



Committee Secretary
Joint Standing Committee on Migration
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26 January 2022

Dear Joint Standing Committee on Migration,

Re: Ending Indefinite and Arbitrary Immigration Detention Bill 2021

Refugee Action Collective (RAC) Victoria welcomes the opportunity to provide input into the Committee's inquiry into the *Ending Indefinite and Arbitrary Immigration Detention Bill 2021* (the Bill).

RAC (Vic) has strongly advocated for the dismantling of indefinite and arbitrary detention on the basis that it is punitive and in clear breach of human rights. RAC (Vic) believes the Bill provides a framework for rectifying many of the abhorrent and cruel components of Australia's current detention policies.

However, the Bill in its current form still allows for immigration detention, which we oppose. Therefore, we cannot support the Bill in full until amendments are made to delete the potential for any length of immigration detention.

Thank you for the opportunity to participate in this inquiry.

Yours sincerely,

Helen Panopoulos, Andrea Bortoli, Barbara Forehan
Members of Refugee Action Collective, Victoria

About Us

Refugee Action Collective (Vic) was established in 2000 as a democratic grassroots collective representing a broad cross-section of the community. The Collective was established as, and continues to be, a voluntary activist group. It is a non-profit entity with the objective of protecting refugee rights through campaign activism.

RAC (Vic) stands for the humane and dignified treatment of asylum seekers and refugees in accordance with Australia's international and humanitarian obligations.

Executive Summary

RAC (Vic) has strongly advocated for the dismantling of indefinite and arbitrary detention on the basis that it is abhorrent, punitive and in clear breach of human rights. Current policies have allowed refugees to be detained for over 9 years with no clear pathway to freedom and a total lack of transparency in their protection claim processing. We believe that this amounts to torture and is both illegal and immoral.

We welcome that the provisions of this Bill make mandatory detention illegal and that it provides and prefers alternatives to immigration detention. RAC (Vic) strongly supports the dismantling of Australia's current offshore immigration detention policies as outlined in the Bill.

However, the Bill allows for immigration detention to continue under some circumstances. RAC (Vic) opposes any length of immigration detention and cannot support the Bill in full until amendments are made to delete the potential for any length of immigration detention.

RAC (Vic) strongly supports those clauses within the Bill that address the rights of the child and the importance of family unity. The inclusion of these principles will ensure that Australia meets its international obligations in regards to human rights. Refugees bring

immeasurable social and economic benefits to the communities they settle in. RAC (Vic) strongly believes that the enactment of this Bill will result in an approach to immigration that recognises and respects the inherent dignity and right to self determination of refugees, and allows refugees to contribute meaningfully in their communities.

Immigration Detention

RAC (Vic) believes that Australia has a legal and moral obligation to treat asylum seekers and refugees with fairness, decency and compassion. However, Australia's asylum and detention policies in no way meet this obligation. The Refugee Council of Australia describes Australia's detention policies as some of the harshest and most punitive in the world.

Australia's policies, including offshore detention, have caused immeasurable suffering. They strip people of their rights and their liberty and leave them without hope. Human Rights Watch's Australian Director, Elaine Pearson, stated that, "Australia is a leader in human rights repression in its offshore processing of asylum seekers".¹

We strongly support Subclause 16(4) of the Bill which prevents the mandatory or arbitrary detention of asylum seekers and we agree with statements within the Bill's Explanatory Memorandum which highlight that such detention policy is in "clear breach of international law and has a catastrophic impact on a person's physical and mental health".²

Arguably, the most abhorrent aspect of current detention policy in Australia is that it allows immigration detention to be indefinite. Detaining asylum seekers and refugees indefinitely is inexcusable, inhumane and a blight on Australia's reputation as a society that values fairness. The physical and mental health impacts on individuals who have been in detention for years on end with no set release date are unfathomable.

¹ Elaine Pearson in Dominic Giannini, *Serious human rights issues in Australia*. Australian Associated Press, 2022.

² Explanatory memorandum. *Ending Indefinite and Arbitrary Immigration Detention Bill 2021* (Cth)

While we note that the Bill provides alternatives to immigration detention wherever possible and that it strives to vastly reduce detention timeframes, we do not support any clauses within the Bill that allow immigration detention to continue.

Even if the spirit of the Bill intends otherwise, recent history has shown that any allowance for immigration detention, however seemingly reasonable, can quickly escalate into punitive and indefinite detention. Refugee policies set in motion by Kevin Rudd in June 2013 did not align with his public assertions made in 2017 when he stated that his 2013 refugee policy intended for refugees and asylum seekers to be detained for 12 months only followed by annual reviews.³

In 2017 Rudd was critical of the Liberal/Coalition government for fostering a detention regime which allowed refugees to languish in detention centres for 4 years. Women and children were eventually released from Nauru after 6 years due to local and international outrage but shamefully, there are still refugees languishing in Rudd's 2013 detention framework after 9 years.

The intention and the reality regarding immigration detention can be skewed depending on which political party is in power. A framework that 'normalises' detention regardless of the length of time a refugee is detained can be manipulated depending on the political narrative of the day.

Since the 'Tampa affair' in 2001, Australian detention policy has sought to punish and 'make an example' of refugees and asylum seekers who arrive by boat in order to deter others. The Australian Government consistently articulates that such stringent policies, including offshore detention, are 'saving lives at sea'. In November 2016, speaking about Australia's treatment of asylum seekers and refugees, the United Nations Special

³ ABC News, *Fact check: Was Labor's PNG refugee deal for one year only?* 2017
<https://www.abc.net.au/news/2017-08-10/fact-check-were-refugees-supposed-to-be-resettled-in-australia/8775992>

Rapporteur François Crépeau stated that “it is a fundamental principle of human rights law that one person cannot be punished only for the reason of deterring another”.⁴ Today, more than 5 years later, the suffering that Crépeau criticised, continues.

Therefore, we strongly support Subclause 16 which dismantles Australia’s current offshore immigration detention policies and specifically, Subclause 16(2) whereby non-citizens must not be taken into, or kept in, immigration detention due to their mode of arrival (for example by boat).

Compatibility with Human Rights

We agree that the Bill is compatible with Australia’s Human Rights obligations. We applaud that the Bill implements into domestic law components of several international instruments, including: Convention and Protocol relating to the Status of Refugees; Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Elimination of all Forms of Discrimination against Women; and Convention on the Rights of Persons with Disabilities.

Family Unity

RAC (Vic) strongly supports clause 8 of the Bill that sets out principles in regards to the paramount importance of family unity. Family separation is acknowledged as a frequently-occurring and distressing experience for refugees and has significant social, emotional and economic impacts on the lives of refugees settling in Australia. It has been shown that refugees who remain separated from family are at increased risk of negative outcomes in regards to mental health, economic situation and ability to build social networks.⁵ Australian government policy, under Ministerial Direction 72, states that there may be “compelling and compassionate circumstances” under which refugees can apply

⁴ François Crépeau, *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru*. United Nations, 2017.

⁵ Stéfanie Morris, Patti Tamara Lenard, Stacey Haugen, Refugee Sponsorship and Family Reunification, *Journal of Refugee Studies*, Vol 34 (1), 2021.

for higher priority family reunification, however the Refugee Council of Australia has noted that these circumstances are arbitrary, making family reunification almost impossible for many refugees currently in Australia.⁶

Preservation of the family unit has ongoing, positive economic and psychosocial benefits. Tangible benefits have been shown to include facilitating better access to health services, supporting social integration and increasing economic participation.⁷ Modelling undertaken by Deloitte Access Economics on behalf of Oxfam Australia has indicated that increasing refugee intake, which could be via family reunification, will result in significant and wide-ranging economic benefits.⁸ The Bill would ensure that Australian immigration policy recognises and affirms the incomparable value of family preservation to the individual.

The Rights of the Child

RAC (Vic) views Clause 9 of the Bill as being an integral part of Australia meeting international obligations in regards to the rights and best interests of the child. Current and historical immigration policy has resulted in a shameful disregard of Australia's obligations under the Convention on the Rights of the Child (CRC).

Clause 9 of the Bill will ensure that relevant clauses of the CRC are upheld in Australian immigration policy. Of particular relevance to the humane and compassionate treatment of refugees, Article 3 of the CRC states that "the best interests of the child shall be a primary consideration" in all actions concerning children.⁹ Numerous reports and enquiries have demonstrated that detention has significant and negative impacts on the emotional and cognitive development of children, with life-long implications.¹⁰

⁶ Refugee Council of Australia. *Family separation and family reunion for refugees: The issues*. RCOA 2021

⁷ UN Refugee Agency, 'Background Note for the Agenda Item: Family reunification in the context of resettlement and integration Protecting the Family: Challenges in Implementing Policy in the Resettlement Context'. *Annual Tripartite Consultations On Resettlement*. Geneva, 2001.

⁸ Lily Gardener & Conor Costello, *Stronger together: the impact of family separation on refugees and humanitarian migrants in Australia*. Oxfam Australia, 2019.

⁹ UN Commission on Human Rights, *Convention on the Rights of the Child*. Geneva, 1990.

¹⁰ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*. 2014.

Furthermore, Article 22 of the CRC states that ratifying countries will ensure that “no child shall be deprived of his or her liberty unlawfully or arbitrarily [and the] detention ... of a child shall be... used only as a measure of last resort and for the shortest appropriate period of time”.¹¹ As of September 2021, the Department of Home Affairs has stated that there are no children in closed detention. However many minors have transitioned to adulthood within detention facilities, such as some of the refugees currently at the Park Hotel Melbourne, and have therefore been deprived of part of their childhood. RAC (Vic) expects that Clause 9 of the Bill will ensure that children are not subjected to further trauma and deprivation of liberty while seeking asylum.

The Positive Economic and Social Contributions by Refugees with the Implementation of the Bill

The Bill, once enacted and implemented with the suggested amendments, will create an environment and framework allowing refugees and asylum seekers to make meaningful contributions to Australia. Initial government support in education, job assistance, medical access and connection to family and community can heal the trauma and bridge the hopes and aspirations of refugees towards a pathway that gives them agency and self-determination.

Refugee and asylum seeker contributions can be both extrinsic and intrinsic - economic and societal - both can be measured in economic terms and in societal cohesiveness. The Department of Home Affairs has already commissioned the Refugee Council of Australia to investigate the benefits refugees and asylum seekers contribute to this country. The report was published in 2010 and is currently on the Department’s website.¹² A further report released in June 2013 by Dr Parsons ‘Assessing the economic contributions of refugees in Australia’ is in the public domain.¹³

¹¹ UN Commission on Human Rights, *Convention on the Rights of the Child*.

¹² Refugee Council of Australia, *Economic, civic and social contributions of refugees and Humanitarian entrants: A Literature Review*. RCOA, Beconnen ACT. 2010.

¹³Richard Parsons, *Assessing the economic contribution of refugees in Australia*. Brisbane: Multicultural Development Association. 2013.

It is meaningful to identify refugees and asylum seekers by their names and the contributions they have made to Australia. RAC (Vic) abhors the common practice of calling refugees by their allocated number. The following refugees are in the public domain and are recognised as Australians with a refugee background with diverse ethnicities, achievements and occupations who have made not only economic contributions to this country but also contributed to the fabric of Australian society. These are several highlighted examples, however far from a complete list of all refugees achievements.

- Professor Munjed Al Muderis: Named 2020 NSW Australian of the Year. A Sydney orthopaedic surgeon and human rights advocate. He fled Saddam's Iraq when he refused to cut off the ears of a soldier for fleeing the army. He came to Australia by boat.
- Dr Saif Noori: A refugee fleeing war torn Iraq in 2018. After support and hard work he is now an Emergency Resident Medical Officer at the Royal Hobart Hospital practising medicine.
- Raneen Shamon: Arrived in Australia in 2017 under a humanitarian visa as an Iraqi refugee. A talented and up and coming artist, she graduated from High School with a Dux and was offered a scholarship with the University of Sydney
- Anh Do: The author of *The Happiest Refugee*, published in 2010. As a 2 and half year old refugee along with his parents fled Vietnam by boat to Australia in the late 70's. His book won Book of the Year and the Indie Book of the Year Award in 2011. Anh Do is a comedian, artist and entrepreneur.
- Huy Truong: Arrived in Australia by boat at age 7 as a Vietnamese refugee. He founded wishlist.com.au and sold it to Qantas. In 1998 Truong won Young Australian of the Year. Huy Truong is now co-founder of Emotiv, a producer of

headsets that read brain signals and facial movements to control technology whether computer games or apps.

- Aliir Aliir: Is an athlete and footballer. In 2013 when he joined the Sydney Swans, Aliir Aliir was the first South Sudanese to join the AFL. He was born in a refugee camp in Kenya after his parents escaped the war in Sudan.

Other refugees who have made significant contributions to Australia throughout the decades include:

- Harry Triguboff: Property Developer
- Frank Lowy: Entrepreneur
- The Honourable James Spigelman AC: Chief Justice and Lieutenant Governor of NSW 1998-2011
- Robert Richter: QC
- Dr Karl Kruszelnicki: Scientist and Educator
- Najeeba Wazefadost: CEO of Hazara Women in Aust. And sits on the Steering Committee for the Global Summit of Refugees
- Richard Pratt: Businessman and founder of Visy (1934-2009)
- Nathan Werdiger: Property Developer and founder of Juilliard Corporation (1923-2015)
- Hani Abdile: Poet
- Nyadol Nyuon: Lawyer, Chair Harmony Alliance, Director Sir Zelman Cowen Centre

RAC (Vic) acknowledges the unnamed, unknown refugees who enrich our lives and who live and work amongst us.

Conclusion

RAC (Vic) believes that policies which allow indefinite and arbitrary detention are abhorrent, punitive and in clear breach of human rights. We believe such policies have caused immeasurable harm. The Bill provides an opportunity to reshape immigration policy in Australia to reflect a more compassionate and humane response to people seeking asylum. However, we cannot support the Bill in full until amendments are made which delete the potential for any length of immigration detention. Such amendments will protect refugees and asylum seekers from political Machiavellian agenda.