



# NATIONAL ETHNIC DISABILITY ALLIANCE

The Plight of People Living with Disabilities  
within Australian Immigration Detention:  
*Demonised, Detained and Disowned.*



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Australian Immigration Detention: Demonised, Detained and Disowned”.**

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National Ethnic Disability Alliance Inc.

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## About Us

The National Ethnic Disability Alliance Inc. (NEDA) is the only national peak organisation representing the rights and interests of people from culturally and linguistically diverse backgrounds (CaLD) and/or non-English speaking backgrounds (NESB) with a disability, their families and carers throughout Australia. NEDA is a member of the Australian Cross Disability Alliance and reports directly to Government as a national peak.

NEDA advocates at the Federal level for the rights and interests of people from CaLD and/or NESB communities with a disability, their families and carers so that they are able to participate fully in all aspects of social, economic, political and cultural life; and provide policy advice to the Government and other relevant agencies to secure equitable outcomes for people from CaLD and/or NESB communities with a disability, their families and carers.

It is imperative that the Australian Government addresses the needs of refugees and people living with disabilities detained in immigration detention.

NEDA acknowledges that people living with disability in immigration detention face multiple and cumulative disadvantages, and therefore urges the Australian Government to not only fulfil its obligations under international and domestic law, but also to end the discrimination and marginalisation these individuals experience while detained in Australian managed facilities.

## Scope of the Report

This paper focuses on the plight of people living with a disability detained in Australian run immigration detention centres, in both onshore and offshore facilities (including Christmas Island, Nauru and Manus Island). It does not examine the suitability of community based options such as Community Detention and release into community on a bridging visa for people living with disabilities.

This report will not be providing an in-depth analysis of asylum seeker or mandatory detention policies in Australia. Furthermore, this research will not explore the purpose or policy aims of mandatory detention; nonetheless, NEDA is of the opinion that mandatory detention does not stop people from travelling by boat to Australia, and therefore questions its efficacy as a deterrent.

This research examines asylum seekers living with disabilities in Australian immigration centres. Asylum seekers are people who are claiming protection as a refugee because they are at risk of persecution due to their race, ethnicity, religion, membership of a particular social group, or political opinion, there is an assumption that a large proportion of the case load will be found to be refugees. In recent years, over 90% of people who came to Australia by boat were found to be refugees and granted protection. As such when we refer to asylum seekers we are referring to people who may have traumatic experiences and human rights violations. This report does not address the issues of people over-staying their visas or others in detention.

In addition, this research will not investigate Australia's unfair migration laws<sup>1</sup> (i.e. the assessment of one's health against calculated economic cost, *that is the cost benefit approach*) that continue to negatively affect refugees or migrants with disability; a discriminatory processes utilised by successive governments. Nor does it consider how disabilities can affect a person's ability to navigate the refugee status determination process in Australia.

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<sup>1</sup> *National Ethnic Disability Alliance*, 'No Right to Discriminate: Submission to the Joint Standing Committee on Migration Inquiry into Immigration Treatment of Disability', October 2009

The scope of this research is mainly limited to secondary sources and published research. However, NEDA did obtain data from the Department of Immigration and Border Protection (DIBP) and also collated several case studies from advocates and/or organisations from within the sector. NEDA did not access detention centres in order to investigate the appropriateness of the facilities or to determine the types of services available to people living with disabilities. Access to centres is highly restricted and remote centres are effectively inaccessible due to the prohibitive cost associated.

NEDA has been largely reliant on the research and opinion of medical experts in this area, which understandably takes a health focus, and does not reflect the social view of disability, that being that society and the environment are the main contributors in *disabling* people. NEDA sought contributions from disability, community welfare, health and refugee advocacy organisations in the formulation of this report.

No disability specialists have been invited to assess and monitor the suitability of detention in the past. While there is a history of independent detention advisory groups in health, for example the now disbanded Detention Health Advisory Group (DeHAG): no groups have had a disability focus or disability advocacy representation.

The suitability of detention for people living with disability has not been the subject of previous research. It is addressed in general by the Australian Human Rights Commission's recent National Inquiry into Children in Immigration Detention, and more in detail in the previous Commission's report in 2004. This paper included both adults and children living with disabilities.

## Executive Summary

Asylum seeker issues evoke strong opinions and are one of the most debated areas of government policy. The asylum seeker debate is complex, multifaceted and emotive.

The Federal Government must address the needs of people living with disability, their families and carers, detained within Australian Immigration detention.

NEDA is of the opinion that asylum seekers who are subject to mandatory detention because they arrived to Australia by boat without a valid visa are treated inhumanely by the Australian Government. Unfortunately, this discrimination and inequality is magnified for mandatory detained people living with disability.

NEDA argues that the Australian Government is not appropriately responding to the complex needs of people with disabilities within immigration detention. Although NEDA acknowledges that living conditions and access to services differ greatly between detention centres, our concerns are only exacerbated by the lack of data and transparency (particularly pertaining to offshore detention facilities).

Refugees with disability are not only exposed to higher risk in Australian detention facilities, but they also do not have access to adequate supports to respond to their needs. As a result they are less able, or often unable, to engage in activities fundamental to everyday living, let alone participate actively in detention facility life; they are ostracised by their circumstance and further cloistered by their disability without access to supports.

NEDA fears that the lack of data collection, coupled with an absence of policy or literature pertaining to people with disabilities and/or their experiences in detention centres, further isolates and excludes this group from nearly all discussions and reinforces their invisibility, vulnerability and hopelessness.

NEDA is opposed to the mandatory detention of all asylum seekers and urges the Government to begin processing people's claim for asylum in a timely and respectful manner that is in line with international human rights expectations. NEDA is confused as to why Australia has a policy of mandatory detaining asylum seekers and can see no benefit whatsoever in doing so.

It is troubling that consecutive governments have used asylum seekers as a political tool in wedge politics, playing on people's entrenched fears and reshaping a once humanitarian issue into a national security matter.

NEDA will continue to advocate in an effort to ensure the rights of people living with disability detained in Australian Immigration detention centres are upheld.

*Australia has no right to discriminate unfairly against refugees living with disability.*

## 1. Introduction

Australia has a long history of migration, beginning with Aboriginal and Torres Strait Islanders migrating to Australia 50 000 -60 000 years ago.<sup>2</sup>

Since colonisation, the influx of communities from various socio-cultural and religious backgrounds has truly made Australia a diverse and multicultural nation.

Dr Sev Ozdowski (OAM) argues that ‘human rights are the basic norms that make a multicultural society possible. They are the secular standards that guide human interactions advancing dignity, mutual respect and equality’.<sup>3</sup>

Taking this notion into consideration, what is the plight of people, particularly people living with disability, currently detained within Australian immigration detention?

Does Australia’s treatment of asylum seekers promote the multicultural values of dignity, mutual respect and equality?

Refugees living with disabilities have unique needs and face particular forms of discrimination. Long term physical, mental health, intellectual or sensory impairments, injuries or chronic illnesses, coupled with socio-cultural, physical, economic and political discrimination hinders equal participation of people with disabilities.

In times of crises and/or displacement, discrimination is often magnified. The World Health Organisation (WHO) estimates that approximately 15% of the world’s population have a disability, suggesting that several million persons who have disabilities are currently displaced by natural disasters or conflicts.<sup>4</sup>

All people who are forcibly displaced face immense challenges. An individual’s disability will often amplify the severe challenges a person is presented with as a result of forced displacement.

The UNHCR states that refugees with disabilities are ‘at heightened risk of violence, including sexual and domestic abuse; exploitation by family members; discrimination; and exclusion from access to humanitarian assistance, education, livelihoods, health care, a nationality, and other services’.<sup>5</sup>

It is also known that the elderly, women, children and LGBTI persons with disability are typically exposed to even higher risks.

NEDA believes it is important to examine the available evidence to determine if Australian run immigration detention centres have the expertise or the capacity to service the needs of detained people with living with disability.

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<sup>2</sup>Hudjashov, G et al., ‘Revealing the prehistoric settlement of Australia by Y chromosome and MtDNA analysis’, in *Proceedings of National Academy of Sciences of the United States of America*, vol 104, no.21, 2007, p8726.

<sup>3</sup> Ozdowski, S. ‘Australian Multiculturalism: the roots of its success’, *Third International Conference on Human Rights Education: Promoting Change in Times of Transition and Crisis*, The Jagiellonian University in Krakow, Poland, 2012, p1.

<sup>4</sup> *United Nations High Commissioner for Refugees*, ‘Working with Persons with Disabilities in Forced Displacement’, United Nations High Commissioner for Refugees (UNHCR), 2011, Available at: <http://www.unhcr.org/4ec3c81c9.html> (Accessed 15 January 2015)

<sup>5</sup> *Ibid*

## 2. Asylum Seekers in Perspective: What's Happening Globally?

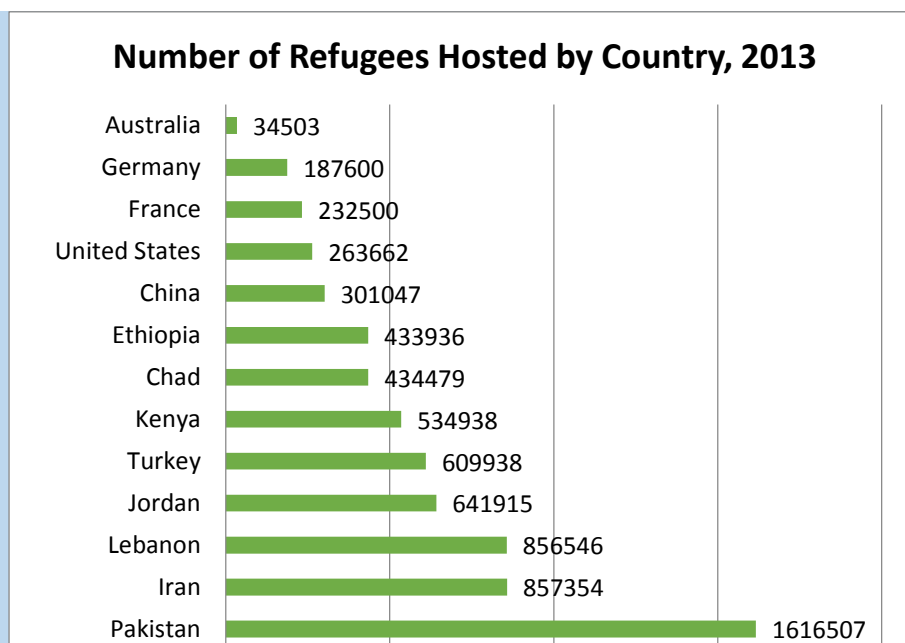
The number of people who arrive to Australia by boat seeking asylum is just a fraction of the numbers arriving in other parts of the world. It is important to put the figures into perspective in an effort to counteract the common misconception that Australia is being overwhelmed or *swamped* by people arriving by boat.

	Global	Australia	% share	Rank	Per capita	Relative to GDP
<b>Refugees Hosted</b>	11,703,179	34,503	0.29%	48	62	85
<b>Asylum Application Received</b>	3,587,475	15,977	0.45%	30	41	66
<b>Asylum Applications Pending</b>	1,171,762	13,559	1.16%	18	66	64
<b>Asylum Seekers Recognised as Refugees</b>	2,821,115	5,035	0.18%	36	40	55
<b>Refugees resettled</b>	98,426	13,169	13.38%	2	1	1
<b>Refugees recognised, registered or resettled</b>	2,919,541	18,204	0.62%	17	22	36
<b>Refugees recognised, registered or resettled, 2013-12</b>	9,243,495	144,125	1.56%	19	25	48
<b>Refugee hosted in 2012 and resettled 2002-12</b>	12,581,886	144,125	1.15%	24	27	65

**Table 1: Breakdown of Australia's 2013 role in protecting refugees**

Source: Refugee Council of Australia

In 2013, there were approximately 12 million refugees worldwide. Australia hosted significantly fewer refugees than many other countries. In 2013, France hosted over 230,000 refugees, and Pakistan 1.5 million, compared to Australia's 34.5 thousand.



**Table 2: Number of Refugees hosted by various countries, 2013.**

Source: Refugee Council of Australia and UNHCR Global Trends, 2013



### 3. Mandatory Detention in Australia

*Australia maintains one of the most restrictive immigration detention systems; we are the only country in the world that has a policy of mandatory non-reviewable detention of asylum seekers.*<sup>6</sup>

#### 3.1 A Short History of Mandatory Detention

Since the introduction of mandatory detention laws under Keating's Labor government in 1992, successive Australian Governments have enacted various policies aimed at deterring asylum seekers from arriving by boat. The 1992 legislation imposed a maximum 273 days in which an individual could be detained.<sup>7</sup> The original 1992 legislation also excluded an individual's right of judicial review of detention.

In 1994 the Keating government broadened the application of mandatory detention to any person who arrived without a visa, or who was found to be residing in Australia with an expired or cancelled visa. In addition, the 1994 legislation saw the removal of the 273-day time limit on detention.<sup>8</sup>

In 1999 and 2001 respectively, Howard's Coalition Liberal government made significant changes to the mandatory detention policy through the introduction of Temporary Protection visas (TPVs) and the *Pacific Solution*.<sup>9</sup> Outlying Pacific Islands were excised from Australia's immigration zone and people arriving to Australia without visas were removed to offshore processing centres, on Manus Island (Papua New Guinea) and Nauru, to determine refugee status.

The Rudd Labor government ended the Pacific Solution policy in 2008, however Labor reinstated it again under the Gillard Labor Government in 2012 in response to the increase of boat arrivals.<sup>10</sup> Furthermore, Labor implemented the Regional Resettlement Arrangement and *No Advantage* principle, meaning that asylum seekers would not be resettled any sooner than they who have been had they not arrived by boat. In 2013, The Abbott led Liberal Government applied a zero tolerance position towards people arriving to Australia by boat and commenced the Australia Defence Force led *Operation Sovereign Borders* Campaign. Boats began to be intercepted and/or turned back to other countries.<sup>11</sup> Most recently, the Government has explored additional 'third country' agreements, with Cambodia for example.

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<sup>6</sup> Brown, S. 'What is Mandatory Detention?', *The Asylum & Refugee Law Project*, University of Queensland, 2013, Available at: <https://uqrefugeereseearch.wordpress.com/2013/07/08/what-is-mandatory-detention>, (accessed 3 February 2015)

<sup>7</sup> Parliament of Australia, 'Immigration detention in Australia,' 2013, *Social Policy Section*, At: [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/Detention#\\_ftn169](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention#_ftn169)

<sup>8</sup> Garnier, A & Cox, L. 'Twenty Years of Mandatory Detention: The Anatomy of A Failed Policy', *Australian Political Studies Australian Conference*, September 2012, Hobart.

<sup>9</sup> *ibid*, p.2

<sup>10</sup> Parliament of Australia, 'Immigration detention in Australia,' 2013, *Social Policy Section*, At: [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/Detention#\\_ftn169](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention#_ftn169)

<sup>11</sup> Owens, J. 'Scott Morrison ends secrecy surrounding Operation Sovereign Borders', *The Australian*, September 18 2014, At: <http://www.theaustralian.com.au/national-affairs/immigration/scott-morrison-ends-secrecy-surrounding-operation-sovereign-borders/story-fn9hm1gu-1227062425371>

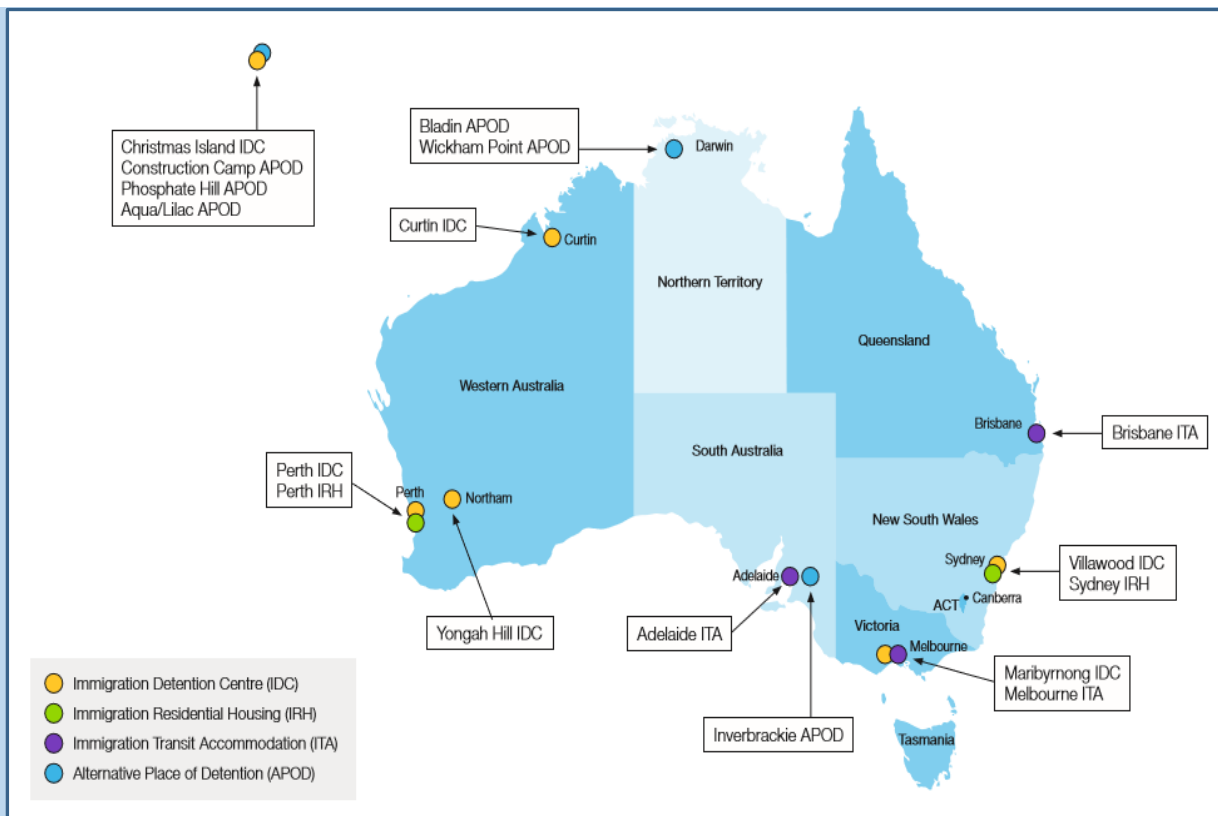
It is important to note that mandatory detention differs significantly from standard immigration detention. The mandatory detention system ensures people who arrive by boat seeking asylum are automatically detained, and subject to indefinite (i.e. it is not time limited) detention where they are unable to challenge their circumstance or need for detention in a court of law.

### 3.2 Location of Immigration Detention Centres in Australia

There are four types of immigration detention facilities throughout Australia:

- Immigration detention centre (IDR)
- Immigration residential housing (IRH)
- Immigration transit accommodation (ITA)
- Alternative place of detention (APOD)

The location of these facilities can be found on the map below.



**Figure 1: Location of Immigration Detention Centres in Australia.**

**Source: Department of Immigration**

### 3.3 Third Country Processing

In August 2012 the Federal Parliament passed amendments to the *Migration Act 1958* allowing Nauru and Papua New Guinea to become 'regional processing countries' thus implementing a third country processing scheme for asylum seekers who came to Australia by boat (without a valid visa).

As at the January 30, 2015 there were 2298 people detained in immigration detention centres on mainland Australia and on Christmas Island. In addition, another 1825 were detained in Offshore Processing Centres: 802 in the Republic of Nauru and 1023 on Manus Province, PNG.<sup>12</sup>

Although this report will not provide an in depth analysis of Third Country Processing, NEDA will be on the record in stating that it agrees with all of the Australian Human Rights Commissions concerns regarding sending asylum seekers to a third country.<sup>13</sup>

### 3.4 Cost of Mandatory Detention

Mandatory detention is significantly more costly than other programs such as community detention or living in the community on bridging visas.

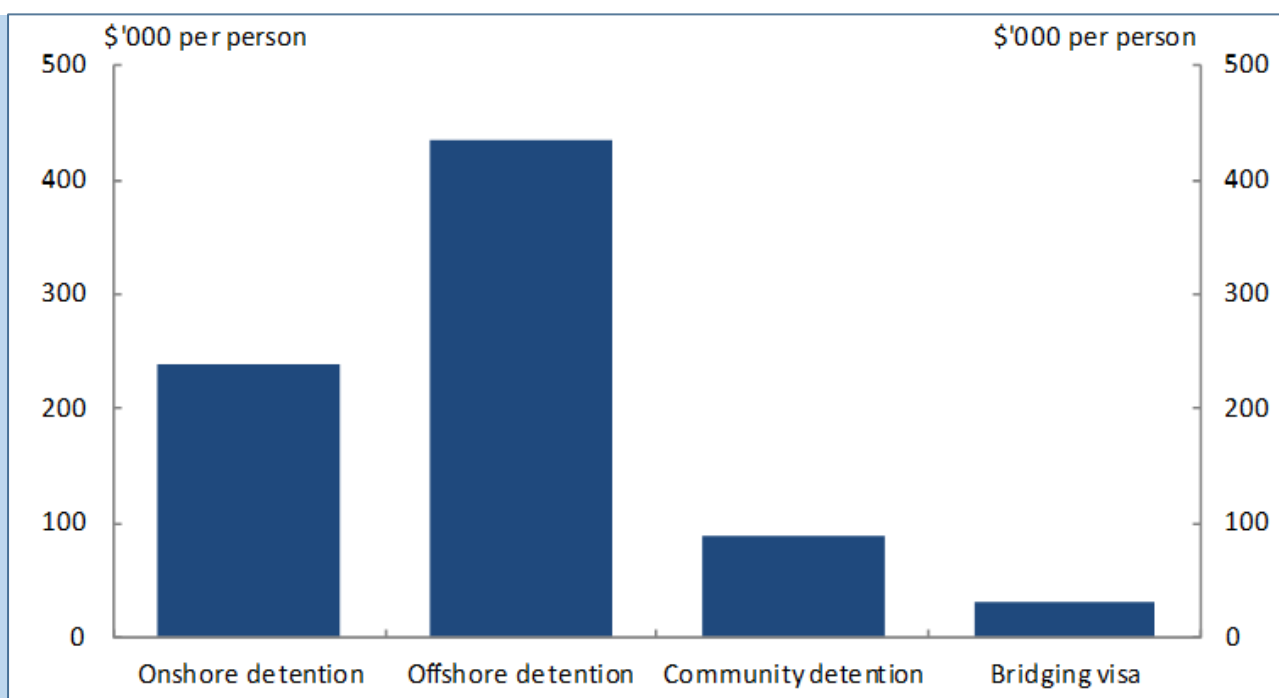


Figure 2: Relative cost per person for 12 months in detention, 2013.

Source: Department of Finance

<sup>12</sup> Department of Immigration and Border Protection, 'Immigration Detention and Community Statistics Summary- 31 January 2015', (2015), <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-jan2015.pdf>

<sup>13</sup> Australian Human Rights Commission, *Examination of the Migration (Regional Processing) package of legislation*, 2013, <https://www.humanrights.gov.au/submissions/examination-migration-regional-processing-package-legislation>

Estimated annual costs of detaining one person in onshore immigration detention is \$239,000 (2013-2014), and more than \$400 000 per person held offshore.<sup>14</sup>

In comparison, the UNHCR's 2013 annual budget for world-wide programming and international settlement of refugees was \$3.9 billion (USD).<sup>15</sup>

The National Commission of Audit report (February 2014) stated that the associated cost of detaining and processing asylum seekers is the 'fastest growing government programme over recent years'.<sup>16</sup> The 2013-2014 annual expenditure has increased from \$118.4 million (2009-2010) to \$3.3 billion (2013-2014).<sup>17</sup>

## 4. Australia's Human Rights Obligations

Australia is a signatory to several international instruments that uphold the basic human rights of refugees and people seeking asylum. The *Universal Declaration of Human Rights* and the United Nations Human Rights Commission's *Convention and Protocol relating to the Status of Refugees* inform Australia of its obligations to ensure that the human rights of asylum seekers are upheld.

Other conventions that pertain to refugees and asylum seekers are: *The International Covenant on Civil and Political Rights (ICCPR)*, the *Convention Relating to the Status of Refugees*, *Convention on the Rights of the Child* and *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

In addition, *The Declaration on the Rights of Disabled Persons*<sup>18</sup> enables a strong anti-discrimination mandate and promotes participation, empowerment and independence for people with disabilities. These international conventions are the basic compliance mechanisms in the ongoing struggle to protect the human rights of refugees, and those refugees that live with disability.

Australian law requires the detention of all non-citizens who are in the country without a valid visa.<sup>19</sup> As a result, people who arrive to Australia without a visa (unauthorised arrivals), or people in Australia who become unlawful because their visa expires or is cancelled (authorised arrivals) are subsequently detained.

However, mandatory detention policies and practices violate International Law and are breach of Article 9 of the *International Covenant on Civil and Political Rights (ICCPR)*, which states that no person is to be subjected to arbitrary arrest or detention.<sup>20</sup>

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<sup>14</sup>National Commission of Audit, *Towards Responsible Government: The Report of the National Commission of Audit Phase One*, 2014, [http://www.ncoa.gov.au/report/docs/phase\\_one\\_report.pdf](http://www.ncoa.gov.au/report/docs/phase_one_report.pdf)

<sup>15</sup> The United National High Commissioner for Refugees, *The Global Report 2013*, 2013, Available at: <http://www.unhcr.org/pages/49c3646c278.html>

<sup>16</sup> National Commission of Audit, *Towards Responsible Government: The Report of the National Commission of Audit Phase One*, 2014, [http://www.ncoa.gov.au/report/docs/phase\\_one\\_report.pdf](http://www.ncoa.gov.au/report/docs/phase_one_report.pdf)

<sup>17</sup> *ibid*, p 196.

<sup>18</sup> Officer for the High Commissioner of Human Rights, Declaration on the Rights of Disabled Persons, At: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightsOfDisabledPersons.aspx>

<sup>19</sup> Migration Act 1958 s189

<sup>20</sup> International Covenant on Civil and Political Rights, Article 9

Since Australia's introduction of mandatory detention in 1992, The United Nations Human Rights Committee has repeatedly found Australia to be in breach of its international obligations, arguing that Australia's asylum seeker policy has 'lead to a chain of human rights violations'.<sup>21</sup> For example, In August 2013 the UN Human Rights Committee found 143 violations of international law by Australia.<sup>22</sup>

At the 53<sup>rd</sup> Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment session (November 2014) the committee recommended that Australia abolish mandatory detention and adopt policies that ensure all asylum seekers claims are assessed properly and promptly.

The committee further cited harsh conditions under mandatory detention and raised concerns about overcrowding, inadequate health care and allegations of mistreatment and sexual and physical abuse.

The report said 'the combination of these harsh conditions, the protracted periods of closed detention and the uncertainty about the future reportedly creates serious physical and mental pain and suffering'.<sup>23</sup>

The mandatory, prolonged and indefinite detention of asylum seekers, especially the detention of people with disabilities, is not only immoral and inhumane, but is a breach of Australia's international obligations.

NEDA echoes Professor Gillian Triggs' sentiments regarding Australia's policy of mandatory detention:

'It is troubling that members of the Government and Parliament and Departmental officials are either uninformed about, or ignore, the human rights treaties to which Australia is a party...Australia should return to its historical generosity of spirit by welcoming to our shores those who seek our protection from conflict and persecution'.<sup>24</sup>

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<sup>21</sup> Dingle, S 'New UN human rights chief criticises Australia's asylum seeker policy, Scott Morrison rejects allegations', *Australian Broadcasting Corporation*, 9 September 2014, At: <http://www.abc.net.au/news/2014-09-08/australia-rejects-un-bosss-asylum-seeker-criticisms/5728918>

<sup>22</sup> Office of the High Commissioner for Human Rights, 'Australia's detention of 46 refugees 'cruel and degrading' UN Rights experts find', 22 August 2013, At: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13648&LangID=E>

<sup>23</sup> [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT\\_C\\_AUS\\_CO\\_4-5\\_18888\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT_C_AUS_CO_4-5_18888_E.pdf).

<sup>24</sup> *Australian Human Rights Commission*, 'The Forgotten Children: National Inquiry into Children in Immigration Detention', 2014, page 17, Available at: <https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014>

## 4.1 Exemption of the Migration Act from the Disability Discrimination Act

The *Disability Discrimination Act 1992* (DDA) aims to eliminate discrimination against people on the grounds of disability in certain areas such as employment, housing, education and the provision of services. Although the DDA is a powerful mechanism that promotes the rights of people with disabilities in Australia, unfortunately its scope does not include refugees with disabilities, as it sees the exemption of *The Migration Act 1958*.

Section 52 of the Disability Discrimination Act 1992 states

'It does not

- (a) 'affect discriminatory provisions in
  - (i) The *Migration Act 1958*; or
  - (ii) A legislative instrument made under that Act.'

The practical implications of this exemption are severe.<sup>25</sup> The DDA prohibits the failure to make allowances or 'reasonable adjustments' for people with disability.

Therefore, asylum seekers with disabilities are negatively affected by the section 52 exemption and are subsequently denied access to legislation that works to ensure that their basic human rights are upheld.

## 5. Obstacles to Disability Identification

There are obstacles to disability identification at operational, organisational, community and individual levels; UNHCR is of the opinion that 'people with disabilities are often overlooked during identification and registration processes'.<sup>26</sup>

Because reliance is often placed on an individual to identify their own disabilities, and due to factors impeding persons with disabilities coming forward, refugees with disabilities aren't identified as being at risk, or as requiring specific support.

Smith-Khan et al.<sup>27</sup> summarises the potential obstacles to disability identification into two categories:

### Organisational

- No systematic identification procedures
- Inconsistent and narrow categorisations
- Insufficient identification tools
- Lack of understanding regarding different conceptualisations of disability

<sup>25</sup> Simmonds, A 'Barring disabled migrants makes Australia the loser', *The Age*, February 4, 2010, At: <http://www.theage.com.au/it-pro/barring-disabled-migrants-makes-australia-the-loser-20100203-ndeb.html>

<sup>26</sup> United Nations High Commissioner for Refugees, '*Resettlement Assessment Tool: Refugees with Disabilities*', April 2013, <http://www.unhcr.org/51de6e7a9.pdf>, Accessed 13 December 2014.

<sup>27</sup> Smith-Khan, L., Crock, M., Saul, B., McCallum, R (2014), 'To 'Promote, Protect and Ensure': Overcoming Obstacles to Identifying Disability in Forced Migration', *Journal of Refugee Studies*, Oxford University Press, 27 (4).



## Self- Identification

- Lack of understanding regarding different conceptualisations of disability
- Stigmas around perceptions of disability, and reluctance to identify as disabled due to social taboos (especially in regards to psychosocial disabilities)
- Burden of proving disability
- Received lack of incentives or feared negative outcomes

It is also known that misunderstandings about the implications of a disability on assessment of resettlement needs can also lead to people, or their families, minimising support needs or the functional impacts of disabilities.<sup>28</sup> The Government has indicated that people who arrived to Australia by boat are screened and assessed for disabilities, within 72 hours of arrival, by 'Australian standard screen instruments', and that this is a 'quite a comprehensive assessment'.<sup>29</sup>

This appears to not be the case, however there is no way of robustly or confidently determining so. NEDA is concerned that assessments are undertaken by Medical Practitioners only, with the expertise of allied health professionals being excluded from the assessment process. The nexus of culture and language around disability creates challenges for effective assessment, particularly if assessment relies on self-disclosure.

NEDA is also of the opinion that many people living with disability in detention will not report their support needs due to the fear that their disability will compromise or negatively affect determinations around their claims for asylum. NEDA urges the Australian Government to ensure that people detained in immigration detention are appropriately assessed to determine their disability status, in the hope of linking them into the supports or services available to them.



**Figure 3: Nauru Detention Centre (Photo: Angela While)**  
**Hall, B. 'Official barred from visits to Nauru, Manus Island', *Sydney Morning Herald*, 5 March 2013.**

<sup>28</sup> United Nations High Commissioner for Refugees, 'Resettlement Assessment Tool: Refugees with Disabilities', April 2013, <http://www.unhcr.org/51de6e7a9.pdf>, Accessed 13 December 2014.

<sup>29</sup> In a Letter to NEDA

## 6. People Living with Disabilities in Australian Immigration Detention

The Convention on the Rights of Persons with Disabilities (CRPD) defines persons with disabilities as those who have 'long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'<sup>30</sup>

NEDA is a strong proponent of the social model of disability, and recognises that societal and environmental factors, rather than an individual's disability, are *disabling* and act as barriers to participation and equality. NEDA also acknowledges that persons with disabilities are not a homogeneous group and that people have different needs and capacities and contribute in their own unique ways to their communities.

Refugees with disabilities are faced with multiple and diverse challenges and are ranked among the world's most vulnerable persons. The United Nations High Commissioner for Refugees (UNHCR) Detention Guidelines<sup>31</sup> states:

'Asylum-seekers with disabilities must enjoy the rights included in these Guidelines without discrimination. This may require States to make "reasonable accommodations" or changes to detention policy and practices to match their specific requirements and needs. A swift and systematic identification and registration of such persons is needed to avoid arbitrary detention; and any alternative arrangements may need to be tailored to their specific needs, such as telephone reporting for persons with physical constraints. As a general rule, asylum-seekers with long-term physical, mental, intellectual and sensory impairments should not be detained. In addition, immigration proceedings need to be accessible to persons with disabilities, including where this is needed to facilitate their rights to freedom of movement'.

People living with disability who are mandatory detained are faced with additional barriers, and therefore are further disadvantaged than others within detention. They have individual and unique support needs that must be met in order to maintain their physical and mental wellbeing and to ensure that they are able to participate in activities while living within detention.

Data relating to people living with disability, their families and carers, in Australian run immigration detention facilities is practically non-existent. NEDA lodged a formal request for information with the Minister for Immigration and Border Protection, and the Department of Immigration and Border Protection (DIBP), and received a letter in response that did not provide specific data on people living with disabilities in immigration detention, yet did assert that:

'Any detainee with a disability is referred for further specialist assessment, diagnosis and support, including the provision of assistive devices such as wheelchairs and hearing aids, as appropriate. Detainees are referred to public services where available or to private providers if required and in line with Australian community standards. Appointments are scheduled commensurate with public waiting lists'.

On a practical level this rarely appears to be the case. Evidence continues to demonstrate that people with disabilities in immigration detention not only face immense challenges, but are not having their basic needs met.

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<sup>30</sup> United Nations, *Convention on the Rights of Persons with Disabilities*, Article 1.

<sup>31</sup> UNHCR Detention Guidelines, 2012, 'Guidelines on the Application Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention', <http://www.unhcr.org/505b10ee9.html> ,



## 6.1 The data: disabled and detained, what do we know?

As at 30 September 2014, there were 268 people living with disabilities in onshore immigration detention facilities of which 219 were adults and 49 were minors; and 114 people living with disabilities at regional processing centres of which 109 were adults and 5 were minors.

<b>Number of People living with Disabilities Detained in Australian Immigration Detention, as at 30 September 2014</b>		
	<b>Onshore</b>	<b>Regional Processing Centres (Manus Island, Nauru)</b>
<b>Adults</b>	219	109
<b>Minors</b>	49	5
<b>Total</b>	<b>268</b>	<b>114</b>

**Table 3: Number of Detained People with Disability in Immigration Detention as of 30th September 2014.**

**Source: Department of Immigration and Border Protection**

The disabilities these people lived with, included:

- Amputation;
- Cognitive (dementia);
- Developmental (Asperger's disorder, autism, developmental delay)
- Functional impairment (reduced mobility, deformity, multiple sclerosis);
- Hearing impairment (hearing loss, deafness);
- Visual impairment (blindness of eye, visual impairment, coloboma); and
- Other (epilepsy and neuralgia)

Detailed data on the ethnicity of people with disabilities in immigration detention is not available, however the top five nationalities identified by the DIBP were<sup>32</sup>:

- Iranian;
- Stateless;
- Afghan;
- Iraqi;
- Pakistani

<sup>32</sup> Source: Department of Immigration and Border Protection, February 2015.

## 6.2 Children with disabilities in Immigration Detention

In July 2014 there were 28 children with disabilities detained in immigration detention, aged between 2 and 17 years old and who on average had spent 11 months detained.<sup>33</sup>

These disabilities these children lived with included:<sup>34</sup>

- Vision disabilities
- Hearing disabilities
- Epilepsy
- Developmental disabilities i.e. developmental delays, autism, reactive attachment disorder, conduct disorder
- Spinal deformity
- Congenital kidney anomaly

In addition, in July 2014 a total of 36 children residing in immigration detention were assessed as having a mental health illness or mental health disorder.<sup>35</sup>

The mandatory detention of children, more specifically children with disabilities, is not only unlawful but abhorrent. The Australian Human Rights Commission's recently published *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2015) thoroughly documents the negative impact that prolonged detention has on children's physical and mental health and details how immigration detention is a dangerous place for children to live in. It provides compelling and numerous accounts of incidents of violence i.e. assault, sexual assault and self-harm, within Australian managed detention centres.

A prominent health care practitioner within the field of refugee health has informed NEDA that in Regional Processing Centres "there is sub-optimal care for children with special needs because of little to no allied health services available, such as physiotherapy, speech therapy, occupational therapy, audiology and dietetics."<sup>36</sup>

Australia's mandatory detention of children is at odds with the Convention on the Rights of the Child, that dictates: 'States have an obligation to take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation that includes sexual abuse Article 19(1)'.

Taking into consideration what is known about the *invisibility* of people living with disabilities within refugee communities, and the prior-mentioned obstacles to disability identification, it is probable that the number of asylum seekers living with disabilities currently detained is underreported.

NEDA would not be surprised if, in fact, the number of asylum seekers with disabilities currently detained was higher than what was reported.

This would most certainly be the case when considering less *visible* disabilities such as developmental delays, autism/Asperger's syndrome and/or developmental delays.

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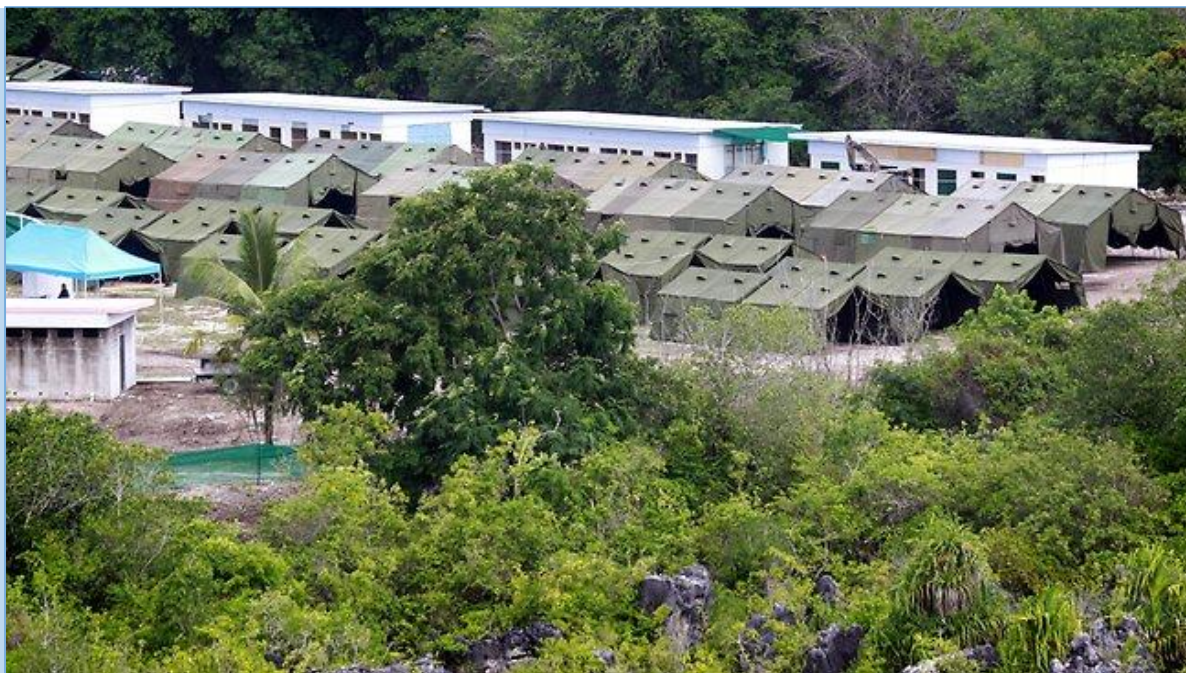
<sup>33</sup> Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* 2014, page 65, Available at: <https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014>

<sup>34</sup> *ibid*

<sup>35</sup> *ibid*

<sup>36</sup> *Personal Correspondence to NEDA*

## 7. Infrastructure and Services for People with Disabilities



**Figure 4: Topside Detention Centre, Nauru**  
**Source: Brad Hunter, News Limited**

The Australian National Audit Office (ANAO) in 2013 stated that there is 'considerable variability' in service delivery standards and services across different detention centres and that 'inconsistency in service provision can lead to tensions within the detainee population'.<sup>37</sup>

Conclusive evidence has demonstrated that those detained on Manus Island and Nauru live in punishing conditions. Overcrowding, little to no privacy, the stifling heat and humidity, and poor toilet and showering facilities makes living in offshore detention centres difficult and exhausting.<sup>38</sup> Over the years these poor conditions has fuelled hunger strikes, roof-top demonstrations, suicide attempts and more recently, riots- resulting in a death.<sup>39</sup> People detained at centres on Christmas Island, Manus Island and Nauru live in more challenging conditions and are exposed to additional diseases due to their tropical locations.

Amnesty International visited Nauru detention Centre in 2012 and concluded that 'there is a toxic mix of uncertainty, unlawful detention and inhumane conditions that are creating an increasingly volatile situation, with the Australian Government failing spectacularly in its duty of care to asylum seekers'.<sup>40</sup>

<sup>37</sup> The Auditor- General, *Individual Management Services Provided to People in Immigration Detention* Canberra (11 February 2013) Australian National Audit Office, At: <http://www.anao.gov.au/~media/Files/Audit%20Reports/2012%202013/Audit%20Report%2021/201213%20Audit%20Report%20No%2021.pdf>

<sup>38</sup> Australian Human Rights Commission, 'Immigration detention on Christmas Island: Report', 2010, At: [https://www.humanrights.gov.au/sites/default/files/content/human\\_rights/immigration/idc2010\\_christmas\\_island.pdf](https://www.humanrights.gov.au/sites/default/files/content/human_rights/immigration/idc2010_christmas_island.pdf)

<sup>39</sup> Brewster, K & Richards, D 'Manus Island Riot: Asylum seeker speaks of witnessing Reza Berati's death', *Australian Broadcasting Corporation*, 4 April 2014, At: <http://www.abc.net.au/news/2014-04-04/manus-island-asylum-seekers-witness-statements-reza-berati-death/5367118>

<sup>40</sup> Amnesty International, *What We Found on Nauru*, 17 December 2012, At: <http://www.amnesty.org.au/refugees/comments/30726/>

## 7.1 Accessibility Issues

The Department of Immigration and Border Protection (DIBP) has failed to ensure detention centres, both onshore and offshore, have been modified or made accessible for detained asylum seekers living with disability.

People with disabilities may require 'reasonable accommodations' to be made to enable access to facilities and services.

When taking into consideration what is known about the physical design of the facilities, and the environment in which people reside in within many of the detention centres, it becomes apparent that the needs of people with disability, particularly mobility disabilities, have not been taken into consideration.

Temporary facilities such as demountable dongas or large tents are often used to house asylum seekers in offshore centres. Stairs leading to buildings and/or uneven dusty (or muddy) surfaces would make it impossible for people with physical disabilities to independently mobilise around the detention centres.



**Figure 5: Shower Facilities at Manus Island.**

**Source: Confidential Photographer, Sarah Hanson-Young's Office, at: <http://sarah-hanson-young.greensmps.org.au/content/photo-galleries/photographs-inside-manus-island-detention-centre>**



This would be amplified by the muddy and wet conditions in offshore detention centres because of their tropical location.

A group of 15 Doctors working for *The International Health and Medical Services* (IHMS) penned a 'letter of concern' to their employer detailing the failings of medical procedure inside Australian run detention centres.

In regards to Christmas Island, they stated that it was:

'unsuitable for any person living with significant intellectual or physical disability. The detention environment exacerbates their burden of care and the facilities and medical services provided are inadequate to accommodate their needs'.<sup>41</sup>

The doctors penning the letter of concern provided a case study detailing the circumstance of a young woman living with cerebral palsy who relied on a wheelchair for mobility, stating 'she was flagged by several medical officers from her arrival as not suitable for the detention environment', and concluded that although exhibiting signs of mental distress she was not transferred out of the facility.

NEDA is disappointed to learn that people living with disability in immigration detention do not have the same opportunities, as other people without disability, to access supports and services that are available to them.

**Case study 1:**  
**Inadequate Access to Medication**

A 3 year old girl had a significant developmental delay and had been diagnosed with a serious neurological condition in infancy.

In her country of origin, she had responded positively to oral medication and invention from allied health professionals.

While being detained on Christmas Island she had inconsistent access to her medication (i.e. there was no weekend dispensing services), and no access to allied health services; this lead to significant deterioration in her level of function.

**Source:** Health Professional working within  
**the detention system**

<sup>41</sup>. Christmas Island Medical Officer's Letter of Concerns', For Review by International Health and Medical Services Management and Executive, November 2013, At: <http://www.theguardian.com/world/interactive/2014/jan/13/christmas-island-doctors-letter-of-concern-in-full>

## 7.2 Lack of Access to Necessary Aids, Equipment and Medication

### **Case study 2: Delayed access to aids, and little access to allied health**

A young boy with profound hearing loss, and his family, had been detained on Christmas Island since July 2013. The boy arrived on Christmas Island when he was 3 years old; upon arrival his cochlear implant, which was obtained in his home country, stopped working.

The boy and his family were flown to mainland Australia in late October 2013 for this to be investigated, and the hearing device was subsequently repaired in November.

The young boy's mother reported that in the four months that the cochlear implant needed to be repaired, her son's expressive language started to decrease in the number of words he would say. The cochlear implant needed to have an external cable replaced, which resulted in it requiring a simple repair.

In the 18 months since the family have been in detention, they have only accessed about a dozen speech and language therapy sessions.

These sessions are with a speech pathologist who does not have previous experience or knowledge of working with children who are hearing impaired. The boy receives no other early intervention support

**Source:** Consent has been obtained from the family through a refugee advocate who supports them.

Without suitably modified aids and equipment (e.g. mobility aids), people with disability detained in immigration detention are prevented from communicating, being independent, and from undertaking daily tasks associated with everyday living and therefore typically require greater support or assistance.

Responding to questions pertaining to people with disability in immigration detention, the Department of Immigration and Border Protection (DIBP) confirmed that:

'if there is a particular program or modification that are required, that is what our specialist health providers are responsible for. They would simply make a request if a kid, for example, needed a particular therapy aid, some kind of mobility device or some kind of developmental tool. In pretty much all cases, it would be provided'.<sup>42</sup>

Unfortunately, NEDA is concerned that all too often this is not the case. It has been documented that medications, assistance aids and equipment have been removed from asylum seekers arriving to Australia by boat.

On one particular occasion the loss (and non-replacement) of a hearing aid saw an unaccompanied child develop self-harming behaviours.<sup>43</sup>

The previously mentioned *Letter of Concern* written by fifteen IHMS Doctors states that patients are 'begging for treatment', and that 'medications have been discarded without being recorded. Glasses, hearing aids and prosthetics are confiscated and often destroyed'<sup>44</sup>.

<sup>42</sup> Australia, Parliament, *Legal and Constitutional Affairs Legislation Committee: Immigration and Border Protection Portfolio*, Senate Thursday, 27 November 2014, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fef1fb46ef-5ee3-49d0-b9df-acb16ec5285c%2F0001%22>, Accessed 6 January 2015.

<sup>43</sup> Sanggaran, J.P, Ferguson, G.M & Haire, B.G, *Ethical challenges for doctors working in immigration detention*, *The Medical Journal of Australia*, 2014, 201 (7): 377, 378.

The letter also documents that asylum seekers must queue for up to three hours for medication with some having to 'queue four times a day'.<sup>45</sup>

Two doctor's working at Christmas Island, Dr Fergusson and Dr Grant, informed the Human Rights Inquiry into Children in Detention in July 2014 of their knowledge of a three year-old girl who had medications removed from her when she arrived to Australia.

Dr Fergusson stated:

'after her medications were destroyed, health services on Christmas Island could only provide her with one of the two medications she needed...she started having seizures...We eventually got supply of that medication she arrived with, but they only ordered a month's worth so in a few weeks time they ran out and she was back to one (medication) again, and this whole time she was having seizures'.<sup>46</sup>

It also appears that there are no slings, hoists or manual handling equipment available for use within offshore detention centres.<sup>47</sup>

Again, this lack of necessary aids, basic equipment and vital medication not only strips independence from a people with disability, but also forces carers to perform risky and dangerous lifting and manoeuvring activities while caring for loved ones or people with disability.

This places all involved at significant risk of injury.

### Case study 3: Life inside Nauru Detention Centre

My family and I travelled to Christmas Island by boat from Indonesia. On route, the boat broke down, everyone nearly drowned and 5 people lost their lives. 101 people were saved, including me and my family. This was a severe trauma, but unfortunately, we never even succeeded in seeing a psychologist.

About the conditions on the island of Nauru, here we live in marquees and due to being close to the equator, the weather on the island is very hot. And we can only use fans. At times, during the day, we have no electricity and we cannot even use the fan. The weather here is so hot that if you sit outside in the sun for a period of time, you lose consciousness.

Regarding health, we do not have many facilities here. We have many physical and mental issues, but nothing is done about them.

We need to speak to psychologists and many people need surgery to treat physical problems, but as the doctors here says, if the list of ill people here that need to be sent to Australia is given to Immigration, this department will refuse all and will not allow easy exit from Nauru, even for treatment.

Every month, when ever go to IHMS, they only repeat one sentence: Drink more water.

My eyes are getting weaker every day, but no optician will ever visit this island and the nurses say you can hope that they may come next year.

**Source:** Excerpts from a letter, written by a 16 year old detained on Nauru, submitted to the AHRC's Inquiry into Children in Detention

**At:**

<https://www.humanrights.gov.au/sites/default/files/Submission%20No%2091%20-%20Name%20withheld%20-%2016%20year%20old%20detained%20in%20Nauru%20OPC.pdf>

<sup>44</sup> 'Christmas Island Medical Officer's Letter of Concerns', For Review by International Health and Medical Services Management and Executive, November 2013, At: <http://www.theguardian.com/world/interactive/2014/jan/13/christmas-island-doctors-letter-of-concern-in-full>

<sup>45</sup> *ibid*

<sup>46</sup> 'Girl 'had fits' after medicine removed', *Sky News Australia*, 31 July, 2014, At: <http://www.skynews.com.au/news/top-stories/2014/07/31/girl--had-fits--after-medicine-removed.html>

<sup>47</sup> 'Christmas Island Medical Officer's Letter of Concerns', For Review by International Health and Medical Services Management and Executive, November 2013, At: <http://www.theguardian.com/world/interactive/2014/jan/13/christmas-island-doctors-letter-of-concern-in-full>

#### Case Study 4: Inadequate access to specialists

An 8 year old girl with a profound disability and who used a wheelchair arrived to Christmas Island by boat. No formal diagnostic assessments or tests had been undertaken to assess her four limb spasticity or severe developmental delay.

The GP on Christmas Island made a presumptive diagnosis of phenylketonuria (PKU), which is a serious metabolic disorder that can be effectively managed by a specialised diet. The specialised diet was commenced and a paediatrician review was arranged on the mainland. The specialist appointment was cancelled after it was discovered that the family could not be transferred off Christmas Island until their chest ex-rays were reported (it took over three weeks for the x-ray reports to arrive).

After subsequent review, the girl was diagnosed with a rare disease which did not require dietary modification. If she had been diagnosed with PKU, accessing a modified diet would have been problematic and difficult to implement due to inexperienced catering staff and lack of access to specialised formulas/supplements or a dietician.

Regardless of her diagnosis, the young girl and her family would have significantly benefited from a prompt and correct diagnosis and multidisciplinary interventions such as physiotherapy, occupational therapy, speech therapy, psychology, dietetics and genetic counselling.

**Source:** A Health Professional working within the Detention System

### 7.3 Lack of Access to Healthcare and Allied Health

As previously stated, access to (and delivery of) services appear to differ depending on the location of the detention centre.

Asylum seekers detained on Manus Island and Nauru face several environmental and infrastructure inadequacies that put their health at risk.<sup>48</sup>

The Royal Australasian College of Physicians have stated:

‘while the Australian Government has committed to providing health care services that are “broadly comparable with health services available within the Australian community” the RACP is concerned that this standard is often not met due to environmental factors in regional processing centres located in PNG and Nauru.<sup>49</sup>

The RACP argues that people detained in RPC’s are exposed to environmental and infrastructural deficiencies that negatively affect their health<sup>50</sup>, such as:

- Limited access to adequate psychiatric care
- Lack of meaningful activity
- An increased risk of malaria and Communicable diseases (e.g. tuberculosis, Hepatitis A and typhoid)
- Lack of access to clean drinking water
- Lack of medical accountability and the absence of performance measures
- Limited capacity for health care professionals to act autonomously

<sup>48</sup> Talley, N ‘Harming the health of refugees for the sake of stopping boats’, *The Conversation*, 26 August 2013, At: <http://theconversation.com/harming-the-health-of-refugees-for-the-sake-of-stopping-boats-17407>

<sup>49</sup>The Royal Australasian College of Physicians, ‘*Submission to the Australian Human Rights Commission Inquiry into Children in Immigration Detention*’, 2014, At: <https://www.humanrights.gov.au/sites/default/files/Submission%20No%20103%20-%20Royal%20Australasian%20College%20of%20Physicians.pdf>

<sup>50</sup> The Royal Australasian College of Physicians, ‘Statement on the health of people seeking asylum’, August 2013, At: <https://www.racp.edu.au/page/asylum-seekers>



A whistle-blower, General Practitioner Dr John Vallentine who worked on Manus Island in April 2013 for International Health and Medical Services (IHMS), provided insight into the inadequate delivery of health services:

‘There was a sense of unseemly haste about it all but I fell in with the spirit of things. As time passed, however, I found my requests to IHMS for equipment and drugs were receiving no action. Simple things, oxygen, Foley’s catheters, yankeur suckers, paediatric antimalarials, parenteral antibiotics, fentanyl, vecuronium, morphine, corneal burrs, portable haemaccues to name but a few- just didn’t turn up. IHMS sent boots and uniforms but the important stuff was not arriving. During that time I was becoming increasingly concerned about our ability to manage children in the remote and quite unforgiving environment. We had no blood transfusion, no paediatric-trained staff, no X-ray equipment, no paediatric emergency facilities. And for paediatric emergency cases, a 24-hour air transfer delay was unacceptable’.<sup>51</sup>

Sadly, it could be argued that the lack of access to adequate health care can be best understood by examining the death of Hamid Kehazaei, who was detained on Manus Island.

Mr Kehazaei was an Iranian asylum seeker who, while detained on Manus Island, obtained a cut to his foot; his cut was initially left untreated. His condition worsened and he was later transported to, and sadly died in, a Brisbane hospital. Mr Kehazaei died from preventable septicaemia.<sup>52</sup>

NEDA would also like to express concerns that it appears no early health intervention services are able to be accessed by children, or people living with disability, while detained within immigration detention.



**Figure 6: Living arrangements on Nauru, 2012**  
**Source: Australian Human Rights Commission**

<sup>51</sup> Rau, C., ‘Detention healthcare tossed overboard’, *Australian Broadcasting Corporation*, 5 September 2014, At: <http://www.abc.net.au/news/2014-09-05/rau-detention-healthcare-tossed-overboard/5722036>

<sup>52</sup> *Australian Broadcasting Corporation*, ‘Scott Morrison rejects negligence claim over brain dead asylum seeker Hamid Kehazaei’, 5 September 2014, At: <http://www.abc.net.au/news/2014-09-05/scott-morrison-reject-negligence--hamid-kehazaei-manus-island/5721848>

## 7.4 Lack of Access to diverse language and communication supports

NEDA is aware that the Department of Immigration and Border Protection (DIBP) provides an interpreting service for people in immigration detention via the Translating and Interpreting Service (TIS).

However it is apparent that asylum seekers with disabilities who have unique, diverse or non-verbal means of communicating are not having their basic communication needs met.

NEDA is disappointed to discover that there have been instances where people have been negatively affected by inadequate access to interpreters while detained in immigration detention. For example, confusion has arisen around medication self-administration because interpreters were not utilised during medication dispensing.<sup>53</sup>

Case Studies 2 & 5 illustrate how people with alternative or non-verbal means of communicating were not provided with the necessary and vital communication supports fundamental to facilitating basic information transfer.

In Case Study 5, it is evident that the family were not provided with appropriate language and communication supports and therefore were not only uninformed of general immigration detention system processes, programs and supports that may have been available to them, but were also unable to communicate or self-advocate to immigration and health staff. They were affectively silenced.

NEDA is of the opinion that the Australian Government has failed to ensure that people with disabilities in immigration detention with alternative or non-verbal means of communicating are appropriately supported or are having their basic human rights upheld.

It appears that these cohorts of people are further disadvantaged as a direct result of their disabilities or language background.

### **Case study 5: Unsatisfactory access to interpreters and health specialists**

An 18 month old hearing impaired child who had profoundly deaf parents had been detained on Christmas Island for approximately 8 months. The child's parents had never had access to an appropriate sign language interpreter and had felt unable to communicate with Government or health staff. They were very anxious that they were unable to hear if their baby was distressed or crying.

The parents' hearing aids had been damaged on the boat journey to Australia and the child's hearing aids had been outgrown. Neither the child, nor the parents had access to a hearing test or replacement aids whilst on Christmas Island. The child had not had genetic testing or a formal audiology assessment; no investigations had occurred to exclude associated conditions or assess other senses.

The parents were concerned not to conceive another baby as they were aware of the genetic risk but had not access to accurate information pertaining to this. The family had not been linked with any deaf community supports and were therefore extremely isolated.

The family were eventually transferred to a more appropriate detention placement only after strong advocacy from health practitioners. The delay in assessment and specialist intervention occurred at a critical time in her development and may lead to long term communication and developmental challenges.

**Source:** Case Study provided by a Health Practitioner working in the detention system

<sup>53</sup> Christmas Island Medical Officer's Letter of Concerns', For Review by International Health and Medical Services Management and Executive, November 2013, At: <http://www.theguardian.com/world/interactive/2014/jan/13/christmas-island-doctors-letter-of-concern-in-full>

## 7.5 Lack of Support for Families/Carers

NEDA has significant concerns regarding the lack of appropriate support services and/or respite available for carers or family members of people with disability within immigration detention.

The stress brought about by being detained, coupled with a lack of formal support services, informal support networks (i.e. family members, friends, communities) and an inability to access respite support results in carers or caregivers being inadequately supported in their caring role.

Carers are not able to fully support people living with disability in detention.

In 2012, the media reported of how two profoundly disabled girls, aged nine and fifteen were detained along with their families/carers detained in a Darwin detention facility and were not receiving appropriate support.<sup>54</sup>

Both girls lived with cerebral palsy and utilised wheelchairs for mobility purposes. One of the girl's mother Nasrin stated 'they don't have any adequate facility here for this type of children'.<sup>55</sup> The mothers communicated that their daughters' conditions had deteriorated rapidly as a result of inadequate medical care and support.

An advocate for the families argued that 'both the girls really need a carer to assist them with everyday tasks like going to the toilet, bathing and to assist the mothers with lifting them in and out of the wheelchairs'.<sup>56</sup>

The then Department of Immigration reportedly responded by stating:

'they are providing the relevant care and support for the children through excursions and special education at school. But the parents of disabled children are also expected to provide a level of primary care, as is the case in the community'.<sup>57</sup>

It is known that there is an enormous pressure placed on parents or caregivers in immigration detention.

In addition, mental health challenges brought about by being detained such as post-traumatic stress disorder (PTSD), depression and anxiety impacts negatively on an individual's capacity to care for, and respond to, the needs of their loved one.

This pressure would be significantly enhanced for carers or family members of people with disability, as they would be attempting to meet the disability related needs of their loved ones with little to no support, and often to no avail.

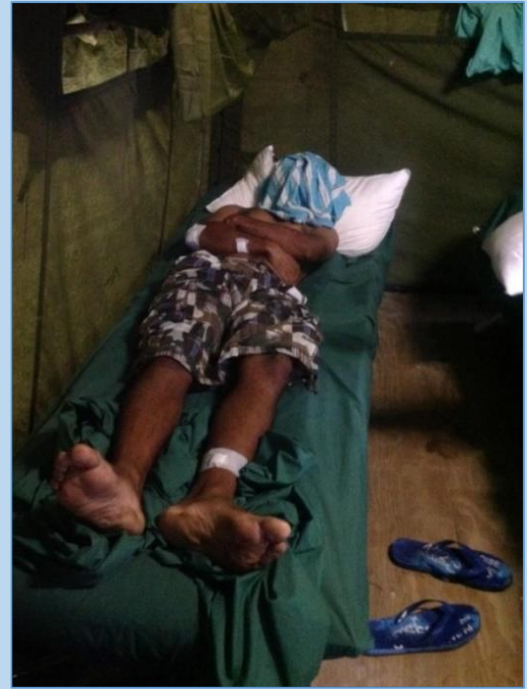
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<sup>54</sup> O'Brien, K 'The plight of a family in immigration detention with two severely disabled children', *Lateline*, 21 November 2012, At: <http://www.abc.net.au/lateline/content/2012/s3638188.htm>

<sup>55</sup> *ibid*

<sup>56</sup> *ibid*

<sup>57</sup> *ibid*



**Figure 7: Men detained on Manus Island.**  
**Source: Photographer confidential, Senator Hanson-Young's Office.**

## 8 The impact of indefinite detention

As previously stated, regarding mandatory detention, The United Nations Human Rights Committee has repeatedly found Australia to be in breach of its international obligations of the *International Covenant on Civil and Political Rights (ICCPR)*.<sup>58</sup>

NEDA acknowledges the overwhelming consensus<sup>59</sup> that confirms prolonged detention in isolated locations, uncertainty regarding the outcome of asylum seeker claims, and little access to health and social services has severe and negative effects on people's mental and physical health.<sup>60</sup>

Furthermore, it is important to recognise the large body of literature that identifies how mandatory detention is linked to an increased prevalence of post-traumatic stress disorder, suicidal ideation, self-harm, depression and anxiety, and long-term damage to one's social and emotional functioning.<sup>61</sup>

Additionally, numerous reports detail the inadequate conditions in immigration detention centres. On a whole, the remote locations of many of the centres, coupled with overcrowding and poor accommodation/infrastructure has a detrimental impact on the physical and mental wellbeing of asylum seekers.

<sup>58</sup> Office of the High Commissioner for Human Rights, 'Australia's detention of 46 refugees 'cruel and degrading' UN Rights experts find', 22 August 2013, At:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13648&LangID=E>

<sup>59</sup> The Royal Australasian College of Physicians, 'Statement on the Health of People Seeking Asylum', August 2013, At: <https://www.racp.edu.au/page/asylum-seekers> .

<sup>60</sup> Newman, L., Dudley, M. & Steele, Z, 'Asylum, Detention, and Mental Health in Australia, 2008, *Refugee Survey Quarterly*, vol. 27, no. 3.

<sup>61</sup> The Royal Australasian College of Physicians, 'Statement on the Health of People Seeking Asylum', August 2013, At: <https://www.racp.edu.au/page/asylum-seekers>



After visiting Nauru detention centre in 2013, the UNHCR concluded that ‘the conditions at the RPC, coupled with the protracted period spent there by some asylum-seekers, raise serious issues about their compatibility with international human rights law, including the prohibition against torture and cruel, inhuman or degrading treatment’.<sup>62</sup>

The Royal Australasian College of Physicians (RACP) in their submission to the *Australian Human Rights Commission Inquiry into Children in Immigration Detention (2014)* expressed its concern with mandatory detention, writing:

‘the experience of detention for children, parents and families has a significant and long-term negative impact on the physical and mental health, and development of children and adolescents. Although the provision of services within detention may mitigate some of the risk of held detention, it does not address the primary harm, which is the fact of being detained...Reactive mental health services do not address the environmental or policy factors contributing to mental health problems’.

NEDA has fears for the long-term health and wellbeing of people living with disability within immigration detention.

Inappropriate or inadequate access to basic amenities, poor health care and limited allied health and specialists supports not only profoundly impacts negatively on one’s mental health, but also denies vital therapies that, in the long term can promote rehabilitation, or enhance communication or physical capabilities.



**Figure 8: Asylum Seekers Protesting on the Roof at Christmas Island Detention Centre, Source: The Courier Mail**

<sup>62</sup> UNHCR, UNHCR Monitoring Visit to the Republic of Nauru 7-9 October 2013 (26 November 2013), At: <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf?COLLCC=746182653&>

## 9 Upholding Dignity and Privacy

When taking into consideration the well documented lack of access to relevant health and social services and supports, the inappropriate and inadequate housing and/or facilities for people with disabilities in immigration detention, and what we know about some of the daily operations of Australian run facilities, it becomes apparent that the Australian Government is not upholding people's rights to dignity and privacy.

This is in breach of the ratified conventions as set out under the UNHCR and the CRPD.

Evidence demonstrates that people in immigration detention, especially people living with disability, have little to no right to privacy (i.e. closed clustered living and showering environments) and are not being afforded basic levels of respect or ethical treatment.<sup>63</sup>

As previously stated, people with disability in immigration detention are at increased risk of being dehumanised, degraded, humiliated and objectified that non-disabled people who are detained. This is more so for children who living with disability.

After visiting Nauru in 2013, Amnesty International Australia concluded that asylum seekers living in tents have 'no privacy, and barely have any room between the stretcher beds'.<sup>64</sup> In regards to the living conditions on Manus Island, Amnesty International Australia is of the opinion that the:

'deliberately harsh, humiliating conditions at the facility were designed to pressure asylum seekers to return to their country of origin, regardless of whether or not they were refugees'.<sup>65</sup>

Furthermore, evidence has surfaced<sup>66</sup> that there is a culture within IHMS of staff and other professionals referring to people detained at Christmas Island by the boat numbers on which they arrived.

In reference to this, a doctor on Christmas Island stated that 'Patients have also expressed their distaste for this practice. There is an example of a Muslim asylum seeker that has drawn the Jewish Star of David onto his shirt with his identification number written underneath it'.<sup>67</sup>

People detained in immigration detention, particularly those on Manus Island or Nauru, are further subjected to trauma by being forced to live in inhumane and degrading environments, and consequently have been denied their fundamental right to privacy, and more horribly, their individual dignity.

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<sup>63</sup> *ibid*

<sup>64</sup> Amnesty International, *What we found on Nauru*, 2012, At: <http://www.amnesty.org.au/refugees/comments/30726/>

<sup>65</sup> Amnesty International Australia, *The Truth About Manus Island, 2013 Report*, 2013, At: <http://www.amnesty.org.au/refugees/comments/33587/>

<sup>66</sup> Christmas Island Medical Officer's Letter of Concerns', For Review by International Health and Medical Services Management and Executive, November 2013, At: <http://www.theguardian.com/world/interactive/2014/jan/13/christmas-island-doctors-letter-of-concern-in-full>

<sup>67</sup> *ibid*

## 10 Truth and Transparency

In his influential *Politics and the English Language* (1946) George Orwell argued that political language 'is designed to make lies sound truthful'.<sup>68</sup> This is surely the case when examining, over the last two decades, the dialogue of the media and both major political parties around asylum seeker and refugee issues.

The emotive language and semantics used to shape public opinion and drive policy have not only disadvantaged people who arrive seeking asylum, but has also harmed Australia's international reputation; to many, it would appear that this process has been driven by political ambition.

NEDA is considerably troubled by the ongoing secrecy and lack of transparency pertaining to mandatory detention in Australia, especially regarding the *Operation Sovereign Borders* campaign, led by the Australian Defence Force, aimed at stopping the arrival of people by boat seeking asylum.

### 10.1 The Suppression of Information and Management of the Media

Historically, Australian Governments have been very reluctant to allow the press and media full access to report on mandatory detention practices and the detention of asylum seekers.

More recently however, the current Federal Government has tightened its control over, and management of, the reporting of asylum seeker issues so profoundly that serious concerns have been raised around the censorship of information<sup>69</sup> and assaults on press freedom.<sup>70</sup>

Not only has the Government actively blocked journalists from visiting some detention centres,<sup>71</sup> but there have been instances where journalists reporting on detention centre events, e.g. riots at Manus Island, have had their cameras confiscated or been forced to delete photographs off their camera.<sup>72</sup>

Furthermore, on a number of occasions the Government has requested the Australian Federal Police (AFP) investigate whistle-blowers and leaks of information. For example, recently the DIBP requested the AFP to investigate the anonymous *Save the Children* staff who made a confidential submission to the Australian Human Rights Commission Inquiry detailing the medical neglect, sexual and physical abuse of children in immigration detention.<sup>73</sup>

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<sup>68</sup> Orwell, G 'Politics and The English Language', 1946, p.9 At: <https://www.mtholyoke.edu/acad/intrel/orwell46.htm>

<sup>69</sup> Dyett, G, 'Failed push for media access to detention centres', *Special Broadcasting Service*, 26 August 2013, At: <http://www.sbs.com.au/news/article/2013/02/11/failed-push-media-access-detention-centres>

<sup>70</sup> Muller, D 'A deafening silence: the media's response to asylum secrecy', *The Conversation*, 23 October 2013, At: <http://theconversation.com/a-deafening-silence-the-medias-response-to-asylum-secrecy-19322>

<sup>71</sup> Pynt, B 'We need to see Manus Island', *The Sydney Morning Herald*, February 24 2014, At: <http://www.smh.com.au/comment/we-need-to-see-manus-island-20140224-33bk1.html>

<sup>72</sup> Callinan, R., 'Manus Island, How information is kept 'under control'', *The Age*, February 25 2014, At: <http://www.theage.com.au/comment/manus-island-how-information-is-kept-under-control-20140225-33eob.html>

<sup>73</sup> Doherty, B. 'Police investigate Save the Children whistleblowers over Nauru abuse report', *The Guardian*, 4 March 2015, At: <http://www.theguardian.com/australia-news/2015/mar/04/police-investigate-save-the-children-whistleblowers-over-nauru-abuse-report>

The previous Minister for Immigration has defended the Government's secrecy around events pertaining to mandatory detention, stating that disclosing information would impede the Government's ability to stop the boats,<sup>74</sup>, arguing 'it's not secrecy for secrecy's sake, it's secrecy with a purpose and that's to protect the operations we undertake'.<sup>75</sup>

Regarding the recent crackdown on transparency pertaining to asylum seeker issues, The Prime Minister Tony Abbott stated 'I'd rather be criticised a bit for being a bit of a closed book on the issue, and actually stop the boats'.<sup>76</sup>

In addition, The Prime Minister has further defended its approach to managing the release of information about asylum seeker issues by likening Operation Sovereign Borders to being at war.<sup>77</sup>

NEDA condemns the restrictions place on, and state secrecy around, the reporting of asylum seeker issues. This suppression of information and government censorship challenges basic free speech principles and prevents the wider community from being informed about policies and practices affecting asylum seekers.

NEDA supports the views of Ben Pynt, Director of Human Rights Advocacy at Humanitarian Research Partners:

"The claims of advocates, which have been verified by mainstream media, are so wildly divergent to the Government's version of events that they hardly coincide at all. In a free and democratic society, we must demand better. If the Prime Minister stands behind freedom of speech, he must end the policy of secrecy that is enabling human rights abuse, and allow journalists to document conditions of detention".<sup>78</sup>

## 10.2 Use of the Term 'Illegal'

Asylum seekers do not break any Australian laws simply by arriving by boat. A person seeking asylum is permitted, under international law, to enter Australia without prior authorisation. Article 31 of the 1951 Refugee Convention recognises that asylum seekers are exempt from traditional immigration processes because they are in an emergency situation.

Therefore, referring to asylum seekers as 'illegal' is inaccurate, inflammatory and highly misleading especially when considering that asylum seekers have not committed a crime or broken any Australian or international law.

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<sup>74</sup> Kirk, A. 'Scott Morrison defends secrecy around Operation Sovereign Borders', *PM on ABC*, January 31 2014, <http://www.abc.net.au/pm/content/2013/s3935974.htm>, Accessed 19 December 2014.

<sup>75</sup> Australian Broadcasting Corporation, 'Scott Morrison says he will stop holding weekly asylum seeker briefings', 4 Feb 2014, At: <http://www.abc.net.au/news/2014-01-14/scott-morrison-says-he-will-stop-holding-weekly-asylum-seeker-b/5200158>

<sup>76</sup> Australian Broadcasting Corporation, 'Tony Abbott happy to be a 'closed book' on boarder operations as Labor demands details on asylum boat turn-backs', 4 February 2014, At: <http://www.abc.net.au/news/2014-01-09/indonesian-military-chief-discussed-boat-turnbacks-with-adf-boss/5191486>

<sup>77</sup> Swan, J 'Tony Abbott compares secrecy over asylum seekers to war time', *The Sydney Morning Herald*, January 10 2014, At: <http://www.smh.com.au/federal-politics/political-news/tony-abbott-compares-secrecy-over-asylum-seekers-to-war-time-20140110-30lyt.html>

<sup>78</sup> Pynt, B 'We need to see Manus Island', *The Sydney Morning Herald*, February 24 2014, At: <http://www.smh.com.au/comment/we-need-to-see-manus-island-20140224-33bk1.html>



In October 2013 the coalition Government directed the Department of Immigration and Border Protection (DIBP) to formally change descriptive language in reference to asylum seekers. The Immigration Minister instructed asylum seekers to be referred to as 'Illegal Maritime Arrivals', people within onshore immigration detention facilities as 'detainees' and people detained in offshore detention facilities as 'transferees'.<sup>79</sup>

This change of language and terminology, coupled with the adoption of and secrecy around the Operation Sovereign Borders military campaigns, purposely communicates to Australians that asylum seekers are criminals who are illegal, unwanted and something to fear.

As a result, it further dehumanises and marginalises people who are already persecuted and vulnerable. Regarding Australia's hard-line approach to asylum seekers, Former Liberal Prime Minister Malcolm Fraser believed that Australia's major political parties are engaged in a 'race to the bottom', and use fear to fuel the debate over asylum seekers, while 'playing politics with the lives of refugees'.<sup>80</sup>

This current use of language by Government in Australia and subsequent descriptions around asylum seekers cannot be contained to the mandatory detention realm; it has real chances of spilling over into - and negatively impacting on - other domains in public and cultural life. This acts as a barrier and impediment to a multicultural and inclusive Australia.



**Figure 9: Posters from the Government's 2014 'No way. You will not make Australia Home' Campaign.**

**Source: Australian Customs and Border Protection Service**

<sup>79</sup> Obtained through a Freedom of Information Request

<sup>80</sup> Coorey, P, 'Former PM Fraser to campaign for Greens', *Financial Review*, 03 July 2013, <http://www.afr.com/p/national/former-pm-fraser-to-campaign-for-vdtwmdwF6lObkr3v2pFGZO>, Accessed 13<sup>th</sup> January 2015.

## 11 Conclusion

Mandatory detention policies and practices within Australia have not only received significant and overwhelming criticism and condemnation, but have also subjected vulnerable and persecuted people to state-sanctioned cruelty and indignity.

Successive Governments have been actively engaged in both wedge and dog-whistle politics using asylum seekers as political tools by preying upon, and conjuring up, deep and long running racist fears within the wider community. Labelling people who arrive by boat as *illegal* and a *threat* to our national security further adds to the demonisation of asylum seekers.

Recently, the Governments inaccurate and contrived links between potential acts of terrorism and people from humanitarian backgrounds is just another example of this purposeful dehumanisation.

The United Nations, along with numerous other international organisations have been vocal with their criticism of mandatory detention policies and practices, and have clearly demonstrated how Australia is not meeting its human rights obligations.

It is also known that indefinite mandatory detention, coupled with detaining people in gruelling and cruel conditions, has profoundly negative consequences for people's physical health, and for their long-term mental health and wellbeing.

This, unfortunately, is only exacerbated for detained people living with disability. This research has demonstrated that people living with disabilities detained within immigration detention are not having their basic, let alone disability related, needs met. Successive Australian Governments have failed to protect the rights of asylum seekers living with disability.

Additional barriers to equity and participation such as improper disability assessments; inadequate access to medications and specialists and/or allied health professionals; inaccessible facilities and programs; lack of access to diverse language and communication supports; and the non-existent support for carers, sees people living with disabilities in immigration detention (and their families/carers) further discriminated against and marginalised.

Furthermore, this research has demonstrated that Australian run detention centres, particularly those on Christmas Island, Nauru and Manus Island, do not have the capacity or expertise to meet the specific needs of people living with disabilities.

Most importantly, NEDA does hope the Government takes into consideration the recommendations of this research.

NEDA will continue to advocate and lobby to Government and relevant Ministers in order to achieve better outcomes for people living with disabilities detained in Immigration Detention.

## Recommendations

### [Recommendation 1](#)

NEDA calls for immediate legislative change to abolish the mandatory detention of people living with disabilities. This includes retrospective legislative change ensuring that all people living with disability are transferred out of closed detention centres.

### [Recommendation 2](#)

NEDA urges that the Australian Government abolishes Mandatory Detention and Third Country Processing policies and begins processing all asylum seekers arriving by boat in a more humane, timely, cost-effective and respectful manner that is in line with Australia's international Human rights obligations. NEDA proposes the Community Detention model as a more suitable alternative. If mandatory non-reviewable detention policy remains, legislative change needs to occur to ensure people living with disabilities are not being detained in remote centres.

### [Recommendation 3](#)

NEDA urges the establishment of an independently disability advisory group to monitor the appropriateness of detention for people living with disability (and possibly examine the disability related barriers to the refugee status determination process).

### [Recommendation 4](#)

If this, and successive Governments, are to continue policies of mandatory detention and third country processing, NEDA is of the opinion that the assessment process for people with disability be completely revised and includes the comprehensive expertise of allied health professionals.

### [Recommendation 5](#)

If this, and successive Governments, are to continue policies of mandatory detention and third country processing, then NEDA expects all people, particularly those living with disability, have more adequate access to health practitioners, allied health professionals, medications and early intervention.

### [Recommendation 6](#)

If this, and successive Governments, are to continue policies of mandatory detention and third country processing, NEDA urges the Government to ensure all facilities and programs within detention centres be made accessible to all people living with disability.

### [Recommendation 7](#)

If this, and successive Governments, are to continue policies of mandatory detention and third country processing, NEDA insists that appropriate aids/equipment, assistance technology and 'reasonable adjustments' are provided to detained people living with disability.

### [Recommendation 8](#)

If this, and successive Governments, are to continue policies of mandatory detention and third country processing, then NEDA expects all people, particularly those living with disability, are provide appropriate language and communication supports.

### [Recommendation 9](#)

If this, and successive Governments, are to continue policies of mandatory detention and third country processing, then carers and/or family members of people with disability are to receive adequate support and assistance.

### [Recommendation 10](#)

NEDA is of the view that if this, and successive Governments, are to continue policies of mandatory detention and third country processing, then they are to drastically improve the living conditions and service delivery standards within detention centres in an effort to improve quality of detained life and as a way of restoring people's right to dignity.

NEDA endorses all the benchmarks stated in the Australian Human Rights Commission's *Human Rights standards for immigration detention* (2013).

### [Recommendation 11](#)

If this, and successive Governments, are to continue policies of mandatory detention and third country processing, then they are to ensure full transparency around asylum seeker issues. NEDA believes that journalists and advocates should have access to Australian run detention centres as a way of documenting detention centre practices and the experiences of asylum seekers who are detained. NEDA foresees that this transparency would not only bring about increased levels of accountability, but would also ensure that the wider community is kept informed with accurate and relevant information.

### [Recommendation 12](#)

NEDA proposes that all political parties in Australia move away from the promotion of wedge politics and related policies that are designed to create conflict and division within society through the dehumanisation of refugees and humanitarian entrants. NEDA recommends that an important first step would be changing the language used in relation to asylum seeker issues, e.g. 'illegal', in both policy and public spheres, thus reminding Australians that seeking asylum is not a crime.

Affirming that the arrival of refugees by boat is a humanitarian issue, rather than a national security one, has significant positive flow on effects and works to promote a more harmonious and multicultural Australia.

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