

Submission to the Joint Select Committee on Australia's Immigration Detention Network by the ACT Refugee Action Committee (RAC)

We are a Canberra-based committee with a mailing list of about 1,000 people who strongly believe that the Australian government should end mandatory detention and should treat asylum seekers more humanely. While we are primarily an advocacy body, some members of RAC have had considerable contact with refugees and we have drawn on this knowledge in compiling our submission. We believe that the treatment of asylum seekers is a humanitarian rather than a security issue and we are opposed to Australia imposing any form of offshore processing on those claiming asylum from persecution however they arrive. Australia should accept its share of refugees by processing refugee claimants who arrive in Australian territory and resettling those found to be refugees, and do so in accordance with internationally accepted standards which do not include indiscriminate mandatory detention.

Our responses to the first eight of the committee's areas of enquiry are as follows:

1. any reforms needed to the current Immigration Detention Network in Australia

We believe that the current Immigration Detention Network should be abolished and that asylum seekers should be processed on the mainland and housed in the community while their applications for asylum are being processed.

The mandatory detention system introduced by legislation in 1992 is in breach of the UNHCR guidelines for the detention of asylum seekers (*UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Feb 1999). The UNHCR has consistently condemned the use of mandatory detention for asylum seekers; as the body most closely involved in formulating refugee standards world wide it should be followed in this matter. The guidelines describe general detention of asylum seekers as inherently undesirable because of its breach of the fundamental freedom from arbitrary imprisonment and its failure to adhere to the provisions of Article 31 of the Refugee Convention prohibiting penalisation of asylum seekers for arriving without authorisation under national laws.

2. the impact of length of detention and the appropriateness of facilities and services for asylum seekers

It is well documented that detention has a detrimental effect on the health of asylum seekers and that holding them in prison-like facilities very quickly affects their mental health. They have almost all experienced trauma before they arrive, and detention only exacerbates this. There is a substantial literature on the devastating effects of lengthy detention on the mental health of asylum seekers under the Howard Government's policies. Much of this literature was examined and summarised in a report undertaken by a former RAC member, the late Rosemary Nairn: *Notes On Health And Mental Health For Asylum Seekers And Refugees Held In Immigration Detention Centres And Living In The Community* http://www.refugeeaction.org/downloads/Health_in_Detention.pdf. (See also: Patricia Austin, Derrick Silove & Zachary Steel, 'The impact of immigration detention on the mental health of asylum seekers', in Dean Lusher & Nick Haslam, eds, 'Seeking Asylum in Australia: Yearning to Breathe Free', Federation Press, 2007; and L Newman et al, 2008, 'Asylum detention and mental health in Australia', *Refugee Survey Quarterly*, Vol. 27, No. 3, pp 110–127.)

Predictably, the same damaging effects are now appearing among those detained under the Labor Government's regime of mandatory detention. The isolation from community, the lack of certainty, and the feeling of rejection inherent in the detention regime continue to operate both on Christmas Island and the mainland. The recent announcement by the Ombudsman that he was inquiring into the many incidents of self-harm and attempted suicide ('New numbers reveal an average of three threatened or actual attempts across the detention centre network per day' ABC Lateline 28 July) is

yet another reminder of the continuing detrimental effects of detention. As the ombudsman himself said: 'There is clearly something fundamentally wrong. We urgently need an evidence-based assessment of the extent and causes of these tragedies in detention facilities relative to the general population, and guidelines and protocols for preventing and managing them' (<http://www.ombudsman.gov.au/media-releases/show/190>). There is no way that mandatory detention can have anything but adverse mental health effects on large numbers of those concerned, and on that ground alone it should be abolished. No government or political party can now claim ignorance of the consequences of this policy.

The fact that the detention of asylum seekers is indefinite makes things worse because the detainees have no idea how long they will be held (even criminals know the length of their sentences!). The fact that they have no contact with the community and are unable to work gives them no preparation for life in Australia and makes it all the harder to adapt later. The psychological damage that is done by detention means they are likely to need more support and/or medical treatment when they eventually enter the community, thereby increasing the cost of detention (see point 7 below).

3. the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties

Employees helping asylum seekers must be trained to understand the effects of trauma and to appreciate that asylum seekers are not to be treated as criminals. There is considerable anecdotal evidence that attitudes towards detainees by employees in detention centres are often antagonistic and demeaning, and that appropriate training is lacking. Serco employees have said that they were not given even the minimal training required in the contract before being placed in charge of complex, emotionally charged situations. We submit that the inevitable result of a policy of detaining refugee claimants arriving by boat, and the political and media rhetoric surrounding it, is for those working within the system to believe detainees are wrongdoers and act accordingly. As regards the rhetoric, politicians, as well as the media, are guilty of using inappropriate and inaccurate language to describe asylum seekers, using terms such as 'illegal', 'criminal' and worse.

The AFP have used unwarranted force to deal with disturbances at detention centres. Since they are largely trained to deal with criminals, we doubt that they have the understanding and appropriate strategies for dealing with traumatised asylum seekers.

We believe that all those employed to work with asylum seekers should be specifically trained for this work and should in turn be supported in dealing with the effects that helping traumatised people may have on themselves.

4. the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network

Children should never under any circumstances be kept in detention. The general effects on health and wellbeing have been dealt with under the second point above, but as regards children detention is simply unacceptable. Such detention is contrary to UNHCR guidelines on detention and on refugee children, and is clearly in breach of the Convention on the Rights of the Child. In the words of the Royal Australian & New Zealand College of Psychiatry: '[detention] violates children's rights to care in developmentally appropriate environments. Detention is detrimental to children's development and mental health and has potential to cause long-term damage to social and emotional functioning.'

The College also refers to the effects on children and young people of exposure to trauma in the detention setting leading to post-traumatic stress disorder. It refers to documented 'serious suicide attempts in children and adolescents'. (RANZCP, Faculty of Child & Adolescent Psychiatry,

Position Statement #52, 'Children in Immigration Detention, adopted October 2003 and still current).

The present Labor and former Coalition Governments have both accepted that children should not be kept in detention except as a last resort, yet when the detention system is placed under pressure this continues to happen to large numbers (over 1,000 at one stage this year). It is also erroneous to claim that children held in facilities outside the main detention centre detention on Christmas Island do not experience many of the adverse effects of isolation from the general Australian community and of exposure to adult distress and self harming behaviour. The present system as a whole is especially harsh and damaging to children and young people, who should never be detained.

5. impact of detention on children and families, and viable alternatives;

The impact on children and families was dealt with under point 4 above. Viable alternatives to detention can be seen in many developed countries around the world (Sweden for example). Families with children can be housed in the community while their applications are being processed. A range of types of accommodation in the community should be provided for all asylum seekers, according to their different cultural and individual needs. They can then begin to adapt to Australian life while also recovering from the trauma that has driven them to seek asylum. Even if they are not found to be refugees, at least they will not have been subjected to further damage while in Australia.

In terms of having information on the whereabouts of asylum seekers in the community, compliance with reporting conditions would be sufficient in most cases (see UNHCR guidelines for example). Asylum seekers have an interest in the outcome of their claims for refugee status, and are unlikely to abscond during processing.

Keeping asylum seekers in detention sometimes results in family separation and the plan to send new arrivals to Malaysia may further contribute to this. An example of families being split up as a result of government policy is highlighted in the High Court challenge to reunite a family split by the Government's proposed Malaysia refugee deal (<http://www.abc.net.au/lateline/content/2011/s3246018.htm>). While a decision is pending on their fate, the mother and son are on Christmas Island while the father, already granted refugee status, is in the Maribyrnong detention centre. Will they be reunited? And if so, how long will it take?

Refugee advocates recognise that reversing the long-term policy of mandatory detention will require provision of physical resources in the community and this will take time. The sooner Australia starts this process the better. While there will be initial expense in ensuring there is suitable accommodation in the community during the processing of claims, it will be small compared with the massive costs of continuing with mandatory detention (see point 7 below).

6. the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers

As is clear above, we reject the use of immigration detention centres in connection with processing refugee claims, except in very rare circumstances and subject to review by the courts. Whatever detention centres are used for, it is dangerous to outsource the contracts to private providers as there is no guarantee that the running of the centres will be appropriate. The running of the centres is something the government should be responsible for and accountable for.

7. the impact, effectiveness and cost of mandatory detention and any alternatives, including community release

It is well documented that mandatory detention is extremely expensive and that community facilities are much cheaper. According to figures in the May 2009 report 'Immigration detention in

Australia; Community-based alternatives to detention (Second report of the inquiry into immigration detention in Australia Joint Standing Committee on Migration) in 2005-6 the daily cost per person of being held in a detention centre is between \$173 and \$1701 per day (the latter high figure being on Christmas Island when numbers were very small) while the daily cost per person of community-based detention is estimated at \$124 per day (sections 4.100, p117 and 4.111, p119). Bob Correll, Deputy Secretary, Department of Immigration and Citizenship stated that, 'Where someone has been in a detention situation in the community, generally the cost of that is lower than other forms of detention, such as residential housing, transit accommodation or in a detention centre' (section 4.113, p120).

The benefits of community housing to families have been outlined under point 5 above, but these benefits should be extended to all asylum seekers. Many of them are young single men who, with no family support, are especially vulnerable and need the support of a community. The treatment often required by people who are or have been held in detention adds further costs to an already costly system. Again from the May 2009 report quoted above, 'Andrew Metcalfe, Secretary, Department of Immigration and Citizenship noted the responsibilities associated with detaining a person and the costs and risks that these imposed on the department: [he said] there is a different type of cost. Being in a detention environment carries significant costs and risks as far as the individual is concerned, such as the deprivation of liberty. It also places a great responsibility on the department. *It is not just that it costs less for people to be in the community; there are actually fewer costs in terms of impact on individuals and, indeed, risks carried by the Commonwealth. So there are a range of reasons that you go down this path*' (Section 4.114, p120-121 our italics).

8. the reasons for and nature of riots and disturbances in detention facilities

Numerous reports from doctors and psychologists have given abundant evidence that desperate people do desperate things in order to try and bring an end to their misery. It is not unfair to say that this government induces hopelessness, anger and despair in detainees, and then stigmatises their consequent behaviour as discrediting them to refugee status. When detention centres, and Christmas Island in particular, are so distant from scrutiny of the media, watchdog organisations and the public, we have only official accounts of what takes place when there are disturbances. The inhumanity and callousness of Prime Minister Gillard's and Minister Bowen's descriptions of disturbances ('disorderly conduct', 'criminal behaviour') and their threats to reject refugee applications are in stark contrast to accounts by health professionals and church leaders who see detainees regularly and describe acute stress and despair, engendered by government policies.

We are not in a position to comment on the remaining areas of inquiry, but would like to make the following points:

- We agree with the UNHCR which has repeatedly criticised Australia's mandatory detention policy. It is both unnecessary and inhumane, as well as being expensive.
- Very little effort has been made to find alternatives to mandatory detention although there are examples of better practice around the world.
- Given its location, Australia has always been and will always be dealing with a very small number of asylum seekers compared to many other countries, both in the developing and the developed world, and should be able to manage their arrival in a more humane manner. In these circumstances, Australia should accept its legal and moral responsibilities to assess the refugee claims of those who reach its shores, by whatever means (note the prohibition on discrimination on the grounds of means of arrival in Art. 31 of the Refugee Convention), and to resettle in Australia those who are found to be refugees.

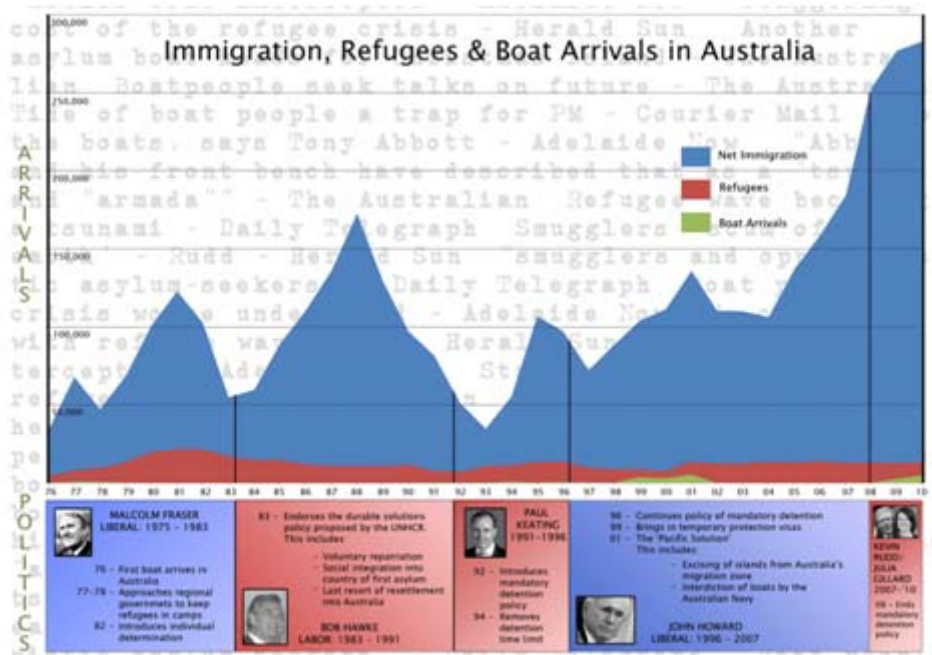
In real terms the number of refugees we accept has diminished steadily since the 1970s (see graph below) and we are in a position to take many more refugees than we do. Many economists and politicians (even the conservative PJ O'Rourke) have pointed out that refugees benefit the community economically, if they are given the chance to work. Australia should increase the quota of offshore refugees it accepts for resettlement, and should accept all those found to be refugees after arriving in Australian territory, without reducing the number of those being resettled from overseas.

Furthermore, the number of Irregular Maritime Arrivals (IMAs) is smaller than the number of non-IMAs. Even in the year 2009-2010 when there was a spike in IMAs, there were only 2172 IMAs, compared to 8150 non-IMAs (DIAC's Asylum Statistics, p.4, <http://www.immi.gov.au/media/publications/statistics/asylum/files>).

In that same year there were 2367 positive decisions (i.e. visas granted) to non-IMAs and 2148 positive decisions for IMAs (p 22). While decisions in that year clearly were not necessarily for arrivals in that year, this indicates that the grant rate for IMAs is very high.

According to a recent government document, 'Past figures show that between 70 and 97 per cent of asylum seekers arriving by boat at different times have been found to be refugees'... 'during the Rudd Government approximately 90-95 per cent of assessments completed on Christmas Island resulted in protection visas being granted. For example, of the 1254 claims assessed on Christmas Island between 1 July 2009 and 31 January 2010, only 110 people were assessed as not being refugees. These figures suggest that 1144 (approximately 91 per cent) of those claims were successful' (*Asylum seekers and refugees: what are the facts?* Janet Phillips, Social Policy Section, Updated 22 July 2011, <http://www.aph.gov.au/library/pubs/bn/sp/AsylumFacts.pdf>, p8).

Given the high percentage of boat arrivals who are found to be refugees, it is even more illogical to insist on keeping them in detention.



http://batteriesredux.blogspot.com/2010_08_01_archive.html

Boat arrivals and refugees as a proportion of immigrants, from 1976 to 2010

- While Australia has relatively small numbers of asylum seekers, the government must prepare for larger numbers as there are likely to be more refugees world wide in the coming years, with continuing instability in the Middle East as well as the impact of climate change and the conflicts and displacements that will arise as a result. As Ben Zala states, ‘Current trends in global security indicate that refugee-producing conflicts are likely to increase.’ (<http://www.worldpolicy.org/blog/2011/07/27/rocking-boat>). In his article, ‘Assessing the Security Challenges of Climate Change’ Obayedul Hoque Patwary explains: ‘Climate change is a very complex phenomenon that affects many aspects of international politics and acts as a stressor making situations of instability, conflict and humanitarian crises more likely and severe. Climate change presents both direct and indirect threat to the security and stability of the society and the state.’ (<http://sustainablesecurity.org/article/assessing-security-challenges-climate-change> May 2011).
- Most importantly, asylum seekers are a humanitarian rather than a security issue and should be treated as such. As far as we are aware, no boat arrival has ever been found to be a terrorist and the vast majority have been found to be refugees.

In conclusion we urge the government to dismantle the detention system as quickly as possible and establish a more humane and cheaper alternative for dealing with asylum seekers.

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