



## Fact sheet 4

# Refugee policy in Australia

### Refugee status in Australia

The Australian Migration Act sets out the laws regulating migrants, asylum seekers and refugees in Australia. The Act incorporates the UN Refugee Convention and defines a refugee as anyone who:

*Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

The Migration Act states that anyone who is in Australia and meets the refugee criteria will be granted a protection visa.

Refugee status determination in Australia is made by a Department of Immigration and Citizenship (DIAC) officer. Unsuccessful applicants can seek review by the Refugee Review Tribunal (RRT), and after that, judicial review by the courts.

### Excision of Australian territory

The Australian Government changed the Migration Act in 2001 so that a number of Australian islands, including Christmas Island became 'Excised Offshore Places'. Excised Offshore Places are areas that are part of Australian territory and are under Australian law and jurisdiction but are not included in Australia's migration zone.

Any person who is not an Australian citizen and enters Australia without a valid visa through an 'Excised Offshore Place' is considered an 'Offshore Entry Person'. 'Offshore Entry Person(s)' cannot apply for refugee status under the normal process which applies on the Australian mainland.

### Immigration detention

According to the Migration Act, detention is mandatory for asylum seekers who arrive on the mainland of Australia and are not carrying a valid visa. It is the current policy of the Australian Government however that all asylum seekers who arrive in excised offshore territories be held in detention.

Asylum seekers are held in detention until their application for refugee status is decided and they are granted a visa or returned to their country of origin. There is no limit to the length of time this process should take and how long an asylum seeker can be held in detention. Some asylum seekers and refugees spend significant periods of time in detention.

While the law and policies outlined above that allow for mandatory detention remain in place, there have been some changes to the Australian Government's approach to immigration detention in recent years.

### **Changes under the current government**

Since the change of government in November 2007 there have been a number of significant developments in Australia's immigration policy. Notably, the closure of the Nauru detention centre, the abolition of Temporary Protection Visas, and the review of long-term detention cases. In June 2008, the new Minister for Immigration, Chris Evans announced some key changes to the detention scheme, which would use time in immigration detention centres as a 'last resort'.

In October 2010, the Government began relocating a significant number of children and families with children into detention within the community. The Government announced in October 2011 that an increasing number of asylum seekers would be placed in the community on bridging visas or in community detention.

In August 2012, the Government decided to re-introduce offshore processing to deter people from seeking asylum in Australia by boat.