

SUBMISSION TO THE INQUIRY ON THE ENDING INDEFINITE AND ARBITRARY IMMIGRATION DETENTION BILL 2021

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds, and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback on the Ending Indefinite and Arbitrary Immigration Detention Bill 2021. This is the first Bill introduced to the Parliament in a long period of time that aims to fundamentally reform Australia's immigration detention system, in line with what RCOA and many other organisations have advocated for years. This Bill is indeed in stark contrast to other immigration detention-related Bills that have been put forward by the Australian Government. Of those Bills, none aimed to address the real problems with Australia's immigration detention system, namely, the lack of a time limit on detention, limited oversight of decisions to detain and the ongoing detention of children. Instead, they all set to make detention conditions more restrictive, further remove the safeguards around arbitrary and indefinite detention, and increase control on the lives of people in detention.

It is disappointing to see that this Bill has been removed from the Notice Paper and is not progressing. However, we remain optimistic that this inquiry will highlight the urgent need for a comprehensive reform to the immigration detention system. We strongly support the passage of this Bill and hope the new Parliament considers this issue with much higher priority than the current one.

In the following submission, we explain the current immigration detention regime and outline the major issues that arise from it. Where relevant we point out the sections of the current Bill that seek to remedy those issues. Finally, we put forward a number of recommendations that can address the current issues with immigration detention system, many of which are in line with this Bill.

1 Australia's immigration detention system

- 1.1 Currently, Australian law requires that anyone who is not an Australian citizen and does not have a valid visa be detained until they are granted a visa or removed from the country.¹ This includes people seeking asylum who enter Australia without a valid visa and those who have had their visas cancelled for a variety of reasons.
- 1.2 Unlike many other countries, the legal framework for immigration detention does not require consideration of necessity, reasonableness and proportionality, and therefore, is liable to produce cases of arbitrary detention.
- 1.3 There is no time limit for detaining a person under Australian law. Mandatory detention applies to every non-citizen without a valid visa, therefore a person's vulnerabilities or personal attributes do not exempt them from detention. Children, pregnant women, elderly, survivors of torture and trauma and people with disability can be (and are) detained, unless the Minister for Home Affairs uses their non-compellable, non-delegable and non-reviewable power to allow

¹ *Migration Act 1958* (Cth), ss 189, 196 & 198.

that person to live in the community until the resolution of their immigration status. There is no independent review or judicial review of the need to detain a person.

- 1.4 The latest available official detention statistics is from 30 September 2021.² As of that date, 1,459 people (1,408 men and 51 women) were detained across four Immigration Detention Centres (IDCs), three Immigration Transit Accommodation (ITAs) and unknown number of Alternative Places of Detention (APODs). Australia continues to use remote detention facilities. Two of the IDCs, Yongah Hill IDC in the town of Northam in regional Western Australia and North West Point IDC on Christmas Island, are remote. As of 30 September 2021, 58% of the detention population were detained after the cancellation of their visas under section 501 of the Migration Act, 19% were irregular maritime arrivals and the rest were detained for 'other' reasons; this could include overstaying one's visa or non-compliance with visa requirements.
- 1.5 As the Australian Human Rights Commission (AHRC) observed in June 2021, since the start of the COVID-19 pandemic, many countries responded to the heightened risk of COVID-19 transmission in crowded settings like immigration detention and reduced their detention population size. For example, from late 2019 or early 2020 to late 2020, Canada, the United Kingdom and the United States reduced their detention population by around 66%, 39%, and 69% respectively. However, the trend in Australia went the opposite way: the detention population increased by 12% in the first six months since the COVID-19 pandemic was declared in March 2020.³ This was despite the clear and persistent calls from public health experts about the risks of COVID-19 transmission in our detention facilities and warnings about dire consequences for people with health issues.⁴
- 1.6 As of September 2021 and as illustrated in Figure 1, the detention population never went back to its pre-pandemic level. There is no official statistics for the period after this date. However, based on the media reports and our own information, we conclude that despite Australia entering a period of increased COVID-19 transmissions, no large-scale detention releases happened. This negligence has resulted in multiple outbreaks across detention facilities in Australia, including the October 2021 outbreak in Melbourne's Park Hotel APOD (a facility that houses vulnerable population with significant health needs)⁵ and a recent outbreak in Villawood IDC in Sydney in January 2022.⁶
- 1.7 The proposal of this Bill to establish a legal framework for detention and not allow mandatory detention is a cause for optimism. When there are fewer reasons to detain people or keep them in detention, there might be reduced overcrowding and more chance to heed health or other relevant advice to respond to the issues of the day.

² Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (30 September 2021), <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>.

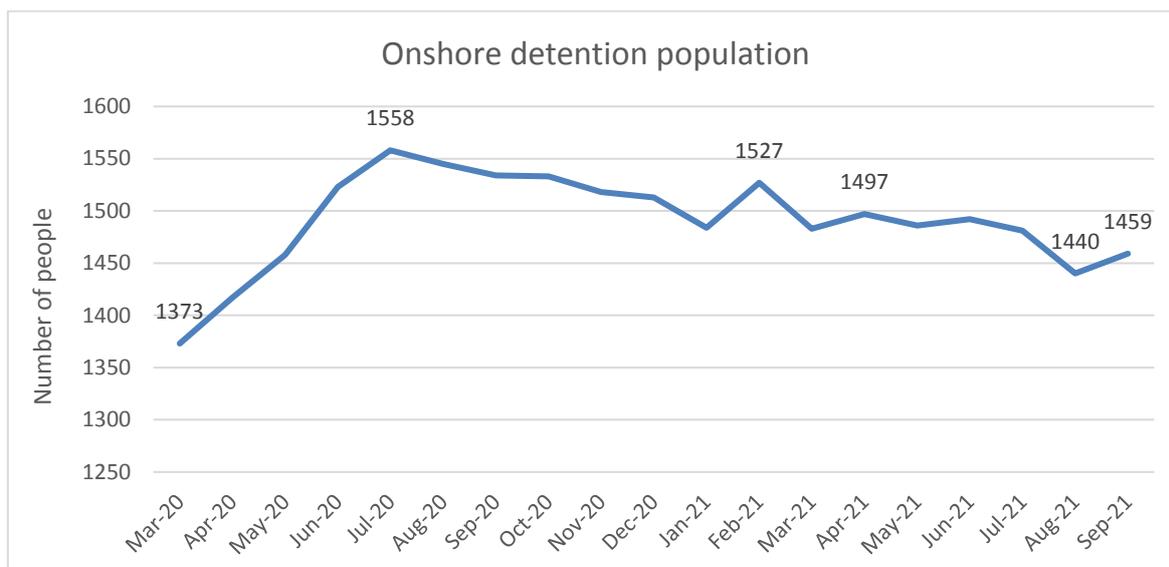
³ Australian Human Rights Commission (2021), *Management of COVID-19 risks in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>, p.5.

⁴ See the March 2020 joint statement by Australasian Society for Infectious Diseases and the Australian College of Infection Prevention and Control on COVID-19 and detainees, here: <https://www.asid.net.au/documents/item/1868>.

⁵ Ben Doherty, 'Inside Melbourne's Park hotel, refugees sit and wait for Covid to find them' *The Guardian* (26 October 2021) <https://www.theguardian.com/australia-news/2021/oct/26/inside-melbournes-park-hotel-refugees-sit-and-wait-for-covid-to-find-them>

⁶ Emma Brancatisano and Caroline Riches, 'Fear COVID-19 will 'run rampant' inside Villawood as more detainees test positive' SBS News (13 January 2022) <https://www.sbs.com.au/news/fears-covid-19-will-run-rampant-inside-villawood-as-more-detainees-test-positive/cbd3105b-39da-40c8-a167-1c705e1cc67a>

Figure 1: Population in Australia's immigration detention network from March 2020-September 2021



2 Long-term detention

- 2.1 One of the issues of significant concern in relation to immigration detention in Australia is the increasing length of detention. This is the direct result of lack of time limit associated with immigration detention.
- 2.2 The average length of detention in Australia continues to rise, standing at the staggering average length of 689 days in September 2021 (see Figure 2).⁷ This is in stark contrast to countries like Canada, the United States and the United Kingdom. The average length of detention in the fiscal year of 2020-21 in Canada was 30 days⁸ and the average length of detention in the United States in the 2021 fiscal year was 48 days.⁹ In the United Kingdom, in the year ending in September 2021, almost 90% of all people in immigration detention had been there for under 6 months and 49% for fewer than 29 days.¹⁰
- 2.3 In Australia and over time, the percentage of people who have been detained for over two years has increased. As of September 2021, 35% of people had been detained more than 2 years and the length of detention for almost a quarter of that group was recorded as 'greater than 1825 days'.¹¹ In November 2021 and in response to a Senate question on notice,¹² the Department of Home Affairs provided further breakdown of prolonged detention (as shown in Figure 3) and revealed that there are people who have been in immigration detention for more than 14 years.

⁷ Data from monthly detention statistics released by the Department of Home Affairs and its predecessors, available here: <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

⁸ Canada Border Services Agency, *Annual detention, fiscal year 2020 to 2021*, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/stat-2020-2021-eng.html>

⁹ US Immigration and Customs Enforcement, *ICE Detention Data, FY21 YTD*, downloaded from: <https://www.ice.gov/detain/detention-management> (we looked at the column outlining ICE Average Length of Stay, Adult Facility Type by Month and Arresting Agency: FY2021 YTD and recorded the overall average for the fiscal year).

¹⁰ UK Home Office, *Immigration statistics data tables, year ending September 2021*, <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-september-2021#detention> (we looked at Detention summary tables, year ending September 2021).

¹¹ Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (30 September 2021), <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>.

¹² Senator Nick McKim, Answer to Question on Notice SE21-323 (16 December 2021),

<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld12-Portfoliold20-QuestionNumber323>.

Figure 2: Average length of detention from January 2013-September 2021

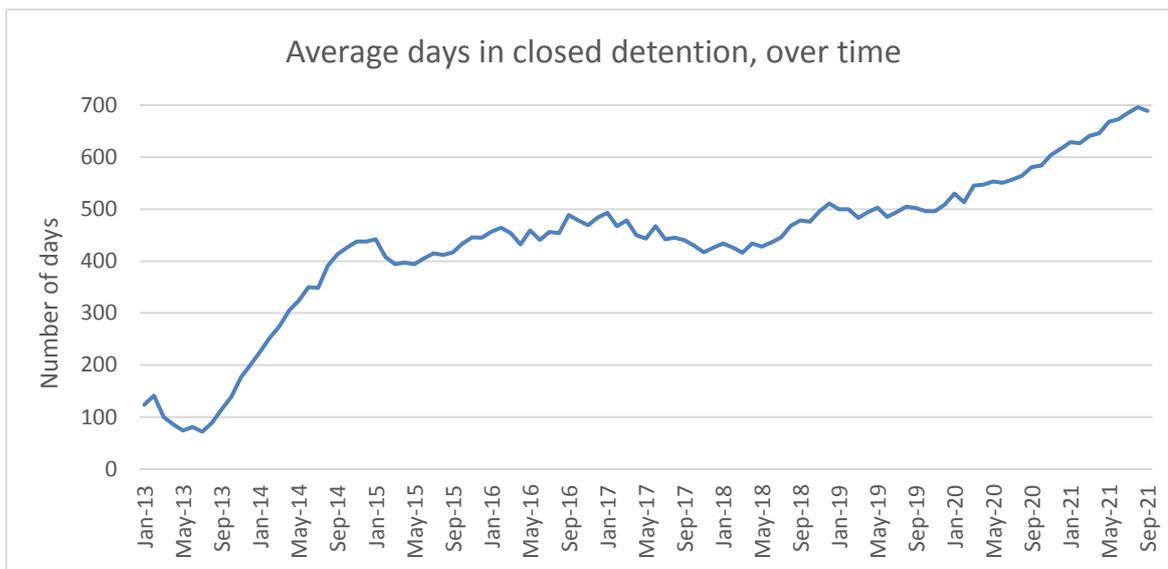
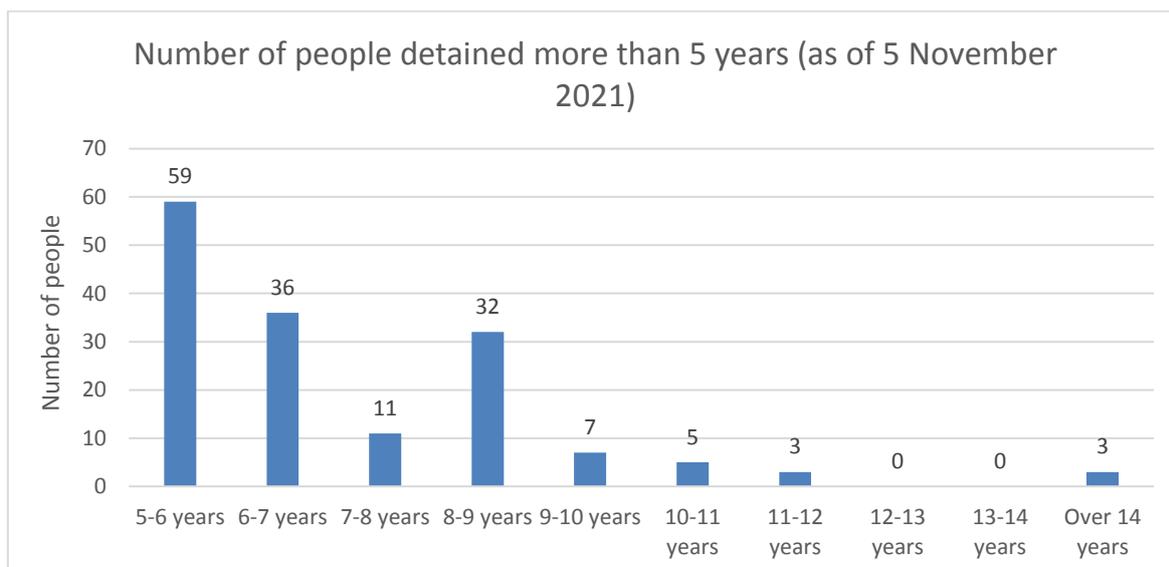


Figure 3: Number of people detained in onshore detention for more than 5 years (as of November 2021)



(NB: The Department of Home Affairs usually reports numbers less than five as estimates for privacy reasons. Here, the number of people who have been detained for 11-12 and over 12 years have been provided as 'fewer than five'. They have been rendered exact in this graph for display purposes)

2.4 Further, in May 2021, the Australian Parliament passed the Migration Amendment (Clarifying International Obligations for Removal) Act 2021 without any public inquiry or formal consultation. While on the face of it, the Act appears to be about preventing the return of people with well-founded fear of prosecution to places where they would be at risk of serious harm, in effect it increases the likelihood of indefinite detention. In cases where refugees cannot be removed from Australia to the country of origin due to a well-founded fear of persecution, the Act gives the Government the power to keep refugees in detention indefinitely, potentially for the rest of their lives.¹³

¹³ For more on the Bill, see: Sangeetha Pillai, *The Migration Amendment (Clarifying International Obligations for Removal) Act 2021: A case study in the importance of proper legislative process* (10 June 2021), <https://www.kaldorcentre.unsw.edu.au/publication/migration-amendment-clarifying-international-obligations-removal-act-2021-case-study>

- 2.5 For years, RCOA maintained that introducing a time limit on immigration detention is the only way to reduce the rising average length of detention and to bring Australia in line with the rest of the world. We have been proposing that the Australian Government should introduce legislation to abolish mandatory immigration detention and to restrict immigration detention to a maximum of 30 days without judicial review and six months overall. Sections 17(1) and 17(2) of the current Bill put a 3-month time limit on immigration detention, and propose that any extension of that timeframe should be decided by the Federal Circuit Court, while ensuring the total period does not exceed 12 months. While these timeframes are higher than what we have proposed and while we recommend they are amended to a 30-day time limit and a total of 6 months detention with judicial review, they still, in their current form, go a long way to address the issue of prolonged detention in Australia.

3 Impact of prolonged detention

- 3.1 There is an abundance of evidence that indefinite detention severely and negatively affects the physical and mental health of adults and children in detention. Prolonged detention contributes to and exacerbates health problems, especially debilitating and life-long mental health issues. Many refugees and people seeking asylum have had traumatic experiences in their home countries and in transit and are therefore more vulnerable to developing mental health issues. Indefinite detention and inadequate healthcare in detention can only further contribute to this.
- 3.2 Many of the mental health experts RCOA has spoken to highlighted that effective treatment is not possible for survivors of torture and trauma while they are detained. They considered it counterproductive that the therapy sessions occur in the detention environment or that people return to detention after the conclusion of the sessions. They commented that the ongoing limbo people face in long-term detention not only hinder the recovery from trauma, they can also be instigators for it.
- 3.3 There are numerous academic and medical articles about the correlation between prolonged detention and mental health issues.¹⁴ One of the more recent reports published by University of Melbourne highlighted that the rate of self-harm among people seeking asylum was exceptionally high when compared to the general Australian population. Amongst the asylum seeker group the highest rate of self-harm was observed in people in offshore and onshore detention and the lowest rate was among asylum seekers in community-based arrangements. The report finds that the rate of self-harm among people seeking asylum (including those in onshore and offshore detention) is more than **200 times** the Australian community hospital-treated rate.
- 3.4 Further, in 2016, UNHCR found that 88% of refugees and people seeking asylum on Manus Island were suffering from depression, anxiety and/or post-traumatic stress disorder, which were “the highest recorded rates of any surveyed population”.¹⁵ The UNHCR medical experts who visited the island in that year, later published that

¹⁴ See for example: Zachary Steel, Derrick Silove, Robert Brooks, Shakeh Momartin, Bushra Alzuhairi, and Ina Susljik, ‘impact of immigration detention and temporary protection on the mental health of refugees’ (2006) 188(1) *The British Journal of Psychiatry* 58-64; Louise K. Newman, Michael Dudley, Zachary Steel, ‘Asylum, Detention, Mental Health in Australia’ (2008) 27(3) *Refugee Survey Quarterly* 110-127; Guy J. Coffey, Ida Kaplan, Robyn C. Sampson, Maria Montagna Tucci, ‘The meaning and mental health consequences of long-term immigration detention for people seeking asylum’ (2010) 70(12) *Social Science & Medicine* 2070-2079.

¹⁵ United Nations High Commissioner for Refugees, *Inquiry on the Serious Allegations of Abuse, Neglect and Self-Harm on Nauru and Manus Island* (Submission, November 2016), <https://www.apf.gov.au/DocumentStore.ashx?id=125eb4f5-9a67-4313-8b19-c6664a24398d&subId=460245>.

...the lengthy, arbitrary, and indefinite nature of immigration detention on Manus Island, together with hopelessness in the absence of durable settlement options, had corroded the resilience of the detainees, and made them vulnerable to mental illness.¹⁶

4 Lack of review of the decisions to detain

- 4.1 According to the United Nations Working Group on Arbitrary Detention (WGAD), a body of independent human rights experts that investigates cases of arbitrary arrest and detention, any form of detention that is mandatory, indefinite, and without automatic and regular periodic review before a judicial authority is arbitrary.¹⁷ These are all central features of Australian immigration detention system, making it a clear example of systemic arbitrary detention.
- 4.2 People in immigration detention do not have access to judicial review of the decisions to detain them. In fact, section 196(3) of the Migration Act expressly prevents the release of an “unlawful non-citizen” from detention, “even by a court”, unless such person is granted a visa or removed from Australia.
- 4.3 This Bill limits the duration of immigration detention to 3-months and proposes that any extension of that timeframe is subject to the decision of the Federal Circuit Court. It also provides non-citizens with avenues to seek judicial review (through Administrative Appeals Tribunal) of decisions to revoke or restrict their access to alternatives to detention.
- 4.4 These provisions go a long way in ending arbitrary detention in Australia and ensuring the Migration Act no longer breaches Australia’s obligations under International Covenant on Civil and Political Rights.

5 International criticism of Australia’s immigration detention regime

- 5.1 Australia’s immigration detention policies have long been criticised by the international community, human rights organisations, independent experts, and various United Nations Committees.
- 5.2 Most recently, in January 2021, when the states reviewed Australia’s human rights record as part of our third Universal Periodic Review (UPR), of the 122 UN member states participating in the hearing, 45 states made comments or recommendations on Australia’s refugee and detention policies. Many countries, including Germany and Norway, urged Australia to amend its detention policies to not only ensure immigration detention is time-limited but that is also subject to judicial review. Each state participating in the UPR hearing has just 55 seconds to speak. The fact that, in such limited time available, so many states raised concerns about Australia’s immigration detention policies illustrates the depth of global concern about these issues.¹⁸
- 5.3 Over the past 20 years, the UN WGAD has adopted 17 opinions¹⁹ regarding the cases of immigration detention in Australia. In all 17 cases, the Working Group has found the detention of the individuals examined as arbitrary and in contravention of various articles of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. The UN

¹⁶ Suresh Sundram and Peter Ventevogel, ‘The mental health of refugees and asylum seekers on Manus Island’ (2017) 390 (10112) *The Lancet* 2534-2536.

¹⁷ United Nations Working Group on Arbitrary Detention, *Revised Deliberation No.5 on deprivation of liberty of migrants* (7 February 2018), https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf

¹⁸ For more comprehensive analysis of all of the recommendations related to Australia’s refugee, asylum and immigration detention policies, see: <https://www.refugeecouncil.org.au/wp-content/uploads/2021/01/Australia-UPR-2101.pdf>; for a full list of all recommendations received by Australia, see: Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia* (24 March 2021), <https://undocs.org/A/HRC/47/8>.

¹⁹ All the research about opinions adopted by UN Working Group on Arbitrary Detention was conducted using the Working Group’s opinion database, available here: <https://www.ohchr.org/EN/Issues/Detention/Pages/OpinionsadoptedbytheWGAD.aspx>

WGAD adopts limited number of opinions each year and examines cases in all 193 UN member states. The fact that this Working Group has adopted 17 opinions about Australia over the past 20 years should be a cause for alarm and reflection. Even more alarming is that all 17 opinions adopted, date to the period between 2015 and now, with five opinions of arbitrary immigration detention adopted in 2020 alone.²⁰

- 5.4 To put this more into perspective, over the same 20-year period, the Working Group adopted only five opinions relating to immigration detention in the United States of America and in four cases found the detention arbitrary. Over the same period, it also adopted two opinions in relation to immigration detention in Canada (finding both cases of arbitrary detention) and also two opinions in relation to such in the UK (finding one case arbitrary detention and another one not arbitrary detention).
- 5.5 Criticism of Australia's immigration detention policies is not limited to the UN WGAD or to when our full record of human rights is being reviewed. Over the past few years, almost all of the UN Committees, tasked with monitoring the implementation of various conventions, have raised concerns about the impact of mandatory and indefinite immigration detention on the specific populations they are concerned with (e.g. women, children, people with disability). Some are listed below:²¹
- 5.6 In its 2019 concluding observations, the Committee on the Rights of the Child recommended again that Australia introduce legislation to prohibit the detention of children in onshore and offshore facilities.²² In the same year, the Committee on the Rights of Persons with Disabilities raised concerns about the situation of children with disability in onshore and offshore detention and asked for their urgent removal. It also recommended that people with disability are not transferred to offshore facilities and that Australia establishes a minimum standard of healthcare for people with disabilities in immigration detention.²³
- 5.7 A year earlier, in 2018, the Committee on the Elimination of Discrimination against Women raised concerns that Australia "has violated its obligations under international human rights and humanitarian laws, including by outsourcing the processing of refugee claims offshore, transgressing non-refoulement obligations and separating families". It raised particular concerns that women and girls were subject to mandatory detention, onshore and offshore, and are separated from their families as a result. The Committee recommended that Australia repeal mandatory detention of people seeking asylum and "ensure, in the interim, that detention is used only as a last resort".²⁴
- 5.8 Not surprisingly, the Human Rights Committee that reviews the implementation of International Covenant on Civil and Political Rights (a treaty that commits the states to respect, among other rights, the right to liberty) was particularly critical of Australia's detention policies in its 2017 Concluding Observations, stating that

²⁰ UN Working Group on Arbitrary Detention adopted one opinion about immigration detention in Australia in 2021, 5 in 2020, 2 in 2019, 4 in 2018, 3 in 2017, and 2 in 2015. In the studied period of 20 years, only one case was examined earlier than 2015 and that was a case relating to the detention of three individuals in 2005 when one person had been in detention for 3 years, one for 5.5 years and one for 6.5 years. However, the UN WGAD filed that case as the Government informed it before adopting an opinion that one individual was deported and two others released to the community.

²¹ All concluding observations referred here relate to the committees' most recent review of Australia.

²² Committee on the Rights of the Child, *Concluding Observations on the combined fifth and sixth periodic reports of Australia* (1 November 2019), <https://undocs.org/CRC/C/AUS/CO/5-6>

²³ Committee on the Rights of Persons with Disabilities, *Concluding Observations on the combined second and third periodic reports of Australia* (15 October 2019), <https://undocs.org/CRPD/C/AUS/CO/2-3>

²⁴ Committee on the Elimination of Discrimination against Women, *Concluding Observations on the eighth periodic report of Australia* (25 July 2018), <https://undocs.org/en/CEDAW/C/AUS/CO/8>

...the Committee remains concerned [...] that the rigid mandatory detention scheme under the Migration Act 1958 does not meet the legal standards under article 9 of the Covenant due to the lengthy periods of migrant detention it allows and the indefinite detention of refugees and asylum seekers who have received adverse security assessments from the Australian Security Intelligence Organisation, without adequate procedural safeguards to meaningfully challenge their detention. The Committee is particularly concerned about what appears to be the use of detention powers as a general deterrent against unlawful entry rather than in response to an individual risk, and the continued application of mandatory detention in respect of children and unaccompanied minors, despite the reduction in the number of children in immigration detention. It is also concerned about poor conditions of detention in some facilities, the detention of asylum seekers together with migrants who have been refused a visa due to their criminal records, the high reported rates of mental health problems among migrants in detention, which allegedly correlate to the length and conditions of detention, and the reported increased use of force and physical restraint against migrants in detention (arts. 2, 7, 9, 10, 13 and 24).²⁵

- 5.9 The Committee made multiple recommendations regarding the detention regime, asking Australia to reduce the period of initial mandatory detention, use alternatives to detention more frequently, ensure detention is subject to judicial review, introduce a time limit on the overall duration of immigration detention, limit the detention of children to the measure of last resort, and address the substandard conditions of detention.
- 5.10 The Committee on the Elimination of Racial Discrimination repeated the same concerns in its review of Australia in 2017, raising alarm about Australia's "policy of indefinite mandatory immigration detention for anyone who arrives in Australia without a visa, including children and unaccompanied minors". The Committee urged Australia to repeal mandatory detention and ensure detention is used as a last resort and subject to regular judicial reviews.²⁶

6 Conditions of immigration detention facilities

- 6.1 There are a myriad of issues associated with the conditions of onshore and offshore immigration detention facilities, many of them are the direct result of the fact that unlike prisons, there are no regulations in relation to the conditions of immigration detention. In this submission, we do not intend to provide a detailed analysis of all the issues related to the conditions of detention. However, to demonstrate why this Bill needs to be passed and why mandatory detention should be repealed, we see it necessary to briefly highlight some of the main issues of concern. [Our submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) elaborates on many of these issues in more detail. While in that submission, the issues are analysed from disability rights perspective, the main issues and their impacts are relevant to all people in detention. This section mainly looks at the conditions in onshore facilities. We will look at the offshore context in sections 8 and 9.

Securitisation of immigration detention

- 6.2 Since the formation of Australian Border Force in 2015, the detention environment has become more securitised and the conditions of detention more prison-like. Use of restrictive measures have become more commonplace and a risk management lens is applied to effectively all of the decisions around placement and management of people in detention.
- 6.3 Some of the examples of this securitisation include:

²⁵ The Human Rights Committee, *Concluding Observations on the sixth periodic report of Australia* (1 December 2017), <https://undocs.org/en/CCPR/C/AUS/CO/6>

²⁶ Committee on the Elimination of Racial Discrimination, *Concluding Observations on the eighteenth to twentieth periodic reports of Australia* (26 December 2017), <https://undocs.org/en/CERD/C/AUS/CO/18-20>

- Frequent use of mechanical restraints (even for movements within the facility)
 - Over regulation of people’s movement and their access to services and facilities (for example access to outdoor)
 - More frequent and invasive body and room searches
 - More frequent use of isolation or solitary confinement to manage challenging behaviours
 - Heavy-handed and punitive response to challenging behaviour without effort to understand the underlying reasons for such behaviour, such as mental health issues.
 - Significant scrutiny of visitors to detention (when they were allowed to visit)
 - Blanket ban on excursions to outside of facilities, for example to places of worship
- 6.4 The facilities, themselves, are also ‘hardened’, through addition of high fences and other extensive security features. In some newly built or refurbished compounds furniture installed (including the furniture in the visiting area) are made from hard material, often metal, and are fixed in place.²⁷
- 6.5 The Australian Government refers to the change in detention population to justify this securitisation. It is true that subsequent to legislative changes in December 2014, an increasing number of non-citizens, including refugees, have been detained after their visas were cancelled because of criminal charges. However, this change in detention population cannot justify the current overly restrictive measures and practices, especially as immigration detention centres still hold a significant number of people seeking asylum and vulnerable people who pose no risk to the community.
- 6.6 It is also of concern to observe an increased rigidity in how the detention system operates. When people need additional support or flexibility to respond to a requirement, this is rarely provided and their inevitable failure to meet their obligations is considered non-compliance. For example, people with cognitive impairment have been reported to find it difficult to access care and get to their medical appointments. This is because they are often provided with an appointment slip without additional support or explanation as to the nature of the appointment. When people do not attend those appointments, they are considered to have failed to comply.

Use of force

- 6.7 The securitisation of immigration detention has led to increased (and at times disproportionate) use of force on people in detention.
- 6.8 Perhaps the most alarming measure is the routine use of handcuffs and other mechanical restraints like body belts and spit hoods. While the Department of Home Affairs maintains that an individual risk assessment is undertaken before the application of mechanical restraints, their frequent use and their reported application to, among others, people with different types of disability, show a low threshold for the authorisation of their use. There is particular concern about the use of mechanical restraints during escorts to medical appointments as it has reportedly negatively affected people’s willingness to receive medical care.
- 6.9 In 2020, the AHRC raised concerns about the cases where the use of restraints during escorts outside of immigration detention has been unnecessary and disproportionate and caused significant distress for people. Examples included people being handcuffed while in a wheelchair or even handcuffed to a hospital stretcher bed. The AHRC assessed that “restraints can be unnecessary for people with restricted mobility, caused by physical disability, frailty or old age”.²⁸

²⁷ See, for example Australian Human Rights Commission’s description of MITA North compound here: Australian Human Rights Commission (2019), *Risk management in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>, pp.35-36.

²⁸ Australian Human Rights Commission (2020), *Inspection of Australia’s immigration detention facilities 2019 report*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>, p.64.

6.10 In another report, the AHRC published the findings of its inquiry into the use of force in immigration detention and during transfers to and from detention facilities. The report findings in relation to ‘Wickham Point extraction’ are particularly damning. It refers to a major operation in April 2015 at Wickham Point detention facility to remove 19 people, mainly family groups and some with young children, from that facility to detention facilities in Melbourne. The AHRC found several examples of inappropriate and disproportionate use of force and restraints, including on minors, people in wheelchairs, people with low risk ratings, and people with mental health issues.²⁹ The Commission also found the ‘significant display of force’ during this operation inappropriate, commenting:

Wickham Point was not intended to be a high security centre and did not accommodate high security detainees in the family compound. However, the way in which the extraction was conducted had the feeling of a paramilitary operation. The operation commenced before dawn. There were more than 20 heavily armoured ERT officers. Many of them appeared to be wearing balaclavas under their helmets such that their faces, other than their eyes and nose, were concealed.

Eleven of the ERT officers carried large plastic shields. When detainees were removed from their rooms, they were immediately confronted by massed ranks of these ERT officers.³⁰

6.11 In March 2019, the Guardian newspaper published leaked audio, video and images that revealed “allegations of excessive force and harassment inside Australian immigration detention facilities”, as part of an investigation that uncovered “serious concerns about transparency and accountability, as well as allegations of assaults, arbitrary transfers and cover-ups”.³¹

More frequent use of Alternative Places of Detention

6.12 According to the Department of Home Affairs, hotels, hospitals, aged-care facilities, and mental health inpatient facilities can be designated as Alternative Places of Detention (APOD). In response to a Senate question on notice, the Department reported that from 1 January 2018 to 31 January 2021, 170 APODs were used in Australia at any time, with the highest number in Queensland. As at 31 January 2021, 56 APODs were classified as “hotel-type APODs”.³²

6.13 These facilities are meant to be used temporarily and to address a specific need; for example if a person in immigration detention needs to be hospitalised for a period of time, the hospital will be considered an APOD. The growing problem is that the Australian Government no longer uses the APODs, especially the hotel-type APODs, as short-term measures. Instead, people are being detained there for a long time. There are now dozens of people who have spent over two years in these facilities. Almost all have been transferred from Nauru and PNG for medical treatment in Australia. This is a group that has experienced in excess of eight years of either detention or restriction of movement and the majority have serious mental and physical health issues, the very reason for their transfer to Australia.

6.14 This issue demonstrates one of the consequences of mandatory detention in the current climate. As more people enter the detention system and as fewer people are able to leave Australia due to issues arising from the COVID-19 pandemic, the detention network

²⁹ Australian Human Rights Commission (2019), *Use of force in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/use-force-immigration-detention>

³⁰ Ibid, pp.115-116.

³¹ Helen Davidson, ‘Secret recordings allege excessive force by guards in Australia’s detention centres’ *The Guardian* (25 March 2019) <https://www.theguardian.com/australia-news/2019/mar/25/secret-recordings-allege-excessive-force-by-guards-in-australias-detention-centres>

³² Senator Nick McKim, Answer to Question on Notice AE21-346 (21 May 2021), <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld10-Portfoliold20-QuestionNumber346>

experiences more pressure and is unable to deal with the influx. The result is overcrowding in purpose-built facilities and more frequent use of non-purpose-built facilities that do not meet many of the detention standards.

- 6.15 Many of the detention monitoring agencies have stated over the past two years that the hotel APODs have over-restrictive conditions. They lack facilities for exercise and recreation, do not provide appropriate access to outdoor, are overcrowded, and lack privacy.³³ People detained in these facilities repeatedly told us that they spend 23 hours a day inside, in rooms with sealed windows and with nothing to do. Such an environment undoubtedly contributes to the deterioration in physical and mental health of people in detention and is not appropriate to use for long-term.
- 6.16 Further, when the Australian Human Rights Commission assessed the management of COVID-19 risks in immigration detention, it noted with concern that in order to manage the risks of an outbreak, more restrictions have been placed on people detained at hotel APODs. For example, they were no longer taken to the closest detention facilities to access outdoors areas or to access services such as the IHMS medical clinic. The AHRC was seriously concerned about a number of people in those APODs who had not left the hotel floor on which they were detained for an extended period of time and remained in cramped rooms where they were not able to even open the windows.³⁴ Nevertheless, even those restrictions did not prevent the inevitable and as mentioned earlier, at least one of these facilities experienced an outbreak in late last year which resulted in half of the population contracting COVID-19.

Healthcare in detention

- 6.17 The Migration Act and Migration Regulations have no provisions requiring reasonable healthcare is provided in immigration detention. Only Regulation 5.35 of the Migration Regulation refers to the medical treatment of people in immigration detention and this is only in the context of the Secretary's power to take certain steps when there is a certain risk to the person in detention's health and life. It does not address the quality or standard of healthcare in detention.³⁵
- 6.18 Healthcare in onshore detention has been the subject of many specific reports³⁶ and have always been mentioned in inspection reports of agencies like the AHRC. Issues like inadequate oversight of the contracted health agency, International Health and Medical Services (IHMS), by the Department, insufficient care for people at risk of self-harm, cost-cutting at the expense of quality care, and extended wait time to access specialist care are some of the issues identified.
- 6.19 It is reasonable to conclude that while the complexity and range of mental health issues in detention have grown, the available mental health support has not been proportionally expanded. People in immigration detention often have to wait a long time to go through

³³ For some of the examples, see Commonwealth Ombudsman (2019), *Immigration Detention Oversight: Review of the Ombudsman's activities in overseeing immigration detention January to June 2019*, https://www.ombudsman.gov.au/__data/assets/pdf_file/0017/109700/Immigration-Detention-Oversight-Report-January-to-June-2019.pdf; Commonwealth Ombudsman (2019), *Monitoring Immigration Detention: Review of the Ombudsman's activities in overseeing immigration detention July to December 2019*, https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/111390/Six-monthly-immigration-detention-report-Jul-Dec-2019.pdf; Australian Human Rights Commission (2020), *Inspection of Australia's immigration detention facilities 2019 report*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

³⁴ Australian Human Rights Commission (2021), *Management of COVID-19 risks in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>, p.46.

³⁵ The Australia OPCAT Network (2020), *The implementation of OPCAT in Australia*, https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation_of_OPCAT_in_Australia.pdf, p.56

³⁶ See, for example: Public Interest Advocacy Centre (2018), *In Poor Health: Health care in Australian immigration detention*, <https://piac.asn.au/wp-content/uploads/2018/06/18.06.14-Asylum-Seeker-Health-Rights-Report.pdf>, Australian National Audit Office (2016), *Delivery of Health Services in Onshore Immigration Detention*, https://www.anao.gov.au/sites/default/files/ANAO_Report_2016-2017_13.pdf

psychiatric assessments and to receive required treatments and medications; they rapidly deteriorate in the process.

- 6.20 In 2019, the Australian Human Rights Commission inspected the detention facilities along with independent medical consultants. Following the inspection, the AHRC expressed alarm about the mental health of the detention population and assessed that the “treatment practices appear inadequate to deal with this problem”.³⁷
- 6.21 The main issues of concern for the AHRC were significant delays in receiving mental health support and reported inferior quality of care. A number of people who spoke to the AHRC reported that they were dissatisfied with how the detention health provider responded to their issues, especially what they perceived to be attempts at minimising their issues.³⁸ The AHRC highlighted that reports about lack of access to timely mental health support were much higher in Brisbane ITA. It raised concerns about the fewer resources available for mental health care in this facility and lack of access to psychologists.³⁹

Detention facilities on Christmas Island

- 6.22 We believe that no one should be detained at facilities on Christmas Island. They are remote, inaccessible and without proper access to comprehensive physical and mental health support.
- 6.23 In its assessment of the facilities, the AHRC raised similar concerns about the facilities, finding them remote, with limited access to healthcare, facilities, services, and with restricted communication to lawyers and support network. It therefore recommended that “as a matter of urgency, the Australian Government should decommission the use of all immigration detention facilities on Christmas Island”.⁴⁰
- 6.24 Amongst all of the detention facilities in Australia, mental health support is most inadequate on Christmas Island. Torture and trauma counselling is provided by phone and there is no psychiatrist permanently on site. This means if someone needs an appointment they need to wait until the next time a psychiatrist flies to Christmas Island, extending the wait time beyond the already long period that people on mainland facilities experience.
- 6.25 Further, the remoteness of Christmas Island and (effective) impossibility to have in-person visits make people feel more isolated and exacerbates mental health issues and pre-existing vulnerabilities.

7 Detention of children

- 7.1 The significant reduction in the number of children in closed immigration detention facilities has been a welcome development in recent years. This number dropped from the peak of 2,000 detained children in July 2013 to zero as of 30 September 2021.⁴¹ However, there is no legislation to prohibit the detention of children (including unaccompanied minors). Therefore, there is concern that if the Australian Government decides to change its current practice and detain in closed facilities those children whose immigration pathway is yet to be finalised (including those who remain subject to offshore processing), there is no legislation that can prevent this.

³⁷ Australian Human Rights Commission (2020), *Inspection of Australia’s immigration detention facilities 2019 report*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>, p.4.

³⁸ *Ibid*, pp.49-51.

³⁹ *Ibid*, pp. 51-53.

⁴⁰ Australian Human Rights Commission (2021), *Management of COVID-19 risks in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>, pp. 25-26.

⁴¹ Based on Australian Government’s reporting, available at: <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

- 7.2 This concern is certainly justified when the case of Murugappan family (known as ‘Biloela family’) is examined; a case that showed the Australian Government’s determination to detain children for extended time in the name of deterrence and border protection. The two Australian-born children of this family spent more than 3 years in closed detention along with their parents. For one year, they were the sole occupants of the remote Christmas Island detention facility. According to the Department of Home Affairs, the Australian Government spent 7 million dollars in 7 months to detain this family on Christmas Island.⁴² It was only in June 2021 and after the youngest child (who was 3 years old at that time) developed a serious health condition requiring hospitalisation and after significant public outcry that the Government finally released the family from closed detention into community detention and temporary bridging visas.⁴³
- 7.3 It is also of concern that sometimes the statistics published by the Government do not present the full picture of immigration detention in Australia. According to the Australia OPCAT Network’s submission to the UN WGAD in 2020, the Australian Government has classified some children in detention facilities as ‘guests’ and therefore not reporting them in official statistics. The OPCAT Network highlighted that these children accompany one or both of their parents who are unlawful non-citizens but are themselves lawful non-citizens and recommended that these children be accommodated with their families in low security residential arrangements rather than joining their parents in closed immigration detention facilities.⁴⁴
- 7.4 The Australian Government sent hundreds of children and their families as well as tens of unaccompanied minors offshore. Children were also born to parents who remained in Nauru. According to the Parliamentary Library, the highest number of children held in a processing centre (Nauru) was 222 in August 2014.⁴⁵ In 2014, the Australian Human Rights Commission also reported that it was aware of “at least 27 unaccompanied children who have been transferred to Nauru and remain in detention”.⁴⁶ This is likely to be an underestimation as we are aware of a number of unaccompanied children who were taken to Manus Island and never transferred to Nauru.⁴⁷
- 7.5 While there are currently no children offshore, this regime resulted in significant mental health and developmental issues amongst children subject to offshore processing policy. As RCOA and Asylum Seeker Resource Centre documented in 2018, many children on Nauru started to develop a rare psychiatric condition called ‘Traumatic Withdrawal Syndrome’ (also known as ‘resignation syndrome’). Children with significant mental health impairments could not be treated on Nauru as this country did not have inpatient mental health facilities for children.⁴⁸
- 7.6 There is still no legislation against the future transfer of children offshore, where essential services remain unavailable. This is particularly relevant now as Australia recently signed a

⁴² Senator Nick McKim, Answer to Question on Notice BE21-461 (16 July 2021), <https://www.aph.gov.au/api/qon/download/estimates/questions/EstimatesQuestion-CommitteeId6-EstimatesRoundId11-PortfolioId20-QuestionNumber461>

⁴³ Three Murugappan family members given temporary Australia visas’ *Al Jazeera* (23 June 2021),

<https://www.aljazeera.com/news/2021/6/23/three-of-murugappan-family-given-temporary-australia-visas>

⁴⁴ The Australia OPCAT Network (2020), *The implementation of OPCAT in Australia*, https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation_of_OPCAT_in_Australia.pdf , p.64.

⁴⁵ Elibritt Karlsen (2016), *Australia’s offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources*,

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore

⁴⁶ Australian Human Rights Commission (2014), *The Forgotten Children: National Inquiry into Children in Immigration Detention*, https://humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf , p.186.

⁴⁷ See, for example, the case of Loghman Sawari as reported here: Ben Doherty, ‘Three countries, eight years: one refugee’s nightmare odyssey through Australia’s detention system’ *The Guardian* (17 July 2021), <https://www.theguardian.com/australia-news/2021/jul/17/three-countries-eight-years-one-refugees-nightmare-odyssey-through-australias-detention-system>

⁴⁸ Refugee Council of Australia and Asylum Seeker Resource Centre (2018), *Australia’s man-made crisis on Nauru: Six years on*, https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Nauru_Manmade_Crisis.pdf , pp.5-7.

new agreement with the Government of Nauru to create “an enduring form” of offshore processing in this country.⁴⁹

8 Offshore processing

- 8.1 There are abundant reports and undeniable evidence that the offshore processing regime has caused irreparable harm to people subject to this regime, our international reputation and our relationship with our Pacific neighbours. RCOA has reported extensively on these issues, including our two comprehensive reports about the conditions of people in [Papua New Guinea](#) and [Nauru](#), as well as our many submissions to various parliamentary committees, including one in which we looked at the [impact of offshore processing on our standing in the Pacific](#).
- 8.2 Many people subject to offshore processing experienced physical ill-health that remained untreated and resulted in permanent impairments. The significant scale of mental health issues amongst the population transferred by Australia to Nauru and Manus Island is also well known. RCOA travelled to Port Moresby in November 2019 and engaged with many refugees and people seeking asylum transferred there. We directly witnessed the alarming level of mental ill-health. While we are not mental health experts, we observed that some people were unable to continue their daily lives independently due to their significant mental health issues; and yet, their access to health and rehabilitation services was limited.
- 8.3 Offshore processing policy is harmful and needs to end. That is what this Bill seeks to achieve, as it expressly requires that the detention only be in Australia and determined to be necessary and proportionate.

9 Oversight and scrutiny

- 9.1 It is well established that independent oversight and scrutiny can identify some of the issues of concern in detention, provide safeguards against abuse and neglect, and give more visibility to vulnerable populations. Australia’s detention system, however, operates under a cloud of secrecy with inadequate effective oversight and scrutiny.
- 9.2 Currently there are some government and non-government bodies that have a level of oversight over onshore immigration detention facilities. The Commonwealth Ombudsman visits and inspects immigration detention facilities and reviews the detention of people who spend more than two years in detention. Since Australia ratified the Optional Protocol to the Convention against Torture (OPCAT), the Commonwealth Ombudsman assumed additional responsibilities as the National Preventive Mechanism under this optional protocol. To fulfil this role, the Ombudsman monitors the places of detention under the control of the Commonwealth, which includes immigration detention facilities. Given the number, location and distance of detention facilities and more frequent use of non-purpose-built facilities, there are concerns about the capacity of the Ombudsman to fulfil this additional role if it is not provided with adequate human and financial resources. For example, while since assuming this role, the Commonwealth Ombudsman published more reports about its monitoring of places of detention, they are by no means ‘regular’ reports as is required under the OPCAT. The last report published by the office reports on its monitoring activities from 1 January to 30 June 2020.
- 9.3 The Australian Human Rights Commission and the Australian Red Cross also monitor the conditions of onshore detention facilities. Australian Red Cross does not publish the reports of its monitoring activities, so the AHRC remains the main source of information about what is happening in immigration detention (as is evident from frequent citation of those reports in this submission).

⁴⁹ Ben Doherty, ‘Australian signs deal with Nauru to keep asylum seeker detention centre open indefinitely’ *The Guardian* (24 September 2021) <https://www.theguardian.com/australia-news/2021/sep/24/australia-signs-deal-with-nauru-to-keep-asylum-seeker-detention-centre-open-indefinitely>

- 9.4 The oversight of offshore facilities is even more limited because of jurisdictional issues. The Australian Human Rights Commission cannot monitor the conditions of offshore processing facilities. The Commonwealth Ombudsman previously visited Nauru and PNG (with agreement of those countries) to ‘examin[e] administrative actions of Australian officials and their contracted service providers’ but did not publish the reports of those inspections. The Australian Red Cross that visits both Nauru and PNG with International Committee of the Red Cross does not publish its reports.⁵⁰
- 9.5 This combined with the systemically late publication of any official statistics relating to onshore and offshore detention means it is impossible to have an up-to-date picture of the immigration detention network. Further, the fact that none of the recommendations of oversight bodies is binding on the Government, creates an environment where effecting change (and preventing harm) through monitoring is impossible and the monitoring bodies and their recommendations are routinely ignored.
- 9.6 As mentioned before, it is alarming that in its response to the scrutiny of international bodies, the Australian Government often tries to paint a different and more positive picture of what is happening in our immigration detention facilities. For example, in its 2021 national report that it submitted to the Human Rights Council in advance of our third Universal Periodic Review, the Australian Government described the immigration detention of children as below:

Immigration detention of children is always a last resort and children are detained for the shortest practicable time. It is the Australian Government’s policy that children are not held in immigration detention centres. In the event that a child is detained, they are accommodated in alternative places of detention such as immigration residential housing precincts designed for families, or in the community under a residence determination. In some circumstances, including airport turnarounds or where there are criminal or security issues, children may transit through held immigration detention.⁵¹

In stating that children ‘may transit through held immigration detention’ and in describing the places of detention where children are detained as ‘designed for families’, the Australian Government is significantly downplaying the harm its mandatory detention policies is causing children. Certainly the children like those of Murugappan family (referred to in paragraph 7.2), did not ‘transit through held immigration detention’, but spent 3 years there and the remote detention facility where they were held cannot possibly be described as ‘designed for families’.

- 9.7 Finally, some of the previous oversight measures have been abandoned altogether. For example, Immigration Health Advisory Group (IHAG) that was the only independent oversight body with medical expertise was disbanded in December 2013. The IHAG had representatives from professional health authorities and provided oversight and advice to the Government in relation to medical care in detention, including mental health care. In response to the disbanding of IHAG, the Australian Medical Association (AMA) said in December 2013 that

...the Government and the Department now have a major challenge in understanding and dealing with complex health conditions in difficult circumstances without the benefit of the expert advice of the highly qualified and respected IHAG members.⁵²

⁵⁰ The Australia OPCAT Network (2020), *The implementation of OPCAT in Australia*, https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation_of_OPCAT_in_Australia.pdf, p.71.

⁵¹ Attorney-General’s Department (2021), *National report submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution 16/21*, <https://www.ag.gov.au/sites/default/files/2020-12/national-report-of-australia-upr-2021.pdf>, paragraph.124.

⁵² Australian Medical Association, ‘AMA shocked by disbanding of Immigration Health Advisory Group’ (16 December 2013), <https://www.ama.com.au/media/ama-shocked-disbanding-immigration-health-advisory-group-ihag>

9.8 This Bill's proposal of regular independent monitoring of immigration detention is a welcome and important step forward.

10 The way forward

10.1 For years and in numerous reports and submissions, RCOA has put forward a series of recommendations to end arbitrary detention and the harms it causes. We provide a summary of those recommendations in Appendix 1. Sadly, these recommendations have not been considered by successive governments.

10.2 In particular, we repeatedly encouraged the Australian Government to introduce legislation to:

- Abolish mandatory immigration detention in favour of a discretionary system under which detention is applied as a last resort and only when strictly necessary;
- Restrict immigration detention to a maximum of 30 days without judicial review and six months overall;
- Establish a system of judicial review of immigration detention longer than 30 days, with subsequent reviews carried out at regular intervals if continued detention is deemed appropriate;
- Codify clear criteria for lawful detention and minimum standards of treatment for people subject to immigration detention, in line with UNHCR's Detention Guidelines; and
- Prohibit the detention of children in closed immigration detention facilities, with community-based support arrangements to be used in place of closed detention.

10.3 While not perfectly aligned with all of these recommendations, this Bill reflects many of our long-standing asks for reform, and we recommend that it be considered by the Australian Parliament and passed.

Appendix 1:

Refugee Council of Australia's major publications in relation to onshore immigration detention in the past ten years

Since the introduction of mandatory immigration detention in 1992, Refugee Council of Australia has been raising concerns about various aspects of this policy and its impact on people in detention.

It is impossible to present all of the comments, public statements, submissions, and reports that we have published over this period. However, below is a list of submissions and reports that RCOA has published in the past 10 years, focusing on the issue of immigration detention in Australia.

This list only includes our major publications on onshore immigration detention. It does not include our reports and submissions on the conditions of people subject to offshore processing. It also does not include any joint submissions we made with other NGOs to international scrutiny bodies, for example the submission to the United Nations Human Rights Committee in advance of the third Universal Periodic Review of Australia's human rights records which highlighted our collective concerns about various aspects of asylum and detention (including detention at sea) policies.

The below list does not include our numerous submissions on policies that can prolong the length of detention or increase the chance of people being arbitrarily detained, for example submissions in response to various changes (or proposed changes) to the Migration Act in relation to visa cancellation on character grounds. Finally, we did not include our annual intake submissions on Refugee and Humanitarian Program here. Those submissions always highlighted mandatory and indefinite detention as one of the major areas of concern for communities and service providers who attended our annual consultations.

In short, the below list is a mere glimpse into what RCOA has done and said over the past 10 years in relation to immigration detention and our recommendations to reduce the harm that these policies have been causing. It is unfortunate that when one reviews these recommendations, it becomes obvious that the majority have been ignored by successive Australian Governments.

2021:

- **People with disability in immigration detention** (submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability)

Some of the main recommendations included:

- limiting the detention of people with disability to the measure of absolute last resort and placing this group in community alternatives to closed detention.
- considering alternatives to closed detention for people who fail to pass the character test and face indefinite detention. We highlighted that we believed most people in this group can be managed appropriately in a less restricted form of detention with proper reporting and supervision. Those who cannot be placed in the community should not be placed in remote detention centres like Yongah Hill IDC or North West Point IDC.
- ensuring that all compounds of immigration detention facilities are safe and accessible, with a design and layout that support the needs of people in detention with disability.
- that non one, particularly people with disability, are not placed in non-purpose-built Alternative Places of Detention. If it is absolutely necessary, this group should be held in those facilities for the shortest period possible.
- refraining from the use of restraints on people with disability as much as possible.
- ceasing the use of high-care accommodation units for quarantine purposes and not placing people with disability in such accommodation for the purpose of medical or operational quarantine.
- commissioning a comprehensive review of the mental health care provided in immigration detention.

- decommissioning the use of all detention facilities on Christmas Island. While the Government plans for this measure, it should urgently transfer anyone with disability out of Christmas Island; this includes people with psychosocial disability.

2020:

- **Leaving No-One Behind: Ensuring people seeking asylum and refugees are included in COVID-19 strategies** (summary of priorities identified at regular national meetings with refugee communities and service providers)
 - First priority identified was to urgently move people out of crowded immigration detention facilities.
- **The Australian Government's response to the COVID-19 pandemic** (submission to the Senate Select Committee on COVID-19)
 - The first recommendation was related to immigration detention, urging the Australian Government to immediately release low-risk people in immigration detention into the community, either into residence determination or onto Bridging Visas with financial assistance and Medicare. We also urged the Government to detail its process for individualised risk assessments and its reasons for people's continued detention, including why it continued to detain many people recognised as refugees, in direct contravention of our responsibility under international law.
- **Submission to the inquiry on the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020** (submission to the Senate Legal and Constitutional Affairs Committee)

This Bill was similar to the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017 that was previously introduced and was subject to a Senate inquiry. RCOA repeated previous recommendations (as referenced below) as they all remained relevant.

2018:

- **Submission on the implementation of OPCAT in Australia: Second stage of consultations** (submission to the Australian Human Rights Commission)

The main impact of the ratification of the OPCAT was the potential for increased scrutiny of conditions of detention by National Preventive Mechanism (NPM). Some of RCOA's recommendations were:

- Remote detention facilities and more restrictive areas within facilities should be prioritised for visits. The NPM should review, as a matter of priority, restrictive detention practices, management of transfers and responses to critical incidents. People in detention with specific vulnerabilities relating to young age, ill health and prolonged detention are more at risk of urgent harm.
- The NPM should be able to examine systemic issues, have a role in promoting public awareness of OPCAT, and be given a mandate to comment on pending legislation and the implementation of legislation.
- The NPM should be able to visit all places of detention without any limit or restriction or interference from governments.
- There needs to be a stand-alone legislation ensuring the independence, mandate, power, staff expertise, funding and transparency of the NPM.

2017:

- **Submission into proposed Melbourne Immigration Transit Accommodation Project, Broadmeadows, Victoria** (submission to the Parliamentary Standing Committee on Public Works)

Some of our recommendations were:

- There should be a balance between low and high security compounds with enough low security beds available to people detained in the state of Victoria without the need for their transfer to other states. This could be achieved by the expansion of Avon compound.
- All efforts should be made to prevent further transfer of long-term vulnerable detainees who have established support networks in the state of Victoria, unless they request to be moved to another state.
- The security mechanisms employed to maintain the good order and safety of the facility should correspond with the risks different detention populations present.
- The scrutiny of visitors to immigration detention should be proportionate to the risks of the cohort they are visiting.
- With the reduction of opportunities for people in detention to leave the held detention environment for excursions, further outdoor space needs to be developed inside the facility. RCOA recommends using the area next to the new Eildon compound marked for “future expansion” or any other suitable space for this purpose.
- All people in detention should have equitable access to outdoor space inside the detention facility.

- **Submission to the Inquiry on the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017** (submission to the Senate Legal and Constitutional Affairs Committee)

We recommended:

- that the Bill seeking to, amongst other things, make mobile phones in detention a ‘prohibited item’ not be passed.
- against implementing restrictive policies on all people in detention to mitigate the risks potentially presented by some. Through risk-based placement, the Department can determine the needs and challenges of each individual in detention and implement policies appropriate to that person.
- comprehensive reform of Australia’s detention system to prevent prolonged, indefinite and unnecessary detention. The central focus of detention reform should be on ensuring the immigration detention is used as a last resort and for the shortest possible time.

- **Submission on the OPCAT in Australia consultation paper** (submission to the Australian Human Rights Commission)

The main impact of the ratification of the OPCAT was the potential for increased scrutiny of conditions of detention by National Preventive Mechanism (NPM). Some of RCOA’s recommendations were:

- To implement OPCAT properly, current monitoring of immigration detention needs to shift from being reactive to preventative.
- To improve the transparency and accountability of detention monitoring, the NPM should be required to publish its visit reports, standards for inspection, and performance against key benchmarks or standards.

- To implement OPCAT, detention monitors should have jurisdiction to monitor offshore processing centres, all Alternative Places of Detention, and detention at sea.
 - Detention monitors should be resourced to monitor remote detention facilities more frequently, and for their visits to be normally unannounced.
 - A clear and transparent coordinating mechanism between detention monitors should be established, with institutionalised opportunities for engagement with civil society including through preparation for visits.
 - To ensure financial and operational independence, there should be increased and ring-fenced resourcing for detention monitoring, and those functions should be entrenched in legislation and in formal agreements.
 - In implementing OPCAT, key priorities for urgent review include: a) Review of healthcare in detention facilities, especially support for mental health and disabilities b) Indefinite and arbitrary detention, including review of detention c) Practices of isolation, including seclusion and restriction of visitor access d) Practices of restraints used during transport.
 - NPM reports should be subject to review by the Joint Parliamentary Committee on Human Rights, and the NPM should establish advisory groups for key vulnerable groups including other responsible statutory authorities with relevant expertise.
- **Unwelcome Visitors: challenges faced by people visiting immigration detention** (report)

Some of our recommendations were:

- DIBP and ABF should recognise the important role of detention visitors. They should engage in more effective dialogue with the visitors, inform them of proposed future changes and seek their feedback. This should include institutional channels of communication as well as more flexible forms of dialogue.
- In developing and managing rules on visits, DIBP and ABF should give greater weight to the administrative nature of immigration detention, to past compliance by visitors and those they are visiting, and to whether the perceived risks can be mitigated in other ways.
- DIBP and ABF should ensure consistency in how the rules around visiting processes are applied in each centre and across the network.
- DIBP and ABF should work with Serco to improve processes for drug testing, including better training for staff and appropriate procedures for ensuring visitors are informed of their rights and processed in timely way.
- DIBP and ABF should ensure there are more opportunities for less structured and more relaxed community visits and gatherings.
- DIBP and ABF should revise the arbitrary rules that are putting unnecessary pressure on people in detention and the visitors (for example, the rules requiring people in detention in Melbourne ITA to apply to visit each other, and rules in Brisbane ITA preventing people sitting at different tables from speaking with each other or sharing food).
- DIBP and ABF should better support religious service providers to deliver their services and the entry process should be relaxed for them.
- DIBP and ABF should improve the availability of translated material on visit booking system and the reception process.
- DIBP should establish a transparent and independent process for reviewing detention.

2016:

- **Submission on the indefinite detention of people with cognitive and psychiatric impairment in Australia** (submission to the Senate Community Affairs References Committee)

We recommended:

- The Australian Government should introduce legislation to:
 - Abolish mandatory immigration detention in favour of a discretionary system under which detention is applied as a last resort and only when strictly necessary;
 - Restrict immigration detention to a maximum of 30 days without judicial review and six months overall;
 - Establish a system of judicial review of immigration detention longer than 30 days, with subsequent reviews carried out at regular intervals if continued detention is deemed appropriate; and
 - Codify clear criteria for lawful detention and minimum standards of treatment for people subject to immigration detention, in line with UNHCR's Detention Guidelines.
- The Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth) (Character Act) be repealed.

2015:

- **Submission to the inquiry into the Migration Amendment (Maintaining the Good order of Immigration Detention Facilities) Bill 2015** (submission to the Senate Legal and Constitutional Affairs Committee)

We recommended that this Bill not be passed due to our concerns about it. We put forward a series of recommendations to amend the Bill if the Parliament decided to pass the Bill. The recommendations ensured there were more safeguards around the use of force by 'authorised officers'. We also put forward a series of recommendations to genuinely improve the operation of immigration detention system. They included:

- Abolish mandatory immigration detention in favour of a discretionary system under which detention is applied as a last resort and only when strictly necessary;
 - Restrict immigration detention to a maximum of 30 days without judicial review and six months overall;
 - Establish a system of judicial review of immigration detention longer than 30 days, with subsequent reviews carried out at regular intervals if continued detention is deemed appropriate;
 - Codify clear criteria for lawful detention and minimum standards of treatment for people subject to immigration detention, in line with UNHCR's Detention Guidelines;
 - Prohibit the detention of children in all closed immigration detention facilities, with community-based support arrangements to be used in place of closed detention.
- **Eroding Our Identity as a Generous Nation: community views on Australia's treatment of people seeking asylum** (report)

Among a series of recommendations related to various aspect of Australia's asylum policy, below focused on immigration detention:

- The Australian Government introduce legislation to:
 - Abolish mandatory immigration detention in favour of a discretionary system under which detention is applied as a last resort and only when strictly necessary;
 - Restrict immigration detention to a maximum of 30 days without judicial review and six months overall;
 - Establish a system of judicial review of immigration detention longer than 30 days, with subsequent reviews carried out at regular intervals if continued detention is deemed appropriate;

- Codify clear criteria for lawful detention and minimum standards of treatment for people subject to immigration detention, in line with UNHCR’s Detention Guidelines; and
- Prohibit the detention of children in closed immigration detention facilities, with community-based support arrangements to be used in place of closed detention.

2014:

- **Response to the National Inquiry into Children in Detention** (submission to the Australian Human Rights Commission)

In this submission we concluded that:

- without substantive legislative change ensuring that children are not placed and do not remain in immigration detention, the cycle of suffering and unnecessary human and financial costs will continue.
- Community alternatives are readily available, and legislative change is now required to ensure that we do not need to hold another inquiry in 2024 [considering that at the time 10 years had passed since the Human Rights Commission’s last national inquiry into children in detention (held in 2004)].

2012:

- **Legislated time limits for immigration detention essential**⁵³ (statement in response to the release of the Joint Select Committee report on Australia’s Immigration Detention Network)
 - In this statement, RCOA urged the Federal Government to legislate a 30-day limit on the time asylum seekers spend in immigration detention and maintained that without legislated time limits, immigration detention remains indefinite, often with serious consequences for people in detention.
- **Submission to the Inquiry into the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**⁵⁴ (submission to the Joint Standing Committee on Treaties)

Some of RCOA’s recommendations were:

- The Australian Government ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- Representatives independent of both state and Federal governments be involved in the national preventative mechanism.
- The national preventative mechanism be properly resourced to ensure that it can adequately carry out its mandate.

⁵³ Available from RCOA’s archives

⁵⁴ Available from RCOA’s archives