Refugee Council of Australia

SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

EXTERNALISATION AND OFFSHORE WAREHOUSING OF PEOPLE SEEKING PROTECTION: THE CASE OF AUSTRALIA

Established in 1981, the Refugee Council of Australia (RCOA) is the national peak body for people from refugee and asylum-seeking backgrounds and the organisations and individuals who work with them. Through our research, public advocacy and policy submissions, RCOA has highlighted the systemic impacts and abuses of externalisation policies, calling for more humane policies in line with Australia's international obligations. RCOA strongly endorses the 2025 UPR Civil Society Report and NGO submission to the UN Working Group on Arbitrary Detention, which call to end offshore processing, evacuate affected individuals to Australia and implement safeguards to prevent future violations.[1]

1. Australia's offshore processing and 'third country reception'

Australia employs some of the world's most punitive externalisation policies, shifting responsibility for people seeking protection on to other countries. Currently, asylum seekers who arrive in Australia by boat without a visa are summarily returned to their country of origin or departure, or are transferred to offshore processing in Nauru. Australia resumed transfers to Nauru in late 2023. These transfers marked the first time since 2014 that new asylum seekers had been sent offshore. Almost 100 people are now held on Nauru. Between 2012 and 2014, Australia also transferred asylum seekers to PNG, with 29 men still remaining in PNG in deep poverty and limbo.

Australia has spent more than $13 billion on offshore detention, despite deaths, violence and medical neglect. The system has been marked by widespread abuse, assaults and long-term psychological and physical trauma. Human rights organisations have concluded that the cruelty and harm experienced by asylum seekers and refugees in Nauru and PNG is deliberate and systemic.[2] In January 2025, the UN Human Rights Committee found Australia responsible for the arbitrary detention of asylum seekers in Nauru, underscoring the ongoing human cost of its externalisation policies.

Recently, the Australian Government struck a secretive deal with Nauru, extending its offshore processing regime and enabling "third-country reception" arrangements to deport refugees and non-citizens to Nauru, and potentially other unknown third countries, without due process or access to natural justice. International experts have repeatedly affirmed that Australia continues to exercise jurisdiction and has human rights obligations with respect to people transferred offshore.

[1] Universal Period Review 2025-06, "Joint NGO Report on behalf of the Australian NGO Coalition 2025." p. 9 https://www.hrlc.org.au/projects/universal-periodic-review-2025-26/; Kaldor Centre for International Refugee Law et al. "Immigration Detention in Australia: Civil Society Submission to the United Nations Working Group on Arbitrary Detention," August 2025, https://www.unsw.edu.au/content/dam/pdfs/law/kaldor/submissions/2025-09-WGAD.pdf.

[2] Madeline Gleeson and Natasha Yacoub, "Cruel, Costly and Ineffective: the failure of offshore processing in Australia," August 2021, Kaldor Centre for International Refugee Law, https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf; Amnesty International, "Australia: Appalling abuse, neglect of refugees on Nauru," 2 August 2016 https://www.amnesty.org/en/latest/press-release/2016/08/australia-abuse-neglect-of-refugees-on-nauru/.

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2. Recent trends and human rights violations

In October 2025, the Australian Government signed a secretive 30-year agreement with the Republic of Nauru to deport non-citizens from the NZYQ cohort[3], including refugees to Nauru without due process or independent oversight. The deal was signed alongside new laws allowing deportations to occur without any consideration of the consequences people would face, such as whether a person might die without proper medical care, be permanently separated from their families, or face persecution in Nauru. The NZYQ cohort refers to a group of people who had their visas cancelled and were held in indefinite immigration detention. They were released into the Australian community following a landmark 2023 High Court ruling that such detention is unlawful when there is no real prospect of removal.[4] Since November 2023, members of the NZYQ cohort have been subject to a series of new legislation to regulate their release into the community, including introducing new "third country reception" arrangements to remove the cohort to Nauru indefinitely.[5]

Several members of the NZYQ cohort have been re-detained, with some issued 30-year visas to reside in Nauru. The first member of the NZYQ cohort was secretly deported to Nauru in October 2025.[6] These developments raise serious concerns about human rights, refoulement and procedural fairness.

Troubling developments have emerged in Nauru, including suggestions that transferred individuals could be returned to their countries of origin and allegations of corruption.[7] The release of a translation of a February 2025 interview reveals that Nauruan President David Adeang falsely claimed people being transferred to Nauru are "not refugees" and suggested his government might "find a way to return them home."[8] Further, in November 2025, Australia's financial intelligence agency, AUSTRAC, reportedly identified suspicious "large-volume" fund movements and raised concerns of potential corruption and money-laundering activities.[9] This followed earlier revelations aired on *60 Minutes* on 9 November 2025, detailing claims of corruption, misuse of public funds and criminal infiltration within government contracts related to offshore processing.[10]

Human rights organisations have called for the Australian Government to immediately suspend its reception arrangement amid these serious corruption allegations and fears that Nauru might send NZYQ members back to serious harm in their home countries.[11] The Refugee Council of Australia has voiced deep concerns about the Australian Government's Nauru arrangement, particularly regarding:

- **Risk of chain and constructive refoulement:** Third-country reception and offshore processing in Nauru significantly increases the risk of Australia participating in chain and constructive refoulement, resulting in asylum seekers and people needing protection being returned to places where they will face irreparable harm.

[3] In November 2023, in the case of *NZYQ vs Minister for Immigration*, the High Court of Australia ruled that the indefinite detention of non-citizens with no prospect of removal was unlawful, resulting in the release of around 140 people from detention.

[4] Human Rights Law Centre, "High Court rules indefinite immigration detention unlawful" 13 November 2023, https://www.hrlc.org.au/updates/indefinite-detention-ends/

[5] *Migration Amendment Act 2024 (Cth)*, inserting s 198AHB into the Migration Act.

[6] Refugee Council of Australia, "First deportation under multi-billion dollar Nauru deal a dark new chapter for Australia" 6 November 2025, https://www.refugeecouncil.org.au/first-deportation-under-multi-billion-dollar-nauru-deal-a-dark-new-chapter-for-australia/.

[7] Ben Doherty and Sarah Basford Canales, "Nauru president floats returning NZYQ refugees to home countries," 25 November 2025, *The Guardian*, https://www.theguardian.com/world/2025/nov/25/nauru-president-floats-returning-nzyq-refugees-to-home-countries-in-interview-australia-tried-to-suppress.

[8] Asylum Seeker Resource Centre. "Nauru transcript exposes Albanese Government secrecy over billions in offshore spending." December 2025. https://asrc.org.au/2025/11/25/nauru-transcript-exposes-albanese-government-secrecy-over-billions-in-offshore-spending/.

[9] Ben Doherty and Sarah Basford Canales "Nauru president accused in parliament of corruptly siphoning off millions of Australian funding," *The Guardian*, 26 November, https://www.theguardian.com/australia-news/2025/nov/26/nauru-president-accused-in-parliament-of-corruption-siphoning-off-millions-of-australian-funding.

[10] "How Australia got rid of illegal immigrants - 60 Minutes Australia," YouTube, 9 November 2025 https://www.youtube.com/watch?v=9hvxVzX0NDI.

[11] "Refugee Council calls for immediate suspension of Nauruan arrangement amid serious corruption allegations." 26 November 2025, https://www.refugeecouncil.org.au/refugee-council-calls-immediate-suspension-nauruan-arrangement-serious-corruption-allegations/.

- **Lifetime exile in Nauru:** Individuals may be forcibly removed to Nauru with no clear pathway out, raising the prospect of spending the rest of their lives on the island with no guaranteed freedom of movement.
- **Indefinite detention:** People may face indefinite immigration detention either in Nauru, another unnamed third country, or back in Australia if they refuse transfer.
- **Forced family separation:** People with Australian citizen family members will be forcibly and indefinitely separated from their immediate family.
- **Lack of safeguards:** There are no legislative or procedural safeguards governing removal, treatment on arrival or ongoing protections in Nauru or any third country.
- **Severe mental health impacts:** The threat or experience of offshore transfer is already causing profound psychological harm, with reports of escalating fear, distress and deterioration in mental health among affected individuals.
- **Complex health needs:** Serious concerns remain about access to adequate medical care, given Australia has had to regularly medically transfer people from Nauru, including recent cases of dengue fever requiring evacuation in August 2025.

Nauru's remote location and limited infrastructure pose significant risks to highly vulnerable groups. The island faces chronic shortages of adequate food and water, minimal work opportunities, and substandard, unsafe housing. Reports indicate many refugees cannot afford food and are forced to skip meals.[12] Healthcare is also severely constrained, with few specialist services and restricted treatment options, leaving people without essential care. In 2025, nine asylum seekers contracted dengue fever in Nauru, with one requiring urgent medical evacuation to Australia.

3. Laws and the responsibility vacuum

In 2023, the High Court of Australia ruled against the practice of indefinite immigration detention, finding it unconstitutional and unlawful. In response, the Australian Government rushed through significant changes to migration laws, despite strong civil society opposition and clear evidence of their long-term harmful impacts. These measures effectively mitigated the High Court's decision, expanding the Government's powers to control, detain and remove people. While these new laws are primarily directed at people previously held in indefinite immigration detention (now on temporary Bridging Visa R), they are capable of applying broadly to all unlawful non-citizens. These laws include:

a) ***Migration Amendment Act 2024*** introduced new third-country reception arrangements enabling non-citizens to be removed to another country, expanding powers to overturn refugee protection findings and share personal data. The law also relinquishes any liability or responsibility from the Australian Government regarding people removed from Australia and their treatment in a third country.

b) ***Migration Amendment (Removal and Other Measures) Act 2024*** provides the Government sweeping enforcement powers, including criminalising non-compliance with removal directions (punishable by up to five years' imprisonment). It also enables third-country reception arrangements and provides civil liability immunity for officers involved in removal processes. In addition, the Act expands powers to reverse refugee protection findings and impose nationality-based travel bans.

c) ***Home Affairs Legislation Amendment (2025 Measures No. 1) Act 2025*** allows the Government to forcibly deport certain non-citizens without warning, even if they face persecution or serious harm. The legislation removes the right to natural justice and procedural fairness when deporting people from Australia to Nauru and other undisclosed third countries. There is no requirement to consider their health needs and no independent oversight of the process. The

[12] Ben Doherty and Sarah Basford Canales, "Asylum seekers on Nauru going hungry despite government spending $1.5m a year for each person," *The Guardian*, 3 October 2025. https://www.theguardian.com/australia-news/2025/oct/03/refugees-and-asylum-seekers-on-nauru-going-hungry-despite-government-spending-15m-a-year-for-each-person.

legislation permits the Government to retrospectively validate visa decisions made using wrong or outdated information, meaning people can be removed based on flawed decisions with no proper review.

Collectively, these laws show how externalisation measures undermine Australia's protection obligations and create legal voids in which asylum seekers or recognised refugees have little recourse to protection, due process or oversight. Through expanded removal powers, liability immunities and removal of procedural fairness, the legislation enables the Government to transfer people to third countries without ensuring their rights or safety. It puts them at serious risk of wrongful removals, forced returns, human rights abuses and refoulement.

4. Motivations and impact on third States

Australia's deal with Nauru reflects broader political and strategic interests in the Pacific. In 2024, Australia announced the Nauru–Australia Treaty, committing $140 million in budget and security support to Nauru.[13] Reports indicate the arrangement limits other countries from providing security or critical infrastructure to Nauru, as Australia seeks to maintain influence amid growing competition with China.[14] For example, in January 2025, Nauru switched diplomatic recognition from Taiwan to China, while representatives of the Bank of China visited Nauru to explore establishing a branch following the exit of the Australian-owned Bendigo Bank.[15]

The Australian Government has committed to paying $408 million upfront to Nauru, plus $70 million per year for 30 years, to support ongoing offshore reception centre operations, at a total projected cost of more than $2.5 billion. These payments are in addition to the $13.35 billion spent since Australia's offshore detention centres were reopened in 2012, including the expansion of the US-based Management and Training Corporation (MTC) contract to over $790 million allocated since 2022.[16] Such financial arrangements with third countries carry substantial risks, as evidenced by the investigation the Australian Government launched in 2023 into suspect payments made to politicians and officials on Nauru and PNG as part of their offshore processing arrangements.

The reputational cost to Australia and Nauru is significant, with these latest deals likely to raise governance concerns, including risks of corruption, misuse of funds, heightened geopolitical tensions in the region, and the risk of turning Nauru into a kleptocracy.

5. Transparency

Numerous organisations and reports have condemned the Nauru deal for its secrecy, its immense cost to taxpayers and risk of human rights abuses. The Australian Human Rights Commissioner has warned the Nauru deal reflects a "disturbing lack of transparency", highlighting "serious human rights concerns" and raising "questions about the Government's commitment to accountability."[17] Whistleblower testimony and independent reporting reveal allegations of corruption, abuse and contract mismanagement at the heart of the offshore detention system and recent Nauru deal. This is in addition to the removal and punitive legislation introduced denying basic protections and procedural fairness to non-citizens, and for exposing vulnerable people to danger without any credible oversight or accountability.

There is no monitoring body with the independence, statutory powers and resources to provide effective oversight of offshore facilities. The Australian Human Rights Commission cannot monitor

[13] Minister for Foreign Affairs, "Nauru-Australia Treaty," 9 December 2024. https://www.foreignminister.gov.au/minister/penny-wong/media-release/nauru-australia-treaty.

[14] Stephen Dziedzic, "Australia inks treaty with Nauru locking out growing Chinese influence," A*BC News*, 9 December 2025, https://www.abc.net.au/news/2024-12-09/australia-nauru-treaty-locks-out-china/104702002.

[15] Ibid.

[16] "Refugee Council calls for Parliamentary Inquiry into allegations of corruption and mismanagement in Offshore Processing," 10 November 2025**,** https://www.refugeecouncil.org.au/refugee-council-calls-parliamentary-inquiry-offshore-processing/.

[17] "Human Rights Commissioner calls for transparency in Nauru deportation arrangement," October 2024, https://humanrights.gov.au/about-us/media-centre/search-listing-media-releases/human-rights-commissioner-calls-for-transparency-in-nauru-deportation-arrangement.

the conditions of offshore processing facilities due to jurisdictional issues. The Commonwealth Ombudsman previously visited Nauru and PNG (with agreement of those countries) to "examine the administrative and operational actions of Australian Government agencies and contracted service providers",[18] but did not publish the reports of those inspections. Independent oversight and scrutiny are essential to provide safeguards against abuse and neglect and give more visibility to vulnerable populations.

The 2025 NGO report to the UN Working Group on Arbitrary Detention highlights the lack of transparency surrounding the interception and detention of asylum seekers at sea. Such detention is particularly disturbing due to the vulnerability of non-citizens in maritime environments, the absence of enforceable rights especially for those detained in secret, and the limited opportunities for independent oversight of detention practices at sea.[19]

6. Technology and private actors

MTC holds the contract to provide "reception, garrison and welfare services" in Nauru.[20] Its amended offshore-processing contract with the Australian Government has increased by $365 million to $787 million and extended to 2027.[21] MTC has a controversial record in the United States, including historical civil suits alleging "gross negligence" and "egregious" security failures at two prison facilities.[22] These developments raise questions about the safety of people remaining in Nauru, particularly given the absence of effective safeguards against human rights abuses.

Australia's detention centres use surveillance systems modelled on prisons, including CCTV monitoring, electronic access controls, and biometric identity checks.[23] Nauru employs similar technologies, such as perimeter CCTV, watchtowers, infrared cameras and barcode-enabled ID cards within the Regional Processing Centre.[24] In 2015, Serco who previously ran Australia's detention centres[25], developed the Security Risk Assessment Tool (SRAT), which assigns risk ratings that determine placement in high-security areas or the use of physical restraints during escorts. Rights groups, advocates and detainees have criticised SRAT as an "abusive" and unreliable tool that can lead to restrictive living conditions and create harmful feedback loops.[26]

Experts from the Kaldor Centre for International Refugee Law, Refugee Law Lab and the International Detention Coalition warn that such surveillance and digital reporting systems lack mechanisms for people to understand, challenge, or seek redress against decisions affecting their liberty.[27] They note that technology could support safer systems only if co-designed with affected communities and governed by strict human rights, proportionality and oversight standards.

7. Persons in vulnerable situations and intersectional discrimination

[18] Commonwealth Ombudsman, Immigration matters (2017), www.ombudsman.gov.au/__data/assets/pdf_file/0024/47661/Immigration-Matters-June-2017.pdf.

[19] See Civil Society Submission to the United Nations Working Group on Arbitrary Detention.

[20] 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*, 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.

[21] Ibid.

[22] Ibid.

[23] Daniel Ghezelbash and Petra Molnar. "Advancing the Responsible Use of Technology in Alternatives to Detention," Kaldor Centre for International Refugee Law, International Detention Coalition, and Refugee Law Lab, 2025

[24] Ibid.

[25] In 2024, the Australian Government ended its $4.6 billion contract with Serco, a British multi-national company, and finalised a new five-year contract with Secure Journeys, a subsidiary of MTC.

[26] Ariel Bogle, "Revealed: the secret algorithm that controls the lives of Serco's immigration detainees" *The Guardian*, 13 March 2024, https://www.theguardian.com/australia-news/ng-interactive/2024/mar/13/serco-australia-immigration-detention-network-srat-tool-risk-rating-ntwnfb-.

[27] Ghezelbash and Molnar, "Advancing the Responsible Use of Technology,"

The third-country reception arrangement poses a significant threat to family unity, particularly for refugees and people seeking asylum. Parents or guardians classified as "removal pathway non-citizens" may be removed to unknown third countries or held in indefinite immigration detention. It is unclear whether these removal requirements would apply to their children, creating a real risk of forced family separation as a consequence of complying with the removal process.

Extensive evidence demonstrates the dangers people face in Nauru. *The Nauru Files*, published by The Guardian in August 2016, contain more than 2,000 leaked incident reports documenting systemic abuse of asylum seekers and refugees, including abuse of children, gender-based and sexual violence.[28] In May 2022, leaked emails from the Nauru Police Force revealed a disregard for the safety of refugees facing suicide risk and self-harm.[29] Gay men have reported harassment and violence from both other refugees and the local community.[30] Although same-sex sexual activity was made legal in 2016, Nauru still offers no legal recognition of same-sex relationships and no anti-discrimination protections in employment or service provision for LGBTQIA+ people.[31]

8. Unified calls for accountability and an end to offshore policies

Civil society organisations, international human rights bodies, UN organisations, leading experts, health professionals, academics, lawyers, journalists, policy specialists, diaspora groups, religious organisations, peak refugee and multicultural bodies and community members have strongly condemned Australia's externalisation policies. Extensive evidence has documented the ill-treatment and cruelty experienced by people held in PNG and Nauru, many of whom were separated from their families and community networks in Australia. Advocates have urged the Australian Government to end offshore processing, investigate allegations of corruption and criminal infiltration linked to the Nauru deal, and evacuate all remaining refugees and asylum seekers to Australia in line with its international obligations.

[28] 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," *The Guardian,* 10 August 2016, https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention.

[29] Human Rights Law Centre, Andrew and Renata Kaldor Centre for International Refugee Law, Refugee Council of Australia, "Torture and cruel treatment in Australia's refugee protection and immigration detention regimes," Submission to the UN Committee Against Torture's sixth periodic review of Australia. 3 October 2022, https://www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/kaldor-centre/2023-08-submissions/2023-09-2022100-HRL-RCO-Kaldo-Centr-Submissio-Committe-Agains-Torture.pdf.

[30] Ibid.

[31] Ibid.