

## **Fact Sheet: Helping asylum seekers harmed by detention**

In RACS' experience, prolonged periods of detention for people seeking asylum, combined with uncertainty and delay in relation to their migration status, can have an extremely harmful impact on a person's mental health. This fact sheet is for people wanting to assist asylum seekers in immigration detention who appear to be suffering harm because of their prolonged detention.

The information in this factsheet is designed to support advocates, healthcare professionals and members of the community who would like to help asylum seekers in detention to take action about their detention. This factsheet sets out the different forms of action that an asylum seeker can take in relation to their detention, the relevant considerations for a person to be released from detention, and how an advocate, counsellor, doctor or healthcare professional can most appropriately comment on the particular circumstances to enable the case to be considered by the Minister for Immigration.

### **RACS' work with asylum seekers in detention**

We strongly believe that Australia should not be responsible for damaging people who are seeking protection. However, due to limited funding and resources, we are generally unable to assist people to make complaints or take action about their detention, or to advocate politically for the release of individuals from detention. RACS' core work is to provide legal assistance to people seeking asylum, including people in detention, by presenting their claims for protection to Australian decision makers.

### **Getting started**

If you have met an asylum seeker in detention who appears to be suffering harm and you would like to help them, the first thing you should do is to ask them if they already have a lawyer, or someone else who is helping them with these matters. If so, you should ask the person's permission to speak to that person and find out what type of assistance they have provided or will be providing. You may need to obtain written permission from the asylum seeker to discuss their case with the person helping them.

Once you have determined that no one else is helping them with these matters, you should consider what assistance you will provide. Types of assistance that may be appropriate could include:

- making a complaint about conditions or breaches of human rights in detention;
- making a request to be released from detention; or
- making a request to be exempted from transfer to Nauru or PNG.

Before you do or submit anything on behalf of an asylum seeker, it is important to:

- obtain consent and a written authority from the person to take steps on their behalf;
- obtain a copy of any documents that have previously been submitted on their behalf and reviewing those documents;
- read to the person in their own language anything that you propose to submit on their behalf and check whether they are okay with it or have any suggested changes;
- give the person a copy of anything submitted on their behalf for their records.

## **Making a complaint about conditions or breaches of human rights in detention**

There are a number of organisations that can receive complaints about conditions in detention or breaches of human rights. These organisations include the Australian Red Cross, the Commonwealth Ombudsman, the Australian Human Rights Commission and several United Nations committees.

[The Australian Red Cross](#) visits immigration detention facilities in Australia to assess and monitor the conditions of detention and the treatment of people held in detention. You can make a complaint by contacting the Australian Red Cross immigration detention monitoring team with all relevant details including the name, date of birth and boat ID of the person on whose behalf the complaint is being made.

Email: [nat\\_idp@redcross.org.au](mailto:nat_idp@redcross.org.au)  
Phone: 03 9345 1800  
In writing: Immigration Detention Monitoring Program Australian Red Cross  
PO Box 196, Carlton South VIC 3053

[The Commonwealth Ombudsman](#) takes complaints and writes reports about immigration matters including conditions in detention. You can make a complaint by phone on 1300 362 072 or via their [online complaint form](#). If you are making the complaint on someone else's behalf, you must make this clear in the form.

[The Australian Human Rights Commission](#) can inquire into [complaints of breaches of human rights](#) in immigration detention. They also monitor [human rights standards in immigration detention](#). To lodge a complaint on behalf of another person, you must complete the form available [here](#). You can make a complaint by calling 1300 656 419, or sending a written complaint to:

Director, Investigation and Conciliation Service, Australian Human Rights Commission,  
GPO Box 5218, Sydney NSW 2001.

The [United Nations](#) can consider complaints about breaches of a person's human rights by the Australian Government in situations where you have tried everything else reasonably possible within Australia to have the situation resolved. The Human Rights Committee of the Office of the United Nations High Commissioner for Human Rights can consider complaints about violations of the rights in the International Covenant on Civil and Political Rights, including arbitrary detention, inhumane treatment of people in detention, or separation from family because of detention. The Working Group on Arbitrary Detention can investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with international standards. More information about how to make these kinds of complaints and a model complaint form can be found on the website of the [Office of the United Nations High Commissioner for Human Rights](#).

## **Making a request to be released from detention**

People who arrive in Australia by boat without a visa do not have the right to apply for any kind of visa unless the Minister for Immigration gives them permission to do so. This means that, generally, a person who arrived by boat who is in detention cannot apply for a Bridging visa to be released from detention. If a person is unsure whether this applies to them, they should contact a registered migration agent for advice.

The Minister for Immigration has the power to make a "residence determination" – a decision that a person in detention can reside in the community at a specified place, without being accompanied or restrained. The person will not hold a visa while living in the community and is not allowed to work. The Minister can make a residence determination if he thinks it is in the public interest.

### **Making a request to be exempted from transfer**

The Minister for Immigration has the power to declare that a person is exempt from transfer to a regional processing country (currently Nauru or PNG).

### **How to make requests**

Requests for the Minister to consider exercising the residence determination power and the power to exempt a person from regional transfer can only be made by officers of the Department of Immigration. For this reason, requests on behalf of an asylum seeker should be made in writing to an officer of the Department of Immigration with a request that the officer refer the matter to the Minister for Immigration.

The Minister's powers are non-compellable (meaning that the Minister has no duty to consider whether to exercise the power even if requested) and can only be exercised by the Minister personally (not by any other person).

The Minister has created guidelines about which cases are to be brought to his or her attention for consideration of whether to exercise these powers.

### **Residence determinations: Which matters are likely to be brought to the Minister?**

According to the guidelines, matters which will be brought to the Minister's attention include people who arrived in Australia before 1 January 2014 and who are:

- unaccompanied minors;
- families; or
- single adults affected by any of the following circumstances:
  - disability or congenital illness requiring ongoing intervention;
  - diagnosed Tuberculosis where supervision of medication dispensing is required;
  - ongoing illness, including mental health illnesses, requiring ongoing medical intervention; and
  - elderly detainees requiring ongoing intervention.

The Minister will also consider other cases where there are unique or exceptional circumstances.

### **Residence determinations: What issues will the Minister consider in making a decision?**

If a matter is brought to the Minister's attention, the guidelines say that the Minister will take into account:

- the person's age and family composition;
- any close relationships with Australian citizens or permanent residents and whether continued detention would result in irreparable harm and continued hardship to an Australian.
- the person's immigration history;
- their health and wellbeing;
- any unique family circumstances of health issues.

### **Exemption from transfer: Which matters are likely to be brought to the Minister?**

The guidelines say that the Minister would like matters brought to his attention where there are good reasons to believe that in both Nauru and PNG the person would either:

- have their life or freedom threatened on account of their race, religion, nationality, membership of a particular social group or political opinion; or
- be subjected to torture, cruel inhuman or degrading treatment or punishment, arbitrary deprivation of life or have the death penalty carried out.

Requests for exemption from transfer should include a summary of the specific risks posed to the person in both Nauru and PNG in relation to one or both of the above criteria.

### **Letters of support for a person in detention**

Letters of support can be written by advocates, people who know the particular situation of the person well, and counsellors, doctors or other healthcare professionals who are in a position to comment on the person's state of health and the impact of detention based on their professional expertise.

Letters of support can include any observations that the author is comfortable making in relation to the following issues:

- A short description of how you know the person, how long you have known them for and in what capacity;
- Diagnosis of any physical health conditions, and in particular, details of:
  - any disabilities or congenital illnesses requiring ongoing intervention;
  - diagnosed Tuberculosis where supervision of medication dispensing is required;
  - ongoing illnesses of any kind, requiring ongoing medical intervention.
- Diagnosis of any mental health conditions, including:
  - any ongoing mental health conditions requiring ongoing medical intervention;
  - any effects of past harm or trauma on the person, including prior to coming to Australia, in offshore detention, or the effects of detention in Australia;
- Observations about the person's ability to communicate, including their ability to answer questions coherently and accurately remember aspects of their past, and any communication impairment due to past experiences of torture or trauma;
- Observations about what treatment, counselling, medical intervention and other support you think the person needs in the future;
- Observations about the likely effect of continued detention on the person's physical or mental health;
- Observations relating to any unique or exceptional circumstances in the person's case;
- If they are at risk of transfer to a regional processing country: any particular risks posed to them in both Nauru and PNG on account of their race, religion, nationality, membership of a particular social group or political opinion, or any risks there that they would be subjected there to which may involve cruel inhuman or degrading treatment or punishment, or arbitrary deprivation of life.

### **For more information**

If you are a lawyer, registered migration agent or interpreter, and you are interested in volunteering with us, please email [admin@racs.org.au](mailto:admin@racs.org.au).

If you want to become involved as an advocate for asylum seekers in detention, you can contact organisations currently working in this area. Organisations in NSW include Balmain for Refugees, Mums for Refugees and SASS (Supporting Asylum Seekers Sydney).

If you would like to know more about RACS and the work we do for people seeking asylum, you could consider becoming a [friend of RACS](#). If you would like RACS to provide training to your advocacy group, please email [admin@racs.org.au](mailto:admin@racs.org.au). Due to our limited funding and resources, we generally charge a small fee for running training sessions.

For more information, please contact RACS during our telephone advice times – Tuesdays and Thursdays from 10.00am to 11.30 on (02) 8355 7227.

**Please note:** This factsheet contains general information only. It does not constitute legal or immigration advice. RACS is independent of the Department of Immigration. This factsheet was prepared in December 2015.