

Refugees and asylum seekers

Mandatory immigration detention

Suggested Question

What concrete legislative and other measures is Australia taking to ensure that immigration detention is only used as a measure of last resort and for the shortest period strictly necessary?

Background

The *Migration Act 1958* requires all unlawful non-citizens (other than those in excised offshore zones) to be detained, regardless of circumstances, until they are granted a visa or removed from Australia. Australian law also fails to protect unlawful non-citizens against indefinite detention, as time limitations for immigration detention are not codified in Australian law.¹

Conditions in immigration detention facilities have serious implications for the human rights of asylum seekers. Detention, particularly when indefinite or prolonged, has a detrimental impact on the mental health of persons who have suffered torture and trauma. This impact is magnified by the limited access to legal counsel, interpreting services, communication facilities, physical and mental health services and social, cultural and religious support networks available to asylum seekers in detention. This is particularly the case for asylum seekers detained in offshore or remote facilities, whose isolation renders the delivery of appropriate services difficult. In light of this, the re-opening of Curtin detention facility, in one of Australia's most remote locations, is of great concern.²

¹ *Migration Act 1958* (Cth), ss189(1), 189(2) and 196(1).

² For further information on immigration detention in Australia, see Refugee Council of Australia (2008), *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia*, available at <http://www.refugeecouncil.org.au/resources/submissions.html> (accessed 21 October 2010).

Proposed Recommendation

That Australia take immediate steps to (1) repeal the provisions of the *Migration Act 1958* relating to mandatory detention; (2) ensure that asylum seekers are detained only where strictly necessary and as a last resort; (3) codify in law time limitations for detention to ensure no detention beyond 6 months; (4) close the Curtin detention facility; and (5) implement community-based alternatives to detention, particularly for families, children and other vulnerable groups.

Offshore processing

Suggested Question

What steps is Australia taking to repeal the provisions of the Migration Act 1958 relating to excised offshore places, and to ensuring that all irregular migrants have equal access to and protection under Australian law for fair and judicially reviewable determinations of their migration applications?

Background

Under the *Migration Act 1958*, a non-citizen who first enters Australia at an excised offshore place (including Christmas Island, Ashmore and Cartier Islands and the Cocos Islands) without legal authorisation is unable to submit a valid visa application unless the Minister for Immigration makes a personal intervention into the case. This process of ministerial intervention is non-compellable and non-reviewable. In addition, asylum seekers in offshore places are barred from the refugee status determination system that applies on the Australian mainland, instead undergoing a non-statutory process governed by guidelines which are not legally binding. They have no access to the Refugee Review Tribunal (a non-transparent review process is available) and very limited access to the Australian courts.³

³ For more information on offshore processing, see Australian Human Rights Commission (2009), *Immigration detention and offshore processing on*

The Australian Government recently announced it is considering further offshore processing of asylum seekers in Timor Leste. Without further detail or clarification of this policy, it is unclear whether this policy will enhance protection capabilities in the region or be merely a deflection of Australia's protection obligations.

Proposed Recommendation

That Australia take all necessary steps to ensure: (1) the provisions of the *Migration Act 1958* relating to excised offshore places are repealed; (2) all irregular migrants have equal access to and protection under Australian law for fair and judicially reviewable determinations of their migration applications, including applications for refugee status determination and protection; and (3) clarify its policy on offshore processing in Timor Leste, including setting out a framework for processing protection applications, options for appeal which will be provided to ensure that every asylum seeker receives a fair hearing, the accommodation arrangements and the resettlement options available for people found to be in need of protection.

Children in immigration detention

Suggested Question

What legislative measures is Australia taking to ensure that children are no longer detained in immigration detention?

Background

While the *Migration Act 1958* has been amended to affirm the principle that asylum seeker children should only be detained as a measure of last resort, and children are no longer detained in immigration detention centres, they nonetheless continue to be held in detention-like conditions in other immigration detention facilities.

Human rights issues relating to the detention of humanitarian minors have been examined in the Australian Human Rights Commission report, *A Last Resort? National Inquiry into Children in Immigration Detention*, however the Australian

Government has not implemented the recommendations outlined in this report.⁴

Proposed Recommendation

That Australia: (1) take all necessary legislative steps to ensure no children are held in detention, or detention-like facilities; and (2) implement the outstanding recommendations from the Australian Human Rights Commission's National Inquiry into Children in Immigration Detention.

Health requirements exemption

Suggested Question

What steps is Australia taking to exempt health requirements from applications under the offshore component of Australia's Refugee and Humanitarian Program?

Background

Migrants to Australia must meet health requirements in order to be considered eligible for a visa. Some groups, including applications for onshore protection visas, are exempt from these health requirements. However, all offshore refugee and humanitarian applicants remain subject to health requirements. There are no justifiable grounds for the current differential treatment.

Proposed Recommendation

That Australia ensure that applications under the offshore component of Australia's refugee and humanitarian program are exempt from the operation of the health requirements.

Christmas Island, at http://www.humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html.

⁴ Australian Human Rights Commission (2004), *A last resort? National Inquiry into Children in Immigration Detention*, at http://www.humanrights.gov.au/human_rights/children_detention_report/index.html.