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To whom it may concern,

As the Director of the Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney, I am pleased to provide a submission for the Consultation on Alternative Commonwealth Capabilities for Crisis Response.

The Kaldor Centre is the world's first and only research centre dedicated to the study of international refugee law. The Centre was established in October 2013 to undertake rigorous research to support the development of legal, sustainable and humane solutions for displaced people, and to contribute to public policy involving the most pressing displacement issues in Australia, the Asia-Pacific region and the world. A core area of the Centre's expertise is mobility in the context of climate change and disasters. This includes both internal and cross-border movement, as well as evacuations – the focus of the present submission.

The submission argues that current Australian laws and policies do not pay sufficient attention to the propensity for evacuations to displace people, nor to relevant international legal frameworks that protect people's rights and needs when they are displaced. It points out problems of multi-jurisdictional fragmentation between local, state, territory and federal actors which have resulted in gaps, overlap and confusion during disasters, and also notes some parallels in Australia's COVID-19 response.

The submission draws directly from the following article, which provides a detailed analysis of state and federal evacuation powers in Australia and makes recommendations for legal and policy reform: Jane McAdam, '[Exploring the Legal Basis in Australia for Evacuations from Disasters: Avoiding Arbitrary Displacement](#)' (2022) 45 *UNSW Law Journal* 1329–66.

Please do not hesitate to contact me if I can be of further assistance.

Yours sincerely,

Professor Jane McAdam AO

1. Australia's devastating bushfires of 2019–20 and unprecedented floods in 2022 saw record numbers of evacuations. As climate change amplifies the frequency and/or severity of extreme weather events, evacuations are likely to become increasingly common. If governments are to bolster resilience, avert displacement and plan effectively, 'more needs to be done when evacuations are required to ensure that the community, especially the more vulnerable, are appropriately looked after'.<sup>i</sup> Physically moving people out of harm's way is only one aspect: recognizing and protecting people's rights (including with respect to any decision to evacuate) is the more fundamental challenge.
2. Since evacuations can displace people, sometimes for prolonged periods, it is crucial that law- and policy-makers 'see' the displacement aspect. Otherwise, disaster prevention and preparedness strategies may be ill-targeted and costly,<sup>ii</sup> and people's protection needs may be overlooked.
3. The multi-jurisdictional nature of disaster response in Australia means that gaps, overlap and confusion may arise between local, state, territory and federal actors. During the 2019–20 bushfires, the challenges created by differing policies and approaches to evacuations were all too clear, including confusion caused by different terminology and people not being allowed to cross a state border to their nearest evacuation centre.<sup>iii</sup> Some of the practical difficulties were partly attributable to multiple jurisdictions, actors and policies; even inconsistencies in data collection and sharing made coordinating approaches problematic.<sup>iv</sup> International guidelines have not addressed these issues in any depth, noting only the need for cooperation where multiple domestic actors are involved.<sup>v</sup> Given that the federal government retains ultimate responsibility under international law to ensure that people are not arbitrarily displaced and that their right to life (among others) is protected, this is clearly an area that warrants further attention.
4. Similar problems of multi-jurisdictional fragmentation, inconsistency and a lack of interoperability between federal, state and territory systems were apparent during Australia's emergency response to the COVID-19 pandemic. Although the pandemic was a national emergency, health advice differed across the states and territories;<sup>vi</sup> there were no systems in place to enable 'effective sharing and linking of health data' between state, territory and federal health departments;<sup>vii</sup> and confusion about border processes led to ad hoc decision-making and general unpredictability.<sup>viii</sup> Such factors had significant consequences for public health and people's ability to move (given Australia's extensive internal and international border closures). Had more transparent and coordinated systems been in place, informed by human rights law, some of the more extreme restrictions on movement may have been avoided, and conflicting interests and motivations could have been better managed.<sup>ix</sup>
5. A particular priority identified by the bushfires Royal Commission was the need to improve cooperation and coordination in planning internal cross-border evacuations, especially in border communities where the safest evacuation route may be across a state line.<sup>x</sup> Existing domestic guidance, such as the Cross-Border Assistance Guidelines 2014 on emergency relief, may provide some assistance in this regard,<sup>xi</sup> but it is unclear to what extent state and territory governments 'are aware of, and have used these arrangements'.<sup>xii</sup> Interestingly, the Royal Commission observed that knowledge and experience gained from COVID-19-related border closures could mean that cross-border commissioners – who help to resolve issues that arise from being located near a state border<sup>xiii</sup> – 'have a useful role to play in future evacuation planning in border areas.'<sup>xiv</sup> In particular, human rights – and, in particular, the right to life – should take precedence over the arbitrary imposition of intra-state borders.

6. The Royal Commission also stressed the need to plan for compound or concurrent disasters – such as the intersection of bushfires with COVID-19.<sup>xv</sup> These may be catastrophic given the additional pressures they place on existing emergency management arrangements (including coordination between multiple actors),<sup>xvi</sup> and the confusion for those affected. For instance, when people were ordered to evacuate from bushfires in Perth that coincided with a strict COVID-19 lockdown in February 2021, the Commissioner for Fire and Emergency Services stressed that preservation of life was the priority: ‘if you’re quarantining and you’re required to evacuate, you should just evacuate’.<sup>xvii</sup> In other parts of the world, fears about COVID-19 meant that when disasters hit, many people remained in their exposed homes rather than moving to crowded evacuation centres.<sup>xviii</sup> This is why in Japan, authorities co-opted private facilities, such as hotels and shopping centres, as additional evacuation shelters to enable physical distancing.<sup>xix</sup> Evacuations from Cyclone Harold in the Pacific in April 2020, and Cyclone Amphan in Bangladesh and neighbouring States in May 2020, were complicated by the need to follow strict COVID-19 protocols.<sup>xx</sup>
7. Another challenge concerns data. Consistent with global trends, poor data-collection practices in Australia mean that we have an incomplete picture of what happens to evacuees after the initial emergency phase.<sup>xxi</sup> The Internal Displacement Monitoring Centre has noted that what little data is gathered tends to lack detail about people’s background, socio-economic status and so on,<sup>xxii</sup> which hampers the development of well-targeted policies and interventions. Accurate data is vital ‘to learn lessons and improve planning, preparedness and responses to future displacement crises’<sup>xxiii</sup> and ‘to foster the meaningful participation of various groups in the planning and design of support programmes’.<sup>xxiv</sup> Australian authorities should also be transparent about their decisions and calculations in responding to disasters, particularly when they involve restrictions on people’s human rights so that their necessity, proportionality and reasonableness can be regularly assessed.
8. Similar data-related problems were also apparent in Australia’s response to COVID-19, and specifically with respect to wide-ranging and long-running restrictions on people’s freedom of movement. Inconsistent border practices across states and territories, poor data-sharing between jurisdictions and ad hoc, opaque decision-making created confusion and unpredictability. The absence of a national human rights framework against which such controls could be evaluated may have enabled their continuation long beyond what was necessary, proportionate or reasonable.<sup>xxv</sup>
9. International legal standards reflected in the Guiding Principles on Internal Displacement,<sup>xxvi</sup> and human rights law more generally,<sup>xxvii</sup> are directly relevant to protecting evacuees – before, during and after an evacuation. These not only require consideration of general human rights concerns, but also specific consideration of the needs and rights of particular individuals and groups who may find themselves especially vulnerable in a disaster. Incorporating more overt references to such standards into Australian legal, policy and operational frameworks on evacuations would give greater prominence to (and promote awareness of) the human rights obligations that Australian authorities are required to respect – and provide greater measures of accountability. At the very least, state, territory and federal guidelines on evacuations should acknowledge and reflect Australia’s obligations under international law and underscore the importance of understanding and responding to evacuations within a human rights framework. This would enable authorities to confront protection gaps head-on and thereby enhance the promotion of people’s rights, well-being and recovery.
10. Without a clear rights-based framework, the emergency nature of evacuations means that although Australian authorities might provide initial assistance, they could end up

evading their longer-term responsibilities, leaving people in legal, physical and emotional limbo. It is imperative that protection principles derived from international refugee, human rights and humanitarian law are incorporated into the conception, planning and implementation of evacuations to safeguard against such risks.

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<sup>i</sup> [2022 Flood Inquiry: Volume One: Summary Report](#) (29 July 2022) 5.

<sup>ii</sup> For instance, they may not take into account the economic costs of evacuations, especially if livelihoods are disrupted over a prolonged period. Following the 2019–20 bushfires, it was estimated that the cost of providing a year’s temporary housing for those who lost their homes was A\$60–72 million, and for each day that a person could not work, the loss was A\$705 per person: Internal Displacement Monitoring Centre (IDMC), [The 2019–2020 Australian Bushfires: From Temporary Evacuation to Longer-Term Displacement](#) (September 2020) 4.

<sup>iii</sup> Public submissions to the Royal Commission detailed the frustration of border communities when it came to their evacuation experiences, for instance: Royal Commission into Natural Disaster Arrangements, [Report](#) (28 October 2020) 281. There was considerable confusion (even at times among emergency services personnel) caused by different terminology used to describe sheltering facilities in NSW and Victoria, including the level of protection that particular facilities could provide: 274, 276.

<sup>iv</sup> Royal Commission into National Natural Disaster Arrangements, [Interim Observations](#) (31 August 2020) para 10.

<sup>v</sup> See eg [The MEND Guide: Comprehensive Guide for Planning Mass Evacuations in Natural Disasters](#) (IASC Camp Coordination and Camp Management Cluster, 2014) 23, 27, 32, 41ff.

<sup>vi</sup> Peter Shergold et al, [Fault Lines: An Independent Review into Australia’s Response to COVID-19](#) (Report, 20 October 2022) 55.

<sup>vii</sup> *Ibid* 66.

<sup>viii</sup> Lily McCann, Sandra C Thompson, Floraidh Rolf, and Tegan Podubinski, ‘Police, Permits and Politics: Navigating Life on Australia’s State Borders during the COVID-19 Pandemic’ (2022) 30(3) *Australian Journal of Rural Health* 363, 368.

<sup>ix</sup> I thank Regina Jefferies for her insights both here and in our co-authored publications on these issues.

<sup>x</sup> Royal Commission (n iii) 281. Some states and territories already do regular cross-border evacuation exercises to determine what will (and will not) work in practice, and for different scenarios. The Queensland Floods Commission of Inquiry also noted challenges that can arise with other boundaries, including local government boundaries, disaster district boundaries police district boundaries, other emergency services boundaries and government agency boundaries: Queensland Floods Commission of Inquiry, [Interim Report](#) (August 2011) 98.

<sup>xi</sup> [Cross-Border Assistance Guidelines](#) (2014). The guidelines are based on the following principles (at 1):

I. The basic immediate needs of citizens will be met in an emergency, regardless of the state or territory in which they live.

II. Jurisdictions will work together and cooperate in the provision of immediate relief to all those impacted by an emergency event.

III. Coordinated emergency relief efforts are critical to successful longer-term recovery.’

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- <sup>xii</sup> Royal Commission (n iii) 451.
- <sup>xiii</sup> See eg NSW Government, '[Office of the Cross-Border Commissioner – Department of Regional NSW](#)'; Regional Development Victoria, '[Victoria's Cross Border Commissioner](#)'.
- <sup>xiv</sup> Royal Commission (n iii) 282 (fn omitted).
- <sup>xv</sup> This was the situation in early February 2021, when bushfires in Perth took hold while the city was in a COVID-19 lockdown. See '[Perth Bushfire: Evacuations as Dozens of Homes Destroyed](#)', *BBC News* (3 February 2021).
- <sup>xvi</sup> Royal Commission (n iii) 5, 271–72. 'Compounding disasters may be caused by multiple disasters happening simultaneously, or one after another. Some may involve multiple hazards – fires, floods and storms. Some have cascading effects – threatening not only lives and homes, but also the nation's economy, critical infrastructure and essential services, such as our electricity, telecommunications and water supply, and our roads, railways and airports' (22). See also Tasmanian Government, '[Emergency Evacuation Framework](#)' (version 2, August 2018) 29, noting the need to cross-reference between authorities in warnings.
- <sup>xvii</sup> Quoted in Bridget Fitzgerald, '[Hundreds of Fire Fighters Continue to Battle a Large, Out of Control Fire North East of Perth](#)' (ABC, *The World Today*, 3 February 2021).
- <sup>xviii</sup> IDMC, '[Global Report on Internal Displacement \(GRID\) 2021](#)' (IDMC, 2021) 21.
- <sup>xix</sup> *Ibid* 74.
- <sup>xx</sup> Viviane Clement et al, '[Groundswell: Acting on Internal Climate Migration: Part II](#)' (The World Bank, 2021) 4.
- <sup>xxi</sup> IDMC 2021 (n xviii) 78; IDMC 2020 (n ii) 20.
- <sup>xxii</sup> IDMC 2020 (n ii) 20.
- <sup>xxiii</sup> IDMC 2020 (n ii) 20.
- <sup>xxiv</sup> IDMC 2021 (n xviii) 79.
- <sup>xxv</sup> I again thank Regina Jefferies for her collaboration here.
- <sup>xxvi</sup> '[Guiding Principles on Internal Displacement](#)', UN doc E/CN.4/1998/53/Add.2 (11 February 1998).
- <sup>xxvii</sup> In addition to international treaty law, see *MEND Guide* (n v); '[Inter-Agency Standing Committee \(IASC\) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters](#)' (Brookings–Bern Project on Internal Displacement, January 2011); Sphere Association, '[The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response](#)' (4<sup>th</sup> edn 2018); '[Sendai Framework for Disaster Risk Reduction 2015–2030](#)', UNGA res 69/283 (23 June 2015) annex II, [33(h)], [33(m)]. Note also International Law Commission (ILC), '[Protection of Persons in the Event of Disasters: Draft Articles and Commentary](#)', UN doc A/71/10 (2016). While evacuations are not mentioned expressly, the draft articles do detail States' responsibilities to undertake preventive and remedial action in the context of disasters. The *MEND Guide* provides the comprehensive international guidance on evacuations. Although specifically developed for 'mass evacuations' – namely, 'the evacuation of whole communities, neighborhoods or geographical areas' (17) – it is relevant to all types of evacuations.