

Submission to the Joint Standing Committee on Migration for the inquiry into the Ending Indefinite and Arbitrary Immigration Detention Bill 2021

1. Introduction

- 1.1. The Migrant Workers Centre welcomes the opportunity to provide this submission to the Joint Standing Committee on Migration regarding Australia's immigration detention policy and practices.
- 1.2. The Centre is a non-profit organisation located in Carlton, Victoria, that advocates migrant workers' rights. We hear from migrant workers who are refugees and those seeking asylum in Australia about the many problems of Australia's immigration detention and refugee policy.
- 1.3. We support the Ending Indefinite and Arbitrary Immigration Detention Bill 2021 because it recognises that seeking asylum is not unlawful and provides that alternatives to immigration detention should be used in preference to immigration detention.
- 1.4. In this submission, we discuss (a) the problems of mandatory detention, (b) the need for alternatives to detention, and (c) the importance of a refugee policy geared to permanent protection.

2. Mandatory Detention

- 2.1. As a nation Australia has the moral obligation to humanity to respond to people seeking protection, hear their claims, and give them refuge when their claims are accurate. It is also our legal duty to do so by international agreements including the Refugee Convention, the Refugee Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.
- 2.2. Despite the obligations, Australia detains people seeking asylum when they don't have a valid visa. Under the *Migration Act 1958*, all asylum seekers who have overstayed their visa, had a visa cancelled, or entered Australia without a visa must be held in immigration detention.
- 2.3. Mandatory detention is an inhumane policy because it does not appraise for each person seeking asylum the necessity, reasonableness, and proportionality of detention. It results in holding innocent people in detention, those who have committed no crime and pose no threat to Australia, those who need medical attention, and those who are entitled to our care.

- 2.4. Some assert that detaining people seeking asylum achieves the allegedly desired outcome of reducing the number of people coming to Australia without a visa. It is an ungrounded assertion since it is human nature to flee danger and hunger. We should not feel proud of receiving a smaller number of asylum applications while the number of people displaced and seeking asylum is going up globally.
- 2.5. **We must amend the *Migration Act 1958* to repeal the legal framework for mandatory detention.** There should be legislative criteria to ensure that detention is used as the last resort, kept to an absolute minimum, and practiced in accordance with our human rights obligations.
- 2.6. People seeking asylum can be detained for prolonged periods and possibly indefinitely under the *Migration Act 1958* because it does not stipulate a maximum timeframe for immigration detention. Indeed, there are people who have been in Australia's immigration detention for more than 13 years.¹
- 2.7. Under the current system of indefinite detention, immigration detention ends only when the Immigration Minister grants a visa to a detained person or deports them. There are many people, however, whose detention cannot be concluded by either of the scenarios.
- 2.8. The first group of indefinite detainees are refugees who cannot be sent to their country of origin due to fear of prosecution. As the Government does not allow asylum seekers who arrived by boat to settle in Australia since 2013, they are forced to remain in detention even after being formally recognised to be in need of Australia's protection. Their only hope is to be able to leave Australia for a country that recognises them as refugees. Until now, the Government does not have a regular arrangement with a third country to which boat-arrival refugees can be sent for resettlement.² Only a small number of refugees have been relocated elsewhere.³
- 2.9. The second group of indefinite detainees are people for whom the Immigration Minister views Australia does not owe protection and yet found no way of removal from the country. Some of them simply do not have a home country to return to because they were born stateless or because they became stateless at no fault of their own. Others resist deportation because they fear persecution upon return. The 2021 amendment to the *Migration Act 1958* (Clarifying International Obligations for Removal) confirmed the principle of refoulement and yet increased the likelihood of indefinite detention by providing no alternatives to detention.
- 2.10. We must abolish the policy of mandatory detention to keep detaining people seeking asylum to bare minimum. We must introduce a time limit to immigration detention to eliminate any chance of having innocent people in detention indefinitely.** The Migrant Workers Centre supports the Ending Indefinite and Arbitrary Immigration Detention Bill

¹ Department of Home Affairs. 22 Mar 2021. "Answer to Senator Nick McKim on the number of people who have been in a held immigration detention facility". Senate Standing Committee on Legal and Constitutional Affairs.

² Refugee Council of Australia. 2020. "Seven years on: An overview of Australia's offshore processing policies".

³ Andrew & Renata Kaldor Centre for International Refugee Law. 2019. "Australia's Refugee Policy: An Overview".

2021 because it ensures that a person's detention period is as short as possible by disallowing arbitrary detention and setting limited time frames to detention.

2.11. The *Migration Act 1958* must stipulate the principle that all asylum applications be individually assessed against the Refugee Convention. The Government must provide people seeking asylum access to legal assistance and when detained an opportunity to challenge the legality of their detention with legal representation.

3. Alternative to Immigration Detention

- 3.1. Apart from the clear emotional and human cost, detaining asylum seekers and refugees has a tremendous fiscal toll on tax payers. The Department of Home Affairs' 2017-18 figures reveal that it costs \$346,660 to hold someone in immigration detention for a year, compared to \$10,221 to have the person live in the community.⁴
- 3.2. Despite the immensity of expenses the Government incurs to detain people seeking asylum, those in immigration detention have limited access to medical care in detention and are in a poor status of physical and mental health.⁵ Waiting with no end in sight for a decision to be made about their future can demise anyone's health, not to mention those who have experienced traumatic fear of persecution and cross-border journeys.
- 3.3. Australia has a duty of care to prevent any reasonably foreseeable harm to people who seek protection and is responsible for providing a range of services to people in detention including health care. The task is much more manageable when those seeking asylum are not detained away from the community.
- 3.4. Australia can welcome people seeking asylum into our community when the Immigration Minister grants them a bridging visa. The Immigration Minister has the discretionary power to release them from detention.
- 3.5. Under the current regime, most of those who arrived without a valid visa are granted a bridging visa without work rights (BVE), if they are ever. Holding a BVE, one cannot study or work and is not eligible for most benefits and social services. They cannot afford health care, either, not to mention counselling.
- 3.6. Given that it takes years before one's asylum application review is complete, we believe that putting asylum seekers on a BVE causes enormous financial and psychological stress and drives the visa holders to destitution. The policy inadvertently pushes people seeking asylum into the black market, where they are forced to undertake dangerous jobs while uncovered with workers' compensation insurance. It also exposes them to the practices of exploitation

⁴ Department of Home Affairs. 22 Mar 2021. "Answer to Senator Nick McKim on the comparative figures of community, immigration detention and hotel detention". Senate Standing Committee on Legal and Constitutional Affairs.

⁵ Public Interest Advocacy Centre. 2018. "In Poor Health: Health care in Australian immigration detention"; Refugee Council of Australia. 2021. "People with Disability in Immigration Detention: A submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability".

and wage theft in Australian job market that notoriously target vulnerable workers. Despite the problems, the Government suggests that people on a BVE go into immigration detention when they cannot support themselves.⁶

- 3.7. When a bridging visa is not a viable option, community detention is a compassionate and affordable alternative to closed detention. Community detention allows people seeking asylum to live at a specified residence in the community while legally remaining in immigration detention. Asylum seekers in community-based arrangements are found to be much less likely to self-harm than those in closed detention.⁷
- 3.8. **Australia should allow all those seeking asylum an opportunity to study and work so that they can contribute to their own well-being and to the Australian community.** We should also provide adequate support and a social security safety net to those unable to find employment. At a minimum, Australia should ensure that people seeking asylum have access to basic health care, counselling, housing support, and language training. The Ending Indefinite and Arbitrary Immigration Detention Bill 2021 ensures that those in alternatives to immigration detention have full access to housing and financial support and have the right to work and education, health care, and other government services, as required under international law.

4. Protecting Refugees

- 4.1. People seeking asylum should be treated equally and fairly under the Refugee Convention. Australia's current refugee policy, however, discriminates them by their mode and year of arrival. The policy does not allow people who entered Australia without a valid visa to settle permanently in Australia even when they are recognised as a refugee. If the refugee had arrived prior to 2014, they are only issued a temporary protection visa. If they arrived afterwards, they are kept in detention until the Government finds a third country for their resettlement.
- 4.2. Along with the mandatory detention policy, the temporary protection regime is against international human rights law, under which temporary protection should be an exceptional measure to be taken only in situations of mass movements of asylum seekers, when individual refugee status determination is impracticable.
- 4.3. Refugees on Australian temporary protection visas must undergo a reassessment of their protection needs at the end of each visa period—either three or five years—to have the visa renewed. The requirement prevents the refugees from having security and peace of mind in Australia and hinders their ability to move forward with their lives. Temporary protection visas also deny them a chance to become full members of the Australian community with the full responsibilities of citizenship.⁸

⁶ Parliamentary Library. 13 Jun 2007. "Asylum seekers on Bridging Visa".

⁷ Kyli Hedrick et al. 2019. "Self-harm in the Australian asylum seeker population: A national records-based study". *SSM Population Health* 8.

⁸ The Safe Haven Enterprise visa opens the door to permanent residency on the condition that the refugee holding the visa works in a regional area and meets all the requirements of a permanent visa. No refugee on the visa has acquired permanent residency yet in this manner.

- 4.4. The case study below illustrates the experience of a refugee on a temporary protection visa. Not having any local education or experience and barred from any Government assistance, the refugee underwent extraordinary difficulties finding jobs in Australia. His migration status with a visa expiry date in file made it even more challenging to survive the Australian job market.

Case study 1. Temporary visa, temporary jobs

Bryan (pseudonym) was born stateless. He fled his homeland where he feared persecution and arrived in Australia by boat. He was released into the community on a bridging visa, which did not allow him to work or study. He had no choice but to depend on his friends for living as he had no housing support, health care, or income. It took five years before he was recognised as a refugee.

The Immigration Minister granted him only a temporary protection visa. Although the visa gave Bryan the right to work, securing employment with the temporary visa was difficult. Employers were reluctant to hire someone with a visa that was bound to expire in a few years. Luckily, a friend helped him get a job at a carpentry. Bryan was placed to operate a machine but was paid at the minimum wage rate. He did not know he was underpaid because he never had a chance to learn about his entitlements. Nor did he realise he was unlawfully dismissed when he got injured at work and received no compensation.

Bryan wanted to use his good driving skills and work as a truck driver. With no local experience, however, he could find only owner-operator opportunities that required his own vehicle and an Australian Business Number. No bank would give a loan to buy a truck to a person on a temporary visa. He wanted to study at a TAFE for a diploma but could not afford to pay the full cost without any government assistance. Job security is a luxury out of reach for Bryan and his fellow refugees on temporary protection visas.

- 4.5. Finding a secure job is a challenge for any migrant worker on a temporary visa. Exercising their workplace rights is another challenge. Migrant workers including asylum seekers and refugees are not familiar with Australian workplace rights and entitlements and are exposed to a greater chance of exploitation, discrimination, and harassment at work.
- 4.6. **Temporary protection visas must be abolished in recognition of their ineffectiveness and the harmed caused.** There is nothing Australia as a nation can benefit from the temporary protection regime. Temporary protection can cause considerable struggle and a significant deterioration in mental health as refugees cannot access long-term employment and housing. Refugees are also prevented from contributing to the Australian community and economy to their fullest ability. There is no evidence to suggest that temporary protection turns people seeking asylum away from Australia, either.

5. Conclusion

- 5.1. The Migrant Workers Centre sees that it is Australia's moral and legal duty to protect those seeking asylum and treat them fairly and equally. We must introduce a reference to the Refugee Convention to the *Migration Act 1958* to ensure that all asylum applications be individually assessed against the Convention.
- 5.2. We must abolish the policy of mandatory detention. There should be a time limit to immigration detention when there is an absolute necessity to detain people. Closed detention

should be replaced with community detention.

- 5.3. Investing in people seeking asylum in Australia enables them to strengthen their skills and contribute to their own well-being as well as that of Australia. We must ensure access to work rights, basic health care and income support for all people seeking asylum.
- 5.4. Together with its detention policy, Australia's refugee policy must be revamped. Anyone recognised as a refugee must be protected permanently and assisted with settlement in Australia. Temporary visas including temporary protection visas render migrant workers vulnerable to exploitation and should not be utilised when there are permanent visa options available.