
UNSW Centre for Refugee Research Policy Position Asylum Seekers - mandatory detention

The University of NSW Centre for Refugee Research recognises that:

1. According to the 1951 Convention Relating to the Status of Refugees¹, a refugee is a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.”
2. Under the United Nations (UN) 1951 Geneva Convention on Refugees, an agreement signed and ratified by Australia, we have a legal obligation to provide asylum to genuine refugees.
3. Australia’s policy of mandatory detention for asylum seekers directly contravenes our commitment to the Universal Declaration of Human Rights (UDHR), which states that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution” (Article 14, UDHR)².
4. Seeking asylum in a country other than one’s own is not illegal, nor is it ‘queue jumping’, but rather a fundamental human right of any person experiencing persecution in their country of origin.
5. The overwhelming majority of asylum seekers are genuine refugees, fleeing persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion, which is perpetrated or condoned by the State or beyond State control. Experiences include torture, rape, imprisonment, threats of death, murder, and disappearance of family members³.
6. Most asylum seekers are severely traumatised by the experiences they have lived through prior to their arrival in Australia. Such experiences are documented torture and rape, witnessing the death of family members, separation from family and community, extreme material hardship and food scarcity, exploitation by border officials and camp guards, and appalling conditions during their flight to Australia⁴.
7. Australia’s treatment of asylum seekers violates international human rights standards. The International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) prohibit arbitrary detention particularly that of children.⁵
8. The Refugee Council of Australia reported that as of 1 June 2001, there were 2,857 adults and 520 children, of whom 39 were unaccompanied minors, in Detention Centres⁶. Detention Centres are inappropriate places for children, however family units may not want to be separated. Detainees may be held in poor conditions and for long periods of time, often up to eighteen months.
9. The detention of children is a serious concern and violates the Convention on the Rights of the Child, signed and ratified by Australia, posing long-term risks to their psychological and social development and well being, in particular their ability to successfully resettle in an Australian community.⁷
10. The mandatory detention of asylum seekers is an excessive response that arbitrarily denies people of certain human rights; prolongs and exacerbates the trauma they have experienced before and during their flight; denies them the possibility and security of normal family life; impairs their successful resettlement; and severely affects their mental health and well being.

11. The trauma and uncertainty of detention upon arrival is exacerbated by the denial of Permanent Residency visas to asylum seeking refugees, who can obtain Temporary Protection visas for three years only with limited access to resettlement services and inability to sponsor vulnerable family members. This places extreme pressure on those men who have left wives and children in situations of danger, in either situations of ongoing conflict in home countries or in unsafe refugee camps.

12. Australia has one of the lowest intakes of refugees of the Western world, more of a ‘trickle’ than a ‘flood’ as reported in the media, yet it the only Western nation with a policy of mandatory detention⁸.

The Centre for Refugee Research believes that:

1. The Federal Government should abolish its policy of mandatory detention for asylum seekers.
2. The [Federal Government should establish a] Royal Commission [which] should undertake an investigation into the conditions in current detention centres and the treatment of asylum seekers within these centres.
3. Australia should fulfil its international legal obligations to protect the human rights of asylum seekers by fully implementing the terms of the Geneva Convention on Refugees.

The Centre for Refugee Research therefore recommends that:

1. At a minimum, families with children, and without criminal records should be immediately removed from detention centres, to enable them to regain some family routine, to benefit from community support, to decrease their vulnerability detention centre guards, and to provide the children with more freedom, access to education and better socialisation.

2. The Federal Government should urgently review its policy of mandatory detention in view of its international human rights obligations.

3. ACM should immediately upgrade the resources and facilities available to asylum seekers in detention, particularly addressing the treatment of asylum seekers by ACM guards through training programs.

4. The Federal Government should abolish the Temporary Protection Visa category, and provide permanent protection and asylum status to refugees seeking asylum in Australia.

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Footnotes

1 UN Convention relating to the Status of Refugees of 28 July 1951, ><http://www.unhcr.ch/refworld/legal/instrume/asylum/1951eng.html>

2 UN, Universal Declaration of Human Rights, 10 December 1948, <http://www.un.org/Overview/rights.html>

3 According to recent government figures, approximately 80% of asylum seekers detained in Australia are recognised as refugees. Amnesty International Australia Newsletter, August-September 2001, <http://www.amnesty.org.au/airesources/index-92as2001.html>

4 Pittaway, E. (1999), *Refugee Women the Unsung Heroes in Nobody Wants to Talk About It*, Refugee Women’s Mental Health, Transcultural Mental Health Centre, Sydney, Australia.

5 Amnesty International, 1998, Australia, *A Continuing Shame: The mandatory detention of asylum-seekers*.

6 Refugee Council of Australia Report

7 UN Convention on the Rights of the Child, Article 37(b)

8 All asylum seekers who arrive in Australia without documents, including women, men and children are either deported or detained.