

**RESPONSE OF THE AUSTRALIAN GOVERNMENT
TO THE VIEWS OF THE COMMITTEE IN
COMMUNICATIONS NUMBERS**

**1255/2004, 1256/2004, 1259/2004, 1260/2004, 1266/2004, 1268/2004, 1270/2004,
1288/2004**

**Saed Shams, Kooresh Atvan, Shahin Shahrooei, Payam Saadat, Behrouz
Ramezani, Behzad Boostani, Meharn Behrooz, Amin Houvedar Sefed**

v

AUSTRALIA

1. The Australian Government presents its compliments to the members of the Human Rights Committee.
2. The Government has taken note of the views of the Committee expressed in Communications Nos. 1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288 of 2004, which were adopted on 20 July 2007. These views have been published on the website of the Attorney-General's Department.¹ The Government provides the following information in response to the Committee's views.
3. The Government wishes to advise the Committee that Mssrs Atvan, Behrooz, Boostani, Ramezani, Saadat, and Shams have been granted permanent Protection visas. These visas allow them to remain in Australia indefinitely. As noted in the Committee's views, Mr Shahrooei and Mr Sefed had been granted permanent Protection visas before the Committee adopted its views. Mr Houvedar Sefed was granted Australian Citizenship on 10 October 2007.
4. The Government welcomes the Committee's view that the authors' allegations of breaches by Australia of articles 7 and 10 of the International Covenant on Civil and Political Rights (the Covenant) were inadmissible on the basis of non-substantiation or non-exhaustion of domestic remedies.

¹ http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_Humanrightscommunications.

Article 9(1)

5. The Government recalls the jurisprudence of the committee that it is not per se arbitrary to detain individuals requesting asylum and that there is no rule of customary international law which would render all such detention arbitrary². It is therefore necessary to examine the circumstances of each case to determine whether the treatment of an individual violates the prohibition of arbitrary detention in the Covenant.
6. The Government acknowledges its obligation under the Covenant not to subject any person to arbitrary detention, and further acknowledges that there are some circumstances in which the lawful and permissible detention of a person may become arbitrary if there are no longer any grounds to justify it.
7. The Australian Government will retain the system of mandatory detention (along with tough anti-people smuggling measures) to ensure the orderly processing of migration to our country. However, it is committed to reviewing the conditions, period and forms of managing detention.
8. The Government would like to provide the Committee with the following information about measures it has taken in furtherance of its commitment to these principles.
9. In 2005 the Australian Government announced a number of changes to both the law and the handling of matters relating to people in immigration detention and the processing of Protection visa applications. These changes include:
 - that where detention of an unlawful non-citizen family (with children) is required under the *Migration Act 1958* (Migration Act), detention should be under alternative arrangements (that is, in the community under residence determination arrangements [now known as community detention] at a specified place in accordance with conditions that address their individual circumstances), where and as soon as possible, rather than under traditional detention;
 - all primary Protection visa applications are to be decided by the Department of Immigration and Citizenship (DIAC) within 90 days of application lodgement;
 - all reviews by the Refugee Review Tribunal are to be finalised within 90 days

² *A v Australia*, CCPR/C/59/D/560/1993

- of the date the Tribunal receives the relevant files from DIAC;
- regular reporting to Parliament on cases exceeding these time limits is required;
 - where a person has been in detention for two years or more there will automatically be a requirement that every six months a report on that person be furnished by DIAC to the Commonwealth Ombudsman. The Ombudsman’s assessment of each report, including recommendations on whether the person should be released from detention, will be tabled in Parliament;
 - the provision in the Migration Act of an additional non-compellable power for the Minister for Immigration and Citizenship to specify alternative arrangements for a person’s detention and conditions to apply to that person;
 - the provision in the Migration Act of an additional non-compellable power for the Minister for Immigration and Citizenship, acting personally, to grant a visa to a person in detention; and
 - the amendment of the Migration Regulations 1994 to create a new bridging visa to enable the release of persons in immigration detention into the community whose removal from Australia is not reasonably practicable at the current time. A Removal Pending Bridging visa may be granted using the Minister for Immigration and Citizenship’s non-delegable, non-compellable public interest power to grant a visa to a person in immigration detention.
10. The legislative changes necessary to give effect to the reforms were contained in the *Migration Amendment (Detention Arrangements) Act 2005* and the *Migration and Ombudsman Legislation Amendment Act 2005*.
 11. The Government has also introduced Detention Review Managers (DRMs). These managers independently review the initial decision to detain a person and continue to review the cases of people in immigration detention on an ongoing basis to ensure their detention remains lawful and reasonable.
 12. Since its election on 24 November 2007, the Australian Government has ended the ‘Pacific Strategy’, under which unauthorised boat arrivals who raised protection claims were assessed at offshore processing centres in Nauru and Manus Province, Papua New Guinea. In February 2008 the last asylum seekers to be processed in an offshore centre were granted humanitarian visas and resettled in Australia. All future unauthorised boat arrivals who raise refugee claims will be taken to Christmas Island, an Australian territory, where their claims will be processed under existing refugee status assessment arrangements.

13. The Minister for Immigration and Citizenship has completed a review of the cases of persons who have been in immigration detention for more than two years. The review, conducted personally by the Minister, sought to apply a range of measures to progress, if not resolve, the immigration status of these detainees. A number were granted visas as a result of the review, enabling their release from immigration detention. Others were removed from immigration detention centres and placed in community detention.
14. The Minister's review was underpinned by the principle that indefinite detention is not acceptable. This demonstrates the Government's commitment to promptly resolve the immigration status of all persons. The Government will only detain persons in immigration detention centres as a last resort and will only do so for the shortest practicable time.

Article 9(4)

15. The Government notes the Committee's view that there was a breach of article 9(4) of the Covenant.
16. Under article 9(4), the obligation on States parties is to provide for review of the lawfulness of detention. In the view of the Government, there can be no doubt that the term 'lawfulness' refers to the Australian domestic legal system. There is nothing apparent in the terms of the Covenant that 'lawful' was intended to mean 'lawful at international law' or 'not arbitrary'.

Conclusion

17. The Government does not accept it owes the authors compensation under article 2(3).
18. The Government reiterates its commitment to its obligation under the Covenant not to subject any person to arbitrary detention. The Government avails itself of this opportunity to renew to the Committee the assurances of its highest consideration.