

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006
Public Hearing 26 May 2006

Response to Questions on Notice:

Q1: In terms of the record of Nauru for instances of mental health problems and the like, have you investigated those previously and provided a report to this committee or others?

Answer

The Department has responded to the committee on previous occasions on issues around mental health and mental health services, both in Nauru and at the Nauru OPC in written form and verbally. DIMA has not investigated the instances or frequencies of mental health ill-health directly but has sought information from the International Organization for Migration (IOM) on mental health issues, as part of IOM's reporting against an assurance framework and DIMA's role in managing IOM's provision of service. The Department has not provided reports on individuals specifically.

There have been three investigations into health services in Nauru: December 2003 Mr John Hodges and Mr Gholam Aboss visited Nauru and reported informally to the Minister in January 2004 that the health services provided in Nauru OPC were adequate. The second report by a Health Team on Health Services for Asylum Seekers in Nauru stated that they were satisfied that the level of care provided at the Nauru OPC was appropriate for the primary health care needs for asylum seekers. A copy of this report is attached and is available from the DIMA website. A third investigation occurred in September 2005 in respect of the 27 remaining residents at the OPC and this investigation reported directly and informally to the Minister and resulted in approval for 25 of these to be brought to Australia.

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Q2: Are you able to provide any statistical information to the committee about how many cases have been opened, what the type of mental illness might have been and any other matters that would arise? I am sure you have kept that type of information – in fact, I am positive that you have. Is that available to the committee? Compare with statistical norms that exist in Australian cities or detention facilities.

Answer

DIMA has received information about the mental wellbeing of asylum seekers and incidents of self harm from two main sources in Nauru and Manus, namely the International Organization of Migration (IOM) and the Australian Federal Police - Protective Service (AFP-PS). DIMA has requested information on mental health among the OPC caseload on a number of occasions.

The information reported below details actual reported incidents between 2001 and 2003, and thereafter various snap shots of the mental health status of the Nauru OPC population. The data are not mutually exclusive so a person treated for insomnia may also be counted as a person presenting with depression.

DIMA is unable to provide statistical norm comparison data in the timeframe set by the Committee Secretariat.

Nauru

DIMA received reports of incidences of self-harm in Nauru. The definition of self harm for the purpose of reporting incidents included the following:

- Threat of self harm
- Actual self harm
- Threat of suicide
- Attempted suicide, and
- Suicide

2001

In 2001 there were no incidents of self-harm reported in Nauru.

2002

From January to October 2002, 8 incidents of self-harm were reported, namely:

- 4 incidents of threat of self harm
- 3 incidents of actual self harm
- 1 threat of suicide

2003

In 2003, 49 incidents of self harm were reported, namely:

- 45 incidents of self-harm in the form of a hunger strike
- 3 incidents of actual self harm
- 1 suicide attempt

In 2003 the Mental Health Unit diagnosed the following conditions in the Nauru asylum seeker population (not mutually exclusive):

Adult:

- 10 adjustment disorder
- 2 acute stress reaction
- 5 anxiety
- 15 depression
- 1 depression and somatisation
- 1 depression and anxiety
- 5 reactive depression
- 2 severe depression
- 4 post traumatic stress disorder
- 2 insomnia
- 1 obsessive compulsive disorder
- 1 somatisation disorder

Child (not mutually exclusive):

- 1 depression
- 1 severe depression
- 1 acute stress reaction
- 4 adjustment disorder
- 1 anxiety disorder

2004

At Feb 2004

- 33 residents prescribed anti-depressants
- 25 residents prescribed sleep medication

At May 2004

- One adult being treated for a chronic mental illness
- 21 adults prescribed psychotropic medication
- 16 adults prescribed sleeping medication
- 17 adults prescribed anti-anxiety medication

2005

At Feb 2005:

- 19 cases with identified mental health condition
- 7 of the 19 were not prescribed any medication
- 12 of the 19 prescribed anti-depressant medication
 - 2 of the 12 prescribed anti-psychotic medication
 - 8 of the 12 prescribed anti-anxiety medication
 - 4 of the 12 being treated for insomnia

At April 2005

- 9 cases with identified mental health concerns
- 6 of the 9 prescribed anti-depressant medication
 - 2 of the 6 prescribed anti-psychotic medication
 - 4 of the 6 prescribed anti-anxiety medication
 - 2 of the 6 being treated for insomnia
- 2 reports of psychosis since July 2004

At May 2005

- 1 incident of actual self harm

At November 2005

- 27 cases with identified mental health concerns
- 13 of the 27 cases being treated for insomnia
 - 7 of the 13 prescribed anti-depressant medication
 - 4 of the 13 prescribed anti-psychotic medication
 - 10 of the 13 prescribed anti-anxiety medication
- 4 residents have at one stage has a psychotic episode and were currently at risk of self harm
- Threats of self harm and suicide reported, though no exact figure available

After November 2005

Two residents remain at the OPC and both have been identified as being of concern over mental health status, one of which has been referred to as at high risk of self-harm.

Manus

In 2001 there was one incident of self-harm reported in Manus.

From January to October 2002, 7 incidents of self-harm were reported, namely:

- 1 incidents of threat of self harm
- 3 incidents of actual self harm
- 3 threat of suicide

From November to December 2002

- 3 attempted suicide
- 1 self-harm

The Manus OPC population declined significantly after January 2003 and no further data can be provided.

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Question 3

Senator BARTLETT—You might like to take this on notice, given the time constraints. There is a submission from Ms Marion Le which I think has only just been made public—I have just seen it on the web and it was not there half an hour ago, so you might not have read it yet. It contains material that I am sure is quite familiar to at least some of you at the table and I am sure you are aware of the work she has done in this area. At pages 7 and 8 of the submission she contrasts the different results for Iraqis who were claiming onshore in 2001-02 and Iraqis who were being assessed offshore, predominantly in Nauru, in that period of time.

She gives the example of 28 cases presided over by RRT members, all but one of which overturned the original DIMIA rejection, and then contrasts that with the process that was followed in Nauru. If you go to the end result I suppose they were all accepted, but that was in 2005 rather than 2002. She specifically talks about emails sent around to state directors by a person in central office, a DIMIA officer, to sign but not date their decisions about people's claims until they received a document from onshore protection about imputed political opinion in Iraq, which seemed to then be pivotal in the rejection of most of those decisions. I do not know if you are aware enough of those claims to make a response to them now or whether you could respond to them on notice.

Mr Hughes—I think it might be better, since we have not had access to that document, to respond to that on notice and make sure that we are comparing like with like. In relation to our assessments of Iraqis on Nauru, we were assessing some of those cases and UNHCR was assessing some of them. At one point, when we were doing successive reviews following change of country information, UNHCR declined to assess some of its cases and asked us to do the assessments instead—asked Australia to do the refugee determinations on some of the cases it previously had responsibility for. In terms of their view of the assessments we were making on Iraqis, they had enough confidence in the work we were doing to ask us to look at cases that they had previously taken responsibility for. I saw that as a sign of confidence on their part, not lack of confidence. We will look at the exact statistics and provide you with an answer.

Answer

Decisions on refugee claims are made on the individual merits of each case. The UNHCR had sufficient confidence in Australia's process to ask Australia to undertake refugee assessments for its caseload of Iraqi nationals in 2004.

By the end of 2002, Australia had approved 85% of Iraqi nationals in its caseload in the offshore processing centres and UNHCR had approved 84% of Iraqis in its caseload on Nauru. Australia's subsequent reviews of the remaining Iraqi cases in the offshore process, taking account of new claims and changes in country situation, lifted Australia's overall approval rate for its Iraqi caseload to over 90%. These results compare favourably with approval rates for Iraqi nationals in comparable countries. For example, initial approval rates in 2004 for Iraqi nationals were 15% in Germany, in both the UK and Sweden they were 0.1%, and in the USA and Belgium they were 52.6% and 66%, respectively.

The paper "*Illegal departure, voluntary return and imputed political opinion in relation to Iraq*" was prepared by the Department to give advice on the proper legal considerations and relevant country information which should be considered in dealing with claims being raised by Iraqi asylum seekers in Australia and on Nauru. It was circulated to Department decision makers in late April 2002 and was sent to the Refugee Review Tribunal as a submission by the Secretary under section 423(2) of the Migration Act on 1 May 2002. A copy of this document is attached.

The paper addressed the claim that the acts of illegal departure from Iraq and applying for asylum abroad, **on their own** and without any other profile attaching to the applicant, created an imputed political profile for that person which would lead to them being persecuted for a Refugees Convention-related reason if they returned.

Ms Le's criticism of the Department paper, and the country information she cites in support of her views, focus overwhelmingly on the poor human rights record in Iraq and the treatment of people identified as not supporting the regime. These issues are not relevant to the core matters addressed by the Department's paper. The information sources she cites also do not override the authoritative sources, including the UNHCR, which were drawn on in the Department's paper in addressing the specific question of whether the acts of illegal departure and claiming asylum offshore would of themselves **create** an imputed adverse political profile for the person in question.

At page 11 of her submission, Ms Le notes "*the only mention of the human rights situation made by many of the DIMIA officer (sic) were under **Part C – CAT – ICCPR – CROC – Humanitarian Considerations.***" Where there is no Refugees Convention ground for the fear of harm, this is the appropriate place to flag concerns for safety of an individual.

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Question 4

Senator BARTLETT—... they are pretty damning claims of serious problems in the competence, let alone the content of assessment, which are unreviewable. It was only by a range of circumstances that they became reviewable last time around. Could you respond to that as soon as possible in terms of the specific criticisms and what things may have changed to prevent them happening again.

Answer

The assertions made by Ms Le about the Australian processes on Nauru were raised in a series of letters and submissions to the Department and the Minister, predominantly commencing from July 2004. By the end of June 2004, Australia had found an additional 146 Afghans on Nauru to be refugees as a result of the reassessment of the Nauru caseload announced by the Minister in December 2003. After those approval decisions, there remained 56 people in the Australian caseload on Nauru.

Ms Le has raised a number of what she terms "*flaws in the decision making process*" as a result of her consideration of information released from various Department files or volunteered to her by the Department. As a result of the material provided by Ms Le, the Department identified a case where a claim raised at review stage had not been adequately researched and where this error had led to an unreliable decision outcome. The matter has been addressed and individual in question is now a visa holder in Australia.

A further group of cases raised by Ms Le relate to instances where there were various shortcomings in aspects of case documentation or the handling of claims, but where these issues did not mean that the relevant decision outcome at the time was incorrect. The Department is drawing on the issues raised by Ms Le in its reassessment of the arrangements for offshore decision-making. One objective of the Department's current work is to improve transparency of the process to applicants and their representatives, including by providing a greater level of documentation of issues relating to case handling and the decision reasons.

Other concerns raised by Ms Le flow largely from the limitations of relying on material on individual files as a basis for constructing post-fact analyses of what was, predominantly, a decision-making process based heavily on oral face-to-face interaction with the asylum seekers themselves. For example, the decision record used in the offshore process was not a document designed to provide information to the applicant or an adviser on the reasons for decision. It was intended for internal Department use. Similarly, the presence or absence of particular documents from a particular file at a particular time provides no reliable basis for drawing conclusions about what was being considered by the decision maker, or about the appropriateness of the handling of paperwork provided to the department.

Several of the other concerns raised by Ms Le appear to be attributable to Ms Le's disagreement with the choices made by decision makers in identifying the relevant country or other case information and in the decision maker's analysis of the relevant issues.

Some of the other issues raised by Ms Le are not instances of any flaw in refugee processing. For example, a concern was raised about a decision record which merges the decision of two different people, but this related to a draft document in a case where the final decision record contained no such error. It is also a basic principle of refugee decision-making that questions about the nationality of an asylum seeker do not need to be resolved where the person would not be a refugee, even if they had the nationality they claimed.

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Question 5

Senator BARTLETT—... Was the department able to give a guarantee that anybody on Nauru who sought to have access to an adviser, whether a lawyer or migration agent, would be able to have access to them?

Mr Hughes—I think I may have answered that question at estimates. I think the position from our point of view was that we had no objection to people having an adviser assist them in their work and, as I understand it, that when advisers sought to become involved in the latter stages of the caseload on Nauru they were given access by the Nauru government to go there for that purpose.

Senator BARTLETT—Without revisiting all that, we would seek as strong as possible a guarantee. It is nice that you do not have any objection, but we would like to make sure that it will actually happen and also that it will happen at the start rather than just when things get difficult two years down the track. Can you give any stronger indication that that will occur at the start?

Answer

The Department is reviewing the existing offshore processing arrangements to identify any areas where there could be some strengthening of the decision-making processes and greater transparency of decision-making arrangements. This could involve some adjustments which might affect this issue. The outcome of this process has yet to be settled. In the meantime, any person who is not a national of Nauru will need to obtain a visa from the Government of Nauru to visit that country.

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Question 6

Senator BARTLETT—Can you confirm that last year some permanent protection visas were provided to a number of people who travelled to Australia directly from a part of Indonesia, Ambon, and made a refugee claim?

Mr Hughes—Yes.

Senator BARTLETT—Were any concerns expressed by the Indonesian government that you were aware of about those protection visas being granted to people coming directly from Indonesia?

Mr Hughes—That particular caseload, as you know, were in Australia for some years on safe haven visas. It is quite possible that at some time during that process, during the time they were in Australia, concerns were expressed. I cannot say definitively whether they were or they were not over that whole period of time.

Senator BARTLETT—Is that able to be taken on notice?

Mr Hughes—It is.

Answer

The Department is not aware of any concerns expressed by the Indonesian Government over the grant of visas to the group of Indonesians from Ambon.

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Question 7

Senator BARTLETT—Okay. From my reading of a lot of things, it seems that this [Bill] applies to people who arrive unauthorised predominantly by boat as opposed to people who fly in on commercial airlines, for example. I know it is very difficult these days to get on a commercial airline without proper documentation, but I presume there are still a small number that manage to do that. Will they still be treated differently if they manage to do that?

Mr Correll—The essential reason for that is that people coming in via aircraft are covered through the layered border security system for the country, including our advanced passenger-processing systems. Therefore, the detection in that area is far more sophisticated than is possible for arrivals by boat, and that is the primary reason for the differences—the quite sophisticated techniques that are in place for air arrivals.

Senator BARTLETT—But do people get through?

CHAIR—Was that a yes, then, Mr Correll? They will be treated differently?

Mr Correll—Yes.

Senator BARTLETT—Maybe on notice, could you give me an indication of how many people have arrived via that method in the last 12 months?

Mr Correll—Yes, we will take that on notice.

Answer

Each year a small number of people travelling to Australia by air claim Australia's protection on arrival.

Many people attempt to travel to Australia and elsewhere using bogus travel documents. Australia's tough border controls are designed to detect the use of fraudulent documents. The number of people arriving documented (on genuine and fraudulent passports, as well as impostors travelling on passports not their own) at Australian airports, who have subsequently sought to engage Australia's protection obligations, was **10** for Program Year 2004-05, and **16** for the current Program Year (to 30 April 2006).

During Program Year 2004-05, **30** people arrived undocumented at Australian airports, and subsequently sought to engage Australia's protection obligations. For the current Program Year, 2005-06 (to 30 April 2006), **49** undocumented arrivals have subsequently sought protection. Some of these people have destroyed or disposed of their documents prior to, or upon their arrival in Australia. Others may be determined as undocumented arrivals if they have travelled on a document that is not their own.

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Question 8

Senator Nettle: So you do not believe there is any requirement for the Nauruan government to give permission for a case to be launched in the High Court of Australia that relates to somebody in Nauru? That is the evidence that we had earlier today.

Ms Bicket: It would depend on the circumstances. In relation to a matter that pertained to a decision of a minister of Australia, I would not think that the Nauruan government had to give permission for someone making any sort of action under Australian law.

Senator Nettle: Perhaps you could go back and look at the evidence of Mr Walters on that issue.

Ms Bicket: I am happy to. I am not aware of the particular matter that you are referring to.

Answer

There is no requirement for the Nauruan Government to give permission for a case to be launched in the High Court of Australia that relates to somebody in Nauru.

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Q9: In respect of the issue of medical care and people needing to be evacuated from offshore detention centres to Australia – which I think is an interesting one in terms of the indication by the department that there would be no financial implications for this bill – do you know what it would cost to medivac somebody from Nauru to Cairns? For example, there is an Afghan family whose nine-year-old boy is currently in hospital in Cairns. What would the cost have been to medivac them if they had already been transferred to Nauru?

Answer

Medical evacuation from Nauru can be carried out in numerous ways depending on available transport. Nauru to Cairns in one flight would require a charter, but medical evacuation to Brisbane might occur by commercial carrier or charter. The total costs could range between \$20,000 for non-charter flights and \$100,000 depending on arrangements.

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Question 10

What is the Federal Government's rationale for the Bill, particularly with respect to its timing?

Answer

The policy of processing unauthorised arrivals offshore is an important part of a long term whole-of-Government policy commitment to improve border security and deter activities of those involved in people smuggling. It ensures that people smugglers will not be able to deliver the outcome they had promised their clients. There have been fewer than 200 unauthorised arrivals by sea since the inception of the Pacific Strategy in 2001.

The amended legislation broadens the group of people subject to offshore processing to include all unauthorised boat arrivals and ensures consistency irrespective of whether people reach the mainland or an excised place. The existing and new arrangements apply to people irrespective of whether they have fled directly to Australia or passed through other countries. As under the existing provisions, the Minister will have a personal non-compellable power to allow a person to make a valid visa application in Australia.

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Question 11

What is the justification for the retrospectivity of the bill's application?

Answer

The Bill is not retrospective because it will not come into effect until the day after royal assent. However, when the new legislation is enacted, the changes to the Migration Act 1958 will apply, from that enactment date, to any people who arrived by sea without authority from 13 April.

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Q12: The Minister's 'declarations' under section 198A for Nauru and PNG were signed on 12 October 2001 and 25 November 2002 respectively. Does the Federal Government intend to review those declarations, prior to the implementation of the Bill, to ensure that those countries still meet the conditions set out in section 198A(3), or whether those declarations should be revoked under section 198A(3)(b)?

Answer

The Nauru s.198A(3) declaration was signed on 2 October 2001 and renewed 25 November 2002. The PNG s.198A(3) declaration was signed 12 October 2001. The current declarations are ongoing and there is no review currently planned. The Department is confident that the MOU is a sound platform for offshore processing and that both sides have and will meet their obligations.

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Q13: What is the substance behind a section 198A(3) declaration by the Minister? What criteria does the Minister use to make a declaration under this section? Can it be made public?

Answer

The criteria for declaration under s.198A(3) is that a specified country:

1. Provides access, for persons seeking asylum, to effective procedures for assessing their need for protection
2. Provides protection for persons seeking asylum, pending determination of their refugee status.
3. Provides protection to persons who are given refugee status, pending their voluntary repatriation to their country of origin or resettlement in another country.
4. Meets relevant human rights standards in providing that protection.

Assessment against the criteria used a number of sources including:

1. Publicly available material, such as the U.S State Department reports on human rights.
2. Assessment of the Government of Nauru's commitment through the signing of the Statement of Principles (10 September 2001).
3. Protection provided under the PNG and Nauru Constitutions.
4. Consultation with a number of governments and organisations, including UNHCR.

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Question 14

The Minister's declaration in relation to Nauru was made approximately 12 months after asylum seekers were relocated to Nauru for processing – could you explain for the Committee why the declaration was not made prior to asylum seekers being taken Nauru? Does the Bill introduce any requirement that the declaration under section 198A(3) be made prior to moving asylum seekers to a declared country for processing?

Answer

The date of first arrivals in Nauru was 19 September 2001.

The Republic of Nauru was declared under S198A(3) on 2 October 2001. This declaration was renewed under S198A(3) on 25 November 2002. The renewal is ongoing and no review is currently planned.

While the Nauru declaration was signed 13 days after the first arrival, an Administrative Agreement and Statement of Principles between the Government of Nauru and the Government of Australia were signed on 10 September 2001.

Question 14 (part 2)

It is already a requirement in section 198A of the Act that the declaration under subsection 198A(3) be made prior to exercising the power in section 198A to move asylum seekers to a declared country for processing. The Bill does not alter this position.

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Question 15

Are there any limits on the period for which a declaration under section 198A(3) can be made?

Answer

There are no limits in the legislation for the period in which a declaration under subsection 198A(3) can be made. The declaration will remain in force for the period specified or until revoked under paragraph 198A(3)(b).

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Question 16

Can the Minister's declaration of a country under section 198A(3) be reviewed by a court?

Answer

A declaration under s 198A(3) could be reviewed by a court for jurisdictional error.

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Question 17

The Committee asked: Who (which country or organisation) will undertake refugee status determination processing in offshore detention centres? If it is to be Australia (DIMA), what law and standards will it apply?

Answer

Australia is prepared to undertake refugee status determination in the Offshore Processing Centres. The existing assessment process which was developed in 2001-02 in consultation with UNHCR would be the basis for processing any refugee claims. However, these arrangements are currently under review to identify any measures which could be taken to strengthen the process.

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Question 18

How will the transfer to offshore countries take place?

Answer

DIMA would arrange to fly any DUAs to offshore countries when a decision by the Government has been made to do so and the DUAs have been declared medically fit to fly. The flight would generally be carried out by a hired commercial operator.

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Question 19

The Committee asked: How will Australia ensure that no refoulement from Nauru or PNG takes place? What is the content of the agreement with those countries in terms of protection?

Answer

Section 198A of the Migration Act requires that a country can be declared only where it meets conditions which ensure that the removal of an individual would not be in breach of Australia's protection obligations. Ministerial declarations under section 198A are in place in relation to Papua New Guinea (PNG) and Nauru. Australia has agreements with the governments of Nauru and PNG that people transferred to the OPCs will be allowed to stay while processing of any claims proceed and while resettlement of any refugees is arranged.

Over the period since the establishment of the offshore processing arrangements in PNG and Nauru, the practical outcome has been that no person awaiting a refugee assessment or found to be a refugee has been returned to their homeland against their will.

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Question 20

Are there any concerns about the Federal Government working with the Indonesian Government to intercept any future asylum seekers from West Papua?

Answer

Australia would ensure that any responses to persons seeking asylum in this country would be cognisant of our obligations under the Refugee Convention and other international obligations.

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Question 21

The Committee asked: How should persons from West Papua apply for asylum in Australia?

Answer

If offshore, people regardless of their nationality can apply for a visa under Australia's Humanitarian Programme. Each application is considered on its merits.

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Question 22

The Committee asked: If persons from West Papua should not apply for asylum in Australia what should they do? Which country should they go to?

Answer

Any asylum seeker arriving in Australia by boat will continue to receive access to protection and a refugee status determination process. However, the Refugee Convention does not set out how refugee claims should be assessed or give asylum seekers the right to choose the country in which these claims will be assessed. These are matters for countries to decide and the proposed legislation and existing offshore processing arrangements draw on the legitimate rights of states to make such arrangements.

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Question 23

The Committee asked: Does the Federal Government acknowledge that it should uphold its refugee protection obligations regardless of an asylum seeker's country of origin?

Answer

Yes. The DUA Bill is fully consistent with Australia's protection obligations and does not discriminate on the basis of the country of origin of any unauthorised boat arrivals who seek asylum. The experience of the past fifteen years has been that unauthorised boat arrivals can come from a wide range of countries and nationality composition can vary significantly and unpredictably.

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Q24: Will asylum seekers be detained in 'declared' countries? If so, under what authority and for what duration?

Answer

Asylum seekers will not be detained in 'declared' countries.

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Q25: Will private contractors be used to detain asylum seekers? If, as DIMIA argues, the asylum seekers are not to be detained but, rather, will be in a declared country on a special residency visa, will private contractors be used to supervise, organise and manage those asylum seekers?

Answer

No asylum seeker will be detained in Nauru. They will be lawfully in Nauru with a Nauru visa and will be subject to visa conditions set down by the Government of Nauru. The International Organization for Migration manages the processing centre and does engage private contractors to provide services.

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Q26: Will there be special measures in place for the detainment of women and children? If, as DIMIA argues, the asylum seekers are not to be detained but, rather, will be in a declared country on a special residency visa, will there be any special measures in place for the treatment of women and children?

Answer

No asylum seeker will be detained in Nauru but may have visa conditions setting out where they reside. Special measures for women, children and families are being reviewed in consultation with the Government of Nauru.

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Q27: How can this Bill be reconciled with the Federal Government's recent change in policy in relation to detaining asylum seeker children?

Answer

No person in an offshore processing centre will be detained. This includes asylum seeker women and children.

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Q28: If asylum seekers are not to be detained in 'declared' countries, what measures does the Federal Government have in place for alternatives to detention in 'declared' countries?

Answer

Asylum seekers will not be in detention in Nauru. Special measures for women, children and families are being reviewed in consultation with the Government of Nauru.

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Question 29

The Committee asked: How will Australia ensure that the human rights of persons outside Australia but under Australia's effective control are respected and protected under the Refugees Convention, and other relevant international human rights treaties to which Australia is a party?

Answer

Practical arrangements in place in Offshore Processing Centres supported by agreements with relevant host country Governments provide the basis for the Minister's declaration of a country under s.198A of the Migration Act. Experience over the past four years with asylum seekers in Offshore Processing Centres has demonstrated the effectiveness of these arrangements for ensuring protection and access to durable solutions for persons found to be refugees. Some 1550 people have been accommodated in the Offshore Processing Centres so far and not one person found to be a refugee has been returned to their homeland against their will.

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Q30: Who is responsible for the human rights and welfare of asylum seekers while they are present in third countries? Will there be oversight? If so, who will provide it?

Answer

Asylum seekers resident at the Nauru OPC will be lawfully in Nauru under Nauru law. IOM is tasked with managing the welfare of the asylum seekers. The human rights of asylum seekers are vested in Nauru law therefore Nauru is ultimately responsible for them. Nauru and Australia have a memorandum of understanding which expresses a wish to support regional efforts to combat people smuggling and cooperate on the management of asylum seekers, in which it is clear that Australia is responsible for the asylum seeker administration and commitments. To this end, Australia has engaged IOM to manage the OPC, and provides oversight to IOM's operations.

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Question 31

The Committee asked: What type of visa will successful applicants be allowed to apply for? Will the visa allow for family reunion?

Answer

Designated unauthorised arrivals (DUAs) under the new legislation who are found to be refugees and are to be resettled in Australia will be able to access the same three-year subclass 447 temporary humanitarian visa which is currently available to offshore entry people in the same circumstances. As is currently the case, visa grant will be conditional on satisfying health and character requirements. It is intended that regulations will be made to alter the name of the subclass 447 visa and adapt the eligibility criteria to refer to the new category of DUAs. The subclass 447 visa provides for three years' temporary residence in Australia, and access to income support payments and Medicare, among other services. 447 visa holders are also able to apply for a protection visa after arrival in Australia if they want to seek further protection.

Family reunion provisions are available only to holders of permanent visas.

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Question 32

The Committee asked: How will resettlement work?

Answer

There are ten countries worldwide, including Australia, which regularly participate in the resettlement of refugees. Over a thousand Offshore Processing Centre residents have already been resettled in Australia and other countries with UNHCR or DIMA assistance or on their own initiative. Any new Offshore Processing Centre residents would be managed in a similar way.

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Question 33

The Committee asked: Is there a timeframe within which refugees will need to be found a 'durable solution' in Australia if other countries decline? Will such persons be detained (or continue on special residency visas in a declared country) pending the finding of a 'durable solution'?

Answer

Australia will be making every effort to secure a durable solution for refugees as quickly as possible. The duration of Offshore Processing Centre residents' stay will depend on the circumstances at the time. It should be noted that, as at 17 May 2006, 41% had spent less than 12 months in OPCs and 81% less than 24 months. This includes the time taken to assess and decide any refugee claims and to identify and implement resettlement or other departure arrangements.

Asylum seekers processed offshore are not held in detention. Under "open centre" arrangements they are free to move around the island, subject to some restrictions imposed by the Government of Nauru.