.

ENDNOTES

1. Source: DIAC systems, as at end of year 2010-11.
2. Source: DIAC systems, as at end of year 2010-11.
3. Source: DIAC systems, as at end of year 2010-11.
Australia was ranked 47th, hosting 23,434 refugees, or 0.2 per cent of the global total. Taking into account relative population size, that rank drops to 71st.

Capacity vs contribution
Pakistan hosted the highest number of refugees

These statistics from the Asylum Seeker Resource Centre reveal how Australia’s refugee intake compares with the rest of the world.
Asylum seekers and refugees: what are the facts?

Summary extract from a Parliamentary Library background note, by Janet Phillips

➤ Australia has a long history of accepting refugees for resettlement and over 700,000 refugees and displaced persons have settled in Australia since 1945

➤ There is a difference between an asylum seeker and a refugee – asylum seekers are people seeking international protection but whose claims for refugee status have not yet been determined. Although those who come to Australia by boat seeking Australia’s protection are classified by Australian law to be ‘unlawful non-citizens’, they have a right to seek asylum under international law and not be penalised for their ‘illegal’ entry

➤ Up until 2009 only a small proportion of asylum applicants in Australia arrived by boat – most arrived by air with a valid visa and then went on to pursue asylum claims. While the number of boat arrivals has risen substantially in recent years, it is worth noting that they still comprise less than half of onshore asylum seekers in Australia and a greater proportion of those arriving by boat are recognised as refugees

➤ There is no orderly queue for asylum seekers to join. Only a very small proportion of asylum seekers are registered with the UNHCR and only 1 per cent of those recognised by the UNHCR as refugees who meet the resettlement criteria are subsequently resettled to another country. As the overall number of asylum applications has continued to rise, states are increasingly taking responsibility for refugee status determination

➤ All unauthorised boat arrivals in Australia are subject to the same assessment criteria as other asylum applicants and also are subject to comprehensive security and health checks

➤ Claims that refugees in Australia are entitled to higher benefits than other social security recipients are unfounded

➤ In recent years, the Australian Government has allocated around 13,000 places to refugees and others with humanitarian needs under its planned Humanitarian Program. Most of these places have been given to offshore refugees referred to Australia by the UNHCR, but some are given to refugees who applied for asylum onshore

➤ The number of people arriving unauthorised by boat in Australia, is small in comparison to the numbers arriving in other parts of the world such as Europe. Similarly, the number of asylum claims lodged in Australia is small in comparison to the USA, Canada and Europe

➤ While only about 20 developed nations, including Australia, participate formally in the UNHCR’s refugee resettlement program, the vast majority of asylum seekers and refugees are hosted in developing countries.

ENDNOTE
57. DIAC, Australia’s refugee and humanitarian program, op. cit.

WHO IS A REFUGEE?

When you apply for a protection visa in Australia the Department of Immigration and Citizenship (DIAC) will assign a case officer to make a decision on your protection visa application. The case officer will make a decision by thinking about your case against the definition of a refugee. It is important that you understand this definition. This fact sheet from the Asylum Seeker Resource Centre will help you to understand the definition of who is a refugee.

ELEMENTS OF DEFINITION

To be found to be a refugee your case must meet all of the eight criteria set out below.

1. You are outside your home country
2. You are afraid to go home
   The case officer will listen to what you are saying about this and will also look at your actions to see if they are consistent with you being someone who is afraid to go back home.
3. You are afraid that if you go home you will face ‘persecution’
   Persecution is ‘serious harm’. This means that you must be afraid that if you go home you will suffer serious physical or mental harm. Examples of serious harm are: unlawful arrest; unlawful imprisonment; torture; execution or deprivation of liberties.
4. You are afraid that the persecution will happen to you for at least one of five convention reasons:
   a. Your race (e.g. being part of a particular ethnic group that share the same physical characteristics)
   b. Your religion (e.g. not being allowed to practice your religion freely)
   c. Your political opinion (e.g. membership of a particular political party)
   d. Your nationality (e.g. being targeted because you come from a particular country)
   e. Your membership of a particular social group.
5. Your fear of persecution is well founded
   This means that even though you are afraid to go back home there must be a factual basis for your fear about returning home. It is not enough to be afraid to return. The reasons for your fear should be supported by country information. The stories about what

WHO IS A REFUGEE? – DEFINITION

According to the Refugee Convention – Article 1A (2) a refugee is a person who: “owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his or her habitual residence, is unable, or, owing to such fear, is unwilling to return to it.”
WHAT IS A ‘PARTICULAR SOCIAL GROUP’?

A particular social group is an identifiable group of people who have some shared characteristic, attribute, activity, belief, interest, goal or aim and that is different from the rest of the society. However the shared characteristic that people have in common cannot just be a shared fear of persecution.

An example is ‘homosexual men in Ethiopia’ because they have a shared set of characteristics and experiences that sets them apart from the rest of the society they live in. Other examples are: ‘Journalists in Sri Lanka’ or ‘Academics in Iraq’ or ‘Women in Afghanistan’.

has happened to you in your country in the past can also be important to show that your fear is well founded.

It will be important to tell the case officer about every time you have been persecuted in the past to show your fear is well founded but you must also be able explain why you are at risk of persecution if you go home now.

6. You cannot relocate in your home country to find safety

This means that you are not able to go and live in another part of your country and be safe. The case officer needs to think about any particular difficulties you might have in moving to a different part of the country.

7. The government in your home country cannot protect you

You need to be able to show that the government in your home country is unwilling or unable to protect you there.

The case officer will look at whether you have ever gone to the police before and whether the police were able to help you. They should also look at independent country information about the police and military in your country before making a decision.

8. You cannot go and live in a safe third country

If you have a legal right to enter or remain in any country other than Australia and your home country – then this may affect your ability to apply for protection. If you can go to another country, other than Australia, and be safe from harm – and you have a visa or some other way to stay there permanently – then Australia will usually not grant you protection here.

REFUGEE PROGRAM INCREASED TO 20,000 PLACES

Prime Minister Julia Gillard and the Minister for Immigration and Citizenship Chris Bowen today announced that the government will increase Australia’s humanitarian program to 20,000 places in 2012-13, in line with the recommendation of the Expert Panel on Asylum Seekers.

The government will also immediately allocate $10 million for regional capacity building projects with a special emphasis on United Nations High Commissioner for Refugees (UNHCR). As outlined in the recommendations of the panel chaired by former Chief of the Defence Force, Angus Houston, we will be increasing our annual refugee intake from 13,750 to 20,000 places in this financial year.

This is a more than a 40 per cent increase to our humanitarian intake and the biggest boost to Australia’s refugee intake in 30 years. This increase is targeted to those in most need: those vulnerable people offshore, not those getting on boats.

People who arrive by boat will get no advantage. It’s not worth the risk to life and it’s not worth the money, because there is absolutely no benefit to getting on that people smuggler’s boat.

As an immediate measure, the government will resettle an additional 400 refugees from Indonesia to underscore our commitment to offering safe alternatives to dangerous boat journeys.

We will consult with the UNHCR and regional partners to determine the allocation of the remaining resettlement places, and we expect to make further announcements on additional resettlement options from within our immediate region over the coming months. This increase shows that people can pursue regular options and be safely referred to resettlement countries such as Australia as part of an orderly humanitarian program. Taking a dangerous boat journey is no advantage.

The $10 million boost to regional capacity building will also assist the UNHCR and non-government organisations in the region, particularly operations in Malaysia and Indonesia – a further commitment from this government to safer and more orderly migration pathways.

The humanitarian program and capacity building increases follow the recent passage of legislation in the Australian Parliament to allow for regional processing of asylum seekers’ applications.

Australia, along with the United States and Canada, has ranked consistently among the world’s top three resettlement countries. Australia is the UNHCR’s largest resettlement country on a per capita basis.

We remain strongly committed to our humanitarian program as an engaged and leading international partner in sharing refugee protection responsibilities, assisting those most in humanitarian need.

Who counts as a refugee?

The 1951 UN Refugee Convention, which Australia has signed, defines a refugee as someone who has a well-founded fear of persecution in their own country, because of their race, religion, nationality, or political or social affiliation. In other words, refugees are ordinary people trying to escape war, persecution and horror.

Where do refugees to Australia come from?

More than half of the refugees to Australia come from just four countries: Afghanistan, Iran, Sri Lanka and Iraq, places where people live in constant fear of violence, death and torture, and suffer from severe repression for their ethnic, religious, political, or sexual affiliation. Refugees are often fleeing war, or brutal regimes like the Taliban.

Are conditions really so bad in refugees’ countries of origin?

Yes. People only become refugees as a last resort. Consider the most recent facts:

➤ Afghanistan: 2011 was the deadliest year of the war for civilians yet, with 3,021 killed in war-related violence, and 4,507 wounded. 16 Afghani civilians were murdered by drunken US soldiers on a rampage in Southern Kandahar province in March 2012. Women, children, schools and clinics are often targeted. Gross human rights abusers often hold public office

➤ Iran: Thousands of people, including many democracy activists, were unjustly imprisoned following the illegitimate June 2009 Presidential election. Many remain behind bars. At least 9 political dissidents have been executed since 2009. Torture of political prisoners is common. Members of ethnic and religious minorities are subject to brutal repression. Student organisations are often banned and their leaders imprisoned. Iran executes more prisoners than any country except China

➤ Sri Lanka: About 50,000 people, mainly Tamils, remain detained in government camps. 7,000 people have been imprisoned without trial and refused access to the Red Cross. The government continues to carry out enforced disappearances and torture. Human rights defenders and journalists are killed, assaulted and jailed. The Sri Lankan government has refused to cooperate with United Nations enquiries.

Why do refugees come by boat?

A boat is often the only way to reach safety. In war, or when persecuted by a repressive regime, refugees simply cannot get the travel documents they need in order to come by plane. The fact that refugees are ready to sell everything they have to buy a place on a treacherous ocean crossing shows how desperate they are. Refugees often cannot swim, and armed militias continued to commit gross human rights abuses. Torture of prisoners is rife. Thousands of displaced people live in temporary settlements without access to clean water, electricity, or sanitation. Many are widows, who are forced into sex-trafficking and prostitution.
hundreds have died in the attempt to reach Australia by sea.

Is it legal to come by boat?
Yes. Under Australian law, it is never illegal to apply for refugee status here, no matter how you arrive. Talk of ‘illegal’ or ‘unauthorised’ boat arrivals or ‘illegal immigrants’ is prejudicial and wrong in law. The Australian Press Council specifically recommended in 2009 that the media not use these descriptions of refugees.

What about people smugglers?
Refugees have no choice but to use ‘people smugglers’. The people who actually crew refugee boats are usually impoverished Indonesian fishermen. Under current laws, many famous figures from the past would face prosecution as people smugglers, like Oskar Schindler, who saved more than 1,000 Jews during the Holocaust. No one calls Qantas managers ‘people smugglers’, but they also take money to bring asylum seekers here by plane.

How many refugees come here?
Very few. It would take 20 years to fill the MCG with the number of refugees who come to Australia. The United Nations Refugee Agency, the UNHCR, estimates that there were 10.4 million refugees worldwide at the start of 2011. In 2010-2011, Australia’s refugee intake was just 13,799 people, less than 0.14%. Australia was one of the only countries in the world to have fewer refugee claims in the first half of 2011. In those six months alone, the USA received 36,400 applications for asylum; France 26,100 and Germany 20,100.

In most countries from which refugees come, there simply is no queue, and no way to apply for refugee status.

How does Australia’s refugee intake compare to other countries?
Australia has far fewer refugees than other countries. Pakistan has 1,740,711 refugees, Iran 1,070,488, and Syria 1,054,466. Other Western countries take far more refugees per head of population than we do: the UK had 269,363 in 2010; Germany had more than half a million (593,799).

How many migrants to Australia come in as refugees?
Most new migrants here are not refugees. As of July 2010, boat arrivals constituted less than 2% of Australia’s total migration program numbers, and much less than 1% of the increase to the Australian population by birth and migration in a given year. Refugees currently make up just 6.6% of the places in our overall permanent immigration program. In the early 1980s, refugee and humanitarian intake averaged 20% of immigration, creating the Australia we know today.

Aren’t they jumping a queue?
No. In most countries from which refugees come, there simply is no queue, and no way to apply for refugee status. The world’s biggest refugee camp, Dadaab in Kenya, is now full. In war zones, access to embassies or UNHCR offices is impossible. The Australian embassy in Afghanistan does not even make its address public. There is no way to join any queue there.

Why don’t they stop in some other country on the way?
Very few countries between Australia and the Near East or Sri Lanka or Afghanistan have signed the Refugee Convention, meaning there is no right of asylum there. Terrible abuses have been recorded of asylum seekers in SE Asia: in March 2012, there were shocking revelations of brutality at a detention centre in Indonesia, with a 28-year-old Afghan asylum seeker tortured and beaten to death by guards. Anyone trying to escape persecution would choose to come to Australia if they could.

Is it true that many aren’t genuine refugees at all?
No. The government tries to discredit refugees by claiming that they are not genuine, but the vast majority of boat arrivals are found to have a genuine claim to Australia’s protection. For example, the majority of the asylum seekers detained during the 2011 Christmas Island and Villawood riots were later found to be refugees. The assessors Australia uses to decide asylum claims are notoriously biased; findings of bias have been repeatedly made by the Federal Magistrates Court against a reviewer of Afghan claims. The
vast majority of rejections of asylum claims are overturned on appeal.

Why don’t we just send them to some other country to be processed, like PNG or Nauru?

Australia has a legal and moral responsibility towards the small numbers of refugees who ask us for help. We are the wealthiest and most stable state in the region, and best able to help refugees. No other country can give them the support they need.

What happens to refugees once they’ve arrived?

People who arrive in Australia by plane and seek refugee status are allowed to live in the community while their claims are assessed. Only people who come by boat are locked up in detention, in line with Australia’s mandatory detention policy. This double standard is cruel to refugees, expensive for the taxpayer, and in contravention of both the 1951 UN Refugee Convention, and the International Covenant on Civil and Political Rights, both of which Australia has signed.

How many people are in detention and how long do they spend there?

As of January 31 2012, there were 4,944 refugees in detention. When it came to office in 2007 the government promised that detention would be capped at 90 days. But as of February 2012, 62% of detainees have been behind razor wire for 3 months or more. One third (32%) have been detained between 6 and 12 months, and 26% have been detained for more than a year. Incredibly, Australian law allows for asylum seekers to be locked up for ever.

Didn’t the government say it would get children out of detention?

In 2010, the government promised that it would bring children out of detention. But as of 29 February 2012, 496 children were still locked up, including 160 at Leonora, in remote outback WA. In January 2012, France was condemned by the European Court of Human Rights for detaining two children for two weeks.

What are the consequences of detention?

Detention further harms already vulnerable people and breaks lives. Refugees need support after the tragedies that have forced them from home. Indefinite detention only brutalises them more.

Suicide, hunger-strikes, and self-harm are common. Children scream at night in their sleep. Detainees are regularly driven to self-harm and mutilation, such as swallowing glass light bulbs. There have been multiple suicides and attempted suicides in Darwin detention centres and at Villawood.

The contract between the government and SERCO, the company that runs detention centres, reveals clinical depression is considered a ‘minor’ incident, but unauthorised media access is ‘critical’. The SERCO training manual shows that new recruits are trained how to beat detainees. In March 2012 a 29-year-old refugee had to be hospitalised after being beaten by guards at Villawood.

What do the experts say about mandatory detention?

Mandatory detention has been condemned by Amnesty International Australia, leading medical and mental health experts, churches, and many others.

Australia is the only Western country to lock refugees up in detention camps instead of allowing them to live in the community.

Aspects of Australia’s refugee processing have been ruled illegal by the High Court, and the Commonwealth Ombudsman has criticised conditions on Christmas Island. Dr Graham Thom, Refugee Campaign Coordinator for Amnesty, has described Australia’s mandatory detention policy as ‘inhumane’, ‘unacceptable’, ‘cruel’ and ‘degrading’. He says it ‘defies logic’ and is ‘a system that is failing the people it is supposed to protect’.

Professor Patrick McGorry, psychiatrist and 2010 Australian of the year, has compared detention centres to ‘factories for mental illness’. The AMA has frequently called for refugees to be allowed to stay in the community while their claims are processed.

Aren’t refugees being released into the community on ‘bridging visas’?

In late 2011, the government announced that it would release 100 detainees per month into the community.

By March 2012, the numbers actually released fall far short of this mark. But even with 100 per month released, many thousands of people will still be left in detention.

How do other countries treat refugees?

Mandatory detention was only introduced to Australia in 1992. Australia is the only Western country to lock refugees up in detention camps instead of allowing them to live in the community while their claims are processed.

Community processing is not only humane and decent; it avoids the waste of much of the $2 billion budgeted in 2011 for refugee detention. The Christmas Island detention centre alone cost $253 million in 2010-2011 – money that could be better spent on health, education and social services.


Fact sheet, March 2012
© Refugee Action Coalition
www.refugeeaction.org.au
The object of Australia’s Migration Act 1958 is to regulate, in the national interest, the lawful entry and stay of people in Australia. All non-citizens wanting to visit Australia have to apply for, and be granted, a visa to enter Australia.

Non-citizens who are in the migration zone and do not hold a valid visa entitling them to remain in Australia are unlawful non-citizens.

Australia’s Migration Act 1958 requires that unlawful non-citizens who are in Australia’s migration zone be detained and that unless they are granted permission to remain in Australia, they must be removed as soon as reasonably practicable.

Those who are found to be refugees are released from immigration detention immediately, subject to health and character requirements.

New directions in detention

Australia’s mandatory immigration detention policy was introduced in 1992 and expanded in 1994. It has since been maintained by successive governments with bipartisan support in parliament.

In July 2008, the minister announced a fundamental shift in immigration detention policy delivered in his ‘New Directions in Detention’ speech. The reforms announced include the introduction of seven ‘Key Immigration Detention Values’ to guide detention policy and practices into the future, and the implementation of a new processing regime for unauthorised arrivals on Christmas Island.

The announcements in July will see the government maintain a strong stance on border security while also treating people fairly and humanely.

Key immigration detention values

The government’s approach to immigration detention is based on a set of values that take a risk-based approach to immigration detention and seek a prompt resolution of cases. The values commit the department to detention as a last resort, to detention for the shortest practicable period and to the rejection of indefinite or otherwise arbitrary detention.

The government’s seven key immigration detention values are:

1. Mandatory detention is an essential component of strong border control
2. To support the integrity of Australia’s immigration program, three groups will be subject to mandatory detention:
   a. All unauthorised arrivals, for management of health, identity and security risks to the community
   b. Unlawful non-citizens who present unacceptable risks to the community and
   c. Unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time
6. People in detention will be treated fairly and reasonably within the law
7. Conditions of detention will ensure the inherent dignity of the human person.

No children in immigration detention centres

It is government policy that children will not be held in immigration detention centres.

While there will be occasions when children will be accommodated in low-security facilities within the immigration detention network, such as immigration residential housing, immigration transit accommodation and community detention, the priority will always be that children and their families will be promptly accommodated in community detention.

This allows children and their families to move about in the community and receive support from non-government organisations and state welfare agencies, as necessary.

Health care arrangements

All people in immigration detention can gain access to appropriate health care commensurate with the level of care available to the broader community.

For people in community detention and immigration...
residential housing, health care services are provided by community-based health providers. For people in facility-based detention, most primary health services are available onsite with referral to external health providers in the community as clinically required.

An initial health assessment is offered to every person entering immigration detention to identify conditions that will require attention. This assessment includes the collection of personal and medical history, a physical examination and formalised mental health screening and assessment.

Treatment management is coordinated through the department’s contracted health services manager for all people who have a clinically identified need for ongoing medical treatment. As well as the initial health assessment, there are mechanisms in place to identify health needs that may emerge during a person’s time in detention, including formal monitoring processes such as the three-monthly mental health review in detention centres.

A discharge health assessment is completed for each person being discharged from any immigration detention placement. This assessment includes the provision of a health discharge summary from the health services manager to the individual, which informs future health providers of relevant health history, treatment received during detention and any ongoing treatment regimes. Where appropriate, linkages are made with relevant community health providers to facilitate ongoing care beyond discharge.

**Immigration detention**

The department uses a number of programs which provide flexibility in the provision of services to people in immigration detention. These arrangements include community detention facilitated by organisations such as the Red Cross, detention in immigration residential housing or immigration transit accommodation and foster care arrangements (for unaccompanied minors).

**Community detention**

Community detention is a form of immigration detention that enables people in detention to reside and move about freely in the community without needing to be accompanied or restrained by an officer under the Migration Act 1958.

The department works with non-government organisations (NGOs) to ensure people placed in community detention are appropriately supported. NGOs are funded by the department to source appropriate housing, provide payment of living expenses, and to ensure access to relevant health and community services and social support networks is provided.

**Immigration transit accommodation**

Immigration transit accommodation has been introduced for short-term, low flight risk people. The Brisbane Immigration Transit Accommodation opened in November 2007 and the Melbourne Immigration Transit Accommodation opened in June 2008. Further immigration transit accommodation will be located in Adelaide.

Immigration transit accommodation offers hostel-style accommodation, with central dining areas and semi-independent living. Immigration transit accommodation provides a narrower range of services at a less intensive level than is typically offered in an immigration detention centre because of the short-stay nature of the client group.

**Immigration residential housing**

Immigration residential housing is a less institutional, more domestic and independent environment for low flight and security risk people in detention, particularly families with children. Participation in immigration residential housing accommodation is voluntary, subject to meeting eligibility criteria.

Some of the benefits of immigration residential housing are that residents can cook their own food and undertake a range of typical household responsibilities. This includes accompanied visits to local shops for groceries and other household or personal necessities. Residents are also able to undertake accompanied visits to local recreational facilities and attend educational and developmental activities that are undertaken in the community. Immigration residential housing is in place at Perth and Sydney.

**Immigration detention centres**

Immigration detention centres primarily accommodate people who have overstayed their visa, breached their visa conditions and had their visa cancelled or have been refused entry at Australia’s entry ports.

There are centres located at:

- Villawood (established in Sydney in 1976)
- Maribyrnong (established in Melbourne in 1966)
- Perth (established in 1981)
- Christmas Island (established in 2001)
- Northern (established in Darwin in 2001).

The government will deliver on its commitment to extensively redevelop the Villawood Immigration Detention Centre, with $186.3 million allocated for the five-year project. The redeveloped centre will include a range of accommodation options to account for the different requirements of people in detention and will make the most of the existing infrastructure, where possible, to ensure greater value for money.

The redevelopment, which will remedy concerns raised through the Australian Human Rights Commission, will now proceed to detailed design and scrutiny through the Public Works Committee of Parliament. It is envisaged the redevelopment works will be done in stages, with the project to be completed in 2013-14.
processing arrangements for asylum seekers who arrive at an excised offshore place.

Under these arrangements, asylum seekers receive publicly funded independent advice and assistance, including access to independent merit review of unfavourable refugee status assessments and external scrutiny by the Commonwealth and Immigration Ombudsman. These measures build on strengthened procedural guidance for departmental officers conducting refugee status assessments.

Under the enhanced processing arrangements, all irregular maritime arrivals are treated fairly and humanely and have their asylum claims assessed as expeditiously as possible.

**Immigration detention services and standards**

The department will ensure services delivered by contracted service providers will be provided in a fair, reasonable and humane manner, through implementing performance standards in each contract which are focused on service outcomes to people in detention.

These performance standards will be monitored through a robust performance management framework. Standards to be monitored include interaction and well-being of people in detention, programs and activities, catering, transport, reception, cleaning, reporting of incidents and complaints.

**Contract arrangements**

On 11 December 2009, the department entered into a five-year contract with Serco Australia Pty Ltd to provide services to people in immigration detention centres throughout Australia. Transition from the previous detention service provider G4S Australia Pty Ltd was completed in November 2009.

The department signed a contract in January 2009 with International Health and Medical Services Pty Limited (IHMS) to provide general and mental health services to people in immigration detention. Transition from the previous health contracts was completed in May 2009.

On 29 June 2009, the department entered into a five-year contract with Serco Australia Pty Ltd to provide services to people in immigration residential housing and immigration transit accommodation throughout Australia. Transition from the current detention service provider G4S will be completed by the end of January 2010.

**Immigration detention statistics**

The table below is the total number of people held in immigration detention.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NO. OF PEOPLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-98</td>
<td>2,716</td>
</tr>
<tr>
<td>1998-99</td>
<td>3,574</td>
</tr>
<tr>
<td>1999-00</td>
<td>8,205</td>
</tr>
<tr>
<td>2000-01</td>
<td>7,881</td>
</tr>
<tr>
<td>2001-02</td>
<td>7,808</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NO. OF PEOPLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-03</td>
<td>6,602</td>
</tr>
<tr>
<td>2003-04</td>
<td>6,196</td>
</tr>
<tr>
<td>2004-05</td>
<td>7,410</td>
</tr>
<tr>
<td>2005-06</td>
<td>6,510</td>
</tr>
<tr>
<td>2006-07</td>
<td>4,718</td>
</tr>
<tr>
<td>2007-08</td>
<td>4,514</td>
</tr>
</tbody>
</table>

Source: Departmental systems

Statistics for the number of people held in each of the immigration detention centres are updated regularly and are available online.

**External scrutiny**

Services provided for immigration detention centres are subject to parliamentary scrutiny and accountability and are subject to both administrative and judicial review. In fact, the immigration detention process is among the most closely scrutinised of all government programs.

Immigration detention is subject to regular scrutiny from external agencies such as the Australian Human Rights Commissioner, the Commonwealth Ombudsman, the United Nations High Commissioner for Refugees (UNHCR) and the Minister’s Council on Asylum Seekers and Detention (MCASD) to ensure people in immigration detention are treated humanely, decently and fairly.

The department has implemented a targeted strategy to ensure that people in immigration detention understand they can complain or provide feedback about any aspect of their detention. Posters detailing the process for providing feedback have been provided to all places of detention. The posters are available in a number of languages.

**Minister’s Council on Asylum Seekers and Detention (MCASD)**

The Minister’s Council on Asylum Seekers and Detention (MCASD) will provide the minister with independent advice on the development of policies, processes, services and programs, necessary for achieving timely, fair, and effective resolution of immigration status for people seeking asylum or other migration outcomes in Australia.

**The Detention Health Advisory Group**

The Detention Health Advisory Group (DeHAG) was formed in 2006. The DeHAG plays a major role in providing DIAC with advice regarding the design, implementation and monitoring of improvements in health care (particularly mental health care) for people in immigration detention.

The establishment of this group reflects the department’s strong commitment to being closely engaged with its key stakeholders in a more open and accountable interaction. The group comprises of practitioners from key health professional organisations. The Ombudsman’s office has observer status.

---

**Fact Sheet 82 — Immigration Detention.** Produced by the National Communications Branch, Department of Immigration and Citizenship, Canberra. © Commonwealth of Australia 2012. Last reviewed May 2012, www.immi.gov.au
Since mandatory detention was introduced in 1992, many have questioned the different treatment afforded asylum seekers who arrive unauthorised by boat to other onshore asylum applicants and made suggestions for reform. In 1992, the Joint Standing Committee on Migration Regulations expressed concerns at the potential for lengthy detention for certain ‘border claimants’ (unauthorised arrivals), noting that the new mandatory detention arrangements were complex and focused on mode of arrival not the status of the individual:

Although the latest legislation is intended as an interim measure, it has added to the complexity of the border arrangements. There are a confusing array of provisions focused not so much on the status of the person as their mode of arrival in Australia.136

Since then, a number of authoritative researchers and key stakeholders (such as those referenced on page 14) have argued that mandatory detention discriminates against boat arrivals and in addition is unnecessary, costly, harmful and counterproductive – arguments include:

- Australia effectively has two ‘classes’ of asylum seekers whereby those who arrive by air with valid documents are usually granted lawful status and are able to reside in the community while their applications are processed (an ‘alternative to detention’), but those who arrive by boat without documentation are considered a security risk and mandatorily detained, often for long periods of time, while their asylum claims are processed137
- Australia’s mandatory detention policy is costly and the strain on the detention network is unsustainable138
- The negative effects of lengthy detention are damaging long-term (particularly in terms of mental health) for the individuals concerned and could be avoided through shorter detention periods or detention alternatives.139 In addition, between 2000 and 2010 (as at 31 March 2010) the Commonwealth had paid out over $12 m in compensation for alleged injury or wrongful detention to individuals140

There is growing acknowledgement that the use of immigration detention to manage irregular migration is ineffective and costly.

- As the majority of boat arrivals in the past have been found to be refugees, the negative effects of long-term detention are counterproductive. These detrimental effects mean that it may take much longer for those concerned to recover and begin to contribute to Australian society; and it reflects unfavourably on Australian refugee policy both nationally and internationally146
- There is no credible evidence that the threat of mandatory detention stops people from seeking refuge, but may instead be ineffective as a deterrent and lead to more risky unauthorised migration trends.142 UNHCR has stated that “detention is generally an extremely blunt instrument to counter irregular migration. There is no empirical evidence that the threat of being detained deters irregular migration or discourages people from seeking asylum”143
- There is a growing acknowledgement internationally that the use of immigration detention to manage irregular migration is ineffective and costly144
- Research collated by the International Detention Coalition (IDC) concurs with many of the above viewpoints – the common arguments put forward include that:
  - Detention is not an effective deterrent of asylum seekers and irregular migrants in either destination or transit contexts.

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au
Detention fails to impact on the choice of destination country and does not reduce numbers of irregular arrivals. Studies have shown asylum seekers and irregular migrants either are not aware of detention policy or its impact in the country of destination; may see it as an inevitable part of the journey; and do not convey the deterrence message to other back to those in country of origin

- Detention undermines an individual’s right to liberty and places them at greater risk of arbitrary detention and human rights violations
- Detention, even for short periods, harms health and wellbeing for all. The consequences for the cognitive and emotional development of children may be lifelong and
- Detention is counterproductive in achieving compliance with final decisions. On the contrary, asylum seekers and irregular migrants in the community comply and cooperate if they are able to meet their basic needs, have been through a fair and informed process and are supported to achieve sustainable long-term solutions while awaiting a decision on their case. Individuals awaiting a decision on their case are a low absconding risk, and in transit contexts individuals appear less likely to abscond, if they are not at risk of detention and refoulement, and remain hopeful on future prospects.\(^{145}\)

All of these arguments are contentious and ignite passionate debate in the public arena. However, many argue the need for urgent reform as Australia’s mandatory detention policy with its potential of indefinite detention for some asylum seekers is unsustainable.\(^{146}\)

REFERENCES

136. Joint Standing Committee on Migration Regulations, Australia’s refugee and humanitarian system: achieving a balance between refuge and control, op. cit., pp. 159 and 177.
146. For example, Australian Human Rights Commission, Immigration detention system in need of reform, op. cit.

Extract from Immigration detention in Australia background note by Janet Phillips and Harriet Spinks, Social Policy Section Parliamentary Library, Department of Parliamentary Services © 2012 Commonwealth of Australia 23 January 2012
Yesterday, May 6th, marked the 20th anniversary of Australia’s policy of mandatory detention. The policy has eroded Australia’s standing as a good middle power global human rights actor. More precisely, the inclusion of children within the mandatory detention regime has bought national and international condemnation.

Mandatory detention legislation was first introduced in Australia in 1992. Legislation was amended in 1994 to reinforce indefinite detention. The Labor government’s policy ensured that all asylum seekers arriving in Australia without prior authorisation could be detained for unspecified and prolonged periods of time. Amnesty International has consistently argued that prolonged mandatory detention causes untold psychological damage to detainees, especially for children.

Of the estimated 200 million asylum seekers who crossed international borders in 2010, approximately one quarter were children. Australia is the only country in the world with a policy of mandatory detention of children. Greece, Israel, Malaysia, Mexico, South Africa and the US do detain children in immigration facilities, however in these countries child detention is not the first resort but the last resort.

The International Detention Coalition argue that asylum seeker children should never be detained because it is not in the best interests of the child, their protection or safety. National legislation, for all states that have signed international human rights conventions therefore should enact the liberty of children as a fundamental human right.

The 2004 National Inquiry into Children in Immigration Detention – A last resort? prepared by Australia’s Human Rights and Equal Opportunities Commission (HREOC) was tabled in the federal parliament. According to the international organisation End Immigration Detention of Children, the report remains a benchmark, demonstrating children who are detained are at risk of a variety of psychosocial and developmental problems directly linked to their detention experiences, including Post Traumatic Stress Disorder (PTSD) and depression.

The HREOC report found that mandatory detention of children is fundamentally inconsistent with the Convention on the Rights of the Child (CRC) to which Australia is a signatory. Of particular concern in the 2004 report was: that Australia’s policy of mandatory detention of children was not the last resort but the first resort; that mandatory detention was not in the best interests of any child; and that children were not living an environment that fostered self-respect and dignity and failed to ensure recovery from past torture and trauma. Mandatory detention amounted to cruel, inhumane and degrading treatment of children and exposed them to physical and mental violence.

The same report recommended that Minister for Immigration exercise use of Ministerial discretion to grant humanitarian visas under Section 417 of the Migration Act 1958 (Cth) and that Australia’s immigration detention laws should be amended to comply with the Convention on the Rights of the Child. Yet, the Australian High Court has maintained the legislative power of the federal government to mandatorily detain asylum seekers, including children, arguing that the intolerable conditions of detention do not affect the validity of the detention itself.

The High Court also found that the mandatory detention of children under the legislation was also valid. In the case of the Minister for Immigration v B (2004) 219 CLR 365 the High Court found that the Family Court had no jurisdiction to order the Minister for Immigration to release children from detention. The UN Human Rights Committee however has consistently found that the mandatory detention regime is a breach of basic human rights. Even findings against the federal government on behalf of children traumatised by detention have failed to deter ongoing bipartisan support for the policy.

The passing of the 2005 Migration Amendment (Detention Arrangements) Act supporting the principle that children should only be detained as a matter of last resort, the November 2007 legislative changes that ended the ‘Pacific Solution’ and abolished Temporary Protection Visas, and 2008 Labor announcement titled ‘New Values in Immigration Detention’, while improvements, are
Asylum Seekers and Immigration Detention Issues in Society | Volume 353

Island is considered an alternative place of detention, where 32 children are currently being held. The majority of children held come from Afghanistan and Iran. As the International Detention Coalition note mandatory detention is not a “sustainable migration solution”. It is certainly not for those children and their families currently detained under two decades of bipartisan mandatory detention policies.

Jo Coghlan lectures in Australian and International Politics in the School of Social Science and International Studies at the University of New South Wales.

© Jo Coghlan. Posted 7 May 2012.


indicative that mandatory detention remains core to Australia’s migration human rights policies.

While in October 2010 the Gillard Government announced that it would be release children from detention, the Refugee Council of Australia notes that the policy was not immediate and continue to remain concerned that protection of children during the refugee determination process has not been sufficiently addressed.

On the 20th anniversary of mandatory detention, 4,197 asylum seekers are currently detained in immigration detention facilities, with 428 children held under mandatory detention measures. Some time referred to as ‘Alternative Places of Detention’, government statistics might suggest that all 428 children are living in the Australian community. However, for example, Christmas Island is considered an alternative place of detention, where 32 children are currently being held. The majority of children held come from Afghanistan and Iran.

As the International Detention Coalition note mandatory detention is not a “sustainable migration solution”. It is certainly not for those children and their families currently detained under two decades of bipartisan mandatory detention policies.

Jo Coghlan lectures in Australian and International Politics in the School of Social Science and International Studies at the University of New South Wales.

© Jo Coghlan. Posted 7 May 2012.


An unhappy 20th birthday for mandatory detention

This statement from the Refugee Council of Australia marks the 20th anniversary of Australia’s mandatory detention policy for asylum seekers who arrive in Australia without a visa.

On 6 May 1992, the Migration Amendment Act 1992 became law and has been maintained by successive governments, making Australia the only Western country to detain asylum seekers indefinitely for arriving in Australia without a visa.

The Refugee Council of Australia (RCOA) has opposed mandatory detention since its inception. RCOA chief executive officer Paul Power said mandatory detention damaged the mental health of asylum seekers, was expensive to operate and did not act as a deterrent.

“If in 2008, the Australian Government reaffirmed its mandatory detention policy but also announced that detention would be used only as a last resort and for the shortest practicable time it takes to manage health, identity and security risks,” Mr Power said.

“We would like to see the government implement this fully and ensure that detention is used only in exceptional circumstances and for as brief a period as possible.”

“When people are detained, we believe that their detention should be reviewed independently after 30 days, to give the person an opportunity to hear the government’s case for their continued detention and to be able to put their case for release.”

When first introduced, mandatory detention policy applied for a maximum of 273 days. Time limits were removed in 1994, making detention indefinite for asylum seekers.

In March, the Joint Select Committee report on Australia’s Immigration Detention Network recommended a 90-day time limit to detention of asylum seekers who pass initial identity, health, character and security checks.

The report also recommended:

- The publication of reasons for continued detention beyond 90 days.
- Amending legislation to replace the Minister for Immigration as the legal guardian of unaccompanied minors in detention facilities.
- Using detention as a last resort for the shortest practicable time.
- Amendment of the ASIO Act to allow the Security Appeals Division of the Administrative Appeals Tribunal to review ASIO assessments of refugees and asylum seekers.

Mr Power said the Federal Government had made progress in moving asylum seekers out of detention and into the community but there was more work to be done.

“As at 31 March 2012, there were 4,197 people in locked detention facilities, at least 3,800 of whom were asylum seekers. Of these, 428 were children.

“A quarter of the people in immigration detention have been there for more than a year and 6% for more than two years. They include more than 50 recognised refugees with adverse ASIO assessments languishing in immigration detention indefinitely, not knowing the reasons for their detention or how long they will be behind bars.”


RCOA’s submission to the Joint Select Committee on Australia’s Immigration Detention Network is available at www.refugeecouncil.org.au/r/sub/1108-Detention.pdf

© Refugee Council of Australia | www.refugeecouncil.org.au
The initial findings of Amnesty International’s recent detention centre visits, reiterate the organisation’s long held position that the indefinite and prolonged detention of asylum seekers in Australia is a failed policy that contravenes human rights standards.

The most serious and damaging conditions faced by asylum seekers in immigration detention are the length of time and the indefinite nature of their imprisonment. Among the asylum seekers who had been in detention for extended periods, self-harm and attempted suicides were talked about as a fact of life. The use of sleeping pills and other medication was also widespread.

The Christmas Island Northwest Point Immigration Detention Centre (IDC) is overwhelmingly and unacceptably prison-like. The facility is too harsh to house people who have not committed a crime. Adding to the restrictive environment is the new behaviour management regime in the White compound.

The Curtin IDC in Western Australia should be immediately closed for immigration detention purposes. The remote and isolated location of the centre, as well as the extremely hot and dusty physical conditions, exacerbates the existing problems with detaining asylum seekers.

Findings documented from Perth IDC, Northern IDC, Wickham Point IDC, Phosphate Hill APOD and Darwin Airport Lodge APODs 1, 2 and 3, are all illustrative of a failed system.

Given the human rights abuses inherent in indefinite detention, and the excessive costs of transporting basic infrastructure, supplies and staff to such extremely inaccessible locations, Amnesty International remains appalled that this policy has continued for so long.

Recommendations
In order for Australia to meet international human rights standards, Amnesty International recommends the following:

1. A maximum 30-day time limit is placed on the detention of asylum seekers, so that all asylum seekers are moved into the community once health, character and identity checks are complete
2. Immigration detention centres that are remote and isolated be shut down as soon as possible
3. The shift towards processing asylum seekers in the community is expedited, with long-term detainees, families and unaccompanied minors moved out as a priority
4. In all detention centres, but particularly remote ones, asylum seekers ability to communicate with the outside world must be significantly improved. Specifically, increases in access to both outbound and inbound telephones, internet, external activities, and visits from the Australian community.
AHILAN*

Ahilan is a Sri Lankan man who has spent more than two years in Australian detention centres. In Sri Lanka he was jailed twice, and has marks on his body from being beaten by Sri Lankan authorities. He fled from Sri Lanka to Malaysia, hoping to be able to return home when the situation stabilised. In Malaysia he was jailed for 3 months for being a refugee. When he was released, he decided to seek protection in Australia.

On arrival in Australia was detained on Christmas Island before being moved to Curtin IDC.

He says: “If I would have been able to survive there [Sri Lanka] then I would not have left. I thought I would be safe here, but instead I have been put back in jail. I am at breaking point. I have been self-harming.”

“Why is detention for so long? A few months is OK, but two years is too long for anyone. At least in the community I might have some peace. I have been surviving on medication, pain killers and sleeping tablets. I am becoming forgetful and I am worried that detention will ruin me forever.

“I can’t talk to my mother anymore because I will sound so unhappy and she’ll worry about me. Really, it’s better at least that I die here than Sri Lanka.

“When I think about all these things in my life I feel like dying. I had no peace in my country and now in Australia it is bad too. I have come to a point where there seems to be no hope. There are so many problems, who is listening? Who cares?”

SYED AND FATIMA*

Syed, Fatima and their two sons have been on Christmas Island for over two months now. They left Afghanistan in 1999 when civil violence was increasing and they felt it was too unsafe, as part of the Hazara ethnic minority, to remain. They fled to neighbouring Pakistan where they established a business. The Pakistani Government gradually became less tolerant of refugees and their children were banned from attending the local school. Then in 2010, their oldest son was kidnapped by the Taliban. Fearing for the lives of their younger sons, the family fled.

Despite being in Australia for more than 70 days, the family is yet to start the formal process of applying for asylum. They believe this will begin when they are transferred to the mainland, but do not know when this will happen. They know that the process of applying for refugee status could take many months or even years, and are worried that their children will not receive a proper education while they wait.

Fatima is grateful for the safety her family has found in Australia. When asked if there are any problems with the conditions in Phosphate Hill, she explained that sometimes her children feel lonely and isolated, and grow bored in the small compound. She stated that she understood that on such a small island the possibilities for activities and excursions are limited, but young boys need things to do and more space to play.

Syed says: “Everything is for my family. If I die, no problem. But my wife and children, they must have a life.”

MIRZA*

Mirza is a young Iranian who has been in Australian detention for 15 months, firstly on Christmas Island and now in Northern IDC. He is a Faili Kurd, an ethnic minority group persecuted and denied citizenship by Iranian authorities, rendering him stateless. Mirza displayed burn marks on his body from the violence he experienced in Iran, alongside these older scars were deep gashes he had cut across his own torso more recently.

Mirza shook uncontrollably as he spoke and apologised as he struggled to remember the details of his own life, and the current status of his refugee claim in Australia.

He said, “In Iran I have been tortured and I have been threatened, but I have never been in prison before Australia. When I came to this country I was strong and healthy, now I am ill. I take sleeping pills, I am weak.

“The pain and frustration here is unlimited. The only way to release it is to hurt ourselves. They do not allow us to end our lives, but they don’t let us save our lives either. We are so stuck, we have no options.

“I know the officers are just doing a job. It is the politicians who play with my life like it’s a ball in a soccer game.”

He couldn’t remember the last time he had left the detention centre.

* All names have been changed and identifying biographical information removed to protect the individuals and their families.
There is overwhelming evidence that mandatory detention is harmful to detainees and staff alike and a humane alternative is long overdue, advises clinical psychologist Zachary Steel.

What is the harm caused by detention?

The Senate Legal and Constitutional Affairs Committee tabled a report on the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 in mid-August, hot on the heels of an announcement by the Commonwealth Ombudsman to investigate suicide and self-harm among detainees. But how much more can such reports tell us about the harm caused by detention?

That detention is harmful to children is now well established and widely understood. Detaining children and young people accentuates developmental risks, threatens bonds with parents and carers, limits educational opportunities, worsens the effects of existing trauma and results in impaired mental health.

These impacts were amply documented in the Human Rights and Equal Opportunity Commission Inquiry into Children in Immigration Detention (2004). It found alarming levels of suicidal ideation and acts of self-harm among young detainees, along with major depressive disorder and Post Traumatic Stress Disorder.

Other mental health problems included anxiety, nightmares, bedwetting, dissociative behaviour, emotional numbing and a sense of hopelessness. Evidence also suggested the kind of mental health care required for these young people could not be effectively delivered in a detention setting.

What benefit?

But these findings are not limited to children: immigration detention has been shown to have an independent, adverse effect on the mental health of all detainees, both by exacerbating the impact of previous traumatic experiences and as a new source of ongoing trauma.

Helplessness, despair and panic are normal reactions to conditions of confinement and uncertainty that characterise detention. And riots, protests, self-harm and suicide are all predictable responses to the extraordinary stress it engenders.

A substantial body of social and clinical psychological research indicates the conditions imposed by detention are the most likely immediate contributors to the range of extreme adverse events consistently witnessed within detention facilities in Australia and internationally.

Mandatory detention is extremely expensive, does not deter new arrivals, is not required for immigration compliance and is extraordinarily harmful to detainees and staff alike.

Many detainees have personal histories of exposure to torture or other potentially traumatic events, ongoing worry and guilt about families left behind, and the fear of being returned to a country where their life may be in danger.

No wonder ‘processing’ compounds to progressively break asylum seekers down. And the harmful impact of detention on refugees persists well beyond the period of detention, with more recent studies documenting continuing distress and mental health problems between three and five years after release compared with refugees processed through community-based alternatives.

Australian model

Of particular concern is the way immigration detention is implemented under the Australian model – mandatory, indefinite detention and often in remote high-security facilities.

Remoteness restricts access to mental health and other services, as well as impeding links to community resources and networks. The ethical delivery of mental health services is also seriously compromised in such environments.

Concerns have also been raised about the impact of detention on the mental health and wellbeing of detention centre employees themselves. Staff are regularly in situations of extreme stress and often face threats to their personal safety but lack adequate training or experience to be able to respond.

Witnessing the hopelessness, despair, anger and self-harm of detainees is linked to secondary trauma. The grave risk to the mental health of detention centre personnel was demonstrated by the suicide of a detention centre officer in recent months.

Mental health training and support have been developed and delivered to some detention centre employees, but not across the board and some of the least-experienced frontline staff are missing out.

While current mitigating strategies such as providing mental health training to staff and releasing some children and families from detention are important to minimise harm, they fail to acknowledge that detention is, by its very nature, harm inducing and a source of trauma for all concerned.

The prevention of mental health problems and recovery from harms inflicted by detention cannot be fully addressed without widespread reform and a return to a less restrictive model for managing the majority of asylum seekers and other irregular migrants arriving in Australia.
It is absolutely clear from a health perspective that there’s no justification for indefinite, prolonged mandatory detention, particularly in offshore and remote locations.

**Viable alternatives**

There are effective humane alternatives to managing irregular migration. With effective systems in place, the vast majority of asylum seekers can reside in the community while their claims are being processed.

This optimises the health, well-being and eventual settlement outcomes of (those found to be) refugees as well as those who are eventually repatriated.

The United Nations High Commissioner for Refugees has highlighted the failure of detention to deter irregular migration, illustrating that community-based programs and supervised release result in low rates of absconding and have significantly better outcomes, both psychologically and in terms of cost.

While immigration detention remains, it’s essential that mental health services in detention settings (particularly remote, offshore centres) are improved and adequate support and training provided to all staff, including psychologists.

Adopting the amendments proposed by the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 would bring Australian into line with our international human rights obligations.

The recent inquiry announced by the Commonwealth Ombudsman is welcome but the issues being addressed have been extensively examined in the past and there’s a real risk its recommendations won’t be implemented just as those emanating from other reports haven’t.

There’s overwhelming evidence to show that mandatory detention is extremely expensive, does not deter new arrivals, is not required for immigration compliance and is extraordinarily harmful to detainees and staff alike. A humane alternative is long overdue.

**Zachary Steel is Clinical Psychologist, School of Psychiatry at the University of New South Wales.**
In the current political impasse concerning the off-shore processing of asylum seekers, all parties converge on one key priority: preventing asylum seekers from undertaking perilous boat journeys to Australia. Australia implements a range of interception immigration policies designed to manage the flow of regular and irregular migrants (including asylum seekers), and to deter individuals without proper authorisation from arriving in this country. But beyond discussion of mortality, there is inadequate consideration of the effects these strategies have on asylum seekers’ mental health.

Mandatory detention

Research has demonstrated that restrictive immigration policies of interception and deterrence have adverse effects on the health and wellbeing of the individuals they are designed to deter.

Mandatory detention has repeatedly been shown to have a substantial negative impact on the health of asylum seekers.

The stress factors associated with indefinite confinement have been well documented. Detainees face ongoing uncertainty and reduced control over their future, limited access to legal resources and proximity to others exhibiting significant levels of psychological distress, to name a few.

Temporary protection visas

Temporary protection visas (TPVs), routinely issued by the Australian Government from 1999 to 2008, were found to be extremely harmful to mental health.

Between these years, TPVs were automatically granted to all individuals found to be genuine refugees but who had arrived using irregular migration channels, including by boat. TPV holders were restricted from accessing essential benefits, services and family reunion programs, and they lived with the overshadowing possibility of repatriation to their home countries.

Reports from centres working with refugees across the country quickly identified TPV holders as a unique group who were unable to recover from their traumatic pasts while their futures hung in limbo. This was followed by research identifying TPV holders as experiencing unremittingly high rates of mental health issues and resettlement difficulties, compared to refugees who had been granted permanent protection visas.

All TPVs were reverted to permanent protection visas by the Labor Government in 2008. Research has shown that exchanging temporary for permanent visas reduced psychological symptoms amongst refugees.

One of the most concerning aspects of the recent spurt of political discussions around interception measures has
Asylum Seekers and Immigration Detention Issues in Society

Volume 353

been the Coalitions’ commitment to reintroduce TPVs, neglecting this evidence of harm. The reintroduction of TPVs would significantly undermine recent steps taken to improve the health and wellbeing of asylum seekers.

**Interception**

The government’s interception policies also have hidden impacts on the health of asylum seekers. These strategies include stringent visa restrictions indiscriminately applied to whole populations, and the imposition of large fines on airline carriers for transporting passengers without adequate documentation.

Consequently, potential asylum seekers are either obliged to remain in unsafe situations or seek risky, circuitous routes, often with disastrous consequences, rather than simply buying an inexpensive plane ticket. Such conditions render it impossible to recover from the impact of persecution, instead increasing the psychological effects of exposure to trauma.

Mass disaster research has shown that conditions of safety and predictability are vital to recovery from trauma.

These serious but covert repercussions for the physical and mental wellbeing of asylum seekers are frequently overlooked in national political debates that are incessantly focused on irregular boat arrivals.

**Preventing recovery**

Common stress factors are amplified by each of these restrictive immigration policies and collectively act to undermine good mental health.

Fundamentally, these interception policies not only fail to protect asylum seekers, negating the commitment

Australia has made as a signatory to the *UN Refugee Convention*, but also actively detract from physical and mental health by directly erecting barriers to recovery from trauma.

Mass disaster research has shown that conditions of safety and predictability are vital to recovery from trauma.

Recovery is the norm among refugee groups when provided with a stable environment and access to resources that promote personal independence and positive resettlement.

An example comes from Australian’s own migration history: Vietnamese refugees arriving in Australia from the late 1970’s have prospered as a dynamic immigrant community that actively contributes to the cultural and economic development of Australia. Their migration occurred at a time when no policy of deterrence was in operation as there was global support for the stable resettlement of refugees. Consequently, and in spite of significant exposure to traumatic events, this population exhibits very low levels of mental health difficulties.

**The cornerstone for good policy**

Encouraging positive health in asylum seekers must be a cornerstone of all asylum seeker policy design.

The Australian government has demonstrated some consideration of health factors in its Malaysian solution by highlighting the need for a safe environment in which applications for asylum can be processed while actively discouraging hazardous journeys by boat.

But this policy, and the alternative policies being advocated by the opposition, falls short of addressing the health impacts of the policies currently in place.

It is critical that accumulating evidence documenting both the positive and detrimental factors affecting mental health are incorporated into asylum seeker immigration policy.

This will not only prevent further harm, but also assist refugees to recover from the impact of trauma and persecution, in order to build new lives as healthy, functioning members of Australian society.

Belinda Liddell is Postdoctoral Research Fellow at the University of New South Wales. This article was co-authored by Angela Nickerson.

Twenty years after mandatory detention, kids still being detained

The government needs to decisively intervene to ensure the release of all the children held in detention with their families, proposes Sev Ozdowski

Yet again the mandatory detention is under challenge in the High Court. David Manne, a human rights lawyer, acts on behalf of an unnamed Sri Lankan man who has been in detention for more than three years after receiving a negative security assessment. Mandatory detention also impacts on children. Not that long ago, also because of a negative ASIO assessment, a Sri Lankan refugee Ranjini and her two young sons have been indefinitely detained in Sydney’s notorious Villawood Detention Centre. Mandatory detention in Manne words: “It is like being sentenced to life imprisonment without even having been charged, tried and convicted.”

“It is like being sentenced to life imprisonment without even having been charged, tried and convicted.”

In fact this year we celebrate two important anniversaries of direct relevance to mandatory detention of children in Australia. Twenty years ago, in May 1992, the Keating Labor government introduced the Migration Reform Bill that created Australia’s mandatory detention system. Gerry Hand, the then Minister of Immigration, argued it was needed to stop a perceived influx of Cambodian and Vietnamese refugees. Back then the actual number of people who arrived by boat was limited to 158 in 1990-91 and 78 in 1992, and the legislation removed access to judicial review and mandated a detention period for boat people of up to 273 days. Two years later the 273 days limit was removed, allowing for indefinite detention.

Eight years ago, in April 2004 the Human Rights Commission transmitted to then Attorney-General Philip Ruddock a report of my inquiry into mandatory detention of children who arrived on boats over the period 1999-2002. On Budget day in 2004 Tony Abbott, then Leader of the House, tabled the A Last Resort? report in Parliament. The inquiry found that between 1 July 1999 and 30 June 2003, 2,184 children were detained after arriving by boat to seek asylum in Australia. Approximately 14 per cent of those children came to Australia with no parents, and most of them came from Iraq, Iran and Afghanistan.

Children damaged by their time served in detention require mental health support for years.

The inquiry found that many children spent a very long time in immigration detention without proper schooling and health care – the longest time a child spent in Australian immigration detention before being found to be a genuine refugee and released was five years, five months and twenty days. The inquiry also documented that children detained for long periods of time were at a high risk of acquiring mental illness. In fact, the face to face meetings with severely traumatised and mentally unwell children and their parents was the most traumatising experience of my work as Human Rights Commissioner.

The report concluded that
Australia was clearly in breach of the Convention on the Rights of the Child which it ratified in 1990, which mandated that detention of children should be “a measure of last resort” and “for the shortest appropriate period of time”; and that any detention of children must be a proportionate response to achieving a legitimate aim. In my view, Australia’s mandatory detention policy, which allowed the long-term imprisonment of children in harsh outback prison camps, was one of the worst human rights violations in Australia’s post World War II history.

The inquiry also found that the vast majority of children were recognised as refugees and subsequently released into the Australian community with their parents. For example, almost 98 per cent of the Iraqi and well over 95 per cent of Afghani and Iranian children were recognised as refugees. We have since discovered that children damaged by their time served in detention require mental health support for years, and that some of them have won large government compensation payouts.

The key recommendations of the Inquiry were that children with their parents be released immediately into the community and that detention laws should be amended to comply with the Convention on the Rights of the Child.

The initial response was a press release by the then Minister for Immigration Amanda Vanstone who stated the Report was backward looking and unfair to the Department of Immigration. But contrary to popular expectations, on 11 June 2004 the then Prime Minister John Howard publicly declared that: “It is the Government’s intention to dwindle the number of children in immigration detention to zero”, and in fact soon after this the government released the vast majority of children.

On 24 August 2004 an announcement was made by the Prime Minister that “there are only two children in immigration detention centres”. And here I wish to acknowledge the positive role in influencing government decision played by Petro Georgiou and his ‘Gang of Four’, and by the then Prime Minister’s Chief of Staff and now Senator Arthur Sinodinos.

In response to my report, the former Coalition government also introduced a range of changes to the Migration Act 1958. The most significant change was the inclusion into the Act of a principle that “a minor shall only be detained as a measure of last resort.” The harsh Howard’s border protection policy has also ensured that boats stopped arriving. In 2003-04, only 53 people arrived in Australia by boat without a visa. Consequently in 2005, we all held hope that the mandatory, long-term detention of children in Australia was a thing of the past. In fact, for the three years following those changes, children were not being detained in anything other than exceptional circumstances and for very short periods of time.

We are again witnessing a growing number of refugees arriving by boat on our shores and a growing number of children as immigration prisoners in Australia.

The Labor government, since coming to power in late 2007, has dismantled the harsh border protection measures inherited from the Coalition Government – it abolished the Pacific Solution, closed detention centres on Nauru and Manus Islands and abolished Temporary Humanitarian Visas. As a result we are again witnessing a growing number of refugees arriving by boat on our shores and a growing number of children as immigration prisoners in Australia.

The assurances given by both the Prime Minister Gillard and Immigration Minister Evans that no children will be held in detention centres have proved to be hollow. Today, on the 20th anniversary of mandatory detention, and eighth anniversary of my report, over 420 children are locked up in secure detention facilities around the country. This is despite the fact that there are existing well-functioning community based alternatives for child asylum seekers, as demonstrated by some 690 children currently living in the community facilities.

Looking at The Australian’s analysis of the current budget, the government proposes to spend over $1 billion in 2012-13 on asylum seekers. It is further projected that this cost will increase to $3.5 billion by 2015-16. This is the outcome of a sharp increase in boat arrivals – in this FY we can expect over 7,000 people arriving by boat; just in the past fortnight 670 arrived. That means that the number of children in immigration detention will continue to grow as the government continues its inhumane and ineffective policies of mandatory detention. This also means that the vast majority of them will be released into the Australian community after their health has been damaged.

International examples show that detention of children can be prevented altogether. Holland and Belgium recently adopted policies preventing the detention of children and their families.

We once again need the Prime Minister to assert some leadership and intervene decisively to release all the children held in detention with their families. Long-term, mandatory imprisonment of children is certainly not a Labor party value. It is certainly un-Australian and in breach of international human rights agreements that we voluntarily entered into. It is a time now to release the children, like Howard did single-handedly in 2004 and to show some compassion and common sense. If Julia Gillard does not do it, the High Court will soon order her to.

Dr Sev Ozdowski OAM is Adjunct Professor at the Centre for Peace and Conflict Studies, University of Sydney and was Australian Human Rights Commissioner and Disability Discrimination Commissioner (2000-05).

This article was first published in The Australian on 25 May 2012.
O
n the 18th October 2010, the Prime Minister
Julia Gillard announced that the majority
of asylum seeker children and their families
would be released by the 30th of June 2011, prioritising
unaccompanied minors and vulnerable children. At
the time of the announcement, there were 738 children in
detention. Of these 276 were unaccompanied minors.
In the months after the announcement, a record high
of over 1,000 kids were in detention, including over 400
unaccompanied minors. As we reach the date of 30 June
2011, many of us were hoping to celebrate the end of
our policy of detaining children. Unfortunately, this is
not something we can celebrate as children are still in
detention.

The latest figures show that, as of June 15th, 678
children have been released into community detention.
There are no figures as to how many children are still in
detention. What is clear is that the community detention
program has worked. Children interviewed two weeks
after being released into community detention shared
their feelings of freedom and the Asylum Seeker Resource
Centre (ASRC) Campaign Coordinator Pamela Curr has
seen a “significant visible improvement in their mental
health – children have gone from being suicidal to being
normal, happy adolescents”.

The children themselves have also recorded a change.
“When I was released into community detention, the
first thing I did was to go for a long run as I could go
for as long as I liked and as far as I wanted in wide open
spaces”. “As we walked home from school my friend and
I kept turning to each other and pinching each other to
make sure we were awake and not dreaming, as we were
walking without SERCO (security contracted by DIAC)”. To
have such simple access to space and freedom has made
all the difference for many families and children – many
suffering from torture and trauma. The community sector
has stepped in to provide a level of care and support that
immigration detention failed to.

While the Government has moved the ‘majority’ of
children and families into community detention and the
program has been successful, the Government’s policy of
mandatory detention continues. The ASRC has a number
of concerns which are yet to be answered. There is no
indication of how many children are still in detention or
what the plan is to release them. There are no national
standards for children being released into community
d Detention – it is up to each agency to define the level of
support the children will receive. Furthermore, there has
not been the promised evaluation of the program and the
Government has removed their Community Detention
fact sheet 83A from their website. (Editor’s note: this fact
sheet was back online at the time of press, December 2012)

The Government needs to provide transparency into
the community detention program, detail how many
children are still in detention and their plan to release
them. It is heartbreaking for children who are seeking
protection to feel that “in Afghanistan, I am free but not
safe. In Australia, I am safe but not free”. We should ensure
that those seeking protection in Australia are free and safe.
Locking up children is not making us safer

Wouldn’t everyone be better off if some funding was diverted to resource and expand the existing community detention program to ensure children are not indefinitely locked up, asks Sophie Peer

Imagine an Australian child is orphaned overseas. The local Government appoints him a legal guardian. The first thing the guardian does is take the boy to jail-like conditions in a remote location where he will stay indefinitely.

Would our headlines call this barbaric? Would there be outcry: children shouldn’t be treated this way? Surely he needs a comforting environment, surely there’s a better place for the boy than a detention centre? Why does he need to be so far from people who speak his language, people who could give him some support? Doesn’t he need a carer, maybe a counsellor more than a guard?

It would no doubt be a scandal.

Yet here in Australia the Immigration Minister of the day is tasked with deciding whether or not to lock up children seeking asylum. He is also the legal guardian of all children without an adult relative. The basic principle of the Convention on the Rights of the Child, Australia’s own domestic laws relating to children and the tenet of a global report released last week is that states must first consider the ‘best interests of the child’ when making decisions that impact that child.

Australia’s ‘processing’ of children seeking asylum were last week highlighted on the world stage. The International Detention Coalition (IDC) presented their report Captured Childhood to the United Nations Human Rights Council. Australia’s performance is left wanting and the IDC is clear: “it is never in the best interests of a child to be detained for immigration purposes.”

The report presents best practice, steps through a model based on a presumption against the detention of children and is realistic that not every child will eventually stay in the state they have entered, but is clear that their human rights should not be denied while in that state.

Deterrence is often cited as the reason for states locking up children. Yet Andrew Metcalfe, Secretary of the Department of Immigration said last year “Detaining people for years has not deterred anyone from coming”. Minister Bowen agrees with him.

So, if not about deterrence, it must be about security? Except we know that only one child seeking asylum in Australia has ever had an adverse security finding made against them.

If not about security, it must be about logistics. Wanting to get appropriate housing and care for the 528 kids (and their parents in some cases) in secure detention facilities seems pretty fair. Australia has a model of community detention in place; today 534 children are part of that system which affords them relative freedom.

Taxpayers have paid Serco over $1 billion to run immigration detention facilities in the last four years. Add to this various government departmental costs, infrastructure expenses and logistics, the total cost is in the billions.

Wouldn’t the child, the community and the taxpayer be all better off if some of the funds were diverted to properly resource and expand the already existing community detention program so that 100 per cent of children, not 50 per cent are not indefinitely locked up?

Australia receives around 1 per cent of the world’s claims for asylum – that’s counting boat, plane and offshore applications. We could adopt the model presented in the Captured Children report, presuming against detention. The blockage is not security. It’s not insurmountable logistics. It’s not deterrence.

This leaves political will.

A child who has just undergone a dangerous boat journey, and possible months, even years before that searching for safety is detained on Christmas Island. The IDC states that a Government should be able ‘within hours’ conduct individual screening to determine age and assign an independent guardian to the unaccompanied child.

Christmas Island is the first port of call geographically. Beyond the initial reception, why are remote locations, preferred to detain these children? There is limited access to support from carers, educators and members of the child’s community. Of course, it also greatly impedes legal support.

Christmas Island may be a practical location but a child doesn’t need to stay there more than one day. Any length of time there could be in better conditions.

Reallocation of some detention budget into appropriate housing options would be a practical solution. The Hugo Report showed a holistic, well-coordinated program, with adequate support, would benefit the regional economies.

Policy debates about breaking business models and stopping people risking a dangerous journey are important. These debates should not result in denying a child his or her liberty. The child on the boat is hardly going to be the ringleader of a people smuggling racket. Locking that child up on Christmas Island and then in Leonora 830 km from Perth, where he has no access to education is hardly going to break any business model or save future asylum seekers’ life.

Rather, it will almost certainly cause damage to that child who will then receive care from our community sector and more than likely, be granted a visa to remain in Australia permanently.

So even if you agree with the harshest border security laws imaginable; does capturing a childhood keep you safer?

Sophie Peer is Campaign Director at ChilOut.

First published in The Punch
26 March 2012
Community arrangements offer more humane approach to treatment of asylum seekers and refugees

The Australian Human Rights Commission has called for community placement options to be pursued urgently for all asylum seekers, refugees and stateless persons who do not pose an unacceptable risk to the Australian community.

Commission President Catherine Branson QC released the Community arrangements for asylum seekers, refugees and stateless persons report today.

“Commission staff recently visited a number of people living in the community – both in community detention and on bridging visas – as well as people in closed detention with very few prospects of release,” Ms Branson said.

“We found that, as well as being better aligned with Australia’s international human rights obligations, community arrangements offer a far more humane and effective approach to the treatment of asylum seekers, refugees and stateless persons than closed detention.

“Maximum benefits will be derived where asylum seekers are placed in the community at the earliest opportunity following arrival, with appropriate support and opportunities for self-reliance and meaningful activities,” she said.

“An individual assessment of suitability for community placement should be conducted at the earliest opportunity post-arrival.”

Ms Branson has recommended that the government work towards a uniform model of community assessment and placement for asylum seekers, irrespective of their place or mode of arrival in Australia. She has further recommended that the right to seek paid work should be extended to all adults who have been placed into community arrangements.

“We should also make sure all those in community placement are given the opportunity to enrol in vocational training, and to attend English language classes. Those who are unable to generate an independent income should have access to a level of income support sufficient to meet their basic needs,” Ms Branson said.

She said it was crucial that access to essential health care and counselling be made available and that school-aged children have full access to formal education.

During its visits to four immigration detention facilities, the Commission spoke with asylum seekers, refugees and stateless persons, some of whom had received adverse security assessments and some of whom are of interest to the Australian Federal Police or who have been charged in relation to detention centre disturbances during early 2011.

“Under current arrangements, many of these people appear likely to remain in closed detention for the foreseeable future,” Ms Branson said.

She said that there are many benefits associated with community arrangements. She said community placement can be much cheaper than closed detention and can allow for readier transition to life as an Australian resident for people who are granted protection.

“Community arrangements entail fewer risks to the health, mental health, safety and wellbeing of asylum seekers, refugees and stateless persons and are therefore likely to lead to lower rates of suicide and self-harm as well as fewer claims for compensation,” Ms Branson said.

“There are also very low rates of absconding from community arrangements.

“And, importantly, let’s not forget that community placements allow for the full enforcement of immigration law, and, where there is any risk, conditions can be applied within a community setting to mitigate this risk.”

The Commission has made a total of eight recommendations in the report including that the government end the system of mandatory and indefinite immigration detention, assess the need to detain people on a case-by-case basis, and give consideration to releasing from detention those refugees who’ve received adverse security assessments, or to placing them in a less restrictive form of detention.

The Community arrangements for asylum seekers, refugees and stateless persons report can be found online at: www.humanrights.gov.au

The report summary and recommendations can be found on page 28 of this book.
Community arrangements for asylum seekers, refugees and stateless persons

Report summary and recommendations from the Australian Human Rights Commission

This report is about two distinct subject matters. The first of these is the welcome move by the Australian Government to transfer increasing numbers of asylum seekers, refugees and stateless persons into community arrangements. The second is the situation of people who remain in immigration detention facilities with little or no prospect of being released.

Australia has a legal and policy framework which provides for mandatory and indefinite immigration detention. Despite this framework, the Australian Government has recently taken measures to transfer large numbers of asylum seekers, refugees and stateless persons out of closed detention into the community, pending the resolution of their claims for protection. This is being achieved through the use of community detention and bridging visas.

The Australian Human Rights Commission recently visited a number of people living in the community under these arrangements. The Commission found that, as well as being better aligned with Australia’s international human rights obligations, community arrangements offer a far more humane and effective approach to the treatment of asylum seekers, refugees and stateless persons than closed detention.

The Commission also visited four immigration detention facilities this year to speak with asylum seekers, refugees and stateless persons. Some of these people had received adverse security assessments and some of them were people of interest to the Australian Federal Police or had been charged in relation to detention centre disturbances during early 2011. Under current arrangements, many of these people appear likely to remain in closed detention for the foreseeable future.

Australia’s system of mandatory, indefinite immigration detention leads to breaches of our international human rights obligations and it has a devastating human impact. Community placement options should urgently be pursued for all asylum seekers, refugees and stateless people who do not pose an unacceptable risk to the Australian community.

RECOMMENDATIONS

Recommendation 1: The Australian Government should end the system of mandatory and indefinite immigration detention.

Recommendation 2: The need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. That assessment should be conducted when a person is taken into immigration detention or as soon as possible thereafter. A person should only be held in a closed immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be managed in a less restrictive way. Otherwise, they should be permitted to reside in the community while their immigration status is resolved – if necessary, with appropriate conditions imposed to mitigate any identified risks. If a risk to the community cannot be effectively mitigated, consideration should be given to whether the person can be placed in a less restrictive form of detention.

Recommendation 3: Australian Government policy should be reformed so that individuals in immigration detention who have received an adverse security assessment can be considered for release from detention, or for placement in a less restrictive form of detention.

Recommendation 4: The Australian Government should comply with its international human rights obligations by providing for a decision to detain a person, or a decision to continue a person’s detention, to be subject to prompt review by a court. To comply with article 9(4) of the International Covenant on Civil and Political Rights, the court must have the power to order the person’s release if their detention is not lawful. The lawfulness of their detention is not limited to domestic legality – it includes whether the detention is compatible with the requirements of article 9(1) of the International Covenant on Civil and Political Rights, which affirms the right to liberty and prohibits arbitrary detention.

Recommendation 5: The Australian Government should work towards a uniform model of community assessment and placement for asylum seekers, irrespective of their place or mode of arrival in Australia. An individual assessment of suitability for community placement should be conducted at the earliest opportunity post-arrival.

Features of such a model should include:

- Permission for adult asylum seekers placed in the community to seek paid employment, irrespective of their level of vulnerability.
- Opportunities for engagement in meaningful activities, including permission to attend English language classes and to enrol in vocational training.
- A level of income support sufficient to meet basic needs for those who are unable to generate an independent income.
- Access to essential health care and counselling.
- Full access to formal education for school-aged children.

Recommendation 6: The Australian Government should introduce reforms so that refugees who have received adverse security assessments from the Australian Security Intelligence Organisation are provided with:

- Information sufficient for them to be reasonably informed of the basis of the adverse assessment.
- Access to merits review by the Security Division of the Administrative Appeals Tribunal.
- Procedural mechanisms to provide for effective merits and judicial review, including opportunities for a person to know the basis of their assessment and to make submissions on the content of that assessment, either directly or through an appropriate person such as a Special Advocate.

Recommendation 7: The Australian Government should develop a formal statelessness determination mechanism which recognises both de jure and de facto statelessness, and establish administrative pathways for the grant of substantive visas to stateless persons who have been found not to be refugees or otherwise owed protection.

Recommendation 8: A uniform national policy on the use of restrictive places of detention should be developed and should cover all places of detention that may be used for observation and segregation. Mental health and suicide prevention experts should be consulted in the development of this policy. The policy should specify that there is to be no co-location of people who are considered to be at risk of suicide or other forms of self-harm with people who are under observation due to aggressive or threatening behaviours.

Summary and recommendations from ‘Community arrangements for asylum seekers, refugees and stateless persons’, July 2012.

© Australian Human Rights Commission | www.humanrights.gov.au

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au
Chapter 3

Offshore processing policy debate

Report of the expert panel on asylum seekers

Summary of the key recommendations from the ‘Houston Report’ outlining immigration policy options which were subsequently adopted by the federal Government to prevent asylum seekers risking their lives on dangerous boat journeys to Australia

PRINCIPLES

Recommendation 1
The Panel recommends that the following principles should shape Australian policymaking on asylum seeker issues (paragraphs 2.6-2.22):

➤ The implementation of a strategic, comprehensive and integrated approach that establishes short, medium and long-term priorities for managing asylum and mixed migration flows across the region
➤ The provision of incentives for asylum seekers to seek protection through a managed regional system
➤ The facilitation of a regional cooperation and protection framework that is consistent in the processing of asylum claims, the provision of assistance while those claims are being assessed and the achievement of durable outcomes
➤ The application of a ‘no advantage’ principle to ensure that no benefit is gained through circumventing regular migration arrangements
➤ Promotion of a credible, fair and managed Australian Humanitarian Program
➤ Adherence by Australia to its international obligations.

AUSTRALIA’S HUMANITARIAN PROGRAM

Recommendation 2
The Panel recommends that Australia’s Humanitarian Program be increased and refocused:

➤ The Humanitarian Program be immediately increased to 20,000 places per annum (paragraphs 3.3-3.8)
➤ Of the 20,000 places recommended for the Humanitarian Program, a minimum of 12,000 places should be allocated for the refugee component which would double the current allocation (paragraphs 3.3-3.8)
➤ Subject to prevailing economic circumstances, the impact of the Program increase (recommended above) and progress in achieving more effective regional cooperation arrangements, consideration be given to increasing the number of places in the Humanitarian Program to around 27,000 within five years (paragraphs 3.3-3.8)
➤ The Humanitarian Program be more focused on asylum seeker flows moving from source countries into South-East Asia (paragraphs 3.3-3.9).

REGIONAL ENGAGEMENT

Recommendation 3
The Panel recommends that in support of the further development of a regional cooperation framework on protection and asylum systems, the Australian Government expand its relevant capacity-building initiatives in the region and significantly increase the allocation of resources for this purpose (paragraphs 3.26-3.28).

Recommendation 4
The Panel recommends that bilateral cooperation on asylum seeker issues with Indonesia be advanced as a matter of urgency, particularly in relation to:

➤ The allocation of an increased number of Humanitarian Program resettlement places for Indonesia (paragraphs 3.20-3.22)
➤ Enhanced cooperation on joint surveillance and response patrols, law enforcement and search and rescue coordination (paragraphs 3.20-3.22)
➤ Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia (paragraphs 3.20-3.22).

Recommendation 5
The Panel recommends that Australia continue to develop its vitally important cooperation with Malaysia on asylum issues, including the management of a substantial number of refugees to be taken annually from Malaysia (paragraphs 3.23-3.24).

Recommendation 6
The Panel recommends a more effective whole-of-government strategy be developed for engaging with source countries for asylum seekers to Australia, with a focus on a significant increase in resettlement places provided by Australia to the Middle East and Asia regions (paragraphs 3.29-3.33).

REGIONAL PROCESSING

Recommendation 7
The Panel recommends that legislation to support the transfer of people to regional processing arrangements be introduced into the Australian Parliament as a matter of urgency (paragraphs 3.54 and 3.57). This legislation should
require that any future designation of a country as an appropriate place for processing be achieved through a further legislative instrument that would provide the opportunity for the Australian Parliament to allow or disallow the instrument (paragraph 3.43).

**Recommendation 8**
The Panel recommends that a capacity be established in Nauru as soon as practical to process the claims of IMAs transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law (paragraphs 3.44-3.55).

**Recommendation 9**
The Panel recommends that a capacity be established in PNG as soon as possible to process the claims of IMAs transferred from Australia in ways consistent with the responsibilities of Australian and PNG under international law (paragraphs 3.56-3.57).

**Recommendation 10**
The Panel recommends that the 2011 Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement (Malaysia Agreement) be built on further, rather than being discarded or neglected, and that this be achieved through high-level bilateral engagement focused on strengthening safeguards and accountability as a positive basis for the Australian Parliament’s reconsideration of new legislation that would be necessary (paragraphs 3.58-3.70).

**FAMILY REUNION**

**Recommendation 11**
The Panel recommends that the current backlog in the SHP be addressed as a means of reducing the demand for family reunion through irregular and dangerous maritime voyages to Australia, and that this be achieved through removing family reunion concessions for proposers who arrive through irregular maritime voyages – with these proposers to instead seek reunion through the family stream of the Migration Program (paragraphs 3.13-3.18).

**Recommendation 12**
The Panel recommends that in the future those who arrive in Australia through irregular maritime means should not be eligible to sponsor family under the SHP but should seek to do so within the family stream of the Migration Program (paragraph 3.71).

**OTHER RECOMMENDATIONS**

**Recommendation 13**
The Panel recommends that Australia promote more actively coordinated strategies among traditional and emerging resettlement countries to create more opportunities for resettlement as a part of new regional cooperation arrangements (paragraphs 3.35-3.37).

**Recommendation 14**
The Panel recommends that the Migration Act 1958 be amended so that arrival anywhere on Australia by irregular maritime means will not provide individuals with a different lawful status than those who arrive in an excised offshore place (paragraphs 3.72-3.73).

**Recommendation 15**
The Panel recommends that a thorough review of refugee status determination (RSD) would be timely and useful (paragraphs 3.74-3.76).

**Recommendation 16**
The Panel recommends that a more effective whole-of-government strategy be developed to negotiate better outcomes on removals and returns on failed asylum seekers (paragraphs 3.81-3.83).

**Recommendation 17**
The Panel recommends that disruption strategies be continued as part of any comprehensive approach to the challenges posed by people smuggling and that relevant Australian agencies be resourced with appropriate funding on a continuing basis for this purpose (paragraphs 3.84-3.86).

**Recommendation 18**
The Panel recommends that law enforcement agencies in Australia continue their activities in countering involvement of Australian residents who are engaged in funding or facilitating people smuggling operations (paragraph 3.87).

**Recommendation 19**
The Panel notes that the conditions necessary for effective, lawful and safe turnback of irregular vessels carrying asylum seekers to Australia are not currently met, but that this situation could change in the future, in particular if appropriate regional and bilateral arrangements are in place (paragraphs 3.77-3.80).

**Recommendation 20**
The Panel recommends that Australia continue to work with regional countries in a focused way to develop joint operational guidelines for managing Search and Rescue (SAR) activities in the region and to address the need for any further regional and national codification of arrangements across SAR jurisdictions (paragraphs 3.88-3.90).

**Recommendation 21**
The Panel recommends that, in the context of a review of the efficacy of the recommendations put forward in this Report, the linkage between the onshore and offshore components of the Humanitarian Program be reviewed within two years.

**Recommendation 22**
The Panel recommends that the incompleteness of the current evidence base on asylum issues be addressed through a well-managed and adequately funded research program engaging government and non-government expertise (paragraphs 3.38-3.40).

The Report of the Expert Panel on Asylum Seekers (The Report) of 13 August 2012 is somewhat of a policy smorgasbord. This is not surprising given the terms of reference and the narrow terms of the policy debate. Essentially a number of tough elements of the ‘Pacific Solution’ are to be reintroduced. However there are some sweeteners like no Temporary Protection Visas (TPV) and an increase in the refugee program to 20,000 places a year.

The first and dominating term of reference was “how best to prevent asylum seekers risking their lives by travelling to Australia by boat”. This item is the theme of the report, and has been the theme of the policy arguments (rather than debate).

There is an acknowledgment in the report that the numbers arriving in Australia are small by international standards (Australia’s proportion is equivalent to 2.5% of all asylum applications internationally, including arrivals by air and sea). Most refugees stay in countries near their home country. However, the perceived need to ‘stop the boats’ has triumphed over the real need of dealing with an international and regional issue of 42.5 million forcibly displaced people in the world.

The report also states that most refugees are not living in ‘camps’ but in urban settings. This has been a fact for some years, and according to the UNHCR around 30% of refugees are in camps, and around 50% in urban settings. This is significant because it can be harder to ensure services such as health, education, and case processing is done evenly in cities and many people will simply not register, as happened in Syria with Iraqis.

On a positive side, the report recommends an increase in the annual program from 13,750 to 20,000 and even higher numbers in five years if the boats stop. This is something that the Refugee Council of Australia has called for for many years and in fact, was the program back in the early 1980s during the Vietnamese ‘boat people’ period.

The panel’s call for regional approaches to the movement of people and dealing with non-Refugee Convention countries in the region is also important. However, these are long-term plans and unlikely to develop quickly. In our region, Malaysia hosts around 100,000 refugees and ‘persons of concern’ for the UNHCR, yet Malaysia is not a signatory to the Refugee Convention. In Pakistan there are an estimated 2.7 million refugees and displaced persons and 900,000 in Iran, neither country are signatories to the Refugee Convention. Syria has over a million Iraqis by some estimates, and is now creating its own refugee flow with Iraqis looking elsewhere and Syrians fleeing the civil war in their country.

Another positive was a call for community sponsorship of refugees like in Canada. In fact, a similar program did exist in Australia in the 1980s and 1990 called the Community Refugee Support Scheme (CRSS). The program was abandoned in the late 1990s. This involved groups linked to communities, or churches to fund the airfare costs, find accommodation and help with short-term resettlement needs.

Reassuringly, there was no suggestion of returning to the TPV and an acknowledgement about the impracticality of the turnback policy – especially where boats can be scuttled placing the lives of refugees and Naval personnel at risk.

Nevertheless, there are significant negatives from a human rights perspective. The worst would be the return to using Nauru and PNG as places to warehouse refugees. The report calls for a ‘no advantage test’ which seems to mean that refugees will be stuck on Nauru for years, whilst their assessment ‘peers’ are processed in Malaysia or elsewhere.

This view is misguided as it assumes that there is a refugee processing queue and you take a number and wait your turn. There is no queue, and the queue myth has gradually become accepted as fact with both political parties referring to a ‘queue’ that does not exist. It enables politicians...
to falsely discriminate between the 'good refugees', who wait patiently for a resettlement place, and the bad refugees, who try and find a solution to their plight by travelling to Australia.

They are all refugees, but only a few will ever be resettled. This is a fact unlikely to change unless the causes of forced movement stop or countries like Australia vastly increase their resettlement programs. Neither of these points seems likely in the medium term.

Other recommendations deal with the punishment of the 'bad refugees'. These include a total excision of Australia from the migration zone for anyone arriving as an 'irregular maritime arrival' (IMA), and preventing the bad refugees from getting the cheap sponsorship option for family reunion. It is not clear if a stowaway who jumps ship in Sydney will be flown to Nauru to have their case assessed or not.

Another unstated matter is what procedures and law will apply in Nauru. Currently the IMA caseload is covered by the same legal tests as those seeking asylum after arriving by air. The process used by UNHCR varies from country to country and generally is far less procedurally fair, and in a number of elements positively unfair. Is it proposed to introduce a procedurally unfair process for people in Nauru, or will they get the benefit of procedural fairness as currently happens?

The family reunion issue was not fully set out in the report and it seems to have been not fully understood by the authors. Any citizen or permanent resident can sponsor a partner and dependent children under the family migration program. The main issue with these visas are the cost (currently $2,060) and processing time. Also, under the family program the sponsored partner and any children will not get settlement benefits such as free English classes and settlement assistance. Whilst there is a figure for the family migration program each year, the partner visa is not 'capped' like the refugee program.

Protection visa holders are able to apply to sponsor their spouse and dependent children under the humanitarian program which avoids paying the $2,060 fee and they have access settlement services and English classes if needed. A practical problem is that the larger numbers coming as refugees means fewer places for family reunion so the processing time for these cases has significantly blown out to several years. The Report recommends that those who came as IMAs should not have access to this program as a way of reducing pressure on the humanitarian family reunion caseload.

A significant number of people have already decided the delays are too long and have lodged under the family program already, which means that unless resources are moved to assess the cases in Amman, Dubai, Colombo, Tehran and Islamabad, the family migration program processing will blow out.

Another issue not really addressed is that of unaccompanied minors (UAM). There are a few references in the Report to 'vulnerable persons' but does this mean that UAMs will be sent to Nauru and PNG, and if so, who are their guardians? Currently the Immigration Minister is their Guardian and this was an issue raised in 2011 in the M70 case in the High Court which effectively ruled out the Malaysian plan. The Malaysian plan is not ruled out but it is suggested that it be reworked as part of the general strategy of deterrence.

One of the major causes of delays now faced by applicants whether in Australia, on Christmas Island or in Jordan is the slow process of security checks by ASIO. Whilst this is not mentioned in the report given the limited terms of reference, it does slow down the process so much that people can be waiting more than 1-2 years after lodging a case for their security check to be finalised. This has flow on consequences in family reunion and in some cases, means that children are no longer considered dependent because the process took so long. Whilst there needs to be security checks, why they are taking so long is a mystery.

Overall, the report endorses a harsh policy for dealing with asylum seekers. There are proposals which may slow or even stop the boats, but there are greater needs of addressing protection for those forcibly displaced generally. The Report discusses the need for regional solutions but this is nothing new. The Comprehensive Plan of Action in the 1980s was a 'regional solution' for the Vietnamese and Cambodian boat people, but since then there have been no serious efforts at regional solutions. Whilst we fret over a caseload of 2.5% of the world’s asylum applications, most refugees will live in non-convention countries, in uncertain and sometimes unsafe circumstances, hoping and searching for their solution.

Kerry Murphy is a partner in D’Ambra Murphy Lawyers and an accredited specialist in immigration law.

Senate passes offshore processing bill

After two days of debate the Senate has passed legislation which will allow the offshore processing of asylum seekers who come by boat. ABC News reports

After two days of debate the Senate has passed legislation which will allow the offshore processing of asylum seekers who come by boat.

The Greens put up several amendments to build in extra human rights protections and to stop asylum seekers from being held offshore for more than 12 months.

They also put up amendments to review the bill and to give it a so-called ‘sunset clause’ so it would only last for two years.

Greens Senator Sarah Hanson-Young says the bill allows all asylum seekers, including children, to be detained indefinitely.

The Government denies it is a return to Howard-era policies and says it is hopeful the processing centres can be up and running on Nauru and Papua New Guinea’s Manus Island within a month.

“There are 10 unaccompanied minors who have today arrived on Christmas Island who’ll be among the first people sent to Nauru,” she said.

“Why is the Government so reluctant to ensure these minors have access to these appropriate protection and welfare arrangements?”

The return to a policy the Rudd government dumped in 2008 represents a major backdown by Prime Minister Julia Gillard and her government.

But they were voted down by the Coalition and the Government, who joined together to pass the bill.

Some government senators, however, told the Upper House of their concerns. The Left faction’s Doug Cameron wants the Government to promise it will also increase the humanitarian intake.

And factional colleague Gavin Marshall acknowledged the frustration within the party over the plan.

“I cannot honestly say legislation we consider today sits comfortably in the narrative of the Labor Party, a party based on social justice, compassion and a fair go,” he said.

“And it doesn’t sit well with me.

“I know that many members of the party and of the Australian public more broadly share the sense of disappointment and frustration that I feel today.”

MAJOR BACKDOWN

The return to a policy the Rudd government dumped in 2008 represents a major backdown by Prime Minister Julia Gillard and her government.

In two days of debate in the Lower House earlier this week, 42 Liberal and National MPs spoke on the policy, dubbed the Pacific Solution Mark II.

The Government denies it is a return to Howard-era policies and says it is hopeful the processing centres can be up and running on Nauru and Papua New Guinea’s Manus Island within a month.

Nationals Senator Barnaby Joyce revelled in Labor’s discomfort.

“I can look at Penny Wong, ask Minister Wong, that is not your view,” he said.

“I can look at Senator (Bob) Carr and go that is not your view, and that they’re all going to vote for it, they’re all going to support it, they’re all going to stand silent on it.”

Greens Senator Sarah Hanson-Young says the bill allows all asylum seekers, including children, to be detained indefinitely.

The Government denies it is a return to Howard-era policies and says it is hopeful the processing centres can be up and running on Nauru and Papua New Guinea’s Manus Island within a month.

“Why is the Government so reluctant to ensure these minors have access to these appropriate protection and welfare arrangements?”
AUSTRALIA’S MORAL OBLIGATIONS TOWARD PEOPLE SEEKING ASYLUM

Address to the second annual Bishop Joseph Grech Colloquium on Ethics and Migration, Melbourne, Victoria by Chris Bowen MP, Minister for Immigration and Citizenship

Introduction

The theme of this evening’s colloquium is ‘Australia’s moral obligations toward people seeking asylum’. It may be tempting to suggest that looking at the asylum seeker issue from the perspective of ethics or morality is to look at it from a new or different perspective. Or that the only morally acceptable approach is a generous onshore processing regime which guarantees resettlement to anyone who arrives on our shores as an asylum seeker.

Some argue that we should not return people to their home country even after they have been found not to be refugees after an exhaustive process of determination.

Some argue that we should not return people to their home country even after they have been found not to be refugees ...

Having had to think deeply about these issues, and put in place practical policies over the last two years, I reach a different perspective about the moral imperatives of asylum policy.

I believe in an approach that is generous, that recognises the complexities of the problem and importantly, acknowledges the desperate circumstances that cause people to travel to seek asylum.

When it comes to our moral obligations towards those seeking asylum, we must consider not just our moral obligations towards those who seek to come to our shores but also to the millions of displaced people around the world – who equally long for safety, peace, hope and a better future for themselves and their children.

Consequently, I also believe in robust measures to ensure that those who have the means and willingness to come here by boat should not be advantaged over those who do not.

I believe that asylum seekers should not be demonised and that they are simply doing what most of us would do in similar circumstances with similar means. Even those who do not turn out to be genuine refugees are simply seeking a better life for their family – not something in any way to be condemned.

More broadly, I believe in an appropriately high migration program and that we should promote and in celebrating the success of Australian multiculturalism.

Ultimately, the case for offshore processing as part of a properly constructed regional framework which improves protection outcomes across the region can probably be best dealt with in two parts: fairness and safety.

I think it was these combined moral imperatives of fairness and safety that led the Expert Panel of Angus Houston, Michael L’Estrange and Paris Aristotle to recommend the principle of ‘no advantage’ as the underlying theme of their report – that people who...
arrive by boat should not receive an advantage in terms of chances at permanent resettlement over others.

To argue otherwise is to argue that they should receive an advantage, not a proposition that, to my mind, stands up to close scrutiny.

Let’s be clear, this is not about punishment or punitive actions. Three good men would not have put their names to a report which recommended this. Punishing some to warn others would not, to my mind, be a justified, sustainable or morally acceptable position. But putting all on a more even playing field when it comes to resettlement certainly is.

**Fairness and equity**

Let me deal firstly with the issue of fairness – with equity.

There are 42 million displaced people in the world – people who have been forced from their homes through no fault of their own. Around 15 million of these are recognised as refugees, having fled across national borders.

Australia plays a unique role in resettling some of these people, giving them a chance of a better life.

Most countries, such as Germany, France and the United Kingdom, are kept busy dealing with those arriving. So they resettle virtually no refugees from elsewhere.

Others, such as the United States and Canada, have very few asylum seekers arriving on their shore and so have generous resettlement programs.

---

**There are 42 million displaced people in the world – around 15 million of these are recognised as refugees.**

---

Australia has determined that we will help as many refugees as we can. And each year we spend hundreds of millions of dollars helping 13,750 settle into life in Australia – a figure we announced, last week, would lift of millions helping 13,750 settle into life in refugees as we can. And each year we spend hundreds off shore or on shore. An uncapped program would mean an unlimited budget. Consequently, such a policy cannot be advocated by those who have the responsibility of economic management.

Still, we are increasing our Humanitarian Program quota to 20,000 places – at a cost of more than $1 billion over the next four years.

I note that this is not a bipartisan position and, indeed, has been heavily criticised by some as sending ‘the wrong message’.

But the government’s view is that, in addition to removing the ‘advantage’ of arriving by boat, our policies must increase refugees’ prospect of resettlement in Australia through authorised means.

This concept of ‘no advantage’ is based partly on the moral and compassionate principle of fairness.

Say what you will about Australians’ sense of right and wrong; one quality that is deeply entrenched in our national psyche – including among our newest migrants – is our sense of fairness.

Sitting in my Fairfield electorate office in Sydney’s West, I am constantly reminded of the inherent unfairness of a situation that rewards those who come by boat over those who don’t and can’t.

I hear the stories of people trying desperately to get family members to safety from Syria, where they fled from Iraq after a family member was kidnapped and after receiving regular death threats from local fundamentalists.

I hear of the hardship of family members of Assyrians, Chaldeans and Mandaeans suffering persecution back home; of Copts in Egypt whose places of worship are shot at or burnt.

I talk to some of the relatives of the 1.6 million refugees in and around the Horn of Africa who wonder if there is any chance, after years of waiting, of being reunited with their loved ones to enjoy a new life in Australia.

Barely a day goes by when, as a local member, I don’t hear a story like this, tearfully told by a local resident worried about the plight of their loved ones.

They beg us: though we be out of sight; do not cast us out of mind.

This is why, in the most multicultural area of Australia, where many refugees have made their home, there is very strong support for policies that deter boat journeys and give more places to people sitting in desperate and prolonged circumstances around the world.

The constituents I speak to every day – who came to Australia as refugees and who still have relatives in the Middle East, Asia and Africa patiently but desperately waiting for the chance of a new life in Australia – are to me a pretty good guide as to whether our refugee policy is operating fairly.

Like them, I believe our refugee program should be calibrated to give those refugees in protracted situations around the world – in the Middle East, in Asia and in Africa – who don’t have the opportunity or resources to use people smugglers at least the same opportunities as those who do.

There simply is no moral justification for providing those with more money and more mobility with a greater...
chance at a humanitarian visa and a life in Australia over those of equal or greater humanitarian need.

Proximity surely cannot be the overriding moral principle, whereby we take full responsibility for every imaginable need – including food, shelter, language skills, occupational training, entertainment and so on – as soon as an individual makes it to Australian jurisdiction, but absolutely no responsibility until that point.

So it is from people like the refugees in my electorate that I get the strongest feedback that policies such as the Malaysia agreement, which removes the incentive to come to Australia by boat but which gives more people the chance of resettlement in Australia, are the right ones.

Safety

Let me turn, then, to the second moral principle underlying the Expert Panel’s report: safety – and the need to remove the perverse incentive for desperate people to risk their lives to get to Australia.

There will always be a range of complex circumstances which cause people to travel to claim asylum. But it is a fact that properly designed regional processing can save human lives.

Conversely, asylum seekers are effectively encouraged to sell everything they own, borrow whatever other money they need and risk their lives on overcrowded boats organised by unscrupulous smugglers. And many, as we know, never make it.

The first time I had to deal, as Minister for Immigration, with the loss of life at sea was the December 2010 Christmas Island tragedy.

The fact that there have been more tragedies since then should never mean we get used to or accept these tragedies.

The first time I had to deal, as Minister for Immigration, with the loss of life at sea was the December 2010 Christmas Island tragedy.

I challenge anyone to stand at the memorials at Christmas Island that commemorate these losses of life – particularly the memorial to the SIEV X of 2001, in which most of the people who died were young children – I challenge anyone to stand at those memorials and not commit themselves to a better way.

Even as I speak to you this evening, efforts are continuing to find survivors of a boat that sunk around 45 nautical miles off the coast of Java. Around 150 asylum seekers on their way to Australia were believed to be on this boat. I have just been advised that only 22 have been rescued so far.

This is the latest in a regular string of fatal voyages – and these are just the ones we know about.

To the best of our knowledge, hundreds of others have boarded boats that have disappeared in the middle of the night, with none of those aboard ever heard from again.

I simply say to you: this is not a tolerable situation.

No one disputes the legitimacy of the ambition of asylum seekers – or even of economic migrants who are not refugees – to seek a better life in Australia for themselves and their families. In their situation, I would do the same.

And, so long as Australia’s policy settings hold out the incentive to come by boat, that choice is a rational, if risky, one.

I say to you bluntly: those who argue passionately for onshore processing must accept that this will lead to deaths at sea.

There is nothing moral or humanitarian about telling people that their best chance at a new life in Australia is to risk their lives on the high seas to get here.

That is why it is our responsibility, as policy makers, to reconfigure our policy settings to remove this incentive, without incorporating into our approach the immoral policy of deflecting those who are fleeing persecution back into harm’s way.

And this is the nuanced approach the Expert Panel has sought to achieve through its integrated and complimentary recommendations.

The policy changes the Expert Panel has recommended – and which the government is implementing – are designed to discourage people from making dangerous ocean voyages while, at the same time, providing better
regular migration pathways and continuing the work we have begun to improve conditions for the hundreds of thousands of refugees in our region.

These policies must work in unison to allow asylum seekers to reach the conclusion that there is ‘no advantage’ in undertaking the perilous boat journey to Australia.

We have moved quickly to implement the Panel’s recommendations.

Not only to reinstate the option of offshore processing in Nauru and Manus Island – and reduce the incentive for that boat journey – but also to increase our Humanitarian Program to 20,000 places, giving more refugees a chance for better lives in Australia without having to take that journey; and also funding greater work on protection and capacity building in our region.

This broader package of measures is fundamental – and that is why it is incorrect to describe the government’s implementation of the Expert Panel’s recommendations as the ‘Pacific Solution Mark II’, as some have described it.

The increase in our humanitarian resettlement efforts, the commitment to working with countries like Indonesia and Malaysia to improve protection outcomes, the commitment to monitoring, transparency and the involvement of non-government organisations makes our approach a very different proposition.

**Onshore processing and detention**

While the government has endorsed the Expert Panel’s recommendation for offshore processing, I also want to touch briefly on the morality of what we were doing while we had no option but to continue with onshore processing.

When I first became Immigration Minister, I travelled to Christmas Island and other parts of our detention network. On Christmas Island I saw a group of young children – about the same age as mine – playing in a sand pit. It was one of those moments that triggers a sense of the need for action.

Shortly after this visit, and about a month after becoming Immigration Minister, I announced that we were to begin moving families and children out of ‘held’ detention into community detention arrangements. Community detention is detention in only the broadest and most technical of senses. As many of you know, it involves placing vulnerable people into community housing and providing them with care and supervision, with the assistance of our NGO partners, led by the Red Cross.

Like much of the good news in this portfolio, this has happened over the past two years with little fanfare or acclamation.

But I am very proud of the way we have progressed these community detention arrangements, including meeting the target I set when I first announced the policy in October 2010 of getting the majority of children out of detention facilities by June 2011.

More recently, in November 2011, I announced that, following initial detention for health, security and identity checks, eligible asylum seekers arriving by boat who were assessed to not pose risks to the community would be issued with bridging visas.

While on bridging visas, they are able to live in the Australian community while their refugee claims are assessed. They are given the right to work to support themselves and access to Medicare.

This was quickly followed by another initiative that I am pleased to say has engendered community support, the Community Placement Network (CPN).

**While there is war, tyranny and oppression, there will be human misery, suffering and the search for a better life in countries such as ours.**

The CPN was an initiative of the Australian Homestay Network to make short-term homestay style accommodation accessible to asylum seekers exiting immigration detention on a bridging visa.

It offers interested Australians the opportunity to open their homes to host asylum seekers for a six-week period.

Feedback from hosts and guests has already been very positive. All guests accommodated through the CPN have found their own accommodation either prior to, or at the end of, the six week transition period. A number of guests have also found employment or been able to gain work experience through their host’s community networks.

These measures have resulted in a reduction in the average length of detention from 277 days in November 2011 to 86 days in July 2012.

**Conclusion**

To conclude, the ultimate answer to refugee issues, both in Australia and around the world, is, of course, peace on earth. While there is war, tyranny and oppression, however, there will be human misery, suffering and the search for a better life in countries such as ours.

The role of any single nation state in global community, then, is similar to that of the individual human being in their local community: to do the most we can with the finite resources available to us to alleviate the misery and suffering of our neighbour and contribute to the common good.

This, necessarily, must involve an element of justice and prudence in achieving altruistic ends: prioritising our assistance, not based on proximity or an individual’s resources, but to those assessed to be in greatest need.

Unfortunately, we cannot save every man, woman and child in the world; but we can remove the incentive for people to risk death at sea and, along the way, help more of those who desperately need our assistance, providing them with a new home in Australia and an opportunity to rebuild their lives in peace and hope.

These twin moral principles – fairness and safety – are the principles which underpin this government’s policy and my approach.

Extract from an address to the second annual Bishop Joseph Grech Colloquium on Ethics and Migration, Melbourne, Victoria by Chris Bowen MP, Minister for Immigration and Citizenship 30 August 2012, Department of Immigration and Citizenship

www.minister.immi.gov.au

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and Trinity College, East Perth, library@trinity.wa.edu.au

Issues in Society | Volume 353

Asylum Seekers and Immigration Detention 37
It takes a micro look at an undeniably macro problem – not the first time our political leaders have done so. It is the worst form of political opportunism I have been forced to witness.

Some commentators have taken great delight in the conversion of one-time advocates of onshore processing to the offshore way of life. To avoid any confusion let me spell out where I stand: I support onshore processing, convinced now more than ever before by the merits of such an approach.

Let’s work our way through the various falsehoods used to try to hoodwink people into believing that offshore processing is the best policy approach for the government to take.

Offshore processing is based on a premise that it will stop the boats. We’ll see about that. But even if it does ‘stop the boats’, it’s not as if asylum seekers vanish into thin air. The plight of millions of displaced citizens continues, even if our policymakers pretend the problem is solved because it’s geographically removed from Australia.

Anyone who thinks that there is an orderly queue for asylum seekers wanting safe passage to Australia or anywhere else needs to do a bit more research.

If they aren’t coming to Australia by boat, they are making hazardous journeys to other parts of the world. Or sitting in squalor in refugee camps plagued by any number of socially unacceptable living conditions, including sickeningly low life expectancy rates.

Or they are sitting in jails in countries that have not signed on to the relevant UN refugee conventions. Women and children, not just men.

These are the best-case scenarios of what will happen to asylum seekers who would have tried to come to Australia by boat if not for offshore processing. You rarely hear political leaders acknowledge these realities.

It is true that 4 per cent of asylum seekers coming to Australia by boat are estimated to have drowned at sea since the Pacific Solution was stopped (with the support of the opposition immigration spokeswoman at the time). But if the boats do continue to come, in spite of offshore processing in Nauru and elsewhere, people will continue to drown at sea, just as they did during the Howard era as well as more recently.

For the 96 per cent who successfully make the often dangerous journey, they will be locked up in detention centres (let’s just call them prisons) – women and children, not just men – for an indefinite period.
of time.

The fact that they will be locked up for years indefinitely is a key part of the policy the ‘expert committee’ has settled on. That’s what they deserve, apparently, for ‘queue jumping’.

Anyone who thinks that there is an orderly queue for asylum seekers wanting safe passage to Australia or anywhere else needs to do a bit more research. The whole definition of being a refugee is that you are displaced and seeking a safe haven. It’s not an orderly process.

In other words, the people coming here by boat – whether supported by people-smugglers or not – have a right to do just that under international law.

One of the main arguments used to justify ‘stopping the boats’ is that people should not selectively country hop from Indonesia to Australia when they have already secured safe passage out of their homeland.

That would be a fair point if Indonesia (the country they usually hop here from) had signed on to the UN conventions. But it has not, which means it is under no obligation to treat asylum seekers appropriately, and it certainly does not. Equally, asylum seekers are under no obligation to stay in a non-signatory nation which persecutes them. Who would?

Over the past decade, year on year, between 70 and 90% of asylum seekers coming to Australia by boat have been found to be genuine refugees. If policymakers are seriously concerned about taking places away from land-locked refugees sitting in camps rather than just using them as a political weapon, decouple the quota. Or don’t, because only genuine refugees who come by boat (70-90 per cent of people who do) are ever granted safe haven anyway, so what’s the difference?

Arguments to process asylum seekers offshore have only recently shifted primarily to the virtuous claims of protecting people from the risk of drowning. It used to be primarily about penalising queue jumpers, stopping the hordes of arrivals and protecting Australian sovereignty. Never mind that by international standards arrival numbers are very low and Australian sovereignty has never been at risk.

Another argument used is that because Australia’s courts provide asylum seekers with extra rights of appeal beyond those granted internationally, policymakers need to process them offshore.

How embarrassing it is that Australian politicians hide from Australian law rather than change it. Herein lies the problem with our political class and how it has responded to boat people.

If it doesn’t like the laws of the land that afford asylum seekers appeal rights equal to those of Australians, change the laws. If it doesn’t like the international responsibilities being a signatory to the UN conventions on refugees requires, rip up the agreement. Then our political leaders could do what they like without being in violation of the very laws they are elected to uphold. I might not agree with their approach – and would continue to argue against it – but I could at least respect it.

Peter van Onselen is a Winthrop Professor at the University of Western Australia.

First published in The Australian
18 August 2012
The expert panel on asylum seekers delivered its report on Monday, and two days later the Government introduced legislation designed to give effect to its recommendations. The Opposition enthusiastically supported it. Not surprisingly, since it is largely what they have been asking for.

This happened so quickly that you have to wonder whether the Government and Opposition have thought things through. Surely they must have done: they are playing with the lives of defenceless, traumatised people, and their explanation for the new laws emphasises their deep concern for the lives and welfare of boat people.

The new legislation will enable the Government to intercept boat people trying to get to Australia; they will be rescued from the perils of the sea and taken to Nauru or Manus Island.

But I have some questions for the leaders of both major parties regarding what happens to asylum seekers next.

1. **How many boat people will be sent to Nauru?**

Nauru has a population of 8,000. The limit to the number of refugees under Pacific Solution Mark II is 1,500 people (roughly 20 per cent of Nauru’s population). This is generous of Nauru because the nation does not have enough food or water for its own people. An increase of 20 per cent is significant. Still, Australia will be paying a fortune for Nauru’s warehousing services.

Imagine if Australia decided to increase its population by 20 per cent by taking boat people. That would mean receiving four million boat people, which would test Labor’s commitment to refugees. Yet the whole idea of the expert panel was Labor’s response to the fact that we have received 7,000 boat people this year, so I guess a population increase of 20 per cent would not work for us.

2. **How long will they have to stay on Nauru?**

A central element of the expert panel’s report was the principle that boat people would not get an advantage by having travelled to Australia by boat.

People who arrive in Indonesia but who choose not to get on a boat can wait between 10 and 30 years to be resettled in a country which has signed the *Refugee Convention*. So will people have to stay in Nauru for 10 to 30 years?

Paris Aristotle, a member of the expert panel and director of the Victorian Foundation for Survivors of Torture, has commented publicly on the terrible psychiatric harm inflicted on people held in detention. Psychiatric opinion is unanimous on this. The uncertainty associated with indefinite detention is a major cause of significant mental harm and suffering.

Strangely, Paris Aristotle could not answer this question on ABC’s *Lateline* on Tuesday night. Richard Marles (Parliamentary Secretary for Foreign Affairs) could not answer it either on ABC Local Radio on Wednesday evening. It’s an important question.

No one can say how long people will be held under Pacific Solution Mark II; however, it has to be long enough to deter others from seeking safety in Australia. On October 13, 2008, Mr Aristotle wrote in *The Age*:

> *Any multi-million dollar system that causes the trauma they ... endured cannot be in the national interest, nor does it protect the integrity of our asylum procedures.*

We need to be very clear about this: the old system involved holding boat people in remote places for long enough that it would deter others.

Strangely, that is what the Labor party has just hurriedly decided to do, except for the fact that the new system is worth multi-billion dollars. I wonder what benefits in education those same billions could produce, if we decided not to spend them damaging boat people. How do you balance traumatising children against our other national objectives?

3. **Where will they go after they are assessed as refugees?**

Boat people caught up in Pacific Solution Mark I were not allowed to apply for Australian visas without the minister’s consent. Will this apply to the new proposal? If they are assessed as refugees, will they be allowed to come to Australia? Is this ‘offshore processing’ or is it pushing them away and closing the door behind them?

They cannot be sent back to their own country if they are refugees. Nauru does not have the capacity to hold them forever. Other Western countries were not much impressed when we tried to offload refugees under the first Pacific Solution.

So are boat people to languish for years while we hawk them around the world? Is there a plan for this, or will it be made up on the run?

These questions matter. Not only because the lives of damaged, vulnerable people turn on the answers, but because our national reputation will be trashed again if this plan goes where it seems to be headed.

Ms Gillard, Mr Abbott: what are the answers to these three questions?

*Julian Burnside AO QC is an Australian barrister and an advocate for human rights and fair treatment of refugees.*

*The Drum, Opinion, 17 August 2012*
Improving conditions for asylum seekers

We need to think less about where we send asylum seekers and more about how we treat them there, says Suzanne Dvorak from Save the Children Australia

After six weeks of parliamentary break, the past five days have seen frenzied activity on what has been one of the most hotly contested issues in Australian politics for years.

We have finally seen Parliament agree to a way forward on asylum seekers. This resolution has not pleased everyone, and human rights and refugee advocates have rightly pointed to the legislation’s flaws and raised legitimate concerns for the protection of the thousands of asylum seeker children and their families who come to Australia by boat.

But whether you’re for or against the return to offshore processing, the bill has passed. It is now time for us to work together to ensure that conditions for asylum seekers – one of the world’s most vulnerable groups – are as humane as possible, wherever they are processed.

The potential consequences of this bill cannot be ignored. Even young children, forced to flee their homes in fear of persecution from the likes of the Taliban and conflict in Africa, could face years trapped behind razor wire on Manus Island or Nauru – out of sight, out of mind.

But this is not what the expert panel’s report has actually called for. A thorough examination of the report – which many will likely not have done – makes the recommendation for a solution like Nauru or PNG sound a lot less scary than some have made out, with specific provisions to ensure the human rights of all asylum seekers processed in these locations.

The text makes clear that although the recommendation would involve the transfer of individuals from Australia to a different country, this does not mean the legal and protection responsibilities Australia holds would also be transferred to that country.

Instead, according to the report, Australia would remain responsible for ensuring that the basic rights of the asylum seekers it has transferred are fulfilled.

What remains to be seen is how this obligation will be upheld to make sure there is not, as many have worried, a return to the conditions seen previously for asylum seekers in Nauru that led to a deterioration in their health and wellbeing.

Who will be responsible for ensuring protection from harm, access to education and healthcare – including mental health – for asylum seeking children? Who will provide these services and monitor their implementation to ensure the risks to children are mitigated?

In addition to serious questions on the conditions in these processing centres, the other major concern is the length that people will be detained – this must be kept to an absolute minimum.

Labelled as a disincentive by the report and a cruel punishment by others, the ‘no-advantage’ measure seeks to ensure asylum seekers who arrive by boat would be processed over the same time period as if they had gone through so-called ‘regular’ channels.

But what this could entail, as some have already pointed out, is an unacceptably long wait in detention, the exact duration to be decided through some type of formula or standard reached by comparing average wait times for refugees across the region.

Looking back at past ‘solutions’ placing vulnerable people on far-flung Pacific islands, there is real concern that the consequences could be devastating for anyone placed under these conditions – in particular, children.

In the end, while the Parliament has been quick to pass legislation that sees a return to offshore processing, what has been less quick in coming is direct and unequivocal reassurance of Australia’s commitment to meeting its international obligations – so that regardless of where asylum seeking children and their families are processed, they be granted the same protection and same access to services like education as they would if they were in fact being processed on Australian land.

The issue is bigger and more complex than a simple decision around whether to process claims on or offshore. It’s about respect for the basic rights of some of the world’s most vulnerable people – their dignity and one of the most sacred rights, the right to life.

As an aid agency that works in so-called ‘source’, ‘transit’ and ‘destination’ countries, Save the Children is well aware of the risks children and their families face when forced to flee their homes and leave everything they know and cherish behind.

Through every stage of that journey, there is a role for Australia to play in helping ensure children are kept safe from harm.

Following the panel’s report according to its true intent means addressing all of these stages, and working with governments in the countries concerned, so that together we can find a lasting solution that keeps children and their families alive, and protected from their biggest fear: persecution.

Suzanne Dvorak is chief executive officer of Save the Children Australia.

The Drum, Opinion, 17 August 2012

www.abc.net.au/unleashed

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au
After two weeks of assessing the evidence, discussing policy and reporting on fieldwork, the asylum seeker expert panel from The Conversation has made its findings.

Using information from our research repository, and arising from discussion had on the group blog, our panel of academics has drafted a position tailored to the Houston panel’s Terms of Reference.

Whether this expert advice will be heeded remains to be seen, but this statement will remain on the public record as a fair, humane and workable policy approach to asylum seekers losing their lives at sea.

As a nation dependent upon migration for its past success and its future prosperity and as a proud party to human rights treaties, Australia should be a leader in the Asia Pacific, working in partnership with its neighbours to implement fair and just measures in responding to asylum seekers in the region.

Australia must reject deterrence as the governing framework as being both unethical in relation to persecuted people and unacceptable in relation to discouraging an illicit market in irregular migration. It must recognise that the continual increase in border security measures can enhance the likelihood of death for the most vulnerable groups, including women and children.

Australia can effectively manage asylum seekers without generating fear or financial deficit, or outsourcing to other countries or private contractors.

We should enhance regularised travel for asylum seekers by redressing visa processes which unnecessarily restrict travel access for main asylum groups including Iraqis, Afghans, Iranians and Sri Lankans.

We should enhance onshore procedures for efficient and effective processing of asylum claims.

As an alternative to detention, we should implement procedures that require regular reporting by onshore applicants after necessary health and security checks have been completed.

We must work towards parity in processing time and protection outcomes for those making asylum claims in transit countries and those making such claims onshore in Australia. This should involve bringing the situation for all those seeking asylum up to highest existing standards in the region or better, reducing any incentive for making onward journeys.

Australia can effectively manage asylum seekers without generating fear or financial deficit, or outsourcing to other countries or private contractors.
SOURCE, TRANSIT AND DESTINATION COUNTRIES

Australia should be the lead, co-ordinating country in responding to asylum seekers in the Asia Pacific. We can do so through mobilising similar countries such as New Zealand, Canada and the USA, along with our proximate neighbours, to develop a program of action that is geared for future challenges.

As part of coalition forces in current key countries of origin such as Afghanistan and Iraq, Australia should recognise and honour our moral obligations in responding to irregular flows generated by conflict in the region.

Recognising the importance of regional solutions, Australia should prioritise asylum seekers in the Asia Pacific.

Australia should at minimum double its annual refugee and humanitarian resettlement program and seriously consider a larger intake.

RESPECTING INTERNATIONAL OBLIGATIONS

All asylum and border control processes must be consistent with Australia’s international obligations. These obligations should be promoted as a matter of pride and prominence in all measures.

Recognising the likely increase in prosperity and growth throughout this region, Australia as a human rights leader should encourage other nations in the region to become parties to the Refugee Convention and Protocol and enhance their capacity to provide protection.

SHORT-TERM MEASURES

Australia should cease its practice of reducing the number of offshore special humanitarian places made available through its refugee and humanitarian resettlement program each year by the number of onshore protection visas granted that year.

Australia should at minimum double its annual refugee and humanitarian resettlement program and seriously consider a larger intake.

MEDIUM-TERM MEASURES

Australia should negotiate with regional governments for the establishment of asylum claim processing centres in countries such as Indonesia, Pakistan and Malaysia so that asylum seekers do not need to travel further afield in order to access protection.

Australia should work with regional governments to find regional solutions to refugee protection.

Countries that agree to provide refugee protection – including Australia – should provide air transport from origin and transit countries to destination countries for all persons assessed as being in need of protection. Providing an opportunity for legal and safe passage to Australia could help reduce unauthorised entries.

LONG-TERM MEASURES

Australia should negotiate with OECD and middle-income countries to increase their refugee intake and take diplomatic initiatives to support an embargo on the sales of arms to conflict areas.

We should support efforts by governments, the United Nations, and other organisations, especially civil society groups, to prevent conflicts, to resolve existing conflicts and to rebuild societies after conflicts.

LEGISLATIVE REQUIREMENTS

It is already within the power of the executive government to ensure that all Australia’s international obligations towards asylum seekers are honoured. However, under existing domestic law, it is also within the power of the government to act contrary to Australia’s international obligations in many respects if it chooses to do so.

Therefore, legislation should be passed which expressly incorporates the Refugee Convention and Refugee Protocol and all human rights treaties to which Australia is a party into Australia’s domestic law without change.

Sharon Pickering is Professor of Criminology at Monash University. Helen Ware is Professor, International Agency Leadership at the University of New England. Melissa Phillips is a Doctoral Candidate at the University of Melbourne. Sandy Gifford is Professor of Anthropology and Refugee Studies at Swinburne University of Technology. Savitri Taylor is Associate Professor, Law School at La Trobe University. Stephen Castles is Research Chair in Sociology at the University of Sydney.

Offshore processing myth buster

SOME FACTS FROM THE ASYLUM SEEKER RESOURCE CENTRE

**MYTH: Offshore processing will discourage asylum seekers from arriving by boat**

**FACT**

As Andrew Metcalfe, Secretary of the Department of Immigration confirms, Nauru was ineffective in deterring asylum seekers from leaving Indonesia for Australia. This, he says, is "not just a view of my department; it is the collective view of agencies involved in providing advice in this area." Metcalfe goes on to cite why the evidence of this is clear:

“We all know what happened with the people who were taken to Nauru [the majority were eventually resettled in Australia or New Zealand]. We know that Nauru filled up very quickly. We know that the government needed to establish new facilities at Manus because people kept coming. In fact, 1,700 people came after the Tampa arrived.”

History shows that an increase or decrease in boat arrivals depends far less on our domestic policy as on 'push' factors in countries of origin such as repression, discrimination, ethnic conflict, human rights abuses and civil war. As migration expert Dr Khalid Koser has noted:

“There is wide consensus among both scholars and refugee organisations that conditions in origin countries ... tend to be more important than conditions in destination countries ... in explaining the movement of refugees.”

It is too simplistic to claim that the Pacific Solution caused the lull in boat arrivals to Australia after 2001. This decrease coincided with major external events such as the fall of the Taliban as the Coalition forces entered Afghanistan and the overthrow of Saddam Hussein in 2003. UNHCR statistical data confirms that there was a worldwide decrease in asylum seeker movements – including to countries where deterrent policies such as offshore processing and mandatory detention have not been implemented.

**MYTH: Malaysia is a good solution**

**FACT**

Malaysia is not a signatory to the UN Refugee Convention and there is no guarantee that asylum seekers processed there would be safe.

Amnesty International reports that refugees and asylum seekers in Malaysia are abused, exploited, arrested and locked up – in effect, treated like criminals.6,000 asylum seekers and refugees are caned annually in Malaysia and once in detention commonly face overcrowding, malnutrition, and disease.4

The High Court of Australia confirmed in August 2011 that deporting asylum seekers to Malaysia would breach our obligations under both the international Refugee Convention and our own Migration Act, as it would place asylum seekers at risk of persecution or torture without guarantees of their protection.5 The only way to subvert this was to amend the Migration Act, which Parliament did in August 2012.

**MYTH: Nauru and PNG worked in the past and would be more humane offshore processing options**

**FACT**

Around 1,500 asylum seekers were processed on Nauru under the previous government’s Pacific Solution. Many of those previously detained on Nauru suffered serious mental health issues as a result of detention. A number were assessed at ‘grave risk’ and were taken to Australia because of their deteriorating mental health while numerous incidents of self-harm and detainees suffering from depression and psychological conditions were reported.6 Andrew Metcalfe, Head of the Department of Immigration, holds firmly to the view that Nauru itself was ineffective and should not be reintroduced to process asylum seekers.7

**FACT**

Once found to be genuine refugees, Australia still holds the obligation to accept or resettle those held offshore. Under the Pacific Solution (2001-2006), almost two thirds of all applicants were accepted as refugees and were given permanent visas. 62% were resettled in Australia and New Zealand, and 3% were sent to Sweden, Canada, Denmark and Norway, where the refugees were found to have family living outside of their country of persecution.

**FACT**

In 2006 the Edmund Rice Centre tracked 41 returned Afghan asylum seekers from Nauru and found that 39 were in perilous conditions. Their report, *Deported Back to Danger II*, detailed that the Australian Government secured the return of more than half the asylum seekers on Nauru in 2003 by a "mixture of inducements and threats". The report follows an earlier account by the centre that up to nine asylum seekers and several of their children were killed on return to Afghanistan from Nauru8.

**FACT**

“It is an extravagant waste and it needs to stop.”(Stephen Smith, 2004, ALP Shadow Immigration Minister on Manus Island). In October 2001, Iraqi men, women and children who fled persecution under the Saddam regime were flown from Christmas Island to Manus Island and incarcerated there until August 2003. All were eventually accepted as refugees.

**MYTH: Nauru is a signatory to the Refugee Convention now, so we can send asylum seekers there**

**FACT**

While Nauru is a recent signatory of the Refugee Convention, the country has neither the economic, social nor legal capacity to enact its responsibilities. The Solicitor General had previously confirmed that neither Nauru nor Papua New Guinea satisfied the legislative requirement...
that adequate protections be in place for asylum seekers to be sent there. As of August 2012 however, the Australian Parliament amended our laws to override our international obligations under the United Nations Refugee Convention.

**MYTH: Offshore processing is more cost-effective**

**FACT**

Offshore processing is even more expensive than detention on the mainland because of the increased cost of delivering services to remote locations. The Pacific Solution, which saw asylum seekers detained on Manus Island and Nauru, cost more than $1 billion dollars over five years, or $200,000 per person.10 The Christmas Island detention centre will cost almost $1 billion dollars between 2009 and 2014.11

In January 2012 DIAC prepared an infrastructure report on Nauru for the Immigration Minister12. It an infrastructure report on Nauru between 2009 and 2014.11 will cost almost 1 billion dollars Christmas Island detention centre.

**MYTH: Australia needs to protect our borders from asylum seekers**

**FACT**

No boat arrival who may have been a potential threat to national security has ever gained entry into Australia. Boat arrivals are subject to the most rigorous security checks of all arrivals into Australia.

**MYTH: ‘Stopping the boats’ is more humane than letting asylum seekers risk their lives on potentially dangerous journeys**

**FACT**

Under Operation Relex boats traveling from Indonesia were intercepted before they reached Australian waters. The Australian Navy was ordered to deter and deny entry but generally did not assist people on these boats that were placed in danger.13 Many drowned as a result, including 355 men, women and children in the widely reported SIEV X Incident.14 What ‘stopping the boats’ also ignores, is the bigger picture: whatever punitive and inhumane the Australian government can institute, people will continue to flee their countries due to realistic fears of persecution or death in their home countries and in places through which they transit on their way to safety.

**MYTH: Strong offshore processing policy reduces people smuggling**

**FACT**

The Australian government has in fact contributed to the creation of people smuggling by restricting the legal avenues for asylum seekers to find protection in Australia. As the world’s leading authority on international refugee law, Professor James Hathaway explains:

> The whole people-smuggling problem is a false issue. We created the market for human smuggling. If asylum seekers could lawfully come to Australia and make a refugee claim without the need of sneaking in by boat, they would do it. But we make it illegal and create the market that smugglers thrive on.15

**REFERENCE**

8. www.erc.org.au
9. www.abc.net.au/7.30/content/2004/s1043095.htm
14. www.sievx.com

© Asylum Seeker Resource Centre
www.asrc.org.au
August 2012

**ENDNOTES**

The flow of people coming to Australia by boat is increasing, and is likely to increase further. Indonesia will remain the main stepping-off point, and the notion that some sort of political or strategic deal with Indonesia can stem the flow of people seeking to come here by boat is fanciful.

There are several reasons for this: the very large number of persons seeking relocation to somewhere better than where they are now; the sometimes decades-long wait to gain legitimate entry to desirable destinations (such as the US, EU, UK, Canada and Australia); the well-organised and affordable criminal networks that facilitate people smuggling; the inability or unwillingness of transit countries to interdict the flow; the money being made out of the flow by corrupt officials and corrupt agencies; the unpreparedness of other countries to take the travellers; the difficulty of gaining access by air to desirable destination countries; and, possibly, the perception that some countries (such as Australia) are a soft touch.

According to the UNHCR, the main source countries for refugees last year were Afghanistan at 2,664,400 refugees and Iraq at 1,428,300. These are coincidentally the two countries where Australian forces have been part of a US-led military coalition to effect regime change post 9/11.

Rather than declining, the flow to Australia is likely to increase as the security situation in some source countries deteriorates. The main holding countries for refugees were Pakistan, with 1,702,700 refugees, and Iran, with 886,500. These numbers only reflect those registered with the UNHCR; there may be double that number of displaced persons who have not registered.

While the statistics do not show ethnicity, the likelihood is that most of those seeking to leave Pakistan, Iran and Afghanistan for Australia are Hazaras.

The boats won’t stop – so what should we do?

If Australian politicians seriously want to reduce the boats coming to Australia they need to start at the source and the holding countries, advises national security expert Clive Williams.
prior to 2001, and the prospect of a return to Taliban control in the south and east after 2014 will inevitably drive more Hazaras into Pakistan and Iran.

They will not be welcome in either country, particularly Pakistan, where the Hazara ethnic minority has been facing discrimination for at least a century. Violence against Hazaras has risen sharply post 9/11, with more than 800 Hazaras killed in suicide attacks or targeted shootings. To date no one has been arrested for these killings.

Sri Lanka will remain a significant boat people source country because of ongoing discrimination against the Tamil population by the Sinhalese-dominated government. It is hard to judge how many Sri Lankan Tamils will try to make the journey, but the numbers could decrease as the Sri Lankan authorities make it more difficult for them to leave. Most of the Sri Lankan Tamils are likely to come either by boat direct, or via Malaysia and Indonesia. The Tamil diaspora in Australia probably number around 30,000.

While persecution and discrimination are certainly reasons for people to want to leave where they are and come to Australia, the overwhelming reason for relocating to Australia is economic betterment. That is not necessarily a bad thing. The boat people are showing initiative and the chances are they will work hard to improve their prospects once they are able to do so.

As a resident immigrant population increases in size and resources, it creates a pull factor for more members of that group to come by boat as the residents are able to pay people smugglers to fast-track their relatives.

What can be done to get people off the boats? Some options could include: taking more people from refugee camps directly, and discouraging the people smuggler option; returning boat arrivals to source countries (complicated if they have destroyed documentation); allowing more in by air following offshore processing; buying up and destroying surplus boats in Indonesia; holding unauthorised arrivals for long periods in detention centres; encouraging or subsidising transit countries to keep them; proactively going after people smugglers; nominating where in Australia they must live for a set period; encouraging them to stay where they are by improving local conditions; and/or encouraging them to go somewhere else, other than Australia.

High-profile political deals with Indonesia and Malaysia are unlikely to discourage the people smugglers, or their hopeful clients.

However, the reality is that we need to manage the process humanely and accept the most deserving cases, while avoiding being swamped by numbers and growing demand. Australian politicians have tried to duck the issue, but if they seriously want to reduce the boats coming to Australia, the places to start are the source and holding countries.

High-profile political deals with Indonesia and Malaysia are unlikely to discourage the people smugglers, or their hopeful clients. Indonesia’s borders are particularly porous and I doubt Indonesia would be able to stem the flow, even if it wanted to.

Last year Australia took in 21,805 refugees, while last financial year Australia’s total migration and humanitarian intake was 182,500 people. Of these, most – 92 per cent – came from the migration program.

This is another issue that should be addressed by our politicians, i.e. should more of our intake be refugees, and should we increase, or even reduce, the total number of migrants admitted annually? Does the Australian population – other than those who directly benefit – believe we can sustain an inflow of nearly 200,000 new arrivals a year?

Clive Williams is an Adjunct Professor at Macquarie University’s Centre for Policing, Intelligence and Counter Terrorism, and a Visiting Professor at the Australian National University’s Australian Centre for Military and Security Law.

© Clive Williams, 17 July 2012

First published in The Drum, Opinion | www.abc.net.au/unleashed
Five ways to prevent more asylum seeker tragedies

The Conversation asked key experts to take a considered look at the refugee problem. Following are five different opinions offering possible solutions.

1. Andrew Markus
   Pratt Foundation Research Chair of Jewish Civilisation, Monash University
   The asylum debate has raged in Australia on and off since the mid-1970s, with little progress towards reasoned understanding. The advocates for a humanitarian response recycle myths and simplicities, as do others with their prescriptions.
   Just look at some responses to the latest drowning tragedy. Julian Burnside argues on The Conversation that “if we took 10,000 refugees each year from Indonesia, and took them in order of lodging an application in Indonesia for protection, the incentive to get on a boat would disappear.”
   Would disappear?
   The Age editorialises in similar terms: “The best way of destroying the people smugglers’ business would be to increase substantially our humanitarian intake from refugee camps in neighbouring countries.”
   Without a regional agreement, it is more likely that if Australia took 10,000 refugees from Indonesia many more than 10,000 would arrive in that country seeking entry into Australia, and the incentive to get on a boat would be just as great, if not greater.
   The flow of refugees is dynamic, not static, driven by numbers that defy solution. At the end of 2009 United Nations High Commissioner for Refugees (UNHCR) figures indicate that there are more than 11 million refugees, asylum seekers, internally displaced populations and others of concern in five Asian region countries: Pakistan, Thailand, Iraq, Iran and Myanmar.
   For some it is debasing and humiliating to talk of numbers in the context of desperate human suffering – and it is. But governments must make decisions. There is insufficient funding to meet competing needs, including the need to provide adequate foreign aid.
   Globally there are more than one billion people living in extreme poverty. Where do the estimated 22,000 children under the age of five who die each day from preventable causes figure in the calculus?
   The reality is that with one choice taken, be it passive or active, another choice is foregone. Australia maintains a world class resettlement program, taking more refugees per capita than any other country.
   It is an expensive program but let’s agree that we should do more, starting with a doubling of the present intake. But having agreed on a number, how is a limit to be observed, given that demand will greatly exceed the available places?

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au

48 Asylum Seekers and Immigration Detention

Issues in Society | Volume 353
There is no possibility of finding a solution to the problem of asylum seeker boat arrivals that will not be seriously morally, legally and politically flawed in one way or another. In particular, no workable solution will be discovered by former opponents of the Howard policy that will offer the psychological reward of what James McClelland once described as “the warm inner glow” – the permanent but usually illusory hope of the Left.

There is probably no alternative to some form of offshore processing. Public opinion is opposed to the spontaneous arrival of asylum seeker boats. We now know that onshore processing – even when combined with harsh deterrent measures like mandatory detention and temporary protection visas – will not stop the boats of (mainly) desperate human beings arriving. We now also know that because of the unscrupulous nature of the people smugglers, boats sailing from Indonesia to Australia will never be even remotely safe.

Once offshore processing is established, the legislation permitting mandatory detention should be repealed. The memory of the dreadful things that happened in the Australian asylum seeker detention camp archipelago will most likely puzzle, perplex and shame later generations of Australians.

If there are almost no more spontaneous boat arrivals, Australia should move at once to the policy now favoured by both the Labor Party’s Immigration Minister, Chris Bowen, and by the Greens – an increase in the annual quota of refugees from 13,750 to 20,000. Some emphasis should be placed on finding homes for those people who have been found to be refugees but who have been marooned for several years in Indonesia.

KATE GAUTHIER
Associate Lecturer with the Migration Law Program, Australian National University

We often hear the issue of boat arrival asylum seekers described as a ‘problem’ that must be solved. But is it actually a problem for Australia?

The media obsesses over boat stats like footy scores, but no one seems to care about the much larger number of asylum seekers arriving by plane, who have a far lower rate of being found to be in need of protection. And when you compare Australian asylum arrivals to European numbers, the idea that we are being overrun becomes a weak joke.

Some say boat arrivals are a border security issue. But there are around 1 million visitors in Australia at any given time, who enter Australia on temporary visas without any in-depth security check.

Some think that unauthorised arrivals threaten an orderly migration program. But just how does one flee a crisis or warzone in an orderly manner?

And lastly, the greatest ‘problem’ of all, the safety issue. Everyone can agree that taking an asylum boat to Australia is a dangerous journey. But imagine this scenario: there is a hospital giving life-saving treatment on the other side of a dangerous freeway. There is no pedestrian crossing and many sick people are hit by cars as they cross seeking medical help.

Doesn’t it seem a bit heartless (and pointless) to build a fence to stop people entering the freeway? In a matter of life and death, won’t they just climb the fence?

There is bipartisan support for reducing the number of people dying in an attempt to reach Australia. But that support can be viewed as hypocrisy since the debate is, to continue the analogy, about how to build a better fence to stop people travelling to the hospital instead of how to help people get there, or even how to provide medical care at the source.

There is only one approach that policy experts agree would reduce boat arrival numbers. That is to increase Australia’s refugee and humanitarian intake numbers and to give more resettlement places to refugees in our region. If refugees see there is a credible chance they will get a resettlement place then there is less chance they would risk their life.

DR ANTHONY BILLINGSLEY
Lecturer, School of Social Sciences and International Studies, University of New South Wales

The recent disaster off the coast of Indonesia again brings us face-to-face with the human side of refugee flows to Australia but also points to their origins. People are risking their life at sea in order to escape the horrors of civil conflict at home.

While the focus is rightly on the search for survivors and the circumstances of the voyage, this disaster, and others before it, should also highlight what is called the ‘push factor’ in refugee flows. This is at the nub of the problem faced by many countries, including Australia.

Australians accept we have a moral obligation to help people in trouble and have welcomed many people from countries experiencing civil disorder. Importantly, we are also legally obliged to accept refugees because Australia is party to the Convention on the Status of Refugees and its accompanying Protocol.

The politicised nature of the debate about these obligations is unfortunate as it distracts us from our duty as global citizens. But it also overlooks the actual cause of the problem and only responds to the symptoms.

The problems in key source countries means we can only expect the refugee situation to get worse. Security in Afghanistan is likely to continue to deteriorate with the impending withdrawal of Western forces. Similar security problems will worsen in Iraq now that the US military have withdrawn. Civil order is breaking down in Iran, Syria, Sudan, Somalia and many other countries.

Despite widespread formal support for the Refugee Convention, Western countries have been less than committed to the underlying problems that cause refugee movements.
The world paid great attention to Afghanistan during the Soviet Union’s occupation of that country. But once Soviet forces had withdrawn, we abandoned Afghanistan to its fate, a situation that President Hamid Karzai has been insisting must not happen again. Similarly in Iraq and Somalia we have lost interest in the terrible conditions faced by people.

If we are to relieve the problems of refugees and to limit the risk of more boat disasters, we must work actively to seek political, not military, solutions to the problems of troubled countries. As long as countries are plagued by violence and we do nothing to help resolve their problems, refugees will appear on our doorstep seeking help.

JAMES JUPP
Adjunct Associate Professor, Australian Demographic and Social Research Institute, Australian National University

The ‘boat people’ problem is undoubtedly a political, not administrative, one. Administrative devices have been tried by governments ever since mandatory detention was introduced twenty years ago. This kicked off a process of avoiding the United Nations Convention on Refugees, and increasing legal intervention.

At that time, the refugees admitted annually was 25,000, with special consideration given for those coming from the crises in Yugoslavia, China and Indochina. Little harm and much good resulted.

Now, there are three major problems: control of the boats by privateers inadequately supervised by maritime authorities in Asia, the recalcitrance of governments, and popular opinion blaming asylum seekers. Unfortunately, asylum seekers are seen as those who must be punished and controlled, rather than assisted, within the terms of the convention.

These asylum seekers come from war-torn and oppressive conditions in Afghanistan, Iraq, Iran, and Myanmar unlike their predecessors from Vietnam and Cambodia. Their plight is urgent, with many belonging to persecuted minorities. In many cases they are seeking family reunification with those already in Australia.

Reform of the refugee system would alleviate, but not necessarily solve, the problems created by wars in which many thousands of civilians have died, wars in which Australia has been actively engaged.

But an extension of the refugee program and the re-adoption of the Special Humanitarian Program abolished by the Howard government would help. Increasing the capacity of overseas immigration posts in Pakistan, Indonesia and Thailand would permit more refugee applicants to use the legal avenues. Co-operation with Indonesia in supervising overloaded boat departures and criminal involvement would be the first step in a regional policy similar to that once adopted for the Vietnamese.

The vital objective must be to adhere as closely to the convention as is possible, and to reverse the punitive approaches adopted since the more liberal days of the Whitlam, Hawke and Fraser governments.

© 2011 Andrew Markus, Robert Manne, Kate Gauthier, Anthony Billingsley, James Jupp
Posted 22 December 2011.
The Conversation | http://theconversation.edu.au
EXPLORING ISSUES

ABOUT THIS SECTION

‘Exploring issues’ features a range of ready-to-use worksheets relating to the articles and issues raised in this book.

The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

As the information in this book is gathered from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Does the source have a particular bias or agenda? Are you being presented with facts or opinions? Do you agree with the writer?

The types of ‘Exploring issues’ questions posed in each Issues in Society title differ according to their relevance to the topic at hand.

‘Exploring issues’ sections in each Issues in Society title may include any combination of the following worksheets: Brainstorm, Research activities, Written activities, Discussion activities, Quotes of note, Ethical dilemmas, Cartoon comments, Pros and cons, Case studies, Design activities, Statistics and spin, and Multiple choice.

CONTENTS

BRAINSTORM 52
WRITTEN ACTIVITIES 53
DISCUSSION ACTIVITIES 54
MULTIPLE CHOICE 55-56

WORKSHEETS AND ACTIVITIES
Brainstorm, individually or as a group, to find out what you know about asylum seekers, refugees and immigration detention.

1. What is a refugee?

2. What is an asylum seeker?

3. What is mandatory detention?

4. List at least five countries around the world which re-settle more refugees than Australia.
Complete the following on a separate sheet of paper if more space is required.

Examine the summary of the key recommendations from the *Report of the expert panel on asylum seekers* (also known as 'The Houston Report'), which are reproduced on pages 29-30. These recommendations have subsequently been adopted by the Australian Government. In your own words, write a short article on how you think these recommendations will affect the situation of asylum seekers arriving by boat.
How Australia deals with the influx of unauthorised arrivals on its shores is the focus of a complex and ongoing national debate. Should asylum seekers be processed offshore in mandatory detention, or processed onshore in Australia and allowed to live in the community until their refugee claims have been assessed? Form two opposing groups and prepare a list of arguments with which to debate the detention issue in the spaces provided below. Include relevant statistics in your arguments where appropriate.

**IN FAVOUR OF MANDATORY DETENTION AND OFFSHORE PROCESSING OF ASYLUM SEEKERS**

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

**IN FAVOUR OF COMMUNITY PLACEMENT AND ONSHORE PROCESSING OF ASYLUM SEEKERS**

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Complete the following multiple choice questionnaire by circling or matching your preferred responses. The answers are at the end of the next page.

1. What percentage of refugees in the world today live in developing countries?
   a. 8%
   b. 10%
   c. 25%
   d. 40%
   e. 80%

2. The federal government recently announced an increase in Australia’s 2012-13 humanitarian program intake. How many places in total will be now be available?
   a. 12,000
   b. 13,750
   c. 20,000
   d. 24,000
   e. 120,000

3. Of the 10.4 million refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR), which country hosts the most refugees?
   a. Australia
   b. Germany
   c. Iran
   d. Pakistan
   e. Syria
   f. United States

4. In what year was Australia’s policy of mandatory detention introduced?
   a. 1945
   b. 1974
   c. 1982
   d. 1992
   e. 1994
   f. 2002

5. Which of the following countries are not signatories to the United Nations Convention Relating to the Status of Refugees?
   a. Australia
   b. Indonesia
   c. Malaysia
   d. Nauru
   e. New Zealand
   f. Papua New Guinea
MULTIPLE CHOICE

Complete the following multiple choice questionnaire by circling or matching your preferred responses. The answers are at the end of this page.

6. Respond to the following statements by circling either 'True' or 'False':
   a. It is illegal for asylum seekers to come to Australia by boat. True / False
   b. Mandatory detention is cheaper than community-based programs. True / False
   c. The object of Australia’s Migration Act 1958 is to regulate the lawful entry and stay of people in Australia. True / False
   d. The first refugees in Australia were from Vietnam in the 1980s. True / False
   e. Australia is the only country in the world with a policy of mandatory detention of children. True / False
   f. Refugees come to Australia by boat because it is the safest method of transport. True / False
   g. You are classified as a refugee if you are at risk because your country is at war. True / False
   h. People arriving unauthorised by boat have their asylum application prioritised. True / False
   i. Over the past decade, between 70-90% of asylum seekers in Australia have been found to be genuine refugees. True / False
   j. Australia is the only Western country to lock refugees in detention camps. True / False

MULTIPLE CHOICE ANSWERS

1 = e ; 2 = c ; 3 = d ; 4 = d ; 5 = b, c ; 6 – a = F , b = F , c = T , d = F , e = T , f = F , g = F , h = F , i = T , j = T.
In 2010-11, 65% of visas were granted to people offshore under the offshore humanitarian resettlement program. (p.1)
Until mid-1989, there were fewer than 500 refugee applications a year from people in Australia. (p.1)
Refugee status (protection visa) applications peaked at 16,248 during 1990-91, with about 77% coming from People’s Republic of China nationals. (p.1)
Australia is one of 147 signatory countries to the Refugee Convention. (p.1)
From 24 March 2012, complementary protection claims will be considered as part of the protection visa assessment process. (p.1)
On 9 August 2008, temporary protection visas were abolished. (p.2)
Protection visa decisions are to be made by the department within 90 days of receipt of the application. The average 90 day processing rate in 2010-11 was 60.7%. (p.2)
Protection visa applicants rejected by the Refugee Review Tribunal have 28 days to depart Australia. (p.2)
In 2010-11, the Humanitarian Program delivered 13,799 visas. (p.2)
More than 80% of the world’s refugees are in developing nations. (p.3)
Of the 10.4 million refugees under UNHCR’s mandate as of 2011, the largest numbers were being hosted by Pakistan, Iran, Syria, Germany, Kenya and Jordan. (p.3)
As of 2011, Australia was hosting 23,434 refugees, or 0.2% of the global total. (p.3)
Over 700,000 refugees and displaced persons have settled in Australia since 1945. (p.4)
Until 2009 only a small proportion of asylum applicants arrived by boat – most arrived by air with a valid visa. (p.4)
If you are at risk only because of general violence in your community or because your country is at war – then you are not a refugee. (p.5)
The government will be increasing Australia’s annual refugee intake from 13,750 to 20,000 in 2012-13. (pp.6, 29, 31, 35, 37)
Under Australian law, it is never illegal to apply for refugee status here, no matter how you arrive. (p.8)
It would take 20 years to fill the MCG with the number of refugees who come to Australia. (p.8)
In 2010-2011, Australia’s refugee intake was just 13,799 people, less than 0.14% of the global total. (p.8)
Refugees currently make up just 6.6% of the places in our overall permanent immigration program. (p.8)
In the early 1980s, refugee and humanitarian intake averaged 20% of immigration. (p.8)
Australia’s mandatory immigration detention policy was introduced in 1992 and expanded in 1994. (p.10)
Between 2000 and 2010 the Commonwealth had paid out over $12 m in compensation for alleged injury or wrongful detention to individuals. (p.13)
Of the estimated 200 million asylum seekers who crossed international borders in 2010, approximately one quarter were children. (p.15)
Australia is the only country in the world with a policy of mandatory detention of children. (p.15)
When first introduced, mandatory detention policy applied for a maximum of 273 days. Time limits were removed in 1994, making detention indefinite for asylum seekers. (p.16)
As at 31 March 2012, there were 4,197 people in locked detention facilities, at least 3,800 of whom were asylum seekers. Of these, 428 were children. (p.16)
Amnesty International recommends that a maximum 30-day time limit is placed on the detention of asylum seekers. (p.17)
Placing people in community detention is 90% cheaper that in immigration detention. (p.20)
Temporary protection visas, routinely issued by the Australian Government from 1999 to 2008, were found to be extremely harmful to mental health. (p.21)
In May 1992, the Keating Labor government introduced the Migration Reform Bill that created Australia’s mandatory detention system. (p.23)
As of 15 June 2011, 678 children have been released into community detention. (p.25)
The numbers arriving in Australia are small by international standards (Australia’s proportion is equivalent to 2.5% of all asylum applications internationally, including arrivals by air and sea). (p.31)
In Pakistan there are an estimated 2.7 million refugees and displaced persons and 900,000 in Iran, neither country are signatories to the Refugee Convention. (p.31)
Malaysia hosts around 100,000 refugees and ‘persons of concern’ for the UNHCR, yet Malaysia is not a signatory to the Refugee Convention. (pp.31, 44)
There are 42 million displaced people in the world – around 15 million of these are recognised as refugees. (p.35)
There has been a reduction in the average length of detention from 277 days in November 2011 to 86 days in July 2012. (p.37)
4% of asylum seekers coming to Australia by boat are estimated to have drowned at sea since the Pacific Solution was stopped. (p.38)
Between 70 and 90% of asylum seekers coming to Australia by boat have been found to be genuine refugees. (p.39)
6,000 asylum seekers and refugees are caned annually in Malaysia. (p.44)
Around 1,500 Asylum seekers were processed on Nauru under the previous government’s Pacific Solution. (p.44)
As of August 2012, the Australian Parliament amended our laws to override our international obligations under the United Nations Refugee Convention. (p.45)
In 2011, Australia took in 21,805 refugees, while last financial year Australia’s total migration and humanitarian intake was 182,500 people. Of these, 92% came from the migration program. (p.47)
Asylum seeker
An individual seeking international protection whose claim for refugee status has not yet been determined. Entrants by boat without a visa are entitled to seek asylum. If the Government’s initial processing suggests they may have a valid case, they are classified as ‘asylum seekers’.

Boat people
A term used in the media and elsewhere to describe asylum seekers who arrive by boat or attempt to arrive by boat without authority to enter Australia. DIAC uses the term ‘unauthorised boat arrivals’ or ‘unlawful boat arrivals’.

Community detention
A form of immigration detention that enables people to reside and move about freely in the community without needing to be accompanied or restrained by an officer.

Country of first asylum
A country that permits a person fleeing from persecution to enter its territory for purposes of providing asylum temporarily, pending eventual repatriation or resettlement.

Detention centres
Specialised facilities for people who have arrived at an Australian border without a visa and sought entry or legal visitors who have subsequently offended against the immigration law, visitors overstaying their visas, or individuals awaiting deportation.

Displaced people
People who flee their homes to escape conflict, violence, human rights abuses or other disasters.

Humanitarian Program
Australia’s Humanitarian Program comprises two components: the onshore protection/asylum component provides protection to people found to be refugees after arriving in Australia, in line with the Refugee Convention; and the offshore resettlement component offers resettlement for people overseas who are in the greatest need of humanitarian assistance. The offshore resettlement component comprises two categories of permanent visas: refugee and Special Humanitarian Program (SHP).

Internally displaced person
A person who has been forced to flee or to leave their home or place of habitual residence, particularly as a result of, or in order to avoid the effects of, armed conflict, situation of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.

Malaysia Agreement
Arrangement between the Australian and Malaysian governments signed on 25 July 2011 to deter people smuggling by transferring unauthorised arrivals from Australia to Malaysia for processing of their refugee claims.

Mandatory detention
The automatic detention of every unauthorised entrant, including asylum seekers, for the duration of their application procedures and appeals, without means of appeal or review.

Non-refoulement
The obligation on States under the Refugee Convention not to expel or return a person (that is, refoule), either directly or indirectly, to a place where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.

Overstayers
A person who arrives with a short-term visa and seeks to remain permanently in the country on a clandestine basis.

People smuggling
The UN Convention against Transnational Organised Crime’s Protocol against the Smuggling of Migrants by Land, Sea and Air defines people smuggling as “the procurement, in order to obtain directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

Refugee
Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion: is outside the country of his/her nationality and unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence is unable or, owing to such fear, is unwilling to return to it.

Source country
Includes the country of origin or a country of first asylum for an asylum seeker or refugee (as distinct from transit countries).

Stateless person
Someone who is not considered a national by any country. In some cases, they are not legally recognised as a citizen by any country (a situation known as de jure statelessness). In other cases, a person may possess a legal nationality but cannot in practice exercise their citizenship rights (known as de facto statelessness).

Third country
Where refugees move from their countries of first asylum to another country, such as Australia, that country is described as a third country (the first being the home country, and the second being the country of first asylum).

Unauthorised arrivals
Any person arriving or attempting to arrive in Australia by sea or air without authorisation or a valid visa – many of these people are asylum seekers.
Websites with further information on the topic

A Just Australia  www.ajustaustralia.com
Amnesty International  www.amnesty.org.au
Asylum Seeker Resource Centre  www.asrc.org.au
Australian Human Rights Commission  www.humanrights.gov.au
Australian Refugee Foundation  www.refugeefoundation.org.au
Children Out of Immigration Detention (ChilOut)  www.chilout.org
Department of Foreign Affairs and Trade  www.dfat.gov.au
Department of Immigration and Citizenship  www.immi.gov.au
Edmund Rice Centre for Justice and Community Education  www.erc.org.au
International Organization for Migration (IOM)  www.iomaustralia.org
NSW Refugee Health Service  www.refugeehealth.org.au
Refugee and Immigration Legal Service  www.rails.org.au
Refugee Council of Australia  www.refugeecouncil.org.au
Rethink Refugees  www.rethinkrefugees.com.au
Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)  www.startts.org.au

For more information about social issues visit The Spinney Press website at  www.spinneypress.com.au

ACKNOWLEDGEMENTS
The publisher is grateful to all the contributors to this book for granting permission to reproduce their works.

COPYRIGHT DISCLAIMER
While every care has been taken to trace and acknowledge copyright the publisher tenders its apology for any accidental infringements or where copyright has proved untraceable. The publisher would be pleased to come to a suitable arrangement with the rightful owner.

ILLUSTRATIONS AND PHOTOGRAPHS
Photographs and illustrations courtesy of iStockphoto, except pages 7 and 47 © Don Hatcher; pages 15 and 17 © Australian Human Rights Commission; pages 23 and 50 © Simon Kneebone; pages 31, 36, 38, 42, 46 and 48 © Royal Australian Navy/Department of Defence; page 34 © Ulet Ifansasti/iStockphoto; and Central Intelligence Agency map on page 43 sourced from Wikipedia.

THANK YOU
★ Refugee Council of Australia
★ Asylum Seeker Resource Centre
★ Department of Immigration and Citizenship
★ The Conversation website and contributing authors.

DISCLAIMER
The Spinney Press is an independent educational publisher and has no political affiliations or vested interests with any persons or organisations whose information appears in the Issues in Society series. The Spinney Press seeks at all times to present variety and balance in the opinions expressed in its publications. Any views quoted in this book are not necessarily those of the publisher or its staff.

Advice in this publication is of a general nature and is not a substitute for independent professional advice. Information contained in this publication is for educational purposes only and is not intended as specific legal advice or to be used to diagnose, treat, cure or prevent any disease. Further, the accuracy, currency and completeness of the information available in this publication cannot be guaranteed. The Spinney Press, its affiliates and their respective servants and agents do not accept any liability for any injury, loss or damage incurred by use of or reliance on the information made available via or through its publications, whether arising from negligence or otherwise.

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au
### Index

<table>
<thead>
<tr>
<th>A</th>
<th>accommodation, transit</th>
<th>10-12</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Afghanistan</td>
<td>7, 16, 18, 23, 42, 43, 44, 46, 49-50</td>
</tr>
<tr>
<td></td>
<td>Africa</td>
<td>35, 39, 41</td>
</tr>
<tr>
<td></td>
<td>Amnesty International</td>
<td>9, 15, 17, 18, 44</td>
</tr>
<tr>
<td></td>
<td>asylum seekers assessment</td>
<td>1-2, 4, 12, 16, 28, 31 see also processing</td>
</tr>
<tr>
<td></td>
<td>case studies</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>classes of</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>definition</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>myths</td>
<td>38-39</td>
</tr>
<tr>
<td></td>
<td>tragedies, preventing</td>
<td>48-50</td>
</tr>
<tr>
<td></td>
<td>world ranking, Australia’s</td>
<td>3-4</td>
</tr>
<tr>
<td></td>
<td>Australian Human Rights Commission</td>
<td>15, 19, 23, 27, 28</td>
</tr>
<tr>
<td>B</td>
<td>boat people</td>
<td>23, 31-32, 39, 40, 47, 50 see also arrivals, boat</td>
</tr>
<tr>
<td>C</td>
<td>children see detention centres, children Christmas Island</td>
<td>8-9, 10-12, 16, 17, 18, 26, 32, 33, 36-37, 43, 44-45</td>
</tr>
<tr>
<td></td>
<td>Convention on the Rights of the Child</td>
<td>15, 24, 26</td>
</tr>
<tr>
<td></td>
<td>Convention relating to the Status of Refugees, 1951 see Refugee Convention</td>
<td></td>
</tr>
<tr>
<td></td>
<td>countries destination</td>
<td>14, 41, 43, 44, 46 holding (host) 3-4, 46-47 source (countries of origin) 2, 7, 14, 29, 41, 43, 44, 46-47, 49 transit 41, 42-43, 46-47</td>
</tr>
<tr>
<td>D</td>
<td>detention centres</td>
<td>11, 18, 23, 26 children in 9, 10, 15-16, 19, 23-24, 25, 26, 37</td>
</tr>
<tr>
<td></td>
<td>riots</td>
<td>8, 19</td>
</tr>
<tr>
<td></td>
<td>visits to</td>
<td>26, 27, 28</td>
</tr>
<tr>
<td></td>
<td>community</td>
<td>10-11, 20, 25, 26, 27, 28, 37</td>
</tr>
<tr>
<td></td>
<td>immigration</td>
<td>10-28</td>
</tr>
<tr>
<td></td>
<td>harms of</td>
<td>9, 19-20, 21</td>
</tr>
<tr>
<td></td>
<td>issues</td>
<td>13-14</td>
</tr>
<tr>
<td></td>
<td>indefinite</td>
<td>14, 16, 17, 20, 23, 28, 33, 38, 40</td>
</tr>
<tr>
<td></td>
<td>mandatory</td>
<td>21, 28</td>
</tr>
<tr>
<td></td>
<td>alternatives to</td>
<td>13, 19-20, 24</td>
</tr>
<tr>
<td></td>
<td>impact of</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>introduction of</td>
<td>13, 15, 23, 50</td>
</tr>
<tr>
<td></td>
<td>46-47, 48-49</td>
<td></td>
</tr>
<tr>
<td></td>
<td>persecution</td>
<td>5, 8, 22, 41, 47</td>
</tr>
<tr>
<td></td>
<td>post-traumatic stress disorder (PTSD)</td>
<td>21 processing community 9, 13-14, 16, 17, 19, 20, 24, 27, 28 offshore 1, 21, 33, 37, 38 cost of 45 policy debate 29-50 onshore 13, 37, 49 regional 6, 29-30</td>
</tr>
<tr>
<td></td>
<td>protection, complementary</td>
<td>1-2</td>
</tr>
<tr>
<td>Q</td>
<td>’queue jumping’</td>
<td>8, 38-39</td>
</tr>
<tr>
<td>R</td>
<td>refugees definition</td>
<td>1, 4, 5, 7, 39 facts 7-9 statistics 3, 8 world ranking, Australia’s 3-4</td>
</tr>
<tr>
<td></td>
<td>Refugee Convention</td>
<td>1, 2, 5, 7, 8, 9, 22, 31, 38, 40, 43, 44, 45, 49, 50</td>
</tr>
<tr>
<td></td>
<td>Refugee Review Tribunal</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Report of the expert panel on asylum seekers</td>
<td>29-50</td>
</tr>
<tr>
<td></td>
<td>recommendations</td>
<td>29-30, 36-37 regional engagement 29</td>
</tr>
<tr>
<td>S</td>
<td>self-harm</td>
<td>17, 19, 21, 27, 28</td>
</tr>
<tr>
<td></td>
<td>Serco</td>
<td>9, 12, 26</td>
</tr>
<tr>
<td></td>
<td>social group, particular</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Somalia</td>
<td>49, 50</td>
</tr>
<tr>
<td></td>
<td>Sri Lanka</td>
<td>7, 18, 23, 42, 46-47</td>
</tr>
<tr>
<td></td>
<td>Sudan</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>suicide</td>
<td>17, 19, 27, 28</td>
</tr>
<tr>
<td></td>
<td>Syria</td>
<td>8, 31, 35, 49</td>
</tr>
<tr>
<td>T</td>
<td>Taliban</td>
<td>18, 41, 44, 47</td>
</tr>
<tr>
<td></td>
<td>Thailand</td>
<td>48, 50</td>
</tr>
<tr>
<td></td>
<td>training</td>
<td>English language 27, 28, 32 vocational 27, 28</td>
</tr>
<tr>
<td>U</td>
<td>United Nations (UN)</td>
<td>1, 15, 50</td>
</tr>
<tr>
<td></td>
<td>United Nations High Commissioner for Refugees (UNHCR)</td>
<td>3-4, 6, 8, 12, 13, 20, 31, 35, 44, 46, 48</td>
</tr>
<tr>
<td>V</td>
<td>visas bridging</td>
<td>2, 9, 27, 28, 37 protection 1, 2, 5, 21, 32 resolution of status 2 temporary protection 2, 15, 21, 24, 31</td>
</tr>
</tbody>
</table>

---

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au