

## **Mandatory Detention of Asylum Seeking Children**

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## **Global and Domestic Context**

### ***Mandatory Detention***

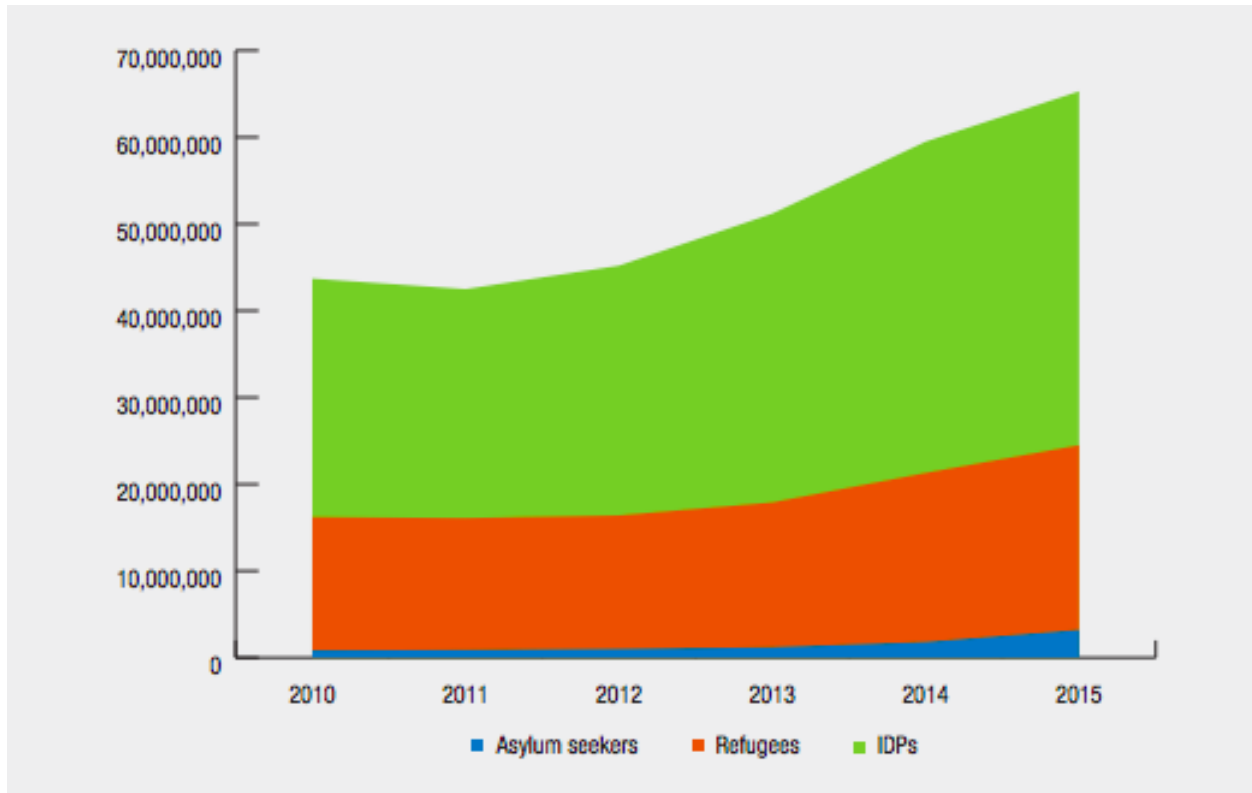
The Keating Government introduced the mandatory detention policy in 1992 by enacting the Migration Amendment Act 1992. The mandatory detention policy in Australia was designed in 1992 in response to unlawful boat arrivals within the Australia territory. This policy requires the detention of all the unlawful non-citizens unless they are granted a lawful status temporarily through a visa (Phillips & Spinks, 2013).

### ***Detention of Unauthorized Arrivals***

According to the Migration Act 1958, all the non-citizens arriving unlawfully in Australia must be detained. These include the asylum seekers and other migrants entering Australia despite the expiration or cancellation of visa. The asylum seekers who enter Australia without authorization must be detained mandatorily, automatically, and indiscriminately (Field, 2006).

### ***Forced Displacement***

There is a substantial increase in forced displacement all across the globe. 51.2 million people in the world were displaced forcibly by the end of 2013. This number had increased to 65.3 million in as less as two years. Of 65.3 million forcibly displaced people, 3.2 million people were the asylum seekers (United Nations High Commissioner for Refugees, 2014)



*Figure 1: Forcibly Displaced People between 2010 and 2015 (United Nations High Commissioner for Refugees, 2011)*

Even though global displacement has increased, Australia still receives an unchanging number of asylum applications. In fact, the number has relatively decreased as a proportion of the total global applications. 15,977 and 16,177 asylum applications were received by Australia in 2013 and 2015, forming 1.5% and 0.5% of the global total respectively (United Nations High Commissioner for Refugees, 2014).

## **Immigration Detention and Community Alternatives**

### *Detention Facilities in Australia*

Closed immigration detention facilities are used to detain most of the unlawful non-citizens. There were a total of nine immigration detention facilities in Australia during the period of publication. Five Immigration Detention Centres (IDCs) operated in Maribyrnong, Villawood, Yongah Hill, Perth and North West Point. Since they are characterised as “medium to high risk,”

these facilities are not used by the children. Melbourne, Brisbane, and Adelaide operate three lower security facilities, referred to as “Immigration Transit Accommodation (ITA).” By the end of 2016, only 1,364 people were held in the closed detention facilities operating in Australia (Department of Immigration and Border Protection, 2016).

### ***Arbitrary Detention***

The United Nations Human Rights Committee (UNHRC) states that arbitrary detention is lawful, but unjust. Hence, a person shall not be detained arbitrarily if their detention is reasonable in any given case. The Migration Act of 1958 states that unlawful non-citizens must be detained anyhow. They shall not be released from detention unless removed from Australia or granted a visa (Australian Human Rights Commission, 2017).

### ***The Pacific Solution***

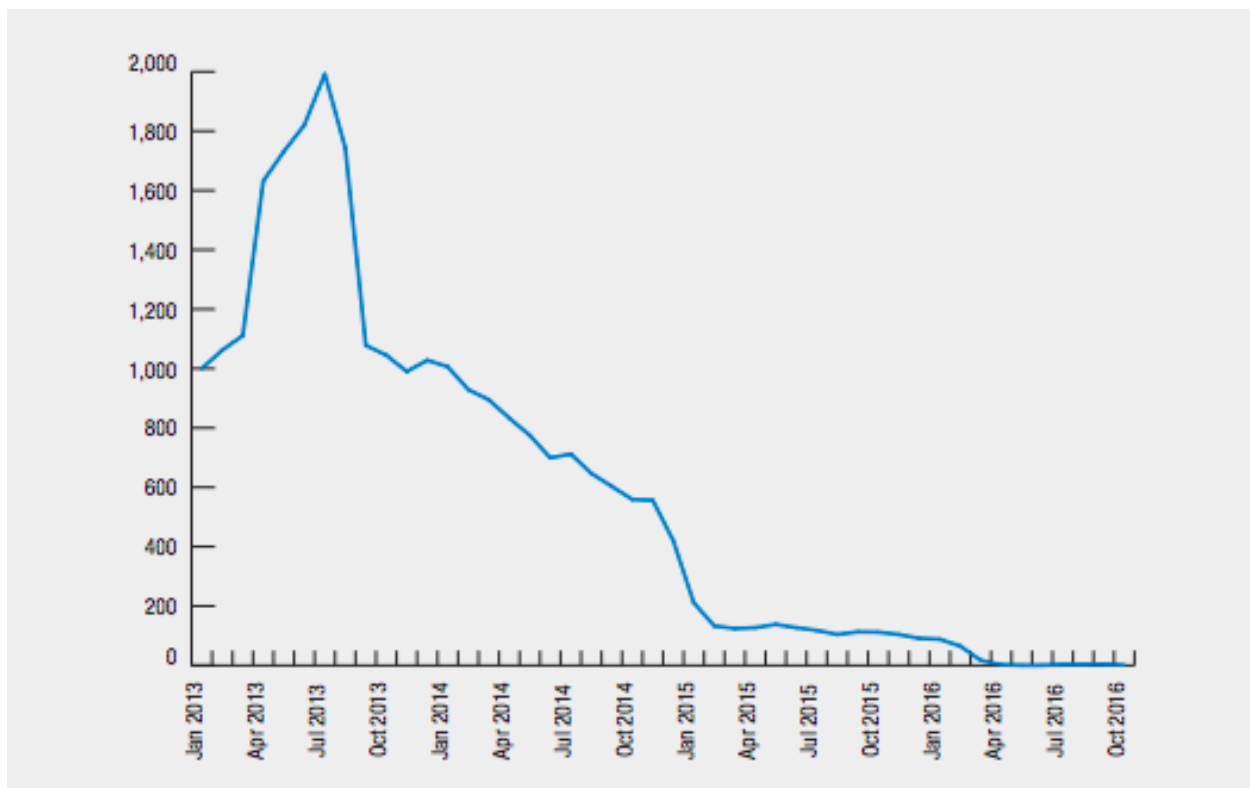
The Pacific Solution was initiated in 2001. It is an offshore processing strategy that forcibly transfers the asylum seekers to the Republic of Nauru and the Papua New Guinea (PNG). Asylum seekers entering Australia through the sea are sent to these two Pacific states. Costs associated with the camps are financed by the Australian government. Besides, the government also bears the costs of aid donations. International Organization for Migration (IOM) and the Australian government ensure that the camps in Nauru and PNG are not turned into detention centres. Following this logic, the government of Australia has announced that its detention policy is now discretionary, instead of being mandatory. This is because the asylum seekers will not be detained in Australia anymore, but would rather move to an offshore processing centre. However, many critics and the asylum seekers argue that these offshoring processing centres are rather the places where children and adults are held in arbitrary detention (Field, 2006).

### **Detention of Asylum Seeking Children**

Convention on the Rights of Child’s (CRC) article 3(1) states that the interests of asylum seeking children will be taken care of in all circumstances. Article 37(b) of CRC ensures that no child will be held in arbitrary detention and that the children will be detained for a short time period.

CRC has declared that a child’s detention based on the migration status of their parents violates their rights and does not serve in the best of their interests. In fact, it has urged the states to terminate mandatory detention of asylum seeking children with regards to their migration status (Global Migration Group, 2016). According to the Migration Act, detention of the children will be the last thing to be done. Practically, however, the provisions stated in the Migration act are equally applicable to children and adults. The Commission has shown opposition to the mandatory detention of asylum seeking children. It has been distressed about the number of child detainees and the extended time periods for which they have been held in detention. A National Inquiry was conducted by the Commission in 2014. The inquiry revealed that detention policy, procedure and law in Australia failed to resolve the issues and address the weaknesses of asylum seeking children. Besides, no security or assistance were provided to the detained asylum seeking children (Australian Human Rights Commission, 2014).

In 2013, 1,992 asylum seeking children were detained. The Minister for Immigration and Border Protection announced in 2016 that Australia’s closed immigration detention facilities will not hold children. By the end of 2016, only two children were held in detention.



*Figure 2: Number of children in closed detention in Australia (Australian Human Rights Commission, 2017)*

The provisions of the Migration Act 1958, however, equally apply to adults and children despite the Commission's urge to release children and endorsement of the Child Safeguarding Framework. There is a high likelihood that children may be detained for a substantial time period in the future if the law remains unchanged. Unaccompanied children suffer from a disturbed state of mind, and may also resort to harming themselves, according to the findings of the 2014 National Inquiry. The inquiry also reveals that the asylum seeking children held in detention might still not have recovered from the trauma when entering into adulthood (Australian Human Rights Commission, 2014). Children are vulnerable, thus, protection must be enhanced. The young and unaccompanied asylum seekers have the Minister for Immigration and Border Protection as their guardian. According to the Commission, the role of the Minister as the legal guardian of the unaccompanied children comes into conflict with their responsibilities. These responsibilities include decision-making about visas, administration of the detention system and transfers to and removals from Regional Processing Centres.

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