

SUBMISSION TO JOINT MIGRATION COMMITTEE

Ending Indefinite and Arbitrary Immigration Detention Bill 2021 (Andrew Wilkie)

SUMMARY OF WHAT THE BILL PROPOSES

This Bill provides that alternatives to immigration detention, which may take various forms depending on the particular circumstances of the individual, are almost always used in preference to immigration detention. Under this Bill, immigration detention for non-citizens and refugees must be lawful, necessary, proportionate and be for the shortest time possible. The provisions of this Bill make mandatory detention illegal. This Bill clearly outlines the reasons and the time frames, communication and services that are to be available in immigration detention, which will be independently monitored. It adheres to refugee and international human rights law and ensures all decisions are subject to independent oversight and prompt review.

WHY IS THIS BILL NECESSARY?

- This Bill is necessary to ensure that Australian law is compliant with refugee and international law.
- It ends the illegal, inhumane and arbitrary detention of refugees by the Australian Government.
- It implements into domestic law components of: Convention and Protocol relating to the Status of Refugees; International Covenant on Civil and Political Rights; Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Convention on the Elimination of all Forms of Discrimination against Women; and Convention on the Rights of Persons with Disabilities.
- The scale of Australia's misconduct is highlighted by the number of Conventions and International Laws that it is in breach of and the far ranging impact that this is having on refugees and non-citizens. It is clearly evidenced by the number and extent of areas addressed in this Bill.

KEY AREAS ADDRESSED IN THE BILL

- **Principle of Family Unity/Principle of the Rights and Best Interests of the Child:** recognises the obligation to protect and respect family life upholds the principle that family unity is inherent to the right to family life and this right is entitled to protection by Society and the State.
- **Immigration Detention:** dismantle offshore immigration policies; insert into domestic law the principle that people have a legal right to seek asylum; that immigration detention will adhere to the fundamental human right of liberty and security, the right to freedom of movement and the international prohibition on arbitrary detention.

- **Alternatives to Immigration Detention:** all alternatives are based on the refugee or non-citizen living in the community with various restrictions imposed.
- **Access to Assistance in Alternatives to Immigration Detention:** this includes health and mental health services, education, counselling, government services and legal services.
- **Timeframes for the Determination of Alternatives to Immigration Detention :** ensures that any time frame outside of the 12 month period must be decided by the Federal Circuit Court and not left to the discretion of the Minister or Secretary.
- **Revocations or variation of restrictions:** decisions compliant with international human rights law.
- **Reasons for Immigration Detention:** detention must not be arbitrary and must be based on the individual's particular circumstances.
- **Time Frames for Immigration Detention:** ensuring that an individual's detention period is as short as possible and regularly reviewed.
- **Information Provided to Detainees:** if a refugee or non-citizen is detained they must be informed of the reasons for their detention, provided with free and independent legal assistance, and informed of their rights in connection with the order, including review procedures.
- **Access to Services in Detention:** including physical health and mental health services; trauma and counselling services, in accordance with international standards.
- **Communication for the Purpose of Obtaining Immigration Assistance and Immigration Legal Assistance:** as and when required.
- **Children in Detention:** Children should not be detained and if they are, it must be used as a measure of last resort and for the shortest appropriate time.
- **Independent Monitoring:** to ensure that detention centres comply with international human rights law through scrutiny and monitoring by an independent body.
- **Review of Decisions/ Jurisdiction of Courts:** affords a non-citizen or refugee with judicial review of adverse decisions in accordance with principles of procedural fairness, transparency and accountability.

THIS BILL IS COMPATIBLE WITH THE HUMAN RIGHTS AND FREEDOMS RECOGNISED IN INTERNATIONAL LAW, PROTOCOLS AND CONVENTIONS. IT ENDS THE ILLEGAL, INHUMANE AND ARBITRARY DETENTION OF REFUGEES AND NON-CITIZENS BY THE AUSTRALIAN GOVERNMENT.

IT IS ESSENTIAL THAT THIS BILL IS SUPPORTED IN ORDER TO PUT AN END TO MANDATORY DETENTION; TO END OFFSHORE PROCESSING; TO END BOAT TOWBACKS; AND, TO REJECT THE ABHORRENT CONSEQUENCES OF CURRENT PRACTICES AND TO PROCEED IN ACCORDANCE WITH INTERNATIONAL LAW.