

# Australia: Rudd government modifies immigration detention regime

Jake Skeers  
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In an attempt to distance the Rudd government from the notorious immigration policies of the previous Howard government, Immigration Minister Chris Evans last month announced alterations to Australia's mandatory detention regime for asylum seekers.

Evans said the changes were necessary because the public had "lost confidence in the fairness and integrity of our immigration system". In particular, the detention of children behind razor wire had caused "outrage" in the community. However, he also emphasised the Labor government's commitment to maintaining the Howard government's "architecture".

Mandatory detention will continue, albeit in a modified form, along with the use of the navy and air force to intercept and turn back refugee boats. Australia's offshore territories will remain "excised" from the immigration zone, depriving asylum seekers of access to the courts and other basic legal rights. Refugees will still be detained on Christmas Island, a remote outpost in the Indian Ocean.

Evans's announcement simply means that immigration officials will not automatically detain all asylum seekers indefinitely, as has been the policy, with few exceptions, since 1992. Although the changes have been widely hailed by the media and human rights groups, the mandatory detention legislation remains in place, leaving the basic rights of asylum seekers at the whim of the government.

While providing no details of the new policy, Evans outlined three categories of people who will still be detained:

- \* Asylum seekers who arrive without a visa. They will be held for an indeterminate length of time until "health, identity and security risks" are conducted, but then may be released while officials determine their refugee/migration status.

- \* People with expired visas or who are otherwise "unlawful non-citizens," whom the immigration department believes present "unacceptable risks to the community".

- \* Those who have "repeatedly refused to comply with their visa conditions," typically by not leaving Australia.

Evans would only say that asylum seekers would be

released in "the shortest time practicable," which could mean many months. These proposals leave vast powers in the hands of the government and its immigration and intelligence officials to imprison and then deport. The Australian Security Intelligence Organisation (ASIO) can declare anyone a "security risk" without supplying any evidence, and the minister can refuse or cancel a visa on vague grounds of "bad character".

Evans's promised safeguards are minimal. Decisions to detain people regarded as "unacceptable risks" will be reviewed by senior officials every three months. The Commonwealth Ombudsman's office can review cases after six months but its recommendations are not binding. These changes leave decisions about imprisoning people, who have committed no crime, in the hands of executive government. In other words, detention without trial will continue.

Evans said those dumped on Christmas Island will have access to lawyers and a non-judicial appeal process. But they will still be subject to "non-statutory processing"—without access to review by statutory tribunals or courts. What is more, all the new guidelines can be reversed easily, via regulations.

The minister dropped a previous Labor promise to restore public management of detention facilities, despite a series of official reports that private operators have imposed barbaric conditions, such as solitary confinement and deprivation of medical and mental health care. Evans claimed it would be too expensive to halt the current tender process for new private contracts.

Apart from provoking public criticism, Evans said the previous policies had "done enormous damage to our international reputation". The United Nations Human Rights Committee had made 14 adverse findings against Australia since 1997, ruling that the country had violated the prohibition on arbitrary detention in article 9(1) of the International Covenant on Civil and Political Rights.

Sections of business and the media had been calling for detention modifications since 2002 because the practices were seen as a hindrance to trade, military and diplomatic

efforts in Asia, with the potential to discourage fee-paying students, tourists and skilled workers. As labour shortages emerged in mining and farming areas, Howard increasingly came under pressure to release refugees as a supply of cheap labour, alongside increases to immigration quotas. Pictures of children behind razor wire were also regarded as unhelpful, given Australian military interventions were being conducted under the banner of human rights and “good governance” in East Timor, Solomon Islands, Afghanistan and elsewhere.

In 2005, glaring abuses were revealed, causing a further shift in public sentiment against the Liberal-National coalition government. Cornelia Rau and Vivian Solon were detained, despite being a citizen and permanent resident respectively, and in Solon’s case deported to the Philippines. These two became the most widely reported of more than 200 cases of wrongful detention. Media agitation and popular opposition forced the Howard government to make various reforms, including releasing women and children into guarded “community detention”.

Evans also pointed to the expense of the detention regime, which cost \$220 million in 2006-07, with 441 people detained as of June 30, 2007 (357 as of June 29, 2008). Cost was one of the reasons the Labor government gave in February for shutting the detention camps on the Pacific island of Nauru and on Papua New Guinea’s Manus Island. The Howard government had spent \$247 million from its “aid” budget to maintain the two camps as part of its “Pacific Solution”. According to one report, each detainee processed on Manus Island cost \$500,000.

The mass media has promoted Evans’s claim to have ended the “shameful” period of the Howard government, offering headlines such as “National stain cleansed”. Rupert Murdoch’s *Australian* editorial welcomed the changes as “sensible” and “right for the times”, and numerous refugee advocates have joined in. Kate Gauthier, national coordinator of A Just Australia, declared: “This announcement is a major victory for human rights in Australia. We congratulate the Rudd government.”

But it was Labor that introduced mandatory detention in 1992 under Prime Minister Paul Keating. Designed to block the arrival of Vietnamese, Cambodian and Chinese refugees, detention was originally capped at 273 days, then became indefinite in 1994.

From 1996, when the Keating government lost office, Labor entirely backed all of Howard’s measures. The bipartisan line-up was graphically displayed in August 2001, when the Coalition government blocked 433 refugees from entering Australia after being rescued by the Norwegian cargo ship, the Tampa. Led by Kim Beazley, Labor endorsed this criminal act, then voted for laws retrospectively

legalising the military transportation of the refugees to Nauru. Labor went to the 2001 election trying to outbid the government in demonising refugees as “queue jumpers” and joining in the slanderous allegation that some parents had thrown their children into the ocean to force the navy to rescue them.

Labor stood firm with the Coalition even as asylum seekers, mainly from Iraq, Iran and Afghanistan, conducted long and dangerous hunger strikes in the desert detention camps at Woomera and Port Hedland between 1999 and 2003. Significantly, as opposition to detention grew, it was Coalition backbenchers, not the Labor Party, who began to call for modifications to the regime.

Another major factor in Labor’s new stance is that boat arrivals have dropped dramatically, from a peak of 4,175 in 1999-2000 to 133 in 2006-07. From October 2001, arrivals practically came to a standstill after 353 refugees drowned when their boat, dubbed SIEV X, or “unknown” Suspected Illegal Entry Vessel, sank in international waters between Indonesia and Australia. Howard’s immigration minister Philip Ruddock chillingly said the tragedy could have “an upside ... in the sense that some people may see the dangers inherent” in trying to sail to Australia. There exists compelling evidence that the government allowed the SIEV X survivors to drown, in an area that was under heavy surveillance by the Australian air force and navy, in order to deter future voyages.

If refugee arrivals again begin to increase, Labor is sure to effect another shift. Praising the government’s stance, the *Australian* predicted that if refugee numbers were to spike, “the government’s pragmatic attitude suggests it would be as hard-headed as necessary to protect border security”. Evans himself concluded his speech by pledging “strong border security, firm deterrence of unauthorised arrivals, effective and robust immigration processes and respect for the rule of law and the humanity of those seeking migration outcomes”. Howard and Ruddock employed similar language for a decade.



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