

COUNTRY REPORT

IMMIGRATION DETENTION IN AUSTRALIA: TURNING ARBITRARY DETENTION INTO A GLOBAL BRAND

FEBRUARY 2022



GLOBALDETENTIONPROJECT

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THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Front cover image: Immigration detainees in Brisbane protest their continued detention during the COVID-19 pandemic, May 2020 © Alamy

This report is also available online at www.globaldetentionproject.org

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GLOSSARY

ABF	Australian Border Force
APOD	Alternative Place of Detention
ASIO	Australian Security Intelligence Organisation
CAT	UN Committee against Torture
CEDAW	UN Committee on the Elimination of Discrimination against Women
DHA	Department of Home Affairs
DIAC	Department of Immigration and Citizenship
FOIR	Freedom of Information Request
ICCPR	UN International Covenant on Civil and Political Rights
IDC	Immigration Detention Centre
IHMS	International Health and Medical Services
IOM	International Organisation for Migration
IMA	Illegal Maritime Arrivals
ITA	Immigration Transit Accommodation
OPCAT	Optional Protocol of the UN Convention against Torture
PNG	Papua New Guinea
PSP	Psychological Support Program
RCOA	Refugee Council of Australia
RPC	Regional Processing Centre
SAS	Australian Special Air Service
SPR	UN Subcommittee on Prevention of Torture
UDHR	Universal Declaration of Human Rights
UNHCR	UN High Commissioner for Refugees
UPR	UN Universal Periodic Review
WGAD	Working Group on Arbitrary Detention



KEY FINDINGS

- Australia is one of the few countries in the world with a blanket policy of mandatory, indefinite detention of everyone without a visa, including children and asylum seekers.
- Human rights agencies have repeatedly found Australia's detention system to be arbitrary, discriminatory, and in violation of international law.
- As of January 2022, Australia had failed to establish a National Preventive Mechanism—a critical detention monitoring body—in each of its territories as required by the Optional Protocol to the UN Convention against Torture, which it ratified in 2017.
- People languish in detention for years: The average length of detention is nearly 700 days and dozens have been detained for more than five years.
- Thousands of children have been subject to prolonged detention, resulting in severe physical and mental harm.
- Detention is very expensive: It costs nearly \$400,000 per detainee per year compared to less than \$50,000 for housing a person in the community.
- Unlike other countries who released immigration detainees into the community at the start of the COVID-19 pandemic, Australia increased its detainee population during the first year of the pandemic.
- The country ceased its overseas detention operations in Papua New Guinea but it maintains an offshore processing in Nauru. It also re-opened the detention facility on Christmas Island after the the emergence of COVID-19 even though the Australian Human Rights Commission said it was not suitable for confiing people during a pandemic.
- Independent observers faced barriers gaining access to Nauru and Manus Island and Australia has been persistently criticised for the lack of transparency surrounding its offshore processing operations.
- Monitors have repeatedly criticised the appalling conditions in Australia's detention facilities, including overcrowding and lack of communal and outdoor spaces, the remote location of many detention centres, and the extreme isolation of detainees, who are prevented from using mobile phones.
- Prolonged detention has catastrophic impacts on the physical and mental health of detainees, leading to high rates of self-harm, depression, anxiety, and psychological disorders.
- Detainees in offshore detention facilities must wait years to be transported to Australia for medical treatment, but a 2019 "Medevac Bill" that allowed for such transfers was quickly repealed.



1. INTRODUCTION¹

Australia's migration-related detention system is uniquely severe, arbitrary, and punitive. And that is precisely the message that Australia's political establishment—with significant public support—appears committed to communicating to the rest of the world.² Deplorable and abusive immigration detention conditions and practices abound in many countries in the world; Australia, however, brings together a range of extreme policies in its detention regime, provides them blanket legal cover, aggressively defends them in the face of growing international opprobrium, and spreads them to countries near and far.³

Key features of the Australian migration system are its policy of mandatory indefinite detention of undocumented non-citizens, offshore processing of asylum seekers, the inclusion of children in mandatory detention, and extreme lengths of detention (as of 2021 the average length of detention was nearly 700 days and at least 50 people had been in detention for more than eight years).⁴ National and international experts, judicial bodies, and human rights advocates have repeatedly denounced these policies as violating fundamental human rights as well as the country's international legal obligations.⁵ Nevertheless, some countries have sought to emulate these policies, most notably in Europe, where Denmark, the United Kingdom, and others have proposed schemes that are similar to Australia's notorious "Pacific Solution."

Whereas many migrant detaining countries employ complex and sometimes misleading laws, terminology, and regulations to frame their migration detention systems, Australian law and policy can be blatantly clear in comparison. Thus, for example, although countries in Europe generally provide a broad set of legal norms to define and ground differing migration-related

¹ The Global Detention Project (GDP) would like to thank Sahar Okhovat, Refugee Council of Australia, for providing helpful comments and corrections on this report. Any errors in the report are those of the GDP.

² Behrouz Boochani, the award-winning writer and former detainee at Australia's offshore detention centre in Papua New Guinea's Manus Island, writes that in Australia "a humanitarian issue is repeatedly politicised in the lead-up to Australian federal elections and the 'competition on cruelty' is heightened. This model has been used to manipulate the public since the Tampa affair, and the refugees and their family members left behind are the real victims of this populist and sadistic policy." B. Boochani, "The Pattern Is Clear: Australia's Next Election Will Be a Competition on Cruelty," *The Guardian*, 11 October 2021, <https://www.theguardian.com/commentisfree/2021/oct/11/the-pattern-is-clear-australias-next-election-will-be-a-competition-on-cruelty> See also: M. Isaacs, "The Intolerable Cruelty of Australia's Refugee Deterrence Strategy: Canberra's decision to offshore asylum seekers in inhumane facilities in Papua New Guinea and Nauru isn't an accident. It's exactly the intention." *Foreign Policy*, May 2016, <https://foreignpolicy.com/2016/05/02/australia-papua-new-guinea-refugee-manus-nauru/>

³ M. Flynn, "There and Back Again: On the Diffusion of Immigration Detention," *Journal on Migration and Human Security*, July 2014, <https://cmsny.org/publications/jmhs-there-and-back-again/>; D. Ghezlbash *Refuge Lost: Asylum Law in an Interdependent World*, Cambridge University Press, 2018

⁴ Senate Standing Committee on Legal and Constitutional Affairs, "Home Affairs Portfolio: Australia Border Force – Program 3.5: Onshore Compliance and Detention: SE21-323 – Immigration Detention – No of Years Held in Detention," 25 October 2021, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld12-Portfoliold20-QuestionNumber323>

⁵ M. Gleeson and N. Yacoub, "Cruel, costly, and ineffective: The failure of offshore processing," Kaldor Centre for International Refugee Law, August 2021, https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf

detention measures, Australia's detention laws seem banal and stark: all non-citizens unlawfully in Australia are mandatorily and indefinitely detained until granted a visa or removed.

Another remarkable quality of Australia's system, which figured prominently in the media hype surrounding the decision in January 2022 to revoke the visa of renown professional tennis player Novak Djokovic, is the extraordinary ("God-like") power of the immigration minister. Under the Migration Act, the minister has the sole authority and discretion to grant a person a visa and thus enable their release from detention, if the minister thinks it is "in the public interest" to do so. This ministerial power is not subject to the same rules as provided elsewhere in the Migration Act, nor is it necessary for the minister to provide information to Parliament explaining the use of this power. According to the Refugee Council of Australia, "the effect of this is to give the Minister virtually complete discretion in deciding whether to release a person from detention."⁶

The legal foundation of Australia's immigration detention regime—the 1958 Migration Act—has been amended on multiple occasions. The government's responses to changing conditions—including increases in Indo-Chinese arrivals in the 1980s and the onset of refugee flows from Middle Eastern countries in the 1990s—have invariably led to further tightening of restrictions. This has included the adoption of amendments that limit the ability of detainees to enjoy basic human rights and circumvent Australia's international obligations. A case in point is a provision designating certain Australian islands as "excised" territories in order to prevent asylum seekers detained on them from accessing legal procedures and safeguards.

The severe impact of Australia's detention practices on the health and well-being of migrants, refugees, and asylum seekers has been well documented. The Australian Human Rights Commission has repeatedly expressed serious concerns about the mental health impacts on immigration detainees who are held for prolonged periods in remote immigration detention sites as well as the negative effects of limiting detainees' ability to have easily accessible communication with family, friends, legal representatives, and others.⁷ Commenting on these problems, the Human Rights Commissioner said: "That people are detained for so long in Australia's immigration detention system is not the necessary consequence of irregular migration, which affects many parts of the world. People are detained for long periods in Australia's immigration detention network because of Australia's current legal and policy framework. ... As a liberal democracy, Australia takes its human rights obligations seriously. This means we should confront a difficult truth: we can and we must do better to protect the human rights of people subject to immigration detention."⁸

Given the high cost—roughly 360,000 AUS per person per year in a detention centre versus 47,000 for housing in the community⁹—and severity of Australia's migration detention system, it would seem that the country is facing extraordinary migration pressures. And yet, this is far from the case. In reality, Australia receives among the lowest number of asylum seekers and irregular migrants in the world, primarily due to its geographic isolation. In 2021, for example more than 190,000 asylum applications were lodged in Germany,¹⁰ 87,000 in France, 67,400 in Spain, and

⁶ Refugee Council of Australia, "Australia's Detention Policies: Mandatory Detention," updated May 2020, <https://www.refugeecouncil.org.au/detention-policies/>

⁷ Australian Human Rights Commission, "Inspections of Australia's Immigration Detention Facilities, 2019 Report," 3 December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

⁸ Australian Human Rights Commission, "Inspections of Australia's Immigration Detention Facilities, 2019 Report," 3 December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

⁹ Refugee Council of Australia, "Statistics on People in Detention in Australia: Costs of Detention," 8 January 2022, <https://www.refugeecouncil.org.au/detention-australia-statistics/9/>

¹⁰ DW, "Germany: 2021 Asylum Applications Highest since 2017," *DW*, 12 January 2022, <https://www.dw.com/en/germany-2021-asylum-applications-highest-since-2017/a-60394998>

37,500 in the UK.¹¹ By comparison, roughly 11,000 people arriving by plane made asylum applications in Australia the same year.¹²

Numerous UN human rights officials have condemned Australia's policies of mandatory and indefinite detention and the racist narratives that appear to underpin them. Visiting Australia in 2011, then UN High Commissioner for Human Rights Navi Pillay declared that mandatory, arbitrary detention had "for many years cast a shadow over Australia's human rights record."¹³

Both Pillay and the current UN High Commissioner for Human Rights, Michelle Bachelet, who visited Australia in 2019, raised concerns about racism. "There is a racial discriminatory element here which I see as rather inhumane treatment of people, judged by their differences: racial, colour or religions," said South African-born Pillay in 2011¹⁴; Bachelet argued that "the public narrative in Australia surrounding migration and asylum ... has become weaponised by misinformation and discriminatory and even racist attitudes, including with respect to Islam."¹⁵ Urging greater compassion and respect for the human rights of migrants and refugees in Australia—itsself a country of migrants—Bachelet stressed: "Desperate human beings seeking safety and dignity are victims, not criminals; they are people just like us—tired and in need. And they are moving—many of them—because they have no other choice."¹⁶

¹¹ UNHCR, "Does the UK Have More Asylum Seekers than Most Countries," UNHCR UK, accessed on 1 February 2022, <https://www.unhcr.org/uk/asylum-in-the-uk.html>

¹² Australian Government, Department of Home Affairs, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

¹³ Sydney Morning Herald, "UN Rights Chief Slams 'Racist' Australia," 26 May 2011, <https://www.smh.com.au/world/un-rights-chief-slams-racist-australia-20110526-1f4yy.html>; Jeremy Thompson, "UN Rights Chief Attacks 'Disturbing' Policies," ABC News, 25 May 2011, <https://www.abc.net.au/news/2011-05-25/un-rights-chief-attacks-disturbing-policies/2730650>

¹⁴ Sydney Morning Herald, "UN Rights Chief Slams 'Racist' Australia," *Sydney Morning Herald*, 26 May 2011, <https://www.smh.com.au/world/un-rights-chief-slams-racist-australia-20110526-1f4yy.html>;

¹⁵ UN Human Rights Commissioner, Michelle Bachelet, "2019 Whitlam Oration: Australia's Role in Human Rights in a Changing World," Whitlam Institute, 9 October 2019, <https://www.whitlam.org/publications/2019/10/9/2019-whitlam-oration-un-human-rights-commissioner-michelle-bachelet>

¹⁶ UN Human Rights Commissioner, Michelle Bachelet, "2019 Whitlam Oration: Australia's Role in Human Rights in a Changing World," Whitlam Institute, 9 October 2019, <https://www.whitlam.org/publications/2019/10/9/2019-whitlam-oration-un-human-rights-commissioner-michelle-bachelet>



2. LAWS, POLICIES, PRACTICES

2.1 Key Norms

Core pieces of national legislation providing a framework for immigration detention

- Migration Act (1958)
- Maritime Powers Act (2013)
- Australian Border Force Act (2015)

The main piece of legislation relating to immigration detention in Australia is the 1958 Migration Act.¹⁷ Detention powers are also provided in the Maritime Powers Act (2013)¹⁸ and the Australian Border Force Act (2015).¹⁹

Migration Act and amendments. Under Sections 189, 196, and 198 of the Migration Act, all non-citizens who are unlawfully present on Australian territory, whether on the mainland or an “excised offshore place,” must be held in immigration detention until they are granted a visa or removed from Australia. The laws on detention apply to any person who arrives in Australia without a valid visa (unauthorised arrivals), including asylum seekers, and to those who arrived with a visa, but subsequently became unauthorised because their visa expired or was cancelled (authorised arrivals).²⁰ The law makes no distinction between adults and children.²¹ Under the Migration Act, detention measures are mandatory and indefinite, to be enforced until the person is removed from the country or granted a visa.²²

The Migration Act has been amended repeatedly in response to evolving migration contexts. In the 1970s and 1980s, the Indo-Chinese refugee crisis resulted in maritime arrivals of Vietnamese and Cambodian refugees fleeing the aftermath of the Vietnam War.²³ While initially the Vietnamese were welcomed in Australia, attitudes started to harden as more boats of Cambodian refugees arrived between 1989 and 1994, leading to the adoption of the 1989 *Migration Legislation Amendment Act*.²⁴ This introduced changes to the system of processing

¹⁷ Government of Australia, “Migration Act 1958,” 8 October 1958, <https://www.legislation.gov.au/Details/C2021C00156>

¹⁸ Government of Australia, “Maritime Powers Act 2013,” <https://www.legislation.gov.au/Details/C2013A00015>

¹⁹ Government of Australia, “Australian Border Force Act 2015,” <https://www.legislation.gov.au/Details/C2016C00650>

²⁰ Australian Human Rights Commission, “Australia’s Immigration Detention Policy and Practice,” in *A Last Resort? National Inquiry into Children in Immigration Detention*, April 2004, Chapter 6, <https://humanrights.gov.au/our-work/6-australias-immigration-detention-policy-and-practice>

²¹ Australian Human Rights Commission, “Australia’s Immigration Detention Policy and Practice,” in *A Last Resort? National Inquiry into Children in Immigration Detention*, April 2004, Chapter 6, <https://humanrights.gov.au/our-work/6-australias-immigration-detention-policy-and-practice>

²² Refugee Council of Australia, “Australia’s Detention Policies,” updated May 2020, <https://www.refugeecouncil.org.au/detention-policies/>

²³ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

²⁴ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

boat arrivals and allowed officers to arrest and detain anyone suspected of being an “illegal entrant.” Although detention was still discretionary and not mandatory until 1992, the changes made in 1989 effectively introduced a policy of “administrative detention” for all people entering Australia without a valid visa, or any others present in the country unlawfully (i.e. without a valid visa), while their immigration status was resolved.²⁵

Subsequent amendments to the 1958 Migration Act have resulted in the emergence of a legal framework providing for mandatory, indefinite detention of all “unlawful non-citizens.” In 1992, the Migration Amendment Act was passed introducing mandatory detention as a temporary and exceptional measure to deal with a particular group of “designated persons,” the unauthorised Indochinese boat arrivals.²⁶ A 273-day limit on detention was introduced under the 1992 Migration Amendment Act. However, mandatory detention was subsequently extended to all “unlawful non-citizens” with the enactment of the *Migration Reform Act 1992* (which came into effect on 1 September 1994).²⁷ Under this act a new visa system distinguished between “lawful” and “unlawful” non-citizens and the 273-day detention limit was removed. The 1992 Migration Reform Act also introduced detention charges, whereby an unlawful non-citizen was liable for the costs of their immigration detention.²⁸ Under the 1992 Reform Act, those asylum seekers who had entered the country lawfully (“authorised arrivals”), generally those who had arrived by air and on valid visas, could apply for a bridging visa, be released from detention, and stay in the community while their claims were assessed. Conversely, “unlawful non-citizens” or “unauthorised arrivals,” including unauthorised boat arrivals, were mandatorily detained without the opportunity to apply for bridging visas until they could be removed from Australia, or their claims had been assessed and security and health checks carried out.²⁹

Australia’s legal detention regime changed again following the arrival by boat of 9,500 asylum seekers between 1999 and 2001, most of whom were from Middle Eastern countries. The government responded by introducing a series of measures intended both to discourage unauthorised boat arrivals and reduce the number of people in detention. In October 1999, the Government introduced Temporary Protection Visas (TPVs) which enabled the release into the community on a temporary basis of many detainees who had been granted refugee status.³⁰

An event known as the “*Tampa* Affair,” which occurred in August 2001, prompted another major shift in legislation. On 24 August 2001, 433 mainly Hazara Afghan asylum seekers *en-route* to Australia were rescued from their sinking boat by a Norwegian freight ship, the *MV Tampa*. Australian authorities refused to allow the *Tampa* entry into Australian territorial waters, after the asylum seekers begged its Captain not to land them in Indonesia, leading to an international standoff. On 29 August, the Captain of the *Tampa* entered Australian waters and was interdicted by the Australian Special Air Service (SAS). The asylum seekers were eventually escorted to the Pacific Island of Nauru, from where 131 of them were sent to New Zealand and the remaining

²⁵ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

²⁶ Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs, “Chapter 5 – Mandatory Detention Policy,” in *Administration and Operation of the Migration Act 1958*, 2 March 2006, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2004-07/migration/report/c05

²⁷ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

²⁸ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

²⁹ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

³⁰ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

302 were processed on Nauru.³¹ This was the first time that Australian forces had intercepted a boat carrying refugees.³²

The event led to the prompt introduction of a series of new laws in September 2001 which became known as the “Pacific Solution.” These consisted of the *Amendment (Excision from Migration Zone) Bill 2001* and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001*. Under these new laws, several Australian offshore islands (Christmas Island, Ashmore and Cartier Islands, and the Cocos) were excised from Australia’s migration zone.³³ In practice this meant that “unauthorised” non-citizens arriving at one of these islands without a valid visa were unable to make a valid application for a visa to enter Australia and instead were transferred to offshore processing centres set up on Nauru and Manus Island in Papua New Guinea where they were required to stay until their asylum claims had been processed.³⁴ A total of 1,637 people were detained on Nauru and Manus islands between 2001 and February 2008, when the Pacific Solution was formally ended, of whom 70 per cent were found to be refugees and were resettled in either Australia or another country (such as New Zealand, the USA, Sweden, and Canada).³⁵ Offshore processing and detention of asylum seekers was resumed in 2012 when the 2008 decision to end it was overturned.

In a further change to the Migration Act, Parliament passed the *Migration Amendment (Abolishing Detention Debt) Bill 2009* in September 2009,³⁶ removing *the requirement for detainees to pay the cost of their own detention (introduced in 1992) and cancelling all immigration detention debts.*³⁷

*In July 2011, in response to increasing unrest in immigration detention centres, amendments to the Migration Act were passed to toughen the character test under Section 180A of the Migration (Offences and Undesirable Persons) Amendment Act 1992.*³⁸ Under Section 180A, the minister had powers to refuse a visa or cancel an existing visa of a person if they were deemed likely to engage in criminal activity, to vilify a segment of the Australian community, to incite discord in the Australian community, or represent a danger to the Australian community through potential involvement in activities that were violent or disruptive. Section 501 of the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011 extended this penalty to any person who was convicted of a criminal offence while they were in detention, or while escaping from immigration detention.³⁹

In 2013, the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013 was introduced to ensure that no “unauthorised maritime arrivals” would be able to apply for a protection visa in Australia and they would all be sent to “regional processing countries” for

³¹ National Museum Australia, “Defining Moments: ‘Tampa Affair’,” <https://www.nma.gov.au/defining-moments/resources/tampa-affair>

³² Amnesty International, “What was the “Tampa Affair” and Why Does it Matter?,” 27 August 2001, <https://www.amnesty.org.au/what-was-the-tampa-affair-and-why-does-it-matter/>

³³ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

³⁴ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

³⁵ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

³⁶ <http://classic.austlii.edu.au/au/legis/cth/bill///maddb2009418/>

³⁷ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

³⁸ Government of Australia, “Migration (Offences and Undesirable Persons) Amendment Act 1992 No. 213, 1992 -Section 5,” 24 December 1992, http://classic.austlii.edu.au/au/legis/cth/num_act/maupaa1992477/s5.html

³⁹ Government of Australia, “Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011, 23 June 2011, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1011a/11bd143

the processing of their refugee claims.⁴⁰ The intention was to remove the difference in legal status between those individuals arriving at “excised offshore places” (created after the *Tampa* affair) and those arriving elsewhere in Australia, in effect excising the whole of the country for “unauthorised maritime arrivals.”⁴¹

In 2014, the Australian Government again amended the 1958 Migration Act with the introduction of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014, with significant impacts on the human rights of refugees and asylum seekers.⁴² Under this act, the Minister for Immigration was given new powers to detain people at sea (both within Australian waters and on the high seas) and to transfer them to any country, or a vessel of another country, even without that country’s consent.⁴³ These powers could be exercised without any consideration of Australia’s non-refoulement obligations, the law of the sea, or any other international obligations; nor were they subject to judicial review or to publication under the Legislative Instruments Act 2003, so they did not have to be made public or face parliamentary scrutiny. According to the Refugee Council of Australia (RCOA), these powers “would allow the Minister to hold people seeking asylum in arbitrary, indefinite, and potentially incommunicado detention at sea and forcibly transfer them to countries where they could face persecution and other forms of serious harm, without any scrutiny by the public, courts, or Australian Parliament.”⁴⁴

As well as removing Australia’s non-refoulement obligations with respect to the mandatory removal of non-citizens without valid visas, the 2014 Act also removed most references to the 1951 Refugee Convention and replaced them with Australia’s own redefined criteria for granting refugee status.⁴⁵ Most notable amongst these was a requirement that people seeking asylum have exhausted all possible options for protection in their own country, including moving internally to other parts of their own country (“internal relocation”); that “effective protection” in a person’s own country can be provided by the government or a non-governmental body; that a person has taken reasonable steps to “modify their behaviour” so as to avoid persecution; and a redefinition of membership of the category “social group” under the Refugee Convention.⁴⁶

Another impact of the 2014 Act was on the status of children born to parents who came to Australia as asylum seekers by boat and were considered as “transitory persons” and “unauthorised maritime arrivals” and subject to the same offshore processing and denial of

⁴⁰ Government of Australia, “Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012, 8 March 2013, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd084

⁴¹ Government of Australia, “Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012, 8 March 2013, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd084

⁴² Government of Australia, “Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Caseload) Bill 2014, 25 September 2014, https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r5346

⁴³ Refugee Council of Australia, “Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014: What it Means for People Seeking Asylum,” 1 February 2019, <https://www.refugeecouncil.org.au/legacy-caseload-brief/>

⁴⁴ Refugee Council of Australia, “Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014: What it Means for People Seeking Asylum,” 1 February 2019, <https://www.refugeecouncil.org.au/legacy-caseload-brief/>

⁴⁵ Australian Human Rights Commission, “Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014,” Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 31 October 2014, https://humanrights.gov.au/sites/default/files/2014.10.31_Submission_re_Migration_and_Maritime_Powers_Legislation_Amendment_Act.pdf?_ga=2.210660112.488275248.1632707968-155655995.1625813226

⁴⁶ Australian Human Rights Commission, “Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014,” Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 31 October 2014, https://humanrights.gov.au/sites/default/files/2014.10.31_Submission_re_Migration_and_Maritime_Powers_Legislation_Amendment_Act.pdf?_ga=2.210660112.488275248.1632707968-155655995.1625813226

access to permanent protection in Australia as their parents. The provisions also applied retroactively to children born before the 2014 Act came into effect.⁴⁷

The Migration Amendment (Character and General Visa Cancellation) Act 2014 came into effect in December 2014.⁴⁸ This act significantly broadened the grounds for failing a “character test” under Section 501 of the Migration Amendment.⁴⁹ As a result, there was a substantial increase in the number of visa refusals and cancellations and consequently the number of people being held in immigration detention.⁵⁰

A further amendment to the 1958 Migration Act, the Migration Amendment (Urgent Medical Treatment) Bill (commonly known as the “Medevac Bill”) came into effect in February 2019. Under this piece of legislation, asylum seekers and their families could be temporarily transferred to Australia from Manus Island or Nauru for medical treatment, if they were assessed by two or more treating doctors; and all children and their families could be temporarily transferred from offshore detention to Australia for the purpose of medical or psychiatric assessment.⁵¹ The Medevac Bill was repealed by the Australian Parliament in December 2019.⁵²

The most recent amendment to the Migration Act, the Migration Amendment (Clarifying International Obligations for Removal) Regulations 2021, was passed in May 2021.⁵³ Under this amendment, a refugee who has had their visa cancelled for reasons of security, character, criminal convictions, or “association with a group” suspected by the Minister of wrongdoing, but who cannot be returned because they could face persecution in their country of origin, can be held indefinitely in detention.⁵⁴

The Australian Government justified the new legislation saying that it strengthened Australia’s protections against *refoulement*.⁵⁵ However, human rights and refugee law groups argued that it reinforced policies of indefinite detention in Australia⁵⁶ and the Joint Parliamentary Committee on Human Rights raised serious concerns that the law “may also have implications for Australia’s obligation not to subject any person to torture or to cruel, inhuman or degrading treatment or

⁴⁷ Australian Human Rights Commission, “Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014,” Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 31 October 2014, https://humanrights.gov.au/sites/default/files/2014.10.31_Submission_re_Migration_and_Maritime_Powers_Legislation_Amendment_Act.pdf?_ga=2.210660112.488275248.1632707968-155655995.1625813226

⁴⁸ Government of Australia, “Migration Amendment (Character and General Visa Cancellation) Bill 2014,” 25 November 2014, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1415a/15bd053

⁴⁹ Government of Australia, “Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011,” 23 June 2011, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1011a/11bd143

⁵⁰ Australian Human Rights Commission, “Inspection of Australia’s Immigration Detention Facilities 2019 Report,” 3 December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

⁵¹ Migration Amendment (Urgent Medical Treatment) Bill 2018, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6236

⁵² Kate Walton, “‘Dark Day’: Australia Repeals Medical Evacuation for Refugees,” *Al Jazeera*, 4 December 2019, <https://www.aljazeera.com/news/2019/12/4/dark-day-australia-repeals-medical-evacuation-for-refugees>

⁵³ Government of Australia, “Migration Amendment (Clarifying International Obligations for Removal) Regulations 2021,” 5 August 2021, <https://www.legislation.gov.au/Details/F2021L01078>

⁵⁴ Ben Doherty, “New Law Allows Australian Government to Indefinitely Detain Refugees,” *The Guardian*, 13 May 2021, <https://www.theguardian.com/australia-news/2021/may/13/new-law-allows-australian-government-to-indefinitely-detain-refugees-with-criminal-convictions>

⁵⁵ Ben Doherty, “New Law Allows Australian Government to Indefinitely Detain Refugees,” *The Guardian*, 13 May 2021, <https://www.theguardian.com/australia-news/2021/may/13/new-law-allows-australian-government-to-indefinitely-detain-refugees-with-criminal-convictions>

⁵⁶ Kaldor Centre for International Refugee Law, “Joint Statement from Refugee Law Organisations in Response to the Migration Amendment (Clarifying International Obligations for Removal) Bill, 2021,” 13 May 2021, <https://www.kaldorcentre.unsw.edu.au/news/joint-statement-refugee-law-organisations-response-migration-amendment-clarifying-international>

punishment.”⁵⁷ In unchallengeable new powers, the legislation also allows the minister to withdraw a person’s refugee status if they believe they can be returned to the country from which they fled. Advocates argued that this was an unjustifiable abuse of minister’s powers to unilaterally remove protection that had been legally provided to refugees.⁵⁸

In February 2021, a private member’s bill, the Ending Indefinite and Arbitrary Immigration Bill, was introduced to Parliament proposing a fundamental reform of Australia’s immigration detention system.⁵⁹ Although the bill was removed from the Notice Paper in October 2021 (meaning it would not be debated in Parliament), it was referred for consideration to the Joint Standing Committee on Migration. Several advocacy organisations used this opportunity to make submissions supporting the passage of the bill and calling for the complete overhaul of Australia’s arbitrary and indefinite immigration detention system.⁶⁰

Australian Border Force Act. Another separate, but related piece of legislation, the Australian Border Force Act 2015, has important implications for immigration detention as it makes it a crime for an “entrusted person” to make record of or disclose protected information with a punishment of up to two years’ imprisonment. Although a High Court challenge to the legislation in 2016 excluded health care professionals from these provisions, they still applied to anyone engaged or employed by the Department of Immigration, including social workers, educators, and others contracted by the Department to work in immigration detention sites.⁶¹

Maritime Powers Act. Section 72 of the Maritime Powers Act (2013) provides apprehension, detention, and return powers to maritime officers involved in interdicting vessels at sea. Like the Migration Act, the Maritime Powers Act has been amended several times, including notably in 2014, when both the Maritime Powers Act and the Migration Act were amended to, *inter alia*: broaden maritime detention and removal powers; and limit judicial review of the application of these powers.⁶²

2.2 Grounds for Detention

Are grounds for administrative migration-related detention provided in law?	Yes
Are there reports of arbitrary migration-related detention?	Yes

In most major migrant detaining countries, grounds for detention are carefully enumerated and explained in law and policy, which often provide varying detention powers and lengths of detention depending on an individual’s specific situation. The applicability of detention measures is typically circumscribed by requirements to assess the necessity and proportionality of each

⁵⁷ Parliamentary Joint Committee on Human Rights, “Human Rights Scrutiny Report,” Report 5 of 2021, 29 April 2021, https://uploads.guim.co.uk/2021/05/13/Report_5_of_2021.pdf

⁵⁸ Ben Doherty, “New Law Allows Australian Government to Indefinitely Detain Refugees,” *The Guardian*, 13 May 2021, <https://www.theguardian.com/australia-news/2021/may/13/new-law-allows-australian-government-to-indefinitely-detain-refugees-with-criminal-convictions>

⁵⁹ Parliament of Australia, “Ending Indefinite and Arbitrary Immigration Detention Bill 2021,” accessed 21 February 2022, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6675

⁶⁰ Refugee Council of Australia, “Submission on the Ending Indefinite and Arbitrary Immigration Detention Bill 2021,” 22 February 2022, <https://www.refugeecouncil.org.au/submission-on-the-ending-indefinite-and-arbitrary-immigration-detention-bill-2021/> Human Rights Watch, “Submission by Human Rights Watch to the Inquiry on the Ending Indefinite and Arbitrary Immigration Detention Bill 2021,” 27 January 2022, <https://www.hrw.org/news/2022/02/15/submission-human-rights-watch-inquiry-ending-indefinite-and-arbitrary-immigration>

⁶¹ Refugee Council of Australia, “Recent Changes in Australia’s Refugee Policy,” March 2021 <https://www.refugeecouncil.org.au/recent-changes-australian-refugee-policy/6/>

⁶² Human Rights Law Centre, “Australian Migration Law Amendments: What this means for asylum seeker children,” 17 April 2015, <https://www.hrlc.org.au/news/australian-migration-law-amendments-what-this-means-for-asylum-seeker-children>

individual detention decision, to provide for judicial interventions, and to enable detainees to challenge the legality of their detention.

This is not the case in Australia. As detailed in the previous section (“Section 2.1 Key Norms”), Australia’s legal framework for migration-related detention is stark in its scope and application: Under sections 189, 196, and 198 of the Migration Act, all non-citizens—including asylum seekers—unlawfully in Australia, without a valid visa, must be detained and kept in detention until granted a visa or removed from the country.

While various adjustments and amendments have been made to this detention regime, the core rationales for migration-related detention have largely remained consistent for years: Mandatory, indefinite detention is a blanket measure for ensuring that:

- unauthorised arrivals do not enter the Australian community until their identity and status have been properly assessed and they have been granted a visa;
- unauthorised arrivals are available during processing of any visa applications and, if applications are unsuccessful, that they are available for removal from Australia; and
- unauthorised arrivals are immediately available for health checks, which are a requirement for the grant of a visa.⁶³

Notwithstanding these official rationales, an important unofficial—though frequently admitted—“driving principle” behind Australia’s immigration control regime is deterrence, particularly its offshore processing policies. And while successive political leaders have remained under the thrall of the deterrence idea, many observers have argued that the model has not lived up to its billing, especially when one takes into account the tremendous human toll it has taken on the lives of thousands of people.⁶⁴

Numerous experts have concluded that Australia’s migration-related detention practices are fundamentally arbitrary in nature. The UN Working Group on Arbitrary Detention, for instance, adopted 17 “opinions” between 2002-2021 on immigration detention cases in Australia, each of which concluded that the detention measure in question had been arbitrary.⁶⁵

Numerous other international monitors and judicial authorities have repeatedly found Australia’s detention powers to be fundamentally arbitrary in nature and application.⁶⁶ (For more on the assessments of these bodies, see below “Section 2.13 International Monitoring.”)

2.3 Criminalisation

Does the country use criminal facilities to confine immigration detainees?

No

⁶³ Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs, “Chapter 5 – Mandatory Detention Policy,” in *Administration and Operation of the Migration Act 1958*, 2 March 2006, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2004-07/migration/report/c05

⁶⁴ Madeline Gleeson and Natassha Yacoub, “Cruel, costly, and ineffective: The failure of offshore processing,” Kaldor Centre for International Refugee Law, August 2021, https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf

⁶⁵ Sahar Okhovat (Refugee Council of Australia), in correspondence with Michael Flynn (Global Detention Project), 26 January 2022. See also: UN Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention,” <https://www.ohchr.org/EN/Issues/Detention/Pages/OpinionsadoptedbytheWGAD.aspx>

⁶⁶ See, for instance, the Opinions adopted by the UN Working Group on Arbitrary Detention, <https://www.ohchr.org/EN/Issues/Detention/Pages/OpinionsadoptedbytheWGAD.aspx>

Section 4A of the Migration Act states that Chapter 2 of the Criminal Code, which sets out the general principles of criminal responsibility, applies to all “offences” against the Migration Act. Importantly, however, these offences do not include strictly status-related violations, but rather fraud and smuggling, among other infractions.

Although asylum seekers who enter Australia without a valid visa are called “unlawful” non-citizens, it is not a criminal act per se to enter Australia for the purposes of seeking asylum without a valid visa. Asylum seekers who arrive without a visa are detained for identity, security, and health checks and to prevent absconding while their legal status is resolved, rather than as a punishment for breaking the law.⁶⁷

Although Australia does not provide criminal sanctions for status-related violations, many aspects of the country’s migration-related detention regime have been characterised as severe exemplars of the “criminalisation” of asylum and irregular migration. Conditions in immigration detention centres are harsh and have repeatedly been criticised for their carceral characteristics and allegations of inappropriate use of force against detainees. Additionally, Australia’s mandatory, unlimited detention regime, as well as its offshore processing policies, appear to serve as ad hoc, unacknowledged forms of punishment.⁶⁸

2.4 Asylum Seekers

Is the detention of asylum seekers provided in law?	Yes
Are asylum seekers detained in practice?	Yes
Maximum length of detention for asylum seekers	Indefinite

Australia is a party to the 1951 Convention Relating to the Status of Refugees, Article 31 of which provides that states should not “impose penalties” on people seeking refuge “on account of their illegal entry or presence.” Despite this fact, Australia imposes mandatory, indefinite detention measures on everyone who arrives without a valid visa, including asylum seekers, and maintains a regime of offshore processing for asylum seekers interdicted at sea.⁶⁹

Many commentators have argued that asylum seekers arriving by boat (known as “unauthorised boat arrivals”) have been disproportionately affected by Australia’s mandatory detention policy.⁷⁰

⁶⁷ Asylum Seeker Resource Centre (ASRC) Fact Sheet, “It is not Illegal to Seek Asylum,” 2013 <https://www.asrc.org.au/wp-content/uploads/2013/07/it-not-illegal-seek-asylum.pdf>

⁶⁸ See, for example, Human Rights Watch, “Australia: 8 Years of Abusive Offshore Asylum Processing,” 15 July 2021, <https://www.hrw.org/news/2021/07/15/australia-8-years-abusive-offshore-asylum-processing>; Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities, 2019 Report,” 3 December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>; Albin, T., “The Criminalisation of Unauthorised Immigrants: How Does Immigration Detention Become Punishment?” Curtin Law School, 2017, <https://espace.curtin.edu.au/handle/20.500.11937/57645>

⁶⁹ Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs, “Chapter 5 – Mandatory Detention Policy,” in *Administration and Operation of the Migration Act 1958*, 2 March 2006, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2004-07/migration/report/c05

⁷⁰ Refugee Council of Australia, “Australia’s Detention Policies: Mandatory Detention,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/>

As of 30 September 2021, a total of 1,459 persons were in immigration detention in Australia.⁷¹ Of these, 291 were “illegal arrivals” who had arrived by air (15 persons) or by boat (278 persons) (19.9 percent of all detainees) and 1,168 persons (80.1 percent of all detainees) were visa overstayers or people whose visas had been cancelled.⁷²

According to the Australian Human Rights Commission, mandatory detention of asylum seekers in Australia goes “well beyond the period of time it takes to gather basic information about an asylum claim, health, identity, or security issues” and results in asylum seekers, including children, being detained for months, or increasingly years, with no time limit on detention and only very limited opportunities for legal review.⁷³ In effect, under Australian law an asylum seeker can be detained for life. As of 31 August 2021, of the 1,440 people in detention, approximately 50 people had been in detention for more than eight years, some of whom had already spent 10 years or more behind bars.⁷⁴

As well as being mandatory, indefinite, and unreviewable, the detention of asylum seekers in Australia has been declared arbitrary by important domestic and international monitoring bodies.⁷⁵ As noted earlier (see “Section 2.2 Grounds for Detention,”) the UN Working Group on Arbitrary Detention (WGAD) found 17 consecutive cases of immigration detention in Australia, investigated between 2002-2021, to be arbitrary, representing by far the WGAD’s largest migration-related detention case load for any single country.⁷⁶

Most asylum seekers are accommodated in purpose-built detention facilities, but increasingly they are also detained in “alternative places of detention” (APODs), including buildings which are not purpose-built for detention, such as hotels. In its 2019 report on the “Inspection of Australia’s Immigration Detention Facilities,” the Australian Human Rights Commission drew attention to the increased use of hotels as alternative places of detention across the country and serious concerns about the inadequate living conditions in these locations, including very limited access to communal and outdoor spaces. Although asylum seekers are only meant to be held for short periods of time in APODs, many people have been detained in hotels for lengthy periods with serious impacts on their mental and physical health and wellbeing.⁷⁷

Moreover, the remote location of many onshore and offshore detention centres leads to extreme isolation for asylum seekers and makes it much harder for them to access lawyers, health services, interpreters, and support networks.⁷⁸

⁷¹ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 30 September 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>

⁷² Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 30 September 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>

⁷³ Australian Human Rights Commission, “Australia’s Immigration Detention Policy and Practice,” in *A Last Resort? National Inquiry into Children in Immigration Detention*, April 2004, Chapter 6, <https://humanrights.gov.au/our-work/6-australias-immigration-detention-policy-and-practice>

⁷⁴ Senate Standing Committee on Legal and Constitutional Affairs, “Home Affairs Portfolio: Australia Border Force – Program 3.5: Onshore Compliance and Detention: SE21-323 – Immigration Detention – No of Years Held in Detention;” 25 October 2021, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundId12-PortfolioId20-QuestionNumber323>

⁷⁵ Refugee Council of Australia, “Australia’s Detention Policies: Mandatory Detention,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/>

⁷⁶ Sahar Okhovat (Refugee Council of Australia), in correspondence with Michael Flynn (Global Detention Project), 26 January 2022. See also: UN Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention,” <https://www.ohchr.org/EN/Issues/Detention/Pages/OpinionsadoptedbytheWGAD.aspx>

⁷⁷ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities, 2019 Report,” 3 December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

⁷⁸ Refugee Council of Australia, “Australia’s Detention Policies: Mental Health and Conditions,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/3/>

A report by the University of Melbourne in 2019 highlighted that the rate of self-harm among people seeking asylum was exceptionally high when compared to the general Australian population.⁷⁹ Amongst the asylum seeker group the highest rate of self-harm was observed in people in offshore and onshore detention and the lowest rate was among asylum seekers in community-based arrangements. The report found that the rate of self-harm among people seeking asylum (including those in onshore and offshore detention) was more than 200 times the Australian community hospital treated rate.⁸⁰

In 2016, the Office of the UN High Commissioner for Refugees (UNHCR) found that 88 percent of refugees and people seeking asylum on Manus Island were suffering from depression, anxiety, and/or post-traumatic stress disorder, which were “the highest recorded rates of any surveyed population.”⁸¹ The UNHCR medical experts who visited the island in that year, stated that “the lengthy, arbitrary, and indefinite nature of immigration detention on Manus Island, together with hopelessness in the absence of durable settlement options, had corroded the resilience of the detainees, and made them vulnerable to mental illness.”⁸²

2.5 Children

Is the detention of unaccompanied children provided in law?	Yes
Is the detention of accompanied children provided in law?	Yes
Number of detained children	0 (as of 31 August 2021)

Australia’s Migration Law provides for the detention of children. In the past, thousands of children have been detained by the country, but in recent years the number of detained minors has significantly decreased. According to statistics from the Department of Home Affairs (DHA), on 31 August 2021 there were no children in onshore or offshore Australian immigration detention facilities.⁸³ According to the DHA, 175 children were living in the community after being approved for a residence determination on 31 August 2021.⁸⁴

Children who are detained have usually been held in Immigration Transit Accommodation (ITAs) and Alternative Places of Detention (APODs), both of which meet GDP’s criteria for detention sites (for more on these types of detention facilities, see “Section 3 Detention Infrastructure”

⁷⁹ University of Melbourne, “High Self-Harm Rates Among Detained Asylum Seekers Prompts Calls for Action,” 14 October 2019 <https://about.unimelb.edu.au/newsroom/news/2019/october/high-self-harm-rates-among-detained-asylum-seekers-prompts-calls-for-action>

⁸⁰ Refugee Council of Australia, “People with Disability in Immigration Detention,” Submission to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability, 3 November 2021, <https://www.refugeecouncil.org.au/wp-content/uploads/2021/11/People-with-disability-in-detention-RCOA.pdf>

⁸¹ United Nations High Commissioner for Refugees, “Inquiry on the Serious Allegations of Abuse, Neglect and Self-Harm on Nauru and Manus Island, Submission to the Senate Legal and Constitutional Affairs Committee,” November 2016, <https://www.refworld.org/docid/591597934.html>

⁸² Suresh Sundram and Peter Ventevogel, “The mental health of refugees and asylum seekers on Manus Island,” (2017) 390 (10112) *The Lancet*, 2534-253

⁸³ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

⁸⁴ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

below). In the past, children have also been detained in dedicated immigration detention centres (IDCs).⁸⁵

Prior to 2005, the Migration Act did not differentiate between adults and children. But in July 2005, the Australian government declared that children would be detained in immigration only as a last resort, introducing legislative changes and a reform programme that improved the administrative processes and staff attitudes in relation to the detention of children.⁸⁶ Section 4AA of the Migration Amendment (Detention Arrangements) Act 2005 affirmed “as a principle that a minor shall only be detained as a measure of last resort” and allowed families with children in detention to be placed in the community under community detention arrangements.⁸⁷

In July 2008, the then Minister for Immigration and Citizenship, Senator Chris Evans, announced the New Directions in Detention policy, providing a set of seven key immigration detention values by which the Australian government would be guided.⁸⁸ Included in the seven values, was the principle that “children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.”⁸⁹

In 2011, however, the Australian Human Rights Commission argued that the reforms introduced in 2005 and 2008 “had not been sufficiently robust to prevent the immigration detention of children.” While the commission acknowledged that children were no longer detained in IDCs, it noted that those children remaining in other detention facilities were indeed detained and asserted that: “They are not free to come and go from the facilities where they live.”⁹⁰ The commission also noted that “child asylum seekers continue to be subjected to mandatory immigration detention.”⁹¹ It is worth noting too, that the number of detained children following the reforms actually increased, reaching a peak of 1,992 in July 2013.⁹²

In a subsequent “National Inquiry into Children in Detention” in 2014, the Australian Human Rights Commission noted that the country’s mandatory and prolonged detention of children continued to violate the UN Convention on the Rights of the Child and cause children significant physical and mental illness and developmental delays. In particular, the commission found that in the first half of 2014, 34 percent of detained children were assessed as having mental health disorders “at levels of seriousness that were comparable with children receiving outpatient mental health services in Australia,” and that between January 2013 and March 2014, 128

⁸⁵ Refugee Council of Australia, “Statistics on People in Detention in Australia – Children in Detention,” 11 June 2021, <https://www.refugeecouncil.org.au/detention-australia-statistics/4/>

⁸⁶ Commonwealth of Australia Ombudsman, “Department of Immigration and Multicultural Affairs: Report into Referred Immigration Cases: Children in Detention,” December 2006, https://www.ombudsman.gov.au/__data/assets/pdf_file/0021/26247/investigation_2006_08.pdf

⁸⁷ Migration Amendment (Detention Arrangements) Act 2005, <https://www.legislation.gov.au/Details/C2005A00079>

⁸⁸C. Evans, “New Directions in Detention- Restoring Integrity to Australia’s Immigration System,” Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008, <https://tinyurl.com/mr259yra>

⁸⁹ Australian Human Rights Commission, “DIAC Response to 2008 Immigration Detention Report - Summary of Observations Following the Inspection of Mainland Immigration Detention Report,” accessed 18 June 2021, <https://humanrights.gov.au/our-work/diac-response-2008-immigration-detention-report-summary-observations-following-inspection>

⁹⁰ Australian Human Rights Commission, “Mandatory Immigration Detention of Children in Australia: How Far Have We Come and Where to From Here?” 18 November 2010, http://www.hreoc.gov.au/about/media/speeches/speeches_president/2010/20101118_children.html

⁹¹ Australian Human Rights Commission, “2011 Immigration Detention in Leonora,” 2014, <https://humanrights.gov.au/our-work/2011-immigration-detention-leonora#Heading71>

⁹² Department of Home Affairs (DHA), “Immigration Detention Statistics Summary,” 31 July 2013, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-july2013.pdf>

detained children engaged in self-harm or attempted suicide.⁹³ At the time of the 2014 inquiry, 800 children were being held in mandatory indefinite immigration detention by Australian authorities, including 186 children on Nauru and the average length of detention for children and their families was one year and two months. Over 167 babies were born in immigration detention in 2014.

Despite these inquiries and recommendations, however, the situation for children in immigration detention onshore and offshore did not greatly improve. In 2016, a cache of leaked files from Nauru—obtained and published by the *Guardian* newspaper—covering the period from May 2013 to October 2015, again highlighted a litany of abuses experienced by child detainees on Nauru. The files reportedly included seven reports of sexual assault against children, 59 reports of assault against children, 30 cases of self-harm involving children, and 159 reports of threatened self-harm amongst children.⁹⁴

One recent case, which was widely criticised, again re-focused attention on Australia’s child detention policies. The Murugappan family—a Tamil couple from Sri Lanka with two young Australian-born daughters, also known as the “Biloela Family”—was arrested and detained in 2018, despite having lived in Biloela (central Queensland) for four years. Following a mid-air Federal Court injunction during an attempted deportation flight, the family were transferred to Christmas Island pending the outcome of their court appeal. Since then, the Biloela community has campaigned for their release, but authorities have insisted on their continued detention, despite the risks posed to the young children. In June 2021, the youngest daughter, three-year-old Tharnicaa, was transferred to Perth for emergency medical care after being hospitalised with a suspected blood infection. According to advocates, she was unwell for a week before authorities would provide hospital access.⁹⁵ Following this incident, the family was moved from Christmas Island to community detention in Perth while they await a decision on their ongoing legal cases. Community detention requires the family to live at a designated address, remain in Perth, and have restrictions on visitors.⁹⁶

International observers have frequently challenged Australia’s child detention policies. In 2017, the UN Human Rights committee urged the country to ensure that children and unaccompanied minors “are not detained, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention and their special need for care.”⁹⁷ In 2019, the UN Committee on the Rights of the Child urged Australia to amend the Migration Act to prohibit the detention of children, and noted that—even though no children remained in regional processing countries—authorities should enact legislation prohibiting the detention of children in such situations.⁹⁸

⁹³ Australian Human Rights Commission, “Summary Factsheet - The Forgotten Children: National Inquiry into Children in Immigration Detention 2014,” 18 July 2015, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/summary-factsheet-forgotten-children-national>

⁹⁴ P. Farrell et al, “The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention,” *The Guardian*, 10 August 2016, <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention>

⁹⁵ M. A. Kenny and N. Procter, “As a Young Child is Evacuated from Detention, Could This See the Biloela Tamil Family Go Free?” *The Conversation*, 8 June 2021, <https://theconversation.com/as-a-young-child-is-evacuated-from-detention-could-this-see-the-biloela-tamil-family-go-free-162289>

⁹⁶ Josh Taylor, “What comes next for the Tamil family from Biloela?”, *The Guardian*, 15 June 2021, <https://www.theguardian.com/australia-news/2021/jun/16/what-comes-next-for-the-tamil-family-from-biloela>

⁹⁷ UN Human Rights Committee, “Concluding Observations on the Sixth Periodic Report of Australia,” CCPR/C/AUS/CO/6, 1 December 2017, <https://bit.ly/3iMoHjo>

⁹⁸ UN Committee on the Rights of the Child (CRC), “Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia,” CRC/C/AUS/CO/5-6, 1 November 2019, <https://uhri.ohchr.org/Document/File/565aabfe-16c4-47bc-9476-e15faeda599d/BDB220F2-1156-4F81-8C04-783A4E736A1A>

2.6 Other Vulnerable Groups

Does the country class any groups of people as “vulnerable”?	No
Are these groups protected from detention?	No

Because immigration detention in Australia is mandatory for all unlawful non-citizens, there is no judicial review of decisions to detain, no consideration of necessity, reasonableness, or proportionality, and thus no review of a person’s needs and vulnerabilities. As a result, vulnerable groups—including children, the elderly, persons with disabilities, pregnant women, survivors of torture and trauma, and persons with specific physical and mental health condition—are detained in Australia. There are no regulations in place regarding the provision of healthcare, or other special arrangements for vulnerable groups in places of immigration detention, and no measures to reduce the length of detention for vulnerable persons and persons with disabilities.⁹⁹

Under Section 195A of the 1958 Migration Act, the Minister for Home Affairs can exercise his or her personal, non-compellable, non-delegable, and non-reviewable powers to grant people in detention bridging visas while their immigration status is being resolved or move them to “community detention.”¹⁰⁰ According to the Refugee Council of Australia (RCOA), community detention can be a better option for those with significant vulnerability as they are guaranteed a place of residence, a caseworker, and a small living allowance.¹⁰¹

In its submission to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability in November 2021, the RCOA raised urgent concerns about conditions for vulnerable persons, including persons with disabilities and survivors of torture, in immigration detention.¹⁰² The RCOA submission highlighted the very negative impacts of long-term detention on the physical and mental health and wellbeing of adults and children. They pointed out that long-term detention can exacerbate existing disability and increase the likelihood of developing disability, especially psychosocial disability, while in detention. Refugees and asylum seekers who have already suffered traumatic experiences in their home countries and during their journeys to seek protection are more vulnerable to developing mental health problems; indefinite detention, increased securitisation, and inadequate health care in detention facilities exacerbates mental health issues.¹⁰³ Moreover, health care experts have highlighted that effective treatment for survivors of torture and trauma is not possible while they are in detention. There is a notable increase in psychosocial disabilities, notably schizophrenia, amongst immigration detainees.¹⁰⁴

⁹⁹ Refugee Council of Australia, “People with Disability in Immigration Detention,” Submission to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability, 3 November 2021, <https://www.refugeecouncil.org.au/wp-content/uploads/2021/11/People-with-disability-in-detention-RCOA.pdf>

¹⁰⁰ Government of Australia, “Migration Act 1958, s.195A,” 8 October 1958, http://classic.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s195a.html

¹⁰¹ Sahar Okhovat (Refugee Council of Australia), in correspondence with Michael Flynn (Global Detention Project), 9 November 2021

¹⁰² Refugee Council of Australia, “People with Disability in Immigration Detention,” Submission to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability, 3 November 2021, <https://www.refugeecouncil.org.au/wp-content/uploads/2021/11/People-with-disability-in-detention-RCOA.pdf>

¹⁰³ Refugee Council of Australia, “People with Disability in Immigration Detention,” Submission to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability, 3 November 2021, <https://www.refugeecouncil.org.au/wp-content/uploads/2021/11/People-with-disability-in-detention-RCOA.pdf>

¹⁰⁴ Refugee Council of Australia, “People with Disability in Immigration Detention,” Submission to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability, 3 November 2021, <https://www.refugeecouncil.org.au/wp-content/uploads/2021/11/People-with-disability-in-detention-RCOA.pdf>

Independent assessments of immigration detainee mental and physical health—particularly amongst those held offshore—have found huge numbers suffering from ill-health. In one 2019 review in which 581 detainees were assessed, 97 percent were found to be suffering from physical ill-health, and 91 percent were experiencing mental health problems.¹⁰⁵ Many have highlighted that such suffering was particularly compounded in offshore detention conditions, where observers repeatedly painted a picture of medical neglect, local hospitals ill-equipped to treat detainees, and spiralling rates of self-harm.

Until early 2019, sick detainees held in offshore detention facilities waited an average of two years before they were transferred to Australia for medical treatment—often due to lengthy court cases.¹⁰⁶ In February 2019, however, the Australian government amended the 1958 Migration Act through the Migration Amendment (Urgent Medical Treatment) Bill (commonly known as the “Medevac Bill”). This paved the way for refugees and asylum seekers detained in offshore facilities to be transferred to the mainland for medical treatment, upon the recommendation of two independent doctors and when necessary treatment was unavailable offshore.¹⁰⁷ Before being repealed in December 2019, some 192 people were transferred to Australia for medical treatment under the law.¹⁰⁸

However, persons transferred for treatment in Australia were still considered to be detained and were not able to have their claims for protection processed during treatment unless they returned to Nauru or Papua New Guinea (PNG). The majority were placed in Alternative Places of Detention (APODs): according to the Department of Home Affairs (DHA), by 31 December 2019, 110 Medevac refugees and asylum seekers were held in hotels under close supervision.¹⁰⁹ In one description of a hotel APOD in Brisbane in June 2019, several refugees and asylum seekers describe conditions in which private Serco security guards permanently patrolled corridors; rooms “crawling with bed bugs,”; and “humiliating” invasive body searches before leaving the hotel for medical appointments.¹¹⁰ Other reports have highlighted detainees’ lack of access to outdoor space and lack of appropriate food provision.¹¹¹

Although some Medevac refugees and asylum seekers were released, many still remain in detention as of this writing. According to the DHA, which justified the releases on a purely financial basis, “all those released were granted final departure bridging visas which allowed “individuals to temporarily reside in the Australian community while they finalise their arrangements to leave Australia.”¹¹² In a statement, the ministry said: “The individuals residing in

¹⁰⁵ P. Karp and S. Martin, “Asylum Seekers Held in Papua New Guinea Blocked from Talking to Lawyers or Doctors,” *The Guardian*, 26 August 2019, <https://www.theguardian.com/australia-news/2019/aug/26/asylum-seekers-held-in-papua-new-guinea-blocked-from-talking-to-lawyers-or-doctors>

¹⁰⁶ Asylum Seeker Resource Centre (ASRC), “Medevac Bill Explained,” accessed 6 July 2021, https://asrc.org.au/medevac_faq/

¹⁰⁷ Asylum Seeker Resource Centre (ASRC), “Medevac Bill Explained,” accessed 6 July 2021, https://asrc.org.au/medevac_faq/

¹⁰⁸ Australian Refugee Council, “Australia’s Offshore Processing Regime: The Facts,” 20 May 2020, <https://www.refugeecouncil.org.au/offshore-processing-facts/8/>

¹⁰⁹ Australian Refugee Council, “Australia’s Offshore Processing Regime: The Facts,” 20 May 2020, <https://www.refugeecouncil.org.au/offshore-processing-facts/8/>

¹¹⁰ B. Smee et al, “‘Like a Criminal’: Inside the Brisbane Hotel Where Medevac Refugees are Detained,” *The Guardian*, 29 June 2019, <https://www.theguardian.com/australia-news/2019/jun/30/like-a-criminal-inside-the-brisbane-hotel-where-medevac-refugees-are-detained>

¹¹¹ Business and Human Rights Resource Centre, “Australia: Refugees & Asylum Seekers Held in Hotel Detention Facilities are Subjected to Prison-Like Conditions & Risk COVID-19 Exposure,” 6 September 2020, <https://www.business-humanrights.org/en/latest-news/australia-refugees-asylum-seekers-hotel-detention-facilities-are-subjected-prison-conditions-contravention-international-human-rights-standards/>

¹¹² J. Taylor, “Nearly All Refugees Held in Melbourne Hotel Detention to be Released, Advocates Say,” *The Guardian*, 20 January 2021, <https://www.theguardian.com/australia-news/2021/jan/20/more-than-20-refugees-to-be-released-from-melbourne-hotel-detention-advocates-say>

the alternative places of detention were brought to Australia temporarily for medical treatment. They are encouraged to finalise their medical treatment so they can continue on their resettlement pathway to the United States, return to Nauru or PNG, or return to their home country.”¹¹³ As of 31 August 2021, there were 1,179 “transitory persons” in Australia, of which 619 were in immigration detention, including 39 held in immigration detention centres (IDCs) or immigration transit accommodation (ITAs) and 44 in APOD’s.¹¹⁴

2.7 Length of Detention

Maximum length of administrative immigration detention, as provided in law	Indefinite
Average length of detention	696 days (as of 31 August 2021)

There is no maximum limit on the length of migration-related detention in Australia. According to Section 196 of the Migration Act, an unlawful non-citizen detained under Section 189 must be kept in immigration detention until he or she is removed or deported from Australia, taken to a regional processing country, or granted a visa. This policy has led to many people being kept in detention for extraordinarily long periods of time: As of mid-2021, there were approximately 50 people who had been in detention for more than eight years, some of whom had already spent 10 years or more behind bars.¹¹⁵

The lack of a legal cap on the duration of detention leads to excessive detention periods with the length of time increasing every year. In August 2012, the average number of days in closed detention was 79 days;¹¹⁶ this rose to 412 days in August 2015,¹¹⁷ 468 days in August 2018,¹¹⁸ and 696 days by August 2021.¹¹⁹ Out of 1,440 people in immigration detention on 31 August 2021, 935 had been in detention for up to 2 years (65 percent), 388 persons had been detained for between 2 and 5 years (26.9 percent), and 117 people for over 5 years (8.1 percent).¹²⁰

¹¹³ J. Taylor, “Nearly All Refugees Held in Melbourne Hotel Detention to be Released, Advocates Say,” *The Guardian*, 20 January 2021, <https://www.theguardian.com/australia-news/2021/jan/20/more-than-20-refugees-to-be-released-from-melbourne-hotel-detention-advocates-say>

¹¹⁴ Senate Standing Committee on Legal and Constitutional Affairs, “Home Affairs Portfolio: Australia Border Force – Program 3.5: Onshore Compliance and Detention: SE21-300 – Update of AE21-458 – No: of Transitory Persons in Australia,” 25 October 2021, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId12-PortfolioId20-QuestionNumber300>

¹¹⁵ Senate Standing Committee on Legal and Constitutional Affairs, “Home Affairs Portfolio: Australia Border Force – Program 3.5: Onshore Compliance and Detention: SE21-323 – Immigration Detention – No of Years Held in Detention,” 25 October 2021, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId12-PortfolioId20-QuestionNumber323>

¹¹⁶ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2012, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-Aug-2015.pdf>

¹¹⁷ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2015, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-Aug-2015.pdf>

¹¹⁸ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2018, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-august-18.pdf>

¹¹⁹ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

¹²⁰ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

2.8 Procedural Standards

Are procedural standards required by law?	Limited in scope
What basic procedural standards are required by law?	<ul style="list-style-type: none"> Information to detainees
Are procedural standards routinely applied?	Not applicable

Australia’s mandatory, indefinite detention regime offers little in the way of procedural standards and guarantees. The Migration Act specifically prohibits a court from releasing an unlawful non-citizen from detention until they receive a visa or are deported. Detention does not depend on individual circumstances, such as being a health or security risk, as it does in other countries.¹²¹ A court can only review the lawfulness of detention by enquiring into whether a person holds a valid visa. According to the Refugee Council of Australia (RCOA), “this effectively means that courts cannot independently review whether detention is justified.”¹²²

For the Australian Human Rights Commission, a key concern with the mandatory detention system in Australia is that “the detention of an unlawful non-citizen is not based on an individual assessment that the person needs to be detained. It is an *a priori* rule which applies to an entire class of people, regardless of their circumstances, and is not subject to judicial review.”¹²³ Key procedural safeguards such as judicial review of detention decisions, vulnerability assessments, considerations of necessity and proportionality, or application of discretion, do not exist in Australia’s mandatory detention system.

The limited range of procedural guarantees provided in Articles 194–196 of the 1958 Migration Act mainly concern the provision of information to detainees and visa applications. These include, “as soon as reasonably practicable after an officer detains a person under section 189, the officer must ensure that the person is made aware of: the provisions of sections 195 and 196; and if a visa held by the person has been cancelled under section 137J—the provisions of section 137K.” Article 195 states that a detainee may apply for a visa “within two working days after the day on which section 194 was complied with in relation to his or her detention; or if he or she informs an officer in writing within those 2 working days of his or her intention to so apply—within the next 5 working days after those 2 working days.” The same article goes on, however, to state that “a detainee who does not apply for a visa within the time allowed by subsection (1) may not apply for a visa, other than a bridging visa or a protection visa, after that time.”

Article 196 prohibits “the release, even by a court, of an unlawful non-citizen from detention,” (other than for removal or deportation) “unless the non-citizen has been granted a visa.”

According to the Australian Human Rights Commission, under Australian law the necessity or proportionality of detention cannot be challenged and the question of whether detention is arbitrary, and therefore unlawful under international human rights law, cannot be separately adjudicated.¹²⁴ There have been several Australian High Court cases which have upheld the constitutional validity of laws which allow for indefinite immigration detention in Australia. These

¹²¹ Refugee Council of Australia, “Australia’s Detention Policies: Mandatory Detention,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/>

¹²² Refugee Council of Australia, “Australia’s Detention Policies: Mandatory Detention,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/>

¹²³ Australian Human Rights Commission, “Judicial Review of Lawfulness of Detention (2013),” Response to Questionnaire from the UN Working Group on Arbitrary Detention, 8 November 2013, para. 7, <https://humanrights.gov.au/our-work/legal/submission/judicial-review-lawfulness-detention-2013>

¹²⁴ Australian Human Rights Commission, “Judicial Review of Lawfulness of Detention (2013),” Response to Questionnaire from the UN Working Group on Arbitrary Detention, 8 November 2013, para. 5, <https://humanrights.gov.au/our-work/legal/submission/judicial-review-lawfulness-detention-2013>

including immigration detainees, although their application may be limited or rarely used.¹³² Most recently, Queensland passed the *Human Rights Act 2019*, which went into effect in January 2020. Section 29 provides: “(1) Every person has the right to liberty and security. (2) A person must not be subjected to arbitrary arrest or detention. (3) A person must not be deprived of the person’s liberty except on grounds, and in accordance with procedures, established by law. (4) A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.”¹³³

2.9 Non-Custodial Measures (“Alternatives to Detention”)

Does the law require consideration of non-custodial measures as part of detention procedures?	No
Are non-custodial measures used in practice?	Yes (two discretionary measures: bridging visas and community detention)

Because immigration detention measures are mandatory, there is no consideration of non-custodial “alternatives to detention” to test the necessity and proportionality of individual detention decisions. However, the law gives a discretionary power to the immigration minister to provide people “bridging visas” that enable them to live in the community. The law also provides for a measure called “community detention” which, although not strictly detention, imposes severe restrictions on freedom of movement.¹³⁴

In 2005, the Migration Act was amended to give the immigration minister the absolute discretionary power to provide “bridging visas” to immigration detainees, which enables them to be released into the community.¹³⁵ Bridging visas can be granted to people who arrive by boat, for example, who are designated as “illegal maritime arrivals” (IMAs). These allow individuals to live in the community while their applications are processed, and most people under such visas are permitted to work and study and have access to Medicare.¹³⁶ There are different types of bridging visas, but IMAs are generally provided with a bridging visa E. As of 31 August 2021, 11,630 IMAs were living in the community on such a visa.¹³⁷

Separately, the immigration minister has the discretionary authority to make a “residence determination” that provides for “community detention.” When this measure is applied—mainly for cases of people who are vulnerable (such as families or unaccompanied minors)—people are still formally considered in “detention” as they do not have a visa but they are not in fact fully deprived of liberty. They are generally not under physical supervision, but they must live at a

¹³² Australian Human Rights Commission, “Judicial Review of Lawfulness of Detention (2013),” Response to Questionnaire from the UN Working Group on Arbitrary Detention, 8 November 2013, paras. 27-29, <https://humanrights.gov.au/our-work/legal/submission/judicial-review-lawfulness-detention-2013>

¹³³ Queensland Government, Human Rights Act 2019, <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005#sec.29>

¹³⁴ Refugee Council of Australia, “Australia’s Detention Policies: Where are People Detained?,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/5/#https://www.refugeecouncil.org.au/srssl/#>

¹³⁵ See Sections 195A and 197AB of the Migration Act.

¹³⁶ Refugee Council of Australia, “Australia’s Detention Policies: Where are People Detained?,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/5/#https://www.refugeecouncil.org.au/srssl/#>

¹³⁷ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

specified address and are subject to curfews and reporting duties, and they are not permitted to work.¹³⁸ As of 31 August 2021, 560 people were living in the community after being approved for residence determination.¹³⁹

2.10 Detaining Authorities and Institutions

What authorities are responsible for detention and other migration-control measures?

- Department of Home Affairs
- Australian Border Force

While the authority to detain people for migration reasons lies with the Australian Border Force (ABF), Australia’s migration-related detention centres are managed by a private company, Serco.

Under the 2015 Australian Border Force Act, Border Force Officers exercise their powers under the Migration Act and other relevant legislation, including the power to detain unlawful non-nationals. The ABF also manages safety and security within immigration detention facilities and operates as an independent agency under the Home Affairs Portfolio.¹⁴⁰ In addition, the Department of Home Affairs (DHA), which was established in 2017 and succeeded the Department of Immigration and Border Protection, is responsible for delivering immigration and customs border policy functions.¹⁴¹

Article 189 of the Migration Act provides the legal grounds for the detention of unlawful non-citizens, under which an “officer” may detain such persons. Under Article 5 of the same act, various “officers” are authorised to detain non-nationals including: “(a) an officer of the department [of Immigration and Citizenship], other than an officer specified by the Minister in writing...; or (b) a person who is an officer for the purposes of the Customs Act 1901, other than such an officer specified by the Minister in writing...; or (c) a person who is a protective service officer for the purposes of the Australian Federal Police Act 1979...; or (d) a member of the Australian Federal Police or of the police force of a State or an internal Territory; or (e) a member of the police force of an external Territory; or (f) a person who is authorised in writing by the Minister to be an officer for the purposes of this Act; or (g) any person who is included in a class of persons authorised in writing by the Minister to be officers for the purposes of this Act.”¹⁴²

2.11 Regulation of Detention Conditions and Regimes

Does the country use prisons for immigration detention?

No

Does the country have regulations establishing minimum conditions and treatment in detention?

No

¹³⁸ Refugee Council of Australia, “Australia’s Detention Policies: Indefinite and Prolonged,” 20 May 2020, <https://www.refugeecouncil.org.au/detention-policies/2/>

¹³⁹ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 August 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

¹⁴⁰ Australian Border Force, “Immigration Detention in Australia,” accessed on 14 January 2022, <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-management>; Department of Home Affairs, “Who We Are,” accessed on 14 January 2022, <https://www.homeaffairs.gov.au/about-us/who-we-are/our-history>

¹⁴¹ Department of Home Affairs, “Who We Are,” accessed on 14 January 2022, <https://www.homeaffairs.gov.au/about-us/who-we-are/our-history>

¹⁴² Migration Act 1958 – Sect 5, http://classic.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s5.html

Australia has not codified immigration detention regulations. There only exist a few manuals released following Freedom of Information Requests (FOIRs). In 2020, the Australian Information Commissioner ordered the release of Serco’s immigration detention centre operating manual. At the time of writing, the Department of Home Affairs (DHA) had not released the manual, arguing that it would allow immigration detainees to make human rights complaints as a “means of intimidating Serco personnel.”¹⁴³

On the other hand, a 400-page 2010 Serco “learner guide,” released in 2012, provides guidance and instructions for detention centre staff on the treatment of persons in immigration detention. The manual provides, *inter alia*, a code of conduct for staff, instructions on conducting searches (screening search, pat search, strip search), and a section on control and restraint which teaches officers restraining techniques but also “defensive counter-strikes” such as: straight punches; palm heel strikes; side angle kicks; front thrust kicks; and knee strikes.¹⁴⁴ In addition, a 2015 Serco “Management Guide” includes several manuals on procedures to follow in immigration detention. The “Behaviour Management” manual provides guidance as regards detainees displaying “anti-social behaviour.” The manual provides examples of anti-social behaviour and explains procedures that are to be followed in such cases. For instance, the manual states that any detainee demonstrating unacceptable behaviours is to be referred to the International Health and Medical Services (IHMS) for review and also explains the use of “restrictive accommodation” for those detainees.¹⁴⁵ Another manual within the management guide goes through procedures regarding death in detention, detailing reporting and on scene requirements.¹⁴⁶

Moreover, the DHA has also released certain manuals regarding procedures in immigration detention centres, including: the use of force in detention;¹⁴⁷ assessment and placement of detainees in immigration detention facilities;¹⁴⁸ and one on alternative places of detention.¹⁴⁹

A long-standing area of concern has been detainee access to telecommunications. In particular, authorities have attempted to prohibit detainees’ use of mobile phones, claiming that detainees use them to conduct criminal activities, plan escape attempts, and intimidate staff and other detainees.¹⁵⁰

In 2017, the use of mobile phones and SIM cards in immigration detention facilities was banned. However, this policy was soon found to be invalid by the Federal Court, which held that it was not authorised by the Migration Act.¹⁵¹ During inspection visits to detention facilities in 2018, the Australian Human Rights Commission spoke to facility staff, who reported that although a small

¹⁴³ J. Taylor & C. Knaus, “Home Affairs Fought for Three Years to Stop Serco Detention Centre Manual Release,” *The Guardian*, 6 March 2020, <https://www.theguardian.com/australia-news/2020/mar/06/home-affairs-fought-for-three-years-to-stop-serco-detention-centre-manual-release>

¹⁴⁴ Serco, “Student Folder: CSO Induction Training Course,” 2010, https://issuu.com/crikey/docs/serco_manual?printButtonEnabled=false&shareButtonEnabled=false&searchButtonEnabled=false&backgroundColor=percent23222222, p.236-237.

¹⁴⁵ Serco Immigration Services, “Behaviour Management,” Management Guide, 24 February 2015.

¹⁴⁶ Serco Immigration Services, “Death in Detention,” Management Guide, 19 February 2015.

¹⁴⁷ Department of Home Affairs, “Detention Services Manual – Safety and Security Management – Use of Force,” 10 October 2018, <https://www.homeaffairs.gov.au/foi/files/2020/fa-200100011-document-released.PDF>

¹⁴⁸ Department of Home Affairs, “Assessment and Placement of Detainees in Immigration Detention Facilities in Australia,” 2 September 2016, <https://www.homeaffairs.gov.au/foi/files/2020/fa-200400837-document-released.PDF>

¹⁴⁹ Department of Home Affairs, “Detention Services Manual – Detainee Placement – Alternative Places of Detention,” 3 October 2018, <https://www.homeaffairs.gov.au/foi/files/2020/fa-200400837-document-released.PDF>

¹⁵⁰ Australian Human Rights Commission, “Risk Management in Immigration Detention (2019),” May 2019, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>

¹⁵¹ Australian Human Rights Commission, “Risk Management in Immigration Detention (2019),” May 2019, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>

number of detainees used their telephones to intimidate others, generally the reintroduction of mobile phones had brought significant benefits—including to detainees’ mental wellbeing.¹⁵²

A bill has been proposed that would amend the Migration Law (Migration Amendment [Prohibiting Items in Immigration Detention Facilities] Bill 2020) to allow mobile phones and other internet-connecting devices to be labelled as “prohibited items.”¹⁵³ The bill, which as of this writing has not advanced, was criticised by some observers for violating international rules. Amnesty International argued that due to the “woefully inadequate” provision of fixed phones and computers within detention facilities, the bill would leave most detainees unable to contact legal representatives and family members—thus potentially breaching UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), which amongst other provisions ensure detainees’ rights to remain connected with the outside world.¹⁵⁴

2.12 Domestic Monitoring

Do NGOs attempt to monitor migration-related detention sites?	Yes
Has the country established a National Preventive Mechanism (NPM)?	Yes – Office of the Commonwealth Ombudsman

Australia ratified the Optional Protocol of the Convention against Torture (OPCAT) in 2017,¹⁵⁵ although it opted to postpone establishment of a National Preventive Mechanism (NPM)—a key detention monitoring body required by the protocol—until 2022.¹⁵⁶ As of January 2022, however, the country had still not designated NPMs in each state and territory, a failure which was widely criticised by civil society groups and opposition political figures.¹⁵⁷

Commenting on the country’s OPCAT ratification, the Refugee Council of Australia said: “Even the highest quality detention monitoring will not address the fundamental issue with immigration detention in Australia: it is mandatory, indefinite and arbitrary and not subject to a proper and transparent review.”¹⁵⁸

The Commonwealth Ombudsman undertakes inspections of facilities—including, in the past, inspections of facilities in Papua New Guinea and Nauru—and receives and investigates complaints from detainees. However, the Ombudsman does not publish reports following these

¹⁵² Australian Human Rights Commission, “Risk Management in Immigration Detention (2019),” May 2019, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>

¹⁵³ M. Peterie, “Banning Mobile Phones in Immigration Detention Would Make an Inhumane System Even Crueler,” University of Wollongong Australia, 2 September 2020, <https://www.uow.edu.au/media/2020/banning-mobile-phones-in-immigration-detention-would-make-an-inhumane-system-even-crueler.php>

¹⁵⁴ Amnesty International, “New Bill to Ban Mobile Phones in Immigration Detention May Breach Mandela Rules,” 19 May 2020, <https://www.amnesty.org.au/new-bill-to-ban-mobile-phones-in-immigration-detention-may-breach-mandela-rules/>

¹⁵⁵ UN Committee against Torture (CAT), “Sixth Periodic Report Submitted by Australia Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure, Due in 2018,” CAT/C/AUC/6, 20 March 2019, <https://bit.ly/30iba7C>

¹⁵⁶ Human Rights Law Centre, “Australia off track to implement anti-torture protocols by international deadline,” 2 August 2021, <https://www.hrlc.org.au/news/2021/8/6/australia-off-track-to-implement-anti-torture-protocols-by-international-deadline>

¹⁵⁷ Rachael Knowles, “A national disgrace: Australia slammed for failing to meet anti-torture obligations,” *NITV News*, 20 January 2022, <https://www.sbs.com.au/nitv/article/2022/01/20/national-disgrace-australia-slammed-failing-meet-anti-torture-obligations>

¹⁵⁸ Refugee Council of Australia, “Submission on the Implementation of OPCAT in Australia: Second Stage of Consultations,” 21 September 2017, <https://www.refugeecouncil.org.au/opcat-second-stage/>

inspections.¹⁵⁹ During the COVID-19 pandemic, the Ombudsman reported that it had had to pause in-person visits to onshore detention facilities—but as of August 2020, physical visits had resumed.¹⁶⁰

The Australian Human Rights Commission monitors and inspects Australia’s immigration detention facilities and ensures that the human rights of detained migrants and asylum seekers are respected. The commission has for many years, called on the government to end the system of mandatory immigration detention as it leads to breaches of Australia’s human rights obligations. While the commission acknowledges that the use of immigration detention may be legitimate in some circumstances for a strictly limited period of time, in order to avoid detention being arbitrary there must be an individual assessment of the necessity of detention for each person, taking into account their individual circumstances.¹⁶¹

Immigration detention facilities are also monitored by the Australian Red Cross. The organisation’s humanitarian observers regularly assess detention conditions, detainees’ access to services, and the treatment of detainees. The Australian Red Cross has also supported the International Committee of the Red Cross in its monitoring visits to offshore detention facilities in Papua New Guinea and Nauru.¹⁶² However, while the two organisations raise issues with the government, reports of their inspections are not published.¹⁶³

On the other hand, the Australian Ombudsman’s (“Commonwealth Ombudsman”) inspection reports on immigration detention centres are publicly available.¹⁶⁴ Between January and March 2020, the Ombudsman conducted inspections at the Melbourne Immigration Transit Accommodation; the Mantra Bell City APOD; and the Villawood Immigration Detention Centre.¹⁶⁵ Moreover, the Australian Human Rights Commission also conducts visits to immigration detention centres and publishes reports on specific inspection visits,¹⁶⁶ as well as yearly reports on the situation in the country’s detention facilities.¹⁶⁷

¹⁵⁹ N. Zhou, “Greens Senator Nick McKim Deported from Manus Island,” *The Guardian*, 20 July 2019, <https://www.theguardian.com/australia-news/2019/jul/20/greens-senator-nick-mckim-deported-from-manus-island>

¹⁶⁰ International Ombudsman Institute, “Australia - Statement by the Commonwealth Ombudsman on the Management of COVID-19 Risks in Immigration Detention Facilities,” 11 August 2020, <https://www.theioi.org/ioi-news/current-news/statement-by-the-commonwealth-ombudsman-on-the-management-of-covid-19-risks-in-immigration-detention-facilities>

¹⁶¹ Australian Human Rights Commission, “Immigration Detention and Human Rights,” 6 January 2016, https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights#9_3

¹⁶² Australian Red Cross, “Immigration Detention Monitoring,” accessed 7 July 2021, <https://www.redcross.org.au/about/how-we-help/migration-support/immigration-detention-monitoring-program>

¹⁶³ N. Zhou, “Greens Senator Nick McKim Deported from Manus Island,” *The Guardian*, 20 July 2019, <https://www.theguardian.com/australia-news/2019/jul/20/greens-senator-nick-mckim-deported-from-manus-island>

¹⁶⁴ Commonwealth Ombudsman, “All Inspection Reports,” accessed on 31 January 2022, <https://www.ombudsman.gov.au/publications/reports/inspection/all-reports>

¹⁶⁵ Commonwealth Ombudsman, “Monitoring Immigration Detention: The Ombudsman’s Activities in Overseeing Immigration Detention: January-June 2020,” Report No. 04/2021, 2021, https://www.ombudsman.gov.au/_data/assets/pdf_file/0015/112560/Report-No.-04_2021-Monitoring-Immigration-Detention-The-Ombudsmans-activities-in-overseeing-immigration-detention-January-June-2020-A2184717.pdf

¹⁶⁶ Australian Human Rights Commission, “Immigration Detention Reports and Photos,” accessed on 31 January 2022, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/immigration-detention-reports-and-photos>

¹⁶⁷ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities 2019 Report,” 3 December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

2.13 International Monitoring

Has the country ratified the Optional Protocol to the Convention against Torture (OPCAT)?	Yes
Has the country received visits from the Subcommittee on Prevention of Torture (SPT)?	No
Has the country received comments from international human rights mechanisms regarding its immigration detention practices?	Yes

Australia’s immigration detention practices have been heavily scrutinised by international observers, who have highlighted a variety of concerns with respect to arbitrary detention, use of indefinite and mandatory detention, operations at offshore processing facilities, abuses suffered by detainees both in mainland and offshore centres, the detention of children, and the role of private actors in operating detention centres, amongst other issues.

The country’s rigid mandatory detention regime and indefinite detention policies have been frequently flagged by human rights mechanisms as cause for concern. In 2021 for example, during its review for the third cycle of the UN Universal Periodic Review (UPR), Australia received several recommendations, including: “Review its immigration detention regime to end the indefinite detention of people seeking asylum in Australia and to stop offshore processing of refugees and provide pathways to resettlement (Finland) (para 146.313)” and “amend the Migration Act 1958 to prohibit placing children in immigration detention (Rwanda) (para 146.334).”¹⁶⁸ According to the Refugee Council of Australia, of the 122 UN member states that participated in Australia’s UPR hearing on 20 January 2021, 45 states made comments or recommendations on refugee and detention policies. In particular, comments were raised regarding the offshore processing of people seeking asylum, indefinite immigration detention, lack of legislation to prohibit the detention of children, refoulement, and a lack of compliance of the country’s asylum and border management policies with international law.¹⁶⁹

Furthermore, in 2017 the UN Human Rights Committee noted that it was “particularly concerned about what appears to be the use of detention powers as a general deterrent against unlawful entry rather than in response to an individual risk.”¹⁷⁰ In 2017, the UN Special Rapporteur on the Human Rights of Migrants also encouraged Australia to cease using detention as an “automatic consequence of a decision to refuse admission of entry or of a removal order,” and to instead: “Change its laws and policies related to mandatory administrative detention of migrants in an irregular situation and asylum seekers, so that detention is decided on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation.”¹⁷¹ In its review in 2017, the UN Committee on the Elimination of Racial Discrimination (CERD) repeated concerns about Australia’s “policy of indefinite mandatory immigration detention for anyone who arrives in Australia without a visa, including children and unaccompanied minors,” and urged Australia

¹⁶⁸ Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Australia,” A/HRC/47/8, 24 March 2021, <https://undocs.org/A/HRC/47/8>

¹⁶⁹ Refugee Council Australia, “Australia’s 2021 Universal Periodic Review by United Nations Human Rights Council: UN Member States Challenge Australia’s Refugee and Asylum Policies,” 22 January 2021, <https://www.refugeecouncil.org.au/un-member-states-challenge-australias-refugee-and-asylum-policies/>

¹⁷⁰ UN Human Rights Committee, “Concluding Observations on the Sixth Periodic Report of Australia,” 2017, <https://uhri.ohchr.org/Document/File/c09dc287-c4db-460e-ae7d-c645bf1f350a/E7484DFE-B7AB-412D-B33E-221707F1B333>

¹⁷¹ UN Special Rapporteur on the Human Rights of Migrants, “Report of the Special Rapporteur on the Human Rights of Migrants on his Mission to Australia and the Regional Processing Centres in Nauru,” A/HRC/35/25/Add.3, 24 April 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/098/91/PDF/G1709891.pdf?OpenElement>

to ensure detention is used as a last resort and subject to regular judicial reviews and to repeal mandatory detention.¹⁷²

Previously, in its 2014 concluding observations, the UN Committee against Torture (CAT) recommended that, “the State party should adopt the necessary measures with a view to considering: (a) repealing the provisions establishing the mandatory detention of persons entering its territory irregularly; (b) ensuring that detention should be only applied as a last resort, when determined to be strictly necessary and proportionate in each individual case, and for as short a period as possible; and (c) establishing, in case it is necessary and proportionate that a person should be detained, statutory time limits for detention and access to an effective judicial remedy to review the necessity of the detention.”¹⁷³

In an April 2016 adjudication by the UN Human Rights Committee,¹⁷⁴ Australia’s indefinite detention of refugees on secret security grounds was found to be arbitrary and illegal. The case concerned five refugees (one Iranian, three Sri Lankan, and one Afghan) who Australia recognised as refugees because returning them to their countries of origin was unsafe, but who were nonetheless refused visas due to “adverse security assessments” made by the Australian Security Intelligence Organisation (ASIO) and who were subsequently detained between 2009 and 2015. According to the committee, the refugees’ detention was arbitrary and contrary to Article 9(1) of the UN International Covenant on Civil and Political Rights (ICCPR) because Australia had not “demonstrated on an individual basis that their continuous indefinite detention was justified,” had not demonstrated “that other, less intrusive, measures could not have achieved the same end of compliance with the State party’s need to respond to the security risk that the authors were said to represent,” and had deprived the refugees of legal safeguards “allowing them to effectively challenge the grounds for their indefinite detention.” The committee also held that the refugees’ detention was contrary to their right to liberty, because the government had failed to justify why they posed a security risk.¹⁷⁵ Subsequently, the ASIO reversed its security assessments and all five refugees were released into the community, having spent between four and six years incarcerated without charge.¹⁷⁶

International observers have also frequently challenged Australia’s offshore detention practices. In particular, several UN treaty bodies have held that Australia has violated its obligations under international law by outsourcing the processing of refugee claims offshore; denying fair and efficient asylum procedures, legal representation, and the right to appeal in offshore processing facilities; forcing vulnerable asylum seekers and refugees to be confined in overcrowded facilities lacking sufficient health care services; failing to revoke policies allowing children to be detained offshore; and exposing detainees—particularly females and children—to sexual abuse and physical violence coupled with insufficient access to justice.¹⁷⁷ Some UN treaty bodies, such as

¹⁷² Committee on the Elimination of Racial Discrimination, *Concluding Observations on the eighteenth to twentieth periodic reports of Australia* (26 December 2017), <https://undocs.org/en/CERD/C/AUS/CO/18-20>

¹⁷³ UN Committee against Torture (CAT), “Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Australia,” CAT/C/AUS/CO/4-5, 23 December 2014, <https://uhri.ohchr.org/Document/File/3eccc7c6-127e-4d7f-8a9f-4fc9ffb00232/99BDEF4D-0DB3-4C71-B0E6-D9BB8B7DF3C6>

¹⁷⁴ UN Human Rights Committee, “Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2233/2013,” CCPR/C/116/D/2233/2013, 18 April 2016, [https://uploads.guim.co.uk/2016/05/17/CCPR-C-116-D-2233-2013-English-cln-auv_\(1\).pdf](https://uploads.guim.co.uk/2016/05/17/CCPR-C-116-D-2233-2013-English-cln-auv_(1).pdf)

¹⁷⁵ UN Human Rights Committee, “Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2233/2013,” CCPR/C/116/D/2233/2013, 18 April 2016, [https://uploads.guim.co.uk/2016/05/17/CCPR-C-116-D-2233-2013-English-cln-auv_\(1\).pdf](https://uploads.guim.co.uk/2016/05/17/CCPR-C-116-D-2233-2013-English-cln-auv_(1).pdf)

¹⁷⁶ B. Doherty, “Australia’s Indefinite Detention of Refugees Illegal, UN Rules,” *The Guardian*, 17 May 2016, <https://www.theguardian.com/law/2016/may/18/australias-indefinite-detention-of-refugees-illegal-un-rules>

¹⁷⁷ See, for example: UN Committee on the Elimination of Discrimination against Women (CEDAW), “Concluding Observations on the Eighth Periodic Report of Australia,” CEDAW/C/AUS/CO/8, 25 July 2018, <https://uhri.ohchr.org/Document/File/e96fa65b-29fd-4dcc-bb27-2bbab4d9f0ea/6E40B6D4-9133-40F5-A21F-B72E5A260B42>; UN Committee against Torture (CAT), “Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Australia,” CAT/C/AUS/CO/4-5, 23 December

the UN Committee on the Elimination of Discrimination against Women (CEDAW), have urged Australia to cease the use of offshore processing.¹⁷⁸

Although Australia has ratified the Optional Protocol to the Convention against Torture (OPCAT), as of January 2022 it had yet to receive a visit from the Subcommittee on the Prevention of Torture (SPT). While the SPT announced that it would visit Australia in March/April 2020, this visit was postponed due to COVID-19 and a new date has not yet been confirmed.¹⁷⁹

The Office of the UN High Commissioner for Refugees (UNHCR) also visits immigration detention facilities and publishes monitoring reports, mostly concerning offshore immigration detention. One of its latest reports concerned the situation of refugees and asylum seekers on Manus Island and Papua New Guinea, published in May 2018. According to that UNHCR report, 3,172 refugees and asylum seekers had been forcibly transferred to facilities in PNG and Nauru since the introduction of the offshore processing policy in 2013.¹⁸⁰

The Working Group on Arbitrary Detention (WGAD) last visited Australia in 2002, following which it expressed concerns regarding the mandatory detention of unauthorised arrivals, restrictions on judicial review, the detention of children, and the psychological impact of detention on asylum seekers. The Working Group concluded by urging Australian authorities to review its laws in order to bring them into compliance with international standards, such as the ICCPR.¹⁸¹

Despite not having visited Australia since 2002, the WGAD regularly issues judgements, called “opinions”, on specific cases of alleged arbitrary detention of asylum seekers and migrants in Australia. Between 2002-2021, it adopted 17 such opinions, each of which concluded that the detention had been arbitrary.¹⁸²

As an example, at its 90th session in May 2021 the WGAD considered the case of Mirand Pjetri, an Albanian national who arrived by boat from Indonesia in Australia in September 2013 and had been held in immigration detention on Christmas Island, in Darwin, at Melbourne Immigration Transit Accommodation in Broadmeadows, and at Villawood Immigration Detention Centre in Sydney, where he was still being held.¹⁸³ Despite good character records, Mr. Pjetri’s applications for safe haven enterprise visas and bridging visas, which would have given him a reprieve from the eight years he had spent in closed detention centres, were repeatedly refused.

2014, <https://uhri.ohchr.org/Document/File/3eccc7c6-127e-4d7f-8a9f-4fc9ffb00232/99BDEF4D-0DB3-4C71-B0E6-D9BB8B7DF3C6>; UN Human Rights Council, “Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences – On Her Mission to Australia,” A/HRC/38/47/add.1, 17 April 2018, <https://uhri.ohchr.org/Document/File/220d0453-b979-43d9-8e2b-0529651ecfdd/4DD4F36E-C494-4FC6-8E9B-624627B7D413>; UN Committee on the Rights of the Child (CRC), “Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia,” CRC/C/AUS/CO/5-6, 1 November 2019, <https://uhri.ohchr.org/Document/File/565aabfe-16c4-47bc-9476-e15faeda599d/BDB220F2-1156-4F81-8C04-783A4E736A1A>

¹⁷⁸ UN Committee on the Elimination of Discrimination against Women (CEDAW), “Concluding Observations on the Eighth Periodic Report of Australia,” CEDAW/C/AUS/CO/8, 25 July 2018, <https://uhri.ohchr.org/Document/File/e96fa65b-29fd-4dcc-bb27-2bbab4d9f0ea/6E40B6D4-9133-40F5-A21F-B72E5A260B42>

¹⁷⁹ UN Human Rights, “UN Treaty Body Database – Optional Protocol of the Convention against Torture (CAT-OP),” accessed 7 July 2021, https://tinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological#

¹⁸⁰ UNHCR, “UNHCR Fact Sheet on Situation of Refugees and Asylum-Seekers on Manus Island, Papua New Guinea,” 5 July 2018, <https://www.unhcr.org/en-au/publications/legal/5b3ea38f7/unhcr-fact-sheet-on-situation-of-refugees-and-asylum-seekers-on-manus-island.html>

¹⁸¹ UN Working Group on Arbitrary Detention (WGAD), “Report of the Working Group on Arbitrary Detention: Addendum, Visit to Australia, Executive Summary,” E/CN.4/2003/8/Add.2, 24 October 2002, <https://undocs.org/E/CN.4/2003/8/Add.2>

¹⁸² Sahar Okhovat (Refugee Council of Australia), in correspondence with Michael Flynn (Global Detention Project), 26 January 2022. See also: UN Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention,” <https://www.ohchr.org/EN/Issues/Detention/Pages/OpinionsadoptedbytheWGAD.aspx>

¹⁸³ UN working Group on Arbitrary Detention (WGAD), “Opinion No. 17/2021 concerning Mirand Pjetri (Australia),” Opinions adopted by the Working Group on Arbitrary Detention at its ninetyeth session, 3–12 May 2021, A/HRC/WGAD/2021/17, <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions90thSession.aspx>

Requests for ministerial intervention were also refused, despite serious ill-health that Mr Pjetri has suffered due to the length of time he had spent in detention. In 2019, the authorities engaged in an abortive attempt to deport Mr. Pjetri. Even though Mr. Pjetri was hospitalised repeatedly due to grave ill-health (mental and physical), he continued to be returned to immigration detention and remained on a removal list for deportation; the uncertainty of these circumstances only exacerbated his poor health.

The WGAD found that Mr. Pjetri’s prolonged detention for over eight years in Australian immigration centres was arbitrary on several grounds: Mr. Pjetri was arbitrarily and indefinitely detained for exercising his fundamental right to seek asylum (Article 14 of the Universal Declaration of Human Rights (UDHR)) and in violation of his rights to non-discrimination and liberty and security of person (Articles 2 and 9 of the ICCPR); he was arbitrarily and indefinitely detained without the right to effective judicial review or the right to appeal the decision to detain, and without a legal limit set on the length of his detention after which he would be released (in violation of Article 9 (2) of the ICCPR); and his detention was discriminatory on the grounds of nationality (in violation of Article 26 of the ICCPR).¹⁸⁴

2.14 Transparency and Access to Data

Transparency Record on Migration-Related Detention	Mixed
Is there a publicly accessible official list of currently operating detention centres?	Partially
Does the country provide annual statistics of the numbers of people placed in migration-related detention?	Yes

Although Australia discloses information regarding the location of detention facilities as well as monthly detention statistics, it has long been criticised for its lack of transparency surrounding immigration detention—particularly regarding its offshore detention operations. According to observers: “This has created a closed, controlled environment, in which people are routinely neglected and harmed.”¹⁸⁵

According to Section 42 of the Australian Border Force Act (2015),¹⁸⁶ no one contracted to work for the Australian Border Force (ABF) must speak publicly about their work. Those who do face two years’ imprisonment—although medical practitioners have been exempted since 2017, following complaints by human rights observers.¹⁸⁷ In 2015, the existence of this legislation forced the UN Special Rapporteur for the Human Rights of Migrants to postpone his monitoring visit to the country, stating that: “This threat of reprisals with persons who would want to cooperate with me on the occasion of this official visit is unacceptable. ... The Act prevents me from fully and freely carrying out my duties during the visit.”¹⁸⁸

¹⁸⁴ UN working Group on Arbitrary Detention (WGAD), “Opinion No. 17/2021 concerning Mirand Pjetri (Australia),” Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, 3–12 May 2021, A/HRC/WGAD/2021/17, <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions90thSession.aspx>

¹⁸⁵ A. Nethery and R. Holman, “Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres,” *The International Journal of Human Rights*, (20), 4 July 2016, <https://www.tandfonline.com/doi/abs/10.1080/13642987.2016.1196903>

¹⁸⁶ Australian Border Force Act (2015) <https://www.legislation.gov.au/Details/C2020C00202>

¹⁸⁷ Australia OPCAT Network, “The Implementation of OPCAT in Australia,” January 2020, https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation_of_OPCAT_in_Australia.pdf

¹⁸⁸ Office of the High Commissioner for Human Rights (OHCHR), “Migrants / Human Rights: Official Visit to Australia Postponed Due to Protection Concerns,” 25 September 2015, <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E>

Monthly detention statistics are made available online by the Department of Home Affairs (DHA).¹⁸⁹ However, in a 2020 submission from the Australia OPCAT Network to the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the UN Working Group on Arbitrary Detention (WGAD), the network argued that these statistics are “increasingly insufficient or misleading.” For instance, the network reported that “in August 2019, when 53 men were detained in the Bomana Immigration Centre in Port Moresby, the Department continued to report the number of people detained in offshore facilities as zero.” It also pointed to the fact that some children in detention have been classified as “guests” and thus excluded from statistics; that the department does not fully disclose information and statistics concerning all Alternative Places of Detention (APODs); and that the department does not disclose the numbers held in facilities other than immigration detention centres, immigration transit accommodation, and some APODs, such as at airports, at sea, or in Department of Home Affairs (DHA) offices.¹⁹⁰

Access to offshore detention facilities has been a particular source of controversy, with independent observers and journalists frequently struggling to gain access. For years, Nauru refused to grant visas to most Australian media outlets seeking to report on immigration detention, and in 2014 the island increased its media visa fees from 200 AUD to 8,000 AUD.¹⁹¹ Although the Australian government claimed it had no involvement in these decisions, in 2018 the *Guardian* Australia revealed that these obstructions were part of a joint effort between Australia and Nauru.¹⁹²

In 2016, Nauru also announced that it would not grant visas to any Australian or New Zealand passport holders unless they worked for the ABF, while in July 2019 Papua New Guinea announced a similar policy whereby it would block all travel to Manus Island for tourism purposes—purportedly as an effort to prevent refugee advocates from travelling to the island and meeting with refugees.¹⁹³ On one particularly notable occasion, the Australian Greens Senator, Nick McKim, travelled to Manus following reports of growing rates of self-harm and suicide attempts amongst refugees and asylum seekers. However, following a request to view accommodation conditions, McKim was deported to Australia.¹⁹⁴

The involvement of private companies within the country’s detention operations has also led to transparency concerns. In 2020, CCTV footage released under freedom of information laws showed Serco guards physically abusing a detainee. The footage, which was captured in 2015, was investigated by the Australian Human Rights Commission in 2019—who were allegedly told to keep the footage under wraps by the DHA as it would have a “substantial adverse impact” on Serco’s operations. However, in a letter to the DHA the commission wrote: “Disclosure of this type of information ... goes towards increasing scrutiny, discussion, comment, and review of the government’s activities.”¹⁹⁵

¹⁸⁹ See: Department of Home Affairs (DHA), “Visa Statistics,” accessed 8 July 2021, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

¹⁹⁰ Australia OPCAT Network, “The Implementation of OPCAT in Australia,” January 2020, https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation_of_OPCAT_in_Australia.pdf

¹⁹¹ The Government of the Republic of Nauru, “Visa Requirements,” <https://bit.ly/KOxOxb>

¹⁹² H. Davidson, “Australia Jointly Responsible for Nauru’s Draconian Media Policy, Documents Reveal,” *The Guardian*, 4 October 2018, <https://www.theguardian.com/australia-news/2018/oct/04/australia-jointly-responsible-for-naurus-draconian-media-policy-documents-reveal>

¹⁹³ Australia OPCAT Network, “The Implementation of OPCAT in Australia,” January 2020, https://www.refugeecouncil.org.au/wp-content/uploads/2020/02/Implementation_of_OPCAT_in_Australia.pdf

¹⁹⁴ N. Zhou, “Greens Senator Nick McKim Deported from Manus Island,” *The Guardian*, 20 July 2019, <https://www.theguardian.com/australia-news/2019/jul/20/greens-senator-nick-mckim-deported-from-manus-island>

¹⁹⁵ S. Trask, “Video Home Affairs Didn’t Want You to See Leads to Calls for Immigration Detention Inquiry,” *SBS News*, 22 October 2020, <https://www.sbs.com.au/news/video-home-affairs-didn-t-want-you-to-see-leads-to-calls-for-immigration-detention-inquiry>

2.15 Trends and Statistics

Immigration detainee population	1,459 (as of 30 September 2021)
Average length of detention	689 days (as of 30 September 2021)
Number of involuntary removals from onshore immigration detention	32 (2020-2021 financial year) ¹⁹⁶
Number of voluntary removals from onshore immigration detention	1,002 (2020-2021 financial year) ¹⁹⁷
Number of refugee status determinations awaiting a decision	30,062 (as of 31 December 2021) ¹⁹⁸

Australia's Department of Home Affairs (DHA) reported that as of 30 September 2021, there were 1,459 people confined in immigration detention facilities. Of these, 991 were in dedicated immigration detention centres (IDCs), 103 were in Alternative Places of Detention (APODs), and 365 were in Immigration Transit Accommodation (ITAs). On that date, the department also reported that there were no children in detention (in APODs).¹⁹⁹ (It is worth noting, however, that observers have criticised the department's statistics as "insufficient or misleading," and their accuracy is thus questioned. For more, see: "Section 2.14 Transparency and Access to Information.")

Of the country's immigration detainee population, 19.9 percent (291 people) were people who "arrived unlawfully by air or by boat." The remaining 80.1 percent (1,168 people) were detained for overstaying their visas, or whose visas had been cancelled. The most common countries of origin for detainees were New Zealand (241 people), Iran (140 people), Vietnam (136 people), Sudan (65 people), India (61 people), Iraq (60 people), Afghanistan (53 people), United Kingdom (53 people), Sri Lanka (48 people), and Fiji (44 people).²⁰⁰

According to DHA statistics, the total number of immigration detainees has generally decreased in recent years: from 6,122 people in December 2013 (including 2,183 on Christmas Island);²⁰¹ 1,792 in December 2015 (including 145 on Christmas Island);²⁰² 1,285 in December 2017

¹⁹⁶ Senate Standing Committee on Legal and Constitutional Affairs: Supplementary Budget Estimates, "Australian Border Force – Program 3.5: Onshore Compliance and Detention," SE21-301 – Update on AE21-365, 25 October 2021, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld12-PortfolioId20-QuestionNumber301>

¹⁹⁷ Senate Standing Committee on Legal and Constitutional Affairs: Supplementary Budget Estimates, "Australian Border Force – Program 3.5: Onshore Compliance and Detention," SE21-301 – Update on AE21-365, 25 October 2021, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld12-PortfolioId20-QuestionNumber301>

¹⁹⁸ Department of Home Affairs, "Monthly Update: Onshore Protection (Subclass 866) Visa Processing – December 2021," accessed on 31 January 2022, <https://www.homeaffairs.gov.au/research-and-stats/files/monthly-update-onshore-protection-866-visa-processing-december-2021.pdf>

¹⁹⁹ Department of Home Affairs (DHA), "Immigration Detention and Community Statistics Summary," 30 September 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>

²⁰⁰ Department of Home Affairs (DHA), "Immigration Detention and Community Statistics Summary," 30 September 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>

²⁰¹ Department of Home Affairs (DHA), "Immigration Detention and Community Statistics Summary," 31 December 2013, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-dec2013.pdf>

²⁰² Department of Home Affairs (DHA), "Immigration Detention and Community Statistics Summary," 30 December 2015, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-dec-2015.pdf>

(including 327 on Christmas Island);²⁰³ 1,450 in December 2019 (including “less than five” on Christmas Island);²⁰⁴ and 1,459 in September 2021 (including 226 on Christmas Island).²⁰⁵

2.16 Privatisation

Is detention centre management privatised?	Yes
Are private companies involved in the provision of services within detention centres?	Yes

Australia has a largely privatised immigration detention system, a rare quality that it appears to share with only two other English-language (and common law) countries, the United Kingdom and the United States.²⁰⁶ As of 2022, the country’s detention centres, both on the mainland and on Christmas Island, were operated by the controversial multinational firm Serco.²⁰⁷

Australia’s offshore processing centres in Nauru and Papua New Guinea (Manus Island) have been operated by a series of private contractors, including G4S, Ferrovial, Paladin, Transfield (Broadspectrum), and Canstruct International. Although Australia’s Manus Island detention and processing operations have formally ended, the country maintains a processing site in Nauru, which is operated by the Brisbane firm Canstruct International. In early 2022, Australia awarded Canstruct “its eighth non-competitive contract extension—for \$218.5m to provide six months of ‘garrison and welfare services’ on Nauru.” According to the *Guardian*: “The company’s total revenue from island contracts over the past five years now totals more than \$1.8bn.”²⁰⁸

The privatisation arrangements and the performance of these companies have been the source of numerous criticisms and investigations dating back to the late 1990s due to the mistreatment of detainees and contracting scandals, amongst other controversies.

Until 1998, detention facilities were operated by a government agency, the Australian Protective Services.²⁰⁹ In 1996, the government proposed using private contractors, announcing in its budget that year that it intended to pursue this option. According to one account, the government saw privatisation “as a means of cutting costs and improving efficiency in the provision of immigration detention services.”²¹⁰

²⁰³ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 December 2017, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-december-17.pdf>

²⁰⁴ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 31 December 2019, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-december-2019.pdf>

²⁰⁵ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 30 September 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>

²⁰⁶ Flynn, M., and Cannon, C., “The Privatization of Immigration Detention: Towards a Global View,” Global Detention Project, September 2009, https://www.globaldetentionproject.org/wp-content/uploads/2016/06/GDP_PrivatizationPaper_Final5.pdf

²⁰⁷ Mark Akkerman, “Financing Border Wars,” Transnational Institute (TNI), 9 April 2021, <https://www.tni.org/en/financingborderwars>

²⁰⁸ Ben Doherty, “Nauru offshore regime to cost Australian taxpayers nearly \$220m over next six months,” *The Guardian*, 3 January 2022, <https://www.theguardian.com/world/2022/jan/24/nauru-offshore-regime-to-cost-australian-taxpayers-nearly-220m-over-next-six-months>

²⁰⁹ A. Mainsbridge and L. Thomas, “Immigration Detention in Australia: The Loss of Decency and Humanity: Submission to the People’s Inquiry into Immigration Detention,” *Public Interest Advocacy Center (PIAC)*, 17 July 2006, https://www.piac.asn.au/wp-content/uploads/06.07-PIACSub-Peoples_Inquiry.pdf

²¹⁰ A. Mainsbridge and L. Thomas, “Immigration Detention in Australia: The Loss of Decency and Humanity: Submission to the People’s Inquiry into Immigration Detention,” *Public Interest Advocacy Center (PIAC)*, 17 July 2006, https://www.piac.asn.au/wp-content/uploads/06.07-PIACSub-Peoples_Inquiry.pdf

Despite claims of cost effectiveness, assessments of the value of detention contracts have revealed the tremendous cost of hiring private companies. The Refugee Council of Australia (RCOA) reported that the most lucrative contracts issued by Australia for managing its offshore processing operations during the period August 2012 to February 2021 were: Broadspectrum (approximately \$2.5 billion); Canstruct International (\$1.4 billion); Canstruct (\$653 million); International Health and Medical Services (\$445 million); and Paladin (\$443 million).²¹¹

In 1998, the government contracted Australasian Correctional Services (ACS), the Australian subsidiary of Wackenhut Corrections Corporation, to become the country's first private company to manage immigration detention centres. The initial contract specified that ACS was to run seven immigration detention centres for a period of three years. Following intense media and NGO criticism of ACS operations, the government ended its immigration-related detention service contract with the company in 2003. The government established a new contract with the security firm Group 4 Falck (now G4S) in August 2003.²¹²

In 2009, amidst a scandal over the death of a detainee in G4S custody, Serco took over operations of detention centres on the mainland and Christmas Island.²¹³ G4S nevertheless continued to be contracted to operate the overseas processing detention site on Manus Island until 2015, when Transfield (later, Broadspectrum), which was already operating the detention site on Nauru,²¹⁴ took over operations not long after G4S guards were charged with murdering a detainee at the Manus Island centre.²¹⁵

Transfield, which reportedly was paid \$1.5 billion during the period 2012-2015 to operate Nauru,²¹⁶ was also the subject of numerous scandals, as its subcontractors were “accused of a series of abuses, including handcuffing children, spying on a senator when she visited the island on an official trip, assaulting asylum seekers who were handcuffed, and running a secretive solitary confinement facility on Manus.”²¹⁷

A more recent contractor of Australia's offshore processing operation, Paladin, which replaced Broadspectrum at the refugee centres in Papua New Guinea, has also been heavily criticised. In 2020, Australia's Auditor-General “rebuked the Department of Home Affairs for handing little-known security company, Paladin, a \$532 million refugee services contract on Manus Island, saying taxpayers did not receive ‘value for money.’”²¹⁸ According to the RCOA, among the

²¹¹ Refugee Council of Australia, “Offshore Processing Statistics,” 8 January 2022, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/6/>

²¹² Flynn, M., and Cannon, C., “The Privatization of Immigration Detention: Towards a Global View,” Global Detention Project, September 2009, https://www.globaldetentionproject.org/wp-content/uploads/2016/06/GDP_PrivatizationPaper_Final5.pdf

²¹³ Government of Western Australia, Department of Mines, Industry Regulation, and Safety, Worksafe, “Summary of successful prosecutions: Prosecution Details: G4S Custodial Services Pty Ltd (CAN 050 069 255),” <https://prosecutions.commerce.wa.gov.au/prosecutions/view/1349>; Parliament of Australia, “The Department's administration of its contract with Serco,” 12 April 2012, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/immigrationdetention/report/c03

²¹⁴ Ben Doherty, “Transfield named Coalition's 'Preferred Tenderer' for Manus and Nauru Centres,” *The Guardian*, 31 August 2015, <https://www.theguardian.com/world/2015/aug/31/transfield-named-coalitions-preferred-tenderer-for-manus-and-nauru-centres>

²¹⁵ Helen Davidson, “Manus Guards Charged Over Death of Iranian Asylum Seeker Reza Barati,” *The Guardian*, 19 August, 2014, <https://www.theguardian.com/world/2014/aug/19/manus-unrest-two-guards-charged-murder-reza-barati>

²¹⁶ Melissa Davey, “Transfield Given \$1.5bn over Three Years to Manage Nauru and Manus Centres,” *The Guardian*, 27 October 2015, <https://www.theguardian.com/australia-news/2015/oct/27/transfield-given-15bn-over-three-years-to-manage-nauru-and-manus-centres>

²¹⁷ Ben Doherty, “Transfield named Coalition's 'Preferred Tenderer' for Manus and Nauru Centres,” *The Guardian*, 31 August 2015, <https://www.theguardian.com/world/2015/aug/31/transfield-named-coalitions-preferred-tenderer-for-manus-and-nauru-centres>

²¹⁸ Angus Grigg et al, “Home Affairs Rebuked Over Paladin's \$532m Contract,” *Financial Review*, 28 May 2020, <https://www.afr.com/policy/foreign-affairs/home-affairs-rebuked-over-paladin-s-532m-contract-20200528-p54xds>

concerns that were raised during a financial review of the company were: the problematic nature of its closed-tender contract; the controversial background of the company's founder, Craig Thrupp, whose track record includes "allegations of financial mismanagement, deception, questionable payments, and large debts"; and corruption allegations of a Paladin company that is majority-owned by the family of high-ranking Papua New Guinea political leader.²¹⁹

Serco has also repeatedly come under criticism for its detention management practices, including its guards' excessive use of force.²²⁰ In March 2012, the company's "prison-style" training manual was leaked, revealing instructions on how to "hit" and "strike" detainees, and recommendations to use "pain" to defend, subdue, and control asylum seekers. In one part, the company attempts to train guards to employ a "downward kick" to the lower shin to cause a "high level of pain and mental stunning" lasting for up to seven seconds.²²¹ According to one Australian senator who read sections of the manual during a parliamentary session: "There is nothing in this training manual to suggest anybody working on the ground in our detention centres have the skills necessary to deal with the specific needs of asylum seekers."²²²

More recently, in 2020 CCTV footage released under freedom of information laws showed Serco guards punching a detainee, wrestling him to the ground, and knocking his tooth loose. The footage, which was captured in 2015, was investigated by the Australian Human Rights Commission in 2019—who were allegedly told to keep the footage under wraps by the Department of Home Affairs (DHA) as it would have a "substantial adverse impact" on Serco's operations. According to the commission, the guards' actions were "unnecessary" and "excessive," and breached both the DHA's and Serco's operational guidelines.²²³

The provision of other services at detention centres, including medical care, has also been the subject of severe criticism and debate due to concerns related to lack of effective oversight by government agencies, models of care driven by financial interests rather than medical necessity, and medical personnel prioritising company policy and political decisions rather than patients' needs.

Stephen Brooker, a former director for mental health at Australia's private detention health provider, International Health and Medical Services (IHMS), writes that soon after he started with the company, "it became apparent that there was an immediate safety risk in terms of the adequate implementation of the Psychological Support Program (PSP), which was the framework used within immigration detention facilities involving all organizations: Department of Immigration and Border Protection; Serco; (the Detention Security Provider DSP); and IHMS (health provider). The clinical procedures of the PSP were not clear and clinical recommendations were at times ignored. There was also an expectation that IHMS clinicians would interact with the clients in a similar way to other contracted detention service staff, and with the detention service provider failing to recognize that this approach blurred the critical need to distinguish between the role of health care staff and detention security staff."²²⁴

²¹⁹ The Refugee Council of Australia, "The Paladin Affair," 22 August 2020, <https://www.refugeecouncil.org.au/paladin-affair/>

²²⁰ Mark Akkerman, "Financing Border Wars," Transnational Institute (TNI), 9 April 2021, <https://www.tni.org/en/financingborderwars>

²²¹ A. Crook, "Serco Training Manual: How to 'Hit' and 'Strike' Detainees," *Crikey*, 14 March 2012, <https://www.crikey.com.au/2012/03/14/serco-training-manual-how-to-hit-and-strike-asylum-seekers/>

²²² A. Crook, "Serco Training Manual: How to 'Hit' and 'Strike' Detainees," *Crikey*, 14 March 2012, <https://www.crikey.com.au/2012/03/14/serco-training-manual-how-to-hit-and-strike-asylum-seekers/>

²²³ S. Trask, "Video Home Affairs Didn't Want You to See Leads to Calls for Immigration Detention Inquiry," *SBS News*, 22 October 2020, <https://www.sbs.com.au/news/video-home-affairs-didn-t-want-you-to-see-leads-to-calls-for-immigration-detention-inquiry>

²²⁴ P. Young et al, "Challenges to Providing Mental Health Care in Immigration Detention," Global Detention Project Working Paper No. 19, <https://www.globaldetentionproject.org/challenges-to-providing-mental-health-care-in-immigration-detention-global-detention-project-working-paper-no-19>

According to Brooker, this public-private setup of health care in immigration detention has created “dual loyalty” challenges for health care providers, who faced “uncertainty ... in what they could say ... or how to act when faced with an intransigent organization who expected clinicians to prioritize detention operational issues over clinical considerations.” Those who didn’t toe the company line, writes Brooker, were subjected to reprisals: “Mental health clinicians who spoke openly about the role of the broader environment in causing harm or who were openly critical of the policy were seen or felt to have inappropriately engaged in political advocacy. This usually ended with a contract being cancelled or not being renewed. It was a strange situation where everyone appeared to acknowledge that the environment caused mental health issues and harm but this could not be discussed openly.”²²⁵

2.17 Cost of Detention

Daily detention cost in offshore detention (per person)	\$9,305 (2021) ²²⁶
Yearly offshore processing management budget	\$1,19 billion (2020-2021) ²²⁷
Yearly onshore immigration detention facility cost per person	\$361,835 (2020-2021) ²²⁸
Yearly onshore hotel-type detention cost per person	\$471,493 (2020-2021) ²²⁹
Yearly cost of “community detention”	\$46,490 (2020-2021) ²³⁰

According to official data, the annual cost of holding a single person in immigration detention during the 2020-2021 fiscal year was on average \$361,835. This cost rose to \$471,493 if the person was held in a hotel-type accommodation; and to \$458,506 in hotel-type APODs in Brisbane and Melbourne. On the other hand, a price tag per person per year for “community detention” was \$46,490 on average.²³¹

As regards offshore processing operations, the total cost between 2013 and 2021 is estimated to have been a staggering \$9.03 billion.²³² In 2016-2017, the government allocated \$880.5 million for offshore processing, but reportedly spent \$1.083 billion. Likewise, in 2019-2020, \$526.6 million was budgeted but costs rose to \$961.7 million. The government reports that it intends to

²²⁵ P. Young et al, “Challenges to Providing Mental Health Care in Immigration Detention,” Global Detention Project Working Paper No. 19, <https://www.globaldetentionproject.org/challenges-to-providing-mental-health-care-in-immigration-detention-global-detention-project-working-paper-no-19>

²²⁶ Doherty, B. “Budget Immigration Costs: Australia Will Spend Almost \$3.4m for Each Peron in Offshore Detention,” *The Guardian*, 12 May 2021, <https://www.theguardian.com/australia-news/2021/may/12/australia-will-spend-almost-34m-for-each-person-in-offshore-detention-budget-shows>

²²⁷ Refugee Council Australia, “Offshore Processing Statistics,” 8 January 2022, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/6/>

²²⁸ Refugee Council Australia, “Statistics on People in Detention in Australia: Costs of Detention,” 8 January 2022, <https://www.refugeecouncil.org.au/detention-australia-statistics/9/>

²²⁹ Refugee Council Australia, “Statistics on People in Detention in Australia: Costs of Detention,” 8 January 2022, <https://www.refugeecouncil.org.au/detention-australia-statistics/9/>

²³⁰ Refugee Council Australia, “Statistics on People in Detention in Australia: Costs of Detention,” 8 January 2022, <https://www.refugeecouncil.org.au/detention-australia-statistics/9/>

²³¹ Refugee Council Australia, “Statistics on People in Detention in Australia: Costs of Detention,” 8 January 2022, <https://www.refugeecouncil.org.au/detention-australia-statistics/9/>

²³² Refugee Council Australia, “Offshore Processing Statistics,” 8 January 2022, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/6/>

reduce the costs of its offshore processing to \$307.5 million in 2021-2022, and to \$296.1 million by 2023-2024.²³³

According to the Refugee Council of Australia, the top contractors in offshore processing by value of contracts from August 2012 to 5 February 2021 were: 1) Broadspectrum (Australia) PTY Limited with an approximate \$2.5 billion contract; 2) Canstruct International PTY Ltd with a \$1.4 billion contract; 3) Canstruct PTY Ltd with a \$653 million contract; 4) International Health and Medical Services Pty Ltd with a \$445 million contract; and 5) Paladin Holdings PTE Ltd with a \$443 million contract.²³⁴

2.18 Externalisation

Has the country financed migration-related detention outside its territory?	Yes
Has the country financed offshore processing of asylum seekers?	Yes

Australia has long been notorious for its efforts to externalise immigration controls and offshore asylum processing, which have inspired copycat proposals in numerous other countries, particularly in Europe.²³⁵ These efforts led to the emergence of a far-flung detention system that has included employing “regional processing centres” in foreign countries (Papua New Guinea and Nauru), financing border controls and detention schemes in Indonesia with the assistance of the International Organisation for Migration (IOM), and “excising” Australian islands from the country’s “migration zone,” where detainees are prevented from accessing asylum procedures amongst other basic legal guarantees and services.

By the end of 2021, Australia had ceased all processing and detention operations in Papua New Guinea. However, it continues to have operations in Nauru, with which it finalised an agreement in 2021 to maintain “an enduring form” of offshore processing indefinitely.²³⁶ When Australia announced it would be ending its Papua New Guinea operations in October 2021, the 124 refugees who remained there were given the option to permanently settle in Papua New Guinea or request a transfer to Nauru.²³⁷ A government spokesperson said that there was “zero chance of settlement in Australia for those in Papua New Guinea.”²³⁸

According to the Refugee Council of Australia, “As of 31 December 2021, there were 105 people still in PNG and 114 on Nauru.”²³⁹

²³³ Refugee Council Australia, “The Federal Budget: What it Means for Refugees and People Seeking Humanitarian Protection,” 7 October 2020, <https://www.refugeecouncil.org.au/federal-budget-summary/>

²³⁴ Refugee Council Australia, “Offshore Processing Statistics,” 8 January 2022, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/6/>

²³⁵ M. Flynn, “There and Back Again: On the Diffusion of Immigration Detention,” *Journal on Migration and Human Security*, July 2014, <https://cmsny.org/publications/jmhs-there-and-back-again/>; D. Ghezelbash *Refuge Lost: Asylum Law in an Interdependent World*, Cambridge University Press, 2018

²³⁶ B. Doherty, “Australia signs deal with Nauru to keep asylum seeker detention centre open indefinitely,” *The Guardian*, 24 September 2021, <https://www.theguardian.com/australia-news/2021/sep/24/australia-signs-deal-with-nauru-to-keep-asylum-seeker-detention-centre-open-indefinitely>

²³⁷ B. Doherty, “Australia to end offshore processing in Papua New Guinea,” 6 October 2021, <https://www.theguardian.com/australia-news/2021/oct/06/australia-to-end-offshore-processing-in-papua-new-guinea>

²³⁸ Marian Faa, “Australian Government Urged to Act as PNG’s COVID-19 Outbreak Spreads Among Refugees,” *ABC News*, 20 October 2021, <https://www.abc.net.au/news/2021-10-21/png-refugee-family-covid-calls-for-evacuation/100548240>

²³⁹ Refugee Council of Australia, “Offshore Processing Statistics,” 8 January 2022, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/6/>

Despite the continued operations on Nauru, officials declared in 2015 that asylum seekers at the processing centre would no longer be detained and could move about freely on the island. For the refugees languishing on the island, however, their situation remained dire. An observer from Human Rights Law Centre remarked: “A transition to an open centre [is] an important and hard-won improvement, but letting people go for a walk does not resolve the fundamental problems. ... The men, women, and children on Nauru need a real solution—settlement in a safe place where they can rebuild their lives.”²⁴⁰

The origins of this offshore system date back to 2001, when a Norwegian tanker called the *MV Tampa* entered Australian waters after having rescued 433 mainly Hazara Afghan asylum seekers. The Australian Special Air Service (SAS) interdicted the ship and the asylum seekers were eventually escorted to the Pacific island of Nauru, from where 131 of them were sent to New Zealand and the remaining 302 were processed on Nauru.²⁴¹ This was the first time that Australian forces had intercepted a boat carrying refugees.²⁴²

The “*Tampa* affair,” as it came to be known, occurred at a time of “escalating numbers of boat arrivals to Australia’s north-west—from 200 in 1998 to 5,516 in 2001 (though boat arrivals only ever represented about 1.5 percent of Australia’s total migration intake).”²⁴³ This growth in numbers combined with a host of other incidents—including the sinking of a migrant boat called SIEV X in which 353 men, women and children drowned, and the spread of fabricated stories about migrant children being thrown off boats so they could be rescued and given asylum—fuelled a moral panic in Australia that was enflamed by leading political figures.

When the *Tampa* sought to land the rescued asylum seekers in Australia, then-Prime Minister John Howard responded, saying: “I believe it is in Australia’s national interest that we draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals in this country.” The same day that the ship was boarded by the Australia SAS, Howard tabled a bill in Parliament “giving the government sweeping powers to refuse entry to people seeking asylum by seas.”²⁴⁴

The slate of legislative proposals eventually adopted by Australia, dubbed the “Pacific Solution,” consisted of the *Amendment (Excision from Migration Zone) Bill 2001* and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001*. Under these new laws, several Australian offshore islands (Christmas Island, Ashmore and Cartier Islands, and the Cocos) were excised from Australia’s migration zone.²⁴⁵ In practice this meant that “unauthorised” non-citizens arriving at one of these islands without a valid visa were unable to make a valid application for a visa to enter Australia and instead were transferred to offshore processing centres set up on Nauru and Manus Island in Papua New Guinea where they were

²⁴⁰ AFP, “Nauru says immigrants will no longer be detained,” *AFP*, 2 October 2015, <https://news.yahoo.com/nauru-says-immigrants-no-longer-detained-060000691.html>

²⁴¹ National Museum Australia, “Defining Moments: ‘Tampa Affair,’” <https://www.nma.gov.au/defining-moments/resources/tampa-affair>

²⁴² Amnesty International, “What was the ‘Tampa Affair’ and Why Does it Matter?,” 27 August 2001, <https://www.amnesty.org.au/what-was-the-tampa-affair-and-why-does-it-matter/>

²⁴³ B. Doherty, “The Tampa affair, 20 years on: the ship that capsized Australia’s refugee policy,” *The Guardian*, 21 August 2021, <https://www.theguardian.com/australia-news/2021/aug/22/the-tampa-affair-20-years-on-the-ship-that-capsized-australias-refugee-policy>

²⁴⁴ B. Doherty, “The Tampa affair, 20 years on: the ship that capsized Australia’s refugee policy,” *The Guardian*, 21 August 2021, <https://www.theguardian.com/australia-news/2021/aug/22/the-tampa-affair-20-years-on-the-ship-that-capsized-australias-refugee-policy>

²⁴⁵ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

required to stay until their asylum claims had been processed.²⁴⁶ These offshore measures were later bolstered by successive amendments.

The 2013 Unauthorised Maritime Arrivals and Other Measures Act provides that no “unauthorised maritime arrivals” would be able to apply for a protection visa in Australia and they would all be sent to “regional processing countries” for the processing of their refugee claims.²⁴⁷ This removed differences in legal status of people arriving at “excised offshore places” (created after the *Tampa* affair) and those arriving elsewhere in Australia.²⁴⁸

The 2014 Migration and Maritime Powers Legislation Amendment Act empowered the immigration minister to detain people at sea (both within Australian waters and on the high seas) and to transfer them to any country, or a vessel of another country, even without that country’s consent.²⁴⁹

Although Australia is commonly considered to be the original source of offshore detention and processing policies, Australian politicians found inspiration for the Pacific Solution in U.S. migrant interdiction and detention practices implemented in the Caribbean in the 1980s and 1990s. Australia’s parliamentary digest describing the Howard government’s proposals recounts various policies pursued by successive U.S. administrations to combat “people smuggling,” highlighting in particular directives to interdict suspected smuggling vessels in the high seas, including the U.S. President Bill Clinton’s directive “providing for the offshore processing of illegal immigrants.” The digest states how in the United States “there is a distinction between illegal immigrants who are interdicted offshore and those who apply within the territory of the United States. The distinction is between immigrants who are ‘seeking admission’ and those who are ‘in and admitted to the United States.’ ... Illegal immigrants who are interdicted offshore are taken to a third country or a United States ‘trust territory’ for processing. These places include Guantanamo in Cuba, the Mariana Islands and Midway, but not Guam or the Virgin Islands which form part of the United States. As at 1998, the United States was negotiating with Mexico to reach an agreement allowing assessment within Mexican waters and repatriation via Mexico. It is difficult to get accurate information on agreements between the United States and processing countries or countries of origin. However, it is understood that in several cases, ‘jurisdiction’ over foreign ships in international waters has been exercised under the *Safety of Life at Sea* (SOLAS) regulations established by the International Maritime Organisation. Otherwise, jurisdiction has been obtained by consent in individual cases.”²⁵⁰

Australia’s Pacific Solution became the focus of an international human rights campaign. Amnesty International filed complaints against Australia with UNHCR and the UN Committee against Torture, claiming that refugees’ rights to freedom and security were being jeopardised. The Australian public, meanwhile, largely supported the changes, re-electing the Conservative Howard government, which proclaimed victory over a foreign invasion.²⁵¹ A total of 1,637 people were detained on Nauru and Manus islands between 2001 and February 2008, when the Pacific

²⁴⁶ Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

²⁴⁷ Government of Australia, “Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012, 8 March 2013, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd084

²⁴⁸ Government of Australia, “Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012, 8 March 2013, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd084

²⁴⁹ Refugee Council of Australia, “Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014: What it Means for People Seeking Asylum,” 1 February 2019, <https://www.refugeecouncil.org.au/legacy-caseload-brief/>

²⁵⁰ Parliament of Australia, “Bills Digest No. 62 2001-02: Border Protection (Validation and Enforcement Powers) Bill 2001,” Parliamentary Library, accessed 10 February 2022, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd0102/02bd062

²⁵¹ C. Bailliet, “The Tampa Case and its Impact on Burden Sharing at Sea,” *Human Rights Quarterly*, (25), 2003.

Solution was formally ended, of whom 70 per cent were found to be refugees and were resettled in either Australia or another country (such as New Zealand, the USA, Sweden, and Canada).²⁵² In 2012, offshore processing and detention of asylum seekers in Nauru and Papua New Guinea was resumed, reversing a 2008 decision to end it. In October 2021, the Australian government announced that it would stop processing asylum seekers in Papua New Guinea at the end of 2021 due to the country's worsening COVID-19 outbreak.²⁵³ However, it continues to have operations in Nauru, with which it finalised an agreement in September 2021 to maintain “an enduring form” of offshore processing indefinitely.²⁵⁴

2.19 COVID-19 Response

Did authorities issue a moratorium on new migrant detention orders?	No
Were immigration detainees released as a pandemic-related measure?	No
Were deportations temporarily ceased?	Yes

Observers in Australia warned about the high risks of COVID-19 outbreaks for refugees and asylum seekers in immigration detention since the onset of the pandemic in 2020. There was concern that mitigation measures in overcrowded detention centres were inadequate and that the slow and uneven implementation of the country's vaccination campaign (in particular during the first half of 2021) left detainees extremely vulnerable. There were calls for asylum seekers to be released as their continued detention in the midst of a pandemic could not be justified.²⁵⁵ In a joint letter to the Minister for Home Affairs in April 2020, more than 1,100 health professionals urged that “failure to take action to release people seeking asylum and refugees from detention will ... put them at risk of infection and possibly death” as well as “placing a greater burden on Australian society and the health care system.”²⁵⁶

While the Australian government followed the advice of epidemiologists and health care professionals in its overall management of the COVID-19 pandemic, it has consistently refused to include refugees, asylum seekers, and other non-citizens in its national public health response. In continuing to view this population from a perspective of national security, criminality, and border control, the pandemic reinforced Australia's regime of mandatory immigration detention.²⁵⁷

²⁵² Parliament of Australia, “Immigration Detention in Australia,” updated 20 March 2013, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/detention

²⁵³ M. Faa, “Australian Government Urged to Act as PNG's COVID-19 Outbreak Spreads Among Refugees,” *ABC News*, 2 October 2021, <https://www.abc.net.au/news/2021-10-21/png-refugee-family-covid-calls-for-evacuation/100548240>

²⁵⁴ B. Doherty, “Australia signs deal with Nauru to keep asylum seeker detention centre open indefinitely,” *The Guardian*, 24 September 2021, <https://www.theguardian.com/australia-news/2021/sep/24/australia-signs-deal-with-nauru-to-keep-asylum-seeker-detention-centre-open-indefinitely>

²⁵⁵ L. Knowles and J. Carter, “Asylum Seekers Plead to be Released from Detention Centres Amid Coronavirus Fears,” *ABC News*, 25 March 2020, <https://www.abc.net.au/news/2020-03-25/coronavirus-fears-asylum-seekers-plead-for-release-detention/12084604>; SBS News, “Australian Doctors Call for Refugees to be Released Amid Coronavirus Fears,” *SBS News*, 2 April 2020, <https://www.sbs.com.au/news/australian-doctors-call-for-refugees-to-be-released-amid-coronavirus-fears>; Asylum Seeker Resource Centre, “Morrison Government Must Act Urgently to Avoid COVID Catastrophe in Immigration Detention,” Media Release, 3 August 2021, <https://asrc.org.au/2021/08/03/morrison-government-must-act-urgently-to-avoid-covid-catastrophe-in-immigration-detention/>

²⁵⁶ “Australian Doctors Call for Refugees to be Released Amid Coronavirus Fears,” *SBS News*, 2 April 2020, <https://www.sbs.com.au/news/australian-doctors-call-for-refugees-to-be-released-amid-coronavirus-fears/55c06ac2-3d99-4a44-84e0-567d2946fea2>

²⁵⁷ A. Vogl et. al. “COVID-19 and the relentless harms of Australia's punitive immigration detention regime,” *Crime, Media, Culture*, 2021, Vol. 17 (1), 43-51, <https://journals.sagepub.com/doi/pdf/10.1177/1741659020946178>

On 23 March 2020, asylum seekers in detention across Australia wrote an open letter to the prime minister pleading for their release into the community. The detainees wrote: “It is only a matter of time before it will breach our closed environment. ... We are sitting ducks for Covid-19 and are extremely exposed to becoming severely ill, with the possibility of death.”²⁵⁸

However, the Department of Home Affairs (DHA) promptly rejected these and other calls to release detainees, claiming that “infection control plans are in place and plans to manage suspected cases of Covid-19 have been developed and tested. Detainees displaying any Covid-19 symptoms may be quarantined and tested in line with advice from health officials and in accordance with the broader Commonwealth response.”²⁵⁹ The Australian Border Force also responded by confirming that immigration detainees had full access to medical professionals and the same range of health care services as Australian citizens.²⁶⁰

In a June 2021 report examining the country’s management of COVID-19 risks in immigration detention, the Australian Human Rights Commission highlighted that while other countries released immigration detainees at the start of the health crisis, Australia instead increased its detainee population during the first year of the pandemic from 1,373 in March 2020 to 1,527 in February 2021.²⁶¹ The commission noted that this increase had “contributed to capacity pressures throughout Australia’s network of immigration detention facilities and increased the concentration of detainees in compounds at various times throughout 2020.”²⁶²

It described COVID-19 as a “serious threat” for those held in immigration detention, raising concerns about the high density of people held in enclosed, confined spaces where a significant proportion of them had pre-existing health conditions which could worsen the outcomes of contracting COVID-19. It urged the government to “follow expert health advice by placing people who present a low security risk in community-based alternatives to closed detention” as other countries have done with success. The commission recommended reducing the numbers being held in immigration detention facilities, improving physical distancing, especially in overcrowded bedrooms, paying special attention to detainees with underlying health conditions, and ensuring that any resort to quarantine must be “reasonable, necessary and proportionate to addressing COVID-19 risks.” It recommended that people should not be held in “harsh, prison-like” conditions during their quarantine and should have access to necessary support, and vaccines should be readily available for all immigration detainees, without discrimination.²⁶³

As well as concerns regarding persons detained in dedicated immigration detention centres, health professionals and refugee rights advocates also urged authorities to release people detained in Alternative Places of Detention (APODs)—such as those held in hotels following their transfer to Australia from offshore facilities in Nauru and Papua New Guinea under the 2019

²⁵⁸ L. Knowles and J. Carter, “Asylum Seekers Plead to be Released from Detention Centres Amid Coronavirus Fears,” *ABC News*, 25 March 2020, <https://www.abc.net.au/news/2020-03-25/coronavirus-fears-asylum-seekers-plead-for-release-detention/12084604>

²⁵⁹ E. Al-Ghalib, “Home Affairs Rejects Calls to Release Immigration Detainees Fearful of Coronavirus,” *SBS News*, 27 March 2020, <https://www.sbs.com.au/news/home-affairs-rejects-calls-to-release-immigration-detainees-fearful-of-coronavirus>

²⁶⁰ Z. Osborne, “Refugees Fear COVID Risk in Australian Immigration Detention,” *Al Jazeera*, 11 September 2021, <https://www.aljazeera.com/news/2021/9/11/refugees-fear-covid-risk-in-australian-immigration-detention>

²⁶¹ Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

²⁶² Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

²⁶³ Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

Medevac legislation. Conditions in such facilities had repeatedly been flagged as a matter of concern prior to the pandemic: for example, in 2019 conditions in Kangaroo Point APOD in Brisbane were described as dirty and comfortless, and rooms were reported to be “crawling with bed bugs.”²⁶⁴ A detainee at Kangaroo Point APOD told reporters in March 2020 that approximately 80 asylum seekers were in the hotel and that social distancing was impossible to implement. He said: “the doctors, they are saying ‘you need to have three or four metres from each other’, we don’t have one centimetre from each other. We are just sitting with each other in the dining room or on the balcony when people are smoking, that’s the only place we have for fresh air.”²⁶⁵

In August 2020, authorities announced that they would be transferring detainees between detention facilities in an effort to minimise overcrowding. As part of this, the government announced that it would be “reopening” Christmas Island detention facility (which was closed in 2018, but re-opened in 2019 to detain the Murugappan family—see “Section 2.5 Children” above—and to quarantine Australians returning from Wuhan, China during the earliest days of the pandemic).²⁶⁶ According to reports, the Australian Border Force (ABF) confirmed the move, claiming that the country’s inability to deport non-nationals during the pandemic had placed undue pressure on its detention estate.²⁶⁷ In a Tweet, the ABF stated that refugees and asylum seekers would not be amongst those relocated to the centre.²⁶⁸ However, observers have argued that refugees continued to be held there, pointing to DHA statistics indicating that 82 of the nearly 250 people in detention on Christmas Island had some kind of refugee visa.²⁶⁹

According to detainees who were held in the Christmas Island (North West Point) Immigration Detention Centre, conditions in the facility were poor: they were placed in lockdown for 22 hours a day and were denied access to workable Wi-Fi, leading to many struggling with both their physical and mental health. Describing the conditions in the facility, one refugee said: “It’s worse than jail. In jail, you know when you can go home, in detention they don’t have a timeframe for you to go home. You wait around, and you don’t know what’s happening.”²⁷⁰ On 5 January 2021, some detainees rioted in protest at their detention conditions. According to one detainee who spoke to the *Guardian*, the facility’s management had denied detainees the opportunity to hold a

²⁶⁴ B. Smee, S. Vasefi and L. Martin, “Like a Criminal: Inside the Brisbane Hotel Where Medevac Refugees are Detained,” *The Guardian*, 29 June 2019, <https://www.theguardian.com/australia-news/2019/jun/30/like-a-criminal-inside-the-brisbane-hotel-where-medevac-refugees-are-detained>

²⁶⁵ J. Blakkarly, “For a Detainee Inside an Australian Immigration Detention Centre, Covid-19 is Terrifying,” *SBS News*, 25 March 2020, <https://www.sbs.com.au/news/for-a-detainee-inside-an-australian-immigration-detention-centre-covid-19-is-terrifying>

²⁶⁶ H. Davidson, “Inside Christmas Island: The Australian Detention Centre with Four Asylum Seekers and a \$26m Price Tag,” *The Guardian*, 25 January 2020, <https://www.theguardian.com/australia-news/2020/jan/26/inside-christmas-island-the-australian-detention-centre-with-four-asylum-seekers-and-a-26m-price-tag>; N. Hondros and M. Bungard, “ABF Confirms Re-Opening of Christmas Island Detention Centre During Pandemic,” *The Sydney Morning Herald*, 4 August 2020, <https://www.smh.com.au/politics/federal/asylum-seeker-activists-slam-christmas-island-detention-centre-re-opening-20200804-p55ijn.html>

²⁶⁷ N. Hondros and M. Bungard, “ABF Confirms Re-Opening of Christmas Island Detention Centre During Pandemic,” *The Sydney Morning Herald*, 4 August 2020, <https://www.smh.com.au/politics/federal/asylum-seeker-activists-slam-christmas-island-detention-centre-re-opening-20200804-p55ijn.html>

²⁶⁸ Australian Border Force, “Tweet, 5 August 2020,” *Twitter*, 5 August 2020, <https://bit.ly/3gcHhj6>

²⁶⁹ Senate Standing Committee On Legal And Constitutional Affairs, “Budget Estimates, 24-25 May 2021, Home Affairs Portfolio Australian Border Force, Program 3.5: Onshore Compliance and Detention, BE21-395 - Christmas Island Detainees - Previously held Protection, Refugee or Humanitarian Visa,” <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId11-Portfolioid20-QuestionNumber395>

²⁷⁰ M. Rachwani, “Christmas Island Detainees Riot and Set Fire to Buildings in Protest Against Conditions,” *The Guardian*, 6 January 2021, <https://www.theguardian.com/australia-news/2021/jan/06/christmas-island-detainees-riot-and-set-fire-to-buildings-in-protest-against-conditions>

peaceful protest—prompting some to react violently and set two of the compounds alight. Additional disturbances were also reported on 10 January.²⁷¹

In its report examining COVID-19 risks in detention, the Australian Human Rights Commission also noted the unsuitability of the facility during the pandemic due to its isolation and lack of sophisticated health care facilities. The commission stated: “As a matter of urgency, the Australian Government should decommission the use of all immigration detention facilities on Christmas Island and implement more appropriate solutions to reduce the number of people in closed immigration detention.”²⁷²

In January 2021, some of those detained in Melbourne APODs were released (for more on this, see “Section 2.6 Other Vulnerable Groups”). According to the DHA, which justified the releases on a purely financial basis, all those released were granted “final departure bridging visas” which allow “individuals to temporarily reside in the Australian community while they finalise their arrangements to leave Australia.”²⁷³ In a statement, the department said: “The individuals residing in the alternative places of detention were brought to Australia temporarily for medical treatment. They are encouraged to finalise their medical treatment so they can continue on their resettlement pathway to the United States, return to Nauru or PNG, or return to their home country.”²⁷⁴

There have been several outbreaks of COVID-19 amongst staff and detainees in immigration detention centres and APODs across Australia since the start of the pandemic. In March 2020, for example, a security guard employed at the Brisbane APOD (Kangaroo Point Hotel) tested positive for COVID-19. Even though this did not lead to an outbreak at the facility, detainees in the facility were not tested after the positive case because the Australian border force said they didn’t “have kits to test everyone.”²⁷⁵ On 5 September 2021, it was confirmed that at least one guard at Melbourne Immigration Transit Accommodation (MITA) Broadmeadows Residential Precinct (BRP) had tested positive for COVID-19; meanwhile detainees at the same facility expressed fears about their own health and safety stating that five to six people were expected to share a room in bunk beds. A detainee told Al Jazeera: “They don’t test us for COVID unless we show symptoms. This means they would not actually know if it is spreading until a lot of people are sick. It could travel fast. Guards are free to come and go.”²⁷⁶

On 18 October 2021, detainees at Park Hotel, Melbourne (where the world tennis star Novak Djokovic was temporarily detained in January 2022), held a protest against their detention at the

²⁷¹ P. Karp, “Fresh Disturbance at Christmas Island Detention Centre Due to ‘Inhumane’ Conditions, Advocates Say,” *The Guardian*, 10 January 2021, <https://www.theguardian.com/australia-news/2021/jan/10/fresh-disturbance-at-christmas-island-detention-centre-due-to-inhumane-conditions-advocates-say>

²⁷² Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

²⁷³ J. Taylor, “Nearly All Refugees Held in Melbourne Hotel Detention to be Released, Advocates Say,” *The Guardian*, 20 January 2021, <https://www.theguardian.com/australia-news/2021/jan/20/more-than-20-refugees-to-be-released-from-melbourne-hotel-detention-advocates-say>

²⁷⁴ J. Taylor, “Nearly All Refugees Held in Melbourne Hotel Detention to be Released, Advocates Say,” *The Guardian*, 20 January 2021, <https://www.theguardian.com/australia-news/2021/jan/20/more-than-20-refugees-to-be-released-from-melbourne-hotel-detention-advocates-say>

²⁷⁵ J. Blakkarly, “For a Detainee Inside an Australian Immigration Detention Centre, Covid-19 is Terrifying,” *SBS News*, 25 March 2020, <https://www.sbs.com.au/news/for-a-detainee-inside-an-australian-immigration-detention-centre-covid-19-is-terrifying>

²⁷⁶ Z. Osborne, “Refugees Fear COVID Risk in Australian Immigration Detention,” *Al Jazeera*, 11 September 2021, <https://www.aljazeera.com/news/2021/9/11/refugees-fear-covid-risk-in-australian-immigration-detention>

L. Carroll, “Villawood Detention Centre Staff Member Tests Positive for COVID,” *Sydney Morning Herald*, 12 September 2021, <https://www.smh.com.au/national/australia-news-live-foreign-airlines-at-risk-of-pulling-out-as-victorian-outbreak-accelerates-20210912-p58qv6.html>

hotel during a COVID-19 outbreak. They protested having to share sleeping quarters and cramped eating and recreation spaces during the outbreak, despite the fact that many of them were medically vulnerable. By 22 October 2021, nearly one-third of all the detainees at Park Hotel had tested positive for COVID-19. The Refugee Action Coalition argued that the Australian authorities had “failed to implement the most basic COVID protocols” to prevent infection at the Park Hotel.²⁷⁷

Vaccination rates amongst immigration detainees also lagged well behind the rest of the Australian population. As of 29 November 2021, all detainees within Australia’s immigration detention network had been offered a COVID-19 vaccination. Of these, 61 percent of immigration detainees (924) were fully vaccinated (two doses),²⁷⁸ compared to 93.3 percent of the general population (16 years and over) who were fully vaccinated as of 30 January 2022.²⁷⁹ Disparities were also reported in vaccination rates for refugees and asylum seekers being held at offshore detention centres. On Nauru, 88 percent of the 107 detainees had received a first dose of the vaccine by 6 September 2021 and 84 percent were fully vaccinated. However, in Papua New Guinea, where the health system was reportedly overburdened with outbreaks, only 20 percent of detainees had received their first dose and just 11 percent were fully vaccinated according to information provided during Senate deliberations on 18 October 2021.²⁸⁰ The Australian Border Force maintained that all detainees had been offered COVID-19 vaccinations in a roll-out that commenced in early August and was taking place “at all immigration detention facilities across the immigration detention network”.²⁸¹

²⁷⁷ Ben Doherty, “A Covid incubator’: outbreak in Melbourne refugee detention hotel grows as vaccination rate lags,” *The Guardian*, 18 October 2021, <https://www.theguardian.com/australia-news/2021/oct/19/a-covid-incubator-outbreak-in-melbourne-refugee-detention-hotel-grows-as-vaccination-rates-lag>

²⁷⁸ Senate Standing Committee on Legal and Constitutional Affairs - Supplementary Budget Estimates, “Program 3.5: Onshore Compliance and Detention,” SE21-280 – Onshore Detention – COVID Vaccination Full or Partial, 25 October 2021, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld12-Portfoliold20-QuestionNumber280>

²⁷⁹ Australian Government (Operation COVID Shield), “COVID-19 Vaccine Rollout,” 31 January 2022, <https://www.health.gov.au/sites/default/files/documents/2022/01/covid-19-vaccine-rollout-update-31-january-2022.pdf>

²⁸⁰ Ben Doherty, “A Covid incubator’: outbreak in Melbourne refugee detention hotel grows as vaccination rate lags,” *The Guardian*, 18 October 2021, <https://www.theguardian.com/australia-news/2021/oct/19/a-covid-incubator-outbreak-in-melbourne-refugee-detention-hotel-grows-as-vaccination-rates-lag>

²⁸¹ Ben Doherty, “A Covid incubator’: outbreak in Melbourne refugee detention hotel grows as vaccination rate lags,” *The Guardian*, 18 October 2021, <https://www.theguardian.com/australia-news/2021/oct/19/a-covid-incubator-outbreak-in-melbourne-refugee-detention-hotel-grows-as-vaccination-rates-lag>



3. DETENTION INFRASTRUCTURE

3.1 Overview

As of January 2022, Australia operated seven immigration detention facilities—six of which were on the Australian mainland, and one on Christmas Island. These facilities include four Immigration Detention Centres (IDCs) and three Immigration Transit Accommodation (ITAs). In addition, the country also makes use of Alternative Places of Detention (APODs), which include hotels that have been repurposed for detention (see “Section 3.3d Alternative Places of Detention” below).²⁸² Australia previously had detention operations in “regional processing centres” in Nauru and Papua New Guinea (see “Section 3.3e Extraterritorial Detention Facilities in PNG and Nauru” below).

In 2019, the Australian government stated that it would be closing several detention facilities following a drop in boat arrivals. Specifically, the government announced its plans to close Maribyrnong IDC in Melbourne and the Blaxland Compound at Villawood IDC in Sydney—closures that the country’s immigration minister called “another milestone in the ramping-down of Australia’s onshore immigration detention network.”²⁸³ However, these closures were dismissed as a “meaningless announcement” by the Refugee Action Coalition, whose spokesperson pointed to the government’s opening of new compounds at [Yongah Hill IDC](#) and a high security compound in the [Melbourne ITA](#).²⁸⁴

In 2020, the Australian government also announced the full reopening of [North West Point IDC \(Christmas Island\)](#). Previously shut down in 2018, North West Point was partially re-opened in 2019 under the watch of 109 staff members, and subsequently to quarantine Australians returning from Wuhan, China during the earliest days of the pandemic.²⁸⁵

²⁸² Australian Border Force, “Immigration Detention in Australia: Detention Facilities,” accessed on 17 January 2022, <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-facilities>; Refugee Council Australia, “Statistics on People in Detention in Australia: Alternatives Places of Detention,” 8 January 2022, <https://www.refugeecouncil.org.au/detention-australia-statistics/3/>

²⁸³ SBS News, “Refugee Group Blasts ‘Meaningless’ Decision to Close Detention Centres,” *SBS News*, 2 January 2019, <https://www.sbs.com.au/news/refugee-group-blasts-meaningless-decision-to-close-detention-centres>

²⁸⁴ SBS News, “Refugee Group Blasts ‘Meaningless’ Decision to Close Detention Centres,” *SBS News*, 2 January 2019, <https://www.sbs.com.au/news/refugee-group-blasts-meaningless-decision-to-close-detention-centres>

²⁸⁵ H. Davidson, “Inside Christmas Island: The Australian Detention Centre with Four Asylum Seekers and a \$26m Price Tag,” *The Guardian*, 25 January 2020, <https://www.theguardian.com/australia-news/2020/jan/26/inside-christmas-island-the-australian-detention-centre-with-four-asylum-seekers-and-a-26m-price-tag>; N. Hondros and M. Bungard, “ABF Confirms Re-Opening of Christmas Island Detention Centre During Pandemic,” *The Sydney Morning Herald*, 4 August 2020, <https://www.smh.com.au/politics/federal/asylum-seeker-activists-slam-christmas-island-detention-centre-re-opening-20200804-p55ijn.html>

3.2 List of Detention Facilities

Facility Type	Name	Capacity (2020) ²⁸⁶
Immigration Detention Centres (IDCs)	Perth Immigration Detention Centre (PIDC)	45
	Villawood Immigration Detention Centre (VIDC)	616
	Yongah Hill Immigration Detention Centre (YHIDC)	558
	North West Point (Christmas Island) Immigration Detention Centre (NWPIDC)	500
Immigrant Transit Accommodation (ITAs)	Brisbane Immigration Transit Accommodation and Fraser Compound (BITA)	145
	Melbourne Immigration Transit Accommodation (MITC)	396
	Adelaide Immigration Transit Accommodation (AITA)	34

3.3 Conditions and Regimes in Detention Centres

3.3a Overview. Australia maintains a variety of immigration detention facilities—including secure Immigration Detention Centres (IDC), secure Immigrant Transit Accommodation (ITA), Alternative Places of Detention (APODs), and non-secure Community Detention and Alternative Detention Programs.²⁸⁷

The private contractor Serco manages the operations of IDCs, ITAs, and APODs throughout the country on behalf of the Australian government through an arrangement with the Australian Border Force (“Detention Service Provider Contracts”).

3.3b Immigration Detention Centres (IDCs). As of June 2021, the government of Australia maintained four IDCs. The Global Detention Project classifies these centres as secure detention facilities, given that detainees are restricted from leaving by an extensive physical security infrastructure. A 2008 report by the Australian Human Rights Commission noted that IDCs typically have a “security-driven atmosphere” and implement “physical measures [of security]

²⁸⁶ Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

²⁸⁷ Australian Human Rights Commission, “Immigration Detention and Human Rights,” 6 January 2016, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights>

such as high wire fencing and razor wire, and surveillance measures such as closed-circuit television.”²⁸⁸

IDCs accommodate people who have been detained under the 1958 Migration Act. As of January 2022, there were four operational IDCs: [Villawood IDC](#) (Sydney), [Perth IDC](#) (Perth), [North West Point \(Christmas Island\) IDC](#), and [Yongah Hill IDC](#).²⁸⁹

In August 2020, the Australian Border Force announced that it was reopening [North West Point \(Christmas Island\) Detention Centre \(NWP IDC\)](#) to provide capacity relief during the pandemic. However, the facility has been criticised for its conditions on numerous occasions. For example, during a 2017 visit the Australian Human Rights Commission found that, “due to its remoteness, the nature of its security infrastructure, and limited access to facilities and services on Christmas Island, the NWP IDC is not an appropriate facility for immigration detention, particularly for people who are vulnerable or have been detained for prolonged periods of time.”²⁹⁰ More recently, in 2021 the commission noted that there is limited medical care available on the island, and that if a detainee requires acute care, they will need to be transferred by air ambulance to Perth. The commission also highlighted the fact that detainees cannot reliably access the internet from their mobile phones, challenging their ability to maintain contact with the outside world.²⁹¹ As a result of such observations, in June 2021, the commission urged the Australian government to decommission the use of detention facilities on the island.²⁹² Nonetheless, as of January 2022, the facility remains in use.²⁹³

Other IDCs have also received criticism regarding the conditions for detainees. Following a visit to [Villawood IDC](#) in April 2017, the Australian Human Rights Commission found that many detainees in the facility did not feel safe due to the risk of physical violence from others in the facility. One detainee told the commission: “I close the door of my room because I’m scared. In jail I had better safety than in detention.” Many of those held in high-security compounds such as Blaxland and Mackenzie reported violent incidents such as fights and assaults, with some reporting that staff had not taken adequate steps to protect them from such incidents. The commission also heard reports of racial discrimination and intimidating behaviour from staff towards detainees, as well as the use of restraints when detainees are transported externally—such as to medical appointments.²⁹⁴

In assessing accommodation at the facility—which is separated between lower security and higher security compounds—the commission noted that those held in the main detention

²⁸⁸ Australian Human Rights Commission, “2008 Immigration Detention Report: Summary of Observations Following Visits to Australia’s Immigration Detention Facilities,” 18 November 2010, www.hreoc.gov.au/human_rights/immigration/idc2008.html#Heading847.

²⁸⁹ Australian Border Force, “Immigration Detention in Australia,” 25 May 2020, <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-facilities>

²⁹⁰ Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

²⁹¹ Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

²⁹² Australian Human Rights Commission, “Management of COVID-19 Risks in Immigration Detention,” 16 June 2021, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>

²⁹³ Department of Home Affairs, “Response to the Australian Human Rights Report on COVID-19 Risks in Immigration Detention;” accessed on 31 January 2022, https://humanrights.gov.au/sites/default/files/homeaffairs_response_covid-19_immigration_detention_2021_0.pdf

²⁹⁴ Australian Human Rights Commission, “Australian Human Rights Commission Inspection of Villawood Immigration Detention Centre: Report,” 10-12 April 2017, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-villawood-immigration-detention-centre>

complex were housed in modern, purpose-built accommodation blocks, and that bedrooms were shared by up to two people. However, in some areas of the now-closed high security Blaxland compound, some were held in dormitories housing up to six detainees which lacked natural light or sufficient privacy. Some detainees also reported the presence of vermin in the dormitories and criticised the small number of showers and toilets available for their use. Responding to its findings, the commission stated that it: “considers that current accommodation arrangements in Blaxland compound are unacceptable and do not provide humane and dignified conditions of detention as required by the ICCPR.”²⁹⁵

According to the commission, each compound at the Villawood IDC has an indoor common area typically containing a TV, seating, basic recreation equipment (such as books and/or a pool table), computers, and a kitchenette. All compounds also had outdoor seating areas—some of which included gardens. In the main complex area, all compounds have indoor and outdoor exercise areas, but at Blaxland compound the outdoor area had limited shade and insufficient space for detainees to run around. People in lower-security compounds could access the canteen to collect their meals, while those in higher security compounds could not, and instead had their meals delivered to their compound. There are limited opportunities for detainees to cook their own meals. Many detainees spoke negatively about food provision, describing it as repetitive and unsuitable for those with specific dietary requirements.²⁹⁶ In September 2019, the commission returned to the Villawood IDC and found that the Blaxland compound was the only compound that had not yet undergone refurbishment. Since the commission’s visit, the Blaxland compound has closed and detainees held there were transferred to the new high security compound in March 2020.²⁹⁷

Several similar criticisms were raised by the commission following its 2017 visit to [Perth IDC](#), including: small and cramped living and exercise facilities; excessive use of restraints; and lack of suitable food for persons with dietary requirements);²⁹⁸ and its 2017 visit to [Yongah Hill IDC](#), including: limited space and privacy in accommodation areas; poor standards of health care provision; and limited access to computers.²⁹⁹

3.3c Immigrant Transit Accommodation (ITA). The second form of secure immigration detention is Immigrant Transit Accommodation (ITAs). The Global Detention Project classifies these facilities as secure, as the Australian Human Rights Commission provides that detainees “are still being held in a closed detention facility. They are not permitted to come and go.”³⁰⁰ The [Melbourne ITA](#)

²⁹⁵ Australian Human Rights Commission, “Australian Human Rights Commission Inspection of Villawood Immigration Detention Centre: Report,” 10-12 April 2017, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-villawood-immigration-detention-centre>

²⁹⁶ Australian Human Rights Commission, “Australian Human Rights Commission Inspection of Villawood Immigration Detention Centre: Report,” 10-12 April 2017, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-villawood-immigration-detention-centre>

²⁹⁷ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities 2019 Report,” December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>, p.23.

²⁹⁸ Australian Human Rights Commission, “Australian Human Rights Commission Inspection of Perth Immigration Detention Centre,” 2018, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/australian-human-rights-commission-inspection-0>

²⁹⁹ Australian Human Rights Commission, “Australian Human Rights Commission Inspection of Yongah Hill Immigration Detention Centre,” 2017, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-yongah-hill-immigration-detention>

³⁰⁰ Australian Human Rights Commission, “2008 Immigration Detention Report: Summary of Observations Following Visits to Australia’s Immigration Detention Facilities,” 2008, http://www.hreoc.gov.au/human_rights/immigration/idc2008.html#Heading847

for example, includes various higher-security features, such as an external fence, high internal fences, secure doors, and security cameras.³⁰¹

ITAs were initially intended to hold people in short-term detention before they are transferred to long-term centres or returned home, although they are now used to detain people often for years. These facilities are used for people assessed to be a “low security risk.” As of January 2022, there were three ITAs: [Adelaide ITA](#) (Kilburn, Adelaide), [Brisbane ITA](#) (near Brisbane Airport), and [Melbourne ITA](#) (Melbourne, Victoria).³⁰²

In 2019, a young Afghan man, detained at the [Melbourne ITA](#) tried to set himself on fire following two years in detention.³⁰³ His attempt to self-harm was interrupted but came two days after the death of another Afghan man at the same detention centre. The Australian Human Rights Commission has found numerous shortcomings at the facility, which is made up of four compounds, each dedicated to the detention of specific groups of detainees. Despite traditionally being a “low-security” detention facility, the commission noted a “controlled movement” policy, which prevents detainees moving freely between compounds. While the centre claimed that this was to protect detainees in the female compound, the commission noted that it had significantly curtailed freedom of movement and restricted some detainees’ access to facilities (while some compounds had sufficient space and facilities, others did not).³⁰⁴

3.3d Alternative Places of Detention (APODs). In addition to these forms of secure detention, the Australian government operates a third form of secure detention facility called an Alternative Place of Detention (APOD). These facilities include hotels that have been repurposed for detention, and as of January 2022, four APODs were in operation: the [Northern APOD](#) (Mercure Darwin Airport Hotel), Meriton Suites (Brisbane), [Park Hotel, Carlton](#) (Melbourne), and Best Western (Melbourne). Between January 2018 and January 2021, approximately 170 different APODs were used. Of those, 56 were classified as hotel-type APODs.³⁰⁵

Although APODs are intended to be used to confine people for short periods of time, observers have highlighted that people have in reality been detained in such facilities for long periods.³⁰⁶ Large numbers of persons transferred from offshore detention facilities to the mainland under now-repealed Medevac legislation were held in hotel APODs for several years (for more, see: “Section 2.6 Other Vulnerable Groups.”) According to Department of Home Affairs (DHA) data, as of 30 September 2021, there were 48 people detained in APOD’s in the state of Victoria, 28 in New South Wales, 19 in Queensland, less than 10 in Western Australia, and less than 5 in South Australia.³⁰⁷

³⁰¹ Australian Human Rights Commission, “Australian Human Rights Commission Inspection of Melbourne Immigration Transit Accommodation,” 2017, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-melbourne-immigration-transit>

³⁰² Australian Border Force, “Immigration Detention in Australia,” 25 May 2020, <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-facilities>

³⁰³ L. Martin, “Young Afghan Man Tries to Set Himself on Fire at Melbourne Detention Centre,” *The Guardian*, 15 July 2019, <https://www.theguardian.com/australia-news/2019/jul/15/young-afghan-man-tries-to-set-himself-on-fire-at-melbourne-detention-centre>

³⁰⁴ Australian Human Rights Commission, “Australian Human Rights Commission Inspection of Melbourne Immigration Transit Accommodation,” 2017, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-melbourne-immigration-transit>

³⁰⁵ Senate Standing Committee on Legal and Constitutional Affairs, “Program 1.3: Onshore Compliance and Detention: AE21-346 – Alternative Places of Detention (APODs) in Australia Since 2018,” 22 March 2021.

³⁰⁶ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities, 2019 Report,” December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

³⁰⁷ Department of Home Affairs (DHA), “Immigration Detention and Community Statistics Summary,” 30 September 2021, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2021.pdf>

At the same time however, inspections have found APODs to offer inadequate conditions for long-term detention. In 2019, for example, the Australian Human Rights Commission noted that they provide “very limited” access to communal or outdoor areas.³⁰⁸ The commission further stated: “The conditions of detention at the Melbourne and Brisbane hotel APODs are inadequate. They are extremely restrictive and lack sufficient outdoor space and facilities for exercise, recreation, and activities. Such restrictive conditions and lack of access to these essential amenities appeared to be contributing to a decline in the physical and mental wellbeing of those detained in the hotel APODs.”³⁰⁹

During its visit to a Melbourne hotel APOD in 2019, the commission observed that people were detained in two or three bedrooms but were unable to open their windows; detainees had access to a small common area and a “multipurpose room”; the gym was available for detainees for just one hour a day; and detainees had no access to outdoor space. Detainees complained that they could not get enough fresh air and that they felt “locked in.”³¹⁰ Windows were also found to be locked in the [Kangaroo Point Hotel APOD](#) in Brisbane, and the facility was similarly flagged for its lack of outdoor space (although detainees were permitted occasional access to the hotel’s small outdoor pool and a BBQ area). At the time of the visit, the commission also learned that detainees had the option between Monday to Friday to be transferred to [Brisbane Immigration Transit Accommodation and Fraser Compound](#) (BITA) for an hour to use the centre’s facilities and join in organised activities.³¹¹ This practice ended with the start of the COVID-19 pandemic.³¹²

More recently, news reports have highlighted the poor living conditions at the [Park Hotel](#) in Melbourne. The windows were reportedly drilled shut to stop refugees from opening them at all.³¹³ On 27 December 2021, refugees held in the hotel posted images of maggots and mould found in the food they were served in their rooms.³¹⁴ In addition, a week earlier, several fires broke out in the facility. Refugees and asylum seekers fled to the ground floor, but were stopped from leaving by guards before being evacuated. Some were hyperventilating with anxiety and others were forced to urinate in bottles as there were no toilets. Australian police said that one person was taken to hospital and treated for smoke inhalation.³¹⁵

³⁰⁸ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities, 2019 Report,” December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

³⁰⁹ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities, 2019 Report,” December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

³¹⁰ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities, 2019 Report,” December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

³¹¹ Australian Human Rights Commission, “Inspections of Australia’s Immigration Detention Facilities, 2019 Report,” December 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

³¹² Sahar Okhovat (Refugee Council of Australia), in correspondence with Michael Flynn (Global Detention Project), 26 January 2022.

³¹³ B. Doherty, “Everyone Asks About Novak but Mehdi Has Languished for Nine Years in Australian Immigration Detention,” *The Guardian*, 7 January 2022, https://www.theguardian.com/world/2022/jan/07/everyone-asks-about-novak-but-mehdi-has-languished-for-nine-years-in-australian-immigration-detention?CMP=Share_iOSApp_Other

³¹⁴ E. Gillespie & A. Lucente, “Asylum Seekers in Melbourne Detention Say They Were Served ‘Maggots and Mould’ for Dinner,” *SBS News*, 29 December 2021, <https://www.sbs.com.au/news/asylum-seekers-in-melbourne-detention-say-they-were-served-maggots-and-mould-for-dinner/3e4d70d3-bb5e-4faf-b11b-99a80b9407c1>

³¹⁵ A. Britton, “Investigation Launched After Fires Break Out at Melbourne Detention Hotel,” *SBS News*, 23 December 2021, <https://www.sbs.com.au/news/investigation-launched-after-fires-break-out-at-melbourne-detention-hotel/726af640-5134-4ad1-8ffa-f5ca02f8c079>

Conditions at the [Northern APOD](#) (Mercure Darwin Airport Resort) have also been denounced. In February 2020, an Iranian man, Reza Golmohammadian, and his family were flown to Darwin from Nauru for medical treatment. However, a year later, Mr Golmohammadian complained that he and other refugees had received inadequate treatment while they were in Darwin. This claim was backed up by a group of Darwin-based medical professionals who wrote a letter to the Federal Minister for Home Affairs on 8 February 2021, calling for the immediate release of refugees held in the facility. The letter, which was signed by 51 medical professionals, said that many of the refugees had received limited care and that their ongoing medical conditions had not been addressed. Moreover, it highlighted multiple reports of inadequate living conditions and sanitation which contributed to the deteriorating health of the detainees. Mr Golmohammadian said that he and his wife were detained in a 3m x 3m room with bunk beds and that due to his health problems, he was unable to climb into the bunk bed and so slept on the floor.³¹⁶

The [Kangaroo Point Hotel APOD](#) is reportedly no longer being used to detain refugees since April 2021, when the last 19 refugees were forcibly removed and transferred to the Brisbane Immigration Transit Accommodation Centre after a change of ownership of the hotel.³¹⁷ Prior to this, in March 2021, the government released 50 refugees into the community from Kangaroo Point Hotel without providing a reason for their release.³¹⁸ In addition, in January 2021, Australian authorities released 46 refugees from the [Park Hotel APOD](#)³¹⁹ and a further 25 in August 2021.³²⁰ While the releases were welcomed by civil society, some organisations also took the opportunity to call for the release of all detainees. Dr. Graham Thom, refugee coordinator at Amnesty International, stated that: “while this is an important first step, given the mental health impact on all those still in detention, a number for eight years, the release of those remaining must occur as a matter of urgency.”³²¹

3.3e Extraterritorial Detention Facilities in PNG and Nauru. For many years, Australia had detention operations in “regional processing centres” in Nauru and Papua New Guinea. However, as of 2020, both the Nauru Regional Processing Centre (RPC) and the Manus Island RPC in PNG were closed. The Manus Island RPC was closed in October 2017, although it was later replaced with the Bomana Immigration Detention Centre (IDC), which operated between 2019-2020. In October 2020, the Australian government confirmed that there were no longer any people held at Bomana and in 2021 it announced that all processing activities in PNG would be

³¹⁶ S. Vivian & J. Hislop, “Darwin Hotel Refugees Plea for Community Release as Doctors Lament ‘Deteriorating Health’ Inside Confinement,” *ABC News*, 9 February 2021, <https://www.abc.net.au/news/2021-02-10/darwin-medevac-refugees-plea-for-temporary-community-release/13131922>

³¹⁷ M. Dennien, “Remaining Refugees ‘Forced’ From Inner-Brisbane Hotel Site,” *Brisbane Times*, 16 April 2021, <https://www.brisbanetimes.com.au/national/queensland/remaining-refugees-moved-from-inner-brisbane-hotel-site-20210416-p57jxa.html>; M. Boseley, “Kangaroo Point Hotel: 19 Asylum Seekers Forcibly Removed in Brisbane as Police Clash with Protesters,” *The Guardian*, 17 April 2021, <https://www.theguardian.com/australia-news/2021/apr/17/asylum-seekers-forcibly-removed-from-brisbane-hotel-supporters-say>

³¹⁸ A. Silva, “I Still Have Nightmares: Surviving Australia’s Kangaroo Point,” *Al-Jazeera*, 18 April 2021, <https://www.aljazeera.com/features/2021/4/18/i-still-have-nightmares-surviving-australias-kangaroo-point>

³¹⁹ M. Truu, “More Asylum Seekers Released From Melbourne Immigration Detention, a Week After Dozens Freed,” *SBS News*, 28 January 2021, <https://www.sbs.com.au/news/more-asylum-seekers-released-from-melbourne-immigration-detention-a-week-after-dozens-freed/79e15d0c-0414-415f-bbfe-57780c032484>

³²⁰ Asylum Seeker Resource Centre, “Release of 33 Refugees From Detention Welcomed, But Show Arbitrary Nature of Still Detaining Over 90,” 24 August 2021, <https://asrc.org.au/2021/08/24/release-of-33-refugees-from-detention-welcomed-but-shows-arbitrary-nature-of-still-detaining-over-90/>

³²¹ Asylum Seeker Resource Centre, “Release of 33 Refugees From Detention Welcomed, But Show Arbitrary Nature of Still Detaining Over 90,” 24 August 2021, <https://asrc.org.au/2021/08/24/release-of-33-refugees-from-detention-welcomed-but-shows-arbitrary-nature-of-still-detaining-over-90/>

permanently shuttered.³²² In Nauru, Australia continues offshore processing procedures though its formal detention procedures reportedly came to end by the late 2010s.³²³

The Bomana IDC, which opened in 2019 near Port Moresby, was a highly controversial offshore site for detaining asylum seekers, which received widespread media attention during its brief operating period for the deplorable conditions of detention. The Refugee Council of Australia interviewed released detainees who described detention conditions that amounted to cruel, inhuman, and degrading treatment. They reported being effectively cut off from the outside world for several months, unable to call family or lawyers. Most of the compounds did not have air conditioning and the detainees had to sleep in stifling cells in tropical heat. The water in the shower was boiling hot and the food portions were extremely small to the point that many men lost between 10-20kg in the first two months in the facility.³²⁴

³²² B. Doherty, "Australia to end offshore processing in Papua New Guinea," 6 October 2021, <https://www.theguardian.com/australia-news/2021/oct/06/australia-to-end-offshore-processing-in-papua-new-guinea>

³²³ AFP, "Nauru says immigrants will no longer be detained," *AFP*, 2 October 2015, <https://news.yahoo.com/nauru-says-immigrants-no-longer-detained-060000691.html>; Australian Border Force, "Operation Sovereign Borders Monthly Update: March 2019," 9 April 2019, <https://web.archive.org/web/20200814123127/https://newsroom.abf.gov.au/releases/operation-sovereign-borders-monthly-update-march-2019>

³²⁴ Asia Pacific Refugee Rights Network and the Global Detention Project, "Joint Submission to the Universal Periodic Review: Papua New Guinea," 26 March 2021, <https://www.globaldetentionproject.org/joint-submission-to-the-universal-periodic-review-papua-new-guinea>; Refugee Council of Australia and Amnesty International, "Until When: the Forgotten Men on Manus Island," November 2018, https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Until_When_AIA_RCOA_FINAL.pdf, pp. 12-13 & 51



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