

A campaign for the humane treatment of asylum seekers: managed by the Refugee Council of Australia

Campaign e-bulletin : November 2010

There have been a lot of significant changes in the area of asylum seeker policy in the past month. The Minister announced that children and families would be released from detention and a High Court decision yesterday granted asylum seekers on Christmas Island rights to appeal to the courts. Both of these are significant positive changes.

But over the past two years, we have watched thousands of asylum seekers (including those children soon to be released) kept for prolonged periods in detention, at odds with the 2008 promises by this Government to institute the New Directions in Detention policy that was to bring in a risk-based detention system.

The Government has not ruled out trying to legislate to restrict the new appeal rights of asylum seekers, and says it will have no impact on setting up a regional processing centre in East Timor.

High court decision

In short, the High Court has found that in the specific cases of the Sri Lankan two men who launched the appeal they were denied procedural fairness during their review process. But more broadly, the High Court decision means that asylum seekers processed offshore under the excision laws can appeal to the courts if they believe legal errors have occurred in the processing of their cases.

At this point, it is unclear how far-reaching this precedent is. It could mean that any decision made by an Australian official in East Timor or Nauru could also be subject to review. At minimum, asylum seekers on Christmas Island now have access to the courts.

These court reviews have always been on procedural or legal grounds, not on the actual merits of their protection claims. Courts do not have the power to grant a visa, but they can say that a decision was made in error and strike out the decision.

The Minister has been saying that this will keep some people in detention longer, as they appeal their rejections. It is hardly fair to shift the blame for prolonged detention to the people being detained. For people who win their appeals, their detention was prolonged by the legal errors in the processing of their claim.

Shadow Immigration Minister Scott Morrison says that this judgement means Australia needs third country processing – essentially saying that when the rule of law gets in the way of achieving a political aim, we should move activities of the Australian Government offshore so that our legal system cannot stop the Government from engaging in actions that breach Australian law.

Mr Morrison also says the Government should look at introducing legislation to restrict the avenues of appeal. He is forgetting that Coalition already tried to restrict all court review with the privative clause legislation introduced by Philip Ruddock, but that law was knocked back by the High Court as being a breach of the Constitution.

RCOA has welcomed the High Court ruling. See RCOA's [media releases](http://www.refugeecouncil.org.au/docs/releases/2010/111010_HighCourt_ruling.pdf) for further information.
http://www.refugeecouncil.org.au/docs/releases/2010/111010_HighCourt_ruling.pdf

Release of children from detention

The Government recently announced they will be releasing children from immigration detention. The position of the ALP Government has always been that they do not hold children “behind razor wire” in the Immigration Detention Centres (IDCs). However, the Government has developed a series of “Alternative Places of Detention” in which the experience of detention is remarkably similar to that experienced in an IDC.

We must remember that the policy to remove children from detention facilities was put in place by the Howard Government in 2005 when they amended the Migration Act to include the principle that “Children should be detained as a measure of last resort.”

At that time, the policy and practice was very unambiguous: no child would be held in any kind of secure detention facility unless there was a clear security, health or compliance risk from the child or the custodial parent. If one custodial parent or relative was not a risk, the child would remain in the community. If there was no other carer, the child and parent would be in the residential housing project, but never ever in the main detention centres (IDCs). The current Government has interpreted that practice to mean that children should just not be detained in an IDC, but other secure detention facilities were OK.

When the kids are released, we cannot stop our campaign. This time we have to keep going until we have real legal reform that ensures this never ever happens again. We were promised in 2005 that kids would not be detained, and over 700 are in detention. Let’s keep up the pressure until the laws are changed so no future government can easily backslide on this issue.

Please see our Take Action section at the end of this newsletter for who to write to.

RCOA welcomes moves to release children from detention

RCOA has welcomed the Australian Government’s announcement that children and their families will soon be released from immigration detention facilities. RCOA has long advised Governments that there are a range of options that could be used in order to release children and their families from detention, while ensuring that any security concerns are addressed. “Releasing children and their families into the community will relieve the emotional distress and mental anguish that detention has been proven to cause. This is particularly important for those who have fled horrific situations of war or persecution,” Paul Power, CEO of RCOA said. RCOA’s media release on the announcement can be downloaded here:

www.refugeecouncil.org.au/newsevents/media.html

Legislation on detention of humanitarian minors introduced to the Senate

The Australian Greens have introduced a new Bill to the Senate which aims to ensure that ensure children and unaccompanied minors will not be held in immigration detention facilities. The Migration Amendment (Detention of Minors) Bill 2010 would amend the Migration Act 1958 to provide that the Minister for Immigration and Citizenship must determine, within 12 days, that a detained minor reside within the community and appoint a person to act as guardian to the minor. The text of the Bill can be accessed through www.aph.gov.au/bills/index.htm

RCOA presents policy concerns to Minister and Parliamentarians

RCOA’s President, CEO and Communications Manager met Minister for Immigration and Citizenship, Chris Bowen, on October 20 to present RCOA’s concerns and ideas about Australian refugee policy. At the meeting, RCOA representatives presented summaries of priorities for asylum seeker policy and refugee settlement needs, as well as a joint NGO statement developed in August regarding an Asia-Pacific regional protection framework. In October, RCOA representatives also held meetings with Parliamentary Secretary Senator Kate Lundy, Shadow Minister Scott Morrison, Shadow Parliamentary Secretaries Teresa Gambaro and Senator Michaelia Cash, Greens Senator Sarah Hanson-Young, Independent MP Andrew Wilkie and advisers for several ministers. Summaries of the issues raised are at www.refugeecouncil.org.au/current/index.html#octpriorities

RCOA calls for review of policy of indefinite mandatory detention

RCOA has written to Immigration Minister Chris Bowen, urging him to review the Australian Government’s policy of indefinite mandatory detention of asylum seekers who enter Australia without a visa. The letter follows Mr Bowen’s announcement of the establishment of a new detention centre at Scherger RAAF Base near Weipa, Queensland and the expansion of Curtin detention centre to cope with the record numbers of people in immigration detention. RCOA has urged Mr Bowen to develop policies for all asylum seekers consistent with the Government’s 2008 *New Directions in Detention* policy, which directs decision-makers to justify why a person should be detained rather than released to live independently in the community. Under the policy, only those people who pose a demonstrable risk to the community should be detained. RCOA

urged the Minister to examine risk assessment models used in countries such as the United States, Sweden, South Africa and New Zealand. RCOA's letter to the Minister can be viewed at <http://www.refugeecouncil.org.au/current/index.html> A statement, issued on September 17, on the announced expansion of detention centres is at <http://www.refugeecouncil.org.au/newsevents/media.html>

RCOA submission on new human rights legislation

RCOA has made a submission to the Standing Committee on Legal and Constitutional Affairs inquiry into the Human Rights (Parliamentary Scrutiny) Bill and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill. The two Bills aim to increase consideration of human rights in the parliamentary process by establishing a Parliamentary Joint Committee on Human Rights and introducing a requirement for statements of compatibility to be submitted with all Bills. While welcoming the legislation, RCOA expressed concerns over a number of issues including the Bills' limited definition of "human rights", the need to expand the powers of the Joint Committee and the absence of oversight, accountability or quality assurance mechanisms in the proposed legislation. The submission is available at www.refugeecouncil.org.au/resources/submissions.html Further information about the inquiry can be found at www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/index.htm

Report of 2010 UNHCR Executive Committee (ExCom) meeting now available

RCOA's report of the 61st session of UNHCR's Executive Committee is now available for download. It contains an overview of key issues discussed, summaries of statements made by UNHCR personnel, NGOs and the Australian Government delegation, and briefs of the six side events held during the meeting. The report is available at www.refugeecouncil.org.au/docs/resources/2010_ExCom.pdf Other documents from the ExCom meeting can be found at www.unhcr.org/pages/4c80bf266.html

Take Action

Please write at least one letter to any of the following, but it would be great if you would write to all of them. You can either draft different letters, or write one simple letter that you can send to everyone. Please note that all letters can be sent via parliament house and you do not need the room number, just the person's name.

You may wish to raise the issue of children, to ask that they release them as quickly as possible and to introduce legislation to enshrine those changes. And that in the meantime they start to ease the security restrictions on families so they can go out on more excursions.

You could also write on the issue of the High Court ruling – to ask that the Government listens to the spirit of the ruling, which is that the rule of law and procedural fairness requires access to the courts. Tell them you would oppose any further attempts to subvert Australia's democratic system of legal review.

The Hon. Julia Gillard, MP

Prime Minister of Australia
Parliament House
Canberra ACT 2600

The Hon. Chris Bowen, MP

Minister for Immigration and Citizenship
Email Chris.Bowen.MP@aph.gov.au

Mr Scott Morrison MP

Opposition spokesperson on Immigration
email scott.morrison.mp@aph.gov.au

The Hon. Mr Tony Abbott, MP

Leader of the Opposition
email Tony.Abbott.MP@aph.gov.au

You can find contact details for your local member here

http://www.enewsletteronline.com/SrvENManager?c_go=y&c_id=10110&s_id=284693&si_id=2&memberid=2438685&url=http://www.aph.gov.au/house/members/index.htm

To unsubscribe, send an email to mail@ajustaustralia.com with the subject: unsubscribe