



Australia's Alternative Detention Model

The detention of asylum seekers has aroused intense community debate since the arrival of the first boats from Cambodia in 1989. The issue attracted further controversy with the opening of the Port Hedland immigration detention centre in north western Australia in 1991. The isolation of the centre, reports of poor facilities for detainees and the slow processing of their applications, generated adverse media attention and some deep seated community divisions.

Community concerns have been raised by numerous groups throughout Australia, including major Church and non-governmental organisations and the Human Rights and Equal Opportunity Commission.[1] Australian detention practice has also attracted adverse comment from international organisations including the US Department of State[2] and the International Secretariat of Amnesty International.[3]

In 1994 a number of peak organisations in Australia, including the Refugee Council of Australia and the National Council of Australia, endorsed a *Charter of Minimum Requirements for Legislation Relating to the Detention of Asylum Seekers*. This Charter, a copy of which is available below, is an important statement of agreed norms relating to the detention of asylum seekers.

While detention remains the norm for unauthorised boat arrivals, there have been a number of positive developments over the past three years, not least of these being:

- significant improvements in the conditions in the detention centres;
- priority processing of detainees at both primary and review levels;
- case management of detainees in some facilities;
- more rigorous and expert determination of claims;
- provision for release from detention for certain designated groups of asylum seekers.

Despite these significant improvements, serious concerns continue to be voiced by eminent community leaders. [4] The main criticisms focus on:

- the human rights implications of the detention of asylum seekers;
- the suffering imposed on the detainees; and
- the significant costs of the detention of asylum seekers.

The rationale for keeping asylum seekers who enter the country without immigration clearance is immigration control. An additional reason sometimes given is deterrence.

This submission recognises the place of detention as an instrument of immigration control. Detention is, however, costly - politically, socially and economically - as well as in human terms. It is therefore desirable to modify the present regime so as achieve a better balance between immigration objectives on the one hand and, the costs of detention on the other.

The Alternative Detention Model:

The alternative model, set out below, provides a legislative and regulatory framework for a more flexible detention regime.

Under this model restrictions of the current type on the liberty of Protection Visa applicants should be kept to a minimum, usually to less than 90 days. After the initial period in closed detention, most applicants would pass on to a more liberal regime; one that is most appropriate to the individual's circumstances. Regular review of each applicant's detention status is recommended so as to improve the ability to relate the applicant's circumstances more equitably to the restrictions imposed on his/her liberty. Finally, a review process is recommended to establish an ongoing process leading to a higher level of equity in the case management of each applicant.

The alternative model proposes a simple three stage regime. The stages represent a linear progression ranging from severe restrictions on personal liberty to increasingly liberal provisions.

The Alternative Detention Model

STAGE I: ARRIVAL, RECEPTION, & CONSIDERATION FOR RELEASE:

A. Presumption for release within three months:

There is a presumption that all applicants for a Protection Visa ("applicants") will be released from detention within three months of arrival, unless the case officer is satisfied that any one of the following grounds for detention exist with respect to the individual applicant:

B. Grounds for detention:

1. **IDENTITY:** The identity of the applicant cannot be verified as far as practicable.
2. **CLAIM:** A valid application for a Protection Visa - which includes the elements on which the applicant's claim for asylum is based - has not been lodged with DIMA.
3. **NATIONAL SECURITY:** The applicant is a threat to the national security or public order.
4. **LIKELIHOOD OF ABSCONDING:** There is a demonstrable likelihood that the individual applicant is likely to abscond.
5. **HEALTH CHECK:** The applicant has failed to complete a health check, or undertake to complete a health check, when required to do so by the case officer.

C. Special circumstances requiring priority processing:

The case officer shall give priority to the processing for release from detention of an applicant where any of the following special circumstances exist:

1. **CHILDREN AND CLOSE RELATIVES OF CHILDREN:** The applicant is less than 18 years of age, or is a close relative of another applicant who is less than 18 years of age.
2. **AGED PERSONS:** The applicant is aged greater than 75 years of age.
3. **UNACCOMPANIED MINOR:** The applicant is an unaccompanied minor.
4. **SINGLE WOMEN:** The applicant is a single woman.
5. **HEALTH:** The applicant has a special need based on health in respect of which a medical specialist (and/or an appropriately qualified medical practitioner) has certified that the applicant cannot properly be cared for in a detention environment.
6. **TORTURE/TRAUMA:** The applicant has a special need based on previous experience of torture or trauma in respect of which a medical specialist (and/or an appropriately qualified medical practitioner) has certified that the applicant cannot properly be cared for in a detention environment.

STAGE II: RELEASE FROM DETENTION:

A. Criteria for release from detention:

An applicant who complies with all of the requirements as set out in Stage 1, paragraphs B(1)-(5) must, within three months of arrival in Australia, be released from detention.

- (ii) The holder must report at regular intervals to DIMA, to be specified by the case officer.
 - (iii) The holder or the nominated close family member may be required to pay a bond to DIMA or sign a recognisance with DIMA.
 - (iv) If called upon to do so, the holder shall within 24 hours present to an officer of DIMA.
 - (v) The holder will be required to sign an undertaking in writing that he or she shall comply with the conditions of the visa and, in the event that a condition of this visa is breached, may be returned to detention.
 - (vi) Eligibility for Permission to Work will be available in the terms contained in Bridging Visa E.
 - (vii) Eligibility for Asylum Seekers' Assistance shall be in the terms currently available to other asylum seekers.
- (b) COMMUNITY ORGANIZATION RELEASE:**

The elements of this bridging visa are as follows:

- (i) The holder must reside at a designated address nominated by a recognised community organisation. Any change of address must be notified to DIMA within 48 hours.
- (ii) The holder must report at regular intervals to DIMA, to be specified by the case officer.
- (iii) If called upon to do so, the holder shall within 24 hours present to an officer of DIMA.
- (iv) The holder will be required to sign an undertaking in writing that he or she shall comply with the conditions of the visa and, in the event that a condition of this visa is breached, may be returned to detention.
- (v) Eligibility for Permission to Work will be available in the terms contained in Bridging Visa E.
- (vi) Eligibility for Asylum Seekers' Assistance shall be in the terms currently available to other asylum seekers.

(c) RELEASE UPON OWN RECOGNISANCE:

The elements of this bridging visa are as follows:

- (i) The holder must reside at a designated address. Any change of address must be notified to DIMA within 48 hours.
- (ii) The holder must report at regular intervals to DIMA, to be specified by the case officer.
- (iii) If called upon to do so, the holder shall within 24 hours present to an officer of DIMA.
- (iv) The holder will be required to sign an undertaking in writing that he or she shall comply with the conditions of the visa and, in the event that a condition of this visa is breached, may be returned to detention.
- (v) Eligibility for Permission to Work will be available in the terms contained in Bridging Visa E.
- (vi) Eligibility for Asylum Seekers' Assistance shall be in the terms currently available to other asylum seekers.

STAGE III. RETURN TO DETENTION:

A. BREACH OF CONDITIONS:

If the applicant breaches any one of the conditions set for his or her release, and fails to show good reason for such breach to the case officer, he or she may be returned into detention and shall not be eligible to re-apply for release until a period of 90 days from the time of return to detention.

B. CHANGE IN CIRCUMSTANCES:

If any of the circumstances set out in Stage 1, paragraphs B(1)-(5) occur, the applicant may be returned to detention.

and Communication, Murdoch University 14/10/95).

[5]The discord between current practice and relevant international instruments was widely canvassed in submissions to the Joint Standing Committee on Migration by the Attorney-General's Department, the Human Rights and Equal Opportunity Commission, the Department of Foreign Affairs and Trade and other agencies.