



**Detention in Australia: Submission to the Subcommittee on  
Prevention of Torture**

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Submitted by  
**Amnesty International Australia**

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## **About Amnesty International**

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## 1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to make a submission to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), and welcomes the news about the upcoming visit of the SPT to Australia in October of this year.

1.2 AIA's submission is not intended to provide a comprehensive analysis of issues faced by all people in detention and people deprived of their liberty in Australia. It focuses on AIA's priority areas of work, including ending the over-representation and mistreatment of Aboriginal and Torres Strait Island Peoples - particularly children - in the criminal justice system and establishing a more humane policy that protects the rights of refugees and people seeking asylum.

1.3 In respect to these matters, Australia has failed to meet its obligations under the Optional Protocol to the Convention Against Torture (OPCAT), including establishing a National Preventive Mechanism (NPM), five years after ratifying OPCAT.

1.4 The minimum age of criminal responsibility has been an important area of AIA's research into the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system across Australia. In AIA's most recent report, *'Raise the Age: Kids Belong in Community'* AIA has recommended all state and territory governments raise the minimum age of criminal responsibility to at least 14 in their jurisdictions.<sup>1</sup> As of today, the minimum age of criminal responsibility remains at 10 years old in all jurisdictions, in contravention of the recommendations of the UN Children's Rights Convention<sup>2</sup> and the recommendation directly to the Australian Government by the UN Children Rights Committee<sup>3</sup>. The Australian Capital Territory and Northern Territory have committed to raising the age of criminal responsibility but have not done so at time of writing.

1.5 Among other issues, the failure of Australian Governments to raise the minimum age of criminal responsibility has directly contributed to the issues found in youth detention centres raised through this submission.

1.6 Furthermore, 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, community detention, among other topics.<sup>4</sup> AIA maintains that both mandatory and

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<sup>1</sup> Amnesty International, 'Kids Belong in Community,' 2020 available at <https://www.amnesty.org.au/wp-content/uploads/2020/05/Raise-the-Age-Kids-Belong-in-Community-2020.pdf>

<sup>2</sup> UN Convention on the Rights of the Child Committee, General comment 24 - Children's rights in juvenile justice, 2019. <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>

<sup>3</sup> UN Convention on the Rights of the Child, Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, 2019 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En)

<sup>4</sup> See Amnesty International, Submission to the Australian Human Rights Commission National Inquiry into Children in Immigration Detention,' 2014, available at <https://humanrights.gov.au/our-work/commission-website-national-inquiry-children-immigration-detention-114>; Amnesty International, 'Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru,' 2015 available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Submissions); Amnesty International, 'Island of Despair,' 2016, available at <https://www.amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>; Australian Human Rights Commission,

indefinite detention, wherever they occur, are a breach of Australia's international human rights obligations.

**1.7 AIA welcomes any opportunity to meet with the SPT during or before the scheduled visit to discuss these issues in more detail.**

## **2. Recommendations**

AIA recommends that in the upcoming visit to Australia, the SPT should:

- 1) continue to advocate for the effective establishment of NPMs across all Australian jurisdictions;
- 2) visit Don Dale, Banksia Hill, and Ashley Youth Detention Centres to hear first-hand accounts of life in these youth detention centres;
- 3) investigate the use of spit hoods across all jurisdictions, with a particular focus on the Northern Territory and Queensland. The SPT should advocate for spit hoods to be banned, in line with the 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory;
- 4) advocate for the implementation of all recommendations found in the 1991 Royal Commission into Aboriginal Deaths in Custody report;
- 5) advocate for the Federal Government to fulfill its commitment to establish a process for national, real-time reporting of all deaths in custody;
- 6) advocate the minimum age of criminal responsibility be increased to a minimum of 14 years of age across Australia;
- 7) advocate for the principle that no person should be detained in violation of their human rights and to bring an end to the mandatory and indefinite detention of people waiting for their asylum claims to be assessed;
- 8) advocate for the establishment of a formal, independent review process to assess on a case-by-case basis the necessity and proportionality of detention of all refugees and people seeking asylum who are currently detained by Australia;
- 9) engage in dialogue with people seeking asylum and refugees who have been detained in Australia's immigration detention regime, including those held, or previously held on Nauru and in Papua New Guinea;
- 10) seek further information about the Perth Immigration Detention Centre facility by visiting the centre and talking to the detainees;
- 11) include refugees and people seeking asylum on both Nauru and PNG in their assessment of Australia's obligations under OPCAT; and

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'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); Amnesty International, 'The Impact of Indefinite Detention: The Case to Change Australia's Mandatory Detention Regime,' 2005 available at <https://www.amnesty.org/es/wp-content/uploads/2021/08/asa120012005en.pdf>; Amnesty International, 'Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 2010, available at [https://www.aph.gov.au/Help/404?item=%2fsenate%2fcommittee%2flegcon\\_ctte%2fmigration\\_detentionreform\\_proc&user=extranet%5cAnonymous&site=website](https://www.aph.gov.au/Help/404?item=%2fsenate%2fcommittee%2flegcon_ctte%2fmigration_detentionreform_proc&user=extranet%5cAnonymous&site=website); Amnesty International, 'Submission to the Joint Select Committee on Australia's Immigration Detention Network,' 2011, available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/immigrationdetention/submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/immigrationdetention/submissions).

- 12) visit active APODs and advocate that they be used as a detention measure of last resort, and for the shortest possible amount of time.

### 3. Independent Inspection of Detention Facilities

3.1 Four years ago the Australian Government made a commitment under the Optional Protocol to the Convention Against Torture (OPCAT) to implement an independent inspection system for all places of detention.<sup>5</sup>

3.2 The implementation of these monitoring systems, known as 'National Preventive Mechanisms' (NPM) would have ensured independent oversight across Australia's detention network.

3.3 AIA notes with great concern that more than 13 years on from Australia signing OPCAT, Australia's three most populous states, New South Wales, Victoria and Queensland have failed to introduce their own NPM Models, reportedly telling the Federal Government they cannot meet the extended January 2023 NPM implementation deadline without more resourcing.<sup>6</sup> Recent evidence also suggests the NT Government, despite having a process in place, is failing to implement its commitments to monitor its own conditions of detention.<sup>7</sup>

3.4 Despite the responsibility of NPM implementation falling to state and territory governments, many aspects of Australia's detention system are managed at a Federal level, and it is the Federal Government that must ensure Australia meets its international treaty obligations.

3.5 To achieve this, AIA has recommended that any NPM model designed to monitor detention facilities meet the following criteria:

#### 1) *Independence;*

- a) The functional and operational independence of the NPM and its members must be guaranteed.<sup>8</sup> This means that the NPM should be formed in such a way that it does not constitute any part of the government, parliament, judiciary or prison system.
- b) The appointment procedure for the members of the NPM should be through an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. It should set out a period of office that should be sufficient to foster the independent functioning of the NPM.<sup>9</sup>
- c) The state should not appoint to the NPM members who hold positions that could raise questions of conflict of interest.<sup>10</sup>
- d) Members of the NPM must be guaranteed privileges and immunities that are necessary for them to function independently.<sup>11</sup>

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<sup>5</sup> Department of Foreign Affairs and Trade, 'Improving oversight and conditions in detention,' 2017 available at <https://www.dfat.gov.au/news/news/Pages/improving-oversight-and-conditions-in-detention>.

<sup>6</sup> The Guardian, 'Australia's indefinite detention of people with mental impairment breaches human rights, advocates say,' 15 August, 2022, available at <https://www.theguardian.com/australia-news/2022/aug/15/australias-indefinite-detention-of-people-with-mental-impairment-breaches-human-rights-advocates-say>

<sup>7</sup> ABC, NT is breaching its own independent monitoring policy at Don Dale Youth Detention Centre <https://www.abc.net.au/news/2022-08-24/don-dale-youth-detention-centre-nt-foi-policy-failings/101338742>

<sup>8</sup> UN General Assembly, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), 9 January 2003, A/RES/57/199, article 18(1), available at: <https://www.refworld.org/docid/3de6490b9.html>.

<sup>9</sup> Paris Principles: composition and guarantees of independence (Paris Principles), principle 3 and Subcommittee on the Prevention Against Torture (SPT) Guidelines on NPMs at para. 9 and 16.

<sup>10</sup> SPT Guidelines on NPMs at paras.18.

<sup>11</sup> OPCAT article 35 & SPT Guidelines on NPMs at para.26.

- e) The NPM should enjoy complete financial and operational autonomy and avoid actual and perceived conflicts of interest when carrying out its functions.<sup>12</sup>
- f) The NPM should have its own premises. Where the NPM performs other functions in addition to those under the OPCAT, its NPM functions should be located within a separate unit or department, with its own staff and budget.<sup>13</sup>
- g) The NPM should be able to draft its own rules and procedures.

2) *Adequate funding, free from political restrictions;*

- a) The NPM must have the necessary resources, including adequate funding to function effectively.<sup>14</sup>
- b) The founding instrument should provide for long-term funding and ensure that funding can not be restricted for spurious reasons e.g. as a punishment for criticism.
- c) The NPM should have financial control over its own staff, including to hire, dismiss and pay its own staff.<sup>15</sup>

3) *Independent, capable, gender-balanced and representative members*

- a) The experts of the NPM must have the required capabilities and professional knowledge to function effectively, ensuring gender balance and adequate representation of ethnic and minority groups.<sup>16</sup>
- b) The appointment procedure detailed in the founding instrument should take into account the specific expertise and experience required for visiting places of detention to prevent torture and other ill-treatment. Relevant experts would include lawyers, doctors including forensic specialists, psychologists, penitentiary management experts, and human rights experts.<sup>17</sup>
- c) The members and staff of the NPM should regularly review their working methods and undertake training in order to enhance their ability to execute their functions effectively.<sup>18</sup>

4) *Widest possible application of the definition of “places of detention” and “detainees”*

- a) The founding instrument of the NPM must guarantee it access to any place under the state party's jurisdiction (i.e where it exercises effective control) where people are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. The NPM must function throughout a state party, including all parts of a federal state without limitations or exceptions.<sup>19</sup>
- b) The definition of “places of detention” should include any places where people are or may be deprived of their liberty by any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is

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<sup>12</sup> SPT Guidelines on NPMs at paras. 12 and 30.

<sup>13</sup> Paris Principles, principle 2 and SPT Guidelines on NPMs at para.32.

<sup>14</sup> OPCAT article 18(3) and SPT Guidelines on NPMs at para.11.

<sup>15</sup> Paris Principles, principle 2.

<sup>16</sup> OPCAT article 18(2) and SPT Guidelines on NPMs at para. 17 and 20.

<sup>17</sup> SPT Guidelines on NPMs at paras. 17 and 20.

<sup>18</sup> SPT Guidelines on NPMs at paras. 31.

<sup>19</sup> OPCAT article 4(1)and 29 and SPT Guidelines on NPMs at para. 24 and 33.

not permitted to leave at will by order of any judicial, administrative or other authority.<sup>20</sup>

- c) This includes police stations, military and other security forces' stations and detention centres, all pre-trial detention centres, remand prisons, prisons for sentenced persons (civilian and military), places outside prisons where prisoners are employed, hospitals or clinics where prisoners are treated, rehabilitation and similar centres for juveniles, immigration centres, transit areas at international ports, transit vehicles, centres for detained people seeking asylum, refugees or internally displaced persons, psychiatric institutions, and other places of administrative detention where people are not permitted to leave at will, and places believed to be unofficial or secret places of detention.

5) *Full, immediate, unhindered access to all places of detention and detainees*

- a) The NPM must be allowed to conduct regular visits, announced and unannounced, to all places of detention, their installations and facilities.<sup>21</sup>
- b) The NPM must be able to choose the places it wants to visit and set the frequency of its regular visits without interference.<sup>22</sup>
- c) If there are several NPMs they must collectively monitor all places of detention.
- d) The NPM should be able to initiate contact with directors of places of detention and the executive, in particular where urgent action is required.

6) *Unrestricted access to all relevant information*

- a) The NPM must have access to all information relating to the number of places of detention and their location.<sup>23</sup>
- b) The NPM must have access to all information relating to the number of persons deprived of liberty.<sup>24</sup>
- c) The NPM must have access to all information about the treatment of persons deprived of their liberty and conditions of detention.<sup>25</sup>
- d) The NPM must be able to choose the persons it wants to interview and to conduct private interviews.<sup>26</sup>

7) *Unrestricted, safe access to the NPM*

- a) Guarantees must be put in place to ensure that no person or organisation is subject to any form of sanction, reprisal, or other harm for communicating any information, whether true or false, to the NPM.<sup>27</sup>
- b) Procedures must be put in place to ensure that confidential information collected by the NPM is not published without the express consent of the person concerned.<sup>28</sup>

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<sup>20</sup> OPCAT article 4(1) and (2).

<sup>21</sup> OPCAT articles 4 and 20(c) and SPT Guidelines on NPMs at para. 24 and 25.

<sup>22</sup> OPCAT article 20(e) and SPT Guidelines on NPMs at para.25.

<sup>23</sup> OPCAT article 20(a).

<sup>24</sup> OPCAT article 20(a).

<sup>25</sup> OPCAT article 20(b).

<sup>26</sup> OPCAT articles 20(d) and (e).

<sup>27</sup> OPCAT article 21(1) and SPT Guidelines on NPMs at paras. 14 and 27.

<sup>28</sup> OPCAT article 21(2).



- c) A procedure should be put in place to ensure that information regarding the NPM and on ways to contact it, is readily available to the public and all persons deprived of their liberty.
- 8) *Direct, unhindered, untapped communications with the Subcommittee*
- a) The NPM must be able to communicate and meet with the Subcommittee without interference.<sup>29</sup>
  - b) If there are several NPMs there should be a clear and coherent process for coordinating and communicating with each other and the SPT.
- 9) *NPMs recommendations and follow-up to be taken seriously*
- a) The NPM must be allowed to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment. It should also be granted the power to submit proposals and observations concerning existing or draft legislation.<sup>30</sup>
  - b) The NPM should be able to independently make public the findings and recommendations from its visits without interference. The NPM should be able to submit reports to and, where appropriate, address in person directors of places of detention, legislative bodies, the Executive and other political institutions.
  - c) The NPM should actively seek to follow-up on the implementation of any recommendations which the Subcommittee has made in relation to the country in question, liaising with the Subcommittee when doing so.<sup>31</sup>
  - d) The relevant authorities must examine the recommendations of the NPM and to discuss their implementation with the members of the NPM in a follow-up process.<sup>32</sup>
  - e) The relevant authority must publish and disseminate the annual reports of the NPM. It should also ensure that it is presented to, and discussed in the national legislative assembly, or Parliament or other political institutions. The Annual Reports of the NPM should also be transmitted to the SPT which will arrange for their publication on its website.<sup>33</sup>

**Recommendation 1:** AIA recommends that in the upcoming visit to Australia, the SPT continue to advocate for the effective establishment of NPMs across all Australian jurisdictions.

<sup>29</sup>OPCAT articles 12(c) and 20(f).

<sup>30</sup>OPCAT article 19(b) and (c) and SPT Guidelines 35 and 36.

<sup>31</sup>SPT Guidelines on NPMs at para. 38.

<sup>32</sup>OPCAT article 22 and SPT Guidelines on NPMs at paras. 13.

<sup>33</sup>OPCAT article 23 and SPT Guidelines on NPMs at paras. 29.

## 4. Incarceration of First Nations People

### Over-representation of Aboriginal and Torres Strait Islander Peoples in Prisons, with Focus on Children

4.1 Systemic racism, inequality and denial of self-determination are demonstrated by the over-representation of Aboriginal and Torres Strait Islander men, women and children and the treatment they receive in detention facilities across Australia.

4.2 Indigenous children constitute 5.8% of all young people aged 10-17 but make up 49% of all young people in detention, according to the 2020-2021 data released by the Australian Institute of Health and Welfare.

4.3 Like adults, Aboriginal and Torres Strait Islander children are disproportionately punished for minor offences and remanded in custody. The Minimum Age of Criminal Responsibility in all Australian jurisdictions is ten years old, despite UN experts, legal advocates, health professionals and community leaders agreeing that ten is too young to be exposed to the criminal justice system.

4.4 This has a particularly adverse effect on Aboriginal and Torres Strait Islander children. Most children in prison come from disadvantaged backgrounds, having experienced trauma from poverty, discrimination, homelessness, family violence, and sexual abuse. The Australian Medical Association has said that, "Criminalising the behaviour of young and vulnerable children creates a vicious cycle of disadvantage and forces children to become entrenched in the criminal justice system."<sup>34</sup>

4.5 The Northern Territory has the most significant difference in detention rates between Indigenous and non-Indigenous people, with Aboriginal and Torres Strait Islander youth 31 times more likely to be incarcerated than their non-Indigenous peers.<sup>35</sup>

4.6 An ABC TV documentary *Australia's Shame* brought national attention to the systematic abuse of Indigenous children at Don Dale Youth Detention Centre in the Northern Territory, where children were isolated without sunlight or running water, tear gassed, stripped naked and restrained in chairs.<sup>36</sup>

4.7 The Royal Commission into the Detention and Protection of Children in the Northern Territory that ensued the media investigation found "systemic and shocking failures" in the youth detention system that have taken place over a prolonged period and "were ignored at the highest levels". None of the officers responsible was charged, and many recommendations remain ignored.

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<sup>34</sup> AMA calls for Age of Criminal Responsibility be raised to 14 years  
<https://www.ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age>

<sup>35</sup> Youth detention population in Australia 2021  
<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2021/contents/summary>

<sup>36</sup> Four corners: Australia's Shame  
<https://www.abc.net.au/4corners/australias-shame-promo/7649462>

4.8 Despite promising to close Don Dale in 2017, the Northern Territory government has since announced further expansion of the facility. And children have struggled to access essential services like health care and education due to staff shortages and a sharp increase in detainees.<sup>37</sup>

4.9 Legal advocates say it is “only a matter of time” before death in custody occurs at Don Dale. A 16-year-old boy attempted suicide in June 2022, the latest in at least 54 cases of self-harm or suicide attempts over the past year.<sup>38</sup>

4.10 A report by the Northern Territory Office of the Children’s Commissioner raised concern that children at risk of self-harm are left in their cells for up to 23 hours and 45 minutes per day while waiting for medical assessment. Of the 35 children currently in Don Dale, almost all are Aboriginal.

<sup>39</sup>

4.11 These incidents of abuse are not unique to Don Dale. It is a national problem. In Western Australia, the state with the highest rate of Aboriginal and Torres Strait Islander youth detention, former president of the state’s children’s court Denis Reynolds labelled its youth justice system “broken” and “a basket case”.<sup>40</sup>

4.12 The treatment of detainees at Banksia Hill Youth Detention Centre has been known for years. A 2017 report noted that a special operations group uses stun grenades, gun-laser sights and pepper spray, unprecedented in adult and juvenile custodial settings.

4.13 Incidents at the Banksia Hill centre show Australia pays little attention to the difference between children and adults. In July 2022, the state government transferred 17 young people, some as young as 14, from the Banksia Hill juvenile detention centre to Casuarina maximum security adult prison, following “escalating” disruptions from young people. A suicide prevention expert said the incident is a sign of deteriorating mental health among the young detainees and raised the alarm that there could be a youth suicide for the first time in state prison. Western Australia’s Children and Young Person Commissioner Jacqueline McGowan-Jones said many of the children have a disability, many have severe mental health issues, and all have trauma in their background.<sup>41</sup>

4.14 In August 2022, three of the children committed self-harm by swallowing shards of broken glass and were taken to the hospital. The office of the Minister for Corrective Services confirmed 36 minor self-harm attempts and one attempted suicide at Banksia Hill in July, two minor self-harm

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<sup>37</sup> Urgent reform needed after ten year old detained at Don Dale

<https://www.theage.com.au/national/urgent-reform-needed-after-ten-year-old-detained-at-infamous-don-dale-20211202-p59e5j.html>

<sup>38</sup> Is it really going to take a death? Legal advocates say Don Dale must be shut down.

<https://www.theguardian.com/australia-news/2022/jun/10/is-it-really-going-to-take-a-death-legal-advocates-say-don-dale-must-be-shut-down>

<sup>39</sup> Media statement detention monitoring report

[https://occ.nt.gov.au/\\_data/assets/pdf\\_file/0017/1073114/occ-media-statement-detention-monitoring-report.pdf](https://occ.nt.gov.au/_data/assets/pdf_file/0017/1073114/occ-media-statement-detention-monitoring-report.pdf)

<sup>40</sup> Western Australia youth justice system broken

<https://www.abc.net.au/news/2022-08-03/western-australia-youth-justice-system-broken-banksia-hill/101292948>

<sup>41</sup> We will see a death: Fears for children inside maximum security Perth prison after boy swallows glass

<https://www.theguardian.com/australia-news/2022/aug/04/we-will-see-a-death-advocates-fear-for-children-inside-maximum-security-perth-prison-after-boy-swallows-glass>

attempts and two attempted suicides at Casuarina from 20-31 July and 11 minor self-harm attempts and one attempted suicide in the first week of August.<sup>42</sup>

4.15 The State Children’s Court president Hylton Quail earlier this year warned, “when you treat a damaged child like an animal, they will behave like an animal”. The judge said about a 13-year-old child at Banksia Hill threatening self-harm: “I’m satisfied that his deteriorating behaviour in detention is directly linked to the conditions of his detention, the lengthy lockdowns he has been subject to, the failure to provide him with psychological care, education programs, stimulation, and consistent support.” The boy’s detention management report said he was keen to learn and consistently showed good behaviour, but he lost his access to education and counselling due to staff shortages and lockdowns.<sup>43</sup> His story was similar to those of 28 Aboriginal children in 2019 who were denied their right to education at the Banksia Hill juvenile centre.<sup>44</sup>

4.16 While Don Dale and Banksia Hill represent the more egregious cases, other youth detention centres around the country have also come under increasing scrutiny in recent years. These are, but not limited to, Frank Baxter Youth Justice Centre in New South Wales, the Parkville Youth Justice Centre in Victoria, the Brisbane Youth Detention Centre in Queensland and the Ashley Youth Detention Centre in Tasmania.

4.17 In August 2022, former detainees from the Ashley Youth Detention Centre shared harrowing testimonies of sexual and physical abuse during the Tasmanian Government’s inquiry into sexual abuses in custodial settings,<sup>45</sup> AIA has led calls for its immediate closure<sup>46</sup>. The prevailing conditions in these centres have been exacerbated by the Covid-19 pandemic, with young people having been subjected to extended periods of lockdowns and solitary confinement.

**Recommendation 2:** AIA recommends that in the upcoming visit to Australia, the SPT should visit Don Dale, Banksia Hill, and Ashley Youth Detention Centres to hear first-hand accounts of life in these youth detention centres.

## Use of Spit Hoods

4.18 The 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory recommended the ban on the use of spit hoods. But police data in February 2022 showed that “inhumane” spit hoods and restraint chairs have since been used on children in police watch houses 27 times.<sup>47</sup>

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<sup>42</sup> Alarming figures reveal number of suicide attempts and self harm in juvenile justice system

<https://www.nit.com.au/alarmed-figures-reveal-number-of-suicide-attempts-and-self-harm-incidents-in-was-juvenile-justice-system/>

<sup>43</sup> Hylton Quail slams conditions at Banksia Hill Detention Centre

<https://www.abc.net.au/news/2022-02-10/hylton-quail-slams-conditions-banksia-hill-detention-centre/100819262>

<sup>44</sup> Fears WA youth justice system broke after 28 Aboriginal children deprived an education

<https://www.watoday.com.au/national/western-australia/fears-wa-youth-justice-system-broken-after-28-aboriginal-children-in-detention-deprived-an-education-20190121-p50srh.html>

<sup>45</sup> Sydney Morning Herald, Youth detention centre a monster

<https://www.smh.com.au/national/youth-detention-centre-a-monster-inquiry-told-20220818-p5bayn.html>

<sup>46</sup> ABC, Calls to close Ashley Prison now, 2022

<https://www.abc.net.au/news/2022-08-24/call-to-close-ashley-prison-now-in-wake-of-coi-revelations/101362550>

<sup>47</sup> Northern Territory police still using spit hoods and restraint chairs on children

4.19 Queensland is the only other state that uses spit hoods on children, with parliamentary data revealing state police have used them eight times on children aged 10-17 since 2019. South Australia was the most recent state to outlaw the practice in September 2021.<sup>48</sup>

4.20 AIA and the Omega Foundation wrote to the Group of Government Experts on torture free trade in December 2021 and singled out spit hoods (or spit guards) for particular mention as law enforcement equipment that can be misused for torture or other ill-treatment.<sup>49</sup>

**Recommendation 3:** AIA recommends that in the upcoming visit to Australia, the SPT investigate the use of spit hoods across all jurisdictions, with a particular focus on the Northern Territory and Queensland. The SPT should advocate for spit hoods to be banned, in line with the 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory.

### Aboriginal Deaths in Custody

4.21 Nearly 500 Aboriginal and Torres Straits Island people have died in custody over the three decades since the Royal Commission into Aboriginal Deaths in Custody. Most recently, on 12 August, a 32-year-old man died at maximum-security Port Phillip prison in Melbourne. In May 2022, Aboriginal woman Veronica Nelson died alone in her cell despite repeatedly calling out for help.<sup>50</sup>

4.21 Over-representation of First Nations peoples in detention and lack of adequate care due to systemic racism and discrimination have contributed to mental and physical harm and accelerating numbers of Aboriginal deaths in custody.

4.22 Aboriginal and Torres Strait Islander women are even less likely to receive appropriate medical care. A highly distressing incident involved a young Aboriginal woman who was transported naked, menstruating and handcuffed in the back of a prison van from Bandyup Women's Prison to Graylands Hospital for treatment in 2018.<sup>51</sup>

4.23 The death of Aboriginal men and women in custody brings many tragedies for their families and communities. It also impacts the transmission of culture and compounds intergenerational trauma.

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<https://www.theguardian.com/australia-news/2022/feb/25/northern-territory-police-still-using-inhumane-spithoods-and-restraint-chairs-on-children>

<sup>48</sup> South Australian Government, Statute Amendment (Spithood Prohibition Act 2021)

[https://www.legislation.sa.gov.au/lz/path=/y/a/2021/statutes%20amendment%20\(spit%20hood%20prohibition\)%20act%202021\\_47](https://www.legislation.sa.gov.au/lz/path=/y/a/2021/statutes%20amendment%20(spit%20hood%20prohibition)%20act%202021_47)

<sup>49</sup> Tackling the trade in tools of torture

<https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT3069982017ENGLISH.pdf>

<sup>50</sup> Aboriginal man dies in custody

<https://www.abc.net.au/news/2022-08-12/aboriginal-man-dies-in-custody-at-port-phillip-prison-melbourne/101326070>

<sup>51</sup> Woman prisoner transported naked and handcuffed in prison

<https://www.watoday.com.au/national/western-australia/woman-prisoner-transported-naked-and-handcuffed-in-prison-van-20180325-p4z65t.html>

4.24 Successive governments have failed to fully implement the Royal Commission's 339 recommendations and many coronial investigations. Some of these critical recommendations include tackling the root causes of imprisonment, diverting people away from prisons, and removing hanging points from prisons, which are yet to be actioned. Worse, no one has ever been convicted or held accountable for these deaths.

4.25 For years, Australia has not heeded the call of the Office of the UN Human Rights Commissioner for Human Rights that independent investigations must occur for all deaths that happen in the administration of justice. Governments have also failed to record Aboriginal deaths in custody properly. AIA welcomes the new Labor Government's commitment to establishing national, real-time reporting of all deaths in custody.

**Recommendation 4:** AIA recommends that in the upcoming visit to Australia, the SPT should advocate for the implementation of all recommendations found in the 1991 Royal Commission into Aboriginal Deaths in Custody report.

**Recommendation 5:** AIA recommends that in the upcoming visit to Australia, the SPT should advocate for the Federal Government to fulfill its commitment to establish a process for national, real-time reporting of all deaths in custody.

**Further Recommendations:**

During its visits to Australia, we ask the SPT to recommend that Australian government's:

1. Raise the minimum age of criminal responsibility to at least 14 years old, with no limitations for children under this age;
2. abolish the presumption of doli incapax, and alternatives, such as 'developmental immaturity' be enshrined in legislation across all jurisdictions;
3. develop a crime prevention plan that adopts a justice reinvestment approach. This involves setting up a justice reinvestment fund, investing in community-based justice reinvestment pilots and providing communities with the resources and authority they need to ready themselves for a justice reinvestment approach;
4. increase funding for Indigenous community-led and controlled organisations to support culturally appropriate, place-based, Indigenous designed and led preventative programs to address the needs of Aboriginal and Torres Strait Islander people;
5. recommend accountability for police and corrective services officers responsible for causing harm and death in custody of Aboriginal people through disciplinary and court

procedures; and

6. recommend an Aboriginal Inspectorate position be created within each agency designated the National Preventive Mechanism with oversight of places of detention within the criminal justice system, focusing on Aboriginal prisoners and detainees.

## 5. Immigration Detention

5.1 The Australia OPCAT Network's 2020 submission on the implementation of OPCAT in Australia has a detailed chapter on the state of immigration detention. AIA echoes the concerns raised in that submission about the conditions of immigration detention.

### Indefinite and Mandatory Detention

5.2 Under Australia's mandatory detention legislation, people seeking asylum who arrive without adequate documentation are held in immigration detention pending the outcome of their asylum claim. The only way their detention can come to an end under Australian law is for the person to be granted a visa enabling them to remain lawfully in Australia or to be removed or deported to another country.

5.3 However, under the *Migration Act 1958*, those whose detention cannot be ended in any of these ways must continue to be detained. Due to the lack of any independent review, a rejected person seeking asylum may be subject to indefinite detention pending removal. Additionally, Australian law prohibits the release of detained people seeking asylum while their status is being determined, notwithstanding the relevant Minister's ability to lift the bar.<sup>52</sup>

5.4 It can take more than five years for a final determination to be made on a person seeking asylum's claim. Meanwhile, the person remains in detention until they are recognised as a refugee under the Refugee Convention and granted a visa, or are removed.<sup>53</sup>

5.5 This delay can be due to a number of factors including the nature of the claim itself and the difficulty in obtaining relevant information. However, in some cases it is also due to the shortcomings of Australia's refugee determination system, which lacks adequate safeguards to prevent errors in decision making at first instance or in relation to subsequent applications, and provides asylum applicants with inadequate advice and representation beyond appeal to the Administrative Appeals Tribunal.

5.6 There is mounting evidence that detainees, particularly those who are kept in prolonged or indefinite detention, are at high risk of experiencing chronic depression, incidents of self-harm or attempted suicide.<sup>54</sup>

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<sup>52</sup> Migration Act 1958

<https://www.legislation.gov.au/Details/C2021C00357>

<sup>53</sup> Ibid

<sup>54</sup> Amnesty International, 'Island of Despair,' 2016

<https://www.amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>

5.7 AIA considers it unacceptable that exercising the right to seek asylum in Australia from human rights abuses in other countries should be met with a system that further violates human rights, including mandatory administrative detention of a prolonged or indefinite period of time.

5.8 The International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary detention and provides that a detained person must be able to take proceedings before a court that can determine the lawfulness of detention and order release where detention is unlawful.

5.9 AIA maintains that detention should only take place in exceptional circumstances, consistent with international human rights standards. Persons whose detention does not meet such standards should be immediately released from detention. Persons who are detained beyond a maximum period of detention which should be reasonable in its length and as specified in national law should be automatically released.

### *Perth Immigration Detention Centre*

5.10 Perth Immigration Detention Centre (PIDC) is located near the Domestic Terminal of the Perth Airport, Western Australia, and was opened in 1981. It has a capacity of 45 and currently holds a population of approximately 24 detainees.<sup>55</sup> It is designed to primarily detain individuals in transit for temporary periods (24 - 48 hours) while awaiting a decision concerning deportation or resettlement.<sup>56</sup> It would now appear that long term detainees with specific health needs are also being held in the PIDC. AIA has brought forward cases of people seeking asylum detained at PIDC for up to ten years.

5.11 According to the Australian Human Rights Commission, the PIDC accommodation and living areas are cramped, with limited outdoor space accessible to detainees. It has been reported that the PIDC is not an appropriate or accommodating facility for those who are held in detention for prolonged periods of time.<sup>57</sup> It is also stated that the PIDC is not a suitable environment for managing people with complex vulnerabilities and significant healthcare needs.<sup>58</sup>

5.12 An investigation conducted within the PIDC found that the recent use of mechanical restraints in circumstances where restraints had previously been deemed unnecessary were used

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<sup>55</sup> Refugee Council of Australia (2019). Detention statistics for Australia - Refugee Council of Australia. [online] Refugee Council of Australia. Available at: <https://www.refugeecouncil.org.au/detention-australia-statistics/>

<sup>56</sup> Global Detention Project. (n.d.). *Perth Immigration Detention Centre in Australia*. [online] Available at: <https://www.globaldetentionproject.org/countries/asia-pacific/australia/detention-centres/159/perth-immigration-detention-centre>

<sup>57</sup> THE IMPLEMENTATION OF OPCAT IN AUSTRALIA SUBMISSION BY THE AUSTRALIA OPCAT NETWORK TO THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (SPT) AND THE UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION (WGAD). (2020). [online] Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation\\_of\\_OPCAT\\_in\\_Australia.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation_of_OPCAT_in_Australia.pdf).

<sup>58</sup> Australian Human Rights Commission (2018.). *Australian Human Rights Commission Inspection of Perth Immigration Detention Centre: Report (2018) | Australian Human Rights Commission*. [online] Available at: <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/australian-human-rights-commission-inspection-0>.



excessively.<sup>59</sup> Lack of precautions are taken to ensure the safety, security and wellbeing of its detainees, a testament to the fact that facility staff face significant challenges in offering meaningful engagement with detainees due to the lack of dedicated facilities and staffing limitations.<sup>60</sup> An outcome of this has been the excessive reporting of the experiences of multiple detainees who have faced deplorable conditions in relation to their liberty, freedom of movement, and right to the highest attainable health standard.<sup>61</sup>

5.13 The case studies provided below illustrate the impact and effect of these measures on the conditions that people seeking asylum detained at PIDC have been exposed to.

Ted fled Iran and travelled by boat to Australia in July of 2013. After his boat was intercepted, Ted was taken to Darwin, arriving on 15 July 2013 as an "unauthorised maritime arrival" under s 5AA of the Migration Act 1958. Since then, he has attempted to apply for a Temporary Protection (subclass 785) visa. However, this was not communicated to Ted, leaving him detained for an ongoing period of ten years, with the last 18 months spent at PIDC.

Whilst detained, Ted has made several attempts to end his life, including by hanging and swallowing razor blades. In 2015, Ted attempted suicide by hanging, rendering Ted mute, and diagnosing him with psychogenic mutism. He engaged in a hunger strike in 2018 due to the poor conditions he had been exposed to whilst in detention (Ted has been transferred to virtually all the IDCs in Australia, with concerns raised with AIA that this has been deliberately used as a means to disorient him). Ted has been diagnosed with Post Traumatic Stress Disorder and prescribed medication. The mental health team at Villawood Immigration Detention Centre developed a Risk Management Plan in 2019, where it was stipulated that Ted be confined to a single bedroom "at all time".

During his time in PIDC, Ted has been subject to arbitrary detention, inadequate healthcare standards, suicide ideation and attempts, deprivation of liberty and restricted freedom of movement. He wishes to end his indefinite detention.

**Case Study: Ted**

*Note: name is anonymised, full details can be provided upon request. Full case study redacted to protect identity of individual*

<sup>59</sup> Australian Human Rights Commission (n.d.). Report of an Inquiry into a Complaint of Acts or Practices Inconsistent With or Contrary to Human Rights in an Immigration Detention Centre Human Rights and Equal Opportunity Commission. (n.d.). [online] Available at: [https://humanrights.gov.au/sites/default/files/content/pdf/human\\_rights/asylum\\_seekers/HRC\\_10.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/human_rights/asylum_seekers/HRC_10.pdf)

<sup>60</sup> Ibid.

<sup>61</sup> THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (SPT) IMMIGRATION DETENTION IN AUSTRALIA: MAIN ISSUES OF CONCERN SINCE JANUARY 2020. (n.d.). [online] Available at: <https://www.refugeecouncil.org.au/wp-content/uploads/2022/08/2022-Report-to-the-SPT-Final.pdf>

Amir fled Fiji and has been detained at PIDC for five years and two months. During this period Amir has sustained back injuries which have resulted in four lower back spinal surgeries. Whilst enduring his injuries, Amir claims he has been unable to receive adequate healthcare services and support from Serco officers at PIDC. Because of his injuries, Amir has been identified as disabled. His application for a protection visa with the Administrative Appeals Tribunal has been postponed, leaving him with no legal support.

Case Study: Amir

Note: name is anonymised, full details can be provided upon request.

Case study redacted to protect identity of individual

**Recommendation 6:** AIA recommends that in the upcoming visit to Australia, the SPT should advocate for the principle that no person should be detained in violation of their human rights and to bring an end to the mandatory and indefinite detention of people waiting for their asylum claims to be assessed.

**Recommendation 7:** AIA recommends that in the upcoming visit to Australia, the SPT should advocate for the establishment of a formal, independent review process to assess on a case-by-case basis the necessity and proportionality of detention of all refugees and people seeking asylum who are currently detained by Australia.

**Recommendation 8:** AIA recommends that in the upcoming visit to Australia, the SPT should seek further information about the PIDC facility by visiting the centre (along with those centres identified in the Australia OPCAT Network's 2020 submission) and talking to the detainees.

## Offshore Detention

5.14 The current policy of the Australian Government is that no person who arrives in the country by boat seeking asylum can ever settle in Australia. Instead, anyone who arrives by boat is forcibly taken by the Government of Australia to offshore 'Regional Processing Centres'.<sup>62</sup>

5.15 A mainstay of the Australian Government's offshore detention regime, Nauru and Australia signed a new memoranda of understanding about offshore processing on the island as recently as 2021.<sup>63</sup>

<sup>62</sup> Australian Human Rights Commission, 'Asylum Seekers and Refugees,' accessed 2021, <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees>

<sup>63</sup> Department of Foreign Affairs and Trade, 'Memorandum of Understanding between the Republic of Nauru and Australia on the Enduring Regional Processing Capability in Republic of Nauru,' 2021, <https://www.dfat.gov.au/geo/nauru/memorandum-understanding-between-republic-nauru-and-australia-enduring-regional-processing-capability-republic-nauru>

5.16 Under this agreement, Nauru is responsible for assessing people's claims for international protection and hosting the facilities required to detain them, while Australia is committed to bearing the entirety of the cost.

5.17 As a matter of international law, a state can be held responsible for the conduct of its officials when they are outside its territory. The test for whether Australia retains primary responsibility over refugees and people seeking asylum offshore is not whether those individuals are located on Australian soil, but whether Australia exercises "effective power and control" over them. Currently there are more than 100 refugees and people seeking asylum remaining in Nauru.<sup>64</sup>

5.18 Similar arrangements existed between the Australian and Papua New Guinea Government, however this was terminated at the end of 2021, with - according to the Australian Government - responsibility for the more than 100 refugees and people seeking asylum remaining there transferring to the Papua New Guinea Government, despite a lack of alternative resettlement options.<sup>65</sup>

5.19 The Australian Government has repeatedly claimed that this policy of offshore detention deters people-smugglers and protects people who might otherwise undertake the hazardous boat crossing to Australia. However, since its inception, offshore processing has been designed to be punitive and has been widely promoted by a succession of Australian governments as a deterrent to refugees and people seeking asylum, rather than people-smugglers.

5.20 This deterrence-based response to those attempting to reach safety by boat, which includes boat push-backs, is both abusive and unsustainable. It has seen more than a dozen avoidable deaths, along with serious and worsening physical and mental health impacts.<sup>66</sup>

5.21 Furthermore, it has seen the deteriorating security and safety of those continuing to be detained under this regime, with people seeking asylum being forcibly returned to their countries of origin and then becoming victims of persecution, violence, torture and death.

5.22 AIA and researchers from our International Secretariat have travelled to Nauru in 2012 and 2016 and Papua New Guinea in 2013, 2014, 2018 and 2019, interviewing close to a hundred refugees and people seeking asylum, gathering documentary, video and audio evidence about conditions on the islands. Mental illness and incidents of self-harm among refugees and people seeking asylum in offshore detention are shockingly commonplace. Nearly all of the people whom Amnesty researchers and campaigners have met reported mental health issues of some kind: high levels of anxiety, trouble sleeping, and mood swings were frequently mentioned. Almost all said that these problems began when they were transferred offshore.<sup>67</sup>

5.23 This is in part due to the debilitating uncertainty refugees and people seeking asylum face about their future. Although refugees and people seeking asylum on Nauru and in Papua New

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<sup>64</sup> Department of Home Affairs, 'Visa Statistics,' 2021

<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

<sup>65</sup> Legal and Constitutional Affairs Legislation Committee, 'Official Committee Hansard,' 2021, pg. 59, [https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/25201/toc\\_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee\\_2021\\_10\\_25\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/25201/0000%22](https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/25201/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2021_10_25_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/25201/0000%22)

<sup>66</sup> Monash University, 'Australian Border Deaths Database,' 2021

[https://www.monash.edu/\\_data/assets/pdf\\_file/0018/2523141/BOB-Research-Brief-18- border-deaths-annual-report-2020\\_Final.pdf](https://www.monash.edu/_data/assets/pdf_file/0018/2523141/BOB-Research-Brief-18- border-deaths-annual-report-2020_Final.pdf)

<sup>67</sup> Amnesty International, 'Game Over,' 2019

<https://www.amnesty.org.au/gameover/>

Guinea are no longer technically detained, they are nonetheless in a detention-like environment. In all intents and purposes Nauru and Papua New Guinea are open-air prisons that people cannot leave, even when they have been officially recognised as refugees.

5.24 Many of the refugees and people seeking asylum interviewed by Amnesty described how they or their friends and family had been attacked and/or subjected to verbal abuse. On Nauru, this includes physical attacks on men, children and women – including sexual assaults – as well as robbery and attempts to break into their homes.<sup>68</sup>

5.25 Refugees and people seeking asylum who were victims of crime said that the police failed to adequately investigate their complaints, a claim supported by Nauru's former Chief Justice.<sup>69</sup>

5.26 The health care available in offshore processing is also inadequate. Certain medical services, specialists, tests and procedures are not available. Individuals said they had to wait for months to see a visiting specialist or undergo a necessary test, even when, according to the doctors, their condition was serious, such as suspected cancer.<sup>70</sup>

5.27 Descriptions of medical transfers to and from Nauru and Papua New Guinea expose a system that traumatises the patient and appears to be done in a manner that is not in the best interests of patients. The medical transfer of patients depends on the discretion of the Home Affairs Minister, and medical professionals can be overruled or their advice disregarded.<sup>71</sup>

5.28 This system has resulted in the avoidable deaths of more than a dozen refugees and people seeking asylum, including that of Hamid Khazaei. The Queensland Coroner found that Mr Khazaei's death was preventable and the result of "compounding errors" in health care provided under Australia's offshore immigration detention system.<sup>72</sup>

5.29 The inescapable conclusion, made clear by the purported intent of this system, is that the abuse and anguish that constitutes the daily reality of refugees and people seeking asylum held offshore is the express intention of the Australian Government.

5.30 The conditions on Nauru and in Papua New Guinea - refugees' severe mental anguish, the intentional nature of the system, and the fact that the goal of offshore processing is to intimidate or coerce people to achieve a specific outcome - amounts to torture.

5.31 In furtherance of a policy to deter refugees and people seeking asylum, the Australian Government has made a calculation in which intolerable cruelty and the destruction of the physical and mental integrity of hundreds of children, men and women, have been chosen as a tool of government policy. In doing so the Australian Government is in breach of international human rights law and international refugee law.

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<sup>68</sup> Amnesty International, 'Until When?', 2018

<https://www.amnesty.org/en/documents/asa34/9422/2018/en/>

<sup>69</sup> Geoffrey M. Eames AM QC, 'Submission to Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru,' 2015

<http://www.aph.gov.au/DocumentStore.ashx?id=1c235c65-51bc4979-93f3-320175ad7c9e&subId=352831>

<sup>70</sup> Amnesty, Island of Despair

<https://www.amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>

<sup>71</sup> Migration Amendment (Repairing Medical Transfers) Bill 2019 (Cth)

<sup>72</sup> ABC, 'Asylum Seeker Hamid Khazaei's Death From Leg Infection Was Preventable, Queensland Coroner Finds,' 2018

<https://www.abc.net.au/news/2018-07-30/asylum-seeker-hamid-khazaei-coronial-inquest-death-preventable/10050512>

5.32 The authority responsible for the systematic human rights abuses is the Australian Government. It is the Australian Government that set up the offshore processing system and the Australian Government that has forcibly transferred people seeking asylum offshore. A range of Australian Government officials and contractors – on Nauru, Papua New Guinea and in Australia – are involved with the operation of these regimes. The Australian authorities are continuously informed about what is happening.

**Recommendation 8:** AIA recommends that in the upcoming visit to Australia, the SPT should include refugees and people seeking asylum on both Nauru and PNG in their assessment of Australia’s obligations under OPCAT.

## Alternative Places of Detention

5.33 Another population relevant to offshore processing on Nauru and Papua New Guinea is a group of approximately 1200 people currently in 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.

5.34 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 now live.

5.35 Yet up until recently, 196 of these refugees and people seeking asylum, transferred to Australia under the repealed Medevac legislation, were detained in what the Government refers to as ‘Alternative Places of Detentions’ (APODs), such as hotels and hospitals.<sup>73</sup>

5.36 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>74</sup>

5.37 AIA has received reports of refugees and people seeking asylum remaining locked in their rooms for upwards of 23 hours a day. They have had nearly no access to the outside world, yet alone the proper treatment they were brought to Australia to receive. Many were held in these conditions for upwards of two years.<sup>75</sup>

5.38 According to the Australian Human Rights Commission, APODs should only ever be used for “very short periods of time and under exceptional circumstances.”<sup>76</sup>

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<sup>73</sup> Immigration detention concerns deepen

<https://humanrights.gov.au/about/news/immigration-detention-concerns-deepen>

<sup>74</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

<https://www.unhcr.org/en-au/protection/globalconsult/3bd036a74/unhcr-revised-guidelines-applicable-criteria-standards-relating-detention.html>

<sup>75</sup> Public Interest Advocacy Centre, ‘Healthcare denied: Medevac and the long wait for essential medical treatment in Australian immigration detention,’ 2021

[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>76</sup> Australian Human Rights Commission, ‘Inspections of Australia’s immigration detention facilities 2019 Report,’ 2019

<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

5.39 To make matters worse, many of the refugees and people seeking asylum being 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.

5.40 The Home Affairs Minister has the ability to grant residence determination to refugees and people seeking asylum who are being held in these conditions, which allows people to live in the community while legally remaining in immigration detention. 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).

5.41 Over the last year, more than 200 refugees and people seeking asylum have been released into the community. However, no reasoning has ever been given as to why some have been released, whilst others remain detained, reinforcing the arbitrary nature of the detention for those who remain. Many with mental health issues already at breaking point.

5.42 Approximately six refugees and people seeking asylum remain detained in Australia, with one individual still detained in an APOD. AIA is supporting a legal challenge to the practice of APODs which is currently before the Federal Court.<sup>77</sup>

**Recommendation 9:** AIA recommends that in the upcoming visit to Australia, the SPT should visit active APODs and advocate that they be used as a detention measure of last resort, and for the shortest possible amount of time.

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<sup>77</sup> The Guardian, Refugee sues Australian Government for alleged unlawful imprisonment in Melbourne hotels, 2022. <https://www.theguardian.com/australia-news/2021/jul/30/kurdish-refugee-sues-australian-government-for-alleged-unlawful-imprisonment-in-melbourne-hotels>