



Submission to the Senate Standing Committee on Legal and
Constitutional Affairs

Migration Amendment (Evacuation to Safety) Bill 2023

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About Amnesty International

Amnesty International is a global movement of more than 10 million people who take injustice personally. We are campaigning 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.

We are impartial and independent of any government, political persuasion or religious belief and do not receive funding from governments or political parties.

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1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs regarding the *Migration Amendment (Evacuation to Safety) Bill 2023* (the Bill).

1.2 The recommendations contained in this submission go towards ending the abuse and enhancing the protection for refugees and people seeking asylum held in offshore detention by Australia.

1.3 AIA supports the proposed amendments to the *Migration Act 1958* proposed in the Bill as they provide refugees and people seeking asylum safety and protection, including access to adequate and appropriate medical treatment in Australia while they await resettlement in a third country.

1.4 AIA wishes to note that by implementing the Bill, Australia is not exempt from its international obligations in relation to refugees and people seeking asylum, in particular the right to seek asylum in Australia.

1.5 The rights of refugees and people seeking asylum has been an important area of work for AIA in which extensive research, reports and submissions have been published that deal with issues of mandatory and indefinite detention, as well as the conditions of offshore detention centres, among other topics.¹

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

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

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

1. International human rights frameworks;

¹ See Amnesty International, Submission to the Australian Human Rights Commission National Inquiry into Children in Immigration Detention,' 2014, available at <https://humanrights.gov.au/our-work/commission-website-national-inquiry-children-immigration-detention-114>; Amnesty International, 'Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru,' 2015 available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Submissions; Amnesty International, 'Island of Despair,' 2016, available at <https://www.amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>; Australian Human Rights Commission, '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; Amnesty International, 'The Impact of Indefinite Detention: The Case to Change Australia's Mandatory Detention Regime,' 2005 available at <https://www.amnesty.org/es/wp-content/uploads/2021/08/asa120012005en.pdf>; Amnesty International, 'Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 2010, available at https://www.aph.gov.au/Help/404?item=%2fsenate%2fcommittee%2flegcon_cte%2fmigration_detentionreform_proc&user=extranet%5cAnonymous&site=website; Amnesty International, 'Submission to the Joint Select Committee on Australia's Immigration Detention Network,' 2011, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/immigrationdetention/submissions.

2. The right to seek asylum;
3. The impacts of offshore detention; and
4. Alternatives to detention.

2. Recommendations

AIA recommends that the *Migration Amendment (Evacuation to Safety) Bill 2023* be passed in full with the following considerations for further implementation:

- 1) Allow recognised refugees the right to settle in Australia, regardless of how they arrive, and ensure those seeking asylum have their claims assessed in a timely, fair and effective manner;
- 2) End the policy of offshore processing and detention and permanently close the 'Regional Processing Centre' on Nauru; and
- 3) Ensure bridging visas allow for refugees and people seeking asylum to remain in the community with full rights and entitlements.

3. International Human Rights Frameworks

3.1 The Australian Government is entitled to control the entry and residence of foreign nationals on its territory. However, all Australian Government policies and practices must comply with the state's international obligations.

3.2 A number of the Australian Government's current policies regarding refugees and people seeking asylum held offshore fall short with respect to a number of fundamental human rights, including:

- 1) Non-refoulement/Constructive refoulement – i.e. the ban on transfer to a real risk of serious human rights violations.²
- 2) The ban on torture and other cruel, inhuman, or degrading treatment or punishment.³
- 3) The right to security of the person – i.e. freedom from injury to the body and the mind, or bodily and mental integrity.⁴
- 4) The right to life.⁵
- 5) The right to liberty.⁶
- 6) The ban on arbitrary detention.⁷
- 7) The right to equality before the law.⁸

3.3 The Australian Government's current policies towards refugees and people seeking asylum have been consistently criticised by a number of United Nations (UN) Treaty Bodies, and most recently in Australia's third cycle Universal Periodic Review by the UN High Commissioner for Human Rights.⁹

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

3.4 The primary source of rights for refugees and people seeking asylum relevant to this submission can be found in the *Refugee Convention 1951*.¹⁰ Australia voluntarily acceded to the Refugee Convention and Protocol and is therefore bound by the standards for refugee protection outlined within them.

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

²UN General Assembly, Convention Relating to the Status of Refugees (Refugee Convention), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>.

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

⁴ICCPR, Arts. 9(1), 12(1).

⁵ICCPR, Art. 6(1).

⁶ICCPR, Art. 9(1).

⁷Ibid.

⁸ICCPR, Art. 14(1).

⁹United Nations Human Rights Council, 'Universal Periodic Review - Australia,' 2021 available at https://lib.ohchr.org/HRBodies/UPR/Documents/Session37/AU/HC_letter_to_Australia.pdf

¹⁰ Above, n1.

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

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

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

3.9 Most relevant to this submission is Article 31(1) of the Refugee Convention, which highlights that States are not allowed to penalise refugees and people seeking asylum who show 'good cause' for illegal entry or stay.¹¹ This includes administrative penalties such as detention.

3.10 Furthermore, the preamble of the Refugee Convention highlights that refugees and people seeking asylum should be able to enjoy the widest possible exercise of their fundamental rights.¹² This includes civil rights; such as access to courts, as well as economic, social and cultural rights; ranging from employment rights to social security and the right to education.¹³

International Covenant on Civil and Political Rights

3.11 The International Covenant on Civil and Political Rights (ICCPR) recognises the right to liberty and security of a person and prohibits arbitrary detention.¹⁴ Although the ICCPR has never been fully adopted into domestic legislation, Australia ratified the ICCPR in 1980 and is therefore bound by the rights and protections outlined within it.

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

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."¹⁵

The Vienna Convention on the Law of Treaties

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

¹¹Ibid.

¹²Refugee Convention, Preamble.

¹³Above, n1 Articles 3 - 34.

¹⁴Above, n2 Article 9.

¹⁵Above, n2 Article 9(4)

3.14 The Vienna Convention on the Law of Treaties provides that ‘every treaty in force is binding upon the parties to it and must be performed by them in good faith’.¹⁶

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

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

“Law, as any other institution, is subject to abuse. Apartheid South Africa was governed by laws that regulated oppression and led to horrific denial of dignity. The law that must guide us is that law which is capable of delivering justice and providing remedies for grievances. It is a dynamic and reliable institution that is capable of preserving the rights of all while adapting itself to the needs of a changing world. This is the role of human rights law.”¹⁷

3.17 Thus, the Vienna Convention on the Law of Treaties states that parties ‘may not invoke the provisions of its internal law as a justification for its failure to perform a treaty’.¹⁸

3.18 These pieces of international law and standards form the basis of AIA’s recommendations.

4. The Right to Seek Asylum

4.1 The right to seek asylum is premised on the human right “to seek and enjoy in other countries asylum from persecution” as found in the Universal Declaration of Human Rights.¹⁹

4.2 All people are entitled to this right, regardless of *how* or *where* they arrive in Australia. This includes people seeking asylum who arrive by boat.

4.3 This right recognises that using irregular means to enter a country when seeking international protection may be some people’s only option. To use arguments of sovereignty to justify denial of a person’s right to seek asylum is contrary to the object and intention of the international human rights and the refugee law framework.

4.4 According to the Australian Human Rights Commission:

“All people who make claims for asylum in Australia should have those claims assessed on the Australian mainland through the refugee status determination and complementary protection system that applies under the Migration Act.”²⁰

¹⁶United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <https://www.refworld.org/docid/3ae6b3a10.html>.

¹⁷UN High Commissioner for Human Rights, Louise Arbour, International Commission of Jurists, Biennial Conference, Berlin, Germany, 27 August 2004.

¹⁸Above, n15 Article 27.

¹⁹UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

²⁰Australian Human Rights Commission, ‘Asylum Seekers and Refugees,’ accessed 2021, available at <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees>.

Recommendation 1: Allow recognised refugees the right to settle in Australia, regardless of how they arrive, and ensure those seeking asylum have their claims assessed in a timely, fair and effective manner.

5. The Impacts of Offshore Detention

5.1 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.²¹ Instead, anyone who arrives by boat is forcibly taken by the Government of Australia to offshore 'Regional Processing Centres'.²²

5.2 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 2021.²³

5.3 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 externalization 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."*²⁴

5.4 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.²⁵

5.5 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.

5.6 Currently there are more than 60 refugees and people seeking asylum remaining in Nauru.

5.7 Similar arrangements existed between the Australian and Papua New Guinea Government, however this was terminated at the end of 2021, with - according to the Australian Government - responsibility for the more than 100 refugees and people seeking asylum remaining there at that

²¹Above, n20.

²²Ibid.

²³Department 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>.

²⁴Parliament 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>.

²⁵Ibid.

time transferring to the Papua New Guinea Government, despite a lack of alternative resettlement options.²⁶

5.8 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.

5.9 However, since its inception, offshore processing has been designed to be punitive and has been widely promoted by a succession of Australian governments as a deterrent to refugees and people seeking asylum, rather than people-smugglers.

5.10 This deterrence-based response to those attempting to reach safety by boat, which includes boat push-backs, is both abusive and unsustainable.

5.11 It has seen more than a dozen avoidable deaths, along with serious and worsening physical and mental health impacts.²⁷

5.12 Furthermore, it has seen the deteriorating security and safety of those continuing to be detained under this regime, with people seeking asylum being forcibly returned to their countries of origin and then becoming victims of persecution, violence, torture and death.²⁸

5.13 The 'Regional Processing Centre' on Nauru is kept well-hidden from international scrutiny. Most journalists are denied access and in 2015 the Australian Government passed the *Australian Border Force Act 2015*, which at the time carried a prison sentence of up to two years for any staff member who spoke out publicly about conditions in the Centre.²⁹ Although now significantly amended, the secrecy amendments still apply to information that may compromise Australia's security, defence or international relations.³⁰

5.14 Despite this, in 2016 AIA travelled to Nauru, interviewing 58 refugees and people seeking asylum and gathering documentary, video and audio evidence about conditions on the island.³¹ Researchers also interviewed individuals who are currently employed by, or who have previously worked for, companies or organisations under contract to the Australian Department of Immigration and Border Protection on Nauru.³²

5.15 AIA has also visited Manus Island and Port Moresby on PNG on a number of occasions, most recently in 2019, during this visit interviewing more than 15 refugees and people seeking asylum, gathering documentary, video and audio evidence about conditions.³³

5.16 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 AIA's researchers and campaigners have met reported mental health issues of some kind: high levels of anxiety,

²⁶Legal 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

²⁷Monash 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

²⁸Above, n25.

²⁹Australian Border Force Act 1958 (Cth).

³⁰Ibid.

³¹Above, n25.

³²Ibid.

³³Amnesty International, 'Game Over,' 2019, available at <https://www.amnesty.org.au/gameover/>.

trouble sleeping, and mood swings were frequently mentioned. Almost all said that these problems began when they were transferred offshore.³⁴

5.17 This is in part due to the debilitating uncertainty refugees and people seeking asylum face about their future. Although refugees and people seeking asylum on Nauru and in Papua New Guinea are no longer technically detained, they are nonetheless in a detention-like environment. In all intents and purposes Nauru and Papua New Guinea are open-air prisons that people cannot leave, even when they have been officially recognised as refugees.

5.18 Many of the refugees and people seeking asylum interviewed by Amnesty described how they or their friends and family had been attacked and/or subjected to verbal abuse.³⁵ On Nauru, this included physical attacks on men, children and women – including sexual assaults – as well as robbery and attempts to break into their homes.³⁶

5.19 Refugees and people seeking asylum who were victims of crime said that the police failed to adequately investigate their complaints, a claim supported by Nauru's former Chief Justice.³⁷

5.20 The health care available in offshore processing is also inadequate. Certain medical services, specialists, tests and procedures are not available. Individuals said they had to wait for months to see a visiting specialist or undergo a necessary test, even when, according to the doctors, their condition was serious, such as suspected cancer.³⁸

5.21 Descriptions of medical transfers to and from Nauru and Papua New Guinea expose a system that traumatises the patient and appears to be done in a manner that is not in the best interests of patients. The medical transfer of patients depends on the discretion of the Home Affairs Minister, and medical professionals can be overruled or their advice disregarded.³⁹

5.22 This system has resulted in the avoidable deaths of more than a dozen refugees and people seeking asylum, including that of Hamid Khazaei. The Queensland Coroner found that Mr Khazaei's death was preventable and the result of "compounding errors" in health care provided under Australia's offshore immigration detention system.⁴⁰

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

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

5.25 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

³⁴Above, n25,40.

³⁵Ibid.

³⁶Ibid; Amnesty International, 'Until When?', 2018, available at <https://www.amnesty.org/en/documents/asa34/9422/2018/en/>.

³⁷Geoffrey M. Eames AM QC, 'Submission to Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru,' 2015, available at <http://www.aph.gov.au/DocumentStore.ashx?id=1c235c65-51bc4979-93f3-320175ad7c9e&subId=352831>.

³⁸Above, n25.

³⁹Migration Amendment (Repairing Medical Transfers) Bill 2019 (Cth).

⁴⁰ABC, 'Asylum Seeker Hamid Khazaei's Death From Leg Infection Was Preventable, Queensland Coroner Finds,' 2018, available at <https://www.abc.net.au/news/2018-07-30/asylum-seeker-hamid-khazaei-coronial-inquest-death-preventable/10050512>.

government policy. In doing so the Australian Government is in breach of international human rights law and international refugee law.

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

Recommendation 2: End the policy of offshore processing and detention and permanently close the ‘Regional Processing Centre’ on Nauru.

6. Alternatives to Detention

6.1 The United Nations High Commissioner for Refugees ‘Revised Guidelines on Detention’ calls upon states to consider alternatives to the detention of people seeking asylum until their status is determined.⁴¹ In accordance with these guidelines, the issuing of bridging visas may be considered to be an alternative to detention.⁴²

6.2 Whereas previously refugees and people seeking asylum transferred to Australia for medical treatment under the Medevac legislation were held indefinitely in APODs, the previous Australian Government made a number of policy changes - namely the issuing of bridging visas - that have to some extent softened the harsh nature of the current detention system.

6.3 Currently, the majority of refugees and people seeking asylum who were detained offshore and who are now in Australia are either in Community Detention (CD) or have been issued “Final Departure” bridging visas (BVEs), or are now being transferred out of CD onto these visas through a staged approach.

6.4 Prior to Medevac the previous practice for those medically transferred from offshore was to place, specifically families, into CD. The current Bill also seeks to allow for the use of CD.

6.5 AIA has expressed concern with respect to both of these practices, (the use of CD and BVEs) as the process has often been arbitrary, while also in practice restricting refugees and people seeking asylum’s basic rights in different ways.

6.6 While in most cases a BVE holder will be granted work rights, previously this trade off meant that BVE holders were not eligible to receive Centrelink and were ineligible for the Status Resolution Support Services (SRSS) program.⁴³ AIA welcomes recent changes by the Federal Government to provide extended support for those being released from CD, to help them transition into the community, as well as now providing access to SRSS for those BVE holders acutely in need.

6.7 AIA understands that the current Bill is attempting to resolve a number of these issues related to adequate support by placing this group in CD, but we caution that in doing this, other issues may be created.

⁴¹Above, n26.

⁴²Above, n26.

⁴³Australian 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.

Education is a human right, but for some refugees and people seeking asylum in Australia, finishing high school after the age of 18 or going to TAFE or university is denied. After August 2012, the Australian Government introduced punitive deterrence policies for people who arrive by boat. This has left thousands of people on various classifications of temporary, safe haven, bridging and community detention visas, without basic rights to work and study. Of particular concern are young people who arrived as children with their families and cannot progress their education.

Sara's* family fled Iran in 2013 when Sara was 10. They were transferred to offshore detention in Nauru where Sara spent five years without access to any formal education. Passionate about learning English, reading and writing, Sara educated herself through donated books and resources.

When Sara's family came to Australia in 2018 for medical reasons, they were placed into community detention which denied the family the right to work and the right to study after the age of 18. The family is also subject to curfew at night, restricting their ability to build social connections. Sara was able to go to high school when she first arrived in Australia at the age of 16, but her older sister was denied any access to study. Sara completed her HSC in 2020 but had to engage a lawyer to convince the Department of Immigration to allow her to do so once she had turned 18 in her final year.

Sara is now 20 and lives with her family, unable to work or progress her study and life.

"What crime did I commit to be treated like this?" Sara asks.

*** Names have been changed for privacy reasons.**

6.8 Refugees and people seeking asylum who are placed into CD should be afforded basic rights and entitlements, including the right to employment and education. While CD may be appropriate for some, there must be flexibility in this designation to ensure an appropriate decision can be made around the circumstances of individuals.

6.9 Furthermore, AIA remains deeply concerned at the limited nature of the Final Departure BVE, both in terms of the length of the visa as well as restrictions on basic rights attached to it. Granting 6 month visas makes it extremely difficult for refugees to gain access to the rental market as well as to find employment. When the only realistic third country option open to them is New Zealand, and this process is a three year process, forcing refugees to reapply every 6 months is both cruel and unnecessary.

6.10 While waiting for third country options, restrictions on basic rights such as the right to study is also deeply harmful as well as counter productive. If refugees are to successfully settle in countries such as New Zealand, who are assisting Australia by offering resettlement places, then all efforts should be made to allow these refugees to access basic rights that will result in improved integration while waiting for these outcomes.

6.11 AIA notes the Bills reference to APODs and we strongly oppose the indefinite arbitrary detention of refugees and people seeking asylum in APODs. AIA maintains that recourse to more restrictive forms of detention should only take place in those circumstances where detention may

exceptionally be resorted to as specified by the UNHCR, and detention should in all cases be a last resort, in compliance with international human rights law and standards.

6.12 People whose applications for protection have been finally determined and found not be in need of protection, on the basis of fair and satisfactory procedures, should be granted a bridging visa with basic rights and entitlements pending their removal.

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

Recommendation 3: Ensure bridging visas allow for refugees and people seeking asylum to remain in the community with rights and entitlements.

7. Conclusion

The Australian Government's current policy towards refugees and people seeking asylum has caused untold psychological and physical damage to refugees and people seeking asylum. It has undermined Australia's diplomatic relations with regional neighbours and its reputation as a country that respects international law at a huge financial cost.

There is now widespread awareness of the damage offshore processing has caused and the need for change in Australia's immigration detention system. There is an obvious need to find a better balance between Australia's border security and the rights and responsibilities towards people seeking asylum.

The continuing operation of the 'Regional Processing Centre' on Nauru, as well as refugees left stranded in Papua New Guinea is a national shame that has led to the avoidable deaths of more than a dozen refugees and people seeking asylum. Within a system designed purely to deter, the treatment of refugees and people seeking asylum under these conditions amounts to torture. As a matter of urgency, the Australian Government must close the remaining centre on Nauru and bring all remaining refugees and people seeking asylum in Nauru and Papua New Guinea to Australia while they await permanent solutions.

Upon arrival in Australia, this group must be released into the community immediately under a visa subclass that allows the enjoyment of basic rights such as employment, education, healthcare and social security.

It is AIA's hope that the Parliament will use this inquiry as an opportunity to make positive changes to restore Australia's reputation and ensure refugees and people seeking asylum are treated with dignity and respect and in accordance with international human rights law. The passing of the *Migration Amendment (Evacuation to Safety) Bill 2023* in full will go some way to achieving this.

