



Senate Legal and Constitutional Affairs References Committee
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Dear Committee Secretary

The Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney (Kaldor Centre) is pleased to provide a submission to the inquiry into offshore processing and resettlement arrangements. The Kaldor Centre is the world's leading research centre dedicated to the study of international refugee law. Founded in October 2013, the Kaldor Centre undertakes rigorous research on the most pressing displacement issues in Australia, the Asia-Pacific region and around the world, and contributes to public policy by promoting legal, sustainable and humane solutions to forced migration.

This submission addresses three issues:

1. Part A sets out concerns about 'offshore processing', noting that it:
 - is not a necessary, effective or sustainable measure for deterring people from travelling by boat to Australia to seek asylum;
 - has been implemented in such a way as to violate Australia's international legal obligations;
 - is profoundly destructive to the physical and mental health of people subject to it; and
 - has an extraordinarily high operating cost which is difficult to forecast accurately and is well in excess of what it would cost to accommodate people in the Australian community.
2. Part B sets out concerns about the 'resettlement programs' in relation to Nauru, noting that:
 - excessive delays have exacerbated suffering and trauma experienced by refugees;
 - the resettlement agreements with the United States and New Zealand do not provide an appropriate solution for all refugees who were subject to offshore processing prior to 2023, or to those who arrived in Australia and were transferred to Nauru since 2023; and
 - the resettlement agreements do not promote responsibility-sharing or assist with global efforts to address the impacts of displacement on individuals, communities and host countries.
3. Part C sets out comments on Australia's responsibility for violations of international law.

The circumstances giving rise to this inquiry highlight, again, the need to rethink Australian refugee policy and explore alternatives to offshore processing and maritime interception that position Australia to manage future displacement in a lawful and sustainable way in line with Australian values of fairness, equality, freedom, respect for the rule of law and compassion for those in need.¹ To this end, we commend to the Committee the Kaldor Centre Principles for Australian Refugee Policy.²

Please do not hesitate to contact us if we can be of further assistance.

Yours sincerely,

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Senior Research Fellow
Andrew & Renata Kaldor Centre for International Refugee Law,

A. Concerns about Australia's 'offshore processing' arrangements

1. The Kaldor Centre has previously detailed at length our concerns about offshore processing of asylum claims.³ We provide a summary of these concerns below and welcome the opportunity to provide the Committee with further detail about each one.
2. **Offshore processing it is not a necessary, effective or sustainable measure for deterring people from travelling by boat to Australia to seek asylum.** It does not 'stop the boats', 'break the business model' of people smugglers or 'save lives at sea'. Successive Australian governments have argued that offshore processing is necessary to deter boat arrivals, either on its own or as an integral part of a 'suite' of border policies including maritime interception and pushbacks. However, these claims are not supported by the government's own data on arrivals over an extended period. We note in particular that:
 - 2.1. The best way to assess the effectiveness of offshore processing as a standalone policy is by looking at its first year of operation, between August 2012 and September 2013, when it existed independently of maritime interception and boat pushback policies. Between August 2012 and July 2013, when offshore processing was implemented with the possibility of settlement in Australia for people found to be refugees, more than 24,000 asylum seekers arrived in Australia by boat.⁴ This number was considerably higher than at any other time since the 1970s, when asylum seekers arriving by boat were first recorded in Australia (although still considerably *lower* than the annual number of asylum seekers arriving in many other countries and, arguably, well within Australia's capacity as a host country). Boats then continued to arrive after the ban on settlement in Australia was announced on 19 July 2013.⁵
 - 2.2. The number of people arriving by boat did not begin to drop until Australia began intercepting and turning back boats at sea with the launch of Operation Sovereign Borders (OSB) in September 2013. By the end of 2014, Australia had stopped transferring asylum seekers offshore completely, and instead had pivoted to this boat 'push back' policy. We note that boat push backs also raise serious legal, practical and humanitarian concerns, but do not detail those here given the limits of the Committee's mandate.⁶
 - 2.3. There is no evidentiary basis for the claim that, following the commencement of OSB, offshore processing continued to be a necessary part of a suite of deterrence measures. According to government data, no new asylum seekers were sent offshore for nine years between late 2014 and late 2023, despite the fact that people seeking asylum continued to arrive in Australia (or be intercepted at sea en route to Australia) in that period.⁷ Indeed, Australia began to go to extraordinary lengths to pursue maritime pushbacks despite the supposed availability of offshore processing.
 - 2.4. We argue that Australia undertook extraordinary measures to turn back boats rather than transfer asylum seekers to offshore processing because the government was aware that there was no more capacity for new arrivals offshore, and because it had realised that offshore processing was not an effective deterrent. We also note that, by 2017, government statements on offshore processing had shifted dramatically from active endorsement to distancing from the policy. In relation to the people transferred to Manus Island in Papua New Guinea (PNG), for example, Home Affairs Minister Peter Dutton stated 'I didn't put people on Manus ... I want to get people out of Manus. ... I want it closed'⁸ and claimed that Labor should be 'apologising ... for putting these people on Manus Island in the first place'.⁹
 - 2.5. Government data also shows that there were no spikes or increases in boat arrivals during the period that offshore processing was progressively wound down after 2014.¹⁰ For example, there were no reported increases in boat arrivals around the times of the announcement and implementation of the United States (US) resettlement deal. Nor were there increases in arrivals when resettlement opportunities to Canada, New Zealand and certain European States opened up, or when the majority of people offshore were moved back to Australia for medical and other purposes.
 - 2.6. Similarly, government data does not appear to show a decrease in boat arrivals following the resumption of transfers of new asylum seekers offshore in 2023, although this is difficult to determine precisely since the Department of Home Affairs stopped providing detailed boat arrival data in Senate Estimates.¹¹

2.7. The fact that offshore processing was not a deterrent for irregular maritime migration was entirely foreseeable. Historically, the vast majority of asylum seekers trying to reach Australia by boat have been found to be refugees,¹² and very few have had access to alternate safe and legal pathways to protection. As former Prime Minister Malcolm Fraser (who oversaw Australia's response to the Indochinese refugee crisis) observed in 2013 when he called for a Royal Commission into Australia's offshore processing policies: 'If they are genuine refugees, there is no deterrent that we can create which is going to be severe enough, cruel enough, nasty enough to stop them fleeing the terror in their own lands'.¹³

3. The way in which offshore processing has been implemented in Australia violates our international legal obligations as well as the good faith promises Australia made to the international community through its ratification of core international human rights treaties and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. We note in particular that:

3.1. Various aspects of the policy may result in a violation of the principle of *non-refoulement*, a fundamental principle of international law prohibiting the return or transfer of a person to any place where they would face persecution or real risks of other serious harm. Risks of *refoulement* arise from: the blanket application of the policy to all asylum seekers arriving by boat on or after 19 July 2013 (who are not otherwise returned directly to their country of origin or port of departure) without adequate screening for individual protection concerns in Nauru and previously PNG; the creation of a 'return-oriented environment' offshore, placing considerable pressure on people to return to their countries of origin even if they continue to fear persecution or other serious harm there ('constructive *refoulement*'); and the denial of durable solutions and family reunion to people recognised as refugees, which could compel them to return to serious harm in order to reunite with or rescue family members still in danger.¹⁴

3.2. The way in which Australia has implemented offshore processing in Nauru and PNG also appears to have violated our obligations:

- not to expose people to torture or cruel, inhuman or degrading treatment or punishment;
- to protect children's rights and take the best interests of the child into account as a primary consideration in all matters concerning them;
- to protect women against gender-based violence and other serious forms of discrimination against women; and
- to respect and ensure the rights of people with disabilities, including the right to freedom from discrimination.¹⁵

We welcome the opportunity to provide further information about these human rights violations, should it assist the Committee.

3.3. Every UN body, committee and special procedure that has reviewed Australia's offshore processing regime has expressed concern that Australia is contravening its obligations under international law.¹⁶ Most recently, both the UN Human Rights Committee and the UN Committee against Torture have found in three separate cases that Australia has violated its obligations under the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷ These views are also reflected in reports and decisions by parliamentary inquiries, the Australian Human Rights Commission, the Supreme Court of Papua New Guinea, and national and international non-governmental organisations.¹⁸

3.4. Australia has been referred to the International Criminal Court (ICC) at least six times since 2014 with respect to offshore processing. One communiqué submitted by a coalition of eminent international lawyers argued:

there is a reasonable basis to believe that public officials and corporate actors may have committed and may continue to commit the crimes against humanity of unlawful imprisonment, torture, deportation, persecution and other inhumane acts. These crimes are at the heart of Australia's immigration detention policy and constitute a widespread and

systematic attack against a civilian population, within the meaning of Article 7 of the Rome Statute of the International Criminal Court.¹⁹

In 2020, the Office of the Prosecutor (OTP) at the ICC declined to open an investigation, but determined that the conditions of detention offshore ‘appear to have constituted cruel, inhuman, or degrading treatment ... and the gravity of the alleged conduct thus appears to have been such that it was in violation of fundamental rules of international law’.²⁰

- 3.5. Despite the efforts of successive governments to create distance between Australia’s actions and the legal consequences of offshore processing, Australia has not been successful in quarantining itself from international and domestic legal challenges, nor in avoiding responsibility for legal violations. Australia’s obligations under international refugee and human rights law do not end with the physical transfer of asylum seekers out of Australian territory. This issue is addressed further in Part C of this submission below.

4. **Australia’s offshore processing regime has had a profoundly destructive effect on the physical and mental health of people subject to it.** We note in particular that:

- 4.1. In 2016, medical experts working with the United Nations High Commissioner for Refugees (UNHCR) reported that the rates of depression, anxiety and Post Traumatic Stress Disorder (PTSD) in the asylum seeker and refugee population on Manus Island was ‘amongst the highest recorded rates of any surveyed population’.²¹ They cautioned that the rate of undiagnosed and untreated mental health conditions created risks of ‘significant morbidity and potentially mortality from suicide’, and that people would ‘likely ... require considerable treatment to regain premorbid levels of functioning’ but that such treatment services were not accessible to them in PNG.²² At the same time, paediatricians reported that children transferred to Nauru were among the most traumatised they had ever seen.²³ In 2018, Médecins Sans Frontières (MSF) reported that ‘the mental health suffering on Nauru is among the worst MSF has ever seen, including in projects providing care for victims of torture’.²⁴
- 4.2. Australia was on notice about the significant and escalating harm resulting from offshore processing since 2012.²⁵ UNHCR, in particular, ‘consistently and repeatedly warned of the severe, negative health impacts of “offshore processing” which are as acute as they are predictable’,²⁶ and a team of medical experts warning as early as 2014 that there was ‘a significant and ongoing risk of child abuse, including physical and sexual abuse, in the detention environment [in Nauru] where large numbers of children and adults are held in crowded conditions without normal social structure or meaningful activities’.²⁷
- 4.3. Certain human rights violations were so severe and unjustifiable as to indicate systemic cruelty on their own. For example:
 - Babies and children were exposed to extreme levels of violence, abuse, neglect, assault and trauma, both within the detention centres on Manus Island and Nauru and subsequently in the community in Nauru, causing severe harm to their health, well-being and development. Parents reported that their children played with cockroaches because they had no toys.²⁸ Children as young as five reportedly attempted to kill themselves.²⁹ UNHCR reported children were wetting the bed until early-to-mid adolescence, and that the conditions were so severe that parents were no longer able to parent effectively, resulting in security guards and other staff ‘assuming functions as *de facto* parental figures’.³⁰ Despite being repeatedly warned of the potentially irreparable harm to children, Australia continued to transfer and hold them offshore and resisted evacuating critically ill children even when they had been determined to be in need of immediate psychiatric treatment in an in-patient child mental health facility.³¹ By 2018, children on Nauru were so traumatised that several began to present with a rare psychiatric condition known as traumatic withdrawal syndrome (or ‘resignation syndrome’), involving progressive social withdrawal and reluctance to engage in usual activities. The most serious stage of the disorder is when the child enters a profound withdrawal and is unconscious or in a comatose state, at which stage many were evacuated to Australia.³²

- Women and girls exposed to rape and sexual assault in Nauru were denied appropriate medical treatment, had no access to justice and were exposed to repeated attacks because Australia refused to move them to places of safety.³³
- Families were deliberately separated, including spouses and parents/children. Some separation occurred due to family members arriving separately before and after the 19 July 2013 policy change.³⁴ In other cases, families were separated by the Australian government's policy of medically evacuating critically ill refugees without their immediate family members, even where this policy resulted in children being separated from parents.³⁵
- Men who fled persecution on the basis of their sexual orientation in their home countries were knowingly sent to PNG, where consensual same-sex acts between men are criminalised.³⁶ Gay men reportedly faced harassment and abuse inside the Manus Island detention centre, with one gay man saying: 'I have seen many of them not leaving their rooms ... and I have seen them crying – some of them for days and days and days'.³⁷

4.4. Exposure to harsh and cruel conditions appears to have been an inherent part of the implementation and purpose of the 'Australian model' of offshore processing. The UN Special Rapporteur on the Human Rights of Migrants concluded after his visit to Australia and Nauru in 2017 that 'Australia's responsibility for the physical and psychological damage suffered by these asylum seekers and refugees is clear and undeniable', and it is a 'situation [that is] is purposely engineered by Australian authorities to serve as a deterrent for potential future unauthorized maritime arrivals'.³⁸

5. The cost of operating an offshore processing regime is extraordinarily high (particularly for a policy that has not met its stated aims), very difficult to forecast accurately and well in excess of what it would cost to accommodate people in the Australian community while their asylum claims are processed.³⁹

B. Concerns about Australia's 'resettlement programs'

6. In the context of refugee protection, 'resettlement' describes the process of transferring people who have been recognised as refugees from one asylum country to another country that is willing to admit them and provide protection on a permanent basis. It is usually pursued by UNHCR and States as a responsibility-sharing mechanism and a protection tool to meet the needs of refugees whose life, liberty, safety, health or fundamental human rights are at risk in an asylum country. There is no right to be resettled, nor is there any obligation on States to resettle refugees. There is a gulf between the number of refugees who may be in need of resettlement and those who can actually achieve it, with UNHCR estimating that on average less than 1% of the world's refugee population benefits from resettlement.⁴⁰
7. If the inclusion of 'resettlement programs' in the Committee's mandate refers to resettlement as understood in the refugee context, we make the following observations.⁴¹
8. Australia concluded agreements with the US and New Zealand for the resettlement of people recognised as refugees in Nauru and PNG in 2016 and 2022 respectively. The agreement with the US was for about 1250 resettlement places, 1115 of which had been filled by 31 August 2025.⁴² It is unclear whether the Trump administration will fulfil its commitment to resettle a further 135 refugees. The agreement with New Zealand was for 450 resettlement places, of which 324 had been filled and a further 63 had been approved by 31 August 2025.⁴³
9. While these agreements were welcomed at the time as providing a long-overdue solution to many refugees who first arrived in Australia seeking protection in 2013 and 2014 and had been living in limbo since then, excessive delays in finalising and then implementing these agreements have exacerbated the suffering and trauma experienced by refugees who fled persecution or other serious harm in their countries of origin and were subsequently exposed to significant human rights violations under Australia's offshore processing regime.
10. Additionally, the resettlement agreements with the US and New Zealand do not provide an appropriate solution for all refugees who were subject to offshore processing, including those who have family and other ties to Australia, or have other reasonable grounds for refusing transfer to

those countries. These ‘transitory persons’ require an immediate solution to their temporary status which, in most cases, should be permanent settlement in Australia.

11. The resettlement agreements also do not appear to provide a solution for any refugee who arrived in Australia and was transferred to Nauru since 2023. In relation to this group, we urge the government to learn from its experience of trying to secure third-country resettlement places for refugees who arrived in 2013 and 2014, and to ensure that refugees are provided timely access to durable solutions. In the absence of further resettlement agreements, these solutions should involve the option of permanent settlement in Australia.
12. Finally, the US and New Zealand resettlement agreements do not promote responsibility-sharing or assist with global efforts to address the impacts of displacement on individuals, communities and host countries. By refusing to provide permanent protection to *any* refugee who arrives in Australia by boat, and taking up resettlement places in other countries that could have been allocated to refugees in need in other parts of the world, Australia has sought to shift its responsibilities, modelled bad practice and exacerbated the impact of displacement on individuals and other States that host significantly larger numbers of displaced people with significantly fewer resources.
13. A more effective, humane and sustainable strategy would be to work with governments in the region to help provide refugees and other displaced people with basic rights and protections.⁴⁴ By improving conditions in these countries, we could reduce the need for onward travel to Australia. In return for governments in our region adopting reforms, Australia should significantly increase the number of people it resettles from these countries and create other ‘complementary pathways’ to protection. We should also explore the possibility of processing asylum claims in the region, to remove the need for people to seek protection by boat, and develop more strategic responses to acute crises and humanitarian emergencies.⁴⁵

C. Comments on Australia’s responsibility for violations of international law committed in the context of offshore processing and resettlement in Nauru

14. Under international law, Australia is responsible for all acts and omissions which are ‘attributable’ to it, and which constitute a breach of an international obligation in force for Australia.⁴⁶ If these two conditions are met, Australia will have committed an ‘internationally wrongful act’ engaging its responsibility, even if the relevant conduct was authorised or deemed lawful by Australia’s own national laws.⁴⁷ In certain circumstances, Australia may also be responsible for the conduct of partner States, such as Nauru.

Attribution

15. Attribution is the process of working out which people, entities or groups are acting on behalf of Australia for the purposes of determining responsibility under international law. For the purposes of attribution, it is irrelevant whether the relevant conduct occurs within or outside Australia territory.
16. Conduct is attributable to Australia if it is committed by an organ of the State, such as the Australian Parliament or the Executive, a government Department, individual politicians or Department officers (including Australian Border Force officers) or Australian police officers.⁴⁸ Conduct is also attributable to Australia if it is committed by persons or entities exercising elements of governmental authority (such as tasks relating to security, detention and immigration),⁴⁹ or if it is committed by any other person or group acting on the instructions of, or under the direction or control of, Australia in carrying out the conduct.⁵⁰ On these bases, the conduct of primary contractors and subcontractors involved in offshore processing and resettlement programs, and potentially other third parties, is attributable to Australia. In other words, these parties are acting as Australia for State responsibility purposes.
17. Conduct of an Australian organ or a person or entity empowered to exercise elements of Australian governmental authority is considered an act of Australia under international law if the organ, person or entity is acting in that capacity, even if it exceeds its authority or contravenes instructions.⁵¹

Breach of an international obligation in force for Australia

18. Australia will be responsible if the conduct of any organ, person or entity which is attributable to it constitutes a breach of an international obligation in force for Australia.
19. Australia's international obligations include those it has assumed under international refugee law and international human rights law, some of which are set out in paragraph 3.2 above. Previously, successive Australian governments have tried to argue that these obligations do not bind Australia in relation to its conduct offshore because it occurs outside Australia and some aspects of offshore processing are governed by the laws of Nauru and PNG. However, there are several issues with this position.
20. First, there is no doubt that Australia's international obligations are binding with respect to decision-making and other conduct that takes place in Australia, including decisions about whether to transfer asylum seekers offshore in the first place, whether and when to authorise evacuations back to Australia or elsewhere for medical treatment, resourcing offshore detention centres and the award of contracts to private companies and other service providers that operate offshore. Cumulatively, these decisions are the root cause of many of the human rights violations that have been reported offshore.
21. Second, Australia's obligations under international refugee and human rights law do not end with the physical transfer of asylum seekers out of Australian territory, and its position that it does not exercise jurisdiction over asylum seekers and refugees transferred to Nauru and PNG is at odds with established international law and the consistent opinions of authoritative international bodies. Notably, the UN Human Rights Committee has repeatedly affirmed that Australia exercises jurisdiction over people transferred offshore, concluding that 'the significant levels of control and influence exercised by [Australia] over the operation of the offshore regional processing centres, including over their establishment, funding and service provided therein' amount to effective control such as to establish Australia's jurisdiction and engage its obligations.⁵² The Committee against Torture has reached the same conclusion.⁵³ The Special Rapporteur on the Human Rights of Migrants also concluded that 'the Government of Australia is ultimately accountable for any human rights violations that occur in the regional processing centres' in Nauru and PNG.⁵⁴ This position has also been endorsed by Australian parliamentary inquiries, including by this Committee.⁵⁵
22. Third, regardless of whether Australia exercises jurisdiction offshore, it can be held responsible for or in connection with the wrongful conduct of its partner States, including Nauru. Australia and Nauru may have 'joint' or 'shared' responsibility if they cooperate in a course of conduct that violates international law.⁵⁶ Australia will also be responsible if it 'aids or assists' Nauru in the commission of an internationally wrongful act, provided Australia has knowledge of the circumstances of the act and the act would have been internationally wrongful if committed by Australia itself.⁵⁷ On this basis, Australia can be held responsible for any human rights violations or other breaches of international law committed by Nauru with Australian funding or support.

Consequences of a finding of Australian responsibility

23. Under international law, there are two main legal consequences of internationally wrongful conduct. First, the responsible State must cease the wrongful conduct and provide assurances of non-repetition. Second, the responsible State must provide full reparation in the form of restitution, compensation and/or satisfaction. For the purposes of the present inquiry, these consequences mean that Australia has obligations to bring to an end any wrongful conduct of contractors or subcontractors that is attributable to Australia, and to make reparation for the harmful effects of that conduct (including, if necessary compensation).

Endnotes

- ¹ Department of Home Affairs, 'Australian values' (undated).
- ² Available at <https://www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/kaldor-centre/20023-09-kaldor-principles/2023-09-Kaldor_Centre_Principles_for_Australian_Refugee_Policy_Mar22.pdf>.
- ³ See in particular Madeline Gleeson and Natasha Yacoub, *Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia* (Policy Brief 11, Kaldor Centre, August 2021); Kaldor Centre, *Submission to the UK House of Commons Public Bill Committee on the Nationality and Borders Bill 2021* (15 October 2021); Madeline Gleeson and Natasha Yacoub, 'Offshore processing in Australia' (*Externalizing Asylum*, Refugee Law Initiative, University of London, 2024).
- ⁴ Janet Phillips, 'Boat arrivals and boat "turnbacks" in Australia since 1976: A quick guide to the statistics' (Australian Parliamentary Library, Research Paper Series 2016-17, 27 January 2017). See discussion of these figures in Gleeson and Yacoub, *Cruel, Costly and Ineffective* (n 3) at note 8.
- ⁵ Gleeson and Yacoub, *Cruel, Costly and Ineffective* (n 3) 6.
- ⁶ See Violeta Moreno-Lax, 'The Interdiction of Asylum Seekers by Sea: Law and (mal)practice in Europe and Australia' (Policy Brief 4, Kaldor Centre, May 2017).
- ⁷ Elibritt Karlsen, 'Australia's offshore processing of asylum seekers in Nauru and PNG: A quick guide to statistics and resources' (Australian Parliamentary Library, Research Paper Series 2016-17, 30 June 2016) 8.
- ⁸ Peter Dutton, 'Interview with The Project, Channel 10' (transcript, 27 November 2017).
- ⁹ Peter Dutton, 'Press Conference, Brisbane' (transcript, 24 November 2017).
- ¹⁰ Senate Standing Committee on Legal and Constitutional Affairs, 2019-20 Additional Estimates, Home Affairs Portfolio, Answers to Questions on Notice, AE20-203.
- ¹¹ See e.g. Senate Standing Committee on Legal and Constitutional Affairs, 2023-24 Budget Estimates, Home Affairs Portfolio, Answers to Questions on Notice, BE24-0669.
- ¹² Janet Phillips, 'Asylum seekers and refugees: what are the facts?' (Australian Parliamentary Library, 2 March 2015) 9.
- ¹³ 'Former PM Malcolm Fraser calls for royal commission into Australia's management of offshore processing', *ABC News* (25 July 2013).
- ¹⁴ See e.g. UNHCR, *UNHCR Monitoring Visit to the Republic of Nauru: 7 to 9 October 2013* (26 November 2013) para 140; UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea: 23 to 25 October 2013* (26 November 2013) para 119; UNHCR, 'Australia should not coerce vulnerable people to return to harm' (29 August 2017); Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, UN Doc CCPR/C/AUS/CO/6 (1 December 2017) para 35(a).
- ¹⁵ These obligations are set out in a number of international human rights treaties to which Australia is a party, including the International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of Persons with Disabilities.
- ¹⁶ For a list of UN reports on offshore processing from 2012 to 2019, see: UNHCR, 'United Nations Observations: Australia's transfer arrangements with Nauru and Papua New Guinea (2012–present)' (undated).
- ¹⁷ *Nabhari v Australia* (Human Rights Committee, Comm No. 3663/2019, 25 October 2024); *M.I. et al. v Australia* (Human Rights Committee, Comm No. 2749/2016, 31 October 2024); *A.A. v Australia* (Committee against Torture, Comm No. 1079/2021, 27 November 2025).
- ¹⁸ See list of sources in Gleeson and Yacoub, *Cruel, Costly and Ineffective* (n 3) at notes 85-88.
- ¹⁹ Tendayi E Achiume et al, 'The Situation in Nauru and Manus Island: Liability for crimes against humanity in the detention of refugees and asylum seekers', Communiqué to the Office of the Prosecutor of the International Criminal Court (2017) 5.
- ²⁰ Letter from the Office of the Prosecutor of the ICC to Andrew Wilkie MP (12 February 2020) 2.
- ²¹ UNHCR, *Submission No 43 to the Senate Legal and Constitutional Affairs 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 2016* (12 November 2016) 32.
- ²² Ibid.
- ²³ Elizabeth Elliott and Hasantha Gunasekera, *The Health and Well-Being of Children in Immigration Detention: Report to the Australian Human Rights Commission, Monitoring Visit to Wickham Point Detention Centre, Darwin, NT, October 16th – 18th 2015* (4 February 2016) 3.
- ²⁴ MSF, *Indefinite Despair: The Tragical Mental Health Consequences of Offshore Processing on Nauru* (December 2018) 4.
- ²⁵ For a record of reports detailing this harm since 2012, see the Kaldor Centre's *Supplementary Submission No. 53.1* to this Committee's inquiry into the Migration Amendment (Repairing Medical Transfers) Bill 2019 [Provisions] (10 September 2019).
- ²⁶ UNHCR, 'UNHCR urges Australia to evacuate off-shore facilities as health situation deteriorates' (12 October 2018).
- ²⁷ Physical and Mental Health Subcommittee of the Joint Advisory Committee for Nauru Regional Processing Arrangements, *Nauru Site Visit Report: 16-19 February 2014* (2014) 3.
- ²⁸ Elliott and Gunasekera (n 23) 18.
- ²⁹ Felicity Ogilvie, 'Five-year-old girl attempted suicide in fear of going back to Nauru, father says', *ABC News* (28 March 2015).
- ³⁰ UNHCR, Submission No 43 (n 21) 14.
- ³¹ See e.g. the child known as 'BXD18' in linked proceedings *FRM17 v Minister for Home Affairs* [2019] FCAFC 148.
- ³² Ben Doherty, 'Beggings to die': succession of critically ill children moved off Nauru', *The Guardian* (25 August 2018); Louise Newman, 'What is resignation syndrome and why is it affecting refugee children?' *The Conversation* (22 August 2018); MSF, *Indefinite Despair* (n 24) 4-5, 24.
- ³³ See e.g. Refugee Council of Australia (RCOA) and Asylum Seeker Resource Centre (ASRC), *Australia's Man-Made Crisis on Nauru: Six Years On* (September 2018) 9-10; Wendy Bacon et al, *Protection Denied, Abuse Condoned: Women on Nauru at Risk* (June 2016).
- ³⁴ See e.g. RCOA and ASRC, *Australia's Man-Made Crisis on Nauru* (n 33) 8-9; Human Rights Law Centre, *Together in Safety: A Report on the Australian Government's Separation of Families Seeking Safety* (2020), 12-15.
- ³⁵ Ibid; UNHCR, Submission No 43 (n 21) paras 32, 50.
- ³⁶ Amnesty International, *This is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea* (December 2013) 73-74.
- ³⁷ Dominic Godfrey, 'Gay detainees on Manus Island are outlaws in PNG', *RNZ* (1 September 2017).

³⁸ UN Human Rights Council, [Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru](#) (UN Doc A/HRC/35/25/Add.3, 24 April 2017) para 79.

³⁹ See e.g. Gleeson and Yacoub, *Cruel, Costly and Ineffective* (n 3) 9-11; Save the Children and UNICEF, [At What Cost?: The Human, Economic and Strategic Cost of Australia's Asylum Seeker Policies and the Alternatives](#) (September 2016); ASRC, Save the Children, GetUp! And Equity Economics, [At What Cost? The Human and Economic Cost of Australia's Offshore Detention Policies 2019](#) (2020).

⁴⁰ UNHCR, ['Refugee Resettlement'](#) (October 2020).

⁴¹ If the reference to 'resettlement programs' is intended to refer to the deportation of members of the NZYQ cohort to Nauru, see the concerns detailed in [our submission](#) to this Committee's inquiry into the Migration Amendment Bill 2024 (Cth).

⁴² Senate Legal and Constitutional Affairs Legislation Committee, 'Estimates' (8 October 2025) 82.

⁴³ *Ibid*, 83.

⁴⁴ Jane McAdam et al, ['Our cruel and costly offshore processing system was a failure. We have a better solution on asylum policy'](#) (*The Conversation*, 26 July 2023).

⁴⁵ Jane McAdam and Regina Jefferies, [Ensuring Protection in Humanitarian Emergencies: A Framework for Australia](#) (Policy Brief 15, Kaldor Centre, September 2024).

⁴⁶ International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts* (ARSIWA), art 2.

⁴⁷ *Ibid*, art 3.

⁴⁸ *Ibid*, art 4.

⁴⁹ *Ibid*, art 5.

⁵⁰ *Ibid*, art 8.

⁵¹ *Ibid*, art 7.

⁵² Human Rights Committee, *Concluding Observations* (n 14) para 35. See also the cases of *Nabhari* and *M.I. et al* (n 17).

⁵³ *A.A. v Australia* (n 17).

⁵⁴ UN Human Rights Council (n 38) para 73.

⁵⁵ See e.g. Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (December 2014) 131-138; Select Committee on the Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, *Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru* (August 2015) 121-122.

⁵⁶ ARSIWA, art 47(1); André Nollkaemper et al, 'Guiding Principles on Shared Responsibility in International Law' (2020) 31(1) *European Journal of International Law* 15.

⁵⁷ ARSIWA, art 16.