

**United Nations
Human Rights Committee
(HRC)**

Australia

NGO Alternative Report

Submitted by
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Parallel information submitted to the Human Rights Committee on the occasion of the consideration of the sixth periodic report of Australia

1. The present parallel information is submitted by Franciscans International (FI, an NGO in general consultative status with the UN ECOSOC) and Edmund Rice International (ERI, NGO with Special consultative status with the UN ECOSOC). The submitting organisations welcome the opportunity to submit this parallel information that brings additional and specific information concerning threats to and violations of a number of substantive rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR).
2. While offering specific cases, illustrative of broader, structural issues that impede the full realization of civil and political rights, the present information aims at providing elements of replies to the questions posed to the State of Australia in the Committee's List of Issues (LoI). The sections hereafter thus follow the structure of the LoI and whenever relevant recall the specific questions to which the information provided corresponds to.

I. Right to life and prohibition of torture and of other cruel, inhuman or degrading treatment or punishment, rights of non-citizens (arts. 3, 6, 7, 9 and 13).

12. In the light of the Committee's concluding observations (CCPR/C/AUS/CO/5, paras. 19 and 20), please provide information on the measures to ensure that individuals are not extradited or otherwise returned to a country where there are substantial grounds for believing that they are at risk of being arbitrarily deprived of life or being tortured or subjected to other cruel, inhuman or degrading treatment or punishment. What steps does the State party take to monitor the safety of individuals once they are extradited or returned on the basis of diplomatic assurances? Please also explain how the transferring of asylum seekers to third countries for the processing of their claims is consistent with the State party's obligations under the Covenant, most significantly non-refoulement obligations.

3. Australia is a State Party to the International Convention Relating to the Status of Refugees (CRSR) since 1954. The Migration Act 1958 is one of the Australian legislations that regulates treatment of asylum seekers and refugees. According to the Act, a non-citizen who arrives in Australia without a valid visa, whether on mainland Australia or at an "excised offshore place", cannot make a visa application unless the Minister makes a personal intervention, and is subject to mandatory detention. Section 197C of the Act stipulates, "*An officer's duty to remove as soon as reasonably practicable an unlawful non-citizen under section 198 arises irrespective of whether there has been an assessment, according to law, of Australia's non-refoulement obligations in respect of the non-citizen.*"¹ Australia is therefore the only country whose law explicitly says that its non-refoulement obligations are irrelevant when returning or removing an asylum seeker.²

¹ Australian Migration Act, 1958, section 197C.

² McAdam, Jane, "We can resettle refugees in Australia and it's not just wishful thinking. This is how.", The Guardian, 5th of September 2016, <https://www.theguardian.com/commentisfree/2016/sep/05/we-can-resettle-refugees-in-australia-and-its-not-just-wishful-thinking-this-is-how>

4. Australia has been implementing a discriminatory immigration policy³ and denies access to the refugee status determination procedure to asylum seekers arriving by boat on its territory or one of its “excised offshore places”. Since 2012, the Australian Government has implemented a third-country processing regime under which asylum seekers’ claims will be processed in third countries, not within Australian territory. Australia signed Memoranda of Understanding (MoU) with Nauru on 29 August 2012 and Papua New Guinea (PNG) on 8 September 2012 designating them as regional processing countries. Initially, the use of such third countries was applicable only for asylum seekers arriving at an “excised offshore place”, such as Christmas Island. In May 2013, however, the Australian Government extended this policy to all asylum seekers who arrive by boat in Australia (whether to the mainland or to an excised offshore place) without authorisation. In September 2014, Australia signed a further MoU with Cambodia, to resettle any asylum seekers held in Nauru who are eventually granted refugee status.
5. Sending someone to a third country where the person will face torture or inhuman or degrading treatment is inconsistent with the ICCPR and a blatant violation of the principle of non-refoulement. Nauru and Papua New Guinea, currently, cannot be considered as “safe” third countries and therefore asylum seekers cannot be sent there for processing. Australia must assess individually each protection claim and the safeness of the third country for the applicant before sending an asylum seeker to a third country for processing. This implies that, in order to comply with its international obligations, Australia must determine whether the person seeking protection would be at risk of being subject to torture or inhuman and degrading treatment in the place where the person is sent, and, additionally, whether there is a risk of being subject to refoulement from this place.
6. According to our findings, Australia actively encourages/coerces asylum seekers to return to their countries of origin.⁴ Between September 2010 and September 2016, 531 people were repatriated from Nauru and Manus Island.⁵ These returns to their countries of origin are very probably not voluntary, given the conditions in the centres. Afghanistan’s Minister for Refugees and Repatriations, Sayed Hussain Alemi Balkhi, told Australian government officials in February 2015 that the forcible repatriation of Afghans should be stopped because of the worsening security situation in the country.⁶ However, Australia did not take into consideration this pledge. The goal of Australia’s deterrence policy is to discourage other people in need of protection from trying to come to Australia by boat. To do so, Australia will never allow anyone arriving illegally by boat to seek asylum in Australia. Indeed, Australia sends them either back to their countries of origin or to offshore processing centres where they will face a very long (and indefinite) detention in harsh conditions. The Refugee Council of Australia argues that Australia’s deterrence policy creates a “*perverse incentive to maintain inhumane conditions*” in Nauru and Manus Island centres, as the threat can only have a deterrent effect if asylum seekers

³ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.9.

⁴ Amnesty International report, *Island of Despair: Australia’s “processing” of refugees in Nauru*, 2016, p.23.

⁵ Idem.

⁶ See the report *Responsibility to Protect*, pg. 65 at https://d3n8a8pro7vhmxc.cloudfront.net/erc/pages/41/attachments/original/1500271850/The_Responsibility_to_Protect_17_July_2017_---Completed.pdf?1500271850

“believe that what they are seeking in Australia – safety, humane treatment, a fair hearing, an opportunity to rebuild their lives and a secure future – will not be available to them” in the offshore processing centres.⁷ We firmly believe that this policy is a blatant violation of the core values protected by human rights. As the UN Special Rapporteur on the human rights of migrants wrote, *“it is a fundamental principle of human rights law that one person cannot be punished only for the reason of deterring another.”*⁸ Someone’s human rights cannot be violated as a means to an end. We also received information that initially financial incentives were given to men to return to their country of origin as they were not promised resettlement in Australia. Financial incentives have now been withdrawn and those who are able to return are being 'forced back', whilst Iranian people who refuse to return are being placed in jails on Papua New Guinea.

7. We are deeply concerned about the use by Australian authorities of an “enhanced screening process” or any form of screening at sea. This procedure is a mean to determine when a person who arrived by boat should be “screened in” to further determine his or her status, or “screened out” and removed from Australia. The people are sometimes screened directly on board a vessel, at sea. The speedy nature of the process (which can take around one hour and contain only four questions⁹) make it almost impossible for asylum seekers to obtain legal advice and does not allow for a proper and fair assessment of the claims. The authorities do not automatically inform the people arriving that they have a right to seek asylum.¹⁰ The enhanced screening process *“risks excluding those with legitimate claims for protection”* and *“may not protect people from refoulement”*.¹¹
8. According to the Minister for Immigration and Border Protection, 30 boats, carrying 765 people looking for international protection, have been turned back between September 2013 and April 2017.¹² The Australian government has acknowledged that *“it does not monitor what happens to people who it has returned under OSB [Operation Sovereign Borders]”*.¹³ There are several concrete examples of situations where Australia has failed to assure and monitor the safety of the people it returned to their countries of origin in breach of the principle of non-refoulement. One of the latest example is when, in April and July 2015, two boats of Vietnamese asylum seekers have been returned to their country after all their claims had been rapidly assessed on the sea and rejected. Despite their alleged commitment, the Vietnamese authorities detained, prosecuted and

⁷ Refugee Council of Australia, Senate legal and constitutional affairs committee, Conditions and treatment of asylum seekers and refugees at regional processing centres, p.5.

⁸ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.9.

⁹ The Guardian, <https://www.theguardian.com/australia-news/2016/may/24/vietnamese-asylum-seekers-forcibly-returned-by-australia-face-jail>

¹⁰ The Australian Human Rights Commission, *Tell me about: The enhanced screening process*, June 2013.

¹¹ The Australian Human Rights Commission, *Tell me about: The enhanced screening process*, June 2013.

¹² Press Conference, 7th of April 2017, <http://www.minister.border.gov.au/peterdutton/2017/Pages/press-conference-07042017.aspx>

¹³ Official Committee Hansard, Senate Legal and Constitutional Affairs Legislation Committee, Estimates, 25 May 2015, p 120, cited by: Andrew & Renata Kaldor Centre for International Refugee Law, Factsheet: Turning back boats, last updated May 2017, p.4.

condemned some of the asylum seekers for having fled illegally the country.¹⁴ One of them was detained for three months and beaten after her forced return to Vietnam, and later condemned to three years in prison.¹⁵ She then fled a second time by boat, and is now in Indonesia, still looking for protection for her children and herself. Another example is the case of 12 Sri Lankan asylum seekers who were returned to Sri Lanka by the Australian authority. Upon their arrival in Colombo they were arrested. Two of them were charged with leaving the country unlawfully.¹⁶

9. The UN Human Rights mechanisms have been critical to the Australian policies on asylum seekers and refugees. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, stated that the conditions of living in the offshore processing centres amount to inhuman or degrading treatment, and can also be considered as torture.¹⁷ Indeed, in Nauru and Manus processing centres, the asylum seekers and refugees detained face harsh conditions, including poor healthcare, lack of education opportunities for children, indefinite time of detention, serious mental and physical health issues, sexual assault, threats by the local population, and intimidation.¹⁸
10. In the 2nd review of Australia by the Universal Periodic Review (UPR) in 2015, more than 60 states made critical statements on the Australian policies on asylum seekers and refugees. Australia responded that “[Australia] is committed to a managed and equitable system of migration, consistent with our international obligations and respectful of the human rights of migrants, refugees and asylum seekers. Australia respects and complies with its non-refoulement obligations”. It accepted several recommendations on migrants, refugees and asylum seekers, including safeguarding the rights of refugees and asylum seekers, complying with the principle of non-refoulement, protecting children’s rights, and improving the conditions of detention of all asylum seekers and refugee, while rejecting recommendations to repeal mandatory detention of asylum seekers.¹⁹

14. Please explain whether the State party plans to reform or abolish the system of mandatory detention without individualized determination of necessity in cases of illegal entry. Please also provide information concerning: (a) applicable time limits for detention of migrants; (b) whether the State party is considering amending the Migration Act 1958 to ensure that stateless persons and persons who cannot be deported or removed to their

¹⁴ <https://www.theguardian.com/australia-news/2016/may/24/vietnamese-asylum-seekers-forcibly-returned-by-australia-face-jail>

¹⁵ <http://www.abc.net.au/news/2017-02-21/vietnam-asylum-seeker-returned-by-australia-speaks-of-beatings/8288226>

¹⁶ See the relevant article at <https://www.theguardian.com/australia-news/2016/may/18/asylum-seeker-forcibly-returned-by-australia-says-his-refugee-claim-was-ignored>.

¹⁷ Amnesty International report, *Island of Despair: Australia’s “processing” of refugees in Nauru*, 2016, pp.48-49.

¹⁸ Several news articles reported the impact of the pending closure of Manus Centre is causing significant unrest and uncertainty and utilities, eg electricity cut off parts of the compound. See <https://www.theguardian.com/australia-news/2017/jul/26/manus-island-closure-refugees-forced-out-of-compound-and-threatened-with-arrest> and <http://www.abc.net.au/news/2017-08-01/manus-island-asylum-seekers-demand-water-and-power-reconnection/8764152>

¹⁹ Report of the Working Group on the Universal Periodic Review, Australia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/31/14/Add.1.

country of origin are not indefinitely detained; (c) the legal, administrative and procedural safeguards to ensure that no children are held, on the basis of their migratory status, in detention or detention-like facilities, including in “excised offshore” detention facilities, and that unaccompanied children are provided with special protection and assistance

11. According to our findings, Australia does not plan to reform or abolish the system of mandatory detention. During the Australia 2nd UPR, the delegation of Australia made statement that it *“has no plans to cease its policies of mandatory immigration detention, safely turning back boats or transferring people who arrive illegally by boat to other countries for processing and resettlement.”*²⁰ These practices, however, do not comply with Australia’s obligations under international law and pose a serious threat to the human rights of asylum seekers and refugees.
12. Currently, asylum seekers who arrive without a valid visa are automatically detained. In May 2017, 1400 people were detained in immigration detention facilities (including 370 in Nauru and 816 in Manus Island).²¹ The mandatory detention of all people arriving without a valid visa, without a case-by-case assessment of the necessity of the detention, can be considered as arbitrary detention.²² The UN Special Rapporteur noted, *“a policy of mandatory detention leaves no space for considering the particular circumstances of each detainee’s case or for applying all procedural safeguards applicable to persons deprives of their liberty”*.²³
13. Since the 1992 Migration Reform Act, there is no time limit for detention of migrants.²⁴ The average time spent in detention is 443 days, and more than 22% of all the persons detained had been detained for more than 730 days (two years).²⁵ The UN Special Rapporteur reported that he met with people who had been detained for more than seven years.²⁶
14. Detention negatively impacts the mental and physical health and wellbeing of children.²⁷ Moreover, *“long-term detention significantly undermines a child’s ability to enjoy a range*

²⁰Report of the Working Group on the Universal Periodic Review, Australia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/31/14/Add.1.

²¹ Immigration Detention and Community Statistics Summary at 31 May 2017, Department of Immigration and Border Protection.

²² Australian Human Rights Commission, Asylum seekers, refugees and human rights, Snapshot report, 2nd edition, 2017, p.12.

²³ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.12, par.56.

²⁴ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.5, par.24.

²⁵ Immigration Detention and Community Statistics Summary at 31 May 2017, Department of Immigration and Border Protection.

²⁶ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.12, par.57.

²⁷ The Forgotten Children: National inquiry into children in immigration detention, Australian Human Rights Commission, 2014 p.58.

of human rights, including the right to education and the right to enjoy the highest attainable standard of physical and mental health”²⁸

15. We welcome the establishment of alternatives to detention for children, their actual release from detention centres and the development of the child Safeguarding Framework. The Australian government must continue to develop and implement this framework, in order to offer a better protection for children asylum seekers and refugees. As of May 2017, five children were still detained in Australia and 43 in Nauru²⁹, which, even if it is now an open centre, provides detention-like conditions of living.³⁰ The UN Working Group on Arbitrary Detention, after a visit to Australia, highlighted that “*a system combining mandatory, automatic, indiscriminate and indefinite detention without real access to court challenge is not practised by any other country in the world.*”³¹ According to international law and Australian law, the detention of children must only be a measure of last resort.
16. Unaccompanied children are also subject to mandatory detention when they arrive without authorization.³² Under the *Immigration (Guardianship of children) Act 1946*, the Minister for Immigration and Border Protection is the legal guardian of unaccompanied minors. This task has been delegated to Departmental officers. This raises serious issues, as the Australian Human Rights Commission pointed out in a report: the guardians lack expertise, are not truly independent, and do not advocate for the best interest of the child.³³ The most problematic point is that these officers are in a situation of conflict of interest. As employees of the Immigration and Border Protection Department, they are under the obligation to deport all unauthorized migrants, and as guardians, they must act in the best interest of the child.³⁴ The assistance provided to unaccompanied children is therefore deficient.

15. Please describe any steps taken: (a) to repeal the provisions of the Migration Act 1958 relating to “excised offshore places,” and to close the Christmas Island detention centre; and (b) to ensure that all irregular migrants, including those held “offshore”, have equal access to fair and judicially reviewable determinations of their applications for protection.

17. According to our findings, no step is taken to repeal the provisions of the Migration Act 1958 relating to excised offshore places. Australia, in its report to the Human Rights

²⁸ Australian Human Rights Commission, Information about children immigration detention, <https://www.humanrights.gov.au/information-about-children-immigration-detention>

²⁹ Immigration Detention and Community Statistics Summary at 31 May 2017, Department of Immigration and Border Protection.

³⁰ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.14, par.69.

³¹ Civil and political rights, including the question of torture and detention, Report of the Working Group on arbitrary detention, E/CN.4/2003/8/Add.2, 24 October 2002, p.18.

³² Australian Human Rights Commission, Information about children immigration detention, <https://www.humanrights.gov.au/information-about-children-immigration-detention>

³³ The Forgotten Children: National inquiry into children in immigration detention, Australian Human Rights Commission, 2014, pp. 166-171.

³⁴ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.10, par.45.

Committee, wrote that “Australia is not taking steps, and has no plans, to repeal the provisions of the Migration Act 1958 relating to “excised offshore places.””³⁵.

18. Instead of repealing the Migrant Act 1958, Australia adopted the Australian *Border Force Act* in 2015. Section 42 of the Act stipulates that anyone who gains "protected information" during their employment or service for the Border Force is barred from revealing this information without authorisation. This measure censors the only source of information available to publicly report on what is happening in the detention centres. We welcome the fact that, after the Amendment of September 2016, health practitioners have been exempted and that the secrecy and disclosure provisions do not apply to them anymore.³⁶ ³⁷However, all the other staff working in offshore detention centres, such as teachers, lawyers, security guards and social workers are still silenced and can be condemned to a maximum penalty of two years in prison if they speak out about human rights abuses occurring in the centres. Unlike the government argues, the release of the information concerning the conditions of living in the detention centres does not threaten Australia’s national security. Therefore, the secrecy provisions contained in the *Border Force Act* are not necessary to achieve the protection of national security. This profoundly anti-democratic measure therefore violates the freedom of expression and of the right of information, which are enshrined in the ICCPR³⁸, and allows the government to operate as it wishes without any control from the civil society.
19. The Australian government does not have the intention to close the Christmas Island detention centre³⁹, where 287 men are currently detained.⁴⁰ Concerning the refugee status determination procedures of Nauru and Papua New Guinea, the Australian government repeatedly stated that it is not responsible for any of their failures, and that only Nauru and Papua New Guinea are responsible.⁴¹ However, we believe that Australia shares responsibility with Nauru and Papua New Guinea. Actually, as the UN Special Rapporteur on the human rights of migrants clarified, “*all detention centres and detainees – whether onshore or offshore – fall under the responsibility of the Government of Australia*”.⁴² Therefore, Australia can be held accountable for the human rights violations committed in the offshore processing centres. Indeed, it is Australia’s decision to transfer

³⁵ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Sixth periodic reports of States parties due in 2013, Australia, CCPR/C/AUS/6, 2 June 2016.

³⁶ *Government backs down in the face of Doctors’ challenge*, Doctors for Refugees, press release, 22nd of October 2016, <https://www.doctors4refugees.org/challenging-the-border-force-act>

³⁷ See also Dutton retreats on offshore detention secrecy rules that threaten workers with jail, <https://www.theguardian.com/australia-news/2017/aug/14/dutton-retreats-on-offshore-detention-secrecy-rules-that-threaten-workers-with-jail>

³⁸ ICCPR, art.19 (2)

³⁹ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Sixth periodic reports of States parties due in 2013, Australia, CCPR/C/AUS/6, 2 June 2016.

⁴⁰ Immigration Detention and Community Statistics Summary at 31 May 2017, Department of Immigration and Border Protection.

⁴¹ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Sixth periodic reports of States parties due in 2013, Australia, CCPR/C/AUS/6, 2 June 2016 and “Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre”, Legal and Constitutional Affairs References Committee, Senate Inquiry, April 2017, p.109, par.4.4.

⁴² Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.14, par.72.

asylum seekers who arrived by sea in Australian territorial waters or who were intercepted in the high seas to these third-countries for processing, and it signed Memoranda of Understanding to officialise these agreements. Furthermore, as the Senate Inquiry of April 2017 noted, Australia provides funds and technical help to support Nauru and Papua New Guinea's asylum procedures.⁴³

20. All irregular migrants are not equal before the refugee status determination procedure. Actually, the irregular migrants arriving by boat do not even have access to the Australian refugee status determination procedure, unless the Minister for Immigration and Border Protection exceptionally lifts the bar for them personally. The UN Special Rapporteur determined that this policy discriminated migrants according to their mode of arrival, which is not a relevant criterion.⁴⁴ The decision to send them to an offshore processing centre is non-reviewable.⁴⁵
21. For all irregular migrants arriving by boat between the 13th of August 2012 and the 1st of January 2014, who had not been transferred to an offshore processing centre, Australia introduced a "fast-track assessment process". If their claim for protection is rejected, the "excluded fast-track applicants" cannot apply for a merits review to the Refugee Review Tribunal, and will have only a limited form of review by the Immigration Assessment Authority (IAA). The IAA will generally not interview the claimant and will not consider new information, unless in exceptional circumstances.⁴⁶ In May 2017, the Government further announced that the deadline for the application for the "Fast Track" refugee status is now 1 October 2017.⁴⁷ This policy might affect 7.500 asylum seekers.
22. As we mentioned above, enhanced screening procedures and other forms of screenings at sea raise many human rights concerns. Enhanced screening procedures were replaced in September 2013 with another form of screening under the Operation Sovereign Borders, which also included screening at sea. The lack of normal safeguards and access to legal advice, as well as the conditions in which the screening is conducted make it an unfair and incomplete assessment.⁴⁸
23. Another worrying feature of the protection claim procedure is that, according to the *Migration Act*, it is possible to refuse to grant a visa or to renew it when the person does not pass the "character test".⁴⁹ Refusals of protection claims and visa cancellations based

⁴³ "Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre", Legal and Constitutional Affairs References Committee, Senate Inquiry, April 2017, pp.109-110, par.4.4.

⁴⁴ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.9, par.36.

⁴⁵ SOURCE?

⁴⁶ Refugee Council of Australia, Recent changes in Australian refugee policy, 8 June 2017, <http://www.refugeecouncil.org.au/publications/recent-changes-australian-refugee-policy/>

⁴⁷ *Peter Dutton gives asylum seekers in Australia deadline to apply for refugee status*, see at <https://www.theguardian.com/australia-news/2017/may/21/peter-dutton-gives-asylum-seekers-in-australia-deadline-to-apply-for-refugee-status>

⁴⁸ Refugee Council of Australia, Recent changes in Australian refugee policy, 8 June 2017, <http://www.refugeecouncil.org.au/publications/recent-changes-australian-refugee-policy/>

⁴⁹ Migration Act 1958, section 501.

on character grounds have increased dramatically in the last three years.⁵⁰ The main issue concerning these decisions is that they offer only a limited access to independent review, and that when people do have this chance, the time limits to appeal is of 9 days after the decision, which is too short.⁵¹ People with adverse character assessment who cannot be returned, as they have a well-founded fear of persecution in their countries of origin, are given indefinite detention. The UN Special Rapporteur emphasised that *“a judicial review process is important for these groups of detainees.”*⁵²

Recommendations for questions 12, 14 and 15:

24. To ensure the reception of asylum seekers and processing of their claims accords with Australia’s obligations under international law.
25. To stop the practice of refoulement of asylum-seekers and refugees.
26. To impose a moratorium on returning any asylum seekers to their country of origin against their will until an impartial international assessment of the situation is conducted and their safety can be assured.
27. To ban the practice of processing asylum claims at sea and return to a policy of processing asylum seekers on the Australian.
28. To transfer all asylum seekers currently detained offshore to Australia, and ensure that their rights are protected in accordance with Australia’s international law obligations.
29. To create an independent body that will act as the guardian for unaccompanied minors
30. To amend the Migration Act 1958 and enact federal legislation for the effective implementation of the Convention on the rights of the Child.
31. To implement a judicial review process that is freely accessible to all asylum seekers.
32. To ensure that legal representation is freely accessible to all asylum seekers from the commencement of their processing.

⁵⁰ Australian Human Rights Commission, Asylum seekers, refugees and human rights, Snapshot report, 2nd edition, 2017, p.18.

⁵¹ Australian Human Rights Commission, Asylum seekers, refugees and human rights, Snapshot report, 2nd edition, 2017, p.18.

⁵² Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, 2017, A/HRC/35/25/Add.3, p.12, par.58.