CHAPTER 5

MANDATORY DETENTION POLICY

Introduction

5.1 This chapter discusses the background to Australia's mandatory detention policy and whether it can continue to be justified as a proportionate and rational measure necessary to ensure the integrity of Australia's immigration program. The implementation of mandatory detention and options for reform are discussed more fully in Chapter 6.

History of the policy of mandatory detention

5.2 Australia's policy of mandatory immigration detention was introduced with bi-partisan support in 1992. Under sections 189, 196 and 198 of the Migration Act, all non-citizens unlawfully in Australia must be detained,[1] and kept in immigration detention until granted a visa or removed from Australia.[2] An unlawful non-citizen is any person who does not hold a valid visa.

5.3 In theory, the policy of mandatory immigration detention applies to everyone who arrives without a valid visa, including asylum seekers claiming protection; lawful entrants who have overstayed their visa; and people who have had their visa cancelled on various grounds and are liable to deportation. However, many witnesses argued that mandatory detention is aimed primarily at deterring unauthorised boat arrivals.[3]

5.4 Prior to 1992, the Migration Act made a distinction between unauthorised border arrivals and illegal entrants and deportees. Unauthorised boat arrivals were deemed to have not entered Australia, they were detained in open areas of migration centres but not permitted to leave the centre and had to report daily to the Australian Protective Service.[4] By contrast, 'illegal entrants' included those who entered Australia by deception or fraud, or had entered lawfully and subsequently overstayed their visa or breached visa conditions. This group were liable to be deported but could only be detained for 48 hours and then for periods of seven days with the permission of a magistrate.

5.5 In 1992, the *Migration Amendment Act 1992* introduced the policy of mandatory detention of 'designated' persons, which applied to people who arrived by

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1 Migration Act 1958, s. 189.

2 Migration Act 1958, s. 196, s.198 or s.199.

3 For example, Assoc. Professor Susan Kneebone, Castan Centre for Human Rights Law, *Submission* 71, p.2.

4 Millbank A., *The Detention of Boat People,* Current Issues Brief No.8 2000-01, Department of Parliamentary Library, 27 February 2001, p.2.

boat between 19 November 1989 to 1 September 1994, without authority to enter or remain in Australia.[5] The discretion to detain illegal entrants and deportees continued. The policy was expressed to be an 'interim measure' for a 'specific class of persons' to 'address only the pressing requirements of the current situation'.[6] It was generated by concern about the possibility of a large number of unauthorised boat arrivals and the need to maintain tighter control over the migration program.[7]

5.6 It was community concern about the length of detention endured by unauthorised boat arrivals that acted as a catalyst for the Joint Standing Committee on Migration inquiry into asylum, border control and detention (JSCM inquiry) in 1994.[8] During that inquiry many witnesses opposed mandatory detention on the grounds that it was intended to deter asylum seekers fleeing persecution arriving by sea and was likely to institutionalise lengthy periods of detention.[9] The then Department of Immigration and Ethnic Affairs (DIEA) argued that the upgrading of security arrangements in Australian migration centres was necessary to prevent escape and ensure that people without a lawful basis to remain in Australia were available to be removed.[10] The JSCM gave bi-partisan support for the principle of mandatory immigration detention but recommended that there should be capacity to consider release where the period exceeded six months.[11]

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5 Migration Act 1958, s. 177; the classification also applied to all non-citizen children born in Australia whose mother was a 'designated person'.

6 The Hon Gerry Hand, MP, Migration Amendment Bill 1992, Second Reading Speech, *House of Representatives Hansard,* 5 May 1992, p.2370.

7 Petro Georgiou MP, Second Reading Speech, Migration Amendment (Detention Arrangements) Bill 2005, *House of Representatives Hansard*, 21 June, 2005, p.63.

8 See JSCM, *Asylum, Border Control and Detention*, February 1994, p.32; Evidence to that inquiry indicated that as at 27 January 1994 of the 216 unauthorised boat arrivals held in detention 84 persons had been detained for less that 6 months; 1 for 8 months; 31 for 12 to 18 months; 6 for 18 to 24 months; 26 for 30 to 36 months, 2 for 36 to 42 months and 63 for 42 to 48 months.

9 JSCM *Asylum, Border Control and Detention*, February 1994, p.13.

10 DIEA evidence at that time revealed that 57 persons who had arrived by boat had escaped from detention between 1991 and October 1993. 25 unauthorised boat arrivals escaped in 1991 (7 of whom later returned voluntarily); 22 escaped in 1992 (6 were captured within a few hours of escape and nine returned voluntarily); 10 escaped in 1993 (three returned voluntarily). Of the individuals who were allowed to reside in the community while their refugee status applications were being determined, out of a group of 8,000 individuals who had been refused refugee status, some 2,171 persons (27%) remained unlawfully on Australian territory; see JSCM *Asylum, Border Control and Detention*, February 1994, p.31.

11 JSCM *Asylum, Border Control and Detention*, February 1994, p.xiv.

Migration Reform Act 1992

5.7 During the JSCM inquiry, major changes to the migration system were introduced by the *Migration Reform Act 1992*.[12] The various classifications of border arrivals, illegal entrants and deportees were replaced with a simple distinction between lawful and unlawful non-citizens.[13] Using the *Migration Amendment Act 1992* model, the amendments introduced by this Act required mandatory detention of all boat people, illegal entrants and deportees.[14] Consequently, mandatory detention, initially envisaged as a temporary and exceptional measure for a specific group of boat people, was extended to become the norm. Judicial supervision of the power of arrest and detention was removed. Although on its face the law applies uniformly to everyone without lawful authority to enter or remain in Australia, it has been argued that the primary target remained 'boat people'.[15]

5.8 Successive governments have maintained Australia's mandatory detention policy to ensure that:

- unauthorised arrivals do not enter the Australian community until their identity and status have been properly assessed and they have been granted a visa;
- unauthorised arrivals are available during processing of any visa applications and, if applications are unsuccessful, that they are available for removal from Australia; and
- unauthorised arrivals are immediately available for health checks, which are a requirement for the grant of a visa.[16]

Continuing rationale for mandatory detention

5.9 The number of unauthorised arrivals has fluctuated over time, but increased significantly toward the end of the 1990s. In September 2001, following the 'Tampa

12 The *Migration Reform Act 1992* commenced operation on 1 September 1994 under then Immigration Minister, Senator the Hon. Nick Bolkus.

13 See JSCM, *Asylum, Border Control and Detention*, February 1994, p.86 for detailed discussion of the *Migration Reform Act 1992.*

14 The relevant provisions, sections 189 and 196 commenced on 1 September 1994; see Hancock N., *Refugee Law – Recent Legislative Developments*, Current Issues Brief No.5 2001-02, 18 September 2001 p.6.

15 Millbank A. and Phillips J., *The detention and removal of asylum seekers*, E-Brief, Department of Parliamentary Library, 5 July 2005, p.2.

16 See for example, http://www.immi.gov.au/facts/82detention.htm

Crisis',[17] the policy of excision and offshore processing was introduced to combat the involvement of organised people smuggling networks in the transit of asylum seekers to Australia by boat.[18] Under the 'Pacific Solution' unauthorised boat arrivals arriving on excised places are diverted to processing centres on Nauru, Manus Province and Papua New Guinea (PNG) (declared third safe country). Over the last four years the number of unauthorised arrivals has declined significantly since its peak in 2001. See Table 5.1 below.

5.10 In September 2004, the Government recommitted itself to 'tough and well-resourced' border protection arrangements including 'retaining the policies of excision, offshore processing and mandatory detention that act as a powerful deterrent to unauthorised arrivals'.[19]

5.11 Table 5.1 shows the number of unauthorised arrivals in the last eight years.

17 In August 2001, the MV Tampa, a Norwegian container ship carrying 433 Afghan asylum seekers rescued from an Indonesian fishing vessel was refused permission to enter Australian waters or land the asylum seekers on Australian soil. See Chapter 1 – Border protection: A new regime, *Report of the Senate Select Committee on Certain Maritime Incident*, 23 October 2002, p.p.1-8, available at http://www.aph.gov.au/senate/committee/maritime_incident_ctee/report/c01.htm.

18 Since 2001 unauthorised arrivals on Christmas Island, Ashmore and Cartier Islands, the Cocos (Keeling) Islands and other prescribed places have been prevented from making a valid visa application unless the Minister determines that it is in the public interest to do so.

19 Joint Press Release, Attorney General The Hon Philip Ruddock and Minister for Justice and Customs, Senator The Hon Christopher Ellison, *Strengthening our Borders,* E 140/04, 27 September 2004.

Table 5.1: Number of vessels and number of unauthorised arrivals

Year	No. of vessels	No. of unauthorised arrivals
1997-98	13	157
1998-99	42	926
1999-2000	75	4,175
2000-01	54	4,137
2001-02	23	3,649
2002-03	nil	nil
2003-04	3	82
2004-05	nil	nil
1 July 2005 – 20 January 2006	2	50

Source: DIMIA, Managing the Border, 2004-05 edition, p. 29; and figures provided to the committee by DIMIA on 20 January 2006.

The Palmer and Comrie inquiries

5.12 During 2005 the discovery of the mistaken detention of a permanent resident Ms Cornelia Rau, who has lived in Australia since she was 18 months old, focused attention on the Commonwealth Government's policy of mandatory immigration detention.[20] The *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* was established in February 2005 (the Palmer Report). The subsequent discovery of the unlawful detention and deportation of Australian citizen Vivian Alvarez Solon in 2001 resulted in an extension of the Palmer inquiry and a referral to the Commonwealth Ombudsman.

5.13 The Palmer Report criticised the handling of immigration detention cases, which it said suffers from serious problems stemming from deep seated cultural and attitudinal problems within DIMIA.[21] The report of the *Inquiry into the Circumstances*

20 See Prince P., *The detention of Cornelia Rau: legal issues*, Research Brief, Department of Parliamentary Services, 31 March 2005, no.14, 2005-05.

21 Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, 6 July 2005,p. xi.

*of the Vivian Alvarez Matter, report No. 3 of 2005 (*the Comrie Report*),* reached broadly similar conclusions.

5.14 The Palmer and Comrie reports provided the impetus for a re-examination of the mandatory detention policy. While the focus of these inquiries was the illegal detention of a permanent resident and an Australian citizen, it revealed serious and persistent problems in the treatment of vulnerable persons. In particular, public concern was voiced about the mental health effects of indeterminate detention of asylum seekers and the indefinite detention of people who cannot be removed.[22]

Recent changes to mandatory detention policy

5.15 On March 2005, in response to calls for the release of long term detainees, the Minister for Immigration, Multicultural and Indigenous Affairs, announced 'new measures to manage the cases of long term immigration detainees' who are not found to be refugees and where 'the Minister believes it is not reasonably practicable to achieve removal in the short term and where the detainee undertakes to co-operate fully with removal from Australia once that becomes practicable.'[23]

5.16 These measures created a new class of bridging visa, known as the Removal Pending Bridging Visa, which are said to allow for greater flexibility in managing the cases of long term detainees who are awaiting removal but cannot be removed for various reasons. Regulations creating the new visa were introduced on 11 May 2005.[24]

5.17 The new bridging visa is not available to detainees with current visa applications, or who are challenging a decision, either through review or courts. And a detainee cannot apply for a Removal Pending Bridging Visa unless they are first invited to do so by the Minister. Detainees receiving the Removal Pending Bridging Visa are released into the community and have access to the same limited social support benefits as Temporary Protection Visa holders, i.e. work rights, access to Medicare benefits and various welfare payments. The new bridging visa does not allow family reunion and does not provide re-entry rights if the holder leaves Australia. A Removal Pending Bridging Visa can be ceased when removal can be arranged and the holder is required to report regularly to DIMIA. Access to the visa is not merits reviewable.

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22 The Member for Kooyong, Mr Petro Georgiou's, undertook in May 2005 to introduce private members Bills, which would have effectively ended indefinite detention of asylum seekers; limited detention to 90 days for new asylum seekers, with access to judicial review; families with children would not have been detained; and all long term detainees of 12 months or longer would have been released into the community. The Migration Amendment (Act of Compassion) Bill 2005, and Migration Amendment (Mandatory Detention) Bill 2005 were introduced into the Senate on 16 June 2005 by Greens Senator Kerry Nettle: See Millbank A. and Phillips J., *The detention and removal of asylum seekers*, E-Brief, Department of Parliamentary Library, 5 July 2005, p.1.

23 http://www.minister.immi.gov.au/media_releases/media05/v05046.htm.

24 Migration Amendment Regulations 2005 (No.2) (SLI No. 76 of 2005).

5.18 Further calls for a review of the mandatory detention policy and an easing of conditions in detention followed the Palmer Inquiry. On 17 June 2005 the Prime Minister announced changes that were said to preserve the broad framework and principle of mandatory detention but 'with a softer edge'. The *Migration Amendment (Detention Arrangements) Bill 2005* was introduced by the Minister for Citizenship and Multicultural Affairs, the Hon, Mr Peter McGauran MP. In summary, the amendments provide for:

- Parliament's affirmation as a matter of principle that a minor shall only be detained as a measure of last resort;
- an additional non-compellable power for the minister to specify alternative arrangements for a person's detention and conditions to apply to that person. This is intended to allow families with children to be placed in community detention arrangements with conditions being set to meet their individual circumstances;
- extending the ministers non-compellable discretionary powers to allow release from immigration detention, through the grant of a visa where the Minister believes this is appropriate, including a removal pending bridging visa; and
- require DIMIA to report to the Commonwealth Ombudsman when a person has been detained for 2 years, and every 6 months thereafter that the person is in detention. The Ombudsman's assessment and recommendation are to be tabled in Parliament.[25]

5.19 During the second reading speech, Mr McGauran said:

> The broad framework of the government's approach is unaltered. It is essential that we continue to have an orderly and well managed migration and visa system. The government remains committed to its existing policy of mandatory detention, its strong position on border protection, including excision, the maintenance of offshore processing and in the unlikely event of it being needed in the future – the policy of turning boats around. These changes also represent the responsiveness of this government in taking opportunities to see that out existing detention policy is administered with greater flexibility.

5.20 In addition, all primary protection visa applications must be decided by DIMIA within three months of receipt of the application and review by the RRT must also occur within three months. Periodic reports of cases where these time limits have not been met must be made to the Minister, who will table the reports in the Parliament.[26]

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25 Second Reading Speech, House of Representatives Hansard, 21 June 2005, p.2; see also Millbank A. and Phillips J., *The detention and removal of asylum seekers*, E-Brief, Department of Parliamentary Library, 5 July 2005, p.1.

26 Second Reading Speech, House of Representatives Hansard, 21 June 2005, p.3.

Initial responses to recent reforms

5.21 HREOC acknowledged the amendments are a positive move in addressing some of its concerns but believed that the measures do not go far enough. They said:

> …in contrast to the recommendations made in *Those who've come across the seas* and *A last resort?*, the amendments do not create enforceable rights and depend entirely upon an exercise of Ministerial discretion. The Commission considers that, as a consequence, Australia is not meeting its obligations to provide 'effective remedies' for violations of human rights. The Commission considers that those obligations are best met by providing that the ongoing appropriateness of detention be periodically reviewed by a Court empowered to order release on the grounds discussed …in *A last resort?*[27]

5.22 HREOC went on to say that the amendments do nothing to alter the power of the Commonwealth to subject a person, who cannot be removed from Australia, to 'indefinite detention' under the Migration Act. And that like the Residential Housing Projects and the home-based detention arrangements, 'the use of the power to specify 'alternative arrangements' still involves a form of detention, the conditions of which will be specified by the Minister.'[28] In other words, 'alternative arrangements' is an alternative *form* of detention not an alternative to detention.

5.23 HREOC also pointed to the possible inconsistency between the statutory obligation to only detain children as a measure of last resort in the recently inserted subsection 4 AA (1) of the Migration Act which is qualified by subsection 4 AA(2), which states that:

> For the purposes of subsection (1), the reference to a minor being detained does not include a reference to a minor residing at a place in accordance with a residence determination.

5.24 HREOC argued:

> That approach is inconsistent with the broad meaning of detention accepted in international law.[29]

Review of detention of two years or more by Commonwealth Ombudsman

5.25 Under the new section 486L of the Migration Act, as amended, where a person has been in detention for two years or more, DIMIA is required to report that case to the Commonwealth Ombudsman and provide a report on that person every six months. The Ombudsman will review the facts and provide an assessment and recommendation to the Minister, who must table the assessment in Parliament.

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27 HREOC, *Submission 199*, p. 4.

28 HREOC, *Submission 199*, p. 5.

29 See e.g. *Amuur v France* (1992) 22 EHRR 533 referred to in HREOC *Submission 199*, p.5.

5.26 The committee welcomes the statutory requirement for regular independent monitoring and the tabling of the Ombudsman's report in Parliament. This new mechanism will increase transparency and accountability in relation to people in long term immigration detention and should promote a greater internal discipline in DIMIA's case management. The Ombudsman has significant powers to obtain information and enter departmental premises.

5.27 However, a number of concerns were raised that should be taken into account when assessing whether review of this nature is sufficient as an ongoing safeguard against arbitrary or inhumane detention. For example, Amnesty International argued that the duty to report does not commence until a person has been held for a period of 2 years, which:

> …is excessively long considering that the initial detention of a person is not subject to review or investigations, and the mounting evidence that detainees who are in prolonged or indefinite detention have a high risk of mental illness.[30]

5.28 It was also noted that the recommendations of the Ombudsman are advisory only. Subsection 486O (4) provides that:

> The Minister is not bound by any recommendations the Commonwealth Ombudsman makes.

5.29 This is consistent with the advisory role of the Ombudsman but highlights what some witnesses regard as the limits of administrative rather than judicial supervision of individual cases.

5.30 In a recent information bulletin the Ombudsman reported that:

- 17 reports and statements for tabling had been provided to the Minister;
- 93 current and former detainees have been interviewed by Ombudsman staff:
- assessments of 40 people who have been in detention for two years or more at 29 June 2005, and who remain in detention, are being prioritised for completion.[31]

5.31 The Ombudsman has reported that the Minister has tabled the first 2 reports with her response.

> In response to the first person, he voluntarily returned to his home country due to family problems and in respect of the second person, the

30 Amnesty International Australia, *Submission 191* p.5

31 Commonwealth Ombudsman, Information Bulletin 6, 14 December 2005; section 486O of the *Migration Act 1958* requires the Commonwealth Ombudsman, upon receipt of a report from the DIMIA, to provide the Minister with an assessment of the appropriateness of the arrangements for the detention of a person who has been in detention for two years or more.

> Ombudsman suggested a permanent visa but before the Ombudsman report was provided to the Minister, a temporary protection visa was granted[32].

5.32 The Ombudsman also reported that many people who are subject to an assessment have been granted various visas and released from detention before their assessment are completed. This is encouraging. However, the Committee is concerned about the implications for the workload of the Ombudsman's office as assessments involve a substantial amount of work – researching the detainee's circumstances; seeking further information, explanations and obtaining files from DIMIA; consulting detainee's representatives and discussing potential recommendations.[33]

5.33 The Ombudsman also reported that a significant number of draft assessments provided to the Ombudsman required substantial re-working because of changes to the detainee's circumstances, which in turn changes the priority for completing assessments.

5.34 The effective implementation of new section 486L relies on DIMIA providing prompt up to date information to enable assessments to be conducted efficiently. Timely and accurate information on changes or likely changes to a detainee's circumstance is critical to the effective discharge of the Ombudsman new role.

5.35 Moreover, although the role of the Ombudsman under section 486L is narrowly circumscribed, the potential caseload is substantial and likely to grow significantly over the next two years based on current figures (see above). The Ombudsman reported that:

> As at 29 June 2005, when this function commenced, there were 149 people who had been in detention for more than two years on whom reports were to be prepared by DIMIA for the Ombudsman no later than 29 December 2005. During the first six months as many as 50 other people in detention will become subject to this reporting obligations.[34]

5.36 The committee notes a potential further 67 assessments for people, detained between 12 to 18 months at the time of the inquiry, will become subject to the reporting obligation in the first half of 2006. The requirement for 6 monthly reports to the Ombudsman on each person who remains in detention beyond the 2 year period will also add to the assessment workload.

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32 Commonwealth Ombudsman, Information Bulletin 6, 14 December 2005.

33 Commonwealth Ombudsman, Information Bulletin 6, 14 December 2005, p.2.

34 *Covering Statement by the Commonwealth Ombudsman to the Minister for Immigration and Multicultural and Indigenous Affairs Concerning Reports under s.486O of the Migration Act 1958*, 12 October 2005 in the Commonwealth Ombudsman, *Information Bulletin 6*, 14 December 2005

Criticisms of the policy

5.37 In looking back over the thirteen years since mandatory detention was introduced, it is evident that it has been and remains, one of Australia's most controversial policies. Strong and sustained debate over the policy has led, as outlined above, to ongoing evolution of its application. Over this time, three key criticisms consistently emerge:

- The effectiveness of the mandatory detention
- The legality of the mandatory detention
- The indeterminate nature of mandatory detention.

Effectiveness of mandatory detention

5.38 As described above, the central rationale for mandatory detention has been the preservation of Australia's border control measures and the creation of a deterrent against unauthorised arrivals. The use of temporary detention of arrives during the determination of health and security checks has generally been only a secondary consideration.

5.39 However, the extent to which the decrease in unauthorised boat arrivals can be attributed to mandatory detention is open to debate. For example, Professor Maley disputes the claim that mandatory detention is a deterrent. He states:

> …there is simply not a shred of credible evidence that Australia's polices have actually deterred… The key marker of this is to be found in DIMIA's own data on boat arrivals. The current system of mandatory detention was introduced in 1992 by the ALP (with the complicity of the Coalition). In 1991-1992, three boats arrived, with 78 people. In the following year, the number of people who arrived by boat more than doubled, and by 1994-95, the number had reached 1071… The message should be obvious: it is overwhelmingly the situation in refugees' country of origin (push factors), and the situation en route to Australia (transit factors) that determine the flow of refuges to Australia. These factors account for the cessation of refugee flows since late 2001.[35]

5.40 It is notable that Australia's experience is consistent with the downward global and regional trends in asylum requests.[36] Recent UNHCR analysis indicates a significant fall in asylum applications in Europe and other non-European industrialised countries since its peak in 2001. In 2004, in 50 industrialised countries, the number of asylum requests fell by 22 per cent and since 2001 have dropped by 40

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35 Professor William Maley, Director Asia-Pacific College of Diplomacy, ANU, *Detention: Government's policy has been built on a myth*, Australian Policy Online, 15 June 2005, p.2 available at http://www.apo.org.au.

36 *Asylum Levels and Trends in Industrialised Countries, 2004: Overview of Asylum Applications Lodged in Europe and Non-European Industrialised Countries in 2004*, Population Data Unit, UNHCR, Geneva, 1 March 2005.

per cent.[37] The largest fall in asylum requests since 2001 was reported by non-European industrialised countries – Canada and the USA received 48 per cent fewer requests in 2004 than 2002, while asylum levels in Australia and New Zealand fell by 74 per cent. The report also notes that:

> The number of asylum seekers from Afghanistan and Iraq continued to drop sharply in 2004. Afghan asylum applications have fallen by 83 per cent since 2001, while Iraqi asylum requests have dropped by 80 per cent since 2002.[38]

5.41 This evidence suggests that factors other than mandatory detention are likely to have been the biggest influence on boat arrivals to Australia over the past five years.

5.42 Some witnesses also argued that the largest number of onshore asylum applications are lodged by people who arrive on short term visas and subsequently seek asylum. It was therefore suggested that the rationale for detention – to prevent escape and disappearance into the community and availability for removal – is difficult to sustain in the face of this evidence.

5.43 Information provided by DIMIA confirms that the largest proportion of asylum claims are initiated by people who arrive with a visa. The number of initial applications for protection from people held in immigration detention centres was less than half of the total onshore claims in 1999-2001, when the number of asylum requests was at its peak. Protection requests from immigration detainees have declined as a proportion of total onshore claims as the number of unauthorised arrivals has continued to decline. By contrast the proportion of visitor visa holders applying for protection visas after they arrive in Australia has remained relatively stable.[39]

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37 The EU recorded 19 per cent fewer applications; North America 26 per cent fewer and Australia and New Zealand registered 28 per cent fewer asylum requests in 2004 than 2003.

38 *Asylum Levels and Trends in Industrialised Countries, 2004: Overview of Asylum Applications Lodged in Europe and Non-European Industrialised Countries in 2004*, Population Data Unit, UNHCR, Geneva, 1 March 2005, p.3.

39 The Department's 2004-05 annual report records a small decline from 0.07 per cent in 2003-4 to 0.06 per cent in 2005-05.

Table 5.2: Protection Visa Applications 1999-00 to 2004-05 as at 30 June 2005

Program Year of Lodgement	All Applications	All Detainees
1999-00	11,653	5,033
2000-01	12,540	5,122
2001-02	9,235	3,166
2002-03	5,023	612
2003-04	3,567	322
2004-05	3,105	88

Source: Outcomes Reporting Section Report ID 376 ICSE Extract 30 June 2005

5.44 Obtaining information about the number of long term detainees is not always straight forward.[40] During the inquiry DIMIA provided the following breakdown of the number of detainees and periods of detention current at that time:

- 422 people less than three months (43 per cent)
- 99 people three to six months (13 per cent)
- 119 people six to 12 months (16 per cent)
- 67 people 12 to 18 months (9 per cent)
- 49 people 18 months to 2 years (7 per cent)
- 92 people more than 2 years (12 per cent).

5.45 The Commonwealth Ombudsman reported that DIMIA has advised that at least three people had been held for more than three years, including two people for longer than five years.[41] The committee was unable to test the accuracy of that figure.

5.46 A recent Ministerial press statement indicates that the profile of detainees in Australian immigration detention centres has changed significantly over the past five years. As at 21 December 2005, the number of people in detention is the lowest since 1999 (except illegal foreign fishers). The decline in the arrival of unauthorised arrivals is the major contributing factor to the overall reduction in detention figures.

5.47 On 26 December 2005, the Minister reported that of 535 people in immigration detention, only 16 were unauthorised boat arrivals and a further 76

40 In June 2005 it was reported to the Parliament that 300 people, including children, had been in immigration detention for over one year and about 80 of them had been in detention for four years or more; Mr Georgiou MP, Migration Amendment (Detention Arrangements) Bill 2005, Second Reading Speech, *House Hansard*, p.63.

41 Response to question on notice 7 October 2005

detainees are living in the community under residence determinations (community detention), including 40 children.[42]

> Less than 30 per cent of detainees are actually seeking asylum. At this time only 26 people had primary protection visa applications before the department. Most asylum seekers arrive in Australia with a valid visa and live in the community while they pursue their claims.[43]

5.48 The Committee is encouraged by the overall reduction in the number of people in immigration detention centres[44] but remains concerned about the prolonged detention of detainees, especially in relation to people:

- claiming asylum and awaiting the outcome of reviews and appeals;
- those who have been unsuccessful in their claim for refugee status and await an exercise of ministerial discretion to grant a visa on humanitarian grounds; and
- those who await deportation but cannot be removed for various reasons.

Indeterminate nature of mandatory detention

5.49 The often lengthy and indeterminate nature of immigration detention, especially of unauthorised boat arrivals, emerged as a central theme of the inquiry. Some witnesses argued that prolonged loss of liberty could rarely be justified on the basis of, for example, the risk of flight.[45]

5.50 It was also said that the immigration detention had taken on an increasingly punitive character, exacerbating the adverse effects of detention. Some of the legislative changes that reflect a hardening of the detention policy include:

- the removal of the statutory right of HREOC and the Commonwealth Ombudsman to initiate confidential contact with people held in immigration detention;[46]

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42 *Few Detainees Prove Immigration Policies Working Well,* Media Release, Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, 26 December 2005, available at http://www.minister.immi.giv.au/media_releases/media-5/v05160.htm.

43 *Few Detainees Prove Immigration Policies Working Well,* Media Release, Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, 26 December 2005, available at http://www.minister.immi.giv.au/media_releases/media-5/v05160.htm.

44 Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs *Few Detainees Prove Immigration Policies Working Well,* Media Release, 26 December 2005, available at http://www.minister.immi.giv.au/media_releases/media-5/v05160.htm.

45 See for example, Mr Wall de Gallo, *Submission 6*, p.1; Mr D. Bennett, *Submission 7*, p.1; Ms L. Nasir, *Submission 9*, p.1.

46 The committee notes that amendments to the *Migration 1958* on 30 November 2005 now enable the Ombudsman to contact an immigration detainee where that person has not made a complaint to the Ombudsman.

- clarification that officers of the Department are under no duty to give visa applications to unauthorised boat arrivals unless a request is made by the detainee;
- increases in the penalty for escaping from immigration detention introduction of and new offences manufacturing or possessing weapons have been introduced;[47]
- introduction of a regime for strip searching immigration detainees and security monitoring provisions governing visitors to detention centres;[48]
- preventing court orders for release.[49]

5.51 Many witnesses equated immigration detention to imprisonment, but lacking the minimum standards applicable to criminal detainees.[50] The emphasis on security, the use of high fences, uniformed guards, handcuffs and behaviour management techniques were regarded as more appropriate to correctional facilities than administrative detention, especially of asylum seekers. The committee notes that the Palmer Report described Baxter as a 'correctional style facility':

> It is surrounded by a strong, high steel picket fence inside which is a perimeter fence topped with electrified wires. It looks like a prison. In many ways, the activities that occur in Baxter are similar to those in any Australian correctional institution; the untrained observer could not tell the difference. Baxter is effective in its purpose of containment.[51]

5.52 DIMIA has made efforts to improve immigration detention – the closure of Woomera in April 2003 is one example. In response to ongoing public concern about the effects of the detention on children, other changes to detention policy have been implemented.[52] The Woomera Residential Housing Project was established in August 2001 to enable eligible women and children to live in family style accommodation at Woomera, while remaining in immigration detention. In 2003 the Woomera RHP closed and residents were accommodated at the new Port Augusta RHP. A new RHP in Port Hedland also opened on 18 September 2003.

5.53 Nevertheless, the adverse mental health effects of indeterminate and lengthy detention remains a serious and persistent issue of public concern and raises important

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47 *Migration Legislation Amendment (Immigration Detainees) Act 2001*.

48 *Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001*.

49 *Migration Amendment (Duration of Detention) Act 2003; see also* Millbank A. and Phillips J., *The detention and removal of asylum seekers*, E-Brief, Department of Parliamentary Library, 5 July 2005, p.2.

50 See Chapter 6 for discussion on prison like conditions and practices.

51 Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, 6 July 2005, p. xi.

52 Phillips J., Lormier C., *Children in Detention*, E Brief, Department of Parliamentary Library, 23 November 2005, p.4.

questions about Australia's legal and moral obligations toward non-nationals. The Palmer Report confirmed that for detainees in Baxter:

> … the worst punishment was seen to be the open-ended nature of their detention and the fact of detention itself. Everything was done for them and they felt useless. As one detainee put is, 'It is like dying from the inside'.[53]

5.54 During the inquiry Mr Burnside QC said:

> The mistreatment that is associated with indefinite mandatory detention is not really difficult to identify. For people who have not committed an offence, to be locked up indefinitely for months or years, and in particular without knowing how long the detention will continue, is a torment the consequences of which have been thoroughly documented by the medical profession. That is the largest problem – the fact that they do not know when, if ever, they are going to be released.
>
> …the fact that the act allows lifetime detention of an innocent human being is pretty disturbing and, I would say, represents world's worst practice, and the fact that it can only be brought to an end by the uncompellable, unreviewable discretion of an individual is also disturbing.[54]

5.55 It is in this context that many witnesses challenged the ethics of mandatory detention. The concerns of many witnesses were reflected by Ms McKerney, a founding member of Rural Australians for Refugees:

> The Australian government says that this [migration detention] is used as a deterrent to stop other asylum seekers coming here and that this policy has succeeded in greatly reducing numbers. But it is morally wrong to use the destruction of innocent people's lives as a deterrent to others. There are ways to protect Australian borders other than locking asylum seekers up for long periods.

5.56 Mr Burnside QC also questioned the morality of using detention as a deterrent. He commented:

> My concern in the matter, from first to last, is a moral concern, which is simply this: in my view – and I think it is not a difficult view to hold – it is morally reprehensible to mistreat innocent people as an instrument of government policy in order to deter other people from behaving in particular ways. The system of mandatory detention, as it is designed and as it has been implemented, does precisely that. It involves the mistreatment of innocent people in order to deter other people from behaving in particular ways. Innocent people are simply being used and mistreated as instruments of policy.[55]

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53 Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, 6 July 2005, p. 58.

54 *Committee Hansard*, 27 September 2005, p. 44.

55 *Committee Hansard*, 27 September 2005, p. 44.

5.57 The detrimental effects of the isolation imposed by the use of remote locations, especially on young people was said to compound the problem.[56] For example, the Woomera Lawyers Group argued that:

> the location of our detention centres in remote outback areas is part of a policy of deterrence … I cannot see any reason for people to be detained so far away from centres where there are facilities available to deal with some of the issues that arise.'[57]

5.58 Like many witnesses, Mr J. Peter advocated that mandatory detention should be re-examined:

> for it's impact on detainees, the prison staff and the civil society of Australia – and it's 'cost effectiveness' should be looked at, in comparison to less draconian methods.[58]

5.59 Throughout the inquiry critics of the policy maintained that prolonged detention for an indeterminate period is inhumane and the lack of legal safeguards is antithetical to the rule of law in a democratic society.

The legality of mandatory detention

5.60 Some witnesses argued that many of the problems associated with immigration detention are embedded in the law itself and that the prolonged and indeterminate detention is inconsistent with international law and practice.[59]

5.61 It is accepted as a fundamental legal principle of Australian law and international law, that as an incidence of national sovereignty, the State may determine which non-citizens can gain entry to Australia, the conditions under which those non-citizens are admitted or permitted to remain, and the conditions under which they may be deported or removed.[60] That said, there is no legal impediment to the exercise of national sovereignty consistent with international obligations or minimum standards necessary to preserve human dignity. The movement of people across national borders fleeing persecution, civil war or for economic reasons is a global phenomena. Australia shares, with other nation states, binding obligations under international customary and treaty law in relation to refugees and the treatment of non-citizens generally.

5.62 At the domestic level *Chu Kheng Lim v The Minister for Immigration, Local Government and Ethnic Affairs* (the Lim case), is leading authority for the principle

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56 See for example, Mr R. Monson, *Submission 14*, p.1

57 *Committee Hansard*, 26 September 2005, p. 50.

58 Mr. J. Peter, *Submission 3*, p.1

59 See for example, Castan Centre for Human Rights Law, Submission 71, p.2.

60 *Robtelmes v Brenan* (1906) 4 CLR 395; JSCM, *Asylum, Border Control and Detention*, February 1994, p.11.

that sovereignty confers on the Executive the authority to detain a non-citizen for the purposes of expulsion or deportation, to receive, investigate and determine an application for an entry permit, and, after that determination, to admit or deport that non-citizen.[61] Provided the detention is 'reasonably necessary' to achieve this purpose the detention is within power. Since the decision in the Lim case it has been accepted that the constitutional basis or source of power for the Act, is the naturalisation and aliens' head of power (s.51 (xxvii)).

5.63 However, Associate Professor Kneebone argued that the 'citizen – alien dichotomy' has led to a belief that different standards can be applied to someone who cannot establish that they are a citizen. Consequently, the Migration Act is framed entirely in terms of the control of aliens and reflects an ingrained sense of a lack of State responsibility for the treatment of 'non-citizens'.[62]

5.64 In 2004 the High Court declared that failed asylum seekers who cannot be returned to their country of origin or another country and who pose no danger to the community, can be kept in immigration detention indefinitely. In *Al Kateb v Godwin*[63] and *Minister for Immigration and Multicultural and Indigenous Affairs v Al Khafaji*, the majority of the High Court said that provided the Immigration Minister retained the intention to eventually deport such people, the detention would be valid even if it was potentially indefinite.[64]

5.65 The 2004 decisions were criticised by some witnesses, especially in light of evidence of the detrimental effects of long term detention on health and wellbeing.[65] For example, Mr J Peter said that the 2004 decisions have 'highlighted the need for legislation that will make it unlawful to detain asylum seeks indefinitely and to hold children in mandatory detention'.[66] HREOC also argued that a law which authorises indefinite detention should not remain on the statute books.[67]

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61 Reported JSCM, *Asylum, Border Control and Detention*, February 1994, p.11.

62 See also Mr. N. Hitchcock, Fellow and former President, Migration Institute of Australia, *Committee Hansard* 28 September 2005, p.73.

63 (2004) 78 ALJR 1099, Gleeson CJ, McHugh, Hayne, Callinan and Heydon JJ, Gummow and Kirby JJ dissenting; [2004] HCA 38.

64 Prince P., *The High Court and indefinite detention: towards a national bill of rights?,* Research Brief, Department of Parliamentary Services, 16 November 2004, p.1.

65 See, for example, Ms R McKenry, *Submission* 2, p.3; *Submission* 71, p.4.

66 Mr. J. Peter, *Submission 3*, p.1.

67 HREOC, *Submission 199*, p. 5. See also Ms Rosemary McKenry, *Submission 2*, p. 3; Mr J. Peter, *Submission 3*, p. 1 and NSW Young Lawyers Human Rights Committee, *Submission 198*, p. 3.

United Nations guidelines on detention of asylum seekers

5.66 Australia has assumed responsibility to extend protection to asylum seekers and refugees through its accession on 22 January 1954 to the 1951 *Convention relating to the Status of Refugees* and the *1967 UN Protocol Relating to the Status of Refugees* (the Refugee Convention). The committee notes that the Executive Committee of the UNHCR provides guidance on accepted international practice, and although not binding under international law, reflects an international consensus of acceptable practice that has an important normative effect. UNHCR ExCom Conclusion 44 states that the circumstances in which it may be necessary to detain such persons include:

- To verify identify;
- To determine elements of a claim;
- To deal with cases where such persons have destroyed vital documents;
- To protect national security or public order.

5.67 Similarly, the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* (February 1999*)* (UNHCR Guidelines) state that 'As a general principle asylum-seekers should not be detained' (guideline 2) unless there are 'exceptional grounds for detention' (guideline 3) as outlined above.

5.68 Several submissions argued Australia's immigration detention policy and practice is also inconsistent with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on the Rights of the Child (CRC). The UN High Commissioner for Refugees said that:

> Australia's policy of mandatory detention of all asylum seekers arriving undocumented is not consistent with applicable international standards. While UNHCR recognises that mandatory detention was introduced as a mechanism seeking to address Australia's particular concerns related to illegal entry, using detention in this way requires the exercise of great caution to ensure that it does not serve to undermine the fundamental principles upon which the regime of international protection is based. Legitimate State security concerns must be addressed in a way that balances them with the rights of individuals, consistent with human rights instruments, including the Refugee Convention. In the particular case of refugees, their human suffering in fleeing persecution should not be exacerbated by their treatment upon arrival in the country of asylum.[68]

68 UNHCHR, *Submission 74,* p.3; For a more detailed statement of UNHCR's position in relation to detention see UNCHR's submission to the HREOC National Inquiry into Children in Immigration Detention, available at http://www.unhcr.org.au/pdfs/subinqchildimmi.pdf.

A v Australia

5.69 In 1993 a case concerning the prolonged detention of a Cambodian national was lodged under the first Optional Protocol to the ICCPR for consideration by the UN Human Rights Committee – a body of independent experts nominated by State parties to monitor the implementation of the ICCPR.[69]

5.70 In *A v Australia* it was argued, among other things, that A's detention between 25 November 1989 and 20 June 1993 (three years and 204 days)[70], although lawful under the *Migration Act 1958* was arbitrary and in violation of article 9.1 of the ICCPR. The UN HRC found that, while mandatory detention is not *per se* a breach of international law, the continued detention of A could not be justified in the circumstances of his case and found that Australia had breached its treaty obligation:

> It is established international legal principle that 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness, injustice and lack of predictability: Furthermore, remand in custody could be consider arbitrary if it is not necessary in all the circumstance of the case, for example, to prevent flight or interference with evidence; the element of proportionality becomes relevant in this context. The State party however, seeks to justify the author's detention by the fact that the entered Australia unlawfully and by the perceived incentive for the applicant to abscond if left in liberty.[71]

5.71 The HRC observed that every decision to keep a person in detention should be open to periodic review so that the grounds justifying detention can be assessed:

> In any event, detention should not continue beyond the period for which the State can provide appropriate justification. For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individuals, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal.[72]

5.72 The HRC also formed the view the provisions of the Migration Act, which prevents a court from releasing a person from detention, violates the right to a real and effective review of the lawfulness of detention by an independent court. The primary issue in dispute is the scope of judicial review. The inability of Australian courts to look beyond narrow legal questions and provide supervision of the merit of detention decisions was found to be inconsistent with the right of effective review enshrined in

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69 The HRC is the treaty monitoring body constituted under the ICCPR and responsible for overseeing the implementation of the ICCPR by State parties to the treaty.

70 Mr A was released from detention on 27 January 1994.

71 See also *Van Alphen v the Netherlands*: Views adopted on 23 July 1990, para.5.8.

72 *A v Australia* Communication No.560/1993 CCPR/C/59/D/560/1993. 9.3 available at http://www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/opt/0/state/9/node/5/type/finalview.

article 9.4 of the ICCPR. The HRC has reached the same conclusion in subsequent cases involving Australia.[73]

Reconciling Australian law and practice with universal minimum standards

5.73 The disparity between international and domestic law led some witnesses to advocate the introduction of a constitutional or statutory bill of rights.[74] An inquiry into the merits of a bill of rights is outside the scope of the present inquiry. However, the committee notes that unlike comparable jurisdictions such as the UK and Canada, Australian judges do not have a coherent set of minimum standards against which to assess the compatibility of Australian law or the conduct of public authorities.

5.74 Associate Professor Kneebone said:

> As numerous reports and decisions of international committees have now pointed out the effect of section 189 and 196 read together is to create a mandatory, non-reviewable system of detention which arguably breaches the right to freedom from arbitrary detention (ICCPR Article 9). This consequence of the reading of sections 189 and 196 together is also confirmed by decisions in which it has been held that the harsh conditions of detention *(Behrooz v Secretary, Department of Immigration* (2004) 79 CLD 176), or the fact that the children are detained in contravention of international human rights standards (Re Woolley) does not affect the (domestic) legality of the detention regime.

5.75 In her submission she said: the 'deep seated culture and attitudes' are embedded in the Migration Act itself and '…reflected in many of its provisions and hence in its administration and operation'.[75] This view was widely shared.

5.76 Associate Professor Kneebone also contrasted the Migration Act with the Canadian *Immigration and Refugee Protection Act 2002* (IRPA), which is drafted as 'framework legislation' with fixed principles in each part of the Act. She says that:

> It articulates key principles for the immigration and refugee protection programmes, including fundamental rights and freedoms. For example, it clarifies that persons can be arrested and detained for three principal reasons: identify, flight risk or danger to the public. It also set out the human rights framework for refugee protection and incorporates it into the legislation.[76]

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73 See for example, *Bakhtiyari v Australia*, Communication No. 1069/2002 UN Doc. CCPR/C/79/D/1069/2002 para.9.3; *C v Australia* Communication No. 900/1999 UN Doc. CCPR/C/76/D/900/1999 para.8.2; see also *Madafferi v Australia,* Communication 1011/2002 UN Doc. CCPR/C/81/D/1011/2001.

74 For example, Mr. J Peter, *Submission 3*, p.1.

75 Castan Centre for Human Rights Law, *Submission* 71, p.2.

76 Castan Centre for Human Rights Law, *Submission* 71, p.3.

5.77 The committee agrees with the general consensus that existing Migration Act provisions lack adequate safeguards to prevent detention for a period longer than justified by the facts of individual cases or that conditions of detention meet acceptable standards.

Alternatives to mandatory detention

5.78 There was a general consensus among organisations and individuals that mandatory detention may be necessary when an asylum seeker first arrives in Australia for the purpose of carrying out identity, health, character and security checks but that the time spent in detention should be strictly limited.[77] However, it was suggested that if mandatory detention is to continue then procedures need to be put in place to have detention decisions independently reviewed. The Commonwealth Ombudsman observed that there is a need for legislative clarification and amendment in relation to detention provisions, and that the attempts to limit the impact of judicial and tribunal review had led to a tightening of provisions.[78]

5.79 The South Brisbane Immigration & Community Legal Service Inc. suggested that continuing immigration detention should be subject to 'regular judicial or other independent scrutiny, initially within a month and then on a quarterly basis.'[79] The Catholic Migrant Centre recommended that:

> Migration detention of unauthorised arrivals who seek asylum be limited to a specific period of days (we suggest 45), after which a detainee should have the right to have their ongoing detention reviewed by a judicial body. The onus of proof should be on DIMIA to demonstrate that the ongoing detention of an asylum seeker is necessary in all the circumstances with due weight being given to the fact that the right to liberty is one of the most fundamental of all human rights.[80]

5.80 Mr Colin James Apelt said:

> There should be a presumption against detention of asylum-seekers who arrive without authorisation. Detention of an asylum-seeker should only be resorted to if it is necessary to verify their identity and/or to determine the basis for the claim for refugee status or asylum and/or to protect national security and public order and/or where the asylum-seeker has deliberately sought to mislead the authorities.

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77 Ballarat Refugee Support Network, *Submission 52*, pp. 1-2; Ms Rosalind Berry, *Submission 137*, p. 5; FECCA, *Submission 101*, p. 3; Great Lakes Rural Australians for Refugees, *Submission 150*, p. 2; Social Issues Executive Anglican Diocese Sydney, *Submission 155*, p. 1; NCCA, *Submission 179*, p. 18; HREOC, *Submission 199*, p. 3.

78 *Committee Hansard* 7 October 2005, p.71.

79 South Brisbane Immigration & Community Legal Service, *Submission 200*, p. 5.

80 Catholic Migrant Centre, *Submission 165*, p. 3.

> The Migration Act must be amended to specify a statutory maximum duration for detention that is reasonable. Once this period has expired the individual concerned should be released.[81]

5.81 FECCA said that full protection must be afforded to:

> …the most vulnerable in reception centres, namely women and children. We argue that family units and unaccompanied women and children should be allowed into receptive communities as soon as the required identity, health and security checks have been completed. All unaccompanied minors should be delivered into appropriate community care within 48 hours.[82]

5.82 HREOC referred the committee to recommendations made in its most recent reports relating to detention of asylum seekers.[83] These recommendations include:

- detention for immigration purposes should not exceed 28 days in the absence of exceptional circumstances;
- in relation to the detention of children for immigration purposes, there should be a presumption against detention;
- a court or tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of initial detention; and
- the continuing detention of children for immigration purposes should be subject of prompt and periodic review by a court.[84]

Committee view

5.83 The committee agrees with the general consensus that it is now appropriate to reconsider Australia's policy of mandatory detention for the duration of status determination process.

5.84 The factors which influenced the adoption of mandatory detention in 1992 are to a large extent now longer present. There is also persuasive argument that the deterrent effect is not as efficacious as once thought and that, while the original policy envisaged the possibility of long term determination, the Parliament did not intend to pass a law for the indefinite detention of non-nationals.

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81 Mr Colin James Apelt, *Submission 89*, p. 1.

82 FECCA, *Submission 101*, p. 3.

83 *Commission's Report of an inquiry into complaints by immigration detainees concerning their detention at the Curtin Immigration Reception and Processing Centre* (HREOC Report No. 28), http://www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_28.htm; *Those who've come across the seas*, http://www.humanrights.gov.au/human_rights/asylum_seekers/index.html#seas; *last resort?,* http://www.humanrights.gov.au/human_rights/children_detention_report/index.html

84 HREOC, *Submission 199*, pp. 3-4.

5.85 While recent changes create scope to ameliorate the harshness of the policy, it is the committee's view that amendment of section 189 is necessary to better reflect Australia's changed attitude, especially toward asylum seekers and those who for various reasons cannot be safely returned to their country of origin. It is the role of the law to provide procedural safeguard against over zealous use of executive power and reflect the community's values of humanitarian concern and fairness; as well as to ensure effective implementation and protection of the Australian migration program.

5.86 The committee considers the evidence in relation to the practice of immigration detention in chapter 6. Options for reform are considered in more detail in that chapter and recommendations appear at the end of that chapter.