



Catholic Religious Australia Submission to the Joint Standing Committee on Migration's inquiry into the End Indefinite and Arbitrary Immigration Detention Bill 2021

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Catholic Religious Australia (CRA) welcomes the opportunity to make a submission to the Joint Standing Committee on Migration's inquiry into the Ending Indefinite and Arbitrary Immigration Detention Bill 2021 (the Bill).

CRA is the peak body representing the Leaders of 150 Catholic Religious Institutes and Societies of Apostolic Life which operate in Australia. Our religious institutes comprise more than 5,000 Catholic religious women and men and their lay colleagues, who work in education, health care and social services. Australia's religious congregations are strongly committed to action for justice. Through their justice ministries, they work with and advocate for Australia's most vulnerable communities, including refugees and asylum seekers.

At present, more than more than 82.4 million¹ men, women and children are displaced across the world, having to flee wars, violence, unfounded persecution, human rights violations, dire economic conditions, food insecurity and climate change crises. Australia has shirked its humanitarian responsibility and international legal obligations regarding those who are forced to seek asylum through its immigration detention policies. *The Universal Declaration of Human Rights* declares that every human being has the right to seek asylum and the protection of another nation; CRA wholeheartedly supports the Bill as a means of transforming Australia's migration policies for the better, bringing them in line with international legal requirements and fulfilling the rights and needs of some of the world's most vulnerable peoples.

Family Unity

We fully support the Bill's prioritisation of the principle of family unity in all actions and decisions under the proposed Act.

The family is the most fundamental unit of society, and the relationships within it support each person to grow and be cared for throughout life. The right to family life, and its protection and assistance, is therefore established in many bodies of international law, including in Article 16(3) of the Universal Declaration of Human Rights; in Article 23(1) of the International Covenant on Civil and Political Rights; and in Article 10(1) of the International Covenant on Economic, Social and Cultural Rights. The right of a child to their family is firmly established throughout the Convention on the Rights of the Child.

It is deeply concerning that under current Australian legislation, for any person who arrives by boat seeking asylum in Australia, including minors, their family members are not eligible for consideration for resettlement in Australia. This has resulted in lengthy separation of families, with many being left in dangerous situations in their country of origin, without familial support. Prolonged family separation may have serious negative emotional and mental impacts on the individuals involved.

We therefore endorse the Bill's proposal that actions which would disrupt an intact family unit or prevent family reunification should be avoided, and that action must be taken to allow a dispersed family to reunite, without being forced to return to the country from which they have fled.

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

The Rights and Best Interest of the Child

We fully support the Bill's prioritisation of the principle of the rights and best interests of the child in all actions and decisions that affect a child.

Under current legislation, the mandatory detention of any non-visa holder in Australia, including children, is in breach of the *Convention on the Rights of the Child*. This 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 (Article 37, b). This is because detention can have significant negative repercussions for children's health, development and well-being. The Australian Human Rights Commission has found that children in detention endure anxiety, bedwetting, and suicidal thoughts and behaviours,² which impact the child's psychological, physical and cognitive development.

We therefore endorse the Bill's fundamental principle that children should not be detained, allowing only for very specific conditions and time frames for when a child can be detained.

Arbitrary Immigration Detention

We fully support the Bill's assertion that detention must not be arbitrary, and that any decision to detain a person is an exceptional measure, only undertaken under legitimate circumstances and conducted in line with UNHCR detention guidelines.

We are deeply concerned that Australia's *Migration Act 1958* wrongfully categorises all who arrive in Australia without a visa as "unlawful non-citizens," necessitating their detention. This ignores the very nature of refugee flight. Conflict, persecution, and dire economic conditions, for example, can prohibit an individual from having the time and resources to gather evidence, obtain the correct documentation, or to acquire a visa before needing to flee 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 (Article 31, 1). Their detention by Australia, purely on the basis of seeking asylum, is therefore arbitrary and in contravention of the *Refugee Convention*. Asylum seekers should not be held in detention whilst their refugee status is being processed and determined.

Secondly, we are also concerned that detention is arbitrarily used as part of a policy of deterrence, said to dissuade future asylum seekers from seeking refuge in Australia. Yet, policies of deterrence have been shown to be ineffective. Asylum seekers often have minimal knowledge of the immigration policies of destination countries, and their destination is often determined by the people smugglers engaged.³ Instead, detention as part of a policy of deterrence only seems to serve as a political tool, used to create a narrative of control over borders for citizens. When detention is used politically, it again constitutes arbitrary detention, contravening the *International Convention on Civil and Political Rights* (Article 9, 1).

² 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>

³ 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>

At present, there is no set limit on the length of time that an asylum seeker can be held in detention, with detainees facing indefinite detention. Additionally, detainees are prohibited from legally challenging their detention. Any length of detention, for those who have legally sought asylum in accordance with international law, 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.⁴ 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*.

We therefore strongly support the Bill's proposal that immigration detention only be undertaken as a last resort, in exceptional circumstances where it is deemed necessary and unavoidable, in accordance with international standards. We also support that such an exceptional case of detention be conducted for the shortest possible timeframe, and in a manner that seeks to preserve the rights of the individual. This includes provision of free and independent legal assistance, regular reviews of detention status, regular independent inspection of detention conditions, adequate health and mental health services, and social connections.

We also support the Bill's proposal that offshore processing be completely dismantled. Offshore processing is costing Australian taxpayers more than \$1 billion a year to fund a system that leaves asylum seekers without adequate health services, legal assistance and with little hope for the future.⁵ The health and wellbeing of asylum seekers can be vastly improved if any necessary detention or alternatives to detention always take place in Australia.

Alternatives to Immigration Detention

We fully support the Bill's proposal that if a legitimate reason for immigration detention does not exist, then alternatives to immigration detention are to be employed while individuals are processed and determined to be refugees. These alternatives are all to include different modalities of the refugee living within the community, with certain restrictions.

Not only do community-based alternatives to detention better uphold human rights, research has shown that they also result in many benefits for host countries, including: improvement in non-citizen health and wellbeing; improvement in societal integration for approved cases; maintenance of high rates of compliance amongst non-citizens; reduction in costs when compared to detention; and increase in voluntary departure and return rates.⁶

We therefore endorse the Bill's proposal that alternatives to immigration detention be employed where a reason for immigration detention cannot be found, as per the UNHCR detention guidelines, and that adequate access to health and mental health services, education, counselling, government services and legal services is made available. We also agree with the Bill's proposal that, consistent with Article 17 of the Refugees Convention, non-citizens and refugees are granted their right to work. Importantly, the Bill also

⁴ 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>

⁵ Refugee Council of Australia, *Seven years on: An overview of Australia's offshore processing policies*, <https://www.refugeecouncil.org.au/seven-years-on/>

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>

proposes that any determination of alternatives to immigration detention only be in place for 12 months, unless an extension is found necessary by the Federal Circuit Court, to prevent indefinite restrictions for non-citizens.

Boat Turnback Policies

Our only concern about the passing of the Bill is that it may prompt an increase in efforts to turn back boats, so that maritime asylum seekers never reach Australian shores. From 2013 to 31 August 2021, [873 people, including 124 children, seeking asylum on 38 vessels were returned to their country of departure](#), following minimal to no refugee status assessment.⁷ While the Bill will strengthen the rights of those who are able to arrive in Australia (e.g. those who come in on a student visa and later seek asylum) or who are already in immigration detention, it will not have an impact on Operation Sovereign Borders, which prohibits people from having the opportunity to seek asylum on our shores, contravening *The Universal Declaration of Human Rights* that declares that every human being has the right to seek asylum and the protection of another nation. While we support the contents of the Bill, we think safeguards are necessary to ensure that its passing does not exacerbate boat turn-backs.

Conclusion

Catholic Religious Australia strongly supports the Ending Indefinite and Arbitrary Immigration Detention Bill 2021 as a necessary step in the right direction to transform Australia's asylum seeker policies, so that they are more humane and in line with international legislation.

Seeking asylum is a human right, and those who have needed to do so should be treated with dignity and respect, not as criminals. An end to indefinite and arbitrary detention is urgently needed to do so. For the approximately 1459 people currently held in immigration detention in Australia,⁸ and the approximately 228 people held in Papua New Guinea and Narau,⁹ this Bill will be life changing.

⁷ Refugee Council of Australia, Statistics on boat arrivals and boat turnbacks, <https://www.refugeecouncil.org.au/asylum-boats-statistics/>

⁸ Department of Home Affairs, Visa Statistics, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

⁹ Refugee Council of Australia, Offshore processing statistics, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/2/>