

Australian Human Rights Commission – Asylum seekers, refugees and human rights (snapshot report 2013)

Australia maintains one of the most restrictive immigration detention systems in the world – Australian Human Rights Commission

The Australian Human Rights Commission undertook a report that considered immigration detention law, policy and practice, bridging visas, the enhanced screening process, third country processing and proposed Government reforms. This report was released on the 22 October 2013.

SYNOPSIS OF REPORT

The report displays multiple concerns regarding Australia's treatment of asylum seekers and refugees both within Australia and abroad. Underlying most of the criticisms and concerns, is a worry that Australia is not upholding its international obligations towards asylum seekers or refugees. Primarily, the nature and procedures of mandatory detention is of most worry to the Commission. The prolonged nature and inadequate conditions continue to result in high risks of mental harm and social exclusion. In addition, the Commission expresses concern at the third country processing regimes. Specifically the Commission has particular reservations about the Minister's discretion in sending asylum seekers to countries where they might face the risk of refoulement.

DOMESTIC

Mandatory immigration detention

Australia is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR). Australia has a binding obligation under article 9(1) of the ICCPR to not subject anyone to arbitrary detention. The Commission notes that Australia has repeatedly found to have breached this article by the United Nations Human Rights Committee.

Australia has engaged in the arbitrary detention of asylum seekers, though lawful under domestic law, has been held to be unjust or disproportionate under Australia's international obligations. There is no time limit for those in detention. Asylum seekers that are placed in detention are not detained based on individual assessments, but because of their mode of arrival. This leads to prolonged and indefinite detention. The Commission reiterates its concerns about the conditions of detention and the cost. In 2011-12, immigration detention cost the Australian taxpayers \$1.235 billion.¹

The Commission recommends in its report that asylum seekers be detained only if it is shown to be necessary in individual cases. This is especially required because it has been questioned whether mandatory detention effectively deters people from seeking asylum.

¹ www.anao.gov.au/Publications/Audit-Reports/2012-2013/Individual-Management-Services-Provided-to-People-in-Immigration-Detention

Children in detention

As of 5 September, there were 1,428 children in closed immigration detention. The average age of these children was 10 years old.² The *Convention of the Rights of the Child* (CRC) requires that children only be detained as a matter of last resort and for the shortest appropriate period of time. The mandatory detention of children is fundamentally inconsistent with Australia's obligations under the CRC because it is used as a first, not a last resort.

Children detained for long periods of time are at high risk of serious mental harm, which may amount to cruel, inhumane or degrading treatment in breach of the CRC. The Commission also expressed concern about unaccompanied children in detention. The Minister's role as guardian of these children creates a conflict of interest. A more suitable process would have an independent guardian appointed for all unaccompanied minors in detention to ensure that their rights are protected. This recommendation was taken up in 2012 by the Parliamentary Joint Select Committee on Australia's Immigration Detention Network.³

Refugees with adverse security assessments

The Commission raised concerns again about the 52 refugees being denied a protection visa as a result of adverse security assessments from ASIO. A number of those refugees have been detained for over four years.

In 2012, ASIO accepted advice from an independent reviewer of security assessments that two cases be overturned, 10 maintained. No information has been provided for any of these cases. The Commission reiterated its strong support for an independent review of adverse security assessments and greater transparency.

Mental health impacts of detention

Between 1 July 2010 and 20 June 2013, there were 12 deaths in immigration detention. Coroners have found that six of those deaths were suicides. Rates of self-harm and detrimental impacts of mental health remain high.

The UN Human Rights Committee has found Australia in breach of the right not to be subject to cruel, inhumane or degrading treatment or punishment, and the right of people to be detained to be treated with dignity, by continuing to detain people in the knowledge that it was contributing to mental illness.

Alternatives to detention

The Commission welcomes the increased use of community arrangements. The practical benefits of this are clear. Community arrangements create fewer risks to the health, safety and wellbeing of asylum seekers and refugees which lead to lower rates of self-harm and fewer claims for welfare. In addition, it allows a smoother transition to living in the Australian community once protection visas are granted.

² DIAC communication with The Commission

³ www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/immigrationdetention/report/index

Bridging visas without the right to work

The Commission notes that under article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Australia has an obligation to ensure that there is a minimum right of access to employment, especially for disadvantaged and marginalised individuals and groups.

As at 2 September 2013, there were 21,000 asylum seekers living in the community of bridging visas without any work rights. The Commission also raised concern that the level of financial assistance to those without work rights was inadequate and created vulnerability if asylum seekers were on that level of benefits for a long period of time. The UNHCR has also expressed concern about this.

Enhanced screening process

The Commission expressed concern that the enhanced screening process might not conform with sufficient safeguards to protect people from being at risk of *refoulement*.

Non-refoulement requires Australia to provide asylum seekers with effective access to fair and efficient asylum procedures. The Commission is concerned that the process does not constitute a fair asylum procedure and risks excluding those with legitimate needs for protection. The Commission had specific concerns:

- People subjected to the enhanced screening process are not informed of their right to seek asylum.
- Screening interviews may be brief and not sufficiently detailed or probing to ensure that all relevant protection claims are raised.
- The process may in fact be used not for screening but for substantive assessment of protection claims without the normal safeguards.
- Persons subject to the screening process are not informed of their right to seek legal advice and are only provided with reasonable facilities to contact a legal advisor if they make a specific request.

The Commission was also concerned that those 'screened out' are not given a written statement of the reasons for the decision and do not have any recourse to an independent review of the decision.

UNHCR labelled this process as unfair and unreliable.

THIRD COUNTRY PROCESSING

The Commission is concerned that third country processing puts asylum seekers at risk of *refoulement*. The Commission is concerned that the Minister's discretion in matters of sending asylum seekers to a third country does not adequately address the possibility that asylum seekers may face *refoulement*. Nor does it provide adequate safeguards and leaves the Minister with the power to decide whether or not to expose an asylum seeker to that risk or not.

The same issue of arbitrary detention and the conditions of detention apply equally, if not more so to detention on Manus Island and Nauru. In addition, the Commission reiterated its view that hot, remote locations are not appropriate places to send asylum seeker children, or other vulnerable groups.

International Health and Medical Services recommended that children younger than 5 and pregnant women should not take anti-malaria medicine and should therefore not travel to Manus Island, which has endemic rates of malaria.

PROPOSED POLICY CHANGES

TPVs

The Commission opposes the reintroduction of TPVs because

1. Granting of protection on a temporary basis results in uncertainty, and has a detrimental impact upon a holder's mental health. It also affects their capacity to participate in social, employment and educational opportunities offered in Australia.
2. Absence of family reunion combined with a ban on leaving Australia means holders face prolonged and indefinite periods of separation from their family.
3. Limiting TPVs to those who arrived by boat, Australia may be discriminating against this group contrary to the ICCPR and the Refugee Convention.

Reform of the refugee status determination process

The UNHCR identified several procedural safeguards for a fair and efficient refugee status determination procedure. The Commission opposes any proposal to remove an independent merits review process from refugee status determination in Australia.

The Commission expressly notes that there has been significant criticism of the UK's fast track system which the Government has an interest in. Determining straight forward cases has proven to be difficult with the fast track process; groups who are not supposed to be placed in the fast track system like children have been, timeframes have not been complied with and there has been continued prolonged detention of asylum seekers.

The Commission also expressed concern that withdrawing legal assistance IAAAS may increase the chance of refoulement.

This summary has been compiled by the Asylum Seeker Resource Centre (ASRC). For more information please contact educate@asrc.org.au

For the full report please visit the Australian Human Rights Commission's webpage <https://www.humanrights.gov.au/>



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