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NATIONAL COUNCIL *good works*

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## ***Submission on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill***

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## **Background**

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 148 countries around the world. In Australia, we operate in every state and territory, with more than 50,000 members and volunteers committed to our work of social assistance and social justice. We are accountable to the people in our community who are marginalised by structures of exclusion and injustice.

The Society has a strong history of working with migrants and refugees. Catholic social teaching places a special onus on us to help people who have fled their homeland due to war, persecution, injustice or intolerance, and are now seeking asylum on our doorstep. To that end, the Society operates a migrant and refugee service in each State and Territory in Australia, which assists with everything from helping refugees lodge appeals against adverse decisions to providing living support for those newly in our community. We also coordinate a national Vincentian Refugee Network, and participate in and coordinate visits to immigration detention facilities, for example Villawood. Through these experiences, our volunteers have witnessed first-hand many of the daily struggles that asylum seekers and refugees in detention and in our community face, as well as hearing their stories of persecution in their homeland, and we consider it a privilege to assist, and stand in solidarity with, these brave and often remarkable people.

The Committee Secretary has invited the National Council of the Society to make a submission on the inquiry into the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012* (Cth). The National Council is charged with representing the Society on a national basis, and in particular in the area of advocacy, and we welcome the opportunity to contribute this submission on the Bill.

### **Schedule 1, Items 6 and 47**

By expanding the definition of *transitory person*, these items ensure that someone who has been assessed to be a refugee for the purposes of Article I(A) of the *Refugees Convention*,<sup>1</sup> as amended by the Refugees Protocol,<sup>2</sup> can be brought from immigration detention into Australia for a temporary purpose (such as medical attention) and then taken back to a regional processing country.

While the Society supports any efforts to provide people seeking asylum with medical help, we remain gravely concerned about detaining people generally, and in particular detaining people who have already been assessed to be refugees. We hold these concerns for both moral and legal reasons.

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<sup>1</sup> United Nations Convention relating to the Status of Refugees, 1951, United Nations, *Treaty Series*, vol. 189 (1954), No. 2545.

<sup>2</sup> UN General Assembly, *Protocol relating to the Status of Refugees*, 16 December 1966, A/RES/2198, available at: <http://www.unhcr.org/refworld/docid/3b00f1cc50.html> [accessed 23 November 2012].

## *The moral argument*

A person is assessed to be a refugee under Article I(A) of the *Refugees Convention* if the person,

**owing to wellfounded fear of being persecuted** for reasons of race, religion, nationality, membership of a particular social group or political opinion, **is outside the country of [his or her] nationality and is unable** or, owing to such fear, is **unwilling to avail [himself or herself] of the protection of that country**; or who, not having a nationality and being outside the country of [his or her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (emphasis added).

As such, people assessed as refugees are without doubt some of the most vulnerable in the world, not only economically and politically, but socially and psychologically as well. In this category are not only the class of people that this Item would cover (already assessed as refugees), but in fact the vast majority of people who arrive by boat in Australian territory, given that up to 95% of these people will ultimately be found to be refugees.<sup>3</sup>

It is not controversial to state that sending these highly vulnerable people into detention – and all that entails – can only lead to misery and distress. The evidence that immigration detention causes severe mental health issues in detainees is overwhelming,<sup>4</sup> with 86% of those detained having been found to suffer clinically significant symptoms of depression and, in varying proportions, other mental illnesses.<sup>5</sup> Evidence clearly indicates that these symptoms are not only due to pre-detention trauma, but to the specific stressors that people experience through immigration detention itself, including loss of liberty, uncertainty regarding return to country of origin, social isolation, abuse from staff, riots, forceful removal, hunger strikes and self-harm.<sup>6</sup>

Aside from the direct human misery that detention causes, it has been clearly established that the detention experience causes *long-lasting* ramifications for refugees' mental health, even after refugees are resettled into the community,<sup>7</sup> as most will be.

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<sup>3</sup> Generally between 80–90% of sea arrivals, accounting for those applications upheld on appeal, are refugees. See, for example, Department of Immigration and Citizenship, “Quarterly Tables – June Quarter” *Asylum Statistics - Australia* at 12-13 (at [immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-june-quarter-2012.pdf](http://immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-june-quarter-2012.pdf)). See also Janet Phillips, “Asylum Seekers and Refugees: What are the Facts?” *Parliamentary Library Background Note* at 8 (at [aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/AsylumFacts](http://aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/AsylumFacts)).

<sup>4</sup> See, for example, 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* (2004) 28(6) 527 – 36 (at [ncbi.nlm.nih.gov/pubmed/15707201](http://ncbi.nlm.nih.gov/pubmed/15707201)); Green and Eager, “The health of people in Australian immigration detention centres” *Medical Journal of Australia* 192(2) 65–70; Australian Human Rights Commission, *Immigration Detention at Curtin* at 31 (at [hreoc.gov.au/human\\_rights/immigration/idc2011\\_curtin.pdf](http://hreoc.gov.au/human_rights/immigration/idc2011_curtin.pdf)).

<sup>5</sup> See, for example, Joint Select Committee on Australia’s Immigration Detention Network, *Final Report* (2012) 104 (at [aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=immigration\\_detention\\_ctte/immigration\\_detention/report/report.pdf](http://aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctte/immigration_detention/report/report.pdf)). See also views of Professor Newman cited in Bereton and Bacon, “Nauru’s ‘Explosive’ Situation” *New Matilda* (30 November 2012) (at [newmatilda.com/2012/11/30/expert-condemns-nauru](http://newmatilda.com/2012/11/30/expert-condemns-nauru)).

<sup>6</sup> See for example Robjant et al, “Mental health implications of detaining asylum seekers: systematic review” *British Journal of Psychiatry* (2009) 194(4) 306–12 (at [ncbi.nlm.nih.gov/pubmed/19336779](http://ncbi.nlm.nih.gov/pubmed/19336779)).

<sup>7</sup> See for example Silove et al, “No refuge from terror: the impact of detention on the mental health of trauma-affected refugees seeking asylum in Australia” *Transcultural Psychiatry* (2007) 44(3) 359–93 (at [ncbi.nlm.nih.gov/pubmed/17938152](http://ncbi.nlm.nih.gov/pubmed/17938152)); Steel et al, “Impact of immigration detention and temporary protection on the mental health of refugees” *British Journal of Psychiatry* (2006) 188 58–64 (at [ncbi.nlm.nih.gov/pubmed/16388071](http://ncbi.nlm.nih.gov/pubmed/16388071)).

Our volunteers see this ongoing suffering first-hand when they visit detainees. They tell us that people with physical disabilities receive far less support than is required (in fact, less support in some cases than they received in their country of origin), that people who have escaped severe torture are not provided with specialists to treat their physical or psychological injuries, and that staff give conflicting information to detainees, and will threaten them (if on the mainland) with sending them to Nauru or Manus Island. All of this, along with the many other objectionable features of immigration detention, leads to the very high rates of mental illness suffered by people in detention mentioned above.

Further, and although this is not at the heart of the moral argument, psychological illness in resettled refugees has a far wider impact than individual suffering: with mental illness costing the Australian economy at least \$20 billion each year,<sup>8</sup> we are all indirectly paying an economic price for the psychological harm caused by detaining those who seek refuge in Australia.

### *The Legal Argument*

The legality of Australia's system of immigration detention has been much discussed in other fora, and is the subject of current examination by the Parliamentary Joint Committee on Human Rights.<sup>9</sup> At this point, suffice to say we support the views of others including the Refugee Council of Australia, the UNHCR, the Parliamentary Joint Committee on Human Rights,<sup>10</sup> and most recently Australia's own Human Rights Commission,<sup>11</sup> that elements of the current system are problematic, and probably contrary to international law, including the *Convention on the Rights of the Child*, the *International Covenant on Civil and Political Rights*, the *Refugees Convention*, and even possibly the *Convention Against Torture* (in the context of third-country processing).

### **Schedule 1, Item 8**

This Item defines the new term, *unauthorised maritime arrival*. Such people are then designated to be unauthorised arrivals, meaning that people who arrive by boat on the mainland are eligible for processing at regional centres. The effect of this section will be that "all noncitizens who arrive in Australia by irregular maritime means ... will be subject to the regional processing framework inserted by the Regional Processing Act in August this year unless they are specifically excluded".<sup>12</sup>

This Item will enlarge the class of people who are subject to immigration detention, and who are therefore more likely to suffer trauma and mental illness as described above. This raises clear moral concerns. The Society therefore strongly opposes this approach, noting also the possibility that those people who are willing to take the very great risk of travel by boat as far as mainland Australia may be the very people who are the most desperate and vulnerable, and the most likely to suffer psychological illness as a result of being indefinitely detained.

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<sup>8</sup> Australian Bureau of Statistics, "Mental Health" *Australian Society Trends* (March 2009) (at [abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30March%202009](http://abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30March%202009)).

<sup>9</sup> See [aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=humanrights\\_ctte/activity/migration/index.htm](http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/activity/migration/index.htm).

<sup>10</sup> In relation to this particular bill, at [aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=humanrights\\_ctte/reports/7\\_2012/c07.htm](http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/reports/7_2012/c07.htm).

<sup>11</sup> Australian Human Rights Commission, *Immigration Detention on Christmas Island – Report* (December 2012) (at [humanrights.gov.au/human\\_rights/immigration/idc2012\\_christmasisland.html#fnB2](http://humanrights.gov.au/human_rights/immigration/idc2012_christmasisland.html#fnB2)).

<sup>12</sup> Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 31 October 2012, 12738 (Chris Bowen MP).

The *Universal Declaration of Human Rights*, which Australia endorsed at its declaration and has consistently supported, states that people have a right to come to our country to both seek and enjoy asylum.<sup>13</sup> This Item of the present bill, along with the current legislative and policy framework around people who seek refuge in Australia, shuts the door in the face of those desperate and terrified people who come here by boat, and seeks to punish those who are the most deserving of our compassion and humanity.

### **Schedule 1, Item 48**

This Item repeals provisions that enabled a transitory person to request the Refugee Review Tribunal to assess whether the person is a refugee, if the transitory person has been in Australia for more than 6 months.

Again, the Society strongly opposes any move to keep people in detention for longer, in this case by removing some people's ability to have their refugee status determined, and then having the possibility of making a valid visa application, at a point when they have already spent 6 months on Australian soil. It is also unclear whether and how denying access to the Refugee Review Tribunal to people who are *already in* immigration detention could possibly further the "no advantage" policy of dissuading people from attempting to come to Australia by boat to seek asylum.

We strongly urge that all asylum seekers who come to our continent and our offshore locations be given prompt, fair hearings of their refugee claims, with due legal process and natural justice. This must include access to appeal tribunals in all cases. We are also particularly concerned by recent attempts to "screen out" some asylum seekers very early, in a process about which not much is known – this seems to be another example of executive decision-making moving itself outside the reach of any sort of independent oversight.

### **Conclusion**

The Society recognises the government's progress in reducing the average period of immigration detention to a two-year low of 74 days (as at October 2012),<sup>14</sup> and the government's commitment to increase the number of humanitarian program places it offers to 20,000.<sup>15</sup>

However, we maintain the position that the policy of indefinite mandatory immigration detention of people who pose no danger to the community is unjust, and ultimately increases social exclusion for the vast majority of those asylum seekers when they are found to be refugees and are resettled in Australia. We also remain deeply concerned with the number of children currently in Australian immigration detention, and in APODs which we understand are no better. We take the view adopted by the International Detention Coalition that "it is never in the best interests of a child to be detained for immigration purposes".<sup>16</sup>

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<sup>13</sup> "Everyone has the right to seek and to enjoy in other countries asylum from persecution". Article 14(1), UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) (at [unhcr.org/refworld/docid/3ae6b3712c.html](http://unhcr.org/refworld/docid/3ae6b3712c.html)).

<sup>14</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary* (31 October 2012) (at [immi.gov.au/managing-australias-borders/detention/facilities/statistics/](http://immi.gov.au/managing-australias-borders/detention/facilities/statistics/)).

<sup>15</sup> Chris Bowen MP, "Refugee Program increased to 20 000 places" *Media release* (23 August 2012) (at [minister.immi.gov.au/media/cb/2012/cb189459.htm](http://minister.immi.gov.au/media/cb/2012/cb189459.htm)).

<sup>16</sup> International Detention Coalition, *Captured Childhood* (2012) 7 (at [idcoalition.org/wp-content/uploads/2012/03/Captured\\_Childhood-report.pdf](http://idcoalition.org/wp-content/uploads/2012/03/Captured_Childhood-report.pdf)).

For these reasons, the St Vincent de Paul Society was pleased to see the inclusion of several actions related to immigration detention in the National Human Rights Action Plan 2012. We also warmly welcome the current examination of the compliance of the Migration (Regional Processing) package of legislation for compliance with human rights by the Parliamentary Joint Committee on Human Rights.<sup>17</sup>

We hope and pray that the approach can begin to shift from one driven by politics and sound-bites to the recognition of this issue as primarily a moral and ethical question, and secondarily a legal question of our compliance with our international obligations.

Dr John Falzon

Chief Executive Officer

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<sup>17</sup> See [aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=humanrights\\_ctte/activity/migration/index.htm](http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/activity/migration/index.htm).