



Submission to the Department of Treasury  
2025-26 Pre-Budget submissions

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Submitted by  
**Amnesty International Australia**

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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

Amnesty International Australia (AIA) welcomes the opportunity to make a submission to Treasury regarding Australia's 2025-26 budget priorities. This submission has two focuses. The first is the protection of refugees and people seeking asylum, primarily through an increase in the Refugee and Humanitarian Program, and also through providing better and safer pathways and assistance to people fleeing international crises who are seeking protection in Australia. The second is Indigenous justice and the over-imprisonment of Aboriginal and Torres Strait Islander peoples, particularly the overrepresentation of Indigenous children in the youth justice system. AIA aims in this submission to draw the Government's attention to issues which require serious consideration in planning Federal Budget expenditure.

### A. Protection of refugees and people seeking asylum

1.1 Over several decades, 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 Malaysia. In 2018 and 2019, AIA researchers were again able to document the ongoing crisis facing refugees in the Middle East, Africa and Europe, and in 2023, AIA conducted a visit to assess the situation facing Rohingya refugees in Cox's Bazar, Bangladesh.

1.2 It is with this experience, supported by findings in UNHCR's *Projected Global Resettlement Needs 2025*, that AIA understands the current refugee crisis to be unprecedented since the Second World War. For 2025 alone, UNHCR operations across the globe have estimated that more than 2.9 million refugees will be in need of resettlement, an expected increase of approximately half a million compared to 2024, and more than double compared to 2021.<sup>1</sup>

#### *Pathways for people fleeing crises*

1.3 The genocide in the Occupied Palestinian Territory since 7 October 2023 has added to these pressures. Israel's assault leading to the almost total destruction of Gaza has created 1.9 million internally displaced people. Amnesty International's December 2024 report found genocide has been and is being committed against the Palestinian people. There is an imperative for Australia to respond, as it has in previous comparable crises such as Ukraine, Afghanistan, East Timor and Kosovo.

1.4 Despite the recent ceasefire, which is still yet to be fully implemented and made permanent, Palestinians trying to flee desperately need access to safe pathways and permanent protection. Places should be provided in addition to Humanitarian Program numbers as were places for Afghans fleeing the Taliban, and people should be assisted to flee the OPT to safety in Australia. In the longer term, Australia must establish a durable solution - an emergency visa and process.

#### *Increasing the Refugee and Humanitarian Program*

1.5 In the 2024-25 Budget, the Australian Government retained the 20,000 Humanitarian Program places set in 2023-24, despite its prior commitment to increasing that number to 27,000.<sup>2</sup> We note that the additional, temporary 4,125 places per year provided for Afghans are due to

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<sup>1</sup> UNHCR, '2025 Projected Global Resettlement Needs,' pg. 5, available at, <https://www.unhcr.org/au/media/projected-global-resettlement-needs-2025>

<sup>2</sup> Australian Labor Party, August 2023, 'Australian Labor Party National Forum,' p 138, available at, <https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf>

expire in June 2026.<sup>3</sup> Given the continuing worsening situation under the Taliban and the numbers of Afghan refugees in need of protection, AIA strongly advocates for further places to be set aside, additional to the Humanitarian Program, for Afghans. In the last Budget, the Community Refugee Integration and Settlement Pilot (CRISP) was extended for a further year to June 2026.

1.6 In this 2025-26 Budget, AIA urges the Australian Government to make good its own commitment to increasing the Humanitarian Program level to 27,000 places per year, and to consider a further increase up to 30,000 places. AIA further urges the Government to make the community sponsorship pilot a permanent program, providing an additional 10,000 places.

## **B. Indigenous justice**

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

1.8 AIA welcomed the Labor Government's First Nations justice package with \$69 million over four years to establish a National Justice Reinvestment Program for up to 30 community-led justice reinvestment initiatives, and \$20 million per year committed to the program after the four years. AIA also welcomed the Government commitment of \$12.5 million over four years to establish a National Justice Reinvestment Unit to coordinate and support justice reinvestment initiatives. In the 2023-24 Budget, the Government committed an additional \$10 million over four years to support place-based justice reinvestment initiatives in Central Australia.

1.9 AIA also welcomed the establishment of real-time reporting of First Nations deaths in custody in June 2023 and a dedicated action plan to reduce domestic, sexual and family violence against Aboriginal and Torres Strait Islander women and children in August 2023.

1.10 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. AIA supports the evidence-based solutions of justice reinvestment programs and wraparound services. We urge the government to focus Budget investments on initiatives effective in addressing overimprisonment.

1.11 Despite these positive developments, the fact remains that Aboriginal children and adults have continued to suffer horrific abuses in the criminal justice system over the past year – from Aboriginal children dying by suicide at youth detention centres to Aboriginal men dying in custody. In 2024 there were 24 Indigenous deaths in custody out of 100 total,<sup>4</sup> meaning Indigenous people made up almost 25% of deaths in prison, police custody and youth detention despite making up only approximately 3.8% of the total Australian population.<sup>5</sup>

1.12 These figures once again reveal the lack of seriousness on the part of governments in preventing Aboriginal deaths in custody, 30 years after the report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was handed down. In August 2024, a teenager died by

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<sup>3</sup> Refugee Council of Australia, 'Government listens to community pleas by adding 16,500 new places for Afghan refugees,' 2022, available at <https://www.refugeecouncil.org.au/government-listens-to-community-pleas-by-adding-16500-new-places-for-afghan-refugees/>

<sup>4</sup> <https://www.aic.gov.au/statistics/deaths-custody-australia>

suicide at the Banksia Hill youth detention centre in Perth.<sup>6</sup> “Human Rights Commissioner Lorraine Finlay said serious concerns had been raised about Banksia Hill for years, including evidence given by the commission in 2022 before the United Nations committee against torture.”<sup>7</sup> Just two weeks before the child’s death, the Commissioner for Children and Young People had delivered a report condemning the “systemic failure of successive governments that did not put the needs of children and young people as their primary consideration” at West Australia’s youth detention centres.<sup>8</sup>

1.13 This death came less than a year after another teenager had died at Unit 18, Casuarina Prison in Perth, the investigation of which uncovered “significant failures”.<sup>9</sup> AIA has consistently said that Australia’s youth detention system breaches international human rights law, including the Convention on the Rights of the Child and Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

1.14 The UN Subcommittee on the Prevention of Torture issued its report on Australia, in December 2023 and found an “extraordinary number of persons deprived of their liberty on remand”, making up to 70% of the prison population in some locations visited.<sup>10</sup> These high numbers were partly due to a reversal in the presumption of bail for some offences. The Committee noted that “the cost and conditions of bail may disproportionately affect Aboriginal and Torres Strait Islander peoples”.<sup>11</sup>

1.15 The Subcommittee cited the “severe overrepresentation of Aboriginal and Torres Strait Islander peoples in prisons and in police watch-houses”, with Indigenous people comprising approximately 28 per cent of the adult prison population of Australia despite making up only 2 per cent of the overall population. It noted that it had:

“received frequent reports that overpolicing of Indigenous communities, profiling, discrimination and prejudice contributed to those disproportionate incarceration rates. The Subcommittee is concerned that policies to tackle criminality in Indigenous communities fail to take into account core contributing factors and lack a needs-based approach to crime prevention.... [and observed] that many Indigenous detainees interviewed had themselves been victims of physical or sexual violence.”

1.16 The Subcommittee recommended that Australia review its policies relating to Indigenous communities in the criminal justice system and implement social and crime prevention schemes to reverse the overincarceration of members of Indigenous communities.<sup>12</sup>

1.17 Governments have consistently committed to Closing the Gap targets. However, the 2024 Commonwealth Closing the Gap report revealed critically that instead of improving towards targets

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<sup>6</sup> AIA, 30 August 2024, Death of 17 year old Aboriginal boy in WA youth detention a shameful, preventable tragedy’, at <https://www.amnesty.org.au/death-of-17-year-old-aboriginal-boy-wa-youth-detention/>

<sup>7</sup> National Indigenous Times, 1 September 2024, ‘Teen’s custody death triggers call for justice overhaul’, available at <https://nit.com.au/01-09-2024/13457/teens-custody-death-triggers-call-for-justice-overhaul>

<sup>8</sup> AIA, above n 7.

<sup>9</sup> The Guardian, 10 November 2023, ‘Prison officers watched movies and relaxed as 16-year-old Cleveland Dodd fatally self-harmed, minister says’, at: <https://www.theguardian.com/australia-news/2023/nov/10/prison-officers-watched-movies-and-relaxed-as-16-year-old-cleveland-dodd-fatally-self-harmed-minister-says>

<sup>10</sup> OHCHR Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party: Report of the Subcommittee* at page 6, available at <https://www.ohchr.org/en/treaty-bodies/spt/visits>

<sup>11</sup> Ibid

<sup>12</sup> Ibid

set, outcomes are worsening in four key areas. Key targets going backwards include Indigenous incarceration rates, children in out-of-home care, and suicide rates among First Nations peoples.<sup>13</sup>

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

### *Refugees and People Seeking Asylum*

#### 1. The International Context

a. The Rohingya

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*

#### 1. Overrepresentation of First Nations people in the criminal justice system

a. Justice Reinvestment Initiatives

b. Implementation of the Royal Commission into Aboriginal Death in Custody

#### 2. Nation-Wide Implementation of OPCAT

#### 3. Closing the Gap Targets

1.19 The recommendations contained in this submission aim to rebuild Australia's reputation as a leading resettlement country and help to address the worsening global refugee crisis; as well as implement evidence-based, community-led initiatives that positively impact First Nations People.

## **2 Recommendations**

2.1 For the protection of refugees and people seeking asylum, AIA recommends that the Government:

- Establish an expanded humanitarian quota and take a leading role in resettling Rohingya refugees out of Bangladesh, and expand and amend the criteria for the Skilled Refugee Labour Agreement pilot program to enable Rohingya refugees to access it.
- Provide 20,000 dedicated places in addition to Australia's humanitarian intake over four years for Afghan refugees from 2026, and expedite and prioritise existing applications by Afghans, in particular those by Afghans living in Pakistan and Iran, as a matter of urgency.
- increase the offshore Humanitarian Program to 30,000 places per annum in the 2025-26 Budget, the vast majority being UNHCR referred refugees, de-link the onshore component of the Humanitarian Program from the offshore component, and include unallocated quotas that can be used in a flexible way for urgent and emergency cases.
- Immediately assist Palestinians fleeing genocide in the Occupied Palestinian Territory, starting with those who have family or connection to Australia, either by relaxing the Visitor Visa criteria relating to temporary entrants for applicants from the OPT; or by issuing subclass 449 visas offshore, and facilitating their safe passage to Australia.
- Offer all Palestinians who arrived in Australia since 7 October 2023 permanent protection, or alternatively, a three-year Subclass 786 Temporary (Humanitarian Concern) visa with a commitment to transition these to permanent Resolution of Status visas after three years.

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<sup>13</sup> Australian Government Productivity Commission, 31 July 2024, *Closing the Gap: Annual Data Compilation Report July 2024*, available at: <https://www.pc.gov.au/closing-the-gap-data/annual-data-report>

- Establish a durable, uniform process and visa type to facilitate additional emergency intakes in international crises like those we are currently seeing.
- Reform Australia's private sponsorship programs - the CSP and CRISP - by removing all non-protection related criteria, increasing the number of places to 10,000 per annum, and ensuring these are additional to the Refugee and Humanitarian Program.

2.2 For Indigenous justice, AIA recommends that the Government:

- Fund Australia-wide justice reinvestment initiatives and the national coordination body and require that any model centers First Nations leadership and expertise at every level.
- Advise all states and territories to raise the age of criminal responsibility from 10 to at least 14 and provide national guidance to end abusive practices in prison and detention (including abolishing the use of spit hoods, watchhouses and all mechanical restraints in all justice facilities).
- Resource federal, state and territory governments to fully implement the RCIADIC recommendations.
- Continue resourcing for consolidated, real-time reporting of all deaths in custody; and commit to systemic changes to ensure recent tragedies are not repeated.
- Provide funding to resource the implementation of OPCAT across all Australian jurisdictions as a matter of urgency including intergovernmental agreement and funding NPMs; and
- Fund existing and new initiatives to meet Closing the Gap targets, particularly in relation to the disproportionate rates of incarceration and suicide of First Nations peoples, violence against First Nations women and children, and removal of First Nations children.

### 3 International Legal Human Rights Framework

Australia is a signatory to numerous international human rights treaties and protocols. Several of these are directly relevant to the information and recommendations in this submission:

- *1951 Convention on the Status of Refugees* (Refugees Convention)
- *UN Declaration on the Rights of Indigenous People* (UNDRIP)
- Rights of children and young people - *Convention on the Rights of the Child* (CROC)
- *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and the *Optional Protocol to the Convention against Torture* (OPCAT)
- *International Covenant on Civil and Political Rights* (ICCPR)

3.1 Many of Australia's current policies and practices, particularly in regard to the over-incarceration of First Nations adults and children, the increasing removal of First Nations children from their families, and treatment of refugees and people seeking asylum, are in direct breach its obligations under these treaties. AIA is deeply concerned about the derogation of Australia's duties and advocates for these rights to be embedded in Australian federal law via a Human Rights Act.<sup>14</sup>

3.2 Despite setting ambitious targets, Australia is further failing to ensure the protection of the rights of First Nations Peoples – the rate of imprisonment alone is not in accordance with rights under the UNDRIP. Despite its commitments under this and the CROC, Australia continues to escalate the removal and incarceration of First Nations children.

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<sup>14</sup> Amnesty International Australia, A Human Rights Act for Australia, available at: <https://www.amnesty.org.au/campaigns/human-rights-act/>



3.3 Australia's *Migration Act 1958* fails to align with the protections envisaged in the Refugees Convention, and its treatment of refugees breaches other human rights treaties, particularly the most recent amendments made to the Act in late 2024<sup>15</sup> and the continued offshore detention regime.<sup>16</sup>

3.4 As the Australian branch of an international human rights organisation, it is of grave concern to AIA that Australia's laws and practices are, in a number of critical areas and with grave impact on peoples' lives, inconsistent with its international obligations. We urge the Government to have proper regard for these international responsibilities for the rights of all people in Australia, and ensure that policies and laws are consistent with them.

## 4 Refugee rights – the International Context

4.1 As noted by the UNHCR, world resettlement needs now exceed 2.9 million people, an increase of half a million people compared with last year.<sup>17</sup> As global conflicts escalate, there are record numbers of people on the move, more than ever within our own region:

*“Asia and the Pacific hosts 15.7 million forcibly displaced and stateless persons, including 7.5 million registered refugees, people in refugee-like situations and asylum-seekers, 6 million internally displaced persons and some 449,000 internally displaced returnees; 219,000 others of concern; and 2.5 million stateless persons (representing over half of the world’s stateless population). The latter figure includes 1.3 million Rohingya who are both stateless and either refugees or internally displaced.”*<sup>18</sup>

4.2 In Asia, individuals from Afghanistan and Myanmar remain the largest displaced populations, with 5.8 million people from Afghanistan living as refugees or in refugee-like situations - most in Iran and Pakistan - and over 1.3 million refugees from Myanmar living mostly in Bangladesh and Malaysia.<sup>19</sup> Most countries in the region are not signatories to the Refugees Convention and as a result, many refugees and people seeking asylum are considered 'illegal immigrants' and live a "fragile and tenuous" existence, lacking work rights and freedom of movement and vulnerable to abuse and exploitation. Often forced to live in refugee camps or detention facilities, they have limited access to health, education and justice, and are subject to arbitrary arrest and detention.<sup>20</sup> The region includes some of the most climate-vulnerable countries which means the refugee population in the Asia-Pacific is especially impacted by natural disasters such as floods, cyclones and extreme temperatures.<sup>21</sup>

4.3 In the Middle East, Amnesty International's research recently found sufficient basis to conclude that Israel has committed and continues to commit genocide against Palestinians in the occupied Gaza Strip. Our December 2024 report, *'You Feel Like You Are Subhuman': Israel's*

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<sup>15</sup> Amnesty International Australia, 2 December 2024, 'Labor's new migration laws deliver a dangerous setback for rights of refugees and people seeking asylum', available at <https://www.amnesty.org.au/migration-laws-deliver-dangerous-setback-for-rights-of-refugees-and-people-seeking-asylum/>

<sup>16</sup> Amnesty International Australia, 10 January 2025, Nauru detention centre must be urgently evacuated in light of UN ruling' available at <https://www.amnesty.org.au/nauru-detention-centre-must-be-urgently-evacuated-in-light-of-un-ruling/>

<sup>17</sup> Above n. 1, pg. 39

<sup>18</sup> Ibid pg. 5

<sup>19</sup> Ibid pg. 39

<sup>20</sup> Ibid pg. 40

<sup>21</sup> Ibid pg. 40

*Genocide Against Palestinians in Gaza*<sup>22</sup>, documents how during its military offensive launched in the wake of the deadly Hamas-led attacks in southern Israel on 7 October 2023, Israel unleashed destruction on Palestinians in Gaza brazenly, continuously and with total impunity. It demonstrates that Israel has persisted in committing genocidal acts, fully aware of the irreparable harm it was inflicting on Palestinians in Gaza. It continued to do so in defiance of countless warnings about the catastrophic humanitarian situation and of legally binding decisions from the International Court of Justice (ICJ) ordering Israel to take immediate measures to enable the provision of humanitarian assistance to civilians in Gaza.

- 4.4 It is now over 15 months since the genocide in the Occupied Palestinian Territory began and the plight of Palestinians in Gaza is becoming more desperate by the day. To date, more than 47,000 Palestinians have been killed, an estimated 1.9 million people are internally displaced (making up 90 per cent of Gaza) and 345,000 people facing catastrophic food insecurity.<sup>23</sup> There is intense overcrowding in temporary shelters, and disrupted water, sanitation systems and health services, leading to increased risk of infectious diseases transmission and bacterial infections, particularly impacting on children.
- 4.5 Palestinians have just begun to return to the North of Gaza in an attempt to rebuild their homes and lives. UNRWA, the UN Agency established to support Palestinians in 1949, has been banned by the Israeli Knesset in a decision that will have disastrous consequences for Palestinians in the Occupied Territory and though out the region that depend on it for food, shelter, education, aid, medical care and other essential services.<sup>24</sup> The UN Famine Review Committee has issued an alert of an imminent and substantial likelihood of famine occurring in areas of Northern Gaza. The UN and partners estimate that 3.3 million people are in need of humanitarian assistance in Gaza and the West Bank, requiring at least US\$6.6 billion in aid.<sup>25</sup>
- 4.6 To respond to these global needs, UNHCR has stated it will continue to prioritise those who are most vulnerable, including where protection risks are greatest.
- 4.7 In 2023, the UNHCR maintained its five priority situations and advocated for states to provide quotas for refugees in these groups, which in our region include Afghanistan and Myanmar.<sup>26</sup> It is crucial that Australia's program reflects the priority needs in our region as identified by UNHCR, ensuring that the humanitarian places we offer are going towards the most urgent needs in our region, and that the majority of those coming to Australia are referred by UNHCR through a non-discriminatory process.

### *Rohingya Refugees*

- 4.8 The Rohingya people of Rakhine State, Myanmar have suffered decades of systematic discrimination, statelessness and targeted violence. Driven by violence, human rights abuses and persecution, they have repeatedly been forcibly displaced across the border in

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<sup>22</sup> Amnesty International, 5 December 2024, 'You Feel Like You Are Subhuman': Israel's Genocide Against Palestinians in Gaza, MDE 15/8744/2024, at <https://www.amnesty.org/en/documents/mde15/8668/2024/en/>

<sup>23</sup> UN Office for the Coordination of Humanitarian Affairs, 17 December 2024, Reported impact snapshot: Gaza, at: <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-17-december-2024>

<sup>24</sup> AIA, 30 January 2025, 'Israel's ban on UNRWA is an illegal attack on humanitarian aid', available at <https://www.amnesty.org.au/israels-ban-on-unrwa-is-an-illegal-attack-on-humanitarian-aid/>

<sup>25</sup> ReliefWeb, 11 December 2024, 'Flash Appeal: Occupied Palestinian Territory (December 2024)', at <https://reliefweb.int/report/occupied-palestinian-territory/flash-appeal-occupied-palestinian-territory-december-2024-enar>

<sup>26</sup> Ibid pg. 13

Bangladesh, escalating in the late 70s, early 90s, and again in 2016-2017.<sup>[OEB]</sup> In August 2017, the military unleashed a brutal campaign of violence against people in the northern parts of Rakhine State, where the majority of Rohingya normally live. This campaign was unlawful and grossly disproportionate, targeting the entire Rohingya population on the basis of their identity.

- 4.9 Rohingya people who have been forcibly displaced to Bangladesh have given accounts of killings, torture, rape and burning of entire villages by the Myanmar security forces, often accompanied by local vigilantes. The UN has described the situation as a “textbook example of ethnic cleansing”, and Amnesty International has concluded the military’s actions amount to crimes against humanity.<sup>27</sup>
- 4.10 Bangladesh has been recognised by the international community for hosting Rohingya refugees, but as it is not signatory to the Refugees Convention, the vast majority of Rohingyas there are not formally recognised as refugees. Their situation requires urgent attention. Cox’s Bazar, where most Rohingya refugees live in camps, is often exposed to cyclones, torrential rains, landslides, flash floods, storm surges and extreme temperatures.<sup>28</sup> The influx of refugees has impacted the environment and shared resources shared, leading to higher disaster risk, climate vulnerability and jeopardising the safety of refugees and Bangladeshis.<sup>29</sup>
- 4.11 Rohingya refugees live in flimsy temporary shelters in Cox’s Bazar, unable to lawfully work, with no access to formal education and freedom of movement and subjected to harsh living conditions. Reduced humanitarian funding by the World Food Program in 2023 means that water, hygiene and sanitation are tenuous.<sup>[OEB]</sup> They are vulnerable to water-borne and communicable disease outbreaks<sup>[OEB]</sup>, and the risk of fire, violence or natural disasters.
- 4.12 These conditions have led to some Rohingya people demanding to be sent back to Myanmar without any protection measures in place or undertaking dangerous journeys to other countries by land and sea. Such journeys risk hundreds being stranded and losing their lives. This issue worsened drastically in the past year. Save the Children reported a **700% surge** in Rohingya refugees arriving by boat in 2024 compared with 2023, and at least 221 lost their lives or were reported missing at sea in the year to date.<sup>30</sup> Rohingya refugees reported rising violence in the camps, with kidnappings, abductions and children recruited by armed groups.<sup>31</sup>
- 4.13 The international community is working with Bangladesh towards the Rohingya’s “early, voluntary, safe, dignified, sustainable repatriation and reintegration to Myanmar”.<sup>32</sup> But a 2024 Deakin University study found safe repatriation of all the Rohingya population would be impossible in the next decade, and even of the majority not a genuine possibility as it relies on

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<sup>27</sup> Amnesty International, “‘We will destroy everything’: Report of the detailed findings of the UN FFM,” June 27 2018, pg. 177-314, available at, <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>

<sup>28</sup> Above n. 1, pg. 24

<sup>29</sup> Ibid pg. 24

<sup>30</sup> Save the Children, 4 November 2024, ‘Rohingya Refugees Arriving in Indonesia by Boat Surge 700% as Sea Crossings Predicted to Reach a New High This Year’, available at <https://www.savethechildren.org/us/about-us/media-and-news/2024-press-releases/rohingya-refugees-arriving-in-indonesia-by-boat-surge-700-percent>

<sup>31</sup> Ibid

<sup>32</sup> 2024 Joint Response Plan Rohingya Humanitarian Crisis pg. 13, available at <https://rohingyaresponse.org>

highly unlikely outcomes.<sup>33</sup> MSF agrees that voluntary repatriation is “simply not viable in the short or medium term” as the “root causes for their displacement are yet to be addressed”.

- 4.14 It is therefore vital that the international community including Australia steps up and provides durable solutions. The UNHCR identifies **119,300** individuals in Bangladesh in need of resettlement in 2025 – among these a group of **20,000** refugees who fled Myanmar in the early 1990s due to serious human rights violations and are unable to return, including women at risk, survivors of violence and torture, and separated children.<sup>34</sup> They are particularly vulnerable.
- 4.15 While the US committed to a minimum of 8,000 places each year, Australia ran a 50-person resettlement pilot for Rohingya from Bangladesh in 2022-23. AIA welcomed the Australian Government’s commitment to increase Rohingya resettlement at the 2023 Global Refugee Forum, but Australia did not commit to a specific figure as hoped. AIA strongly encourages the Australian Government to establish a formal quota for Rohingya refugees in this Budget of at least 1,000 places.
- 4.16 The recent change in US leadership and migration policy, including President Trump’s announcement of a freeze of vital foreign aid, will impact the support system for Rohingyas in Cox’s Bazar<sup>35</sup>. While there has been an exemption granted for emergency food for refugees in Cox’s Bazar, other USAid programs will be affected including shelter and vital medical treatment<sup>36</sup>. In addition, Trump’s Executive Order cancelling refugee arrivals<sup>37</sup> will have significant impact refugees in Asia<sup>38</sup> including Rohingyas who were approved for US visas and travel. There is therefore a greater imperative and opportunity for Australia to step up its intake.
- 4.17 The Government should also consider extending and expanding Australia’s Skilled Refugee Labour Agreement Pilot (SRLAP) as another pathway available to Rohingya refugees. This program should be made additional to the Humanitarian Program so it does not take away places there, and exceptions should be made to the criteria to recognise volunteer work done by Rohingya people as sufficient to engage in the SRLAP.

*Recommendation 1*

The Government establish an expanded humanitarian quota and take a leading role in resettling Rohingya refugees out of Bangladesh and expand and amend the criteria for the Skilled Refugee Labour Agreement pilot program to enable Rohingya refugees to access it.

## *Afghanistan*

- 4.18 It is now three and a half years since the Taliban seized power in Afghanistan, committing human rights abuses and international law violations with absolute impunity. The Taliban have

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<sup>33</sup> Ware, A., and Laoutides, C. (2024). ‘The Rohingya repatriation myth: why repatriation from Bangladesh to Myanmar is (nigh) impossible’, *Development in Practice*, 34(5), 633–640 available at: <https://doi.org/10.1080/09614524.2024.2338213>

<sup>34</sup> Above n. 1, pg. 44

<sup>35</sup> The Guardian, 29 January 2025, ‘UN aid agencies cut back operations after Trump’s 90-day funding suspension’, <https://www.theguardian.com/world/2025/jan/28/un-aid-cuts-trump-funding>

<sup>36</sup> <https://www.reuters.com/world/us/trumps-freeze-us-aid-rings-alarm-bells-thailand-ukraine-2025-01-28/>,

<sup>37</sup> Associated Press, ‘Trump administration cancels travel for refugees already cleared to come to America’, available at: <https://apnews.com/article/refugees-flights-trump-immigration-border-resettlement-33ebaa34bc4d0c069a22ee7aa5f8ff6d>

<sup>38</sup> Cato Institute, 27 January 2025, ‘The Indefinite Suspension of All Refugees Is Unjustified’, available at: <https://www.cato.org/blog/indefinite-suspension-refugees-starts-today>

created the world's most serious women's rights crisis<sup>39</sup>. The United Nations Special Rapporteur on Afghanistan analysed the Taliban's gender-based system of subjugation, discrimination, segregation, disrespect for human dignity and exclusion of women and girls, finding that the severe deprivation of their fundamental rights to work, health, education and freedom of movement as devastating and long-lasting harm on the whole population, with increasing violence against those who resist.<sup>40</sup>

4.19 The Special Rapporteur and the Working Group on discrimination against women and girls found that "the pattern of large-scale systematic violations of women's and girls' fundamental rights in Afghanistan, abetted by the Taliban's discriminatory and misogynist policies and harsh enforcement methods, constituted gender persecution and an institutionalised framework of gender apartheid."<sup>41</sup>

4.20 The Taliban takeover has also created one of the world's worst humanitarian crises.<sup>42</sup> Afghans make up one of the largest refugee populations globally, and aid is underfunded with only 47% per cent of the funding required provided so far.<sup>43</sup> In neighboring countries Iran, Pakistan, Tajikistan, Uzbekistan, Turkmenistan there are over 5.52 million registered Afghan refugees, asylum-seekers and Afghans living in refugee-like situations<sup>44</sup>.

4.21 AIA notes that Australia made 31,500 places available to Afghan refugees over 4 years within its Humanitarian Program (and Family Reunion Program)<sup>45</sup> including 16,500 additional places announced in the 2022-23 Federal Budget. 4.20 While AIA commends the impact of these commitments, they were made under the previous government, and we note the current Government is yet to make any additional commitments to refugees from Afghanistan. AIA also notes that these additional commitments were made up to 2026.

4.22 Along with other organisations and the diaspora community. AIA has consistently called for 20,000 dedicated additional places to be made available to Afghan refugees. We repeat this call for the 2025-26 Budget, and emphasise the increased urgency of the situation for Afghans. Given the repressive regime and risk for women under the Taliban rule, visas for Afghan women at risk should be prioritised as part of this number, and they should be allowed to apply without having family connection, as is presently required for a humanitarian visa.

4.23 Increasing Australia's commitment would be consistent with comparable countries such as Canada, which has made 40,000 places available to people from Afghanistan, most in addition to its regular resettlement quota. It is also an approach supported by the UN High Commissioner for Refugees, who has stated that States' responses to refugees from their

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<sup>39</sup> Human Rights Watch, 11 August 2024, 'Afghanistan: Taliban Tighten Grip 3 Years into Rule', available at <https://www.hrw.org/news/2024/08/11/afghanistan-taliban-tighten-grip-3-years-rule>

<sup>40</sup> A/HRC/56/25: The phenomenon of an institutionalized system of discrimination, segregation, disrespect for human dignity and exclusion of women and girls - Report of the Special Rapporteur on the situation of human rights in Afghanistan, pg. 2, 5, 6, at <https://www.ohchr.org/en/documents/country-reports/ahrc5625-phenomenon-institutionalized-system-discrimination-segregation>

<sup>41</sup> Ibid p 2.

<sup>42</sup> Human Rights Watch, above n 41.

<sup>43</sup> UN *Afghanistan 2024 Humanitarian Needs Response Plan* at <https://humanitarianaction.info/plan/1185>

<sup>44</sup> UNHCR Operational Data Portal, Afghanistan situation, at <https://data.unhcr.org/en/situations/afghanistan>

<sup>45</sup> 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>.

existing resettlement commitments.<sup>46</sup>

4.24 Moreover, it is vital that the over 200,000 applications already made by Afghan nationals for protection and resettlement in Australia be expedited and prioritised urgently. Pakistan has initiated a program of detentions and widespread harassment of Afghans, and since September 2023 the Pakistani government's crackdown on foreign immigrants and refugees has forced thousands of Afghans back to Taliban-ruled Afghanistan.<sup>47</sup> As at 12 December 2024 this number was 792,200,<sup>48</sup> adding to the over 3.22 million internally displaced who have fled their home in search of refuge inside Afghanistan.<sup>49</sup> Their life and fundamental rights are at risk amid an intensified crackdown on human rights and ongoing humanitarian catastrophe.<sup>50</sup>

*Recommendation 2:*

Provide 20,000 dedicated places in addition to Australia's humanitarian intake over four years for Afghan refugees from 2026, and expedite and prioritise existing applications by Afghans, in particular those by Afghans living in Pakistan and Iran, as a matter of urgency.

## 5 Increasing the Refugee and Humanitarian Program

5.1 In AIA's previous Pre-Budget and other submissions, we have highlighted the need for Australia to increase the offshore component of the Humanitarian Program. As noted above, the world is facing unprecedented numbers of displaced people. It is incumbent upon States signatory to the Refugees Convention with strong economies like Australia to step up.

5.2 AIA recognises the important role Australia has played in resettling vulnerable refugees through the offshore component of the Refugee and Humanitarian Program, and notes that during 2022-23 there was a substantial increase in the amount of grants made under the Humanitarian Program to over 15,000. However, AIA believes Australia has a responsibility to do much more. By comparison, in 2023 Canada admitted over 74,979 refugees and protected persons as permanent residents.<sup>51</sup> Canada committed at the Global Refugee Forum to over 136,000 refugees in the next 3 years, as well as using other complementary pathways.<sup>52</sup>

5.3 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 and size of the Humanitarian Program.

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<sup>46</sup> Amnesty International, "We will destroy everything": Report of the detailed findings of the UN FFM,' June 27 2018, pg. 177-314, available at, <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>

<sup>47</sup> Human Rights Watch, above n 41.

<sup>48</sup> UNHCR Operational Data Portal, Afghanistan situation, at <https://data.unhcr.org/en/situations/afghanistan>

<sup>49</sup> By the end of 2023, as reported by UNHCR *Country Operations: Afghanistan* available at <https://reporting.unhcr.org/operational/operations/afghanistan>

<sup>50</sup> Amnesty International, 'Pakistan: Halt mass detentions and deportations of Afghan refugees,' 2023, available at, <https://www.amnesty.org/en/latest/news/2023/11/pakistan-halt-mass-detentions-and-deportations-of-afghan-refugees/>

<sup>51</sup> Government of Canada, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2024.html>

<sup>52</sup> Government of Canada, 15 December 2023, Canada builds on pledges and partnerships at the Global Refugee Forum, available at: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/12/canada-builds-on-pledges-and-partnerships-at-the-global-refugee-forum.html>

5.4 Thus AIA urges the Government to commit to increasing the offshore component of the Humanitarian Program to 30,000 places in the upcoming 2025-26 Budget.

5.5 Beyond growing the program, a central reform needed is the delinking of the 'onshore' component of the Humanitarian Program from the 'offshore' component. If a person in Australia is found to need protection, 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. Linking these two distinct protection methods has had a considerable negative impact on Australia's ability to protect both those it has an obligation to in Australia and those it has committed to internationally.

5.6 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 they make tangible, measurable contributions to Australian society. A 2019 study by Deloitte Access Economics found that by 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.<sup>53</sup> These figures need updating to current economic settings, but it is clear that the Australian economy can sustain far higher numbers in humanitarian intake than it offers.

5.7 As part of the Humanitarian Program, AIA encourages the Government to set aside quotas for vulnerable refugee populations, including women at risk and LGBTQIA refugees. In addition and to ease the pressure on the humanitarian visa system, AIA encourages the Government to expand the number and type of complementary pathways available to vulnerable cohorts, for example student visas, sports scholarships, skilled migration, regional migration.

5.8 In addition to expanding the Humanitarian Program, in AIA's view part of the humanitarian quota should be unallocated, to allow for it to be flexible for urgent and emergency cases across the globe. UNHCR notes that states designating unallocated quotas as a small portion of their resettlement quota play "a crucial role in global refugee resettlement efforts".<sup>54</sup> They offer greater flexibility, addressing refugees in severe and immediate risk - such as those in prolonged detention or under threat of severe violence, survivors of gender-based violence facing further abuse - and provide access to refugees in locations with no or limited quotas.<sup>55</sup>

5.9 The Global Compact on Refugees calls for States to dedicate at least 10 per cent of resettlement places as unallocated for emergency or urgent cases identified by UNHCR.<sup>56</sup>

*Recommendation 3:*

The Government increase the offshore Humanitarian Program to 30,000 places per annum in the 2025-26 Budget, with the vast majority being visa subclass 200 (UNHCR referred) refugees, de-link the onshore component of the Humanitarian Program from the offshore component, and include unallocated quotas that can be used in a flexible way for urgent and emergency cases.

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<sup>53</sup> 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>

<sup>54</sup> Above n 1, p 16

<sup>55</sup> Ibid

<sup>56</sup> Global compact on refugees 2018, 3.2 Resettlement, par 92, pg. 37, at: <https://globalcompactrefugees.org>

## *People fleeing international crisis*

5.10 AIA is of the view that the escalation in global conflicts, and Australia's response to them, calls for more consistent and fair responses and the development of new programs.

5.11 AIA commends the previous and current government's approach to assisting people seeking safety from Ukraine, however, we note that the same approach was not taken to people from Afghanistan or the Occupied Palestinian Territory (OPT). 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 four years. AIA commends the Government on the additional places offered to Afghans fleeing the Taliban after that time and submits that this should continue.

5.12 Ukrainians who applied for Visitor Visas to escape Russia's war were overwhelmingly granted Visitor Visas - more than 11,500 since February 2022.<sup>57</sup> The war on Ukraine broke out in February 2022, and an offer of a humanitarian visa to all Ukrainians in Australia was made in April 2022, just two months later. Ukrainians were provided a pathway to permanency by the offer of transition to a Resolution of Status (subclass 851) visa at the conclusion of three years.

5.13 By comparison, over 70% of Palestinian Visitor Visa applications were refused in the first six months after 7 October 2023, most for failing to show they were a "genuine temporary entrant,"<sup>58</sup> a criterion almost impossible to meet when fleeing ongoing war and genocide. The Government provided no support to people arriving from the OPT, and for over a year they had to rely solely on the community. In AIA's view, rejecting over 7,000 applications of Palestinians fleeing Israel's assault on Gaza was a shocking abdication of Australia's legal and moral obligations to provide safety to those in crisis.<sup>59</sup>

5.14 In October 2024, the Government began issuing the first temporary humanitarian visas to only a dozen Palestinians families, based on individual interviews.<sup>60</sup> In December 2024, 14 months after Israel's siege of Gaza began, Home Affairs Minister Tony Burke confirmed he had personally offered a humanitarian visa to around 800 Palestinians – a little less than half of those who have arrived in Australia.<sup>61</sup> Since then, a growing number of Palestinians have been offered this visa.<sup>62</sup>

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<sup>57</sup> Department of Home Affairs, <https://www.homeaffairs.gov.au/help-and-support/ukraine-visa-support>

<sup>58</sup> Senate Estimates May 2024; The Guardian, 16 April 2024, 'Palestinians were refused Australian visitor visas due to concerns they would not 'stay temporarily'', at: <https://www.theguardian.com/australia-news/2024/apr/16/palestinians-were-refused-australian-visitor-visas-due-to-concerns-they-would-not-stay-temporarily>; Refugee Council of Australia, 14 June 'Letter to Immigration Minister re Palestinian visa refusals' at: <https://www.refugeecouncil.org.au/letter-to-immigration-minister-regarding-palestinian-visa-refusals/>; AIA, 3 June 2024, 'Amnesty International calls on the Australian Government to urgently provide humanitarian visas to Palestinian people fleeing Gaza', at: <https://www.amnesty.org.au/humanitarian-visas-gaza/>

<sup>59</sup> Mohamed Duar, AIA Spokesperson for Occupied Palestinian Territory, 15 August 2024

<sup>60</sup> SBS, 1 October 2024, 'First humanitarian visas issued to Palestinian families' available at: <https://www.sbs.com.au/news/podcast-episode/first-humanitarian-visas-issued-to-palestinian-families/1oc2kkyr5>

<sup>61</sup> SBS, 5 December 2024, 'Been through enough': 800 Palestinians in Australia granted more rights after visa move', available at: <https://www.sbs.com.au/news/article/800-palestinians-in-australia-granted-more-rights-after-visa-move/3iewi6vw2>

<sup>62</sup> The Guardian, 20 January 2025, 'Australia grants nearly 1,000 humanitarian visas in three months to those fleeing Israel-Hamas conflict' at: <https://www.theguardian.com/australia-news/2025/jan/20/australia-grants-nearly-1000-humanitarian-visas-in-three-months-to-those-fleeing-israel-hamas-conflict>



5.15 AIA commends this decision, and that those provided such a visa will finally have access to social and settlement supports as was provided to those who fled from Ukraine.<sup>63</sup> However, AIA notes that both the timeframe and the process of offering humanitarian visas for those fleeing the OPT is not the same as was provided for people fleeing Ukraine. AIA highlights the importance of the Government maintaining a principled, fair and non-discriminatory approach to Australia's humanitarian programs and emergency responses.

5.16 Tens of thousands of Palestinians remain stuck unable to safely flee Gaza, many of whom have family in or connections to Australia. Amnesty International has released its report confirming that Israel is committing genocide on Palestinians, and there is now a desperate humanitarian situation for those who remain. As of September 2024, only about 1,300 Palestinians had been able to resettle in Australia via the Visitor Visa pathway<sup>64</sup> and there are still fewer than 2,000,<sup>65</sup> while there are now 1.9 million internally displaced people in Gaza.<sup>66</sup> There has been no firm commitment by the Australian government to provide Palestinians with a pathway to permanency when their humanitarian visas expire at the end of three years.

5.17 The Palestine Australia Relief and Action (PARA) has called on the Australian Government to push for safe exits out of Gaza, ensure a clearer pathway to permanency for Palestinians on temporary visas, family reunification and more support.<sup>67</sup> AIA supports these calls. AIA believes that *“Despite the catastrophic toll on Gaza’s population, the government’s response remains inadequate.”*<sup>68</sup>

5.18 In spite of the temporary ceasefire announced on 15 January 2025 Gaza's population is still facing severe threat. Analysis shows that “humanitarian needs will remain severe, access will likely remain limited, and deaths will continue to occur throughout the first phase of the ceasefire.”<sup>69</sup> To date, 1.9 million people (90% of Gaza's 2.1 million population) have been displaced, with 95% of the population facing Crisis level or higher food insecurity due to an engineered famine and restrictions on aid by Israel, and 92% of housing units destroyed.<sup>70</sup>

5.19 The World Health Organisation reports very limited access to healthcare, with over half Gaza's hospitals only partially operational and specialist care unavailable, and 30,000 people facing life threatening injuries requiring ongoing rehabilitation.<sup>71</sup> There has been a massive increase in transmission of infectious disease, rising malnutrition and the risk of famine persists,

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<sup>63</sup> Department of Home Affairs, ' Hamas-Israel Conflict: Temporary Humanitarian Stay pathway for Palestinian and Israeli nationals in Australia', available at: <https://www.homeaffairs.gov.au/help-and-support/hamas-israel-conflict/information-for-palestinian-israeli-nationals-temporary-humanitarian-stay>

<sup>64</sup> ABC, 21 September 2024, The Gharbias are among hundreds of Palestinian families who have resettled in Australia after fleeing the conflict in Gaza, available at: <https://www.abc.net.au/news/2024-09-21/nsw-palestinian-gaza-refugee-sydney-gharbia-family-school/104369778>

<sup>65</sup> SBS, above n 66.

<sup>66</sup> UNWRA, 12 December 2024, UNRWA Situation Report #151 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem, available at: <https://www.unrwa.org/resources/reports/unrwa-situation-report-151-situation-gaza-strip-and-west-bank-including-east-jerusalem>

<sup>67</sup> ABC above n 68

<sup>68</sup> Mohamed Duar, AIA Spokesperson for Occupied Palestinian Territory, 15 August 2024

<sup>69</sup> ReliefWeb 17 January 2025, 'ACAPS Briefing note - Palestine: Gaza ceasefire: priority needs and risks', available at: <https://reliefweb.int/report/occupied-palestinian-territory/acaps-briefing-note-palestine-gaza-ceasefire-priority-needs-and-risks-17-january-2025>

<sup>70</sup> Ibid

<sup>71</sup> World Health Organisation, 19 January 2025, 'The ceasefire in Gaza brings hope, but immense challenges lie ahead to restore the health system', available at: <https://www.who.int/news/item/19-01-2025-the-ceasefire-in-gaza-brings-hope--but-immense-challenges-lie-ahead-to-restore-the-health-system>

amid public order breakdown.<sup>72</sup> The solid waste system has collapsed and the water system has been drastically cut.<sup>73</sup>

5.20 It is in this context that AIA submits that the Australian Government must now either relax the Visitor Visa criteria relating to temporary entrants for those applying from the OPT; or issue Humanitarian Stay (Temporary) (subclass 449) Visas and evacuate and bring Palestinians to safety in Australia. The Government has previously issued 449 visas to evacuate Afghans to safety from the Taliban in 2021, and also to evacuate people from Kosovo and East Timor in 1999.<sup>74</sup>

5.21 “Australia has used the [449 visa] to respond to humanitarian emergencies where people have been displaced, or face a ‘strong likelihood’ of being displaced, and are ‘in grave fear of [their] personal safety’ because of the circumstances surrounding such displacement.”<sup>75</sup> As a signatory to the Refugees Convention and the Genocide Convention, AIA submits that it is entirely appropriate that Australia now use its resources and visas at its disposal to bring more Palestinians to safety.

*Recommendation 4:*

The Government urgently provide pathways for people fleeing the Occupied Palestinian Territory to seek safety, either by: waiving the Visitor Visa criteria requiring applicants to be a genuine temporary entrant for those applying from OPT; or issuing 449 visas starting with those who have family or connection to Australia, and facilitating their evacuation and safe passage to Australia.

5.22 On arrival in Australia, people fleeing the OPT could be offered a permanent Resolution of Status (subclass 851) visa. If not, all Palestinians should be offered a three-year Subclass 786 Temporary (Humanitarian Concern) visa, as was granted to those fleeing Ukraine. To ensure fairness and non-discriminatory treatment, AIA asks the Government to provide Palestinians access to the same permanent pathway as those who fled from Ukraine, in the likely event that they cannot return to the OPT in three years’ time. In the absence of providing immediate and permanent protection, AIA calls for a firm commitment to providing permanent safety in future.

*Recommendation 5:*

The Government offer all Palestinians who have arrived in Australia since 7 October 2023 permanent protection; and if not, offer the option of a three-year Subclass 786 Temporary (Humanitarian Concern) visa, and commit to transitioning all those holding a 786 visa and unable to return to OPT in three years’ time onto a permanent Resolution of Status (subclass 851) visa.

5.23 In furtherance of the aim of consistent approaches and non-discriminatory access to Australia’s programs, and in recognition that the Visitor Visa pathway is a manifestly inadequate response to people fleeing war and genocide, AIA submits that the Government must establish a process to facilitate future additional emergency intakes to regularise our emergency crisis responses. AIA supports the principles in the Kaldor Centre’s policy briefing<sup>[66]</sup> on this issue, and we urge the Government to commit to developing such a response.

*Recommendation 6:*

AIA recommends the Government commit to establishing a durable solution - an equitable, uniform process and visa type to facilitate additional emergency intakes in international crises.

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<sup>72</sup> Ibid

<sup>73</sup> UN News, 16 January 2025, “Enough death and destruction’: Gazans hope for ceasefire and a better future’, available at: <https://news.un.org/en/story/2025/01/1159101>

<sup>74</sup> UNSW Kaldor Centre brief p 12.

<sup>75</sup> UNSW Kaldor Centre brief p 12.

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

5.24 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. 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.<sup>76</sup>

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

- Support and fast-track the full social and economic participation of newcomers to Australia;
- Support the settlement of newcomers in a wider range of Australian communities, including regional communities;
- Support the development of English proficiency of refugee newcomers;
- 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;
- Enrich civic life and foster social cohesion in Australian communities;
- 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
- Ensure that the Australian public is aware of and remains supportive of Australia's successful and long-standing humanitarian migration program.

5.26 AIA welcomed changes announced in 2021 to Australia's Community Sponsorship Program (CSP) reducing the cost and bureaucratic burden for those wanting to sponsor and welcome refugees into their communities. Australia now has other mechanisms for a citizen or permanent resident to sponsor a refugee or person in need of protection, including the Special Humanitarian Program and the Community Refugee Integration and Settlement Pilot (CRISP).

5.27 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. Consideration must 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 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, places under both the CSP and CRISP are still being included in Australia's official Humanitarian Program. Furthermore, AIA notes that there are currently only a limited number of visas available through the CSP and CRISP. The lack of 'additionality' of the programs

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<sup>76</sup> Amnesty International, 12 October 2020 'Review of Australia's Community Sponsorship Program,' at [https://www.amnesty.org.au/wp-content/uploads/2020/11/Amnesty-submission\\_Community-Support-Program-review\\_Oct-2020.pdf](https://www.amnesty.org.au/wp-content/uploads/2020/11/Amnesty-submission_Community-Support-Program-review_Oct-2020.pdf).

and the limited number of places inhibits the Australian community from participation in these programs and will constrain the growth of these programs in the future.

5.30 AIA commends the Government's commitment as set out in the ALP's 2023 Policy Platform<sup>77</sup> to progressively increase the community-sponsored refugee program to 10,000 places per annum, in addition to the government-funded humanitarian intake. We call on the Government to honour its commitment by increasing community sponsorship places in this 2025-26 Budget and make these additional to the general Humanitarian Program places.

*Recommendation 7:*

The Government reform Australia's private sponsorship programs - the CSP and CRISP - by removing all non-protection related criteria from the CSP, increasing the number of places to 10,000 per annum and ensuring these are additional to the Refugee and Humanitarian Program.

## 6 Indigenous Justice

### Overrepresentation of First Nations people in the criminal justice system

6.1 Indigenous children represent 1 in 15 children in Australia but make up half of all children in Australia's youth detention centres. Children as young as ten years old are locked up. In 2024, First Nations young people aged 10–17 were 27 times as likely as non-Indigenous young people aged 10–17 to be in youth detention.<sup>78</sup> As discussed above, Australia's overimprisonment of First Nations people and in particular, children, has been widely criticised by human rights bodies and Children's Commissioners, and was noted with concern by the UN Subcommittee on the Prevention of Torture.

6.2 AIA's Community is Everything campaign aims to end over-representation and abuse of First Nations children in prison. We have called for federal, state and territory governments to:

- Work together on national reform to make makes the justice system in every state and territory fair for all children, by adopting Change the Record's national plan;
- Adequately fund the hard-working First Nations people and organisations already working to support children and families and prevent contact with the justice system;
- Ensure sentencing alternatives are available to Judges to support rehabilitation;
- Raise the age of criminal responsibility from 10 to 14 in every state and territory;
- Immediately release all children who are unsentenced or on remand and ensure there is culturally appropriate care and services available in their post-release transition;
- Support children, families and communities to stay strong and together;
- Adequately fund First Nations community-controlled legal and other support services;
- End abusive practices in prison and detention, and abolish the use of spit hoods and mechanical restraints in all justice facilities;
- Set targets to end the overrepresentation of First Nations children in prison, and improve the collection and use of data;
- Work through the Meeting of Attorneys-General to reform State and Territory laws that breach children's rights.

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<sup>77</sup> Australian Labor Party, above n 2.

<sup>78</sup> Australian Institute of Health and Welfare, 13 December 2024, Youth detention population in Australia 2024' available at: <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/first-nations-young-people/key-findings>

- Adequately fund First Nations led diversion programs

6.3 Shocking reports of abuse of children in detention have emerged across the country in every state and territory, in the NT leading to a Royal Commission. In 2021, the United Nations Human Rights Council called on Australia to immediately end its incarceration of children under 14 and condemned Australia’s human rights atrocities perpetrated against children in youth detention.<sup>79</sup>

6.4 Instead of doing this, across Australia in 2024 Queensland introduced tougher laws against youth offending including imposing adult custodial sentences on children<sup>80</sup>. Victoria reversed its decision to raise the age of criminal responsibility<sup>81</sup> and the Northern Territory lowered the age to 10 years old,<sup>82</sup> all citing the intention to address criminal offending and make the community safer. This is despite direct evidence to the contrary showing that in fact, incarceration is the biggest criminogenic factor in reoffending.

6.5 Expert, longitudinal evidence in Australia demonstrates that punitive, carceral responses to youth offending does not reduce rates of recidivism to make communities safer.<sup>83</sup> Findings from investigative and research-based inquiries into youth offending, including Victoria’s Inquiry into Youth Detention Centres, the Disability Royal Commission and the recent National Children’s Commissioner report ‘*Help Way Earlier!*’ show that criminalisation and incarceration of children only exacerbates the impacts of trauma and alienation that can lead to offending.<sup>84</sup>

6.6 AIA’s Indigenous Rights campaigner Kacey Teerman has said, “Despite the popular rhetoric, imprisoning children and treating them as adults in the justice system has never been shown to make communities safer or reduce crime rates”. Palawa Elder and Amnesty International Indigenous Rights Advisor Rodney Dillon said, in response to the WA Coroner’s finding in relation to Unit 18 at Casuarina prison, “government must invest in long-term solutions that address the key drivers of violence in children in consultation with their families and communities ... it can start by diverting the millions of dollars spent on maintaining the youth detention centres into Aboriginal community-led diversion programs that actually work”.<sup>85</sup>

6.7 In her 2024 report *Help Way Earlier!*, the National Children’s Commissioner described the treatment of children, some as young as ten, in the criminal justice system as “one of the most urgent human rights issues facing Australia today”.<sup>86</sup> The Commissioner found that “[d]espite evidence of social disadvantage being the root cause of offending behaviour, policy responses are

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<sup>79</sup> AIA, 13 December 2024, ‘WA Premier must act on Coroner’s call to urgently close Unit 18’, at: <https://www.amnesty.org.au/wa-premier-must-act-on-coroners-call-to-urgently-close-unit-18/>

<sup>80</sup> Queensland Government, Media Statement: ‘A Fresh Start for Queensland: Parliament approves Making Queensland Safer Laws’, available at <https://statements.qld.gov.au/statements/101719>

<sup>81</sup> The Guardian, 13 August 2024, ‘Betrayal’: Indigenous and legal groups condemn Victoria’s backflip on raising the age’ available at: <https://www.theguardian.com/australia-news/article/2024/aug/13/victoria-shelves-plan-to-raise-the-age-of-criminal-responsibility-to-14>

<sup>82</sup> SBS 18 October 2024, ‘Age of criminal responsibility lowered to 10 in Northern Territory’ at <https://www.sbs.com.au/news/article/age-of-criminal-responsibility-lowered-to-10-in-northern-territory/49135w7sn>

<sup>83</sup> AIA, 28 October 2024, ‘Adult crime adult time’ policy flies in the face of all evidence’, available at: <https://www.amnesty.org.au/queensland-1np-adult-crime-adult-time-policy-flies-in-the-face-of-all-evidence/>

<sup>84</sup> Ibid

<sup>85</sup> Ibid

<sup>86</sup> Australian Human Rights Commission, ‘*Help Way Earlier!*’- transforming child justice for safety & wellbeing’, available at: <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>

centred on policing, stricter bail laws, and incarceration. In many cases, these responses worsen the trauma and inequality driving children's contact with the justice system in the first place."<sup>87</sup>

6.8 The Commissioner found that policy responses address the symptoms, with tougher policing, stricter bail laws and incarceration, which does further harm to already traumatised children, but do not address the social determinants at the root of offending behaviour.<sup>88</sup> Rather than ineffective punitive approaches, what is needed is evidence-based, child rights-based and community-led reforms to reduce offending behaviour and make our communities safer.<sup>89</sup>

6.9 It is clear that imprisoning people does not make communities safer or stop offending. Studies have shown conclusively that imprisonment does not deter.<sup>90</sup> Incarcerating people is expensive, ineffective and has a high social cost – contributing to “intergenerational demographic, social and economic dysfunction”.<sup>91</sup> Evidence shows that addressing the root causes of offending is what is effective in reducing reoffending. In the case of First Nations programs, these approaches must be culturally safe and relevant, designed and run by First Nations peoples themselves. Children who take part in Indigenous-led programs like bush camps are far less likely to reoffend than children who are incarcerated.<sup>92</sup>

6.10 Evidence also emerged in 2024 illustrating with greater clarity the link between child protection and youth justice, showing that children subject to the child protection system had a much greater risk of youth justice involvement. The report shows this is even greater for Aboriginal children: 76% of First Nations children under youth justice supervision had a child protection interaction in the last 10 years, compared with 55% of non-Indigenous children.<sup>93</sup> The report also found that the younger a child was when they first entered youth justice supervision, the more likely they were to have had an interaction with the child protection system.<sup>94</sup>

6.11 It is clear interaction with child protection is not effective in diverting children away from future involvement with the youth justice system. This is especially important given the rate of First Nations children removed to child protection in 2024, failing the Closing the Gap target.

6.12 In light of the above, AIA recommends the Federal Government take leadership and provide guidance to states and territories to reduce the over-imprisonment of First Nations children and prevent their abuse in youth detention centres.

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<sup>87</sup> Ibid

<sup>88</sup> Ibid, p 9-10

<sup>89</sup> Ibid

<sup>90</sup> Sentencing Advisory Council, 18 April 2011, 'Does Imprisonment Deter? A Review of the Evidence', at <https://www.sentencingcouncil.vic.gov.au/publications/does-imprisonment-deter-review-evidence>

<sup>91</sup> Andrew Taylor, Hannah Payer and Tony Barnes, 'The Missing Mobile: Impacts from the Incarceration of Indigenous Australians from Remote Communities' [2017] Applied Mobilities 1,1 cited in ALRC, Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Report 133), Ch. 4 Justice Reinvestment, at <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>

<sup>92</sup> AIA, 6 December 2017, 'Update: Community is Everything', at: <https://www.amnesty.org.au/cie-wrap-up/>

<sup>93</sup> Australian Institute of Health and Welfare, 25 October 2024, 'Young people under youth justice supervision and their interaction with the child protection system 2022–23', available at: <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/summary>

<sup>94</sup> Ibid: “More than 9 in 10 (94%) of children aged 10 at their first youth justice supervision had an interaction with the child protection system at some point in the last 10 years”.

*Recommendation 8:*

The Government advise all states and territories to raise the age of criminal responsibility from 10 to 14 in line with international minimum standards and provide national guidance to states and territories to end abusive practices in prison and detention (including abolishing the use of spit hoods and mechanical restraints in all justice facilities).

*Justice reinvestment initiatives*

6.13 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 and preventative-focused, redirecting investment away from the criminal justice system towards place-based initiatives. It embraces therapeutic and rehabilitative methods like diversion programs, early intervention, prevention and rehabilitation, to reduce incarceration of Aboriginal and Torres Strait Islander Peoples, crime and recidivism by addressing the underlying causes of incarceration.

6.13.1 The Australian Law Reform Commission has written that:

Justice reinvestment suggests that prisons are an investment failure, ‘destabilising communities along with the individuals whom they fail to train, treat, or rehabilitate (and whose mental health and substance abuse are often exacerbated by the experience of imprisonment)’.<sup>[5]</sup> Instead, to address the causes of offending, money is better spent—and indeed savings can be made—by reinvesting in places where there are a high concentration of offenders. Justice reinvestment, its proponents contend, can serve both the ends of economic efficiency and social justice: ‘the most efficient way to a just society is to reduce criminality at source through investment in social justice’.<sup>[6]</sup><sup>95</sup>

6.14 Evidence shows that justice reinvestment initiatives are effective to drive imprisonment rate down, when designed and led by First Nations people in a self-determination model.

6.15 The 2022-23 Budget provided funding for 30 community-led justice reinvestment initiatives and a national body to be delivered in partnership with Aboriginal and Torres Strait Islander communities.<sup>96</sup> The 2023-24 Budget announced an additional \$10 million over four years to support place-based justice reinvestment initiatives in Central Australia.

6.16 AIA has long called for supporting justice reinvestment initiatives to address the disproportionately high incarceration rate of Aboriginal and Torres Strait Islander Peoples and welcomed the investment into preventive measures.<sup>97</sup>

*Recommendation 9:*

The Government continue funding justice investment initiatives Australia-wide, and the national coordination body. Given the grossly disproportionate incarceration rates, it is crucial that any model of justice reinvestment centre on First Nations leadership and expertise at every level.

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<sup>95</sup> ALRC, above n 90.

<sup>96</sup> ALP, *Labor’s commitment to First Nations peoples*, 18 May 2022, at <https://apo.org.au/node/319334>

## *Implementation of the Royal Commission into Aboriginal Deaths in Custody*

6.17 As of today, there have been 582 Indigenous deaths in custody since the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC).<sup>98</sup> The RCIADIC's final report concluded First Nations people had a higher rate of death in custody simply because of their disproportionate rate of incarceration, and that the continuing over-representation of First Nations people in prison had their "origins in "structural, systemic injustice to a disadvantaged minority rather than a propensity in this group to increased criminality".<sup>99</sup> 6.19 The 339 recommendations of the RCIADIC report included policy development and criminal justice matters and emphasised the importance of including Aboriginal and Torres Strait Islander Peoples and their perspectives. Despite these findings, First Nations peoples in Australia continue to be among the most incarcerated people in the world. Since the release of the RCIADIC report, progress to fully implement the recommendations has been slow and far from satisfactory. Many of them remain unimplemented or only partially implemented.

### *Recommendation 10:*

The Government resource federal, state and territory governments to fully implement the RCIADIC recommendations; continue resourcing consolidated, real-time reporting of all deaths in custody; and commit to systemic changes to ensure recent tragedies are not repeated.

## *Nation-wide implementation of OPCAT*

6.18 Australia signed the Optional Protocol to the Convention Against Torture in 2009 and ratified in 2017, in the wake of the Royal Commission into the Protection and Detention of Children in the Northern Territory, sparked by the revelation of abuses suffered by Aboriginal children. OPCAT requires each state and territory to designate a 'National Preventive Mechanism' (NPM) to protect against torture, mistreatment, abuse and systemic failings by carrying out inspections and oversight of police, prison cells and other places of detention.<sup>100</sup>

6.19 On ratifying, Australia opted to postpone its obligation to establish National Preventive Mechanisms until January 2022, and the Committee against Torture then granted an extension for Australia to establish a NPM until 20 January 2023<sup>101</sup>. At that date Australia again failed to establish a NPM by the deadline.<sup>102</sup> Seven years after ratifying OPCAT, Australia's three biggest states - NSW, Victoria and Queensland – continue to fail to establish NPMs, noting they cannot fulfil their obligations without federal government funding.<sup>103</sup>

6.20 Disappointingly, the 2024-25 Budget again did not contain sufficient funding to support a nation-wide mechanism to prevent torture and other cruel, inhuman or degrading treatment in

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<sup>98</sup> National Deaths in Custody Program Real-time dashboard, Australian Institute of Criminology, available at <https://www.aic.gov.au/statistics/deaths-custody-australia>

<sup>99</sup> RCIADIC Report cited in ANTA, Deaths in Custody, 6 December 2024, available at: <https://antar.org.au/issues/justice/deaths-custody/>

<sup>100</sup> Change the Record, 20 January 2022, 'Australia has failed to meet anti-torture deadline: condemned by First Nations organisations', available at: <https://www.changetherecord.org.au/change-the-record/posts/australia-has-failed-to-meet-antitorture-deadline-condemned-by-first-nations-organisations>

<sup>101</sup> Australian Human Rights Commission, Optional Protocol to the Convention Against Torture, available at: <https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

<sup>102</sup> AIA, 30 January 2023, 'OPCAT Failure: Australia misses another deadline', available at: <https://www.amnesty.org.au/australia-has-failed-to-meet-the-deadline-for-implementing-the-optional-protocol-to-the-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment/>

<sup>103</sup> Ibid



detention.<sup>104</sup> Members of the Australian NPM released a statement expressing concern and disappointment, saying that current funding levels are insufficient to meet Australia's torture prevention responsibilities.<sup>105</sup> They noted that "15 years after signing OPCAT, Australia continues to see high rates of incarceration and increased incidences of death and other harm in custody, while ill treatment also continues to be found in other places of detention."<sup>106</sup>

6.21 As First Nations deaths in custody continue, including the recent deaths of two children, and as the Northern Territory plans to reintroduce spit hoods for use on children, which can amount to torture<sup>107</sup>, and Queensland introduces law to impose adult prison sentences on children, it is imperative that the Government ensure our commitment to OPCAT is effective. The federal Government must establish an intergovernmental agreement between all states and territories and invest the funding required for each state and territory to establish NPMs.

*Recommendation 11: The Government ensures the implementation of OPCAT is adequately resourced across all jurisdictions as a matter of urgency, including intergovernmental agreements and funding NPMs.*

### *Closing the Gap targets*

6.22 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 (aged 10-17 years) in detention by at least 30 per cent by 2031.<sup>108</sup>

6.23 Under the National Agreement, governments have committed 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, and a significant and sustained reduction in the suicide of Aboriginal and Torres Strait Islander people towards zero.<sup>109</sup>

6.24 However, the 2024 Closing the Gap report revealed that instead of improving towards the targets, "outcomes are worsening in four key areas: children removed into out-of-home care by child protection systems, the proportion of children who are developmentally on track, the rate of people taking their own lives and the number of adults imprisoned".<sup>110</sup>

6.25 The rate of incarceration of Aboriginal and Torres Strait Islander adults was 15.2 times higher than for non-Indigenous adults, compared to 12.5 times higher in 2019 (the baseline

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<sup>104</sup> Australian NPM Joint Statement, 'Little funding for torture prevention in federal Budget, available at <https://nla.gov.au/nla.obj-3450794658/view>

<sup>105</sup> Ibid

<sup>106</sup> Ibid

<sup>107</sup> AIA, 26 February 2022, 'Use of spit hoods can amount to torture in youth detention or anywhere else', at <https://www.amnesty.org.au/use-of-spithoods-can-amount-to-torture-in-youth-detention-or-anywhere-else/>; Australian Human Rights Commission, 17 February 2023, Submission to The Australian Federal Police's review on its use of spit hoods, at <https://humanrights.gov.au/our-work/legal/submission/australian-federal-polices-review-its-use-spit-hoods>

<sup>108</sup> Closing the Gap targets and outcomes, available at <https://www.closingthegap.gov.au/national-agreement/targets>

<sup>109</sup> Ibid

<sup>110</sup> Australian Government Productivity Commission, 31 July 2024, *Closing the Gap: Annual Data Compilation Report*, available at <https://www.pc.gov.au/closing-the-gap-data/annual-data-report>

year).<sup>111</sup> Aboriginal and Torres Strait Islander children experienced rising rates of out-of-home care, with children aged 5–9 and 10–14 years consistently subjected to the highest rates since 2019<sup>112</sup>. Only five socio-economic targets are on track of the 15 that were assessed in 2024.

6.26 This concerning report card once again demonstrated the slow progress in improving the lives of Aboriginal children and adults despite Government commitments to Close the Gap. The 2024-25 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 12:*

The Government fund existing and new initiatives to meet Closing the Gap targets, particularly in relation to the disproportionate rates of incarceration and suicide of First Nations peoples, violence against First Nations women and children, and removal of First Nations children.

## 7 Conclusion

7.1 As the humanitarian situation worsens within our region as well as in the Middle East, the Australian Government must not only urgently expand the Humanitarian Program and quotas for particular groups, but where appropriate ensure there is additionality for specific crises, with a process to respond which is underpinned by the principle of non-discrimination.

7.2 The Government’s commitment in its 2023 Policy Platform to progressively increase the community-sponsored refugee program to 10,000 places per annum is commendable. The Government must now introduce these measures as soon as practicably possible.

7.3 The 2025-26 Federal Budget also provides an excellent opportunity to advance the Government’s human rights agenda to help bring meaningful improvements in the lives of Aboriginal and Torres Straits Islander People.

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

7.5 By implementing these recommendations by AIA, the Government can become a true leader in addressing the injustices faced by First Nations Peoples while also restoring its reputation as an important player in addressing the global refugee crisis.

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<sup>111</sup> Ibid, p 63

<sup>112</sup> Ibid, p 30