# IMMIGRATION DETENTION IN AUSTRALIA:
## Civil Society Submission to the United Nations Working Group on Arbitrary Detention

August 2025

ASRC Asylum Seeker Resource Centre
UNSW Sydney
UNSW Kaldor Centre for International Refugee Law
Human Rights Law Centre
JRS Australia Jesuit Refugee Service
RACS Refugee Advice & Casework Service
Refugee Council of Australia

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***Authors***

Andrew & Renata Kaldor Centre for International Refugee Law
Asylum Seeker Resource Centre
Human Rights Law Centre
Jesuit Refugee Service Australia
Refugee Advice & Casework Service
Refugee Council of Australia

Associate Professor Mary Anne Kenny
Dr Eve Lester
Dr Claire Loughnan
Professor Savitri Taylor


*This submission was prepared by a coalition of legal centres, service providers and academic and civil society actors, some of which are not listed as named authors. It was prepared on the basis of broad national consultations, and has been endorsed by many individuals and organisations working with people deprived of their liberty in an immigration context.*

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## Executive Summary

This submission has been prepared by a coalition of legal centres, service providers and academic and civil society actors to assist the Working Group on Arbitrary Detention (Working Group) to prepare for its visit to Australia in 2025. Drafts of the submission were shared with a wide range of stakeholders for feedback and consultation. The submission focuses on the law and practice of closed immigration detention in and by Australia.

Australia operates a regime of mandatory immigration detention of all 'unlawful non-citizens' under the *Migration Act 1958* (*Migration Act*). The Working Group has repeatedly expressed its 'serious reservations' about this regime and its compatibility with Australia's obligations under international human rights law.[1]

The number of people detained has reduced slightly in the last few years. However, the average time in detention remains very long. There are no time limits on immigration detention.

There have been important changes in the detention demography over the past decade (**Part 1)**. While there used to be a significant number of asylum seekers in immigration detention, the detention population is now predominantly people who have had their visas cancelled on character grounds. This shift is partly due to the commencement in September 2013 of 'Operation Sovereign Borders', under which Australia intercepts and turns back boats at sea or summarily removes asylum seekers who reach Australia by boat. It is also due to the expanded use of visa cancellation powers, and the introduction of mandatory visa cancellation powers in 2014, which have made it easier for visas to be cancelled on 'character' grounds (**Part 2B**).

The most significant legal and policy developments shaping the current immigration detention context are the High Court of Australia's judgment in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (*NZYQ*)[2] in November 2023, and subsequent cases and legislation (**Part 3**). In *NZYQ*, the High Court overturned a 20-year precedent and held that the indefinite immigration detention of a non-citizen for whom there is no real prospect of removal becoming practicable in the reasonably foreseeable future is unconstitutional. Subsequently, in *ASF17*, the High Court clarified when a person's removal from Australia is 'practicable in the reasonably foreseeable future'.[3]

As there was no real prospect of the plaintiff in *NZYQ* (a stateless refugee) being removed from Australia, the High Court ordered his immediate release. Other non-citizens who did or could benefit from this judgment are referred to as the '*NZYQ* cohort'. Since November 2023, members of the *NZYQ* cohort have been subject to a series of new visa conditions when released into the community. New powers to impose a curfew and electronic monitoring devices on the *NZYQ* cohort have been particularly controversial, and subject to further High Court challenge.[4] Australia has also introduced new 'third country reception' arrangements, under which it plans to remove members of the *NZYQ* cohort to Nauru indefinitely.

This submission sets out additional concerns relating to immigration detention, including that:

[1] See e.g. Working Group, 'Opinion No 69/2021 Concerning Navanitharasa Sivaguru (Australia)', UN Doc A/HRC/WGAD/2021/69 (22 February 2022) [113] ('*Sivaguru*'); Working Group, 'Opinion No 68/2021 Concerning Said Said (Australia and Nauru)', UN Doc A/HRC/WGAD/2021/68 (22 February 2022) [98] ('*Said Said*').
[2] *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 97 ALJR 1005; [2023] HCA 37 ('*NZYQ*').
[3] *ASF17 v Commonwealth of Australia* (2024) 98 ALJR 782 ('*ASF17*').
[4] *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40 ('*YBFZ*').

- Australia continues to operate a regime of mandatory immigration detention which is often punitive, there is no independent or judicial review of the ongoing necessity for detention in each individual case, and the grounds for securing release from detention are very limited (**Part 2A**);
- specific groups – including people with disabilities, women and gender diverse people – face additional challenges in detention (**Part 4**);
- Australian policies promote a 'prison to deportation pipeline' in which detention and removal from Australia are used as methods of secondary punishment for non-citizens who have committed criminal offences (**Part 5**);
- oversight mechanisms lack enforcement powers or are otherwise inadequate to provide effective protection against arbitrary detention and other human rights violations in immigration detention (**Part 6**);
- the increased securitisation and use of force and restraints in immigration detention centres, combined with inadequate healthcare, contribute to the punitive character and impact of indefinite and arbitrary detention (**Part 7**);
- non-citizens are detained at sea in circumstances which are shrouded in secrecy but appear to be a violation of Australia's international obligations (**Part 8**); and
- Australia continues to operate a policy of offshore processing of people seeking asylum who arrive by sea without a visa, which exposes them to significant harm in Nauru (and formerly Papua New Guinea) (**Part 9**).

This submission contains a number of case studies. Names and some personal details have been changed to protect the confidentiality and identities of the people mentioned therein.

# 1 Overview of immigration detention in Australia[5]

1.1 Australia operates a regime of **mandatory immigration detention** of all 'unlawful non-citizens' under the *Migration Act 1958* (*Migration Act*).[6] The Working Group has repeatedly expressed its 'serious reservations' about this regime and its compatibility with Australia's obligations under international human rights law.[7]

1.2 There are various **types of immigration detention** in Australia. People may be detained in closed detention in purpose-built facilities (Immigration Detention Centres (IDCs)), or at other sites which are designated as 'alternative places of detention' (APODs), including hotels and hospitals. The Minister may also require people to be held in certain places in the community on specific conditions under a 'residence determination'. This latter form of detention is commonly referred to as 'community detention', but this submission focuses on closed detention in IDCs and APODs.

1.3 The **number of people detained** has reduced slightly in the last few years. As of 30 April 2025, 962 people were detained in immigration detention facilities in Australia. The reduction can be attributed in part to the High Court's decision in *NZYQ* in November 2023, which resulted in the release of at least 224 people from immigration detention (see Table 1).[8]

1.4 While the overall number of people in immigration detention has reduced, the **average time in detention** remains very long (see Table 2). As of April 2025, the average time spent in immigration detention in Australia was 456 days, with 31.1% of people detained for more than a year, 17.8% of people detained for more than 2 years, and 6.3% (61 people) detained for more than 5 years. These times are significantly longer than in other countries. For comparison, the average length of time in immigration detention in 2024 was 46.9 days in the United States and 16 days in Canada.[9] There is no time limit for detaining a person under Australian law.[10] These figures suggest that many people are being subjected to arbitrary detention within Categories II, IV and V of the Working Group's categorisations due to the sheer length of time they have been administratively detained.

1.5 In terms of the **demography of the detention population,** as of April 2025, 93% of the closed detention population were adult males. The main countries of nationality were New Zealand (18.8%), Iran (6.8%), India (5.6%), the United Kingdom (5.3%) and Tonga (5.1%). Almost half the people in community detention are men, with women comprising around 20 percent and children around 32 percent of the population. The main country of nationality was Iran (47%), with other significant groups from Somalia (8.7%), Sri Lanka (6.1%) and Pakistan (6.1%), or stateless (6.1%).

1.6 There have been important **changes in the detention demography** over the past decade. While there used to be a significant number of asylum seekers in detention, the

[5] Unless otherwise attributed, the data in this section is obtained from Department of Home Affairs, 'Immigration Detention and Community Statistics Summary: April 2025' (29 May 2025) ('April 2025 Statistics Summary').
[6] *Migration Act 1958* (Cth) s 189 ('Migration Act').
[7] *Sivaguru* (n 1) [113].
[8] Department of Home Affairs, 'Community Protection Summary' (October 2024) 2.
[9] US Immigration and Customs Enforcement, 'ICE Detention Data: EOFY2024' (2024); Government of Canada, 'Quarterly Detention and Alternatives to Detention Statistics: Fourth Quarter, Fiscal Year 2023 to 2024' (2024).
[10] See below Part 2A.

detention population is now predominantly people who have had their visas cancelled on character grounds (56% of people in immigration detention as of April 2025).[11] There are various reasons for the changes in detention demographics over time, including changes in the use of 'bridging visas' (which permit people to be released from detention), changes in the policy settings for asylum seekers who arrive by boat (including the commencement of 'Operation Sovereign Borders' in September 2013, under which Australia turns back boats at sea or summarily removes asylum seekers who reach Australia by boat and are subject to offshore processing),[12] and amendments to the *Migration Act* making it easier to cancel a person's visa on 'character' grounds.[13]

**Table 1: Number of people in immigration detention facilities (March 2021 – March 2025)[14]**

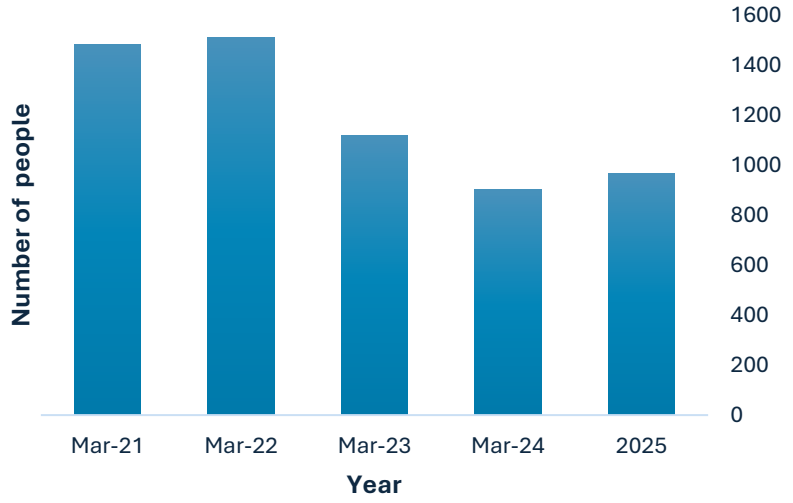
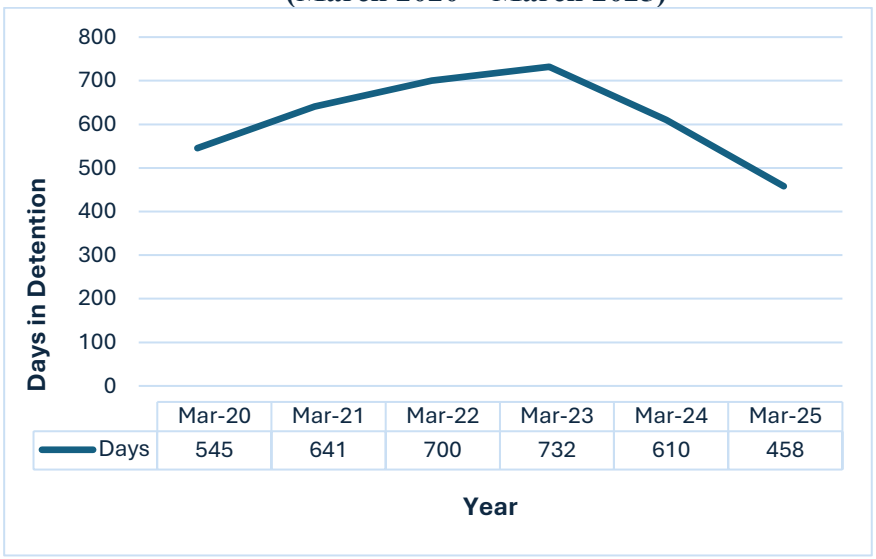



**Table 2: Average time in detention (March 2020 – March 2025)[15]**




[11] Some of these people may also be asylum seekers or refugees.
[12] See below Parts 8 and 9.
[13] See below Part 2(B).
[14] Data taken from annual detention reports at Department of Home Affairs, 'Immigration detention statistics' (undated).
[15] Ibid.

1.7 Immigration facilities are **located throughout Australia**. As of March 2025, 12 immigration detention facilities were operational in Australia: six IDCs and six APODs (see Figure 1 and Table 3). IDCs continue to have a higher percentage of people who have had their visas cancelled on character grounds than other types of detainees. For example, in the Villawood IDC in March 2025, 62 percent of the overall population were detained due to their visa being cancelled on character grounds and 9 percent were asylum seekers who arrived by boat.

1.8 **Government reporting** on detention statistics is persistently late, inaccurate and incomplete. Specifically, the monthly immigration detention statistics provided by the Department of Home Affairs are published with delay and are increasingly insufficient or misleading. For example, they:

- do not include people detained other than in IDCs and APODs, such as those detained at airports, at sea, or in Department offices;
- do not disclose the location, number, type, capacity or current detainee population of all APODs;
- do not include people detained in Nauru; and
- do not include people held in Papua New Guinea (PNG).

1.9 Since Australia does not include information about people in **Nauru and PNG** in its detention reporting, Parts 1 to 7 of this submission focus on immigration detention in Australia, while Part 8 raises specific concerns with respect to detention at sea and Part 9 addresses offshore processing and detention.

**Figure 1: Map of operational immigration detention facilities**[16]


[16] Refugee Council of Australia (RCOA), 'Where people are in detention' (29 June 2025).

**Table 3: People in Immigration Detention Centres (IDCs) and Alternative Places of Detention (APODs) as of 30 April 2025[17]**

| No. | Facility | Location(s) | Detainees |
|---|---|---|---|
| **IDCs** | | | |
| 1. | Villawood | Sydney, NSW | 414 |
| 2. | Yongah Hill | Small town of Northam, WA | 166 |
| 3. | Perth | Perth, WA | 10 |
| 4. | Melbourne | Melbourne, VIC | 160 |
| 5. | Brisbane | Brisbane, QLD | 125 |
| 6. | Adelaide | Adelaide, SA | 30 |
| 7. | North West Point | Christmas Island | 0 |
| | | ***Subtotal*** | ***905*** |
| **APODs (some locations unknown)** | | | |
| 8. | Some locations unknown | NSW | 11 |
| 9. | | VIC | <15 |
| 10. | | QLD | 22 |
| 11. | | SA | 0 |
| 12. | | WA | <5 |
| 13. | | NT | 10 |
| | | ***Subtotal*** | ***57*** |
| | | **TOTAL** | **966** |

# 2 Legal and policy frameworks for immigration detention

## *A Mandatory immigration detention of 'unlawful non-citizens'*

2.1 Australia operates a universal visa system according to which all non-citizens must have authorisation to enter and remain in the form of a visa.[18] Non-citizens who do not hold a valid visa are classed as 'unlawful non-citizens'.[19] Section 189 of the *Migration Act* requires the detention of all 'unlawful non-citizens' in Australia's migration zone. There are no exceptions for people seeking asylum or other vulnerable groups, including children, pregnant women, and survivors of torture, trauma and trafficking in persons.

2.2 The *Migration Act* does not permit a detaining officer to consider the appropriateness or necessity of detention in an individual case before detaining a person. Rather, if an officer 'reasonably suspects' that a person in Australia is an 'unlawful non-citizen', they *must* detain that person, without further inquiry.[20] The initial decision to detain may only be challenged on the basis of a mistake of fact, or in certain cases if the 'reasonable suspicion' was not formed on a lawful basis.[21]

2.3 Section 196 of the *Migration Act* provides that the detention of an unlawful non-citizen must continue until the person is removed from Australia,[22] transferred to a regional

[17] April 2025 Statistics Summary (n 5).
[18] Migration Act, s 42(1).
[19] Ibid, ss 13, 14.
[20] Ibid, s 189(1); *Ruddock v Taylor* (2005) 222 CLR 612.
[21] *McHugh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 283 FCR 602 617 [51] (Allsop CJ).
[22] Migration Act, s 198(1) provides for unlawful non-citizens to be removed from Australia 'as soon as reasonably practicable'.

processing country (Nauru, and previously PNG),[23] deported,[24] or granted a visa. The *Migration Act* does not set out time limits on the duration of detention, nor is there any mechanism for regular or independent review of the purpose and necessity of detention.

2.4 Section 4AA(1) of the *Migration Act* 'affirms as a principle that a minor shall only be detained as a measure of last resort'. However, this 'affirmation' cannot be invoked in any court to challenge the automatic and mandatory detention of children who are deemed 'unlawful non-citizens' and does not translate in practice to children only being detained as a measure of last resort. The Australian Human Rights Commission (AHRC) has previously documented the significant harm experienced by children in immigration detention.[25] Regardless of whether any children are in closed detention at the time of the Working Group's visit to Australia in 2025, they have routinely been detained in various immigration detention facilities in the past, and the legal framework requiring their detention continues to be in force.

2.5 The *Migration Act* provides the Minister with several non-compellable powers to bring an end to detention. The Minister may grant a bridging visa to an 'eligible non-citizen' pending the grant of a substantive visa or their departure from the county.[26] The Minister may, in the public interest, intervene to grant a detainee a substantive visa,[27] or direct their release to an alternative location in the community (i.e., community detention).[28] The exercise of these 'detention intervention' powers is informed by guidelines issued by the Minister, which direct attention to detainees' individual circumstances – including the health impacts of detention and other 'unique or exceptional circumstances'.[29] While they are intended to prevent the prolonged detention of people who cannot be removed from Australia, they are discretionary and insufficient to ensure that ongoing immigration detention is not arbitrary, and their exercise tends to be politicised in practice. Importantly, the exercise of detention intervention powers is not compellable or subject to independent or periodic review by an authority that can order the release of people who are detained arbitrarily.

2.6 Human rights and refugee groups have called on the Australian government to introduce time limits on immigration detention and establish an independent body to ensure immigration detention is only used as a last resort and for the shortest possible time, in accordance with international human rights standards.[30]

2.7 **We request that the Working Group:**

- **reaffirm that immigration detention is an exceptional measure that should only be used as a measure of last resort, after all viable alternatives have been considered, and on the basis of an individualised assessment of whether detention is reasonable, necessary and proportionate to a legitimate purpose;**

[23] Ibid, s 198AD provides for the removal of unauthorised maritime arrivals to a 'regional processing country.' Such persons are exempted from the general removal power: s 198(11).
[24] Ibid, s 200.
[25] AHRC, 'The Forgotten Children: National Inquiry into Children in Immigration Detention' (2014).
[26] Migration Act, ss 31(2)(g), 37, 72–6.
[27] Ibid, s 195A.
[28] Ibid, s 197AB. See Part 1 for a definition of 'community detention'.
[29] Minister for Home Affairs, 'Minister's Residence Determination Power' (21 October 2017) [8] (not publicly available).
[30] RCOA, 'Submission to the Inquiry on the Ending Indefinite and Arbitrary Immigration Detention Bill 2021'; Asylum Seeker Resource Centre (ASRC), 'Submission to the Senate Legal and Constitutional Affairs Committee'.

- **recommend that the Australian government introduce procedural safeguards to ensure that the original decision to detain complies with its obligations under international law and strict, legally enforceable time limits and mechanisms for effective, periodic and independent review; and**
- **recommend that the Australian government introduce a legally enforceable obligation not to detain children for immigration purposes under any circumstances.**

**Case Study: Maksym and Elena**

Maksym and Elena arrived in Australia from Ukraine in November 2024 on Visitor visas. When they arrived at the airport, they explained their intentions to seek asylum in Australia. Their Visitor visas were cancelled. They were detained at passport control and transferred to immigration detention as they no longer held valid visas. No inquiries were made as to the appropriateness of their detention, even though it was recognised that Maksym and Elena were likely to apply for asylum and engage Australia's protection obligations. No alternatives to detention were considered by the detaining officers.

Maksym and Elena were put in touch with a legal service provider who assisted them to apply for Protection visas. It was difficult to communicate with Maksym and Elena while they were detained as they experienced significant restrictions on their ability to speak with people outside the detention centre. They were denied access to their private phones and to SIM cards posted to them by their daughter. They had limited access to the internet.

The isolation of Maksym and Elena from their support networks and legal representatives caused them significant discomfort and apprehension. Officials exacerbated these challenges by failing to respond adequately to requests for information and disclosures of concerns. For example, they were required to talk with welfare staff in the presence of third parties such as security officers. Because of this lack of privacy, they were concerned that if they complained about their mistreatment in detention they would be punished with restrictions on their access to information (a common practice by authorities in their country of origin).

Legal representatives helped Maksym and Elena seek the intervention of the Minister to be granted a bridging visa and released into the community. They had not committed any crimes in Australia or overseas and represented no risk to the community. Their ongoing detention posed significant risks for their mental health and wellbeing. However, under the system of mandatory detention in Australia they were held in immigration detention for months.

In December 2024 Maksym and Elena's application for a Safe Haven Enterprise visa (SHEV) was refused. They appealed this refusal and were ultimately successful at the Administrative Review Tribunal (Tribunal) in January 2025. The Tribunal set aside their visa refusal and found that they were owed protection. Despite this, they continued to be held in immigration detention for a further 6 weeks until March 2025 when they were granted a bridging visa per their s 195A Ministerial Intervention request.

## *B Detention as a result of visa cancellation on 'character' grounds*

General cancellation powers

2.8 The *Migration Act* allows a visa application to be refused, or a visa to be cancelled, on the basis that the applicant or holder fails a 'character test'.[31] The 'character test' is broad and extends beyond criminal convictions. A non-citizen may fail the 'character test' on the basis of their criminal 'associations',[32] any past or present conduct,[33] or a suspicion that they pose a 'risk' to the community.[34]

2.9 If a visa is refused or cancelled on 'character' grounds, the non-citizen becomes an 'unlawful non-citizen'[35] liable to mandatory detention under section 189 of the *Migration Act*. A non-citizen subject to an adverse 'character' decision is also barred from applying for any visa other than a Protection (Subclass 866) visa or a visa specified in the *Migration Regulations 1994* (Cth), being a Bridging "R" Visa (BVR).[36]

2.10 Character-based decisions may be made by the Minister for Home Affairs or a delegate. Adverse decisions made by the Minister cannot be reviewed on their merits.[37] They can only be reviewed by a court based on jurisdictional error.[38] Adverse decisions made by a delegate may be reviewed on their merits by the Tribunal, but only if the application for review is lodged within a strict 9-day timeframe.[39] The person who is subject to the decision must remain in immigration detention until the Tribunal decides the review. The review decision must be made within 84 days of receipt of the application for review – though failure to comply with this timeline leads to the decision under review being *affirmed,* rather than set aside, by default.[40]

2.11 The *Migration Act* empowers the Minister to 'override' favourable decisions made by the Tribunal,[41] if it is in the 'national interest' to do so. There is no strict time limit on when an 'override' decision can be made – in some cases, the Minister has exercised the power months after a favourable decision by the Tribunal.[42] The 'national interest' is not defined and courts have repeatedly held that the concept is 'broad and evaluative,'[43] involving a largely political assessment[44] which is open to the Minister

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[31] Migration Act, s 501(6).
[32] Ibid, s 501(6)(b).
[33] Ibid, s 501(6)(c).
[34] Ibid, s 501(6)(d).
[35] Ibid, s 15.
[36] Ibid, ss 501E(2)(a), 501E(2)(b); *Migration Regulations 1994* (Cth) reg 2.12AA ('Migration Regulations').
[37] The right to merits review by the Administrative Review Tribunal for character-based decisions is limited by Migration Act, ss 500(1)(b) and (ba) to decisions made by a *delegate* of the Minister for Home Affairs under ss 501 and 501CA(4).
[38] Migration Act, s 476A(1)(c) vests exclusive jurisdiction in the Federal Court of Australia in relation to proceedings concerning a personal decision of the Minister made under ss 501, 501A, 501B, 501BA, 501C or 501CA.
[39] Ibid, ss 500(1)(b), (ba), 500(6B).
[40] Ibid, s 500(6L).
[41] Ibid, s 501BA.
[42] See, eg, *Morgan v Minister for Immigration and Multicultural Affairs* [2025] FCA 266; *GRCF v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 415. In the latter case, Bennett J held that a time-limit on the exercise of s 501BA '[did] not find voice in the text of the statute': at [93].
[43] *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1, 30 [57] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ); *Carrascalao v Minister for Immigration and Border Protection* (2017) 252 FCR 352, 390 [156]–[157] (Griffiths, White and Bromwich JJ).
[44] *Plaintiff S156/2013 v Minister for Immigration and Border Protection* (2014) 254 CLR 28, 46 [40] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ); *Plaintiff S297/2013 v Minister for Immigration and Border Protection* (2015) 255 CLR 231, 242 [18] (French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ).

to make, without being confined to a particular set of factors or considerations.[45] Personal 'override' decisions of the Minister cannot be reviewed on the merits and are subject only to judicial review by a court, which is rarely successful.

Mandatory cancellation powers

2.12 In 2014, amendments to section 501 of the *Migration Act* made it easier for a visa to be cancelled on character grounds.[46] The new mandatory cancellation power in section 501(3A) requires the Minister to cancel the visa of any person serving a full-time sentence of imprisonment who has a 'substantial criminal record',[47] which includes anyone sentenced to a term of imprisonment of 12 months or more.[48] As a result of these amendments, the number of visa cancellations on character grounds increased by over 1,100 percent between the 2013–14 and 2016–17 financial years.[49] The 2014 amendments also introduced a 'revocation' power which allows a mandatory cancellation decision to be revoked in certain circumstances.[50]

2.13 The introduction of mandatory cancellation powers has increased the number of character-based decisions more than tenfold.[51] Mandatory cancellation decisions are often notified to non-citizens towards the end of their sentences, meaning the revocation process is usually pending at the time their sentence concludes. This means that non-citizens are 'pipelined' directly from prison, following the completion of their sentence, to immigration detention, where they must remain until their revocation request is determined.[52] The Act does not specify a timeframe for consideration of a revocation request. The prison-immigration detention 'pipeline' is discussed further in Part 5 below.

2.14 **We request that the Working Group:**

- **recommend to the Australian government that all revocation powers be reviewable by the Tribunal and the removal from the Migration Act of Ministerial powers to 'override' character-based decisions made by the Tribunal; and**
- **advise the Australian government on how the character-based visa cancellation regime should be amended to ensure that children, long-term Australian residents, stateless persons and persons found to be owed protection are not detained contrary to Australia's international obligations.**

[45] *Vargas v Minister for Home Affairs* (2021) 286 FCR 387, 403 [61] (McKerracher, Markovic and SC Derrington JJ); *Gubbay v Minister for Home Affairs* [2020] FCA 1417, [56] (Reeves J); *Candemir v Minister for Home Affairs* (2019) 268 FCR 1, 5–6 [20]–[21], 7 [24] (Collier, Robertson and Thawley JJ).
[46] *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth).
[47] Migration Act, s 501(3A)(a)(i).
[48] Ibid, ss 501(3A)(a)(i) and (7)(c).
[49] Department of Home Affairs, 'Visa statistics: visa cancellation' (14 October 2019).
[50] Migration Act, s 501CA(4).
[51] Sanmati Verma and Claire Loughnan, *Prison to Deportation Pipeline: How Mandatory Visa Cancellation Creates a Parallel Form of Imprisonment for Non-Citizens*, Human Rights Law Centre and Melbourne Social Equity Institute (November 2024) 6.
[52] Ibid, 5. This is an intended outcome of the 2014 amendments. When introducing the amendments in the House of Representatives, then-Minister for Home Affairs Scott Morrison explained that they would introduce 'a streamlined process which will deliver the key benefit of providing a greater opportunity to ensure noncitizens who pose a risk to the community will remain in either criminal or immigration detention until they are removed or their immigration status is otherwise resolved'. See also Part 5.

# 3 The (partial) end of indefinite immigration detention

## *A Recent judicial developments*

3.1 In 2004, in *Al-Kateb*, the High Court of Australia ruled that the indefinite immigration detention of a non-citizen was lawful.[53] Almost 20 years later, in November 2023, the High Court overturned this precedent in *NZYQ* by ruling that the indefinite immigration detention of a non-citizen for whom there is no real prospect of removal becoming practicable in the reasonably foreseeable future is unconstitutional.[54]

3.2 The separation of powers in the Australian Constitution mandates that the Executive can only detain people if detention is necessary for a legitimate and non-punitive purpose.[55] In *NZYQ*, the High Court held that the legitimate and non-punitive purpose must be one which is capable of being achieved *in fact*. Accordingly, where a person is detained for the purposes of removal from Australia, that removal must be capable of actually being achieved. Where there is no real prospect of removal becoming practicable in the reasonably foreseeable future, ongoing detention cannot be justified. As there was no real prospect of the plaintiff (a stateless refugee) being removed from Australia, the High Court ordered his immediate release. Other non-citizens who did or could benefit from this judgment are referred to as the '*NZYQ* cohort'.

3.3 Six months later, in *ASF17*, the High Court considered whether its findings in *NZYQ* applied to an Iranian asylum seeker who was unwilling to cooperate with his removal because he feared serious harm in Iran. He had been in immigration detention for almost a decade and his asylum application had been rejected.[56] In its judgment, the High Court clarified that a person's removal from Australia is 'practicable in the reasonably foreseeable future' if:

- there is a country to which the person might be removed, and the *Migration Act* allows removal to that country;[57] and
- there are steps that can be taken which would realistically result in the person's removal from Australia in the reasonably foreseeable future. Steps are capable of being taken if a person has *chosen* not to cooperate with their removal.[58]

3.4 In *ASF17*, the High Court found that the plaintiff *could* practicably have been removed from Australia in the foreseeable future if he had cooperated with attempts to remove him, and therefore that he was not part of the *NZYQ* cohort and was not required to be released from detention. However, the Court did distinguish the plaintiff's circumstances from those of a person who is *unable* to cooperate with their removal due to mental incapacity or psychiatric illness. In doing so, the Court suggested that a person's *capacity to cooperate* is relevant to determining the prospects of their removal from Australia, and the lawfulness of their detention pending that removal.

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[53] *Al-Kateb v Godwin* (2004) 219 CLR 562.
[54] *NZYQ* (n 2).
[55] *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1, 33; *NZYQ*, [30].
[56] The plaintiff had been subjected to the flawed (and now repealed) 'fast-track' process for refugee status determination. For a summary of the deficiencies in that process see ASRC, 'Briefing paper – people failed by Fast Track' (12 Sep 2024).
[57] Section 197C of the Migration Act does not allow the removal of a person to a country if a 'protection finding' has been made in relation to that country. However, the Minister for Immigration has the power to reverse protection findings in certain circumstances: see s 197D.
[58] *ASF17* (n 3) [41].

3.5 In the days immediately following *NZYQ*, around 140 people were released from immigration detention. As at 31 October 2024, 224 people had been released based on the decision.[59] However, there remains a lack of transparency and substantial inconsistency in the Australian government's approach to releases. Despite the decision in *NZYQ,* litigation continues to be necessary to secure the release of some people in detention.[60] It is still not clear whether the Department of Home Affairs has reviewed the circumstances of all people to determine whether their detention is lawful. There are known instances where people lack mental capacity to cooperate with their removal but continue to be detained.

### *B Harsh visa conditions in lieu of detention*

3.6 Eight days after the decision in *NZYQ* in November 2023, a new law imposing harsh visa conditions on people previously subject to indefinite detention and now living in the community was introduced, debated and passed by the Parliament within 12 hours. The *Migration Amendment (Bridging Visa Conditions) Act 2023* (Cth) introduced a new mechanism for the Minister to grant a BVR to people in the *NZYQ* cohort, without them needing to apply for the visa.[61] It imposed a number of mandatory conditions on BVR holders and two additional conditions – a curfew and the imposition of an electronic monitoring device (such as an ankle monitor) – which were mandatory unless the Minister was satisfied that the person did not pose a risk to the community.

3.7 In November 2024, the High Court ruled in *YBFZ* that these conditions were invalid because they were inconsistent with the Constitution.[62] The majority found that these conditions were punitive because they infringed on visa holders' liberty and bodily integrity. It held that the 'detention imposed by the curfew condition is neither trivial nor transient in nature'[63] and that the physical presence of the ankle monitors imposed 'both a real physical and a real psychological and emotional burden' on the wearers.[64] It concluded that there was no legitimate purpose for the imposition of these restraints. The purpose of the law which authorised them was to protect 'every part of the Australian community from any harm at all'.[65] This risk of harm was 'designedly unparticularised and indeterminate' risks of harm, and thus the law 'authorise[d] uncertain and unpredictable outcomes'.[66] Even if the purpose of the conditions were to protect against future offending, the majority considered that it was not reasonably necessary to impose them. The Court described the curfew and electronic monitoring conditions as 'a form of extra-judicial collective punishment' based on membership of the *NZYQ* cohort and noted that fundamental protections against arbitrary interference with liberty and bodily integrity apply equally to citizens and non-citizens.[67]

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[59] Department of Home Affairs, 'Community Protection Summary' (October 2024).
[60] Human Rights Law Centre (HRLC), 'Ned Kelly Emeralds free after 11 years of immigration detention' (Media Release, 30 November 2023) in relation to *AZC20 v Secretary, Department of Home Affairs (No 2)* [2023] FCA 1497.
[61] For a summary of the Bill, see HRLC, 'Summary: Migration Amendment (Bridging Visa Conditions) Bill 2023' (17 November 2023).
[62] *YBFZ* (n 4). For a summary, see HRLC, 'Summary: High Court's decision in YBFZ v Minister for Immigration' (6 November 2024).
[63] *YBFZ*, [51] (Gageler CJ, Gordon, Gleeson and Jagot JJ).
[64] Ibid, [60] (Gageler CJ, Gordon, Gleeson and Jagot JJ).
[65] Ibid, [81] (Gageler CJ, Gordon, Gleeson and Jagot JJ).
[66] Ibid, [76], [79] (Gageler CJ, Gordon, Gleeson and Jagot JJ).
[67] Ibid, [12], [81], [87] (Gageler CJ, Gordon, Gleeson and Jagot JJ).

3.8 In the immediate aftermath of *YBFZ,* ankle monitors were removed from BVR holders and curfews were lifted. However, a further suite of legislation was rushed through Parliament reintroducing, in a slightly different form, the Minister's power to impose curfews and electronic monitoring.[68] As a result of these laws, the current features of the new BVR regime are as follows:

- **Extensive and harsh visa conditions:** The imposition of 20 mandatory visa conditions, six additional mandatory visa conditions if the visa holder has been convicted of certain offences, two discretionary conditions and four visa conditions that may be imposed if the Minister is satisfied that they are reasonably necessary for the protection of any part of the Australian community.[69]
- **Electronic monitoring and curfews:** the conditions listed above include a requirement for certain BVR holders to wear a monitoring device (in the form of an ankle bracelet) at all times,[70] and a curfew for one third of each day.[71] These conditions are imposed for a period of 12 months, but subsequent BVRs can be granted with the same conditions for further 12-month periods.[72]
- **Criminal offences:** The creation of nine criminal offences for breach of certain visa conditions (including those relating to electronic monitoring and curfews), subject to the defence of reasonable excuse.[73] Each offence has a mandatory minimum sentence of one year imprisonment, with a maximum term of five years.[74]

3.9 As at 31 March 2025, there were 309 BVR holders of which 75 were subject to electronic monitoring and 43 were subject to a curfew.[75] In addition, all BVR holders remain subject to at least 20 mandatory visa conditions which continue to limit their freedoms and basic dignity, including restrictions on their movement.[76] The effects of this harsh regime have been devastating, with some BVR holders reporting that they "don't feel free" despite being released from immigration detention.[77] People subject to electronic monitoring in particular report to health professionals that their ankle bracelets are 'both a physical discomfort and a psychological burden', which leave them feeling 'humiliated, embarrassed, and trapped in a system that limits their freedom and opportunities for education or work'. Health professionals have observed that electronic monitoring 'is triggering trauma-related symptoms, including anxiety, depression, flashbacks, and intrusive memories' in their clients, many of whom suffer from complex psychological trauma and PTSD due to both their past experiences of torture and trauma and their periods of extended detention in Australia.

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[68] *Migration Amendment Act 2024* (Cth); *Migration Amendment (Removal and Other Measures) Act 2024* (Cth); *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Act 2024* (Cth).
[69] Migration Regulations, Schedule 2, Clauses 070.611(1), 070.612, 070.612A, 070.612B, 070.613, 070.614.
[70] Condition 8621 requires the visa holder to: wear a monitoring device at all times; allow authorised officers to fit, install, repair or remove monitoring device or related equipment; take reasonable steps to ensure the device and equipment remains in good work order; and notify an authorised officer as soon as practicable upon becoming aware that the device or equipment is not in good working order.
[71] Condition 8620 requires the visa holder to remain at a notified address between 10pm and 6am or such other times specified by the Minister (not more than 8 hours apart).
[72] Migration Regulations, reg 2.25AE.
[73] Migration Act, ss 76B, 76C, 76D, 76DAA, 76DAB, 76DAC.
[74] Ibid, s 76DA.
[75] Department of Home Affairs, 'Community Protection Summary' (March 2025) 2.
[76] Migration Regulations, Schedule 2, Clauses 070.611(1) and 070.612.
[77] Stephanie Zillman, 'Gus Kuster doesn't feel free, despite being released from indefinite detention', *ABC News* (28 November 2024).

**3.10 We request that the Working Group:**

- **seek urgent review of the circumstances of each person who is in immigration detention and the immediate release of all people who are part of the *NZYQ* cohort or otherwise facing indefinite and arbitrary detention; and**
- **recommend reform of the BVR regime to remove the restrictive visa conditions, including repeal of the conditions imposing electronic monitoring and curfews.**

**Case Study: Awad**

Awad arrived in Australia by boat in 1999 and was granted a protection visa 3 months after his arrival. Awad fled to Australia fearing persecution in his country of origin. Awad had been detained and tortured on several occasions in the years preceding his escape, owing to his political activities and family background. By the time he arrived in Australia, many members of his family had either been executed or also fled the country for concerns around their safety.

After being granted safety in Australia, Awad got married and diligently raised his stepchildren. He worked to rebuild his life. Despite this, he continued to be impacted by the long-term consequences of the torture and trauma he experienced in his country of origin, in addition to the traumatic experience of displacement in and of itself. He was diagnosed with a series of standalone and interrelated health issues. This included complex PTSD (which involved quasi-psychotic symptoms including hearing voices) and periodic suicidal ideation. Awad has attempted to take his life on more than one occasion, and has been hospitalised during periods of acute mental illness.

On 23 August 2018, Awad's protection visa was cancelled on the basis of his criminal record. Awad could not be returned to his country of origin as he was found to be owed protection in Australia. He consequently became an unlawful non-citizen and was transferred into immigration detention. During his time in detention, Awad was transferred between a number of detention centres across the country. Though his family attempted to relocate with him, logistical and financial obstacles led to their protracted separation. Awad's marriage was not able to survive the enormous pressure placed on their family due to his detention and relocation. He also suffered from the use of excessive force by detention staff on multiple occasions, which he found particularly triggering due to his treatment by authorities in his country of origin.

Awad was held in detention for approximately 6 years before being granted a BVR. While this visa facilitated his release into the community, Awad continued to face significant restrictions on his liberty by way of the conditions to which this visa was subject. Awad was required to abide by a specific curfew and wear an electronic monitoring device at all times. Awad was gravely affected by the fitting of the electronic monitoring device, because of the resemblance this experience bore to the circumstances in which torture was inflicted upon him. Awad continues to experience vivid, intrusive images of past trauma which are exacerbated by the surveillance and monitoring he is subject to as a BVR holder. This has hampered Awad's ability to successfully manage his health conditions and recovery from trauma, as well as reintegrate into the community following an extended period in detention.

### *C Criminalisation of non-cooperation with removal*

3.12 The new laws also introduced a power for the Minister (or a delegate) to issue a person with a 'removal pathway direction' requiring their cooperation with steps to remove them from Australia.[78] For example, a person may be directed to apply for a passport or other documents required for travel or attend an interview.

3.13 A person who is owed *non-refoulement* obligations may be issued a direction,[79] but cannot be required to do anything in relation to the country in respect of which they are owed protection. However, this safeguard is limited to people who have a 'protection finding' within the meaning of s 197C(3) of the *Migration Act*,[80] and when coupled with an expanded power to reverse those protection findings, does not adequately mitigate against the risks of *non-refoulement*.[81]

3.14 There are harsh consequences for a failure to comply with a direction. A person who does not comply commits a criminal offence with a mandatory minimum sentence of 12 months' and a maximum sentence of 5 years' imprisonment or a fine of $99,000 (or both).[82] While a person may raise the defence of reasonable excuse, the following reasons for non-compliance are expressly deemed *not* to constitute a reasonable excuse:

- the person has a genuine fear of suffering persecution or significant harm if the person were removed to a particular country;
- the person is, or claims to be, owed *non-refoulement* obligations; or
- the person believes they would suffer adverse consequences if they complied with the direction.

3.15 There is limited publicly available information about the use of these new powers. At the time of writing, we do not believe that any directions have yet been issued. Nonetheless, the existence of these powers has caused significant distress within the community and there is no guarantee that they will not be used in the future.

3.16 **We request that the Working Group recommend the repeal of the power to issue a 'removal pathway direction', or at a minimum, the repeal of the criminal penalties for a failure to comply with a direction.**

### *D Community safety orders*

3.17 In addition to the expanded BVR regime, the Australian government also responded to *NZYQ* by introducing a new preventive detention regime which is modelled on a post-sentence control regime for terrorist offenders.[83] New Part 9.10 of the *Criminal Code Act 1995* (Cth) enables the Minister to apply to a court for a 'community safety order'

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[78] Migration Act, s 199C.
[79] Ibid, s 199B.
[80] Ibid, s 199D(1); see also s 199D(2).
[81] Ibid, ss 197C, 197D.
[82] Ibid, s 199E. The fine is 300 penalty units, each worth $330 (subject to indexation, which will next occur on 1 July 2026): *Crimes Act 1914* (Cth), s 4AA.
[83] *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act* 2023. See HRLC, 'Explainer: Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023' (undated).

in relation to any adult member of the *NZYQ* cohort who has been convicted of a 'serious violent or sexual offence' in Australia or overseas.[84]

3.18 There are two types of community safety orders that can be issued by a court. A *detention* order authorises detention in prison.[85] A *supervision* order imposes conditions, contravention of which is an offence.[86] A court may make a detention order if it is 'satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence'.[87] It may make a supervision order if satisfied of the same thing on the 'balance of probabilities'.[88] In the case of a supervision order, the court must also be satisfied on the balance of probabilities that, individually and in combination, the conditions imposed are 'reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence'.[89] The risk assessment tools used in the counter-terrorism context to assess the risk that a person poses to the community have been strongly criticised by both the judiciary and the Independent National Security Legislation Monitor, notably where they result in continuing detention.[90]

3.19 Whether imposing a detention order or a supervision order, the court must be satisfied that less restrictive measures, including any visa conditions that have been imposed under the *Migration Act*, would not be effective in addressing the risk.[91]

3.20 The maximum duration of a community safety order is three years,[92] with a requirement of annual review.[93] However, it is possible to subject a person to a succession of community safety orders without any upper limit.[94]

3.21 At the time of writing, we do not believe that any community safety orders of either kind have yet been issued, although preparatory steps have been taken by the Australian government to impose orders on a number of people in the *NZYQ* cohort.[95]

3.22 **We request that the Working Group advise the Australian government on the potential incompatibility of 'community safety orders' (and particularly preventive detention orders) with international law.**

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[84] See Criminal Code 395.8 (applying for a community safety order) and 395.5 (who a community safety order may apply to). The terms "serious violent or sexual offence" and "serious foreign violent or sexual offence" are defined in Criminal Code 395.2.
[85] Ibid 395.5(3).
[86] Ibid 395.5(4).
[87] Ibid 395.12(1)(b).
[88] Ibid 395.13(1)(b).
[89] Ibid 395.14(1).
[90] *Benbrika v A-G (Cth)* [2024] VSC 265 (5 June 2024) (Hollingworth J); *Attorney-General (Commonwealth) v Benbrika (No 2)* [2025] VSC 223 (30 April 2025) (Elliott J); Grant Donaldson SC, Independent National Security Legislation Monitor, *Review into Division 105A (and related provisions) of the* Criminal Code Act 1995 *(Cth)* (2022) 69-89.
[91] Criminal Code 395.12(1)(c) and (d), 395.13(1)(c) and (d).
[92] Ibid, 395.12(5) and 395.13(5).
[93] Ibid, 395.23.
[94] Ibid, 395.12(6) and 395.13(6).
[95] As at 24 February 2025, no application had yet been made for a community safety order: Senate Legal and Constitutional Affairs Committee, Proof Committee Hansard, *Additional Estimates* (24 February 2025) 116 (Ms Sharp, Group Manager, Legal, Department of Home Affairs).

### *E The lack of post-release support for BVR holders creates risks of re-detention*

3.23 A number of people released as a consequence of the decision in *NZYQ* spent a protracted period of time in detention. Reintegrating back into the Australian community following such an extended time in detention can be challenging, especially for people facing language barriers, limited family support and mental and physical health conditions which developed or deteriorated during their protracted detention.[96]

3.24 Instead of investing in tailored support services to facilitate the transition from closed detention to the community, the Australian Federal Police and Australian Border Force established 'Operation AEGIS', a joint operation with enforcement, investigation, removal and surveillance functions, in November 2023.[97] A package of $225 million was announced to support these agencies with monitoring BVR holders in the *NZYQ* cohort, including through the use of surveillance drones,[98] and investigating and penalising any breaches of restrictive visa conditions.[99] Meanwhile, legal organisations supporting BVR holders have observed that some fell into homelessness as a result of being excluded from social housing programs. Many BVR holders are also excluded from accessing State-based programs. Without adequate tools to address the root causes or settings for criminal offending, people are more likely to be trapped in a cycle of recidivism and face re-detention.[100]

3.25 The difficulty of transitioning BVR holders into the community is compounded by the nature of the legal precedent established in *NZYQ.* In order to avoid the risk of false imprisonment claims, release decisions are implemented quickly. Service providers may be given only a few hours' notice of an individual's release, and often are not provided with complete information about their health and other needs.

3.26 **We request that the Working Group advise the Australian government on international best practice for reducing the risks of re-detention of people who have spent protracted periods of time in detention of any type.**

**Case study: Sara**

Sara, who had a diagnosis of schizophrenia, was granted a BVR and released from detention without notice to her legal representative or family. She was dropped off at a former address where she had experienced conflict with a family member who also has a diagnosis of schizophrenia. Sara called her primary carer, who picked her up. Sara was scheduled to have a depot injection a week after her release, but neither Sara nor her family or legal representative were given information about the caseworker allocated by the Department of Home Affairs. Sara's legal representative contacted emergency mental health services to attempt to obtain urgent treatment for her. After calling several services, Sara's representative was finally able to locate her allocated caseworker about a week following release.

[96] Walter Forrest and Zachary Steel, 'The Impact of Immigration Detention on the Mental Health of Refugees and Asylum Seekers' (2023) 36(3) *Journal of Traumatic Stress* 642.
[97] Claire O'Neil, Mark Dreyfus and Andrew Giles, '$225m boost to operation aegis and law enforcement to keep Australians safe' (Joint Media Release, 27 November 2023).
[98] Paul Karp, 'Drones used to track immigration detainees released after high court decision, Andrew Giles reveals', *The Guardian* (30 May 2024).
[99] O'Neil, Dreyfus and Giles (n 98).
[100] See Part 5.

### *F Re-detention pending transfer to third countries*

3.27 In November 2024, Australia also introduced new 'third country reception' arrangements, under which Australia can enter into an agreement with any third country for the removal of unlawful non-citizens to that country.[101] Australia is not required to consider the person's connections to Australia, or their connections (if any) to the third country to which they are being removed. There are no legislative safeguards to protect against transferred people being detained or otherwise harmed in the third country.

3.28 While these new arrangements are primarily directed at people previously held in indefinite immigration detention (BVR holders), they are capable of applying broadly to all unlawful non-citizens. For BVR holders, their visas automatically cease upon being granted permission to enter and remain in a third country, resulting in their sudden re-detention pending removal.[102]

3.29 On 16 February 2025, the Minister for Home Affairs announced that Australia had entered into a third country reception arrangement with Nauru.[103] Three members of the *NZYQ* cohort were issued 30-year visas to reside in Nauru (without their consent or knowledge), and immediately taken into immigration detention upon the automatic cessation of their BVRs. These moves raised serious concerns about human rights, *refoulement* and procedural fairness.[104] As of July 2025, legal challenges to these removals are before the Australian courts, and no one has yet been removed to Nauru.

**3.30 We request that the Working Group advise the Australian government on the potential incompatibility of its proposed 'third country reception' arrangements with international law.**

## 4 Specific groups in detention

### *A People with disabilities*

4.1 People with disabilities are not exempt from mandatory immigration detention.

4.2 Prolonged detention has been shown to cause or exacerbate psychosocial disability.[105] Psychosocial disabilities are particularly exacerbated by a lack of sufficient and appropriate support services and mental health care in closed immigration detention and disruptions in treatment after a person is transferred to immigration detention from prison. People in detention have also reported heavy-handed responses to any signs of distress.[106] Frequent transfers between immigration detention facilities creates additional difficulties for people living with psychosocial or cognitive disabilities, especially where the moves take place without reasonable justification, at little or no notice, and/or remove people from their support networks.

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[101] *Migration Amendment Act 2024* (Cth), inserting s 198AHB into the Migration Act.
[102] Migration Act, s 76AAA.
[103] Tony Burke, Minister for Home Affairs, 'Statement on NZYQ' (Media Release, 16 February 2025).
[104] Elizabeth Byrne, 'Plans to Deport Three Non-citizens to Nauru Thwarted by Legal Challenges', *ABC News* (25 February 2025).
[105] RCOA, 'People with Disability in Immigration Detention', Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2021) 3, 5–6 ('RCOA Royal Commission Submission').
[106] Ibid 11.

4.3 In 2015, the National Ethnic Disability Alliance (NEDA) assessed that the Australian government had failed to consider the needs of people with disabilities, and to ensure that onshore and offshore detention centres were modified or made accessible for them .[107] While some detention centres have accessible facilities for people with mobility disabilities, others continue to be inappropriate. As people in immigration detention are often moved multiple times between facilities, the lack of consistently accessible facilities creates added challenges for people with a disability.

4.4 In its 2024 report on the Yongah Hill IDC, the AHRC recommended that:

- the Department and its service providers ensure that every initial assessment includes a robust assessment of mental health and cognitive disability, as well as screening for neurodevelopmental disability to identify support needs;
- where a screening assessment identifies a significant mental impairment, cognitive disability or neurodevelopmental disability, this should prompt an assessment by the Department and its service providers of the decision-making supports that may be required by that person; and
- the Government should support and provide resourcing to the Department to liaise with state and territory corrective services, youth justice departments and justice health agencies in the development of national practice guidelines for screening in custody, as recommended by the Disability Royal Commission.[108]

**4.5 We request that the Working Group:**

- **advise the Australian government on its obligations under international law with respect to the detention of people with disabilities, including its obligations under the Convention on the Rights of Persons with Disabilities and relating to the right to the highest attainable standard of physical and mental health, with a particular focus on any forced or non-consensual medical treatment; and**
- **ask the Australian government to provide an update on its progress in implementing the recommendations of the AHRC in its 2024 report on the Yongah Hill IDC.**

### *B Women*

4.6 In 2024, the AHRC published a landmark report on the experiences of women in immigration detention in Australia.[109] It concluded that 'in an overwhelmingly male system, women in immigration detention are often an afterthought when it comes to detention infrastructure, the provision of programs and activities, equitable access to services and the delivery of staff training'.[110]

4.7 Key concerns identified by the AHRC include that:

- there is a lack of appropriate detention facilities for women, meaning some women may be moved interstate away from their children, families, friends and support networks;

[107] NEDA, 'The Plight of People Living with Disabilities within Australian Immigration Detention: Demonised, Detained, and Disowned' (2015) 20.
[108] AHRC, 'Yongah Hill Immigration Detention Centre Inspection Report' (April 2024).
[109] AHRC 'Not Just an Afterthought: The Experience of Women in Immigration Detention' (2024).
[110] Ibid, 8.

- women are routinely exposed to the possibility of harassment and violence because many of the services available to them are located in or adjacent to male compounds;
- women do not have the same opportunities as men for meaningful self-development, and the programs and activities offered to them are often unresponsive to their needs or not age appropriate;
- government officers and private contractors have not incorporated adequate gender-specific training into staff training and ongoing development; and
- there is an absence of specific policies and guidance material on the management of transgender persons in immigration detention.

4.8 The Australian government's response to the AHRC's recommendations was mixed.[111] It accepted or partially accepted some recommendations, but merely 'noted' many others and claimed they were already met. It also disagreed with or rejected several recommendations, including the AHRC's recommendation to make the Broadmeadows Residential Precinct safer for women.[112]

4.9 In addition to the issues raised in the AHRC's report, we note that women in prolonged immigration detention have reported a significant decline in the mental health of their child/ren who remain in the community, and from whom they have been forcibly separated. In turn, this causes mothers significant emotional distress, which is compounded by the lack of dedicated support for children affected and impacted by immigration detention.

**4.10 We request that the Working Group:**

- **ask the Australian government to provide an update on its progress in implementing the recommendations of the AHRC in its 2024 report on women in immigration detention; and**
- **ask the Australian government to demonstrate that, for any mothers in immigration detention and separated from their child/ren in the community, the government has considered all alternatives to detention and determined that detention is reasonable, necessary and proportionate in light of each mother's individual circumstances and taking into consideration the best interests of their child/ren.**

### *C LGBTQI+ people*

4.11 LGBTQI+ people in detention, especially gender diverse people, face additional challenges and are more likely than the general population to experience assault and self-harm, especially in detention settings.

4.12 Both the AHRC and the Commonwealth Ombudsman have raised concerns about the placement and treatment of transgender people in immigration detention.[113] These concerns include:

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[111] Australian Government, Department of Home Affairs, 'Department of Home Affairs' Response' (2024).
[112] Ibid.
[113] AHRC, 'Not just an afterthought' (n 110) 36-38; Commonwealth National Preventive Mechanism, 'Post Visit Summary: Villawood Immigration Detention Centre and Miowera Village (APOD)' (June 2025) 20-24. The Commonwealth Ombudsman acts as the National Preventive Mechanism (NPM) for immigration detention facilities under the Optional Protocol to the Convention against Torture (OPCAT). See Part 6 for analysis.

- the lack of any national policy or guidelines for the placement, management or welfare of transgender persons in immigration detention;
- the use of the Miowera Village APOD as a default placement for all transgender persons in the immigration detention network, which may result in people being moved away from states in which they have connections to family and community;
- the fact that transgender detainees are subjected to pat searches by whomever is on duty, instead of by a staff member of the same gender as the detained person identifies; and
- the fact that detained transgender women are subject to 'intrusive' supervision within their accommodation unit at Miowera Village by predominantly male staff, while other detainees are not subject to the same monitoring.

**4.13 We request that the Working Group advise the Australian government on the importance of national guidelines and procedures for the placement, management and welfare of transgender persons in immigration detention.**

**Case Study: Kaweria**

Kaweria arrived in Australia in March 2023 on a student visa. After an unplanned pregnancy, her ex-partner forced her out of their home. Unable to continue her work or study, Kaweria returned to her country of origin in May 2024. Following the birth of her daughter, she claimed to fear being subjected to female genital mutilation/circumcision and forced marriage as per her family's wishes and cultural practices. Kaweria returned to Australia in November 2024 on what she believed to be a valid student visa. However, her student visa was cancelled before she cleared immigration, and she was taken into immigration detention.

Kaweria experiences poor mental health due to separation from her infant daughter and family, her young age (21 years old), and a history of gender-based violence. She has a heightened vulnerability to the isolation and stress of the immigration detention environment, and advises that it is causing her mental health to deteriorate. She requires additional care and monitoring to manage the risk of worsening post-natal depression yet has received inconsistent mental health support. For example, Kaweria previously had access to a counsellor who spoke to her once a week, but lost contact when her mobile number changed and the change was not communicated to her mental health team.

In February 2025, Kaweria sought urgent medical help from a psychologist. Her legal representatives also made an urgent referral for mental health support. These efforts did not result in a face-to-face appointment with a counsellor until two months later.

There are no concerns about Kaweria's character or identity. She had intended to resume study, get a job and re-unite with her infant child. Instead, she continues to be held in closed detention. Despite having made a valid application for protection and multiple requests to the Minister highlighting how a closed detention environment is particularly difficult for her, Kaweria has been detained since November 2024 with no clear timeline of when she will be released.

## 5 The link between immigration and criminal detention[114]

5.1 Political and media responses to *NZYQ* suggested that the members of the *NZYQ* cohort were so dangerous that the only safe place for them, as a collective, was in detention. Then Minister for Home Affairs, Claire O'Neil, told Parliament: 'If I had any power to keep these people detained, I would do so'.[115] Then opposition leader, Peter Dutton, and other opposition MPs, repeatedly characterised the *NZYQ* cohort as 'hardcore criminals',[116] with Dutton telling Parliament: 'We will sit additional hours, through the night, whatever it takes to get these people back into custody, which is where they belong'.[117] The legislative response also appeared to seek re-detention of the *NZYQ* cohort by any means possible – whether as a result of breach of the stringent visa conditions (which were subsequently found to be punitive and unconstitutional),[118] or through the imposition of 'community safety orders'.[119] There was no real discussion of the importance of assessing risk and any need for preventive detention measures to be applied on an individual basis, or of considering alternatives to detention as measures of first resort.

5.2 These responses highlight the interconnections between immigration and criminal detention, and the existence of a 'prison to deportation pipeline', in Australia.[120] In recent years, detention and deportation have increasingly and improperly been used as methods of secondary punishment. It is worth recalling that across Australia, people are released from custody (including after serving time for serious offences) on a daily basis, and these releases are generally not politicised. By contrast, non-citizens who are convicted of offences carrying custodial sentences are portrayed as more dangerous, more likely to reoffend and therefore less entitled to their liberty on account of their migration status.

5.3 Non-citizens serving a sentence in the criminal justice system (as opposed to immigration detention) experience a distinct, parallel form of custody compared to citizens. They are unable to access certain courses and programs, including rehabilitation programs. They are often placed in more restrictive facilities. They struggle to access parole and associated support services, which can have an adverse effect on their visa status. They have limited or no access to legal advice and, until recently, there were limited publicly funded legal services providing advice and assistance specifically in relation to visa cancellation proceedings.[121] These factors make it difficult for non-citizens to provide the evidence that decision-makers often

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[114] This Part draws on the following article: Eve Lester, 'Ctrl Alt Del: NZYQ May Be an Important Development, But It's Time For a Reset' (2024) 99 *Immigration Review* 5.
[115] Claire O'Neill, 'Interview with Natalie Barr, Sunrise' (15 November 2023).
[116] Commonwealth Hansard, House of Representatives (13 November 2023) 7891 (Dan Tehan, Shadow Minister for Immigration and Citizenship); (14 November 2023) 8022, 8024 (Peter Dutton, Leader of the Opposition), 8023-8024, 8027, 8035 (Dan Tehan); (15 November 2023) 8195, 8200, 8202, 8367 (Peter Dutton), 8199, 8203, 8204, 8210, 8370, 8377 (Dan Tehan), 8207, 8208 (Paul Fletcher); (16 November 2023) 8324, 8365 (Peter Dutton), 8330 (Andrew Hastie), 8359 (Colin Boyce), 8361 (Angus Taylor), 8363 (Gavin Pearce), 8365 (Angie Bell), 8371, 8372 (Sussan Ley).
[117] Peter Dutton, 'Joint Doorstop Interview with the Hon Dan Tehan MP' (Canberra, 15 November 2023).
[118] See discussion of *YBFZ* in Part 3.
[119] See Part 3(D) above.
[120] The term 'deportation' is used in a general sense here to refer a range of ways that a non-citizen might be removed from Australia, including but not limited to under the government's specific deportation powers.
[121] Certain legal aid societies and community legal centres have recently received funding to provide limited legal assistance to people facing visa cancellation: Attorney-General's Department, 'Investing in Access to Justice and Improving Community Safety' (Media Release, 14 May 2024).

demand when considering whether to reinstate a visa, such as engagement in rehabilitative and educative programs. As a result, many non-citizens are transferred directly from prison to immigration detention at the end of their sentences, and from there they face deportation.

5.4 We note particular concerns about the use of force, including chemical restraints (sedatives), to coerce people in immigration detention to comply with their removal from Australia. The Commonwealth Ombudsman (acting as the NPM) recently reported on one case of 'involuntary removal' from Australia involving sedation of a man in immigration detention.[122] He was injected with Haloperidol, a highly restricted anti-psychotic drug. Its use to manage acute agitation is considered an 'off label' use. The Ombudsman noted that medical staff on the aircraft were unlikely to have the facilities to monitor vital signs and perform resuscitation, as required by the prescribing guidelines. The man subsequently needed additional medications during the deportation flight to lessen the side effects, and counter the extrapyramidal effects, of the Haloperidol.

**5.5 We request that the Working Group ask the Australian government to provide an update on its response to the Ombudsman's report and recommendations regarding the administration of chemical restraints without consent to people in immigration detention.**

**Case Study: Darshan**

Darshan arrived in Australia in 2012 by boat and has been held in immigration detention multiple times over the last decade. This is the result of minor driving and assault charges that led to the cancellation of his bridging visa. Darshan has a mild cognitive disorder, substance dependency and has been impacted by a history of trauma which underpins and contextualises his criminal offending. Currently he has been held in immigration detention since May 2023.

With the support of a legal service provider, Darshan made an application for a Bridging Visa E (BVE) in 2025 to be released into the community while his judicial review application is ongoing. Since being detained Darshan has been engaged with a counsellor, regularly attends Alcoholics Anonymous meetings and has completed rehabilitative programs to address the root causes of his criminal offending. No serious incident reports have been produced relating to Darshan's conduct during his detention, reflecting his good behaviour. Despite this, his application for a BVE was refused on the basis that he would likely not comply with the condition to not engage in criminal conduct.

This refusal was challenged by Darshan and his legal representatives in November 2024. In December 2024 the Tribunal remitted the matter, finding that the applicant's total offending occurred within a concentrated period of time and was driven by the use of substances as a coping mechanism for stress and grief. The Tribunal also accepted evidence of Darshan's reformed character as evidence of his motivation to not breach the conditions of his visa. Despite this remittal, the Department has indicated that they are referring Darshan's application for further assessments around his character.

[122] Commonwealth NPM, 'Fit to Fly? An Involuntary Removal Case Study involving the use of Chemical Restraint' (3 December 2024).

The impact on Darshan of this prolonged detention, even after a remittal from the Tribunal, has been significant. His mental health is poor as he is separated from his wife and newborn child. He struggles with feelings of shame and guilt of being a father who cannot provide for his son or even be in physical contact with him. He further feels immense guilt at not being able to provide and care for his partner, who is struggling to provide and raise their son on her own. The indefinite and prolonged nature of his detention has caused significant anxiety about the status of his visa, and separation from his family.

The psychological harm incurred while being detained has been further exacerbated by the use of handcuffs on Darshan by detention staff on multiple occasions. This typically occurs when escorting him to and from various medical appointments and for the duration of these appointments. The experience of being mechanically restrained has caused him significant psychological distress, such that he now refuses any further medical treatment for fear of being handcuffed again. Moreover, this is inhibiting his access to medical treatment for his persisting pain, subsequently causing him further distress as the pain endures.

Darshan is significantly distressed by the use of handcuffs which he described as triggering of his previous experiences of detention and torture in his country of origin. None of the Planned use of Force Risk Assessments from detention staff identify that Darshan has a pre-existing mental health condition nor that he is a known survivor of torture and trauma.

Given his low-level offending, consistent good conduct in immigration detention, demonstrated rehabilitation, and strong community support, Darshan's ongoing detention lacks a reasonable or proportionate basis. The toll of prolonged detention in these circumstances – without clear justification or meaningful prospect of release – inflicts serious harm and undermines fundamental human rights, including the rights to liberty, dignity, and humane treatment.

# 6 Oversight of immigration detention

6.1 Independent oversight and scrutiny are essential to identify issues of concern in detention, provide safeguards against abuse and neglect, challenge cases of arbitrary detention, and ensure the visibility of vulnerable populations. Unfortunately, a culture of secrecy is embedded in Australia's immigration detention system and limits opportunities for effective independent oversight. This culture is due in large part to immigration detention being mandatory and therefore not amenable to meaningful judicial scrutiny.

6.2 A number of government and non-government bodies have some level of oversight over immigration detention facilities in Australia. For example, the Commonwealth Ombudsman visits and inspects immigration detention facilities and reviews the detention of people who spend more than two years in detention. Under section 486O of the *Migration Act*, the Commonwealth Ombudsman can make recommendations to the Minister regarding a person's detention. However, the Minister is not bound by any of the recommendations the Ombudsman makes.[123] The Commonwealth Ombudsman also acts as the National Preventive Mechanism (NPM) for immigration detention

[123] Migration Act, s 486O(4).

facilities under the Optional Protocol to the Convention against Torture (OPCAT). However, it has not been provided with adequate human and financial resources to fulfil its mandate to the best of its ability, particularly given the number and location of detention facilities, and the more frequent use of non-purpose-built facilities.

6.3 The AHRC visits immigration detention facilities in Australia and is the main public source of information about what is happening within those facilities. Organisations such as the Australian Red Cross and the Office of the UN High Commissioner for Refugees (UNHCR) also monitor conditions in detention in Australia and offshore. The former does not publish its findings, and the latter publishes only some of its findings.

6.4 In addition to these formal mechanisms, informal oversight is provided when relatives, friends and supporters visit people detained in immigration detention centres. These visits provide emotional and psychological support for detainees and an informal mechanism for monitoring conditions in detention. Studies have noted the importance of informal visits for transparency of carceral institutions.[124] However, visitor oversight is limited in Australian immigration detention facilities because of the remote locations of many centres and various restrictions on visitor access.

6.5 Effective oversight of immigration detention is also limited by the government's efforts to ban the use of mobile phones. In December 2024, the government passed a new law granting the Minister sweeping powers to declare almost any item a 'prohibited item' in immigration detention, including mobile phones.[125] Mobile phones are essential to the ability of detainees to connect with family, friends and legal representatives. They are also critical to protecting against arbitrary detention. Detainees may access alternatives to personal smartphones, such as desktop computers and landline phones, but these devices do not necessarily ensure privacy, may have inadequate internet connection and can be poorly maintained.

6.6 While the abovementioned oversight mechanisms are important, they do not have the capacity to effect the release of any person found to be detained arbitrarily. Moreover, under the mandatory immigration detention system, detainees have very few opportunities to challenge the lawfulness of their detention – they can only challenge whether or not they are an unlawful non-citizen and, for a small number of people, whether they fall within the *NZYQ* cohort. The strongest protection would be legally enforceable rights to freedom from arbitrary detention and from cruel, inhuman and degrading treatment or punishment in detention.

6.7 **We request that the Working Group:**

- **discuss with the Australian government the importance of legally enforceable rights to freedom from arbitrary detention, and from cruel, inhuman and degrading treatment and punishment, as essential means of protecting the rights of detained people and ensuring Australia's compliance with its international obligations; and**
- **recommend that the Australian government remove the limits on people in immigration detention having access to personal mobile phones.**

[124] For a summary of this research, see Amy Nethery and Rosa Holman, 'Secrecy and Human Rights Abuse in Australia's Offshore Immigration Detention Centres' (2016) 20(7) *International Journal of Human Rights*, 1018.
[125] *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Act 2024* (Cth). See also HRLC, 'Explainer: Albanese Government's Mobile Phone Ban Bill' (8 November 2024).

# 7 Conditions in immigration detention

## *A Impacts of long-term detention*

7.1 Prolonged and indefinite detention has severe negative effects on the physical and mental health of detained adults and children.[126] Prolonged detention has been shown to cause or exacerbate psychosocial disability.[127] The AHRC notes that '[p]rolonged detention is a risk factor for mental ill-health, as the negative impacts of immigration detention on mental health tend to worsen as the length of detention increases'.[128] Extensive research has shown that there is no safe level of immigration detention, and the negative effects of immigration detention persist indefinitely following release.[129] These risks are a major concern given the length of time people are held in closed detention and other features of the mandatory immigration detention regime detailed above. One doctor consulted for this report said immigration detention 'equates to a toxic exposure which is associated with significant morbidity and mortality, arguably in the same sense that asbestos, cigarettes or vapes are toxins'.

## *B Securitisation and the use of force*

7.2 Since the formation of Australian Border Force in 2015, the immigration detention environment has become more securitised. Detention facilities have 'hardened' through the addition of high fences and other security features.[130] In some newly built or refurbished compounds, the furniture is made from hard materials (often metal) and fixed in place.[131] These physical changes have made the conditions of detention more prison-like. Infrastructure issues at some detention facilities have rendered them 'no longer fit for purpose'.[132]

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[126] Zachary Steel et al, 'Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees' (2006) 188(1) *British Journal of Psychiatry* 58; Louise K Newman, Michael Dudley and Zachary Steel, 'Asylum, Detention, and Mental Health in Australia' (2008) 27(3) *Refugee Survey Quarterly* 110; Guy J Coffey et al, 'The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum' (2010) 70(12) *Social Science & Medicine* 2070; ASRC, 'Cruelty by Design: The Health Crisis in Offshore Detention' (July 2024); AHRC, 'Inspections of Australia's Immigration Detention Facilities: 2019 Report' (3 December 2020) ('2019 Inspection Report'); Joint Select Committee on Australia's Immigration Detention Network, 'Final Report' (March 2012); Philippa Specker et al, 'Investigating whether Offshore Immigration Detention and Processing are Associated with an Increased Likelihood of Psychological Disorders' (2025) 226(3) *British Journal of Psychiatry* 189; Kyli Hedrick et al, 'Self-Harm in the Australian Asylum Seeker Population: A National Records-Based Study' (2019) 8 *Population Health* 100452:1–9; Ben Doherty, 'Offshore Detention Makes it 20 Times More Likely Asylum Seekers will Suffer PTSD, Australian Study Finds', *The Guardian* (12 November 2024).

[127] RCOA Royal Commission Submission (n 106).

[128] AHRC, '2019 Inspection Report' (n 127) 134.

[129] Isabella Priestley et al, 'The impact of immigration detention on children's mental health: systematic review' (2025) *BJPsych* 1; Trina Filges et al, 'The impact of detention on the health of asylum seekers: An updated systematic review' (2024) 20(3) *Campbell Systematic Review* e1420; Bafreen Mohammad Sherif et al, 'A descriptive, prospective cohort study of the somatic and psychological health impacts of immigration detention on asylum seekers and refugees' (2024) *Research Square preprints*; Shidan Tosif et al, 'Health of children who experienced Australian immigration detention' (2023) 18(3) *PLoS One* e0282798; Irina Verhülsdonk et al, 'Prevalence of psychiatric disorders among refugees and migrants in immigration detention: systematic review with meta-analysis' (2021) 7(6) *BJPsych Open* e204; Martha von Werthern et al, 'The impact of immigration detention on mental health: a systematic review' (2018) 18 *BMC Psychiatry* 382.

[130] AHRC, 'Yongah Hill Immigration Detention Centre Inspection Report' (April 2024) ('Yongah Hill').

[131] AHRC, 'Risk Management in Immigration Detention' (2019) 36–7.

[132] AHRC, Yongah Hill (n 132) 5.

7.3 Other examples of increased securitisation include:

- the routine (and at times excessive) use of force against detainees;[133]
- the routine and inappropriate use of mechanical restraints, including excessive handcuffing for offsite appointments and transfers between detention facilities;
- over-regulation of movement within detention facilities;
- limited access to services and facilities, including outdoor spaces;
- frequent and invasive body and room searches;
- new and expanded search and seizure powers which allow mobile phones, SIM cards, computers and other electronic devices to be seized;[134]
- heavy-handed and punitive responses to perceived behavioural challenges, including the frequent use of isolation and solitary confinement;
- the use of fire extinguishers and other firefighting equipment against detainees;
- administrative barriers, confusing rules and significant scrutiny of visitors; and
- fewer activities and heightened surveillance on excursions.[135]

7.4 Decisions about placing and managing people in detention are increasingly determined through a risk management lens (as opposed to a human rights lens). Serco, the private company previously contracted to manage immigration detention facilities in Australia,[136] developed and deployed a Security Risk Assessment Tool (SRAT) which classified detainees as low, medium, high or extreme risk. These risk classifications determined whether detainees were held in high-security compounds and the extent of physical restraints during transfer to medical appointments and between facilities. They were not transparent, nor were they subject to independent review or legal challenge. Many people in detention did not know the SRAT existed; if they did, they did not know their risk rating or the reasons for that rating, nor did they have an opportunity to correct errors in the information relied upon in SRAT reports.[137] The SRAT was criticised by human rights groups, advocates and detainees as an 'abusive' and 'blunt instrument', with questionable reliability and accuracy.[138] A review by the Commonwealth

[133] Commonwealth NPM, 'Access All Areas: Monitoring Places of Detention 2022–23' (May 2024); AHRC, 'Use of Force in Immigration Detention' (2019). In FY21–22, there were 7,017 use of force incidents in onshore immigration detention centres. Of these, at least 5,202 or 74.1% were 'planned' uses of force. In FY23–24, there were at least 5,558 use of force incidents in onshore immigration detention centres. Planned use of force incidents made up 4,624 or 83.2% of overall use of force incidents: RCOA, 'Statistics on People in Detention in Australia' (4 May 2025); Senate Standing Committee on Legal and Constitutional Affairs, 'Supplementary Estimates: Incidents Involving Use of Force in Detention Facilities' (2024).

[134] See discussion in Part 6.

[135] For further context, see sources at n 135 and Australia OPCAT Network, 'The Implementation of OPCAT in Australia', Submission to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Working Group on Arbitrary Detention (January 2020) ('OPCAT Submission'); Commonwealth Ombudsman, 'Monitoring Immigration Detention: The Ombudsman's Oversight of Immigration Detention, 1 July 2020 to 30 June 2021' (2022) ('2020–21 Monitoring Report'); Commonwealth NPM, 'Monitoring Commonwealth Places of Detention: Annual Report, 1 July 2021 – 30 June 2022' (2023); AHRC, 'Yongah Hill' (n 132); Michelle Peterie, *Visiting Immigration Detention: Care and Cruelty in Australia's Asylum Seeker Prisons* (Bristol University Press, 2022); Jesuit Social Services, 'The Harsh Reality of Onshore Immigration Detention in Australia' (July 2019); Tony Burke, 'Boosting Detention Centre Search Powers' (12 October 2024).

[136] Serco, a British multi-national company, was contracted to manage immigration detention services for 15 years. The Australian government has now finalised a five-year contract with Secure Journeys, a subsidiary of USA company Management & Training Corporation Pty Ltd to run Australia's onshore facilities: Ariel Bogle and Christopher Knaus,'Labor to pay $2.3bn to controversial US prison operator subsidiary to run onshore detention', *The Guardian* (11 December 2024).

[137] In 2023, the Australian Information Commissioner and Privacy Commissioner handed down a determination in relation to a complaint made by 'AEZ' against Serco. The Commissioner found that Serco had interfered with AEZ's privacy by failing to 'take reasonable steps to ensure the personal information it collected about [him] was accurate, up-to-date and complete, in breach of APP 10.1': *AEZ and Serco Group Pty Limited (Privacy)* [2023] AICmr 93, [159] (Commissioner Falk).

[138] Ariel Bogle, 'Revealed: The Secret Algorithm that Controls the Lives of Serco's Immigration Detainees', *The Guardian* (13 March 2024).

Ombudsman similarly found that the SRAT was not based on sound scientific research on the likelihood of reoffending and of violent behaviour.[139]

7.5 The securitisation of detention facilities must be assessed in the context of the new laws imposing restrictions on the *NZYQ* cohort and criminalising non-cooperation with removal from Australia.[140] These laws could see thousands of people detained or re-detained in increasingly harsh closed detention environments.

**Case study: Yasir**

As a young child, Yasir and his family were imprisoned for two years as 'enemies of the state' in his home country. They were tortured and kept in handcuffs. Yasir says: 'The things that happened in jail changed me forever. I can't even look at handcuffs without feeling like I'm going to have a seizure.'

Yasir fled to Australia in 2013 and was detained on Christmas Island and at Yongah Hill for almost a decade between 2013 and 2022. During this period, he was diagnosed with PTSD and other physical health issues. In order to attend offsite medical appointments, guards insisted that Yasir be handcuffed. Being handcuffed led to Yasir having seizures. He says: 'I would feel terrible. I would start shaking and sometimes vomit or have seizures and injure myself'. Yasir chose to miss specialist medical appointments to avoid being handcuffed.

Yasir says: 'Even though I have missed important investigations and treatment, I would rather die than agree to handcuffs. The doctors would ask: "Why did you refuse to go to the appointment?" and I would say "I didn't refuse the appointment, I refused the handcuffs".'

Yasir asked the guards to stop handcuffing him. He says he has never been told why handcuffs are necessary, given the guards have let him attend other appointments without restraints. Numerous doctors and counsellors have written reports advising that Yasir should not be restrained, given his mental health condition.

Documents obtained from the Department of Home Affairs through Freedom of Information requests show that the Department was aware of Yasir's mental health condition, that he was a survivor of torture and/or trauma, and that the use of restraints might exacerbate his trauma symptoms. Nevertheless, the Department and its then security contractor, Serco, continued to insist that Yasir be handcuffed to attend offsite medical appointments.

### *C Healthcare in detention*

7.6 There is a 'legislative vacuum' around the provision of health care to people in immigration detention. Neither the *Migration Act* nor the *Migration Regulations* require the provision of a reasonable standard of healthcare in immigration detention.[141] By contrast, there are laws which ensure that people in prisons have a right to reasonable

[139] Commonwealth Ombudsman, 'Immigration Detention Oversight: Review of the Ombudsman's Activities in Overseeing Immigration Detention, January to June 2019' (February 2020) 17 [5.37].
[140] See above Parts 3B and 3D for further details on these legislative regimes.
[141] 'OPCAT Submission' (n 137) 56. Regulation 5.35 refers to the medical treatment of people in immigration detention, but only in the context of the Secretary's power to take certain steps when there is a serious risk to the health and life of a detainee. It does not address the quality or standard of healthcare in detention: Migration Regulations, reg 5.35.

health care.[142] Longstanding and systemic failures to provide access to a reasonable standard of healthcare in immigration detention have been consistently documented.[143] Key concerns relevant to the arbitrariness of measures of deprivation of liberty include: (i) arbitrary transfers within the immigration detention network, often with little or no notice, disrupting continuity of care, specialist appointments and ongoing treatment; and (ii) the use of handcuffs on detainees travelling to offsite medical appointments, sometimes against medical advice, which can deter detainees from attending medical appointments or trigger a PTSD response which interferes with the provision of medical care.[144]

7.7 There are also longstanding concerns about the use of 'high care' accommodation units in immigration detention centres.[145] These units are purportedly used for quarantine and other health purposes. However, they have been described by the AHRC as 'prison-like, harsh and highly restrictive, and unsuitable for quarantine'.[146]

7.8 **We request that the Working Group:**

- **reiterate the relationship between the arbitrariness of detention and conditions of detention, and in particular how the fact of condition being arbitrary can be conducive to poor conditions of detention; and**
- **request that the Australian government review the use of 'high care' accommodation units, and implement national policies requiring that they only be used when absolutely necessary, as a measure of last resort after all alternatives have been considered**.

**Case Study: Vincent**

Vincent was born and raised in Vietnam and came to Australia in 1990. After living in the community and later being imprisoned, he was detained at Yongah Hill in April 2018. Vietnamese is his first language and he speaks limited English.

Vincent was first diagnosed with Hepatitis C in the 1990s. He self-advocated on his arrival at Yongah Hill and notified medical staff of his diagnosis alongside liver problems. He attended medical appointments with IHMS, but did not have access to an interpreter between his arrival in April 2018 and March 2019. Vincent's request for Hepatitis C treatment when he initially entered detention remained unanswered for over a year and the doctor refused numerous requests to prescribe the relevant medication.

Vincent was extremely distressed that medical staff were denying him access to Hepatitis C medication. His mental health deteriorated. He says: 'Being denied treatment made me feel like I was dying. I thought that if I did not receive proper medical treatment for Hepatitis C

[142] Pubic Interest Advocacy Centre (PIAC), 'In Poor Health: Health Care in Australian Immigration Detention' (2018) ('In Poor Health'). PIAC is now the Justice and Equity Centre.
[143] Ibid; PIAC, 'Healthcare Denied: Medevac and the Long Wait for Essential Medical Treatment in Australian Immigration Detention' (December 2021); Australian National Audit Office, 'Delivery of Health Services in Onshore Immigration Detention: Department of Immigration and Borden Protection' (2016).
[144] PIAC, 'In Poor Health' (n 144); PIAC, 'Healthcare Denied' (n 145); AHRC, 'Yongah Hill' (n 132); Justice and Equity Centre, 'Ensuring Access to Hepatitis C Treatment in Immigration Detention' (undated); Commonwealth Ombudsman, '2020–21 Monitoring Report' (n 137).
[145] AHRC, 'Management of COVID-19 risks in immigration detention' (16 June 2021) 39; AHRC, 'Yongah Hill' (n 132) 49.
[146] AHRC, 'Management of COVID-19 risks in immigration detention' (n 147) 39.

then I would not have much time left to live. I couldn't understand why I wasn't allowed to go see a General Practitioner in the Australian community to fix this problem.'

By late October 2019 – 18 months into his immigration detention – he was made aware that other detainees received Hepatitis C treatment. Vincent was hurt, frustrated and confused over why he had not received treatment. He was asked to take numerous blood tests, but nobody explained to him why they were necessary, nor did anybody explain his test results.

Vincent only began a course of treatment for Hepatitis C after obtaining legal assistance in April 2020, nearly two years after his entry into immigration detention. Even still, Vincent was made to attend some early morning appointments which was not conducive to his sleep pattern (because he had insomnia). There were times when he missed his appointments (sometimes only by 15 minutes) and was denied access to the medication.

**Case Study: Abdullahi and Faduma**

In November 2023, Abdullahi and Faduma arrived in Australia by plane on documents which they believed to be valid, but were in fact invalid. The couple were detained and then transferred to separate areas of an immigration detention centre. Faduma was pregnant.

Later in November, Faduma was hospitalised for bleeding complications during her pregnancy. A month later, Faduma experienced bleeding again. Her legal representatives urgently requested that the couple be considered for community detention or released on bridging visas into the community. The detention environment and separation of the couple were not conducive to Faduma's health and pregnancy.

In January 2024, Faduma experienced a miscarriage in detention. She experienced severe depression and requested to be reunited with her husband, Abdullahi, who was her primary support network. She was not eating and was suffering from kidney problems as a result of gender-based violence in her country of origin. Abdullahi was seriously concerned for Faduma's welfare and did not sleep for multiple nights in a row. Their legal representatives continued to make requests for their reunion and release from detention to no avail.

After three months of being detained separately, Abdullahi and Faduma were moved to a family compound in March 2024, where they could reside together. However, this compound was socially isolated from others and the accommodation had not been in use for at least 7 years. They were under 24/7 security monitoring in the presence of guards, only able to leave accommodation once a day within the region of 5 metres and accompanied by guards. Additionally, the welfare team was not permitted into the accommodation to provide support, entertainment or culturally appropriate food.

In total, Abdullahi and Faduma were detained for approximately four months. During this time, they received limited communication or support from detention staff and the Department. Multiple requests to be considered for community detention went unanswered.

# 8 Detention at sea

8.1 Asylum seekers trying to reach Australia by sea without a visa and other non-citizens may be deprived of liberty at sea, both within and outside Australian territorial waters. The Australian government provides very little information about what it calls 'on water matters', including the interception of asylum seeker vessels and detention of people at sea. The detention of non-citizens at sea is particularly concerning because of the:

- inherent vulnerability of non-citizens detained by a State in a maritime environment;
- lack of transparency around detention-at-sea practices;
- lack of effective or enforceable rights of non-citizens detained at sea, especially those who are detained in secret; and
- limited opportunities for independent oversight of detention at sea.

8.2 Monitors from the Commonwealth NPM conducted semi-announced visits to two Australian vessels in Western Australia in 2024.[147] Neither vessel was designed to accommodate detained persons at sea, but both had been 'retrofitted' with 'temporary detention facilities' in which people could be held indefinitely.[148] The NPM was told that improvements had been made to the detention facilities, but concluded that they were not, and had never been, appropriate for detention.[149] In particular, the NPM noted a lack of furniture or beds, inappropriate ablution facilities, and general conditions falling 'well short' of what was necessary to 'meet all requirements of health'.[150] The NPM requested, but was not provided with, the policy and guidance documents governing detention of people at sea.[151]

8.3 Non-citizens deprived of liberty at sea are among the most vulnerable of the Australian detention population because they may be held in secret without access to lawyers, independent monitors and other support services. At a minimum, Australia should accept and act on the recommendations made by the NPM, including the recommendation to develop a full suite of human rights-compliant policies and procedures for detention at sea. If, as appears likely, the detention of asylum seekers at sea cannot be conducted in accordance with Australia's international obligations, it should not occur at all.

8.4 **We request that the Working Group:**

- **discuss detention at sea with the Australian government as a matter of priority;**
- **recommend that the Australian government accept the recommendations made by the Commonwealth NPM with respect to detention at sea;**
- **reiterate that Australia is responsible under international law for violations of its human rights obligations with respect to asylum seekers outside its territory and subject to its effective control or jurisdiction, including on the high seas; and**
- **invite the Australian government to demonstrate, to the Working Group's satisfaction, that Australia's policy and practice of detention at sea complies**

[147] Commonwealth NPM, 'Post Visit Summary: Merchant Vessel (MV) *Besant* and Australian Defence Vessel (ADV) *Guidance*' (6 March 2025).
[148] Ibid, 3–4.
[149] Ibid, 4.
[150] Ibid, 8–9.
[151] Ibid, 4.

**with its international obligations, including the obligations to ensure the right to life, not to subject people to arbitrary detention, not to subject people to torture or cruel, inhuman or degrading treatment or punishment, and to respect the rights of certain groups including women, children and people with disabilities.**

# 9 Detention in, and following return from, Nauru and PNG

## *A Offshore processing of asylum seekers*

9.1 In August 2012, Australia reintroduced 'offshore processing' arrangements in Nauru and PNG. These arrangements have been extensively criticised for exposing asylum seekers and refugees to significant human rights violations.[152] In the interests of space, this submission notes and reiterates these criticisms, but focuses on issues of direct relevance to the Working Group's mandate and visit in 2025.

9.2 Asylum seekers who arrive in Australia by boat without a visa are either summarily returned to their country of origin or departure, or transferred to offshore processing in Nauru.[153] International experts have repeatedly affirmed that Australia continues to exercise jurisdiction and have human rights obligations with respect to people transferred offshore.[154] Most recently, the UN Human Rights Committee found that Australia was responsible for arbitrarily detaining asylum seekers in Nauru.[155] Australia's persistent denial of these obligations is a matter of grave concern.

[152] See e.g. Committee against Torture (CAT), *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Australia*, UN Doc CAT/C/AUS/Co/4-5 (23 December 2014); UN Human Rights Council (HRC), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E Méndez*, UN Doc A/HRC/28/68/Add.1 (5 March 2015); Senate Legal and Constitutional Affairs References Committee, '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' (April 2017); RCOA and Amnesty International, 'Until When? The Forgotten Men of Manus Island' (November 2018); RCOA and ASRC, 'Australia's Man-Made Crisis on Nauru: Six Years On' (September 2018); HRC, *Report of the Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Australia*, UN Doc A/HRC/37/51/Add.3 (22 October 2018); UNHCR, 'United Nations Observations: Australia's Transfer Arrangements with Nauru and Papua New Guinea (2012-Present)' (2019); Human Rights Watch, 'Australia Universal Periodic Review Outcome Statement' (8 July 2021); UNHCR, 'UNHCR Statement on 8 Years of Offshore Asylum Policy' (19 July 2021); Madeline Gleeson and Natasha Yacoub, 'Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia' (Kaldor Centre, Policy Brief 11, August 2021) HRLC, Kaldor Centre for International Refugee Law and RCOA, '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, 75th Session, 2022' (3 October 2022); ASRC, 'Cruelty by Design' (n 127).

[153] Between 2012 and 2014, Australia also transferred asylum seekers to PNG. While those arrangements formally ended in December 2021, a number of men transferred at that time remain there today: see Part 9(D).

[154] Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Fifth Periodic Report of Australia*, UN Doc E/C.12/AUS/CO/5 (11 July 2017) 4 [18]; Human Rights Committee (CCPR), *Concluding Observations on the Sixth Periodic Report of Australia*, UN Doc CCPR/C/AUS/CO/6 (1 December 2017) 7 [35]; Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia*, UN Doc CERD/C/AUS/CO/18-20 (26 December 2017) 7 [30]; Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Eighth Periodic Report of Australia*, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018) 17–8 [54]; CAT, *Concluding Observations on the Sixth Periodic Report of Australia*, UN Doc CAT/C/AUS/CO/6 (5 December 2022) 9 [29]. See also Gleeson and Yacoub, 'Cruel, Costly and Ineffective' (n 154) 12.

[155] CCPR, *Nabhari v Australia*, UN Doc CCPR/C/142/D/3663/2019 (22 January 2025); CCPR, *MI et al v Australia*, UN Doc CCPR/C/142/D/2749/2016 (23 January 2025).

9.3 **We request that the Working Group:**

- **reiterate that Australia is responsible under international law for violations of its human rights obligations with respect to asylum seekers and refugees transferred offshore;**
- **invite the Australian government to demonstrate, to the Working Group's satisfaction, that Australia's offshore processing policies comply with its international obligations; and**
- **encourage the Australia government to implement the recommendations of the Human Rights Committee by making full reparation to individuals who were previously arbitrarily detained offshore and taking all steps necessary to prevent similar violations from occurring in the future.**

9.4 After bringing everyone who had been transferred to Nauru back to Australia in mid-2023, Australia began sending new arrivals to Nauru again in late 2023. These transfers marked the first time since 2014 that new asylum seekers had been sent offshore. Currently, almost 100 people are believed to be held on Nauru. The lack of independent oversight of their treatment makes it difficult to ascertain specific details about their reception conditions (including whether they are detained or subject to other restrictions on their liberty) and the progress of their asylum claims.

9.5 **We request that the Working Group seek information from the Australian government about the status of these asylum seekers as a matter of urgency and, if possible, visit Nauru to assess the conditions and legality of any detention.**

9.6 People transferred to Nauru since 2023 report being subject to closed detention at the Regional Processing Centre (RPC) on arrival. While in closed detention, they have limited access to private communication devices. Smartphones have been replaced with basic brick phones with only a direct line to Melbourne Training Corporation (Security) and IHMS. People detained in Nauru are unable to contact family, lawyers and other support persons. The lack of facilities to video call family members is causing distress. Communal computers have restricted access to certain websites, including human rights organisations and other bodies which might support detained persons to challenge the legality or conditions of their detention.

9.7 After a period of detention in the RPC, many people are subsequently transferred to allocated residential units in the community in Nauru. While not reaching the threshold of closed detention, the conditions of these residential allocations amount at least to a restriction of movement, and may amount to a form of deprivation of liberty.

9.8 Other issues of concern to people transferred to Nauru include:

- the lack of information and transparency around when people will be released from detention and asylum processing;
- the lack of resettlement options for people recognised as refugees;
- the sense of being pressured to accept return and resettlement packages, including in some cases before being given an opportunity to seek asylum;
- the lack of work rights and inadequacy of financial support for asylum seekers in the community;
- food insecurity and the lack of access to clean water;
- substandard accommodation in the community, including in residences infested with pests and with no working whitegoods and dirty and stained beds; and

- the lack of appropriate or adequate healthcare, including limited access to specialist assessment and treatment, limited and delayed access to dental care, no inpatient psychiatric care facilities, no MRI equipment, no after hours or weekend primary care, no emergency care and no air ambulance stationed on the island.[156] These limitations are exacerbated by a telehealth ban which prohibits foreign health practitioners from providing telemedicine to people in Nauru.[157]

9.9 Given the experiences of asylum seekers and refugees in Nauru in the past, there are concerns that the people there now will continue to experience significant human rights violations and suffer irreparable harm. Asylum seekers previously detained offshore presented with extreme levels of mental illness. In 2018, Médecins Sans Frontières reported that 'the mental health suffering on Nauru [was] among the worst [it had] ever seen, including in projects providing care for victims of torture'.[158] Another recent study concluded that people detained offshore were 20-times more likely to develop a post-traumatic stress disorder than someone who was not detained or who was detained in Australia for less than six months.[159]

### *B Removal of people in the NZYQ cohort to Nauru*

9.10 See discussion at Part 3(F) above.

### *C Detention in Australia of people evacuated or transferred back from Nauru and PNG*

9.11 Between 2018 and 2023, large numbers of asylum seekers and refugees were medically evacuated or otherwise transferred back to Australia from Nauru and PNG for health and other reasons. They were designated as 'transitory persons' under Australian law and subject to mandatory detention upon return to Australia,[160] even if they had previously been living in the community in Nauru or PNG. In 2021, PIAC (now the Justice and Equity Centre) published a report on the treatment and detention of people evacuated back to Australia.[161] That report detailed a range of concerns including:

- the indefinite detention of people in hotels and motels which were not fit for purpose;
- poor detention conditions leading to worsening physical and mental health, including a lack of access to adequate fresh air, sunlight, activities and visitors; and
- inappropriate and disproportionate restrictions on liberty imposed as purported measures to manage the risk of COVID-19 outbreaks, including isolation and limits on freedom of movement, socialising, activities and visits, all of which are critical to health and well-being in detention.

9.12 The prolonged detention of people in APODs — hotels, motels and other facilities that are not designed for long-term detention — is arbitrary and exposes people to serious risks of harm. These risks are exacerbated when the location of these facilities is kept secret and when detainees are unable to access appropriate legal advice and challenge

[156] ASRC, 'Cruelty by Design' (n 127).
[157] *Health Practitioners (Telemedicine Prohibition) Regulations 2019* (Nauru) regs 4–5.
[158] Médecins Sans Frontières, 'Indefinite Despair: The Tragic Mental Health Consequences of Offshore Processing on Nauru' (December 2018) 4.
[159] Specker et al, 'Investigating' (n 127); Doherty, 'Offshore Detention' (n 127).
[160] Migration Act, ss 5 (definition of 'transitory person'), 198B.
[161] PIAC, 'Healthcare Denied' (n 145).

the legality of their detention. The use of these facilities has been widely condemned.[162] Out of desperation, some people requested return to Nauru or PNG, regardless of their ongoing medical needs, and at least 130 people commenced court proceedings seeking to compel their removal from Australia as an alternative to arbitrary detention (though these cases were largely unsuccessful).[163]

9.13 **We request that the Working Group review Australia's practice of using APODs for detention, especially for the indefinite detention of people who are transferred back to Australia after a period of living in the community in Nauru or PNG.**

### *D People remaining in Papua New Guinea*

9.14 In December 2021, Australia formally ended its offshore processing arrangements with PNG. While the immediate task of providing for the men who remained there at that time fell to PNG, Australia continued to fund their settlement services. In November 2023, Australian financial assistance ended, leaving the small group of refugees in PNG in urgent need of food, accommodation, income support, work rights and medical expenses.[164] They faced evictions, financial hardship, and a rapid decline in their mental and physical health.[165] In July 2024, Australia announced that it would reinstate financial support to the PNG cohort. PNG threatened to terminate its support for the settlement arrangement and send the men back to Australia unless further funds were provided.[166] Currently, approximately 37 men remain in PNG, some of whom have wives or partners and children. Some report that the financial assistance provided by Australia is low and insufficient to cover rental and medical costs.[167]

9.15 In October 2023, government officials in both PNG and Australia acknowledged that 16 refugees needed urgent medical care and would need to be transferred to Australia.[168] Additionally, an open letter signed by more than 500 doctors and health professionals in October 2023 called on the Australian government to provide urgent medical evacuation for those concerned in PNG.[169] These transfers do not yet appear to have occurred.

9.16 **We ask the Working Group to discuss the cases of the 37 men in PNG with the Australian government, and to receive guarantees that they will not be subject to arbitrary detention either in PNG or upon return to Australia for medical care or other purposes.**

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[162] AHRC, 'Use of Force' (n 135).
[163] Sowaibah Hanifie, 'Medevac Refugees Return to Nauru after More than a Year in Australian Hotel Detention', *ABC News* (18 March 2021); Nino Bucci, 'Court Ruling on Detention of Iranian Man in Australia May Clear Path for Release of 130 Refugees', *The Guardian* (3 February 2021).
[164] Amy Nethery and Jemima McKenna, 'Dozens of Refugees Are Still Stranded in Precarious Situations in PNG – and Support from Australia is Dwindling', *The Conversation* (18 November 2024).
[165] Ibid; Paul Karp and Ben Doherty, 'Ex-Manus Island Detainees Stranded in PNG Threatened with Eviction over Unpaid Rent', *The Guardian* (11 September 2024).
[166] Rebecca Kuku, Ben Doherty and Paul Karp, 'PNG Threatens to Send Refugees Back to Australia Unless it Keeps Funding Humanitarian Program', *The Guardian* (7 October 2023).
[167] Nethery and McKenna, 'Dozens of Refugees' (n 166).
[168] ASRC, 'Behrouz Boochani Says Lives at Risk in PNG as Albanese Government Ignores Stranded Refugees' (13 December 2023).
[169] 'An Open Letter to the Australian Parliament to Support Immediate Evacuation of Refugees Remaining in Papua New Guinea (PNG)' (31 October 2023).

# 10 Recommendations to the Working Group

10.1 Regarding the **mandatory immigration detention of 'unlawful non-citizens'**, we request that the Working Group:

- reaffirm that immigration detention is an exceptional measure that should only be used as a measure of last resort, after all viable alternatives have been considered, and on the basis of an individualised assessment of whether detention is reasonable, necessary and proportionate to a legitimate purpose;
- recommend that the Australian government introduce procedural safeguards to ensure that the original decision to detain complies with its obligations under international law and strict, legally enforceable time limits and mechanisms for effective, periodic and independent review; and
- recommend that the Australian government introduce a legally enforceable obligation not to detain children for immigration purposes under any circumstances.

10.2 Regarding **detention as a result of visa cancellation on 'character' grounds**, we request that the Working Group:

- recommend to the Australian government that all revocation powers be reviewable by the Tribunal and the removal from the Migration Act of Ministerial powers to 'override' character-based decisions made by the Tribunal; and
- advise the Australian government on how the character-based visa cancellation regime should be amended to ensure that children, long-term Australian residents, stateless persons and persons found to be owed protection are not detained contrary to Australia's international obligations.

10.3 Regarding the ***NZYQ*** **cohort and harsh visa conditions upon release from immigration detention**, we request that the Working Group:

- seek urgent review of the circumstances of each person who is in immigration detention and the immediate release of all people who are part of the *NZYQ* cohort or otherwise facing indefinite and arbitrary detention; and
- recommend reform of the BVR regime to remove the restrictive visa conditions, including repeal of the conditions imposing electronic monitoring and curfews.

10.4 Regarding the **criminalisation of non-cooperation with removal from Australia**, we request that the Working Group recommend the repeal of the power to issue a 'removal pathway direction', or at a minimum, the repeal of the criminal penalties for a failure to comply with a direction.

10.5 Regarding **community safety orders**, we request that the Working Group advise the Australian government on the potential incompatibility of these orders (and particularly preventive detention orders) with international law.

10.6 Regarding the **lack of post-release support for BVR holders**, we request that the Working Group advise the Australian government on international best practice for reducing the risks of re-detention of people who have spent protracted periods of time in detention of any type.

10.7 Regarding the **'third country reception' arrangements with Nauru for the *NZYQ* cohort**, we request that the Working Group advise the Australian government on the potential incompatibility of these arrangements with international law.

10.8 Regarding **detention of people with disabilities**, we request that the Working Group:

- advise the Australian government on its obligations under international law with respect to the detention of people with disabilities, including its obligations under the Convention on the Rights of Persons with Disabilities and relating to the right to the highest attainable standard of physical and mental health, with a particular focus on any forced or non-consensual medical treatment; and
- ask the Australian government to provide an update on its progress in implementing the recommendations of the AHRC in its 2024 report on the Yongah Hill IDC.

10.9 Regarding **detention of women**, we request that the Working Group:

- ask the Australian government to provide an update on its progress in implementing the recommendations of the AHRC in its 2024 report on women in immigration detention; and
- ask the Australian government to demonstrate that, for any women who are in immigration detention and separated from their child/ren in the community, the government has considered all alternatives to detention and determined that detention is reasonable, necessary and proportionate in light of each woman's individual circumstances and taking into consideration the best interests of their child/ren.

10.10 Regarding **detention of transgender people**, we request that the Working Group advise the Australian government on international best practice and the importance of national guidelines and procedures for the placement, management and welfare of transgender people in immigration detention.

10.11 Regarding the **detention of people prior to and during deportation**, we request that the Working Group ask the Australian government to provide an update on its response to the Ombudsman's report and recommendations regarding the administration of chemical restraints without consent to people in immigration detention.

10.12 Regarding **oversight of immigration detention**, we request that the Working Group:

- discuss with the Australian government the importance of legally enforceable rights to freedom from arbitrary detention, and from cruel, inhuman and degrading treatment and punishment, as essential means of protecting the rights of detained people and ensuring Australia's compliance with its international obligations; and
- recommend that the Australian government remove the limits on people in immigration detention having access to personal mobile phones.

10.13 Regarding **conditions of detention**, we request that the Working Group:

- reiterate the relationship between the arbitrariness of detention and conditions of detention, and in particular how the fact of condition being arbitrary can be conducive to poor conditions of detention; and
- request that the Australian government review the use of 'high care' accommodation units, and implement national policies requiring that they only be used when absolutely necessary, as a measure of last resort after all alternatives have been considered.

10.14 Regarding **detention at sea**, we request that the Working Group:

- discuss detention at sea with the Australian government as a matter of priority;
- recommend that the Australian government accept and act on the recommendations made by the Commonwealth NPM with respect to detention at sea;
- reiterate that Australia is responsible under international law for violations of its human rights obligations with respect to asylum seekers outside its territory and subject to its effective control or jurisdiction, including on the high seas; and
- invite the Australian government to demonstrate, to the Working Group's satisfaction, that Australia's policy and practice of detention at sea complies with its international obligations, including the obligations to ensure the right to life, not to subject people to arbitrary detention, not to subject people to torture or cruel, inhuman or degrading treatment or punishment, and to respect the rights of certain groups including women, children and people with disabilities.

10.15 Regarding **offshore processing and detention in Nauru (and previously PNG)**, we request that the Working Group:

- reiterate that Australia is responsible under international law for violations of its human rights obligations with respect to asylum seekers and refugees transferred offshore;
- invite the Australian government to demonstrate, to the Working Group's satisfaction, that Australia's offshore processing policies comply with its international obligations;
- encourage the Australia government to implement the recommendations of the Human Rights Committee by making full reparation to individuals who were previously arbitrarily detained offshore and taking all steps necessary to prevent similar violations from occurring in the future; and
- seek information from the Australian government about the status of these asylum seekers as a matter of urgency and, if possible, visit Nauru to assess the conditions and legality of any detention.

10.16 Regarding **detention in Australia of people evacuated or transferred back from Nauru and PNG**, we request that the Working Group review Australia's practice of using APODs for detention, especially for the indefinite detention of people who are transferred back to Australia after a period of living in the community in Nauru or PNG.

10.17 Regarding **people remaining in Papua New Guinea**, we request that the Working Group discuss their cases with the Australian government and receive guarantees that they will not be subject to arbitrary detention either in PNG or upon return to Australia for medical care or other purposes.