

# Labor for Refugees

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28 August 2019

## Indefinite detention of stateless people

Labor for Refugees asks that Labor in Opposition:

- Notes that a United Nations Human Rights Council Working Group on Arbitrary Detention has found that indefinite detention of stateless people in Australia is in breach of article 14 of the Universal Declaration of Human Rights.
- Acknowledges that the indefinite detention of stateless people who have committed no crime, including asylum seekers and refugees, is inhumane and unacceptable in a modern society.
- Pressures the Coalition Government regarding the immorality and injustice of a law that allows stateless people to be held in indefinite detention, effectively facing the prospect of spending the rest of their lives in detention.
- Pressures the Coalition Government, subject to security assessment, to immediately release all stateless people currently held in Australian detention centres into community detention, particularly those held for years. Where a stateless person fails to obtain refugee status, that they be allowed to remain in the community until repatriation or resettlement in another country can be effected.

### Background

Stateless persons are individuals who are not considered citizens or nationals under the operation of the laws of any country<sup>i</sup>. As at 31 May 2019, 55 stateless men and women are being held in immigration detention facilities throughout Australia<sup>ii</sup>.

Under ss 189 and 196 of the *Migration Act 1958*, non-citizens, including asylum seekers and refugees, can be detained until deported or granted a visa. For those that are stateless, this effectively means they face the prospect of spending the rest of their lives in detention, as return to their country of origin may be refoulement.

In 2004, the High Court ruled that indefinite detention of a stateless person was lawful. However, it is clearly neither just nor humane.

On a purely economic basis, it costs more than \$346,000 a year to hold an asylum seeker or refugee in detention in Australia, compared to \$103,343 to live in community detention, and just \$10,221 to live in the community on a bridging visa. Studies show that, in time, refugees living and working in the community go on to make a net contribution<sup>iii</sup>.

### Case Study 1<sup>iv</sup>

Ahmad Shalikhhan has spent most of his young adult life in immigration detention since arriving at Christmas Island by boat on 25 August 2013, aged 16, with his mother, claiming asylum.

As stateless Faili Kurds from Iran, he and his mother have both been recognised as refugees. In 2016, Ahmad's mother was given a 5-year Safe Haven Enterprise Visa and is now living in the community. However, Ahmad's claim was denied having failed a character test. Among other factors, in 2014, Ahmad, then aged 17, was arrested and charged with offences including assaulting a public officer, for which he received a caution with no conviction. Ahmad also has ongoing complex mental health issues and has exhibited aggressive behavior while in detention. However, assessment reports have indicated that the confined environment of detention is exacerbating his mental health. Nevertheless, it is understood he has shown considerable behavioural improvement and just wants to get an education and lead a normal life outside of detention.

Ahmad remains in detention at Sydney's Villawood Detention Centre and has been awaiting a determination on a protection visa for **six years**. However, there is no limit or timeframe for this decision. Ahmad has already effectively lost his young adulthood in detention. If his visa is refused, he faces the prospect of spending the rest of his life in detention as return to his country of birth would constitute refoulement.

## Case Study 2

Said Imasi has been held without charge or trial since arriving in Australia from Norway as a teenager in 2010 with a false passport. His application for refugee status was rejected. However, it was found that he is a stateless person.

Said has claimed he may have been born in Spain's Canary Islands before being taken to the disputed territory of Western Sahara. However, no country has recognised him as a citizen, nor will accept him.

He has now been in detention for **nine years** and is currently held in Sydney's Villawood Detention Centre.

A recent High Court ruling<sup>v</sup> has determined that his detention is not unlawful. With no prospect for resettlement or deportation, this in effect means he can lawfully be detained for the rest of his life. Again, lawfulness does not equate to a just nor moral outcome. His detention has been criticised as arbitrary and contrary to international law by the [United Nations Human Rights Council Working Group on Arbitrary Detention](#). The Commonwealth Ombudsman has repeatedly sought his release into the community.

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<sup>i</sup> Statelessness, UNHCR <https://www.unhcr.org/en-au/statelessness.html>. Accessed 3 July 2019

<sup>ii</sup> Immigration Detention and Community Statistics Summary, 31 May 2019

<https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-may-2019.pdf>

<sup>iii</sup> *Factsheet: The Cost of Australia's Asylum and Refugee Policies: A Source Guide*, Andrew & Renata Kaldor Centre for International Refugee Law, University of NSW, Sydney, Last update 18 March 2019

<sup>iv</sup> Opinions adopted by the United Nations Human Rights Council Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018: Opinion No. 74/2018 concerning Ahmad Shalikhani (Australia) [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A\\_HRC\\_WGAD\\_2018\\_74.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_74.pdf)

<sup>v</sup> Plaintiff M47/2018 v Minister for Home Affairs & ANOR [2019] HCA 17

12 June 2019. High Court of Australia. <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2019/hca-17-2019-06-12.pdf>