



**Universal Periodic Review Mid-Term Report:
Amnesty International's Feedback on Australia's Progress**

15 September 2023

**Submitted by
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Introduction

This document provides Amnesty International's assessment of Australia's progress on implementing the recommendations it received during the Third Cycle of Universal Periodic Review (UPR) in 2021.

Our feedback focuses on issues relating to First Nations justice; refugees and people seeking asylum; domestic human rights frameworks; sexual orientation, gender identity and intersex status; rights of women; modern slavery; climate change; and international humanitarian law.

While the Australian Government has made progress on various human rights issues at the halfway of the third cycle, serious concerns must be swiftly addressed. The Australian Government should take urgent steps to reduce the incarceration of Aboriginal and Torres Straits Islander Peoples, fulfil Australia's international obligations toward people in detention, refugees and people seeking asylum, phase out fossil fuels, and equally importantly, legislate a Human Rights Act to protect the rights of everyone in Australia.

The sections below list the recommendations Australia accepted, followed by our assessment of their implementation.

1. First Nations justice

Overrepresentation of First Nations People in prisons

Continue to address the problem of overrepresentation of Aboriginal and Torres Strait Islander peoples in the total prison population (Romania); SUPPORTED

Take concrete steps to address the overrepresentation of indigenous peoples in the criminal justice system and the high rate of incarceration among them (Bahamas); SUPPORTED

1.1 Aboriginal and Torres Strait Islander Peoples continue to be disproportionately represented in prisons, especially children. First Nations People make up roughly 4 per cent of the total Australian population but account for 32 per cent of all prisoners, according to the Australian Bureau of Statistics' latest data. In an even grimmer statistic, almost half of the young people aged 10–17 in detention are Indigenous, although only about 6 per cent of children in that age group are Aboriginal or Torres Straits Islander.¹ First Nations adults and children are disproportionately punished for minor offences and remanded in custody.

1.2 Since the Royal Commission into Aboriginal Deaths in Custody, governments accepted many of the Commission's recommendations, but many others, including imprisonment being the "last resort", have not been implemented. Successive governments have also failed to adequately address the underlying systemic issues which the Commission identified as the cause of the overrepresentation of First Nations Peoples in the criminal justice system.

1.3 Government systems dealing with child protection and youth justice have repeatedly failed First Nations families. There are many examples of successful community-led solutions across the country. They need proper, long-term funding and a commitment from governments to move away from Band-Aid responses that harm kids and don't achieve the outcomes they promise.

1.4 Amnesty International has welcomed the Labor Government's Budget announcements in 2022 to allocate \$81.5 million to invest in 30 community-led justice reinvestment initiatives across Australia and establish an independent national justice reinvestment unit. The Government called it the largest funding package in justice reinvestment ever committed by the Commonwealth. An additional \$10 million was announced in the 2023 Budget for justice reinvestment initiatives in Central Australia.

1.5 Amnesty International calls on governments to invest further in long-term, First Nations communities-led solutions, by diverting money away from policing and investing in people and communities.

¹ Youth detention population in Australia, Australian Institute of Health and Welfare
<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2022/contents/understanding-youth-detention-in-australia/aboriginal-and-torres-strait-islander-people>

Raising the Age of Criminal Responsibility

1.6 At Australia's UPR Third Cycle in January 2021, the previous government simply noted recommendations from many countries to bring Australia's youth justice system fully into line with international standards by raising the minimum age of criminal liability from 10 to 14 years and harmonising the youth justice system with the Convention on the Rights of the Child.

1.7 The UN Committee on the Rights of the Child in 2019 expressed grave concern about the "very low age of criminal responsibility", calling on Australia to raise the minimum age of criminal responsibility to an "internationally accepted level and make it conform with the upper age of 14 at which *doli incapax* applies".²

1.8 Australia played a vital role in the drafting and passing of the UN Convention on the Rights of the Child three decades ago. Yet, there is not a clear national strategy to ensure the implementation of the protections of the rights of the child. The youth justice system across all jurisdictions in Australia has been described for many years as being in crisis.

1.9 From Don Dale in the Northern Territory to Banksia in Western Australia, from Ashley in Tasmania to Cleveland in Queensland, media reports have revealed shocking stories of abuse at these detention centres, with many children attempting suicide and self-harm. Since the Royal Commission into the Protection and Detention of Children in the NT shone a light on some of the most serious violations in Australia's youth justice system, state governments have failed in their duty towards children under their care. Official statistics and media reports show rising numbers of children being remanded in prison rather than granted bail, breaching international guidelines that say prisons should only be used as a last resort.

1.10 This year alone, the Queensland Government overrode its own Human Rights Act twice, the first instance relating to the criminalisation of breach of bail and more recently allowing adult watchhouses to be used as youth detention centres for the next three years, even though the government knows children are not meant to be kept in adult watch hoses for even one night, yet alone weeks or months or years.

1.11 In December 2022, the Attorney General released the much-delayed report from the previous government, prepared in 2020 with input from state, territory and federal justice departments and informed by over 80 submissions by Aboriginal and Torres Strait Islander organisations, medical and legal experts, and human rights organisations which called for the age of criminal responsibility to be raised to 14 with no exceptions.

1.12 Over the past year, the Change the Record coalition, of which Amnesty International is a member, has delivered over 200,000 signatures to the Australian Government, demanding all governments raise the age to at least 14 years old. Since then, we have seen some states move to raise the age of criminal responsibility and detention, but these moves don't go far enough. The

² UN Committee on the Rights of the Child report 2019
<https://digitallibrary.un.org/record/3863406?ln=en>

ACT Government has introduced a bill to raise the age to 12 in 2023 and then to 14 in 2025, with carve-outs for certain behaviours. The NT Government raised the age to just 12 and the Victorian Government is planning to raise the age of criminal responsibility to 12 in 2024, with a possible review to go to 14 with carve-outs in 2027. Tasmania raised the age of detention to 14. Although steps in the right direction, these moves do not fully protect many vulnerable children and still violate international standards.

1.13 Amnesty International calls on the Australian Government to take national leadership by raising the age of criminal responsibility to at least 14, without exceptions, and follow the advice of their own departments as revealed in the report produced for the National Council of Attorneys-General.³

Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Take steps in consultation with Aboriginal and Torres Strait Islander peoples and the representative bodies to implement the United Nations Declaration on the Rights of Indigenous Peoples in law, policy and practice (Canada); Similar recommendation made by Costa Rica; *SUPPORTED*

1.14 In 2009, Australia endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the world's most comprehensive international instrument on Indigenous Peoples' rights. However, real actions to comply with the principles set out in the UNDRIP have not been realised at the Federal and State/Territory levels.⁴

1.15 The systemic breaches of the rights of Aboriginal and Torres Strait Islander Peoples are widespread, as evident in the overrepresentation of First Nations children and adults in the criminal justice system, dispossession of their land and resources, discriminatory government policies imposed on their lives without consent or consultation, and profound social and economic inequality.

1.16 Australia has committed at international forums to implementing the Declaration and promoting Indigenous People's enjoyment of rights on an equal basis. However, Australian governments have not taken steps to implement the UNDRIP into law, policy or practice.

1.17 Amnesty International recommends that the Australian Government develop a national plan for the implementation of the UNDRIP based on consultation with First Nations representatives. This plan must adhere to intrinsically-linked principles of self-determination and free, prior and informed consent.

³ After two-year delay, groups welcome high-level report calling for age of criminal responsibility to be raised to 14 <https://nit.com.au/13-12-2022/4511/after-a-two-year-wait-groups-welcome-release-of-high-level-report-calling-for-age-of-criminal-responsibility-to-be-raised-to-14>

⁴ Australian Human Rights Commission, 'Implementing UNDRIP', Australia's third UPR, 2021

Constitutional recognition

Advance the necessary referendum pathway to reflect its commitment to recognising Indigenous Australians in the Constitution (New Zealand); Similar resolutions made by Brazil, Sweden, India, and Vanuatu; SUPPORTED

Recognise the legal status of the Indigenous peoples to ensure full protection of their rights (Mauritius); SUPPORTED

1.18 The Uluru Statement from the Heart is an invitation from First Nations People to all Australians. One of its key features is to ask Australians to support meaningful constitutional recognition by providing a First Nations Voice to Parliament.

1.19 On its first day in office, the current Government committed to fully implementing the Uluru Statement from the Heart, which calls for three things - Voice, Treaty and Truth. The referendum to be held on 14 October 2023 will seek to enshrine in the Australian Constitution recognition of Indigenous People through the establishment of an advisory body to Parliament called the "Aboriginal and Torres Strait Islander Voice".

1.20 Amnesty International stands in solidarity with Aboriginal and Torres Strait Islander Peoples in their continuing fight for justice, and all it encompasses. As a predominantly non-Indigenous organisation, Amnesty International recognises the importance of supporting Aboriginal and Torres Strait Islander Peoples in the pursuit of self-determination and justice and acknowledging there's a diversity of opinions and perspectives in First Nations communities.

1.21 As a human rights organisation, we recognise the opportunity the 2023 Referendum on the Voice provides in progressing First Nations rights in Australia. Amnesty International is committed to campaigning to ensure all human rights are recognised and realised for all First Nations Peoples, and as such, supports voting in favour of the Voice to Parliament. Amnesty International intends to continue supporting Aboriginal and Torres Strait Islander Peoples' demands for justice beyond the Voice and encourages the Government and the public to do so too.

Refugees and people seeking asylum

Ending offshore processing

Ensure that its asylum procedures and border management policies fully comply with international obligations (Nicaragua); SUPPORTED

2.1 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.⁵ Instead, anyone who arrives by boat is forcibly taken by the Government of Australia to offshore ‘Regional Processing Centres’.⁶

2.2 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 2021.⁷

2.3 Despite the legislative instrument designating Nauru as a regional processing country lapsing towards the end of 2022, Nauru was re-designated as a country for regional processing in February 2023, despite advice from UNHCR stating that:

“UNHCR strongly objects to the re-designation of Nauru as a regional processing country. The designation amounts to externalisation of international protection responsibilities and is contrary to Australia’s obligations under the 1951 Convention, as well as to the principles of the Global Compact on Refugees... Such arrangements are not only detrimental to the wellbeing of those transferred but they shift asylum responsibilities, evade international obligations, are contrary to the letter and spirit of the Refugee Convention and negatively influence refugee approaches elsewhere.”⁸

2.4 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.⁹

2.5. 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.

2.6 While the number of refugees and people seeking asylum in Nauru has reduced to 2 at the time of providing our assessment, there are still 62 refugees and people seeking asylum remaining in

⁵ Australian Human Rights Commission, ‘Asylum Seekers and Refugees,’ accessed September 2023., available at <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees>.

⁶ Ibid.

⁷ 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 available at <https://www.dfat.gov.au/geo/nauru/memorandum-understanding-between-republic-nauru-and-australia-enduring-regional-processing-capability-republic-nauru>.

⁸ Parliament of Australia, 2023, available at, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F2ed26bb1-813e-45c9-9b25-33a56a991145%22>.

⁹ Ibid.

Papua New Guinea even as the Government announced the termination of its offshore processing arrangement with PNG at the end of 2021.¹⁰ The Australian Government now maintains that the responsibility for the remaining refugees and people seeking asylum rests with the Papua New Guinea Government, a position Amnesty International rejects.¹¹

2.7 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. 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.¹²

2.8 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 International 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.¹³

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

2.10 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.

2.11 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.

2.12 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 – previously in Papua New Guinea and in Nauru

¹⁰ Australian Human Rights Commission, 'Statement on Ending Offshore Processing in PNG,' 2021, available at <https://humanrights.gov.au/about/news/media-releases/statement-ending-offshore-processing-png>

¹¹ Legal and Constitutional Affairs Legislation Committee, 'Official Committee Hansard,' 2021, pg. 59, available at 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

¹² Monash University, 'Australian Border Deaths Database,' 2021 available at https://www.monash.edu/_data/assets/pdf_file/0018/2523141/BOB-Research-Brief-18-_border-deaths-annual-report-2020_Final.pdf

¹³ See Amnesty International, 'Island of Despair,' 2016, available at <https://www.amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>.

and Australia – are involved with the operation of these regimes. The Australian authorities are continuously informed about what is happening.

2.13 Amnesty International maintains that the Australian Government should end the policy of offshore processing and detention and permanently close the ‘Regional Processing Centre’ on Nauru. The Australian Government must also fulfil its responsibilities to refugees and people seeking asylum remaining in PNG, by transferring them to Australia so they are able to receive medical treatment before engaging in alternative resettlement solutions.

Principle of non-refoulement

Take the necessary measures to ensure that the principle of non-refoulement is incorporated into legislation and that all asylum seekers, regardless of how they arrived in the country, have access to efficient refugee status determination procedures and determination of non-return (Argentina); SUPPORTED

Ensure that the non-refoulement principle is secured in law and adhered to in practice, and that all asylum seekers, regardless of their mode of arrival, have access to efficient refugee status determination procedures (Afghanistan); SUPPORTED

Ensure that its asylum procedures and border management policies fully comply with international obligations (Nicaragua); SUPPORTED

Ensure that refugee procedures are compatible with international standards, guaranteeing the principle of non-refoulement and prioritising family reunification (Mexico); SUPPORTED

2.14 Operation Sovereign Borders is Australia’s military-led border control operation. In operations called turnbacks, Australian officials intercept boats of people seeking asylum and prevent them from landing in Australia.¹⁴

2.15 Australia’s international human rights law obligations are engaged whenever it has effective control over someone, including on the high seas. From the moment a state establishes effective control over a boat, all persons on it are within the state’s jurisdiction, and that state is responsible for securing and protecting their human rights.

2.16 Non-refoulement is an international legal principle that prohibits the transfer of individuals to another country or jurisdiction where they would face a real risk of persecution or other serious human rights violations or abuses. This principle is the cornerstone of international refugee protection. States are obliged to give individuals the opportunity to challenge their transfer (to another country or jurisdiction) on the grounds that such a transfer would put them at real risk of serious human rights violations or abuses.

¹⁴ See Amnesty International ‘By Hook or by Crook: Australia’s Abuse of Asylum-Seekers at Sea,’ 2015, available at <https://www.amnesty.org/en/documents/asa12/2576/2015/en/#:~:text=In%20operations%20called%20turnbacks%2C%20Australian,them%20from%20landing%20in%20Australia.>

2.17 In past cases documented by Amnesty International¹⁵, Australia turned back people, at least some of whom were people seeking asylum, without any assessment of each person's individual situation, including the risk of serious human rights violations or abuses, either in the country to which they were being returned or in another country to which they might be sent. There is no evidence to suggest this practice has shifted. By collectively expelling people seeking asylum, without any apparent procedural fairness, Australian officials violated, and continue to violate the prohibition on refoulement.

Fulfilling international obligations

Ensure that measures taken with regard to refugees and asylum seekers are in full compliance with obligations under international law and human rights (Albania); SUPPORTED

Fulfil its international obligations related to refugee protection (Pakistan); SUPPORTED

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

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

2.20 However, previously a large number of this group of people were held in Alternative Places of Detention (APODs). Despite the name, 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'.¹⁶

2.21 Amnesty has received reports of refugees and people seeking asylum remaining locked in their rooms for upwards of 23 hours a day. Many had nearly no access to the outside world, let alone the proper medical treatment they were brought to Australia to receive.¹⁷ Many were detained in these conditions for upwards of two years.

2.22 According to the Australian Human Rights Commission, APODs should only ever be used for "very short periods of time and under exceptional circumstances."¹⁸ To make matters worse, many of the refugees and people seeking asylum who had been held in these conditions have physical and

¹⁵ Ibid.

¹⁶ Office of the United Nations High Commissioner for Refugees, 'UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers,' 1999, available at <https://www.unhcr.org/en-au/protection/globalconsult/3bd036a74/unhcr-revised-guidelines-applicable-criteria-standards-relating-detention.html>

¹⁷ Public Interest Advocacy Centre, 'Healthcare denied: Medevac and the long wait for essential medical treatment in Australian immigration detention,' 2021 available at https://piac.asn.au/wp-content/uploads/2021/12/PIAC_Medevac-Report_2021_IssueE_03122150-1-1.pdf

¹⁸ Australian Human Rights Commission, 'Inspections of Australia's immigration detention facilities 2019 Report,' 2019, available at <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

mental health conditions that require lengthy periods of treatment, and in many cases, deteriorated under the detention conditions of APODs.

2.23 Amnesty International welcomes the actions taken by the previous and current Australian Government to release refugees and people seeking asylum from APODs into the community. However, no reasoning has ever been provided as to the length of detention nor timing of releases. While some were granted freedom, others remained detained for substantially longer periods, reinforcing the arbitrary nature of this type of detention.

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

2.25 On 14 April 2021 - supported by Amnesty International and Marque Lawyers - Moz commenced proceedings against the Commonwealth of Australia in the Federal Court of Australia, challenging the lawfulness of the hotel detention regime provided for in the *Migration Act 1958* (Cth).

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2.26 On 6 July 2023, the Federal Court found the Australian Government did in fact have the legislative power to detain Moz in two Melbourne-based hotels operating as APODs.²⁰

2.27 However, in a departure from the norms of judgments in the Federal Court, Justice Bernard Murphy emphasised that the lawfulness of Moz's detention must not be confused with the morality of the practice. Justice Murphy told the court:

"I can only wonder at the lack of thought, indeed the lack of care and humanity, in detaining a person with psychiatric and psychological problems in the hotels for over 14 months... Primarily, in hotel rooms with windows that only opened 10 centimetres and for most of the time, without access to an outdoor area or to breath fresh air or feel the sun on his face. Anyone who endured even two weeks of hotel quarantine during the covid-19 pandemic, would surely understand how difficult it must have been. As a matter of ordinary human decency, the applicant should not have been detained for such a period of time in those conditions. The decision in this case does not turn on the humanity of the applicant's detention, it is about whether the minister had power under the act to approve hotels as places of immigration detention. The minister had, and has, the power to do so."

2.28 While a Notice of appeal has been filed, it remains the case today and into the future that any government, should it wish, could use the same system to detain future refugees and people seeking asylum.

2.29 The use of hotel-like accommodation as APODs for the long-term detention of refugees and people seeking asylum is grossly inappropriate and should only occur in exceptional circumstances and for the shortest possible time. Unless required for health and safety, Amnesty International

¹⁹ Mostafa Azimitabar v Commonwealth of Australia VID177/2021.

²⁰ Amnesty International Australia, 'Federal Court Finds Refugee Hotel Detention Lawful but System Continues to Cause Harm,' 2023, available at <https://www.amnesty.org.au/federal-court-finds-refugee-hotel-detention-lawful-but-system-continues-to-cause-harm/>

recommends that the Australian Government legislate that the maximum time a person should be held in hotel-like accommodation be seven days.

Rights of refugees while on bridging visas

Continue to ensure the security, living conditions and rights of migrants, refugees and asylum seekers, regardless of how they entered the country (Peru); SUPPORTED

2.30 The Australian Government has made a number of recent policy changes - namely the issuing of bridging visas - that have to some extent softened the harsh nature of its detention system. More recently, refugees and people seeking asylum who have been released into the community in this way are being granted Bridging Visa E (BVE).

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

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

2.33 While in most cases a BVE holder will be granted working rights, this trade off means BVE holders are not eligible to receive Centrelink and are ineligible for the Status Resolution Support Services (SRSS) program.²¹

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

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

2.36 While there have been improvements in this respect, the fact that this is a matter left to the discretion of the Minister is of concern. Amnesty International recommends that refugees and people seeking asylum who are granted bridging visas should be afforded basic rights and entitlements, including the right to employment, education, social security and access to health care.

2.37 Furthermore, the issuing of bridging visas should be made by an independent Court empowered to review the necessity of detention and order release if continued detention is found

²¹Australian Human Rights Commission, 'Lives On Hold: Refugees and Asylum Seekers in the Legacy Caseload,' 2019 available at https://humanrights.gov.au/sites/default/files/document/publication/ahrc_lives_on_hold_2019.pdf.

to be unreasonable or disproportionate to the objectives to be achieved. This review process should follow the standards set out by international refugee law.

Abolishing Temporary Protection Visas

Strengthen actions in favour of the human rights of indigenous peoples and refugees (El Salvador); SUPPORTED

2.38 Amnesty International is among many human rights and civil society organisations who have campaigned for the abolishment of temporary protection visas since their inception, and have called for the end to an unnecessary, cruel, harmful policy which has undermined a cohesive Australian society.

2.39 In this context, Amnesty commends the current Australian Government for fulfilling their election promise to transition refugees from the cruel and unnecessary system of temporary protection visas that have forced thousands of people and their families to live in limbo, towards a pathway to permanency.

2.40 While Amnesty International is relieved to see the happiness this brings after so many years for the more than 19,000 refugees for whom this announcement applies, we do note that despite Labor's policy platform stating that a Labor Government would commit to abolishing the visa category completely, it remains. We trust in good faith that a resolution to this matter will come in time.

2.41 A more pressing concern relates to the roughly 9,000 people seeking asylum who were rejected under the flawed fast-track process²², for whom this recent announcement is bitterly disappointing. Thousands of people rejected under this process, who have been living and working in Australia for more than a decade, now face further limbo and uncertainty, with many facing the very real prospect that they will be forcibly returned to the country from which they fled.

2.42 Amnesty International understands the complexities and the need for rigour in Australia's refugee determination processes, but much like the current government in opposition, have serious concerns regarding the fast-track process.

Resettlement pathways

Fulfil its international obligations related to refugee protection (Pakistan); SUPPORTED

2.43 After nine long years, in April 2022 the previous Australian government accepted New Zealand's long-standing offer of resettling refugees trapped in Australia's cruel offshore detention regime.

²² UNSW Kaldor Centre for Refugee Law, 'Fast-Track Refugee Status Determination: Research Brief,' 2022, https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Research%20Brief_Fast%20track_final.pdf

2.44 While this was welcomed news, it unfortunately excluded refugees remaining in PNG, forcing UNHCR to negotiate a separate arrangement with New Zealand.²³ It's also important to note that the previous Australian government could have accepted this offer nine years ago and spared people the trauma of this experience. Instead, people have suffered and have had years of their lives unnecessarily taken away from them.

2.45 The deal will see 450 refugees resettled over three years. However, if all those spaces are filled, it still leaves a shortfall of approximately 500 people who will still require permanent resettlement solutions.

2.46 Amnesty International welcomes this deal, but it can and must be expanded by the current Australian Government to ensure that anyone who wishes to engage in a resettlement pathway has the opportunity to do so.

Increasing Australia's Humanitarian Program

Ensure that the issue of asylum seekers and refugees are addressed in line with international human rights and humanitarian law and Australia's other commitments on this issue in other forums, including within the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Indonesia); SUPPORTED

2.47 More than 3,500 Rohingya attempted deadly sea crossings in 2022, mainly from Myanmar and Bangladesh, a 360 per cent increase from the previous year.²⁴ 348 people died on the journey, many drowned, while children died from hunger and thirst.²⁵

2.48 This recent escalation of movement reflects the urgent need to action a coordinated and regional response to save the lives of Rohingya stranded at sea, and the Bali Process provides a unique forum to achieve this goal.

2.49 With the most recent meetings held in Adelaide during 2023 with Australia as co-chair, there were high hopes for positive outcomes. However, while the Bali Process has retained a strong focus on combating people smuggling and trafficking, the cooperation envisaged in its goals of focusing on implementing mechanisms to address safe disembarkation at sea and the protection of victims has not materialised.

2.50 Among other recommendations,²⁶ Amnesty recommends that the Australian Government commit to increasing the Humanitarian Program to at least 30,000 places per annum, with the vast majority being visa subclass 200 (UNHCR referred) refugees. Additionally, Australia must provide a greater number of places for Rohingya refugees from Myanmar, while taking a leading role in resettling Rohingya refugees out of Bangladesh.

²³ UNHCR, 'Resettlement to New Zealand for People Transferred Offshore by Australia,' accessed September 2023, available at <https://help.unhcr.org/australia/resettlement-to-new-zealand-for-persons-subject-australias-offshore-transfer-policy/>

²⁴ Amnesty International Australia, 'Report: A Better Plan for Rohingya Refugees,' 2023, available at <https://www.amnesty.org.au/report-a-better-plan-for-rohingya-refugees/>

²⁵ Ibid.

²⁶ Ibid.

Domestic human rights frameworks

Human Rights Commission

Strengthen the national human rights commission, including through the provision of adequate resources (Sri Lanka); SUPPORTED

Guarantee sufficient financial and budgetary support for the Australian Human Rights Commission so that it can carry out its mission and meet its objectives within the framework of Sustainable Development Goal targets 1.4, 4.3 and 4.6 and Goal 5 (Paraguay); SUPPORTED

3.1 In 2022 the Australian Human Rights Commission (AHRC) President Rosalind Croucher revealed that since 2017 the AHRC had run deficits, leading to net debt of \$5.4m by June 2021.²⁷ Thus, Amnesty International welcomed moves by the Australian Government to provide additional funding to the Commission.²⁸

3.2 Additionally, Amnesty welcomed moves by the Australian Government that ensured the AHRC's 'A-status' was maintained by the accreditation body, the Global Alliance of National Human Rights Institutions.

3.3 In 2022, Amnesty, the Human Rights Law Centre and the Australian Human Rights Institute raised concerns²⁹ after the Alliance warned that the Commission's ranking would be lowered if steps were not taken to ensure open merit-based selection processes for future Commissioner appointments.

3.4 This came after the previous government hand-picked the current Human Rights Commissioner without an open, merit-based selection process. The Commissioner was appointed for a five-year term.

3.5 At the end of 2022, the Australian Government passed legislation that will mean future appointments to the Commission are made through a merit-based and transparent process. These measures show a commitment to transparency and integrity, which will help ensure the Commission maintains its status as an 'A-status' institution.³⁰

²⁷ The Guardian, 'Australian Human Rights Commission to Slash Staff After Budget Cuts and Surge in Workload,' 2022, available at <https://www.theguardian.com/australia-news/2022/mar/17/australian-human-rights-commission-to-slash-staff-after-budget-cuts-and-surge-in-workload>

²⁸ Attorney-General's Department, 'Investing in Integrity, Human Rights and Safety,' 2022, available at <https://ministers.ag.gov.au/media-centre/investing-integrity-human-rights-and-safety-25-10-2022>

²⁹ UNSW Australian Human Rights Institute, 'Morrison Government Must Ensure the Independence and Effectiveness of the Australian Human Rights Commission,' accessed September 2023, available at <https://www.humanrights.unsw.edu.au/news/morrison-government-must-ensure-independence-and-effectiveness-australian-human-rights-commission>

³⁰ Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Bill 2022.

Human Rights Act

Ensure that Australia's international human rights obligations are enshrined in domestic law (Canada); Similar resolution made by Zambia; SUPPORTED

Continue to ensure the full implementation of domestic and international laws to end all forms of discrimination, including discrimination against race, culture and religion (Ghana); SUPPORTED

3.6 Australia has shown its commitment to respecting and fulfilling human rights by ratifying seven of the major international human rights treaties. However, little has been done to protect these rights and freedoms in domestic legislation. This means many of the rights and freedoms enshrined in the international instruments are not easily enforceable in Australia.

3.7 Although three states and territories - the ACT, Victoria, and Queensland - have passed Human Rights Acts, Australia is the only liberal democracy without a federal human rights act.

3.8 Earlier this year, the Attorney General asked the Parliamentary Joint Committee on Human Rights to conduct an inquiry into Australia's Human Rights Framework that will include reviewing the effectiveness of the Human Rights Framework developed in 2010 and the National Human Rights Action Plan, and considering whether the government should legislate a Human Rights Act.

3.9 While some positive initiatives came from the 2010 Framework, Amnesty International has been concerned about successive governments' failure to adopt and implement all of the recommendations presented to them from the National Human Rights Consultation in 2009 in particular, the key recommendation to legislate a Federal Human Rights Act.

3.10 Along with the Amnesty International National Office, Amnesty supporters sent over 4,000 submissions to the inquiry, calling on the Australian Government to legislate a Human Rights Act. Legislating overarching human rights protection in a Human Rights Act or Charter is the most important step to promote and protect human rights in Australia. An Act would require public authorities to consider human rights when making decisions and to act compatibly with human rights. A law would also provide opportunities for people to seek justice if their rights were breached.

3.11 Amnesty International welcomed the resolution passed at the ALP National Conference in August 2023, which states that "A federal Labor government will consider whether our commitment to the implementation of human rights standards could be enhanced through a statutory charter of human rights and responsibilities."

3.12 Amnesty International supports the Australian Human Rights Commission's proposed model for a federal Human Rights Act as outlined in the "Free & Equal Position Paper" released in March 2023.³¹

3.13 Amnesty International recommends that the Australian Government develop a new National Human Rights Framework that prioritises protecting human rights in domestic law in a Human

³¹ Free and Equal: A Position paper on Human Rights Act
https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf

Rights Act. The Framework should also commit to modernising federal discrimination laws, strengthening Parliamentary scrutiny, introducing a human rights indicator index, producing an annual statement to Parliament on human rights, a national human rights education program for public authorities and the general public, an adequately funded AHRC, and support for civil society organisations to protect human rights.

Anti-discrimination laws

Take resolute measures to combat discrimination and violence on racial, ethnic or religious grounds (Azerbaijan). Similar resolutions made by Nigeria, Serbia, Nepal, Barbados, Burkina Faso, Qatar, Democratic People’s Republic of Korea, Cuba, Malaysia; SUPPORTED

Give attention to the implementation of national policies for marginalised or vulnerable social groups, including migrant children, Aboriginals and persons with disabilities (Nicaragua); SUPPORTED

3.14 Australia’s four discrimination laws, the *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)*, *Disability Discrimination Act 1992 (Cth)* and *Age Discrimination Act 2004 (Cth)*, protect individuals from discrimination based on their race, sex, disability and age. The Australian Human Rights Commission handles complaints concerning discrimination on the basis of these attributes. Separate, overlapping schemes also exist to protect against discrimination in the workplace. In addition, states and territories have their own protection mechanisms.

3.15 However, there are significant discrepancies between these Acts, affecting the accessibility, practicality, and efficacy of human rights protection at a national level. Developed in a piecemeal fashion, some of these laws have remained unchanged since their inception four decades ago.

3.16 Since Labor came to power, the Government has taken some steps to reform anti-discrimination laws. The Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (Cth) was enacted in December 2022, marking an important step toward implementing the recommendations of the “Respect@Work” report concerning sexual harassment in the workplace. The Albanese Government has also asked the Australian Law Reform Commission to report on religious exemptions for schools contained in the Sex Discrimination Act 1984 (Cth) as a first step towards new religious discrimination laws and ending lawful discrimination against LGBTQIA+ students and staff, while allowing religious schools to maintain their communities of faith.

3.17 The AHRC’s position paper, as part of its “Free and Equal Project” in December 2021, provides a comprehensive review of the status of these laws, emphasising the need for overdue reforms and providing 38 recommendations to modernise Federal discrimination laws.³²

³² A reform agenda for federal discrimination laws

<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>

3.18 The position paper identified four key areas of reform; building a preventative culture, modernising the regulatory framework, enhancing access to justice, and improving the practical operation of federal discrimination laws.

3.19 Many of the AHRC's recommendations focus on implementing a positive duty to eliminate discrimination and the role of intersectional discrimination, as many people experience multiple overlapping forms of discrimination, which today's laws fail to address.³³

3.20 Amnesty International calls on the Australian Government to modernise federal discrimination laws to ensure their effectiveness and shift the focus from a reactive model that responds to discriminatory treatment to a proactive model that seeks to prevent discriminatory treatment in the first place.

Civil and Political Rights

Put an end to the violation of freedom of peaceful assembly and the excessive use of force by law enforcement officials (Bolivarian Republic of Venezuela); SUPPORTED

Continue to protect civil and political rights for all persons in Australia as well as freedom of expression and freedom of religion (Bosnia and Herzegovina); SUPPORTED

3.21 Human rights in Australia are protected in various pieces of legislation, through the Constitution and in common law. This piecemeal approach means some fundamental rights are protected, but many others are not. The only laws explicitly protecting human rights are the six anti-discrimination Acts.

3.22 The Constitution protects certain civil and political rights, such as the right to vote, the right to a jury for certain offences, and some protection of freedom of religion. However, it does not guarantee many fundamental rights such as the right to legal representation, the right to freedom of expression, and equality before the law. The High Court has implied some rights are found in the Constitution, such as the right to freedom of political communication.³⁴

3.23 The common law recognises several rights and freedoms, including the right to a fair trial and freedom of movement. However, common law protections can be overridden by Parliament at any time.

3.24 In recent years, Parliament has passed laws that are not human rights compliant. The Australian Law Reform Commission's inquiry into "Traditional Rights and Freedoms: Encroachments by Commonwealth Laws" in 2015 cited many examples of laws that interfered with common law rights, including freedom of speech, religion, movement, association and the right to a fair trial.³⁵ In *The Legal Assault on Australian Democracy* in 2016, Professor George Williams identified 350

³³ Intersectional discrimination in Australia

<https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2020/09/02-BLACKHAM-AND-TEMPLE.pdf>

³⁴ *Nationwide News Pty Ltd v Wills, Australian Capital Television Pty Ltd v Commonwealth*

³⁵ Traditional Rights and Freedoms: Encroachments by Commonwealth Laws

<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/>

examples of laws that “arguably encroach upon rights and freedoms essential to the maintenance of a healthy democracy”.³⁶

3.25 Over the past year, we have seen increasing attacks on the right to protest across the country, with New South Wales, Tasmania, Victoria and South Australia rushing through anti-protest laws that impose severe penalties, including prison sentences, on people taking part in peaceful protests.

³⁶ In *The Legal Assault on Australian Democracy*
<https://r.law.qut.edu.au/article/view/651.html>

Sexual orientation, gender identity and intersex status

Continue to work on ending discrimination on the grounds of sexual orientation and gender identity, including through the launching of awareness-raising campaigns and training of public officials (Israel); SUPPORTED

Ensure free and timely access to appropriate health care for all, including LGBTI+ persons, children and adolescents where the young person has sufficient maturity to provide informed consent (Iceland); SUPPORTED

4.1. Attempts to wind back the rights and hard-fought protections of LGBTQIA+ people must be rejected. While the previous government failed in its efforts to rush through a flawed religious discrimination bill towards the end of 2021³⁷, the current government has committed to continue these efforts through a more consultative and balanced approach,³⁸ a move welcomed by Amnesty International.

4.2. As a human rights organisation, Amnesty International opposes discrimination in all its forms, and supports any legislation that provides protections for those who face discrimination. However, Amnesty International's long-held view that the best way to achieve this is for the Australian Government to implement a Federal Human Rights Act. A Federal Human Rights Act would ensure that the fundamental rights of all in Australia are protected and appropriately balanced. A Human Rights Act would also provide a consistent criteria for limiting rights where rights compete, which would allow for the resolution of issues concerning the competition between freedom of religion and freedom from expression. This would also help to move away from toxic political debates that arise when people's rights and identities are deliberated, which cause harm to the LGBTQIA+ community, particularly the trans community.

4.3. While there is progress in respect to this matter as stated above with the Government taking steps to reform anti-discrimination laws, Amnesty International maintains that it is vital that no new legislation privileges religious views to the detriment of LGBTQIA+ people.

4.4. In particular, Amnesty International recommends the Australian Government amend the Sex Discrimination Act to ensure that religious schools cannot discriminate against students, teachers and other staff.

³⁷ Australian Human Rights Commission, 'Religious Discrimination Bill 2021 and Related Bills,' 2021, available at https://humanrights.gov.au/sites/default/files/ahrc_submission_to_pjchr_on_religious_discrimination_bill_0.pdf

³⁸ Australian Law Reform Commission, 'Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper,' 2023, available at <https://www.alrc.gov.au/publication/adl-cp-2023/>

Rights of women

Continue to combat family, domestic and sexual violence (Bosnia and Herzegovina); Similar recommendations by Georgia, Iraq, Republic of Moldova, Iran, Czechia, Portugal, Kazakhstan, Bahrain; SUPPORTED

Adequately fund the National Plan to Reduce Violence against Women and their Children and ensure that the Plan is inclusive of all forms of gender-based violence (Bahamas); Similar resolution by Bosnia and Herzegovina, Qatar, Republic of Korea, Burkina Faso; SUPPORTED

Continue efforts to curb domestic and sexual violence, particularly for women with disabilities and indigenous women (Lesotho). Similar resolution made by Singapore; SUPPORTED

Take targeted action to protect indigenous women and children from family, domestic and sexual violence by increasing options for support (Marshall Islands), Similar resolution by Peru; SUPPORTED

5.1 In October 2022, the federal, state and territory governments released the National Plan to End Violence against Women and Children 2022–2032 (National Plan). Last month, the Government released the First Action Plan 2023-2027 and a standalone Aboriginal and Torres Strait Islander Action Plan under the National Plan.³⁹

5.2 These action plans, which set out the national and state-based commitments across prevention, early intervention, response, recovery and healing, come at a critical time when human rights organisations, including Amnesty International, academics and practitioners have been calling for more funding and clearer actions to tackle domestic, family and sexual violence.

5.3 For the first time, the First Action Plan set targets to end violence, including a 25 per cent annual reduction in female victims of intimate partner homicide.⁴⁰

5.4 The Government also made an unprecedented funding commitment of \$2.3 billion over the 2022-23 and 2023-24 Budgets to support the delivery of the National Plan, including separate funding for First Nations women and children.

5.5 These are much-needed steps to progress their ambitious target to eliminate domestic, family and sexual violence. In particular, Amnesty International welcomes the establishment of a dedicated plan for First Nations women and children, who experience disproportionate rates of

³⁹ Govt releases first dedicated Aboriginal and Torres Strait Islander action plan to end domestic violence
<https://www.sbs.com.au/nitv/article/govt-releases-first-dedicated-aboriginal-and-torres-strait-islander-plan-to-end-domestic-violence/povhr4d8s>

⁴⁰ First Action Plan, 2023-27
<https://www.dss.gov.au/the-national-plan-to-end-violence-against-women-and-children/first-action-plan-2023-2027>

violence and violence that are often more severe and more complex in their 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.⁴¹

⁴¹ Indigenous women should be at the centre of combating domestic violence, SMH, available at www.smh.com.au/national/indigenous-women-should-be-at-the-centre-of-combating-domestic-violence-20220914-p5bhy2.html

Criminal justice and counter-terrorism

Cease cruel, inhuman or degrading treatment in public places of detention, including sexual violence, routine strip searches and inadequate mental health care facilities (Democratic People’s Republic of Korea); SUPPORTED

Expedite the process of the creation of the national preventive mechanism in accordance with the Optional Protocol to the Convention against Torture (Ukraine); SUPPORTED

Strengthen implementation of the Optional Protocol to the Convention against Torture through the establishment of national preventive mechanisms (Philippines); SUPPORTED

6.1 Australia has failed to meet its obligations under the Optional Protocol to the Convention Against Torture (OPCAT), including establishing National Preventive Mechanisms (NPMs) in all Australian jurisdictions, more than five years after ratifying OPCAT.

6.2 The Australian Government made a commitment under OPCAT to implement an independent inspection system for all places of detention across all Australian jurisdictions. The implementation of these monitoring systems, known as ‘National Preventive Mechanisms’ (NPMs) would have ensured independent oversight across Australia’s detention network.

6.3 Amnesty International 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 could not meet the already then extended January 2023 NPM implementation deadline without more resourcing.⁴²

6.4 These failures were further exacerbated when the UN Subcommittee on the Prevention of Torture suspended its tour of Australia in October 2022 after being refused entry to places of detention in New South Wales and Queensland before taking the extraordinary step of terminating the visit in February 2023.⁴³

6.5 In May 2023, the Queensland Parliament passed legislation that would remove legislative barriers prohibiting UN officials from visiting places of detention. However the bill allows the state government to retain the right “to temporarily prohibit or restrict the United Nations subcommittee’s delegations access to certain parts of the facility in certain circumstances”. An objection must be made on grounds of national defence, public safety, natural disaster or serious disorder in the place of detention, according to the bill’s explanatory notes.⁴⁴

⁴² The Guardian, ‘Australia’s indefinite detention of people with mental impairment breaches human rights, advocates say’ <https://www.theguardian.com/australia-news/2022/aug/15/australias-indefinite-detention-of-people-with-mental-impairment-breaches-human-rights-advocates-say>

⁴³ Australian Human Rights Commission, ‘Urgent Action Needed Following Termination of UN Inspection,’ 2023, available at <https://humanrights.gov.au/about/news/urgent-action-needed-following-termination-un-inspection>

⁴⁴ Queensland changes laws to accommodate UN prisons inspectors <https://www.theguardian.com/australia-news/2023/may/23/queensland-changes-laws-to-accommodate-un-prisons-inspectors>

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

6.7 Amnesty International supports the recommendations made by the Australian Human Rights Commission in their report, 'Road Map to OPCAT Compliance'⁴⁵ and urges the Australian Government to outline immediate and tangible steps to ensure Australia complies with its OPCAT obligations.

⁴⁵ Australian Human Rights Commission, 'Road Map to OPCAT Compliance,' 2022, available at https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf

Climate change

Implement concrete and immediate measures to fight against the effects of climate change on human rights and fundamental freedoms (France); SUPPORTED

Take tangible and sustainable steps to tackle the adverse effects of climate change, drawing on Australia's potential to produce and export renewable energy (Haiti); SUPPORTED

Ensure the full and meaningful participation of affected communities in the preparation of environmental impact assessments prior to the approval of major projects (Botswana); SUPPORTED

7.1 Soon after taking office in 2022, the Labor Government submitted its enhanced Nationally Determined Contribution (NDC) to the UNFCCC, formalising its 2030 emissions reduction target. Amnesty International welcomed this announcement as well as legislation of 43 per cent emissions reductions on 2005 levels by 2030 as essential steps from the previous government's inaction on climate. However, Amnesty International maintains that the 2030 target needs to be strengthened significantly in line with science and our international responsibilities to limit warming to 1.5 degrees Celsius.

7.2 The Labor Government has given significant support to the renewable energy sector, which is also welcomed. It also secured the support of the Parliament to reform the Safeguard Mechanism, bringing in stronger regulations to the emissions of Australia's 215 biggest polluting facilities, including Santos, BHP, Woodside, Chevron and Rio Tinto.

7.3 Despite these positive developments, the Australian Government is still actively expanding the fossil fuel industry in Australia. In 2022–23, Australian federal and state governments provided \$11.1 billion worth of spending and tax breaks to assist fossil fuel industries. This year's figure represents a 5% decline on last year's, but subsidies in the forward estimates have increased from \$55.3 billion to a record \$57.1 billion.⁴⁶ Australia remains one of the world's largest fossil fuel producers and exporters.

7.4 Coal and gas projects have received bipartisan support under successive governments in Australia. These projects have come at the expense of Aboriginal and Torres Strait Islander People's rights to their land, culture and livelihood. In the lead-up to the 2022 UN Climate Conference, Traditional Owners and Aboriginal sustainability experts called on the Australian Government to consult properly with First Nations communities in the development of the renewal energy projects on their lands and avoid the same mistake it did with fossil fuel mining.⁴⁷

⁴⁶ Fossil fuel subsidies in Australia, Australia Institute

<https://australiainstitute.org.au/wp-content/uploads/2023/05/P1378-Fossil-fuel-subsidies-2023-Web.pdf>

⁴⁷ 'Don't make the same mistake': Traditional Owners' warning over renewable projects on Aboriginal land

<https://www.sbs.com.au/news/article/dont-make-the-same-mistake-traditional-owners-warning-over-renewable-projects-on-aboriginal-land/1v2x3h245>

7.5 Amnesty International calls on the Government to obtain the free, prior and informed consent of First Nations peoples before embarking on any projects that affect their lives.

7.6 In 2023 alone, the Federal Labor Government has approved four new coal projects, the latest being the Gregory Crinum Coal Mine in the Bowen Basin, which will run until 2073.

7.7 The expansion of the fossil fuel industry is contrary to warnings by the UN and world-leading climate scientists who have said in no uncertain terms that to prevent the adverse human rights impacts on people and communities, there can be no new investments in coal, gas and oil.

Modern slavery

Ensure effective implementation frameworks for combating forced labour and slavery related to the activities of Australian companies (Syrian Arab Republic); SUPPORTED

Complete and implement the National Action Plan to Combat Modern Slavery (Greece); SUPPORTED

8.1 Many of the recommendations accepted by Australia are in relation to human trafficking. Our feedback will specifically focus on the implementation of the Modern Slavery Act.

8.2 In its fifth year of operation, the Modern Slavery Act 2018 has increased awareness of modern slavery among business leaders, boards and investors and forced some to start addressing the risk of human rights abuses in their operations and supply chains. However, as evidenced in extensive research projects by the Human Rights Law Centre, Business & Human Rights Law Centre, UNSW Australian Human Rights Institute and others, the Act is failing to drive substantive change in the business community.^{48 49}

8.2 Their key findings include that 66% of companies are failing to address all mandatory reporting requirements, 56% of commitments made by companies in their first round statements to improve their modern slavery responses remaining unfulfilled in the second round of reporting, and only 33% of companies appearing to be taking some form of effective action to address modern slavery risks.

8.3 This year, the Labor Government completed a review of the Modern Slavery Act, led by Professor John McMillan AO. Amnesty International has contributed to the review process, offering a series of recommendations, including strengthening compliance with the Act through better reporting and penalties for non-compliance, including: a 'duty to prevent' modern slavery, requiring companies to proactively address modern slavery and not merely report on risks, introducing ongoing time-bound review of the Act's effectiveness, adopting complementary measures such as an import ban on goods produced with forced labour, ensuring exploited workers can seek justice and remedy, and appointing an Anti-Slavery Commissioner.

8.4 Amnesty International welcomed the Attorney-General's recent announcement to establish Australia's first federal Anti-Slavery Commissioner.

8.5 The ALP Draft National Platform presented at the 49th Annual Conference in 2023 acknowledges Australia's important role in combatting modern slavery and commits to ensuring that the Commonwealth criminal laws adequately capture and prohibit forced labour; enforcing

⁴⁸ Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act; available at <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221>

⁴⁹ New report shows companies failing to act on modern slavery; available at <https://www.hrlc.org.au/news/2022/11/17/new-report-shows-companies-failing-to-act-on-modern-slavery>

supply chain reporting requirements, including penalties for non-compliance; and outlawing importation into Australia of goods or services produced with forced labour, child labour or prison labour.⁵⁰

8.6 Amnesty International welcomes these commitments and urges the Australian Government to continue active consultations with civil society and experts as it considers Professor McMillan's review.

Ratify the ILO Protocol to the Forced Labour Convention, 1930 (United Kingdom of Great Britain and Northern Ireland); SUPPORTED

8.7 In 2022, the previous government ratified the International Labour Organization (ILO) Protocol of 2014 to Forced Labour Convention 1930 (No. 29) (the Protocol). The Protocol adds new elements to the ILO Forced Labour Convention 1930 (No. 29), aimed at tackling the complexities of modern slavery and addressing the root causes of forced labour, with obligations to prevent and suppress forced labour, protect victims and provide access to appropriate and effective remedies, and penalise the perpetrators of forced labour and end their impunity.

⁵⁰ ALP Draft Platform 2023

<https://laborconference.org.au/files/ALP%20Draft%20National%20Platform%2049th%20Annual%20Conference%202023.pdf>

International humanitarian law

Continue its international efforts to prevent crimes against humanity (Armenia); **SUPPORTED**

9.1 On 15 April 2021, the previous government announced the Australian Defence Force (ADF) withdrawal from Afghanistan, ending a 20-year involvement in the US-led international military operation against terrorism, with more than 26,000 Australian military personnel serving.

9.2 The 20-year war is estimated to have taken the lives of at least 47,245 civilians, with many more injured, in addition to over 66,000 Afghan national military and police, 51,191 Taliban and other fighters, 72 journalists, and 444 aid workers.⁵¹ Overall, human rights in Afghanistan have been threatened, and violated, since Australia began its engagement there in 2001.

9.3 Amnesty International welcomed the release of the 2020 report of the Inspector-General of the Australian Defence Force Afghanistan Inquiry, led by Justice Paul Brereton, into alleged war crimes by Australian Special Forces (SAS) in Afghanistan.

9.4 The report found evidence of grave human rights violations by Australian special forces soldiers, including the alleged executions of 39 Afghan civilians and prisoners, deliberate cover-ups, and abuse. It made 143 recommendations, including that 53 incidents involving 19 soldiers be referred to the Office of the Special Investigator for criminal investigation, and that the families of the victims be compensated. It also made numerous recommendations aimed at transforming culture and accountability mechanisms within the SAS, including strengthening reporting mechanisms and protections for whistleblowers.

9.5 The Australian Department of Defence accepted all findings of the report and committed to addressing all recommendations. In August 2021, it launched the Afghanistan Inquiry Reform Plan that set out the Defence strategy for responding to the Inquiry and established the Afghanistan Inquiry Reform Program to coordinate and drive this work, with the Afghanistan Inquiry Reform Plan to be delivered by the end of 2025.

9.6 Amnesty International recommends that the Australian Department of Defence delivers all recommendations of the Inspector-General of the Australian Defence Force Afghanistan Inquiry as soon as possible and delivers 6-monthly reports on their progress, and, post-implementation, annual reports on their success.

9.7 Amnesty International welcomes the Australian Government's commitment to the implementation of the recommendations of the Brereton report into alleged war crimes to the greatest extent possible.

9.8 In the lead-up to the release of the Inspector-General of the Australian Defence Force Afghanistan Inquiry Report, the previous Australian government announced that a separate body,

⁵¹ Ellen Knickmeyer, 'Costs of the Afghanistan War, In Lives and Dollars', 2021, available at <https://apnews.com/article/middle-east-businessafghanistan-43d8f53b35e80ec18c130cd683e1a38f>

acting under the powers of the Australian Federal Police Commissioner will be led by an eminent person with experience in the criminal justice system and in international law: the Office of the Special Investigator (OSI). The OSI will investigate allegations of crimes, gather evidence and where appropriate refer briefs for consideration of prosecution to the Commonwealth Director of Public Prosecution.

9.9 Amnesty International welcomes the establishment of this body and recommends that the Australian Government develop a permanent international crime mechanism, appropriately resourced to provide effective access to justice for victims.
