Public Interest Advocacy Centre

Ending Indefinite and Arbitrary Immigration Detention Bill 2021 (Cth)

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Our priorities include:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for First Nations people
- Access to sustainable and affordable energy and water (the Energy and Water Consumers' Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Improving outcomes for people under the National Disability Insurance Scheme
- Truth-telling and government accountability
- Climate change and social justice.

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1. Introduction

The Public Interest Advocacy Centre (**PIAC**) welcomes the opportunity to make this submission to the Joint Standing Committee on Migration inquiry into the Ending Indefinite and Arbitrary Immigration Detention Bill 2021 (Cth) (**Bill**).

This Bill is a balanced and carefully crafted attempt to end a system that continues to result in gross breaches of the human rights of asylum seekers. It permits detention for specific purposes and for defined periods of time, while also seeking to provide a range of protections to minimise the harms caused by detention. We urge the Committee to support the Bill.

PIAC has lengthy experience working with people in onshore immigration detention. PIAC does not support Australia's system of mandatory immigration detention. This system holds people for excessive and indefinite periods of time and causes harm to physical and mental health. It is a system that is cruel and unnecessary. It also fails to meet minimum standards for closed environments.

In this context, PIAC's Asylum Seeker Health Rights Project has sought to secure humane standards of medical and mental health care for asylum seekers in Australia's onshore immigration detention centres. Since 2016, we have worked with people in immigration detention and their advocates to address physical and mental health issues facing that population. We also monitor the use of restraints and excessive use of force. We are currently running test case litigation challenging the lawfulness of handcuffing in immigration detention. We represent clients in litigation, complaints to various agencies and work on law reform. Our work is conducted in close consultation with key peak refugee and asylum seeker advocacy organisations.

PIAC strongly supports the aim of this Bill to abolish indefinite and arbitrary detention. The *average* period a person spends in onshore immigration detention in Australia is currently 689 days.[1] This can be contrasted with the US, where the average length of stay is 55 days, and in Canada, where it is 15 days.[2]

Detaining people for such extended periods is disproportionate to any legitimate aim. It is also punitive in its impact and contrary to the position of the United Nations Office of the High Commissioner for Human Rights (**OHCHR**) Working Group on Arbitrary Detention (**UNWGAD**) who have consistently held that immigration detention should never be punitive, and seeking asylum is not a criminal act.[3] Seeking asylum is a universal human right enshrined in article 14 of the Universal Declaration of Human Rights and in the Convention relating to the Status of Refugees and the Protocol: international legal obligations to which Australia has committed.

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[1] Australian Government Department of Home Affairs, *Immigration Detention Statistics* (30 September 2021), Visa Statistics https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention.

[2] American Immigration Council, *Immigration Detention in the United States by Agency* (2 January 2020) https://www.americanimmigrationcouncil.org/research/immigration-detention-united-states-agency; Canada Border Service Agency, *Annual Detention Fiscal Year 2019 to 2020* (2020) https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html.

[3] United Nations Office of the High Commissioner for Human Rights Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, Opinion No. 17/2021 concerning Mirand Pjetri (Australia)*,* A/HRC/WGAD/2021/17 (3–12 May 2021); see also Opinions No. 28/2017, No. 42/2017 and No. 35/2020.

Based on our casework and expertise, our submission focuses on the impact of the proposed Bill on the health and wellbeing of refugees and asylum seekers in Australian onshore immigration detention. The experience of PIAC's clients, as set out below, demonstrates that Australia's current system of arbitrary detention severely hinders the ability of people in onshore immigration detention to access appropriate medical care. Immigration detention is a healthcare crisis. The use of restraints is one example of this, as the arbitrary use of handcuffing creates barriers which prevent people from seeking medical care.

1.1 Case study: immigration detention and health care

Sadiq[4] came to Australia by boat in 2013 and was detained on Manus Island and Nauru for 6 years. During this period, he developed a serious knee injury that prevented him from walking and weight bearing.

After three years of pain, Sadiq underwent surgery in Port Moresby, which revealed that years of lacking treatment had led to the cartilage in his knee almost completely wearing away. Post-operation, Sadiq suffered from a series of serious seizures over a period of 8 months. The cause of these seizures was never identified in Port Moresby. Further, the operation on his knee failed to relieve him of any pain.

Two Australian doctors then assessed Sadiq's health issues, finding that he had been prescribed multiple medications with harmful and potentially life threatening drug interactions. Both doctors concluded that Sadiq could not be safely treated in PNG.

Sadiq then was transported to Australia for medical treatment in June 2019. He shortly undertook an EEG, which was found to be within normal limits. No further investigation was conducted as to his seizures. Sadiq's knee pain also continued to worsen, and he was placed on the waiting list to see an orthopaedic specialist.

Whilst Sadiq waited over 9 months for a specialist appointment, he developed serious mental health issues, including depression, PTSD symptoms and a severe anxiety surrounding being restrained. His anxiety was also accompanied by chest pain and heart palpitations. The doctors noted that his mental health symptoms were 'a result of his prolonged detention'.

By March 2020, Sadiq refused to be restrained in order to be taken out of detention to his specialist appointment. Sadiq objected to being touched and handcuffed by Serco security guards in public, stating that he 'is not a prisoner'.

Sadiq was finally able to see an orthopaedic specialist who found that his knee was inoperable due to the severe damage and prolonged lack of treatment. Sadiq's mental health spiralled again. By September 2020, he was suffering from advanced PTSD and Anxiety. He developed nightmares, insomnia and started having paranoid delusions.

Sadiq's story illustrates how detention can exacerbate both physical and mental health conditions. The failure to treat Sadiq's knee condition whilst offshore led to his permanent disability. This in turn led to a downturn in his mental health.

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[4] We have changed our client's name to protect his privacy.

Sadiq was finally released into community detention in August 2021. Since being released, his mental health has improved significantly.

2. Proposal to end indefinite and arbitrary detention

PIAC supports the legislative amendment in the Bill. It is consistent with international human rights law. PIAC supports the incorporation of the principle of family unity and the principle of the rights and best interests of the child. The Bill is consistent with the United Nations High Commissioner for Refugees (**UNHCR**) *Detention Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*. These guidelines emphasise that detention must not be arbitrary and any decision to detain a person must only occur following an assessment of individual circumstances in strict compliance with UNHCR Guideline 4, as follows:

> **Guideline 4.1**
> Detention is an exceptional measure and can only be justified for a legitimate purpose.
>
> **Guideline 4.2**
> Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose.
>
> **Guideline 4.3**
> Alternatives to detention need to be considered.

PIAC support the Bill's intent to adhere to refugee and international human rights law by ensuring all decisions are subject to independent oversight and prompt review. PIAC notes the findings of the UNWGAD in its opinion concerning Mirand Pjetri (Australia):[5]

> As the Working Group has explained, in its revised deliberation No. 5, any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording claims or initial verification of identity if in doubt.[6]
>
> This echoes the views of the Human Rights Committee, which, in paragraph 18 of its general comment No. 35 (2014), has argued the following:
>
>> *Asylum seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of a particular reason specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.*

[5] Human Rights Committee Working Group on Arbitrary Detention, *Opinion No. 17/2021 concerning Mirand Pjetri (Australia)* , 90th sess, UN Doc A/HRC/WGAD/2021/17 (4 June 2021) [102] – [108] and [115] – [119].
[6] A/HRC/39/45, annex, para. 12.

> In addition, the Working Group recalls the numerous findings of the Human Rights Committee, in which the application of mandatory immigration detention in Australia and the impossibility of challenging such detention has been found to be in breach of article 9 (1) of the Covenant.[7]

The need for this Bill is heightened by the current lack of sufficiently robust oversight and accountability mechanisms for conditions in detention, including in relation to access to health care.

Although the Optional Protocol on the Convention Against Torture (**OPCAT**) was ratified by Australia and adopted in 2017, progress towards incorporating OPCAT into law, policy and practice has been too slow.[8] The Commonwealth government elected to postpone its obligation to establish a National Preventative Mechanism (**NPM**) until January 2022.[9] The Commonwealth government has nominated the Office of the Commonwealth Ombudsman to be the NPM overseeing immigration detention, but disappointingly we are yet to see sufficient practical progress in implementing a coordinated and effective system of monitoring and prevention.

While any length of time in immigration detention has the potential for harm, the current uncertainty and arbitrariness around how long people are detained is of particular concern. Extended, indefinite detention has been recognised for decades to be toxic and extremely damaging to mental and physical health.

The Bill's careful and balanced approach provides alternatives to immigration detention which may take various forms depending on the particular circumstances of the individual, to be used in preference to immigration detention. PIAC commends the way this Bill clearly outlines the reasons and the time frames for detention as well as communication and services that are to be available in immigration detention, access to which will be independently monitored.

3. Impact of detention on the provision of health care

3.1 Immigration detention is a healthcare crisis

Indefinite and arbitrary detention causes mental illness and exacerbates existing medical conditions.[10] Prolonged immigration detention is known to have a significant, negative impact on mental health and there are increasing numbers of asylum seekers who have been detained for increasing periods of time. The Commonwealth Ombudsman has reported that immigration detention in a closed environment for longer than six months had a significant, negative impact on mental health.[11]

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[7] See Human Rights Committee, *C v. Australia*; *Baban and Baban v. Australia* (CCPR/C/78/D/1014/2001); *Shafiq v. Australia* (CCPR/C/88/D/1324/2004); *Shams et al. v. Australia* (CCPR/C/90/D/1255–1256, 1259–1260, 1266, 1268, 1270 and 1288/2004); *Bakhtiyari et al. v. Australia* (CCPR/C/79/D/1069/2002); *D and E and their two children v. Australia* (CCPR/C/87/D/1050/2002); *Nasir v. Australia* (CCPR/C/116/D/2229/2012); and *F.J. et al. v. Australia* (CCPR/C/116/D/2233/2013).

[8] Australian Human Rights Commission, *Implementing OPCAT in Australia* (2020).

[9] Commonwealth Ombudsman, *Monitoring Immigration Detention* (Report, 2021) 4

[10] Irina Verhülsdonk, Mona Shahab, and Marc Molendijk, 'Prevalence of psychiatric disorders among refugees and migrants in immigration detention: Systematic review with meta-analysis' (2021) 7 BJPsych Open 6, E204.

[11] Australian Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (Report No 2, 2013) 59. See also PIAC, *In Poor Health: Health care in Australian immigration detention* (June 2018) 12 and PIAC, *Healthcare denied: Medevac and the long wait for essential medical treatment in Australian immigration detention* (3 December 2021).

On 3 December 2021 PIAC published its report '*Healthcare denied: Medevac and the long wait for essential medical treatment in Australian immigration detention*'.

The report demonstrates urgent reform is needed to ensure health care in immigration detention is equivalent to Australian community standards. It shows that for many years now, people in immigration detention have been arbitrarily refused medical treatment.

PIAC is particularly concerned that many people who were transferred to Australia to access urgent medical treatment under the Medevac scheme experienced significant delays to access healthcare. All of the people in the Medevac cohort were arbitrarily detained in onshore immigration detention facilities upon arrival, despite many living in the community offshore because they had already been determined to be refugees.

Some of our Medevac clients are still detained and are still awaiting care. The impact of this failure is severe. Two years later, people are still without treatment for painful and debilitating conditions including severe gum disease, chest pain and heart palpitations. The combination of delayed treatment and long-term confinement has also exacerbated some existing medical conditions.

Since being transferred, onshore detention conditions have resulted in our clients' mental health deteriorating to the point they have been at risk of suicide. Between 2020-21 there were 195 instances of self-harm in onshore immigration detention centres.[12]

The experience of the Medevac cohort reflects access to healthcare in immigration detention generally: in too many cases the government is failing to provide basic medical care for people in Australian immigration detention.

PIAC emphasises that the Commonwealth government has a non-delegable duty of care to provide reasonable health care to the people it detains.[13] This duty means the Commonwealth government must exercise reasonable care to avoid harm to the person detained, regardless of whether the harm is inflicted by a third person or by the person detained themselves.[14]

PIAC's findings from working with clients in the Medevac cohort once again highlight the need for urgent reform to ensure people in immigration detention receive health care equivalent to the Australian community standard.

PIAC has urgent concerns in relation to:

- delays in people receiving treatment;
- the failure to implement recommended treatment plans, for example, not providing access to a dental specialist despite referrals being made poor communication between agencies involved in providing health care and to people in detention; and
- poor detention conditions leading to worsening physical and mental health, including:
    - the use of 'temporary' hotels purportedly repurposed for immigration detention for long and indefinite periods; and

[12] Australian Government Department of Home Affairs, *2020-2021 Annual Report* (30 June 2021) 120.
[13] *AS Minister for Immigration and Border Protection & Anor* [2014] VSC 593.
[14] *SBEG v Commonwealth of Australia* [2012] FCAFC 189, 19.

- lack of access to adequate fresh air, sunlight, activities and visitors.

While the first priority for reform must be to release people from unnecessary and cruel detention, PIAC reiterates the need to strengthen the protections for people in the Australian immigration detention system. This necessarily includes clearer and more transparent mechanisms to ensure that medical care is provided.

3.2 The use of restraints prevents access to health care

In addition to the failure to provide adequate medical care, PIAC is concerned about the excessive and arbitrary use of handcuffs in immigration detention.

The use of handcuffs is widespread and arbitrary. Serco guards and staff often handcuff people when transporting them to medical appointments, to court proceedings, and between detention facilities. If a person requests to attend appointments off site, the expectation is that they will probably be handcuffed.

The Commonwealth's Detention Services Manual clearly outlines that there a presumption against the use of force.[15] This also includes restraints such as handcuffs, during movements within an immigration detention facility, transfers between facilities and during transport and escort activities outside of immigration detention facilities.[16] However, overwhelming reports from the field and our clients' experiences demonstrate this is not being implemented in practice. Instead, the use of handcuffs has become standard and the presumption appears to have been reversed as a matter of practice.

The routine use of handcuffing detainees to and from medical appointments is unjustified, unreasonable, and disproportionate to genuine individualised risk. It impacts on the medical practitioner's ability to treat the person effectively and is contrary to the Commonwealth's 'last resort' principles.[17]

Arbitrary handcuffing creates a new form of trauma for the individual, especially if that person has a history of abuse and torture. Handcuffs are triggering and its common use is inhumane. Our clients have told us that being handcuffed is degrading and humiliating.

In these circumstances, it is not uncommon for a person in immigration detention to refuse to attend offsite appointments to avoid the harm and humiliation of being handcuffed. This practice therefore poses a significant barrier for people to access healthcare on a routine and regular basis – or at all.

PIAC's observations are broadly consistent with the Australian Human Rights Commission's observations in 2019:[18]

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[15] Australian Government Department of Home Affairs, *Detention Services Manual – Safety and security management – Use of force* (10 October 2018).

[16] Ibid.

[17] Ibid.

[18] Australian Human Rights Commission, *Use of Force in Immigration Detention* [2019] AusHRC 130, 132.

> The Commission has observed from its regular monitoring of immigration detention facilities that the use of restraints, particularly handcuffs, is becoming routine in transfers between immigration detention facilities and during escorts to external appointments such as medical appointments and court hearings.
>
> The application of restraints in practice differs significantly from the impression generated by the department's Detention Services Manual. The manual suggests that use of handcuffs should be the exception, rather than the rule. In particular, the manual provides that 'restraint during escorted visits and scheduled travels only applies to detainees who have a serious or violent criminal history, those who have a history of escape, and those for whom the risk assessment indicates that they potentially pose a high risk'.
>
> The key issue seems to be the ease with which detainees are given a 'high' risk assessment, thus requiring the use of handcuffs. As noted above, I am concerned about the default position that treats all physically fit single adult detainees as high risk for 28 days after entering detention. I am also concerned that some detainees are given a higher risk rating than a reasonable objective assessment would require.

These concerns were echoed by the Castan Centre in 2020:[19]

> Specific uses of restraint are set out in the service contract only as it relates to 'Transport and Escort Services'. In addition to the standards for which such are permissible under the Mandela Rules, the list includes instances where 'the Department has otherwise approved' the use in an 'Escort Security Risk Assessment process'. This may include many uses which are not permitted under international standards. With regards to the use of restraint more broadly in immigration detention, the service contract does not specify permitted uses, but notes that it must not be used 'in a manner which is likely to cause injury, serious discomfort or potential danger to the Detainee'.

This does not appear to be a recent change in practice. On 14 August 2001, the President of Australian Medical Association (AMA), Dr Kerryn Phelps, spoke to ABC Radio about the case of a six-year-old Iranian boy, Shayan Badrie, living in the Villawood Detention Centre with his family. Shayan was diagnosed with traumatic, acute stress disorder. Dr Phelps was asked about what concerns the AMA was specifically concerned about, and answered:[20]

> We're concerned about a number of issues. Privacy is one. And that is that security staff are generally on hand when somebody is having a consultation with the health professional, when they're consulting with the doctor or the nurse. *Handcuffs are used on patients during transport to external medical and dental appointments and this would seem in many cases to be quite unnecessary.* There's not a structured preventive health program like dedicated immunisation programs, cervical screening, general health screening for tuberculosis, for people who are in the detention centres, and there's a real problem with language, too, with translators being able to help people be understood when they're trying to express their health concerns.

[19] Monash University Castan Centre for Human Rights Law, *Use of Force in Detention and Other Closed Environments* (2020), 81, footnotes omitted.

[20] Dr Kerryn Phelps with Tanya Nolan, 'The World Today', Australian Medical Association Media ABC Radio 2BL (14 August 2001) https://www.ama.com.au/media/dr-kerryn-phelps-ama-president-world-today-abc-radio-2bl-tanya-nolan-tuesday-14-august-2001, emphasis added.

The Royal Australian and New Zealand College of Psychiatrists has emphasised that asylum seekers in Australian immigration detention are '*an already traumatised population, many of whom have severe mental health problems and are at increased risk of further depression, anxiety and post-traumatic stress disorder (PTSD)*.'[21] The use of handcuffing further exacerbates these health problems and puts asylum seekers in immigration detention in an impossible position – they must either accept the harm and distress from being handcuffed in circumstances where it is unjustified, or forego access to healthcare where it is made available.

In November 2020, PIAC filed landmark test case litigation in the Federal Court to challenge the lawfulness of restraints in immigration detention. Our client, Yasir (pseudonym), is living with severe mental illness and the use of handcuffs is particularly retraumatising for him. This has led to frequent disruption and delay to his medical care. The use of handcuffs causes Yasir to have seizures, which has prevented him from attending specialist appointments. It has also led to Yasir refusing medical attention to avoid being handcuffed. Since the case was filed in the Federal Court, Yasir has not been handcuffed for medical treatment. Apart from the positive impact on his well-being, it has meant he has been able to complete investigations for long-standing cardiac issues and to start treatment.

Yasir's case exemplifies the arbitrariness of the use of restraints in immigration detention. PIAC reiterates that the use of restraints creates further trauma, prevents access to medical care, and should only be used as a last resort when it is clinically recommended to do so.

3.3 Arbitrary detention, high risk populations and COVID-19

The COVID-19 pandemic has negatively impacted on the mental health and wellbeing of people arbitrarily detained in immigration detention. All visits to immigration detention facilities ceased on 24 March 2020 due to COVID-19 and there have been restrictions on external excursions for activities outside detention facilities, such as gym visits and medical appointments.

PIAC and our clients have also been concerned about the heightened risks of contracting COVID-19 in detention environments and overcrowded settings, and the heightened risks of severe or critical illness from COVID-19 because of relevant comorbidities such as hypertension, diabetes, and respiratory disease.

In addition to the direct impact of COVID-19 outbreaks in immigration detention, the increased pressure on Australia's health system has led to further delays in access to medical consultations and treatment. Health issues for people detained in immigration detention further deteriorated in 2020-21 because of COVID-19, and the detrimental impacts of closed environments.

In October 2021, nearly one third of refugees and asylum seekers detained by the Commonwealth government at Melbourne's Park Hotel tested positive for COVID-19. Reflecting the distress experienced by people being detained there, one detainee labelled it 'a killer hotel, a torture hotel'.[22] Reports included that medical care, food, COVID-19 safety protocols were not provided, or if they were provided, it was done so on an arbitrary basis.

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[21] Royal Australian and New Zealand College of Psychiatrists, 'Immigration detention centres a significant COVID-19 risk', 17 April 2020.

[22] Elle Marsh, 'This is a torture hotel': Inside the Park Hotel outbreak', *The Saturday Paper* (online), 27 November 2021, https://www.thesaturdaypaper.com.au/news/politics/2021/11/27/this-torture-hotel-inside-the-park-hotel-outbreak/163793160012962.

The public attention attracted by the detention of tennis player Novak Djokovic, reignited news headlines regarding the treatment of others detained at the Park Hotel, some of whom have been detained for nearly a decade. These men have reportedly been subject to a range of mistreatment, including being served maggots and mouldy food, and experienced a lack of hygiene and an increasing the risk of contracting COVID-19.

The use of hotels as 'alternative places of detention' has been widely condemned. In June 2019, the Australian Human Rights Commission recommended that hotels only be used as places of detention in exceptional circumstances for very short periods of time, not least because of their lack of dedicated facilities and restrictions on access to open space.[23] Despite this recommendation, hotels, such as Park Hotel, have continued to be designated as 'alternative places of detention' by the Commonwealth government in preference to options such as the granting of bridging visas or release into community detention.

Information on vaccination rates in immigration detention is not transparent. As at 13 January 2022, the Guardian reported that 'across Australia's immigration detention system, 59% of people detained are fully vaccinated, compared to 78% of the general community, and 92% of those aged over 16.'[24] PIAC is concerned about the apparent delay in the vaccination rollout amongst what should be a priority population (given the closed environment and underlying vulnerabilities). We also call for greater transparency of vaccination and booster rates of people in immigration detention.

The Commonwealth refused to follow expert advice to release people into the community to reduce the risk of COVID-19.[25] Instead, the Commonwealth and its agents chose solitary confinement as a tool to prevent COVID-19 transmission. This has led to an underreporting of possible COVID-19 symptoms because people do not want to be locked away without basic living provisions. Reports also indicate a lack of transparency of quarantine rules within detention.[26]

The Special Rapporteur on Torture has stated that a person must not be kept in solitary confinement for longer than 15 days. A longer period amounts to torture under international law.[27] This statement was endorsed by the UN Special Rapporteur on the right to health, the UN Working Group on arbitrary detention, and the UN Special Rapporteur on the rights of persons with disabilities.[28] This Bill would assist to prevent or limit such harmful practices moving forward.

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[23] Australian Human Rights Commission, *Risk Management in Immigration Detention* (2019), https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019.

[24] Ben Doherty, ''Rampant': fears over growing Covid outbreak at Sydney's Villawood detention centre', *The Guardian,* 13 January 2022, https://www.theguardian.com/australia-news/2022/jan/13/rampant-nearly-70-people-have-covid-at-sydneys-villawood-detention-centre-sources-say.

[25] Australian Human Rights Commission Management of COVID-19: risks in immigration detention (2021) https://humanrights.gov.au/sites/default/files/document/publication/ahrc_covid-19_immigration_detention_2021.pdf; see also Sarah Price, 'Villawood asylum seeker's plea from solitary 'torture' amid virus scare', The Saturday Paper, 18 September 2021, https://www.thesaturdaypaper.com.au/news/politics/2021/09/18/villawood-asylum-seekers-plea-solitary-torture-amid-virus-scare#hrd.

[26] Ibid.

[27] United Nations Human Rights Office of the High Commissioner, 'United States: prolonged solitary confinement amounts to psychological torture, says UN expert', (28 February 2020), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633; see also A/66/268 and A/HRC/13/39/Add.5.

[28] Ibid.

4. Conclusion

Immigration detention is a healthcare crisis. Australia's arbitrary and indefinite immigration detention regime inflicts considerable harm. Much of this is inherent in indefinite detention, but also results from detainees:

- not having access to adequate healthcare;
- being arbitrarily subjected to routine handcuffing; and
- being at heightened risk of contracting COVID-19.

PIAC recommends that the Bill be passed. Consideration should be given to provisions with respect to access to healthcare in detention. Safeguards within the Bill are welcomed because it brings Australia's detention regime in better alignment with the UNHCR Guidelines.

PIAC suggests that legislative change must be complemented by training, education and robust review. This will help to ensure that if people continue to be held in immigration detention, they receive the healthcare to which they are entitled: commensurate with Australian community standards and in keeping with international law. This includes:

- including an agreed standard of care in the contractual renewals with IHMS or other health providers appointed to deliver services to immigration detainees;
- auditing existing policies;
- mitigating the risks of COVID-19 by ensuring that all detainees and staff are vaccinated; and
- only using handcuffs and other physical restraints as a last resort when clinically recommended to do so.

PIAC reiterates that the use of solitary confinement is an unacceptable approach to reduce the risk of COVID-19. The advice of medical professionals to reduce the spread of COVID-19 should be followed.

PIAC urges drafters to carefully consider the health implications of immigration detention, including the serious consequences of prolonged detention. The current system is in breach of international law and out of step with Australian community standards