

Your rights if you came by boat and are in immigration detention

Who are RACS and what can they do for me?

RACS is a community legal centre which specialises in refugee law. Our core work is to assist people in making applications for protection visas onshore in Australia.

Unfortunately if you have come to Australia by boat, the current law prevents you from being allowed to lodge a protection visa in Australia, without the personal approval of the Minister for Immigration. You are subject to a requirement under the Australian Migration Act that you be taken to Nauru or PNG as soon as reasonably practicable, or unless the Minister grants an exemption.

Because you are not able to lodge a protection visa application in Australia under the law, RACS is not able to help you in preparing or lodging an application for protection.

You have the right to write to the Australian Minister for Immigration to seek the Minister's personal approval to be exempt from transfer to Nauru or PNG:

The Hon Scott Morrison MP,
Minister for Immigration and Border Protection,
PO Box 6022, House of Representatives,
Parliament House, Canberra ACT 2600.

Your letter should be a "Request to be exempt from transfer to a regional processing country, and request for the bar to be lifted to allow me to make an application for a protection visa in Australia". You should be aware that the current Immigration Minister has not granted any exemptions from transfer or lifted the bar on applications for protection visas to be lodged in Australia since coming into office, so unfortunately the chances of success on these requests are extremely poor.

RACS is currently running a project aimed at preventing removal to a person's home country for those with good claims to be a refugee who came by boat, who have never allowed to make a protection application. The goal and the extent of this work is to stop a person's return to their home country because of being "screened out".

In doing this work, RACS doesn't have capacity to take complaints about general breaches of human rights, or about conditions in detention.

This factsheet is designed to give you referrals to the organisations which do monitor and report on the conditions in immigration detention, including about a person's continued detention.

We would encourage you to make a complaint about your conditions.

You can't get in trouble for making a complaint and it does not affect your migration status or chances of obtaining a visa in Australia.

Who handles complaints about detention conditions or about breaches of human rights?

[The Red Cross](#) visits immigration detention facilities to assess and monitor the general conditions of detention as well as the treatment of people held in detention. To contact a Red Cross immigration detention worker, call 03 93451800. You could alternately write outlining your concerns about your continued detention and conditions to:

Request for immigration detention assistance,
Australian Red Cross,
St Andrews House, Level 4, 464 Kent Street,
Sydney NSW 2000.

[The Commonwealth Ombudsman](#) takes complaints and writes reports in relation to immigration matters including safeguarding conditions in detention. They can be contacted on 1300 362 072 or via their [online complaint form](#).

[The Australian Human Rights Commission](#) can inquire into [complaints of breaches of human rights](#) in immigration detention. They also monitor [human rights standards in immigration detention](#). They can be contacted on 1300 656 419, or a complaint can be sent to:

Director, Investigation and Conciliation Service,
Australian Human Rights Commission,
GPO Box 5218, Sydney NSW 2001.

What are my human rights?

Australia is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR). The Australian Human Rights Commission can investigate your treatment against this Convention. The articles of the ICCPR that could be of particular relevance to a complaint to AHRC are: article 9(1), article 10(1), article 17(1), and article 23(1).

Under article 9(1) of the ICCPR, there is a requirement that **detention not be 'arbitrary'**, which means that detention should not continue beyond the period for which the Department can provide appropriate justification. Detention is arbitrary where it is not necessary in all the circumstances of the case. In your case, there may be less restrictive means of achieving compliance with immigration policies, especially if you pose no unacceptable risk to the community. If your health is worsening or detention is causing damage to your emotional wellbeing this could make it unreasonable that the Department is continuing to detain you. It could make your continuing restrictive detention a disproportionate approach for achieving relevant immigration objectives.

Under article 10(1) of the ICCPR, there is an obligation on the Department to take actions to **prevent inhumane treatment of detained persons**. This includes a requirement to respect the rights and interests of a detainee to maintain family connections.

Under articles 17(1) and 23(1) of the ICCPR, every person has the right not to be subjected to an **arbitrary interference with their family and to the protection of the family**. These articles may have been breached in your case if you are separated from your family because of your detention and if this is affecting your ability to maintain your family relationships.

Please note: This factsheet contains general information only. It does not constitute legal or migration advice. If you need legal or migration advice about your specific situation, please contact RACS. RACS gives telephone advice on Tuesdays and Thursdays from 10am to 12 noon. RACS is entirely independent of the Department of Immigration. All assistance is free. This factsheet was prepared in February 2014.