



SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

SUBMISSION TO THE INQUIRY ON THE MIGRATION AMENDMENT (PROHIBITING ITEMS IN IMMIGRATION DETENTION FACILITIES) BILL 2020

The Refugee Council of Australia (RCOA) is the national peak body for refugees, people seeking asylum, and the organisations and individuals who work with them, representing over 190 organisations. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds, and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback on the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 and its likely impacts on people in detention, their families and support networks, as well as visitors to immigration detention facilities. We believe there is no need for this Bill, as the current powers, laws and policies can and do deal with the issues that the Government seeks to address via the Bill. We are deeply troubled by this legislation, as it aims to introduce further restrictions to an immigration detention environment that is already highly restrictive. Those restrictions are likely to be implemented without proper consideration of the vulnerabilities and needs of people detained in those facilities. If passed, this Bill grants further broad and unchecked powers to the Minister and detention officers.

We are also disappointed that, similar to a number of other Bills and policies introduced in relation to immigration detention in recent years, this Bill does not address the real problems with Australia's immigration detention system: namely, the lack of a time limit on detention and limited oversight of decisions to detain.

1 The previous version of this Bill and RCOA's submission

1.1 In September 2017, a Bill similar to the current Bill was introduced. It was referred to this committee for inquiry and report. In 2019, the Bill lapsed in the Senate after the 45th Parliament was dissolved.

1.2 RCOA, along with many other organisations and individuals, made a submission to this inquiry. We also participated in a public inquiry to highlight our serious concerns with the 2017 version of this Bill. Our main concerns highlighted in the [submission](#) were:

- the Bill sought to grant the Minister yet another discretionary power, without any provision for oversight and review, to declare any item a 'prohibited thing' and prevent people in detention and their visitors from possessing and using that item;
- the Bill's disregard for the significant and documented positive impacts of mobile phones, namely, facilitating connection with legal representatives (and therefore more prompt resolution of immigration status), mitigating social isolation, improving family and community connection and subsequently, the mental health of people in detention. Instead, in the narrative justifying the passage of the Bill, there was disproportionate focus on the risk profile of some of the people in detention and their inappropriate use of mobile phones;

- the lack of proper consideration of the best interests of children by denying them ready and flexible access to communicate with their parents at all hours, while the parents are detained;
- that extensive search powers already existed but the Bill sought to extend them to more items and more places of detention, including Alternative Places of Detention;
- the Bill sought to support, through legislation, the use of dogs in search and screening processes, including during screening of people in detention and their visitors;
- that visitors to detention facilities would face even greater challenges than they were already facing; and
- that the detention system is already securitised, with restrictive policies applicable to all people in detention, without much consideration of their needs, vulnerabilities and past experiences.

1.3 The current Bill does not address the majority of our concerns. We welcome that the current Bill no longer authorises the use of detector dogs to search people in detention, their possessions and visitors to immigration detention facilities. It is also positive that the Bill now specifies that the medications and healthcare supplements that are prescribed or supplied for the individual use of a person in detention are not prohibited things. Finally, we welcome that the legislative instrument by which the Minister determines the prohibited things in immigration detention facilities is now disallowable. However, fundamental issues with the Bill remain.

1.4 As will be elaborated in the following sections, we argue that this Bill continues to grant broad and unchecked power to the Minister and detention service providers. While the Explanatory Memorandum mentions a targeted and risk-based approach in relation to the seizure of the prohibited items, there is nothing in the Bill that guarantees that. There is also no Parliamentary oversight of how the Minister chooses to direct officers to exercise seizure powers, as the legislative instrument by which the Minister directs those officers to exercise such powers is not disallowable. The Bill now specifies that the officers do not need to have any suspicion to initiate a search (unless it is a strip search). There also continues to be significant focus on mobile phones and the alleged risk they present, again without much regard for the documented positive impacts they continue to have.

1.5 We emphasise, once again, that the main detention-related issues in Australia that need urgent attention are the lack of a time limit on detention and the limited oversight of decisions to detain. None of the Bills introduced to the Parliament in the past years seeks to address these important issues. They instead seek to further securitise the detention facilities and restrict the rights of people in detention, who can remain detained for many years.

2 The current context of the immigration detention system

2.1 In recent years, the increased security and the enforcement-centred approach of the Australian Border Force (ABF) to the management of immigration detention facilities have resulted in a highly securitised detention system. Restrictive policies continue to be applied to people in detention without much consideration of their needs and vulnerabilities. For example, an increasing number of people are now mechanically restrained (handcuffed) during outside appointments, including medical appointments, and for a long time no outside excursions have been carried out.

2.2 Currently, the average length of detention in onshore detention facilities is 18 months (545 days). A quarter of the detention population has been in detention for more than two years,¹ some of whom have spent over eight years deprived of liberty.²

¹ Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (31 March 2020), <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf>.

² The most recent breakdown of the length of detention beyond two years that is available publicly was [published](#) by the Commonwealth Ombudsman in August 2017. The Ombudsman reported that in 2016–17, 122 people had been detained for more than five years, and 24 people had been detained for six years or more. RCOA is aware of a number of cases where people have been in onshore detention for over 8 years. This is without considering the offshore group.

2.3 There is no denying that, following changes to the character cancellation provision, the number of people in detention who had spent time in correctional facilities, and consequently had their visas cancelled, has increased. It is understandable that the management of the risks some members of this group may present might require the implementation of more restrictive detention management policies in relation to them. However, increasingly the enforcement-centred approach to the management of detention facilities is becoming the default practice. That our immigration detention facilities are still accommodating a great number of vulnerable and low risk people is being ignored, and there seems to be deliberate disregard of the fact that all of these people are in administrative detention and are not deprived of liberty because they committed a crime.

2.4 We are appalled that the Minister has used this Bill to speak about the past criminal history of some people in detention and the risk they may present, while ignoring the dire situation of many highly vulnerable people in detention who pose no risk and dismissing the continuous pleas from various organisations, health experts and monitoring bodies to release them into the community.

2.5 The Minister's speeches and the Explanatory Memorandum to this Bill continue to focus on "higher-risk detainees". While we acknowledge that some of the people in detention do pose a risk to the safety of other people in detention, staff and the order of the facility, attention also needs to be paid to the significant gaps that present in how risk assessments are made in the detention facilities. After a series of detention inspection focusing on the very same issue, the Australian Human Rights Commission (AHRC) identified a number of trends that undermined the effectiveness and accuracy of the risk assessment process. It concluded that:

As a consequence of these trends, many people in immigration detention may have received risk assessments that do not accurately reflect any objective risk they may pose. In particular, there appears to be considerable variation in the severity of the risk presented by people in the 'high risk' category.³

2.6 On the other hand, the current discussions about this Bill tend to focus far less (or none at all) on the fact that the vulnerability of people in detention has increased in the past year. That is not just because more people are experiencing very prolonged detention. It is also because a significant number of recognised refugees and people seeking asylum have been medically transferred to Australia from offshore facilities in Papua New Guinea and Nauru. They have all spent more than six years in those countries and experienced serious trauma and medical neglect. Many remain in closed detention. In fact, almost all of the people who have been medically transferred to Australia under the "medevac" legislation remain in closed detention, more than a year after their transfer. The restrictions that this Bill proposes will also apply to this group. Further, as there is still no legislation to prevent the detention of children, what this Bill is seeking to implement can and will impact children.

2.7 RCOA repeats our strong opposition to the implementation of restrictive policies on all people in detention to mitigate the risks possibly presented by some.

3 Broad and unchecked power

3.1 This Bill seeks to grant the Minister for Home Affairs extremely broad powers to declare any item a 'prohibited thing', as long as the Minister is "satisfied" that the possession or use of that item "might be a risk to the health, safety or security of persons in the facility, or to the order of the facility", (section 251A). Declaring an item a 'prohibited thing' can prevent people in detention and their visitors from possessing and using that item. The broad terms used here and the low threshold (e.g. that an item *might* be a risk to health and safety of people or the *order* of the facility) is cause for serious alarm.

³ Australian Human Rights Commission (2019), *Risk management in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>, pp.21-22.

3.2 Subsection 251B(6) of the Bill seeks to grant the Minister the power to direct, by a legislative instrument, that an authorised officer must seize a thing by exercising one or more specified relevant seizure power. This direction is a binding Ministerial direction.

3.3 While some Parliamentary oversight has now been introduced, as an instrument made under the new section 251A will be disallowable, an instrument made under subsection 251B(6) will not be disallowable. This means there is no Parliamentary oversight or checks and balances over how it is being utilised, and no option to review and challenge the decisions made under this subsection.

3.4 Subsections 252(2), 252AA(1A), 252BA(3), and 252G(1A) allow the officers to search a person in detention, a detention facility or a detention visitor without having any suspicion that the person may have in their possession a prohibited item. Given there are no minimum statutory standards or proper legal framework for standards in immigration detention, these provisions create even more unchecked power in detention facilities. We know that even now holding the officers accountable is extremely challenging. We have been told, repeatedly, that people in detention and detention visitors find the complaint mechanism ineffective. Creating more unaccountable power can lead to both abuse of power and less accountability.

4 Mobile phones

4.1 As mentioned before, there is no provision in this Bill to guarantee a targeted and risk-based approach to the seizure of prohibited things, especially mobile phones. We are deeply troubled that the passage of this Bill will lead to an effective blanket ban on the possession and use of mobile phones by people in detention.

4.2 There has been considerable focus, both in the Minister's speeches and in the Explanatory Memorandum, on how a small group of people in detention have used mobile phones for unlawful activities. What is missing from these conversations is that there are already laws and policies that can deal with the misuse of mobile phones. If there is evidence that a person has used a mobile phone to conduct or support illegal activities, including to threaten and intimidate another person, it is a criminal matter that should be dealt with through existing laws. There is no need for this Bill to mitigate this risk. As the AHRC argues, the current internal standards of behaviour could be amended to include the acts that are not unlawful but may be inappropriate, such as breaching the privacy of staff working in the detention facility.⁴

Mobile phones are lifelines

4.3 Mobile phones are vital in maintaining social and family connections, which can help improve mental health. This is of particular importance now that the average length of time in detention is at a record high. There is abundant evidence available linking prolonged detention to mental health issues, as well as deterioration in physical health.

4.4 RCOA notes that many people detained in immigration detention facilities are parents of young children in the community. In meeting the best interest of these children, it is imperative that they have ready and flexible access to communicate with their parents at all hours by mobile phone.

4.5 More than any other time, we have seen the positive impacts of mobile phones during the COVID-19 pandemic, when all external visits to detention facilities, including family visits, have ceased (a ban that started on 24 March 2020 and continues at the time of writing this submission, June 2020). People in detention have been able to maintain their contact with their family and friends because of mobile phones. They did so with less stress and without the need to share communal facilities, something that presents a greater risk at the time of a pandemic. We are dismayed that the

⁴ Australian Human Rights Commission (2019), *Risk management in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>, p.58.

Government has chosen now, in the midst of a global pandemic, to introduce this Bill, despite being well aware of how access to mobile phones helped people remain safe and connected.

4.6 The men and women who have been transferred from offshore facilities have always used mobile phones to stay in contact with their family and friends, both when they were offshore and after being transferred to Australia. We know from our direct work with this group how important access to mobile phones is for them and how mobile phones assisted in maintaining their mental wellbeing. After almost seven years in detention and limbo, connection with the outside world has kept these people alive, especially as many continue to be detained in highly restrictive conditions in Australian APODs with little access to fresh air and visitors.

4.7 RCOA and many other organisations have raised concerns about the lack of meaningful programs and activities in immigration detention facilities. The AHRC raised alarm that the boredom, frustration and lack of engagement that arise from lack of meaningful programs and activities can contribute to the tensions within the facilities.⁵ In the absence of those activities, many people in detention have been using mobile phones to remain engaged and occupy their time. They also use their phones to access information and the news. As a former person in detention told RCOA:

There is nothing worse than being locked up and not knowing what happens outside. When I was in detention [and did not have access to mobile phones], I did not know what happened in my home country or, if I had some news, I was really stressed not knowing how my family was because I could not quickly check on them.

Access to legal representatives and legal information

4.8 Mobile phones facilitate contact between people in detention and their legal representatives, allowing prompt and private phone consultations with lawyers who are working to tight, statutory deadlines. Using other means of communications often creates delays in initiating or maintaining vital contacts with legal representatives, putting people at risk of losing their chance to exercise their legal rights. This is because people have to wait to use limited communal phones or computers or ask a third party, for example a security officer, to assist them with urgent communications.

4.9 Over the years, we have repeatedly heard from the lawyers that it is much harder to access people who do not have mobile phones. Lawyers who spoke to RCOA report that it is extremely challenging to work within the statutory deadlines when their clients are detained in remote detention facilities and do not have access to mobile phones. Setting up time for an interview, often across different time zones on limited landlines, creates significant challenges for lawyers to submit applications to courts and tribunals.

4.10 To assist someone with their protection visa applications or their appeal against the cancellation of their visas, lawyers need to speak to people about confidential and sensitive issues, for example, accounts of rape and torture. The public nature of landlines means many people will be reluctant to disclose sensitive and personal information. While private interview rooms are available, there are limited in number and securing them, often within a tight deadline against which the lawyers are working, is extremely challenging.

4.11 There have been instances when mobile phones helped alert the lawyers to an imminent removal and prevented potential *refoulement*. The Explanatory Memorandum states that requests by unlawful non-citizens about to be removed from Australia to access legal assistance during their removal “will be facilitated until such time as it is no longer reasonably practicable to do so. What is reasonable will depend on the circumstances including what is happening operationally and whether facilities to access legal assistance are readily available having regard to the particular operational

⁵ Australian Human Rights Commission (2019), *Risk management in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>, p.65.

environment". This lays bare the many operational challenges and barriers that can prevent someone from accessing legal assistance during a quickly unfolding situation. Having access to mobile phones mitigates a significant number of these issues.

4.12 In working with their legal representatives, people also use their mobile phones for activities that would previously have required the use of a landline phone or desktop computer. They include maintaining regular contact, answering quick but essential questions (without the need to go through time consuming channels and set up an interview) and urgently provide documents. This, without a doubt, results in more prompt resolution of people's immigration status.

Accountability

4.13 We know that human rights violations thrive behind closed doors. During the COVID-19 pandemic lock down and when the detention monitoring bodies were not able to visit detention facilities,⁶ it was mobile phones that enabled people report on what was happening in detention. The fact that the Government is introducing a Bill that can effectively remove a significant element of accountability at a time when (most) monitoring bodies are not visiting detention facilities is cause for serious alarm.

4.14 Beyond the current period, mobile phones continue to facilitate private and prompt contact with scrutiny bodies. People have used their devices to record instances of excessive use of force, giving them much-needed evidence to substantiate their complaints. People in detention have told us having their mobile phones introduces more checks and balances in an environment in which they feel powerless.

4.15 It was also the mobile phones that allowed people who have been transferred from offshore facilities to raise awareness about their plight and their continued detention. They did so through filming the peaceful protests in APODs and through contact with media.⁷ We note the fact that this Bill has been introduced at a time when mobile phones are being increasingly used by people in detention to directly tell the Australian community about their conditions.

No other alternative means of communication can replace mobile phones

4.16 Before people in detention could have access to mobile phones, they had to share a limited number of landline telephones. It resulted in increased competition over their use and heightened tensions. There were usually queues forming directly behind a person speaking on the landline, limiting the privacy and creating tension among both those on the phones and those waiting.

4.17 Landlines were particularly inadequate when families tried to contact a person in detention from overseas. Family and friends of those detained would report that the staff answering the detention switchboard refused to put the call through to people in detention. For a considerable period of time, the switchboard number was not contactable, creating undue stress, especially when the matter was urgent.

4.18 Calling family members who live overseas using landline telephones is costly. Various messaging applications and voice over IP services available on mobile phones allow people to communicate with their family members and friends free of charge. People can use video calls to see their families, something that is significant for parents who are trying to maintain their connections with their children who live overseas. A conversation between a person in detention and

⁶ RCOA understand the Commonwealth Ombudsman resumed its physical inspection on 22 May 2020 when it visited Brisbane Immigration Transit Accommodation and Melbourne Immigration Transit Accommodation (source: <https://croakey.org/commonwealth-ombudsman-to-report-on-covid19-responses-in-detention-facilities/>)

⁷ One notable example was the participation of Farhad Bandesh, a refugee from Manus Island who has been transferred to Australia for medical treatment and is currently in detention, in ABC's Q&A program during which he raised concerns about the risk of a COVID-19 outbreak in detention facilities.

a journalist published by BuzzFeed highlights this issue clearly. The journalist asked the man how the removal of mobile phones would affect him:

[Talking about his 9-year old son, whom he left in Iran when he was 2 years old]

I'm trying my best to make him know me as his father. I'm trying to show him myself in video calls so he will recognise me as his father.

...

[In response to availability of alternative means of communication, such as landline telephones and shared computers]

*Do you think it's going to be enough for me? I need to see my son in a video so I can show him who his father is. How can I show him myself when I talk to him on a landline phone?*⁸

4.19 Shared computers with internet connection cannot replace mobile phones. Even if people are allowed to use the computers to call their families using programs like Skype, they will only have access to one-way video calls (meaning they can see their families but their families cannot see them). The other significant issue with those means of communication is that people have access to shared computers on a rigid roster basis. People have to use their allocated time to contact their families. However, that time is not always the most suitable; sometimes it is in the early hours of the morning in their home country or it is when the children are at school. It is almost impossible to work out an appropriate time for everyone in detention who wishes to use a computer to contact their families, considering the unique situation of every family and the time differences. Having mobile phones allows people to contact their families when it suits them best. Other prevalent issues are that access to computers and the internet is often used as a behavioural management tool and the internet connection in remote facilities like Christmas Island is often unreliable.

4.20 RCOA is not convinced that the mere fact of installing additional landline telephones and computers provides people with appropriate communication channels that are on par with mobile phones. We believe this argument disregards many reports and documented evidence about the challenges people face when trying to use other communication channels.

4.21 The Explanatory Memorandum to this Bill also mentions visits from the family and friends as a way of ensuring people in detention maintain contact with their support network. Yet, we continue to hear about the challenges the visitors face when trying to access detention facilities. From onerous visitor application processes to intrusive screening process (which this Bill proposes to make even greater), the detention visitors continue to face a myriad of challenges.

4.22 Finally, we reiterate that it is unreasonable and disproportionate to remove a communication tool with so many vital and important benefits in order to mitigate a risk alleged to be presented by a small group of people. As mentioned before, the importance of mobile phones has to be considered in the current context of immigration detention, when the average length of time in detention is increasing, more vulnerable people have been detained, and many people are separated from their families and social networks for extended periods of time due to frequent movement and transfer within the detention network.

5 Search and seizure powers

5.1 RCOA submits that there is no need for this Bill, as the different sections of the Migration Act already grant substantial search, screening and seizure powers to authorised officers in relation to

⁸ Hannah Ryan, 'I WhatsApp'ed refugees to ask why they're so freaked out about the Government taking their phones away' *Buzzfeed News* (22 May 2020), <https://www.buzzfeed.com/hannahryan/refugees-phones-australia-whatsapp-interview?mc_cid=4b9f4e87f2&mc_eid=ad7aa12084>.

people in detention and detention visitors. Sections 252 (searches of persons), 252A (power to conduct a strip search), 252AA (power to conduct a screening procedure), 252C (possession and retention of certain things obtained during a screening procedure or strip search), and 252G (powers concerning entry to a detention centre), all allow authorised officers to search and screen (without warrant) a person, their clothing and property or conduct a strip search of a person in detention. This is to look for weapons, items that can help a person to escape from detention, and things that are evidence for cancelling a person's visa. Visitors can be searched for items that can endanger the safety of people in detention and staff and disrupt the order of the facility.

5.2 In fact, through the reports we regularly receive from people in detention and their supporters, we know that people in detention and their rooms are being frequently and extensively searched at different hours of the day. People continue to report that those room searches, that often take a long time, leave them feeling intimidated and humiliated. We also know that detention visitors are also routinely searched and also undergo drug tests. We have previously raised our concerns about the accuracy of those tests and numerous examples of "false positives".

5.3 Minister Tudge's second reading speech claims that the current legislation does not support the officers "to remove illegal and dangerous items from detention facilities". The Minister claims that only through the passage of this Bill, the ABF officers will be enabled to "combat the incursion, distribution and use of contraband that pose a significant risk to the safety and security of the immigration detention environment." As we argued above, these claims are incorrect. The officers already have extensive powers to search people in detention and their visitors for illegal and dangerous items, including through strip searches, and seize those items.

5.4 This Bill provides no protection relating to search powers. There is no requirement for a warrant, no rules for conducting a search (unless it is a strip search), and no limitation on how often, when or how many times an individual can be searched. As mentioned earlier, this Bill now does not even need the officers to have a suspicion to initiate a search (unless it is a strip search).

5.5 RCOA is alarmed by the inclusion of medical examination areas in the areas that can be searched, as set out by section 252BA. There is no further information or safeguarding provision to emphasise the importance of privacy when a person in detention is attending a consultation with a health professional. As it stands, this section does not prevent authorised officers from interrupting a private consultation with a doctor or a mental health professional to search for various illegal or prohibited items, including mobile phones.

Strip searches

5.6 It is particularly disturbing that, by extending the strip searches to look for prohibited things, this Bill seeks to significantly lower the threshold for a strip search, a traumatic and humiliating experience for many. If this Bill is passed, a strip search can be authorised to determine whether or not a person has concealed a mobile phone or a SIM card.

5.7 A 2019 report by the WA Office of the Inspector of Custodial Services reviewed the use of strip searches in Western Australian prisons and found them to be ineffective and harmful. The Inspector of the Custodial Services stated in that report that it was "naïve" to think that strip searching works, as **out of 900,000 strip searches conducted in the course of five years, only 571 contraband items were found**, or the hit rate of only one in 1,500 searches. Furthermore, most of the detected items were not even drug or weapon related. The report stated that these figures were not unique and were consistent with the research and data in other Australian jurisdictions and internationally.⁹

⁹ Office of the Inspector of Custodial Services (2019), Strip searching practices in Western Australian prisons, https://www.oics.wa.gov.au/reports/strip-searching-practices-in-western-australian-prisons/?doing_wp_cron=1591803005.7533690929412841796875, p.iii.

5.8 The report also states that despite the perception of some officials that these searches have a deterrent effect:

There was no relationship between the volume of strip searches and the number of positive drug tests of prisoners. Nor was there any increase in contraband finds, using other processes, when strip searching stopped at certain facilities. These findings are consistent with research in other countries.¹⁰

5.9 The report finds strip searching to be “a distressing, humiliating, and degrading experience. For people with traumatic backgrounds, it is likely to be even worse”.¹¹ It finds an obvious conflict between the practice of strip searching and trauma-informed practice.¹² Considering the prevalence of historical, pre-existing trauma in the immigration detention population, the fact that many are fleeing persecution and traumatic experiences, and lower rates of trauma-informed training and practices for the detention guards, the practice of strip searching will be of added concern in immigration detention facilities.

5.10 It is reasonable to assume the chance of detecting contraband during strip searching is much higher in prisons than in immigration detention, as the people incarcerated in prisons are there because of a crime they committed, while those in immigration detention are in administrative detention. When the report of the Inspector of Custodial Services shows that the chance of detecting contraband during strip search in prison is about 0.06%, there is very little justification for calling for the expansion of the grounds based on which those searches can be performed in an administrative detention setting. It is especially of concern when many other jurisdictions, like the United Kingdom and Canada, are moving away from this practice and are trialling various forms of new technology instead of strip searching.¹³

Recommendation 1

RCOA recommends that Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 not be passed.

Recommendation 2

RCOA strongly recommends against implementing restrictive policies on all people in detention to mitigate the risks potentially presented by some. Through risk-based placement, the Department can determine the needs and challenges of each individual in detention and implement policies appropriate to that person.

Recommendation 3

RCOA has long argued for comprehensive reforms of Australia’s detention system to prevent prolonged, indefinite and unnecessary detention. The central focus of detention reform should be on ensuring the immigration detention is used as a last resort and for the shortest possible time. As a general rule, people should only be subject to immigration detention after having undergone a thorough, individualised and risk-based assessment which has determined that there is a genuine need for detention and no other alternatives are available. When people are subject to detention, clear legislative time limits should apply and a system of regular judicial review should be established to monitor the ongoing need for detention.

¹⁰ Ibid, p.v.

¹¹ Ibid, p.iii

¹² Ibid, p.2

¹³ Ibid, p.x.