



30 June 2021

The Hon Alex Hawke MP
Minister for Immigration
The Hon Karen Andrews MP
Minister for Home Affairs
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister Hawke and Minister Andrews,

Re: National Refugee Week 2021

The theme of National Refugee Week 2021 was *'Unity – The way forward.'* The Global COVID-19 Pandemic has highlighted to us now, more than ever, the necessity of global solidarity. Without it, the developing world will remain unvaccinated against COVID-19 and we will not end the pandemic. If we do not consider our brothers and sisters around the world, the more than 82.4 million¹ men, women and children displaced across the world will continue to grow in number, having to flee wars, violence, unfounded persecution, human rights violations, dire economic conditions, food insecurity and climate change crises, enduring untold suffering. Only through global solidarity and recognising our common humanity can we work together, not merely to survive, but that all might flourish.

Whilst we are pleased that Australia is one of the world's more generous contributors to international refugee resettlement efforts, annual refugee resettlement globally never exceeds more than 1% of the total refugee population.² Australia, as a signatory of the Convention and Protocol Relating to the Status of Refugees (the Refugee Convention), must step up to meet this challenge and alleviate suffering. When Australia resettles those seeking refuge and supports them to thrive in our society, they in turn give back to our nation, enriching our communities through sharing their diverse cultures and traditions, skills, talents and friendship. Improvements are therefore desperately needed to our migration policies to fulfill the rights and needs of some of the world's vulnerable peoples, and to ensure that we can all thrive together.

Decreases to the Refugee and Humanitarian Program

We are concerned by the decrease in the annual visa allocation for the Refugee and Humanitarian Program, from the quota of 18,750 places in 2018-19, to just 13,750 places per year. This is counterintuitive, given the rise in the number of refugees globally, and the fact that Australia never

¹ UNHCR, Global Trends: Forced Displacement in 2020, <https://www.unhcr.org/flagship-reports/globaltrends/>

² UNHCR, Resettlement, <https://www.unhcr.org/pages/4a16b1676.html>

reached its quota for the 2019-20 period given the restrictions of the COVID-19 Pandemic³. By limiting options for refugees to reach safety in Australia via the Refugee and Humanitarian Program, more people will be forced to take dangerous journeys to attempt to reach Australian shores, without a visa, in order to preserve their lives. We ask that the Australian government reverse this quota and return to the previous policy of a staged quota increase.

The Protection of Asylum Seekers under International Law

Australia has shirked its international legal obligations regarding asylum seekers by creating 'legal loopholes.' *The Universal Declaration of Human Rights* declares that every human being has the right to seek asylum and the protection of another nation. Yet, we are concerned that Australia has adopted a policy of deterrence, constructing fictitious excised offshore places and excluding the Australian mainland from the 'migration zone,' alleging that international legal obligations do not apply to these spaces. We ask that the Australian government abandon its policy of deterrence and take its obligation to protect those seeking refuge seriously and treat them in accordance with the provisions of the *Refugee Convention*, which should remain in force regardless of how asylum seekers arrive.

The Arbitrary Detention of Those Seeking Asylum

Australia's *Migration Act 1958* categorises all who arrive in Australia without a visa as "unlawful non-citizens." This ignores the very nature of refugee flight. War, state-enacted persecution, and dire economic conditions, for example, can make it impossible for an individual to gather evidence, obtain the correct documentation, or to acquire a visa before fleeing to safety. The *Refugee Convention* thus recognises that the seeking of asylum can necessitate breaching immigration rules, and that penalties should therefore not be imposed. Being arbitrarily detained purely on the basis of seeking asylum not only contravenes the *Refugee Convention*, but also basic human rights.

According to Australian policies, an asylum seeker must remain in immigration detention unless and until they are granted some form of visa, or they are removed from the country. There is no set limit on the length of time that an asylum seeker can be detained for, with individuals facing indefinite detention. At present, individuals spend an average of 641 days in immigration detention, greatly exceeding timeframes in other countries of the global north.⁴ Additionally, detainees are prohibited from legally challenging their detention.

This ongoing uncertainty about the future can trigger and exacerbate mental illness and severe distress in individuals who may already be suffering from trauma based on their experience of persecution and refugee flight.⁵ No person should be subject to degrading treatment or punishment, as per Australia's obligations under the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, and

³ Department of Home Affairs, Australia's Offshore Humanitarian Program: 2019–20, <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf>

⁴ UNSW Kaldor Centre, The Migration Amendment (Clarifying International Obligations for Removal) Act 2021: A case study in the importance of proper legislative process, <https://www.kaldorcentre.unsw.edu.au/publication/migration-amendment-clarifying-international-obligations-removal-act-2021-case-study>

⁵ Australian Human Rights Commission, Inspections of Australia's immigration detention facilities 2019 Report, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

we ask the Australian government to consider ending immigration detention and employing alternatives to closed detention,⁶ while allowing asylum seekers more expedient access to a fairer and more comprehensive refugee status determination process.

Detention of Children

Australia's mandatory detention of any non-visa holder in Australia extends to children. This breaches children's rights under the *Convention on the Rights of the Child*, ratified by Australia, which specifies that children must not be arbitrarily detained, and may only be detained as a measure of last resort and for the shortest time possible. The Australian Human Rights Commission has found that children in detention endure anxiety, bedwetting, and suicidal thoughts and behaviours.⁷ As we have all witnessed, Tharnicca Murugappan, at 3 years old, has had her right to health gravely compromised while detained on Christmas Island. No child should have to suffer that again and we ask the Australian government to change the *Migration Act* to prohibit the detainment of children seeking asylum or born to asylum seekers in immigration detention.

We are pleased that Tharnicca and Kopilka Murugappan have been released from detention on Christmas Island for the interim. However, we are gravely concerned that these young girls who, along with their parents, have not been guaranteed visas and could be returned to detention at some point in the future.

We stand together with so many Australians to ask that, on compassionate grounds, the Immigration Minister uses his ministerial discretionary powers to allow the Murugappan family to live permanently in Biloela, having suffered enough under Australia's asylum seeker processes and systems.

Australia has a responsibility to comply with its international legal obligations, and our policies concerning refugees and asylum seekers must therefore be changed and improved. Otherwise, we deny that refugees and asylum seekers have dignity and are worthy of rights, as all human beings do, eroding the very foundation of our society. Australians celebrate diversity and champion a "fair go" for all. This must extend to our fellow citizens around the globe, who seek a safe life on Australian shores. This year, we ask that you truly embrace unity as the way forward.

Your sincerely,



Peter Carroll FMS
President



Anne Walker
National Executive Director

⁶ La Trobe Refugee Research Centre, *There Are Alternatives: A handbook for preventing unnecessary immigration detention*, <https://www.ohchr.org/Documents/Issues/Migration/Events/IDC.pdf>

⁷ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>