



Immigration detention in Australia

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Social Policy Section

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Introduction

The policy of mandatory detention in Australia (that is the legal requirement to detain all non-citizens without a valid visa) was introduced by the Keating (Labor) Government in 1992 in response to a wave of Indochinese boat arrivals.

Under this policy it is a requirement that ‘unlawful non-citizens’ (a national from another country without a valid visa) in Australia's migration zone are detained unless they have been afforded temporary lawful status through the grant of a bridging visa while they make arrangements to depart or apply for an alternative visa. Most are usually granted temporary lawful status in this manner, but if an unlawful non-citizen is considered to be a flight or security risk, or refuses to leave Australia voluntarily, they may be refused a bridging visa and detained in preparation for their removal.¹

Currently, all asylum seekers who arrive without authority by boat are detained and usually transferred to Christmas Island initially while their reasons for being in Australia are identified.²

The main focus of Australia's mandatory detention policy is to ensure that:

- people who arrive without lawful authority do not enter the Australian community until they have satisfactorily completed health, character and security checks and been granted a visa, and
- those who do not have authority to be in Australia are available for removal from the country.³

While Australia's detention population is comprised of unauthorised boat arrivals (also referred to as irregular maritime arrivals), some visa overstayers and certain other unlawful non-citizens, it is the (often lengthy) mandatory detention of asylum seekers who have arrived unauthorised by boat that attracts the bulk of the attention in the public debate.⁴

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1. Department of Immigration and Citizenship (DIAC), *Overstayers and other unlawful non-citizens*, Fact sheet no. 86, DIAC website, viewed 5 February 2013, <http://www.immi.gov.au/media/fact-sheets/86overstayers-and-other-unlawful-non-citizens.htm> and *Immigration detention*, Fact sheet no. 82, DIAC website, viewed 5 February 2013, <http://www.immi.gov.au/media/fact-sheets/82detention.htm>
 2. DIAC, *Processing irregular maritime arrivals*, Fact sheet no. 75, DIAC website, viewed 24 October 2011, <http://www.immi.gov.au/media/fact-sheets/75processing-irregular-maritime-arrivals.htm> Note: DIAC's processing irregular maritime arrivals fact sheets are currently under review.
 3. Ibid. and DIAC, *Background to immigration detention*, DIAC website, viewed 5 February 2013, <http://www.immi.gov.au/managing-australias-borders/detention/about/background.htm>
 4. Asylum seekers who arrive by air usually have a valid visa and identity documents and are therefore not ‘unlawful’, but this is not usually the case for boat arrivals. Historically, unauthorised boat arrivals only made up a small proportion of asylum applicants with the majority arriving by air, but more recently the proportions have shifted due to an increase in boat arrivals. For more detail see J Phillips, *Asylum seekers and refugees: what are the facts?*, Background note, Parliamentary Library, Canberra, 2013, p. 6, viewed 14 March 2013, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumFacts

Australia is not alone in detaining unauthorised arrivals in certain circumstances and many other countries around the world have onshore immigration detention or ‘reception’ centres.⁵ However, Australia is still the only country where immigration detention is mandatory for all unlawful non-citizens (including asylum seekers).⁶

This background note provides a brief overview of the historical and political context surrounding mandatory detention in Australia. It includes government policy responses and a statistical appendix with data drawn from available sources, including committee reports, ministerial press releases and figures supplied by the Department of Immigration and Citizenship (DIAC).

What was Australia’s detention policy before 1992?

Detention policy in Australia began to evolve in response to the arrival of the first wave of boats carrying people seeking asylum from the aftermath of the Vietnam War. Over half the Vietnamese population was displaced in these years and, while most fled to neighbouring Asian countries, some embarked on the voyage by boat to Australia.⁷ It is estimated that about 1.8 million people departed Vietnam in and after 1975 and it is probable that there were at least 3 million departures from the region over a twenty year period.⁸ In comparison, a relatively small number embarked by boat to Australia—the first wave of Indochinese boat arrivals from 1976 to 1981 included just over 2000 people.⁹ From 28 November 1989 to 27 January 1994 another eighteen boats arrived in a second wave carrying 735 people (predominantly Cambodian nationals).¹⁰

The first wave of ‘boat people’ was initially received by the Australian public with sympathy—there was a general assumption that these arrivals were ‘genuine’ refugees and most were granted refugee status relatively quickly.¹¹ However, continuing arrivals became a matter of increasing

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5. For international comparisons see DIAC, Submission to the Joint Select Committee on Australia’s Immigration Detention Network (no. 32), August 2011, pp. 210–226, viewed 14 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm
 6. J Menadue, A Keski-Nummi and K Gauthier, *A new approach—breaking the stalemate on asylum seekers and refugees*, Centre for Policy Development, Occasional paper no. 13, Sydney, 2011, p. 31, viewed 5 February 2013, http://cpd.org.au/wp-content/uploads/2011/08/cpd_refugee_report_2nd-run-WEB-VERSION3.pdf
 7. J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Background note, Parliamentary Library, Canberra, 2013, p. 1, viewed 14 March 2013, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/BoatArrivals
 8. W. C. Robinson, *Terms of Refuge: the Indochinese exodus and the international response*, 1998, pp. 151, 272. It is worth noting that Australia was a major resettlement country for Indochinese refugees and, according to Robinson, on a per capita basis Australia accepted more people for resettlement than any other country—from 1975 to 1995 Australia resettled more than 137 000 Indochinese refugees—a total second only to the United States and on a per capita basis more than any other country.
 9. J Phillips and H Spinks, op. cit., p. 1.
 10. Joint Standing Committee on Migration, *Asylum, border control and detention*, Australian Government Publishing Service (AGPS), Canberra, February 1994, p. 16.
 11. D McMaster, *Asylum seekers: Australia’s response to refugees*, Melbourne University Press, Melbourne, 2001, pp. 70–73.

concern with public discussion soon focusing on such issues as rising unemployment and the impact of people 'jumping the immigration queue'.¹²

In the late 1970s Australia had three facilities that could be described as immigration detention centres, in Sydney, Perth and Melbourne. However, all were designed to detain short-term compliance cases (such as visa overstayers) and only the infrastructure in Sydney was considered adequate to accommodate the new arrivals.¹³ As a result, most of the Indochinese asylum seekers arriving from 1976 to 1981 were housed in Sydney's Westbridge Migrant Centre (now Villawood) together with other refugees and humanitarian arrivals:

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.¹⁴

The enactment of the *Migration Legislation Amendment Act 1989* introduced changes to the system of processing boat arrivals and allowed officers to arrest and detain anyone suspected of being an 'illegal entrant'.¹⁵ Although detention was still discretionary and not mandatory until 1992, the changes made in 1989 effectively introduced a policy of 'administrative detention' for all people entering Australia without a valid visa, or any others present in the country unlawfully (i.e. without a valid visa), while their immigration status was resolved.¹⁶

The 'second wave' detainees were held in (unfenced) detention in Villawood:

12. J Phillips and H Spinks, op. cit., pp. 5–8.
13. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., pp. 23–24 and 197. As early as December 1978, it was suggested that Christmas Island be utilised as a 'refugee centre and quarantine centre', but instead the Government created a holding centre near Broome and detainees were sent on to Villawood or to a centre near Darwin. Boat arrivals were not accommodated on Christmas Island until 1999. For further detail on the development of Australia's detention network see DIAC's submission, pp. 24 and 197–207.
14. A Millbank, *The detention of boat people*, Current issues brief, Parliamentary Library, Canberra, 2001, viewed 14 March 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2FN1K36%22_m
15. Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, First report of the inquiry into immigration detention, House of Representatives, Canberra, December 2008, p. 151, viewed 5 February 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/index.htm
16. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., pp. 23, 197. Immigration detention was not considered to be a punitive measure but 'an administrative function whereby people who do not have a valid visa are detained while their claims to stay are considered or their removal is facilitated'. See DIAC, *Background to immigration detention*, op. cit.

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.¹⁷

However, most of the second wave of detainees were not processed quickly and all remained in custody for the entire period of their refugee determination process.¹⁸ Between November 1989 and January 1994, eighteen boats arrived carrying mostly Cambodians, Vietnamese and Chinese nationals, with one third remaining in detention until the end of this period (some of whom were in custody for over four years).¹⁹

In response to this second wave of boat arrivals the Port Hedland Immigration Reception and Processing Centre opened in 1991 in order to accommodate some of the (mostly Cambodian) asylum seekers.²⁰ The removal of asylum seekers to this relatively isolated centre on the site of a disused mining camp in north-west Western Australia attracted criticism from the Refugee Council of Australia amongst others.²¹

As a result of the enactment of the *Migration Legislation Amendment Act 1989*, and other contributing factors discussed below, the numbers of immigration detainees began to slowly increase (although there were fluctuations in the numbers depending on arrivals). For example, on 1 January 1985 there were only five people being held in immigration detention centres.²² However, by June 1992 (after the second wave of Indochinese boats had begun to arrive) there were 478 people in immigration detention of whom 421 were boat arrivals (including 306 Cambodians):

17. Ibid. and A Millbank, *The detention of boat people*, op. cit.

18. D McMaster, op. cit., pp. 74–80.

19. Ibid., p. 74; and N Viviani, *The Indochinese in Australia 1975 to 1995: from burnt boats to barbeques*, Oxford University Press, Melbourne, 1996, p. 24.

20. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., p. 197.

21. D McMaster, op. cit., p. 80.

22. Joint Standing Committee on Migration, *Asylum, border control and detention*, op. cit, p. 14.

Location of detainees on 12 June 1992²³

Location	Detainees
Port Hedland WA	292
Villawood NSW	139
Maribyrnong Vic	15
Darwin NT	12
Roebourne WA	10
Fremantle WA	6
Adelaide SA	1
Parramatta NSW	1
Westbridge NSW	1
Albany Prison WA	1
Total	478

While the main factor contributing to the increased use of immigration detention was the arrival of several boats carrying Indochinese asylum seekers fleeing the region in the aftermath of the Vietnam War, there was also increased compliance activity against other unlawful non-citizens (usually visa overstayers) who had arrived in the country originally by air.²⁴ This was partly due to the fact that in the 1980s and 1990s there was pressure on the Government to address concerns over the number of ‘undocumented migrants’ or visa overstayers in the community (an estimated 90 000 in 1990). The 1990 Joint Standing Committee on Migration Regulations report noted the issues of public concern:

The control of illegals has taken on a new urgency in recent years because the problem is coupled with or compounded by fears of an increased movement of asylum seekers. The two issues are, and should be seen to be, different...The presence of illegal entrants has come, whether correctly or not, to symbolise the inability of governments to control their borders, and in Australia’s case, to protect the integrity of its immigration programme.²⁵

Why was mandatory detention introduced?

It was in 1992 that the policy of mandatory detention was introduced by the Keating Government (with bipartisan support) through the enactment of the *Migration Amendment Act 1992*.²⁶

Mandatory detention was initially envisaged as a temporary and ‘exceptional’ measure to deal with

23. Joint Standing Committee on Migration Regulations, *Australia’s refugee and humanitarian system: achieving a balance between refuge and control*, AGPS, Canberra, August 1992, pp. 160–163.

24. Ibid., pp. 13–16. For example, of the 302 unauthorised arrivals placed in detention in 1990, 198 had arrived by boat and 104 had arrived by air. For more detail on unlawful non-citizens generally see DIAC, *Overstayers and other unlawful non-citizens*, op. cit.

25. Joint Standing Committee on Migration Regulations, *Illegal entrants in Australia: balancing control and compassion*, AGPS, Canberra, September 1990, pp. 12–14.

26. Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, op. cit., p. 151.

a particular cohort of ‘designated persons’—Indochinese unauthorised boat arrivals.²⁷ In his second reading speech, the then Minister for Immigration, Gerry Hand, stated:

The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community ... this legislation is only intended to be an interim measure. The present proposal refers principally to a detention regime for a specific class of persons. As such it is designed to address only the pressing requirements of the current situation. However, I acknowledge that it is necessary for wider consideration to be given to such basic issues as entry, detention and removal of certain non-citizens.²⁸

However, mandatory detention was subsequently extended to all ‘unlawful’ non-citizens with the enactment of the *Migration Reform Act 1992* (when the Act came into effect on 1 September 1994):

The Act established a new visa system making a simple distinction between a ‘lawful’ and ‘unlawful’ non-citizen. Under Section 13 of the Act, a migration officer had an obligation to detain any person suspected of being unlawful. The Act removed the 273 day detention limit which had applied under the Migration Amendment Act 1992. Overstayers could apply for a bridging visa which allowed them to stay in the community while their claims were assessed. The Act had bipartisan support.²⁹

In an acknowledgement of the high costs of mandatory detention, the Act also introduced detention charges (detention debts) whereby an unlawful non-citizen was liable for the costs of his or her immigration detention.³⁰

In his second reading speech Minister Hand provided the Government’s rationale for some of the amendments:

In the Migration Reform Bill currently before the House I propose a range of measures to enhance the Government's control of people who wish to cross our borders. The Bill sets out more effective means of regulating entry, detention and removal of people who do not establish an entitlement to be in Australia...

At present, we have an array of laws which govern detention and removal, depending upon how a person arrived in Australia. This is confusing to the public and administrators alike. The Bill will provide for a uniform regime for detention and removal of persons illegally in Australia. Non-

27. Ibid., p. 3.

28. G Hand (Minister for Immigration, Local Government and Ethnic Affairs), *Migration Amendment Bill 1992*, Second reading speech, 5 May 1992, viewed 5 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F1992-05-05%2F0031%22>

29. Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, op. cit., p. 151.

30. Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, op. cit., pp. 112–118. Note: In practice, recovery of these debts was usually not pursued, with less than 2.5 per cent recovered between 2004–05 and 2008 before the policy was abolished by the Rudd Government.

citizens who are in Australia without a valid visa will be unlawful and will have to be held in detention.

Unlawful non-citizens who satisfy prescribed criteria will be able to acquire lawful status and release from detention by the grant of a bridging visa. Bridging visas will not be available to people who arrive in Australia without authority. Depending on their circumstances, they will be immediately removed from Australia or will be subject to detention until any claim they wish to make has been resolved. When a person who is in Australia unlawfully has exhausted all available application and merits review entitlements, the law will require that person to be removed as soon as practicable. Deportation will only apply in relation to the current 'criminal', 'national security' and 'certain serious offences' categories.³¹

Although the Act extended mandatory detention to all unlawful non-citizens, those who satisfied certain criteria (for example those visa overstayers who were not considered a flight or security risk) were able to acquire lawful status by the grant of a bridging visa and thereby avoid detention. However, bridging visas were not available to people who had arrived in Australia without authority (such as unauthorised boat arrivals).³²

Commenting in 1994 on the rationale for the different treatment of boat arrivals, the Department of Immigration and Ethnic Affairs argued that there was a sound basis for the mandatory detention of anyone who had clearly bypassed the offshore entry processes required by Australia's universal visa system. Visa overstayers on the other hand had 'submitted themselves to a proper application and entry process offshore'.³³ The Department also argued that there was a need for secure detention given the number of unauthorised boat arrivals who had absconded from unfenced migrant accommodation hostels in the past—57 between 1991 and 1993, of whom 18 remained at large in January 1994.³⁴

Over the years successive governments have argued the need to 'retain mandatory detention to support the integrity of Australia's immigration program' and 'ensure the effective control and management of Australia's borders'.³⁵ As a result, while many changes and reforms have been introduced by both sides of politics since the 1990s, Australia's mandatory detention policy essentially remains unchanged:

31. G Hand (Minister for Immigration, Local Government and Ethnic Affairs), *Migration Reform Bill 1992*, Second reading speech, *Debates*, House of Representatives, 4 November 1992, p. 2620, viewed 5 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F1992-11-04%2F0177%22>

32. *Ibid.*

33. Joint Standing Committee on Migration, *Asylum, border control and detention*, op. cit, p. 109.

34. *Ibid.*, pp. 110–111.

35. C Bowen (Minister for Immigration and Citizenship), *Labor unveils new risk-based detention policy*, media release, 29 July 2008, viewed 5 February 2013, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08072.htm> and P Ruddock (Minister for Immigration and Multicultural affairs), *Australia's border integrity strengthened by new legislation*, media release, 26 September 2001, viewed 5 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FRH156%22>

The reasons for Australia's mandatory detention policy put forward at the outset by immigration minister the Hon. Gerry Hand in 1992 under the Hawke Government are, in essence, the same as those put forward by immigration minister the Hon. Philip Ruddock ten years later under the Howard Government. Successive governments and other supporters of Australia's mandatory detention policy have claimed that it is an integral part of the highly developed visa and border controls necessary to maintain the integrity of our world class migration and refugee resettlement programs. They point to the problems caused by asylum-driven migration in European countries. They point out that where detention has been prolonged this has been by detainees' own actions and determination to remain in a more prosperous country. Detainees have been free to leave at any time.³⁶

Currently, most onshore unlawful non-citizens (usually visa overstayers) are not detained, but are issued with a bridging visa (thereby acquiring temporary lawful status) while their immigration status is resolved.³⁷ Similarly, asylum seekers who arrive in the country by air with a valid visa (and then lodge an application for a protection visa) are able to automatically apply for a bridging visa to give them 'lawful' status while their application is being processed.

This means that provided the criteria for a bridging visa are satisfied they will not be detained.³⁸ In contrast, it is Government policy that asylum seekers who arrive unauthorised by boat are mandatorily detained while they undergo an assessment process, including security and health checking, to establish if they have a legitimate reason for staying in Australia.³⁹ Although the Gillard Government announced a change in policy in November 2011 whereby 'eligible boat arrivals who do not pose risks will be progressively considered for community placement on bridging visas while their asylum claims are assessed', they continue to be mandatorily detained initially while health, security and identity checks are completed.⁴⁰

What has happened since 1992?

Howard Government

The numbers of Indochinese boat arrivals between 1976 and 1994 were relatively small (just over 2760 people).⁴¹ However, between 1999 and 2001 Australia received a new wave of approximately

36. A Millbank and J Phillips, *The detention and removal of asylum seekers*, E-brief, Parliamentary Library, Canberra, 2005, viewed 2 November 2011, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/asylumseekers

37. See DIAC, *Overstayers and other unlawful non-citizens*, op. cit., for more detail, including the consequences of being unlawful and the granting of bridging visas.

38. E Karlsen, E Koleth and J Phillips, *Seeking asylum: Australia's humanitarian program*, Background note, Parliamentary Library, Canberra, 2011, pp. 14–15, viewed 15 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F158141%22>

39. DIAC, *Processing irregular maritime arrivals*, op. cit.

40. C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, media release, 25 November 2011, viewed 6 February 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm>

41. J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, op.cit.

9500 unauthorised boat arrivals seeking asylum (predominantly from the Middle East).⁴² In response, the Coalition (Howard) Government introduced a range of measures designed to discourage further boat arrivals and reduce the number of people in detention.

In October 1999 the Government introduced Temporary Protection Visas (TPVs) enabling the release into the community of many detainees who had been granted refugee status. However, protection and therefore residency in Australia, was only provided on a temporary basis. The Howard Government maintained that the introduction of this visa would remove the incentives for asylum seekers who were considering making the journey to Australia by boat.⁴³

While this measure had the potential to significantly reduce the number of people in detention, it was criticised by many for only providing protection for a limited period of time (three years initially); not allowing refugees to sponsor family members under the family reunion program (with the result that more family groups began to arrive by boat); and not affording access to the full range of government services provided to refugees with permanent visas.⁴⁴

By September 2001, the Parliament had passed (with bipartisan support) the *Migration Amendment (Excision from Migration Zone) Bill 2001* and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bills 2001*, giving effect to a policy of offshore processing which came to be known as the 'Pacific Solution'.⁴⁵

The Pacific Solution was introduced in response to the events of August 2001 when 433 asylum seekers en route to Australia were rescued from their sinking vessel by a Norwegian freighter, the *Tampa*. The *Tampa* was refused entry to Australia (although the ship's master eventually defied this order and did enter Australia's territorial waters where it was interdicted by the Special Air Service (SAS)), and the asylum seekers were subsequently transferred to *HMAS Manoora* and sent to the Pacific island of Nauru.⁴⁶

Under the Pacific Solution, Christmas Island, Ashmore and Cartier Islands and the Cocos (Keeling) Islands were excised from Australia's migration zone, meaning that non-citizens arriving unlawfully

42. Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, op. cit., p. 3.

43. P Ruddock (Minister for Immigration and Multicultural Affairs), *Ruddock announces tough new initiatives*, media release, 13 October 1999, viewed 6 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FYOG06%22>

44. Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, op. cit., p. 152. Note: DIAC now acknowledges that more families began to arrive by boat due to the lack of family reunion options under the TPV regime; see A Metcalfe (Secretary, Department of Immigration and Citizenship), Senate Legal and Constitutional Affairs Legislation Committee, Immigration and Citizenship portfolio, Supplementary Budget Estimates 2011–12, 17 October 2011, p. 25, viewed 6 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fc41d33f3-455d-4f98-ba56-42dc68511fc3%2F0002%22>

45. Ibid.

46. H Spinks and J Phillips, *Tampa: ten years on*, FlagPost, Parliamentary Library, Canberra, 22 August 2011, viewed 6 February 2013, <http://parliamentflagpost.blogspot.com/2011/08/tampa-ten-years-on.html>.

(without valid documentation) at one of these territories were not able to make a valid application for a visa to Australia, including Protection Visas, unless the bar on the visa application process was lifted at the discretion of the Minister (ministerial discretion).⁴⁷

Instead, unauthorised arrivals at excised places were transferred to Offshore Processing Centres which were established on Nauru and Manus Island (Papua New Guinea) where they remained while their asylum claims were processed. Persons who were found to be owed protection were eventually resettled either in Australia or in a third country, with the emphasis on trying to find resettlement solutions in a third country in preference to Australia. Some asylum seekers were also processed on the excised offshore territory of Christmas Island. Asylum seekers processed offshore under the Pacific Solution did not have access to legal assistance or judicial review of negative decisions.

Between 2001 and February 2008, when the Pacific Solution was formally ended by the Rudd Government, a total of 1637 people had been detained in the Nauru and Manus facilities—1153 of whom (70 per cent) were found to be refugees and ultimately resettled in another country. The majority of these 1153 refugees were resettled in Australia (61 per cent) with the remainder resettled in other countries such as New Zealand, Sweden, Canada and the United States of America (USA).⁴⁸

While the Pacific Solution reduced the numbers of those who would otherwise have been detained onshore (by 1637 people), it was widely criticised by refugee advocacy and human rights groups as being contrary to international refugee law, unjustifiably expensive to implement, and psychologically damaging for detainees.⁴⁹ In addition, there was a great deal of criticism at the time of conditions in onshore immigration detention centres such as Curtin, Woomera and Baxter (leading to widespread unrest and rioting).⁵⁰

While mandatory detention remained a cornerstone of the Howard Government's attempts to deter asylum seekers arriving by boat, some softening of the policy was introduced in 2005 by the then

47. Select Committee on a Certain Maritime Incident, *A Certain maritime incident report*, The Senate, October 2002, p. 15, viewed 6 February 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=maritime_incident_ctte/report/index.htm and DIAC, *Processing irregular maritime arrivals*, op. cit.

48. C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, media release, 8 February 2008, viewed 6 February 2013, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08014.htm> and H Spinks and J Phillips, *Tampa: ten years on*, op. cit.

49. For example, see K Bem, N Field, N Maclellan, S Meyer and T Morris, *A price too high: the cost of Australia's approach to asylum seekers*, A Just Australia and Oxfam Australia, August 2007, viewed 6 February 2013, <http://pandora.nla.gov.au/pan/76526/20070910-1523/www.oxfam.org.au/media/files/APriceTooHigh.pdf>

50. Reports of unrest during the Howard Government were documented at length during the 2004 inquiry into children in immigration detention—see Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention*, Commonwealth of Australia, April 2004, 'Safety of children in immigration detention' chapter 8, pp. 283–356, viewed 6 February 2013, http://www.hreoc.gov.au/human_rights/children_detention_report/index.html

Minister for Immigration, Philip Ruddock, through a residential housing project for women and children and community detention arrangements (discussed further below).⁵¹

Rudd/Gillard Governments

Rudd Government

Prior to the 2007 federal election, the Australian Labor Party (ALP) resolved to implement significant changes to asylum and immigration detention policy if elected, including a commitment to end the 'Pacific Solution' (while still retaining the excision of Christmas Island, Cocos Islands and Ashmore Reef); to give permanent, not temporary, protection to all refugees; to limit the detention of asylum seekers for the purposes of conducting initial health, identity and security checks; to subject the length and conditions of detention to review; to return management of detention centres to the public sector (the Howard Government privatised the operation of detention centres in 1997); and to create a new Refugee Determination Tribunal.⁵²

On 24 November 2007, the ALP won the federal election and Kevin Rudd was sworn in as Australia's 26th Prime Minister on 3 December 2007. On forming Government, the ALP made some significant changes in immigration detention policy, giving effect to many, but not all, of the commitments made during the election campaign.

On 8 February 2008 the 'Pacific Solution' was formally ended, as the last 21 asylum seekers held at the Offshore Processing Centre (OPC) in Nauru were resettled in Australia. The Rudd Government announced that the centres on Manus and Nauru would no longer be used, and that future unauthorised boat arrivals would be processed on Christmas Island, which would remain excised from Australia's migration zone. However, in response to increases in boat arrivals, the Gillard Government subsequently reversed this decision in 2012 and reintroduced the policy of transferring asylum seekers to offshore processing centres in both Nauru and Papua New Guinea (more detail below).

On 29 July 2008 the Minister for Immigration and Citizenship, Senator Chris Evans, announced in a speech to the Centre for International and Public Law at the Australian National University, an overhaul of the policy of mandatory detention, guided by seven 'key immigration detention values' as endorsed by Cabinet:

51. A Millbank and J Phillips, op. cit.

52. E Karlsen, *Developments in Australian refugee law and policy 2007–2010*, Parliamentary Library, Canberra, 2010, p. 1, viewed 15 March 2013, http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/296071/upload_binary/296071.pdf;fileType=application%2Fpdf#search=%22library/prspub/296071%22 and Department of Immigration and Multicultural Affairs, *Future operation of immigration detention centres*, media release, 17 September 1997, viewed 6 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2IW56%22>

Mandatory detention is an essential component of strong border control

To support the integrity of Australia's immigration program three groups will be subject to mandatory detention:

- all unauthorised arrivals, for management of health, identity and security risks to the community
- unlawful non-citizens who present unacceptable risks to the community and
- unlawful non-citizens who have repeatedly refused to comply with their visa conditions

Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC)

Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review

Detention in Immigration Detention Centres is only to be used as a last resort and for the shortest practicable time

People in detention will be treated fairly and reasonably within the law, and

Conditions of detention will ensure the inherent dignity of the human person.⁵³

The new policy dictated that people would be detained as a 'last resort', rather than as standard practice. Unauthorised arrivals would be detained on arrival for identity, health and security checks, but once these were completed the onus would be on the Department to justify why a person should continue to be detained.⁵⁴ Ongoing detention would be justified for people considered to pose a security risk or those who did not comply with their visa conditions. It was assumed that the majority of people would be released into the community while their immigration status was resolved.

Despite the change in policy rhetoric, long-term mandatory detention continued under the Rudd Government. As at 31 October 2011, 39 per cent of the detention population had been in detention for more than 12 months.⁵⁵ Although the proportion of detainees in detention for more than twelve months has subsequently dropped under the Gillard Government (8.4 per cent as at 31 December

53. C Evans (Minister for Immigration and Citizenship), *New directions in detention: restoring integrity to Australia's immigration system*, speech delivered to Centre for International and Public Law, ANU, 29 July 2008, viewed 6 February 2013, <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>

54. The detention values were developed at a time when there were very few unauthorised boat arrivals and the facilities on Christmas Island were being described as a 'white elephant'. For example, S Smiles, 'MP labels island detention centre a waste of money', *Age*, 9 July 2008, viewed 6 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FSXXQ6%22>

55. DIAC, *Immigration detention statistics summary*, DIAC website, 31 October 2011, viewed 29 November 2011, <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20111031.pdf>

2012) due to the release of many asylum seekers on bridging visas, mandatory detention for all unauthorised boat arrivals has remained in place.⁵⁶

The Rudd Government also announced changes to the processing of unauthorised arrivals at excised offshore places (the excisions from the migration zone were maintained).⁵⁷ Those arriving unauthorised at an excised place would be processed on Christmas Island, where asylum seekers would undergo a non-statutory refugee status assessment process, but they would have access to publicly funded advice and representation.⁵⁸ They would also be able to access a review process for negative asylum decisions (although not via the Refugee Review Tribunal) and would be subject to external scrutiny by the Immigration Ombudsman. This was a change from the system under the previous Government, where unauthorised arrivals at excised places had no access to independent review or external scrutiny, but it still did not afford such people the same rights as those who arrived and were processed onshore (with access to merits or judicial review through the Refugee Review Tribunal and the Courts).⁵⁹

The increase in boat arrivals during 2009 and 2010 placed significant pressure on immigration detention facilities. The Rudd Government responded to this pressure by expanding the immigration detention network—\$202.0 million over five years (including \$183.3 million in capital funding, and \$18.7 million in related expenses) was allocated in the 2010–11 Budget to ensure appropriate accommodation for asylum seekers. The measure provided for funding of \$143.8 million for increased capacity at immigration detention facilities. The measure also provided capital funding for a number of upgrades and enhancements to essential amenities and security at existing facilities, consisting of \$22.0 million for Christmas Island, \$15.0 million for the Northern Immigration Detention Centre in Darwin, \$1.5 million for Villawood in Sydney and \$1.0 million to upgrade existing residential facilities at Port Augusta (South Australia) for unaccompanied minors.⁶⁰

One of the key changes to detention policy made by the Rudd Government was the removal of the statutory requirement that detainees be liable for the cost of their detention (detention debt), a policy that had been introduced in 1992 with the aim of minimising the significant cost to government of holding people in immigration detention. The Rudd Government argued that the policy was ineffective because recovering debts had proved to be extremely difficult—the level of

56. C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, op. cit. and DIAC, *Immigration detention statistics summary*, DIAC website, 31 December 2012, viewed 6 February 2013, <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/>

57. C Evans (Minister for Immigration and Citizenship), *New directions in detention: restoring integrity to Australia's immigration system*, op. cit.

58. The non-statutory refugee status assessment process is not bound by the *Migration Act 1958*. See DIAC, *Processing irregular maritime arrivals*, op. cit.

59. However, after the collapse of its 'Malaysian Solution' proposal, the Gillard Government announced that in 2012 it would be 'moving to a single protection visa process for both boat and air arrivals, using the current onshore arrangements for application and independent review through the Refugee Review Tribunal (RRT) system, as needed', see C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, op. cit.

60. Parliamentary Library, *Budget review 2010–11*, Parliamentary Library, Canberra, May 2010, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201011

debt recovery over the years averaged around four per cent.⁶¹ On 8 September 2009 Parliament passed the *Migration Amendment (Abolishing Detention Debt) Bill 2009* which amended the Migration Act to remove this requirement. The Act also had the effect of extinguishing all immigration detention debts outstanding at the time of commencement.⁶²

In response to a new wave of asylum seekers arriving by boat in 2009 and 2010, the Rudd Government began to introduce changes to its policies. On 9 April 2010, citing changed circumstances in Afghanistan and Sri Lanka, the Rudd Government announced that it would suspend the processing of new asylum claims from Sri Lankan nationals for three months and Afghan nationals for a period of six months. Those affected by the suspension would remain indefinitely in immigration detention until the suspensions were lifted (in July 2010 for Sri Lankans and September 2010 for Afghans).⁶³

Gillard Government

In July 2010, following a change in leadership, the Labor Government (under the new Prime Minister Julia Gillard) continued in its efforts to reduce the number of people in immigration detention and deal with the problem of overcrowding—both on the mainland and on Christmas Island. In particular, the Gillard Government continued to expand the detention network in order to ease the problem of overcrowding on Christmas Island (by accommodating certain detainees selected for transfer to the mainland). In addition Julia Gillard announced the Government would be moving towards establishing a regional processing centre, possibly in East Timor (although negotiations for the ‘Timor Solution’ subsequently collapsed):

Building on the work already underway in the Bali Process, today I announce that we will begin a new initiative. In recent days I have discussed with President Ramos Horta of East Timor the possibility of establishing a regional processing centre for the purpose of receiving and processing irregular entrants to the region.⁶⁴

Following the re-election of the Gillard Government in August 2010, the newly appointed Minister for Immigration and Citizenship, Chris Bowen, announced on 17 September 2010 that additional immigration detainee accommodation would be prepared for families and unaccompanied minors in

61. Senate Legal and Constitutional Affairs Committee, *The Administration and Operation of the Migration Act 1958*, The Senate, Canberra, 2 March 2006, p. 350.

62. For more information on detention debts see H Spinks and E Karlsen, *Migration Amendment (Abolishing Detention Debt) Bill 2009*, Bills Digest, no. 126, 2008–09, Parliamentary Library, Canberra, May 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F1EHT6%22> The Migration Amendment (Immigration Detention Reform) Bill 2009 was also introduced by the Rudd Government to support the implementation of the Government’s new detention policy (although this Bill subsequently lapsed).

63. C Evans (Minister for Immigration and Citizenship), *Changes to Australia’s immigration processing system*, media release, 9 April 2010, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm>

64. J Gillard (Prime Minister), *Moving Australia forward: address to the Lowy Institute*, Sydney, 6 July 2010, 8 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1E8X6%22>

Melbourne, and for single adult men in northern Queensland and Western Australia (through an expansion of capacity at the Curtin Detention Centre that had been reopened earlier in the year).⁶⁵ Over the following months new facilities were also announced for Inverbrackie in South Australia, Wickham Point in Darwin and Pontville in Tasmania.⁶⁶

Like the Howard Government before it, the Gillard Government came under increasing pressure to move children from detention centres, as had been promised in the ALP's 'detention values'. On 18 October 2010 the Prime Minister and the Minister for Immigration and Citizenship announced that the Australian Government would expand its existing residence determination program and begin moving children and vulnerable family groups out of immigration detention facilities and into community-based accommodation.⁶⁷

With pressure on the detention network continuing to increase, the Gillard Government announced several significant policy changes and initiatives in 2011, including:

- 27 April 2011—in response to increasing unrest in immigration detention centres, the Minister announced that he would introduce amendments to the Migration Act, including a new provision to toughen the character test. Under the proposed changes a person would fail the character test should they be convicted of any offence committed while in immigration detention and they would be prevented from applying for a permanent protection visa.⁶⁸ On 5 July 2011, the changes were passed by Parliament.⁶⁹
- 7 May 2011—in an attempt to discourage boat arrivals and people smuggling, the Government announced that Malaysia had agreed to a transfer of 800 unauthorised boat arrivals in exchange for 4000 refugees to Australia over four years.⁷⁰ This proposal came to be known in the public debate as the 'Malaysia Solution'.
- 2 June 2011—the Government agreed to a new select committee inquiry into mandatory detention to inquire into Australia's Immigration Detention Network, 'including its management,

65. C Bowen (Minister for Immigration and Citizenship), *Additional immigration detention accommodation*, media release, 17 September 2010, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/media-releases/2010/cb10064.htm>

66. C Bowen (Minister for Immigration and Citizenship), *Government announces new and expanded immigration detention*, media release, 3 March 2011, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb159679.htm>

67. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Government to move children and vulnerable families into community-based accommodation*, media release, 18 October 2010, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/media-releases/2010/cb10071.htm>

68. C Bowen (Minister for Immigration and Citizenship) and K Rudd (Minister for Foreign Affairs), *Tougher character test to send clear message*, media release, 24 October 2011, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb164699.htm>

69. C Bowen (Minister for Immigration and Citizenship), *Character test changes passed by parliament*, media release, 5 July 2011, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb167979.htm>

70. C Bowen (Minister for Immigration and Citizenship) and J Gillard (Prime Minister), *The regional cooperation framework*, media release, 7 May 2011, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb165079.htm>

resourcing, potential expansion, possible alternative solutions, the Government's detention values, and the effect of detention on detainees'.⁷¹

- 19 August 2011—the governments of Australia and Papua New Guinea signed a Memorandum of Understanding towards the proposed establishment of an 'assessment centre' on Manus Island.⁷²
- 19 September 2011—After the High Court ruled against the 'Malaysia Solution' on 31 August 2011, casting doubt on the legality of offshore processing entirely, the Government released the proposed *Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011*. The Bill was introduced to the House of Representatives on 22 September 2011, but was not pursued by the Government when it became clear it was unlikely to be passed by the Parliament.

The Gillard Government remained committed to offshore processing and at the ALP National Conference in December 2011 it was agreed that the Platform would be amended to reflect the Government's intention to continue to pursue this policy in the context of 'strong regional and international arrangements to deter secondary movements of asylum seekers'.⁷³ However, after the collapse of the 'Timor Solution', the withdrawal of the *Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011* and the subsequent collapse of the 'Malaysia Solution' (and the proposal for an 'assessment centre' on Manus Island in PNG), the Government announced other options to relieve the pressure on detention centres. In particular, in October 2011 the Gillard Government proposed that some asylum seekers who arrive unauthorised by boat be issued with bridging visas (just like most air arrivals) and released from detention into the community while their claims are processed:

As you know, we currently have been moving families and children into the community. That has been an ambitious task, but it has been a task that we have fulfilled, moving the majority of children into the community. We'll continue to do that. We'll also continue to do that as we do at the moment with some vulnerable adults.

In addition, there are a range of powers available currently to the Government that are used regularly for people who arrive in Australia irregularly by air or are visa overstayers and are used from time to time for people who arrive by boat. Of course, they will be used more regularly as we manage the detention network so that we avoid opening more detention centres. There, of

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71. See the Joint Select Committee on Australia's Immigration Detention Network website, viewed 8 February 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/index.htm
72. C Bowen (Minister for Immigration and Citizenship), *Australia and Papua New Guinea Sign MoU*, media release, 24 October 2011, viewed 8 February 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb170699.htm>
73. ALP, *National platform*, December 2011, p. 172, ALP website, viewed 8 February 2013, <http://www.alp.org.au/getattachment/fdffe386-48e4-4ead-be88-d099e884bc54/our-platform/> and P Kelly, 'Battle to stem the tide', *Weekend Australian*, 10 December 2011, viewed 8 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1286365%22>

course, I'm referring to bridging visas, as well as the current community detention availability that we have been implementing over the last 12 months.⁷⁴

On 25 November 2011 the Minister for Immigration and Citizenship announced that the first group of asylum seekers—all long term detainees—would be released on bridging visas under this arrangement.⁷⁵ As at 31 December 2012, 10 356 bridging visas had been granted to IMA clients since the program began in November 2011 (2760 of whom had subsequently been granted protection visas).⁷⁶

On 25 November 2011, the Gillard Government also announced the end of a parallel refugee status assessment process for boat arrivals and a return to a single protection visa processing system.⁷⁷ Subsequently, in March 2012, a single statutory protection visa process for both boat and air arrivals came into effect. Importantly, the onshore arrangements for application and independent review through the Refugee Review Tribunal (RRT) system now applied to all people seeking asylum in Australia, regardless of their mode of arrival.⁷⁸

The decision that many IMAs (boat arrivals) would now be released on bridging visas just like non-IMAs (air arrivals), together with the decision that there would be a return to a single protection visa processing system for IMAs and non-IMAs was a significant departure from previous arrangements.

In 2012, boat arrival numbers continued to climb, largely due to an 'unprecedented expansion' of unauthorised boat arrivals from Sri Lanka. The increase in arrivals (together with several months of political deadlock and the rejection of the 'Malaysia Solution' by the High Court) placed the Government under increasing pressure to find some alternative policy options and 'stop the boats'.⁷⁹

In April 2012 the Joint Select Committee on Australia's Immigration Detention Network final report was released. The Committee made 31 recommendations, including that 'the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a

74. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Transcript of joint press conference*, Canberra, 13 October 2011, viewed 8 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1162009%22>

75. C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, op. cit.

76. Senate Legal and Constitutional Affairs Committee, Additional Budget Estimates, Immigration and Citizenship Portfolio, 11 February 2013, p. 115, viewed 21 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fb418547b-7f30-4322-8468-ddaaf0bce0f6%2F0000%22>

77. After the collapse of the 'Malaysian Solution' proposal, the Gillard Government announced that in 2012 it would be 'moving to a single protection visa process for both boat and air arrivals, using the current onshore arrangements for application and independent review through the Refugee Review Tribunal (RRT) system, as needed'; C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, media release, 25 November 2011, viewed 11 January 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm>

78. C Bowen (Minister for Immigration and Citizenship), *New single protection visa process set to commence*, media release, 19 March 2012, viewed 11 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb184344.htm>

79. M Bowles (Secretary, DIAC), Senate Legal and Constitutional Affairs Committee, Additional Budget Estimates, Immigration and Citizenship Portfolio, 11 February 2013, op. cit., p. 14.

last resort' and that 'all reasonable steps be taken to limit detention to a maximum of 90 days'.⁸⁰ The Gillard Government accepted (fully, in principle or partially) 26 of the 31 majority report recommendations made by the Committee, including that the Government adhere to its commitment of only detaining asylum seekers as a last resort and limit detention to a maximum of 90 days where possible.⁸¹ To a certain extent the Gillard Government has made some progress with limiting the length of detention due to its commitment in November 2011 to release many asylum seekers on bridging visas. As mentioned earlier, as at 31 October 2011, 39 per cent of the detention population had been in detention for more than 12 months, but by 31 December 2012 the proportion of those in detention for more than 12 months had dropped to 8.4 per cent.⁸²

In June 2012 the Prime Minister made a key announcement that the Government would be establishing an expert panel to examine 'the best way forward for our nation in dealing with asylum seeker issues'.⁸³ The Expert Panel on Asylum Seekers subsequently released its report on 13 August 2012.⁸⁴ The report acknowledged that there are 'no quick or simple solutions to the policy dilemmas and the humanitarian challenges that asylum seeking create', but that 'to do nothing when there is the ability to do more is unacceptable'. The report put forward 'an integrated set of proposals' that included several long-term policy options together with short-term options to alleviate the immediate pressure on the detention network. One of the short-term options proposed was the urgent introduction of legislation to 'support the transfer of people to regional processing arrangements' to allow the establishment of processing centres in Nauru and Papua New Guinea.⁸⁵

The Gillard Government accepted all the recommendations of the Expert Panel's report and announced that one of the first measures to be adopted would be resuming the practice of offshore processing under arrangements with the governments of Nauru and Papua New Guinea (PNG).⁸⁶ Under these arrangements, any asylum seeker arriving in Australia by boat after 13 August 2012

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80. Joint Select Committee on Australia's Immigration Detention Network, *Final report*, The Senate, Canberra, March 2012, p. xxi, viewed 21 February 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/index.htm
 81. Australian Government, *Government Response to Recommendations by the Joint Select Committee on Australia's Immigration Detention Network*, November 2012, p. 4, viewed 21 February 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/index.htm
 82. DIAC, *Immigration detention statistics summary*, *op. cit.*
 83. J Gillard (Prime Minister), *Joint press conference*, media release, 28 June 2012, viewed 21 February 2013, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-29>
 84. For more detail see H Spinks, *Breaking the deadlock? The Report of the Expert Panel on Asylum Seekers*, FlagPost, Parliamentary Library, Canberra, 13 August 2012, <http://parliamentflagpost.blogspot.com.au/2012/08/breaking-deadlock-report-of-expert.html>
 85. Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers*, Department of the Prime Minister and Cabinet, Canberra, August 2012, pp. 7–8, viewed 21 February 2013, http://expertpanelonasylumseekers.dpmc.gov.au/sites/default/files/report/expert_panel_on_asylum_seekers_full_report.pdf
 86. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Australia signs memorandum of understanding with Nauru*, media release, Canberra, 29 August 2012, viewed 22 February 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb189579.htm>

could be transferred to Regional Processing Centres (RPCs) in Nauru or Manus Island (PNG) for processing after a 'pre-transfer assessment' conducted by the Department of Immigration and Citizenship to determine whether it is 'reasonably practicable' for the person to be transferred.⁸⁷ All transferred asylum seekers would have their protection claims assessed by either Nauru or PNG and those who were subsequently found to be refugees would be eligible for resettlement to Australia or another resettlement country. The first transfers to Nauru occurred on 14 September 2012 and the first to Manus, PNG, on 21 November 2012.⁸⁸ Many asylum seekers affected by the Government's 13 August 2012 announcement also returned, either voluntarily or involuntarily, mostly to Sri Lanka.⁸⁹

The Government made it clear that it would be adhering to a 'no advantage' principle outlined in the Expert Panel on Asylum Seekers report, meaning that asylum seekers would not be resettled any sooner than they would have been had they not travelled to Australia by boat.⁹⁰ What this means in practice is unclear, with the Government refusing to explain how long people may have to wait for resettlement.

It remains to be seen whether this 'short-term' option becomes entrenched as long-term policy. If that becomes a reality, and the Government holds firm to its 'no advantage principle', asylum seekers may once again find themselves spending prolonged periods of time in offshore processing centres in the Pacific as they once did during the Howard Government's 'Pacific Solution'.

In November 2012 the Minister for Immigration and Citizenship announced that due to the large number of arrivals in 2012, people who arrived after 13 August 2012 would not necessarily be transferred offshore. However they would still have the 'no advantage' principle applied to their cases onshore and if found to be refugees, may not be issued with permanent protection visas but instead could be issued with bridging visas without work rights:

Mr Bowen said given the number of people who had arrived by boat since 13 August, it would not be possible to transfer them all to Nauru or Manus Island in the immediate future. 'Accordingly, some of these people will be processed in the Australian community. They will not however be issued with a permanent Protection visa if found to be a refugee, until such time

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- 87. See DIAC, *Departmental guidelines for assessment of persons prior to transfer pursuant to Section 198AD(2) of the Migration Act 1958*, DIAC, Canberra, 14 October 2012, viewed 22 February 2013, <http://www.immi.gov.au/visas/humanitarian/pdf/s198ad-2-guidelines.pdf>
 - 88. C Bowen (Minister for Immigration and Citizenship), *Asylum seeker transfer*, press conference transcript, Sydney, 14 September 2012, viewed 22 February 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb189879.htm> and First transfer to Papua New Guinea, media release, 21 November 2012, viewed 22 February 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb191879.htm>
 - 89. C Bowen (Minister for Immigration and Citizenship), *Sri Lankan men removed to Colombo*, media release, 19 December 2012, viewed 22 February 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb192584.htm>
 - 90. For example, see C Bowen (Minister for Immigration and Citizenship), *Designating Nauru as a regional processing country, transfers to Nauru, asylum seeker boats, the Greens*, media release, 10 September 2012, viewed 15 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb189747.htm>

that they would have been resettled in Australia after being processed in our region,' Mr Bowen said.⁹¹

On 16 October 2012 the Gillard Government also announced an independent review process for those assessed to be refugees, but not granted a permanent protection visa as a result of an adverse security assessment (ASA). The Independent Reviewer of Adverse Security Assessments commenced in December 2012 and is due to report in June 2013.⁹²

What are the contentious issues?

Mandatory detention has been the subject of vigorous debate since it was introduced in 1992, igniting great passion in both its supporters and detractors. It has typically been viewed by some as a necessary part of maintaining the integrity of Australia's immigration system and protecting our borders, while others argue it is contrary to the spirit of international refugee law, inhumane and largely ineffective in curbing unauthorised arrivals.⁹³

Inquiries

Numerous reports on the pros and cons of mandatory detention, from both the government and non-government sectors, have been produced since the policy was introduced in 1992. In 1993 the Joint Standing Committee on Migration conducted an inquiry into immigration detention, following public concern regarding the mandatory detention of unauthorised arrivals seeking refugee status. The Committee's report, *Asylum, border control and detention*, released in 1994, recommended that unauthorised arrivals seeking refugee status continue to be mandatorily detained for the duration of the claims process, but that there be a 'capacity to consider release where the period of detention exceeds six months'.⁹⁴

A 1998 Report from the Human Rights and Equal Opportunity Commission (HREOC) on the policy of mandatory detention argued that the policy breached international human rights standards and that when detention was prolonged many of the conditions in which people were detained became

91. C Bowen (Minister for Immigration and Citizenship), *No advantage onshore for boat arrivals*, media release, viewed 22 February 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb191883.htm>

92. Attorney-General's Department, *Independent Reviewer of Adverse Security Assessments*, Attorney-General's Department website, viewed 22 February 2013, <http://www.ag.gov.au/NationalSecurity/CounterterrorismLaw/Pages/IndependentReviewofAdverseSecurityAssessments.aspx> This review followed a High Court ruling on 5 October 2012 concerning a Sri Lankan asylum seeker with an adverse ASIO assessment who has been in immigration detention with his wife and three children since 29 December 2009. For more detail see I McCluskey, *High Court holds security risk provision invalid*, FlagPost, Parliamentary Library, Canberra, 9 October 2012, <http://parliamentflagpost.blogspot.com.au/2012/10/high-court-holds-security-risk.html>

93. A Millbank and J Phillips, op. cit.

94. Joint Standing Committee on Migration, *Asylum, border control and detention*, op. cit, page xiv. A dissenting report from Senator Chamarette recommended an end to the policy of mandatory detention of unlawful non-citizens, including unauthorised arrivals, except for the purposes of initial identity, health and security checks.

unacceptable. The report also called for children and other vulnerable people to be detained only in exceptional circumstances.⁹⁵

Also in 1998 the Australian National Audit Office (ANAO) published *The Management of boat people* arguing that the detention and management of boat arrivals was costly and inefficient:

Boat persons represent about 0.01 per cent of the total number of persons who arrive in Australia annually. Management of boat persons is thus in the order of one thousand times more resource-intensive than the reception of ordinary arrivals. In such an environment there are clear risks to the economy and efficiency of operations. The fact that DIMA had no explicit responsibility for monitoring whole of government costs of the management of boat people means that one of the pre-conditions for the control of these risks is missing.⁹⁶

In 2001, former Secretary of the Department of Foreign Affairs, Philip Flood, was asked by then Minister for Immigration and Multicultural Affairs, Philip Ruddock, to undertake an inquiry into immigration detention procedures. In his report he expressed concerns over conditions throughout the detention system (particularly in the remote centre at Woomera) and documented several instances of psychiatric problems, self harm and sexual, verbal and physical abuse of children in Villawood, Woomera, Curtin and Port Hedland immigration detention centres. The report recommended that in its management of long-term detainees the Department should ensure that children are not held in detention for long periods at Woomera and that processing times for TPVs be reduced.⁹⁷ In another 2001 report on visits to immigration detention centres, the Joint Standing Committee on Foreign Affairs, Defence and Trade also expressed a number of concerns about the human rights and detention conditions for detainees.⁹⁸

In 2002, the Select Committee on a Certain Maritime Incident inquiry report on the *MV Tampa* standoff, the 'children overboard' incident and the Pacific Solution was published.⁹⁹ The report was critical of the uncertain outcomes for those being processed under the Pacific Solution and the lack of transparency in the implementation of the arrangements (involving long processing times and a lack of scrutiny of the procedures).¹⁰⁰

95. Human Rights and Equal Opportunity Commission, *Those who've come across the seas: Detention of unauthorised arrivals*, Commonwealth of Australia, 1998, viewed 4 March 2013, http://www.hreoc.gov.au/Human_Rights/immigration/seas.html

96. Australian National Audit Office (ANAO), *The Management of boat people*, Canberra, 1998, pp. 125–126, viewed 4 March 2013, <http://www.anao.gov.au/Publications/Audit-Reports/1996-1997/Management-of-Boat-People>

97. P Flood, *Report of the inquiry into immigration detention procedures*, Canberra, February 2001.

98. Joint Standing Committee on Foreign Affairs, Defence and Trade, *A report on visits to immigration detention centres*, June 2001, viewed 4 March 2013, http://www.apf.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/idc_visits/idcindex.htm

99. For details on the Tampa standoff see H Spinks and J Phillips, *Tampa: ten years on*, op. cit.

100. Select Committee on a Certain Maritime Incident, *A certain maritime incident report*, op. cit., p. 336.

In 2004, HREOC published *A last resort? The report of a national inquiry into children in immigration detention*, which was scathing in its criticism of the mandatory detention of children. The Inquiry found that:

Australia's immigration laws, as administered by the Commonwealth, and applied to unauthorised arrival children, create a detention system that is fundamentally inconsistent with the Convention on the Rights of the Child (CRC).¹⁰¹

The Inquiry further found that children in long term immigration detention were at risk of serious psychological harm, and that failure to remove children from detention with their parents constituted cruel, inhumane and degrading punishment.¹⁰²

In July 2005 the *Inquiry into the circumstances of the immigration detention of Cornelia Rau* (the Palmer Report) reported on the wrongful detention of Ms Rau.¹⁰³ In its main findings the report noted serious problems with Australia's handling of immigration detention cases and suggested that urgent reform was necessary.¹⁰⁴

Initially under the Labor Government the intensity of public debate was subdued due to the small number of boat arrivals (7 boats carrying 148 people in 2008), the dismantling of the Pacific Solution and the announcement of an overhaul of the policy of mandatory detention guided by seven 'key immigration detention values'.¹⁰⁵

On 5 June 2008 the Joint Standing Committee on Migration was asked to conduct an inquiry into immigration detention at a time when there were very few unauthorised boat arrivals—only three boats arrived in 2007–08 and there were only 408 people in immigration detention in Australia on 6 June 2008.¹⁰⁶ The committee examined a variety of issues, including detention facilities and services, detention length, criteria for release and community based alternatives to detention.¹⁰⁷ In the first of three reports the Committee praised the Government for its 'New Directions' policy and stated that:

Minister Evans' announcements signalled a paradigm shift in Australian policy. The presumption of detention that defined the policy of the previous Government has shifted to an assumption of

101. Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention*, op. cit.

102. Ibid.

103. M Palmer, *Inquiry into the circumstances of the immigration detention of Cornelia Rau* (the Palmer Report), Commonwealth of Australia, Canberra, July 2005, viewed 4 March 2013, <http://dpl/Books/2005/PalmerReport.pdf>

104. Ibid.

105. J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, op. cit., p. 18; and DIAC, *Key immigration detention values*, DIAC website, viewed 4 March 2013, <http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm>

106. J Phillips and H Spinks, op. cit., Appendix A; and DIAC, *Immigration statistics summary*, 6 June 2008.

107. Joint Standing Committee on Migration, *Inquiry into immigration detention in Australia*, House of Representatives, Canberra, 2008, viewed 4 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/index.htm

release following minimum checks. The onus will be on the Department of Immigration and Citizenship to demonstrate that detention is necessary.

This Committee welcomes the announcement of these values and the commitment of the current Australian Government to a fairer and more humane system for asylum seekers and others who are detained in immigration custody...

Hopefully this will be not just a new beginning for people held in detention, but for Australian society in determining the detention time, nature and treatment of those who come to our shores.¹⁰⁸

However, the third report (published after an increase in the arrival of people by boat) noted that there were still serious concerns regarding the well-being of detainees both on the mainland and on Christmas Island:

The Committee acknowledges that the Australian Government has made positive steps to introduce more appropriate and humane accommodation and facilities through immigration residential housing and immigration transit accommodation.

However, the standard of the accommodation and facilities provided at immigration detention centres was of a serious concern, particularly Stage 1 at Villawood and the Perth immigration detention centre. Many detention facilities also have disproportionate and antiquated security measures such as razor/barbed wire, in particular at the North West Point immigration detention centre on Christmas Island...

The Committee, and many other organisations, continue to have some reservations about the Department of Immigration and Citizenship's capacity to shift to a risk-averse framework where the onus is on establishing the need to detain. The primary concern of immigration authorities should be one of care for the well-being of detainees.¹⁰⁹

A dissenting report by Liberal backbencher, Petro Georgiou (one of the backbenchers responsible for the softening of the Howard Government's policy towards the detention of children in 2005), also argued that the issue of the detention of children had not been adequately addressed by any of the three reports and that the length of detention and the detention conditions they were experiencing was 'disturbing'.¹¹⁰

108. Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from immigration detention*, First report of the inquiry into immigration detention in Australia, House of Representatives, Canberra, December 2008, pp. viii and xi, viewed 4 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/index.htm

109. Joint Standing Committee on Migration, *Immigration detention in Australia: facilities, services and transparency*, Third report of the inquiry into immigration detention in Australia, House of Representatives, Canberra, August 2009, p. viii, viewed 4 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/index.htm

110. P Georgiou, Inquiry into immigration detention in Australia, *Dissenting report*, House of Representatives, Canberra, August 2009, viewed 4 March 2013,

After the Joint Standing Committee on Migration completed its inquiry into immigration detention the debate intensified due to the increase in the arrival of asylum seekers by boat and the corresponding rise in the number of immigration detainees on Christmas Island and in onshore detention centres.¹¹¹

In reports on its 2011 inspections of the Villawood and Curtin Immigration Detention Centres, the Australian Human Rights Commission (AHRC, formerly HREOC) expressed frustration and concern about detention conditions (both onshore and on Christmas Island) and on Australia's mandatory detention policy generally:

The Commission's longstanding concerns about Australia's immigration detention system have escalated over the past year, with ongoing troubling incidents across the detention network. These have included six deaths in detention (five of which appear to have been the result of suicide), suicide attempts, serious self-harm incidents including lip-sewing, riots, protests, fires, break-outs and the use of force against people in detention on Christmas Island by the Australian Federal Police. These incidents have occurred in the context of a detention network that is under serious strain due to a number of factors, but most importantly because thousands of people are being held in detention facilities for long periods of time.

As of 11 March 2011 there were 6819 people, including 1030 children, in immigration detention in Australia—4304 on the mainland and 2515 on Christmas Island. More than half of those people had been detained for longer than six months, and more than 750 people had been detained for longer than a year.

The Commission has repeatedly raised concerns about the detrimental impacts that prolonged and indefinite detention has on people's mental health, and has repeatedly recommended reforms to bring the immigration detention system into line with Australia's international obligations.

In the Commission's view, there is an urgent need for the Australian Government to end the current system of mandatory and indefinite detention, and to make greater use of community-based alternatives that are cheaper, more effective and more humane than holding people in immigration detention facilities for prolonged periods.¹¹²

The 2011 AHRC report on Curtin Immigration Detention Centre (reopened in June 2010 to assist in accommodating the growing number of detainees) also reinforced the Commission's key concerns

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/report3.htm

111. For background and statistics on boat arrivals see J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, op. cit.
112. Australian Human Rights Commission (AHRC), *Immigration detention at Villawood 2011: summary of observations from visit to immigration detention facilities at Villawood*, AHRC, Canberra 2011, viewed 4 March 2013, http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.html This report is one of a series conducted by the AHRC over many years. See the AHRC website for a list of these inspection reports, viewed 4 March 2013, http://www.hreoc.gov.au/human_rights/publications.html

over pressures on the infrastructure, services, facilities, staff and detainees in Australia's detention facilities.¹¹³

In June 2011, a parliamentary inquiry into the detention network was established. The inquiry was initially proposed by the Opposition to draw attention to increasing levels of unrest and outbreaks of violence in detention centres. Following some negotiation concerning its terms of reference, the motion to establish the inquiry was passed with the support of both the Greens and the Government. The inquiry's terms of reference were extensive and included an examination of the impact, effectiveness and cost of mandatory detention and the alternatives.¹¹⁴ The committee received a large number of submissions that were highly critical of Australia's current immigration detention policies and that voiced the concerns of many stakeholders.¹¹⁵ The Committee published its report in March 2012 and made 22 recommendations including that 'the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the shortest practicable time'; and that 'asylum seekers who pass initial identity, health, character and security checks be immediately granted a bridging visa or moved to community detention while a determination of their refugee status is completed'.¹¹⁶

In 2012 the AHRC published another highly critical report, *Immigration detention on Christmas Island*, reiterating concerns outlined in previous reports. The report also noted the 'considerable pressure' on detainees and immigration staff due to the large number of people in detention and 'the uncertainty amongst the detention population due to the prospect of transfer to a third country for processing of their asylum claims'.¹¹⁷ Another AHRC report published in 2012, *Human rights issues raised by the transfer of asylum seekers to third countries*, discussed a number of additional concerns after the Australian Government commenced transferring asylum seekers to Nauru for processing of their claims for asylum in September 2012 including the 'differential treatment of asylum seekers based on their mode of arrival' and the 'potentially protracted duration of stay in a third country'.¹¹⁸

Detention conditions

Since the 1990s the detention of asylum seekers in often remote locations has received a great deal of public attention. In particular, the duration and conditions of their detention have been

113. AHRC, *Immigration detention at Curtin: observations from visit to Curtin immigration detention centre and key concerns across the detention network*, AHRC, Canberra, 2011, viewed 4 March 2013,

http://www.humanrights.gov.au/human_rights/immigration/idc2011_curtin.pdf

114. Joint Select Committee on Australia's Immigration Detention Network, Inquiry website, viewed 4 March 2013,

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctte/immigration_detention/index.htm

115. Ibid. For further details on detention reviews see DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., pp. 116–123.

116. Joint Select Committee on Australia's Immigration Detention Network, *Final report*, op. cit.

117. AHRC, *Immigration detention on Christmas Island*, AHRC, Canberra, December 2012, viewed 4 March 2013,

http://humanrights.gov.au/human_rights/immigration/idc2012_christmasisland.html

118. AHRC, *Human rights issues raised by the transfer of asylum seekers to third countries*, AHRC, Canberra, November 2012, viewed 4 March 2013, http://humanrights.gov.au/human_rights/immigration/transfer_third_countries.html

controversial issues that have plagued successive governments beginning in the early 1990s when there were several hunger strikes, rooftop demonstrations and suicide attempts at Villawood and Port Hedland.¹¹⁹ In response, in 1992 the department created counselling teams to try and diffuse some of the unrest.¹²⁰

The issue of providing additional and appropriate accommodation to avoid overcrowding and a deterioration of conditions was a significant challenge for the Howard Government with the surge in boat arrivals in the late 1990s and is proving to be the case again for the Labor Government following a surge in arrivals since 2008—both governments have responded by making provisions for additional accommodation.¹²¹

For the Howard Government, the conditions in detention centres, prolonged detention and the physical and psychological effects on detainees on Nauru and in onshore detention facilities, particularly Woomera, attracted a great deal of criticism.¹²² In 2000 there were a number of incidents of self-harm, riots and protests in Woomera where 500 people staged a mass escape, followed by riots and unrest at Port Hedland and Curtin detention centres.¹²³

In 2006 the Howard Government funded researchers at the University of Wollongong to study the long-term effects of immigration detention on those detained. Published in 2010, the study showed that asylum seekers suffered more serious physical and mental health problems than those detained for a shorter length of time and for different reasons such as visa overstayers waiting to depart the country.¹²⁴

Refugee advocates and other stakeholders have also been critical of the mandatory detention regime that has continued under the Rudd and Gillard Governments.¹²⁵ The Rudd Government's

119. D McMaster, op. cit., p. 84; DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., p. 25.

120. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., p. 25.

121. J Phillips, H Spinks and E Karlsen, *Responding to boat arrivals*, Flagpost, Parliamentary Library, Canberra, 28 March 2011, viewed 4 March 2013, <http://parliamentflagpost.blogspot.com/2011/03/responding-to-boat-arrivals.html#more>

122. For example, D McMaster, op. cit.; and S Metcalfe, *The Pacific Solution*, Australian Scholarly Publishing, Melbourne, 2010.

123. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., pp. 25–26 and 62–63. Reports of unrest during the Howard Government were also documented at length during the 2004 inquiry into children in immigration detention. See HREOC, *A last resort? National Inquiry into Children in Immigration Detention*, op. cit., 'Safety of children in immigration detention' chapter 8, pp. 283–356.

124. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit. pp. 62–63. For further findings from this study see J Green and K Eagar, 'The health of people in immigration detention centres', *Medical Journal of Australia*, vol. 192, no. 2, 2010. The DIAC submission lists other influential studies during the Howard Government such as; Z Steel et. al., 'Impact of immigration detention and temporary protection on the mental health of refugees', *British Journal of Psychiatry*, vol. 188, no. 1, 2006.

125. For example, M Crock, *Immigration, refugees and forced migration : law, policy and practice in Australia*, Federation Press, Sydney, 2011; and K Koser, *Responding to boat arrivals in Australia: time for a reality check*, Lowy Institute, 2010, viewed 4 March 2013, <http://www.lowyinstitute.org/publications/responding-boat-arrivals-australia-time-reality-check>

temporary suspension in April 2010 of the processing of asylum seekers from Sri Lanka and Afghanistan arriving by boat was criticised on the basis that it might lead to their indefinite detention and would contribute to over-crowding and processing delays in the future.

Since 2010, overcrowding has placed extreme pressure on infrastructure and the detention network generally and DIAC has struggled to adequately house the various different groups of detainees.¹²⁶ Although the Gillard Government subsequently lifted the suspensions, over-crowding, delays in processing, and protests, rioting and incidents of self harm in both onshore and offshore detention centres have attracted further attention and criticism.¹²⁷

On 29 July 2011, the then Commonwealth Ombudsman announced that his office would initiate an investigation into suicide and self-harm in Australian immigration detention facilities in response to growing concerns about the impact of long-term detention on the ongoing mental health of detainees.¹²⁸ Numerous other stakeholders, including many mental health professionals, supported the Ombudsman's inquiry and also expressed their growing concerns about prolonged detention in immigration detention centres and the effects it may be having on detainees.¹²⁹ However, following the resignation of the Ombudsman in October 2011, the inquiry did not report.¹³⁰

On 29 November 2011, the Government released an independent report (the Hawke report) commissioned by the Minister for Immigration and Citizenship to review incidents of unrest at the Christmas Island and Villawood detention centres earlier in 2011.¹³¹ The report noted the stress that the detention network has been placed under by the recent surge in boat arrivals. In the case of Christmas Island, the report found that 'the immigration detention infrastructure was not able to cope with either the number or the varying risk profiles of detainees'; 'the rapid increase in arrivals overwhelmed the refugee status and security assessment processing resources despite DIAC's action to train additional staff'; and 'in this environment, problems of health, including mental health,

126. A Hawke and H Williams, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, op. cit.

127. For example, AHRC, *Immigration detention at Villawood 2011: summary of observations from visit to immigration detention facilities at Villawood*, op. cit.; M Dickie, *Malaysia Solution or political safety net?*, The Drum Opinion, ABC website, 8 June 2011, viewed 4 March 2013, <http://www.abc.net.au/unleashed/2750070.html> and M Fraser, 'How Australia can solve its asylum seeker problem', *The Age*, 25 June 2011, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F870357%22>
For examples of serious incidents in detention since 2001 see: DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32) op. cit. pp. 62–63 and 81–82.

128. A Asher, *Inquiry to examine suicide and self-harm in Australian immigration detention*, Commonwealth Ombudsman, media release, 29 July 2011, viewed 4 March 2013, <http://www.ombudsman.gov.au/media-releases/show/189>

129. For example, L Newman, N Proctor and M Dudley, 'Suicide and self harm in immigration detention', *Medical Journal of Australia*, vol. 195, no. 6, 19 September 2011, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F1111721%22>

130. A Asher (Commonwealth Ombudsman), *Ombudsman resigns*, media release, Canberra, 20 October 2011, viewed 19 March 2013, <http://www.ombudsman.gov.au/media-releases/show/198>

131. A Hawke and H Williams, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, DIAC, Canberra, 31 August 2011, viewed 4 March 2013, <http://www.immi.gov.au/media/publications/pdf/2011/independent-review-incidents-christmas-island-villawood-full.pdf>

increased, and detainee anger and frustration rose, often producing violent reactions and self harm'.¹³²

In February 2013, the Australian National Audit Office (ANAO) released its audit report on the management of detention centres, *Individual management services provided to people in immigration detention*.¹³³ In its report the ANAO acknowledged the many challenges for the Government:

Immigration detention is one of the most complex, controversial and debated areas of government policy. Over the past three years, the number of people in immigration detention has increased significantly. Around 1000 people were accommodated in immigration detention in June 2009, compared to around 7670 in 'held' detention and an additional 1688 in community detention as at 30 September 2012. Over the same period, the total number of immigration detention facilities in Australia and on Christmas Island increased from nine to 19...

Managing the changes to the immigration program, including policy changes and the rise in the number of irregular maritime arrivals, has been challenging for DIAC and the service providers.¹³⁴

The report found that there is 'considerable variability' in the standard of services delivered across the detention network and that 'inconsistency in service provision can lead to tensions within the detainee population' which in turn may contribute to unrest.¹³⁵

Duration of detention

Since mandatory detention was first introduced there have been specific concerns expressed over the duration of detention experienced by many asylum seekers. As early as 1994, the Joint Standing Committee on Migration noted that:

The long term detention of certain unauthorised border arrivals has generated widespread community concern. While the Committee recognises that various factors have contributed to the length of detention which has been endured by those unauthorised arrivals who have landed in Australia since November 1989, there is broad agreement that the long term detention of asylum seekers is inappropriate and unacceptable.¹³⁶

As noted previously, then Minister, Gerry Hand, explained on the introduction of mandatory detention in 1992 that the Government did not intend to detain people indefinitely and, initially, a time limit was given:

132. Ibid., p. 3.

133. ANAO, *Individual management services provided to people in immigration detention*, Canberra, 2013, viewed 5 March 2013, http://www.anao.gov.au/~/_media/Files/Audit%20Reports/2012%202013/Audit%20Report%2021/201213%20Audit%20Report%20No%2021.pdf

134. Ibid., pp. 15 and 17.

135. Ibid., p. 16.

136. Joint Standing Committee on Migration, *Asylum, border control and detention*, op. cit., p. 147.

Australia will, of course, continue to honour its statutory and international obligations as it always has done. Any claims made by these people will be fully and fairly considered under the available processes, and any persons found to qualify for Australia's protection will be allowed to enter. Until the process is complete, however, Australia cannot afford to allow unauthorised boat arrivals to simply move into the community. The Government has no wish to keep people in custody indefinitely and I could not expect the Parliament to support such a suggestion. Honourable members will note that the amendment calls for custody for a limited period. The period provided for in the amendment is 273 days—this translates into nine months.¹³⁷

However, the 273 day (9 month) time limit was subsequently removed by the *Migration Reform Act 1992* and, with indefinite detention permitted under Australian law, many instances of prolonged detention have occurred over the years.¹³⁸

Those detained for overstaying their visa or awaiting removal following a visa cancellation are typically detained for only a short period—asylum seekers on the other hand are often detained for several months, in some cases years.

In 1989 the average length of stay in immigration detention was 15.5 days, but for the Cambodian asylum seekers who arrived by boat in 1989, the average length of stay (until a primary decision was made on refugee status) proved to be 523 days.¹³⁹

With the rapid increase of asylum seekers arriving by boat in 1999–2000, the rate of processing slowed again and by the end of December 2000, of the 2023 people in detention, 18 per cent had already been detained for a year or more.¹⁴⁰ By 2005, 31 per cent of detainees had been held for one year or more and in 2007 there were 367 people who had been in detention for two years or more.¹⁴¹

In recent times the duration of detention has again become an issue of concern. When the surge in boat arrivals began in late 2008, asylum applicants were initially processed and released from detention relatively quickly. However, as more and more people arrived processing times began to increase and the period of time people were spending in detention began to drag out once again. The situation was exacerbated by the freeze on processing for applicants from Sri Lanka and Afghanistan which was imposed by the Rudd Government in April 2010. The stated rationale was to enable decision makers to consider 'evolving circumstances in these two countries', and wait for

137. G Hand, (Minister for Immigration, Local Government and Ethnic Affairs), *Migration Amendment Bill 1992*, Second reading speech, op. cit.

138. See for example the case of *Al-Kateb v Goodwin* (2004) described in AHRC, *Human rights and asylum seekers and refugees*, Information sheet, 2009, AHRC website, viewed 4 March 2013, http://www.humanrights.gov.au/letstalkaboutrights/downloads/HRA_asylum.pdf

139. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., p. 25.

140. A Millbank, *The detention of boat people*, op. cit.

141. Senate Legal and Constitutional Affairs Legislation Committee, Answers to Questions on notice, Immigration portfolio, Additional Estimates 2004–05, nos. 108 and 124, 15 February 2005, viewed 4 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_0405/immi/index.htm and Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, op. cit., p. 148.

new country guidelines from the UNHCR.¹⁴² The effect of this freeze was that people remained in detention for up to six months before processing of their claims even began.

So, it would seem that many asylum seekers in detention continued to face periods of lengthy detention as they did during the Howard Government. The number of boat arrivals who spent more than 12 months in detention increased significantly with the subsequent strain on the detention network adding to processing delays.¹⁴³ As at 31 October 2011, 39 per cent of the detention population had been in detention for more than 12 months.¹⁴⁴ Since the mid-1990s, following the recommendations of the Joint Standing Committee on Migration in 1994, steps have been taken to speed up the processing of asylum seekers in detention by successive governments.¹⁴⁵ However, the complexities of processing large numbers of unauthorised arrivals, including verifying identities and conducting security assessments, continue to contribute to significant delays.¹⁴⁶

In a submission to the Joint Select Committee on Australia's Immigration Detention Network the UNHCR expressed its concerns at lengthy detention periods experienced by some detainees in Australia and stated that 'all efforts should be made to avoid the situation of protracted detention and the possibility of indefinite detention'.¹⁴⁷

While successive governments have argued for the need for mandatory detention in order to secure Australia's borders and maintain the integrity of the Migration Program, for many years critics have highlighted the significant practical, legal and ethical problems associated with lengthy periods of detention since mandatory detention was introduced in 1992. As mentioned previously, long periods spent in detention contributed to high levels of unrest in detention facilities under the Howard Government and unrest and security incidents have escalated in mainland detention centres and on Christmas Island under the Gillard Government.¹⁴⁸

142. C Evans (Minister for Immigration and Citizenship), *Changes to Australia's immigration processing system*, media release, Canberra, 9 April 2010, viewed 4 March 2013, <http://www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm>

143. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), pp. 57–58, viewed 4 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm

144. DIAC, *Immigration detention statistics summary*, DIAC website, 31 October 2011, viewed 29 November 2011.

145. A Millbank, *The detention of boat people*, op. cit.

146. DIAC, *Annual report 2009–10*, op. cit., p. 115. Note: Adverse security assessments also contribute to prolonged detention. For an explanation of the current security assessment process see Australian Security Intelligence Organisation (ASIO), *Report to Parliament 2010–11*, ASIO, Canberra, 2011, pp. 27–28, viewed 4 March 2013, <http://www.asio.gov.au/img/files/Report-to-Parliament-2010-11.pdf>

147. UNHCR, Submission to the Joint Select Committee on Australia's Immigration Detention Network, (no. 110), August 2011, viewed 4 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm

148. For a list of incidents see DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit.; and DIAC, Answer to question on notice no. 21, Joint Select Committee on Australia's Immigration Detention, August 2011, viewed 4 March 2013,

A number of stakeholders, including the Refugee Council of Australia, have expressed significant concerns over the levels of unrest in response to lengthy detention periods and the effects it may have on detainees.¹⁴⁹ In 2011, Australia's leading health organisations, including the Royal Australian and New Zealand College of Psychiatrists and the Australian Medical Association (AMA) demanded an urgent review of Government policy and detention conditions:

Over 30 key health and mental health organisations and mental health advocates are demanding the Government urgently review the standards of mental health care in all immigration detention centres. This issue is urgent and action needs to be taken now ... It is clear that conditions inside detention centres are unacceptable. Children are especially vulnerable. The mental health crisis in the immigration detention system is rapidly worsening and these conditions cannot be allowed to continue.¹⁵⁰

As noted previously, the proportion of detainees in detention for more than twelve months has dropped under the Gillard Government (8.4 per cent as at 31 December 2012) due to the release of many asylum seekers on bridging visas.¹⁵¹ However, asylum seekers transferred to offshore processing centres in the Pacific may once again face prolonged periods of time waiting for their asylum claims to be processed as they did during the Howard Government's 'Pacific Solution'. The UNHCR has expressed concerns that there is 'no time limit on detention' under the Government's offshore processing arrangements.¹⁵²

Children in detention

The detention of children continues to be one of the most contentious issues of Australia's mandatory detention policy. It is also the one area which has seen a significant shift in policy in response to sustained criticism by refugee advocates, human rights groups and government backbenchers.¹⁵³

During the Howard Government, the Australian Human Right Commission (formerly HREOC) produced a report in 2004 which was highly critical of the detention of children.¹⁵⁴ In response, the Government rejected the findings and recommendations of the report and reaffirmed its commitment to the policy of mandatory detention. At the time the Minister stated that 'to release

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm

149. Refugee Council of Australia, *Increase in long-term detention at heart of unrest*, media release, 27 April 2011, viewed 4 March 2013, <https://www.refugeecouncil.org.au/n/mr/110427-Detention-Unrest.pdf>

150. Australian College of Mental Health Nurses et al, *Leading health organisations demand immediate action on mental health standards in immigration detention*, media release, 1 November 2011, viewed 4 March 2013, <http://www.acmhn.org/images/stories/News/111101over30leadinghealthorgs.pdf>

151. C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, op. cit. and DIAC, *Immigration detention statistics summary*, DIAC website, 31 December 2012, op. cit.

152. See for example, UNHCR, *UNHCR Mission to Manus Island, Papua New Guinea 15-17 January 2013*, UNHCR, p. 13, viewed 5 March 2013, <http://unhcr.org.au/unhcr/images/2013-02-04%20Manus%20Island%20Report%20Final.pdf>

153. J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, op. cit.

154. HREOC, *A last resort? National Inquiry into Children in Immigration Detention*, op. cit.

all children from detention in Australia would be to send a message to people smugglers that if they carry children on dangerous boats, parents and children will be released into the community very quickly'.¹⁵⁵

However, in June 2005, following significant pressure from certain Coalition members of the back bench, the Howard Government announced a 'softening' of immigration detention policy, including the release of families with children into community detention arrangements.¹⁵⁶

The detention of children has also proved to be a contentious issue for the Labor Government. One of the seven 'immigration detention values' endorsed by Cabinet in 2008 was that children should not be held in immigration detention centres, but in lower security detention alternatives such as immigration transit accommodation or in community detention.¹⁵⁷ Yet as more and more people began arriving by boat from 2008 onwards this 'value' was put to the test. The number of children being held in detention rose steadily, attracting vocal criticism from refugee advocates and human rights groups.¹⁵⁸

In response to growing pressure by interest groups and overcrowding in detention centres generally, the Immigration Minister announced in October 2010 that children would be progressively moved out of detention facilities into community-based accommodation by June 2011.¹⁵⁹ Progress on this commitment proved to be slow, but by 30 June 2011 the Government announced it had moved 'most' children out of centres and into community detention.¹⁶⁰ According to DIAC, as at 31 July 2011 there were 872 children in immigration detention, but there were no longer any children detained in immigration detention centres:

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155. A Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs), *HREOC Inquiry into children in immigration detention report tabled*, media release, 13 May 2004, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2TKC6%22> and *Government committed to detention regime*, media release, 10 June 2004, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FAZ2D6%22>
156. J Howard (Prime Minister), *Immigration detention*, media release, 17 June 2005, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FKWDG6%22> For an opinion piece by one of the key backbenchers see, P Georgiou, 'Why we need a new policy on refugees', *Age*, 26 May 2005, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FV85G6%22>
157. DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., p. 92.
158. For example, J Jureidini and J Burnside, 'Children in immigration detention: a case of reckless mistreatment', *Australian and New Zealand Journal of Public Health*, vol. 35, no. 4, 1 August 2011, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F1003445%22> and S Ozdowski, 'Child detention a festering sore', *The Australian*, 16 April 2011, viewed 4 March 2013, <http://www.theaustralian.com.au/national-affairs/opinion/child-detention-a-festering-sore/story-e6frgd0x-1226039936224>
159. C Bowen (Minister for Immigration and Citizenship), *Community-based accommodation for children*, media release, 18 October 2011, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F298187%22>
160. C Bowen (Minister for Immigration and Citizenship), *Government meets commitment on community detention*, media release, 29 June 2011, viewed 4 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F882333%22>

As at 31 July 2011, there were 872 children (aged under 18 years) in immigration detention—446 were detained in the community under residence determinations, 329 were in alternative places of detention, 45 were in immigration residential housing and 52 were in immigration transit accommodation. No children are detained in an immigration detention centre. An increasing number of children are living in the community under a residence determination (community detention) since the Government's announcement on 18 October 2010. The number of children in immigration detention has also been decreasing.¹⁶¹

By the end of December 2012 there were 1221 children in immigration detention:

As at 31 December 2012, there were 1221 children (aged under 18 years) in immigration detention facilities and alternative places of detention. The increase in the number of children in detention facilities for December 2012 is due to a rapid increase in irregular maritime arrivals during October and November 2012. The majority of children in facilities-based detention have been in detention for less than two months. No children are detained in immigration detention centres.¹⁶²

The issues in summary

Since mandatory detention was introduced in 1992, many have questioned the different treatment afforded asylum seekers who arrive unauthorised by boat to other onshore asylum applicants and made suggestions for reform. In 1992, the Joint Standing Committee on Migration Regulations expressed concerns at the potential for lengthy detention for certain 'border claimants' (unauthorised arrivals), noting that the new mandatory detention arrangements were complex and focused on mode of arrival not the status of the individual:

Although the latest legislation is intended as an interim measure, it has added to the complexity of the border arrangements. There are a confusing array of provisions focused not so much on the status of the person as their mode of arrival in Australia.¹⁶³

Since then, a number of authoritative researchers and key stakeholders (such as those referenced below) have argued that mandatory detention discriminates against boat arrivals and in addition is unnecessary, costly, harmful and counter-productive—arguments include:

- Australia effectively has two 'classes' of asylum seekers whereby those who arrive by air with valid documents are treated differently to those who arrive by boat without documentation—they are considered a security risk and mandatorily detained, sometimes for long periods of time, while their asylum claims are processed.¹⁶⁴

161. DIAC, *Immigration detention statistics summary*, 31 July 2011, op. cit.

162. DIAC, *Immigration detention statistics summary*, 31 December 2012, op. cit.

163. Joint Standing Committee on Migration Regulations, *Australia's refugee and humanitarian system: achieving a balance between refuge and control*, op. cit., pp. 159 and 177.

164. J Menadue, A Keski-Nummi and K Gauthier, *A new approach—breaking the stalemate on asylum seekers and refugees*, Occasional paper no. 13, Centre for Policy Development, Sydney, 2011, p. 18, viewed 4 March 2013, http://cpd.org.au/wp-content/uploads/2011/08/cpd_refugee_report_2nd-run-WEB-VERSION3.pdf

- Australia's mandatory detention policy is costly and the strain on the detention network is unsustainable.¹⁶⁵
- the negative effects of lengthy detention are damaging long-term (particularly in terms of mental health) for the individuals concerned and could be avoided through shorter detention periods or detention alternatives.¹⁶⁶ In addition, between 2000 and 2010 (as at 31 March 2010) the Commonwealth had paid out over \$12 million in compensation for alleged injury or wrongful detention to individuals.¹⁶⁷
- as the majority of boat arrivals in the past have been found to be refugees, the negative effects of long term detention are counter-productive. These detrimental effects mean that it may take much longer for those concerned to recover and begin to contribute to Australian society; and it reflects unfavourably on Australian refugee policy both nationally and internationally.¹⁶⁸
- there is no credible evidence that the threat of mandatory detention stops people from seeking refuge, but may instead be ineffective as a deterrent and lead to more risky unauthorised migration trends.¹⁶⁹ UNHCR has stated that 'detention is generally an extremely blunt instrument to counter irregular migration. There is no empirical evidence that the threat of being detained deters irregular migration or discourages people from seeking asylum.'¹⁷⁰
- there is a growing acknowledgement internationally that the use of immigration detention to manage irregular migration is ineffective and costly.¹⁷¹
- research collated by the International Detention Coalition (IDC) concurs with many of the above viewpoints—the common arguments put forward by the IDC include:

165. AHRC, *Immigration detention system in need of reform*, media release, 14 September 2011, viewed 4 March 2013, http://www.humanrights.gov.au/about/media/media_releases/2011/84_11.html

166. AHRC, *Mental health impacts of indefinite detention a major concern at Curtin detention centre*, media release, 29 September 2011, viewed 4 March 2013,

http://www.humanrights.gov.au/about/media/media_releases/2011/88_11.html and Australian Psychological Society, *Detention centres failing to meet minimum standards of mental health care, experts say*, media release, 29 August 2011, viewed 4 March 2013, <http://www.psychology.org.au/Content.aspx?ID=3864>

167. Senate Legal and Constitutional Affairs Legislation Committee, Answers to Questions on notice, Immigration and Citizenship Portfolio, Budget Estimates 2010–11, 27 May 2010, question no. 71, viewed 4 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud_1011/diac/index.htm

168. K Koser, *Responding to boat arrivals in Australia: time for a reality check*, op. cit.

169. J Menadue, op. cit., pp. 13, 21 and 31.

170. UNHCR, *UNHCR urges states to avoid detaining asylum seekers*, UNHCR UK website, June 2011, viewed 5 March 2013, <http://www.unhcr.org.uk/resources/monthly-updates/june-update/alternatives-to-detention.html>

171. See 'Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Geneva, Switzerland, 11–12 May 2011', *International Journal of Refugee Law*, 3 November 2011, viewed 5 March 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F1218269%22> and Asia Pacific Refugee Rights Network, *NGOs urge Asia Pacific governments to end the immigration detention of children*, media release, 25 November 2011, viewed 5 March 2013, http://www.jrs.net/news_detail?TN=NEWS-20111128043010

- detention is not an effective deterrent of asylum seekers and irregular migrants in either destination or transit contexts. Detention fails to impact on the choice of destination country and does not reduce numbers of irregular arrivals. Studies have shown asylum seekers and irregular migrants either are not aware of detention policy or its impact in the country of destination; may see it as an inevitable part of the journey; and do not convey the deterrence message to other back to those in country of origin
- detention undermines an individual's right to liberty and places them at greater risk of arbitrary detention and human rights violations
- detention, even for short periods, harms health and wellbeing for all. The consequences for the cognitive and emotional development of children may be lifelong and
- detention is counterproductive in achieving compliance with final decisions. On the contrary, asylum seekers and irregular migrants in the community comply and cooperate if they are able to meet their basic needs, have been through a fair and informed process and are supported to achieve sustainable long-term solutions while awaiting a decision on their case. Individuals awaiting a decision on their case are a low absconding risk, and in transit contexts individuals appear less likely to abscond, if they are not at risk of detention and refoulement, and remain hopeful on future prospects.¹⁷²

All of these arguments are contentious and ignite passionate debate in the public arena. However, many argue the need for urgent reform as Australia's mandatory detention policy with its potential of indefinite detention for some asylum seekers is unsustainable.¹⁷³

What are the alternatives?

Many argue that there are viable alternatives to detention (or less punitive options) that may be beneficial to all stakeholders while fulfilling Australia's international obligations.¹⁷⁴

Comprehensive research conducted by the Centre for Policy Development argues that a 'risk-based' approach should be applied across the entire detention system, including for boat arrivals. This would mean that while unauthorised arrivals may need to be detained briefly for identity, health and security checks, community release (not community detention) could occur within a short time frame enabling the Government to 'phase out mandatory detention within two years, transitioning to a risk-based detention policy applicable to all asylum seekers regardless of their manner of arrival'.¹⁷⁵ Some go on to argue that detention in any form is unnecessary and that community

172. International Detention Coalition (IDC), *Ten things IDC research found about immigration detention*, IDC website, viewed 5 March 2013, <http://idcoalition.org/cap/handbook/capfindings/>

173. For example, AHRC, *Immigration detention system in need of reform*, op. cit.

174. International Detention Coalition, op. cit.

175. J Menadue, op. cit., p. 35; and DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., pp. 26–27.

detention may be just as psychologically damaging and traumatic as other more restrictive forms of detention.¹⁷⁶

The UNHCR has stated that ‘asylum seekers should not be detained beyond the purpose of assessing identity, health and security checks’ and points out that moving from a focus on mandatory to community detention or ‘detention alternatives’ (i.e. no detention at all) would afford significant savings.¹⁷⁷ While it is Australian Government policy to only detain unauthorised boat arrivals while they complete health, character and security checks and their immigration status is resolved, in practice many asylum seekers have experienced prolonged periods of detention in the past.¹⁷⁸

Recent research by Latrobe University recommended that detention should only be used in exceptional cases and that by implementing the following five steps unnecessary detention could be avoided:

- a presumption against detention
- individual screening and assessment to identify the needs, strengths, risks and vulnerabilities of each case
- an assessment of an individual’s community circumstances to identify any support that may help them with immigration proceedings
- further conditions, such as reporting requirements or supervision, to strengthen their community setting and mitigate any concerns
- if these conditions are shown to be inadequate, detention in line with international standards, including judicial review and of limited duration, may be used as a last resort in exceptional cases.¹⁷⁹

It is important to acknowledge that over the years both the Coalition and the Labor governments have made efforts to make community detention and other alternative accommodation options available for more vulnerable detainees, particularly children and their families. In 2002 the Howard Government introduced alternative accommodation arrangements (such as the residential housing

176. M Fraser, ‘How Australia can solve its asylum seeker problem’, *The Age*, 25 June 2011, viewed 5 March 2013, <http://www.theage.com.au/opinion/politics/how-australia-can-solve-its-asylum-seeker-problem-20110624-1gjl.html> M Quekett, ‘Don’t detain boat people says expert’, *The West Australian*, 11 July 2011, viewed 5 March 2013, <http://au.news.yahoo.com/thewest/a/-/wa/9816766/dont-detain-boat-people-says-expert/> and J Menadue, op. cit., p. 36.

177. A Edwards, *Back to basics: the right to liberty and security of person an ‘alternatives to detention’ of refugees, asylum seekers, stateless persons and other migrants*, UNHCR, Research on legal and protection policy research series, April 2010, p. 85, viewed 5 March 2013, <http://www.unhcr.org/4dc949c49.html> UNHCR, Submission to the Joint Select Committee on Australia’s Immigration Detention Network, (no. 110), op. cit.

178. DIAC, Submission to the Joint Select Committee on Australia’s Immigration Detention Network (no. 32), pp. 57–58, op. cit.

179. R Sampson, G Mitchell and L Bowring, *There are alternatives: a handbook for preventing unnecessary immigration detention*, Latrobe Refugee Research Centre and the International Detention Coalition, 2011, viewed 5 March 2013, <http://idcoalition.org/cap/>

projects in Port Augusta and Port Pirie). In 2005, the Government introduced several measures, including a commitment to moving families and children into community detention. The Community Care Pilot was subsequently introduced which allowed families and certain other detainees with complex needs to be released into the community with support from NGOs funded by the Government.¹⁸⁰ In addition, the Australian Government has provided access to certain allowances and other assistance for asylum seekers in detention (and in the community) for many years.¹⁸¹

In 2008 The Rudd Government announced that detention policy would be moving from a punishment focus to a 'risk-based' model with detention as a 'last resort'. However, with the increase in the number of boat arrivals, the Government's 'New Directions in Detention' policy was never fully implemented on Christmas Island.¹⁸² In response to the increasing pressure in overcrowded immigration detention centres, the Minister for Immigration and Citizenship announced in March 2011 that the community detention program would be expanded and that children and their families would be progressively moved out of detention facilities into community-based accommodation by June 2011.¹⁸³ In addition, more onshore compliance cases have been managed in the community:

Since the community status resolution approach was expanded nationally in 2009, the proportion of onshore compliance clients managed in the community instead of detention has increased.¹⁸⁴

Since then many asylum seekers have been transferred into community detention (there were 2590 accommodated under these arrangements in 2011–12).¹⁸⁵ In its report, *Community arrangements for asylum seekers, refugees and stateless persons: observations from visits conducted by the Australian Human Rights Commission from December 2011 to May 2012*, the AHRC commended the Government's change in policy:

180. J Menadue, op. cit., p. 34.

181. See L Buckmaster, *Australian government assistance to refugees: fact v fiction*, Background note, Parliamentary Library, Canberra, 1 December 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F3WCV6%22>

182. Ibid.

183. C Bowen (Minister for Immigration and Citizenship), *Community-based accommodation for children*, media release, op. cit.; and *Moving asylum seeker children into the community*, Statement, 1 March 2011, viewed 5 March 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb159599.htm> For other government initiatives and reforms see the DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., pp. 26–27 and 89.

184. A Metcalfe (Secretary Department of Immigration and Citizenship), *Opening statement to the Joint Select Committee on Australia's Immigration Detention Network*, Transcript, 9 December 2011, viewed 5 March 2013, <http://www.immi.gov.au/about/speeches-pres/pdf/2011/2011-12-09-jsc-immigration-detention.pdf>

185. DIAC advice provided to the Parliamentary Library on 3 December 2012

The Commission found that, as well as being better aligned with Australia's international human rights obligations, community arrangements offer a far more humane and effective approach to the treatment of asylum seekers, refugees and stateless persons than closed detention.¹⁸⁶

As mentioned earlier, in a significant announcement on 13 October 2011, the Gillard Government stated that in addition to the expanded use of community detention it would extend the practice of issuing bridging visas to onshore asylum seekers (air arrivals) to include some of those who have arrived irregularly by boat. It was proposed that these individuals would then be released from detention into the community while their asylum applications were processed 'as part of the suite of measures to respond to pressures on the immigration detention network'.¹⁸⁷ It would appear that 'as part of the new approach to asylum seeker management' some of the asylum seekers to be released under this arrangement would include long-term detainees who would 'live in the community on bridging visas while their asylum claims are completed and their status is resolved'.¹⁸⁸ On 25 November 2011 the Minister announced that the first group of long-term detainees were to be released under these arrangements.¹⁸⁹

Since then, over 10 000 asylum seekers have been released on bridging visas (as of 31 December 2012) and the Secretary of the Department of Immigration and Citizenship has made it clear that the focus of the Department has 'moved from predominantly a held detention model to a held detention-community detention and bridging visa model'.¹⁹⁰

According to the UNHCR, such initiatives are to be encouraged. It argues that while alternatives to detention are often not a key priority for destination countries, 'asylum seekers very rarely need to be detained, or indeed restricted in their movements':

UNHCR and non-governmental advocacy groups should continue to focus attention on the fact that basic legal safeguards of detention are not observed in many situations and that conditions of detention within many immigration detention centres, prisons and airport transit zones around the world fall below internationally acceptable standards.

Finding alternatives to detention may not always be a key priority when it comes to resolving an inhumane or illegitimate detention policy, but these measures are important for longer-term policy relating to the treatment of refugees and/or asylum seekers. For the world's major destination States, existing evaluations of alternatives – including monitoring of appearance

186. AHRC, *Community arrangements for asylum seekers, refugees and stateless persons: observations from visits conducted by the Australian Human Rights Commission from December 2011 to May 2012*, Canberra, July 2012, p. 2, viewed 5 March 2013, http://humanrights.gov.au/human_rights/immigration/2012community-arrangements/summary.html#Heading70

187. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Transcript of joint press conference*, op. cit.

188. C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, op. cit.

189. Ibid.

190. Senate Legal and Constitutional Affairs Committee, *Additional Estimates, Immigration and Citizenship Portfolio*, pp. 15 and 115, 11 February 2013, viewed 5 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add1213/diac/index.htm

rates during unconditional release or unsupervised stay in the community— support the position that asylum seekers very rarely need to be detained, or indeed restricted in their movements, prior to a final rejection of their claim or prior to the point at which their removal becomes a practical reality.¹⁹¹

Many other refugee advocates in Australia also encourage the use of detention alternatives and have indicated their support for the community based options introduced by the Australian Government.¹⁹² However, some are concerned that the levels of support for those released into the community might be inadequate, particularly for those who have spent long periods of time in held detention, or those who have been denied work rights under the ‘no advantage’ principle.¹⁹³ Concerns also continue to grow for those transferred to offshore processing centres in the Pacific who may face prolonged periods of time waiting for their asylum claims to be resolved.¹⁹⁴

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191. O Field, *Alternatives to detention of asylum seekers and refugees*, UNHCR, Geneva, 2006, p. 50, viewed 5 March 2013, http://dpl/Books/2011/UNHRC_AlternativesDetentionAsylumSeekers.pdf The UNHCR has also argued for some time that asylum seekers leave their homes reluctantly and could be better supported in the region through the development of ‘strengthened protection space’ and better regional cooperation (thus potentially disrupting the people smuggling operations that lead to unauthorised boat arrivals in Australia). See UNHCR, *2011 regional operations profile—Asia and the Pacific*, UNHCR website, <http://www.unhcr.org/pages/4a02d8ec6.html> and *Regional cooperative approach to address refugees, asylum seekers and irregular movement*, UNHCR Bali Process discussion paper, November 2010, viewed 5 March 2013, <http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf> See also J Menadue, op. cit., pp. 13 and 21; and Oxfam, *Asylum seekers: the way forward*, 2010, viewed 5 March 2013, <https://www.oxfam.org.au/media/2010/07/asylum-seekers-the-way-forward/> The UNHCR also argues that more legal avenues for asylum seekers in the region may remove the need for individuals to resort to irregular migration options, see *Refugee protection and mixed migration: a 10-point plan of action*, 2007, viewed 5 March 2013, <http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf>
192. For example; Refugee Council of Australia, *Refugee and asylum seekers policy on a positive pathway*, media release, 25 November 2011, viewed 7 March 2013, <http://www.refugeecouncil.org.au/n/mr/111125-Community-Processing.pdf> and AHRC, *Community arrangements for asylum seekers, refugees and stateless persons: observations from visits conducted by the Australian Human Rights Commission from December 2011 to May 2012*, op. cit.
193. For example; L Hartly and C Fleay, *Refugees and asylum seekers in the community after long-term detention*, Curtin University, Perth, December 2012, viewed 7 March 2013, http://blogs.curtin.edu.au/human-rights-education/files/2012/12/ReleasedNotYetFree_BVCD_FINALREPORT.pdf and K Murphy, ‘The no advantage myth in refugee processing’, *The Conversation*, 22 November 2012, viewed 7 March 2013, <http://theconversation.edu.au/the-no-advantage-myth-in-refugee-processing-10940>
194. UNHCR, *UNHCR Mission to Manus Island, Papua New Guinea 15-17 January 2013*, op. cit.

Statistical Appendix A: Immigration detainees 1989–2012

Year	Women	Men	Minors	Unknown	Total
1989–90	48	122	62	14	246
1990–91	57	126	66	11	260
1991–92	42	119	25	2	188
1992–93	49	197	17	3	266
1993–94	49	161	63	5	278
1994–95	286	500	376	14	1176
1995–96	159	349	184	1	693
1996–97	120	727	73		920
1997–98	393	1359	110	1	1863
1998–99	649	2852	216		3717
1999–00	1025	5627	822	3	7477
2000–01	1390	6053	1344	4	8791
2001–02	1785	6307	1224	5	9321
2002–03	1536	5157	427	4	7124
2003–04	1586	5053	324	1	6964
2004–05	1600	5989	381		7970
2005–06	920	5542	425		6887
2006–07	794	3988	276		5058
2007–08	640	3744	239		4623
2008–09	642	3534	206	15	4397
2009–10	1149	7657	996		9802
2010–11	1752	9595	1787		13 134
2011–12	2288	14 190	2898		19 376

Sources

- **1989–90 to 2007–08:** DIAC, Submission to the Joint Standing Committee on Migration, *Inquiry into Immigration Detention in Australia*, submission 129d, 30 September 2008, viewed 19 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/subs.htm
- **2008–09 to 2011–12:** DIAC advice provided to the Parliamentary Library.

Notes

- An additional 1637 people were detained in offshore processing centres in Nauru and Manus Island between September 2001 and February 2008. Source: C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, media release, 8 February 2008, viewed 13 April 2011, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08014.htm>

Appendix B: Immigration detainees by category

Year	Unauthorised boat arrivals	Overstayers	Cancellation	Other	Unauthorised air arrivals	Fishers	Total
1989–90	236	9		1			246
1990–91	173	70	1	15	1		260
1991–92	85	85	6	10	2		188
1992–93	198	51	8	8	1		266
1993–94	199	56	9	12	2		278
1994–95	1096	52	1	16	11		1176
1995–96	591	39	9	18	28	8	693
1996–97	367	120	4	32	392	5	920
1997–98	159	594	27	83	992	8	1863
1998–99	920	1109	56	115	1515	2	3717
1999–00	4185	1333	102	216	1616	25	7477
2000–01	4163	2237	1148	519	391	347	8805
2001–02	3082	3115	1567	407	393	757	9321
2002–03	28	3469	1610	840	271	906	7124
2003–04	77	3442	1448	656	404	937	6964
2004–05	1	3906	1452	480	614	1517	7970
2005–06	93	1835	724	637	719	2879	6887
2006–07	100	1349	791	790	589	1439	5058
2007–08	37	1358	600	970	426	1232	4623
2008–09	N/A	N/A	N/A	N/A	N/A	N/A	4397
2009–10	N/A	N/A	N/A	N/A	N/A	N/A	9802
2010–11	N/A	N/A	N/A	N/A	N/A	N/A	13 134
2011–12	14 438	2216	480	78	2090	74	19 376

Sources

- **1989–90 to 2007–08:** DIAC, Submission to the Joint Standing Committee on Migration, *Inquiry into Immigration Detention in Australia*, submission 129d, 30 September 2008, viewed 19 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/subs.htm
- **2008–09 to 2009–10:** DIAC advice provided to the Parliamentary Library. N/A: detailed breakdown of data requested from DIAC.
- **2010–11:** DIAC, *Annual report 2010–11*, DIAC, Canberra, p. 182. N/A: detailed breakdown of data requested from DIAC.
- **2011–12:** DIAC advice provided to the Parliamentary Library on 3 December 2012.

Notes

- Detention figures do not include the 1637 people who were detained in the Nauru and Manus facilities between September 2001 and February 2008 (when the last of the detainees left the Offshore Processing Centre in Nauru).

Appendix C: Unaccompanied minors in detention

Year	Unaccompanied minors
1994–95	2
1995–96	1
1996–97	7
1997–98	10
1998–99	7
1999–00	53
2000–01	93
2001–02	198
2002–03	8
2003–04	1
2004–05	0
2005–06	1
2006–07	5
2007–08	2
2008–09	41
2009–10	476
2010–11	411
2011–12	1788

Sources:

1994–95 to 2007–08: DIAC, Submission to the Joint Standing Committee on Migration, *Inquiry into Immigration Detention in Australia*, submission 129I, 30 September 2008, viewed 19 March

2013, http://www.apph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/subs.htm

2008–09 to 2010–11: Senate Legal and Constitutional Affairs Committee, Answers to Questions on notice, Immigration and Citizenship Portfolio, Budget Estimates 2012–13, 21–22 May 2012, Question 363, viewed 19 March

2013, http://www.apph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud1213/diac/index.htm

2011–12: DIAC advice provided to the Parliamentary Library on 3 December 2012.

Appendix D: Community detention

Year	People held in community detention
2005–06	76
2006–07	143
2007–08	108
2008–09	196
2009–10	161
2010–11	1551
2011–12	2590

Sources:

2005–06 to 2007–08: DIAC, Submission to the Joint Standing Committee on Migration, *Inquiry into Immigration Detention in Australia*, submission 129I, 30 September 2008, viewed 19 March

2013, http://www.apph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/detention/subs.htm

2008–09 to 2010–11: Senate Legal and Constitutional Affairs Committee, Answers to Questions on notice, Immigration and Citizenship Portfolio, Budget Estimates 2012–13, 21–22 May 2012, Question 401, viewed 19 March 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud_1213/diac/index.htm

2011–12: DIAC advice provided to the Parliamentary Library on 3 December 2012.

Appendix E: Key detention facilities

Immigration Detention Centres (IDCs)

- **Maribyrnong**—initially known as Maribyrnong Migrant Hostel, then Midway Migrant Hostel, Australia's first immigration detention centre was established in Melbourne in pre-existing buildings in 1966.¹⁹⁵ The current purpose-built IDC was opened in 1983 and mostly caters for people who have over-stayed their visa or had their visa cancelled because they failed to comply with their visa conditions. People refused entry to Australia at international airports and seaports are also detained there (capacity about 85).
- **Villawood**—originally constructed in Sydney between the early 1960s and 1970s as a migrant hostel (Westbridge), the buildings have been progressively upgraded. It was adapted into a secure IDC in 1976. It has three accommodation compounds, Blaxland, Hughes and Fowler (capacity about 451).¹⁹⁶
- **Perth**—near the airport and established in 1981 (capacity about 37). The Perth IDC mainly caters for people who have over-stayed their visa or had their visa cancelled because they failed to comply with their visa conditions. People refused entry to Australia at international airports and seaports are also detained there, and people with a criminal conviction awaiting removal to another country.
- **Christmas Island**—a temporary facility was established at Phosphate Hill in September 2001. This facility is still in use, and includes accommodation units for vulnerable clients (capacity approximately 150) and a separate fenced area (capacity about 168). There is also a Construction Camp adjacent to the Phosphate Hill facility suitable for vulnerable clients (capacity about 310). A purpose-built facility at North West Point was opened in 2008 (capacity about 1956).
- **Northern** in Darwin (also known as Berrimah)—originally constructed following a decision announced in August 2001 to establish contingency centres. The original facility was located within the Defence Establishment Berrimah, formerly known as HMAS Coonawarra. A facility upgrade was deemed to be necessary due to the increased apprehension of illegal foreign fishers in the northern waters of Australia (capacity about 536).
- **Curtin**—reopened in June 2010. It is located at the Curtin Royal Australian Air Force (RAAF) base around 40 kilometres south-east of Derby, Western Australia. It is currently used to house single adult male Irregular Maritime Arrivals (IMAs). It has a capacity of about 1200. Curtin was originally commissioned by the Keating Government in 1995 to accommodate boat arrivals after

195. Joint Standing Committee on Migration, *Asylum, border control and detention*, op. cit., p. 160.

196. For more detail on this IDC and other early centres see Joint Standing Committee on Migration, *Asylum, border control and detention*, op. cit., pp. 160–162.

Port Hedland IDC reached capacity. It was decommissioned again in December 1995, reopened in 1999 and closed again on 23 September 2002.

- **Scherger**—opened in October 2010 and located at the Scherger RAAF Base, approximately 30 kilometres east of Weipa, Queensland (capacity about 300—for single adult males).
- **Pontville** in Tasmania—announced 5 April 2011 and opened in September 2011 to accommodate low-risk, single adult males (capacity 140). In March 2012 Pontville was decommissioned, but it re-opened again in December 2012.
- **Wickham Point** in Darwin—announced on 3 March 2011 and opened in December 2011 (originally planned for a site at 11 Mile Antenna Farm).
- **Yongah Hill** (also known as Northam) in WA—announced in October 2010 and commenced operation in June 2012.
- **Former IDCs:**
 - Port Hedland IRPC (Immigration Reception and Processing Centre), WA—was originally established in 1991 as the primary facility for boat arrivals. It closed in 2004 (capacity over 800).
 - Woomera IRPC, SA—commissioned November 1999 (capacity about 2000). The last group of detainees left the Woomera Immigration Reception and Processing Centre (IRPC) on 17 April 2003 and were re-located at Baxter. The Woomera IRPC was decommissioned but was maintained by the Howard Government as a contingency centre with the capacity to be put back into use at short notice. Woomera was the largest, and because of its isolated and harsh environment, the most notorious of the detention centres during the Howard Government.
 - Baxter IDC—near Port Augusta, South Australia, was completed in July 2002. It accepted its first detainees in September 2002. This facility was primarily used to detain unauthorised boat arrivals. In August 2007, the Baxter immigration detention centre stopped operating as an immigration detention facility and was handed back to the Department of Defence in 2008 (capacity 660 to 880).

Immigration Residential Housing (IRH)

Immigration Residential Housing provides detention arrangements that allow people to live in family style accommodation while being detained. Immigration Residential Housing is available in:

- Sydney—duplex houses established in 2006 and located next to at Villawood (capacity about 35)
- Perth—established in 2007 and located in the suburb of Redcliffe (capacity 17)
- Port Augusta—eight houses located in Elis Close Port Augusta, established April 2010
- Former residential housing projects (RHPs) during the Howard Government included Port Augusta RHP (opened in 2003 to accommodate about 40 women and children) and Woomera RHP (opened in 2001 to accommodate about 40 women and children). Woomera and Port Hedland RHPs closed in December 2003 and May 2004 respectively.

Immigration Transit Accommodation (ITA)

Immigration Transit Accommodation provides hostel-style accommodation to house people who are assessed as a low security risk. Immigration Transit Accommodation is available in:

- Brisbane—three accommodation buildings located near Brisbane airport and operational since 2007 (capacity about 40)
- Melbourne—two story building opened in June 2008 in Broadmeadows (capacity about 144)
- Adelaide—a small residential complex located in the suburb of Kilburn and opened in January 2011 (capacity about 25)

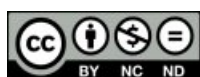
Alternative Places of Detention (APOD)

Alternative Places of Detention can accommodate any person who is in immigration detention. APOD include hospital accommodation in cases of necessary medical treatment; schools for the purpose of facilitating education to school-aged minors; rented accommodation in the community (hotel rooms, apartments) and accommodation in the community made available through arrangements with other government departments. All people in immigration detention facilities (including APOD) are not free to come and go but supervised excursions outside the facilities are considered by the detention services provider on a case-by-case basis. APODs are located at:

- Darwin—a number of alternative places of detention have been established in Darwin (capacity about 610) such as Darwin Airport Lodge (the Asti Motel APOD closed in June 2011).
- Inverbrackie—opened on 18 December 2010, it is located near Adelaide. It is a Department of Defence property that has been converted to house families in 81 houses (capacity about 400).
- Leonora—opened in June 2010, is located within one kilometre of the Leonora town centre (capacity about 210). Leonora is a small town about 900 kilometres north-east of Perth and about 300 kilometres north of Kalgoorlie.
- Former APODS—it was announced on 3 March 2011 that Virginia Palms APOD in Brisbane would close and the Asti Motel APOD in Darwin closed in June 2011.

Source: Department of Immigration and Citizenship [Detention services](#) website and the DIAC, Submission to the Joint Select Committee on Australia's Immigration Detention Network (no. 32), op. cit., pp. 197–207. For a current list of sites, including some that were not accepted, see Senate Legal and Constitutional Affairs Legislation Committee, Answers to Questions on notice, Immigration and Citizenship Portfolio, Additional Estimates 2010–11, 21 February 2011, Question 222.

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