

Australian Red Cross

Submission to the Joint Standing Committee on Migration

**INQUIRY INTO ENDING INDEFINITE AND ARBITRARY
IMMIGRATION DETENTION BILL 2021**

Prepared January 2022

Foreword

I write on behalf of Australian Red Cross (Red Cross) regarding the Joint Standing Committee on Migration's Inquiry into the *Ending Indefinite and Arbitrary Immigration Detention Bill 2021*.

Red Cross welcomes the Committee's interest in the Bill that seeks to end indefinite and arbitrary immigration detention. Red Cross strongly supports the intent of the Bill to embed in legislation mechanisms to end and prevent prolonged or indefinite detention and better protect the humanitarian needs of people in immigration detention.

For more than 30 years, Red Cross has played a humanitarian role in places of immigration detention in Australia. Our significant experience in this area, along with our expertise as a humanitarian organisation and as part of the global International Red Cross and Red Crescent Movement, informs this submission.

There is strong evidence which highlights the humanitarian impacts of prolonged or indefinite immigration detention and the detention of children. Through our immigration detention monitoring work in Australia as well as our support to the International Committee of the Red Cross (ICRC) in its monitoring visits to people transferred to Nauru and Papua New Guinea, Red Cross has witnessed these impacts first-hand. We know evidence shows that better outcomes and efficiencies can be achieved for both the individual and the nation by relying on alternatives to detention. Similar Parliamentary Inquiries in Australia have found, and recommended, that legislative limits to detention should be reintroduced. Our experience in detention monitoring further underscores the importance of family unity and of access to services in detention, given the particular and complex vulnerabilities of people in immigration detention.

Where detention is deemed necessary by the Australian government, Red Cross would like to see greater use of alternatives to immigration detention to prevent people, especially those experiencing vulnerabilities, from being placed in immigration detention at all. Where alternatives to detention are not feasible, Red Cross would like to see protections introduced to limit the length of time that someone is held in immigration detention and which prioritise the wellbeing of the individual detained through improved access to family and services that ensure the safety, health and wellbeing of people in immigration detention.

Red Cross has a special role in Australian society as auxiliary to the humanitarian services of government and in accordance with this role, our confidential approach to humanitarian diplomacy requires us to maintain the confidence of all. Although we have a unique role as a detention monitor in Australia, information we have obtained in the course of our monitoring must remain confidential. This submission has instead been prepared on the basis of Red Cross' unique and historical understanding of the immigration detention system in Australia.

Yours sincerely,



Noel Clement
Director, Australian Programs
Australian Red Cross

Acknowledgements

We acknowledge the thousands of people who have been, or remain, in immigration detention, who have spoken to us confidentially about their experiences. We also acknowledge the policy and operational staff of the Department of Home Affairs, Australian Border Force, and the Detention Service Providers, who have helped to facilitate and inform our important monitoring work.

Abbreviations

Abbreviation	Descriptor
Bill	The Ending Indefinite and Arbitrary Immigration Detention Bill 2021
Department	The Department of Home Affairs (previously known as the Department of Immigration and Border Protection)
ICRC	International Committee of the Red Cross
IDC	Immigration Detention Centre
IDMP	Immigration Detention Monitoring Program
IFRC	International Federation of Red Cross and Red Crescent Societies
Red Cross	Australian Red Cross
RAS	Refugee Adjustment Study
RFL	Restoring Family Links – Red Cross’ family tracing program
SRSS	Status Resolution Support Services
The Movement	International Red Cross and Red Crescent Movement, the world’s largest humanitarian organisation comprising the International Federation of the Red Cross Red Crescent Movement, 192 National Societies, and the International Committee of the Red Cross
WHO	World Health Organization

Australian Red Cross submission on the *Ending Indefinite and Arbitrary Immigration Detention Bill 2021*

Australian Red Cross (Red Cross) is one of 192 National Red Cross and Red Crescent Societies that, together with the International Committee of the Red Cross (ICRC) and International Federation of Red Cross and Red Crescent Societies (IFRC), make up the International Red Cross and Red Crescent Movement (the Movement); the world's largest and most experienced humanitarian network.

In Australia, our 27,000 person-strong workforce includes staff, members, and volunteers nationwide. Red Cross is guided by seven [Fundamental Principles](#): Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality. These principles are at the very core of our mission to prevent and alleviate human suffering. With reference to the Fundamental Principles of Humanity and Impartiality, Red Cross endeavours to prevent and alleviate human suffering guided solely by need and giving priority to the most urgent cases of distress. Red Cross does not discriminate as to an individual's nationality, race, culture, gender, sexual orientation, religious beliefs, social background, disability, family status, marital status, age or political opinions.

For more than 30 years, Red Cross has played a humanitarian role in places of immigration detention in Australia. In 1991, Red Cross began providing a range of monitoring and humanitarian services in places of immigration detention, and in 2003, our access to places of immigration detention and people in immigration detention was assured under a Memorandum of Understanding (MoU) between Red Cross and the Department of Immigration and Multicultural Affairs (DIMIA, now known as the Department of Home Affairs (the Department)). This 2003 MoU affirmed our role in places of immigration detention and enabled us to provide specific services including the Red Cross Family Tracing service and Country of Origin news service. The role of Red Cross in places of immigration detention gradually evolved and, in 2009, a new MoU affirmed our role as a detention monitoring body. The framework that this MoU created remains in force today. Red Cross began formally monitoring places of immigration detention in Australia under this framework in 2010 through our Immigration Detention Monitoring Program (IDMP), and we have monitored places of immigration detention across Australia each quarter since.

The Red Cross IDMP monitors the conditions of immigration detention and how people are treated in immigration detention in Australia, and we remain the only humanitarian organisation that regularly conducts independent immigration detention monitoring in Australia. We aim to prevent and reduce harm and suffering and empower people in detention to seek to have their concerns addressed through self-advocacy, in the first instance.

Our IDMP work is conducted in accordance with a set of *Guiding Principles for Monitoring Immigration Detention* that set our expectations about immigration detention which are [published on our website](#) and annexed to this submission (Annex 1). Each of these Principles directly relate to the content of this Bill, but of note, Guiding Principle Two states that "*where detention is considered necessary, it should be used only as a last resort, for the shortest practicable time and after an assessment of its necessity in each individual case*". Guiding Principle Five states that "*children should not be detained in immigration detention facilities*". Similarly, [ICRC's policy on immigration detention](#) suggests that detention should be a measure of last resort and should be limited in time. There is notable alignment between our Guiding Principles, ICRC's policy on immigration detention and the intent of the Bill.

Since 2010, Red Cross has tracked developments relating to the legislative and policy frameworks that underpin Australia's detention system and witnessed significant changes to Australia's detention network, populations, and operations. Of note, successive Australian governments have introduced and relied on a range of alternatives to detention, such as community detention arrangements and residence determinations, which made it possible for people to remain in the community while their immigration matters were resolved.

However, Red Cross has also witnessed the average length of detention climbing from a low of 74 days in May 2013 to a record high of 696 days in August 2021. Indeed, in September 2014, the average length of detention reached 413

days, and has not since dropped below 400 days.¹ This is an average length of detention that is unparalleled in comparable jurisdictions internationally and is well understood to cause significant adverse impacts on a person’s health and wellbeing. Red Cross remains gravely concerned about the potential humanitarian consequences of prolonged or indefinite immigration detention.² Similarly, the preference of successive Australian governments to rely on alternatives to detention, such as community detention (also known as residence determination), in cases involving families and children has ensured that the number of children held in immigration detention has steadily reduced over the last decade and there are currently no children in held immigration detention. However, it remains legally possible to detain children indefinitely in Australia and offshore.

Red Cross suggests that the Committee broadly consider the following when reviewing the Bill:

- The extensive evidence publicly available that highlights the **significant humanitarian impact of prolonged or indefinite immigration detention and the detention of children**;
- The extensive evidence publicly available that highlights **better outcomes and efficiencies can be achieved in Australia by relying on alternatives to detention**;
- The **findings of similar parliamentary inquiries in Australia** over the last three decades and their recommendations that legislative limits to detention should be reintroduced;
- The successful operation of **laws that limit the length of immigration detention in comparable jurisdictions internationally**;
- The evidence of **the humanitarian importance of family unity** and the impact of family separation;
- Whether immigration detention is functioning as administrative detention, and whether **adequate supports and services for vulnerable groups in detention** are being provided; and
- The purpose and value of **independent detention monitoring**, as illustrated by the work of the Red Cross IDMP, and the importance of ensuring ongoing access to detention facilities and people in detention for the purpose of detention monitoring, particularly during extraordinary situations like public health and other emergency situations.

Red Cross provides the following specific recommendations to the Committee.

Recommendation 1	That the words “seeking asylum” are removed from the Bill title to ensure the legislation applies to all people in immigration detention, irrespective of the reason why they are in Australia or why they were detained. For clarity, it should also be noted in the Bill title that the legislation is intended to apply specifically to ‘immigration detention’.
Recommendation 2	That the Committee support Clause 8 of the Bill and for family unity to be protected under the Bill by ensuring that the separation of families is prevented through use of community based alternatives to immigration detention.
Recommendation 3	That the Committee support the intent of Clause 11 of the Bill and suggests that the Bill should require that immigration detention is used only in the exception, as a last resort, after an assessment of its necessity in each individual case, and where it is demonstrated that community-based alternatives are not suitable.
Recommendation 4	When reviewing Clause 12, that the Committee consult with stakeholders, including people with lived experience of immigration detention, and their families, to determine the most appropriate alternatives to immigration detention that can be adopted in the Australia context.

¹ See Immigration Detention and Community Statistics Summaries, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

² In this submission, Red Cross does not provide a legal analyses of the issue of ‘indefinite detention’, but notes that people in detention, particularly those in prolonged detention, have reported to Red Cross that they perceive that they are in indefinite detention.

Recommendation 5	Relating to Clause 13 and 14, that the Committee ensure access to a safety net and work rights upon release from immigration detention.
Recommendation 6	That the Committee support the intent of Clause 17 of the Bill, which is to reintroduce legislative limits to the length of time for immigration detention in Australia.
Recommendation 7	In addition to Clause 19, that parameters are embedded in the Bill to ensure that, where alternatives to immigration detention are assessed to be inappropriate, people are only detained in metropolitan immigration detention facilities to allow them to access services and supports that can help to mitigate the harmful impacts of immigration detention.
Recommendation 8	That the Committee support the need for stronger legislative limits to the detention of children (including those who are with their parents) in immigration detention.
Recommendation 9	That the Committee ensure that the Bill complements and aligns with existing detention monitoring mechanisms and the implementation of Australia's international obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Annex 1 – Guiding Principles for Monitoring Immigration Detention

Red Cross Guiding Principles for Monitoring Immigration Detention and Restoring Family Links Services

Red Cross has long advocated that people held in immigration detention are among the most vulnerable people in our society. In order to minimise the impacts of detention on the dignity, health and wellbeing of those detained, Red Cross has adopted the following guiding principles drawn from Australian Red Cross Migration Policy that inform this work in immigration detention across Australia:

1. All people in immigration detention should be treated with dignity and respect, regardless of the reason for, or location of, their detention.
2. Where detention is considered necessary, it should be used only as a last resort, for the shortest practicable time and after an assessment of its necessity in each individual case. Detention, beyond that required for initial health and security screening, should be reviewed by an independent authority on a regular basis, with reviews occurring with increased frequency for longer term detention.
3. While awaiting an immigration outcome and beyond, the restoration of family links is a priority.
4. Authorities are responsible for the provision of appropriate services and support to ensure the health and wellbeing of people in detention is in line with Australian community standards and takes into consideration the particular and complex vulnerabilities of people in detention.
5. Children (including those without their parents) should not be detained in immigration detention facilities. Where detention has been deemed necessary, detention should be community based wherever possible.
6. Facilities should be based in locations with appropriate access to health and welfare services, a wide range of meaningful activities and excursions, appropriate community, and cultural, religious and linguistic supports. These are most usually found in metropolitan areas.
7. People in detention should have access to oversight agencies and independent legal advice, appropriately facilitated by detention service providers or authorities, in order to minimise and respond to protection risks, address complaints and ensure appropriate support for vulnerable people.
8. Assessment of protection claims - and any other immigration status resolution matters - should occur in a timely manner, with appropriate legal and judicial safeguards, and people should be kept regularly informed as to the status of their claim/immigration matter.
9. People in immigration detention should be treated fairly and reasonably within the law.
10. The Australian Government retains significant humanitarian responsibilities for people it transfers to another country, not only for ensuring respect for these principles, but also for subsequent durable solutions, be it resettlement, local integration or return.