



Current Issues Brief
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The Detention of Boat People

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Major Issues

- All 'unlawful non-citizens' in Australia must be detained and, unless they are granted permission to remain in the country (through the grant of a visa), they must be removed as soon as practicable. This mandatory detention policy was set into legislation with bipartisan support in 1992, and endorsed through a major parliamentary inquiry in 1994. Mandatory detention applies to visa 'overstayers' as well as unauthorised arrivals. However people who arrive legally and overstay their visas and who apply for refugee or other visas can be given bridging visas. Unlike boat people, they are not held in detention for the duration of their refugee claims assessment.
- In 1998–99, 926 boat people were detained, in 1999–2000, 4174. With the dramatic escalation in the number of 'illegal' boat arrivals over the last 18 months, more people than ever before are being held in detention, and with riots, break-outs, a suicide and allegations of child abuse, attention has focused on the detention centres and their management. The legitimacy, and point, of detaining large numbers of people, 90 per cent of whom are being found (under the terms of the 1951 Refugee Convention) to be 'legitimate refugees', is being questioned. *The Australian* and *The Age* appear to be running campaigns against the policy, with calls to adopt 'more humane' overseas models of dealing with asylum seekers.
- Measures were adopted in the mid-1990s to speed up the processing of refugee claims for boat people. However time is inevitably taken to establish identities, and to appeal unfavourable decisions through the Courts. At the end of December 2000, of 2003 people in detention 31 per cent had been held for less than one month, 20 per cent between one and three months, 13 per cent between three and six months, 18 per cent six to 12 months and 18 per cent for a year or more.
- The fundamental rationale for detention in Australia, especially of unauthorised boat arrivals, has been that it is necessary in order to maintain the 'integrity' of our borders and of the migration program (and public faith in governments' capacity to control it). Critics argue that the policy discriminates against boat people (and other unauthorised arrivals), and that the harshness of detention compounds the distress suffered by already traumatised people, making their eventual integration into the community more difficult.
- Australia's mandatory detention policy for all unauthorised entrants and people without valid visas may be unique. Other features of our migration culture which set us apart from other countries include a lack of land borders, relatively low levels of illegal/asylum seeker inflows, a highly managed and historically significant immigration program, and a universal visa system.
- Sweden's 'reception centre' system in particular has been suggested as a model for Australia. Although Sweden receives more than twice as many asylum seekers, per capita,

as Australia, fewer are detained. Illegally arrived asylum seekers are mainly detained at the early stages, to establish identity, and end stages, to ensure compliance, of the refugee determination process. It is against Swedish law to detain children for longer than a few days, and women and children are housed in open accommodation near their male relatives. Reforms in 1997, which involved the transfer of management responsibility from the Swedish police and private security contractors to the Swedish Migration Board, have reportedly resulted in more open, more dignified and less stressful environments in the centres.

- Another feature of Sweden's immigration situation that differs from Australia is that asylum seekers comprise the bulk of immigration to Sweden. As refugees perform poorly in the Swedish labour market, Sweden's 'immigrants' have unemployment rates 2.5 times those of the native born. A majority of public opinion in Sweden as in other European countries is against accepting asylum seekers, 'integration' problems are greater than in Australia, and nearly 70 per cent of Sweden's population is against 'further immigration'.
- Australia's mandatory detention regime arguably reflects a highly developed migration system and culture as much as national isolationist or xenophobic tendencies. It also reflects the fact that as we have had relatively few illegal arrivals, detention has been a logistically feasible option. Claims by anti-detention campaigners of cruel and brutal conditions and treatment in Australia's detention centres are exaggerated. However the number of boat people in detention in Australia has risen rapidly, and the notion, and images, of thousands of people held in outback camps behind barbed wire are disturbing.
- A number of commentators have pointed out that the only practical way of stopping illegal asylum seeker inflows into Western countries is to change the 1951 Refugee Convention, which legitimises such movements. UK Home Secretary Jack Straw has proposed such changes. In the meantime, Australian governments, like other Western governments, struggle to balance conflicting needs and demands: to meet our Convention obligations; to discourage illegal boat arrivals and people smuggling; to not 'punish the victim', and to not harm the nation's image as an inclusive and compassionate and civilised society.
- Australia's Opposition is questioning the appropriateness of outsourcing the management of detention centres, and the Immigration Minister Mr Ruddock is examining the possibility of releasing women and children boat people into the community, along the lines of Sweden. While the implementation of the policy may be softened through such measures, it is unlikely that the major political parties will change their basic positions on the detention of boat people before the next election. Ms Pauline Hanson has remarked that the perceived failure of government to deal with illegal boat arrivals was a major feature in One Nation's unexpectedly large vote in the recent WA election.

Introduction

Australia's mandatory detention policy was set into legislation with bipartisan support in 1992 and came into force in 1994. With the dramatic escalation in the number of 'illegal' boat arrivals over the last couple of years, more people than ever before are being held in detention. In 1998–1999 3574 people were held in detention, 926 of whom were boat people; in 1999–2000 8205 people were held in detention, 4174 of whom were boat people.

Unlike earlier waves of boat people, recent arrivals have come from well outside our region, and through organised people smuggling operations. A high proportion have originated from 'hot spot' Middle Eastern countries (Iraq, Afghanistan) to which they cannot be returned. The outcome of detention for most is that they are being released into the community on three-year 'temporary protection' visas, with the subsequent prospect of permanent residence.

Riots, break-outs, a suicide and allegations of child abuse have focused media and public attention on the detention centres and their management. The legitimacy—and point—of detaining large numbers of people who are being determined (under the terms of the 1951 Refugee Convention) to be 'legitimate refugees', is being questioned. *The Australian* and *The Age* appear to be running concerted campaigns against the Government's detention policy. And there have been calls to replace Australia's detention regime with a 'more humane' overseas model, e.g. as in Sweden or the UK.

This Current Issues Brief:

- summarises the historical development of detention in Australia
- identifies key policy decisions and legislation
- describes the rationale for and criticisms (pros and cons) of detention
- lists international instruments and United Nations High Commissioner for Refugees (UNHCR) guidelines relevant to the detention of asylum seekers
- describes detention policies and practices in the major immigration countries (Canada, the US), and in the European countries that have been suggested as models for Australia (Sweden, the UK), and
- describes key differences in the immigration situation and cultures of these countries which might need to be considered when comparing detention practices.

Detention policy and legislation up to 1992

Australia's vast coastline has always held open the prospect of irregular people movement and doubtless some of this occurred over the years. It is only when the more concerted move of specific groups in significant numbers began in the 1970s that the term 'boat people' was coined.

Detention policy and practices in Australia have evolved along with reactions to successive waves of boat people over the last 25 years.

Pre-1989 detention regime for boat people

The initial wave of boat people comprised 56 boats from Vietnam containing a total of about 2100 people. The first arrived in Northern Australia in April 1976 and the last in August 1981. There were few concerns within the Government or the Department of Immigration about the 'bona fides' of these boat people (they were fleeing a regime that Australia had fought against), and they were 'processed' for permanent residence immediately on arrival. These mainly Vietnamese boat people were held in 'loose detention' in an open part of Westbridge (now Villawood) Migrant Centre in Sydney, together with migrants who had been granted visas under the humanitarian and refugee programs. They were not allowed to leave the Centre during processing and had to report for rollcall daily.

By the time of the last arrivals in the early 1980s doubts were increasing as to the 'bona-fides' of the boat people. Passengers on the last Vietnamese boat, which arrived on 5 August 1981, were detained in the former East Arm Quarantine Station in Darwin. From the late 1980s, Australia became a key player in the Comprehensive Plan of Action (CPA), an international agreement established in June 1989 to solve the problem of the outflow of refugees (and 'economic refugees') from Indo-China. The CPA involved the holding of boat people in camps in the region (Hong Kong, Thailand, Indonesia, Malaysia, the Philippines) pending assessment by the United Nations High Commissioner for Refugees (UNHCR) for repatriation or resettlement in a third country. By the end of the CPA in 1995, Australia had accepted 16 800 camp people through the 'offshore' humanitarian program.

The next wave of boat people, mainly from Cambodia, began to arrive in Australia from 28 November 1989. Passengers on the first of these boats (Pender Bay) were held for a period of three weeks at a holding centre near Broome normally used for illegal fishermen awaiting trial. They were subsequently moved to the Westbridge (now Villawood) Migrant Centre in Sydney. As in the case of the earlier Vietnamese boat people, they were detained in an unfenced area, but were not permitted to leave the Centre and had to report daily to the Australian Protective Service. A number of these boat people illegally left the Centre. According to the Immigration Department, about 60 boat people escaped in the period 1991 to 1993.¹

Detention centres

The progressive upgrading of security arrangements in migration reception centres, and the development of specific purpose detention facilities in recent years, has been the history of the development of detention centres in Australia.²

There are currently six detention facilities:³

- Villawood Immigration Detention Centre (IDC) in Sydney, established in 1976, capacity 270 people
- Maribyrnong IDC in Melbourne, established 1996, capacity 80
- Perth IDC, established 1991, capacity 40
- The Immigration Reception and Processing Centre (IRPC) in Port Hedland, WA, established 1991, capacity over 800
- Leased accommodation (IRPC) at the Curtin RAAF Air Base near Derby, WA, capacity 1000, and
- Woomera IRPC, SA, commissioned November 1999, capacity (by March 2001) 2000.

Woomera is the largest, and because of its isolated and harsh environment, the most notorious. Work to convert the former defence and space program facility will by March 2001 have cost about \$24 million.⁴ Villawood is to undergo a major redevelopment. There are plans for new centres, to be built in Darwin (capacity 500), and Brisbane (capacity yet to be determined).

Detention policy and legislation

Prior to 1992 there was a range of legislative provisions which enabled detention. These provisions often focused on the mode of entry rather than the status of the person involved. For example:

- under section 38 of the *Migration Act 1958*, a prescribed authority could order the detention of a 'prohibited immigrant' (defined in section 6 as someone who 'not being the holder of an entry permit that is in force enters Australia') for a period of up to seven days. This period could be extended.
- Sub-section 12 (2) of the *Immigration (Unauthorised Arrivals) Act 1980* provided that 'passengers' unauthorised to be in Australia be brought before a prescribed authority within 48 hours of arrest, or 'as soon as practicable after that period'. Sub-section 12 (3)

permitted detention of the passenger until: conveyance from Australia; granting of an Entry Permit; or Ministerial direction determined otherwise.

Before the Cambodian boat (Beagle) arrived on 31 March 1990, the *Migration Amendment Act 1989* was passed. This Act introduced significant changes to the system of processing boat people. In essence it provided a legal entitlement to a visa or entry permit, where the applicant met the legislative requirements for such a grant. The intention was to provide fairer and more certain criteria for the grant of visas. The intention was also, by providing a statutory merits review procedure, to remove the necessity for unsuccessful refugee visa applicants to appeal to the judiciary.

Mandatory Detention

The key policy decision that has shaped Australia's detention regime was to make detention mandatory for all 'unlawful non-citizens' (i.e. any non-citizen who does not hold a valid visa authorising stay in Australia). All unlawful non-citizens in Australia must be detained and, unless they are granted permission to remain in the country (through the grant of a visa), they must be removed as soon as practicable.

This policy was set into legislation through the *Migration Reform Act 1992*. This legislation provided a statutory code of procedures for most primary decisions. It clarified the status of people who arrive in Australia as either lawful or unlawful non-citizens, and, as indicated, it mandated detention for unauthorised non-citizens. The Act came into effect from 1 September 1994. At the same time, regulations were enacted which allowed the release of certain detainees on compassionate grounds, e.g. health, or where the needs of children could be better met outside the centre. In practice, few have been released; the needs of children are not often thought to be better met by separating them from their parents.

Mandatory detention applies to visa overstayers as well as unauthorised arrivals. However overstayers who apply for refugee or other visas are given 'lawful' status through the granting of bridging visas. They are not held in detention while their claims are assessed. The rationale for the different treatment of 'overstayers' has been that they have been through the usual 'offshore' identity and health and character checks.

Duration of detention

Since the mid-1990s, following the recommendations of the Joint Standing Committee on Migration (JSCM) in 1994, priority in claims processing has been given to asylum seekers in detention, and steps taken to speed up the process.⁵ However as the period of detention lasts as long as it takes to process refugee claims, there are limits to how far the process can be speeded up. It takes time to verify the identities and nationalities and stories of boat people who arrive without identification or travel documents. Detainees held for extended periods

(one or even two years) are those who have appealed unfavourable refugee determination decisions for judicial review through the Courts.

In 1998–99 three-quarters of detainees were held for less than one month. In that year about one-third of unauthorised arrivals (many from China) failed to make claims 'which would prima facie engage Australia's protection obligations', and were turned around quickly, most within 28 days. The average processing time for the initial, Departmental decision on boat people's refugee claims in 1998–99 was 50 days. Most of those unsuccessful at the primary stage appeal to the Refugee Review Tribunal (RRT). The average time taken by the RRT to finalise a refugee claim in 1998–99 was 66 days.⁶

With the rapid increase of boat arrivals, and the change in source countries, the rate of processing in 1999–2000 was slowed, despite the hiring of more staff. At the end of December 2000, of the 2003 people in detention:

- 31 per cent had been held for less than one month
- 20 per cent one to three months
- 13 per cent three to six months
- 18 per cent six to 12 months, and
- 18 per cent for a year or more.⁷

Outsourcing

The only significant change in the detention regime since the 1992 legislation came into effect has been the outsourcing of the management of detention centres. In November 1997 the Immigration Department contracted the day-to-day operational management of the detention facilities to Australian Correctional Services Pty. Ltd (ACM), a subsidiary of Wackenhut Corrections Corporation, headquartered in the USA.

Outsourcing of the management of detention centres has been controversial, with accusations of brutal treatment by ACM employees following riots at Woomera in June and August last year.⁸ This controversy has heightened following suggestions by the Immigration Minister that greater powers of search and restraint would be sought in order to control violence in the centres, and to deport detainees who assaulted guards or police officers.⁹ The Labor Party has called for a judicial inquiry into conditions in the detention centres, questioning the appropriateness of privatising their day-to-day operations.¹⁰

International instruments relevant to immigration detention

The principal international agreements relevant to Australia's immigration detention arrangements are:

- the UN Convention Relating to the Status of Refugees 1951, which was acceded to by Australia on 22 January 1954, and the UN Protocol Relating to the Status of Refugees 1967, acceded to 13 December 1973
- the International Covenant on Civil and Political Rights (ICCPR) 1966, ratified by Australia 13 August 1980
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (Convention Against Torture), ratified by Australia 8 August 1989, and
- the Convention on the Rights of the Child 1989, ratified by Australia 17 December 1990.

The most relevant of these is the 1951 UN Refugee Convention and its 1967 Protocol. Article 26 of the Convention states that refugees lawfully in a territory should have the right to choose their place of residence and move freely. Article 31 states that States shall not impose penalties on refugees on account of their illegal entry. Also relevant is Article 9 of the ICCPR, which states that:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Formal 'Conclusions' of the Executive Committee of the United Nations High Committee for Refugees (EXCOM), which provides guidance to States on the implementation of their Convention obligations, are that detention should be avoided. However it is acceptable:

- in order to determine the identity of the asylum seeker, and where identity or travel documents have been destroyed
- while the validity of refugee status claims are being examined, and
- in order to protect national security and order.¹¹

Rights advocates and critics of detention policy have claimed that Australia's mandatory detention policy is in contravention of our international treaty obligations. (See statement below by former Human Rights Commissioner Chris Sidoti). Successive Australian governments have maintained that it is a fundamental legal principle, in domestic and international law, that in terms of national security, the State determines which non-citizens are permitted to remain and the conditions under which they may be removed.¹²

The rationale

The fundamental rationale for detention in Australia, especially of unauthorised boat arrivals, has been that it is necessary in order to maintain the 'integrity' of the offshore migration (including refugee) program:

If you build a system which requires individuals to present to the Australian Government in advance of arrival—through one form or another—to seek approval for entry and if the system says that not following that requirement will be ignored on arrival, that undermines our universal visa system.¹³

Australia's mandatory detention regime has been criticised as setting us apart from the rest of the world. However there are a number of other migration related features which also set Australia apart from the rest of the world.

- Australia maintains a large migration program, which is managed offshore, of skilled as well as family migrants, and maintains also a large offshore humanitarian entry program. Unlike in Europe and the US, immigration to Australia is not dominated by illegal and/or asylum seeker movements.
- Australia operates a universal visa system. It maintains and manages entry as well as exit (arrivals and departures) data like no other country. And Australia has avoided the worst of social problems such as slave labour associated with large-scale asylum seeker inflows.
- Australia has no land borders.

The importance that was attached by the previous Labor Government to the role of detention in immigration control is evident in statements by the then Immigration Minister the Hon. Gerry Hand in debates surrounding the introduction of the *Migration Reform Act 1992*. The importance that has been attributed by governments to immigration control in maintaining public support for Australia's immigration program is also shown in these debates:

The Government is determined that a clear message be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community ... Australia cannot afford to allow unauthorised boat arrivals to simply move into the community.¹⁴

The essential rationale by successive governments for detention has been, in other words, that detention is a part of a system of immigration planning and levers and controls that work, that are well-managed, and that have 'integrity' (i.e. that will be enforced).

Practical considerations

Having people in detention has also been justified in that it ensures:

- the availability of people, so that any claims for refugee status are able to be processed promptly
- that people do not enter the Australian community until their identities are established, and they have undergone health and security checks, and
- that if claimants are unsuccessful, they are available for removal.

It has also been argued that releasing people into the community and onto welfare would encourage thousands more people who would not qualify for visas to head to Australia. (Further background as to the rationale and perceived need for detention at the time the mandatory detention policy was being introduced can be obtained from the 1994 report of the JSCM *Asylum, Border Control and Detention*, and submissions to the inquiry. Further background can also be obtained from parliamentary debates, especially during the period 1992–94, when the *Migration Reform Act 1992* was being debated).

Critics

Critics of mandatory detention, including human rights organisations such as Amnesty International, and church groups, have argued that the policy is discriminatory in its application. People who enter as tourists or visitors and overstay their visas and lodge refugee claims are issued bridging visas, enabling them to remain at liberty while their claims are assessed, whereas boat people are detained throughout the process. They argue that the harshness of detention compounds the distress suffered by already traumatised and desperate people, making their eventual integration into the community more difficult.

Coalitions of refugee support and church and community groups have formed to lobby against the detention of asylum seekers.¹⁵ They argue that the harshness of Australia's treatment of boat people is destroying our reputation overseas as a welcoming, tolerant and 'civilised' country.¹⁶ As indicated, some claim that detention contravenes Australia's international treaty obligations, including those relating to the rights of children. According to former Human Rights Commissioner Chris Sidoti:

The (Australian Human Rights) Commission has repeatedly advised the government that its policy of mandatory detention violates voluntarily accepted international obligations. It is disproportionate and inhumane. When it is prolonged it is a gross abuse of human rights.¹⁷

Some have even described Australia's detention policy as a reversion to our earlier White Australia policy mentality, as indicative of the nation's deep-seated racism and 'fear of the other', and as appealing to prejudice and fostering xenophobia in the broader community.¹⁸

Practical criticisms

Practical criticisms of mandatory detention include:

- it is more costly in the short-term than alternative schemes such as releasing people into the community under bond or reporting requirements. A day in detention costs an average of \$105 per person
- it is more costly in human as well as financial terms in the longer term, as settlement and integration into the labour market and society following possibly lengthy periods spent in detention will be more problematic, and
- the secrecy attached to the management of detention centres can foster cultures of harsh and inhumane treatment of asylum seekers.

Current criticism: the changed context

The JSCM decided in 1994 that the risk and likelihood of boat people absconding outweighed the humanitarian concerns, as well as the practical concerns, of critics of the policy.¹⁹ There would still appear to be a good deal of anger in the community at the mode of entry of boat people: protecting the integrity of our borders and of our immigration program remain political imperatives. The situation presented by the current wave of boat people is however different from earlier waves, which comprised people from source countries in or close to our region. Many of these were refused refugee status and quickly returned to their countries of origin.

Most of the current wave of boat people are arriving courtesy of elaborate people smuggling operations. They are not able to be returned to the 'hot-spot' Middle Eastern countries they have come from (Iraq, Afghanistan, Iran). They are being found to have a 'well-founded fear of persecution' on the basis of the credibility of their stories. In any event, Australia does not have agreements with the countries they have originated from, or have been living in, or have transited, to take them back. (An Iraqi boat person may have been living in Iran, and come via Indonesia.) They are being given three-year temporary protection visas.

This changed situation has been perceived as weakening the rationale for mandatory detention. Detention may facilitate the removal from Australia of the 10 per cent of the current wave of boat people who are not being found to qualify for temporary protection visas. However, detaining people in harsh conditions, 90 per cent of whom are going to be allowed to stay, is being portrayed, including in recent months by significant by sections of the media, as pointlessly punitive. It is also being portrayed as based on the cynical objective of dissuading further arrivals.²⁰ Immigration authorities have denied that the objectives of detention include 'punishing' illegal boat arrivals. However information material prepared for distribution in source and transit countries, designed to discourage

people from resorting to people smugglers, would appear to be maximising the potential deterrent effect of Australia's mandatory detention regime. Recent information kits have included a forbidding picture of Woomera detention centre, and the warning that illegal entrants are held in detention far from Sydney.²¹

Overseas comparisons

Not surprisingly, the countries with detention policies and practices most similar to Australia's are the other major countries of immigration, the US and Canada.

The US

Tough legislation, designed to weed out and discourage 'economic refugees', including mandatory detention in a range of circumstances, was introduced in the mid-1990s in the US following rapid increases in asylum seeker numbers in the early 1990s, largely from Latin American, Asian and African countries. At the end of 1995 the backlog of asylum claims in the US stood at 464 000. In 1999, 41 377 applications were lodged, down from 84 839 in 1997.²² The number of people in Immigration and Naturalisation Service (INS) detention in 1995 was 6000. There are currently about 20 000 people in INS detention, about a third of whom are asylum seekers.

Under the *Illegal Immigration Reform and Individual Responsibility Act 1996*, asylum seekers who arrive at airports or other ports of entry are automatically detained while INS officers determine whether they have a 'credible fear' of persecution. Those who fail the test are returned to their home countries. Those who 'pass' are detained in INS detention. Also detained are people who lodge 'defensive' asylum claims, i.e. to prevent removal when they are found to be illegally in the country.²³ About 40 per cent of asylum seeker detainees are paroled, i.e. they are allowed to stay with family or friends while their claims are assessed. (Seventy five per cent of those paroled in 1999 were reported as attending their claim hearings. Put another way, 25 per cent disappeared into the community.)²⁴

The INS operates 9 detention centres itself, and 6 more are run privately. In addition, the INS rents 'thousands' of beds in 'hundreds' of jails nationwide. (It has been estimated that more than half of INS detainees are in private state prisons and county jails).²⁵ The system has been widely criticised as having 'severe institutional problems', and human rights groups (including Amnesty International and Human Rights Watch) have criticised conditions. 'Many reports' of abuse by officers against detainees have been filed.²⁶

Canada

Of the immigration countries, Canada has been most generous to asylum seekers and has maintained the least tough detention regime. However following public consternation at

the arrival of boat people (mainly from China) over the last few years, it has toughened its detention policy.

Citizenship and Immigration Canada's official enforcement fact sheet on 'Arrests and Detention' states that:

As part of its enforcement of the *Immigration Act*, CIC can arrest and detain anyone who has, or may have, violated the Act when there are grounds to believe that person will not appear for other immigration proceedings or poses a danger to the public. People arrested may be put under detention in a jail or an immigration detention centre. Their detention will be reviewed by a senior immigration officer or an immigration adjudicator who may release them under certain terms and conditions.²⁷

In 1997–98 a total of 7080 persons was detained. The average length of detention in jails or correctional facilities was 18 days, and in immigration holding centres 8 days. Conditions for release include 'promises' to appear at hearings, and bonds.

Most boat arrivals (from China) are now held in detention. (It was common for asylum applicants not to show up for their claims determination process. The assumption is that they owed money for their passage and moved quickly on to the US). About 600 boat people arrived during the summer of 1999, and about 500 were held in detention while their claims for refugee status were assessed.²⁸

Sweden²⁹

The Swedish Aliens Act allows detention of asylum seekers on three grounds: for identification, if there is a risk the asylum seeker may disappear into the community, and if it is likely that their application for refugee status will be rejected. As in Australian asylum seekers who arrive with no or fake documents are detained. They are however released quickly into the community once their identities are established. The average time spent in detention varies between two weeks and two months. However there is no maximum period, and rejected asylum seekers whose deportations cannot be implemented due to conditions in their home countries can face lengthy detention.

Despite having more than twice as many asylum seekers per capita as Australia, fewer people are detained. Besides at the beginning, during identification, detention is mainly used at the end of the refugee determination process to ensure departure, where this is deemed necessary. In 2000, there were an estimated 17 000 asylum seekers in Sweden; the combined capacity of Sweden's four detention centres is 120. The major 'closed reception centre' is Carlsund, near Stockholm. Of the four 'reception centres' two are near Stockholm, one near Gothenburg and one near Malmo.

Accommodation is provided for needy asylum seekers in 'reception' or 'investigation' or 'transit' centres in the form of self-contained flats or boarding-house type housing. Staying in government-provided centres while claims for refugee status are assessed is not

compulsory; asylum seekers are encouraged to move into the community, especially if they have relatives or friends in Sweden. In 2000 approximately 10 000 out of the 17 000 asylum seeker population resided outside the centres. Asylum seekers who wait over four months for a decision may be granted permission to work. According to the UNHCR, however, few find it.

Since undergoing major reforms in recent years, Sweden's detention system is being put forward as a model to be emulated by other countries. Before 1997, hunger strikes, suicide attempts and disturbances including a serious hostage situation (in which a guard was held at knifepoint) had been extensively covered in the Swedish media, and detention policy had become a controversial public issue. The subsequent changes, the main features of which are described below, have been credited with creating a less stressful and more dignified environment for the processing of illegal arrivals and refugee claims, without sacrificing the Government's 'enforcement' objectives.

- On 1 October 1997 the Swedish Government transferred primary responsibility for detention from the Swedish National Police, and the private security contractors who managed the day-to-day operations of the centres, to the Swedish Migration Board (SMB). The role of the SMB was to create 'a more civil, culturally sensitive and open detention policy'.³⁰ According to the UNHCR, not only has the treatment of asylum seekers improved, but access to the asylum process has also improved because the personnel running the centres also conduct refugee status determination.
- Each detainee is assigned a caseworker trained in conflict and violence prevention and counselling. The primary role of the caseworker is to inform detainees of their 'rights', including to legal assistance. Caseworkers assist with the preparation of asylum claims, liaise with officials regarding the progress of detainees' cases, and provide 'motivational counselling' to assist 'voluntary departure', or less stressful deportations, in the event of rejection of a claim.

Another significant feature of Sweden's detention system—one that is being examined by Australia's Immigration Minister Mr Ruddock—is the non-detention of children. Under Swedish law children may not be detained for longer than a maximum of three days. Women and children are housed at open 'reception centres', near their male relatives.

The UK

The UK has recently become the top European destination for asylum seekers, with an estimated 97 900 applications (76 040 head of household claims) in 2000. The accommodation of asylum seekers, and the removal of failed asylum seekers, are problems that are widely described as of crisis proportions. The annual bill for supporting asylum seekers has reached BRP 835 million (AUD 2.3 billion).³¹ The regional dispersal policy is described in the UK media as 'collapsing', with people preferring to stay—possibly in poverty—in London rather than accept free accommodation elsewhere.³² Up to 70 per cent

of failed asylum seekers are acknowledged by authorities as simply disappearing into the community.

Border applicants may be detained pending determination of their claims. However an asylum seeker may be temporarily admitted into the country if the Home Office's Immigration Service determines 'that they have access to suitable accommodation, and that they will stay in a known location'. An asylum seeker detained for longer than six days can apply for bail if no decision on their request has been made. They can also apply for bail pending the hearing of an appeal against a negative first decision.

Government policy is to focus detention at the end of the determination process, in order to facilitate removal of rejected asylum seekers. In March 2000 the Government opened a new detention centre at Oakington in Cambridgeshire where 'manifestly unfounded' claimants are detained for one week in an accelerated determination procedure.

The UK currently has places for about 900 detainees in purpose-built detention centres, and three more are on the books. Plans for the placement of asylum seekers in jails (as in the US) are proving controversial.

The Conservative Party has had a policy of compulsory detention for all asylum seekers, but the numbers and costs involved may prove prohibitive.³³

Lessons from overseas: some other comparisons

In comparing detention practices in the countries that have been put forward as models for Australia, the considerable differences in migration, and perhaps social welfare, situations and cultures in these countries need to be kept in mind.

- Immigration authorities in the US have openly acknowledged that illegal migration is 'out of control'.
- In a reverse of the situation that has pertained in Australia, Canada accepts three times as many asylum seekers ('refugees landed in Canada') as offshore refugees (people identified by the UNHCR as in need of resettlement in a third country).
- The majority of migration since 1989 into European countries has comprised asylum seekers and/or illegal entrants, and subsequent family reunion.
- The size of asylum seeker inflows are large—16 400 applications for refugee status in Sweden (population 8.9 million) in 2000, and 97 900 in the UK (population 60 million), compared with Australia, 13 000 in 1999–2000 (population 19 million).
- Reforms in Sweden's detention centres may have brought about a safer and more humane environment. However they have not meant the end of disturbances and

break-out and suicide attempts by (as in Australia) people refused leave to remain and awaiting deportation.³⁴

- Many European countries, including Sweden, have identity card systems which make asylum seekers much easier to track in the community. Without such identification or residency papers, gaining access to services or lawful employment is not possible, and apprehension is easier.
- Many 'voluntary departures' from Sweden comprise people who simply cross the border into another European country. It is also likely that many of those granted temporary stay visas (including Iraqis and Afghanis) move on to another European country, e.g. Germany or the UK.
- While European countries house most of their illegally arrived asylum seekers in 'open' rather than 'closed' 'reception centres', or in hostels, destitute asylum seekers have little choice as to where they go. In some of these centres and hostels, in areas where the pressure of numbers is greatest, serious overcrowding and violent disturbances are common. From the descriptions of observers, conditions in them have at times been appalling.³⁵ They would appear to be more deserving of the 'hellholes' description than Australia's detention centres.³⁶
- Asylum seekers, while perhaps initially more warmly received in Sweden, perform poorly in the Swedish labour market (as do refugee intakes in Australia). As asylum seekers comprise the bulk of immigration to Sweden, Sweden's 'immigrants' have unemployment rates 2.5 times those of the native born.³⁷
- A majority of public opinion in the UK and Sweden is against accepting asylum seekers, a greater majority (nearly 70 per cent in Sweden) is against 'further immigration', and 'integration' problems and incidents of racial violence are more common than in Australia. (A report by the UK Association of Chief Police Officers has claimed that racial abuse towards refugees and asylum seekers has become 'common currency').³⁸
- UK Home Secretary Jack Straw recently acknowledged that 'Labour has lost control of the asylum system and allowed it to be taken over by criminal gangs'.³⁹ The asylum seeker issue in the UK is near the top of voter concerns. The Deputy Director of Britain's Immigration Service has claimed that mandatory detention is the only effective way to keep track of illegal immigrants.⁴⁰ And sixty per cent of those surveyed in a recent UK opinion poll supported mandatory detention for asylum seekers.⁴¹

Australia's Immigration Minister returned from overseas visits in January, including to Stockholm and London, apparently unconvinced of the advisability of changing Australia's mandatory detention policy:

Many other countries are increasingly moving towards detention of unlawful arrivals and those countries without mandatory detention often experience great difficulty in locating failed asylum seekers when it is time for their removal.⁴²

Conclusion

Australia's mandatory detention regime arguably reflects a highly developed migration system and culture as much as national isolationist or xenophobic tendencies. And the fact that as we have had relatively few illegal arrivals, detention has been a logistically feasible option. While there is obviously room for improvement, Australia's detention practices, despite some highly publicised problems, stand up well in terms of international comparisons and standards.⁴³ However the number of boat people in detention in Australia has risen rapidly. Claims by anti-detention campaigners of cruel and brutal conditions and treatment appear to be exaggerated.⁴⁴ However the notion, and images, of thousands of people held in outback camps behind barbed wire are disturbing.

An increasing number of commentators are pointing out that the only practical way of stopping illegal asylum seeker inflows into Western countries is to change the arguably outdated 1951 Refugee Convention, which legitimises such movements.⁴⁵ UK Home Secretary Jack Straw has proposed the assessment of asylum seekers in their own regions, and the subsequent organisation of repatriation, or resettlement in third countries,⁴⁶ along the lines of the 1989–95 international Comprehensive Plan of Action for Indo-Chinese refugees (described above).⁴⁷ With 137 signatories, changing the UN Refugee Convention could be a lengthy process. In the meantime, Australian governments, like other Western governments, struggle to balance conflicting needs and demands: to meet our Convention obligations; to discourage illegal boat arrivals and people smuggling; to not 'punish the victim'; and to not harm the nation's image as an inclusive and compassionate and civilised society.

As indicated, the Immigration Minister is examining the possibility of releasing women and children boat people into the community, along the lines of Sweden. The Opposition is questioning the appropriateness of outsourcing the management of the centres. However, while the implementation of the policy may be softened, it is unlikely that either of the major political parties will raise the possibility of scrapping mandatory detention for the bulk of illegal boat arrivals, at least before the next election. Protecting the borders would appear to remain a political imperative. Ms Pauline Hanson, in an interview with ABC Radio Sunday 11 February, remarked that the perceived failure of government to deal with illegal boat arrivals was a major feature in One Nation's unexpectedly large vote in the recent WA election.⁴⁸

Endnotes

1. Joint Standing Committee on Migration (JSCM), *Asylum, Border Control and Detention*, tabled February 1994, p. 30.
2. See the 1994 JSCM report, *ibid.*, for more detailed historical background.
3. See Department of Immigration and Multicultural Affairs (DIMA) Fact Sheet 82, *Immigration Detention*, <http://www.immi.gov.au/facts/82detain.htm>.
4. Terry Plane, 'Desert gulag ups capacity', *The Australian*, 25 January 2001.
5. JSCM, 1994, *op. cit.*
6. JSCM inquiry report *Not the Hilton*, tabled 4 September 2000, p. 7.
7. Figures provided by the Department of Immigration and Multicultural Affairs, February 2001.
8. See for example Luke McIlveen, 'Baton beatings claimed', *The Australian*, 26 January 2001.
9. Andrew Clennell and David Reardon, 'Injections, expulsion for rioting refugees', *The Sydney Morning Herald*, 23 January 2001.
10. Hon. Duncan Kerr, MP, Shadow Minister for Justice, Media Statement, *Human Pressure Cooker Boils Over Again*, 31 January 2001.
11. See UNHCR site at <http://www.unhcr.ch/welcome.htm>.
12. Hon. Philip Ruddock, MP, MPS 129/2000.
13. Evidence provided by the Department of Immigration. JSCM, 1994, *op. cit.*, p. 109.
14. House of Representatives, *Debates*, 5 May 1992, p. 2371.
15. For example the Justice for Asylum Seekers Alliance, based in Melbourne.
16. 'A statement from the Justice for Asylum Seekers Alliance', *Migration Action*, September/October 2000.
17. Chris Sidoti, 'Asylum seekers: human rights obligations', *Migration Action*, *ibid.*
18. Andy Hamilton, 'Alternatives: isolation or compassion', *Migration Action*, *ibid.*
19. JSCM, 1994, *op. cit.*
20. See articles and editorials in *The Australian* and *The Age* in December 2000 and January 2001.
21. DIMA information kits, 2000 and 2001.
22. The US Committee for Refugees Internet site is at <http://www.refugees.org/>.
23. USA detention policy and legislation is described in CQ Researcher, *Global Refugee Crisis*, vol. 9, no. 25, 9 July 1999.
24. Elizabeth Llorente, 'Immigration detention: a rapidly growing business', *The Recorder Online*, 11 April 1999.

25. Julie Sullivan, 'Prisons: Conditions severe even for jails', *Oregon Live*, 10 December 2000.
26. Elizabeth Llorente, 'INS acts to curtail abuse of detainees', *The Bergen (N.J.) Record*, 28 January 2001.
27. Citizenship and Immigration Canada, *Enforcement Fact Sheet*, <http://www.cic.gc.ca/english/index.html>.
28. US Committee for Refugees, *ibid.* For an investigative report into the detention of Canada's boat people, see Chris Wood, 'Seeking Freedom', *Maclean's*, 22 November 1999.
29. Information in this section, unless otherwise indicated, is from UNHCR statistics and country survey on Sweden, at <http://www.unhcr.ch/world/euro/sweden.htm>, and an unpublished report by Grant Mitchell, former employee of the Swedish Migration Board, *The Swedish Model of Detention*, 28 November 2000. (Available from the Parliamentary Library.)
30. According to former employee and researcher Grant Mitchell, *ibid.*
31. Steve Doughty, 'Asylum bill soars out of control to GBP 835 million', *The Daily Mail (UK)*, 12 February 2001.
32. Martin Bright and Kamal Ahmed, 'Refugees pour back to London: Asylum dispersal system collapses as record numbers seek refuge in UK', *The Observer (UK)*, 31 December 2000.
33. Information in this section is from the UNHCR country survey at <http://www.unhcr.ch/world/euro/uk.htm>, and the Centre for Immigration Studies electronic news service, CICNEWS@cis.org.
34. Grant Mitchell, *op. cit.*
35. See description of the Red Cross reception centre at Sangatte, Calais, by Oliver Burkeman, 'No man's land', *The Guardian (UK)*, 13 December 2000. See also description of refugee hostel at Celle, Germany, by Roger Boyes, 'New Berlin wall to segregate refugees', *The Weekend Australian*, 12 August 2000.
36. The Hon. Malcolm Fraser described Woomera detention centre as a 'hellhole that should be shut down', after receiving the 2000 Human Rights medal at a ceremony in Sydney 10 December 2000. Reported, *inter alia*, in Bernard Lane, 'Shut down Woomera hellhole: Fraser', *The Australian*, 11 December 2000.
37. Thomas Bauer et al., 'Immigration Policy, Assimilation of Immigrants and Natives' Sentiments towards Immigrants: Evidence from 12 OECD Countries', *Discussion Paper No. 187*, Institute for the Study of Labor (IZA), Bonn, August 2000.
38. Described in Vanessa Allen, 'Police chiefs warn of immigrant race-hate time bomb', *Press Association (UK)*, 22 January 2001.
39. In a speech in London 6 February, quoted in Michael Clarke, 'We're powerless to halt the migrants', *The Daily Mail (UK)*, 7 February 2001.
40. *AAP, Fed*: 'UK official backs immigration detention policy', 15 January 2001.
41. Described in Andrew Woodcock 'Nearly half want total bar on asylum seekers: poll', *Press Association (UK)*, 7 January 2001.

42. Hon. Philip Ruddock, MP, MPS 011/2001, 4 February 2001.
43. See inspection reports and conclusions, JSCM , 2000, op. cit.
44. JSCM inspections of the detention centres in late 2000 found that the facilities were 'adequate', that their administration was 'appropriate and professional', that the cultural sensitivities of detainees were 'accommodated', and that Australia was taking seriously its responsibilities to those in care. JSCM, 2000, *ibid*, pp. 84 and 89.
45. See A. Millbank, 'The problem with the 1951 Refugee Convention', *Research Paper no. 5 2000-01*, Department of the Parliamentary Library, 5 September 2000.
46. Mike Peacock, 'Straw calls for shake-up of UN asylum convention', *Reuters*, 6 February 2001.
47. Alan Travis and Ian Black, 'EU looks at Straw's idea to curb migrants', *The Guardian (UK)*, 7 February 2001.
48. Quoted in 'Anti-immigration party on rise again', *Agence-France Presse*, 10 February 2001, and in 'Firebrand Hanson says boatpeople bring disease', *Reuters*, 12 February 2001. See also Paul Kelly, 'Hanson's deadlier than before', *The Australian*, 14 February 2001.