



SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION  
ENDING INDEFINITE AND ARBITRARY IMMIGRATION  
DETENTION BILL 2021

Thank you for this opportunity to make a submission to the Ending Indefinite and Arbitrary Detention Bill inquiry.

Combined Refugee Action Group (CRAG) is based in Geelong, Victoria. Our membership includes over 700 individuals and organisations across the Geelong, Bellarine and Surf Coast regions who are deeply concerned by the Australian Government's mandatory, indefinite detention of people who came to Australia to ask for safety from persecution in their homelands.

The United Nations Refugee Convention, to which Australia is signatory, stipulates (in Article 31) that Contracting States must not impose penalties on people coming from territories where their lives or freedom are threatened due to persecution (based on their race, religion, nationality, social group or political opinion), even if they arrive without authorisation, provided that they present themselves to authorities without delay.

People who have arrived by boat to seek safety have fulfilled their responsibility to the protocols of the Convention, but Australia's current laws, and the current policies Australian Government, ignore and evade Australia's responsibility under this legal instrument.

The United Nations High Commissioner for Refugees (UNHCR) serves as the guardian of the 1951 Convention and its 1967 Protocol. According to the legislation, States are expected to cooperate with the UNHCR in ensuring that the rights of refugees are respected and protected. However, Australia has continually ignored statements, such as the following, which have been issued by the UNHCR:

*"Circumstances and conditions for refugees under Australia's "offshore processing" policy have had severely negative impacts on health, and particularly significantly mental health. During 2016, UNHCR medical experts found cumulative rates of depression, anxiety and PTSD among refugees forcibly transferred to Papua New Guinea and Nauru to be the highest recorded in the medical literature to date at over 80 per cent in both locations. The wellbeing of refugees has been noted by various medical experts to have further deteriorated since that time."*<sup>1</sup>

*"Detention should only apply when it pursues a legitimate purpose (such as to carry out initial identity and security checks in cases where identity is undetermined or in dispute, or there are indications of security risks) and when it has been determined to be both necessary and proportionate in each individual case. UNHCR has ongoing concerns with Australia's legislative and policy framework of mandatory detention, which is inconsistent with many of these principles under international law and which has resulted in the prolonged and indefinite detention of asylum-seekers, refugees and stateless persons, some for up to twelve years."*<sup>2</sup>

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<sup>1</sup> <https://www.unhcr.org/en-au/news/press/2018/10/5bcda38b7/unhcr-appeals-australia-act-save-lives-immediate-risk.html>

<sup>2</sup> <https://www.unhcr.org/en-au/5ef99e0a4.pdf>

The United Nation Human Rights Council's working group on arbitrary detention has also condemned Australia's indefinite incarceration of refugees and asylum seekers, issuing a number of critical statements on individual cases.<sup>3</sup>

The UNHCR has provided a set of guidelines for immigration detention<sup>4</sup>. These guidelines include the following statements:

*These rights taken together – the right to seek asylum, the non-penalisation for irregular entry or stay and the rights to liberty and security of person and freedom of movement – mean that the detention of asylum-seekers should be a measure of last resort, with liberty being the default position.*<sup>5</sup>

*Insufficient guarantees in law to protect against arbitrary detention, such as no limits on the maximum period of detention or no access to an effective remedy to contest it, could also call into question the legal validity of any detention.*<sup>6</sup>

*To guard against arbitrariness, any detention needs to be necessary in the individual case, reasonable in all the circumstances and proportionate to a legitimate purpose ... Further, failure to consider less coercive or intrusive means could also render detention arbitrary.*<sup>7</sup>

*International law prohibits detention or restrictions on the movement of a person on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, such as asylum-seeker or refugee status.*<sup>8</sup>

*To guard against arbitrariness, maximum periods of detention should be set in national legislation. Without maximum periods, detention can become prolonged, and in some cases indefinite, including particularly for stateless asylum-seekers.*<sup>9</sup>

However, immigration detention, for people arriving by boat to seek safety, is used by Australia as a discriminatory first resort. It is not only coercive and intrusive, but it is designed to be deliberately harsh in order to act as a deterrent for others who would ask for help. Without time detention limits nor access to means to contest the detention, it is arbitrary in nature.

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<sup>3</sup> <https://www.theguardian.com/world/2018/jul/08/un-body-condemns-australia-for-illegal-detention-of-asylum-seekers-and-refugees>

<sup>4</sup> Detention Guidelines - Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention <https://www.refworld.org/pdfid/503489533b8.pdf>

<sup>5</sup> Paragraph 14, under Guideline 2: *The rights to liberty and security of person and to freedom of movement apply to asylum-seekers*, in the above document

<sup>6</sup> Paragraph 17, under Guideline 3: *Detention must be in accordance with and authorised by law*, in the above document

<sup>7</sup> Paragraph 18, under Guideline 4: *Detention must not be arbitrary, and any decision to detain must be based on an assessment of the individual's particular circumstances*, in the above document

<sup>8</sup> Paragraph 43, under Guideline 5: *Detention must not be discriminatory*, in the above document

<sup>9</sup> Paragraph 46, under Guideline 6: *Indefinite detention is arbitrary and maximum limits on detention should be established in law*, in the above document

Many reports have detailed the damage done to both adults and children by prolonged, indefinite detention. Some of these are:

- Inspections of Australia's immigration detention facilities 2019 Report<sup>10</sup>
- The impact of immigration detention on mental health: a systematic review (2018)<sup>11</sup>
- National Inquiry into Children in Immigration Detention 2014<sup>12</sup>

CRAG members have:

- Maintained regular contact with people held in offshore detention centres.
- Visited people in detention centres and APODs onshore.
- Befriended people in the community who have been released from ongoing immigration detention.
- Provided accommodation, in their homes, for people who have been released after years of indefinite immigration detention.

Our members have:

- Witnessed the decline in mental health, physical health and cognitive function of people who have been held in situations of immigration detention for extended periods.
- Been required to intervene in the planned suicide and self-harm of people who have been detained, by contacting their friends, mental health workers and lawyers in order to obtain assistance.
- Witnessed people, who have become institutionalised by years of having every moment controlled and observed by immigration officers and guards, experiencing severe anxiety, disorientation, exhaustion and fear for quite some time after being released.
- Listened to people express their feelings of extreme sadness and hopelessness that their youth, their families and their ability to contribute to society in a meaningful way have all been stolen from them by mandatory, indefinite immigration detention, including in situations of Community Detention.

CRAG supports this Bill's denouncement of Australia's current immigration detention policies and laws for their cruelty, breaches of refugee and international human rights law, and flagrant disregard for fairness and human decency toward people seeking safety.

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<sup>10</sup> <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

<sup>11</sup> <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>

<sup>12</sup> <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>