

**AMNESTY
INTERNATIONAL**



DEFENDING HUMAN RIGHTS

Submission to the Department of Treasury

2023-24 Pre-Budget submissions

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Submitted by
Amnesty International Australia

Contact: Ry Atkinson

Email: ry.atkinson@amnesty.org.au

Phone: +61 423 270 124

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About Amnesty International

Amnesty International is a global movement of more than 10 million people in over 160 countries - the world's biggest human rights organisation - who take injustice personally. We campaign for a world where human rights are enjoyed by all.

We investigate and expose the facts, whenever and wherever abuses happen. We lobby governments as well as other powerful groups such as companies, making sure they keep their promises and respect international law.

By telling the powerful stories of the people we work with, we mobilise millions of supporters around the world to campaign for change and to stand in the defence of activists on the frontline.

We support people to claim their rights through education and training. Our work protects and empowers people – from abolishing the death penalty to advancing sexual and reproductive rights, and from combating discrimination to defending refugees' and migrants' rights.

We help to bring torturers to justice, change oppressive laws, and free people who have been jailed just for voicing their opinion.

We speak out for anyone and everyone whose freedom or dignity are under threat and we advocate for laws and policies that ensure peoples human rights are respected.

1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to make a submission to the Department of Treasury regarding Australia's 2023-24 budget priorities.

1.2 This submission has two focuses: the protection of refugees and asylum seekers primarily through an increase to the Refugee and Humanitarian Program; as well as Indigenous justice, particularly the overrepresentation of Indigenous children in the youth justice system. In highlighting these areas, AIA endeavours to draw the Australian Government's attention to issues which require serious consideration in planning Federal Budget expenditure.

Increasing the Refugee and Humanitarian Intake

1.3 Over the past decade, AIA has witnessed firsthand the situation facing refugees in refugee camps in Indonesia, Jordan and Thailand, as well as urban refugees in Kenya, Thailand, Indonesia, and in Malaysia. In 2018 and 2019 AIA researchers were again able to document the ongoing crisis facing refugees in the Middle East, Africa and Europe, including most recently a visit to assess the situation facing Rohingya refugees in Cox's Bazaar in Bangladesh.

1.4 It is with this experience, supported by findings stated in UNHCR's *Projected Global Resettlement Needs 2023*, that AIA understands the current refugee crisis to be the largest the world has faced since the Second World War.¹

1.5 Despite this, in last year's interim October Budget, the Australian Government announced an annual humanitarian quota of just 13,750 places. AIA has continually expressed disappointment at the previous reduction in the humanitarian intake (reduced from the 18,750 in 2019-20 program), particularly in our submission to the previous government's pre-budget priorities, where AIA called for an increase in the program to at least 30,000 places annually in line with global needs.

1.6 While AIA welcomes the Australian Government's prioritisation of Myanmar nationals as a priority caseload in our onshore humanitarian visa program, as well as a recommitment to this group through designated places in Australia's offshore program, the fact is that without a large increase to Australia's Refugee and Humanitarian Program, these measures will remain limited in their impact.

Indigenous Justice

1.7 Aboriginal and Torres Strait Islander peoples are over-represented in many of the most unfavourable national statistics: imprisonment; death in custody; violence against women and children; suicide – the list goes on. To fully address these issues, federal and state and territory governments must recognise the intersection of multiple human rights violations and the underlying causes of colonisation and racism.

¹ UNHCR, '2023 Projected Global Resettlement Needs,' 2022, pg. 14, available at <https://www.unhcr.org/en-au/publications/brochures/62b18e714/2023-projected-global-resettlement-needs.html>

1.8 AIA welcomed the Labor Government's First Nations Justice Package totalling \$99 million over four years in its interim Budget, in particular, the \$81.5 million for 30 community-led justice reinvestment initiatives across the country and an independent national justice reinvestment unit to coordinate these initiatives in keeping with its election commitment.²

1.9 AIA has advocated for funding these initiatives to help end the over-representation of First Nations people, particularly children, and for additional funding for Aboriginal legal services to increase their capacity to provide culturally appropriate assistance.

1.10 In the lead-up to last year's Budget, AIA also called on the Australian Government to allocate resourcing for establishing consolidated real-time reporting of First Nations deaths in custody at a national level; as well as the full implementation of Australia's Optional Protocol to the Convention Against Torture (OPCAT) obligations to monitor human rights violations in places of detention; and for a self-determined, standalone plan for First Nations women as part of the National Plan to End Violence against Women and Children 2022-2032.

1.11 Labor came to power championing an Indigenous voice to Parliament and expressing a strong commitment to protecting the rights of First Nations peoples. However, the fact is that Aboriginal children and adults have continued to suffer horrific abuses in the criminal justice system over the past year - from Aboriginal children attempting suicide at juvenile detention centres to Aboriginal men and women dying in custody.

1.12 The two Aboriginal deaths in custody in quick succession towards the end of 2022 in Western Australia³ - the state with the highest rate of Aboriginal incarceration in Australia - has once again revealed a lacking commitment from governments when it comes to preventing Aboriginal deaths in custody 30 years after the Royal Commission handed down its report.

1.13 In addition to this, Australia has again failed to meet its extended deadline to establish National Preventive Mechanisms (NPMs) across all Australian jurisdictions as was its obligation under commitments agreed to through ratifying OPCAT.

1.14 First Nations women also experience disproportionate rates of violence that is often more severe and more complex in its impacts. Research shows that First Nations women are 32 times more likely to be hospitalised and 11 times more likely to die from violence than non-Indigenous women in Australia.⁴

² Budget Paper No. 2: Budget Measures, APH, available at https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fbudget%2F2022O_02%22

³ Advocates call for urgent action after two 'incredibly tragic' Aboriginal deaths in custody, The Guardian, available at www.theguardian.com/australia-news/2022/dec/30/advocates-call-for-urgent-action-after-two-incredibly-tragic-aboriginal-deaths-in-custody

⁴ Indigenous women should be at the centre of combatting domestic violence, SMH, available at www.smh.com.au/national/indigenous-women-should-be-at-the-centre-of-combatting-domestic-violence-20220914-p5bhy2.html

1.15 Governments have consistently committed to Closing the Gap targets. However, the Commonwealth Closing the Gap Annual Report released in November 2022 revealed that only 4 of 18 socio-economic targets are on track.

1.16 With this noted, AIA's submission will focus on:

Refugees and People Seeking Asylum

1. The International Context
 - a. Myanmar and Rohingya Refugees
 - b. Afghanistan
2. The Humanitarian Program
 - a. Size of the Program
 - b. Alternative Pathways: the Community Sponsorship Program & the Community Refugee Integration and Settlement Pilot

Indigenous Justice

3. Overrepresentation of First Nations people in the criminal justice system
 - a. Justice Reinvestment Initiatives
 - b. Deaths in Custody
 - c. Nation-Wide Implementation of OPCAT
4. Violence Against Aboriginal Women
5. Closing the Gap Targets

1.17 The recommendations contained in this submission go towards rebuilding Australia's reputation as a leading resettlement country and helping to address the worsening global refugee crisis; as well as implementing evidence-based, community-led initiatives that positively impact the lives of First Nations People.

2. Recommendations

AIA recommends that:

- 1) the Refugee and Humanitarian Program continue to provide a targeted number of places for Rohingya refugees from Myanmar, while taking a leading role in resettling Rohingya refugees out of Bangladesh;
- 2) an additional 3,500 places be made available for Afghan refugees in addition to the 16,500 places already committed, and existing applications be expedited and prioritised as a matter of urgency;
- 3) the Australian Government commit to increasing the offshore Humanitarian Program to 30,000 places per annum in the 2023-24 Budget, with the vast majority being visa subclass 200 (UNHCR referred) refugees;
- 4) the Australian Government de-link the onshore component of the Refugee and Humanitarian Program from the offshore component;

- 5) within the Refugee and Humanitarian Program, the Australian Government include unallocated quotas that can thereby be used in a flexible way for urgent and emergency cases;
- 6) the Australian Government establish a uniform process that would facilitate additional emergency intakes when crises like those we are seeing now occur;
- 7) the Australian Government develop a separate process for refugees who will transition from a TPV or SHEV onto a permanent visa who wish to sponsor their family members;
- 8) the Australian Government further reform Australia's two private sponsorship programs, the CSP and CRISP, so that they are in addition to Australia's regular Refugee and Humanitarian Program;
- 9) the number of places offered under the CSP and CRISP be increased to a combined 5,000 places per annum, increasing to 10,000 places per annum within 5 years;
- 10) the Australian Government eliminates any non-protection related criteria from the CSP, such as employment status, age, country of origin and English language proficiency;
- 11) the Australian Government continue funding justice investment initiatives across the country and the national body to coordinate these initiatives. Given the grossly disproportionate incarceration rates of Aboriginal and Torres Strait Islander Peoples, it is crucial that an Australian model of Justice Reinvestment centres on Aboriginal and Torres Strait Islander leadership and expertise at every level;
- 12) the Australian Government provide resourcing for consolidated real-time reporting of all deaths in custody at a national level and commit to systemic changes to ensure these tragedies are not repeated. This would require federal and all state and territory governments to fully implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody;
- 13) the Australian Government commit to ensuring the implementation of OPCAT with adequate resourcing across all jurisdictions as a matter of urgency;
- 14) the Australian Government commit to resourcing and implementing a genuinely self-determined, stand-alone plan to address the unacceptably high rates of violence Aboriginal and Torres Strait Island women and children experience; and
- 15) the Australian Government commit funding to existing and new initiatives to meet Closing the Gap targets, particularly in relation to the disproportionate rates of incarceration, suicide, violence against women and children, and removal of children into protection services.

3. International Legal Human Rights Framework

Refugees and People Seeking Asylum

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

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

3.3 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.

3.4 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.

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

3.6 As a party to the Refugee Convention, Australia has a legal obligation to comply with its provisions and take the necessary steps to give effect to the treaty within its jurisdiction.

Indigenous Justice

3.7 Several UN treaties and guidelines have influenced youth justice systems worldwide, the Convention on the Rights of the Child (CROC) being the primary source of these rights and ratified by most countries, including Australia. It explicitly recognises the particular needs of Indigenous children.⁵

3.8 Article 37 of CROC provides that States Parties shall ensure that "the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time." Article 40(3) requires States Parties to "promote the establishment of measures for dealing with such children without resorting to judicial proceedings to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."⁶

3.9 The UN Committee on the Rights of the Children (UN Committee) has recommended "the most common minimum age of criminal responsibility internationally is 14 years".⁷ Despite this,

⁵ Convention on the Rights of the Child, available at www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

⁶ Ibid.

⁷ United Nations, Committee on the Rights of the Child, *General Comment No. 24 (2019) Children's Rights in the Child Justice System*, 18 September 2019, p. 7.

Australia's minimum age of criminal responsibility is one of the lowest among OECD member countries.⁸

3.10 The UN Committee also urges States Parties to consider “the application of special measures in order to ensure that Indigenous children have access to culturally appropriate services in the [area of] juvenile justice.”

3.11 The United Nations Guidelines for the Prevention of Juvenile Delinquency sets out that community-based services and programs should be developed to prevent youth offending and that “formal agencies of social control should only be utilised as a means of last resort.” They further provide that “every society should place a high priority on the needs and well-being of the family and of all its members” and “should establish policies that are conducive to the bringing up of children in a stable and settled family environment.”⁹

3.12 In September 2019, Australia appeared before the UN Committee on the Rights of the Child and was harshly criticised for not moving to raise its “very low” age of criminal responsibility.¹⁰

3.13 Australia ratified the United Nations Optional Protocol to the Convention Against Torture (OPCAT) in 2017, which requires establishing an independent inspection and monitoring system for all places of detention.¹¹

3.14 The rights of First Nations children and women to safety is foundational to many human rights frameworks ratified and endorsed by Australia, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of Race Discrimination, the Convention on the Rights of the Child (CRC), and significantly for First Nations peoples, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹²

Increasing the Refugee and Humanitarian Program

4. The International Context

4.1 It is important to note that with the Covid-19 pandemic ravaging almost every country across the globe since early 2020, refugees and people seeking asylum have faced particular vulnerabilities. These include but are not limited to border closures, a lack of access to countries of asylum, as well as difficulties in maintaining safety measures in overcrowded refugee camps and/or detention centres.

⁸ Draft report, Council of Attorneys-General Age of Criminal Responsibility Working Group, available at <https://www.croakey.org/wp-content/uploads/2022/12/age-of-criminal-responsibility-working-group-draft-report-20201.pdf>

⁹ United Nations Guidelines for the Prevention of Juvenile Delinquency, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>

¹⁰ United Nations, Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, 1 November 2019, paragraph 14.

¹¹ Australia needs to deliver on our treaty promises, AHRC, available at <https://humanrights.gov.au/about/news/opinions/australia-needs-deliver-our-treaty-promises>

¹² Convention on the Elimination of All Forms of Discrimination Against Women - Human rights at your fingertips, AHRC, available at <https://humanrights.gov.au/our-work/commission-general/convention-elimination-all-forms-discrimination-against-women-human>

4.2 Yet as restrictions on movement ease, and as global conflicts escalate, there are record numbers of people on the move - more than 100 million.¹³ This means that resettlement as a durable solution is now more important than ever.

4.3 As noted by UNHCR, world resettlement needs now exceed 2 million people, an increase of 36% on the previous year.¹⁴

4.4 While in 2021, just 57,436 of the world's refugees were resettled, the number of refugees resettled after referral by UNHCR was only 39,266, just 2.7% of the 1.445 million refugees identified as needing resettlement in 2021 and less than 0.2% of the global refugee population.¹⁵

4.5 To respond to this need UNHCR has stated it will continue to prioritise those who are most vulnerable, including where protection risks are greatest. It is crucial Australia's program reflects the priority needs identified by UNHCR, ensuring the majority of those coming to Australia are referred by UNHCR through a non-discriminatory process.

4.6 Globally, UNHCR has noted that once again Syrian refugees constitute the largest resettlement need of any refugee group, with almost 777,800 Syrian refugees estimated to be in need of resettlement in 2023.¹⁶

4.7. In addition to Syria, UNHCR has identified four other priority areas, which include the deteriorating situations in the Asia-Pacific region developing from Afghanistan and Myanmar.

Myanmar and Rohingya Refugees

4.8 Since seizing power in a coup d'état on 1 February 2021, the Myanmar military has committed massive human rights violations across the country. Armed conflict has erupted or escalated in several regions, including in Kayah and Kayah States, on the country's eastern border with Thailand. The military's operations there have reflected its signature policy of collective punishment of civilian communities perceived to support an armed group or, in the coup's aftermath, the wider protest movement. Amid international inaction and waning global interest, the military has proceeded to attack civilians and civilian infrastructure from the air and the ground, unleashing a new wave of war crimes and likely crimes against humanity that have caused mass displacement and a deepening humanitarian crisis.¹⁷

4.9 The fighting and myriad violations by the Myanmar military have caused widespread displacement in various parts of the country, including Kayah and Kayah States. In some cases, entire villages have been emptied of their populations; at times, civilians have had to flee more than once over the past months. According to the UN, as of 11 April 2022, there were more than 74,000 people displaced in Kayah State; in Kayah State, the situation was even more dire, with around one third to half of the total population displaced – some 91,000 within Kayah State and tens of thousands more to southern Shan State.¹⁸

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid, pg.15.

¹⁷ Amnesty International, 'Bullets Rained From the Sky: War Crimes and Displacement in Eastern Myanmar,' 2022, available at <https://www.amnesty.org/en/documents/asa16/5629/2022/en/>.

¹⁸ OCHA, 'Humanitarian Update No. 17,' 2022, available at, bit.ly/3vo7qmP.

4.10 This is in addition to the targeted violence, persecution and crimes against humanity perpetrated by the Myanmar military in August 2017, in Rakhine state, that saw 700,000 Rohingya forced to flee, a reality that has contributed to Rohingya refugees being one of the largest refugee populations in the Asia region.¹⁹ With close to 1 million Rohingya now in camps on the border in Bangladesh it is important that Australia not only continues to join international efforts to support these individuals but also shows solidarity with the region by helping to resettle the small number of Rohingya identified in need by UNHCR in Bangladesh, Malaysia and Indonesia.

4.11 While AIA welcomed the previous government's commitment to earmark 2,000 places within the existing Humanitarian Program for people from Myanmar, concerns remain. Specifically the failure to resettle Rohingya, the largest refugee population in our immediate region. It is difficult to convince our regional neighbours to take a more rights based approach to the treatment of Rohingya refugees in their countries if Australia refuses to show sufficient solidarity through the use of its humanitarian program.

4.12 It is also important to highlight the fact that Bangladesh is now again allowing resettlement of Rohingya out of the country after over 10 years of restricting any form of resettlement. This is something Australia should not only welcome but given its previous success at resettling Rohingya refugees out of Bangladesh, should take a leadership role in supporting.

4.13 AIA notes that as a percentage of the Humanitarian Program, under the previous allocation, a significant portion of the program is being directed to those from Myanmar, which AIA believes is warranted. However, due to the program remaining at historically low levels, this figure fails to comprehend the crisis at hand. This issue will be dealt with in more detail later in this submission, when discussing how Australia can better respond to emergency situations.

Recommendation 1: AIA recommends that the Humanitarian Program continues to provide a targeted number of places for Rohingya refugees from Myanmar, while taking a leading role in resettling Rohingya refugees out of Bangladesh.

Afghanistan

4.14 Eighteen months on from when the Taliban seized power in Afghanistan, a litany of human rights abuses and violations under international law have been committed by the Taliban, with absolute impunity and zero accountability. As always, it is the civilian population that has suffered.

4.15 Despite the announcement of a 'general amnesty' by the Taliban on 17 August 2021 for those who had worked with the US-led coalition and the previous government, hundreds of former security force personnel and government officials have been subjected to extrajudicial killings, often after public humiliation and torture. Many more have been disappeared.²⁰

¹⁹ Above, n1, pg. 101.

²⁰ Amnesty International, 'The Rule of Taliban: A Year of Violence, Impunity and False Promises,' 2022, available at <https://www.amnesty.org.au/wp-content/uploads/2022/08/REPORT-The-Rule-of-Taliban-A-Year-of-Violence-Impunity-and-False-Promises.pdf>.

4.16 The human rights crisis in Afghanistan is further compounded by the impact of the ongoing massive humanitarian emergency, which prompted the UN to launch in January 2022 its largest ever humanitarian assistance appeal for any single country.²¹

4.17 Within weeks of the Taliban taking power, reports began emerging of non-Pashtuns being forcibly evicted from their homes and farms, so that the victorious Taliban could reward their followers with land taken from other groups, particularly Hazaras, Turkmen and Uzbeks.²²

4.18 These evicted families joined the already huge numbers of internally displaced people. UNHCR has stated that the number of internally displaced people within Afghanistan has now topped 3.4 million, as people fled the Taliban advance across the country.^{23 24} UNHCR also reported that as of June 2022, there were more than 2.1 million Afghan refugees and people seeking asylum in neighboring countries.²⁵ Despite these stark figures, UNHCR acknowledges that the actual number of refugees is likely higher because not all refugees are able to register themselves with the agency.

4.19 AIA notes that within Australia's Refugee and Humanitarian Program (and Family Reunion Program), 31,500 places over 4 years have been made available to refugees from Afghanistan, including 16,500 places in addition to the regular humanitarian intake which was announced in the 2022-23 Federal Budget, a commitment that the new Australian Government has affirmed.²⁶

4.20 While AIA commends the tangible impact of these commitments, the complete total of these commitments were made under the previous government, with the current Australian Government still yet to make any additional commitments.

4.21 AIA has consistently called for an additional 20,000 places to be made available. To implement this, the Australian Government would need to provide an additional 3,500 places for Afghan refugees to be made available in addition to the regular Refugee and Humanitarian Program.

4.22 This increased commitment would bring Australia more in line with comparable countries such as Canada, who have made 40,000 places available to people from Afghanistan, with the majority of these places in addition to Canada's regular resettlement quota. This is an approach supported by UNHCR who has stated that responses to the crisis in Afghanistan should be in addition to existing commitments.²⁷

4.23 Moreover, it is vital that the over 200,000 applications made by Afghan nationals for protection and resettlement to Australia be expedited and prioritised as a matter of urgency.

Recommendation 2: An additional 3,500 places be made available for Afghan refugees in addition to the regular humanitarian intake, and existing applications be expedited and prioritised as a matter of urgency.

²¹ United Nations News, 'Afghanistan: UN launches largest single country aid appeal ever,' available at <https://news.un.org/en/story/2022/01/1109492>

²² UNHCR, 'External Update: Afghanistan Situation,' 2022, available at <https://reporting.unhcr.org/document/3944>.

²³ Ibid.

²⁴ UNHCR, 'Operational Data Portal: Refugees Situation,' available at <https://data.unhcr.org/en/situations/afghanistan>

²⁵ Ibid.

²⁶ Minister for Foreign Affairs, 'Anniversary of the fall of Kabul,' 2022 available at <https://www.foreignminister.gov.au/minister/penny-wong/statements/anniversary-fall-kabul>.

²⁷ Above, n12.

5. The Humanitarian Program

Size and Composition of the Program

5.1 In AIA's previous submissions, we have highlighted the need for Australia to increase its offshore Refugee and Humanitarian Program. As noted above, the world is now facing unprecedented numbers of displaced people.

5.2 AIA recognises the important role Australia has played in resettling vulnerable refugees through the offshore component of the Refugee and Humanitarian Program, but believes Australia has a responsibility to be doing much more. During 2021, only 350 refugees referred to Australia through UNHCR were resettled.²⁸ While this figure certainly represents the impacts of Covid-19, comparable countries such as Canada welcomed 5,825 refugees referred through UNHCR in 2021.²⁹

5.3 These comparisons are indicative of the current state of Australia's Humanitarian Program, which as highlighted previously had one of its lowest intake in 45 years, with only 11,545 visas granted through the 'offshore' 2020-21 Humanitarian Program.³⁰ This is in stark contrast to countries like the United States, which have committed to increasing their humanitarian intake to 125,000 places.³¹

5.4 AIA appreciates that under current circumstances, there may be capacity constraints regarding settlement services, and a scaled approach may be required. However, AIA strongly believes these constraints will not be dealt with unless there is a clear indication regarding the future of the Refugee and Humanitarian Program.

5.5 Thus, AIA believes that the Australian Government must commit to increasing the offshore Refugee and Humanitarian Program to 30,000 places in the upcoming 2023-24 Budget.

5.6 AIA maintains that as a key resettlement country with a long history of successful resettlement, it is crucial Australia continues to play a leading role in the broader global response. Beyond growing the program, one central reform needed to achieve this is the delinking of the 'onshore' component of the Humanitarian Program from the 'offshore' component.

5.7 If a person is found to be in need of protection in Australia, Australia is obliged under international law to grant them protection. This should not be offset against the needs of vulnerable refugees who require resettlement from overseas. The linking of these two distinct protection methods, by the Howard Government, has had a considerable negative impact on Australia's ability to provide protection to both those it has an obligation to and those it has made a commitment to internationally.

5.8 Australia is unique among resettlement countries in linking these programs and it is for good reason others do not. Suffice to say the negative impacts of linking two quite distinct programs have been numerous and varied, including (but not limited to) creating arbitrary delays for those engaging Australia's obligations onshore, as well as undermining Australia's ability to maximise

²⁸ Ibid, pg. 7.

²⁹ Ibid.

³⁰ Department of Home Affairs, '2021-22 Humanitarian program Outcomes,' available at

<https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2021-22-glance.pdf>.

³¹ US Department of State, 'The Presidential Determination on Refugee Admissions for Fiscal Year 2022,' 2021, available at <https://www.state.gov/the-presidential-determination-on-refugee-admissions-for-fiscal-year-2022/>.

places for those offshore. As such, AIA believes it should be a priority of the Australian Government to de-link the two programs.

5.9 While there is an obvious global humanitarian need to grow resettlement in Australia, it is also important to note that refugees bring a wide range of skills, experiences and qualifications, and with the right settings can make tangible, measurable contributions to Australian society.

5.10 A 2019 study by Deloitte Access Economics found that increasing Australia's annual humanitarian intake to 44,000 places per annum over a five year period, economic output could increase by \$37.7 billion in net present value terms over the next 50 years, and the economy could sustain an average of 35,000 additional jobs every year for the next 50 years.³²

5.11 In addition to expanding the Refugee and Humanitarian Program, AIA also notes that UNHCR further appeals to resettlement States to designate a portion of their quota as unallocated so that it can be used in a flexible way for urgent and emergency cases across the globe and outside these five priority areas.³³

5.12 While AIA supports such a measure, we also believe that the more recent crises in Ukraine and Afghanistan, as well as Australia's response to them calls for a more uniformed process in regards to the concept of additionality.

5.13 While AIA commends the previous and current government's approach to assisting people seeking safety from Ukraine, it must be noted that the same approach was not taken to refugees from Afghanistan, a country where there is a greater need for resettlement.

5.14 While the number of Ukrainians arriving in Australia was not capped, the previous Australian Government's initial response to the situation in Afghanistan was originally capped at 10,000 resettlement places within the existing program over the next four years.

5.15 In highlighting this discrepancy, AIA does not wish to deter future governments from responding to crises such as that in Ukraine the way the previous government did. In fact, quite the opposite. The aim however is to highlight the importance of non-discrimination in the application of these responses and corresponding programs, which will be dealt with in further detail later in this submission.

5.16 To achieve this, AIA maintains that Australia must also establish a process that would facilitate additional emergency intakes when crises like those we are seeing now occur, built on the foundations of a non-discriminatory approach.

5.17 AIA also notes that the Australian Government has made a commitment to abolishing Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) and granting refugees on these visas permanency. AIA strongly supports this reform as a matter of urgency.

5.18 While the transfer of this group on to permanent visas should have no impact on the 'offshore' Refugee and Humanitarian Program, AIA does note with concern that a considerable number of people in this group will lodge applications for family reunification, creating further backlogs within an already strained system.

³² Deloitte, 'Economic and Social Impact of Increasing Australia's Humanitarian Intake,' 2019, pg. 4, available at <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-social-impact-increasing-australias-humanitarian-intake-280819.pdf>.

³³ Above, n1, pg. 21.

5.19 AIA supports the Refugee Council of Australia's position that the Australian Government should develop a separate process for refugees who will transition from a TPV or SHEV onto a permanent visa who wish to sponsor their family members.

Recommendation 3: AIA recommends that the Australian Government commit to increasing the offshore Humanitarian Program to 30,000 places per annum in the 2023-24 Budget, with the vast majority being visa sub-class 200 (UNHCR referred) refugees.

Recommendation 4: AIA recommends that the Australian Government de-link the onshore component of the Humanitarian Program from the offshore component.

Recommendation 5: AIA recommends that within the humanitarian intake, the Australian Government include unallocated quotas that can thereby be used in a flexible way for urgent and emergency cases.

Recommendation 6: AIA recommends that the Australian Government establish a uniform process that would facilitate additional emergency intakes when crises like those we are seeing now occur.

Recommendation 7: AIA recommends that the Australian Government develop a separate process for refugees who will transition from a TPV or SHEV onto a permanent visa who wish to sponsor their family members.

Alternative Pathways: the Community Sponsorship Program & the Community Refugee Integration and Settlement Pilot

5.20 Amnesty International globally has been a strong supporter of community sponsorship and our colleagues in countries such as Ireland, Germany and Argentina have been at the forefront of civil society and government efforts to introduce these programs.

5.21 Through AIA's *My New Neighbour* campaign, and as a former member of CRSI (now CRSA), AIA has consistently called for a fair and accessible community sponsorship scheme to enable broader participation from families, groups, communities and businesses.³⁴

5.22 A functional private sponsorship scheme would enable the wider Australian community to take a practical and meaningful role in helping with the settlement of humanitarian migrants and will deliver a wide range of benefits to newcomers as well as the Australian community more broadly. Our experience to date in Australia, combined with data from overseas programs, indicate that such approaches would:

1. Support and fast-track the full social and economic participation of newcomers to Australia;
2. Support the settlement of newcomers in a wider range of Australian communities, including regional communities;

³⁴ Amnesty International, 'Review of Australia's Community Sponsorship Program,' 2020, available at https://www.amnesty.org.au/wp-content/uploads/2020/11/Amnesty-submission_Community-Support-Program-review_Oct-2020.pdf.

3. Support the development of English proficiency of refugee newcomers;
4. Enrich the personal wellbeing and capacity of individual Australians, by providing a satisfying and meaningful way to connect with others in a purposeful shared endeavour;
5. Enrich civic life and foster social cohesion in Australian communities;
6. Expand the number of refugees who have the opportunity to rebuild their lives in safety and in doing so make a contribution to the Australian community; and
7. Ensure that the Australian public is aware of and remains supportive of Australia's successful and long-standing humanitarian migration program.

5.23 Thus, AIA welcomed changes announced to Australia's Community Sponsorship Program (CSP) towards the end of 2021 that dramatically reduced the cost and bureaucratic burden for those wanting to sponsor refugees and welcome them into their communities.

5.24 Beyond this, Australia now has two other potential mechanisms for a citizen or permanent resident to sponsor a refugee (or individual in need of protection); the Special Humanitarian Program; and the 'unnamed' Community Refugee Integration and Settlement Pilot (CRISP).

5.25 As highlighted above, it is again necessary for Australia to clearly articulate the importance and purpose of the Humanitarian Program more broadly, while also specifically clarifying the purpose and rationale for each of these sponsorship programs. This includes clarifying how and why they differ, as well as why someone should engage in one or the other.

5.26 However, the Australian Government must eliminate any non-protection related criteria such as employment status, age, country of origin and English language proficiency from the CSP.

5.27 As the 'named' sponsorship program, like the Special Humanitarian Program, it also runs the risk of becoming a de-facto family reunion program, although with additional costs and without the support provided to those coming under the Special Humanitarian Program. Consideration needs to be given as to how this scheme can include broader members of civil society (as per the Canadian system) to lessen the burden (including financial) on refugee sponsors and ensure the broader benefits to the Australian community.

5.28 AIA strongly welcomed the introduction of the 'unnamed' CRISP by the Australian Government in 2022. The CRISP has the benefit of ensuring that refugees sponsored are those in the greatest need of resettlement (as identified by UNHCR) as well as enabling the broader community to play a leading role in sponsoring and supporting newly arrived refugees.

5.29 However, AIA remains concerned that places under both the CSP and CRISP are still being included in Australia's already historically low humanitarian intake. This lack of 'additionality' inhibits many members of the Australian community from engaging with these programs and could inhibit the growth in these programs in the future.

5.30 Furthermore, AIA notes that there is currently only a limited number of visas available through the CSP and CRISP, which further limits community participation.

5.31 AIA commends the current Australian Government's commitment, as found in the Australian Labor Party's 2021 Policy Platform and in recent statements made by the Minister at his annual Community Consultations, to progressively increase the community sponsored refugee program to

5,000 places per annum, in addition to the traditional government-funded humanitarian intake, and calls on the Australian Government to introduce these measures as soon as practicably possible.³⁵

Recommendation 8: AIA recommends that the Australian Government further reform Australia's Community Sponsorship Program so that it is in addition to Australia's regular Humanitarian Program.

Recommendation 9: AIA recommends that the number of places offered under the CSP and CRISP should be increased to a combined 5,000 places per annum, increasing to 10,000 places per annum within 5 years.

Recommendation 10: AIA recommends that the Australian Government eliminates any non-protection related criteria from the CSP, such as employment status, age, country of origin and English language proficiency.

Indigenous Justice

6. Overrepresentation of First Nations People in the Criminal Justice System

Justice Reinvestment Initiatives

6.1 Justice reinvestment is led by the community, for the community. Instead of failed punitive approaches adopted by successive governments in the past, justice reinvestment is evidence-based. It embraces therapeutic and rehabilitative methods like diversion programs to reduce incarceration of Aboriginal and Torres Strait Islander People and recidivism by addressing the underlying causes of crime and incarceration and diverting them from the criminal justice system.

6.2 The Budget in October 2022 announced a \$99 million commitment over four years from 2022–23 to support improved justice outcomes for First Nations peoples, including 30 community-led justice reinvestment initiatives and a national body to be delivered in partnership with Aboriginal and Torres Strait Islander communities, funding for Aboriginal and Torres Strait Islander Legal Services to ensure First Nations families can access timely and culturally appropriate legal assistance, and funding for the National Aboriginal and Torres Strait Islander Legal Services to support its contribution to law reform and policy development.³⁶

6.3 AIA welcomed these Budget announcements as we have long called for supporting justice reinvestment initiatives to address the disproportionately high incarceration rate of Aboriginal and Torres Strait Islander People.

³⁵ Australian Labor Party, '2021 National Platform,' 2021, pg. 123, available at <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>.

³⁶ Labor's commitment to First Nations people, APH, available at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2F8638543%22>

6.4 Studies of Indigenous-directed expenditure in previous years have shown that ‘Public order and safety’ (the police, justice and carceral systems) is a significant category of government expenditure on Indigenous people.³⁷ AIA commends the Government for reinvesting those taxpayers' dollars into preventive measures.

Recommendation 11: AIA recommends that the Australian Government continue funding new and existing justice investment initiatives across the country and the national body to coordinate these initiatives.

Given the grossly disproportionate incarceration rates of Aboriginal and Torres Strait Islander peoples, it is crucial that an Australian model of Justice Reinvestment centres on Aboriginal and Torres Strait Islander leadership and expertise at every level.

Deaths in Custody

6.5 Labor’s election policy on First Nations justice also committed to “consolidated real-time reporting of all deaths in custody at a national level and convening a summit bringing together First Nations and state and territory representatives to ensure coordinated action” but did not specifically commit funding for this initiative.

6.6 The Budget in October 2022 committed to “explore options for consolidated national real-time reporting with the costs to be met from within the existing resourcing of the Australian Institute of Criminology”. This implies that there will be measures in a future Budget to implement the policy.³⁸

6.7 According to the Australian Institute of Criminology, there were 516 Indigenous deaths in custody between the Royal Commission handing down its report in 1991 and June 2022.³⁹ The number of Indigenous deaths in custody jumped to at least 17 in 2022, compared to 11 in 2021.⁴⁰

Recommendation 12: AIA recommends that the Australian Government provide resourcing for consolidated real-time reporting of all deaths in custody at a national level and commit to systemic changes to ensure these tragedies are not repeated.

This would require the federal and all state and territory governments to fully implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

³⁷ Indigenous Expenditure Report, Productivity Commission, available at <https://www.pc.gov.au/ongoing/indigenous-expenditure-report>

³⁸ Budget paper no. 2, p. 49

³⁹ Indigenous deaths in custody rise to 516 since the 1991 Royal Commission, The Guardian, available at <https://www.theguardian.com/australia-news/2022/dec/20/indigenous-deaths-in-custody-rises-to-516-since-the-1991-royal-commission-report-says>

⁴⁰ Australia’s human rights credibility undermined by domestic record, ABC, available at www.abc.net.au/news/2023-01-12/human-rights-watch-report-2022-australia-asia/101838412

Nation-Wide Implementation of OPCAT

6.8 On 20 January 2023, Australia missed its twice-extended deadline to meet its international obligations under OPCAT to establish NPMs or bodies to monitor conditions and prevent torture in places of detention.⁴¹

6.9 Australia's three biggest states - NSW, Victoria and Queensland - have failed to establish NPMs, noting they cannot fulfil their obligations without federal government funding.⁴²

6.10 Last October, the UN Subcommittee on the Prevention of Torture suspended its trip to Australia after New South Wales and Queensland Governments blocked visiting officials from accessing their prisons and mental health facilities.

6.11 Australia ratified OPCAT in 2017, after the Royal Commission into the Protection and Detention of Children in the Northern Territory revealed abuses suffered by Aboriginal children.

6.12 AIA understands that negotiations between the federal and state and territory governments are ongoing. AIA strongly supports the recommendations made by the Australian Human Rights Commission in *Road Map to OPCAT Compliance*.⁴³

Recommendation 13: AIA recommends that the Australian Government commit to ensuring the implementation of OPCAT is adequately resourced across all jurisdictions as a matter of urgency.

7. Violence Against Aboriginal Women

7.1 The October 2022 Budget provided \$1.7 billion over six years to end violence against women and children, out of which \$1.3 billion will be used to address gender-based violence under the new National Plan to End Violence Against Women and Children 2022–2032 (National Plan) as per Labor's election commitments.⁴⁴

7.2 The National Plan, also released in October 2022, committed to developing a genuinely, self-determined, standalone National Plan for Aboriginal and Torres Strait Islander Women which AIA and broader civil society have long called for. However, no funding was allocated to this in the Federal Budget.

⁴¹ Australia misses another deadline to implement international anti-torture treaty, available at <https://www.abc.net.au/news/2023-01-20/australia-misses-deadline-to-implement-anti-torture-agreement/101874602>

⁴² Ibid

⁴³ Australian Human Rights Commission, 'Road Map to OPCAT Compliance, 2022, available at https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf

⁴⁴ Women's Budget, Treasury, available at <https://www.treasury.act.gov.au/budget/budget-2022-23/budget-2022-23/womens-statement>

7.3 First Nations women in Australia are 32 times more likely to be hospitalised and 11 times more likely to die from violence than their non-Indigenous counterparts. Importantly, family violence has a significant bearing on the rising incarceration rates of First Nations women and, subsequently, the removal of First Nations children into the out-of-home care system.⁴⁵ Unfortunately, previous governments have failed to listen to, and fund, the solutions to these problems posed by First Nations women.

7.4 The message from The Wiyi Yani U Thangani Women's Safety Policy Forum held last year couldn't have been clearer: "It is the responsibility of all levels of government to ensure our rights are protected by listening and acting on the solutions put forward by First Nations women, victim-survivors and specialist community-controlled organisations."⁴⁶

Recommendation 14: AIA recommends that the Australian Government commit to resourcing and implementing a genuinely self-determined, standalone plan to address the unacceptably high rates of violence Aboriginal and Torres Strait Island women and children experience.

8. Closing the Gap Targets

8.1 The National Agreement contains justice targets to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031 and reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent by 2031.⁴⁷

8.2 Under the National Agreement, governments have committed to meeting the family violence target to reduce the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least 50% by 2031. Governments have committed to bringing a significant and sustained reduction in the suicide of Aboriginal and Torres Strait Islander people towards zero.⁴⁸

8.3 The Closing the Gap Annual Report 2022 showed key targets are worsening, including rates of incarceration of Aboriginal adults, suicide and removal of children into out-of-home care. Targets that are not on track also include life expectancy and the development of children in their early years.⁴⁹

8.4 While there is not enough data on violence against Aboriginal women and children, the rate of First Nations young people aged 10-17 years in detention has slightly reduced.⁵⁰

⁴⁵ New report sets the stage for First Nations women to lead response to family and community violence, available at <https://humanrights.gov.au/about/news/media-releases/new-report-sets-stage-first-nations-women-lead-response-family-and>

⁴⁶ Ibid

⁴⁷ Closing the Gap targets and outcomes, available at <https://www.closingthegap.gov.au/national-agreement/targets>

⁴⁸ Ibid

⁴⁹ Commonwealth Closing the Gap Annual Report 2022 <https://www.niaa.gov.au/sites/default/files/publications/niaa-closing-the-gap-annual-report-2022.pdf>

⁵⁰ Ibid

8.5 This sobering report card once again demonstrated how slow progress has been in improving the lives of Aboriginal children and adults despite commitments by successive governments to meet the Closing the Gap targets.

8.6 The October 2022 Budget identified strengthening the Government's commitment to Closing the Gap as a top priority with significant investments in Indigenous health, education and justice.

Recommendation 15: AIA recommends that the Australian Government commit funding to existing and new initiatives to meet Closing the Gap targets, particularly in relation to the disproportionate rates of incarceration, suicide, violence against women and children and removal of children into protection services.

9. Conclusion

As the situation within our region - particularly in Myanmar and Afghanistan - worsens, the Australian Government must not only urgently increase the Refugee and Humanitarian Program to 30,000 places, but where appropriate ensure there is additionality for specific crises, with a process to respond which is underpinned by the principle of non-discrimination.

While recent changes to Australia's approach to community sponsorship are welcomed, to ensure its continued success, further reform is needed to provide clarity and build trust and engagement with Australian communities. When Australians put their hands up, they don't expect the Australian Government to be putting theirs down. Thus, while the scope of the CSP and CRISP must be increased, it must also be in addition to Australia's regular program to ensure the Australian Government is not merely passing the buck on its responsibilities.

The 2023-24 Federal Budget also provides an excellent opportunity to advance the Government's human rights agenda and deliver on all election promises to help bring meaningful improvements in the lives of Aboriginal and Torres Straits Islander People.

Importantly, the Budget must recognise the disproportionately high rates of incarceration and violence that First Nations peoples experience in Australia and the intersecting, layered forms of discrimination and disadvantage due to colonisation and systemic racism. The Australian Government must then invest in initiatives that address the drivers of these injustices and respect and utilise First Nations knowledge and agency.

By enacting these recommendations, the Australian Government can rebuild Australia's reputation as a leading resettlement country and help address the worsening global refugee crisis; while also positively impacting the lives of First Nations People.

