



CASE for Refugees
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Submission to Joint Select Committee on Australia's Immigration Detention Network

1. Introduction

CASE for Refugees (CASE) is a non-for-profit community legal centre based in Perth, Western Australia. CASE has been providing legal and migration assistance to asylum seekers, refugees and the CaLD community in Western Australia for over ten years. Over this time the organisation has built considerable experience assisting clients applying for protection and other visas, as well as providing a generalist legal practice and community legal education services. CASE relies on funding from, among others, the Law Society of Western Australia's Public Purposes Trust, the United Nations Voluntary Fund for Victims of Torture, and the Myer Foundation.

2. Summary

Australia's policy of mandatory, non-reviewable and indefinite detention for asylum seekers is a breach of Australia's international obligations.¹ In the case of survivors of torture or trauma, Australia's current approach of mandatory detention exacerbates problems for seriously harmed individuals who are seeking protection in Australia in accordance with international norms.

Once initial health and identity checks are completed within a finite period of detention, asylum seekers should be accommodated in residential housing or community detention while their claims for refugee status are being assessed.

3. Mandatory Detention

Australia's policy of mandatory, non-reviewable detention of asylum seekers breaches of section 9(1) of the International Covenant on Civil and Political Rights. The policy also does not

¹ See: Australian Human Rights Commission, *Australia's immigration detention system continues to breach international human rights obligations*, (21 July 2011),

http://www.humanrights.gov.au/about/media/media_releases/2011/60_11.html

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comply with the UN High Commissioner for Refugees (UNHCR) guidelines on the detention of asylum seekers,² which provides that detention is 'inherently undesirable'.

The adverse effects of excluding asylum seekers from the community in remote places of detention under prison-like conditions are two-fold:

- a. The environment of Immigration Detention Centres in remote places with minimal access to supporters, advocates and health care workers are not conducive to properly caring for survivors of torture and trauma.

As Professor Patrick McGorry explained at the 2010 'Out of the Dark' lecture presented by CASE and the Coalition for Asylum Seekers Refugees and Detainees, Australia's policy of mandatory, indefinite detention for asylum-seekers creates a separate layer of trauma in addition to the trauma of war and flight already experienced by many asylum seekers. The condition either exacerbates pre-existing problems or result in new harm, which the government has a non-delegable duty of care to avoid or mitigate.

- b. By keeping asylum seekers isolated from the wider community, mandatory detention reinforces the unfair myth that asylum seekers are 'illegal immigrants' who do not deserve protection in accordance with international human rights norms.

4. **Immigration Detention Values**

CASE queries the gap between the rhetoric of the 'Immigration Detention Values' and the realities arising from Australia's policy of mandatory detention in practice. In particular, the articulation of Australia's international obligations in 'Value 5', which notes that detention should be a 'last resort and for the shortest practicable time' is not reflected in the operation of the mandatory detention policy. Further, CASE believes that 'Value 1', which states that 'Mandatory detention is an essential component of strong border control', breaches Australia's international obligations and should be removed.

² UNHCR, *Revised Guidelines On Applicable Criteria And Standards Relating To The Detention Of Asylum Seekers* (February 1999) <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf>.

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5. **The need for alternatives**

Long-term mandatory and indefinite detention causes significant mental health problems and leads to dangerous, high-pressure environments filled with despair.

The government's continuing use of mandatory detention, especially where asylum-seekers are detained in remote locations without adequate care and support for indefinite periods, is the key, changeable factor in the riots that have recently occurred within the Immigration Detention Network. Taking vulnerable people who pose no threat to Australia out of detention cuts the vicious cycle that leads to self-harm, suicide, riots and unrest that have been unfortunately seen recently.

There is no need to keep asylum seekers in detention once initial health and identity checks have been conducted. The use of community detention is a suitable alternative for ensuring asylum seekers who are not a risk to Australia can be adequately cared for while going through the Protection Obligations Determinations process.

CASE is of the view that mandatory detention should be restricted to a minimum period of 30 days for health and identity checks with any further detention being reviewable (for example, every 7 or 14 days). The Department should be required to show cause to an independent statutory authority or a Federal Magistrate as to why any ongoing detention beyond the minimum period is necessary.

6. **Additional issues**

- a. Terms of reference item (q): *the length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network*; and item 1(r): *the processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network*:

The current process requiring asylum seekers to have their refugee status confirmed before security and character checks are undertaken is counter-productive and puts unnecessary pressure on the Immigration Detention Network. By requiring asylum-seekers to remain in

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detention while time-consuming administrative processes are being undertaken, already vulnerable people are subject to further harm.

CASE is of the view that basic health and identity checks following arrival are the only matters which require keeping an asylum seeker in detention for a limited period. Where an asylum seeker is found not to pose a threat to Australia's security, they should be supported in community detention while their protection claims are being assessed. On-shore protection applicants are not subject to draconian detention requirements while their claims are being assessed and CASE does not see why applicants in the offshore process should be arbitrarily treated differently.

CASE notes that it is not a criminal act to seek asylum and that Article 31 of the Refugees Convention stipulates that a 'Contracting State shall not impose a penalty, on account of their illegal entry or presence, on refugees who ... enter or are present in their territory without authorization'. As keeping asylum-seekers in detention is not at all necessary for the processing of their claims for protection, CASE is of the view that arbitrary, indefinite and non-reviewable detention of asylum seekers is a gross violation of Australia's human rights obligations.

- b. Terms of reference item 1(j): *the health, safety and well-being of employees of Commonwealth agencies and/or their agents or contractors in performing their duties relating to irregular maritime arrivals or other persons detained in the network:*

Increased-risks of self-harm and suicide among detainees arising from the policy of mandatory detention create additional burdens on the detention network, other detainees, and staff who are required to care for at-risk detainees (both departmental case officers as well as contractor security officers). The tragedy of this situation was shown recently with the story of the guard from Curtin IDC who took his own life after seeing the aftermath of a detainee suicide.³

³ Paige Taylor, 'Detention misery cuts both ways on Christmas Island' *The Australian* 13 July 2011, <http://www.theaustralian.com.au/news/features/detention-misery-cuts-both-ways-on-christmas-island/story-e6frg6z6-1226093376728>

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7. Conclusion

CASE commends the Joint Parliamentary committee to address the problems arising in the Immigration Detention Network by dealing with the very cause of these problems: mandatory, indefinite detention. In violating Australia's international obligations, mandatory detention has created burdens on asylum seekers, departmental and contractor staff and the wider community that are simply unnecessary and unacceptable.

Limiting the time in which asylum seekers are required to be incarcerated under mandatory detention will have positive flow-on effects including:

- improved mental health outcomes for detainees and staff;
- reduced the costs of mental health and crisis care required for at-risk detainees;
- reduced departmental / contractor time and workload required to care for at-risk detainees;
- reduced risk of serious security and safety problems such as riots and hunger strikes.
- reduced liability for compensation payable to detainees harmed because of breaches of duty of care in relation to foreseeable risks damaging their mental health;
- asylum seekers being better able to instruct their migrations agents or lawyers, which in turn will assist the officers from the Department of Immigration and Citizenship in conducting the Protections Obligations Determinations process;
- less pressure on departmental staff dealing with protection assessments within difficult time frames

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