15 October 2021

Re: Nationality and Borders Bill (UK)

Dear Secretary,

Introduction and Background

The Justice and Peace Office of the Catholic Archdiocese of Sydney, Australia welcomes the opportunity to make a submission on the Nationality and Borders Bill (UK).

The Justice and Peace Office is an agency of the Catholic Archdiocese of Sydney, Australia. We promote justice, peace, human rights, ecology and development through projects and activities based on the social teachings of the Catholic Church. We liaise with a number of Catholic communities, social service, education and health agencies which provide direct support to people seeking asylum and refugees. Such agencies include various Catholic parishes and schools, the Jesuit Refugee Service Australia, Caritas Australia and the St. Vincent de Paul Society. We also engage in advocacy with our state and federal politicians for more humane treatment for all people who seek protection in Australia.

The proposed Nationality and Borders Bill ("the Bill"), if enacted, would adopt some of the worst aspects of Australia's immigration detention system. Therefore the Justice and Peace Office is making this submission to alert the Committee to the dangerous consequences passing such a law.

A Brief Summary of Australia's Recent Asylum Policy and Practice

On 13 August 2012 the Australian Government instituted a policy of so-called "offshore processing" under which people seeking asylum who arrive by boat without a valid visa are transferred to "Regional Processing Centres" in Nauru or Papua New Guinea. Because of the persecution they face, most, if not all, people seeking asylum cannot obtain a visa before they arrive. People seeking protection are held in detention for an indefinite period of time while their asylum claims are assessed by the laws of the third-party nations in which they are detained. Until Denmark also passed legislation to allow the "offshore processing" of people seeking protection earlier in 2021, Australia was the only country in the world to have this policy and practice.[1]

Since 19 July 2013, the Australian Government took an even harsher position towards those who arrive by boat seeking asylum in Australia, declaring that they will never be allowed to settle permanently in Australia, even if they are recognised as refugees. To deny a recognised refugee protection is in direct contravention of Australia's obligations under the Refugee Convention, to which Australia is party. Shortly after that, on 18 September 2013 the Australian Government began the military operation "Sovereign Borders" which forcibly turns boats back to their country of origin if they are carrying people seeking asylum. As at 20 July 2018, since "Operation Sovereign Borders" began the Australian Government has stated that they have intercepted and

[1] BBC News, "Denmark asylum: Law passed to allow offshore asylum centres", (3 June 2021) https://www.bbc.com/news/world-europe-57343572.

turned back 33 vessels with 810 individuals on board.[2] The Australian Government has repeatedly claimed that its policy of mandatory indefinite detention and offshore processing has succeeded in deterring asylum seekers from coming to Australia by boat. However, if that claim were true, there would be no need to turn back boats.

So-called "offshore processing" is responsible for numerous human rights abuses. It led to prolonged and indefinite detention, enormous human suffering caused by inhumane conditions, with grossly inadequate health care and consistent reports of sexual, physical and psychological abuse. Many of these people have been unjustifiably incarcerated in third party countries for more than eight years with inadequate food, water, living conditions and access to medical and mental health care. In July 2013, the UN Human Rights Committee found that the indefinite detention of these people breached the International Covenant on Civil and Political Rights.[3]

Australia's Immigration and Asylum policy over the last few decades have led to a social, political, humanitarian and economic disaster for those caught within the detention regime of Australia. The Justice and Peace Office's work with and on behalf of people seeking asylum and refugees has been made necessary by Australia's atrocious treatment of people seeking protection. Having seen the detrimental impact Australia's immigration detention policies have on those who are seeking protection we have been compelled to advocate for more humane treatment for them.

The Nationality and Borders Bill 2021 (UK)

The Justice and Peace Office is opposed to the passage of the Bill because it seeks to adopt the most dangerous and inhumane characteristics of Australia's immigration detention policies.

This submission outlines three of our greatest concerns regarding the Bill. A lack of comment on the other provisions of the Bill do not mean that we believe they are keeping with the UK's obligations under the Refugee Convention, or basic human rights standards. Our main concerns are that the Bill:

(1) will lead to Differential and Discriminatory Treatment between "Group 1" and "Group 2" Refugees. This two-tiered system raises additional specific concerns such as:

(a) withholding permanent protection from recognised refugees;

(b) the hindering of family reunification for refugees;

(c) giving refugees no recourse to public funds.

(2) allows for indefinite "offshore processing" of people seeking asylum

(3) seeks to expand use of 'out of town asylum centres'.

(1) Differential and Discriminatory Treatment between "Group 1" and "Group 2" Refugees

Clause 10 allows for differential and discriminatory treatment of refugees based on whether the person seeking asylum is classified as "Group 1" or "Group 2" refugee. A person is classified as a "Group 1" refugee if:

[2] Harriet Spinks, "Boat 'turnbacks' in Australia: a quick guide to the statistics since 2001" *Parliamentary Library Research Paper Series* 2018-2019 (July 2018)
https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5351070/upload_binary/5351070.pdf.
[3] Human Rights Law Centre, "UN finds Australia guilty of 143 violations of international law for indefinite detention of refugees" (22 August 2013)
https://www.hrlc.org.au/news/un-finds-australia-guilty-of-143-violations-of-international-law-for-indefinite-detention-of-refugees.

- "they have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention)" (cl 10(2)(a)); and
- They "have presented themselves without delay to the authorities" (Cl 10(2)(b));
- and if the refugee arrived or has remained unlawfully in the UK, "the additional requirement is that they can show good cause for their unlawful entry or Presence" (Cl 10(3))

Under this system of differentiation, only Group 1 Refugees would be afforded the rights that are in fact due to all refugees under the Refugee Convention. Group 2 refugees may face discrimination in not receiving the rights to which they are entitled under the Refugee Convention, particularly as regards to family reunification, and access to public funds.[4]

In September 2021, the United Nations High Commission on Refugees ("UNHCR") has clearly stated that the Bill's "attempt to create two different classes of recognised refugees is inconsistent with the Refugee Convention and has no basis in international law."[5] Under the Refugee Convention, determination of Refugee status is based on a person's well-founded fear of persecution on specified grounds, not based on their mode of transport, route of travel, their choice of country in which to seek asylum or the time at which they lodge their claim.[6] The Bill ignores the reality of forced migration in that people seeking asylum do not have an option of choosing their method of transport and that it is not a requirement of the Refugee Convention that people seek asylum in the first "safe" country they reach after leaving their home. Discriminating on the grounds of the mode of arrival is a regressive step for a democracy such as the UK to consider.

The UNHCR stated "As a party to the Refugee Convention, the United Kingdom has binding legal obligations towards all refugees under its jurisdiction. These must be reflected in domestic law, regardless of the refugees' mode of arrival, or the timing of their asylum claim."[7] The St Vincent de Paul Society has also expressed its concerned that the proposed two-tier immigration process undermines the right of those people claiming asylum to do so in the UK, a right enshrined in the Refugee Convention to which the UK is a signatory.[8] In October 2021 the UNHCR released an even more detailed legal opinion outlining its concerns about the Bill.[9]

(a) Witholding of Permanent Protection from Recognised Refugees

The Explanatory Notes to the Bill state that "Group 2" Refugees will only be eligible for "temporary protection status" which "will not include a defined route to settlement in the UK" and only allows them to apply for long residency status after 10 years and if they meet certain criteria".[10] A particularly concerning feature of this provision is that those who only have temporary protection status "will be expected to leave the UK as soon as they are able to or as soon as they can be returned or removed, once no longer in need of protection."[11]

As the UNHCR pointed out, this would deliberately impede naturalisation, rather than facilitating it as required by Article 34 of the Refugee Convention.[12] The UNHCR reiterated that the Refugee Convention prohibits the

[4] United Nations High Commissioner for Refugees, "Observations on the Nationality and Borders Bill, Bill 141, 2021-22" (September 2021) 8, https://www.unhcr.org/uk/uk-immigration-and-asylum-plans-some-questions-answered-by-unhcr.html (hereafter "UNHCR, "Observations on the Nationality and Borders Bill, (September 2021)")
[5] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 9.
[6] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 9.
[7] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 10.
[8] St Vincent de Paul Society England and Wales, "Our Response to the Nationality and Borders Bill" (6 July 2021) https://www.svp.org.uk/news/our-response-nationality-and-borders-bill.
[9] United Nations High Commissioner for Refugees, "UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22" (October 2021) https://www.unhcr.org/615ff04d4/unhcr-legal-observations-nationality-and-borders-bill-oct-2021.
[10] Nationality and Borders Bill, Explanatory Notes, https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf, 19 (hereafter "Nationality and Borders Bill, Explanatory Notes").
[11] Nationality and Borders Bill, Explanatory Notes, 19.
[12] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 11.

expulsion of refugees who are lawfully in the country, therefore any "expectation" that a refugee leave the United Kingdom under any other circumstances, if enforced, would breach the Refugee Convention.[13]

In relation to denying people rights afforded under the Refugee Convention, the UNHCR said "It is therefore difficult to see how the assertion that under the Bill "[a]ll individuals recognised as refugees by the UK will continue to be afforded the rights and protections required under international law, specifically those afforded by the 1951 Refugee Convention" can be sustained. The express intention is to deny them many of those rights".[14]

The Australian experience of temporary protection visas for recognised refugees is another policy failure. It leads to administrative complexity and inconsistency for both individuals and the Government, anxiety and a lack of integration for people seeking asylum. At the moment, people seeking protection in Australia may only apply for a three-year Temporary Protection Visa (TPV) or a five-year Safe Haven Enterprise Visa (SHEV). Government support for people on these visas ranges from minimal to non-existent. Temporary visas are a barrier to people seeking asylum obtaining employment and contributing meaningfully to the economy because employers are unsure of a person's visa status. They hinder people seeking protection from buying homes, establishing businesses, and better integrating into the community. They are also an administrative burden as they force people to reapply whenever their visas run out requiring the Department of Home Affairs to re-evaluate their claim each time. For those who have no government support or have not been able to find work they are often forced into overcrowded living, needing to sacrifice food and medication for rent, suffer poorer physical and mental health consequences and are be forced to rely on charities for necessities. We are working with NGO's across Australia to support the over 40,000 asylum seekers and refugees who are enduring this discriminatory policy. It has a destabilising impact of the lives of those enduring it and has a draining impact on the NGO's supporting this vulnerable cohort. Nor does it satisfy the government's covert desire to send people back to danger as lawyers are forced to constantly intervene to avoid refoulment.

(b) The hindering of Family Reunions for Refugees

The Explanatory Notes say it "will restrict family reunion rights [of Group 2 Refugees] and may only allow recourse to public funds in cases of destitution."[15] However, the UNHCR cautioned that "Any "restriction" on refugee family reunion as a penalty for claiming asylum in the UK rather than elsewhere, for delaying a claim or for unlawful entry or presence is likely to breach the UK's obligations under the European Convention on Human Rights and the Human Rights Act.[16]

In Australia a further consequence denying permanent protection and only granting TPVs and SHEVs is that those visa holders cannot propose relatives for settlement in Australia under the Refugee and Humanitarian Programme, nor can they sponsor relatives through Australia's general migrant program.[17] In a particularly cruel manoeuvre, even refugees who hold permanent protection visas that were issued before 13 August 2012, are accorded the lowest priority for family reunion under Australia's annual humanitarian intake.[18]

A recent report released by the Human Rights Law Centre *Together in Safety,* highlighted the detrimental impacts of Australia's policy of family separation for people seeking asylum and refugees.[19] The right to reunite with family members overseas, many of whom have also faced persecution and trauma is crucial to a refugee's

[13] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 11.
[14] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 16: Nationality and Borders Bill, Explanatory Notes, 146.
[15] Nationality and Borders Bill, Explanatory Notes, 19.
[16] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 16.
[17] Jesuit Refugee Service Australia and St. Vincent de Paul Society, "Access to family reunion for people seeking asylum and refugees" (June 2021) https://aus.jrs.net/wp-content/uploads/sites/20/2021/07/Family-Reunion-Policy-Brief-June-2021_Updated.pdf (hereafter "JRS Australia, Access to family reunion")
[18] JRS Australia, Access to family reunion.
[19] Human Rights Law Centre, "Exposing Australia's Cruel Separation of Refugee Families", https://www.hrlc.org.au/together-in-safety.

ability to integrate well into their new country. Family Reunification is of primary concern to almost all refugees and people seeking asylum. The Justice and Peace Office recently co-led a campaign where prioritising family reunion for refugees was one of our three demands of the Government.

(c) No Recourse to public funds

The Bill allows the Secretary of State to impose a "No recourse to public funds" condition on "Group 2" refugees and they may only have access to public funds if they are at risk of destitution.[20] This will have an adverse consequence on refugees, their families and in particular any children born into their families.

Australia has also experienced the fallout of denying even basic income support to people seeking asylum and refugees in Australia. People seeking asylum in Australia do not have access to the Australia's social security system, but some of them may be eligible to access the Status Resolution Support ("SRSS") service. That in itself is only 89% of Australia's lowest income support payment, JobSeeker.[21] The SRSS payment is so low that many recipients are still living below the poverty line. In addition, those who are not eligible for the SRSS payment still face chronic financial hardship, poverty, housing insecurity and homelessness.[22]

2. Offshore Processing

The Bill would allow for people seeking asylum to be removed from the UK while their claims are being processed. (Sch 3). This opens the door to the dangerous practice of offshore processing that Australia has adopted as the Bill does not specify a maximum time for offshore processing or detention or that people will be given adequate food, shelter, medical attention or social support.

Offshore Processing is one of the most cruel and inhuman facets of Australia's asylum policy. It invariably also involves some form of mandatory immigration detention. Since 19 July 2013, people seeking asylum who attempt to arrive in Australia without a valid visa (generally by boat) are subject to interception and turn-back policies, or offshore processing in Nauru or Papua New Guinea.

Offshore processing is also extraordinarily expensive. It costs the Australian Government approximately $3.4 million AUD to hold someone in offshore detention whereas it only costs $ 4,429 for a person seeking asylum to live in the community in Australia while their claim is being processed.[23] That money could be much better spent in processing their claims faster and assisting people seeking asylum to find work and integrate into the community.

There is no legal basis for incarcerating people who seek asylum as they have a right to seek asylum under international law. Australia's law does not specify a maximum time for immigration detention with the consequence that some people have been incarcerated for more than eight years. This prolonged detention with no certainty about the future has led to a severe deterioration in their physical and mental health. To date, 14 people have died as a result of Australia's offshore detention policy.[24] Australia faces intense domestic and international criticism for this policy.[25]

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[20] UNHCR, "Observations on the Nationality and Borders Bill, (September 2021) 18; Nationality and Borders Bill, Explanatory Notes, 19.

[21] Jesuit Refugee Service Australia and St Vincent de Paul Society "Access to a safety net for all people seeking asylum in Australia" (June 2021) https://aus.jrs.net/wp-content/uploads/sites/20/2021/07/Safety-Net-Policy-Briefing-June-2021_Updated.pdf.

[22] Ibid.

[23] Kaldor Centre for International Refugee Law, "The Cost of Australia's Refugee and Asylum Policy: A Source Guide" (5 May 2020) https://www.kaldorcentre.unsw.edu.au/publication/cost-australias-asylum-policy.

[24] Human Rights Law Centre, "#8YearsTooLong", (19 July 2021) https://www.hrlc.org.au/timeline-offshore-detention.

[25] Human Rights Watch, "Australia: Address Abuses Raised at UN Review", (20 January 2021) https://www.hrw.org/news/2021/01/21/australia-address-abuses-raised-un-review.

(3) Out of Town Asylum Centres/Immigration Detention

The Bill also allows for people seeking asylum to be detained indefinitely in so-called "out of town" asylum centres. In addition to Australia's policy of offshore processing and detention, Australia also utilises onshore immigration detention centres to hold people whose claims for asylum are being processed. Sadly, many of the harsh conditions of Australia's offshore detention centres are replicated in their onshore detention centres. Those in Australia's onshore immigration detention centres demonstrate shocking levels of mental health problems, cases of self-harm, hunger strikes, deaths and mistreatment in detention.[26] While visitors from the community to detention centres often provide much needed solace and support, the authorities keep changing the rules to make it more inconvenient for people to visit. As the proposed UK centres are likely to be in isolated locations it will be much harder for the people detained there to access community support.

The JRS UK supports asylum claimants accommodated at the disused Napier barracks in Folkestone in the UK. Their assessment is that "The accommodation is dehumanising and unsafe, and the mental health of those accommodated there deteriorates rapidly as weeks pass." Our concern is that the proposed use of out of town asylum centres in the UK will also lead to the same appalling conditions for people seeking asylum already in existence in Australia and the Napier Barracks in the UK.

Conclusion

The Justice and Peace Office is opposed to the passage of the Nationality and Borders Bill because it does not support the UK's obligations to people seeking asylum under the Refugee Convention. The most serious breaches concern the creation of a two-tier immigration system which disregards the criteria for seeking asylum under the Refugee Convention, the possible introduction of offshore processing and the increased use of 'out of town' asylum centres. All these measures have proven disastrous in the Australian context. If the UK does want to reform its immigration system it needs to do so in a way that gives effect to its obligations under the Refugee Convention and its other human rights obligations.

Sincerely,

Fr. Peter Smith
Justice and Peace Promoter
Justice and Peace Office
Catholic Archdiocese of Sydney

[26] Jesuit Social Services, "The harsh reality of Onshore Immigration Detention in Australia" (11 July 2019) https://jss.org.au/the-harsh-reality-of-onshore-immigration-detention-in-australia/.