

# Department of the Treasury 2014-15 Pre-Budget Submissions

## Recommendations for the Federal Budget

### Submission: The Australian Churches Refugee Taskforce

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## AustralianChurches RefugeeTaskforce

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An initiative supported by

**National Council of  
Churches in Australia**

## Overview

The Australian Churches Refugee Taskforce ('the Taskforce') is an initiative of the National Council of Churches in Australia ('NCCA') which came together in early 2013. It is comprised of 17 Senior members of clergy, eight churches and three ecumenical bodies. It has 321 entities as network members.

The ACRT believes that as well as being a utilitarian tool that enables commerce, money is also a powerful symbol. Its use captures a society's values and priorities. Communities find money to enact that which they most value and treasure. As an example, a community subject to war can find almost limitless amounts of money to fund the defense of their territory.

A budget therefore reflects a community's core values, its attitude to its poorest citizens and whether it is truly interested in justice. That which a community claims to be unable to afford is actually something the community does not value. Likewise that upon which a nation spends grossly or negligently, and which may result in harm to others says much about a nation's value system. Spending large amounts of money to punish, and thus degrade the human rights and dignity of people protected by international law is particularly revelatory and destructive.

This submission is also made against the backdrop of the Government's fiscal commitments to restore the Budget to sustainable surplus through 'sustained and fundamental structural overhaul of expenditure' and that in doing so 'all options are on the table.'<sup>1</sup>

We welcome this opportunity to make some recommendations as part of the pre-budget process.

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<sup>1</sup> Treasurer Joe Hockey, Mid-Year Economic and Fiscal Outlook (MYEFO) Speech, Tuesday, 17 December 2013 at: <http://www.joehockey.com/media/speeches/details.aspx?s=125>

## Summary of Recommendations

### The Taskforce recommends that the Australian Government:

Undertake an **urgent and comprehensive review of all spending related to asylum seekers**, in particular the significant costs of offshore processing. This could include:

- Accounting for the costs hereto embedded in operating budgets and remaining unfunded over the long term
- Measures to increase the transparency and accountability of these costs; including so that rigorous costs - benefits analyses can be undertaken
- Looking at measures to assess the human costs of such policies and compatibility with Australian values and human rights principles
- Readjustment of policy to one that is not only more cost effective but also compassionate and honours Australia's International obligations.

**End the needless waste of offshore detention** and explore options for alternatives on mainland Australia. This could include incorporating a clear comparison of policy alternatives, such as on-shore versus offshore costs; closed detention v. community based alternatives as part of the review above.

Ensure sufficient funding is restored to the **unaccompanied humanitarian minors (UHM) program**.

**Extend working rights to asylum seekers, as a precursor to any mutual obligation program**. This would result in significant cost savings and create tax payers rather than tax and support themselves and their families.

Ensure that if mutual obligation proceeds (alongside work rights), then such a program needs to be **informed by evidence of past experience, sufficiently resourced and programmed**, taking into consideration the unique circumstances of the cohort.

Recommit to the Millennium Development Goals and work on **restoring the Australian Aid budget** with an aim of 0.5 percent of gross national income (GNI).

Recognise the significant **fiscal risks and potential liabilities posed by Australia's offshore detention camps and fully account for these**. These could for instance include:

- Significant additional (unfunded) costs associated with ongoing resettlement and care in Nauru or PNG, arising from our MOU obligations.
- Additional potential liabilities and risks arising from governance and security concerns, with breakdowns of governance, or law and order, possible in both locations.
- Potential litigation or other liabilities arising from impacts on Australian staff and personnel involved in both Operation Sovereign Borders and Offshore processing facilities, (which may not already be covered).
- Similarly, consideration could be made to acknowledge the risks and for provision of claims arising from cases of human rights abuses and unlawful detention.

## Costs of current spending- against a global context

In 2013-14 Australia will spend almost two-thirds as much locking up in detention a few thousand people seeking asylum, as the entire UNHCR spend in the last financial year assisting tens of millions of refugees and asylum seekers worldwide. This is a grossly disproportionate amount of money and is unjustifiable waste in terms of both the financial and human costs; with men, women and children being held in inhumane conditions in detention camps offshore.

**The Taskforce recommends that the Australian Government undertake an urgent and comprehensive review of all spending related to asylum seekers, in particular the exploding costs of offshore processing. This could include:**

- **Accounting for the costs hereto embedded in operating budgets and remaining unfunded over the long terms**
- **Measures to increase the transparency and accountability of these costs; such that rigorous costs - benefits analyses can be undertaken**
- **Looking at measures to assess the human costs of such policies and compatibility with Australian values and human rights principles**
- **Readjustment of policy to one that is not only more cost effective but also compassionate and honours Australia's International obligations.**

In the last Budget the total costs of detention-related services and offshore asylum seeker management was increased by \$762 million to **\$2.97 billion** for 2013-14. This included almost **\$2.87 billion** alone for offshore operations.<sup>2</sup>

In addition, the 2013 PEFO contained an item for a rebuild and repair of accommodation facilities at Nauru classified "not for publishing" due to the apparently commercial nature of transaction. (Although reports of cost estimates in early 2012 indicated the reopening of Nauru could cost up to \$316 million<sup>3</sup>, and the damages from riots in July 2013 **at least \$60 million**.)<sup>4</sup> And the MYEFO released in December 2013 detailed an additional **\$406 million**<sup>5</sup> for offshore processing during 2013-14 as well as flagging an additional \$2 billion over the forward estimates.<sup>6</sup>

The publicly known allocations to **offshore processing alone for the Department of Immigration** for 2013-14 thus far are in excess of **\$3.28 billion**. This figure excludes other associated costs which have been earmarked as commercial in confidence and not released, costs for these operations borne by other departments or arms of government, and other significant incentives offered to those countries in order to gain agreement with these operations.<sup>7</sup>

<sup>2</sup> This amount was just the Immigration of Department alone. A summary of these figures is available in a Federal Budget Brief available at: <http://www.refugeecouncil.org.au/r/bud/2013-14-Budget.pdf>

<sup>3</sup> See for example: <http://www.theaustralian.com.au/national-affairs/policy/nauru-detention-rebuild-costs-dwarfs-resorts/story-fn9hm1gu-1226256685006>

<sup>4</sup> See for example: <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/frenzied-rebuilding-at-nauru-detention-centre/1174980>

<sup>5</sup> In addition to this amount it also noted related capital of \$165.6m

<sup>6</sup> This amount was offset slightly by a reallocation of \$58.1 million from proposal to build a new facility at Singleton, which was reversed.

<sup>7</sup> Over and above for instance, what they might normally receive through other bilateral agreements, aid or other arrangements.

As of 24 January there were **2288** men, women and children being held in detention camps on Manus Island and Nauru. In addition, 139 people are suggested to have “voluntarily returned” from offshore processing centres since 18 September 2013.<sup>8</sup>

On these figures this would roughly equate to an expenditure on offshore detention of at least **\$1.3 million per person** for the financial year.<sup>9</sup> Even if you generously allowed for a doubling of numbers of detainees (and no rise in expenditure) on these crude indicators, it would still equate to a cost of over \$1800 per person a day held in offshore detention.<sup>10</sup>

These figures are largely for offshore processing and also do not include the additional hundreds of millions for border protection, the Australian Federal Police, Defence forces, and other associated operations.

For example, the Budget allocated over \$146 million to the Department of Immigration for ‘Border management;’ Customs received \$342.2 million for civil maritime surveillance and \$259.6 million for border protection and enforcement; and Operation Sovereign Borders was also allocated at least another \$22.5 million in MYEFO. A Lowy Institute researcher also conservatively estimated that Defence was absorbing around \$262 million a year in costs for Operation Resolute (the predecessor to Operation Sovereign Borders, of which OSB is arguably now the more intensive).<sup>11</sup>

Yet by comparison, in 2013 the United Nations High Commission for Refugees (UNHCR) announced that its annual budget (composed primarily of voluntary donations) had reached a ‘new annual high of **US\$5.3 billion**’ at the end of June 2013.<sup>12</sup> The UNHCR has staff of more than 7,600 people in over than 125 countries and helps **tens of millions of people**.<sup>13</sup>

With such burgeoning spending at a Commonwealth level, it is a sobering comparison. Particularly given the current policies and practices breach international law,<sup>14</sup> have limited evidence in terms of

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<sup>8</sup> Numbers obtained from Australian Customs and Border Protection, *Fact sheet: Operational Update*, 24 January 2014, found at: <http://newsroom.customs.gov.au/channels/operational-updates/releases/operational-update-24-january> . For a full list of detention facilities and break down by gender / age, see the last Immigration Statistics dated 31 December, **Attachment A**, below.

<sup>9</sup> This is of course only a very rough indicator not a true reflection of per person costs per se, as it takes into account some capital works, and the detention system is very dynamic with people being moved constantly between facilities and numbers fluctuating depending on arrivals. The Minister has also recently announced a doubling of capacity at these Offshore Centre’s, though it is not known at the time of submission what % of capacity is currently occupied – see: <http://www.minister.immi.gov.au/media/sm/2014/sm210839.htm> Such figures are also supported by reports in

<sup>10</sup> These also broadly reflect reports in January 2012 for Nauru that ‘The DIAC plan also seems to require astronomical running expenses -- \$400m a year to operate 375 rooms for detainees. That amounts to more than \$1m a room a year or about \$3000 a room a night’ See: <http://www.theaustralian.com.au/national-affairs/policy/nauru-detention-rebuild-costs-dwarfs-resorts/story-fn9hm1gu-1226256685006>

<sup>11</sup> It is not possible to easily separate out asylum seeker related costs to other operational matters and as the Lowy comment notes, there it is perfectly legitimate for Defense to be involved in these matters, though as it adds ‘But every frigate loitering off Christmas Island is one not conducting counter-piracy patrolling in the Indian Ocean or regional engagement visits in South East Asia.’ See: <http://www.lowyinterpreter.org/post/2013/07/30/asylum-seekers-the-cost-Defence.aspx> A similar question could be raised about Customs, with their commitments of assets to OSB hampering Australian efforts to protect our interests and claims in the Southern Oceans. See for instance: <http://www.smh.com.au/federal-politics/political-news/question-mark-over-australian-governments-whaling-conflict-zone-patrol-20131218-2zxf3.html>

<sup>12</sup> <http://www.unhcr.org/pages/49c3646c1a.html>

<sup>13</sup> <http://www.unhcr.org/pages/49c3646cbf.html> Of these costs also \$166 million was budgeted for our immediate region, South East Asia and the Asia Pacific. Even the entire UNHCR budget allocation to Asia, was just \$576 million

<sup>14</sup> See for example comment by the Australian Human Rights Commission: “Australia’s mandatory detention system leads to breaches of human rights” at: <https://www.humanrights.gov.au/immigration-detention-and-human-rights>

efficacy (in terms of the “deterrent” value of mandatory detention)<sup>15</sup> and there is no discernible strategy for durable, long term resolutions.

For instance, although resettlement for refugees in Nauru, PNG or a third country has been flagged, it is unclear to what extent any realistic costing or assessment of this likelihood has actually been undertaken. Many people, including those whom are Stateless will not be able to be able to be “returned” or “removed” elsewhere (see further on this below).

Considering too that Australia is the ‘only country where immigration detention is mandatory for all unlawful non-citizens (including asylum seekers),<sup>16</sup> these figure represent a **grossly disproportionate amount of money and unjustifiable waste** in terms of both the financial and human costs.

### Alternatives - savings in human and financial costs

Considerable cost savings could be found by shifting from shifting from a punitive approach through offshore detention camps to onshore community based detention or similar alternatives.

**The Taskforce recommends that the Federal Government end the needless waste of offshore detention and explore options for alternatives on mainland Australia. This could include incorporating a clear comparison of policy alternatives, such as on-shore versus offshore costs; closed detention v. community based alternatives as part of the review recommended, above.**

A 2011 research report commissioned by the UNHCR highlighted that not only were Australia’s detention costs high relative to comparable countries, but that Australia could save between an estimated \$117-\$333 dollars per person per day through implementing alternatives to detention (see table below).<sup>17</sup>

G. Table 2: Detention versus alternatives to detention costs

| Country                      | Detention per person per day <sup>500</sup>                      | A2D per person per day                           | Saving per person per day      |
|------------------------------|--|--|--------------------------------|
| Australia                    | \$339 AUD, <sup>501</sup><br>\$124 AUD for ‘community detention’ | \$7 AUD <sup>502</sup> - \$39 AUD <sup>503</sup> | Between \$333 AUD to \$117 AUD |
| Canada: Toronto Bail Program | \$179 CAD  | \$10-12 CAD                                      | \$167 CAD                      |
| Hong Kong                    | \$108 HKD  | Not available                                    | Not available                  |
| United States                | \$95 USD <sup>504</sup>  | \$22 USD <sup>505</sup>                          | \$73 USD                       |

#### Extract: UNHCR (2011)

<sup>15</sup> Alice Edwards (2011) research suggests ‘Pragmatically, no empirical evidence is available to give credence to the assumption that the threat of being detained deters irregular migration, or more specifically, discourages persons from seeking asylum.’ in, *Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* UNHCR, Legal and Protection Policy Series, April 2011. p.1

<sup>16</sup> As noted by the Australian Parliamentary Library (March 2013) at: [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/Detention#\\_ftn6](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention#_ftn6)

<sup>17</sup> The potential savings were based on figures from 2005/06 and depended on assumptions about the particular form of mandatory detention (eg remote facility) or community detention, see: Alice Edwards, *Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* UNHCR, Legal and Protection Policy Series, April 2011.

These were crude estimates, but comparing costs of detention measures in Australia are notoriously difficult, with even the 2009 Parliamentary Inquiry into detention alternatives was unable to quantify (then) current costs, in part due to an 'absence of detailed cost data that can be analysed.'<sup>18</sup>

However it did note some rough figures, which had been dramatically increasing. 'In 1994-95 the average daily cost was \$69, this figure rose to \$105 in 1995-96 and \$111 in 2004' By 2005-06 Overall detention cost per day were \$339, up from \$243 in 2004-05.<sup>19</sup> It also tabled some historical data:

**Table 4.1 Historical operating costs of immigration detention centres**

| Immigration Detention Centre | 2004–05      | 2005–06      | Average cost per day |
|------------------------------|--------------|--------------|----------------------|
| Villawood                    | \$25 238 905 | \$13 763 131 | \$ 163               |
| Maribyrnong                  | \$ 7 497 437 | \$ 3 846 287 | \$ 314               |
| Perth                        | \$ 4 703 790 | \$ 3 456 244 | \$ 577               |
| Christmas Island             | \$ 6 859 375 | \$ 2 605 339 | \$ 1701              |

*Source:* Adapted from Department of Immigration and Citizenship, Questions on notice, (51), Senate Hansard, Budget Estimates, Legal and Constitutional Affairs Committee, 13 February 2005.

**Extract: Joint Standing Committee on Migration (2009), Report 2, p.117**

Note the average cost per day of Christmas Island in 2005-06. This gives further credence to the possibility that current spending for Nauru and Manus Island could be at very least equivalent to, and feasibly more than double that.

More recently, during Senate Estimates hearings after the 2013 Budget, the Secretary of the Department, Martin Bowles suggested that:

I would say that in a broad sense—and again we need to understand the complexity—someone on a bridging visa might be about 20 per cent of the cost of someone in detention.

...There is not an additional 80 per cent of the cost, because we are not holding them in detention, which is a pretty expensive way to hold people. That is why we try and move them through.<sup>20</sup>

This comparison was of an asylum seeker living in the community on a Bridging Visa against being held in detention. Like the UNHCR report, his comments suggested this comparison was between community based measures and Australian based detention *onshore*, not offshore camps.

<sup>18</sup> As noted by the Joint Standing Committee on Migration, Parliamentary Inquiry into Immigration detention in Australia: Community-based alternatives to detention (2009), Report 2, at p. 115, 4.94, see: [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=mig/detention/index.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/detention/index.htm)

<sup>19</sup> Above, at p. 116.

<sup>20</sup> Legal and Constitutional Affairs Legislation Committee, Senate Estimates, Monday 27 May 2013, Hansard, p.41.

This suggests that **significant and ongoing cost savings** could be found by shifting **from a punitive approach through offshore detention camps, to onshore community based detention** or similar alternatives.

There are also additional hidden costs arising from prolonged detention. For instance, detention centres were described by former Australian of the year, Professor Patrick Mc Gorry as ‘factories for producing mental illness and mental disorder.’ Although difficult to quantify costs, conservative modelling has suggested that ‘adverse experiences in extended detention could add some **\$25,000 to the average lifetime health costs** for each successful asylum seeker.<sup>21</sup> These mental health costs, represent 50% more than average, and notably do not include costs for other related adverse impacts of detention, such as impaired ability to integrate into the broader community and engage in employment.

This is significant considering that historically between 70-97% of asylum seekers arriving by boat have been granted refugee status,<sup>22</sup> and many of them will either have to be resettled in Australia or Australia will largely be required to pay the costs of their resettlement in Nauru and PNG (see further on this below).

### **Support for Unaccompanied Humanitarian Minors (UAM) programs**

We **note with concern** that the funding for **supervision and welfare services for unaccompanied humanitarian minors (UHMs) was almost halved in the 2013-14 budget** from \$23.9 million in 2012-13 to \$11.6 million in 2013-14. This is an area of particular concern for the Taskforce, who recently produced *All the Lonely Children*, a report on the situation of unaccompanied refugee and asylum seeker children in Australia.<sup>23</sup>

The Department noted in Senate Estimates that this was due in part to a demand driven funding arrangement, and that they were revisiting the funding model, partly in light of a Refugee Youth Support Pilot program.<sup>24</sup> We suggest that this budget cut, or saving, was overly ambitious and will **require correction and potentially additional funding** (depending on numbers) in the upcoming Budget.

In terms of any new funding models we further suggest that unaccompanied minors should not be treated as a bloc, for instance the Refugee Youth Support Pilot is not suitable for all unaccompanied refugee children, but will require flexibility and differentiation. In this respect we recommend that reference should be made to best practice models for children in care from across Australia and to international and national standards and frameworks, such as and *National Framework for Protecting Australia’s Children 2009–2020*.

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<sup>21</sup> <http://www.socialpolicyconnections.com.au/wp-content/uploads/2011/10/Ward.long-term-costs-v12Oct.2011.pdf>

<sup>22</sup> As noted by the Australian Parliamentary Library (February 2013) at:

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/AsylumFacts#\\_Toc348096470](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumFacts#_Toc348096470)

<sup>23</sup> The Australian Churches Refugee Taskforce, *All the Lonely Children: Questions for policy makers regarding Guardianship of Unaccompanied Minors*, 2013, found at: <http://www.australianchurchesrefugeetaskforce.com.au/all-the-lonely-children/>

<sup>24</sup> Legal and Constitutional Affairs Legislation Committee, Senate Estimates, Tuesday 28 May 2013, Hansard, pp.174-5

## Work rights and mutual obligation

Significant cost savings would be found in allowing asylum seekers living in the community to work, pay tax and support themselves and their families.

### The Taskforce recommends:

- **Work rights be extended to asylum seekers on Bridging Visa's**
- **If mutual obligation proceeds (alongside work rights), then such a program needs to be informed by evidence of past experience, sufficiently resourced and programmed taking into consideration the unique circumstances of the cohort.**

The measure to introduce “mutual obligation agreements” is incorrectly classified, as there is no mutuality or reciprocity. People on BVEs will both be denied to the right to work and be required to undertake mutual obligation.<sup>25</sup> It makes no theoretical or practical sense to take a mechanism used to “push people into work” and force it onto people who, in most instances would be willing and ready to do real work and be self supporting.

The right to work is enshrined in international law including the 1951 Refugee Convention and under Article 23 of the Universal Declaration of Human Rights. Allowing people to work recognises their human dignity, provides a way for people to support their own family, fosters self-reliance and allows contribution to the broader community. It also costs the Government and taxpayers less, because people who work are supporting themselves and paying tax, rather than being forced to rely on government payments.

As people on Bridging Visas are also receiving only **89% of a Centrelink equivalent**, such a policy actually results in enforced poverty and places people in a desperate and vulnerable situations.<sup>26</sup> It is already forcing increasing numbers of asylum seekers to search for assistance from charities or turn to the black market.

Mutual obligation is potentially a cumbersome, costly and bureaucratic measure, with differing accounts of efficiency and effectiveness of past programs in Australia.<sup>27</sup> The MYEFO suggests that the Government will provide **just \$5.1 million** (or \$1.275m for each year) over four years, from within the existing Immigration budget to implement “Phase One” of mutual obligation for asylum seekers who have arrived by boat and are on Bridging Visa subclass E's (BVEs). Although no participant numbers are given, using a rough unit cost of \$1,900 from historical Work for the Dole data,<sup>28</sup> that would equate to only 671 participants per year. With over 21,000 adults on BVEs at 31 December 2013, such a projection suggests that either the projected numbers are very low, or more likely, **the estimates being used to calculate costs are extremely low, and underfunded.**

<sup>25</sup> Liberal Party of Australia, *The Coalitions Policy to Clear Labors 30,000 Border failure Backlog*, p.5

<sup>26</sup> ACOSS have done extensive work on the inadequacy of Newstart payments, see:

[http://acoss.org.au/take\\_action/allowances\\_statement\\_2012-02/](http://acoss.org.au/take_action/allowances_statement_2012-02/)

<sup>27</sup> There is significant literature on these points, see for instance, Catholic Social Services Australia (2007), *The Obligation is Mutual*, discussion paper; Uni SA & Adelaide City Mission (2002), *The Impact of mutual obligation policies on unemployed young people, community organizations and the wider community*; and more recently Jeff Borland, University of Melbourne, at: <http://theconversation.com/work-for-the-dole-doesnt-work-so-why-is-it-coalition-policy-784>

<sup>28</sup> Between 1997 and 2001, just fewer than 130,000 people participated in the Work for the Dole program a total cost of \$235 million dollars, with an average cost of \$1,900 per placement. Ju Ging (2010), *Comparing the Cost Effectiveness of Australia's work for the dole with the UK's New Deal for Young People*, Department of Econometrics and Business Statistics, Monash University, 27 May 2010, p. 17

As a comparison, the Green Army initiative also contained in the MYEFO (and noted as a potential alternative to work for the dole), has allocated costs of \$300m over four years. These are in the order of: \$5.8m in 2013-14; \$124.5m in 2016-17; and \$289.2m in 2018-19. With 2500 participants projected for 2014-15 at cost of \$44million (equating to roughly \$17,600 per participant) rising to 15,000 during 2018-19. With this level of funding the unit cost per participant could foreseeably be above \$15,000. Even allowing for greater resourcing for these particular projects, and establishment costs, there still appears a significant disparity in allocated funding.

In this respect not only is this scheme more akin to enforced labour than mutuality, but it seems to be expected that it will be delivered with minimal resourcing – raising questions about the purported aims and where the costs of the program may lie. For instance, will potential employers be asked to absorb costs? Or for asylum seekers living on below poverty income, even simply being forced to catch public transport daily to their unpaid work, at a cost of approximately **\$50-70 per week** would have serious consequences for their ability to feed and provide basics for their family.<sup>29</sup>

### Foreign Aid expenditure

The Taskforce also **continues to be very concerned at major cuts to foreign aid spending, including ongoing delays in lifting Australian aid support to 0.5 percent of gross national income (GNI)**. The Coalition policy shift reduced projected aid spending by \$4.5 billion over the forward estimates, reallocated to Australian infrastructure projects.<sup>30</sup> The total aid budget for 2013-14 now represents just 0.37% of Australia's GNI.<sup>31</sup>

This means Australia continues to lag behind other developed countries in our commitment to the Millennium Development Goals and foreign aid — Britain, for example, despite significant financial stress in recent years due to the Global Financial Crisis, reaffirmed its commitment to meeting a 0.7% target for official development assistance (ODA) spending in 2013.<sup>32</sup> Of equal and pressing concern is the use of aid funding to pay for asylum seeker policy and program implementation in Australia.<sup>33</sup>

Not only are our current detention policies a gross waste of both human potential and financial resources, but Australia would be much better served by actively addressing people movement issues at the source. People flee their homes because they have to; and they try to stay close to home so they can return if conditions improve. They move on from their initial place of displacement only because there is no hope of a safe life, with access to basic needs such as health care, shelter, education or employment in that location.<sup>34</sup>

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<sup>29</sup> Based on estimates of travel in Queensland where Asylum Seekers on BVEs do not qualify under State arrangements for any form of discounted public transport, and these high costs impact very heavily on families.

<sup>30</sup> Hockey, Joe, The Hon MP and Robb, Andrew, The Hon MP (2013), *Final update on federal coalition election policy commitments*, media release, 5 Sept. [www.liberal.org.au/latest-news/2013/09/05/final-update-federal-coalition-election-policy-commitments](http://www.liberal.org.au/latest-news/2013/09/05/final-update-federal-coalition-election-policy-commitments)

<sup>31</sup> Refugee Council of Australia (2013) "2013-14 Federal budget in brief: what it means for refugees and people seeking humanitarian protection". Briefing paper, [www.refugeecouncil.org.au/r/bud/2013-14-Budget.pdf](http://www.refugeecouncil.org.au/r/bud/2013-14-Budget.pdf)

<sup>32</sup> Tran, Mark (2013) "Autumn statement promises increase in the UK's overseas aid budget", *The Guardian*, 6 Dec. [www.theguardian.com/global-development/2013/dec/05/budget-autumn-statement-aid-development-increase](http://www.theguardian.com/global-development/2013/dec/05/budget-autumn-statement-aid-development-increase)

<sup>33</sup> The Australian Churches Refugee Taskforce has maintained a strong policy position on this point, since the Labor Government diverted \$375 million aid early 2013, effectively making Australia the third largest recipient of its own Aid, see: *Robbing the Poor to care for the Desperate*, at <http://www.australianchurchesrefugeetaskforce.com.au/category/campaigns/robbing-the-poor-to-care-for-the-desperate-using-overseas-aid-for-asylum-seekers-in-australia/>

<sup>34</sup> Menadue, John, Arja Keski-Nummi, Arja and Gauthier, Kate (2011) *A New Approach. Breaking the Stalemate on Refugees and Asylum Seekers*. August. Centre for Policy Development. [https://cpd.org.au/wp-content/uploads/2011/08/CPD-Refugee\\_Report\\_Web.pdf](https://cpd.org.au/wp-content/uploads/2011/08/CPD-Refugee_Report_Web.pdf) , p. 14.

Reducing the costs of detention via more humane strategies such as those outlined earlier in this document, and redirecting savings to more strategic humanitarian assistance programs in source countries, addresses asylum seeker issues at the source.<sup>35</sup>

Even a portion of these staggering amounts would support in-country access to housing, education, and a livelihood that must play an important role in reducing the desperate need to find a safe haven that drives asylum seekers to make dangerous journeys.

As the Lowy Institute summarised in its incoming brief to Government:

“If we have learned nothing else from the last few years, it is that this is a complex problem that defies easy solutions...

People-smuggling is a transnational phenomenon that cannot be managed on a unilateral basis. Equally it is too insignificant an issue to risk jeopardizing economic or trade or other bilateral, regional, or global partnerships. Development assistance should aim for grander goals than reducing immigration or facilitating returns. Regional neighbours are potential trading partners, not just transit countries. Engage the international community to provide a roadmap rather than a roadblock. People-smuggling is a global scourge, and should not be an Australian obsession.”<sup>36</sup>

With what is effectively a global epidemic of refugees in crisis, it is clear that no single country can address all the factors that drive people to flee their current circumstances. Durable solutions require regional cooperation on policy and processes, broad agreement on the principles underpinning the treatment of refugees and asylum seekers, and public education.

### Accounting for the risk of offshore processing

**The Taskforce recommends that the additional fiscal risks and potential liabilities posed by Australia’s running of offshore detention camps be recognised.**

Australia has signed MOUs with both Nauru and Papua New Guinea in order to facilitate offshore processing. It is important to acknowledge the potentially serious liabilities and risks associated with these arrangements.

Our agreements commit us to bearing the **full cost of implementation**, including what is described in the Nauru MOU as “the development of enhanced capacity”.<sup>37</sup> Both MOUs note that where additional development of infrastructure or services is required to meet the purposes of offshore

<sup>35</sup> Crock, Mary and Martin, Hannah (2013) “Submission to the Parliamentary Joint Committee on Human Rights Examination of the Migration (Regional Processing) package of legislation”, 15 January. [http://sydney.edu.au/law/scil/documents/2013/Crock\\_and\\_Martin\\_Submission.pdf](http://sydney.edu.au/law/scil/documents/2013/Crock_and_Martin_Submission.pdf), p. 13

<sup>36</sup> Kahlid Khoser, in *Judicious ambition: international policy priorities for the new Australian Government*, The Lowy Institute, September 2013, at: <http://lowyinstitute.org/publications/judicious-ambition-international-policy-priorities-new-australian-government>

<sup>37</sup> Republic of Nauru and the Commonwealth of Australia (2013) *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues*, <http://www.dfat.gov.au/issues/people-smuggling-mou.html>

processing, “it is envisaged that there will be a broader benefit for communities” in which transferees are initially placed.<sup>38</sup>

In addition, we have continuing legal obligations to those sent ‘offshore’: that is, as UNHCR notes, “the physical transfer of asylum-seekers from Australia to Nauru, as an arrangement agreed by two 1951 Refugee Convention States, does not extinguish the legal responsibility of the transferring State (Australia) for the protection of the asylum-seekers affected by the arrangements”.<sup>39</sup> Further, the MOUs are explicit in identifying a continuing obligation for the “welfare and safety” of transferees (PNG) and, for Nauru, agree that “The Participants will treat Transferees with dignity and respect and in accordance with relevant human rights standards”.

The Government is aware that these are significant commitments, with serious implications for the wellbeing of transferees, for our relationships with Nauru and PNG, and for Australia’s reputation internationally. Yet, in their 2013 reports on both facilities, the UNHCR was “deeply troubled to observe that the current policies, operational approaches and harsh physical conditions at the RPC do not comply with international standards”.<sup>40</sup> Nor were they reported to “provide safe and humane conditions of treatment in detention” or “adequate and timely solutions for refugees”.<sup>41</sup>

There are clearly significant risks arising from our operating these offshore detention camps in uncertain political, social and economic environments. Nauru, for example, with its population of less than 10,000 and area the size of Rottneest Island, has a history of political instability, over-governance and mismanagement; of poor health, poverty and social dysfunction.<sup>42</sup> The recent failure of rule of law, with the sacking of the country’s only magistrate, has thrown the Nauruan justice system into disarray, with many asylum seeker cases now in limbo without proper adjudicative authority.<sup>43</sup>

Papua New Guinea was ranked 144th on the 2013 Transparency International index of corruption, alongside Iran and Nigeria.<sup>44</sup> Manus has been the scene of violence between Papua New Guinea

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<sup>38</sup> Rudd, K, The Hon. MP and O’Neill, Peter, The Hon MP (2013) *Regional Resettlement Arrangement Between Australia and Papua New Guinea*. <http://www.dfat.gov.au/issues/rra-png.pdf>; Republic of Nauru and the Commonwealth of Australia (2013) *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues*, <http://www.dfat.gov.au/issues/people-smuggling-mou.html>

<sup>39</sup> United Nations High Commissioner for Refugees (2013) UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013. [http://unhcr.org.au/unhcr/files/2013-07-12\\_Manus\\_Island\\_Report\\_Final\(1\).pdf](http://unhcr.org.au/unhcr/files/2013-07-12_Manus_Island_Report_Final(1).pdf), p. 6; United Nations High Commissioner for Refugees (2013) UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013 .

<sup>40</sup> United Nations High Commissioner for Refugees (2013) UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013. [http://unhcr.org.au/unhcr/files/2013-07-12\\_Manus\\_Island\\_Report\\_Final\(1\).pdf](http://unhcr.org.au/unhcr/files/2013-07-12_Manus_Island_Report_Final(1).pdf).

<sup>41</sup> United Nations High Commissioner for Refugees (2013) UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013. [http://unhcr.org.au/unhcr/files/2013-07-12\\_Manus\\_Island\\_Report\\_Final\(1\).pdf](http://unhcr.org.au/unhcr/files/2013-07-12_Manus_Island_Report_Final(1).pdf); United Nations High Commissioner for Refugees (2013) UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013. <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>

<sup>42</sup> Hughes, Helen (2004). *From rags to riches: What are Nauru’s options and how can Australia help?* Centre for Independent Studies Issues Analysis, no. 50, August. [http://www.cis.org.au/images/stories/issue\\_analysis/ia50.pdf](http://www.cis.org.au/images/stories/issue_analysis/ia50.pdf); Thomas, Tony (2013) “The naughty nation of Nauru”, *Quadrant Online*, 1 Jan. <http://quadrant.org.au/magazine/2013/01-02/the-naughty-nation-of-nauru/>

<sup>43</sup> Gordon, Michael (2014) “Courts in crisis as Nauru sacks its only magistrate”, *Sydney Morning Herald*, 20 Jan. <http://www.smh.com.au/federal-politics/political-news/courts-in-crisis-as-nauru-sacks-its-only-magistrate-20140119-312u1.html#ixzz2rpbBJlcl>

<sup>44</sup> Transparency International (2013) “Corruption Perceptions Index 2013” <http://cpi.transparency.org/cpi2013/results/>

police and the military, endangering asylum seekers and Australian staff in an incident described in Immigration Department documents as 'critical'.<sup>45</sup>

The last Budget noted unquantifiable contingent liabilities where the Commonwealth agreed to liability limits for Immigration detention services. This includes within Australia for International Health and Medical Services Pty Ltd (IHMS) and Serco; and at Regional Processing Centres, for The Salvation Army, IHMS, Transfield Services and G4S<sup>46</sup> In its MYEFO *Statement of Risks* the Commonwealth also recognises indemnity arrangements being put in place with each of the State and Territories for the 'provision of various services (including health, education, corrections and policing services) to immigration detention facilities and people in immigration detention.'<sup>47</sup>

As noted in the Budget Paper, '[f]iscal risks also include emergency foreign aid and potential natural disasters. Such occurrences have in the past resulted in unexpected increases in expenses and may do so again.'<sup>48</sup> Although the PEFO noted the regional agreements and that provision had been made for 'processing facilities' it also stated 'further facilities could be required should arrivals persist at higher rates. There are also a number of expense measures which impact on the aggregates that still remain subject to the legislative process.'

In this respect Australia's potential liabilities and risks arising from running offshore detention camps are arguably much greater than currently publicly acknowledged and accounted for. These could for instance include:

- Significant additional (unfunded) costs associated with ongoing resettlement and care in Nauru or PNG, arising from our MOU obligations.
- Additional potential liabilities and risks arising from governance and security concerns, with breakdowns of governance, or law and order, possible in both locations.
- Potential litigation or other liabilities arising from impacts on Australian staff and personnel involved in both Operation Sovereign Borders and Offshore processing facilities, (which may not already be covered).
- Similarly consideration could be made to acknowledge the risks and for provision of claims arising from cases of human rights abuses and unlawful detention.<sup>49</sup>

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<sup>45</sup> Natalie O'Brien, N. (2014) "Shots fired during Manus Island riot: detainee", Sydney Morning Herald, 12 January. <http://www.smh.com.au/federal-politics/political-news/shots-fired-during-manus-island-riot-detainee-20140111-30nfj.html>

<sup>46</sup> Budget 2013-14 Paper 1, pp.8- 22-23

<sup>47</sup> MYEFO, Appendix C Statement of Risks p254.

<sup>48</sup> Budget 2013-14 Paper 1, pp.8- 5

<sup>49</sup> On this final point, the UNHCR research report (2011), p.40 noted that in 'combination with the right to an effective remedy for human rights violations found in myriad human rights instruments, there is a specific guarantee of compensation in cases of unlawful or arbitrary detention'. As at March 2010, the Commonwealth had 'paid out over \$12 million in compensation for alleged injury or wrongful detention to individuals.' See [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/Detention](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention)

## Attachment

|   | Men   | Women | Children | Total        |
|---|-------|-------|----------|--------------|
| Total Facility and APOD (Onshore detention)                                 | 4107  | 987   | 1028     | <b>6122</b>  |
| Total Community under Residence Determination (Community based)             | 1035  | 673   | 1637     | <b>3345</b>  |
| Total Community on Bridging Visa E (Including people in a re-grant process) | 18807 | 2136  | 1765     | <b>22708</b> |

| Offshore Processing Centres              | Men         | Women      | Children   | Total       |
|--|-------------|------------|------------|-------------|
| Republic of Nauru                        | 535         | 187        | 116        | <b>838</b>  |
| Manus Province, Papua New Guinea         | 1229        |            |            | <b>1229</b> |
| <b>Total Offshore Processing Centres</b> | <b>1764</b> | <b>187</b> | <b>116</b> | <b>2067</b> |

Immigration Detention and Community Statistics Summary at 31 Dec 2013<sup>50</sup>

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<sup>50</sup> <http://www.immi.gov.au/About/Pages/about-immigration-detention.aspx?heading=immigration-detention-and-community-statistics>