BREACHES OF THE ROME CONVENTION BY THE CURRENT AUSTRALIAN GOVERNMENT

BY TRACIE AYLMER

It is well known throughout the international community that Australia has breached international law. The only difficulty remains in how international law has been breached. This submission clearly shows where the breaches lay within current Australian policy. I will be attaching all manuals and guidelines in the Zip file 'International Criminal Court attachments', to give credence to this submission and as evidence. This submission will direct the reader, by giving observations to areas of policy in relation to the need for an investigation by the International Criminal Court, as domestic investigations and court procedure so far have led to little change to the treatment of asylum seekers..

Contents

INTRODUCTION

The current Australian government believes that it is acting in the best interests of the Australian community. In saying this, however, it has used the media to its own advantage, ensuring the public only hears the concerns of the government. This roundabout methodology has ensured that it outlays its own best interests solely and completely, to the detriment of the Australian public, the international community and in particular to the asylum seekers themselves.

Its main emphasis in recent times has been that of 'people our business'[1]. People are now considered a commodity, rather than a human rights issue, particularly in relation to protection visas. Although the Detention Services Manual declares that there should be honest and frank dealings, the Australian public are unaware of most of the issues surrounding asylum seekers in detention centres and in the community[2]. The current government has decided that the Australian public do not need to know exactly what is going on.

Everything within all aspects of all manuals and guidelines given as enclosures to this submission outlines in detail how this government believes that it is running a business[3]. While asylum seekers are considered a 'client', their clear goal, as outlined below, is to ensure that most (if not all) asylum seekers are sent back to their 'receiving' or 'home' country. If the current government can find any and every opportunity to relocate the asylum seeker to another part of their 'home' country, or even to a third country, then according to their interpretation of the Refugee Convention the asylum seeker does not have to be classified as such. This can be whether the UNHCR has declared a person as an asylum seeker or not.

This means that, according to this current Australian government, asylum seekers are not really asylum seekers. Australia is then believing it is doing its proper job according to the international community, by sending asylum seekers back to where they came from and refusing them refugee status, even though they have suffered torture and/or trauma in their home country.

Visas to both Manus Island and Nauru for journalists have skyrocketed to around $8000 per visa[4]. It is known that the UNHCR and other international organisations have been refused entry to detention centres on both islands. Human rights abuses are now under a cloud of uncertainty, due solely to the current government's philosophy that everything at all detention centres should be hidden from view. The current government believes that if it is not releasing the information, then the public will believe that it is not happening.

This submission is to ensure that the International Criminal Court is aware of the differing interpretations within the many manuals and guidelines in relation to domestic legislation, compared to all the Human Rights Conventions and Protocols, and to clearly prove that the extraordinary narrowing of the interpretation of 'territory' has ensured that the intention of the Conventions have led to grave breaches of Article 7 of the Rome Convention. This

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[1] Page 9, Detention Services Manual PDF.
[2] International Criminal Court media PDF.
[3] Page 11, Detention Services Manual PDF, as an example.
[4] International Criminal Court media PDF.

submission also indicates very clearly who the main perpetrators of the breaches are, and requests for these people to be investigated as quickly as possible, so the people suffering extreme abuses in Australian detention centres are set free with permanent protection visa, due to sur place claims. In addition, all people living in the community under a cloud of uncertainty are given their dignity back, by also granting them permanent protection visas.

CONVENTIONS

Australia is a member state of many varied human rights treaties. The most crucial, in relation to the atrocities occurring at both Manus Island and Nauru, are indicated below.

While this submission focuses on Article 7 of the Rome Statue for the International Criminal Court ("Rome Convention"), other articles of the Rome Convention also come into play.

Article 11 relates to jurisdiction. Australia is a member State of the Rome Convention, so can be investigated if crimes against humanity have occurred, using Article 13. As I am a citizen of the member State, I have authority to refer a crime to the International Criminal Court prosecutors under Article 14, if I have relevant evidence in relation to the crime committed. I believe I have enough evidence to do so, and so do many others within the Australian community.

Article 17 is also relevant. While investigations are being undertaken, these investigations are focused upon one finite situation only, rather than the whole experience of the asylum seeker situation and whether atrocities are occurring on a general basis. This submission draws all aspects of Australian domestic law into question, ensuring that Article 17(2) comes into play as investigations and court procedure enables atrocities to continue. While there is a judicial system at play, it is understood that breaches in human rights still occur, due solely to the incredible narrowing in legislative instruments. Atrocities are occurring despite many aspects of treaties being implemented. This should enable the International Criminal Court to investigate all claims of Article 7 that are attached to this submission.

Many aspects of the Charter for the United Nations ("UN Charter"), the Refugee Convention and Protocol ("Refugee Convention"), the International Covenant on Civil and Political Rights and its Protocol ("ICCPR"), the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment ("CAT"), the Universal Declaration on Human Rights ("Human Rights Convention") and, finally, the Convention on the Rights of the Child ("CROC") are also used within this submission, as well as within the manuals and guidelines attached with this submission.

DOMESTIC LAW

There are two main legislative instruments that the Australian government emphasizes in their adherence of the law – the *Migration Act 1958* (Cth) ('Act') and the *Migration Regulations 1994* (Cth) ('Regulations'). While these instruments denote some aspects of domestic law that must be abided at all times, there are in fact other procedural and administrative instruments that officers must also adhere to. These procedural and administrative instruments are what officers are told to consistently follow by the Minister himself[5].

[5] Page 4, Procedures Advice Manual (PAM3) PDF.

The Act clearly and only recently defines the meaning of both unaccompanied minors (s4AA) and 'unauthorised maritime arrival' (s5AA). The Act goes further as to define 'unlawful non-citizens'[6].

Within the Act, there are also a number of relevant divisions and subdivisions that are quite relevant to this submission. These aspects within the Act give the public an understanding and meaning of what the government wishes the public to see. This is not necessarily what actually happens, particularly in detention centres. I have named the below according to the language given from the Australian parliament in relation to Part 1 of the Act.

- Safe third countries – Division 3, subdivision AI.
- Temporary safe haven visas – division 3, subdivision AJ
- Access to protection from third countries – division 3, subdivision AK
- Other provisions in relation to protection – division 3, subdivision AL
- Non-citizens to be kept in immigration detention – division 6
- Detention of unlawful non-citizens – division 7
- Removal of unlawful non-citizens to processing country – division 8, subdivision B
- People smuggling – division 12
- Offences relating to work by non-citizens – division 12, subdivision C
- Power to chase and board ships and aircraft – division 12A
- Examination, search and detention – division 13
- Identification of detainees – division 13AA

Part 2 of the Act[7] examines that reports on persons in detention for more than 2 years – Part 8C – need to be considered and tabled, as well as Ministerial powers (for example s499).

Regulations also give the public meaning into the methodology of the Department of Immigration and Border Protection ("DIBP") to treat those who need protection visas to the requirement of coming to Australia. The reasons given in this submission will always indicate to those who fled their prior country due to persecution as asylum seekers, not as 'detainees' or 'transferees', as is noted in the manuals and guidelines. The Regulations can be found in easier context at www.austlii.edu.au, by searching for 'Migration Regulations'. Each regulation has a link attached, which enables the reader to open one regulation at a time.

The first regulation that is relevant to this submission is:

> **[Reg 2.07AM Applications for Refugee and Humanitarian (Class XB) visas**
>
> [substituted by SLI 2012, 230 with effect from 28/09/2012 - substituted reg had subregs (1), (2), (3), (4) and (5) - LEGEND note]
>
> 2.07AM (1) For subsection 46(2) of the Act, a Refugee and Humanitarian (Class XB) visa is a prescribed class of visa.
>
> [(2) amended by SLI 2013, 95 with effect on and from 01/06/2013 - LEGEND note]

[6] Page 60, section 14, *Migration Act 1958* (Cth) PDF.
[7] Part 2, *Migration Act 1958* (Cth) PDF.

(2) An application for a Refugee and Humanitarian (Class XB) visa is taken to have been validly made by a person only if the requirements in subregulation (3) or item 1402 of Schedule 1 have been met.

(3) The requirements are that:

[(a) repealed/substituted by SLI 2013, 95 with effect on and from 01/06/2013 - LEGEND note]

(a) the person is a person mentioned in subregulation (5); and

(b) the Minister has invited the person to make an application for a Refugee and Humanitarian (Class XB) visa; and

(c) the person indicates to an authorised officer that he or she accepts the invitation; and

(d) the authorised officer endorses, in writing, the person's acceptance of the invitation.

(4) An application made under paragraph 1402(3)(a) of Schedule 1 is taken to have been made outside Australia.

[(5) repealed/substituted by SLI 2013, 95 with effect on and from 01/06/2013 - LEGEND note]

(5) For paragraph (3)(a), the person is:

(a) a person who:

(i) between 13 August 2012 and before the commencement of this subparagraph, entered Australia at an excised offshore place after the excision time for that place; and

(ii) became an unlawful non-citizen because of that entry; or

(b) a person who, on or after 13 August 2012, was taken to a place outside Australia under paragraph 245F(9)(b) of the Act; or

(c) a person who, on or after the commencement of this paragraph, is an unauthorised maritime arrival.

Note: For paragraph (c), see section 5AA of the Act.

[2.07AN omitted by SLI 2008, 168 with effect on and from 09/08/2008 - LEGEND note]

[2.07AO *Applications for certain substantive visas by specified persons* omitted by SLI 2013, 32 with effect on and from 23/03/2013 - LEGEND note]]

As noted above, this regulation clearly disallows those who fled their country of persecution to come to Australia by boat.

Regulation 2.20 enables non-citizens to be eligible for a bridging visa, as long as they aren't deemed to be 'illegal'. That is, most asylum seekers are not given any alleviation in Australia, as this is the way asylum seekers flee persecution.

Reg 2.07AM **Applications for Refugee and Humanitarian (Class XB) visas**

[substituted by SLI 2012, 230 with effect from 28/09/2012 - substituted reg had subregs (1), (2), (3), (4) and (5) - LEGEND note]

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(c) the person indicates to an authorised officer that he or she accepts the invitation; and

(d) the authorised officer endorses, in writing, the person's acceptance of the invitation.

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(i) between 13 August 2012 and before the commencement of this subparagraph, entered Australia at an excised offshore place after the excision time for that place; and

(ii) became an unlawful non-citizen because of that entry; or

(b) a person who, on or after 13 August 2012, was taken to a place outside Australia under paragraph 245F(9)(b) of the Act; or

(c) a person who, on or after the commencement of this paragraph, is an unauthorised maritime arrival.

Note: For paragraph (c), see section 5AA of the Act.

[2.07AN omitted by SLI 2008, 168 with effect on and from 09/08/2008 - LEGEND note]

[2.07AO *Applications for certain substantive visas by specified persons* omitted by SLI 2013, 32 with effect on and from 23/03/2013 - LEGEND note]

Regulation 2.07AQ gives criteria on how to decide Resolution of Status visas:

Reg 2.07AQ Applications for Resolution of Status (Class CD) visas

[s5 of the Migration Act defines enter, enter Australia, entered, and entry , leave Australia and remain in Australia - see also s4 (object of the Act) and s6 (effect of limited meaning of certain expressions) - LEGEND note]

(1) For subsection 46(2) of the Act, a Resolution of Status (Class CD) visa is a prescribed class of visa.

(2) An application for a Resolution of Status (Class CD) visa is taken to have been validly made by a person only if the requirements of subregulation (3) or item 1127AA of Schedule 1 have been met.

(3) The requirements of this subregulation are met for a person if the criteria set out in at least 1 of the items of the table are satisfied.

Item	Criterion 1	Criterion 2	Criterion 3	Criterion 4
1	The person makes a valid application for a Protection (Class XA) visa	The person holds: (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or (c) a Subclass 695 (Return Pending) visa; or (d) a Subclass 785 (Temporary Protection) visa [on 02/12/2013 the Migration Amendment (Temporary Protection Visas) Regulation 2013 [SLI 2013, 234	Nil	Nil

		F2013L01811] was disallowed resulting in the revival of the previous provisions - (d) had been amended and 785 inserted by SLI 2013, 234 with effect on and from 18/10/2013 - 785 previously omitted by SLI 2008, 168 with effect from 09/08/2008 - LEGEND note]		
2	The person makes a valid application for a Protection (Class XA) visa	The person held, but no longer holds, a visa of a kind mentioned in criterion 2 of item 1, and the visa was not cancelled	The person: (a) has not left Australia; or (b) while holding a visa that permits re-entry to Australia, has left and re-entered Australia	The person does not hold a permanent visa
3	The person holds: (a) a Temporary Safe Haven (Class UJ) visa; or (b) a Temporary (Humanitarian Concern) (Class UO) visa	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer
4	The person is a member of the family unit of a person who is taken to have made a valid application as a result of satisfying the criteria in item 3	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer

(4) If:

(a) the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 1 or 2 of the table in subregulation (3) have been satisfied; and

(b) the application for the Protection (Class XA) visa mentioned in the item was made before 9 August 2008;

the application is taken to have been made on 9 August 2008.

(5) If:

(a) the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 1 or 2 of the table in subregulation (3) have been satisfied; and

(b) the application for the Protection (Class XA) visa mentioned in the item is made on or after 9 August 2008;

the application is taken to have been made when the application for the Protection (Class XA) visa is made.

(6) If the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 3 or 4 of the table in subregulation (3) have been satisfied, the application is taken to have been made when the authorised officer endorses the person's acceptance of the offer as described in the item.

(7) Subregulation (2) applies whether or not the applicant holds, or held, a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 695 (Return Pending) visa or a Subclass 785 (Temporary Protection) visa that is, or was, subject to a condition mentioned in paragraph 41(2)(a) of the Act relating to the making of applications for other visas.

[785 inserted by SLI 2013, 234 with effect on and from 18/10/2013 - previously omitted by SLI 2008, 168 with effect from 09/08/2008 - LEGEND note]

Subclass 866 of the *Migration Regulations 1994* (Cth) shows indication that the current government had limited all applications for those arriving by boat. There are methods of refusing those arriving in Australia as 'unauthorised' or 'illegal' that are elsewhere in both the Act[8] and the Regulations[9], but the current government also extends the power of the subclass itself – which gives decision makers of visas checklists on how to grant or refuse visas.

Other methods of refusing protection visas have been noted in the various manuals and guidelines that the government abides by. These manuals include:

- The Procedures Advice Manual[10]
- The Protection Visa Advice Manual[11]
- The Protection Obligations Evaluations Manual[12]

[8] Part 1, *Migration Act 1958* (Cth).
[9] *Migration Regulations 1994* (Cth).
[10] The Procedures Advice Manual PDF.
[11] The Protection Visa Advice Manual PDF.
[12] The Protection Obligations Evaluation Manual PDF.

- The Detention Services Manual[13]
- The Protection Visa Guidelines[14]
- The Gender Guidelines[15]
- The Refugee Law Guidelines[16]
- The Offshore Humanitarian Program[17]

At regular intervals, parts of these manuals and guidelines are amended, at the instigation of senior authorities and the Minister. On 27 March, many of the guidelines were amended, including Compliance and case resolution, Gathering and assessing information, The settlement requirement, The security checking handbook, Safety and security of those considered high risk in detention, Protection visa 866, Interpretation of the guidelines, Identity in relation to immigration status, Identity in relation to access and disclosure, Identity in relation to visa application processing, Pat down and property searches, Communication and visits in detention centres, Guardianship in relation to detention and Duty of care to asylum seekers. I have hyperlinked each one of these amendments, as this is what the DIBP calls them. These amendments were made after the riot at Manus Island occurred on 17 February 2014, killing Reza Barati and injuring more than 60 others.

In the amendment to Interpretation, the Minister advised all case officers they must not interpret any manuals or guidelines inconsistently. This means that all case officers must abide with how the Minister believes all manuals and guidelines must be interpreted. If there is any inconsistency to the interpretation according to the court system, then the legal department will advise accordingly how to proceed. This does not help the case officer, however, as the Act and Regulations are clearly geared towards refusing protection visas.

In addition, the Minister decided to revoke a number of instruments, declaring them irrelevant[18].

The Minister, due to s499 of the Act[19], may give directions to the DIBP outlining amendments to procedures. Relevant Ministerial Directions include 9[20], 51[21], 55[22], 56[23], 57[24], 60[25] and 62[26].

All of these instruments are discussed in great detail below.

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[13] The Detention Services Manual PDF.
[14] The Protection Visa Guidelines PDF.
[15] The Gender Guidelines PDF.
[16] The Refugee Law Guidelines PDF.
[17] The Offshore Humanitarian Program PDF.
[18] Index of Revocation Instruments PDF.
[19] Part 2, *Migration Act 1958* (Cth).
[20] General Direction 9 PDF.
[21] Ministerial Direction 51 PDF.
[22] Ministerial Direction 55 PDF.
[23] Ministerial Direction 56 PDF.
[24] Ministerial Direction 57 PDF.
[25] Ministerial Direction 60 PDF.
[26] Ministerial Direction 62 PDF.

REFOULEMENT

As noted and in the Conventions, refoulement is considered very a very serious matter and all attempts by Contracting States to abide by non refoulement obligations must occur.

The domestic manuals and guidelines all note the seriousness of refoulement. All demonstrate how Australia must abide by non refoulement obligations at all times. However, the manner of interpretation of refoulement has led to an incredible narrowing of perspective over the years. The recent amendments to the manuals and guidelines have narrowed interpretations even further. These amendments were made after Reza Barati was murdered, to deflect as much responsibility as possible away from the current government.

The previous government decided that asylum seekers were to be taken directly to Christmas Island to be processed. They were given a letter stating that they are in Australian waters and that they are detained due to being 'unauthorised'.

They were not given any opportunity to be tested for their claims until after they reached Christmas Island. Claims were checked and processed, with the result being that many have been allowed to reside in the community on permanent visas (prior to August 2012) or temporary bridging visas (between August 2012 and June 2013).

After July 2013, the intention of the previous government was for all asylum seekers known to the Australian government and forwarded to Christmas Island to be resettled in Papua New Guinea ("PNG"). An agreement[27] was reached between the Australian and PNG governments that resettlement would occur in PNG, as per point 2 in the agreement.

While this could be classified in some part as a breach of refoulement, it is believed that the asylum seekers presently on Manus Island would have been content with this arrangement or any other type of safe arrangement, as long as their visas were processed and they could have had a level of freedom.

This is now not happening[28]. The current government told asylum seekers at Manus Island detention centre in early February 2014 that they will not be resettled at all, and would stay in the detention centre without having their claims processed. This is a blatant breach, as keeping a person indefinitely who has not committed any crimes other than to flee from persecution is against both international and Australian domestic law.

In addition, the present Australian government believes that by intercepting boats of asylum seekers coming into Australian waters and turning those boats back is not classified as refoulement, as then the government will not have to consider whether these asylum seekers have valid claims. This is the recent methodology of the current Abbott government. Boats are being forced to return to Indonesia to such an extent that several times Australian Defence Force ("ADF") ships have been found in Indonesian waters. The Australian government has then claimed to the Australian public that no boats have gone into Australian waters. The Indonesian government has quite vocally disagreed.

The fact that some asylum seeker boats have reached Australian waters means that non-refoulement obligations by the current Australian government have been breached. An

[27] Regional Resettlement Arrangement 2013 PDF, Regional Resettlement Arrangement Between Australia and Papua New Guinea.
[28] Elizabeth Thompson file.

example of this is in January 2014, when there were claims of ADF crew behaving inappropriately to asylum seekers. Some of the claims included forcing asylum seekers to go to the bathroom once a day, and when there were complaints, by burning some asylum seekers' hands[29]. The boat was then forced back into Indonesian waters, which can then be clearly classified as refoulement. Not one of the asylum seeker's claims as refugees were tested at any stage.

While the Australian government has emphatically told the public that the ADF had done nothing wrong, there had previously been inappropriate behavior from some officers prior to these episodes that have put a questionable light on comments made by the ADF. Many in the public believe that the ADF had behaved inappropriately to the asylum seekers, and that the Australian government was complicit in the actions of the ADF.

The Australian public has become aware of other boats that have been turned back, to such an extent that people have been found on an Indonesian island. Not only this, but the Australian government has bought a number of orange boats without equipment purely to put the asylum seekers on boats and send them back to Indonesia[30].

While the current government advertises to the public that they understand the legal requirements of refoulement and are complying with international law, the manuals and guidelines prove otherwise. There are conditions to refoulement, according to the Australian government. These conditions include[31]:

- Whether the asylum seeker fled to their first country of asylum,
- Whether the asylum seeker wishes to return to their country when it is safe to do so,
- Whether the asylum seeker wishes to integrate into a third country.

Switzerland has implemented these conditions successfully into their legislation. The key difference between Switzerland and Australia is the fact that Switzerland is surrounded by a number of different European countries who can cater to their own asylum seeker policies. Australia is not, so should consider this when people consider seeking asylum. That is, the geographical area is so completely different, that Australia needs to reconsider its asylum seeker policies as international law and non-refoulement obligations are clearly being breached.

One key feature of 'preventative measures', apart from the fact that Australia has signed the key Refugee Convention[32], is that other countries from the Middle East to Australia cannot be classified as the 'first country of asylum'. The countries in question from the Middle East to Australia have – importantly – not signed the Refugee Convention or Human Rights Conventions, thereby negating the Australian government's interpretation that there are other countries where the asylum seeker can seek asylum if they travel south from the Middle East, for example.

The previous Australian government had at one stage decided to offer resettlement in PNG and Nauru, that are very poor and in desperate need of financial assistance. This not only

[29] International Criminal Court Media PDF.
[30] International Law media PDF.
[31] Offshore Humanitarian Program PDF.
[32] Refugee Convention PDF.

means that the current Australian government is forcing its responsibilities onto others in relation to the Refugee Convention, but it is also breaching the rules of non-refoulement, as the asylum seekers reached Australian waters before being sent to either Manus Island or Nauru and are clearly legitimate refugees. The Australian government believes that resettlement in Australia of those that came by boat is 'not feasible', nor is there a 'durable solution available to them'[33].

Instead of acting in a proper, responsible manner from an international perspective, the current Australian government has acted to restrict every method meant to be open for those arriving by boat, including classifying them as 'illegal maritime arrivals'[34].

The current Australian government has amended aspects of the Procedures Advice Manual in relation to Identity. It enables the government to believe implicitly in its right to control who comes into the country, no matter what. While this is an act of sovereignty, on the other hand signing the Refugee and Human Rights Conventions should allow flexibility of this, to enable asylum seekers the right to seek protection.

While the Act and Regulations permit the government the right to allow visas, powers enable the use of more thorough investigation when it comes to protection visas. However, these powers can also enable the case officer to refuse a protection visa at any stage, depending on whether the government wishes to give a protection visa to an applicant or not. This is a method of finding any and every way possible in order to refuse a protection visa.

The amendment of Case and Compliance states that the Refugee Convention in relation to non-refoulement obligations must at all times be adhered to. It then continues with stating that refoulement is not breached if the person seeking asylum is a danger to the security of the country. In this instance, the current Australian government is indicating that all asylum seekers coming by boat pose a risk to Australian society, no matter what. They have decided to interpret Article 33(1) as proving that all asylum seekers pose a 'reasonable risk' and should therefore be refused permanent asylum.

The ICCPR[35] clearly states that any person in reasonable consequence would suffer torture or death if they returned to their previous country cannot be removed from a country of save haven. However, the Detention Services Manual and Refugee Law Guidelines indicate very clearly how to return an asylum seeker back to their 'home' country. Even though officers are made aware of the Conventions, the current government have found a way to negate all levels of responsibility.

Even though Australia does have international obligations, page 65 of the Protection Obligations Evaluation Manual states the current Australian government's philosophy succinctly:

> "Not everybody is entitled to Australia's protection, even if you come from a country where there is violence or lack of security"

This philosophy has been extended to include nearly everyone needing protection. Not only has this current government made it nearly impossible for an asylum seeker to obtain a

[33] Offshore Humanitarian Program PDF.
[34] Restrictions are on page 9 of the Offshore Humanitarian Program PDF.
[35] International Covenant on Civil and Political Rights PDF

permanent protection visa, but anyone in urgent desperate need will be turned away, or left on an island and used as a political pawn in a game to see how harshly people can be treated, as noted in the media[36].

The health of all asylum seekers in all detention centres are considered, according to the Detention Services Manual[37]. This is to ensure that victims of torture and trauma, as well as those detained in detention centres on a long term basis, are treated as 'special needs' cases. Even though they fit the criteria for asylum seekers under the Refugee Convention, the current government will keep them detained, rather than granting them a permanent protection visa. Otherwise, they will be removed from Australia back to the country they fled from. This is clearly breaching the non-refoulement obligations that Australia has in the international community and according to the Refugee Convention and ICCPR.

Asylum seekers can be removed from Australia within 48 hours' notice, unless there has been a waiver[38]. Considering the current government does not believe that it is breaching non-refoulement obligations by sending asylum seekers back to the country they fled from even if they have suffered torture or trauma, this is clearly a lack of understanding by the current government on how to interpret human rights conventions properly and succinctly.

CHILDREN

Although the Act[39] contains section 4AA in relation to the detention of children being of last resort, there are clear indications that 1138 minors are at Nauru detention centre. There has been no indication that the children will, at any time soon, be processed into any society, let alone the Australian society.

While the current Australian government notes that the best interests of the child should be the main purpose and consideration when determining the outcome for refugee status, this philosophy has been amended due to other 'primary considerations'. This means that the child will be sent back (or left in detention) with the family instead of having their needs (including education in the offshore detention centres) met[40].

The whole family – including all children – will be taken to the detention centres no matter what in the event that the family becomes 'illegal'. They will not be split, and will all remain there until further notice. Any family members who are already in Australia will not be taken into consideration[41]. In addition, any children born on Australian soil or in detention centres are considered to have their parents' citizenship, rather than Australian citizenship.

While the 'best interests of the child' are seriously considered[42], the reverse appears more viable. As noted above, there are 1138 children at Nauru, with little hope of being properly resettled. The Uniting Church (a Christian church in Australia) offered to take care of some of the children in order to take them out of one of the detention centres. This request was point blank refused by the Minister.

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[36] International Criminal Court Media PDF.
[37] Page 296, Detention Services Manual PDF.
[38] Page 302, Detention Services Manual PDF.
[39] Part 1, *Migration Act 1958* (Cth).
[40] Page 91, Offshore Humanitarian Program PDF. Page 28, Detention Services Manual PDF.
[41] Page 92, Offshore Humanitarian Program PDF..
[42] Page 121, Protection Visa Advice Manual PDF.

In addition, the Protection Visa Advice Manual continues with saying that children are not to be held in detention centres, yet the opposite is true[43]. Then, the Minister has granted delegable authority to those within Australia, but has neglected to say anything about those in the Nauru or Manua Island detention centres.

All throughout the Detention Services Manual, it claims that children are 'not to be detained…for accommodation or while their immigration pathway is being processed'[44]. This is a blanket assurance that is given many times within most manuals and guidelines. However, there are still children in both offshore and onshore detention centres, due largely to other assurances in relation to keeping family members together and suspicion of children for public interest purposes.

All agreements with contractors and delegates are in relation to onshore and Christmas Island detention centres[45]. The Minister has decided that he does not have any authority to deal with any minors in any offshore detention facility, even though many are demanding that he take responsibility for them.

The Detention Services Manual states that unaccompanied minors are kept in 'residence determination'[46]. This is a fallacy, as it is very well known where all unaccompanied minors are kept.

The reasoning and philosophy of the current Australian government can be summed up in the below sentence[47]:

> "Minors will be released from immigration detention permanently either; when the suspicion of their unlawfulness has been resolved, they are granted a substantive visa or removed from Australia".

Children are considered as suspicious entities to the current Australian government, rather than innocent minors requiring protection due to running away from persecution. According to this government, there is no additional requirement allowing or enabling children localization into the community. They are to stay in detention no matter the cost, even if the detention facility is offshore. The only consideration the Minister has is if the child is physically on Australian soil. Only then will he allow himself to be the guardian of unaccompanied children, or allow them to be educated.

Any unaccompanied child that is in detention in Australia is now under the care of the Minister. However, the amendment to Guardianship in relation to unaccompanied minors does not show any indication that minors in offshore processing are being looked after by the Minister. Only those in onshore processing can be guaranteed of guardianship, according to the amendment of the Detention Services Manual.

The amendment to Case and Compliance gives an outline of how children should not be in immigration detention. It continues to say that, if the parents of a child are in detention, then the child should be near their parents and therefore be in detention. The intention, according

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[43] Page 121, Ibid.
[44] Page 5, Detention Services Manual PDF.
[45] Page 21, Ibid.
[46] Page 109, Ibid.
[47] Page 243, Ibid.

to this amendment, is to control 'risk'. True refugees are not considered a risk, even to the UNHCR.

This amendment continues with an explanation of the CROC. It is understood in the manuals and guidelines that the rights of the child are to be considered of very high value, but then continues with the fact that the child must remain with the parents. This is even though the parents remain in detention centres and no visa is being determined for them.

This amendment then claims that education is important to the rights of the child. However, the Detention Services Manual[48] deliberately withholds any policy direction on any key area of education for those in offshore detention, thereby leaving officers to their own conclusions. More often than not, education is not considered in any offshore detention centre and so therefore the children are not being educated in any manner, which is against the CROC.

Additionally, the amendment clearly states on page 18 that while the best interests of the child are important, they are not a key factor for officers to contend with. They are not the 'primary consideration'. Children are considered in relation to both character and risk to the Australian community, according to this amendment. This can mean that the government believes that a child can be considered a high risk to the Australian community. At no stage are they considered to be innocent, as children in the Australian community are regarded. Therefore, the current Australian government believes implicitly that children are not to be let into the Australian community as their character may be flawed, even if they are unaccompanied, are minors and have posed no risk whatsoever in the past.

According to the amendment of the Procedure Advice Manual in relation to Safety and Security, unaccompanied children are accepted as 'high-risk detainees' and are allowed into 'high-care accommodation' with the acceptance of the Minister's delegated guardian. If a child is refused a protection visa for any reason, then the main applicant must also be refused a protection visa[49].

All the Manuals and Guidelines tell different stories when considering the needs of children. It is implied that children, like adults, pose a security risk and should be held for as long as it takes. The CROC was supposed to have held a higher regard for children. The current government's basic need to imply threats to the community ensures that this is breached, just as surely as Lubanga breached Article 7 by training child soldiers.

In addition, child soldiers are not considered to have all requirements in relation to character, as they have committed a crime[50]. Child soldiers will be refused protection in Australia, even though they are victims of much larger issues and are being persecuted themselves.

For children to be considered in such a manner, it seems inconceivable that any first class western economy could stoop to such a level of ignominy. This current government has done it in abundance. This exhibits similar traits as that of Lubanga, who was found guilty at the International Criminal Court.

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[48] The Detnetion Services Manual PDF.
[49] Page 74 of the Offshore Humanitarian Program PDF.
[50] Child Soldiers PDF.

OFFSHORE PROCESSING

Offshore processing has become such a major issue that it is now publicly well known internationally. While the Detention Services Manual claims to hold the best interests of asylum seekers as a prerogative, nothing can be further from the truth. There is a claim that there cannot be a guarantee on page 4 of the amendment to the Detention Services Manual that those in detention centres may not suffer harm.

The Detention Services Manual and its amendment indicates that those in detention will have a high turnover, meaning that staff will have to consult with each other regularly[51]. This has not been the case. Asylum seekers are known to have little to no turnover – their numbers have been constant for quite some time. This shows how those in power have intention of relaying a different objective even to their own staff.

While the current Australian government has advised that it is in constant communication with the UNHCR, there has been media reports which clearly state that the UNHCR and other human rights authorities are refused entry to both Manus Island and Nauru detention centres[52]. The current Australian government is aware of the needs of the UNHCR[53]. The 'Humanitarian Branch' within the DIBP is aware of those seeking asylum, and change the requirements accordingly each January. However, considering those seeking asylum by boat are now at either Manus Island or Nauru (or are since January 2014 turned back to Indonesia) it remains to be seen whether Humanitarian Branch have a job, especially considering how all asylum seekers are now inhumanely treated[54].

The current Australian government understands that asylum seekers flee from persecution without proper identity documentation. Sometimes it is difficult to identify those who do not have identity due to extreme circumstances[55]. However, if there is an issue, authorities are given the right to refuse to allow the asylum seeker any protection. It is up to authorities to determine what to do, and this can be considered on a subjective basis.

Officers are clearly advised that their wording is important[56]. Officers are not to give 'false hope' to any asylum seeker that they could be likely to be given a protection visa in the future. In fact, officers are not to apply any Convention test to those seeking asylum, particularly in the initial stages. Asylum seekers are not to know whether they have any chance, and officers are to refrain from using any words dictating that the Refugee Convention may be applicable. To this current government, that would mean an 'error of law'. This is a breach of international humanitarian law. Giving a proper outcome at the earliest convenience is the most humane thing that can be done, yet this government believes there is no obligation in this respect.

As the current government restricts the number of people who can claim asylum in Australia to the bare minimum, officers are allowed to use a 'subjective test' to see who the most

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[51] Chapter 4, Detention Services Manual PDF and amendment to the Detention Services Manual.
[52] International Criminal Court Media PDF.
[53] Offshore Humanitarian Program PDF.
[54] International Criminal Court media PDF.
[55] Page 32, Offshore Humanitarian Program PDF.
[56] Page 61, Ibid.

worthwhile party is in order to obtain a protection visa. There must be 'compelling reasons' to give the visa, as well as a 'gut feeling'[57].

While interviewing the applicant for a protection visa, officers are required to know if the applicant has made every effort they could to find another place to resettle. The officer places great emphasis on the applicant finding other countries, asking whether they should be looking elsewhere. The officer can then easily refuse to offer a permanent visa to the applicant at the earliest possible convenience.[58]

The Act and Regulations place no legislative instrument on placing a quota for permanent protection visas[59]. However, as a Media Release, the Minister has the power to cap the number of permanent protection visas as he dictates. At present, the number of protection visas has been amended according to the Minister to 2773 for the 2013/14 Australian financial year. This was decreased from 11000 visas earlier in 2013 by the previous government.

When it comes to character, applicants for a permanent protection visa need to check their character with authorities from their last country. Considering many seeking asylum are leaving countries due to fear of persecution, this can be waived[60]. However, this government has interpreted persecution in a very limited manner, and can refuse to grant a visa based on character from their last known country. Not only can this cause warning for the country the asylum seeker is fleeing from, but it can also create a negative listing on the asylum seeker's file, thereby enabling the asylum seeker to be refused in other countries.

From 19 July 2013, officers must take any asylum seeker arriving by boat straight to PNG for assessment, in order for all asylum seekers to be resettled in PNG from that date onwards, even if they reached Australian waters[61]. Instead of allowing time for the asylum seeker to prove that they are, in fact, a refugee, policy dictates that the asylum seeker is to be transferred elsewhere as quickly as possible. They are to be detained at Manus Island even if it is found that they are a refugee. This is against Australia's non-refoulement obligations.

Asylum seekers – from June 2013 to September 2013 – with the previous government were declared 'unauthorised maritime arrivals'. After the current Australian government came into power in September 2013, they are now known as 'illegal maritime arrivals'. This is done so the current government can dehumanize all asylum seekers as those who would be a threat to the community, rather than people fleeing persecution in areas of detriment. Legislative instruments have allowed the Australian government to make agreements with both PNG and Nauru for detention centres to be held in these countries[62]. Even though these agreements occurred with the previous government due to pressure from the opposition, the current government did not have to adopt them. Not only has this government adopted such inhumane practices, but they created an even more serious situation.

[57] Page 63, Ibid.
[58] Page 68, Ibid.
[59] Page 69, Ibid.
[60] Page 73, Ibid.
[61] Page 86, Ibid.
[62] Page 94, Ibid.

As Australia has no borders with any other country, the method of entry to Australia can only be by boat or plane. Those coming by either boat or plane without a visa are taken to either Manus Island or Nauru detention centres. An easy method is for officers to give a 773 visa to ensure that those needing protection would be authorized until after they are found not to be asylum seekers. This would comply with the Refugee Convention and be an infinitely more humane practice.

If a man makes a claim for a protection visa as an applicant and is refused, he and his family (including the woman – who may require a protection visa on more serious grounds) can be barred from applying again at a later stage[63]. This is even with other family members not being able to disclose the whole scenario, which can require greater sensitivity.

Women who are persecuted need to prove 'gross violation of human rights' to officers[64]. It is not enough to show aspects of fear. The Australian government has deliberately left the meaning of 'gross violation' and 'persecution' out of the Regulations, to give it a narrow interpretation and enable officers to refuse protection visas due to mere policy.

While the current Australian government has shown some understanding of what women face if left vulnerable, they still ensure that women are left in detention centres[65]. I have personally heard of stories where women at Nauru detention centre prostitute themselves out to men on the island (including officers meant to protect them) for cigarettes. None of the people in any of the detention centres obtain an income, so this appears to be a reliable outcome if women are addicted to cigarette smoking.

While officers consider whether a male main applicant could return to another area of the country from which they fled, the same philosophy is also available if the main applicant is a woman or a child[66]. Officers can consider gender issues, but they are still given the opportunity to contemplate return to the prior country anyway.

When the asylum seeker eventually reached Christmas Island prior to Operation Sovereign Borders, their initial interview is not expected to show any real detail[67]. Limited knowledge is obtained from the asylum seeker, including identity and their reason for fleeing to Australia. A very brief statement outlining fear of a persecuted country is then expected. If the asylum seeker is unaware of how to make this 'coherent' statement, they will need to wait for an entry interview. Most asylum seekers do not speak English, but there appears in this manual no real expectation for an interpreter to be present. Only after this statement is made are officers then obligated to show information sheets in the asylum seeker's language[68].

The asylum seeker can then file a 'Request for Protection Obligations Determination and Statement of Claim'[69]. However, at no stage in this period of time is the asylum seeker made aware that they can file a request and a statement. Officers do not have to make the asylum seeker aware of administrative matters. This means that asylum seekers can stay in Manus

[63] Page 11, Gender Guidelines PDF.
[64] Page 15, Ibid.
[65] Page 20, Ibid.
[66] Page 32, Ibid.
[67] Page 11, Protection Obligations Evaluation Manual PDF.
[68] Page 12, Ibid.
[69] Page 12, Ibid.

Island or Nauru detention centre until they do become aware of the administrative matters. Only after the request and statement are filed that officers can start working on the file.

There used to be a legal team of lawyers and migration agents who represented asylum seekers (the IAAAS)[70]. This has recently been dismantled, with the full authority of the current Minister.

It is documented that Australia has no protection obligations to any asylum seeker who could possibly seek protection in a third country[71]. While this current government claims that it is complying with the Refugee Convention, what is implicitly noted is that Australia will always consider other countries as safe and will therefore believe it is complying with international instruments even when it refuses protection visas for any refugee seeking protection.

The officer will consider a protection check to see if the asylum seeker can be removed to a third country[72]. This third country can be the country the asylum seeker fled from, or any other country. The officer is directed that any country to reside would be better than Australia for an asylum seeker. If there is a very strong reason for the officer to assume there is no other country, then the protection check will not be completed[73]. This means that the government is telling officers to make a protection check, and that assessments will not be finalized without it. Asylum seekers can then be held in detention centres for an indeterminate amount of time.

The protection visa must be completed for all applicants that are in Australia, as per s36(2) of the Migration Act 1958 (Cth)[74]. However, it is not available for any person on Christmas Island, Manus Island or Nauru. Technically, the government has decided that while Australia has responsibility for the detention centres on these islands, physically the islands cannot be considered on mainland Australian soil and so therefore – for Manus Island and Nauru in particular – the current Australian government does not believe that it has protection obligations. The current Australian government is using the interpretation of 'sovereignty' in the Conventions to reduce its impact of responsibility for asylum seekers on these islands. This is not considered a viable argument, particularly according to the NSW Law Society[75].

The Detention Services Manual clearly states that detention is mandatory[76]. According to the current government, there needs to be strong border control. In one component on the same page, all 'unauthorised arrivals' are to reside in detention centres, although children are not to reside in detention centres and all are to reside for the shortest time possible. As noted above and in attachments, conditions are in such dire straits as to cause gross inhumanity. Considering many in detention centres have been there for many months, if not years and in extremely poor conditions, this is a fallacy.

The current government is more interested in keeping their perception of ensuring 'public interest' than they are in upholding the values of the Refugee and Human Rights

[70] Page 13, The Protection Obligations Evaluation Manual PDF.
[71] Page 17, Ibid.
[72] Page 18, ibid.
[73] Page 20, Ibid.
[74] Page 21, Ibid.
[75] NSW Law Society PDF.
[76] Pages 7 and 8, Detention Services Manual PDF.

Conventions[77]. The subjective consideration of what 'person's risk to the community' is always upheld by Senior Officers, rather than whether mental illness from torture and trauma suffered by the asylum seeker could give rise to permanent protection within the community. People can therefore be left for years within any of the detention centres, due to the current government believing the risk to the community should lock these people away indeterminately.

The main intention of the current government is to detain any person who arrives in Australia by boat or plane without a visa, and keep them in detention centres until they are deported[78]. Unless they are given permission to stay in Australia, they are not to set foot in Australia on a legal basis. It is known, however, that the Minister has no intention of giving any asylum seeker who come by boat permission to set foot in Australia legally, even if they are considered refugees by the international community.

The current government has also worded its Detention Services Manual to ensure that officers are aware there is no duty of care towards asylum seekers in detention centres[79]. Duty of care is 'discharged' for those the government does not believe they owe duty of care to. This is negated by the submission made by the NSW Law Society[80].

In many different areas of the Detention Services Manual, the following phrase is entered time and again, commencing on page 16:

> "Placement in any facility is never an indicator of any migration status resolution outcome".

This basically means that the cases for the asylum seekers stuck in detention never have to be finalized or resolved. The government clearly indicates that asylum seekers can spend their whole lives in detention, without knowing whether they can leave it. It is common knowledge that a number of people have spent more than 5 years in detention centres, without resolution of their cases.

Border screening detention occurred shortly after the asylum seeker was taken to Christmas Island[81]. This is no longer the case, as all boats are pushed back to Indonesia, breaching non-refoulement obligations as well as upsetting the Indonesian government. When border screening did occur, certain questions were asked which could easily negate the asylum seeker's chances of claiming refugee status. There is no indication at this stage that the asylum seeker will be given an interpreting service, in order to respond to questions appropriately. Additionally, asylum seekers coming by boat can be kept in border screening detention for much longer periods of time, if 'required'[82].

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[77] Page 8, Ibid.
[78] Pages 11, 76 and 78, Ibid.
[79] Page 12, Ibid.
[80] NSW Law Society submission PDF.
[81] Page 124, Detention Services Manual PDF.
[82] Page 129, Ibid.

Asylum seekers are also separated prior to being interviewed[83]. The government does not want some asylum seekers 'coaching' others, in order to give appropriate responses in relation to claiming asylum.

Reasonable force is allowed under s261AE of the Act[84]. This is subjective, according to what the officers consider 'reasonable force' to be. While there are guidelines upon how much force to use, it is up to the officer at the time to decide how this should be considered. From what it appears due to advanced technology, force has been entirely unnecessary, and used as a means to create fear amongst asylum seekers[85].

Self-harm and suicidal thoughts are quite prevalent at both Manus Island and Nauru detention centres, in particular[86]. The community hears of many who have tried to commit suicide, especially recently. Mental illness abounds in the extreme on both islands (as well as in onshore detention centres), yet this government has done its utmost in causing political controversy instead of giving a proper outcome deserving of all asylum seekers. Even though some may not have been proper asylum seekers at the start of their unfortunate stay, they are now definitely sur place refugees and should be treated as thus.

There have been many ideas in relation to processing asylum seekers more humanely. Mr Malcolm Fraser, the former Prime Minister of Australia in the late 1970's, suggested that a processing centre should be opened in Indonesia. At present, asylum seekers can go through a process in Indonesia, however it is quite disjointed and unknown by most asylum seekers in Indonesia[87]. If it was advertised properly by the Australian authorities that there would be a processing centre in Indonesia, asylum seekers would attend. The current government has refused to consider this humane suggestion. They wish, instead, to be seen as 'stopping the boats' in more inhumanely, breaching international law in the process.

There is a whole section in the Detention Services Manual that deals with people who have survived torture and/or trauma[88]. The current government ensures all officers are aware of every aspect of survivors or torture and trauma, yet still believes that these victims should be removed from Australia. This is entirely due to their extremely narrow interpretation of the word 'territory'. This is a clear breach of international obligations that Australia chose quite some time ago to adhere to. Aspects of this manual indicate that most of the asylum seekers on Manus Island and Nauru have suffered torture and/or trauma, yet they are still on these islands with little hope or chance of getting off them to safety. Not many people would classify either island as 'safe', particularly with what occurred on Manus Island on 17 February 2014.

The current Australian government, in their directives to officers in the Detention Services Manual[89], has written an amendment which allows 'reasonable force' upon the asylum seeker. Even though the amendment clearly states that this could amount to trespass, the government has allowed force to be used for their own objective. This basically enables

[83] Page 131, Ibid.
[84] Page 275, Ibid.
[85] International Criminal Court media PDF.
[86] Page 509, Detention Services Manual PDF.
[87] Statement Sayed PDF.
[88] From page 482 to page 505, Detention Services Manual PDF.
[89] Page 208, Chapter 8, Detention Services Manual PDF.

officers to become heavy handed in their treatment of asylum seekers – something that has been enacted and has allowed officers to put asylum seekers into hospital, particularly on the night that Reza Barati died, as noted by Elizabeth Thompson[90].

The amendment in relation to Compliance and Case Resolution from the Procedures Advice Manual clearly explains that Australia will help those who have been victims of people smuggling activities. This amendment does not explain whether the victims of people smuggling could be the asylum seekers themselves. In fact, this amendment states that the asylum seekers are to be removed, as they 'have no lawful basis to remain in Australia'.

The current policy is to deter those seeking asylum from considering Australia in the first place[91]. This has also been graphed in the Compliance and Case Resolution amendment of the Procedures Advice Manual. It proves that there is no intention of Australian authorities to regard those seeking asylum as refugees at any stage, contrary to the fact that Australia has signed the Human Rights and Refugee Conventions.

The amendment to Compliance and Case Resolution also shows, on page 6 of this hyperlink, that an asylum seeker's stay in immigration detention is to be 'the least restrictive and most appropriate for that individual'. While the word 'timely' is used, many of those in detention centres are long term residents, some residing at Villawood detention centre for more than 5 years, as one example.

Any behavior of asylum seekers in detention centres can lead to the government refusing a visa on the grounds of character, according to the amendment to Detention Services Manual in relation to Safety and Security. This aspect of the amendment can be considered subjective and according to the methodology given to officers with the government's consent. While 'duty of care' is regarded of high importance, this amendment states that the asylum seekers are responsible for their own behavior, even if detained for very long periods of time.

A 'high-risk detainee' can even include one who is 'vulnerable', although this is up to the interpretation of officers what 'vulnerable' means. This allows officers to keep closer watch on asylum seekers, particularly if there are rampant mental illness issues. Interpreted another way, instead of seeking psychological help for those asylum seekers who are suicidal and being proactive in reducing the effects of long term detention by giving an appropriate outcome as quickly as possible, the officers are allowed to closely watch them instead.

This amendment enables for the 'operational, legal and administrative requirements' to be met. While mental health is regarded for those considered 'high-risk', it is fleeting. Instead, mental health is considered in greater detail in the same chapter, as there is an overall requirement due to the major issue of being detained with nothing to do in high security, particularly at Manus Island and Nauru detention centres. A short period of time held in a detention centre would exacerbate mental illness with anyone.

CONDITIONS AT THE OFFSHORE DETENTION CENTRES

Conditions are noted as being harsh, according to photographs obtained by the media[92]. Cleaning is not adequately completed, and cleaning products are not given to the asylum

[90] Elizabeth Thompson file.
[91] Fact Sheet English Operation Sovereign Borders PDF.
[92] International Criminal Court media PDF.

seekers to clean general areas. It is assumed by officers that they would self-harm instead. Women have not been adequate sanitary materials. All asylum seekers are given one 500ml bottle of water daily. In the hot conditions at Manus Island and Nauru, this is not even the basic requirement for water.

Viral outbreaks are common, as noted in Freedom of Information factsheets that have been obtained and posted online[93]. This is combined with the additional efforts of asylum seekers to self-harm or commit suicide.

While education and activities are mandatory activities in the onshore detention centres, the current government is not obligated nor are they prepared to offer similar activities to those at Manus Island and Nauru detention centres, according to the Detention Services Manual[94]. Children are not educated, which is against the CROC.

The Detention Services Manual points out that 'reasonable standard of care' is necessary in detention centres[95]. However, it is known from reports by Elizabeth Thompson[96], among others, that conditions are to such an unreasonable extent that asylum seekers would prefer to commit suicide than stay there any longer. There is no reasonable standard of care in the offshore detention centres. Page 33 of the Detention Services Manual continues with claiming that care should be given to asylum seekers, however it is now common knowledge due to people like Elizabeth Thompson that this is not the case[97].

Fluid and food refusal is written into the Detention Services Manual[98]. At no stage in my experience have I ever been aware of any policy that can dictate such a thing. This means that the level of frustration asylum seekers feel have gone beyond their hopes for communication. They are desperate and in need, yet their calls for any type of response are obviously being ignored by this current government.

ONSHORE PROCESSING

When filling out an application for a permanent protection visa, if the applicant does not fill out the reasoning on why the applicant needs protection, the visa will be refused. There are no extenuating circumstances, nor does it give guidelines for helping the applicant explain in more detail the persecution that they fled from. The officer is given the power to refuse if they are not satisfied with what has been written[99].

Officers refuse permanent protection visas to any person seeking asylum who come by boat[100]. Officers are to call these asylum seekers 'illegal' at all opportunities. The Minister may use his public interest powers, but refuses to.

Any asylum seeker who has dual nationality is barred from applying for a protection visa, without considering extenuating circumstances[101]. Also, any applicant who has applied

[93] Various Factsheets of FOI PDF's.
[94] Detention Services Manual PDF.
[95] Page 32, Ibid.
[96] Elizabeth Thompson file.
[97] Ibid.
[98] From page 590 to page 600, Detention Services Manual PDF.
[99] Page 17, Protection Visa Advice Manual PDF.
[100] Page 22, Ibid.
[101] Page 23, Protection Visa Advice Manual PDF.

previously – and been refused – is also barred from making another application, no matter its viability. They would have to depart from Australia, then make an offshore application in order to return. There is an issue with this, as there are many grounds given to officers in the manuals and guidelines to refuse offshore protection visas.

Protection visa applicants can make an oath or affirmation as to whether their application is true. However, section 91V of the Act[102] enables an officer to refuse to give a protection application purely on the basis that the 'applicant was not sincere'. This is subjective reasoning, enabling the officer to follow government procedure in doing everything they can to refuse protection visas to asylum seekers.

There appears to be a guarantee that mishandling of information for a protection visa can lead a refugee to being accepted as a 'refugee sur place'. It should be noted that the mishandling of many asylum seekers' records while in detention recently has not been given the same serious value[103]. In fact, they are not considered as refugees sur place at all. Instead, asylum seekers who have had their information mishandled by the current government – by the information appearing on a public website for two weeks – have been placed in detention centres as far away from their legal representatives as possible, prior to court cases being held at the High Court. Additionally, the only legislation that this court can abide by is that of compensation. Asylum seekers can be compensated, but are still not allowed into the community.

There is supposed to be access to migration agents for asylum seekers, based on the IAAAS scheme[104]. However, funding from the government for this scheme has been recently cut by the Minister. Asylum seekers have no free access to legal representation, apart from those willing to complete the work 'pro bono'.

An officer can refuse a permanent visa at initial stages, but not fully determine or send the visa result to the asylum seeker until later[105]. This sounds like a method to confuse an applicant at all stages into believing that the applicant may have a chance at some points of the procedure, when in fact they do not. In addition, any request to add others onto the application will then be refused at all stages.

In relation to how information is sourced – in order to determine whether an applicant may be telling the truth – the government has set up a particular system to gather information. Certain sources are not considered reliable, however it is known that these sources can be linked to other reliable sources. That cannot be determined by the government, so they refuse to regard secondary sources as reliable[106].

Protection visas can be refused if the officer does not believe the applicant is reliable. If the claim for asylum is worded on the application in a different font, style or format to the rest of the document, then the officer can refuse a protection visa[107]. As an example, a different colour pen used to finish an application could be enough for an officer to refuse a visa.

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[102] Part 1, *Migration Act 1958* (Cth).
[103] Page 51, The Protection Visa Advice Manual PDF.
[104] Pages 54 and 55, Ibid.
[105] Page 58, Ibid.
[106] Page 63, Ibid.
[107] Page 79, Ibid.

The Middle East are advised that they can apply for a protection visa in Australia[108]. The government understands that there is an issue with the situation in the Middle East. However, Country Advice Notes for applications from certain areas in the Middle East are being refused, on the grounds that there is not enough fear in the Middle East to warrant a protection visa and the asylum seeker can return to other areas of their home country[109].

There is also a requirement for a 'proposer' in Australia. That is, there must be a properly known person (who is not an asylum seeker who arrived by boat) that can propose for the asylum seekers to come to Australia. Since most people fleeing persecution do not know anyone from a Western country, this in fact vastly restricts the ability for people to seek asylum in Australia. Those who arrived in Australia by boat after August 2012 cannot propose anyone for a protection visa[110].

For those who had arrived by boat to the vicinity of Australian shores after August 2012 and before June 2013, who have already been processed and are onshore, there is a major issue with the temporary Bridging visa granted to them[111]. There is an end date to these temporary visas, with little prospect of being able to stay in safety in Australia. Asylum seekers are in fear of their lives, yet are being coerced into accepting removal from Australia to their home country at a later date. Officers can then take any asylum seeker with an expired Bridging visa into detention, after being declared 'unlawful', for removal back to their home country[112].

Another condition of relevance to those seeking a permanent protection visa is that if a person has already been offered a Temporary Safe Haven (TSH) visa, then they will never be applicable for a permanent visa[113]. TSH visas are for two years maximum, and leads those in the community to believe that – after the visa has expired – they will need to return to their prior country anyway. It is not a guaranteed visa of safety, and gives the visa holder the impression that Australia is not a secure enough country to enable appropriate protection.

It is clear that the current Australian government does not believe that it has an international obligation to those seeking asylum, unless all other methods for obtaining protection by the asylum seeker have been exhaustively approached to no avail[114]. It has successfully implemented legislation in order not to be honour bound to the implementation of any Human Rights or Refugee Convention. This enables the government to sidestep every aspect of responsibility it may have in dealing appropriately with asylum seekers, whilst interpreting all international instruments from the narrowest viewpoint possible. This means that an officer can decide whether they should implement a 'protection check', for which the officer can then give the authority for an asylum seeker to be deported[115].

An officer will consider aspects of real risk, such as whether the person can be relocated to another area of the country they fled from, or whether the authorities in the previous country

[108] Page 17, Offshore Humanitarian Program PDF.
[109] Country Guidance Notes PDF and Country Guidance Note Iran PDF.
[110] Page 20, Offshore Humanitarian Program PDF.
[111] Page 332 of the Migration Regulations 1994 Subclass 574 onwards PDF.
[112] Page 88, Ibid.
[113] Page 99, Protection Visa Advice Manual PDF..
[114] Page 69, Ibid.
[115] Page 70, Ibid.

will give the applicant enough protection, or if persecution is faced by an entire group, rather than from one persecutor. If a response could be found for any of these aspects, the officer can refuse a protection visa[116]. The previous country is declared as the applicant's 'receiving country', which is quite confusing considering the general dictionary meaning of the word 'receive'[117]. Additionally, if there was a third country that could be considered 'safe', then the officer can refuse to grant a protection visa to an applicant[118].

Section 91S of the Act[119] denotes that, if an application is made by a person who knew of family members feeling fear, then an act of persecution will not occur and Australia will have no reason to protect the applicant. Circumstances can occur where fear can be held for all members of a family, yet officers are not obligated to accept a visa on this basis[120].

Officers are directed to the periods of time when a person can cease to be classified as a refugee[121]. In the same paragraph, the manual states that this is not relevant to the officer's decision making in granting or refusing a protection visa. This is because there already is enough in this manual to enable an officer to refuse protection visas.

Another aspect that can be detrimental to an asylum seeker applying for a protection visa is whether they appear 'credible'. This is a subjective inference, for which an officer can decide to dislike the 'manner' an applicant divulges information[122].

The officer then should consider whether the applicant can reside in another country due to reasons such as marriage, as one example. If the officer wishes to refuse an applicant who has already been declared a refugee by the UNHCR, they should contact their supervisor, then can go ahead anyway. The UNHCR would be contacted, as an administrative effort more than anything else[123].

A permanent protection visa cannot be granted to an applicant if there is an adverse security assessment, as advised implicitly to officers[124]. That is, even though the High Court discounted character flaws and it cannot be solely counted as a reason to refuse a visa, the officers can take it 'into account'. Considering fleeing a country due to high risk may prove to show high character issues, counting it as a reason to refuse a visa can be considered as a breach to non-refoulement obligations.

If an applicant fled a war crimes area prior to coming to Australia, the officer will screen the applicant[125]. This means – in all probability – that those who have suffered the most are very likely to be refused protection visas, simply because they were in a wartime area.

Officers can accord certain cases lower priority than others[126]. Officers can even defer making a decision, until a time more suitable to them. The phrases clearly denote that it is

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[116] Page 84, Ibid.
[117] Page 85, Ibid.
[118] Page 87, Ibid.
[119] Part 1, *Migration Act 1958* (Cth).
[120] Page 88, Protection Visa Advice Manual PDF.
[121] Page 90, Ibid.
[122] Page 96, Ibid.
[123] Page 98, Ibid.
[124] Page 100, Ibid.
[125] Page 101, Ibid.
[126] Page 103, Ibid.

quite acceptable to keep applicants in a state of anxiety for the longest period of time possible.

The permanent protection visa, according to the Regulations, requires the Minister to decide whether due to public interest a visa should be granted or refused due to character[127]. If the Minister refuses to grant a visa, then it cannot be reviewed in a Tribunal or Court. The Minister has final say. This gives the Minister an enormous amount of power. He could (and does) decide that every visa should be refused due to character no matter what, particularly at the present time.

If the officer decides to refuse a permanent protection visa, as an example, then the officer can close the file permanently, with no need to reopen the file of the applicant even if a serious error was made in the decision making process[128]. This does not give any leniency in decision making for the officer, for which review of the file should be accepted if there is reasonable cause.

Officers are not to give a visa for asylum seekers arriving by boat unless the section 91P bar has been lifted and the permanent protection visa can be attempted[129]. This is to stop those that are 'unlawful' from being able to apply for an appropriate visa. Applying for a skilled visa is an issue particularly if an applicant's English language skills are poor.

In any case, once it appears that a protection visa has merit, the case will appear before the Minister, who will then decide whether to grant or refuse a permanent protection visa[130]. He has final power over whether an applicant will be protected or not. At present, he is refusing all protection visas, no matter what.

Rather than assessing whether an applicant for a protection visa is owed protection by Australia, section 91Q enables officers to assess whether the asylum seeker could be availed of protection from other countries[131]. This method of assessment is geared primarily towards whether Australia could refuse a protection visa to an applicant at any time during assessment.

If a person is stateless, this should entitle the person to be seriously considered for a protection visa, considering the dictionary meaning of the word 'stateless'. However, officers are to believe that the applicant does not have any right to protection in Australia[132]. In fact, it clearly states that a stateless person can be removed from Australia if necessary. There is little indication upon where the stateless person could reside.

While the Convention for the Stateless Person is understood to have some meaning, common sense is not derived within the Protection Visa Advice Manual, nor in any domestic legislative instruments. The current Australian government does not give itself any responsibility towards those that are stateless[133]. If another country allows a stateless person

[127] Page 112, Ibid.
[128] Page 199, Ibid.
[129] Page 130, Ibid.
[130] Page 131, Ibid.
[131] Page 132, Ibid.
[132] Page 135, Ibid.
[133] Page 136, Ibid.

to reside in their country, then this is acceptable and classified as an 'entitlement'[134]. They can then be 'encouraged' to apply in another country[135].

Officers are directed to consider that prior countries are not to be contacted, unless officers have decided to refuse to give an asylum seeker protection[136]. Once refused, then an officer can contact the country to organize removal of the asylum seeker. Asylum seekers fleeing from fear and persecution will then be returned to the country from which they have fled.

Not only does the officer expect that an applicant should 'take all possible steps to exercise a legally enforceable right to enter and reside in a third country', if the applicant has for any reason not done so, then the officer is obligated to refuse to the asylum seeker a protection visa and return the asylum seeker back to their home country[137].

Any asylum seeker who holds a TSH visa was known to live with uncertainty about their future[138]. While this is understood by officers, the current government has implemented TSH visas, 'encouraging' many with BVE bridging visas to accept TSH visas even though they are only a temporary measure.

A visa applicant who cannot be considered for a visa according to the Refugee Convention can be considered under the Protection Visa Guidelines[139]. This is because the United Nations had noticed that Australia was not acting according to its non-refoulement obligations at the time[140]. While the government has interpreted aspects of the Convention of Torture, they still abide by legislative instruments which asks the question upon whether the prior country could have protected the asylum seeker, among other similar questions (page 9). The United Nations had to step in during 2008 to determine how Australia was to interpret the meaning of 'real risk' and 'significant harm'[141], as the government had interpreted these meanings too narrowly for even the United Nations to stomach. Yet again, however, the current government is interpreting these meanings just as narrowly as beforehand, giving rise to this submission, as well as investigations by other authorities.

It does not matter whether an asylum seeker has a prior country of citizenship or not, officers are to consider the prior country that they lived in as a 'receiving country' and are to check the laws to see whether there could have been any protective measures for the asylum seeker[142]. This can then be used to find a way to refuse a protection visa for the asylum seeker.

The test of 'real risk' is interpreted in s36(2B)(c) of the Act[143]. Officers must interpret the meaning in relation to the prior country's complete and total breakdown of authority and policing. There is no consideration upon whether minority groups are targeted, even if there

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[134] Page 143, Ibid.
[135] Page 144, Ibid.
[136] Page 143, Ibid.
[137] Page 144, Ibid.
[138] Page 146, Ibid.
[139] Page 4, The Protection Visa Guidelines PDF.
[140] Page 6, Ibid.
[141] Page 9, Ibid.
[142] Page 10, Ibid.
[143] Part 1, *Migration Act 1958* (Cth).

is a valid police force that takes care of the majority. Conditions in the prior country must be violent, systemic and widespread, as well as targeting the asylum seeker individually[144].

Medical issues are not considered as a severe deprivation of life[145]. This includes terminal illnesses or forced abortion. Sterilization could come under issues of degrading treatment or punishment, but this is up to officers to decide whether it could be harsh enough to enable a protection visa.

The current Australian government has also interpreted the meaning of 'death penalty'. People convicted of stoning to death for adultery, as its example, are considered to have a conviction that would be 'arbitrary deprivation of life' rather than the death penalty. The effect of both methods is the same, so dividing the meaning to two different contexts should have little meaning in deciding whether to grant a protection visa. However, officers can use the information in relation to their decision to refuse a protection visa[146].

If torture is sanctioned by the country, and is not inconsistent with the ICCPR, then this will be influential in the decision making of the officer[147]. This means that officers can advocate torture, if it fits into certain guidelines. One example for which certain circumstances are not torture includes Ireland v UK (1979-80) 2 EHRR 25)[148]. The officer should also use proportionality in relation to their decision making of an asylum seeker's file, according to the manuals and guidelines[149].

In relation to removing an asylum seeker for which their application for a protection visa has been refused, the officer contacts the previous country from which the asylum seeker fled in order to gain a diplomatic assurance from the country[150]. This does not mean that the asylum seeker needs to be treated adequately, but they will be removed anyway. The Minister will ensure that the asylum seeker is removed if he believes the person will be protected[151]. Authority is therefore moved from the officer to the Minister.

It has been decided in the Act that the Minister is to decide whether an asylum seeker who arrived 'unlawfully' can obtain any visa, including a protection visa in the name of 'public interest'[152]. The Minister has the final word, which guarantees his power. While the public face of this is to ensure the Refugee Convention is engaged, in other areas of this submission I have outlined the very limited circumstances for which the Minister will approve a protection visa (if at all). This is even if there is an engagement of Conventions. Officers are advised not only of the case law and legislative instruments, but how the Minister decides cases are to be determined[153].

While the UNHCR is expected to intervene when an asylum seeker comes to Australia with the expectation of protection, officers are advised not to wait for an outcome from the

[144] Page 13, The Protection Visa Guidelines PDF.
[145] Page 14, Ibid.
[146] Page 15, Ibid.
[147] Page 16, Ibid.
[148] Page 20, Ibid.
[149] Page 26, Ibid.
[150] Page 42, Ibid.
[151] Page 45, Ibid.
[152] Page 6, The Protection Obligations Evaluation Manual.
[153] Page 7, Ibid.

UNHCR[154]. Files are to be determined according to the Minister's instructions. Officers are specifically to use the Protection Obligations Evaluation Manual procedures to make decisions on those seeking protection[155]. They need to be consistent in their evaluation of the asylum seeker's claims.

Officers can allow counsellors to act for any asylum seeker needing psychological help[156]. However, they are not to be given any kind of positive evaluation while receiving psychological help. Asylum seekers who have gone through trauma are not to be given any hope that they could have a slight chance of residing in Australia on a protection visa.

Officers may not have to interview some asylum seekers who have been known to have gone through trauma, especially if it may lead to them 'receiving Australia's protection'[157]. This could be implied as stating that, if an interview can show that Australia should be protecting an asylum seeker, any interview should then not be afforded to the asylum seeker. That is, it would be more difficult to refuse a protection visa if there is an interview that proves trauma has occurred.

If the country that an asylum seeker has come from has adverse information from the person's claims, then this will impact negatively on the application for protection[158]. The officer can then test the information against the claim with the asylum seeker, but does not have to provide the asylum seeker with any hard copy information about the previous country[159]. This can be to aid the officer to refuse a protection visa for the asylum seeker.

While the officer who case manages an asylum seeker's file has the authority to investigate and make a 'fair assessment' on all claims for protection, due to 'public interest' it is in fact the Minister who makes the final decision[160]. The officer only finalizes all information necessary for final decision, which is well known to be a refusal.

The nine key questions guarantees that only a very small minority of people seeking asylum will be granted a protection visa[161]. Relocation is of great importance to officers in assessing claims for protection. Finding a third country to relocate the asylum seeker is one of the main objectives of officers assessing the files of asylum seekers[162]. This has been implemented into legislative instruments, namely s36(3)-(5) of the Act[163].

The current Australian government has decided to interpret the meaning of 'harm or mistreatment' to that of 'serious harm'[164]. This can include threats to life or liberty, significant harassment, significant ill-treatment and/or significant economic hardship, as examples. However, this does not stop refusal of protection visas.

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[154] Page 10, Ibid.
[155] Page 28, Ibid.
[156] Page 33, Ibid.
[157] Page 33, Ibid.
[158] Page 38, Ibid.
[159] Page 39, Ibid.
[160] Page 45, Ibid.
[161] Page 48, Ibid.
[162] Page 49, Ibid.
[163] Part 1, *Migration Act 1958* (Cth).
[164] Page 53, The Protection Obligations Evaluation Manual.

If an officer believes that an asylum seeker can be returned to another geographical area of the country they fled from, then the officer will return the asylum seeker back to their prior country[165]. The officer will consider whether it's safe, but if the person is considered a refugee then the procedure should be that the person is not returned. There should be no reason to return a refugee back to their prior country, even if another geographical area could be declared 'safe', as the asylum seeker fled from the *whole* country, not just a small part of it, for a reason.

It has been declared that, while a UNHCR certificate is of value, it is not *binding* on the officers[166]. That is, it is not necessary in their assessment to either grant or refuse a protection visa, although the officer will have to explain why they will refuse a protection visa[167]. The Minister at all times is aware of all decisions in relation to protection visas[168].

There is no timeframe for officers to decide protection visas[169]. That is, officers can make their final decision years in advance, if the Minister warrants it. An example of this is with Ministerial Direction 62, in relation to family visas from those who with permanent protection visas who arrived in Australia by boat.

When finalizing a case for a protection visa that has the possibility of being granted, the file will then go to the Minister, who will then decide whether the s46(1) bar of protection visas could be lifted due to public interest[170]. At present, all protection visas are barred from being granted, and it's only up to the Minister to lift the bar. It is well known that he refuses to grant all protection visas.

Even if at most levels the protection visa could be granted, there is still a chance that the asylum seeker will not be granted a protection visa. The Independent Assessor cannot 'guarantee eventual settlement in Australia'[171].

If a refugee resides in a detention centre, an application using s195A of the Act[172] could be made on behalf of the refugee. This would enable the refugee to be granted a protection (or other) visa that would allow them to leave the detention centre, if the Minister decides to intervene[173]. However, the Minister is not obligated to intervene, if he does not wish to. At this point in time, it is fair to say that the Minister will refuse to intervene at all times.

More information in relation to the IAAAS is given in the Protection Obligations Evaluation Manual[174], even though the Minister has stripped all funding away from the IAAAS. There is no legal help available for those who need it. I know this, as one of my clients is in one of the detention centres. I am helping her on a pro bono basis. She does not have access to legal assistance, as there is now no funding.

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[165] Page 55, Ibid.
[166] Page 55, Ibid.
[167] Page 56, Ibid.
[168] Page 56, Ibid.
[169] Page 58, Ibid.
[170] Page 59, Ibid.
[171] Page 60, Ibid.
[172] Part 1, Migration Act (Cth).
[173] Page 63, The Protection Obligations Evaluation Manual PDF.
[174] Page 69, Ibid.

Officers are sometimes deliberately told to give asylum seekers hope by advising them that the Minister may intervene in the name of public interest to give them a protection visa[175]. This is a fallacy. The Minister has no intention to grant anyone a protection visa.

In order for officers to assess a protection visa, they must consider 'compelling reasons'[176]. These reasons have been given in great detail, with the assurance that anyone applying for a permanent protection visa must have support within the community. With no support, there will be no visa even if charities are very enthusiastic to help anyone fleeing from persecution if they are within the community. A telephone conversation I had with a charity explained that they cannot help anyone outside of Australia, but are more than willing to help anyone in Australia. The current government finds this an unacceptable method, so will refuse any visa if the person has no support.

From the 4 December 2013, the current Australian government decided to freeze all permanent protection visas[177]. The Refugee Council of Australia has written about this, and their opinion is noted. Any cases that were still being considered has then been finalized, to an extent that the full force of the visa freeze came into effect on 5 March 2014. As at that date, only 2773 permanent protection visas had been approved. The quota given for this financial year from the previous government was more than 11000.

The Act enables some of those in immigration detention to apply for a visa. However, inadequate timing restrictions apply[178]. Officers are not obligated to advise asylum seekers of their right to apply. This enables the government to hold an asylum seeker within a detention centre for as long as the government desires.

Officers are directed to remove an asylum seekers arriving by boat as fast as practicable[179]. The current government has no wish to enable the benefit of the doubt for asylum seekers due to humanitarian reasons. This manual shows a clear breach of non-refoulement obligations.

It is noted in the Detention Services Manual that a 'Household Formation Package' is given to those in the community[180]. This is a fallacy. One of my clients was given only a basic allowance to live on, and had to take furniture from the street in order to even sleep on a bed.

Asylum seekers who are found by the current Australian government to not be an asylum seeker will be removed back to their home country[181]. The main issue here is that most asylum seekers will be found to not be an asylum seeker under Australian law. Domestic law is set up so that – even if an asylum seeker has been tortured – as long as the asylum seeker can be considered in another area of their home country or a third country, they will be removed. This current government does not believe that people have a right to seek asylum, particularly if the home country is large enough geographically.

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[175] Page 74, Ibid.
[176] Compelling reasons PDF.
[177] Refugee Council of Australia, Visa Freeze a New Low in Australia's Treatment of Asylum Seekers (Visa Freeze PDF).
[178] Page 80, Detention Services Manual PDF.
[179] Page 81, Detention Services Manual PDF.
[180] Page 143, Ibid.
[181] Page 150, Ibid.

There is a complaints procedure set in place for asylum seekers in detention[182]. However, many asylum seekers particularly at Manus Island and Nauru detention centres fear retribution if they do complain. They have noted that they have been forced to sign agreements that they were the ones who caused injury to themselves during any riots that have occurred. This is to give an indication to the court system and other investigative bodies that the government is not liable for what has happened to them. These 'agreements' were forced, and due to duress should not be taken into consideration.

The amendment to the Compliance and Case Resolution aspect of the Procedures Advice Manual clearly shows that after the BVE Bridging visa has been completed, asylum seekers are expected to return to their home country. The Bridging visa itself does not enable asylum seekers to work or study, and to do so will cause issues with both the employer and the asylum seeker. They receive a nominal amount to survive, but after the Bridging visa has ended no funds are available to them. This Bridging visa has ensured that many become homeless due to no income and a fear of returning to the country that they fled due to persecution.

While there are many indicators which give privacy of details of asylum seekers as the optimum solution, unfortunately there has recently been a breach of privacy in relation to the asylum seekers. The DIBP publicly outlined personal details of asylum seekers on their website for two weeks, so any member of the public (including the countries that the asylum seekers were fleeing from) could view their details. This should have given rise to sur place claims. However, the government decided to move the asylum seekers to another detention centre, as far away from their legal representatives as possible. The amendment in relation to Identity and Access clearly states that an officer cannot disclose any information about asylum seekers to their previous country, but is silent on whether the Department itself should or should not disclose information. This amendment has also decided to call all asylum seekers 'illegal maritime arrivals', which is adverse to the classification of asylum seekers in the Act and Regulations as 'unauthorised maritime arrivals' and dehumanizes them to the greatest extent.

The details pertaining to the asylum seeker is retained indefinitely. These details can then be used to enable the refusal of any application the asylum seeker makes to other countries, including New Zealand, USA, UK and Canada, as this amendment shows here. This amendment also classifies asylum seekers as 'illegal maritime arrivals'.

The amendment to Case and Compliance targets those with expired BVE Bridging visas. The DIBP has deliberately set up a department targeting them to assist them for deportation. The intention is therefore to cajole asylum seekers to leave Australian shores, using any method possible.

The amendment to Case and Compliance ensures that detention is 'mandatory', as a method of 'strong border control'. While it continues on with stating that 'indefinite or arbitrary' is not acceptable, there are indications that this government does not believe that two years or more is not considered 'arbitrary'. This government actually believes that the Australian

[182] Page 181, Ibid.

community is at risk if asylum seekers are let into the community, so this policy allows and enables them to hold asylum seekers in detention indefinitely, if 'necessary'.

While some in detention may be allowed a BVE Bridging visa to live in the community, the government has decided that the character of those in detention are of the most optimum importance. This may mean that most of those in detention can remain there, as the fact that they arrived in Australia by boat means that the government believes their character is impaired. To this government, their 'integrity' is more important than treating asylum seekers in any safe manner.

There is a permanent protection visa for any applicant who is onshore, for which the current Australian government is considerably restricting. As stated above, the Minister has put a cap on all permanent protection visas to 2773 – the amount considered in December 2013 and approved by the government in early March 2014. This is below the level given to those seeking asylum in other countries by a long shot and greatly hinders the international community.

The government had further tried to limit the 866 visa, by allowing the refusal in relation to any person who arrived here by boat (Regulation 866.222). This fortunately was revoked by the Australian Senate, but this government has used other ways to refuse those arriving by boat in obtaining permanent protection.

All health checks are now considered irrelevant to the final decision making of whether to accept or refuse a permanent visa to an asylum seeker, according to the amendment of 866 Protection Visas. This is confusing, as health checks are usually considered mandatory to ensure that all health issues are contained.

REZA BARATI AND OTHERS

It is due to Reza Barati's murder that there is now an amendment to the Duty of Care of those in detention. As noted in the media and in the manuals and guidelines, there is no guarantee that those in detention will be safe.

Reza Barati was a Kurd, who had previously lived in Iran. He could have claimed to have been stateless[183]. He had come to Australia as an asylum seeker by boat. He was picked up by the Australian authorities and very quickly taken to Manus Island detention centre.

On 17 February 2014 at Manus Island, a riot occurred. All asylum seekers were dragged, kicked and bashed by locals and officers. Many were injured. Reza was bashed to such an extent that he lost his life, by those who were meant to protect him.

An Australian migration agent[184] and a Salvation Army officer[185] have both vocally outlined the conditions at Manus Island detention centre, noting in particular the severe circumstances and the general consensus of various government officials. While their submissions involve a Senate investigation into the death of Reza Barati and the injury of many others, due to recent interpretations of current domestic legislation the public does not believe this investigation will be thorough enough.

[183] Page 137, Protection Visa Advice Manual PDF.
[184] Elizabeth Thompson file.
[185] Salvation Army employee PDF.

In fact, media reports have outlined that some of the perpetrators of the riot are still employed at the Manus Island detention centre. Asylum seekers are still terrified, and are sleeping in shifts. Some are still in pain from that night. One asylum seeker had been shot at, and the bullet is still lodged in his buttocks. He is in great pain, and has only been given Panadol to alleviate the pain. Two have lost an eye.

At the time, the Minister swore to the Australian public that he did not have any details in relation to the above incident. In fact, record keeping is considered mandatory to the upkeep of all detention centres[186]. An incident such as this would have had detailed records kept and the Minister would have had access at the earliest convenience. Although the Minister changed his mind about how the incident commenced, he did this at a time of most benefit to him.

INTERPRETATION OF LAW

The Procedures Advice Manual specifically dictates to all officers that policy is to be considered, in conjunction to the Act and Regulations[187]. It is the way that the government interacts with officers, to ensure that officers abide by governmental guidelines. That is, the methodology of the government overrides the officer's interpretations of the Refugee Convention.

Over and above this method of using policy to dictate whether to grant or refuse a protection visa, officers are specifically directed to consider the Refugee Law Guidelines and Complementary Protection Guidelines before making a decision[188]. The Refugee Law Guidelines direct most decisions towards refusing protection visas for asylum seekers.

In addition, the Protection Visa Advice Manual advises officers that the Protection Obligations Evaluation Manual must be used to consider all acts of processing in relation to 'illegal maritime arrivals' – that is, asylum seekers who come by boat into Australian jurisdiction[189].

Australia is declared a 'secular' religious society[190]. However, the Refugee Law Guidelines denote that cases are considered from a Christian methodology.

Officers are given knowledge of international cases where there have been breaches of the ICCPR[191]. There is an understanding of what it means for asylum seekers to suffer cruel and degrading treatment. This is what many asylum seekers in the Australian community and in offshore detention centres are suffering. I have been told by a reliable source that – since BVE Bridging visas for those on temporary visas have expired – many asylum seekers are now homeless without funds. They beg for food from others in order to survive. They are given no assistance whatsoever from the current government, and are treated as being not in existence. With the interpretation of *MSS v Belgium and Greece*, Australia is breaching

[186] Page 70, Detention Services Manual PDF.
[187] Page 4, Procedures Advice Manual PDF.
[188] The first few pages of the Protection Visa Advice Manual.
[189] Page 14, Ibid.
[190] Page 43, Ibid.
[191] Page 28, The Protection Visa Guidelines.

Article 3 of the European Convention on Human Rights. Also, Australia is breaching s5(1)[192] of its own laws in relation to cruel and inhumane treatment.

Officers are given an interpretation of when corporal punishment can entitle those claiming asylum to have their files regarded more seriously[193]. This means that officers are aware of Article 7 of the ICCPR, and still find ways to refuse protection visas.

Detention is not considered a breach, unless the detention is inhumane and degrading[194]. Officers know and understand this context, yet still use inhumane and degrading treatment on both Manus Island and Nauru detention centres (in particular and onshore detention centres as an aside), according to media reports that have shown photos of the inner sanctum of both these detention centres[195]. The current Australian government is therefore breaching Article 7 of the ICCPR with knowledge and intention. While the current Australian government is offended at the thought of cruel and inhumane treatment of asylum seekers, it has decided not to regard the treatment as cruel and inhumane in either Manus Island or Nauru detention centres as being similar in context.

The current Australian government also understands the non-refoulement obligations quoted within the ICCPR, in particular Articles 6 and 7[196]. If there is a 'risk of irreparable harm' then non-refoulement obligations exist. Officers have full knowledge and understanding of this. All aspects of decision making which are examined in this submission clearly denote that officers are obligated to refuse protection visas whenever they can.

This is clearly demonstrated in relation to the guidelines, which have interpreted 'human rights violations' as not constituting a 'real risk of harm'.[197] In addition, there must be a 'real risk' of persecution, rather than a fear of risk[198]. Officers must subjectively consider the risk, rather than acknowledge that there may be a risk that could give rise to fear.

The Refugee Law Guidelines direct officers to consider the legal consequences of either granting or refusing a protection visa to asylum seekers seeking protection[199]. A number of issues are clearly indicated. One example is that the minority group Hazara are not in any fear of their lives in the Middle East. In fact, it is quite simple to investigate the amount of fear the Hazara minority group feel, and the reasons why they are fleeing to different areas of the world.

Another is that the guidelines specifically state that relocation to another part of the country is implied in the Refugee Convention. The guidelines have deliberately narrowed the interpretation of refugees by implying that relocation back to the country that asylum seekers are fleeing should be considered. This is not the intention of the UNHCR, who have indicated in their examination of Article 1 of the Refugee Convention that a refugee is fleeing their

[192] Part 1, *Migration Act* (Cth).
[193] Page 33, The Protection Visa Guidelines PDF.
[194] Page 34, Ibid.
[195] International Criminal Court media PDF.
[196] Page 39, Ibid.
[197] Page 40, Ibid.
[198] Page 41, Ibid.
[199] The Refugee Law Guidelines PDF.

country, rather than the *small territory* that this government has decided to interpret this Article[200].

In addition, the guidelines advise officers that they must consider each case on their subjective 'feeling' of each applicant. If an officer has a racist attitude of asylum seekers, then most of that officer's files will consider refusal of protection visas, and the officer will find every method to ensure that the protection visas will be refused.

In fact, the whole of the Refugee Law Guidelines suggest that officers are to consider refugee's claims on a negative basis. While in some cases the court system has rejected some claims of negativity, overall the Australian court system abides by the laws set into place by the Australian parliament, so the tendency is for the all claims to be assessed on a negative basis, unless proven otherwise.

The Detention Services Manual clearly indicates in its first several pages that it considers itself a business[201]. It treats people as objectives, rather than as people. That is, people held in detention centres are nothing but commodities to the current Australian government. This is the interpretation of the law that the government directs all officers, as well as the court system, to abide by.

The Detention Services Manual specifically declares that the removal of asylum seekers means that they are removed to their home country, or to another country[202]. Australia is washing its hands of asylum seekers when it uses statements such as this, as no asylum seeker will be acceptable to Australia, according to the current government. Australia is proven to be breaching its international obligations with statements such as this. That is, no territory will be enough for the compunction of officers to enable asylum seekers to be granted asylum in Australia.

The Australian court system, including and particularly the High Court, have not interpreted the Conventions according to examinations by the UNHCR. In disseminating whether asylum seekers should be returned back to their home country, more often than not the courts have sided with the government. Their interpretation of many aspects relating to asylum seekers has fallen over. Even though the Australian courts are well known to be some of the best in the world, in this instance it has failed the asylum seekers, the Australian community and the international community. Investigations and procedures by the Australian court system and the Australian government have failed, particularly in keeping offshore detention centres as a prerogative. If justice prevailed previously, I would not have been obligated to send this submission to the International Criminal Court, as human rights of asylum seekers would not have been breached. However, human rights have definitely been breached in relation to the intention of abuse against those that the most vulnerable within the international community.

MEDIA COVERAGE

In 2011 the true facts were publicly listed from the then Australian government on one of their websites[203]. Not everyone in the Australian public have thought to read these facts, and when the previous government tried to explain the facts to the public an uproar from a loud

[200] UNHCR Interpretation of Art 1 of Ref Conv PDF.
[201] Pages 7 to 11, Detention Services Manual PDF.
[202] Page 584, Detention Services Manual PDF.
[203] 2011 Refugee Resettlement Facts.

percentage voiced very strong opinions against asylum seekers. There were ruminations in the community due to a very harsh opposition government (who are now the current government). Fear played a very strong factor, which has recently enabled that government to gain power, to the detriment of those who understand the Conventions and facts more properly. Some of the public are not aware of the illegality of the situation, and are more swayed by fear from the current government and the media.

Full details of asylum seekers were displayed in full for at least two weeks on the DIBP website[204]. These details were known by the Minister and other senior government officers, and while they were removed from the DIBP website, sur place claims were refused. In fact, all asylum seekers have had to instigate court procedure to demand more than minor compensatory value was given to them. When their legal representatives did instigate court procedure, many of them were moved to detention centres as far away from their legal team as could be. While many who instigated court proceedings were at Villawood detention centre, the DIBP formally advised the public that they were removed due to renovation work. They could have been moved closer, or the detention centre could have been rearranged more appropriately.

Refusal of journalists attending detention centres is now the norm. Journalists have now requested access to both Manus Island and Nauru detention centres. This is considered a 'critical incident' according to the current government, as journalists are 'high profile visitors'[205]. Journalists are required to pay $8000 to obtain a visa at either of these islands[206]. The current government dramatically increased the value of the visa in order to stop journalists and other interested parties going to either detention centre.

When journalists are granted access to detention centres, they must sign a Deed of Agreement[207]. They can only access areas that officers allow, and can never go beyond areas of accompanied areas. They are not to see any areas that may indicate the reality of the detention centre.

MINISTERIAL DIRECTIONS AND POWERS

While nearly every aspect of this submission gives credence to how officers can refuse protection visas for asylum seekers, the Minister has the power to determine that a person can be given a permanent protection visa, according to public interest[208]. However, policy dictates the only time the Minister will consider this is if the person was fleeing either PNG or Nauru.

Ministerial direction 9 enables those who have committed serious crimes to be deported[209]. While serious crimes include those that have had imprisonment for more than 1 year, or life imprisonment, this direction gives great gravity to the Minister's right to make decisions on behalf of the Australian community. Also, it has been decided that a person cannot use the justice system after a deportation order has been made by the Minister. This means that the

[204] Privacy and security are supposed to be a guiding principle to the DIBP – pages 60 to 62, Detention Services Manual PDF.
[205] Page 376, Detention Services Manual PDF.
[206] International Criminal Court media PDF.
[207] Page 618, Detention Services Manual PDF.
[208] Page 88, Offshore Humanitarian Program PDF..
[209] General Direction 9 PDF.

Minister's power is absolute, even if the person showed promise to become an asset within the community, and all officers must adhere to the interpretations of the requirements of the Minister.

Ministerial direction 51 outlines the methods that are to be used in relation to strip searches[210]. While officers must not 'use greater force than necessary', even if an asylum seeker refuses to sign the consent form the strip search can go ahead anyway. This is even though there is modern technology available that can rule out the use of strip searches. Officers have also been given the right to use whatever force is necessary in order to complete the strip search. This gives officers a subjective interpretation of the use of force, as noted with the above media excerpts.

Ministerial direction 55 gives character great emphasis[211]. This is acknowledged as being of great importance. However, it can be used in a heavy handed method. I personally know of one instance where a girl who was charged but not convicted of shoplifting due to extenuating circumstances was sent to a detention centre, with her visa cancelled. Her character was shown to be exemplary, yet due to one minor mistake she has remained in the detention centre for more than 8 months.

While the government has a right to cancel visas, the reasoning that exists does not adhere to the non-refoulement obligations when visas are cancelled due to erroneous reasoning. Australia's non-refoulement obligations do not exist if there is even the slightest hint of a character flaw, which was not the intention of the Conventions relating to non-refoulement obligations. While character is an important issue, all circumstances need to be regarded, yet direction 55 gives more emphasis on the Minister's power to enable officers the ability to cancel visas, thereby sending asylum seekers to detention facilities.

In addition, character is considered for the asylum seeker as a serious issue from the period of time that the asylum seeker was in their previous home country. If the asylum seeker has been sentenced, then they will be refused according to character. This is even though some convictions could relate to charges such as blasphemy, as an example. While blasphemy is a serious charge that could put an asylum seeker to death in their home country, it should not be considered as a breach to character.

Ministerial direction 56 regards assessments of countries when considering protection visas[212]. Consideration of countries can negate the whole purpose of protection visas according to the Conventions. Minority groups, rather than countries, should be assessed. This appears to be another method to refuse protection visas to those seeking asylum. For example, while Iran is known to be a rich country, the various minority groups within Iran still suffer, particularly the Hazara.

Ministerial direction 57 details the order of priority in relation to those who have reached Australian shores in various ways[213]. Those who came by boat are to be considered last. This direction shows methodology that while those in detention should be considered a priority,

[210] Direction 51 PDF.
[211] Direction 55 PDF.
[212] Direction 56 PDF.
[213] Direction 57 PDF.

because they did come by boat their applications are not a priority. There is an enormous amount of "double talk" here.

In addition, officers are expected to glimpse at applications for those who arrived by boat 'periodically'[214]. This means that asylum seekers can get their hopes up, thinking there may perhaps be finalization of their case, only to eventually have it refused when officers decide at a later stage to consider the asylum seeker's matter.

Ministerial direction 60 enables officers to use as much force as necessary to conduct screening procedures[215]. While direction 51 enables strip searches, screening procedures are of a similar context. Officers can determine how much force is necessary to complete a screening procedure of an asylum seeker. While this should be reasonable, it has been found that – depending on the subjective influences of each officer – this could have a negative impact on the asylum seeker[216].

Ministerial direction 62 stops any asylum seeker with a permanent protection visa from applying for their families to live in Australia[217]. While this does not enable the government to refuse family oriented visas outright for these asylum seekers, it ensures that these types of family visas are considered in approximately 20 years. That is, their visas are considered after parent visas, which has a wait time in excess of 16 years.

From as early as 2003, the Minister's office has given direction and authorization to a number of detention services companies for these companies to have full authority over detention centres. Although the list of companies have changed, this list shows that the Minister is aware of who they have given authority to. Delegated authority then ensures that the Minister is responsible for all actions undertaken by detention services companies.

The Minister has been delegated powers in accordance with s198AE of the Act[218]. These powers give the Minister full control of whether he decides, due to his interpretation of 'public interest', who is granted or refused a protection visa[219]. This power is his alone, and caters to whether he would enable asylum seekers arriving by boat to obtain a protection visa. The current Minister refuses to consider any file on behalf of asylum seekers arriving by boat. This section of the Act is not being used, even for the most extreme cases. The current legislation allows the Minister too much power.

In 2011, the previous government contracted one law firm to help with legal services specifically for asylum seekers in detention[220]. The amount payable was for $10 million over a four year period, with the contract finalizing in July 2014. There is no continuation of legal services, and the government has advised the public that asylum seekers in detention will not receive paid access to legal services. Either the asylum seeker must pay for which they have no money whatsoever, or migration agents and lawyers must work pro bono on behalf of asylum seekers.

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[214] Page 25, The Protection Visa Advice Manual.
[215] Direction 60 PDF.
[216] International Criminal Court media PDF.
[217] Direction 62 PDF.
[218] S198AE of the Migration Act Part 1.
[219] Page 3 of Report Processing s198AE Powers.
[220] Contract Notice View lawyer fees paid by government.

BREACHES OF ARTICLE 7 OF THE ROME CONVENTION

The elements of 'crimes against humanity' involve acts that are widespread or systemic attacks directed against any civilian population, with knowledge and intent of the attacks.

The populations within both Manus Island and Nauru detention centres have been attacked in the manner described in Article 7 of the Rome Convention. The refugees seeking asylum have been forcibly deported, imprisoned and deprived of their liberty, psychologically tortured by officers and residents on the islands, raped by officers and residents, persecuted against and they have suffered gross inhumanity. The current Australian government, as well as the domestic and international media, are all aware of the inhumane acts suffered by those within these detention centres[221].

In fact, the current Australian government advocate even more gross inhumanity against all asylum seekers residing in these detention centres, with greater intention. This intention is proven time and again with directions to the ADF to keep pushing asylum seeker boats back into Indonesian territory, without considering non-refoulement obligations.

This is a clear breach of Article 7, which desperately needs investigation by the International Criminal Court.

It is also believed that none of the main participants of the current Australian government can claim any factor of defence for their actions. In order for them to gain high office in a rich western country, they need to be mentally capable. They cannot be intoxicated. They cannot use self-defence as the asylum seekers are not posing any physical threat personally against them and have never met the high officials of the current Australian government. They cannot use duress, as no one has forced the high officials to create laws to severely detriment asylum seekers in these detention centres. In fact, all the main participants of the current Australian government have intention to do whatever is necessary to commit even more atrocities on asylum seekers, by intending to send them to Cambodia. Therefore, Article 31 cannot be made out.

There cannot be the defence of mistake of fact or law, as per Article 32. The laws have been deliberately implemented to enforce atrocities to be committed against asylum seekers, by forcing them on Manus Island and Nauru detention centres.

The defence of Article 33 cannot be used for the main participants of the current Australian government. They have no other superiors. They are the superiors, who are enabling the enforcement of the laws to ensure that atrocities are occurring on asylum seekers in these detention centres.

THE INVESTIGATIONS BY THE CURRENT GOVERNMENT

While there is a Senate Inquiry into the circumstances surrounding the incident on 17 February 2014, this inquiry is not investigating the full extent of atrocities committed. Only the circumstances surrounding the impact of the murder of Reza Barati and the injured asylum seekers will be investigated.

The current government has advised the public they are also investigating the circumstances surrounding the murder of Reza Barati. So far, many of those who physically committed the

[221] International Criminal Court media PDF.

crimes are still employed at the island. It has been more than three months, yet there have been no arrests even though the public knows the names of many who committed the crimes. The public has been advised that the AFP cannot become involved as the crimes were not committed on Australian soil. Authorities in PNG have stated that they cannot investigate as the detention centre is not part of their jurisdiction. This means that the only type of investigation that could occur is that from the government, which is considered quite inadequate.

This submission is calling for extensive investigations by the International Criminal Court, with the knowledge and understanding that the investigations should not be limited to one incident on a particular date. The investigations on the current Australian government should give cause to enable the International Criminal Court prosecutors the authority to use Article 17(2) of the Rome Convention in relation to all onshore and offshore processing. The current Australian government is committing atrocities that are in breach of Article 7 of the Rome Convention, and the court system is doing nothing about it.

PARTIES EXPOSED TO THE BREACHES

The Minister – Mr Scott Morrison – is clearly responsible for notifying his staff on how to proceed with asylum seekers[222]. The DIBP has also authorised officers and other authorities that it is responsible for the duty of care towards asylum seekers in detention centres[223]. Ms Michaela Cash is Assistant Minister to these departments, so Mr Morrison and Ms Cash are exposed and aware of the breaches that are occurring and that are outlined in detail in this submission. They both have intention to commit atrocities.

The Minister is also responsible for making decisions in relation to all detention centres[224]. Additionally, he is responsible as the guardian for all unaccompanied minors in Australia. His s198AE powers go over and beyond domestic and international legislative instruments. The Minister is responsible for every aspect of the lives of those in both onshore and offshore detention facilities.

Mr Tony Abbott is the Prime Minister of Australia. He is regularly kept updated in relation to the gross indecency occurring in all detention centres. He is also exposed and aware of the breaches occurring against humanity in all detention centres. At every instance, he has defended the current asylum seeker policy and has called for treatment to be even more excessive.

Ms Julie Bishop is the Foreign Minister. Not only is she exposed and aware of the breaches occurring, but she has intention to create more human rights abuses by sending asylum seekers to Cambodia – a poor country with a very poor track record of human rights. In fact, international court cases are still occurring in relation to atrocities that happened in the late 1970's. Ms Bishop is very aware of the history of Cambodia – as one of the poorest nations in the world – yet still has intention to create more human rights atrocities.

Mr David Hurley and Mr Angus Campbell are both high ranking officials in the Australian Defence Force. Both instigated the physical components of claiming that asylum seekers coming by boat were classified as 'irregular' or 'illegal' and sending them to Christmas

[222] Page 11, Offshore Humanitarian Program PDF.
[223] Page 34, Detention Services Manual PDF.
[224] Page 138, Ibid.

Island before the current government's adoption of 'Operation Sovereign Borders' was introduced at the end of 2013. Both then instigated for asylum seekers to be sent to Manus Island or Nauru detention centres from July 2013 to December 2013. From early 2014, both then forced boats back to Indonesia, thereby breaking international law by illegally going into Indonesian waters, to the outrage and dismay of Indonesia.

CONCLUSION

There are many in the Australian and international community who are disgusted with the behavior of the current government in relation to asylum seekers. While many hold opinions that find the inhumane and degrading treatment of asylum seekers at Manus Island and Nauru is abominable, Ogg[225] has proven that the interpretations of human rights has been watered down to too great extent.

The Minister directs officers in the consistent manner that he believes officers should react to all asylum seekers. The interpretation of both international and domestic law is to be as narrow as possible. Manuals and guidelines have noted exactly how narrow international Conventions should be, particularly the approach of the Refugee Convention's meaning of the word 'territory'.

According to the current Australian government, 'territory' is to mean the particular communal area that the asylum seeker fled from, not the country. To this current government, the meaning of the word 'territory' is *implied* to mean the small geographical area in the Refugee Convention. Therefore, officers are now obligated to return asylum seekers back to their 'home' country, with assurances from the government in the prior country that they will look after the asylum seeker adequately. The current government is not perturbed how narrow the approach is – if the person is found to be a refugee, yet can travel to another geographical area, that is good enough for them.

The Detention Services Manual should be particularly noted. In this manual, Chapter 6 outlines in detail how an asylum seeker who has suffered torture or trauma can react. It is also noted that the current government is aware that most who have suffered are asylum seekers who arrive by boat. It then goes into detail upon how best to remove those who have suffered torture or trauma back to the country they fled from.

Since this is not the intention of the Refugee Convention, Australia has breached its non-refoulement obligations to the international community. As a signatory to many Human Rights Conventions and Protocols, Australia is supposed to take its overriding duty to the international community seriously. By minimizing its interpretation of the word 'territory', it has done its best to flaunt its duties to those most in need. By ensuring the court system abides by these interpretations, Australia's non-refoulement obligations are breached, causing gross inhumanity.

Children are to be considered suspicious, until after it is perhaps found that they are asylum seekers. In many instances, it can be found that children are not to be located in a detention centre, then they should not be in a detention centre for a couple of reasons, then they should be in a detention centre with their families. Finally, the current government's overriding duty is to the Australian community so therefore children should be held in a detention centre as

[225] Ogg, Kate, A Sometimes Dangerous Convergence: Refugee Law, Human Rights Law and the Meaning of 'Effective Protection' (2013) Macquarie Law Journal, Volume 12, 109.

they may be a character risk. This narrow interpretation of the CROC appears in many domestic manuals and guidelines. There are 1138 children at Nauru detention centre. While many have requested for some of the children to be given a permanent visa and taken into the care of churches, the government's 'public interest duty' has enabled the Minister to refuse[226].

It is understood that many international authorities have requested to see the conditions of the Manus Island and Nauru detention centres, to examine whether there have been human rights atrocities occurring on either or both of these islands. It is understood that the UNHCR – the leading international authority into situations of human rights abuses – have requested and been denied access to both offshore detention centres. This means there is something to hide – in particular crimes against humanity.

The current Australian government is committing atrocities in offshore detention centres in particular with intention, and in the onshore detention centres and the community as an aside. The intention of the current government is solely for political purposes, with no alleviation for those who are suffering. Asylum seekers can't die, yet can't live. In addition, people not in the offshore detention centres are being sent back to the place they feared the most, due to the extreme narrowing of interpretation of laws that were meant to help. The Conventions relating to Human Rights were meant to ensure safety and security for all. This current Australian government is clearly and blatantly doing the opposite – for which an investigation by the International Criminal Court into the actions of Tony Abbott, Scott Morrison, Michaela Cash, Julie Bishop, David Hurley and Angus Campbell is required.

[226] International Criminal Court media PDF.