



31 January 2014

Clarity needed regarding plans to detain asylum seekers currently in the community

The Minister for Immigration Scott Morrison has confirmed that some asylum seekers currently in the community will be detained.¹ The ASRC remains concerned that this may include asylum seekers who are seeking judicial review or ministerial intervention on humanitarian grounds.

The Minister stated:

“Once you have had your claim assessed by the Department but also on appeal, it’s time to go home.”

This statement is ambiguous and needs clarification. It appears to suggest that the ‘time to go home’ is after an adverse decision from the department and then an appeal of that decision to the Refugee Review Tribunal (RRT).

However, asylum seekers have a right of judicial review of an RRT decision to the Federal Circuit Court.² They are also able to request ministerial intervention in their case on humanitarian grounds. Detaining asylum seekers currently in the community with these review matters underway was the ASRC’s original concern with this proposed action.³

The Minister did not confirm that asylum seekers with judicial review on foot would not be detained, instead, he said:

“Where failed asylum seekers have sought judicial review of their decisions, those matters will take their course in the courts. Detention of people involved in ongoing cases is decided on a case by case basis. Their detention does not impact on the progress of their case.”

Detaining people that are exercising judicial review rights will have a detrimental impact on their ability to proceed and this action therefore circumvents the appeal process.

Detention seriously limits access to legal assistance and the well documented impact on asylum seekers mental health directly affects their capacity to continue with proceedings.

There is no information from the Minister regarding what considerations are relevant for determining ‘on a case by case basis’ whether someone will be detained while they have an ongoing appeal.

The Minister must clarify his use of the term ‘failed asylum seeker’ and outline the relevant considerations for detaining an asylum seeker with judicial review or a ministerial request for humanitarian intervention pending.

¹ <http://www.smh.com.au/federal-politics/political-news/scott-morrison-cracks-down-on-failed-asylum-seekers-and-signs-contract-for-voluntary-returns-20140130-31o10.html>.

² 28% of decisions that were remitted back to the RRT by the court resulted in a different decision in 2012/13, MRT-RRT Caseload Report 30 June 2013.

³ ASRC media release of 29.01.14 at <http://www.asrc.org.au/wp-content/uploads/2014/01/ASRC-Media-Release-2901141.pdf>.