

## Your rights if you are in Immigration Detention

This Fact Sheet is for people in detention who have concerns about the conditions of their detention. For Information on how to request Ministerial Intervention to be granted a visa from detention or how to request placement in community detention, see the RACS Fact Sheet, 'How to ask for Ministerial Intervention from Detention'.

### What are my human rights in detention ?

Australia is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR). The Australian Human Rights Commission can investigate your treatment against this Convention. The articles of the ICCPR that could be of particular relevance to a complaint to AHRC are: article 9(1), article 10(1), article 17(1), and article 23(1).

Under article 9(1) of the ICCPR, there is a requirement that **detention not be 'arbitrary'**, which means that detention should not continue beyond the period for which the Department can provide appropriate justification. Detention is arbitrary where it is not necessary in all the circumstances of the case. In your case, there may be less restrictive means of achieving compliance with immigration policies, especially if you pose no unacceptable risk to the community. If your health is worsening or detention is causing damage to your emotional wellbeing this could make it unreasonable that the Department is continuing to detain you. It could make your continuing restrictive detention a disproportionate approach for achieving relevant immigration objectives.

Under article 10(1) of the ICCPR, there is an obligation on the Department to take actions to **prevent inhumane treatment of detained persons**. This includes a requirement to respect the rights and interests of a detainee to maintain family connections.

Under articles 17(1) and 23(1) of the ICCPR, every person has the right not to be subjected to an **arbitrary interference with their family and to the protection of the family**. These articles may have been breached in your case if you are separated from your family because of your detention and if this is affecting your ability to maintain your family relationships.

### Referrals for making complaints

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](#).

## If you are assisting someone in detention

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.

## Getting Help from RACS

RACS is entirely independent of the Department of Home Affairs. All assistance is free

If you would like advice or assistance, RACS offers the following service options:

Service	Day	Time	Address/Number
Client Line	Monday to Friday	11AM to 1PM and 2PM to 4PM	(02) 8355 7227 or <a href="mailto:admin@racs.org.au">admin@racs.org.au</a>
Auburn Drop-in	Wednesday	Register in person from 10 AM to 12 PM	Visit 44A Macquarie Road, Auburn

**Please note:** This fact sheet contains general information only. It does not constitute legal or migration advice. RACS is independent of the Department of Home Affairs. All assistance is free. This factsheet was prepared in October 2023.