

18 FEBRUARY 2026

Offshore processing and resettlement arrangements

Submission to the
Senate Legal and
Constitutional Affairs
References Committee

VISA
CANCELLATIONS
WORKING GROUP

ABOUT THE VISA CANCELLATIONS WORKING GROUP

The Visa Cancellations Working Group is a national group with significant expertise in visa cancellations and migration more generally.

Its membership includes multiple LIV Accredited Specialists in Immigration Law, and is comprised of individuals from private law firms, not-for-profit organisations, community legal centres, and tertiary institutions, including:

- Amnesty International;
- Assent Migration;
- Asylum Seeker Resource Centre;
- AUM Lawyers;
- Carina Ford Immigration Lawyers;
- Circle Green Community Legal;
- Clothier Anderson Immigration Lawyers;
- Darebin Community Legal Centre;
- Erskine Rodan & Associates;
- Estrin Saul Lawyers and Migration Specialists;
- Farrell Rose Migration Lawyers
- FCG Legal;
- Fitzroy Legal Service;
- Federation of Ethnic Communities Councils of Australia Inc;
- Foundation House;
- Gadens;
- Human Rights Watch;
- Immigration Advice and Rights Centre;
- Jesuit Refugee Service Australia;
- Kah Lawyers;
- Law Access;
- Legal Aid New South Wales;
- Monash University;
- MYAN Australia;
- Northern Community Legal Centre;
- Peter McMullin Centre on Statelessness;
- Refugee Legal;
- Refugee Advice & Casework Service;
- Refugee Immigration Legal Service;
- Russell Kennedy;
- Sandpiper Lawyers;
- SCALES Community Legal;
- Sisters Inside;
- Southport Community Legal Service;
- The Kaldor Centre;
- The Law Institute of Victoria;
- The Refugee Council of Australia;
- The University of Canberra;
- The University of Melbourne;
- Varess;
- Victoria Legal Aid;
- Welcome Legal;
- Women's Legal Service, New South Wales, and
- Women's Legal Service, Victoria.

The views in this submission do not purport to be endorsed in their entirety by all members of the Working Group.

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EXECUTIVE SUMMARY

1. The Visa Cancellations Working Group (**the Working Group**) welcomes the opportunity to provide a submission to the Legal and Constitutional Affairs References Committee (**the Committee**) inquiry into Australia’s offshore processing and resettlement arrangements (**the Inquiry**).
2. Several other organisations and individuals have made submissions addressing the legacy of ‘regional processing’ arrangements in Nauru and Papua New Guinea. We endorse and commend to the Committee those submissions, in particular the submissions made by the **Human Rights Law Centre, Liberty Victoria, Human Rights Watch** and the **Peter McMullin Centre on Statelessness**.
3. The Working Group submissions will focus on the ‘third country reception arrangements’ with Nauru established in 2025 (**the arrangements**), their implications for the rule of law, and the human rights of those subject to them. The Working Group has considerable expertise in this space, with members representing scores of people affected or at risk.

Context: historical offshore detention and resettlement

4. The Australian Government’s ‘cruel, costly and ineffective’¹ policy of offshore processing has caused irreparable harm to thousands of people and their families over thirteen years. The cost is staggering financially, and more profoundly, in human and moral terms. The policy is defined by brutality and attempted abdication of responsibility for international obligations and the duty of care owed by government to its people.

¹ Madeline Gleeson and Natasha Yacoub , ‘Cruel, costly and ineffective: The failure of offshore processing in Australia’, Kaldor Centre for International Refugee Law, August 2021.

5. The harms caused are well-documented² and include the deaths of at least fourteen people.³ Conditions and access to basic care historically became so poor that the Australian Government was forced by court order to medically evacuate people to Australia.⁴ In 2025, the UNHCR affirmed Australia's responsibility for arbitrary detention in Nauru.⁵ The Australian Government continues to face claims in court for damages compensating the irreversible harm done to people in Nauru, eight, ten, twelve years ago.
6. The externalisation of Australia's international legal obligations is a dark chapter in Australian history. It has been proven to be an abject failure on all fronts, particularly in terms of the egregious and irreversible harms done to men, women and children and its incompatibility with international refugee law and the apportionment of responsibility on the global stage.⁶

New arrangements in 2025

7. Despite that background, in February 2025, the Australian Government announced an interim deal with the Government of Nauru allowing 30-year exile of Australian community members to Nauru. A final agreement was concluded in August 2025. Little of the terms of those agreements are public. Vast gaps of information remain, and the terms are disturbingly broad.
8. The arrangements continues a trend of rushed, defective, punitive measures vilifying and punishing people in Australia without Australian citizenship – in particular, refugees and stateless people – based purely on visa status.
9. As the Parliamentary Joint Committee on Human Rights has observed in respect of connected legislation, at no stage has any credible justification or evidence been presented to identify any specific or heightened threat that bridging 'R' (subclass 070) visa (**BVR**) holders pose to the community,⁷ nor does it appear any consideration has been given to less restrictive alternatives (for example, refraining from re-detention).⁸
10. Under the arrangements, people are being subjected to exile with no notice and without consideration of their circumstances: how long they have lived in Australia; their families here and the strength of their ties; their health, or the risk of harm or persecution.

² See Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (Report, 11 December 2014); Phillip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru* (Report, 6 February 2015); Paul Farrell, Nick Evershed and Helen Davidson, 'The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention', *Inkl* (online, 10 August 2016) The Nauru files: cache of 2,000 leaked reports reveal...; Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, Parliament of Australia, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru* (Report, 31 August 2015); Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre* (Report, April 2017).

³ See Human Rights Law Centre, '#ElevenYearsTooLong – Timeline of offshore detention', *Human Rights Law Centre* (webpage, 19 July 2024) <<https://www.hrlc.org.au/timeline-offshore-detention>>.

⁴ Gleeson and Yacoub (n 1) p 8.

⁵ Human Rights Committee, *Views: Communication No 2749/2016*, 142nd sess, UN Doc CCPR/C/142/D/2749/2016 (31 October 2024) (*M I et al v Australia*); Human Rights Committee, *Views: Communication No 3663/2019*, 142nd sess, UN Doc CCPR/C/142/D/3663/2019 (22 January 2025) (*Nabhari v Australia*); UNHCR, 'UN ruling on Australia's responsibility for people transferred to Nauru', 16 January 2026, available at <https://www.unhcr.org/asia/news/press-releases/un-ruling-australia-s-responsibility-people-transferred-nauru>.

⁶ See e.g. United Nations High Commissioner for Refugees, UNHCR Note on the "Externalization" of International Protection (Position Paper, 28 May 2021); UNHCR Representation in Australia, New Zealand and the Pacific, Externalisation (online legal publication, 24 January 2022).

⁷ Parliamentary Joint Committee on Human Rights, Report 10 of 2024; [2024] AUPJCHR [1.14].

⁸ *Ibid*[1.18].

11. These arrangements represent a disturbing escalation from earlier but ongoing iterations of offshore processing, because they extract people *already living in the Australian community* from their homes and families and subject them to permanent exile.
12. Under previous arrangements, people were typically exposed to offshore processing on arrival to Australia, and it has been the intention that people detained offshore would be resettled in other safe third countries like the United States of America, Canada or New Zealand – here, there is no such prospect. The arrangements are a troubling escalation of externalisation practices and the derogation of responsibilities Australia has accepted as a global citizen.
13. Six people have been exiled to Nauru under these arrangements to date, but the Department puts the current total of people in the so-called NZYQ cohort at 335.⁹ The Working Group represents many people who have been detained by the Government for the purposes of removal, and many more at risk under the arrangements.
14. The implementation of the arrangements is brutal. Our clients complying with visa conditions and living safely in the community have been subjected to without-notice, traumatic public re-detention, with ongoing impacts on their families, children and communities.
15. The third country arrangements were introduced with unacceptably constrained public scrutiny and their operation has been shrouded in secrecy – not least because the government has legislated to deprive those subject to the arrangements of procedural fairness.¹⁰ As a result, an undefined and increasing number of people are now exposed to the risk of being exiled to Nauru on 30-year visas, without any consideration of the harm the arrangements cause or the long-term implications for their basic rights – including to basic healthcare, family reunion and, most critically, protection against forced return to their country of nationality.
16. Throughout this submission, we share deidentified case studies recording the experiences of our clients who have been subjected to third country arrangements. All names and identifying features have been changed.

RECOMMENDATIONS

- A. The Committee should recommend that the Australian Government immediately end third-country processing arrangements with Nauru and return all individuals sent to Nauru under this policy to Australia.
- B. The Committee should recommend that the Australian Government invest in efficient visa-processing systems and expand alternatives to immigration detention, including community-based supports.

⁹ Legal and Constitutional Affairs Committee, *Estimates*, Home Affairs, 10 February 2026, page 94.

¹⁰ *Migration Act 1958* (Cth), s 198AHAA.

BACKGROUND – THE ‘NZYQ COHORT’

17. While the legislation is drafted with exceptional and unsound breadth, the Australian Government have indicated its initial application will be to the “continued management of the NZYQ cohort”.¹¹
18. There is an alarming amount of misinformation surrounding the so-called NZYQ cohort, the group currently targeted by the Government for removal under the third country arrangements.
19. The High Court found in 2023 that it is unconstitutional to detain people on the premise they are being removed when removal is not reasonably practicable in the reasonably foreseeable future¹² (for example, because they are refugees or stateless).
20. As a result of this finding, over 100 people being detained unconstitutionally by the Government were released from that unlawful custody and granted bridging ‘R’ visas subject to a suite of onerous and often invasive conditions. They were offered minimal support, and subject to intense public scrutiny and vilification, including from Government, with reports of drones being used to track individuals,¹³ and large groups of uniformed officers attending homes to ‘check up’ on clients.
21. These conditions were plainly inimical to rejoining the community safely, as experts raised at the time.¹⁴ The Working Group’s clients reported unprecedented distress and shame, including fear and hopelessness, inability to leave the house or to spend time with family to avoid distressing them, inability to access employment and severe health deterioration.
22. People in this group are no different from other community members – except that they have not had the fortune to be born or become Australian citizens. Indeed, many gone through trauma and persecution before building a life in Australia, without the opportunities and supports that citizens take for granted.
23. Many of those people had been detained by the Government in abhorrent conditions for years without adequate support or healthcare.
24. Prior to their unlawful detention, the majority had been members of the Australian community with families, jobs and communities. Based on self-reporting alone, of the 335 currently falling within the cohort, at least 63 people holding BVRs have Australian citizen spouses or de facto partners; 131 have Australian citizen children.¹⁵
25. In the Working Group’s experience, a number of people affected arrived in Australia before they could even walk or as children, and it is a function of disadvantage that they never applied for Australian citizenship they would certainly have obtained. It defies logic and morality to seek to deport people from the community that produced them.

¹¹ The Hon Tony Burke MP, Minister for Home Affairs, Immigration and Citizenship, ‘Statement on Nauru MOU’, 29 August 2025, Media Release.

¹² *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 415 ALR 254.

¹³ Paul Karp, ‘Drones used to track immigration detainees released after high court decision, Andrew Giles reveals’, *the Guardian* (online, 30 May 2024) <<https://www.theguardian.com/australia-news/article/2024/may/30/drones-tracking-released-immigration-detention-detainees-andrew-giles>>.

¹⁴ Human Rights Law Centre. ‘Explainer: Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023’ (webpage)<<https://www.hrlc.org.au/explainers/preventative-detention/>>.

¹⁵ FOI Data Access Request DA26/01/00111.

26. Like any other member of the community, these people served their sentence for any criminal offending, and their engagement with the justice sentence ended. Unlike any other member of the community, they had been deprived of standard access to rehabilitation,¹⁶ and had instead faced visa cancellation or refusal and detention in stressful and surveilled environments, often deprived of healthcare and family contact and living in fear of removal to persecution.

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27. After their release into the community, and despite the conditions, many people were able to rejoin their families and even have children, find employment, and rebuild their lives in safety.

28. Compellingly, **none** of the cohort have been found to present a sufficient risk to warrant the imposition of community safety orders,¹⁷ a measure the Government introduced to apply to this group only, despite their presenting no higher risk than any other person in the community.¹⁸ Just At least 264 of the group do not even qualify for the imposition of electronic monitoring or curfew conditions:¹⁹ how then can it be said proportionate to exile them to Nauru?

Example A: RVJB is a refugee and father to an Australian citizen who proved his rehabilitation over a decade of unblemished record to multiple Tribunals and experts, all of whom assessed he was not a danger to the community. RVJB had lived in Australia since he was a child with his Australian citizen family after fleeing trauma and immense hardship, from which he built his strong and dedicated character. His visa cancellation meant *seven years* of immigration detention and separation from his child for key milestones.²⁰

29. Exposing people in such circumstances to the arrangements is senseless.

30. It is also a dangerous precedent apt to cause fear and stigmatisation: “[w]hat the government can do to one group serves as a disciplinary tale to everyone holding a visa, about their proper place in the social order”.²¹ By creating two tiers of justice based on a person’s place of birth, we undermine social cohesion, generate mistrust and weaken fundamental principles of our democracy.

31. Every person in Australia should be treated equally before the law. Due acknowledgement should be given to rehabilitation and community ties. Our justice system is rightly premised on rehabilitation, punishment and protection of community safety, all purposes that court sentencing countenances and was applied in respect of these individuals. These arrangements undermine key sentencing principles and judicial decision-making by magistrates and judges within the criminal justice system.

32. It is unacceptable to continue to demonise this group of people and to expose them to unimaginable harm for political expedience and without mounting any justification of substance.

¹⁶ Sanmati Verma and Claire Loughan , ‘Prison to Deportation Pipeline’, *Human Rights Law Centre* (webpage, 13 November 2024) <<https://www.hrlc.org.au/reports/2024-11-14-prison-to-deportation/>>.

¹⁷ Key Brief, *Supplementary Estimates Hearing*, Home Affairs, December 2025, available at <https://www.homeaffairs.gov.au/foi/files/2026/fa-251001997-document-released.PDF>.

¹⁸ See Human Rights Law Centre (n 13).

¹⁹ Legal and Constitutional Affairs Committee, *Estimates*, Australian Border Force, 10 February 2026, page 94.

²⁰ Asylum Seeker Resource Centre, ‘ASRC launches High Court challenge on overreach of new Federal Government laws’ (Media Release, 1 December 2023)<https://asrc.org.au/2023/12/01/asrc-launches-high-court-challenge-on-overreach-of-new-federal-government-laws/>.

²¹ Verma, Langbien and Clarke, ‘A silent discipline: why we all need to hold the line against deportations to Nauru’, *Overland*, 18 February 2026.

SECRECY AND LACK OF PROCEDURAL SAFEGUARDS

33. The way the third country arrangements were introduced into law raises serious concerns.
34. Attempts to rush through legislation without appropriate scrutiny undermines public confidence and the Government's commitment to transparent governance. It leads to flawed law-making with devastating individual and societal consequences and is particularly troubling where proposals have substantial and irreversible impact on people's rights and liberties, including refoulement, permanent family separation, and other harms including loss of liberty.
35. The legislation which introduced the power to enter into 'third country reception arrangements' was introduced and passed by Parliament within three weeks.²² Debate on the legislation was guillotined to ensure its passage in the final week of Parliament.²³ As a result, the public was deprived of even basic information about who the third country arrangements would effect, how they would be operationalised and what they would cost. Such extraordinary lack of transparency has, in our view, provided the pretext for dubious procurement decisions, corruption and misapplication of public funds which are the subject of this inquiry.
36. The Albanese government entered into an 'interim' third country arrangement with the Republic of Nauru in or around February 2025. The details of that 'interim' arrangement, including its cost, were not made public and had to be obtained through litigation by the three persons subject to that arrangement.
37. On 29 August 2025, an MOU between Minister Burke and the President of Nauru, David Adeang, was signed for "further long term visas to be granted by Nauru to people who no longer have a legal right to remain in Australia".²⁴
38. In September 2025, the government legislated to deprive persons subject to the third country arrangements of procedural fairness.²⁵ In doing so, the government acted to pre-empt, and render moot a High Court appeal by one of the three men subject to the 'interim' third country arrangement. Rather than permitting the High Court to establish, as a matter of law, whether persons subject to the 'interim' arrangement were entitled to procedural fairness – in other words, to be given advanced notice and an opportunity to respond before their rights were affected – the government acted to undermine and pre-empt the court's decision.
39. Also in September 2025, the Albanese government announced that it had concluded an 'extended' third country arrangement with Nauru. Again, none of the details of that 'extended' arrangement were made clear – other than the government's intent for it to 'initially' allow for the resettlement of people released from indefinite immigration detention, referred to as the 'NZZYQ cohort.' Persistent inquiries from the media and crossbench through parliamentary processes have also revealed the anticipated, and exorbitant, cost: between \$2.5 billion and \$7 billion over the lifespan of the deal.²⁶

²² The *Migration Amendment Act 2024* (Cth), which introduced the power at s 198AHB of the *Migration Act 1958* (Cth) to enter 'third country reception arrangements,' was introduced to the House of Representatives on 7 November 2024 and passed both houses on 28 November 2024.

²³ Paul Karp, 'Senate moving through 31 bills in frantic end to year as Australian strikes deal with Greens', *The Guardian* (online, 28 November 2024) < <https://www.theguardian.com/australia-news/2024/nov/28/albanese-australian-senate-likely-to-pass-31-bills-guillotine-motion-greens> >

²⁴ The Hon Tony Burke MP (n 10).

²⁵ By way of the *Home Affairs Legislation (2025 Measures No. 1) Bill 2025* (Cth).

²⁶ Refugee Council of Australia, 'First deportation under multi-billion-dollar Nauru deal a dark new chapter for Australia', *Refugee Council of Australia* (Webpage, 6 November 2025) <https://www.refugeecouncil.org.au/first-deportation-under-multi-billion-dollar-nauru-deal-a-dark-new-chapter-for-australia/>.

40. Six months on, the details of the 'extended' deal with Nauru are still not clear. For instance, it is not clear:
- a. How many people are subject to the deal;
 - b. How people are selected for resettlement in Nauru;
 - c. Whether the terms of the deal allow for expansion, to cover new cohorts of people (and who those people might be);
 - d. How the trust which will hold the anticipated billions of Australian funds will be administered;
 - e. What conditions people will be subject to, including whether they will be accommodated in former detention facilities or security (suggesting the need for protection from the community);
 - f. What will happen at the conclusion of the 30-year visa;
 - g. What protections are in place to ensure the safety of affected people.
41. Indeed, these details have been obscured and withheld from even the people subject to the extended deal and their legal representatives. For instance, in the recent cases of *KVO25* and *FZRM*, the applicants – both of whom suffer from serious psychiatric illnesses – argued that any attempt to include them within the terms of the 'extended' arrangement with Nauru would be unreasonable. The government responded with the assurance that both applicants had been 'sidelined' from resettlement in Nauru but declined to disclose the factors against which others were considered suitable for resettlement.
42. It is only through that litigation that the public and lawyers representing people at risk of resettlement have learnt the true scope of the extended arrangement – that it '*enables a broad cohort of people to be considered for third country reception in Nauru, [but] the Department has prioritised the holders (or future holders) of BVRs for consideration for removal to Nauru.*'²⁷ But the process for selection for resettlement remains obscure, and was described obliquely by the Court as follows²⁸:
- ...a triage process is conducted by the Director of BVR Case Management to assess the BVR cohort and identify BVR holders who are suitable for referral for consideration for removal to Nauru pursuant to the third country reception arrangement. This assessment also involves recommending that certain persons be "sidelined". A person who is "sidelined" is not referred for consideration for removal to Nauru and therefore is not under active consideration for removal. [The Commonwealth] states that the assessment process takes account of several factors. A person is sidelined if they do not presently meet the factors for removal.
43. It is unclear what 'factors' have been negotiated between the government and Republic of Nauru, and how they will be applied to determine resettlement outcomes. The opacity and unfairness of these processes is compounded by the legal framework established by the government, and the move to deprive people subject to the arrangements of procedural fairness.
44. The legal framework allows a 30-year Nauruan visa to be issued to a person, causing the cessation of their Bridging R visa and, thereafter, their detention, entirely without their prior knowledge or participation in the process. Sub-section s 198AHB(2) of the Act allows the Commonwealth to 'take... any action... in relation to a third country reception arrangement,' with the added note below the provision clarifying that 'the rules of natural justice do not apply to the doing of a thing in relation to a third country reception arrangement.' The Federal Court has clarified that this provision empowers the Commonwealth to apply for a 30-year visa allowing

²⁷ *KVO25 v Secretary of the Department of Home Affairs* [2025] FCA 1584 [27].

²⁸ *Ibid* [28].

people subject to the ‘extended’ arrangement to enter Nauru.²⁹ Once ‘permission’ to enter a third country is granted pursuant to a ‘third country reception arrangement,’ s 76AAA(3) of the Act empowers the Minister to issue a notice to a person ceasing their Bridging R visa. Once that visa ceases, the former visa-holder becomes an unlawful non-citizen, liable to be detained under s 198 of the Act. This entire process can take place without the visa-holder’s prior notice or involvement.

45. We discuss the real, human consequences of the denial of procedural fairness – both to visa holders and their families – at [47] to [75] below.

Breadth of application

46. The Act as amended empowers the Commonwealth with broad powers to make third country arrangements for “the removal of non-citizens from Australia and their acceptance, receipt or ongoing presence in the foreign country”.³⁰ Non-citizens are any persons without Australian citizenship, including visa holders.

47. A ‘removal pathway non-citizen’ is defined in the Act³¹ to include:

- a. Unlawful non-citizens required to be removed under s 198. This includes people with ongoing Tribunal and court processes (in other words, people who may have been subject to undue process or incorrect decision-making) and people without visas including due to administrative error or delay.
- b. Lawful non-citizens who hold BVRs (typically, the NZYQ cohort, but also others granted BVRs through Ministerial intervention or otherwise).
- c. Lawful non-citizens who hold bridging E (subclass 050) visas based on arrangements to depart. This includes people with pending requests for Ministerial intervention, including many people subject to the defective fast-track refugee assessment process.
- d. Undefined prescribed lawful non-citizens. This gives the Government extraordinary power to specify and target even larger groups in the future.

48. These powers are unacceptably broad and in their lack of specificity and menace are apt to cause fear and division in the community:

As we watch Immigration and Customs Enforcement lay siege to communities in Minnesota – detaining and disappearing neighbours, parents and children while terrorising their allies – we should remember that our own legal system allows immigration authorities to do precisely the same thing.³²

UNACCEPTABLE HARM TO INDIVIDUALS AND FAMILIES

Harm in Nauru

49. We refer the Committee to the evidence in the submissions made by the Human Rights Law Centre of the well-documented historical dangers faced by refugees and asylum seekers in Nauru – including violent attacks, sexual assault (including child exploitation) and widespread societal discrimination.

²⁹ *Ibid* [33].

³⁰ *Migration Act 1958 (Cth)*, s 198AHB.

³¹ *Ibid*, s 5, definition of ‘removal pathway non-citizen’.

³² Verma, Langbien and Clarke, ‘A silent discipline: why we all need to hold the line against deportations to Nauru’, Overland, 18 February 2026.

50. There is considerable evidence that the lives and safety of refugees and transferees are routinely threatened in Nauru. There have been numerous instances of violence, aggression and hostility by members of the Nauruan community towards the refugee population and a pattern of conduct from Government and police in failing to effectively enforce accountability. There are credible reports from Human Rights Watch, Amnesty International and United Nations institutions that refugees in Nauru have been subject to intimidation, harassment, bullying, sexual assault including rape, violence and threats of violence, verbal abuse and mistreatment in the workplace.³³ The Australian Senate Legal and Constitutional Affairs References Committee inquiry into the serious allegations of abuse, self-harm and neglect of asylum seekers in Nauru in April 2017 confirmed that the environment was unsafe, with abuse, self-harm and neglect.³⁴ Reports also indicate the Nauruan authorities have used law enforcement to harass and intimidate refugees and asylum seekers.³⁵
51. As well as those generalised and well-known risks, there are further dangers that are particular to the group of people known as the ‘NZYQ cohort,’ who will initially be subject to the third country arrangements. There has been significant media coverage in relation to the release of people from immigration detention for whom there is no reasonable prospect of removal due to (among other things) their status as refugees, referred to as the ‘NZYQ cohort.’³⁶ There has also been specific coverage in relation to the initial transfer of three people from the NZYQ cohort to Nauru.³⁷
52. Indeed, reporting indicates transferees will face a “hostile reception” in Nauru, noting the Australian Government has described the cohort as “violent” and “appalling”, with reports of Nauruan community members “shouting” and being “angry” at the arrangements.³⁸
53. Coverage has included direct public statements by the President of Nauru, David Adeang, regarding the situation of the three men intended to be transferred. In public statements,

³³ See generally Human Rights Watch, ‘Australia: Appalling Abuse, Neglect of Refugees in Nauru: Investigation on Remote Pacific Island finds deliberate abuse hidden behind wall of secrecy’ (Webpage, 2 August 2016), available here; Refugee Council of Australia and Asylum Seeker Resource Centre, *Australia’s man-made crisis in Nauru* (Report, 4 October 2020); Amnesty International, *Island of Despair: Australia’s “processing” of refugees in Nauru* (Report, 17 October 2016).

³⁴ Senate Legal and Constitutional Affairs References Committee, *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru RPC, and any like allegations in relation to the Manus RPC*, (Report, 21 April 2017) [2.30] and [7.14].

³⁵ Amnesty International, ‘Island of Despair: Australia’s ‘Processing’ of Refugees on Nauru’, 2016, at pp 38 – 42, available here.

³⁶ Paul Karp, ‘Indefinite detention ruled unlawful in landmark Australian high court decision’, *The Guardian* (online, 8 November 2023) <<https://www.theguardian.com/australia-news/2023/nov/08/australia-high-court-indefinite-detention-ruling-government>>; Brett Worthington, ‘Decades after a boat arrived in Australia, the government suddenly found itself with an immigration system in disarray’, *ABC News* (online, 14 April 2025) <<https://www.abc.net.au/news/2024-04-14/nzyq-immigration-detention-timeline-high-court-government/103699478>>; Chris Kenny, ‘Shambles: Convicted criminals remain ‘on the loose’ despite new detainee laws’, *Sky News Australia* (online, 12 February 2024) <<https://www.skynews.com.au/opinion/chris-kenny/shambles-convicted-criminals-remain-on-the-loose-despite-new-detainee-laws/video/4a6e55c4057eb53f572bdd6dd4ec68b8>>.

³⁷ Tom Crowley and Olivia Caisley, ‘Nauru to take non-citizen NZYQ cohort freed from immigration detention’, *ABC News* (online, 16 February 2025)

<<https://www.abc.net.au/news/2025-02-16/nauru-agrees-to-settle-group-of-nzyq-cohort/104942562>>;

Greg Brown, ‘Australian strikes agreement with Nauru to settle NZYQ cohort members’, *The Australian* (online, 16 February 2025)

<<https://www.theaustralian.com.au/nation/politics/Australian-strikes-agreement-with-nauru-to-settle-nzyq-cohort-members/news-story/984a157d8f0b3d668c367a395d038c01>>; Sarah Basford Canales, ‘Convicted murderer among three members of NZYQ cohort to be resettled in Nauru under deal struck by Australian’, *The Guardian* (online, 16 February 2025) <<https://www.theguardian.com/australia-news/2025/feb/16/convicted-murderer-among-three-members-of-nzyq-cohort-to-be-resettled-in-nauru-under-deal-struck-by-Australian-ntwnfb>>; Ronald Mizen, ‘Foreign murderers, sex offenders to be resettled in Nauru’ *Australian Financial Review* (online, 16 February 2025)

< <https://www.afr.com/politics/federal/foreign-murderers-sex-offenders-to-be-resettled-in-nauru-20250216-p5lchf>>

³⁸ Ben Doherty, ‘People banished to Nauru by Australia face hostile reception as \$2.5bn cost of deal revealed’, *The Guardian*, (online, 4 September 2025) <<https://www.theguardian.com/australia-news/2025/sep/03/nzyq-cohort-potentially-hostile-reception-nauru>>.

President Adeang has communicated that the three men ‘[have] killed people’ and observed that ‘some of them are disturbed people.’³⁹ The President issued a recorded statement to the same effect on the public social media page of the Government of the Republic of Nauru.⁴⁰ Given the small population of Nauru, it can be inferred that the President’s comments will be widely known amongst the population.

54. In public statements, President Adeang has reiterated that the three intended transferees are ‘not refugees’ – and that, rather, they are former residents of Australia who are to remain in Nauru for a short period before onward transfer.⁴¹ Despite being factually incorrect, President Adeang’s statements are significant in that they indicate an antipathy amongst the Nauruan government and public towards the receipt and permanent resettlement of refugees. The refusal of the Australian Government to release a translation of those remarks also raises serious concerns.⁴²
55. No evidence in respect to the conditions faced by transferees has been provided.
56. In other words, the highly secretive nature of the deal and the government’s public communication in respect of it has virtually ensured that all of those initially subject to it will be exposed to serious danger in Nauru by virtue of their membership of the cohort.
57. The risk of harm is particularly acute for some people affected by transfer, including:
 - a. People with serious health conditions, noting substantial information at [91]-[93] about the paucity of healthcare and the risk of deprivation of access.⁴³
 - b. People following religions other than Christianity, noting 93% of Nauru’s population is Christian and that the Constitution allows for restriction of freedom of religion if “reasonably required” in the interests of public safety, order, morality or health. There is no known mosque in Nauru. LTSVs feature conditions preventing individuals from undertaking religious vocations except with written approval and prohibit acting in an unspecified way affecting the morale of the people of the Republic.⁴⁴
 - c. Women. Violence against women is a serious issue in Nauru, although there is a lack of data due to a failure to disaggregate crime statistics.⁴⁵ Traditional gender roles both facilitate violence against women and act as a barrier to reporting.⁴⁶ There are reports that women have been forced to marry perpetrators of sexual assault or rape, and that prosecutions are not routinely conducted in relation to these crimes.⁴⁷ While there is evidence that sexual assault and sexual harassment are widespread, data is

³⁹ Ben Doherty and Sarah Basford Canales, ‘“Served their time”: Nauru president backs Australian plan to resettle three members of the NZYQ cohort’, *The Guardian* (online, 19 February 2025) <<https://www.theguardian.com/australia-news/2025/feb/19/served-their-time-nauru-president-backs-australian-plan-to-resettle-three-members-of-nzyq-cohort>>.

⁴⁰ Government of the Republic of Nauru, ‘Interview with His Excellency President David Adeang on the new arrangements with Australia on resettling non-citizens’ (Facebook, 17 February 2025) <<https://www.facebook.com/watch/?v=484804698020986>>.

⁴¹ Amanda Hodge, ‘Nauru President David Adeang defends deal on NZYQ refugees’, *The Australian* (online, 18 February 2025) <<https://www.theaustralian.com.au/nation/politics/nauru-president-david-adeang-defends-deal-on-detainees/news-story/39791fd0abc1fbc39d2ed09043b53bc1>>.

⁴² Ben Doherty and Sarah Basford Canales, ‘Nauru president floats returning NZYQ refugees to home countries’, *The Guardian* (online, 25 November 2025) <<https://www.theguardian.com/world/2025/nov/25/nauru-president-floats-returning-nzyq-refugees-to-home-countries-in-interview-australia-tried-to-suppress>>.

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⁴⁴ LTSV Schedule 3, 2(c) and (e).

⁴⁵ Government of Nauru and United Nations Development Program, *Government of Nauru National Millennium Development Goals Progress Report 1990-2011*, available here.

⁴⁶ UNICEF, ‘Situation Analysis of Children in Nauru’, 96-97, available here.

⁴⁷ UNICEF, ‘Situation Analysis of Children in Nauru’, 96-97, available here.

inadequate.⁴⁸ There is no legislative prohibition of domestic violence, sexual harassment or human trafficking.⁴⁹ There are reports that refugee and migrant women have been targeted for sexual assault and rape, and fear reporting instances of sexual assault and rape to police and a failure of police to investigate reports when they are made.⁵⁰

- d. People with diverse gender or sexual identity. While same-sex relationships were decriminalised in 2016, LGBTIQ+ people continue to face serious harm and discrimination. Same-sex marriage is banned. There are no laws preventing discrimination based on gender or sexuality, no laws addressing hate crimes, and no laws recognising LGBTIQ+ individuals and their families. Legal gender recognition is not available. There are reports of targeted violence based on sexual orientation and gender identity, as well as instances of social discrimination and police intimidation.⁵¹
- a. People who speak out or have a public profile. The US Department of State notes “serious restrictions on freedom of expression and media freedom, including government control of all media”, with journalists raising “fear of legal repercussions” for criticising the government.⁵²

Chain refoulement

- 58. The third country arrangements constitute a serious breach by Australia of its *non-refoulement* obligations owed under the *Convention Relating to the Status of Refugees* and other international instruments. That is so because, as noted at [105] to [112], there is no formal or informal mechanism for the assessment of protection claims in relation to Nauru, and moreover because there is a real and foreseeable risk of chain or constructive *refoulement* onwards from Nauru.
- 59. Transferees to Nauru are not conferred with permanent residency – rather, they are issued with limited 30-year visas. There is no indication from Australia or Nauru as to what transferees are expected to do after that 30-year period expires. No period of residency will render transferees eligible to acquire Nauruan citizenship.⁵³
- 60. There is also nothing to prevent Nauru from cancelling a LTSV once transferees arrive in the country. There is nothing in law which requires the third country reception arrangement between Australia and Nauru to be durable or permanent – indeed, the arrangement is constituted by a series of letters exchanged between heads of state,⁵⁴ which are unlikely to be legally binding. Little comfort can be taken from the statement of principles included in those letters which indicate ‘no risk of chain refoulement’, particularly in light of the inhumane conditions that refugees previously transferred from Australia were subjected to despite the Memorandum of Understanding which governed regional processing expressly requiring that people be treated in accordance with relevant human rights standards.⁵⁵
- 61. As noted at [52], the President of Nauru has indicated in public statements that transferees from Australia will remain in the country for a ‘short period’ before being transferred onwards, including

⁴⁸ UNICEF, ‘Situation Analysis of Children in Nauru’, 29, available here.

⁴⁹ UNICEF, ‘Situation Analysis of Children in Nauru’, 29, available here.

⁵⁰ Report of the UN Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, UN doc A/HRC/35/25/Add.3, para 78, available here.

⁵¹ US Department of State, ‘2024 Country Reports on Human Rights Practices: Nauru’, available here.

⁵² US Department of State, ‘2024 Country Reports on Human Rights Practices: Nauru’, available here.

⁵³ See *Naoero Citizenship Act 2017* (Nauru) Act No 35 of 2017, Part 5 - Acquisition of Citizenship (**‘Naoero Citizenship Act’**); Anna Dziedzic, *Comparative Regional Report on Citizenship Law: Oceania* (Comparative Report 2020/01, February 2020) 12 <<https://cadmus.eui.eu/server/api/core/bitstreams/b45a8ba4-39f2-56f3-b95b-59e5f8b48425/content>>.

⁵⁴ The arrangement is constituted by letters exchanged between the Australian Minister for Home Affairs and the President of Nauru between 31 January 2025 and 12 February 2025 - see *TCXM* (n 20) [39]-[50].

⁵⁵ *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*, Republic of Nauru and Commonwealth of Australia, signed 3 August 2013 (Memorandum of Understanding).

to their countries of nationality.⁵⁶ These statements, made publicly by the Nauruan head of state, must be taken as a serious reflection of state intent.

62. The Nauruan LTSV Regulations also provide that an LTSV may be cancelled if the holder departs Nauru for more than 12 months.⁵⁷ If transferees were to attempt to visit family in third countries, they may risk visa cancellation.
63. The risk of constructive *refoulement* arises from the intolerable conditions that transferees will face in Nauru – particularly including the permanent separation from their family members. Constructive *refoulement* is increasingly recognised by international authorities as a breach of the cardinal prohibition on refoulement under international law.⁵⁸ The International Law Commission, in its draft articles on expulsion, gave explicit consideration to what it termed ‘disguised expulsion,’ meaning ‘disguised or indirect means or techniques in order to bring about the same result that it could obtain through the adoption of an expulsion decision, namely to compel an alien to depart from its territory’.⁵⁹
64. Tellingly, the organisation ‘Homeward’ now offers, in partnership with the Department of Home Affairs, a “free service for eligible non-citizens who wish to voluntarily depart Nauru”.⁶⁰

Harm during detention processes

65. Changes to the legislation enabling the arrangement require the Government to re-detain a person by cessation of their bridging R visa should a foreign country give them permission, ‘however described’, to ‘enter and remain’. That permission may be conditional on an act the person is not capable of (for example, providing an identity document that does not exist). There is no specific timeframe that permission must come into effect.
66. Upon visa cessation, a person is subject to immigration detention under s 189 of the Act. That detention may be unlawful and arbitrary if it is not reasonable, necessary and proportionate.
67. The Working Group is alarmed at the brutal nature of re-detentions, which are routinely causing trauma to those detained as well as their family and loved ones, many of whom are Australian citizens or permanent residents. Legal representatives are not forewarned or engaged with at all until the re-detainment has been completed, despite being on record with the Department as the legal representative.
68. We are concerned about the timing of notification of BVRs ceasing and of re-detention taking place including multiple incidents of re-detention happening late at night or early in the morning and often over the weekend, limiting a person's access to legal representation in these crucial early stages of the removal process.
69. We also observe a pattern of violence and undue physical force in effecting re-detention. People are given no opportunity to report themselves, but subject to raid-like conditions in public places with no access to legal advice.

Example B: Ashkan was living with his Australian parents and siblings, working full-time and complying with visa conditions. Without notice and in the early hours of the morning, instead of

⁵⁶ Amanda Hodge, ‘Nauru President David Adeang defends deal on NZYQ refugees’ *The Australian* (18 February 2025) <<https://www.theaustralian.com.au/nation/politics/nauru-president-david-adeang-defends-deal-on-detainees/news-story/39791fd0abc1fbc39d2ed09043b53bc1>>.

⁵⁷ LTSV Regulations, reg 10.

⁵⁸ Penelope Mathew, ‘Constructive Refoulement’ in Satvinder Juss (ed) *Research Handbook on International Refugee Law* (London, Edward Elgar, 2019) 207.

⁵⁹ International Law Commission, *Draft Articles on the Expulsion of Aliens*, 66th sess, A/69/10 (2014) Art 10(1).

⁶⁰ Homeward, ‘Wanting to return to your home country from Nauru?’, available here, as at 29 January 2026.

requesting that he report, more than eight uniformed officers attended his home demanding entry and checking all rooms even after he had come out to present himself. Officers shouted at his grandmother, causing her distress. He was restrained and taken away but was not provided with any information. Ashkan has now been in detention for months and is tearful speaking about his grandmother, who he believes will think he has committed a crime because of this treatment.

Example C: Saul lived with his family, including his young Australian daughter, recovering from extended detention and complying with his visa conditions. At least eight uniformed officers attended his family home without notice in the middle of the night, shining torches in the daughter's room and causing her to get up and witness the scene of her father being handcuffed on the floor and calling out in pain. Months later, his daughter cannot sleep and is in trouble at school.

Example D: Noah, a father to Australian citizen children, including one with high health needs, made several requests that he be given notice of any re-detention so he could voluntarily attend an office or ensure his children were not home. Regardless, at least eight officers entered his home in the early morning, waking his young children to a distressing scene and leaving them experiencing nightmares while he remains in detention.

Example E: A young man was making a call from a payphone in a local street when he was surrounded by uniformed guards and detained, prevented even from concluding his call. He reported feeling humiliated and terrified. He has ongoing pain from an arm injury caused.

70. Upon their detention, people are not advised of means to obtain legal advice, raise claims about fears of harm in Nauru, or given any reasonable opportunity to take either step.
71. Contrary to Government suggestions, the people re-detained routinely have review rights or other processes available to them. They may have been unable to pursue those due to a lack of legal representation or other barriers to access to justice.

Example F: Elias was forcibly re-detained and scheduled for removal to Nauru. He was referred to free legal services, who assessed there was likely error in a previous decision affecting his residence. The Federal Court quashed that decision, but despite being subject to an unlawful decision and participating in a process to restore his visa, Elias remains in detention in fear, where his health is deteriorating.

72. Our clients experience considerable deterioration in health on re-detention. They report hopelessness, particularly where they have been subject to multiple detentions and re-detentions based on repeated legislation overturning court decisions. They report feeling it is impossible to comprehend their situation or to cope; they report considering return to unimaginable persecution. In some cases, they are unable to engage with legal services at all, placing them at critical risk.

Example G: Long is a refugee separated from his family, who reside in a refugee camp in dangerous conditions. After he was detained, his wife went missing. He is terrified she has been deported back

to harm. He reports utter despair and fear, unable to think about his legal case, and his health is deteriorating.

73. They are also deprived of facilities, including appropriate privacy and access to computers and communication methods, and subjected to pressure to agree to depart to a country they fear persecution in or to Nauru.

Conduct affecting legal outcomes and access to justice, compounding harms

74. That harm is compounded as they pursue legal rights and are forced to remain in detention. A number of concerning practices contribute, including:
- a. In Tribunal proceedings, the Australian Government declines to confirm to the Tribunal the likelihood of a person in the NZYQ cohort being removed to Nauru, despite its own public statements of the intention to do so,⁶¹ and the deportation of six people to date, as well as their and unique knowledge of the secret terms of the agreement. This deprives people of the opportunity to have the impact of removal to Nauru considered and deprives the Tribunal of critical information it requires to make a decision. For example, In *GNHW v Minister for Immigration and Citizenship (No 2)* [2025] FCA 1578, Justice Logan found there was jurisdictional error because of the “false or misleading position put to the Tribunal in terms of the whole truth not being provided in relation to dealings with Nauru”, being “not the whole truth as the Minister’s department knew it to be”, where the Respondent submitted there were no third country removal options for GNHW, depriving the Tribunal of an ability to address the subject of what was reasonably foreseeable.
 - b. The Australian Government routinely refuses to undertake in a timely way not to remove people during legal proceedings, despite there being meritorious proceedings and despite the harm to a person if they are removed. It is common for assurances against removal to be provided on the eve of a court hearing seeking an injunction against imminent removal, wasting considerable pro bono resources that could be used to assist people in need or progress a case quickly, and avoiding a court judgment.
 - c. The Australian Government declines to provide legal representatives with scheduled dates for removal, meaning they are forced to progress cases urgently without complete information with repercussions for pro bono and judicial capacity as well as for preparation of a person’s case.

Harm in the community

75. This cohort of people are also subject to undue surveillance and harassment in the community and deprived of information about their circumstances, including the possibility of removal to Nauru, or accessing legal support.
76. Individuals are placed under duress to depart Australia ‘voluntarily’. The BVR reporting hotline plays messages about departure assistance; people are frequently asked to consider departing, even where they fear persecution in the country they were born.
77. The Working Group is also aware of large groups of officers attending our clients’ homes for no legitimate purpose, leading to significant distress and humiliation including of family and friends, and with an obvious intimidatory function. It is not uncommon for clients to report six or more ABF officers arriving equipped with rubber gloves and arriving in ‘paddy wagon’ vehicles to visit a BVR holder’s residence, and then simply saying they are there for a ‘check in’. Such intimidation tactics cause extreme distress for already vulnerable clients and are inconsistent with ostensible aims of public safety.

⁶¹ See e.g. Burke confirms first cohort of NZYQ deportees in Nauru | SBS News; and Hundreds of former detainees to be deported to Nauru set to live among community | SBS News;

A DEFECTIVE LEGAL FRAMEWORK

78. As we have described at [33] to [42] above, the details of the ‘extended’ arrangement with Nauru have been deliberately obscured from the public, and the legal framework for resettlement in Nauru allows for the entire process to take place without notice to the person subject to it. This means that transfers are not based on correct or current information that may be critical.
79. The human consequences of that process are addressed in these submissions.
80. Given the harm that people face in Nauru, proper consideration of their circumstances and due process is particularly critical. Processes in place are grievously inadequate.

Lack of procedural fairness and inadequate or incomplete information

81. The Working Group holds grave concerns regarding improper and inadequate consideration of clients in assessing their suitability for a Nauruan visa application and in providing information to Nauru for the purposes of a visa application.
82. For example, a number of people have been misidentified, for example being attributed with an incorrect nationality when they are stateless, an error that not only reveals inadequate processes but places people at increased risk of refoulement.

Failure to consider serious health consequences

83. There is no formal process through which critical personal matters – such as a visa-holder’s health status, family connections or whether indeed they face a risk of serious harm in Nauru – can be considered before a Nauruan visa is issued to them. Such applications are made without notice and with no opportunity for comment.
84. While the applicants in both *KVO25* and *FZRM*, referred to at [39], were ‘sidelined’ from the resettlement process presumably on account of their serious health conditions, we are aware of multiple others who have been issued with Long Term Stay visas to enter Nauru without any prior consideration of their critical health needs.
85. For instance, the man at the centre of *TCXM* – an appeal pending before the High Court of Australia – was found to suffer from life-threatening asthma which could not be appropriately treated in Nauru, and which would likely result in his death if he were transferred.⁶² No assessment of this risk took place before a Nauruan visa was issued to him.
86. We are also aware of clients being issued with Nauruan visas despite suffering from serious conditions unable to be treated in Nauru, including requiring long-term respiratory, cardiac or psychiatric medication, as well as people at severe risk of self-harm.
87. In none of these cases has an independent medical assessment been conducted prior to a Nauruan visa being issued. Instead, in our experience, the Government relies on obsolete notes from past detention years in the past.
88. Once a visa to enter Nauru has been issued, we are aware the perfunctory medical assessments take place in the form of a ‘fitness to travel assessment’ before a person is removed from the country. But these assessments are conducted on a desktop basis, in most cases without any physical examination of the detainee or regard to their medical records in the community.

⁶² *TCXM v Minister for Immigration and Multicultural Affairs* [2025] FCA 540.

89. Medical tests and assessments for the purposes of removal are completed within the confines of immigration detention. There is significant information detailing the inadequate health facilities in detention⁶³ and the impact confined detention has on mental health conditions.⁶⁴ Many clients report fear and mistrust of engaging with practitioners in detention. These factors seriously compromise appropriate assessment of health in a detention context and place lives at risk, particularly on or during transfer.
90. Clients who have been re-detained have sought health support within immigration detention centres, but have waited weeks without appointments or treatment, further exacerbating the deterioration of their health. Such absences of assessment and treatment further impede the Australian Government's ability to provide health information and needs to Nauruan authorities, increasing risk to the applicant on the basis that their health will not be adequately understood nor managed.
91. The purpose of a fitness to travel assessment is to consider whether, at a particular point in time, a person is sufficiently well to undertake the journey by air from Australia to Nauru. The assessment focuses on immediate physical health needs that might pose a barrier to the roughly six-hour journey between Australia and Nauru.
92. Longstanding and chronic health conditions are irrelevant to that assessment, as undertaken by the authorities. It is specifically outside the remit of that assessment to consider the future health needs of a person facing removal from Australia, and whether they can be adequately met in the country to which they are being removed. That is because, on the current law, the long-term health needs are explicitly irrelevant to the reasonable practicability of removal.⁶⁵

Example H: Harvey is a refugee who suffers from health conditions affecting his daily life, including his breathing and his ability to read, as well as pain from an injury inflicted by officers during previous unlawful detention, and incidents suggesting serious internal issues. He lived in the community safely and without incident after his release from detention. He was re-detained in the early morning after the Government sought and obtained an LTSV. Documents reveal the only information provided to Nauru about his health was that he had a skin condition and had been given Panadol. He will not be able to obtain treatment for his conditions if transferred to Nauru and they will become debilitating without treatment on Nauru.

Example I: Sandeep experienced severe trauma in the country he fled, leaving him suffering auditory hallucinations for years afterward, with self-harm ideation, and unable to be safe in confined spaces.

⁶³ Commonwealth Ombudsman, 'Monitoring Immigration Detention' (30 June 2022) at 2.194-2.199 (regarding Christmas Island); 2.355-2.356; 2.431-2.438, available at: <https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/290149/Monitoring-Immigration-Detention-Annual-Report-2020-21.pdf>.

⁶⁴ Commonwealth Ombudsman, 'Righting Wrongful Detention' (August 2025), page 22, available at: <https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/320811/Righting-Wrongful-Detention.pdf>; M Bosworth, 'The Impact of Immigration Detention on Mental Health: Literature Review', Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw, 2016, CM 9186, HMSO, London; and M Peterie, 'Deprivation, Frustration, and Trauma: Immigration Detention Centres as Prisons', Refugee Survey Quarterly, 2018, 37(3): 279-306.

⁶⁵ TCXM [183]-[185].

After his release, he lived safely in the community with his partner and child, getting treatment. The Government sought an LTSV without providing any health information to Nauru. After he was detained in front of his family late at night, his health declined and he was deemed unfit to travel but remains in detention.

93. Most people in the 'NZYQ cohort' have chronic health conditions, caused or exacerbated by their time in indefinite immigration detention. The healthcare infrastructure in Nauru has been described as 'critically inadequate'.⁶⁶ The inadequacy of the available healthcare has been extensively reported and substantiated by independent reviews conducted by the Australian Medical Association and Doctors for Refugees.⁶⁷ Specialist medical services, including access to psychiatrists, are not readily accessible.⁶⁸ In a comprehensive analysis of the mental health crisis in Nauru, Medecins San Frontieres reported that:⁶⁹

... the Nauruan health system is ill-equipped to manage the current mental health crisis on the island. The system is under-resourced, with no inpatient facilities at the Republic of Nauru hospital and insufficient mental health staffing.

MSF's health promotion assessment found that mental illness is stigmatised and poorly understood, leading to poor care for all patients—Nauruans as well as refugees.

Healthcare services contracted by the Australian government also had serious limitations, with insufficient psychiatric inpatient beds and frequent staff turnover...

The mental health suffering on Nauru is among the most severe MSF has ever seen, including in projects providing care for victims of torture.

94. The expulsion of Médecins Sans Frontières from Nauru in October 2018 is evidence of the Nauruan Government's attitude to the provision of mental health care,⁷⁰ particularly to refugees and transferees from Australia. There is evidence that societal attitudes alienate those who are suffering from mental illness, and there remains significant stigma in the Nauruan community that prevents access to mental health treatment amounting to serious or significant harm.⁷¹
95. In other words, the third country arrangements permit people with life-threatening health conditions to be sent to a place where the health infrastructure is known to be inadequate to deal with them. As it currently stands, the resettlement framework does not require or mandate the consideration of health-related consequence of removal.

Failure to consider family unity

96. We are also aware of Long Term Stay visas being granted to people with immediate family in Australia, suggesting that family connections were either not known or were overlooked in the visa grant process.
97. For instance, we are aware of several clients with Australian citizen spouses, de facto partners and children who have been issued with visas to enter Nauru.

Example J: James lived in the community as the primary carer for his Australian wife, whose health conditions necessitate regular hospitalisation. Despite his presence being critical to her health, he

⁶⁶ Refugee Council of Australia and Asylum Seeker Resource Centre (n 73) 11.

⁶⁷ Ibid.

⁶⁸ Amnesty International (n 73) 5.

⁶⁹ Médecins San Frontières, *Indefinite Despair* (Report, 2 December 2018).

⁷⁰ Médecins Sans Frontières, 'Nauru', available here.

⁷¹ Médecins San Frontières, *Indefinite Despair* (Report, 2 December 2018).

was re-detained and separated from her. Removal to Nauru will render that permanent, with grave consequences for them both.

Example K: Laila's daughter has significant health needs requiring significant day-to-day assistance. Her re-detention has left her Australian husband with sole care for their children as well as having to support the family. The family are struggling to cope.

98. It is not clear whether, and to what extent, decision makers assessing suitability for resettlement in Nauru consider family connections in Australia. Failure to assess the impact of resettlement on family unity constitutes a breach of Australia's international obligations.
99. Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his family. Further, article 23 recognises that '[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.' Nauru has not ratified the ICCPR.
100. General Comment 19 sets out the Committee's observations on article 23:
- [W]hen a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23.⁷²
- ...
- The right to found a family implies, in principle, the possibility to procreate and live together...[T]he possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.⁷³
101. A right to family unity is inherent in recognising the family as a group unit; if members of the family did not have the right to live together there would be no 'group' to respect or protect. In *Ngambi and Nébol v France* the Committee confirmed that article 23 'guarantees the protection of family life including the interest in family reunification'.⁷⁴
102. From what is known of the immigration restrictions in Nauru, it appears that family reunion will not be permitted once people are resettled on Long Term Stay visas. The rights of 'Long Term Stay visa' holders are exhaustively outlined in the *Long Term Stay Visa Regulations 2025 (Nr) (LTSV Regulations)*.⁷⁵ The LTSV Regulations do not provide for a right of family reunification through sponsorship.
103. The LTSV Regulations provide that 'the holder of a visa...may apply for any protection claimed and have those claimed accessed [sic] in accordance with international instruments, conventions, treaties or protocols'.⁷⁶ However, recognition as a refugee under Nauruan law does not lead to the grant of any visa that would allow for family reunion.
104. Under the *Immigration Regulations 2014 (Nr)*, the only visa to which a recognised refugee is entitled is a Regional Processing Centre visa.⁷⁷ The author does not meet the other qualifying

⁷² Human Rights Committee, *General Comment No 19: Article 23 (The Family) - Protection of the Family, the Right to Marriage and Equality of the Spouses*, 39th sess (27 July 1990) [2].

⁷³ *Ibid* [5].

⁷⁴ Human Rights Committee, *Ngambi Nébol v France*, 81st sess, UN Doc CCPR/C/81/D/1179/2003 (16 July 2004) [6.4].

⁷⁵ LTSV Regulations, reg 14.

⁷⁶ LTSV Regulations, reg 4(a).

⁷⁷ *Immigration Regulations 2014 (Nauru)*, reg 4(1) ('**Immigration Regulations**').

requirements for that visa,⁷⁸ which in any event does not confer a permanent right of residence,⁷⁹ nor permit family reunion. The only visas which enable family members of the holder to apply for a 'dependent's visa' are business visas, employment visas and residence visas.⁸⁰

105. Family members of Nauruan citizens are able to apply for a residence visa.⁸¹ However, neither the LTSV or a Regional Processing Centre Visa, nor any period of prolonged residence, would render a transferee eligible to apply for Nauruan citizenship. As such, there is no real possibility of family reunification once a person is transferred to Nauru under the third country arrangements.
106. Even if family reunion were possible, clients of the Working Group have reported fears for family safety on Nauru, particularly noting the treatment of female refugees outlined at [55(c)]. They have indicated distress at the possibility of exposing their family to harm and degradation.

Lack of assessment of risk of harm in breach of international obligations

107. The Minister for Home Affairs has repeatedly assured the public that any risks to the life or safety of transferees will be considered prior to their removal to Nauru, and that Australia's *non-refoulement* obligations will not be breached as a result. That assurance was given by the Minister in his second reading speech to the legislation which introduced the third country framework, in the following terms (with our emphasis):⁸²

[T]his legislation will also strengthen and streamline the government's power to remove to third countries people who have had their visas cancelled.

When someone's visa is cancelled, for any reason, the first preference of the government is for them to leave the country, voluntarily or involuntarily.

One of the most basic principles of our migration system is if you are in Australia you should either be a citizen or have a visa.

We will of course exercise our removal powers in accordance with our international non-refoulement obligations.

108. As noted at [47] to [62] above, transferees under the third country arrangements face unique dangers in Nauru. Some within the cohort also have personal characteristics which would expose them to danger in Nauru. For instance, the Working Group is aware of LGBTIQ+ persons who are at risk of transfer to Nauru, even though homosexuality continues to be outlawed in the country. Practising Muslims are also at risk of transfer, even though Christianity is the religion of state in Nauru and there are concerns that Muslims may not be able to practice their religion freely. In other words, it is critical that there be a process through which protection claims in relation to Nauru might be considered before a person is permanently transferred to the country against their will.
109. Under Australian law, there is a single statutory process through which Australia's *non-refoulement* obligations might be considered and assessed: through the specialised process for the consideration of Protection visas, established under the Migration Act.⁸³ But there are significant barriers that prevent people threatened with removal to Nauru from making a Protection visa application raising claims against that country.
110. *First*, 83% of the people threatened with deportation to Nauru (referred to as the 'NZYQ cohort') are subject to a positive 'protection finding' within the meaning of s 197C(3) in relation to their

⁷⁸ See *ibid* reg 9(1).

⁷⁹ *Ibid* reg 5.

⁸⁰ *Ibid* reg 7(1).

⁸¹ *Ibid* reg 10(1).

⁸² Minister Home Affairs, Second reading speech – *Migration Amendment Bill 2024* (7 November 2024).

⁸³ *Plaintiff M1-2021 v Minister for Home Affairs* [2022] HCA 17 [18].

country of nationality or former habitual residence.⁸⁴ As a result, they are barred by s 48A of the Act from lodging a further Protection Visa application to raise claims with respect to Nauru. There are likely to be other people who are also barred under s 48A because they have previously applied for, and been refused, a Protection Visa.

111. *Second*, people who are barred under s 48A must seek ministerial intervention under s 48B to lodge a new Protection Visa application to make claims with respect to Nauru. The exercise of the power in s 48B is personal, discretionary and non-compellable. We understand that several of the people at risk of removal to Nauru have made a request to the Minister for the exercise of this power, but we are not aware of any instances in which the bar has been lifted to permit an application. We are aware of at least one case in which the Minister has personally considered and declined to exercise the power, despite the person having serious claims warranting proper investigation, relating to his health and public profile.
112. *Third*, even where it is open to transferees to lodge a Protection Visa application, that regime is directed to claims relating to a person's country of nationality or former habitual residence – not a third country.⁸⁵ The only clear mechanism by which protection claims in relation to Nauru might be assessed is through the prism of s 36(3) of the Act – in assessing whether an applicant is disqualified from protection because of their right to enter and reside in a third country. But for s 36(3) to become relevant, a person must first be found to be owed protection in relation to their country of nationality or former habitual residence under s 36(2). This means that persons who are found not to be owed protection under s 36(2) have no mechanism by which to advance protection claims in relation to Nauru. It is, however, entirely foreseeable that people who may not satisfy s 36(2) in relation to their country of nationality may have real and pressing claims against Nauru – for instance, claims based on their membership of the particular social group of refugees or transferees from Australia.
113. *Fourth*, there is some uncertainty about whether the consideration of protection claims with respect to Nauru under s 36(3) can take place before a person is granted a visa to enter Nauru. Current authority indicates that a person will not be taken to have a relevant 'right to enter and reside' in a third country until they hold a 'lawfully given liberty, permission or privilege' (e.g. through a visa grant).⁸⁶ However, there is generally only a very short period of seven days between a person being notified that they have been granted a Nauruan visa (resulting in the cessation of their BVR under s 76AAA and their re-detention) and their anticipated removal. In addition, the new ministerial instructions on s 48B screen out requests for intervention from people who have received a notice of intention to remove.⁸⁷ This provides only a very short period (if any) for a person to lodge a Protection Visa application. These practical difficulties are compounded by the limited access people in detention have to legal assistance, as previously discussed.
114. Given these significant barriers, we anticipate that people will be deported to Nauru without having a fair opportunity to have their protection claims assessed and in circumstances that breach Australia's *non-refoulement* obligations. In addition to the risks of harm that people are likely to experience in Nauru based on their individual profiles, we are also concerned about the serious risks of chain and constructive *refoulement* to their countries or origin.

Informal protection assessments are insufficient

⁸⁴ Statistics as at 12 May 2025: see Department of Home Affairs, *Freedom of Information Request FA 25/05/00775*.

⁸⁵ For the purposes of s 36(2)(a), a 'refugee' is defined at s 5H(1) by reference to the risk that person may face in their country of nationality, or if they do not have a nationality, then their country of former habitual residence. In relation to the complementary protection provision at s 36(2)(aa), a 'receiving country' is defined at s 5(1) to mean a country of which the non-citizen is a national, or if they have no nationality, then their country of former habitual residence

⁸⁶ *Minister for Immigration, Multicultural Affairs and Citizenship v SZRHU* (2013) 215 FCR 35 per Buchanan J (at [89]), Tracey, Flick, Robertson and Griffiths JJ relevantly concurring.

⁸⁷ 'Ministerial Instructions for processing requests for Ministerial intervention under s 48B(1) of the *Migration Act 1958*' (4 September 2025), Section 10.1(d).

115. In matters before the courts, the Minister's representatives have pointed to 'pre-removal protection assessments' as the mechanism to assess protection obligations that may be owed to people at risk of removal to Nauru. But that is not an effective or adequate barrier against *refoulement*, for several reasons.
116. *First*, and perhaps most importantly, there is no legal requirement to consider *non-refoulement* obligations prior to removing a person from Australia. That position is made pellucidly clear by the text of s 197C(2) of the Act, which reads as follows:
- An officer's duty to remove as soon as reasonably practicable an unlawful non - citizen under section 198 arises irrespective of whether there has been an assessment, according to law, of Australia's non - refoulement obligations in respect of the non-citizen.
117. The only exceptions to that bald position are stated at s 197C(3)-(7) and relate to circumstances in which a Protection visa application is either pending or has resulted in a finding that a person is owed protection in relation to a specific country. But for reasons outlined at [107] to [113] above, it is practically impossible for a person subject to the third country arrangements to make a Protection visa application raising claims in respect of Nauru. Sub-section 197C(2) therefore positively prohibits the consideration of *non-refoulement* obligations prior to the removal of a person to Nauru under the third country arrangements.
118. *Second*, 'pre-removal' checks are conducted after a person has already been identified as suitable for resettlement by Australian authorities and granted a visa to enter Nauru. Assessments are conducted after a person has been detained, in the short period before their removal from the country. It is highly doubtful in these circumstances that a fair, fulsome and unbiased assessment of protection claims could take place.
119. *Third*, in the experience of Working Group members, the 'pre-removal protection checks' conducted with clients facing removal to Nauru are perfunctory, procedurally defective and not geared towards assessing the risks that a transferee may face in Nauru. Several Working Group members have reported that their clients have been interviewed by Departmental officers for around 15-20 minutes, sometimes without an interpreter, and asked basic questions about their country of origin and whether they have heard of Nauru. Even in circumstances where clients have advanced claims against Nauru (for instance, based on their religion, sexuality or other personal characteristics) no further assessment has taken place. It seems clear from the experience of Working Group members that the sole purpose of 'pre-removal protection checks' is to procedurally determine whether a current barrier under s 197C exists to prevent removal to Nauru – not generally whether a person is owed protection in relation to that country.
120. *Fourth*, even where people have legal representatives on the record, they are often interviewed ostensibly about claims with no access to their lawyer and no notice of the purpose or timing of the 'interview'.

UNETHICAL FINANCIAL ARRANGEMENTS

121. The agreement reached by the Australian Government with Nauru represents an estimated \$2.5 billion dollar cost to Australian taxpayers over three decades.⁸⁸ We are deeply concerned by the Australian Government's investment in these border securitisation arrangements for the following reasons:

⁸⁸ Maani Truu, 'Nauru deportation deal set to cost Australia \$2.5 billion over 30 years' ABC News (online, 3 September 2025) < Nauru deportation deal set to cost Australia \$2.5 billion over 30 years - ABC News>.

- a) **Unethical:** Offering large sums of money to nation-states in our region that are vulnerable on many socio-economic indicators is unethical. For example, Nauru was ranked 124th out of 193 countries on the United Nations Development Programme's latest Human Development Index, compared to Australia's rank of 7th.⁸⁹ Offshore arrangements exacerbate the precarity of those sent to Nauru from Australia, many of whom have existing complex therapeutic needs. The harms of such offshore arrangements are well documented.⁹⁰
- b) **The 'persistent challenge' of corruption:** Whilst there is no specific entry for Nauru on the 'Corruption Perceptions Index' produced by *Transparency International*, we note that the latest Index reports that corruption is a 'persistent challenge across the Pacific'.⁹¹ Moreover, the President of Nauru, David Adeang, was named in a recent AUSTRAC report as 'making suspicious transactions' involving millions of dollars.⁹² Australia should not be enabling corruption through offshore arrangements.
- c) **Secrecy and unscrupulous conduct:** Secrecy plagues these security deals with Pacific nations.⁹³ We echo the concerns raised by *Transparency International* over the payments to private security firm contractors hired to deliver the Nauru resettlement deal and their alleged bikie-gang links.⁹⁴ As the Transparency International CEO, Clancy Moore, has expressed '[c]orruption and money laundering allegations have long cast a shadow over Australia's detention centres in Nauru'.⁹⁵

122. The Department quantifies the NZYQ cohort at 335 people. The cost to the Australian community over the next three decades of these arrangements is *over \$7 million dollars per person*.
123. Compounding concerns about appropriate contracting, Management and Training Corporation (**MTC**) has been engaged to operate the regional processing centre in Nauru and detention centres in Australia (where people awaiting removal are detained), despite a history of allegations of gross negligence and bribery in the United States⁹⁶ and mounting concerns about operations in Australia.
124. As Human Rights Watch have observed in their submission to this Inquiry, externalisation policies also place rights and consistency at risk, providing as example payment disputes placing

⁸⁹ 'Human Development Index', United Nations Development Programme (Web Page) < Human Development Index | Human Development Reports>.

⁹⁰ See Kyli Hedrick and Rohan Borschmann, 'The enduring harm from permanent offshore processing arrangements in the Pacific Islands' (2023) 47(6) *Australian and New Zealand Journal of Public Health*, 100095.

⁹¹ Transparency International, 'Corruption Perceptions Index 2025: Pacific Governments Falling Short on Anti-Corruption Commitments' (online 10 February 2026) < Corruption Perceptions Index 2025: Pacific... - Transparency.org>

⁹² Commonwealth, *Parliamentary Debates*, Senate, 25 November 2025, 2496-2498 (David Shoebridge) < https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/28885/toc_pdf/Senate_2025_11_25_Official.pdf;fileType=application%2Fpdf>.

⁹³ Amy Nethery, & Rosa Holman, 'Secrecy and human rights abuse in Australia's offshore immigration detention centres' (2016) 20(7) *The International Journal of Human Rights*, 1018; Nick McKenzie and Cameron Houston, 'Pouring money into a trough': Senior public servant blows whistle on allegedly "corrupt" millions' *The Sydney Morning Herald* (online 8 November 2025) < Home Affairs official blows whistle on allegedly 'corrupt' millions in offshore detention>.

⁹⁴ Transparency International, 'TI Australia calls for accountability over Nauru resettlement deal' (online 26 November 2025) < TI Australia calls for accountability over Nauru resettlement deal - Transparency International Australia %>; Matthew Knott and Nicole Precel, "'Dirty deals": Nauru rorting, bikie gang allegations to be referred to NACC', *The Sydney Morning Herald* (online 10 November 2025) < Nauru offshore detention: Corruption allegations to be referred to anti-corruption watchdog>.

⁹⁵ Transparency International, 'TI Australia calls for accountability over Nauru resettlement deal' (online 26 November 2025) < TI Australia calls for accountability over Nauru resettlement deal - Transparency International Australia %>.

⁹⁶ Sarah Basford-Canales and Ben Doherty, 'US private prisons operator to be paid \$790m to hold 100 people on Nauru in quiet expansion of contract', *The Guardian* (online, 29 September 2025) <<https://www.theguardian.com/world/2025/sep/29/us-private-prisons-operator-paid-790m-to-hold-100-people-on-nauru-in-quiet-expansion-of-contract>>.

accommodation and subsistence at risk,⁹⁷ as well as risking enabling exploitation of local workforces.

125. Instead of costly externalisation arrangements with third-countries, Australia should invest in well-resourced and supported services delivered in Australia to assist those with complex needs, some of whom may become caught up in the criminal justice system. These services could address the 'social determinants of justice' that make certain populations more likely than other groups to come into contact with the criminal justice system.⁹⁸ These social determinants include alcohol and drug use, poor school education, homelessness, and unsupported mental health and cognitive disability.⁹⁹ Extensive research has found that these individual social determinants are driven by structural factors such as racism, poverty and unaddressed exposure to violence and trauma.¹⁰⁰ This would be a better use of resources to promote community safety and help address well-documented structural causes of criminalisation in the first place.

CONCLUSION

126. It is alarming that, despite years of evidence about the irreparable harm caused by defective and irresponsible offshoring practices plagued by mismanagement, third country arrangements of this kind have been established, and without due scrutiny.
127. Extreme and intergenerational cost to individuals and communities is inevitable should this cruel and careless escalation of offshoring policy continue.
128. We urge the Committee have regard to the impact of such policies on the critical tasks of building community and ensuring equivalence of justice. These impacts are being felt now; the damage will only grow. For those people harmed in Nauru
129. The implications of such practices extends beyond individuals, families and communities in Australia. This unprecedented derogation of responsibility and disregard for basic human dignity is apt to affect policy-making across the globe, and particularly where there are unbalanced relationships of power and resourcing between countries.
130. Passage further down this path must be apprehended without delay. The Committee should recommend the third country arrangements cease immediately, with those people deported returned to their homes. Focus should be placed on a functional and humane system characterised by due process and equity.

⁹⁷ Guardian Australia, "Refugees in PNG told they will be evicted next week after Australian-sponsored housing bills not paid", November 2023, <https://www.theguardian.com/world/2023/nov/17/refugees-in-png-told-they-will-be-evicted-next-week-after-australiansponsored-housing-bills-not-paid>.

⁹⁸ See Ruth McCausland, and Eileen Baldry, 'Who does Australia Lock Up? The Social Determinants of Justice', (2023) 12(3) *International Journal for Crime, Justice and Social Democracy*, 37.

⁹⁹ Ibid 42-44.

¹⁰⁰ Ibid 45-47.