



## Factsheet: Refugees and asylum seekers

### Background information

Australia maintains a policy of mandatory immigration detention, with people who arrive by boat without a valid visa, including children, liable for detention. Australia's system is one of the strictest in the world because it is mandatory, it is not time limited, and people are not able to challenge the need for their detention in a court.

In 2012 offshore processing was introduced whereby all people arriving by boat without a valid visa are transferred to the jurisdiction of third countries (currently Papua New Guinea or Nauru) for processing of their asylum claims. Policy was toughened further when the government announced that all persons arriving by boat after July 2013 would not be resettled in Australia.

The number of people held in closed detention peaked in July 2013. In 2014, there was a decrease in the number of children held in closed detention with the use of community arrangements. All children and their families that were detained on Christmas Island were transferred to mainland Australia.

As of August 2015, there were 2028 persons held in immigration detention facilities in Australia, including 104 children. In addition there were 936 asylum seekers detained in the 'regional processing centre' on Manus Island in Papua New Guinea, and 653 asylum seekers detained in Nauru (including 93 children). As at August 2015, around 30,000 asylum seekers were waiting for their claims to be processed.<sup>1</sup>

### Key issue – Prolonged detention in closed facilities

Prolonged mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays, in breach of Australia's international obligations.<sup>2</sup> The average length of time people were being held in immigration detention facilities in Australia as of 31 August 2015 was 412 days.<sup>3</sup> Some people have been held in detention for multiple years as a result of a family member receiving an adverse security assessment.<sup>4</sup>

### Recommendation

***Introduce time limits and access to judicial oversight of detention so that detention occurs only when necessary, for a minimal period, and where it is a reasonable and proportionate means of achieving a legitimate aim.  
Government continue to expand the use of alternatives to closed detention.***

## Key issue – Offshore processing

Australia's reintroduction of third country processing arrangements results in many asylum seekers, including children, being sent to remote detention facilities in Papua New Guinea and Nauru. If owed protection, refugees subject to these arrangements are resettled in Papua New Guinea, Nauru, or, under a recent agreement, Cambodia. There have been numerous reports about the harsh conditions and risks to the safety of asylum seekers in the detention centres in Papua New Guinea and Nauru.<sup>5</sup> Long term detention has detrimental impacts on their physical and mental health.<sup>6</sup>

Even if the regional processing centres on Nauru and Papua New Guinea transition to 'open centres' the holding of asylum seekers in these facilities is likely to still amount to detention under international human rights law. By way of comparison in 2013 the United Nations Subcommittee on Prevention of Torture conducted a country visit to New Zealand where it viewed the Mangere Accommodation Centre for Refugees and Asylum Seekers to be a place of detention. The Mangere Centre is an open detention facility and there are no security guards.

Currently children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress. Additionally the level of health care provided to asylum seekers in these centres is inadequate, with more significant health issues requiring patients to be flown back to Australia for treatment.<sup>7</sup>

## Recommendation

***Government immediately cease the transfer of people to Papua New Guinea and Nauru and return people transferred back to Australia. Government should continue to negotiate regional settlement arrangements through the Bali Process Regional Cooperation Framework.***

## Key issue – Changes to the legal framework

Australia has an established statutory complementary protection framework to provide protection for those not classified as refugees but that cannot be safely returned to their countries.

Recent legislative changes have empowered the government to remove asylum seekers from Australia even where this violates *non-refoulement* obligations under international law.<sup>8</sup> Under current immigration policy the government uses the Australian navy to turn back boats assumed to be carrying asylum seekers. This may violate *non-refoulement* obligations as the people on board these boats are not properly assessed or processed.

In 2014, the government passed legislation that removed references to the Refugee Convention from the *Migration Act 1958* (Cth), and inserted a different, narrower definition of who is a 'refugee' than appears in the Convention. That legislation also placed limitations on merits review of refugee claims.<sup>9</sup>

Temporary protection visas were reintroduced in 2014, which means that asylum seekers in Australia that are found to be refugees will not be granted permanent residency. Temporary protection visas require these refugees to reapply for their protection status every few years.<sup>10</sup> The granting of protection to refugees on a

temporary basis, and the resulting uncertainty about their future, had a detrimental impact upon the mental health of TPV holders when they were last used.<sup>11</sup>

## Recommendation

***Government retain its complementary protection framework and codify the obligation of non-refoulement in law. Government review the impact of temporary protection visas and restore full access to merits review to all asylum seekers.***

## Key issue – Secrecy offence in the *Australian Border Force Act 2015 (Cth)*

In 2015, the government passed legislation that makes it an offence punishable by two years imprisonment if an individual working for the Department of Immigration and Border Protection makes a record of or discloses protected information. The definition of protected information is broad and encompasses any information that was obtained in the course of their employment.

In Australia whistle-blowers have some protection from civil, criminal or administrative liability under the *Public Interest Disclosure Act 2013 (Cth)*. However, this legislation does not protect individuals where the disclosure relates to a disagreement with government policy or decision by a Minister.

There is concern that this offence may discourage legitimate whistle-blowers from speaking out publicly and subsequently reduce transparency.

## Recommendation

***Government amend the Australian Border Force Act 2015 (Cth) to create an exemption for disclosures that are in the public interest. In addition, the Government should amend the legislation so that certain groups working in immigration detention facilities such as health care workers and teachers be exempted.***

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<sup>1</sup> Department of Immigration and Border Protection, *Immigration Detention Statistics for 31 August 2015*. At <http://www.immi.gov.au/About/Pages/detention/about-immigration-detention.aspx> (viewed 30 August 2015).

<sup>2</sup> See Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013), p 150. At <http://www.ombudsman.gov.au/reports/investigation/2013> (viewed 21 March 2015). This was the overarching finding of the Australian Human Rights Commission's report: *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* (2015). At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children> (viewed 24 June 2015).

<sup>3</sup> Department of Immigration and Border Protection, note 1.

<sup>4</sup> See Australian Human Rights Commission, *Refugees with adverse security assessments*, <http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/refugees-adverse-security-assessments> (viewed 25 June 2015).

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- <sup>5</sup> United Nations High Commissioner for Refugees (UNHCR), *UNHCR Mission to the Republic of Nauru, 3–5 December 2012* (2012); UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11–13 June 2013* (2013), p 10-11; Senate Legal and Constitutional Affairs References Committee, Australian Parliament, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (2014). At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Manus\\_Island/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report) (viewed 25 June 2015); Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru: Final Report* (6 February 2015). At <http://www.immi.gov.au/about/dept-info/nauru.htm> (viewed 24 June 2015).
- <sup>6</sup> See K Bem et al, *A price too high: the cost of Australia's approach to asylum seekers* (2007), section 3.4. At <http://oppenheimer.mcgill.ca/A-Price-Too-High-the-cost-of> (viewed 24 June 2015).
- <sup>7</sup> See Australian Human Rights Commission, *The Forgotten Children*, note 3, Chapter 12.
- <sup>8</sup> *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth).
- <sup>9</sup> See Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Australian Government's Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth)* (31 October 2014). At <https://www.humanrights.gov.au/submissions/migration-and-maritime-powers-legislation-amendment-resolving-asylum-legacy-caseload> (viewed 24 June 2015).
- <sup>10</sup> *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth).
- <sup>11</sup> See, for example, Z Steel et al, 'Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies' (2011) 72 *Social Science & Medicine* 1149.