



Australian  
Human Rights  
Commission

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# Manus Island

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# Regional Processing

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# Centre Proposal

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**SUBMISSION TO THE PARLIAMENTARY STANDING  
COMMITTEE ON PUBLIC WORKS**

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## 1 Introduction

1. The Australian Human Rights Commission welcomes the opportunity to make this submission to the Parliamentary Standing Committee on Public Works in its inquiry into the proposed infrastructure and upgrade works to establish a regional processing centre on Manus Island, Papua New Guinea (PNG).
2. This submission draws on the Commission's long history of work in the area of immigration detention and asylum seekers, including:
  - submissions to parliamentary inquiries, for example the Parliamentary Joint Committee on Human Rights' [Examination of the Migration \(Regional Processing\) package of legislation](#) and the Parliamentary Standing Committee on Public Works' [inquiry into the Proposed Redevelopment of the Villawood Immigration Detention Facility](#)<sup>1</sup>
  - national inquiries, including [A last resort? National Inquiry into Children in Immigration Detention](#)<sup>2</sup>
  - inspections and reports on conditions in immigration detention facilities<sup>3</sup>
  - investigating complaints from individuals in immigration detention
  - developing human rights based standards for immigration detention.
3. For a number of reasons specified in previous submissions and reports, the Commission opposes the transfer of asylum seekers to third countries for the processing of their refugee claims.<sup>4</sup> However, if the Australian Government intends to continue to transfer asylum seekers to Manus Island, an appropriate facility should be established in order to ensure that those asylum seekers are treated in accordance with international standards.
4. This submission does not provide a detailed assessment of the Manus Island regional processing centre proposal. Rather, it outlines the international human rights standards which should be adhered to in the design and operation of such a facility.

## 2 Recommendations

**Recommendation 1:** The Australian Government should cease transferring asylum seekers to Manus Island. Asylum seekers who arrive in Australia should have their claims for protection processed under Australian law in a timely and efficient manner. They should be transferred into the Australian community unless they have been individually assessed as posing an unacceptable risk that justifies their detention.

**Recommendation 2:** If the Australian Government intends to continue to transfer asylum seekers to Manus Island, it should establish an appropriate facility to ensure that asylum seekers are treated in accordance with international standards. Asylum seekers currently on Manus Island should be returned to Australia, and no further transfers should take place until an appropriate facility is established.

**Recommendation 3:** In establishing and operating an appropriate facility for asylum seekers on Manus Island, the *Human rights standards for immigration detention* should be considered and applied.<sup>5</sup>

**Recommendation 4:** The Manus Island regional processing centre should not be a closed detention centre. It should be designed and operated as an open facility which allows asylum seekers freedom of movement.

### 3 The Australian Government's third country processing regime

5. The Commission opposes the transfer of asylum seekers to third countries for the processing of their refugee claims and holds serious human rights concerns about the Australian Government's third country processing regime. These concerns are set out in detail in the Commission's recent submission to the Parliamentary Joint Committee on Human Rights, and include:
  - the Australian Government's approach to human rights in designating Nauru and PNG as 'regional processing countries'
  - the differential treatment of asylum seekers based on their mode of arrival
  - the potential for breaches of Australia's *non-refoulement* obligations
  - the potential that asylum seekers transferred to third countries will be subjected to arbitrary detention
  - conditions for asylum seekers on Nauru and Manus Island
  - the detention of child asylum seekers in third countries
  - the impact on families, including the potential for separation
  - the situation of unaccompanied children
  - the lack of robust independent monitoring mechanisms.<sup>6</sup>
6. The Commission has also previously raised concerns about detaining asylum seekers in small, remote locations (such as Christmas Island), which have limited infrastructure and services. These concerns include:
  - lack of timely access to adequate health and mental health care and torture and trauma services
  - limited access to visitors, communication with the outside world, friends, family and legal representatives
  - limited recreational, cultural and educational facilities
  - limited opportunities for excursions outside detention facilities
  - limited access to religious support and services
  - lack of transparency and difficulties in effectively monitoring conditions.<sup>7</sup>
7. Similar concerns arise in relation to the transfer of asylum seekers to Manus Island, given its small size, remoteness and limited infrastructure and services. Other serious concerns include the harsh climate and risk of tropical diseases, in particular malaria.
8. **Recommendation 1:** The Australian Government should cease transferring asylum seekers to Manus Island. Asylum seekers who arrive in Australia should have their claims for protection processed under Australian law, in a

timely and efficient manner. They should be transferred into the Australian community unless they have been individually assessed as posing an unacceptable risk that justifies their detention.

#### 4 The need for an appropriate facility on Manus Island

9. If, despite the serious concerns expressed by the Commission and others about the third country processing regime, the Australian Government intends to continue to transfer asylum seekers to Manus Island, the Australian Government should allocate sufficient resources to establish an appropriate facility there in order to ensure that asylum seekers are treated in accordance with international standards.
10. There are serious concerns about the temporary facility in which asylum seekers are currently being detained on Manus Island. The Department of Immigration and Citizenship acknowledges significant deficiencies with the facility, including: health risks associated with the climate, site location, and the fact that accommodation consists mainly of military tents and camp beds; mental health risks associated with cramped conditions, the limited recreational facilities and their poor state; and inadequate infrastructure to support processing of refugee status assessments.<sup>8</sup>
11. The United Nations High Commissioner for Refugees (UNHCR) reported that when they visited in January 2013, conditions were 'harsh and, for some, inadequate', particularly noting the very hot, wet and muddy conditions, lack of privacy, inadequate recreational facilities, restrictions on access to medical care, and lack of freedom of movement.<sup>9</sup> Serious concerns about conditions have also been raised by other visitors to the temporary facility, including one of the members of the Expert Panel on Asylum Seekers.<sup>10</sup>
12. **Recommendation 2:** If the Australian Government intends to continue to transfer asylum seekers to Manus Island, it should establish an appropriate facility to ensure that asylum seekers are treated in accordance with international standards. Asylum seekers currently on Manus Island should be returned to Australia, and no further transfers should take place until an appropriate facility is established.

#### 5 Relevant international human rights standards

13. In establishing an appropriate facility for asylum seekers on Manus Island, the Australian Government should ensure that the facility is designed, developed and operated in a way that meets international standards.
14. Relevant international human rights standards are set out in treaties including the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT), the *Convention on the Rights of the Child* (CRC), and the *Convention Relating to the Status of Refugees* and its Protocol (Refugee Convention).<sup>11</sup>

15. In addition, specific international guidelines relating to the treatment of detained persons include, among others: the *Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment*, the *Standard Minimum Rules for the Treatment of Prisoners*, the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, and guidelines issued by UNHCR, including the *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*.<sup>12</sup>
16. These instruments cover a broad range of rights and freedoms. Some of the key human rights relevant to people who are subject to immigration detention include the following:
  - Everyone has the right to liberty and security of the person. No one should be subjected to arbitrary arrest or detention.<sup>13</sup>
  - All persons deprived of their liberty should be treated with humanity and respect for the inherent dignity of the human person.<sup>14</sup>
  - No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>15</sup>
  - The detention of a child should be used only as a measure of last resort and for the shortest appropriate period of time.<sup>16</sup>
  - In all actions concerning children, the best interests of the child should be a primary consideration.<sup>17</sup>
  - Every detained person should have access to independent legal advice and assistance.<sup>18</sup>
  - All persons have a right to the highest attainable standard of physical and mental health.<sup>19</sup>
  - Every person is entitled to respect for their human rights without discrimination.<sup>20</sup>
17. The Commission has drawn on relevant international human rights and detention standards in developing the *Human rights standards for immigration detention* (the Standards), which are attached to this submission as Attachment A.<sup>21</sup> The Standards set out minimum benchmarks for the humane treatment of people in immigration detention and include principles relevant to the design and operation of detention facilities.
18. The Standards incorporate overarching principles, for example, that accommodation in immigration detention should not be prison-like, that people in detention should enjoy the least restrictive environment possible and that the primary concern of detention authorities should be one of care for the well-being of people in detention.<sup>22</sup>
19. The Standards also deal with specific requirements, for example standards of accommodation, including climatic conditions, cubic content of air, minimum floor space, lighting, heating, ventilation, window area, sanitary facilities, sleeping arrangements, and provision of separate accommodation for men, women and families.<sup>23</sup> They also set out the need for appropriate educational, recreational, religious and medical facilities.<sup>24</sup>

20. **Recommendation 3:** In establishing and operating an appropriate facility for asylum seekers on Manus Island, the *Human rights standards for immigration detention* should be considered and applied.<sup>25</sup>

## 6 The need to avoid arbitrary detention

21. The Commission is particularly concerned about the potential for asylum seekers to be subjected to arbitrary detention on Manus Island, in breach of article 9 of the ICCPR and article 37 of the CRC.<sup>26</sup>
22. The Expert Panel on Asylum Seekers' proposals for third country processing specifically highlighted the need for protection and welfare arrangements in third countries to comply with international human rights standards, including the prohibition on arbitrary detention.<sup>27</sup> It appears that there is currently a significant gap between the conditions envisaged by the Panel and the reality on Manus Island. As of mid-March 2013, around 250 asylum seekers including around 30 children were detained at the temporary facility there, some of whom had been detained for around six months. One member of the Panel recently visited the facility and expressed serious concern about their lack of freedom of movement and the lack of safeguards to prevent arbitrary detention.<sup>28</sup>
23. To avoid being arbitrary, detention must be necessary and reasonable in all the circumstances of the case, and a proportionate means of achieving a legitimate aim. In determining whether detention is proportionate, consideration must be had to the availability of alternative means for achieving that aim which are less restrictive of an individual's rights.<sup>29</sup>
24. Children, in particular, should not be subjected to mandatory, arbitrary or prolonged detention. Under the CRC they should only be detained as a measure of last resort. If they are detained it must be for the shortest appropriate period of time.
25. In order to minimise the potential for arbitrary detention, the proposed regional processing centre on Manus Island should not be a closed detention centre. Rather, it should be designed and operated in a way that provides for the vast majority of asylum seekers accommodated at the facility to have freedom of movement – that is, freedom to come and go from the facility.
26. If it is deemed necessary to dedicate a section of the facility as closed detention, a person should only be detained in that part of the facility if they have been individually assessed as posing an unacceptable risk to the community and that risk cannot be met in a less restrictive way (for example, through the imposition of conditions such as curfews and reporting requirements).
27. **Recommendation 4:** The Manus Island regional processing centre should not be a closed detention centre. It should be designed and operated as an open facility which allows asylum seekers freedom of movement.

<sup>1</sup> Australian Human Rights Commission (AHRC), *Submission to the Parliamentary Joint Committee on Human Rights' Examination of the Migration (Regional Processing) package of legislation (Submission to the JCHR)* (January 2013). At

[http://humanrights.gov.au/legal/submissions/2013/20130211\\_migration.html](http://humanrights.gov.au/legal/submissions/2013/20130211_migration.html) (viewed 5 April 2013); AHRC, *Submission to the Inquiry of the Parliamentary Standing Committee on Public Works into the Proposed Redevelopment of the Villawood Immigration Detention Facility* (September 2009). At [http://humanrights.gov.au/legal/submissions/2009/20090918\\_villawood\\_immigration.html](http://humanrights.gov.au/legal/submissions/2009/20090918_villawood_immigration.html) (viewed 5 April 2013).

<sup>2</sup> Human Rights and Equal Opportunity Commission (HREOC), *A last resort? The National Inquiry into Children in Immigration Detention (A last resort?)* (2004). At

[http://humanrights.gov.au/human\\_rights/children\\_detention\\_report/index.html](http://humanrights.gov.au/human_rights/children_detention_report/index.html) (viewed 5 April 2013).

<sup>3</sup> See AHRC, *Immigration detention, asylum seekers and refugees: Publications*,

[http://www.humanrights.gov.au/human\\_rights/immigration/index.html#publications](http://www.humanrights.gov.au/human_rights/immigration/index.html#publications) (viewed 5 April 2013).

<sup>4</sup> See for example AHRC, *Submission to the JCHR*, note 1; AHRC, *Submission to the Expert Panel on Asylum Seekers* (July 2012). At

[http://www.humanrights.gov.au/legal/submissions/2012/20120720\\_asylum\\_seekers.html](http://www.humanrights.gov.au/legal/submissions/2012/20120720_asylum_seekers.html) (viewed 5 April 2013); AHRC, *Submission to the Inquiry of the Senate Standing Committees on Legal and Constitutional Affairs into Australia's agreement with Malaysia in relation to asylum seekers* (September 2011). At

[http://www.humanrights.gov.au/legal/submissions/2011/20110914\\_asylum\\_seekers.html](http://www.humanrights.gov.au/legal/submissions/2011/20110914_asylum_seekers.html) (viewed 5 April 2013); Submissions on behalf of the Australian Human Rights Commission (intervening), in *Plaintiff M106/2011 v Minister for Immigration and Citizenship*. At

[http://www.hcourt.gov.au/assets/cases/m70-2011/M106-2011\\_HRC.pdf](http://www.hcourt.gov.au/assets/cases/m70-2011/M106-2011_HRC.pdf) (viewed 5 April 2013); AHRC, *Submission to the Inquiry of the Senate Legal and Constitutional Legislation Committee on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* (May 2006). At

<http://www.humanrights.gov.au/legal/submissions/migration20060522.html> (viewed 5 April 2013); HREOC, *A last resort?*, note 2.

<sup>5</sup> AHRC, *Human rights standards for immigration detention (Immigration Detention Standards)* (April 2013). At <http://www.humanrights.gov.au/our-work/human-rights-scrutiny/immigration-detention-standards> (viewed 16 April 2013).

<sup>6</sup> AHRC, *Submission to the JCHR*, note 1.

<sup>7</sup> AHRC, *2008 Immigration detention report* (2008). At

[http://www.humanrights.gov.au/human\\_rights/immigration/idc2008.html](http://www.humanrights.gov.au/human_rights/immigration/idc2008.html) (viewed 4 April 2013); AHRC, *2009 Immigration detention and offshore processing on Christmas Island* (2009). At

[http://humanrights.gov.au/human\\_rights/immigration/idc2009\\_xmas\\_island.html](http://humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html) (viewed 4 April 2013);

AHRC, *2010 Immigration detention on Christmas Island* (2010). At

[http://www.humanrights.gov.au/human\\_rights/immigration/idc2010\\_christmas\\_island.html](http://www.humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.html) (viewed 4 April 2013).

<sup>8</sup> Department of Immigration and Citizenship (DIAC), *Statement of Evidence Submission 1 for the Parliamentary Standing Committee on Public Works* (20 March 2013), paras 2.1 and 2.5. At

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=awrc/regionalprocessing/subs.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=awrc/regionalprocessing/subs.htm) (viewed 5 April 2013).

<sup>9</sup> UNHCR, *UNHCR Mission to Manus Island, Papua New Guinea 15-17 January 2013* (4 February 2013). At [http://unhcr.org.au/unhcr/index.php?option=com\\_content&view=article&id=284:unhcr-finds-significant-legal-and-operational-inadequacies-at-manus-island&catid=35:news-a-media&Itemid=63](http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=284:unhcr-finds-significant-legal-and-operational-inadequacies-at-manus-island&catid=35:news-a-media&Itemid=63) (viewed 4 April 2013).

<sup>10</sup> See for example P Maley, 'Life at Manus Island 'is pretty tough'', *The Australian*, 4 March 2013. At <http://www.theaustralian.com.au/national-affairs/immigration/life-at-manus-is-pretty-tough/story-fn9hm1qu-1226589489403> (viewed 4 April 2013);

B Hall, 'Life on Manus Island: disease, heat, suffering', *The Age*, 5 January 2013. At <http://www.theage.com.au/national/life-on-manus-island-disease-heat-suffering-20130104-2c8z7.html> (viewed 4 April 2013); The Project, 'A Manus Island detainee speaks' (interview with an asylum seeker detained on Manus Island, 13 March 2013). At

<http://theprojecttv.com.au/exclusive-manus-island-detainee-interview-tonight.htm> (viewed 4 April 2013); Lateline, 'Refugee expert slams Manus Island detention centre' (interview with Paris Aristotle AM, 4 April 2013). At <http://www.abc.net.au/news/2013-04-05/refugee-expert-slams-manus-island-processing-centre/4610674> (viewed 5 April 2013).

<sup>11</sup> *International Covenant on Civil and Political Rights* (ICCPR) (1966). At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (viewed 4 April 2013); *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (1966). At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx> (viewed 4 April 2013); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) (1984). At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> (viewed 4 April 2013); *Convention on the Rights of the Child* (CRC) (1989). At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (viewed 4 April 2013); *Convention Relating to the Status of Refugees* (Refugee Convention) (1951), as amended by the *Protocol Relating to the Status of Refugees* (1967). At <http://www.unhcr.org/3b66c2aa10.html> (viewed 4 April 2013).

<sup>12</sup> United Nations General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988). At <http://www.un.org/documents/ga/res/43/a43r173.htm> (viewed 4 April 2013); United Nations, *Standard Minimum Rules for the Treatment of Prisoners* (1955). At <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> (viewed 4 April 2013); United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990). At <http://www.un.org/documents/ga/res/45/a45r113.htm> (viewed 4 April 2013); United Nations High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012). At <http://www.unhcr.org/refworld/docid/503489533b8.html> (viewed 4 April 2013). For a more complete list of relevant instruments, see AHRC, *Immigration Detention Standards*, note 5, section 1.

<sup>13</sup> ICCPR, art 9(1); CRC, art 37(b).

<sup>14</sup> ICCPR, art 10(1); CRC, art 37(c).

<sup>15</sup> CAT; ICCPR, art 7.

<sup>16</sup> CRC, art 37(b).

<sup>17</sup> CRC, art 3.

<sup>18</sup> CRC, art 37(d); United Nations General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988), principle 17. At <http://www.un.org/documents/ga/res/43/a43r173.htm> (viewed 4 April 2013).

<sup>19</sup> ICESCR, art 12(1).

<sup>20</sup> ICCPR, arts 2(1), 26; CRC art 2(1).

<sup>21</sup> AHRC *Immigration Detention Standards*, note 12.

<sup>22</sup> AHRC, *Immigration Detention Standards*, above, sections 2 and 18.

<sup>23</sup> AHRC, *Immigration Detention Standards*, above, section 18.

<sup>24</sup> AHRC, *Immigration Detention Standards*, above, for example, sections 14, 15, 16 and 17.

<sup>25</sup> AHRC, *Immigration Detention Standards*, above.

<sup>26</sup> For details of the Commission's concerns regarding arbitrary detention in the third country processing regime, see AHRC, *Submission to the JCHR*, note 1, section 11.

<sup>27</sup> A Houston AC, AFC (Ret'd), P Aristotle AM, M L'Estrange AO, *Report of the Expert Panel on Asylum Seekers* (August 2012), pp 79-84 and paras 3.46, 3.56-3.57.

<sup>28</sup> Lateline, note 10.

<sup>29</sup> See for example United Nations Human Rights Committee, *C v Australia*, Communication No 900/1999, UN Doc CCPR/C/76/D/900/1999 (2002), para 8.2. At <http://www.unhcr.org/refworld/docid/3f588ef00.html> (viewed 5 April 2013).