

Submission to the Joint Standing Committee on Migration

Ending Indefinite and Arbitrary Immigration Detention Bill 2021

20th January 2022

The Western Australian Council of Social Service Inc. (WACOSS) welcomes the opportunity to make a submission to the Joint Standing Committee on Migration in regards to the **Ending Indefinite and Arbitrary Immigration Detention Bill 2021**.

WACOSS is the peak body for the community services sector in Western Australia and works to create an inclusive, just and equitable society. We advocate for social and economic change to improve the wellbeing of Western Australians, and to strengthen the community services sector that supports them. WACOSS is part of a network consisting of National, State and Territory Councils of Social Service, who advance the interests of people on low incomes and those made vulnerable by the systems that have been put in place.

WACOSS is deeply concerned that Australia's mandatory detention of asylum seekers, refugees and any other person deemed a 'non-citizen' without a valid visa is a gross violation of our nation's obligations under international human rights law, including rights relating to liberty and security of person and the rights of the child.

Australia's existing mandatory detention legislation requires that people seeking asylum who do not have the documentation that has been deemed necessary are to be held in immigration detention until such time that they are either granted a legal visa to stay in the country or are deported to another country. The consequence of not being able to meet either of these outcomes results in the potential for indefinite detention without charge or adequate judicial review.

This approach is inconsistent with Australia's obligations under Article 9 of the *International Covenant on Civil and Political Rights*. This is particularly apparent when considering the International Convention on Civil and Political Rights Human Rights Committee's general comment No. 35 on liberty and the security of person, that decisions regarding the detention of migrants must:

consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review.¹

Where children are captured under this detention regime, Australia's approach breaches the *Convention on the Rights of the Child*, including Article 37 (b), which states:

¹ Human Rights Committee (2014) *General Comment No. 35 on Liberty and the Security of Person*, International Covenant on Civil and Political Rights, United Nations

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

It is not possible to see how Australia's actions in the mandatory detention of people seeking asylum can be considered in any form consistent with these human rights obligations. It is clear, in fact, that Australia has continued to deepen and extend the unacceptable approach it has taken towards people seeking asylum, including through recent legislative change such as the Migration Amendment (Clarifying International Obligations for Removal) Bill 2021. In 2012, a person was on average held in immigration detention for less than 100 days.² In 2021, that figure exploded to 627 days (20 months).³

The psychological impacts of arbitrary detention are well defined and well known both internationally and within Australia.⁴ WACOSS firmly believes that it is time to ensure our federal policies are aligned with our international legal and humanitarian responsibilities to provide asylum to people fleeing war and persecution.

WACOSS recommends that the Ending Indefinite and Arbitrary Immigration Detention Bill 2021 be passed in order to make the necessary changes to the *Migration Act* to be more consistent with our international human rights obligations. These changes would result in amendments to the mandatory detention provisions of the *Migration Act* to ensure any detention is aligned with procedures and standards established by international law.

Australia must take seriously its position within our region and the global community through a robust commitment to meet our responsibilities under international human rights law. The Ending Indefinite and Arbitrary Immigration Detention Bill 2021 provides an important opportunity for Australia to reset this commitment and work towards a more positive, shared global future.

Yours sincerely,



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WACOSS

² Department of Immigration and Citizenship (2013) *Immigration and Detention Statistics Summary* page 9

³ Department of Home Affairs (2021) *Immigration Detention and Community Statistics Summary* page 13

⁴ Janette P Green, Kathy Eagar (2010) *The health of people in Australian immigration detention centres*