

Australia is an international outlier, keeping refugees in detention with no effective independent oversight, minimum standards or timeframes. There needs to be urgent and systemic reforms to the immigration detention regime to ensure people seeking asylum are treated justly, humanely and fairly.

The following policy position focuses on the policies implemented by successive governments and how they affected thousands of people seeking asylum and refugees subjected to detention both onshore and offshore. It will also make urgent recommendations and explains how these can be implemented.

For information on the application process refugees are subjected to and the so-called 'Legacy Caseload' or the exclusion of people seeking asylum from mainstream social support, please refer to the policy positions on fairness and safety respectively.

Recommendations

1. Prioritise resettlement options for people subject to offshore processing.
2. End the arbitrary and indefinite detention of people seeking asylum in Australia without visas. Detention of people seeking asylum must be a last resort and there must be strict timeframes of no more than 30 days for adults and 72 hours for children, transparent information on conditions in detention and clear, independent mechanisms to challenge detention.

Policy Background

Freedom from arbitrary and indefinite detention

Australia's current immigration detention regime is immoral, subjecting people seeking asylum to harmful conditions with no information on when they will be released. Reform is urgently needed.

Anyone who arrives in Australia by plane without a valid visa, or who has a valid visa but has their visa cancelled at the airport (often because they have asked for protection), will be taken to an immigration detention centre in Australia.

People who arrive by sea without a visa are also mandatorily detained with many released only after varying and lengthy arbitrary periods.

People's visas may also cease due to expiry or cancellation, sometimes without the knowledge of the affected person.

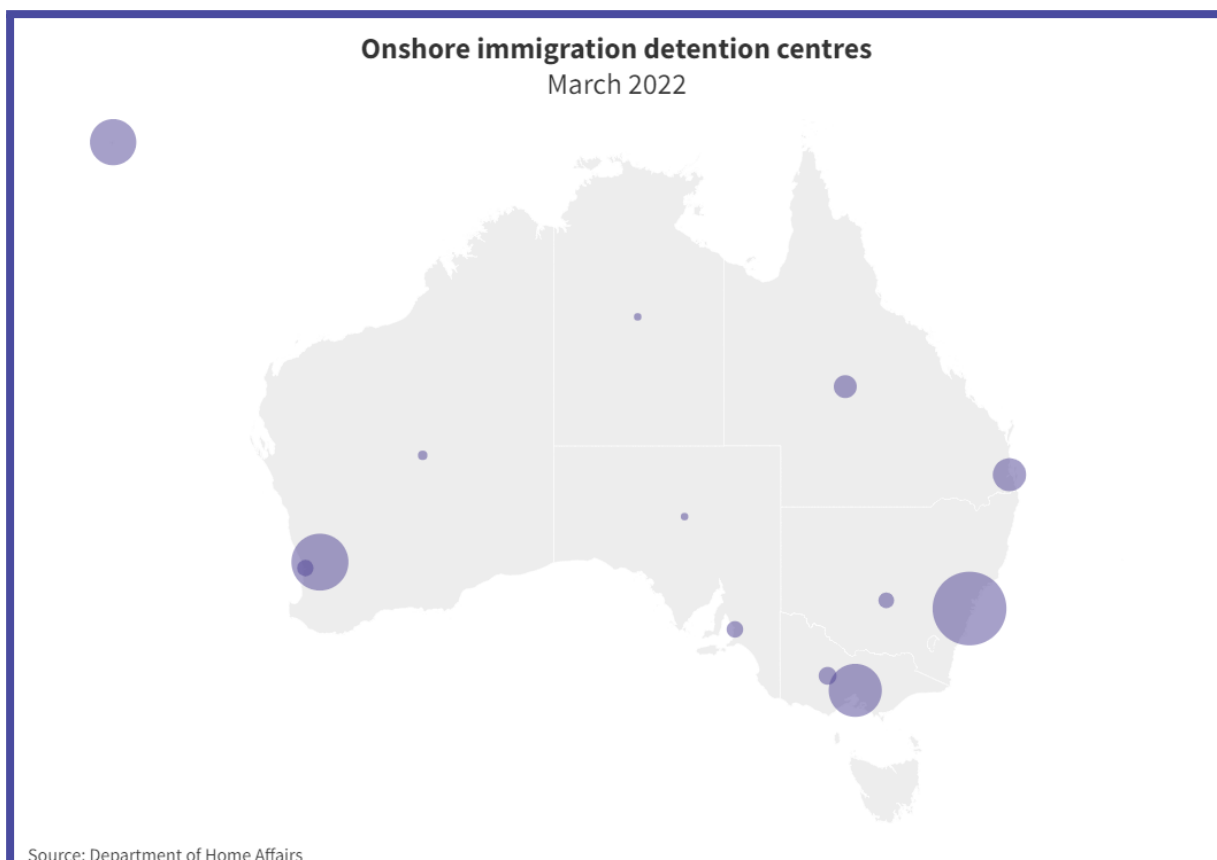
Some people have been in detention for a decade while others are re-detained.

Australia's current immigration detention regime is uniquely cruel as it is:

Mandatory: meaning that it is not used as a last resort for extreme circumstances, but it is the first point of call and applied indiscriminately.

Indefinite: meaning that there are no legislative deadlines, clear review mechanisms or timeframes for how long someone can be held, and the effect of laws is to leave many with no end date to their confinement.

Arbitrary: meaning there is no independent review or independent oversight of immigration detention.



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Part of the reason Australia's immigration detention regime has continued despite its cruelty and inadequacies is through secrecy, preventing clear and timely information to the public so the true extent of the system's decay is not known.

Instead, information on refugees and people seeking asylum is obtained through infrequent Senate Estimates, complex freedom of information requests, out-of-date departmental reports and sector-wide collaboration to develop estimates. Just one example of this is the fact that the

Federal Government does not provide clear and transparent information on how many people seeking asylum are currently held in detention.

However, [information](#) obtained through Senate Estimates from March 2021 showed that 736 people in detention held a humanitarian or protection visa prior to being detained or are in the application process. This accounted for nearly half of the 1,500 people held in immigration detention centres at the time.

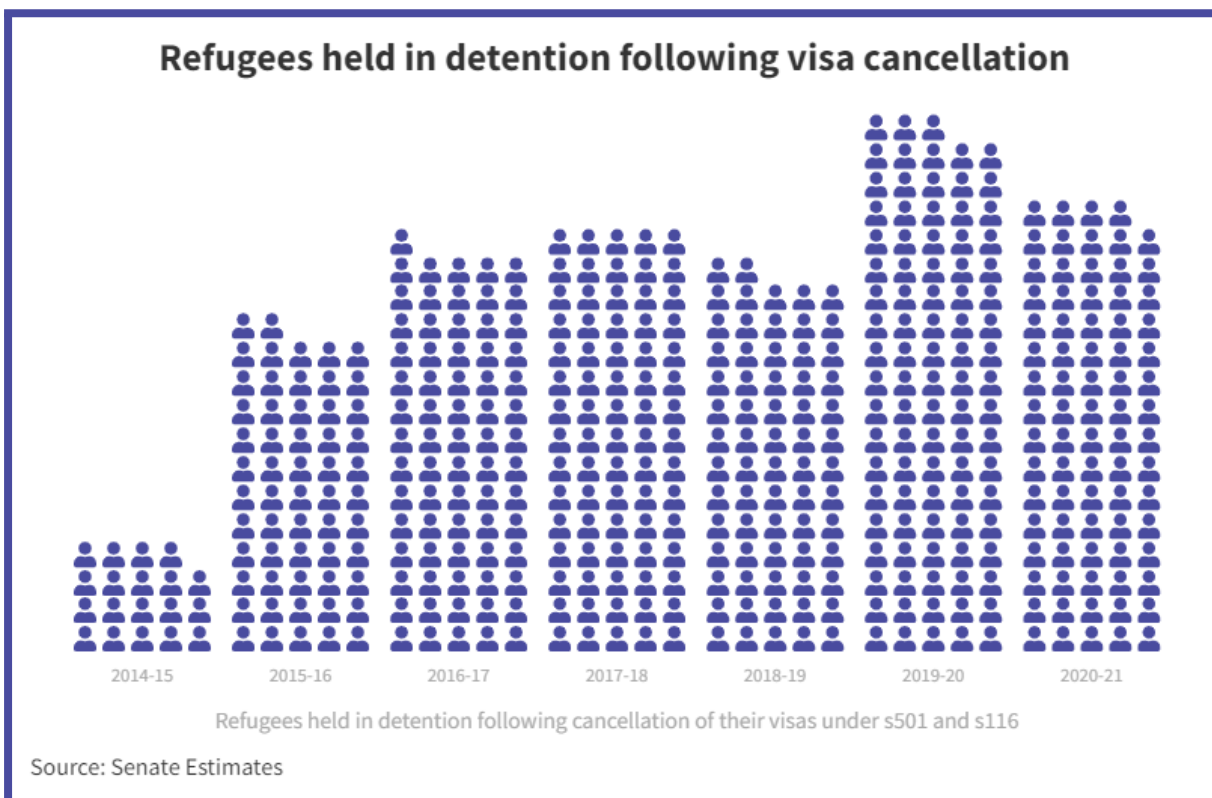
More recent information on people seeking asylum held in immigration detention is scattered but indicates there may be around 400. In December 2021 [277 people](#) held in detention had previously been granted a humanitarian or protection visa. While the number of people in detention who are actively having their claims considered in an application process as of 31 January 2022 is [123 people currently seeking asylum in detention](#) (91 people before the Department and 32 people in held immigration detention with an application before the AAT or the IAA).

There is also a group of around 6 people who were held in offshore detention centres but were moved to Australia for medical reasons mostly under the now-repealed Medevac legislation, who have been in detention for 9 years. The Government has provided no reasons as to why these people are held in detention while hundreds of other people in almost identical situations are in the community.

Once a person is in detention, there is no opportunity to seek merits review of the decision to detain them, to ascertain whether detention is necessary. People are held in detention and assessed under a risk assessment framework created by the Australian Border Force (ABF), which is used to punish any perceived lack of compliance rather than to make a genuine assessment of risk. These assessments are also not reviewable.

The Minister for Home Affairs has extraordinary and 'God-like' powers to cancel or refuse visas, including of refugees, mostly under section 501, but also under sections 116 and 109. These powers have increased in recent years, with the Minister now having [more executive](#) 'public interest' or 'national interest' powers than any other portfolio.

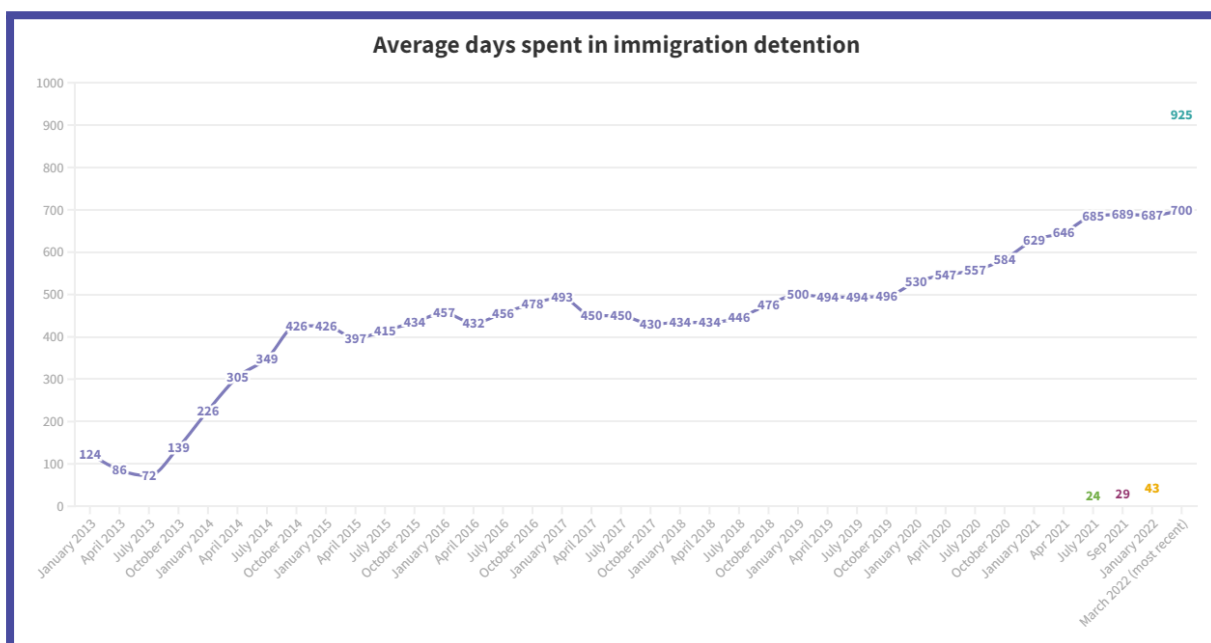
Not surprisingly, this has led to an increase in visa cancellations and refusals, from only 159 cancellations in 2013 [to over](#) 1,733 in 2021, in a massive overreach of executive power. From, 2014 to 2021, at least [472 refugees](#) granted protection in Australia had their visas cancelled under these powers and were taken to immigration detention. Unable to return to their country of origin, refugees often remained in detention indefinitely.



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The time people spend in immigration detention has rapidly expanded over the previous decade. In 2012, a person in immigration detention in Australia was held, on average, for less than 100 days, [it is now 726 days](#). For people seeking asylum the average time spend in immigration detention waiting for a visa outcome is [925 days](#), as of December 2021. Australia is an international outlier with long-term, indefinite mandatory detention being used as a first resort, rather than the last.

For comparison in Canada, as of 30 June 2022, the average length of detention was only 24 days, while in the United States, as of 21 July 2022, the average length of detention was 43 days. In the United Kingdom, as of 31 March 2022, 57 percent of people in detention had been held for less than 29 days, and 86 per cent had been held for less than six months.



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Immigration detention facilities are inhospitable and dangerous environments. Over the previous five years, Australian Border Force recorded there have been [191 complaints](#) of assault made by detainees against persons working at an immigration detention centre. During the same period, there have been 3,145 [actual and threatened instances of self-harm](#), meaning that every day at least one person will either threaten self-harm or actually self-harm. Between 2016-2021 there were also [42 complaints](#) of sexual assault complaints against facility workers.

People in detention are also often subjected to disproportionate and inappropriate use of force., including solitary confinement, body restraints and spit hoods. Even though workers at centres are directed to restrain people only as a last resort, refugees have been forcibly restrained while being moved between centres and there have also been cases of people in detention are placed in mechanical restraints in some instances for over 8 hours at a time, as well as often multiple times per day.

There is also no adequate oversight of the detention regime, including decisions made to detain a person and monitoring of detention facilities. The Commonwealth Ombudsman can make recommendations to the Minister regarding a person’s detention, where they have been detained for at least 2 years. However, these recommendations are not binding and there is no process to seek a review of a person’s detention.

As a result of these conditions, 16 people have [died](#) in immigration detention centres since 2017.

Cost

The indefinite arbitrary detention of people who seek asylum by sea and offshore processing has resulted not just in a moral black hole but a financial one too. Successive Governments have

chosen to spend billions of dollars on a wholly unnecessary, cruel and ineffective policy that hurts people for no clear reason and despite clear alternatives.

In 2022-23, \$1.28 billion [will be spent](#) to maintain an increasingly cruel onshore immigration detention regime with \$1 billion each year over forward estimates to maintain Australia’s immigration detention regime. There was a blowout of nearly \$150,000 in the most recent Federal Budget on keeping refugees offshore in limbo on PNG and Nauru, with \$957 million spent in 2021-22. The estimate for 2022-23 has dropped to \$482 million, which is likely due to the Morrison Government in December 2021 ending their offshore processing agreement with PNG abandoning over 100 refugees.

According to Federal Budgets, including the reopening of the Christmas Island detention centre in 2020, the cumulative spending on onshore and offshore detention between 2015-2023 to over \$18 billion. This is equivalent to building a new state-of-the-art 1,000-bed [public hospital](#) in every state and territory or funding the ABC for the next a decade and a half.

On the individual level, the spending also shows that there are clear alternatives. To keep people held in onshore detention the [average administered cost](#) per annum in 2019–20 was \$361,835, and \$458,506 for those held in Alternative Places of Detention (APOD) accommodation in Brisbane and Melbourne. During the same year, it would have cost \$3.4 million to keep someone on Nauru, a price that has only [increased](#). By comparison, the average administered cost of a person seeking asylum living in the community on a bridging visa with SRSS was \$4,429 in 2019-20.



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However, the heavy economic cost of offshore detention is not comparable to the mental and physical costs. Since 2013, 20 refugees subjected to offshore detention [have died](#), 14 as a direct

result of conditions in detention. There is overwhelming documentation of serious abuses, including child sexual abuse, medical negligence and high levels of self-harm under the offshore detention system. To spend even \$1 keeping someone in these conditions for one day would be a national shame. However, successive Governments kept thousands of some of the most vulnerable people in the world in these conditions for a decade burning through billions of dollars to do so.

People seeking asylum and refugees want to rebuild their lives free from persecution and oppression. Spending even one dollar on denying people their basic rights would be too much, but when the solution is so clear it amounts to a catastrophic policy and moral failure.

“How do I explain the detention life, the cage life? People seeking asylum are put in detention, within a year they will be destroyed mentally and physically. Every day our life is denied, it is not a good place, it destroys dreams and hope.” - Thanush Selvarasa, human rights activist and refugee detained in PNG, MITA and the Mantra Hotel Melbourne released 28 Jan 2021 [source](#)

Christmas Island

While the entire detention regime needs urgent reform the North West Point immigration detention centre on Christmas Island is of particular concern. The detention centre on Christmas Island was closed down in 2018 after a decade of use, however, the Morrison Government reopened the detention centre in 2019 and in 2020 during the COVID-19 pandemic began forcibly moving people caught in Australia’s immigration detention network to the remote island.

At the time of its reopening, medical experts across Australia – including the Australasian Society for Infectious Diseases and the Australasian College for Infection Prevention and Control – advised that the Government release people held in detention to protect against a widespread outbreak.

Human rights groups were also greatly concerned that people seeking asylum and refugees may return to Christmas Island due to the previous abusive treatment of people held in detention there. The Australia Border Force at the time [said](#): “No refugees are being transferred to [Christmas Island.]”

Within 9 months ASRC knew of 103 refugees that had been transferred to Christmas Island, of which 102 have a history of self-harm, mental health conditions or physical health conditions requiring specialist care.

There are currently around 196 people [held on Christmas Island](#) around [90 of whom](#) had protection, refugee or humanitarian visas, which were cancelled by the Minister of Home Affairs. Within this group 63 are engaged in an ongoing visa assessment process, merits review, judicial review or ministerial intervention process, according to Senate Estimates. Access to lawyers and communication is limited on Christmas Island making it difficult for caseworkers and lawyers to

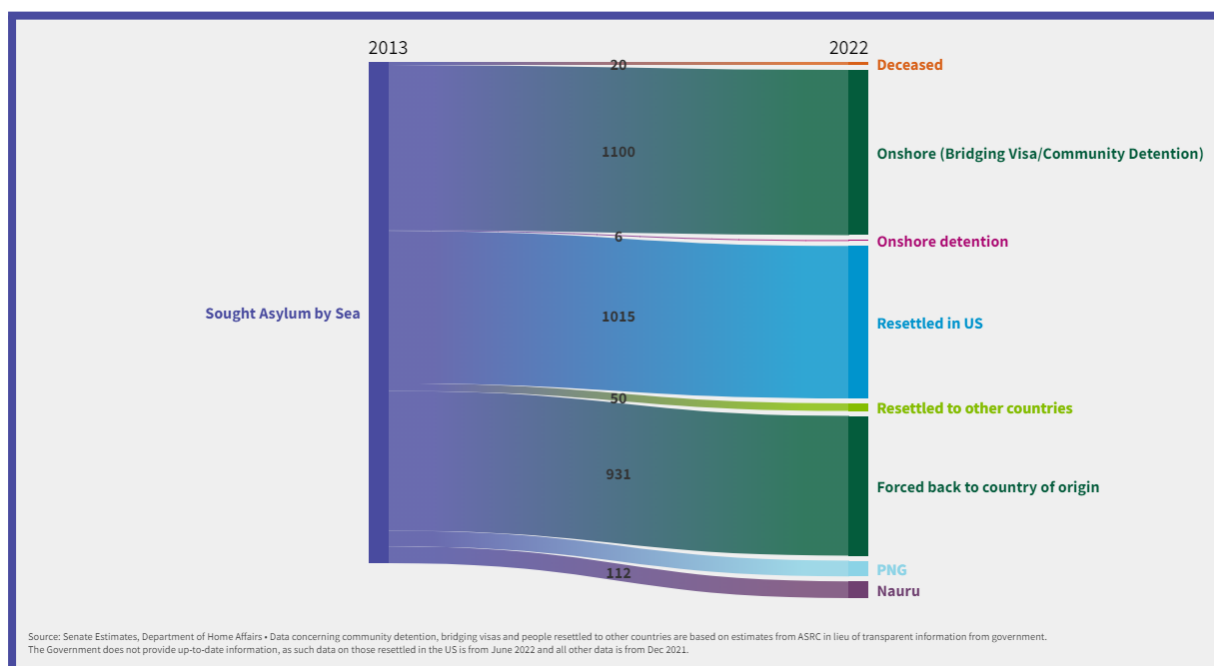
contact their clients, for people to prepare and present their cases properly, or for them to obtain support and comfort from their families.

This facility needs to be closed as a matter of urgency.

Prioritise resettlement options for people subject to offshore processing.

Since 19 July 2013, people who sought asylum in Australia by sea have been prevented from having their protection claim assessed in Australia or ever receiving protection in Australia. Instead, they were transferred to Nauru or Papua New Guinea.

Then Prime Minister Kevin Rudd announced on 19 July 2013 that people seeking asylum by sea would be prevented from settling in Australia, since then [3,127 people](#) have been subjected to offshore detention in PNG and Nauru and denied a permanent home (this does not include children born to people who sought asylum). No person seeking asylum by sea has been transferred to Nauru or PNG since 2014.



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There is overwhelming documentation of serious abuses, including child sexual abuse, medical negligence and high levels of self-harm as a result of offshore detention. [The 'Nauru Files'](#) which consist of over 2,000 leaked documents detail the lack of safety and human rights abuses experienced by the people held on Nauru.

By August 2019 the detention of people seeking asylum on Nauru and PNG had mostly ended and people were moved into the community with wholly inadequate support. There was however between July 2019 to January 2020, 53 people held against their will in isolated

conditions described as torture with no access to lawyers in PNG's Bomana Prison. Almost all of those held in Bomana have now been released.

There are currently 112 people still on Nauru and 104 in PNG unable to rebuild their lives, reunite with family or have any certainty about their future after nearly a decade. The Australian Government must end offshore processing and detention, offering people seeking asylum to live in the community during their resettlement process.

On December 31, 2021, the Morrison Government ended Australia's regional processing agreement with PNG despite over 100 people seeking asylum [under Australia's care](#). Only a few months before the Morrison Government announced an established "enduring" offshore processing capacity on Nauru.

There are resettlement pathways for refugees held offshore, however, they are limited. In 2016, Australia and the US reached a deal that would allow refugees being held on PNG and Nauru to be resettled in the US. So far, about 1,000 have been [resettled in the US](#). The deal allowed for 1,250 people to be resettled.

In March 2022, the Morrison Government agreed to a long-standing offer from New Zealand that will see 150 refugees who were held in offshore detention resettled every year for three years. The agreement with New Zealand along with other resettlement pathways with the US, Canada and other European countries offers some pathways to a permanent home for refugees subjected to offshore detention.

However, once all existing pathways are exhausted there will still be over 500 refugees that after over a decade are owed protection and are still without any clear resettlement pathway. This must change and all people seeking asylum must have a clear pathway to permanent resettlement.

How to achieve change

The following are recommendations on how ASRC's policy recommendations could be enacted by the current government. However, there are many ways to achieve justice and any pathway to achieve humane and moral treatment of people seeking asylum should be embraced.

The Minister of Home Affairs could tomorrow authorise the transfer of all people held on PNG and Nauru to Australia to live in the community while their resettlement options are finalised. This requires no new legislation or policy. Indeed, it does not even require a personal decision of the Minister to bring a person from PNG or Nauru to Australia but can be done according to section 198B.

Furthermore, the Minister should also close down Christmas Island Immigration Detention Centre and utilise alternative management options (including bridging visas and community detention) in place of immigration detention in every case possible.

Legislative change through improving conditions in immigration detention, introducing timeframes, ending mandatory detention, making detention a last resort and establishing review mechanisms can be achieved through passing policies such as the [“Ending Indefinite and Arbitrary Immigration Detention Bill 2021”](#) introduced by independent MP Andrew Wilkie.

The current crisis of Australia’s immigration detention system also necessitates a review of the appropriateness of detention of all persons currently held and of conditions and fitness for purpose of immigration detention facilities. While these reviews can be authorised by the Minister, there is also a need for either a truth and reconciliation commission or Royal Commission to determine and contain damage incurred by people held in detention and provide justice.

What you can do

[LINK TO CURRENT CAMPAIGN](#)