

**AMNESTY
INTERNATIONAL**



DEFENDING HUMAN RIGHTS

Submission to the
Treasury's Pre-Budget Priorities 2021-2022

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Submitted by
Amnesty International Australia

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation with more than 10 million supporters in more than 160 countries around the world.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

1. Summary

- 1.1 Amnesty International Australia welcomes the opportunity to make a submission to the Treasury on the 2021-22 Federal Budget. This submission has two focuses: we wish to highlight the protection of refugees and asylum seekers as an area for serious consideration in planning Federal Budget expenditure, and want to prompt the government to take a lead in ending the overrepresentation of Indigenous children in the youth justice system.
- 1.2 The world is witnessing unprecedented levels of displacement. More than 80 million people globally were forced to flee their homes due to conflict and persecution by the end of 2019. Among them are over 26 million refugees¹. These numbers will increase as climate change increases human displacement².
- 1.3 However, Australia's support for refugees does not match the severity of the global refugee crisis. The cut in the refugee intake by 5000 places announced in the 2020-21 Budget was a severe blow to the world's most vulnerable people. As a wealthy country with a long-standing and successful history of resettling refugees, Australia can and must do more to address the global crisis facing refugees. Increasing the humanitarian intake in the 2021-22 Budget will benefit not only refugees but also Australia's economy and society.
- 1.4 Refugees bring a wide range of skills, experiences and qualifications to the job market. They can contribute to the Government's Economic Recovery Plan as we emerge from the COVID-19 pandemic.
- 1.5 Offshore processing of asylum seekers has cost the Government \$9 billion between 2016-2020³. Last year's Budget allocated \$1.19 billion for offshore processing arrangements, following budget blowouts over the past four years⁴. Offshore processing has proven unsustainable and expensive. The Government can save hundreds of lives and millions of dollars every year by closing down all offshore processing operations, whether in PNG and Nauru or Alternative Places of Detentions.
- 1.6 The Australian community is willing to welcome more refugees in their local neighbourhoods and support as they rebuild their new lives. More than 30,000 Australians, 37 local governments and more than 100 community groups have pledged their support to engage in an improved community refugee sponsorship program. However, Australia's current private sponsorship program for refugees, the Community Support Program (CSP), limits widespread community participation. The two key factors are the program's prohibitive cost and the fact that 1000 visas currently available under the CSP are deducted from the refugee intake's annual quota. Businesses, groups and families believe this is a case of the Government passing the buck rather than enabling more refugees to start new lives in

¹ UNHCR Figures at a glance: <https://www.unhcr.org/en-au/figures-at-a-glance.html>

² Climate change and human displacement
<https://www.unhcr.org/news/stories/2019/10/5da5e18c4/climate-change-and-displacement.html>

³ How much does it cost to detain asylum seekers?:
<https://www.kaldorcentre.unsw.edu.au/publication/cost-australias-asylum-policy>

⁴ Federal Budget: What it means for refugees and people seeking humanitarian protection:
<https://www.refugeecouncil.org.au/federal-budget-summary/>

Australia in safety.

- 1.7 Indigenous children are twenty-two times more likely to end up in the youth justice system than their non-Indigenous peers.⁵ Whilst this rate is slowly reducing, it is still a blight on our community that robs Indigenous children of equal opportunity.
- 1.8 Indigenous incarceration rates will drop when the underlying causes of criminal behaviour are addressed. To reduce Indigenous incarceration rates, the government must tackle the root causes and adopt a holistic approach to youth justice that ensures education, health, housing and other social needs are adequately and appropriately provided.
- 1.9 Each state and territory government is responsible for its own laws, policies and practices for dealing with young people accused of committing, or convicted of, offences. However, it is the Federal Government, as a signatory to international human rights conventions, which bears ultimate responsibility for fulfilling the rights of Indigenous young people in all states and territories.⁶ This responsibility extends to the Federal Government's fiduciary obligation to ensure that expectations under these international conventions and treaties are met.

Recommendations

Amnesty International recommends that the Government adopts the following measures as a package of reforms in the 2021-22 Budget. The Australian Government must:

- 1) Commit to increasing the humanitarian refugee intake to 20,000 immediately and to at least 30,000 places annually within three years in line with global needs and Australia's capacity.
- 2) Reform and expand the current Community Support Program including reducing the cost of sponsorship and ensuring that places are above and beyond the humanitarian resettlement quota. Starting at 1000 places, the program should at least allow the community sponsorship of 10,000 refugees annually over five years.
- 3) Close down the offshore processing operations and bring all asylum seekers and refugees on Nauru and in Papua New Guinea and those held in detention in Australia under offshore arrangements to safety. It must end the mandatory and indefinite detention of people waiting for their asylum claims to be assessed and have their claims evaluated in a timely and fair manner.
- 4) Accept the New Zealand offer to resettle Australia's refugees trapped in limbo in Papua New Guinea, Nauru and onshore as soon as possible.
- 5) Work with Justice Reinvestment Network Australia and Indigenous-led organisations to design a national justice reinvestment body, and fund it for at least four years.

⁵ Productivity Commission, 'Overcoming Indigenous Disadvantage', 2020
<https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2020/report-documents/oid-2020-overview.pdf>

⁶ United Nations, 'Vienna Convention on the Law of Treaties', Article 12

- 6) Commit at least \$46m to work with Justice Reinvestment Network Australia and Indigenous-led organisations to develop new justice reinvestment sites where needed, and to support existing sites.
- 7) Commit new funding towards the National Agreement on Closing the Gap targets, particularly for Indigenous-led organisations, regarding the incarceration of Aboriginal and Torres Strait Islander adults and young people.
- 8) Commit new funding towards the National Agreement on Closing the Gap targets, particularly for Indigenous-led organisations, regarding family violence and abuse against Aboriginal and Torres Strait Islander women and children.
- 9) Commit new funding towards national Indigenous peak organisations to allow them to co-lead the implementation of the National Agreement on Closing the Gap, and funding of the National Family Violence Prevention and Legal Services Forum.

2. International legal human rights framework

Refugees and Asylum Seekers

- 2.1 As stated in the Universal Declaration of Human Rights, “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.
- 2.2 Refugees also have rights and protections under international law as stipulated in the 1951 Refugee Convention.
- 2.3 The principle of non-refoulement, one of the most important principles in the Refugee Convention, requires that countries do not send refugees to a country of origin where they will be at risk of persecution or any other country that might then send them to such a place.⁷
- 2.4 According to the Refugee Convention, refugees ought to be afforded a range of rights as soon as they arrive in a country seeking asylum. These rights include, but are not limited to, the right to non-discrimination (Article 3), freedom of religion (Article 4), the right to access to courts (Article 16), the right to work (Article 17), the right to housing (Article 21), the right to not be penalised for illegal entry (Article 31), the right not to be expelled from a country unless the refugee poses a threat to national security or public order (Article 32), and the right not to be sent back to a country where their life or freedom would be threatened (Article 33).⁸
- 2.5 As a party to the Refugee Convention, Australia has a legal obligation to comply with its provisions and take the necessary steps to give effect to the treaty within its jurisdiction.

Overrepresentation of Indigenous young people in the youth justice system

- 2.6 Under international law, all fair trial and procedural rights that apply to adults apply equally to children, but additional juvenile justice protections exist under the international human rights framework in recognition that children differ from adults in their physical and psychological development. The Convention on the Rights of the Child is the primary source of these rights.⁹ Unique among the major UN human rights treaties, it explicitly recognises the particular needs of Indigenous children.
- 2.7 Article 37 of the Convention on the Rights of the Child provides that States Parties shall ensure that “the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.” Article 40(3) requires States Parties to “promote the establishment [of] measures for dealing with such children without resorting to judicial proceedings ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”
- 2.8 In its General Comment 10, on children’s rights in juvenile justice, the Committee on the Rights of the Child says that “a comprehensive policy for juvenile justice must deal with ...

⁷ United Nations Refugee Agency, Note on Non-Refoulement EC/SCP/2

⁸ United Nations, 1951 Refugee Convention, <https://www.unhcr.org/en-au/1951-refugee-convention.html>

⁹ United Nations, Convention on the Right of the Child

the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings.¹⁰

- 2.9 The Committee on the Rights of the Child also urges States Parties to consider “the application of special measures in order to ensure that Indigenous children have access to culturally appropriate services in the [area of] juvenile justice.” These should “take into account the different situation of Indigenous children in rural and urban situations” and “particular attention should be given to girls ... to ensure that they enjoy their rights on an equal basis as boys.”
- 2.10 The United Nations Guidelines for the Prevention of Juvenile Delinquency sets out that community-based services and programs should be developed for the prevention of youth offending and that “[f]ormal agencies of social control should only be utilized as a means of last resort.”⁸⁴ They further provide that “[e]very society should place a high priority on the needs and well-being of the family and of all its members” and “should establish policies that are conducive to the bringing up of children in stable and settled family environment.”¹¹
- 2.11 These pieces of international law form the basis of Amnesty International’s recommendations for the Federal government to include a response to the overrepresentation of Indigenous young people in the 2021-2022 Federal Budget.

¹⁰ Committee on the Rights of the Child, ‘General Comment No. 10: Children’s rights in juvenile justice’ (2007)

¹¹ United Nations, Guidelines for the Prevention of Juvenile Delinquency

3. Refugees and asylum seekers

Increasing the total Refugee and Humanitarian Program in line with global needs

- 3.1 While the number of people displaced from their homes continues to rise, Australia's intake has been reduced from 18750 to 13750 places per annum for the next three years in last year's Budget. In comparison, the program before 2013 allowed 20000 places per year.
- 3.2 As a wealthy country with a long-standing tradition of resettling refugees, Australia can and must do more to address the global refugee crisis. There is a need for Australia to step up its commitment and support an equal share of the current number of refugees seeking resettlement worldwide, along with OECD nations. The bulk of refugees are currently hosted in low income countries such as Turkey, Colombia and Pakistan.
- 3.3 Increasing the intake in the 2021-22 Budget will be in the interest of Australia's economy and society. Refugees bring a wide range of skills, experiences and qualifications to the job market and can contribute to the Government's Economic Recovery Plan as we emerge from the COVID-19 pandemic.
- 3.4 A study by Deloitte Access Economics in 2019 found that increasing Australia's annual refugee intake to 44000 over five years would generate an extra \$37.7 billion to the economy and create 35000 full-time equivalent jobs annually for the next 50 years¹².

Recommendation 1: The Australian Government commits to increasing refugee intake to 20,000 immediately and to at least 30,000 places annually within three years in line with global needs.

Making Community Support Program for refugees fairer and more accessible to encourage wider community participation

- 3.5 Amnesty International, along with like-minded civil society groups, has consistently raised our concerns with the Government's current Community Support Program (CSP) for refugees since its operation in 2018. The program does not enable widespread community participation despite local communities' eagerness to welcome new refugees in their neighbourhoods.
- 3.6 The CSP currently sits within the Refugee and Humanitarian Program, which has a fixed annual visa quota. Every time a community group, family or business successfully sponsors a refugee through the community sponsorship program, the Government takes a place from

¹² Economic and social impacts of increasing Australia's humanitarian intake
<https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-social-impact-increasing-australias-humanitarian-intake-280819.pdf>

the humanitarian intake quota.

- 3.7 The costs associated with the program are prohibitively high. The application and visas for a family of five costs approximately \$80,000 – three times the amount of Canada’s community sponsorship program for refugees.
- 3.8 The program privileges certain applicants above others. Those who are considered job ready, are from certain priority countries, have adequate English and are willing to settle in regional areas are given priority, rather than those in more urgent need of resettlement.
- 3.9 A fairer and more accessible program will enable families, business and communities to support more people seeking safety to build their lives here and contribute to the Australian community.

Recommendation 2: The Government should use the 2021-22 Budget to reform and expand the current Community Support Program including reducing the cost of sponsorship and ensuring that places are above and beyond any existing humanitarian quota. Starting at 1000 places, the program should allow the community sponsorship of 10,000 refugees annually over five years.

Immediately ending offshore processing and bringing all refugees and asylum seekers detained under offshore arrangements to safety

- 3.10 Australia’s current deterrence-based response to those attempting to reach safety by boat, which includes push-backs and offshore processing on Nauru and PNG, is both abusive and unsustainable and therefore must end.
- 3.11 There is a high human, financial and reputational cost of the Government’s offshore detention policy. It has led to several unavoidable deaths and caused untold physical and psychological damage to people who seek protection from Australia. Additionally, it has come at a financial cost of hundreds of millions and undermined Australia’s diplomatic relations with neighbours and its reputation as a country that respects international law.
- 3.12 Offshore processing costs more than \$1 billion per annum. In the 2018-19 financial year the annual cost, per person, of detaining and/or processing individuals in Australia was estimated at more than \$346,000 to hold someone in detention in Australia; \$103,343 for an asylum seeker to live in community detention in Australia; and \$10,221 for an asylum seeker to live in the community on a bridging visa while their claim is processed¹³.
- 3.13 The 2019 report *At What Cost?* found that offshore detention and processing had cost around \$9 billion between 2016 and 2020. An earlier report found the cost to be \$9.6 billion between 2013 and 2016¹⁴.

¹³ Kaldor Centre, How much does it cost to detain asylum seekers?:

<https://www.kaldorcentre.unsw.edu.au/publication/cost-australias-asylum-policy>

¹⁴ Asylum Seeker Resource Centre, At What Cost?

<https://www.asrc.org.au/wp-content/uploads/2013/04/1912-At-What-Cost-report.pdf>

- 3.14 The Government allocated \$1.19 billion to its offshore processing arrangements in the 2020-21 Budget, an increase of 23% on the actual expenditure in 2019-20.
- 3.15 The Department of Home Affairs confirmed in October 2020 that there are 145 people still in PNG and 146 on Nauru. As of November 2020, there were 1518 people in immigration detention facilities - 1289 in immigration detention onshore, including immigration detention centres, immigration transit accommodation and alternative places of detention, and 229 in immigration detention on Christmas Island. A further 560 people were living in the community after being approved for a residence determination¹⁵.

Recommendation 3: The Government should close down the offshore processing operations and bring all asylum seekers and refugees on Nauru and in Papua New Guinea and those held in detention in Australia under offshore arrangements to safety. It must end the mandatory and indefinite detention of people waiting for their asylum claims to be assessed and have their claims evaluated in a timely and fair manner.

- 3.16 Rather than spending billions of dollars damaging Australia's international reputation, and harming the rights of refugees and asylum seekers, Australia should adopt a humanitarian approach focused on the root causes of human displacement, rather than the current punitive policy and practice approach. A protection-based whole of government approach that works to more effectively engage the Asia-Pacific region on issues relating to protection and safety would be more sustainable and far less expensive in terms of human, economic and reputational cost. The Australian Government should accept the long-standing New Zealand offer, sooner rather than later. Since 2013, New Zealand has offered to resettle 150 refugees from Nauru and PNG every year. The offer was renewed by Prime Minister Jacinda Ardern after the 2017 elections. In 2018, the New Zealand government made the offer directly to Nauru, bypassing Australia. However, neither Nauru nor Australia has since been able to accept the offer. Labor has repeatedly called on the Government to accept the New Zealand offer.

Recommendation 4: The government should accept the New Zealand offer to resettle refugees as soon as possible.

¹⁵ Department of Home Affairs, Immigration detention statistics:
<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

4. Overrepresentation of Indigenous young people in the youth justice system

A National Justice Reinvestment Body

- 4.1 A justice reinvestment approach to criminal justice reform involves a redirection of money from prisons to fund and rebuild human resources and physical infrastructure in areas most affected by high levels of incarceration.¹⁶ Justice reinvestment calculates savings as a result of reducing contact with the justice system and avoiding prison expansions by investing in front-end, long term community development instead. These savings are diverted and reinvested into communities to support them to thrive.
- 4.2 Justice reinvestment has been supported on economic grounds, in that it provides a means for redirecting public money from imprisonment to strengthening individual and community capacity. Incarceration is expensive: the annual cost per prisoner of providing corrective services in 2019–20 was more than \$110,000, and the total justice system costs of Aboriginal and Torres Strait Islander incarceration in 2019 were more than \$4 billion.
- 4.3 New South Wales, Queensland and Western Australia have funded justice reinvestment trials. The Maranguka Justice Reinvestment program in Bourke, New South Wales, reported a 23% reduction in police recorded incidence of domestic violence and comparable drops in rates of reoffending, a 31% increase in year 12 student retention rates and a 38% reduction in charges across the top five juvenile offence categories, and a 14% reduction in bail breaches and 42% reduction in days spent in custody.¹⁷
- 4.4 Federal, State and Territory governments have committed to reducing the overrepresentation of Indigenous young people in the youth justice system by setting a target in the Closing the Gap targets. To meet this target, the justice reinvestment model - as a community-led and evidence-based solution that addresses the root causes of offending - must be adopted.
- 4.5 To best roll-out justice reinvestment projects across the country, a national justice reinvestment body is needed. Its function would be to: coordinates and supports community-led justice reinvestment initiatives across Australia, conduct research and data analysis of trial programs and provides accessible data for local justice reinvestment initiatives to utilise, provides technical expertise and best practice advice to justice reinvestment trial site programs and initiatives, and maintains a publicly accessible database of evidence-based justice reinvestment strategies.
- 4.6 A national justice reinvestment body would include Aboriginal leadership and expertise at all levels.

¹⁶ Susan B Tucker and Eric Cador, 'Justice Reinvestment' (Ideas for an Open Society 3(3), Open Society Institute, 2003)

¹⁷ Just Reinvest NSW, 'KPMG Report shows changes in Bourke had economic impact of \$3.1m in 2017 & \$7m additional over 5 years': <https://www.justreinvest.org.au/>

- 4.7 The establishment of a national Justice reinvestment Body was a key recommendation of the Australian Law Reform Commission's 2017 report *Pathways to Justice - An Inquiry into the Rates of Incarceration of Aboriginal and Torres Strait Islander Peoples*.¹⁸
- 4.8 The Justice Reinvestment Network Australia has estimated that a National Justice Reinvestment Body would need at least \$7.58m budgeted over four years to be able to establish new sites and support existing ones.

Recommendation 5: The Government must work with Justice Reinvestment Network Australia and Indigenous-led organisations to design a national justice reinvestment body, and fund it for at least four years.

- 4.9 More justice reinvestment sites are needed across the country. States and territories are slowly coming on board with the concept and committing funds, but this must happen faster. The federal government can set the states and territories in the right direction by leading with funding.
- 4.10 The Justice Reinvestment Network Australia uses the following assumptions for costing sites: \$1m per site per annum to provide sufficient resources for the functions outlined above, and to establish a clear basis for site funding in locations with varying circumstances (including remoteness, population, existing capacity/support, and availability of other funding sources), and \$500,000 - \$800,000 per annum in establishment funds to support the development of two new sites per year.

Figure 1: Proposed budget (\$m)

	2020-21	2021-22	2022-23	2023-24	Total
Existing sites	7.0	9.0	11.0	13.0	40.0
Establishment funds	1.5	1.5	1.5	1.5	6
Total	8.5	10.5	12.5	14.5	46

Recommendation 6: The Government must commit at least \$46m to work with Justice Reinvestment Network Australia and Indigenous-led organisations to develop new justice reinvestment sites where needed, and to support existing sites.

¹⁸ Australian Law Reform Commission (ALRC) (2017) *Pathways to Justice-An Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples: Final Report*, No. 133, Canberra, p. 13

Meeting the Closing the Gap targets

- 4.11 Justice is a Priority Reform One issue under the new National Agreement on Closing the Gap. However, no new Commonwealth funding has been committed to it.
- 4.12 Governments have committed to establishing a joined up approach to five policy priority areas, including justice, by 2022. This is an opportunity to improve outcomes under the National Agreement and for the Commonwealth to show leadership and bolster the work of states and territories.
- 4.13 The National Agreement contains justice targets to: reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031; and reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent by 2031.

Recommendation 7: The Government must commit new funding towards the National Agreement on Closing the Gap targets regarding the incarceration of Aboriginal and Torres Strait Islander adults and young people.

- 4.14 Under the National Agreement, governments have committed to meet the family violence target to reduce the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least 50% by 2031. To meet this target, substantial investment is required in holistic, culturally safe, wrap-around service delivery models, early intervention and prevention programs and Aboriginal and Torres Strait Islander community led solutions.

Recommendation 8: The Government must commit new funding towards the National Agreement on Closing the Gap targets regarding family violence and abuse against Aboriginal and Torres Strait Islander women and children.

- 4.15 The National Agreement identifies the purpose of this reform setting process as to:
- drive Aboriginal and Torres Strait Islander community-led outcomes on Closing the Gap
 - enable Aboriginal and Torres Strait Islander representatives, communities and organisations to negotiate and implement agreements with governments to implement all Priority Reforms and policy specific and place-based strategies to support Closing the Gap
 - support additional community-led development initiatives
 - bring together all government parties, together with Aboriginal and Torres Strait Islander people, organisations and communities to the collective task of Closing the Gap.
- 4.16 For these purposes to be fulfilled, national peak organisations will require additional funding to carry out community consultation, engagement and development work.

4.17 The National Family Violence Prevention and Legal Services Forum (the Forum) needs a substantial increase in its funding - at least comparable to Community Legal Centres Australia and National Aboriginal and Torres Strait Islander Legal Services (\$1,569,171 (GST exclusive) over the five year period 2020-25, with \$304,200 (GST exclusive) as the base figure for 2020-21) - to be able to fulfil its functions (it has only been allocated \$244,000 per annum).

Recommendation 9: The Government must commit new funding towards national Indigenous peak organisations to allow them to co-lead the implementation of the National Agreement on Closing the Gap, and funding of the National Family Violence Prevention and Legal Services Forum.

5. Conclusion

The Government should use the 2021-22 Budget as an opportunity to fulfil its obligations under international law. It should develop a larger human rights-based Refugee and Humanitarian Program, and address the overrepresentation of Indigenous children and young people in the youth justice system.

As a wealthy nation with a long tradition of refugee resettlement, Australia can and must step up its commitment to protecting the world's most vulnerable people. It becomes all the more urgent in 2021 as displacement continues to rise and the burden intensifies on low and middle-income countries, currently hosting the largest populations of refugees, in the wake of the COVID pandemic.

And as a nation based on more than 60,000 years of custodianship of First Nations people, Australia can and must work towards ending the issues affecting Indigenous children and young people and to give them an equal opportunity.

Adopting a human rights based approach towards refugees and asylum seekers, and Indigenous people, is not only the right thing to do legally and morally, but will be far better for the people directly impacted by Australia's policies, be far less expensive for the Australian taxpayer and help repair Australia's reputation as a country that respects international law as well as its economy in the post-COVID 19 world.