

Policy Statement

The Australian government's immigration detention system punishes people seeking asylum who arrive without a valid visa by mandatorily detaining them beyond any legitimate administrative purpose.

The Asylum Seeker Resource Centre (ASRC) urges the Australian Government to abandon its ineffective policy of 'deterrence' and commence a humanitarian response, which is effective and humane. The Australian Government must meaningfully engage with the global refugee crisis and take a lead in the Asia-Pacific region as a collaborator and instigator of protective and durable policy.

Protective and durable policy requires the closure of detention centres, offshore and onshore, the return to Australia of all those transferred to Nauru and Manus Island and the cessation of mandatory detention of people seeking asylum.

All people seeking asylum, regardless of their mode of arrival, should have their claims for Protection processed in the Australian community according to law. All people seeking asylum should be placed on long term Bridging visas which provide for work rights, medical care, income support and study rights.

The onshore and offshore detention regime for people seeking asylum is inhumane and unjustifiable both in terms of ongoing human rights abuse and the unprecedented monetary cost of detention.

The Current Situation

Anyone who arrives to Australia without a valid visa will be detained in an immigration detention centre within Australia, including Christmas Island, or in an offshore detention centre on Nauru and Manus Island.

There are no time limits, either in policy or law, for how long a person, including a child, can be kept in immigration detention in onshore or in offshore detention centres.

Detention is often prolonged and arbitrary and has serious negative impacts on the mental and physical health of people detained.

Offshore

[Since 19 July 2013, people who arrive to Australia by sea are unable to have their claims for Protection assessed in Australia.](#)

All people seeking asylum in Australia who arrive by sea will be transferred to a regional processing country (RPC) – Nauru or Manus Island in Papua New Guinea – to have their claims for Protection assessed there.

The Australian government actively discourages people from seeking asylum in Australia by ensuring that they cannot lodge an application for Protection in Australia and also advising people seeking asylum by sea that they will never be settled in Australia.

The Australian government has towed back boats of people seeking asylum in order to prevent them from seeking safety in Australia.

'As of 17 October 2016, it was confirmed in Senate estimates that there were 29 boats turned back with 740 people turned back'¹.

As at 31 October 2017, there were 1754 people held on Manus Island, 1245 of whom had been found to be refugees. At that same time, there were 1216 people held on Nauru, 1062 of whom had been found to be refugees.

As at October 2016, there were 45 children held in the Nauru Regional Processing Centre.²

Since the re-emergence of offshore processing five years ago, nine people have died in an RPC: one person was murdered and eight people died as a result of inadequate health care and/or suicide.

There is overwhelming documentation which records the serious abuses, including child sexual abuse, drastically inadequate health care and high levels of self-harm on Manus and Nauru. The 'Nauru Files' which consist of over 2000 leaked documents detail the lack of safety and human rights abuses experienced by the people held on Nauru.

'In the files there are seven reports of sexual assault of children, 59 reports of assault on children, 30 of self-harm involving children and 159 of threatened self-harm involving children.'

The United Nations (UN) has slammed Australia's offshore detention system on many occasions. In 2015, Juan E. Mendez, the UN Special Rapporteur on Torture stated that:

'...the Government of Australia, by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment'.

¹ Refugee Council of Australia, *Operation Sovereign Borders and Offshore Processing Statistics*, available at: <https://www.refugeecouncil.org.au/getfacts/statistics/aust/asylum-stats/operation-sovereign-borders-offshore-detention-statistics/>

² Parliament of Australia, 16 December 2016, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore#_Number_of_children_1

Despite the vast majority of people on Nauru and Manus having been found to be refugees, there is no safe place for settlement of these people. They remain in unsafe limbo and continue to suffer serious deterioration of mental and physical health with inadequate medical attention. They remain indefinitely held in RPCs which cannot safely accommodate them.

Onshore

Anyone who arrives to Australia by plane without a valid visa, or who has a valid visa but has their visa cancelled at the airport (often because they have asked for Protection), is mandatorily detained in an immigration detention centre in Australia including on Christmas Island. Most people in this situation spend years in detention while their Protection claims are assessed. They are not kept in detention for any health or security reason, but simply because of their visa status on arrival.

People who arrive by boat without a visa are also mandatorily detained with many released only after varying and lengthy arbitrary periods. Some people have never been released from detention. Other people are re-detained after having their Bridging visa cancelled and remain in detention for significant periods of time.

'On 31 December 2017, there were 1285 people in detention facilities.... By 2016-2017, 27.1% of people in detention were detained for arriving by boat, 20.2 per cent for overstaying their visa, 47.5 per cent as a result of visa cancellation, and 4.5 per cent came by plane without a valid visa.'

Once a person is in detention, there is no opportunity to seek judicial review of the decision to detain them to ascertain whether detention is necessary. People are held in detention and assessed under a risk assessment framework, created by Australian Border Force (ABF), which is used to punish any perceived lack of compliance rather than to make a genuine assessment of risk. These assessments are also not reviewable.

There have been ongoing and sustained concerns that conditions in Australia's onshore detention centres breach Australia's human rights obligations and amount to arbitrary deprivation of life and cruel or inhuman treatment of punishment³.

There are longstanding concerns that Australia's mandatory and indefinite immigration detention regime severely impacts mental health. 'Rates of mental health problems in the immigration detention population in Australia have been found to be high, and range from depression, anxiety and sleep disorders to post-traumatic stress disorders, suicidal ideation and self-harm.'⁴

Costs

The offshore detention processing system costs over \$1 billion AUD, more than \$464,000 per person, annually. This is a cost of over \$5 billion AUD since the offshore detention system re-emerged in 2012.⁵

In 2014⁶, estimated costs were as follows:

- \$239,000 per person per year in held immigration detention;
- Less than \$100,000 per person per year held in community detention;
- Approximately \$40,000 for a person on a Bridging visa who is having their claims processed in the community.

Within Australia, the cost of detention and compliance is estimated at around \$1.2 billion in the 2017–18 financial year.⁷

Recommendations

- The abolition of Section 189 of the *Migration Act 1958* to bring an end to mandatory detention of people seeking asylum in Australia.
- The introduction of legislated standards and timeframes for detention of people seeking asylum in order to complete health and security checks:
 - 30 days for adults
 - 72 hours for children.
- Detention of adults seeking asylum beyond the initial timeframe in exceptional circumstances only.
- The prohibition of detention of children in held detention beyond the initial timeframe.
- All people seeking asylum in Australia to be processed in the Australian community regardless of their mode of arrival. All people seeking asylum in Australia be issued with long term Bridging visas with the right to work, the right to study, access to income support and to Medicare.
- An end to the regional processing system with all people held on Manus Island or Nauru to be brought to Australia for resettlement or to have their claims for asylum processed in the community under Australian law.
- An end to boat turn backs and a genuine commitment to a durable, humane and fair protection policy.

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³ Australian Human Rights Commission, *Asylum seekers, refugees and human rights – snapshot report*, <http://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report/2-onshore-detention-and>

⁴ <http://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report/2-onshore-detention-and>

⁵ ANAO, *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services, 2016*, www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement

⁶ National Commission of Audit 2014

⁷ The Federal Budget cited in the Kaldor Centre, *The cost of Australia's asylum policy*, <http://www.kaldorcentre.unsw.edu.au/publication/cost-australias-asylum-policy>

Recommendations continued

- An end to boat turn backs and a genuine commitment to a durable, humane and fair Protection policy.
- That the decision to detain a person be made on a case by case basis and as a last resort rather than being applied to a class of people.
- Independent review and judicial review options for:
 - People detained beyond the initial period
 - Decisions to refuse or cancel a Bridging visa
 - Negative ASIO security assessments
 - Detention risk rating and other risk assessments
 - Decisions to transfer a person between detention centres
 - Any incident of self-harm or other serious incident
 - Decisions relating to medical or psychological care
 - Decisions relating to search and seizure powers.

Key Facts

'I would like to emphasise that we people in Manus love you and deeply respect you people in Australia. But we are strongly saying that Peter Dutton is using propaganda to say our only desire is to come to Australia. Our only desire is freedom and safety in any safe country. We are not safe or free now, especially with the Australian Government authorising force to be used against us. Please, let us go.'⁸

- Pursuant to Section 189 of the *Migration Act 1958*, any person in Australia without a valid visa must be detained and placed in immigration detention.
- Since 19 July 2013, under the Labor Rudd Government, any person arriving to Australia by boat without a valid visa was to be removed to Manus Island or Nauru for processing of their claims for Protection. They are not eligible for resettlement in Australia.
- Subsequent federal governments have turned back boats of people seeking refuge and have returned them to unsafe conditions.
- There are no time limits for how long a person can be detained.
- Although the vast majority of people on Manus Island and Nauru have been found to be refugees, there is nowhere safe for them to be resettled and they remain arbitrarily held in unsafe conditions. Most people have been held in these conditions for over four years.
- Australia's onshore detention system operates in a shroud of secrecy with little to no opportunity to review decisions made by the Department of Home Affairs. The Department uses immigration detention as a punitive tool to deter people from seeking Protection in Australia and to criminalise the asylum seeking process.

⁸ Behrouz Boochani, *A message from Behrouz Boochani – Kurdish refugee and independent journalist*, 28 November 2017, <https://www.asrc.org.au/2017/11/28/message-behrouz-boochani-kurdish-refugee-independent-journalist/>

- In addition to detention and compliance costs, the Australian government has been liable for huge sums of money in compensation for the abuse and inadequate treatment of people in detention. In September 2017, the Australian government settled a class action brought by people detained on Manus Island for AUD\$70 million, the largest payout out in a human rights class action in Australia.
- "Between January 2011 and February 2013 there were 4 \313 incidents of actual, threatened and attempted serious self-harm recorded in immigration detention facilities in Australia.[73] In the 2012–2013 financial year there were 846 incidents of self-harm across the immigration detention network...Between 1 July 2010 and 20 June 2013, there were 12 deaths in immigration detention facilities. Coroners have found that six of those deaths were suicides.⁹
- Amnesty International's Senior Director of Research made this statement following interviews with people on Nauru:

'The distressing and heartbreaking accounts of deteriorating mental health, discrimination and violent attacks, sexual violence, inadequate medical care and harassment that I heard from mothers, fathers, adults and children as young as six, paint a picture of people driven to absolute despair'¹⁰.
- In April 2016, Papua New Guinea's Supreme Court ruled that the detention of people seeking asylum on Manus Island was illegal. Despite this, the 850 men incarcerated at the detention centre were not moved from the island. In late 2017, the men were forcibly removed from the detention centre to another, less secure, facility on Manus Island where there are grave concerns for the men's safety. These facilities have not been completed, are significantly overcrowded, and present hygiene risks.
- There is a direct correlation between time spent in detention and deterioration of mental health. Immigration detention exacerbates existing mental health conditions including those experienced as a result of torture and trauma.
- Australia's onshore and offshore detention centres have consistently been found to breach international standards of human rights.
- Australia's onshore and offshore detention and compliance systems costs billions of Australian dollars.
- Immigration detention obstructs the provision of key legal advice and representation services to some of the most vulnerable people in the world.

⁹ Australian Human Rights Commission, *Asylum seekers, refugees and human rights – snapshot report*, <http://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report/2-onshore-detention-and>

¹⁰ Amnesty International, *Australia's regime of cruelty has turned Nauru into an open air prison*, 17 October 2016, <https://www.amnesty.org.au/island-of-despair-nauru-refugee-report-2016/>