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Immigration Detention in Australia and Asylum Seekers' Rights to Appropriate Health Care. Health Care Consequences of Keeping Asylum Seekers in Mandatory Detention in Alternative Places of Detentions (APOD)s

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In memory of Dr. Sayed Mirwais Rohani, who despite speaking fluent English (and six other languages) and having a medical degree that was recognized in Australia was not granted refugee protection visa in Australia and was not permitted to travel to UK to be with his parents. He jumped to his death on 15 October 2019 from the 22nd floor of Brisbane hotel, where he was detained.

Abstract

As a signatory to various international conventions, Australian government is obligated to provide protection to asylum seekers who have fled their own country and are seeking protection. Despite this provision, asylum seekers arriving in boats are detained in detention centres offshore as well as in alternative places of detention onshore owing to their illegal entry. An important question is to look at how mandatory detention emulates modern slavery by a continuum of exploitative practices such as restriction of movement and abuse of vulnerability. This article explores the available evidence on how closely human smuggling and human trafficking are linked and to what extent are we exposing asylum seekers to further rights violation by turning back the boats, as is what happening currently in Australia. In this article we look at current Australian detention policies, health impacts of mandatory detention policies and impact of COVID-19 on refugees seeking asylum in Australia before discussing our recommendations.

Keywords: People smuggling, Human trafficking, Health impacts, Mandatory detention, Alternative to detention.

At the end of 2019, 79.5 million people were displaced worldwide, of which 26 million were refugees and 4.2 million were identified as asylum seekers.¹ Globally, there is a palpable tension between the rights of the refugees and the rights of nations to protect their sovereign borders. Deterrence as a policy which includes detention, denial of entry and forced turning back of boats has been used by many countries.² Deterrence policies have been used to pander to the populist perceptions of asylum seekers and refugees and to demonstrate that government is in control and acting appropriately to protect sovereign borders. Deterrence is also used as a process to reduce the number of applicants and to save money for government.³

In this paper, we outline how Australian refugee policies are dependent on government of the day and the detrimental effect draconian deterrent policies have had on people seeking asylum. Based on overwhelming evidence that shows the detrimental health impacts of mandatory detention of asylum seekers, we call for Australia to end its detention and deterrence approach once for all, and immediate cessation of onshore and offshore detention of irregular maritime arrivals and ask that Refugee Status Determination services be offered to irregular maritime arrivals.

People smuggling and human trafficking connection

People smuggling refers to a payment for service arrangement to individuals or groups that helps to organise movement of people across international borders.⁴ Although there is no coercion, threat or deception for the purpose of exploitation involved in people smuggling as opposed to human trafficking, there is a link between human trafficking, people smuggling and asylum seekers. Often human trafficking includes an element of human smuggling, and a person could be smuggled and trafficked at the same time. especially across borders. Evidence suggests that lack of viable options due to restrictive asylum policies and border closure when seeking protection from persecution forces asylum seekers to entrust and seek services of human

¹ UNHCR, Figures at a glance (2020), <https://www.unhcr.org/en-au/figures-at-a-glance.html>.

² Marko Valenta et al., "European Asylum Policies and the Stranded Asylum Seekers in Southeastern Europe," *Journal of refugee studies* 32, no. Special_Issue_1 (2019), <https://doi.org/10.1093/jrs/fey063>; Antje Missbach and Wayne Palmer, "People smuggling by a different name: Australia's 'turnbacks' of asylum seekers to Indonesia," *Australian journal of international affairs* 74, no. 2 (2020), <https://doi.org/10.1080/10357718.2020.1721429>.

³ Lisa Hassan, "Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States," *Journal of refugee studies* 13, no. 2 (2000), <https://doi.org/10.1093/jrs/13.2.184>.

⁴ Jane Hearn Kerry Carrington, *Trafficking and the Sex Industry: from Impunity to Protection*, (Canberra: Parliament of Australia, 2003).

traffickers, exposing them to abuse and extortion.⁵ Migration routes traverse through areas of conflicts, exposing asylum seekers to further exploitation, more so when they run out of money and are forced to accept exploitative situations in order to pay for the smuggling and the debt incurred.⁶ People who attempt to sail to Australia and are turned back as part of turn back the boats policy are still vulnerable to human trafficking, forced labour and modern slavery in their new destination countries.⁷

People smuggling is a crime under Australian law and people smugglers can be charged under section 233c of the Migration act 1958. People who are smuggled to Australia faces mandatory detention in offshore detention centres and risk being deported to their home country where they might face further persecution.⁸ Most asylum seekers smuggled to Australia by boat are from Middle East and South Asia, in particular from Iran, Iraq, Afghanistan and Sri Lanka.⁹

Australian detention policies

The 1948 Universal declaration of human rights postulates that everyone has “the right to seek and enjoy in other countries asylum from persecution.” Australia is a signatory of the 1951 *Convention relating to the status of refugees* (the 1951 refugee convention, the key legal document defining who is a refugee, their rights and legal obligations).¹⁰ Australian refugee policy is shaped by politics. Both Coalition and Labor government have adopted and maintained an array of refugee policies in response to unauthorised arrival of refugees by boat since 2001. Acceptance of refugees or implicit discrimination and detention of refugees is determined by the Government of the day and the leadership’s desideratum to pander to voters and public opinion. Australia’s defence force led Operations Sovereign Borders (OSB) which included deterrence by means of turning back boats, offshore processing and mandatory detention of asylum seekers received bipartisan support since its inception in 2013. Numerous studies have shown the

⁵ Getachew Kindu, "Re-conceptualizing the operations of trafficking in persons in Ethiopia to inform policy and practice: Lessons from Europe," (2017).

⁶ Johan Leman and Stef Janssens, *Human Trafficking and Migrant Smuggling in Southeast Europe and Russia* (London: Palgrave Macmillan UK, 2015).

⁷ Katharine Bryant Fiona David, Jacqueline Joudo Larsen, *MIGRANTS AND THEIR VULNERABILITY*, IOM (Switzerland, 2019), https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf.

⁸ Aila Spathopoulou, Anna Carastathis, and Myrto Tsilimpounidi, "‘Vulnerable Refugees’ and ‘Voluntary Deportations’: Performing the Hotspot, Embodying Its Violence," *Geopolitics* (2020), <https://doi.org/10.1080/14650045.2020.1772237>.

⁹ UNODC, *Smuggling of Migrants by Sea*, United Nations Office on Drugs and Crime (2011), http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf.

¹⁰ UN General Assembly, "Convention Relating to the Status of Refugees," in *United Nations, Treaty Series, vol. 189, p. 137*, ed. UN General Assembly (28 July 1951).

financial costs for these policies as well as the mental and physical impact these policies have had on refugees seeking shelter in Australia, However, Australian government continue to engineer such policies with the intent that it will deter others from coming to Australia by boat. Additionally, Australian border force act (2015) was passed with bipartisan support.¹¹ Under section 26 of the act the Commissioner is allowed to tell “entrusted persons” not to report serious misconduct or criminal activity if it affects, or is likely to affect, the operations, responsibilities, or reputation of the Department. And under section 42 of the Act, it is an offence to make a record or disclose protected information. The penalty is imprisonment for two years. This act effectively prevents anyone working in detention centres from reporting about the horrendous conditions in immigration detention centres, effectively silencing criticism as well as removing transparency and accountability.

Australian Labor party's 2021 National Platform regarding refugee policy mentioned that asylum seekers who arrive by irregular means will not be punished for their mode of arrival.¹² “Under the Refugee Convention, people seeking asylum have the right to seek protection and asylum. Labor will continue to show global leadership and increase Australia's humanitarian refugee intake and we will treat people seeking our protection with dignity and compassion in accordance with our international obligations, the rule of law and the principles of fairness. Labor believes as a nation we must not harm people seeking refuge.” (page 85)

“ Under the Refugee Convention, asylum seekers have the right to seek protection and asylum and, regardless of the mode of arrival, this is not illegal under Australian or international law. Accordingly, Labor rejects the practice of referring to asylum seekers as ‘illegals’.” (page 119) In June 2022, a month after winning federal election, Labor government reaffirmed the Coalition government's boat turnback's saying ‘Policy doesn't change.’¹³

It appears that there is a bipartisan support for boat turn backs, detention in offshore facilities and resettlement in a third country.

The refugee status determination (RSD) procedure of each country determines the status of refugees and the granting of asylum. In Australia, asylum seekers arriving by boat are not allowed to use the refugee status determination process. All ‘unauthorised maritime arrivals as determined by the Migration Act 1958, are prohibited from applying for a protection visa, unless the relevant Minister lifts the prohibition by exercising personal discretion and allowing the refugee to apply.’¹⁴

¹¹ Australian Government, "Australian Border Force Act 2015," in *C2016C00650* (2015). <https://www.legislation.gov.au/Details/C2016C00650>.

¹² Paul Erickson, *ALP National Platform* (2021), <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>. Page 85

¹³ Amy Hall, "‘Policy doesn't change’: Labor underlines commitment to boat turnbacks after latest interception," *SBS News* (Australia) 10 June 2022, <https://www.sbs.com.au/news/article/policy-doesnt-change-labor-underlines-commitment-to-boat-turnbacks-after-latest-interception/xwjwjoptx>. Page 119

¹⁴ Senate standing committee, AE20-127 - Medical transfers and transitory persons in Australia, (2 March 2020).

Under sections 189, 196 and 198 of the Migration Act, all non-citizens who are unlawfully in Australia must be detained and kept in immigration detention until a visa is granted to remain in Australia or an order is issued for deportation from Australia.¹⁵ Under the previous Australian Coalition government, protecting Australian borders from irregular migration involved shifting the responsibility for processing asylum to other countries such as Nauru and Manus island of Papua New Guinea (PNG) under a regional resettlement agreement with PNG and Nauru.¹⁶ Under this settlement agreement, asylum seekers who arrived by boat were transferred to PNG, where their refugee claim was assessed under PNG law and if they were found to be refugees, they are resettled in PNG or any other participating regional states. Nauru and Cambodia were the only participating regional states. The offer from New Zealand to take the refugees were refused by Australia because the New Zealand Australia visa program which the refugees could utilise in the future and gain entry to Australia.¹⁷ Cost of transfer, assessment and resettlement in PNG or regional centres were met by Australia. Permanent resettlement options for those who are found to be refugees have not materialised due to lack of interest from regional participating states.

Having ruled out permanent resettlement in Australia, the Government utilised other countries to take in the refugees (Nauru and Manus Island of PNG). Resettlement agreement with United States was reached with Obama administration in 2016 that provided resettlement opportunities for up to 1250 refugees. Trump administration agreed to honour the deal made during Obama administration, however the deal agreed with Trump administration ended by December 2020.¹⁸ Canada allows resettlement of refugees through Private Sponsorship of Refugees, where Canadian citizens and permanent residents can raise equivalent of one year's social security and engage in the resettlement of refugees from overseas.¹⁹ The consequence of deals with other countries and lack of transparency means that there is no clear evidence of what happens to refugees and asylum seekers.

Previously, Australian government used various means such as restrictions on media, blocking access to external observers to visit detention centres in order to restrict transparency. These restrictions have created a closed system characterised by high levels of secrecy and low

¹⁵ Australian Government Federal Register of Legislation, "Migration Reform Act 1992," in C2004A04475, ed. Australian Government (Canberra, 1992). <https://www.legislation.gov.au/Details/C2004A04475>.

¹⁶ Australian Government, Regional resettlement arrangement between Australia and Papua New Guinea, (Canberra: DFAT, 2013).

¹⁷ Andrew Tillett, "Kiwi refugee offer comes with security checks attached," *Financial Review* 2019, <https://www.afr.com/politics/federal/kiwi-refugee-offer-comes-with-security-checks-attached-20191205-p53h35>.

¹⁸ Tom McIlroy, "Australia races to resettle refugees as clock ticks on Trump deal," *Financial Review* (Australia) 2020, <https://www.afr.com/politics/federal/australia-races-to-resettle-refugees-as-clock-ticks-on-trump-deal-20201008-p563bn>.

¹⁹ Government of Canada, Private sponsorship of refugees program, (n.d).

levels of accountability.²⁰ At all stages of processes relating to refugees and asylum seekers, there is a lack of transparency from Australian authorities which results in Australians being uninformed. Hence the actual number of refugees and where they are held in detention are difficult to gauge. Australia utilises three kinds of detention centres to detain refugees. Immigration Detention Centres (IDCs), Immigration Transit Accommodations (ITAs) and Alternative Place of Detention (APODs). As of 30th April 2022, 1414 people are in detention facilities which include 1354 men and 60 women.²¹

Irregular Maritime arrival, Global context

According to UNHCR 83,079 asylum seekers and migrants arrived by sea to Italy, Greece, Spain, Cyprus and Malta in 2020.²² In comparison, Australia had 69,391 irregular maritime arrival from 1976 to 2016 (40 years).²³

In 2011, Australia had 4565 irregular maritime arrival, meanwhile Pakistan hosted 1.7 million refugees and 886,500 refugees were hosted by Iran. In essence the burden of assisting and supporting the world' asylum seekers often fall to the poorest countries.²⁴

Modern slavery bill 2018 Australia

The modern slavery bill protects right to freedom from slavery, torture and other cruel, inhuman or degrading treatment or punishment, the right to freedom of movement and the right to health.²⁵ Mandatory detention of asylum seekers in onshore and offshore detention centres is in direct breach of the modern slavery bill of 2018. Mandatory detention is illegal, violates the rights of asylum seekers and should be considered as a crime against humanity.

Where people are held in detention.

Three different kinds of dentition facilities are used in Australia to detain asylum seekers. Immigration Detention Centres (IDCs), Immigration Transit Accommodation (ITAs) and

²⁰ Gabrielle Holly, "Challenges to Australia's Offshore Detention Regime and the Limits of Strategic Tort Litigation," *German law journal* 21, no. 3 (2020), <https://doi.org/10.1017/glj.2020.26>.

²¹ "Offshore processing statistics," Refugee Council of Australia, 2020, accessed 11/12/2020, 2020, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/5/>.

²² UNHCR, *Figures at a glance*.

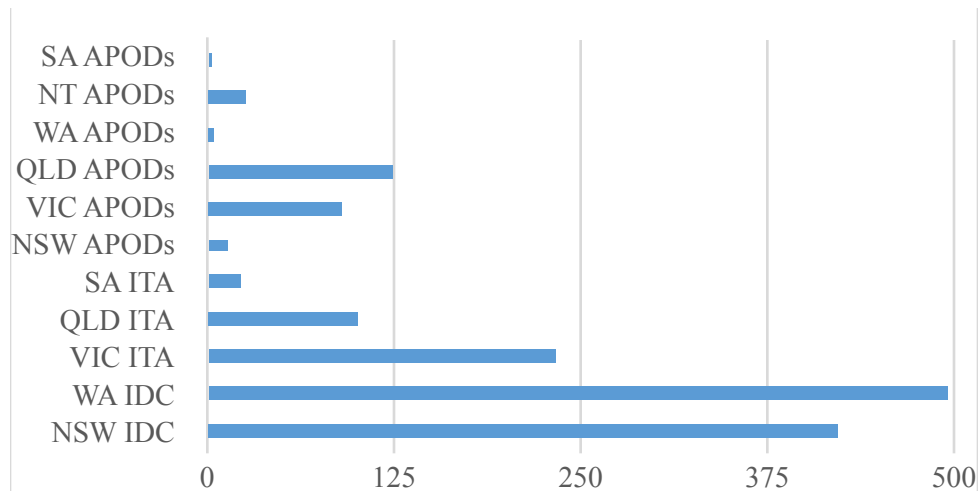
²³ Janet Phillips, Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics, (2017).

²⁴ Harriet Spinks Janet Phillips, Boat arrivals in Australia since 1976, (2013).

²⁵ Australian Government, "Modern Slavery bill 2018," in *C2018B00136*, ed. Australian Government Federal Register of Legislation (Canberra, 2018). <https://www.legislation.gov.au/Details/C2018B00136/Explanatory%20Memorandum/Text>.

Alternative Places of Detention (APODs). As of 30th April 2022, 1414 people are in detention facilities of these, 962 people are held In Immigration Detention Centres in Australia and Christmas Island, 100 are held in APODs and 332 are held in ITAs.²⁶

Table 1: Where people are held in detention



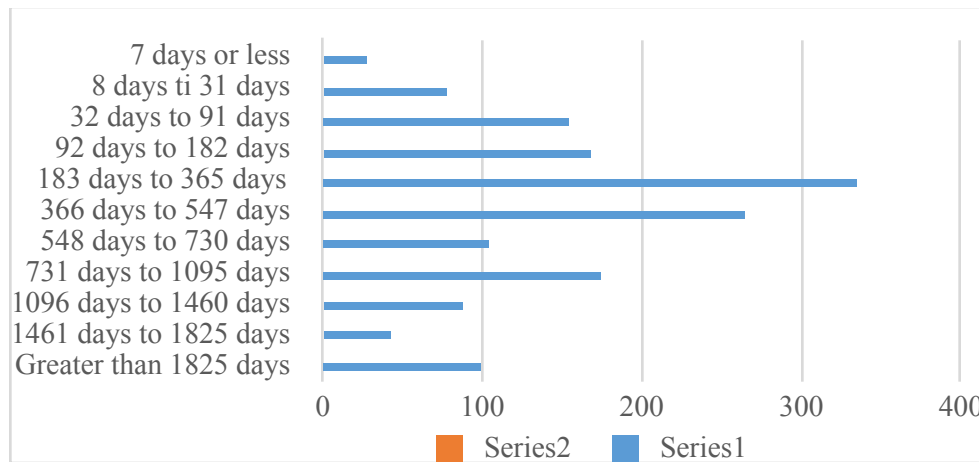
Source: Australian Border Force, [Immigration Detention and Community Statistics Summary, 30 Sep 2020](#)

Time spent in Immigration detention facilities. Of the 1534 people held in detention, 773 (50.5%) have been held more than 365 days and 99 of them in that group (6.5%) have been held in detention for more than 1825 days.²⁷

²⁶ Australian Border Force, *Immigration Detention and Community Statistics Summary* (2022), <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-april-2022.pdf>.

²⁷ Australian Government, *Immigration Detention and Community Statistics Summary* (Canberra: Australian Government, 2020).

Table 2: Time Spent in Immigration and detention centres



Source: Australian Border Force, [Immigration Detention and Community Statistics Summary, 30 Sep 2020](#)

Alternate places of detention

Alternate places of detention (APODs) include hotels in Melbourne and Brisbane as well as hospitals where the asylum seekers are under 24/7 guard. 100 people currently reside in APODs.²⁸ The APODs are not a prison but share fundamental features of imprisonment, including denial of basic rights and coercive treatment. The people living in APODs have not committed any crime and have not been imprisoned because they have committed a crime. Their individual circumstances are not considered prior to placing them in detention. Under the migration act, APODs have been used to house people whose detention is authorised under the act and who need to access medical care in Australia. Unlike an imprisonment order issued by a judicial court, the provisions that govern mandatory detention of asylum seekers require that the person be detained until they have been deported or visa is granted. The asylum seekers that live in these places are neither entirely within the rule of law nor outside. While prisoners in Australia receive timely medical care that meets international standards, asylum seekers living in APODs are under 24 hours of surveillance with limited transparency in regard to their health care needs and what has been provided. Australian border force personnel and their contractors are entrusted with organising health care for asylum seekers living in APODs. Under international human rights law, Australia has the obligation to respect, protect and fulfil its human rights obligations and this obligation extends to asylum seekers detained at APODs currently in Australia. They are held under lockdown condition and are not given access to mobile phones. Denial of mobile phone access is part of the Australian Government's policy to deny asylum seekers access to channels of communication and remove the opportunity for the asylum seekers to voice their

²⁸ Government, Short Immigration Detention and Community Statistics Summary

concerns to outside world. Historically prohibition of free speech is the hallmark of dictators and despots, not democratic societies and, as such, the Australian Government's policy and actions could be legitimately characterised as despotic and dictatorial.

Even if the government is aware that the irregular maritime arrival is likely to experience persecution in their home country, they are refusing to acknowledge the legitimacy of the claim by not allowing application for RSD. The factors that determine who is a refugee and who is not a refugee should begin with Refugee Status Determination. Without due process, people are not able to state their claim or challenge their detention. The Pacific solution envisaged by the Howard government, allowed detention of 1637 unauthorised arrivals in Manus and Nauru detention centres between September 2001 and February 2008.²⁹ 70 percent of those (1153 people) were found to be genuine refugees and were resettled in Australia and other countries.³⁰ Between 2012 and 2013, 18119 people arrived by sea and applied for refugee status determination (includes sole applicants, accompanied applicants and dependants). 5145 applications for protection visa were considered and 3475 protection visas were issued. 8308 applications (includes sole applicants, accompanied applicants and dependants) of asylum received from people entering Australia with valid visa and then applying for Asylum and 5094 visa applications were considered and 1691 applicants (33.2 percent) were granted protection visa.³¹

Table 3: Comparison of asylum application approval/refusal by mode of arrival

Total number of applications for Protection visa	By Air	By Sea	Protection visa granted	Protection visa refused
5145	No	Yes	3475 (68%)	1670 (32%)
5094	Yes	No	1691 (33.32%)	3403 (66.8%)

Source: [Asylum trends](#)

The above figures clearly demonstrate that most of those arriving by sea are genuine refugees. Asylum seekers arriving in Australia by boat are not breaking any laws and by detaining them in detention centres we are further harming them, apart from breaching international law.

²⁹ Janet Phillips, The 'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island, (Canberra 2012).

³⁰ C Evans, "Last refugees leave Nauru," news release, 2008, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/YUNP6%22>.

³¹ DIBP, Asylum Trends – Australia: 2012-13 Annual Publication, (Canberra 2013).

Health effects of mandatory detention

The process of seeking asylum is inherently distressing and the subsequent mandatory detention works only to dehumanise and negatively affect the health of people fleeing persecution. Asylum seekers are typically forced to flee their home country suddenly and sometimes under particular traumatic circumstances, which may be compounded with a dangerous journey and the severing of ties to vital support networks.³²

Detention conditions and the remoteness of the detention locations play a significant role in the mental and physical wellbeing of the asylum seekers.³³

It is estimated that one in six asylum seekers are living with a health problem that is severely impacting their life, including both communicable and non-communicable disease.³⁴ Non-communicable disease such as hypertension, diabetes mellitus, and coronary artery disease are at a high prevalence in early screenings of asylum seekers and are generally considered to represent the primary burden of disease in these populations.³⁵ It has also however been consistently observed that asylum seeking populations of all ages experience an increased prevalence of psychiatric disorders such as post-traumatic stress disorder, depression, and anxiety.³⁶ Furthermore, a report from 2014 detailed that 34% of children held in detention centres were living with mental health disorders, more than double the rate of the general Australian population.³⁷ More pertinent to the medevac group, an Australian study from 2006 identified that the time spent in detention specifically contributed significantly towards the development of

³² Branch of Epidemiology, "Review of Cultural and Linguistic Diversity (CaLD) Data Collection Practices in the WA Health System," (2018).; Zachary E Buchanan et al., "Perceived discrimination, language proficiencies, and adaptation: Comparisons between refugee and non-refugee immigrant youth in Australia," *International journal of intercultural relations* 63 (2018).

³³ M. von Werthern et al., "The impact of immigration detention on mental health: a systematic review," *BMC Psychiatry* 18, no. 1 (2018), <https://doi.org/10.1186/s12888-018-1945-y>; Melissa Bull et al., "Sickness in the System of Long-term Immigration Detention," *Journal of refugee studies* 26, no. 1 (2013), <https://doi.org/10.1093/jrs/fes017>; Janette P. Green and Kathy Eagar, "The health of people in Australian immigration detention centres," *Med J Aust* 192, no. 2 (2010), <https://doi.org/10.5694/j.1326-5377.2010.tb03419.x>.

³⁴ Fary Khan and Bhasker Amatya, "Refugee health and rehabilitation: challenges and response," *Journal of rehabilitation medicine* 49, no. 5 (2017).

³⁵ Khan and Amatya, "Refugee health and rehabilitation: challenges and response."

³⁶ Panos Vostanis, "Meeting the mental health needs of refugees and asylum seekers," *The British journal of psychiatry : the journal of mental science* 204, no. 3 (2014), <https://doi.org/10.1192/bjp.bp.113.134742>; Nadia J Chaves et al., "The Australasian Society for Infectious Diseases and Refugee Health Network of Australia recommendations for health assessment for people from refugee-like backgrounds: an abridged outline," *Medical Journal of Australia* 206, no. 7 (2017).; Zachary Steel et al., "Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia," *Australian and New Zealand journal of public health* 28, no. 6 (2004).

³⁷ Anagha Killedar and Patrick Harris, "Australia's refugee policies and their health impact: a review of the evidence and recommendations for the Australian government," *Australian and New Zealand Journal of Public Health* 41, no. 4 (2017).

mental health disorders such as depression and post-traumatic stress disorder.³⁸ Prolonged detention was found to be associated with more severe mental disturbance with long-term reports of “persistent sadness, hopelessness, intrusive memories, attacks of anger and physiological reactivity” linked to the duration of detention.³⁹

This health burden on asylum seekers is only worsened once they are subjected to mandatory detention in the way the medevac group have. High rates of self-harm and suicide have been consistently observed in Australian detention centres for the past couple of decades. In a retrospective, self-reported study of 10 families detained in Australia from 2004, 93% of adults and 55% of children described suicidal ideation during their time in detention.⁴⁰ Records from Australian immigration detention centres in 2001 detailed 244 incidents of self-harm, with estimated prevalence rates of 12,343 per 100,000 for men and 10,227 per 100,000 for women.⁴¹ These rates are estimated to reflect 41 and 21 times the male and female national Australian rates.⁴² Following this and more recently, in 2011 it was reported that 22% of asylum seekers had self-harmed in the 20 month recording period with a number of methods reported including cutting, hanging, and head hitting as the most common.⁴³ Among these incidents, the male to female ratio was 12:1, which may be a reflection of the average adult immigration detention population having a male to female ratio of 6.8:1.⁴⁴ As for precipitating factors, 83.2% of reports did not have identifiable precipitating factors, but for those incidents that did the following were the most commonly reported: detention conditions, processing arrangements, negative decisions made on refugee claims, and family separation.⁴⁵

Incidence of self-harm was highest in populations in off-shore detention centres such as Nauru and Manus, where self-harm episode rates were 216 and 45 times the general Australian

³⁸ Zachary Steel et al., "Impact of immigration detention and temporary protection on the mental health of refugees," *The british journal of psychiatry* 188, no. 1 (2006).

³⁹ Steel et al., "Impact of immigration detention and temporary protection on the mental health of refugees."

⁴⁰ Steel et al., "Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia."

⁴¹ Michael Dudley, "Contradictory Australian national policies on self-harm and suicide: The case of asylum seekers in mandatory detention," *Australasian Psychiatry* 11, no. 1_suppl (2003).

⁴² Kyli Hedrick, "Getting out of (self-) harm's way: a study of factors associated with self-harm among asylum seekers in Australian immigration detention," *Journal of forensic and legal medicine* 49 (2017).; Dudley, "Contradictory Australian national policies on self-harm and suicide: The case of asylum seekers in mandatory detention."

⁴³ Kyli Hedrick et al., "Self-harm in the Australian asylum seeker population: A national records-based study," *SSM-population health* 8 (2019).

⁴⁴ Hedrick et al., "Self-harm in the Australian asylum seeker population: A national records-based study."

⁴⁵ Hedrick et al., "Self-harm in the Australian asylum seeker population: A national records-based study."

community rates for self-harm treated in hospital, respectively.⁴⁶ Furthermore, rates of self-harm in asylum seeker populations living in the community were 4 times those of the general population.⁴⁷ The massively higher rates of self-harm in individuals living in mandatory detention, even when compared to other asylum seekers living in the community, further highlights the significant influence that mandatory detention has on the mental health of these people.⁴⁸

The Interpersonal Theory of Suicide (ITPS) details how suicidal ideation alone does not lead one to suicide, but instead this paired with persistent and repeated exposure to pain and fear.⁴⁹ As previously mentioned, repeated exposure to traumatic experiences are a predominant feature of the asylum seeker experience. Although pre-migration stressors play a significant role in the development of psychiatric disorders, there continues to be compelling evidence that post-migration stressors such as continued displacement and prolonged mandatory detention are just as important, if not more so, as influences on the mental health of asylum seekers.⁵⁰ It becomes clear from this evidence that the ongoing isolation and dehumanisation from the mandatory detention enforced in Australia is likely having a significant direct impact on the likelihood of asylum seekers, such as those from the medevac group, to commit suicide.

Latent Tuberculosis infection, Vitamin deficiencies, Hepatitis B and Schistosomiasis were the most common diagnoses at the refugee health clinic at the University Hospital Geelong between 2007 and 2012.⁵¹ Asylum seekers often have complex health needs that are influenced by experiences prior to leaving their home country, while in transit and after their arrival in the host country. The global rise in chronic non-communicable disease especially in low and middle-income countries suggests that asylum seekers from those regions may already have a higher burden of pre-existing chronic conditions.⁵² Long periods of disruptions in treatment and access

⁴⁶ Hedrick et al., "Self-harm in the Australian asylum seeker population: A national records-based study.";S. Pointer, Trends in hospitalised self-injury, Australia 1999-00 to 2012-13. Injury research and statistic series no 171, (Canberra, Australia 2015).

⁴⁷ Hedrick et al., "Self-harm in the Australian asylum seeker population: A national records-based study."

⁴⁸ Hedrick et al., "Self-harm in the Australian asylum seeker population: A national records-based study."

⁴⁹ Kimberly A Van Orden et al., "The interpersonal theory of suicide," *Psychological review* 117, no. 2 (2010).;Shraddha Kashyap and Amy Joscelyne, "Refugees and suicide: when the quest for a better life becomes thwarted," in *Alternatives to Suicide* (Elsevier, 2020).

⁵⁰ Wen Chen et al., "Pre-migration and post-migration factors associated with mental health in humanitarian migrants in Australia and the moderation effect of post-migration stressors: findings from the first wave data of the BNLA cohort study," *The Lancet Psychiatry* 4, no. 3 (2017).;Committee on the Elimination of Discrimination against Women (CEDAW), (2016), <https://sustainabledevelopment.un.org/content/documents/10192CEDAW%20contribution%20to%20HLPF%20recd%202016-May-16.pdf>.

⁵¹ Peta J. Masters et al., "Health issues of refugees attending an infectious disease refugee health clinic in a regional Australian hospital," *Aust J Gen Pract* 47, no. 5 (2018), <https://doi.org/10.31128/AFP-10-17-4355>.

⁵² Dele O. Abegunde et al., "The burden and costs of chronic diseases in low-income and middle-income countries," *Lancet* 370, no. 9603 (2007), [https://doi.org/10.1016/S0140-6736\(07\)61696-1](https://doi.org/10.1016/S0140-6736(07)61696-1).

to healthcare while in transit often result in poorly controlled chronic health conditions such as Diabetes and Hypertension.

Death toll of offshore detention

There are no official numbers of border related deaths in Australia. The Australian Border Deaths Database was established as part of the the Global Frontier research. The database is hosted at the Border Crossing Observatory, Monash University. According to the database, since the beginning of 2000, 17 people living in offshore detention centres, 41 people living in onshore detention centres and 22 people living in Community detention have died. 942 people were returned to their country and of which 34 have since died after they were returned to their home countries, suggesting potential breaches of Australia's non-refoulment obligations.⁵³

The Coroners court of Queensland found in 2018 that delays and systematic failure in offshore processing led to the death of Hamid Kehazaei in Manus.⁵⁴ The coroner concluded that if Mr Kehazaei had been transferred to Australia based on the treating doctor's recommendation, his life would have been saved. Omid Masourmali is another refugee who died in Australia and the case is before the Queensland coroner. It should be noted that no coronial inquiries were held for those who died in offshore detention as the deaths occurred outside Australia's legal jurisdiction.

With limited prospects of resettlement, be it in Australia or neighbouring countries asylum seekers in offshore detention centres face deterioration of mental and physical health necessitating transfer to Australia for further medical treatment under the Medevac legislation (Medical Evacuation law).⁵⁵

Impact of COVID-19 on people in detention

While Australia was quick to close borders following WHO declaration of COVID pandemic in March 2020 and stopped processing humanitarian visa, Australian government exhibited callous indifference to safety of refugees kept in detention, despite the Commonwealth Ombudsman recommendation to cease the use of APODs for long-term detention as well as to

⁵³ Y. J. Kim, "Observational Application Comparing Problem-Based Learning with the Conventional Teaching Method for Clinical Acupuncture Education," *Evidence-based Complementary and Alternative Medicine* 2019 (2019), <https://doi.org/10.1155/2019/2102304>.

⁵⁴ Coroners court of Queensland, Findings of Inquest into the death of Hamid Khazaei, (30 July 2018).

⁵⁵ "Explainer: The Medevac Repeal And What It Means For Asylum Seekers On Manus Island And Nauru," Australian Outlook, Australian Institute of International Affairs, 2019, accessed 11/12/2020, 2020, <https://www.internationalaffairs.org.au/australianoutlook/explainer-the-medevac-repeal-and-what-it-means-for-asylum-seekers-on-manus-island-and-nauru/>.

reduce the number of people held in detention facilities.⁵⁶ Meanwhile British Home office took the proactive step to curb the spread of COVID-19 in overcrowded facilities by releasing people from immigration detention.⁵⁷ Social isolation of already isolated detainees during lockdowns is bound to have a tremendous impact on mental health of the detainees. Australia's detention at all cost policy is another example of the callous regard government has when it comes to health and mental wellbeing of immigration detainees. Second concern is the economic impact COVID-19 had on refugees on temporary protection visas and on asylum seekers living in the community on bridging visas, while their claim is being processed. Australian government implemented Job seeker and Job seeker support packages to protect Australians from economic hardships as a result of COVID-19. Those on temporary visa and bridging visas were not afforded the same protection as Australians. This is despite the fact that in 2020, there were 13000 refugees were living in the community on bridging visas, 8400 people on TPVs (Temporary Visa) and 16,000 people on SHEVs (Safe Haven Enterprise Visa).⁵⁸

Economic cost of mandatory detention

Between 2008 and 2020, it is estimated that financial cost of Immigration and detention for Australian government was 20 billion dollars.⁵⁹ The average yearly cost of detaining one person in onshore detention was \$346,178 and in community detention was \$102,880 and in the community on a bridging visa, the cost is around \$10,221 per person.⁶⁰ A report by International detention coalition found that Australia spend twice as much to detain an asylum seeker in onshore detention centre compared to United States, Canada or European countries.⁶¹

In addition, in 2017, Australian government agreed to pay \$70 million to 2,000 asylum seekers held in Manus Island for illegally detaining them in dangerous and damaging

⁵⁶ Commonwealth Ombudsman, *Monitoring Immigration Detention* (2021), https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf.

⁵⁷ V. Chew, Phillips, M. & Yamada Park, M., *COVID-19 Impacts on Immigration Detention: Global Responses*, International Detention Coalition 2020 (2020), <https://idcoalition.org/wp-content/uploads/2020/10/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>.

⁵⁸ Harriet Spinks, *Seeking asylum in the time of coronavirus: COVID-19 pandemic effects on refugees and people seeking asylum*, Parliament of Australia (2020), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/May/COVID-19_-_impacts_on_refugees_and_asylum_seekers; Refugee Council of Australia, *Statistics on people seeking asylum in the community* (2022), <https://www.refugeecouncil.org.au/asylum-community/6/>.

⁵⁹ Ryan Essex, *The healthcare community and Australian immigration detention : the case for non-violent resistance* (Singapore: Palgrave Macmillan, 2020).

⁶⁰ Paul Karp, "Australia's 'border protection' policies cost taxpayers \$4bn last year," *The Guardian* (Australia) 2018, <https://www.theguardian.com/australia-news/2018/jan/05/australias-border-protection-policies-cost-taxpayers-4bn-last-year>.

⁶¹ IDC, *A handbook for preventing unnecessary immigration detention (revised edition)* (Australia, 2015), <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>.

conditions.⁶² Since 2012, Australian government paid out close to \$12 million in compensation wrongful detention of individuals. This another example of ineffectiveness of mandatory detention and the exponential costs associated with it.

Alternatives to mandatory detention

Alternatives to mandatory detention refers to less coercive measure that do not take away the liberty of the individual. Non-custodial, community-based alternatives to detention respect the human rights of the asylum seekers and contribute to their health and wellbeing. Community detention are cost effective, mee the basic needs of the people.

Although financial assistance and health care support given vary between member states in European Union, Netherlands and Greece provide collective accommodation for asylum seekers throughout the length of their application process, Austria and Belgium provide collective housing for new applicants and Sweden and Germany provide individual housing from the moment asylum application is submitted.⁶³ In Sweden, furnished self-catering apartments/ group homes are provided to asylum seekers which includes recreation facilities and child care centres are provided to asylum seekers. Collective accommodation such as the Takanini hostel which has seven self-sufficient housing blocks that can accommodate six people in each are provided for asylum seekers in New Zealand.⁶⁴

Evidence suggests that alternatives to mandatory detentions are more affordable, humane and are effective. It is important that alternatives to detention safeguard health and wellbeing of the asylum seekers.⁶⁵

Recommendations

COVID-19 pandemic has brought a number of challenges and setbacks for refugee protection globally. Border closures, suspension visa process has affected the people who needed help and support the most and increased their vulnerabilities. War and armed conflict in Afghanistan, Syria, Myanmar and Ukraine are bound to increase the number of refugees globally. The current scale of the global refugee crises is challenging to policy makers around the

⁶² Calla Wahlquist Ben Doherty, "Government to pay \$70m damages to 1,905 Manus detainees in class action," *The Guardian* (Australia) 2017, <https://www.theguardian.com/australia-news/2017/jun/14/government-to-pay-damages-to-manus-island-detainees-in-class-action>.

⁶³ Darinka Czischke and Carla J. Huisman, "Integration through Collaborative Housing? Dutch Starters and Refugees Forming Self-Managing Communities in Amsterdam," *Urban planning* 3, no. 4 (2018), <https://doi.org/10.17645/up.v3i4.1727>.

⁶⁴ Ophelia Filed, *Alternatives to Detention of Asylum Seekers abd Refugees*, UNHCR (Switzerland, 2006), <https://www.refworld.org/pdfid/4472e8b84.pdf>.

⁶⁵ Mary Bosworth, *Alternatives to Immigration Detention: A Literature Review* (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3299532.

world. There is an urgent need to offer protection and support to people fleeing violence, chaos, and strife while at the same time preventing deaths at seas and protecting sovereign borders. Australia's hard-line approach to irregular maritime arrival and forced detention is immensely harmful to the mental and physical health of the asylum seekers.

To avert further serious harm and loss of life, we recommend that the Australian government establish an efficient, fair, and transparent processing system for asylum seekers be they arrivals by boat or by other means. People seeking safety in Australia regardless of how or when they arrived, should have the right to have their claim assessed and verified by independent bodies that will operate according to a clearly stated and public set of procedures that also meet procedural safeguards. Independent monitoring teams should be established to audit the process in order to assess the quality of decision-making. This ensures transparency and accountability. We ask that asylum seekers be allowed to apply for refugee status determination upon arrival and those who pass initial identity, health, character, and security checks be granted a bridging visa immediately or placed in community detention. It is imperative that Australian government take steps to detain asylum seeker only as a last resort and detain them only for the shortest possible time.

Current two class system of treating asylum seeker arriving by air favourably as opposed to those arriving by sea is creating prejudice by discriminating one set of people, because they arrived without a valid visa and are therefore penalised and detained indefinitely.

COVID-19 has shown us that a pandemic can affect all of us. It is important to remember the weakest among us when we make policies, so that they too can benefit from government support programs. Visa status should not be used as a guide to who can avail government support.

“A successful refugee policy not only manages national borders but also protects people who need safety. The approach we set out is both principled and pragmatic. By adopting it, Australia could once again show global leadership in addressing the challenge of displacement”.
- Professor Jane McAdam, Director, Kaldor Centre for International Refugee Law.

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