



Submission to the Australian Human Rights Commission

**Inquiry into the use of Alternative Places of Detention**

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Submitted by  
**Amnesty International Australia**

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## **About Amnesty International**

Amnesty International is the world's largest independent human rights organisation, with more than ten million supporters in over 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments.

Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is impartial and independent of any government, political persuasion or religious belief and does not receive funding from governments or political parties.

Since 1961 Amnesty International has campaigned on behalf of thousands of prisoners of conscience - people who are imprisoned because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language or sexual orientation, gender identity or intersex status.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, intersex variations, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status.

Amnesty International campaigns for a world where human rights can be enjoyed by everyone, no matter what situation they are in. Amnesty International has championed the human rights of refugees, people seeking asylum and migrants for decades. We campaign to make sure governments honour their shared responsibility to protect the rights of refugees, people seeking asylum and migrants. We condemn any policies and practices that undermine the rights of people on the move.

Amnesty International Australia is a proud people powered movement founded on the work of volunteers and activists all around the country.

## 1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to make a submission to the Australian Human Rights Commission's Inquiry into the use of Alternative Places of Detention (APODs).

1.2 The recommendations contained in this submission go towards ending the harmful use of APODs as a form of 'general' detention, as well as establishing a uniform, fair, independent and impartial approach to the granting of bridging visas for refugees and people seeking asylum released into the community.

1.3 In addition, this submission seeks to outline legal proceedings before the Federal Court - supported by AIA - in relation to the lawfulness of APODs under the definitions section of the *Migration Act 1958* (Cth), as well as advocating for a uniform approach to compensation should those proceedings be successful.

1.4 The rights of refugees and people seeking asylum has been an important area of work for AIA in which extensive research, reports and submissions have been published that deal with issues of mandatory and indefinite detention, as well as the conditions of offshore detention centres, among other topics.

1.5 AIA maintains that the use of APODs by the Australian Government is a breach of Australia's international human rights obligations, as well as being unlawful and without proper authorisation in domestic legislation.

1.6 Over the past 30 years AIA has continued to monitor all forms of detention centres on mainland Australia and Christmas Island, as well as on Nauru and Papua New Guinea.

1.7 This submission will draw on AIA's expertise in international human rights law and standards as well as our Australian research.

1.8 With respect to the above, this submission will focus on:

1. International human rights frameworks;
2. The Impacts of APODs;
3. The Impact of Bridging Visas;
4. Remedies.

## **2. Recommendations**

AIA recommends that:

- 1) APODs are used as a detention measure of last resort, and for the shortest possible amount of time;
- 2) There be established a statutory maximum duration for detention which should be reasonable in its length. Once this period has expired the individual concerned should automatically be released;
- 3) That people seeking asylum who are detained have regular and automatic access to courts empowered to review the necessity of detention and to order release if continued detention is found to be unreasonable or disproportionate to the objectives to be achieved;
- 4) Establish a new class of bridging visa that allows for refugees and people seeking asylum to remain in the community with rights and entitlements as outlined above;
- 5) For the Australian Government to compensate all people who have been held in APODs under the circumstances outlined through this submission appropriately.

### 3. International Legal Human Rights Framework

3.1 Through ratification of binding international human rights treaties and the adoption of United Nations (UN) declarations, the Australian Government has committed to ensuring that all people enjoy universally recognised rights and freedoms.

3.2 A number of the Australian Government's current policies regarding refugees and people seeking asylum fall short with respect to a number of fundamental human rights. Most relevant to this submission are:

- 1) Non-refoulement – i.e. the ban on transfer to a real risk of serious human rights violations.<sup>1</sup>
- 2) The ban on torture and other cruel, inhuman, or degrading treatment or punishment.<sup>2</sup>
- 3) The right to security of the person – i.e. freedom from injury to the body and the mind, or bodily and mental integrity.<sup>3</sup>
- 4) The right to life.<sup>4</sup>
- 5) The right to liberty.<sup>5</sup>
- 6) The ban on arbitrary detention.<sup>6</sup>
- 7) The right to equality before the law.<sup>7</sup>

3.3 The Australian Government's current policies towards refugees and people seeking asylum have been consistently criticised by a number of United Nations (UN) Treaty Bodies, and most recently in Australia's third cycle Universal Periodic Review by the UN High Commissioner for Human Rights.<sup>8</sup>

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<sup>1</sup>UN General Assembly, Convention Relating to the Status of Refugees (Refugee Convention), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>.

<sup>2</sup>UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>.

<sup>3</sup> ICCPR, Arts. 9(1), 12(1).

<sup>4</sup> ICCPR, Art. 6(1).

<sup>5</sup> ICCPR, Art. 9(1).

<sup>6</sup> Ibid.

<sup>7</sup> ICCPR, Art. 14(1).

<sup>8</sup> United Nations Human Rights Council, 'Universal Periodic Review - Australia,' 2021 available at [https://lib.ohchr.org/HRBodies/UPR/Documents/Session37/AU/HC\\_letter\\_to\\_Australia.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session37/AU/HC_letter_to_Australia.pdf)

## **The 1951 Convention Relating to the Status of Refugees (Refugee Convention)**

3.4 The primary source of rights for refugees and people seeking asylum relevant to this submission can be found in the Refugee Convention 1951.<sup>9</sup> Australia voluntarily acceded to the Refugee Convention and Protocol and is therefore bound by the standards for refugee protection outlined within them.

3.5 Along with other international instruments and customary norms, the Refugee Convention defines who is and who is not a refugee, whilst also specifying a range of rights to which refugees and people seeking asylum are entitled.

3.6 The Refugee Convention crystallises principles such as non-refoulement - that is, refugees must not be expelled or returned to places where they would face persecution based on one or more Convention grounds.

3.7 However, read in partnership with customary international law, the concept of 'constructive refoulement' is also prohibited. 'Constructive refoulement' includes any actions, including arbitrary or prolonged detention, that would compel a person seeking asylum to abandon their claim and return to places where they would face persecution based on one or more Convention grounds.

3.8 Along with non-refoulement obligations, many other rights and protections can be found within the Refugee Convention.

3.9 Most relevant to this submission is Article 31(1) of the Refugee Convention, which highlights that States are not allowed to penalise refugees and people seeking asylum who show 'good cause' for illegal entry or stay.<sup>10</sup> This includes administrative penalties such as detention.

3.10 Under international law, detention is only lawful if it is reasonable, necessary and proportionate in all the circumstances, and can be periodically reviewed.

3.11 While it might be permissible to detain a person seeking asylum for a brief initial period to document their entry to the country, record their claims, and verify their identity, it is arbitrary – that is, unlawful – to continue to detain them while their refugee status is being determined.

3.12 The only circumstances in which detention could lawfully continue would be if there were a demonstrable risk of a particular individual absconding, committing a crime against others, or engaging in acts contrary to national security. This would have to be shown on a case-by-case basis, and the government would have to show that there was no other, less invasive means of achieving the same objective (such as through mandatory reporting requirements).

3.13 Furthermore, the preamble of the Refugee Convention highlights that refugees and people seeking asylum should be able to enjoy the widest possible exercise of their fundamental rights.<sup>11</sup>

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<sup>9</sup> Above, n1.

<sup>10</sup> Ibid.

<sup>11</sup> Refugee Convention, Preamble.

This includes civil rights; such as access to courts, as well as economic, social and cultural rights; ranging from employment rights to social security and the right to education.<sup>12</sup>

### **International Covenant on Civil and Political Rights**

3.11 The International Covenant on Civil and Political Rights (ICCPR) recognises the right to liberty and security of a person and prohibits arbitrary detention.<sup>13</sup> Although the ICCPR has never been fully adopted into domestic legislation, Australia ratified the ICCPR in 1980 and is therefore bound by the rights and protections outlined within it.

3.12 Most relevant to this submission is the guarantee to challenge the lawfulness of detention, stating:

*“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>14</sup>*

### **The Vienna Convention on the Law of Treaties**

3.13 The ratification of an international treaty is a voluntary act by which a state accepts to fulfil in good faith its obligations under that treaty.

3.14 The Vienna Convention on the Law of Treaties provides that ‘every treaty in force is binding upon the parties to it and must be performed by them in good faith’.<sup>15</sup>

3.15 Australia therefore has the obligation to comply with those treaties to which it is a party, as well as with customary international law, including those provisions relating to the protection of refugees, people seeking asylum, migrants and others in its territory or subject to its effective control.

3.16 As one previous UN High Commissioner for Human Rights observed:

*“Law, as any other institution, is subject to abuse. Apartheid South Africa was governed by laws that regulated oppression and led to horrific denial of dignity. The law that must guide us is that law which is capable of delivering justice and providing remedies for grievances. It is a dynamic and reliable institution that is capable of preserving the rights of all while adapting itself to the needs of a changing world. This is the role of human rights law.”<sup>16</sup>*

3.17 Thus, the Vienna Convention on the Law of Treaties states that parties ‘may not invoke the provisions of its internal law as a justification for its failure to perform a treaty’.<sup>17</sup>

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<sup>12</sup> Above, n1 Articles 3 - 34.

<sup>13</sup> Above, n2 Article 9.

<sup>14</sup> Above, n2 Article 9(4).

<sup>15</sup> United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <https://www.refworld.org/docid/3ae6b3a10.html>.

<sup>16</sup> UN High Commissioner for Human Rights, Louise Arbour, International Commission of Jurists, Biennial Conference, Berlin, Germany, 27 August 2004.

<sup>17</sup> Above, n15 Article 27.



3.18 These fundamental principles of international law and standards form the basis of AIA's recommendations.

#### 4. The Impact of Alternative Places of Detention

4.1 Since the inception of Australia's current offshore detention regime, approximately 1200 people have been transferred to Australia. These are refugees and people seeking asylum who were previously held offshore, and who were brought to Australia for their own, or a family member's medical treatment.

4.2 The majority of these refugees and people seeking asylum are now living in the community on some form of bridging visa or in community detention, awaiting permanent options of resettlement whilst contributing to the communities in which they live.

4.3 Despite this, approximately six refugees and people seeking asylum remain detained in Australia, with one individual still detained in an APOD.

4.4 However, there is nothing 'alternative' to this form of detention, with many reporting that conditions within APODs are far more restrictive than that of traditional detention centres. According to the United Nations High Commissioner for Refugees' 'Revised Guidelines on Detention', APODs do not fall within the parameters of 'alternatives to detention'.<sup>18</sup>

4.5 AIA has received reports of refugees and people seeking asylum remaining locked in their rooms for upwards of 23 hours a day. They have nearly no access to the outside world, let alone the proper medical treatment they were brought to Australia to receive.<sup>19</sup> Many were detained in these conditions for upwards of two years.

4.6 According to the Australian Human Rights Commission, APODs should only ever be used for "very short periods of time and under exceptional circumstances."<sup>20</sup>

4.7 To make matters worse, many of the refugees and people seeking asylum who have been held in these conditions have physical and mental health conditions that require lengthy periods of treatment, and in many cases, have deteriorated under the detention conditions of APODs.

4.8 The Home Affairs Minister has the ability to grant residence determinations to refugees and people seeking asylum being held in these conditions, which would allow people to live in the community while legally remaining in immigration detention.<sup>21</sup> The Minister can also grant a Bridging Visa (recently this option has been preferred, however while the Bridging Visa includes work rights, it does not include any welfare support).

4.9 Over the last year, approximately 200 refugees and people seeking asylum have been released into the community. However, no reasoning has ever been provided as to the length of

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<sup>18</sup> Office of the United Nations High Commissioner for Refugees, 'UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers,' 1999, available at <https://www.unhcr.org/en-au/protection/globalconsult/3bd036a74/unhcr-revised-guidelines-applicable-criteria-standards-relating-detention.html>

<sup>19</sup> Public Interest Advocacy Centre, 'Healthcare denied: Medevac and the long wait for essential medical treatment in Australian immigration detention,' 2021 available at [https://piac.asn.au/wp-content/uploads/2021/12/PIAC\\_Medevac-Report\\_2021\\_IssueE\\_03122150-1-1.pdf](https://piac.asn.au/wp-content/uploads/2021/12/PIAC_Medevac-Report_2021_IssueE_03122150-1-1.pdf)

<sup>20</sup> Australian Human Rights Commission, 'Inspections of Australia's immigration detention facilities 2019 Report,' 2019, available at <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

<sup>21</sup> Australian Human Rights Commission, 'Asylum Seekers and Refugees,' accessed 2021, available at <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees>

detention nor timing of releases. While some were granted freedom, others remain detained, reinforcing the arbitrary nature of this type of detention.

**Recommendation 1:** Ensure APODs are used as a detention measure of last resort, and for the shortest possible amount of time.

## 5. Alternatives to Detention

5.1 The United Nations High Commissioner for Refugees' 'Revised Guidelines on Detention' calls upon states to consider alternatives to the detention of people seeking asylum until their status is determined.<sup>22</sup> In accordance with these guidelines, the issuing of bridging visas may be considered to be an alternative to detention.<sup>23</sup>

5.2 As highlighted previously, the Australian Government has made a number of recent policy changes, namely the issuing of bridging visas.

5.3 Although welcomed, AIA has expressed concern with respect to these visas, as their issuing is often arbitrary, whilst also in practice restricting refugees and people seeking asylum's basic rights.

5.4 More recently, refugees and people seeking asylum who have been released into the community in this way are being granted a Bridging Visa E (BVE).

5.5 A BVE allows someone who is 'unlawful' to stay in Australia lawfully while their immigration matter is finalised. In most cases, this reflects the limbo many refugees and people seeking asylum find themselves in; unable to return to their country of origin, unable to permanently settle in Australia due to their mode of arrival, and yet with no other permanent solution.

5.6 While in most cases a BVE holder will be granted work rights, this trade off means BVE holders are not eligible to receive Centrelink and are ineligible for the Status Resolution Support Services (SRSS) program.<sup>24</sup>

5.7 The reality of this means that refugees and people seeking asylum who have been detained for close to a decade in conditions that amount to torture are released with the expectation that they find employment and accommodation with almost no support from the Australian Government.

5.8 This crisis is exacerbated by issues such as language barriers, and lack of appropriate training and support. This means that many refugees and people seeking asylum with work rights often face the prospect of significant financial hardship.

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<sup>22</sup> UN General Assembly, Convention Relating to the Status of Refugees (Refugee Convention), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>

<sup>23</sup> Ibid.

<sup>24</sup> Australian Human Rights Commission, 'Lives On Hold: Refugees and Asylum Seekers in the Legacy Caseload,' 2019 available at [https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_lives\\_on\\_hold\\_2019.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_lives_on_hold_2019.pdf).

“I am on a temporary bridging visa which means this visa has lots of restrictions. I can not study and I can not get qualifications which means I can't even think about my passion for the job I desire. All I want to do is make and sell my own wine, but because of my visa I'm not allowed to. For me it's like Iran! I left Iran to come to Australia for safety and now I live under the same restrictions! There is also no access to any financial support and it is extremely difficult to gain employment on a temporary visa and they ask for a resume. How do I explain to potential employers that I have been imprisoned for nearly 8 years? And they expect me to find somewhere to live with no tenant history or references. And there is also the trauma to deal with! I am free but still chained. Many people have been living in the community with these conditions for years and years. We all need permanent visas to live decent lives, to contribute.”

**Farhad Bandesh**, *refugee formally detained in Papua New Guinea and at the Mantra Hotel APOD.*

“I was released from the Park Hotel prison to a kind of freedom, but only with limited rights. It's like running out from an invisible coffin to the middle of nowhere. Everyone has the human rights to study and get a qualification. Why is the Australian Government separating us from others? I still deal with the trauma after 8 years of being in detention for no crime, but I don't give up! I believe one day I will get my rights back.”

**Mostafa Azimitabar**, *refugee formally detained in Papua New Guinea and at the Mantra Hotel and Park Hotel APOD.*

5.9 Refugees and people seeking asylum who are granted bridging visas should be afforded basic rights and entitlements, including the right to employment, education, social security and access to health care.

5.10 Furthermore, the issuing of bridging visas should be made by an independent Court empowered to review the necessity of detention and order release if continued detention is found to be unreasonable or disproportionate to the objectives to be achieved. This review process should follow the standards set out by international refugee law.

5.11 Persons whose asylum claims are yet to be finally determined should be provided immediately with bridging visas with basic rights and entitlements unless the review process establishes that it is necessary and proportionate to the objective to be achieved to detain them.

5.12 AIA maintains that recourse to more restrictive forms of detention should only take place in those circumstances where detention may exceptionally be resorted to as specified by the UNHCR, and detention should in all cases be in compliance with international human rights law and standards.

5.13 Persons whose applications for protection have been finally rejected on the basis of fair and satisfactory procedures should be granted a bridging visa with basic rights and entitlements pending their removal unless the review process establishes that it is necessary and proportionate to detain them.

5.14 Such a visa should automatically translate into a residency permit if there is no real likelihood or prospect of removal from Australia within a reasonable period of time.

**Recommendation 2:** Specify in national law a statutory maximum duration for detention which should be reasonable in its length. Once this period has expired the individual concerned should automatically be released.

**Recommendation 3:** Ensure that people seeking asylum who are detained have regular and automatic access to courts empowered to review the necessity of detention and to order release if continued detention is found to be unreasonable or disproportionate to the objectives to be achieved.

**Recommendation 4:** Establish a new class of bridging visa that allows for refugees and people seeking asylum to remain in the community with rights and entitlements as outlined above.

## 6. Remedies

6.1 Between 11 November 2019 and 21 January 2021, Mostafa Azimitabar (Moz) was detained within APODs. He was detained until 16 December 2020 at the Mantra Bell City Hotel in Preston, Victoria (Mantra Hotel), and then at the Park Hotel in Melbourne, Victoria, from about 17 December 2020 to about 21 January 2021.

6.2 On 14 April 2021 - supported by AIA and Marque Lawyers - Moz commenced proceedings against the Commonwealth of Australia in the Federal Court of Australia, challenging the lawfulness of the hotel detention regime provided for in the *Migration Act 1958* (Cth) (the Act).<sup>25</sup>

6.3 As an unlawful non-citizen in the migration zone, sections 189 and 196 of the Act require Moz to be detained and kept in immigration detention. Section 5 of the Act provides that “detain” means to take into immigration detention, or to keep or cause to be kept in immigration detention.

6.4 Section 5 of the Act defines “immigration detention” as being in the company of and restrained by particular people (which is not relevant), or being held by, or on behalf of, an officer:

- a) in a detention centre established under the Act; or
- b) in a prison or remand centre of the Commonwealth, a State or a Territory; or
- c) in a police station or watch house; or
- d) in relation to a non-citizen who is prevented, under section 249, from leaving a vessel - on that vessel; or

**e) in another place approved by the Minister in writing (see the definition of immigration detention in section 5(b)(v) of the Act).**

6.5 Section 5(b)(v) of the Act purports to authorise the Australian Government’s actions in detaining refugees and people seeking asylum in hotel APODs. The definitions of immigration detention found in sections 5(b)(i) - (iv) of the Act do not apply to Moz’s detention at the Mantra Hotel and the Park Hotel. Neither the Mantra Hotel nor the Park Hotel was a detention centre

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<sup>25</sup> Mostafa Azimitabar v Commonwealth of Australia VID177/2021.

established under the Act, a prison or remand centre of the Commonwealth, a State or a Territory, a police station or watch house, or a vessel.

6.6 Regardless of whether the Minister approved the Park Hotel or the Mantra Hotel in writing as another place of immigration detention for the purposes of section 5(b)(v) of the Act, Moz's detention at the Mantra Hotel and the Park Hotel was nevertheless unlawful and not properly authorised by the Act.

6.7 Section 273 of the Act already grants a specific power to the Minister to cause detention centres to be established and maintained under the Act. Moz's Federal Court case is arguing that the general ability to approve "*another place ... in writing*" (in the definition of "immigration detention" in section 5(b)(v) of the Act) is not sufficient to properly authorise APODs as places of immigration detention. The definition in section 5(b)(v) cannot be relied on to authorise detention in APODs instead of the specific provision in section 273, in circumstances where the Mantra Hotel and the Park Hotel exhibited the same, if not more restrictive, characteristics of detention centres established and maintained under section 273 of the Act.<sup>26</sup>

6.8 The Mantra Hotel and the Park Hotel had the following characteristics of a detention centre established under section 273 of the Act:

- a) Detainees were under the control of private security guards;
- b) There were patrols of security guards, and detainees were otherwise under regular observation by security guards;
- c) Guards performed a head count every morning and were able to access detainees' rooms at any time;
- d) Detainees shared rooms;
- e) Detainees were able to access kitchen / common areas only on one floor;
- f) Detainees' access to hotel facilities (e.g., the gym) was limited to one hour per day;
- g) Prior to 24 March 2020, detainees at the Mantra Hotel were only able to be outside if they were escorted by guards to Melbourne Immigration Transit Accommodation ("MITA");
- h) Detainees were subjected to pat-down searches to meet with visitors or be escorted to MITA;
- i) As a result of COVID-19, transfers to MITA for outdoor exercise and visits at the Mantra Hotel were suspended from 24 March 2020;
- j) Windows in the Mantra Hotel rooms did not open more than about 10cm and windows in the Park Hotel did not open at all.

6.9 Despite the similarities between the operation of the Mantra Hotel and the Park Hotel as APODs and the operation of detention centres established and maintained under section 273 of the Act (like MITA), the Mantra Hotel and the Park Hotel were not in fact established or maintained under section 273 of the Act.

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<sup>26</sup>Anthony Hordern & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australia (1932) 47 CLR 1 at 7 (Gavan Duffy CJ and Dixon J).

6.10 On the proper construction of the definition of “immigration detention” in section 5 of the Act, the Mantra Hotel and the Park Hotel could not lawfully have been approved by the Minister for the purpose of the definition of “immigration detention” in section 5 of the Act in circumstances where these APODs were being operated as de facto detention centres.

6.11 Accordingly, Moz’s case is that he was detained otherwise than in “immigration detention.” He was detained otherwise than in a place where his detention was properly authorised under the Act, and therefore his (and anyone else’s detention in an APOD under similar circumstances) was unlawful.

6.12 Moz’s case also includes a constitutional argument about the Commonwealth’s failure to properly authorise the expenditures in relation to Mantra Hotel and the Park Hotel.

6.13 The legal aspects of the proceedings have now been set down for a hearing before Justice Murphy in the Victorian Federal Court. The hearing will take place over three days, from 18 to 20 July 2022.

6.14 More broadly, if successful, this case will create a national precedent concerning the unlawful expansion of the immigration detention regime in Australia. If the court rules in Moz’s favour and determines that Moz’s detention at the Mantra Hotel and the Park Hotel was unlawful, the determination will apply to anyone who has been or is currently detained in an APOD under similar circumstances.

6.15 In terms of the relief being sought in the legal proceedings, Moz is seeking compensatory damages, including exemplary damages.

6.16 While Moz is not seeking any compensatory relief on behalf of others through this case, if successful, the Commonwealth will need to consider the consequences of the court’s decision for all people who have been detained in APODs under similar circumstances and compensate those who have been detained unlawfully.

**Recommendation 5:** For the Australian Government to compensate all people who have been held in APODs under the circumstances outlined through this submission appropriately.

## 7. Conclusion

The lasting impact of the use of APODs in a way for which they were never designed or intended has caused untold physical and psychological damage. The Australian Human Rights Commission should use the findings of this inquiry process to advocate for the abolition of APODs as a form of routine detention, at least in part bringing Australia in line with its international obligations.

Although in more recent times, there has been a change in approach for the vast majority of people who were detained in these conditions, there is no prohibition against the future use of APODs for such a purpose and the definition of immigration detention in section 5(b)(v) of the Act remains unchanged.

For refugees and people seeking asylum once detained in APODs and now living in the community, the conditions of their release are simply unacceptable. Beyond the denial of access to basic support, the inability of people to fully participate in society while they await more permanent options must end. A new bridging visa must be established that allows for refugees and people

seeking asylum to remain in the community with access to the full range of rights and entitlements, including the right to study.

Lastly, those who must live with the legacy of this practice, and who have suffered immeasurably, must be compensated appropriately.