Submission to the Joint Select Committee Inquiry on Australia's Immigration Detention Network from Refugee Advocacy Network August 2011

PREAMBLE

The Refugee Advocacy Network RAN is a coalition of organisations concerned with the situation of Asylum Seekers and Refugees and involved in campaigning for their human rights and advocating for fair and just treatment.

RAN acknowledges the work of the Joint Standing Committee on Migration, and their three reports :

- (1) The Committee's <u>First Report</u> of the inquiry into immigration detention in Australia (Criteria for release health, identity and security checks) Tabled in Parliament December 2008).
- (2) <u>Second Report</u> Immigration detention in Australia (Community-based alternatives to detention) Canberra, May 2009.
- (3) The Committee's <u>Third Report</u> Immigration detention in Australia (Facilities, Services and Transparency) Canberra, August 2009.

RAN points members of this current Inquiry to the Second report (May 2009) of the Joint Standing Committee on *Migration on community based alternatives to detention*, that made recommendations for changes to the system of detention. The report recognised "the harsh psychological burdens inflicted by long and indefinite periods of detention.... (that are) known to have harmful long term effects on all those involved"., It is regrettable that the recommendations of the Joint Standing Committee have not been implemented.

Our submission raises a number of fundamental recommendations that would ease the acute distress, pain and suffering being experienced by asylum seekers who have made it to Australia to apply for residency. Most have come from intolerable situations in their homeland, and their suffering has been compounded by the stress and anxiety created by the adverse reception and incarceration in detention experienced on their arrival on Australian shores.

If the recommendations of the three reports cited above had been taken seriously and implemented, there would be no need for this present inquiry. It is shameful that most of the practical and humanitarian recommendations arising from these inquiries have been ignored, and that there is still such a level of denial and lack of knowledge within the Parliament about the appalling conditions endured by asylum seekers in the places from which they are forced to flee.

RAN hopes that the current inquiry findings will be taken seriously and that swift action will take place.

1. Reforms to the Current policy of Immigration Detention in Australia

1.1. The Refugee Advocacy Network calls on the Australian Parliament to discard all failed Asylum Seeker/Refugee policies, and implement compassionate, humanitarian and rights based reforms. The most fundamental reform required is the immediate abolition of mandatory detention for people who are seeking protection as asylum seekers in Australia.

We recommend that the existing system of mandatory detention be replaced by Asylum Seeker Reception Centres in all states, located in metropolitan or large regional centres where there is access to legal and medical services. It is proposed that, people seeking refuge on arrival may be required to stay for a short time for preliminary health, identity and security checks Asylum Seekers would then be released on a bridging visa, with work rights, Medicare and study rights and other appropriate support in the community within 30 days to await processing of their application for permanent residency (see below) If security checks (e.g. ASIO) or other checks are incomplete at the end of 30 days, this should not prevent detainees being released.

{It may be that ASIO checks can be abandoned, as they seem not to fulfil any valuable purpose, and they cause untold delays in the system.}

1. 2 The Refugee Advocacy Network calls on the Australian Parliament to immediately raise the quota for refugee entrants, comprising onshore asylum applicants and offshore refugee resettlement, to at least 30,000 per annum, in line with recommendations by the Refugee Council of Australia based on community and sector consultations and at the same time establish an additional quota of 15,000 people per year to cater specifically for Special Humanitarian entrants and Refugee Family Reunion.

This would sever the artificial link between onshore refugee places and the Special Humanitarian Program and depoliticise the quotas. The SHP quota currently provides the main means for refugee family reunion. A separate quota for refugee family reunion would reaffirm the importance of family reunion as part of successful refugee resettlement in Australia.

Background and Rationale for No. 1

The current system of mandatory detention of asylum seekers who arrive by boat, commonly labelled "unauthorised boat arrivals", is deliberately harsh and punitive, no doubt intended to deter others from arriving by similar means and as a consequence, has little regard to the health and wellbeing of people seeking to engage Australia's protection framework. Long periods of mandatory detention in prison-like environments is known to cause psychological distress and long term harm to vulnerable individuals including children, especially those who have experienced prior trauma. The current system therefore deliberately inflicts harm, which is unethical and unworthy of Australia as a nation. There are significant adverse societal as well as individual and family impacts of mental health disorders resulting from any sort of enforced detention. At a time when the Federal Government, health professionals and the wider Australian community contemplate the urgent public policy priority of addressing endemic mental health problems, few seem to acknowledge the inconsistency of supporting a mandatory detention framework that causes serious mental distress.

Experts such as Professor Louise Newman of Monash University and Professor Patrick McGorry have spoken out on a number of occasions about the damage being done to people held in detention. We quote below from a recent article printed in the Australian and New Zealand Journal of Public Health, August 2011 and cited in the Melbourne Age of 3 August 2011

Psychiatrist Jon Jureidini of the Women's and Children's Hospital in Adelaide, writing in the Journal of Public Health, said detention had led to self-harm in children as young as 10, infants with separation anxiety, teenagers with severe depression and parents who had lost the capacity to care for children.

Dr Jureidini said he had first hand knowledge from treating families, including a fouryear-old child, with psychological damage after being held in the department's Inverbrackie "alternative detention". He said children were being traumatised by intrusive procedures such as nightly head counts, and limited excursions or outings.

Alternative detention was harmful because of the control guards asserted over family movements, Dr Jureidini said. He said he had seen "loving families destroyed by immigration detention process".

The Refugee Advocacy Network is also concerned that Australia's mandatory detention framework contravenes fundamental principles under domestic and international law including the International Covenant on Civil and Political Rights; the Convention Against Torture; the UN Refugee Convention, and the Convention for the Rights of the Child. In particular, mandatory detention specifically discriminates against people who arrive by boat, penalising this group in breach of article 31 of the 1951 Convention.

Not only is the current system inhumane and degrading it is also damaging Australia's reputation as a country committed to universal human rights.

The current system of processing refugee claims is excessively high in cost – due largely to lengthy delays and the incarceration of asylum seekers. Processing of asylum claims is compromised by political considerations and arbitrary exercise of ministerial discretion; as a result it neither is independent, transparent nor subject to judicial review. The consequences of this is that asylum seekers see the system as lacking integrity and have little faith in delivering outcomes which are fair and just. This is a significant factor contributing to unrest in detention facilities. The right to protection and the dignity of asylum seekers should be of paramount importance, not a secondary consideration.

Australia's harsh and costly immigration detention system for asylum seekers is a disproportionate response to the number of people who seek asylum onshore. As of December 2010, Australia housed just 0.45% of world wide asylum claims. It needs to be recognised that poor developing countries carry the most significant burden in hosting asylum seekers and refugees. Although Australia plays a significant role in refugee resettlement, the total number of refugees in Australia is very small: 21, 805 in 2010, compared with countries like Germany (594,269 in 2010); the USA (264,574) and Canada (165,549).

2. The impact of length of detention and the appropriateness of facilities and services for asylum seekers

2.1 The Refugee Advocacy Network notes that asylum seekers are being held in detention for lengthy periods and in some instances, for indefinite periods. The negative impacts on the mental health and wellbeing of asylum seekers is well documented. This is exacerbated

by detention in high security environments with prison-like conditions, in remote locations, with limited access to community services and facilities. It is obvious that existing facilities and staffing are not coping and many policies and practices need serious re-examination. The detention of families and individuals is inhumane and damaging to the most vulnerable of people and must be stopped. For this reason we call for an immediate end to Mandatory Detention as outlined in No. 1.

- 2.2 The current system of detention network be evaluated against immigration detention principles to which the Rudd Labor Government committed to in 2008. We believe that the current system does not comply with those principles:
- Children and, where possible, their families, and also juvenile foreign fishers, will not be detained in an immigration detention centre (IDC);
- Detention that is indefinite or otherwise arbitrary is unacceptable;
- Detention in IDCs is only to be used as a last resort and for the shortest practicable time;
- People in detention must be treated fairly and reasonably within the law; and
- Conditions of detention must ensure the inherent dignity of the human person.
- 2.3 Since there has been non-compliance with the 2008 immigration detention principles outlined earlier, and noting the harmful effects of long term detention, we propose that:
- Families with children should not be separated under any circumstances.
- No children or unaccompanied minors shall be detained in immigration detention facilities and their community residential accommodation shall be low security.
- Unaccompanied minors should be housed in community facilities ideally with appropriate foster carers and processed for residency as a matter of urgency receiving immediate work and education rights, Medicare and legal representation.
- In view of the numerous past failures as a consequence of private sector management of immigration detention centres, the management of immigration centres should be transferred to the public sector.
- In recognition of the harmful impacts to asylum seekers and high costs of detention centres in 'remote areas', all immigration processing centres should be located within established communities with easy access to community and support services.
- All applications for refugee status should be processed speedily, fairly and impartially based on individual merits and will not allow considerations of populism to artificially lower the rates of acceptance or to delay processing of any particular groups of asylum seekers.
- Australia must fully comply with the non-refoulement and all other protection obligations
 voluntarily assumed in signing the UN Refugee Convention and other relevant
 international instruments and will actively engage in the work of the United Nations High
 Commission for Refugees (UNHCR) and other relevant international and regional
 agencies. To this end Australia will ensure that failed asylum seekers are not deported
 to countries which are at war or where internal strife is prevalent.
- 3. The resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties
 - (N.B. comments here also respond to No. 6 The effectiveness and long-term viability of outsourcing immigration detention centre contracts to private provider)

- 3.1 In view of numerous past failures of private sector management of immigration detention centres, it is recommended that the management of immigration centres be transferred to the public sector, to be called Immigration Department Reception Centres, refurbished and staffed in an appropriate manner by well-trained public sector employees who are accountable to DIAC and the Minister for Immigration.
- 3.2 At the very least, DIAC and Immigration Department Reception Centre employees and contractors should in addition to their minimum Cert. II Security training, be required to attend trauma and torture and cross-cultural awareness training (short courses on site) given by accredited providers.
- 3.3 RAN contends that many of the problems of the past in detention facilities stem from the negative culture prevalent in both DIAC but especially amongst staff of SERCO. Asylum seekers should be treated with dignity and respect, and with sensitivity, particularly since many have been subject to trauma and in some cases torture.

4. The health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network

As specified above in No. 1 (Reforms needed to the current Immigration Detention Network in Australia) all asylum seekers and their families should be entitled to respectful and humane treatment, and temporary accommodation in a safe, non-threatening environment on entering Australia. Families with children should never be placed in Detention Centres as there is extensive evidence of the harm caused to children and young people by periods spent in the detention system.

5. Impact of detention on children and families, and viable alternatives

The corrosive impact of detention on mental health and wellbeing of children and families has been comprehensively documented by health professionals including the Government's Detention Health Advisory Group and refugee advocacy group, ChilOut. The Refugee Advocacy Network is highly concerned for the welfare of unaccompanied minors, many of whom have been kept in crowded and unsuitable facilities which have exacerbated tensions, heightened anxiety and contributed to numerous incidents of self-harm. Prolonged detention in these circumstances is at odds with the Minister's role as Guardian, and is in breach of his duty of care obligations. The condition and length of detention for unaccompanied minors is inconsistent with State child protection regimes, which use a 'best interests' framework.

Both Government and Opposition seem to have lost sight of best practice in protecting vulnerable children and young people. There is an urgent need for a Children's Commissioner to enforce national standards in the care of children, including 'non-citizens', and to ensure compliance with the international Convention on the Rights of the Child. The Australian Human Rights Commission discussion paper *An Australian Children's Commissioner* October 2010 specifically refers to 'children in detention, including immigration detention' as amongst those children most at risk in Australian society.

We also welcome the announcement of an inquiry by the Commonwealth Ombudsman into suicide and self-harm in detention facilities.

Viable Alternatives to Mandatory Detention

There are effective alternatives to mandatory detention that do not compromise Australia's security, are cheaper, more humane and which strengthen our sense of community. Instead of being classified by how they arrived here, asylum seekers should be classified by their

care needs and likely security risk. This would allow most refugees to be housed more cheaply in the community.

The solution is a combination of three approaches documented by the Edmund Rice Centre:

- Early evaluation of asylum seekers is needed to work out whether anyone poses a security risk and whether there is a risk of absconding if they are placed in low-security housing
- Case management by a social worker from an accredited welfare agency to work with individuals and families to ensure they become familiar with Australia's refugee system.
 This would provide needed counselling and support as asylum seekers move through the assessment process.
- Provision of accommodation options that house people according to appropriate to security assessment and care needs –community detention and medium security hostel with intensive services.

Security levels to be determined according to need:

- Community management for those considered at low risk, or no risk to the community or unlikely to abscond. This should include women and children, families and young people
- Medium security hostel accommodation for those considered at risk or requiring intensive services
- Full detention only to be used temporarily up to a maximum of 30 days for those considered high risk.

This model reduces the cost to the taxpayer.

The costs of housing refugees depend on the level of security required:

- Community-based accommodation is the cheapest option when low levels of security are required. It is better for children, families and people with disabilities, often caused by war or torture
- Hostel accommodation is the cheapest option for medium levels of security and it is effective for centralising services
- Full detention is only an option for those people who pose a documented security risk.

Several thousand asylum seekers live in the community and are supported by agencies like the Australian Red Cross or Melbourne's Hotham Mission Asylum Seeker Project that provide basic living allowances and in some cases rented accommodation.

The Commonwealth Government has used hostel accommodation to house the Kosovars from the war-torn former Yugoslavia in 1999. During the 1970s tens of thousands of Vietnamese refugees (many of them 'boatpeople') were temporarily housed in hostels and successfully resettled in the community. There is no reason why Australia could not take a similar approach with asylum seekers today.

As documented by the Detention Health Advisory Group, headed by Dr Louise Newman, there are significant health costs associated with keeping children and families in maximum security detention centres. The damaging mental health effects of detention on women, children and families who are a low security risk are well known, as indicated above. The current system does not consider the expense of future psychiatric treatment when these families are found to be genuine refugees and are released into the Australian community after prolonged periods of detention.

A system of Community Reception can be implemented immediately without changes to Australia's border protection policy. A 'risk assessment' would be undertaken immediately, not at the end of the process as currently happens. A caseworker would then prepare people for all possible outcomes of their visa application.

- Hotham Mission's system for asylum seekers living in the community already provides caseworkers to enable individuals and families to adjust to Australia. They help find housing, deal with daily living needs, and orient them to an Australian way of life. Case workers can also identify people who have been tortured or traumatised and help them find specialist counselling services if required. This is vital for women who have been raped and for children who have seen terrible things or have special medical needs. Where people have been found not to be refugees, the caseworker helps them to accept the decision, and assists people to actively plan for their future and to farewell contacts they have in the community as they prepare to leave Australia.
- Asylum Seeker Resource Centre ASRC in Melbourne provides legal, health, counselling, food, case work as well as English classes and advocacy for people seeking asylum in Australia
- 1 For full description and analysis of the economic costs see the report on the Edmund Rice Centre website: Dr Tony Ward, Improving Outcomes and Reducing Costs of Asylum Seekers, Milbur Consulting, 2003.
- 2 Hotham Asylum Seeker Project, Welfare Issues and Immigration Outcomes for Asylum Seekers on Bridging Visa E Research and Evaluation, Hotham Mission Asylum Seeker Project, 2003.

6. The impact, effectiveness and cost of mandatory detention and any alternatives, including community release

The Second report of the Joint Standing Committee on Migration states that "it is not necessary to keep people who meet the criteria for release in secure detention centres for long periods of time awaiting resolution of their immigration status. Co-located, open residential accommodation in the community can provide people with safe and supportive living environments while still being accessible to the Department of Immigration and Citizenship and other service providers."

"Community-based alternatives can also be much more cost-effective than the current high levels of physical security or on-site staffing required within an immigration detention centre. A more supportive living environment maintains the physical and mental wellbeing of those awaiting an immigration decision, which can therefore facilitate a smoother transition into the Australian community where there is a positive outcome or repatriation."

This reinforces our comments above on community-based alternatives to immigration detention facilities. The mental health impacts from detention are not only borne by the individuals, but will have long term intergenerational effects within their families. It is likely that the trauma resulting from an arbitrary and unnecessarily harsh immigration regime will leave long lasting scars and a level of distrust in Australian civic institutions — we may well pay a price in the future in terms of social unrest and civic disengagement for our punitive approach to people who seek our compassion in times of crisis and vulnerability.

7. The total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees

Information contained in the recent Australian Federal Budget (2011) documents just how much Australia's policy of Mandatory Detention really costs. The averaged out total costs per asylum-seeker is phenomenal: \$664,285. The calculation of this cost is explained below:

Numbers

2009: 2750 asylum seekers by boat 2010: 6800 asylum seekers by boat

2011: trending towards 2800 asylum seekers by boat.

Costs

Offshore Asylum Seeker Management \$1.06 billion Onshore Immigration Detention \$800 million Total \$1.86 billion

Overall Acceptance Rate over the past 3 years: 85%

So for 2800 asylum seekers arriving by boat this year it costs \$664,285 per asylum seeker to discover that they are genuine refugees and legally entitled to be approved for permanent residency status. Put another way, to detect one non-entitled asylum seeker costs about \$4.4 million. This is hardly an effective cost-benefit ratio.

Despite the Coalition and Government's concern about criminal asylum seekers there are almost NO criminals amongst those seeking asylum in Australia. In 2000, 13,000 people sought asylum in Australia. **Just 11 failed the Character Test** i.e 0.08%. This is documented by 'the Edmund Rice Centre' in 'Debunking The Myths'

Applying the above percentage to the projected 2800 boat arrivals expected in 2011, gives a grand total of 3 "criminals" (rounded up) at a cost of \$620 million per criminal.

The reasons for and nature of riots and disturbances in detention facilities.

It is clear that riots, disturbances and suicides in detention facilities are a mark of failure of the detention regime. These events stem from a sense of hopelessness and frustration which comes from indefinite internment in prison-like facilities, lack of confidence in the system, and failure to resolve asylum claims within a reasonable period. Overcrowding and competition for access to limited resources magnifies personality conflicts between stressed individuals. In addition, uncertainty over futures is compounded by a widespread lack of confidence in the integrity and independence of the asylum processing system: when the determination process is compromised by political considerations (arbitrary rejection on the basis of assumed country conditions and failure to fully consider claims based on individual merits), there is understandable frustration and despair. The prison-like security and enforcement procedures exacerbate the difficulties of vulnerable people who have already experienced significant trauma, and result in deteriorating mental health.

The Refugee Advocacy Network is dismayed by the actions of SERCO staff and the AFP in dealing with riots and disturbances in detention facilities; the aggressive use of force and in particular, the use of bean bag bullets by the AFP is utterly reprehensible. **Bean bag bullets** have never been used before in Australia as part of crowd control. This aggressive use of force would be unacceptable in other circumstances on the mainland; use of bean bag bullets further highlights how different standards are being applied in dealing with 'non-citizens', with little regard for their wellbeing and human rights.

No concern is expressed by the Minister or SERCO for the impact of such extreme 'crowd control' measures on asylum seekers held in detention facilities. The Refugee Advocacy Network believes that the hostile tactics have also compounded problems of unrest in certain

detention facilities and escalated levels of violence. SERCO and the AFP have a responsibility to ensure a safe environment is provided for all detainees and to not use excessive or extreme force in controlling disturbances.

 The performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons

This directly relates to (8) above, and we would argue that their record is appalling as exemplified by the dehumanising and harmful impact of detention centres on asylum seekers, resulting in suicide, human misery, family separation, self-harm and leading to mental health issues. See comments within (8) above outlining negative and aggressive actions of SERCO and the AFP in 'quelling' riots.

High security facilities are usually understood to be prisons, and the contractors engaged to manage detention centres are in the corrective service industry. It is not realistic to think that this combination can deliver a supportive environment for asylum seekers.

- 10. Any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons
- 10.1 The Refugee Advocacy Network notes that it is as if the detention system functions in a parallel universe; it is almost wholly disconnected to the wider Australian community and to the norms and policy considerations which apply in State jurisdictions in the treatment of vulnerable individuals, and as stated above, in mainland policing. It is proposed that processing/detention centres should be subject to State policies in regard to the protection of children and the mental health and wellbeing of young people.
- 10.2 It is well established that the onset of long term mental health problems amongst vulnerable young people has considerable disabling impacts on an individual's life chances. Yet there seems to be little acknowledgement of the risk factors which equally apply to young people in immigration detention, and the impact their detention will have on their capacity to settle and their long term well-being. We therefore recommend that access to mainstream state services, including schools, language classes, employment and training programs would significantly enhance the prospects of successful resettlement.
- 11. The expansion of the immigration detention network, including the cost and process adopted to establish new facilities

The Refugee Advocacy Network rejects the need for any expansion of the existing immigration detention network and supports the expansion of community release options. It is recommended that all reception centre processing facilities be located in established urban and rural communities in close proximity to community support services. Consideration should be given to locating any new facilities in areas where communities are supportive e.g. West Wimmera Shire.

12. The length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network.

Our views on this question have been covered under No. 1 above.

13. Processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network

Concerns include: lack of judicial review on the merits; lack of transparency and accountability; questionable assumptions about country security; predetermined outcomes; hostile process of assessing asylum claims; arbitrary exercise of Ministerial discretion; lack of real independence in the review process. RRT one person panel inappropriate — and relevant interpreters often unavailable; RRT needs to be expanded to 3 persons as a minimum, with appointments made in accordance with criteria developed and acceptable to advocacy organizations, e.g. RCOA. The current system of refugee determination is highly compromised and lacking in integrity.

SUMMARY OF RECOMMENDATIONS

- Abolition of the Mandatory Detention System and replacement by Asylum Seeker Reception Centres in all states, where people seeking refuge on arrival may be required to stay for a short time for preliminary health, identity and security checks.
- 2. Families with children should not be separated under any circumstances.
- 3. No children or unaccompanied minors shall be detained in immigration detention facilities and their community residential accommodation shall be low security.
- Unaccompanied minors should be housed in community detention or with appropriate foster carers and processed for residency as a matter of urgency receiving immediate work and education rights, Medicare and legal representation.
- In view of the numerous past failures as a consequence of private sector management of immigration detention centres, the management of immigration centres should be transferred to the public sector.
- In recognition of the harmful impacts to asylum seekers and high costs of detention centres in remote areas, all immigration processing facilities should be located within established communities with easy access to community and support services.
- 7. All applications for refugee status should be processed speedily, fairly and impartially based on individual merits and will not allow considerations of populism to artificially lower the rates of acceptance or to delay processing of any particular groups of asylum seekers.
- 8. Australia must fully comply with the non-refoulement and all other protection obligations voluntarily assumed in signing the UN Refugee Convention and other relevant international instruments and will actively engage in the work of the United Nations High Commission for Refugees (UNHCR) and other relevant international and regional agencies. To this end Australia will ensure that failed asylum seekers are not deported to countries which are at war or where internal strife is prevalent.

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Australian Human Rights Commission discussion paper An Australian Children's Commissioner October 2010

ChilOut No Place for Children: Immigration detention on Christmas Island June 2011

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Member organisations include:

Amnesty International Refugee Group

Asylum Seeker Resource Centre

Australian Tamil Congress

Australian Western Saharan Association

Ballarat Circle of Friends 93, Australian Refugee Association

Brigidine Asylum Seeker Project

Catholic Religious Victoria

Catholic Social Justice Groups

Fitzroy Learning Network

Geelong Refugee Action and Information Network

Good Shepherd Australia/New Zealand

Hotham Mission

Humanitarian Crisis Hub

Labor for Refugees, Victoria

Melbourne Catholic Migrant and Refugee office

Refugee Action Collective (Vic)

Rural Australians for Refugees Queenscliff

Rural Australians for Refugees East Gippsland

Rural Australians for Refugees La Trobe Valley

Rural Australians for Refugees Traralgon

Rural Australians for Refugees Portland

Rural Australians for Refugees - Surf Coast

Rural Australians for Refugees - Daylesford

Rural Australians for Refugees Mount Gambier Inc

Refugee Council of Australia

Researchers for Asylum Seekers

RISE

Save the Children

Spectrum Migrant Resource Centre (SMRC

Tamil Refugee Council

The Australian Democrats Victoria
The Greens
West Papuans Group
Victorian Council of Churches
Victorian Immigrant and Refugee Women's Coalition